

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

TO: Stive Farronato, CPA, CA

AND TO: The Discipline Committee of CPA Ontario

The Professional Conduct Committee of CPA Ontario hereby makes the following Allegations of professional misconduct against, Stive Farronato, CPA, CA, a member of CPA Ontario:

1. a) THAT the said Stive Farronato, in or about the period November 1, 2003 through April 30, 2017, while engaged in the practice of public accounting or providing accounting services to the public, did contravene the provisions of the Bylaws and Regulations contrary to Rule 101 of the Rules of Professional Conduct and the CPA Code of Professional Conduct in that he engaged in the practice of public accounting or provided accounting services to the public outside of the firm that he had registered with CPA Ontario contrary to Bylaw 4.17 and the predecessor Bylaws; or in the alternative,

b) THAT the said Stive Farronato, in or about February 2014 and February 2016, while registered as "Stive Farronato, CPA, CFP" with CPA Ontario, signed or associated himself with Declaration for Exemption forms which he knew or should have known were false and misleading, contrary to Rule 205 of the Rules of Professional Conduct and the CPA Code of Professional Conduct, in that he filed the Declarations representing that he did not perform any compilation engagements, when in fact he had done so.
2. THAT the said Stive Farronato, in or about the period November 1, 2003 through April 30, 2017, while engaged in the practice of public accounting or providing accounting services to the public was associated with ITCCTA, a corporation engaged in Canada in the practice of public accounting, contrary to Rule 409 of the Rules of Professional Conduct, the predecessor Rules, and contrary to the CPA Code of Professional Conduct.
3. THAT the said Stive Farronato, in or about the period January 1, 2016 to February 28, 2018, signed or associated himself with his Income Tax and Benefit Return (T1) which he filed with Canada Revenue Agency for the year 2016, which he knew or should have known was false and misleading, contrary to Rule 205 of the Rules of Professional Conduct and the CPA Code of Professional Conduct, in that he reported \$66,600 in bonuses as professional income, against which he claimed expenses in the amount of \$59,764, when the bonuses should have been reported as employment income.

Dated at Mississauga, Ontario, this 18 day of January, 2019.



L. DAVIDSON, CPA, CGA, DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

**CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017**

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **STIVE FARRONATO CPA, CA**, a member of CPA Ontario, under **Rule 101, Rule 409** and **Rule 205** of the Rules of Professional Conduct, as amended.

TO: Mr. Stive Farronato

AND TO: The Professional Conduct Committee

DECISION MADE MARCH 7, 2019 AND ORDER MADE MARCH 8, 2019

DECISION

The Panel was satisfied that Allegation No. 1(a) and No. 2 were proven and constituted a breach of Rule 101 and Rule 409 of the Rules of Professional Conduct. The Panel determined that, having breached these rules, Mr. Farronato committed professional misconduct.

The Panel concluded that Allegation No. 1(b) and No. 3 were not proven.

ORDER

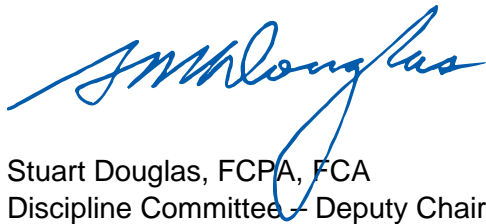
The Panel orders the following:

1. Mr. Farronato be reprimanded in writing by the Chair of the hearing.
2. Mr. Farronato shall pay a fine of \$10,000 to CPA Ontario by Monday, September 9, 2019.
3. Mr. Farronato shall complete, pay for and attend, within 12 months of this Order, the following professional development courses:
 - *Ethics: Conversations in the Boardroom and in the Hallways (CPA Ontario)*
 - *Business Ethics – What Canadian CPAs Need to Know (CPA Ontario)*
 - *Ethics and Tax (CPA Canada)*or, in the event the course(s) listed above become unavailable, the successor course(s) which take their place.
4. Notice of this Decision and Order, disclosing Mr. Farronato's name, is to be given in the form and manner determined by the Panel:
 - (a) to all members of CPA Ontario;
 - (b) to all provincial bodies;

and shall be made available to the public.

5. In the event Mr. Farronato fails to comply with the requirements of this Order, he shall be suspended from membership in CPA Ontario until such time as he does comply, provided that he complies within 30 days from the date of his suspension. In the event he does not comply within the 30 day period, his membership in CPA Ontario shall be revoked, and notice of the revocation of his membership, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Farronato's practice, employment or residence. All costs associated with this publication shall be borne by Mr. Farronato and shall be in addition to any other costs ordered by the Panel.
6. Mr. Farronato shall pay costs of \$54,000 to CPA Ontario by Monday, September 9, 2019.

DATED at Toronto this 8th day of March, 2019



Stuart Douglas, FCPA, FCA
Discipline Committee – Deputy Chair

**CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017**

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **STIVE FARRONATO CPA, CA**, a member of CPA Ontario, under **Rule 101**, **Rule 409** and **Rule 205** of the Rules of Professional Conduct and the CPA Code of Professional Conduct, as amended.

