

Wayne Walter Desing: Summary, as Published in *CheckMark*

Wayne Walter Desing, of Sault Ste. Marie, was found guilty of one charge under Rule 203.2 of failing to cooperate in the attempted inspection of his practice, and one charge under Rule 104 of failing to promptly reply in writing to correspondence from the Institute in respect of a matter of professional conduct. The charge under Rule 104 arose out of Mr. Desing's failure to respond to a standards enforcement enquiry into his non-cooperation with practice inspection. Mr. Desing attended neither the discipline committee's assignment hearing nor its formal hearing into the charges. He was fined \$2,000 and ordered to cooperate with practice inspection within a specified time. As a result of his failure to comply with the order, Mr. Desing was expelled from the Institute.

CHARGE(S) LAID re Wayne Walter Desing

The Professional Conduct Committee hereby makes the following charges against Wayne W. Desing, CA, a member of the Institute:

1. THAT, the said Wayne W. Desing, during the period March 12, 1998 to March 9, 1999, failed to cooperate with officers, servants or agents of the Institute who were appointed to arrange or conduct an inspection of his practice, contrary to Rule 203.2 of the rules of professional conduct.
2. THAT, the said Wayne W. Desing, during the period January 20, 1999 to March 9, 1999, 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 January 20, 1999 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.

Dated at Toronto this 9th day of March, 1999.

UWE MANSKI, FCA
DEPUTY CHAIR, PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Wayne Walter Desing

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

DECISION AND ORDER MADE JUNE 18, 1999

DECISION

THAT, having seen and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Desing, pursuant to Institute Bylaw 560, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to each of the charges, the Discipline Committee finds Wayne Walter Desing guilty of charges Nos. 1 and 2.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Desing be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Desing be and he is hereby fined the sum of \$2,000, to be remitted to the Institute within seven (7) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Desing cooperate with practice inspection by replying to the letter from the director of practice inspection dated September 29, 1998, within seven (7) days from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Desing'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*.
5. THAT in the event Mr. Desing fails to comply with the requirements 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 by publication in a newspaper distributed in the geographic area of Mr. Desing's practice.

DATED AT TORONTO THIS 24TH DAY OF JUNE, 1999
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Wayne Walter Desing

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **WAYNE WALTER DESING, 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 JUNE 18, 1999

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on June 18, 1999 to hear evidence concerning two charges brought by the professional conduct committee against Wayne Walter Desing, CA.

The professional conduct committee was represented by Ms. Deborah McPhadden. Mr. Desing was not present and was not represented by counsel.

The written Decision and Order of the discipline committee was sent to Mr. Desing shortly after the hearing. These are the reasons for that Decision and Order.

The discipline committee reviewed the affidavits of service of the Notice of Assignment Hearing and Notice of Hearing, which were filed as exhibits. The committee was satisfied that Mr. Desing had proper notice of the hearing, and decided to proceed with the hearing in his absence pursuant to Institute Bylaw 560. Prior to proceeding, the secretary of the discipline committee searched the common areas around the hearing room, but Mr. Desing was not present.

A plea of not guilty was then entered on behalf of Mr. Desing to the following charges laid against him:

1. *THAT, the said Wayne W. Desing, during the period March 12, 1998 to March 9, 1999, failed to cooperate with officers, servants or agents of the Institute who were appointed to arrange or conduct an inspection of his practice, contrary to Rule 203.2 of the rules of professional conduct.*
2. *THAT, the said Wayne W. Desing, during the period January 20, 1999 to March 9, 1999, 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 January 20, 1999 in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.*

In presenting her case, counsel for the professional conduct committee filed as an exhibit a document brief, containing various correspondence from the director of practice inspection and the director of standards enforcement, together with a copy of Canada Post's confirmation of receipt of a registered item.

With respect to charge No. 1, the document brief filed attested that:

- On March 12, 1998, the director of practice inspection informed Mr.

Desing that a practice inspection was to be scheduled, and requested certain information relating to Mr. Desing's practice.

- When Mr. Desing failed to respond, the director of practice inspection sent a second request for the information on July 7, 1998, to which Mr. Desing did not respond.
- Mr. Desing also failed to respond to a telephone call to his office.
- Mr. Desing finally submitted the required form on July 27, 1998.
- On September 29, 1998, the director of practice inspection advised Mr. Desing of the three files selected for inspection, requesting that they be forwarded to him by October 20, 1998.
- No response being received from Mr. Desing by November 13, 1998, the director of practice inspection sent a further request by both registered and ordinary mail. No response was received from Mr. Desing.

With respect to charge No. 2, the document brief attested that:

- On January 20, 1999, the director of standards enforcement informed Mr. Desing by registered and ordinary mail that the professional conduct committee wished to commence a review of his failure to respond to the director of practice inspection, and requested a written reply from the member.
- Mr. Desing did not respond to the standards enforcement letter.

Decision on the Charges

After considering the evidence, and the submissions made by Ms. McPhadden, the discipline committee concluded that the allegations set out in the charges had been proven, and that Mr. Desing was guilty of both charges of professional misconduct.

Order as to Sanction

The panel then heard the submissions of the professional conduct committee with respect to sanction, and, upon further deliberation, made the following Order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Desing be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Desing be and he is hereby fined the sum of \$2,000, to be remitted to the Institute within seven (7) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Desing cooperate with practice inspection by replying to the letter from the director of practice inspection dated September 29, 1998, within seven (7) days from the date this Decision and Order becomes final under the bylaws.

4. THAT notice of this Decision and Order, disclosing Mr. Desing'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*.
5. THAT in the event Mr. Desing fails to comply with the requirements 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 by publication in a newspaper distributed in the geographic area of Mr. Desing's practice.

These are the reasons for the sanctions imposed. In considering the appropriate sanction, the panel considered the three general principles of sentencing, namely rehabilitation, general deterrence and specific deterrence. The panel concluded that Mr. Desing was ungovernable, and, accordingly, that rehabilitation did not seem a reasonable objective.

Reprimand

The panel believes that a reprimand in writing from the chair of the hearing stresses to Mr. Desing the unacceptability of his conduct as a chartered accountant.

Fine

The professional conduct committee submitted that a fine should be levied against Mr. Desing in the amount of \$2,000. The panel 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. Desing. Mr. Desing's failure to cooperate with the professional conduct committee's investigation is completely unacceptable and will not be tolerated.

Cooperation with Practice Inspection

The panel agreed with the submission of counsel for the professional conduct committee that Mr. Desing should be allowed seven days from the date of the Decision and Order becoming final under the bylaws to cooperate with practice inspection. This was considered an adequate time frame, in view of the time that would elapse between Mr. Desing receiving a copy of the Decision and Order and the date of its becoming final.

Notice

The giving of notice of the discipline committee's Decision and Order, disclosing Mr. Desing's name, is, in the opinion of the panel, a general deterrent. It is the discipline committee's 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 regulatory processes of the Institute will result in the imposition of serious sanctions.

Failure to Comply

The panel in its order required Mr. Desing to cooperate with practice inspection within a specified time. He has been given many previous opportunities to cooperate, and this is the last

one. Failure to comply with any of the requirements of this Order within the prescribed time periods will result in Mr. Desing's immediate expulsion from membership in the Institute.

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

P. B. A. CLARKSON, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

E.R. ARCHIBALD, C.A.

S. W. SALTER, C.A.

K. TSE, C.A.

B. W. BOWDEN (Public representative)