

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 1956

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **PAUL PERCIVAL, CA**, a member of the Institute, under **Rules 104 and 203.2(a)** of the Rules of Professional Conduct, as amended.

TO: Mr. Paul Percival, CA

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order made May 6, 2010)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on May 6, 2010, to hear charges of professional misconduct brought by the Professional Conduct Committee against Paul Percival, CA, a member of the Institute.
2. Alexandra Hersak represented the Professional Conduct Committee. Mr. Percival did not attend and was not represented by counsel.
3. The panel was satisfied Mr. Percival had received notice of the hearing and that it would be appropriate to proceed in his absence, pursuant to Bylaw 560.
4. The decision of the panel was made known at the hearing on May 6, 2010, and the written Decision and Order sent to the parties on May 14, 2010. These reasons, given pursuant to Bylaw 574, include the charges, the decision, the order, and the reasons of the panel for its decision and order.

CHARGES

5. The following charges were laid against Mr. Percival by the Professional Conduct Committee on February 1, 2010:
 1. THAT the said Paul W. Percival, in or about the period September 3, 2009 to January 19, 2010, 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.
 2. THAT the said Paul W. Percival, in or about the period November 16, 2009 to January 19, 2010, failed to promptly reply in writing to a letter from the Institute to which a written reply is specifically required, in that he failed to reply to letters dated October 9, 2009 and November 3, 2009 from Ms. Tatiana Rabinovitch, CA, Associate Director of Standards Enforcement at the Institute, contrary to Rule 104 of the Rules of Professional Conduct.

PLEA

6. Mr. Percival not being present, the Chair entered a plea of not guilty to each of the charges on his behalf.

EVIDENCE

7. The Professional Conduct Committee filed the Affidavit of Grant Dickson, FCA, Director of Practice Inspection (Exhibit 4), and the Affidavit of Tatiana Rabinovitch, CA, Associate Director of Standards Enforcement (Exhibit 6).

FACTS

8. Based on the evidence, this panel finds that Mr. Percival's practice was selected for practice inspection, and that he failed to provide his quality control manual, certain client working paper files, and a copy of his continuing professional development log as required by Practice Inspection.

9. This panel further finds that Practice Inspection referred the matter to the Professional Conduct Committee for investigation, and that Mr. Percival failed to reply to letters sent by the Associate Director of Standards Enforcement during the course of that investigation.

FINDING

10. The *Rules of Professional Conduct* and, in particular, Rule 203.2(a), require Mr. Percival to cooperate with a practice inspection. His continued failure to provide the documents necessary for that inspection is professional misconduct.

11. The *Rules* and, specifically, Rule 104, require Mr. Percival to respond to letters sent on behalf of the Institute. He failed to do so. This was not a momentary lapse or brief delay in replying. Mr. Percival ignored the requirements of the Institute. That constitutes professional misconduct.

DECISION

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

THAT, having determined to proceed with the hearing in the absence of Mr. Percival, pursuant to Bylaw 560, and having entered on his behalf a plea of not guilty to each of the charges, and having seen, heard and considered the evidence, the Discipline Committee finds Mr. Paul Percival guilty of charge Nos. 1 and 2.

SANCTION

13. The Professional Conduct Committee sought a sanction of: a reprimand in writing; a fine of \$3,000; an order that Mr. Percival cooperate with Practice Inspection within 10 days; and the usual order with respect to publication.

14. Ms. Hersak submitted that Mr. Percival has wasted the time and resources of the Institute by his failure to honour his obligations. He has been warned repeatedly, and has been given numerous opportunities to comply, and thereby avoid a hearing and sanctions. His failure to respond substantively to the Institute, and his sporadic and unpredictable engagement with the Institute, raise a question of governability.

15. As Mr. Percival has no discipline history, the Professional Conduct Committee did not seek expulsion or suspension, except as a consequence of his continuing to fail to cooperate with the Institute's regulatory processes.

ORDER

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

1. THAT Mr. Percival be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Percival be and he is hereby fined the sum of \$3,000 to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Percival cooperate by providing to the Director of Practice Inspection the Quality Control Manual, client working paper files and Continuing Professional Development (CPD) logs, all of which are referred to in the letter to Mr. Percival from the Coordinator of Practice Inspection dated July 13, 2009, within ten (10) days from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Percival's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to all members of the Institute;
 - (b) to all provincial institutes/Ordre,and shall be made available to the public.
5. THAT in the event Mr. Percival 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 until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within the three month period, he shall thereupon be expelled from membership in the Institute and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Percival's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Percival.

REASONS

17. 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. Mr. Percival's refusal to cooperate precluded the practice inspection of his practice. Such conduct cannot be condoned. Nor can his continuing to thwart practice inspection. Should Mr. Percival wish to remain a member of the Institute, and a chartered

accountant, he will provide the documents required by practice inspection forthwith. Any further flouting of his professional obligations will leave the Institute with no alternative but to remove him from membership. A self-governing profession cannot operate if its members refuse to submit to governance. Neither can the public trust be maintained. Mr. Percival's choice is simple; either he accepts both the privileges and responsibilities of being a chartered accountant or he cannot remain one.

18. 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 given.

DATED AT TORONTO THIS 11TH DAY OF JUNE, 2010.
BY ORDER OF THE DISCIPLINE COMMITTEE

A.D. NICHOLS, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R.H. CARRINGTON (PUBLIC REPRESENTATIVE)
G.G. IRELAND, CA
H.G. TARADAY, CA