BETWEEN:

**Chartered Professional Accountants of Ontario
Professional Conduct Committee**

-and-

Mr. Stive Farronato

APPEARANCES:

For the Professional Conduct Committee: Tamara Center, Counsel
Julia McNabb, Counsel
Linda Robinson, Investigator

For Mr. Farronato: James Lane, Counsel

Heard: January 30, 31, March 7, 8, 2019

Decision rendered: March 7, 2019

Order effective: March 8, 2019

Release of written reasons: October 29, 2019

REASONS FOR THE DECISION AND ORDER

I. OVERVIEW

[1] This hearing relates to a determination of what roles Mr. Farronato held during his employment with ITCC Tax & Accounting ("ITCCTA") from 2003 to 2017, what if any obligations arose from those roles, how he was remunerated for his work for ITCCTA and ITC Capital Corporation ("ITC Capital"), and whether he knew or should have known that representations he made in the filing of his 2016 tax return (T1) to Canada Revenue Agency were false or misleading.

[2] Mr. Farronato obtained his CPA designation in 1992. From 1993 to 1995 he worked as a

field auditor with Canada Revenue Agency. In 1995, he became an employee of ITC Capital. In 2003, he joined ITCCTA as an employee. Also in 2003, Mr. Farronato registered his own practice with CPA Ontario. At the time of registering his practice, Mr. Farronato also took out Professional Liability Insurance for his practice. He maintained the registration of his own practice with CPA Ontario throughout the periods referred to in Allegation 1(a) and Allegation 2 (2003-2017).

- [3] In May 2016 a complaint was made by a member of CPA Ontario, raising issues regarding Mr. Farronato's role with ITCCTA, whether accounting services were being provided to the public through ITCCTA, and whether Mr. Farronato was receiving commissions for referrals of tax clients.
- [4] In August 2016, Mr. Farronato was asked to provide a response to the complaint by CPA Ontario's Director of Standards and Enforcement, Theresa Tonelli. A similar investigation was commenced against ML, the owner of ITC Capital, and the father of RL, sole owner of ITCCTA. By way of letter dated October 18, 2016, Mr. Farronato and ML provided a joint response to the complaint.
- [5] In his October 18, 2016 response letter, Mr. Farronato acknowledged that he was not compliant with CPA Ontario requirements regarding practice registration for an entity (ITCCTA) from which he was providing compilation and notice to reader services. He advised that while the issue of registration had been considered at the time of ITCCTA's incorporation, it was understood that registration was not required for the less complex tax and accounting services provided by ITCCTA. He acknowledged that after the complaint had been made against him in April 2016, he had come to realize that this was a mistaken understanding. After having sought the advice of counsel, steps were taken and, in July 2016, two corporations were incorporated (one in Toronto and the other in Ottawa). An application for registration for TMFD Professional Corporation, Chartered Professional Accountants ("TMFD") was submitted to CPA Ontario in August 2016. TMFD was the replacement entity to ITCCTA and was the personal corporation of Mr. Farronato from which he would provide compilation and notice to reader services.
- [6] Through the October 18, 2016 letter, Mr. Farronato also provided information regarding his role at ITCCTA. He denied receiving commissions for the referral of tax clients and provided information regarding his role in relation to ML's company, ITC Capital.
- [7] On March 5 and 13, 2018, Mr. Farronato was interviewed by the Professional Conduct Committee's ("PCC") investigator, Linda Robinson. During the interview, Mr. Farronato provided greater detail regarding the roles he held with both ITC Capital and ITCCTA. He was also asked about the manner in which he had been remunerated for the work he did as an employee of both corporations. Mr. Farronato maintained that he was a salaried employee who received bonuses, not commissions, for his work.
- [8] In April 2018, Mr. Farronato attended a PCC meeting with ML. Ms. Robinson was also in attendance.
- [9] On December 13, 2018, allegations were filed against Mr. Farronato by the PCC. It was alleged from November 1, 2003 through April 30, 2017, Mr. Farronato provided

accounting services to the public outside of the firm he had registered with CPA Ontario. It was also alleged that during that same period, while providing accounting services to the public, he had associated with ITCCTA, an unregistered corporation engaged in the practice of public accounting. It was alleged that in or about the period of January 1, 2016 to February 28, 2018, he submitted an Income Tax and Benefit Return (T1) for the year 2016, when he knew or ought to have known was false or misleading in that he reported bonuses as professional income when the bonuses should have been reported as employment income.

- [10] Due to additional information received following the filing of the allegations, and, in particular, information contained in an expert report provided by Mr. Farronato dated December 5, 2018, the allegations were amended to include an alternative. The new allegation related to representations made by Mr. Farronato from February 2014 to February 2016 on Declaration for Exemption forms which he knew or should have known were false or misleading, representing that he did not perform any compilation engagements, when in fact he had.
- [11] The onus was on the PCC to show, on a balance of probabilities that Mr. Farronato's conduct breached CPA Ontario's Rules of Professional Conduct and the CPA Code of Professional Conduct and constituted professional misconduct.

