

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: An allegation against **MICHAEL JOHN ROOT, CPA, CA**, a member of the Institute, under **Rule 104.2(a)** of the Rules of Professional Conduct, as amended.

TO: Mr. Michael J. Root, CPA, CA

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order December 18, 2012)

1. This tribunal of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on December 18, 2012, to hear an allegation of professional misconduct brought by the Professional Conduct Committee against Michael John Root, a member of the Institute.

2. The Professional Conduct Committee (PCC) was represented by Alexandra Hersak. Mr. Root attended and was unrepresented. He acknowledged that he understood he was entitled to be represented by counsel, and that he was waiving that right. Robert Peck attended the hearing as counsel to the Discipline Committee.

3. The decision of the tribunal was made known at the conclusion of the hearing on December 18, 2012. The written Decision and Order was sent to the parties on December 19, 2012. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegation, the decision, the order, and the reasons of the tribunal for its decision and order.

ALLEGATION

4. The following allegation was laid against Mr. Root by the Professional Conduct Committee on September 6, 2012:

1. THAT the said Michael J. Root, in or about the period April 16, 2012 to July 17, 2012, failed to co-operate with the regulatory process of the Institute contrary to Rule 104.2(a) of the Rules of Professional Conduct, in that he failed to promptly reply in writing to the following letters from the Institute to which a written reply is specifically required, dated March 22, and May 3, 2012, from Ms. Theresa Tonelli, CA, Director of Standards Enforcement at the Institute.

THE PLEA

5. Mr. Root entered a plea of guilty to the allegation.

THE PROCEEDINGS

6. Ms. Hersak made a brief opening statement and said that the evidence of the PCC would be provided by way of an affidavit of Ms. Theresa Tonelli, CPA, CA, Director of Standards Enforcement, sworn on November 27, 2012. The Affidavit and the exhibits attached were included in a document entitled Affidavit of Theresa M. Tonelli, CPA, CA (Exhibit 1). Ms. Hersak reviewed the Affidavit and the exhibits to the Affidavit, particularly the letters sent from the Institute to Mr. Root. Ms. Hersak did not present any other evidence with respect to the allegation.

7. Mr. Root did not present any evidence on his own behalf.

8. Ms. Hersak submitted that the evidence was clear, cogent and convincing and, as Mr. Root acknowledged his guilt by entering a plea of guilty, he should be found guilty of the allegation.

FACTS

9. The relevant facts were not disputed. Mr. Root confirmed the essential points made by Ms. Hersak. The relevant facts, as found by the tribunal, are set out in the following paragraphs.

10. Mr. Root, a partner in a firm, was advised by letter dated March 22, 2012 from Ms. Tonelli that a complaint had been received from a client company that Mr. Root had not advised the company of its tax liabilities. Mr. Root was asked to respond to the complaint on or before April 16, 2012, and advised that his failure to reply could result in a charge by the PCC. In the absence of a response, Ms. Tonelli wrote to Mr. Root again on May 3, 2012 reminding him that he had not responded and advising him that if he did not respond by May 17, 2012 his failure to respond would be referred the PCC and could result in a charge or charges under the Rules. Mr. Root did not respond to Ms. Tonelli's letters and between May 23 and May 30, 2012 a staff member phoned and left two voicemail messages for Mr. Root to which he did not respond. All letters were sent by regular and registered mail to Mr. Root's address of record with the ICAO.

11. Mr. Root confirmed that the facts were true and accurate. He stated that there were no mitigating circumstances that prevented him from replying to the correspondence other than he was busy at the time.

DECISION

12. After deliberating, the tribunal made the following decision:

THAT, having heard the plea of guilty to the Allegation, and having seen and considered the evidence, the Discipline Committee finds Michael John Root guilty of the Allegation.

REASONS FOR THE DECISION

13. In light of the relevant facts which are set out above, the tribunal concluded that the allegation had been proven and that Mr. Root's failure to respond to Standards Enforcement constituted professional misconduct. Accordingly, the tribunal found him guilty of the allegation.

