

Robert Gordon Larkin: Summary, as Published in *CheckMark*

Robert Gordon Larkin, of Toronto, was found guilty of a charge under Rule 203.2 of failing to cooperate in the attempted inspection of his practice. Subsequent to the laying of the charge but prior to the hearing, Mr. Larkin cooperated with practice inspection. He was fined \$1,000. Failure to pay the fine within a specified period of time would have resulted in his expulsion from the Institute. Mr. Larkin has paid the fine.

CHARGE(S) LAID re Robert Gordon Larkin

The Professional Conduct Committee hereby makes the following charges against Robert G. Larkin, CA, a member of the Institute:

1. THAT, the said Robert G. Larkin, in or about the period March 12, 1998 to November 17, 1998, failed to cooperate with officers, servants or agents of the Institute who were appointed to arrange or conduct a practice inspection, contrary to Rule 203.2 of the rules of professional conduct.
2. THAT, the said Robert G. Larkin, in or about the period September 22, 1998 to November 17, 1998, failed to promptly reply in writing to a letter from the Institute in respect of a matter of professional conduct signed by the director of standards enforcement and dated and sent September 22, 1998 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.

Dated at Toronto this 17th day of November, 1998.

UWE MANSKI, FCA – DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Robert Gordon Larkin

DECISION AND ORDER IN THE MATTER OF: Charges against **ROBERT GORDON LARKIN, CA**, a member of the Institute, under **Rules 104 and 203.2** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE JANUARY 27, 1999

DECISION

THAT, having seen, heard and considered the evidence, charge No. 2 having been withdrawn, the Discipline Committee finds Robert Gordon Larkin guilty of charge No. 1.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Larkin be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Larkin be and he is hereby fined the sum of \$1,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. Larkin's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
4. THAT in the event Mr. Larkin fails to comply with paragraph 2 of this Order, 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. Larkin's practice.

DATED AT TORONTO THIS 4th DAY OF FEBRUARY, 1999
BY ORDER OF THE DISCIPLINE COMMITTEE

BRYAN W. STEPHENSON, BA, LLB
SECRETARY - DISCIPLINE COMMITTEE

DISCIPLINE COMMITTEE re Robert Gordon Larkin

REASONS FOR DECISION AND ORDER IN THE MATTER OF: Charges against **ROBERT GORDON LARKIN, CA**, a member of the Institute, under **Rules 104 and 203.2** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE JANUARY 27, 1999

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario convened on January 27, 1999 to hear charges brought by the professional conduct committee against Robert G. Larkin, CA. The professional conduct committee was represented by Ms Deborah McPhadden.

Mr. Larkin was not present at the commencement of the hearing. Approximately one and a half hours after the commencement of the proceedings, Mr. John Kelley, an expelled member of the Institute, appeared before the committee to advise that he was acting on behalf of Mr. Larkin. Upon questioning Mr. Kelley, it became clear that Mr. Larkin was not aware that Mr. Kelley was appearing at the hearing on his behalf. Mr. Kelley advised that he worked in the same premises as Mr. Larkin, and that Mr. Larkin was expected at his office at or about 12:30 p.m. The committee adjourned until 2:00 p.m., in order to allow Mr. Larkin time to get to the hearing.

When the hearing reconvened at 2:00 p.m., Mr. Larkin appeared on his own behalf. He acknowledged for the record that he was aware of his right to be represented by counsel at the hearing, and that he understood that right.

The professional conduct committee had laid two charges against Mr. Larkin, one of which it withdrew when the hearing reconvened, leaving the following charge to be considered at the hearing:

That, the said Robert G. Larkin, in or about the period March 12, 1998 to November 17, 1998, failed to cooperate with officers, servants or agents of the Institute who were appointed to arrange or conduct a practice inspection, contrary to Rule 203.2 of the rules of professional conduct.

Mr. Larkin pleaded not guilty to the charge.

DECISION ON THE CHARGE

The case for the professional conduct committee

The document brief filed by the professional conduct committee contained copies of various letters sent to Mr. Larkin demonstrating the Institute's attempts to arrange for an inspection of Mr. Larkin's practice. A review of this correspondence showed that the letters, which began on March 12, 1998, were the standard letters sent out by the Institute to members selected for practice inspection. The March 12, 1998 letter from the director of practice inspection requested that Mr. Larkin complete certain forms. A letter dated July 7, 1998 reminded Mr. Larkin that the Institute had still not received the information requested in the March 12, 1998 letter. By letter

dated September 22, 1998, the director of standards enforcement advised Mr. Larkin that the matter had been referred to the professional conduct committee for its review.

Mr. Larkin's secretary delivered to the Institute the information requested in the March 12 and July 7, 1998 letters immediately preceding this hearing.

Mr. Larkin's case

Mr. Larkin filed a number of exhibits. The first exhibit was a copy of a letter dated December 15, 1998 to Ms McPhadden (which Ms McPhadden advised was not received by her), stating that Mr. Larkin had not become aware of the Institute's request to conduct a practice inspection until November 1998. The letter also set out Mr. Larkin's various health problems since 1995.