II. PRELIMINARY ISSUES

- [12] Prior to the commencement of the hearing, the PCC advised the Panel that it had not been provided with a will-say statement outlining the anticipated evidence of Mr. Farronato. The PCC confirmed that Mr. Farronato had provided a written response to the complaint and had participated in two interviews conducted by the PCC's investigator. However, following the filing of the allegations against Mr. Farronato, the PCC advised that Mr. Farronato's position, as presented through an expert report and other documents, had changed. The PCC argued that without a will-say from Mr. Farronato the PCC was at a significant disadvantage. While it did not seek to argue the issue as a preliminary motion, it chose to alert the Panel that it might seek an adjournment or other remedies after having an opportunity to hear Mr. Farronato's evidence in chief.
- [13] In response to the concerns raised by the PCC, Mr. Lane, Mr. Farronato's counsel, advised that if this issue were to be litigated it would be Mr. Farronato's position that a member who is the subject of a disciplinary proceeding is a party to the proceedings, not a witness and, as such, is not required under Rule 10 of the *Rules of Practice and Procedure* to provide a willsay relating to his own anticipated evidence. Mr. Lane stated that he would argue that following the completion of the investigation and the filing of the allegations against Mr. Farronato, his obligations to cooperate with the PCC's investigation and provide disclosure, including a will-say, ended.
- [14] Having alerted the Panel to the potential issue, the PCC advised that it was prepared to proceed with the hearing without having the issue determined. The Panel directed the parties to have arguments and jurisprudence prepared so as not to cause a delay in the proceedings.

III. ISSUES

[15] The issues to be determined by the Panel were:

- A. Did the evidence establish, on a balance of probabilities, the facts on which the allegations made by the PCC were based?
- B. If the allegations made by the PCC were established on a balance of probabilities, did the conduct established constitute professional misconduct?

IV. DECISION

[16] Following the completion of the evidence, the PCC invited the Panel to make a finding on Allegation 1(a), 2 and 3. Although it did not ask for a finding on Allegation 1(b), the PCC did not withdraw allegation 1(b).

[17] The Panel found that Allegation 1(a) and Allegation 2 had been established on the evidence presented. The Panel also found that Allegation 1(b) had not been established on the evidence presented. The majority (three of four members) of the Panel found that Allegation 3 was not established based on the evidence presented and that Rule 205 had not been breached. One member of the Panel dissented in relation to Allegation 3 and concluded that professional misconduct had been committed with respect to that allegation.

[18] The Panel was satisfied that the proven allegations, Allegation 1(a) and Allegation 2, constituted a breach of Rule 101 and Rule 409 of the Rules of Professional Conduct and having breached these Rules, Mr. Farronato had committed professional misconduct.

V. REASONS FOR THE DECISION OF THE MAJORITY

Findings regarding Conduct of Mr. Farronato

Allegations 1 and 2

[19] The following reasons were adopted by all members of the Panel.

[20] Mr. Farronato joined ITC Capital as a salaried employee in 1995. ITC Capital was an investment business associated with Assante Wealth Management Ltd. A number of independent brokers processed their work through ITC Capital. Mr. Farronato acted as Branch Manager (Exhibit 2, Tab 1, pg 23, lines 18-20) of the business and was responsible for overseeing the trades going through ITC Capital. Mr. Farronato was also responsible for the preparation of personal and corporate tax returns for family and friends which made up a small portion of the work done at ITC Capital.

[21] In November 2003, Mr. Farronato also began working as a salaried employee at ITCCTA which provided public accounting services to the public. Mr. Farronato's role was to "Oversee Tax Preparation and Financial Statements for Clients" (Exhibit 2, Tab 1, pgs 13, 14). Throughout the years of his employment with ITCCTA, Mr. Farronato was the main client contact person, had general oversight of the firm's activities which

included compilation and notice to reader services for its clients. Mr. Farronato was the only CPA (CA) involved in overseeing the work.

