

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

**DISCIPLINE COMMITTEE**

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

**TO:** Mr. Robert A. Michaud, CA  
6331 Roslyn Avenue  
ORLEANS, ON K1C 2Z9

**AND TO:** The Professional Conduct Committee, ICAO

**REASONS**

(Decision and Order Made December 10, 2008)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on December 10, 2008, to hear charges of professional misconduct brought by the Professional Conduct Committee against Robert Anthony Michaud, CA, a member of the Institute.
2. The Professional Conduct Committee was represented by Alexandra Hersak. Mr. Michaud was not present.
3. Ms. Hersak filed an Affidavit of Service of Samantha Kelly, sworn November 24, 2008, which deposed that she had served Robert A. Michaud on Saturday, October 25, 2008, at 6331 Roslyn Street, Ottawa (formerly Orleans), Ontario, with the Notice of the Hearing for December 10, 2008 (Exhibit 2).
4. Ms. Hersak also filed a copy of her letter of November 24, 2008, to Mr. Michaud (Exhibit 3). This letter disclosed to Mr. Michaud that the Professional Conduct Committee proposed to prove its case by filing an Affidavit of Grant Dickson, sworn on November 20, 2008, and an Affidavit of Tatiana Rabinovitch, sworn on November 21, 2008. The letter to Mr. Michaud indicates that copies of the affidavits and the exhibits thereto were enclosed.
5. The panel was satisfied Mr. Michaud had been served with the Notice of Hearing and decided, pursuant to the power set out in Bylaw 560, that it would proceed in the absence of Mr. Michaud.
6. The decision of the panel was made known at the hearing on December 10, 2008, and the written Decision and Order sent to the parties on January 9, 2009. 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**

7. The following charges were laid against Mr. Michaud by the Professional Conduct Committee on August 25, 2008:

1. THAT the said Robert A. Michaud, in or about the period March 7, 2008 to July 31, 2008, 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 Robert A. Michaud, in or about the period June 13, 2008 to July 31, 2008, 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 May 30, 2008 and June 19, 2008 from Ms. Tatiana Rabinovitch, CA, Associate Director of Standards Enforcement at the Institute, contrary to Rule 104 of the Rules of Professional Conduct.

## **THE PLEA**

8. The Chair entered a plea of not guilty on behalf of Mr. Michaud.

## **THE PROCEEDINGS**

9. Counsel for the Professional Conduct Committee filed the Affidavit of Grant Dickson, FCA, the Director of Practice Inspection, sworn on November 20, 2008, (Exhibit 5) and the Affidavit of Tatiana Rabinovitch, CA, the Associate Director of Standards Enforcement, sworn on November 21, 2008 (Exhibit 6). Ms. Hersak reviewed the contents of the affidavits with the panel.

10. After questions from the panel, Ms. Hersak called Ms. Rabinovitch as a witness. Ms. Rabinovitch referred to a copy of the member profile of Mr. Michaud which had been printed from the Institute's database (Exhibit 7). Ms. Rabinovitch testified that Mr. Michaud's address of record with the Institute, at the relevant times, was 6331 Roslyn Avenue, Orleans, ON K1C 2Z9.

11. At the conclusion of Ms. Rabinovitch's evidence, Ms. Hersak closed the case for the Professional Conduct Committee. Thereafter she submitted that the charges had been proven by clear, cogent and compelling evidence and that Mr. Michaud should be found guilty of the charges.

## **DECISION**

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

THAT, having determined to proceed with the hearing in the absence of Mr. Michaud, 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. Robert Anthony Michaud guilty of charge Nos. 1 and 2.

## **REASONS FOR THE DECISION**

13. The panel accepted the evidence set out in the affidavits of Mr. Dickson and Ms. Rabinovitch, and the evidence given by Ms. Rabinovitch when called as a witness.

14. On January 31, 2008, Mr. Dickson wrote to Mr. Michaud advising him that his practice had been chosen to be practice inspected and asked him to download the appropriate forms from the Institute's website and submit them not later than March 7, 2008. Mr. Dickson did not hear from Mr. Michaud and, accordingly, sent him a letter both by regular post and registered mail on March 20, 2008. He asked that Mr. Michaud submit the required forms by May 15, 2008. This registered letter was delivered to Mr. Michaud's address on March 25, 2008. Mr. Dickson did not receive a reply to his letter of March 20, 2008.

15. A message was left by a member of the Practice Inspection staff for Mr. Michaud on May 13, 2008. Mr. Michaud did not respond to the message or send the required forms by May 15, 2008. Accordingly, Mr. Dickson referred the matter to the Professional Conduct Committee.

