

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: A charge against **PAUL S. KLOOSTERMAN, CA**, a member of the Institute, under **Rule 203.2(a)** of the Rules of Professional Conduct, as amended.

TO: Mr. Paul S. Kloosterman, CA

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order May 25, 2011)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on May 25, 2011, to hear a charge of professional misconduct brought by the Professional Conduct Committee against Paul S. Kloosterman, CA, a member of the Institute.

2. The Professional Conduct Committee was represented by Alexandra Hersak. Mr. Kloosterman 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 panel was made known at the conclusion of the hearing on May 25, 2011. The written Decision and Order was sent to the parties on June 3, 2011. These reasons, given pursuant to Bylaw 574, include the charge, the decision, the order, and the reasons of the panel for its decision and order.

CHARGE

4. The following charge was laid against Mr. Kloosterman by the Professional Conduct Committee on February 25, 2011:

1. THAT the said Paul S. Kloosterman, in or about the period September 8, 2010 to February 8, 2011, failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct a practice inspection, contrary to Rule 203.2(a) of the Rules of Professional Conduct.

THE PLEA

5. Mr. Kloosterman entered a plea of guilty to the charge.

THE PROCEEDINGS

6. Ms. Hersak made a brief opening statement and said that the evidence of the Professional Conduct Committee would be provided by way of two affidavits; the affidavit of Mr. Grant Dickson FCA, the Director of Practice Inspection sworn on May 11, 2011 and the affidavit of Ms. Theresa Tonelli CA, Director of Standards Enforcement sworn on May 10, 2011. The Affidavits and the exhibits attached were included in a document brief entitled Affidavits May 2011 (Exhibit 1). Ms. Hersak reviewed the Affidavits and the exhibits to the Affidavits, particularly the letters sent from the Institute to Mr. Kloosterman and Mr. Kloosterman's letter to the Institute dated October 22, 2010. Ms. Hersak did not present any other evidence with respect to the charge.

7. Mr. Kloosterman testified on his own behalf and filed a brief note from his doctor, Dr. Edward E. Vivoda M.D. C.C.F.P. (Exhibit 2). The note read:

To whom it may concern

Recent diagnosis of acute diabetes needing treatment & stabilization 11.2010

8. Ms. Hersak cross-examined Mr. Kloosterman who also answered questions from the panel.

FACTS

9. The relevant facts, as the panel found them to be, were not disputed. Mr. Kloosterman confirmed the essential points made by Ms. Hersak. The relevant facts, as found by the panel, are set out in the following paragraphs.

10. On January 29, 2010 Mr. Dickson wrote to Mr. Kloosterman advising him that his practice had been chosen to be practice inspected and asked him to provide the Institute with the appropriate forms. Mr. Kloosterman completed the forms within the time requested in the letter. However, Mr. Kloosterman did not send in the documents requested by Ms. Karen Ilkanic, a practice inspection coordinator, in her letter dated June 22, 2010. The documents were to be sent to Practice Inspection on or before September 8, 2010.

11. Ms. Ilkanic extended the deadline to September 17, 2010 and by email to September 24, 2010. The matter was referred to standards enforcement when the documents were not received by September 24, 2010.

12. Ms. Tonelli wrote to Mr. Kloosterman on October 8, 2010 requiring a response in writing to the complaint that he had not cooperated with Practice Inspection. .

13. Mr. Kloosterman replied to Ms. Tonelli by a letter dated October 22, 2010 stating that the documents would be forwarded by October 27, 2010. He did not do so.

14. Mr. Kloosterman testified that in early November 2010 he was diagnosed with diabetes. He was told that this diagnosis would affect his judgment. He also experienced double vision. Mr. Kloosterman told the panel that he is now on medication and his symptoms are under control.

15. Mr. Kloosterman attended the assignment hearing on March 28, 2011 and the hearing on May 25, 2011. He could have brought the required documents with him, but did not do so.

DECISION

16. After deliberating, the panel made the following decision:

THAT, having heard the plea of guilty to the charge and having seen, heard and considered the evidence, the Discipline Committee finds Paul A. Kloosterman guilty of the charge.

REASONS FOR THE DECISION

17. In light of the relevant facts which are set out above, the panel concluded that the charge had been proven and that Mr. Kloosterman's failure to cooperate with Practice Inspection and Standards Enforcement constituted professional misconduct. Accordingly, the panel found him guilty of the charge.

SANCTION

18. Neither party called evidence with respect to sanction. Ms. Hersak made submissions. Mr. Kloosterman made a brief statement to the panel.

19. 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. Kloosterman cooperate with Practice Inspection within 10 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. Kloosterman to partially reimburse the Institute for the costs of the proceedings.

20. Ms. Hersak submitted that the aggravating factor in this case was the length of time Mr. Kloosterman failed to provide the files, despite deadlines being extended and his letter of October 22, 2010, saying that he would provide the required documents by a particular date. Ms. Hersak acknowledged that the mitigating factors included the fact that Mr. Kloosterman had no previous involvement with the discipline process and that he now appeared willing to cooperate, although at the date of the hearing he had still not provided the requested documents.