- [22] Mr. Farronato acknowledged both during the PCC investigation as well as within the disciplinary process, that ITCCTA provided accounting services. Specifically, it provided bookkeeping, compilation, and “straightforward” tax planning and preparation services to the public from November 2003, when it was incorporated, to April 30, 2017, when all tax and accounting work was transferred to a new company, TMFD. The Certificate of Incorporation of TMFD is dated July 20, 2016. TMFD became properly registered with CPA Ontario on April 12, 2017. Mr. Farronato also acknowledged that he, and by extension ITCCTA, were not compliant with CPA Ontario requirements regarding practice registration.
- [23] Mr. Farronato advised that while registration had been considered at the time of the incorporation of ITCCTA, he was under the honest, but mistaken, belief that registration was not required for the kind of work ITCCTA engaged in. Rather, he believed it was required for firms which conducted audit and review engagements, as well as more complex tax engagements.
- [24] Mr. Farronato did not realize the mistake until April 2016 when he and ML were in the process of acquiring an accounting practice in Ottawa. As a result of the prospective merger of practices the issue of registration arose and the advice of legal counsel was sought. This coincided with the complaint made to CPA Ontario in 2016 regarding the status of ITCCTA. Realizing that they should have registered ITCCTA, instructions were given to counsel to rectify the issue and obtain the appropriate registration in order to continue to provide accounting services.
- [25] On July 19, 2016, TMFD was incorporated. After having received approval from CPA Ontario regarding the proposed name of the practice, steps were taken in August 2016 to register the practice. It was intended that all public accounting work once done by ITCCTA would be transferred to TMFD. A Certificate of Registration as a Professional Corporation, dated April 12, 2017, was issued to Mr. Farronato and TMFD by CPA Ontario.
- [26] The Panel concluded that the registration of TMFD by Mr. Farronato that took place in April 2017 is an event that should have happened in November 2003 for ITCCTA when the work and services were moved from ITC Capital to ITCCTA. Mr. Farronato knew, or should have known, that the model for delivery of his services changed when the services and business that he delivered moved from ITC Capital to ITCCTA. As a member of the then Institute of Chartered Accountants of Ontario (“the Institute”), he was obligated to know he needed to register an entity with the Institute as he was the person that was performing compilation/notice to reader services. With hindsight, Mr. Farronato acknowledged that he should have performed the proper incorporation of ITCCTA and registration with CPA Ontario in 2003.
- [27] In 2002, a complaint was made by a member to the Institute regarding allegations that Mr. Farronato had been providing accounting services while an employee of ITC Capital, a company that provides financial planning. Inquiries were made by the Institute of Mr.

Farronato, requiring him to respond to the complaint and attend a meeting of the Professional Conduct Committee. Mr. Farronato advised that ITC Capital only provided basic tax advice with respect to the “mechanical” processing of tax returns and that only 15 percent of ITC Capital’s revenue came from tax related services. In July 2003, the investigation was closed.

- [28] In the fall of 2003, a reporting letter was sent by the Institute’s Director of Standards Enforcement to the 2002 complainant advising that the reason the complaint had been closed was because only a small portion of the work done by ITC Capital involved the preparing of personal tax returns.
- [29] In 2003, Mr. Farronato registered his own practice through which he provided accounting and tax work, preparing tax returns for friends and family outside his employment with ITC Capital and ITCCTA. Mr. Farronato purchased professional liability insurance for his practice, understanding that he was required to maintain such coverage for his practice. This should have triggered a moment of reflection on the part of Mr. Farronato regarding the services that were being provided through ITCCTA.
- [30] Mr. Farronato had an obligation as a Chartered Accountant (now a Chartered Professional Accountant) to ensure that he was adhering to the Rules of his profession. The onus was on him to ensure that he was compliant. The shift in the business from ITC Capital to ITCCTA in 2003 whereby the volume of compilation/notice to reader work escalated from 15% at ITC Capital to a much higher percentage at ITCCTA, should have been dealt with by Mr. Farronato. He should have reviewed the nature and volume of compilation and notice to reader work on an annual basis. As identified by the PCC, he had thirteen years to assess the nature and volume of work that he was performing within ITCCTA and to ensure his compliance with the Rules of CPA Ontario (previously the Institute). Mr. Farronato acknowledged in his testimony that he did not properly address his non-compliance with Rule 409 (and Rule 101). However, he and his counsel viewed it as an error by oversight, not as professional misconduct. The Panel acknowledged his oversight but considered this lack of compliance to the Rules to be professional misconduct.
- [31] In 2014, Mr. Farronato was advised that his practice was the subject of a Practice Inspection. He executed a Declaration of Exemption form (Exhibit 1, Vol 1, pg 8002) certifying that he had not performed, as a sole practitioner or engagement partner, any audit, review, or compilation engagement for the 24-month period preceding the exemption request. Mr. Farronato also certified he would advise CPA Ontario’s Director of Practice Inspection if he were to perform such engagements. Mr. Farronato’s response in his declaration appeared to only address the practice registered under his personal name, and not whether his services within ITCCTA should have been registered with CPA Ontario. He erred in this response by not considering the work he was performing as a Chartered Professional Accountant while at ITCCTA. The services being provided to the clients of ITCCTA included compilation work, etc. Had ITCCTA been registered in 2003, as required, it would have been subjected to Practice Inspection.