SANCTION

14. Neither party called evidence with respect to sanction. Ms. Hersak made submissions to the tribunal.

15. The Professional Conduct Committee requested an order which included the following terms: a reprimand in writing by the Chair; a fine of \$3,500; an order that Mr. Root cooperate by responding to the complaint letters within 30 days of the Decision and Order becoming final, and in the event he failed to do so that he should be suspended for a period of time, and if he still did not cooperate that his membership be revoked; and the usual order with respect to publication. The Professional Conduct Committee also asked for an order requiring Mr. Root to partially reimburse the Institute for approximately 50% of the costs of the proceedings fixed at \$3,200.

16. Ms. Hersak submitted that the aggravating factor in this case was the lack of any response from Mr. Root, despite letters and phone calls from Standards Enforcement. The absolute silence of Mr. Root led to a waste of time and resources when a response would have taken a few hours of his time. Without a response, the PCC is unable to carry out its mandate and once a response is received from Mr. Root, the matter which led to the complaint will still have to be dealt with. Ms. Hersak stated that it has been eight months since the first deadline and to date a response has not been received although it is within Mr. Root's power to do so. Ms. Hersak submitted it is not adequate for Mr. Root to say he was busy.

17. Ms. Hersak submitted in mitigation that Mr. Root has no previous involvement with the disciplinary process, he appeared at the hearing and has pleaded guilty to the allegation.

18. Ms. Hersak submitted that the reprimand, the fine and the notice of the order were required to specifically deter Mr. Root from similar behavior in the future. She also submitted that the fine and notice were required as a general deterrent to dissuade other members from similar misconduct.

19. Ms. Hersak submitted that a term in the order requiring Mr. Root to cooperate would provide him with the opportunity to show that he was both willing and able to comply with the regulatory requirements of the Institute, and enable the PCC to commence its investigation.

20. Ms. Hersak filed a Costs Outline (Exhibit 2) which set out the costs of the hearing, which was estimated to take one day, as just over \$6,500. Ms. Hersak stated that the Professional Conduct Committee was seeking \$3,200, approximately 50% of the costs. She acknowledged that the hearing did not last a full day and invited the tribunal to consider an adjustment to reflect this. Ms. Hersak submitted that costs are an indemnity and it is expected that part would be paid by the member and part would be paid by the profession.

21. Mr. Hersak submitted that the notice in *CheckMark* and on the Institute website informs other members and the public of a breach of the rules and the consequences. There is no evidence of any rare or unusual circumstances in this case that would preclude such publication.

22. Ms. Hersak referred to the cases of *Ross*, *Hubbard*, *Collaton* and *Lis* as precedents which supported the terms of the order requested. Ms. Hersak stated that time will tell if Mr. Root does respond to the original complaint and, if not, the consequences will be suspension, followed by revocation of his membership.

23. Mr. Root apologized to the tribunal, noting that if he had responded when the original letter had been received, this whole process would have been avoided. Mr. Root submitted that he is governable and stated that he is a member of the Institute's Practice Inspection Committee. He undertook to respond to the letter on the hearing day and acknowledged the deterrent effect of the fine, reprimand and publicity.

ORDER

24. After deliberating, the tribunal made the following order:

IT IS ORDERED in respect of the allegations:

1. THAT Mr. Root be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Root be and he is hereby fined the sum of \$3,500 to be remitted to the Institute within twenty (20) days from the date this Decision and Order is made.
3. THAT Mr. Root co-operate by responding to the letters dated March 22 and May 3, 2012 from the Director of Standards Enforcement within twenty (20) days of the date this Decision and Order is made.
4. THAT notice of this Decision and Order, disclosing Mr. Root's name, be given after this Decision and Order is made:
 - (a) to all members of the Institute;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to all provincial institutes/Ordre;and shall be made available to the public.