16. Ms. Rabinovitch wrote to Mr. Michaud on May 30, 2008, advising him of the complaint received from Mr. Dickson and asking for his response on or before June 13, 2008. On June 17, 2008, Ms. Rabinovitch called Mr. Michaud to enquire about the status of his reply. She left a voice mail reminding him the need to respond. Mr. Michaud did not respond to her message or reply to the letter of May 30, 2008. Ms. Rabinovitch wrote again to Mr. Michaud by regular and registered mail on June 19, 2008, requesting a response by June 30, 2008. The registered letter was signed for on June 23, 2008. The signature of the person receiving the registered letter reads "Robert Michaud". Mr. Michaud did not reply to the letter.

17. The correspondence referred to above, from both Mr. Dickson and Ms. Rabinovitch, was sent to Mr. Michaud at his address according to the records of the Institute, namely: 6331 Roslyn Avenue, Orleans, ON K1C 2Z9.

18. Bylaw 107 provides that correspondence sent to a member's last known address is deemed to have been received by the member. Someone with Mr. Michaud's name signed for one of the registered letters. The panel concluded that Mr. Michaud had received the correspondence and had not responded.

19. The panel found that Mr. Michaud's failure to respond to Practice Inspection and to Standards Enforcement breached the Rules of Professional Conduct and constituted professional misconduct. Accordingly, the panel found Mr. Michaud guilty of both charges.

## **SUBMISSIONS ON SANCTION**

20. The Professional Conduct Committee requested an order which included the following terms: a reprimand in writing by the Chair; a fine of \$3,000; an order that Mr. Michaud 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 he should be expelled; and the usual order with respect to publication. The Professional Conduct Committee also asked for an order requiring Mr. Michaud to partially reimburse the Institute for the costs of the proceedings.

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

22. Ms. Hersak submitted that there was a question as to whether or not Mr. Michaud was governable. She said that the requested term of the order requiring him to cooperate within a short period of time, failing which he would first be suspended and then expelled, would give him ample opportunity to demonstrate that he was governable.

23. Ms. Hersak submitted that a mitigating factor in this case was that Mr. Michaud had no history of previous misconduct. She also submitted that the aggravating factors included the fact the Mr. Michaud had not responded to Practice Inspection, the Professional Conduct Committee, or to the Discipline Committee.

24. Ms. Hersak filed a Costs Outline (Exhibit 9) which set out the costs of this hearing at \$5,664.35. The Professional Conduct Committee asked for a partial reimbursement in the amount of \$2,800, just less than 50% of the costs outlined.

25. Ms. Hersak referred to the cases of *Yanush* (2007), *Greer* (2007 and 2008), *Perris* (2006) with Appeal Committee reasons (2007), *Croucher* (2008), and *Carson* (2008) as precedents which supported the terms of the order requested. In particular, she submitted that the requested fine was at the lower range of the range of fines which would be appropriate.

## ORDER

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

1. THAT Mr. Michaud be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Michaud 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. Michaud cooperate by completing and returning the relevant practice inspection forms to the Director of Practice Inspection within 10 days of the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Michaud's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
  - (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.
5. THAT in the event Mr. Michaud 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. Michaud's practice and/or residence. All costs associated with the publication shall be borne by Mr. Michaud and shall be in addition to any other costs ordered by the committee.

**AND IT IS FURTHER ORDERED:**

6. That Mr. Michaud be and he is hereby charged costs fixed at \$2,500, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.

**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. Mr. Michaud's refusal to cooperate precluded the practice inspection of his practice. Such conduct cannot be condoned.

**Reprimand**

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

**Fine**

29. The panel imposed a fine both as a specific deterrent to Mr. Michaud 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 \$3,000 and that Mr. Michaud should be given three months, from the time the Decision and Order becomes final, to pay the fine.

**Cooperation**

30. As there is a question as to whether or not Mr. Michaud is governable, the order requires him to cooperate with Practice Inspection within 10 days of the order becoming final. Mr. Michaud has it within his ability to demonstrate within days of being provided with a copy of the Decision and Order that he is governable.

**Notice**

31. 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.

### **Suspension and Expulsion for failure to comply**

32. 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, he will be expelled. In the event of expulsion, notice will be given in a newspaper published in the area where the member practised or resides and the costs of the publication shall be borne by the member.

### **Costs**

33. Mr. Michaud, 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. The panel was satisfied that the costs set out in the Costs Outline filed by Ms. Hersak were reasonable. The panel concluded that Mr. Michaud should pay \$2,500 as a partial indemnity and, as with the fine, that he should be given three months, from the time the Decision and Order became final, to pay the costs.

DATED AT TORONTO THIS 27<sup>th</sup> DAY OF MAY, 2009.  
BY ORDER OF THE DISCIPLINE COMMITTEE

B.L. HAYES, CA – DEPUTY CHAIR  
DISCIPLINE COMMITTEE

#### **MEMBERS OF THE PANEL:**

J.B. BARRACLOUGH, FCA  
R.H. CARRINGTON (PUBLIC REPRESENTATIVE)  
A.R. DAVIDSON, CA