- [32] Mr. Farronato testified that despite changes in the definition of the practice of accounting in 2006, he was not alerted to the need to consider ITCCTA's non-registered status. Nor did further changes to the definition in 2010, or during unification in 2014, trigger any recognition that ITCCTA was providing accounting services to the public without being registered and thereby subject to the regulation and inspection of CPA Ontario. Despite notices regarding changes to bylaws and rules following annual general meetings of CPA Ontario, Mr. Farronato maintained that it did not occur to him that his employer, ITCCTA, the company through which accounting services were being provided to the public under Mr. Farronato's oversight, should be registered. He failed to recognize his obligation that as a member of the Institute, and later CPA Ontario providing these services for ITCCTA, he was obligated to register with the Institute and later, CPA Ontario.
- [33] Mr. Farronato acknowledged his failure to register himself as a practitioner providing these services. He knew ITCCTA was a corporation and that it was neither registered with the Institute or CPA Ontario, nor did it fall within any of the exceptions. In their response letter dated October 18, 2016, to the Director of Standards Enforcement for CPA Ontario, Mr. Farronato and ML stated "...we mistakenly concluded that registration was not required for simple compilation engagements and straightforward tax preparation of the sort that we perform for clients. We now recognize that the analysis that we did at that time was not very satisfactory." (Exhibit 1, Vol 1, pg 4003). Having heard all the evidence, particularly the testimony of Mr. Farronato, and having reviewed the documents submitted into evidence, the Panel concluded that Mr. Farronato did engage in the provision of compilation services during his employment with ITCCTA.

Allegation 3

- [34] The 2016 complaint that resulted in the investigation leading to this prosecution also alleged that Mr. Farronato paid and received commissions for the referral of clients. In his letter responding to the complaint, Mr. Farronato denied that he ever received any commission directly or indirectly for client referrals. He also denied the payment or receipt of commissions by ITCCTA.
- [35] In December 2017, the PCC appointed an investigator, Ms. Linda Robinson. Her appointment was a year after Mr. Farronato had responded to the complaint made in 2016. She interviewed Mr. Farronato on two occasions – March 5, and 13, 2018 (with his counsel, Mr. Lane also present). She also interviewed ML and the original complainant. Ms. Robinson noted in her cross examination by Mr. Lane that Mr. Farronato and ML had jointly responded to the complaint issues raised by the 2016 complainant. During her interviews of and review of documents with Mr. Farronato, Ms. Robinson reviewed the means by which Mr. Farronato was remunerated by ITC Capital and ITCCTA. She asked for information regarding his personal tax returns and information regarding commission income. The topic of commission income was addressed in the March 2018 interviews. The issue raised was whether part of Mr. Farronato's remuneration reflected on a T4A issued by the companies for whom he worked (ITCCTA, ITC Capital) was properly represented, and whether Mr. Farronato was in effect attempting to

misrepresent the type of remuneration received, i.e., a “bonus” versus “commission”; “employment income” versus “self-employment”. There was no question that Mr. Farronato had reported all income received on his tax returns. The issue was whether his T4A income which allowed him to claim for proper expenses incurred to earn this income should have been reported as “employment income” on a T4.

- [36] During a PCC meeting held on April 10, 2018, discussions were had regarding the manner in which Mr. Farronato received remuneration from ITCCTA and ITC Capital. The PCC ultimately focused on Mr. Farronato’s reporting of his remuneration on his and his family’s 2016 personal tax filings. It was during this meeting that Ms. Robinson recalled that Mr. Farronato had described the bonuses paid to him as being recorded on his T4A as extra work performed outside of his regular work hours. This meeting was not recorded, and Ms. Robinson admitted that her notes were not verbatim. Her notes did record his responses to some of the questions asked during the meeting regarding Mr. Farronato’s reporting of his 2016 remuneration. Her notes set out terms used by Mr. Farronato in his responses at the PCC meeting. When asked about “Bonus pd 2016 T4 & T4A”, Mr. Farronato responded with – “T4A extra work after hours for business, Applied expense to it”. When asked, “Why not regular salary”, he responded, “For additional – extra revenue fee for services Self employed commission” (Exhibit 1, Vol. 1, pg 15001). Mr. Farronato and ML frequently used both “bonus” and “commission” interchangeably. They both maintained that Mr. Farronato was to receive additional remuneration for additional work performed outside regular work hours. The additional work was being performed for the benefit of ITCCTA and ITC Capital.
- [37] As a result of the PCC’s questions regarding Mr. Farronato’s reporting of his remuneration, and the issuance of Allegation 3 whereby Mr. Farronato was accused of filing a false or misleading tax return (T1) for the 2016 year, he engaged the services of Mr. John Grummett, CPA, CA to respond to the allegation.
- [38] Mr. Grummett was retained in late October or early November 2018 by Mr. Farronato through his counsel, Mr. Lane. He was asked to prepare an expert’s report to respond to Allegation 3. Mr. Grummett provided a 5-page report dated December 5, 2018 that provided his opinion regarding the reasonableness of reporting income by Mr. Farronato from ITC Capital and ITCCTA. Mr. Farronato sought to rely on Mr. Grummett’s report and his opinion at his hearing. Mr. Grummett’s qualifications as an expert able to provide opinion evidence on issues dealing with Canadian income tax were not challenged by the PCC. At the hearing, Mr. Grummett acknowledged that the 14 “facts” upon which his opinion was based were best described as “assumptions” as he had not sought to test or prove the facts which were provided to him by Mr. Farronato and his counsel.
- [39] In his report of December 5, 2018, Mr. Grummett, in the section under “Opinion on Reasonableness of Reporting”, concluded that Mr. Farronato “had both an employee/employer relationship and a self-employed business relationship with ITC (Capital) and ITCCTA. The self-employment relationship related to the additional fees paid and reported on Form T4A”. He found that as the additional income was self-employment income, reporting it as “business income” on his 2016 tax return was “reasonable” (Exhibit 1, Vol 1, pg 16004).