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

22. Ms. Hersak submitted that a term in the Order requiring Mr. Kloosterman to cooperate would provide Mr. Kloosterman with the opportunity to show that he was both willing and able to comply with the regulatory requirements of the Institute, and enable Practice Inspection to carry out its mandate.

23. Ms. Hersak filed a Costs Outline (Exhibit 3) which set out the costs of the hearing, which was estimated to take one day, as \$6,290.83. Ms. Hersak stated that the Professional Conduct Committee was seeking 50% of the costs. She acknowledged that the hearing did not last a full day and said that the panel might consider an adjustment to reflect this.

24. Ms. Hersak referred to the cases of *Di Tomaso* (2010), *Metzloff* (2010), *Percival* (2010), *Smith* (2010) and *Lis* (2010) as precedents which supported the terms of the order requested. In particular, she submitted that the requested fine was at the lower end of the range of fines which would be appropriate.

25. Mr. Kloosterman requested that he be given a reasonable amount of time to pay the fine and costs.

ORDER

26. After deliberating, the panel made the following order:

IT IS ORDERED in respect of the charge:

1. THAT Mr. Kloosterman be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Kloosterman be and he is hereby fined the sum of \$3,500 to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Kloosterman cooperate by providing to the Director of Practice Inspection: the Quality Control Manual; the client working paper files and Continuing Professional Development (CPD) logs, all of which are referred to in the letter to Mr. Kloosterman from the Coordinator of Practice Inspection dated June 22, 2010, within ten (10) days of the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Kloosterman's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to all members of the Institute;
 - (b) to the Public Accountants Council for the Province of Ontario;
 - (c) to all provincial institutes/Ordre,and shall be made available to the public.

IT IS FURTHER ORDERED:

5. THAT Mr. Kloosterman be and he is hereby charged costs fixed at \$2,000 to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.

AND IT IS FURTHER ORDERED:

6. THAT in the event Mr. Kloosterman fails to comply with any of the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute and his public accounting licence shall thereupon be suspended until such time as he does comply, provided that he complies within thirty (30) days from the date of his suspension, and in the event he does not comply within the thirty (30) day period, his membership in the Institute and his public accounting licence shall be revoked, and notice of his membership and licence revocation, disclosing

his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Kloosterman's practice and/or residence. All costs associated with the publication shall be borne by Mr. Kloosterman and shall be in addition to any other costs ordered by the committee.

REASONS FOR THE ORDER

27. The Practice Inspection Program was established and is continued in the public interest to ensure that members practising public accounting do so in accordance with the standards of the profession. The panel was not indifferent to Mr. Kloosterman's health problems. However, it appeared that Mr. Kloosterman could have complied as it would not have taken a great deal of time or effort to send the documents between June 22 and September 24, 2010. In addition, the panel understood from his evidence that his medical condition had been under control since November 2010 and yet the documents had not been provided as of the day of the hearing.

28. While the panel has some sympathy for him, in the interest of the public he must comply with the regulatory inspection program of the Institute if he is to continue as a member licensed to practice public accounting.

Reprimand

29. The panel ordered that Mr. Kloosterman be reprimanded to emphasize to him the seriousness of his misconduct and the fact that it was unacceptable.

Fine

30. The panel imposed a fine both as a specific deterrent to Mr. Kloosterman and as a general deterrent to other members to dissuade them from similar misconduct. The panel concluded that the amount of the fine should be \$3,500 and that Mr. Kloosterman should be given six months, from the time the Decision and Order becomes final, to pay the fine.

Cooperation

31. The provision in the Order requiring Mr. Kloosterman to cooperate within ten days of the Order becoming final gives Mr. Kloosterman the opportunity to demonstrate that he can comply with the regulatory requirements of the Institute. If he does so it will enable Practice Inspection to carry out its mandate. The consequences for failure to comply are set out in the Order.

Notice

32. 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 of publication was made.

Suspension and Expulsion for failure to comply

33. 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.

34. This is particularly appropriate with respect to the term of the order requiring Mr. Kloosterman to cooperate with Practice Inspection within 10 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 he is suspended, his licence to practise public accounting will also be suspended. If his membership is revoked, his public accounting licence will be revoked. If his public accounting licence is suspended or if his membership and his public accounting licence are revoked, notice of these facts 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

35. Mr. Kloosterman, the member responsible for the expense of the investigation and hearing, should himself assume part of the costs of these proceedings. The costs requested were approximately half of the actual cost of the investigation and hearing. In consideration of the fact that the hearing did not last a full day, the panel concluded that Mr. Kloosterman should pay \$2,000 as a partial indemnity and, as with the fine, that he should be given six months, from the time the Decision and Order became final, to pay the costs.

DATED AT TORONTO THIS 28TH DAY OF JULY, 2011
BY ORDER OF THE DISCIPLINE COMMITTEE

J.A. CULLEMORE, FCA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

B. BARRACLOUGH, FCA
P. McBURNEY (Public Representative)
H. TARADAY, CA.