IT IS FURTHER ORDERED:

5. THAT Mr. Root be and he is hereby charged costs fixed at \$4,200 to be remitted to the Institute within twenty (20) days from the date this Decision and Order is made.

AND IT IS FURTHER ORDERED

6. THAT in the event Mr. Root fails to comply with any of the requirements of this Order, he shall be suspended from the rights and privileges of membership in the Institute and his public accounting licence shall be suspended until such time as he does comply, provided that he complies within twenty (20) days from the date of his suspension, and in the event he does not comply within the twenty (20) day period, his membership in the Institute and his public accounting licence shall be revoked, and notice of his membership and licence suspension and revocation, disclosing his name, shall be given in the manner specified above, and in a

newspaper distributed in the geographic area of Mr. Root's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Root and shall be in addition to any other costs ordered by the tribunal.

REASONS FOR THE ORDER

25. Mr. Root could have easily responded to the Director of Standards Enforcement and was given ample time to do so. Mr. Root, as he recognized, had no justifiable reason for not responding other than being busy. Both the public interest and the interest of the profession require the tribunal to order him to cooperate with the investigative process of the Institute if he is to continue as a member of the Institute, and to impose a sanction which will make it clear to Mr. Root, the public and the profession that failure to comply will not be tolerated.

Reprimand

26. The tribunal ordered that Mr. Root be reprimanded to emphasize to him the seriousness of his misconduct and the fact that it was unacceptable.

Fine

27. The tribunal imposed a fine both as a specific deterrent to Mr. Root and as a general deterrent to other members to dissuade them from similar misconduct. The tribunal concluded that the amount of the fine should be \$3,500 and that Mr. Root should be given 20 days, from the time the Decision and Order becomes final, to pay the fine.

Cooperation

28. The provision in the Order requiring Mr. Root to cooperate within 20 days of the Order becoming final gives Mr. Root the opportunity to demonstrate that he can comply with the regulatory requirements of the Institute. If he does so it will enable the PCC to carry out its mandate. The consequences for failure to comply are set out in the Order. It is more than eight months since Mr. Root received the first letter from Ms. Tonelli and as at the date of the hearing Mr Root still has not responded.

Notice

29. Publishing the names of members found guilty of professional misconduct is often the single most significant sanction that may be imposed on a member and is often the most effective general deterrent. As the notice serves both to inform the membership at large and offers a measure of protection to the public, it is only in the most exceptional circumstances that privacy considerations outweigh the need to inform both the membership and the public. No such circumstances were present in this case and, accordingly, the usual order for publication was made.

Suspension and Revocation for failure to comply

30. An order of the Discipline Committee which did not provide for consequences in the event a member fails to comply with terms of the order would be meaningless. Accordingly, as is usual, this order provides that if the member fails to comply with any of the terms of the order, he shall first be suspended and, if he still does not comply, his membership will be revoked.

31. This is particularly appropriate with respect to the term of the order requiring Mr. Root to respond to the Director of Standards Enforcement within 20 days of the order becoming final. If he cannot comply with the regulatory requirements of the Institute, he should not enjoy the privileges of membership. If his membership is revoked, notice of this shall be given on the Institute's website and in a newspaper or newspapers distributed in the area where he practises. The costs of the publication, as required by the bylaws, shall be borne by the member.

Costs

32. Mr. Root, the member responsible for the expense of the proceedings, should himself assume part of the costs. The costs requested by PCC were approximately half of the actual cost of the proceedings. The tribunal concluded that Mr. Root should pay \$4,200 as a partial indemnity and, as with the fine, that he should be given 20 days, from the time the Decision and Order became final, to pay the costs.

DATED AT TORONTO THIS *19TH* DAY OF FEBRUARY, 2013
BY ORDER OF THE DISCIPLINE COMMITTEE



J.A. CULLEMORE, FCPA, FCA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

B.G. ALLENDORF, CPA, CA
R.H. CARRINGTON (Public Representative)
R.S. DUSCHEK, CPA, CA