- [40] The PCC relied upon the shift from Mr. Farronato's repeated description of payments made to him during his employment with ITCCTA and ITC Capital as bonuses, to describing, and reporting those same payments as self-employment income. Ms. Robinson, in her cross examination, was asked "if Mr. Grummett's assumptions (previously characterized as facts) were taken as valid, would the recording of the T4A income be OK?" Her response was that she was not a tax expert and she was concerned about providing a response as there was a great deal of tax law governing employee versus self-employed income reporting. She stated that even if all the assumptions were true, she believed that one cannot be an employee and self-employed when doing the same work. Mr. Farronato had stated, however, that the T4A compensation was for work outside his regular duties.
- [41] ML, in his testimony, stated that the compensation was a combination of salary plus a separate arrangement for other/extra work performed. This "extra" compensation had been started in the early 2000's. ML referred to the entries in ITCCTA for "Bonus-Stive" as additional compensation and noted that one of the entries, the largest, tied into the extra work at tax time which he stated related to the increased volume and the additional work that Mr. Farronato was required to perform (Exhibit 1, Vol 1, 19001). ML also referred to the 2016 ITC Capital "Bonus/Comm" (Exhibit 1, Vol 1, 19002). As with ITCCTA, he stated that the amount paid to Mr. Farronato related to the company's profitability. He stated that if there was no extra work then there would be no extra compensation to Mr. Farronato. He stated that the additional work remuneration would be reported on a T4A. The characterization of this income by ITC Capital and ITCCTA on the T4A's was under Box 20 – Self-employed commissions (Exhibit 1, Vol 1, pgs. 11003, 12002). As an alternative to claim expenses, ML could have, and stated he would have, signed a T2200 as opposed to issuing a T4A in support of expenses to be claimed by Mr. Farronato. It was the companies owned by ML and ML's son that issued the T4A's to Mr. Farronato.
- [42] The Panel considered the evidence provided with respect to the filing of the 2016 T1 by Mr. Farronato for himself and his family. They considered the evidence as it pertained to the allegation that Mr. Farronato's Income Tax and Benefit Return (T1) was false or misleading. The Panel noted that he did report all his income from both ITCCTA and ITC Capital on both his T4 and T4A. They considered the interchangeable usage of bonus, self-employed income, and commission by both Mr. Farronato and ML. They considered the fact that ML and his son owned the businesses and had the ultimate decision-making authority. Based upon the evidence, the majority of the Panel accepted that Mr. Farronato did perform duties beyond the day to day operations of the two entities as explained by both ML and Mr. Farronato. The majority of the Panel recognized that Mr. Farronato appeared to be aggressive with respect to the expenses claimed, and to the income splitting that he undertook with his family members.
- [43] During their deliberations, the Panel considered whether the evidence supported that Mr. Farronato submitted a false or misleading tax return for 2016. Three of the four Panel members concluded that while his filing was aggressive, they did not find that it was false or misleading and therefore with respect to Allegation 3, he did not commit

professional misconduct.

- [44] One of the four panel members dissented and concluded that Mr. Farronato had breached Rule 205 and was therefore guilty of professional misconduct. The reasoning for this panel member's conclusion follows.

Allegation 3: Dissent

- [45] Regarding Allegation 3, that the member knew or ought to have known that the representations he made to Revenue Canada in his 2016 tax return were false or misleading, one member of the panel, Mr. Duschek, dissented from the majority's finding that while Mr. Farronato's filing was aggressive, it was not false or misleading. Based on Mr. Duschek's assessment of the credibility of Mr. Farronato and ML, as well as the weight he assigned to the expert's opinion, the dissenting member concluded that the member knew or ought to have known that the representations made in his 2016 tax return were false or misleading.
- [46] In assessing the credibility of the member, Mr. Duschek found that upon learning of the complaint and throughout the investigative process, the member adopted a dismissive, cavalier approach, providing responses which at times were misleading.
- [47] From mischaracterizing his business in an initial response to the complainant, to referring to his income in a variety of ways (including as a bonus, as self-employed commission, as profit sharing, payment for extra work, self-employed income and as a split of earnings of a hybrid nature), Mr. Duschek found that the characterization of Mr. Farronato's income became whatever best suited the member at any particular point in time; depending on to whom he was speaking, and depending on the question that was being asked of him. The dissenting member found such changes in characterization to be misleading.
- [48] The lack of documentary evidence to corroborate Mr. Farronato's position regarding the characterization of his income in order to support his tax filing position, did nothing to bolster his credibility or support the member's final characterization of his income on his tax filing. Both Mr. Farronato and ML acknowledged that no such documents existed.
- [49] Mr. Farronato's also admitted that the supporting schedule (for business income and expenses) he submitted to Revenue Canada with his wife's income tax return lacked transparency, which the dissenting member found to be a misleading representation of expenses to Revenue Canada.
- [50] Mr. Farronato admitted that his wife and children were not paid for the alleged services they provided to him, as part of his "self-employment", and that the expense amounts were not commensurate with the work completed by them. Mr. Farronato stated that, in fact, he had actually engaged in income splitting – explaining that "everybody does it". This further supported the dissenting member's finding that Mr. Farronato had engaged in misleading conduct.
- [51] The admission that he had provided a fabricated supporting schedule to counsel for the PCC regarding a direct inquiry put to him about his spouse's income tax return, was, on