The next exhibit filed by Mr. Larkin was a copy of a letter dated January 13, 1999 to Ms McPhadden. This letter expanded upon the matters in the December 15, 1998 letter.

Mr. Larkin also filed various exhibits relating to the state of his health from 1995 to the date of the hearing, one of which was a copy of an application for total disability benefits, wherein the doctor completing the form states that it is his conclusion that Mr. Larkin has been totally disabled from 1995 to date, and that it is unlikely that he will ever be able to return to work full time.

Mr. Larkin testified on cross-examination that he recalled receiving the March and July, 1998 letters from the Institute, and that, though he had intended to cooperate, he realized that his actions did not reflect his intentions.

Decision on the charge

Mr. Larkin acknowledged he had received the registered letter of July 7, 1998, and that he had not responded within the period of time set out in the charge. After reviewing the evidence, and the submissions made by Ms McPhadden and Mr. Larkin, the discipline committee, upon deliberation, found Mr. Larkin guilty of the charge.

ORDER AS TO SANCTION

The committee then heard the submissions of the professional conduct committee and Mr. Larkin with respect to sanctions, and, upon further deliberation, made the following order:

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Larkin be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Larkin be and he is hereby fined the sum of \$1,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. Larkin's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.

4. THAT in the event Mr. Larkin fails to comply with paragraph 2 of this Order, 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. Larkin's practice.

The particular reasons for the provisions of the discipline committee's Order are briefly set out below. The discipline committee is aware that there are three general principles which govern the imposition of a sanction, namely: general deterrence, specific deterrence and rehabilitation. While general deterrence was a consideration, the primary concerns of the discipline committee in this instance were specific deterrence and rehabilitation.

Mr. Larkin's defence was that he was willing to cooperate but unable to because of his health. Clearly his health has been impaired over the last four years, and has contributed to his lack of cooperation with the Institute. But there was also evidence that Mr. Larkin has been unwilling to cooperate, or has given the matter such a low priority that he needs to be specifically deterred from similar conduct in the future.

Mr. Larkin provided no reasonable explanation for not being in attendance at the commencement of this hearing. The client listing which his secretary delivered to the Institute immediately preceding the hearing is a one page document which Mr. Larkin was urged at the assignment hearing on December 16, 1998 to deliver to the Institute as soon as possible. Ms McPhadden indicated that perhaps the charge would have been withdrawn had he done so. Mr. Larkin gave no explanation as to why it took 40 days to prepare and deliver this simple document.

The fact that Mr. Larkin shared office space and work with Mr. Kelley, who was expelled from the Institute for failure to cooperate with practice inspection in 1997, gave the discipline committee further reason for concern that Mr. Larkin, even with his health problems, was not giving the appropriate attention to the practice inspection program and the public interest.

Reprimand

The committee was of the view that a reprimand is necessary as a specific deterrent to the member, to stress to him the unacceptability of his conduct as a chartered accountant.

Fine

The professional conduct committee submitted that a fine should be levied against Mr. Larkin in the range of \$1,000 to \$1,500. The discipline committee agreed that a fine was appropriate in this case, both as a general deterrent to like-minded members, and as a demonstration to the public of the profession's intolerance of the type of behaviour demonstrated by Mr. Larkin. While the committee was sympathetic to the state of Mr. Larkin's health during the relevant period, the member's failure to cooperate with the regulatory processes of the Institute is unprofessional conduct which will not be tolerated.

Notice

Publication of notice of the discipline committee's Decision and Order, disclosing Mr. Larkin's name, is, in the opinion of the committee, a general deterrent. The committee has a responsibility to ensure that members of the profession and the general public are made aware that failure on the part of members to cooperate with the self-regulatory functions of the Institute can result in the imposition of serious sanctions.

Communication of the fact that the profession views breaches of its bylaws and rules of professional conduct seriously is an important factor in the governance of the profession. Such notification is also necessary to demonstrate to the public that the profession is self-regulating, so as to retain public confidence in the profession's ability to self-govern.

For the foregoing reasons, the committee was unable to grant Mr. Larkin's request that notice not be given in the usual manner. Accordingly, the committee ordered that notice of these proceedings be given as set out in paragraph 3 of the Order.

Expulsion for non-compliance and notice of expulsion

The provision of the Order that Mr. Larkin be expelled if he does not pay the \$1,000 fine is based on the fact that, prior to the date of the hearing, he showed an unwillingness to be governed by the Institute. The committee concluded that, if this unwillingness were to continue, it would be inappropriate for Mr. Larkin to remain a member of the Institute.

The committee also concluded that, in the event of expulsion, there would be no reason to interfere with the application of Bylaw 575(3), and therefore ordered that notice of such expulsion be given in a newspaper distributed in the geographic area of Mr. Larkin's practice.

DATED AT TORONTO, THIS DAY OF MARCH, 1999
BY ORDER OF THE DISCIPLINE COMMITTEE

M. BRIDGE, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

B.M. BYRNE, CA
P.M. CLEVELAND, FCA
G.A. PORTER, CA
S.W. SALTER, CA
J.T. ANDERS (Public representative)