its face misleading and went to the credibility of the member.

- [52] Both Mr. Farronato and ML admitted that Mr. Farronato had been paid \$12,000 in 2016 as an “automobile allowance”. ML stated the amount was also to cover entertainment expenses incurred by Mr. Farronato. Mr. Farronato admitted that he had not included the benefit of this automobile allowance as income in his 2016 income tax return. Mr. Farronato, instead, deducted automobile expenses on his and his wife’s income tax returns for that year for which he had no corroborating evidence. Mr. Farronato’s actions vis a vis this benefit, and the automobile expense deduction made his 2016 income tax return false or misleading.
- [53] Several times, during the testimony or submissions by various parties to this hearing, the issue of the use of a T2200 by Mr. Farronato was raised as part of Mr. Farronato’s defence. A T2200 was submitted as evidence before the panel. Because it was raised so often and by so many different parties, Mr. Duschek felt that the issues (related to Mr. Farronato’s assertions that he could have used a T2200) merit some discussion.
- [54] Mr. Farronato, his Counsel and ML all stated at various times that ML (or his companies) could, as an alternative, have provided a T2200 to Mr. Farronato. This would have allowed Mr. Farronato, they contended, to deduct the expenses (i.e. the items that he had deducted from the alleged self-employment income) against his employment income, thereby providing him with a similar result for taxable income on his income tax returns. Mr. Farronato reasoned that he had not, because of this, misstated his taxable income and that he had not, therefore, filed a misleading income tax return.
- [55] The rules related to the use of a T2200 are quite specific and the conditions for the use of a T2200 form by an employer and an employee are outlined on the form. Counsel for the PCC addressed this directly. Mr. Farronato would only have been provided a T2200, and therefore been allowed to deduct “employment expenses” if he met certain specific employment conditions. No evidence was provided to substantiate that Mr. Farronato met the relevant conditions. Further, Mr. Grummett included a section in his opinion about the possibility of Mr. Farronato’s use of a T2200 as an alternative for deducting expenses. During cross examination by Counsel for the PCC, Mr. Grummett acknowledged that he had not reviewed, in detail, the nature of Mr. Farronato’s expense claims or whether they would have been allowed as deductions, had a T2200 been provided to Mr. Farronato. In her summation, the PCC characterized the T2200 issue, particularly in light of the opinion rendered by Mr. Grummett, as a “red herring”. Mr. Duschek concurred with the PCC on this point.
- [56] As it relates to Allegation 3, Mr. Duschek did not agree with any of Mr. Farronato’s (or his witnesses’) evidence as it related to the use of a T2200. The contention that, somehow, an alternative was available to Mr. Farronato that would put him in the same position vis a vis his taxable income as he had reported it, and that would, therefore, make his income tax return not misleading, is simply not proven. Mr. Duschek found, therefore, that Mr. Farronato had provided misleading information on his income tax returns.
- [57] Mr. Duschek specifically disagreed with the majority on the issue that Mr. Farronato had

merely filed his income tax returns “aggressively”. There are numerous instances, outlined throughout this dissent that demonstrate that Mr. Farronato’s approach to filing his income tax returns and lack of supporting documentary evidence went beyond filing “aggressively”. Since there was no documentary evidence provided to support Mr. Farronato’s position that he was both an employee and self-employed by the same organization at the same time that were accepted by Mr. Duschek as credible, Mr. Duschek concluded that Mr. Farronato had made statements to the PCC and filed income tax returns that were misleading.

- [58] In considering ML’s evidence, the dissenting member found that ML’s characterizations of Mr. Farronato’s income throughout the investigative and pre-hearing process were not only varied but seemed to change depending on the audience. At times he described the income as a “bonus”, as “payment for performance”, as “profit sharing” and on a T-4A, as “self-employed commissions”. Another time the income was described as “split income” between employment income and self-employed income. He also referred to the income as payment for “extra work”. The ever-changing manner in which ML proceeded to characterize Mr. Farronato’s income cast significant doubt on ML’s testimony on this issue.
- [59] Finally, in considering the expert evidence called by the member, Mr. Duschek found that the uncorroborated and untested assumptions upon which the expert relied rendered his evidence and opinion of no assistance. Mr. Grummett did not cite a single precedent case in support of Mr. Farronato’s tax filing position. The evidence of the expert did not assist or bolster the member’s position regarding the nature of his income.
- [60] During submissions by or on behalf of Mr. Farronato, a point was made several times that “it is not the responsibility of the panel to do the job of the CRA” as it relates to the underlying issues in Allegation 3 (i.e. alleged misleading income tax returns). Mr. Duschek felt it important to point out that he agrees with this assertion. He does not, however, believe that the panel is required to do the job of the CRA to properly review and decide upon this allegation. The panel only needs to do the job of the panel and assess the evidence. The fact that this Allegation involves a taxation issue does not mean that the panel should concede that it cannot make a finding based on submissions and/or evidence put before it or the lack of evidence in support of a position.
- [61] Having dismissed the expert’s opinion for lack of a credible and corroborated foundation, made negative findings as to the evidence provided by the member and his witness, ML, and determined that the income received by the member was a form of employment income, Mr. Duschek found on a balance of probabilities that the member knew or should have known that the manner in which he represented his income to Revenue Canada in his 2016 tax return was not only lacking in transparency, but was misleading.

VI. SANCTIONS

- [62] All members of the Panel were unanimous on the issue of sanction.
- [63] The PCC sought sanctions that included a written reprimand, a \$10,000 fine, the

completion of three Continuing Professional Development (CPD) courses covering ethical issues relating to this profession, as well as publicity of this Decision and Order. The PCC also sought a provision that should Mr. Farronato fail to comply with any of the provisions of the order, he would be suspended. Should Mr. Farronato fail to become compliant within a 30-day period, the PCC proposed his membership then be revoked.

- [64] Mr. Farronato did not oppose the sanctions sought by the PCC, save and except for the amount of the fine.
- [65] A written reprimand is an appropriate sanction in this matter, acting as a specific deterrent for Mr. Farronato. Such a reprimand directly communicates to Mr. Farronato the unacceptability of his conduct and acts as a reminder of his ongoing obligations as a member of this profession.
- [66] The requirement that Mr. Farronato participate in CPD courses within 12 months of the Decision and Order also addresses the concept of specific deterrence, as well as rehabilitation. While a majority of this Panel did not make a finding of intentionally misleading conduct, there were elements of Mr. Farronato's conduct that caused the Panel concerns regarding his lack of attention to his obligations. This requirement ensures that Mr. Farronato clearly understands the ethical issues that arise within our profession. The three courses such as "Ethics: Conversations in the Boardroom and in the Hallways", "Business Ethics – What Canadian CPA's Need to Know", and "Ethics and Tax" will assist Mr. Farronato in the rehabilitative process.
- [67] When considering the aspect of general deterrence, the Panel found that publicity of this Decision and Order on the website for CPA Ontario, disclosing Mr. Farronato's name to all members of CPA Ontario, all provincial bodies and the public would be appropriate. Mr. Farronato did not oppose publication and there were no rare and unusual circumstances presented to justify withholding the publication of Mr. Farronato's name.
- [68] With respect to the fine sought, it was the position of the PCC that the fine be in the amount of \$10,000, arguing that the amount would act as a sufficiently high deterrent for both Mr. Farronato and the membership at large. An aggravating factor relied upon by the PCC in support of its position was the period of time during which Mr. Farronato practised public accounting outside the firm which he had registered with CPA Ontario, providing those services instead through a corporation (ITCCTA) which was not registered with CPA Ontario. From 2003 to 2017, Mr. Farronato provided public accounting services through ITCCTA, thereby avoiding scrutiny by the regulator.
- [69] As a further aggravating factor, the PCC argued that Mr. Farronato misled the PCC regarding the details of his wife's tax return. The PCC could not conclude whether his conduct was intentional. This event was not determinative.
- [70] In mitigation, the PCC noted that Mr. Farronato did not have a disciplinary history, he cooperated and actively participated in the investigative and disciplinary processes, and he had taken steps to achieve regulatory compliance.
- [71] Mr. Lane submitted that the appropriate fine in light of the Panel's findings would be in the amount of \$7,500. In support of his argument, Mr. Lane argued that Mr. Farronato's

intentions were not to avoid his obligations to his regulator. He pointed out that Mr. Farronato had paid fees and secured liability insurance in relation to his own practice which would apply to work done both within his own practice, as well as for outside work for a company such as ITCCTA. He noted that fortunately there had been no claims or complaints by clients over the 13-year period. Mr. Lane suggested this Panel should consider the possibilities of what kind of harm could have arisen from the breaches found – arguing that the fact that such harm did not play out was a mitigating factor to be considered. Finally, he also argued that since 2016, Mr. Farronato had taken steps to ensure regulatory compliance.

[72] This Panel considered the cases presented by the PCC in their Case Brief on sanctions. While Mr. Lane argued that there was no case on point and that a tiered approach to fines should be considered, the Panel accepted the PCC's suggested fine in the amount of \$10,000. Such a fine properly reflects the importance of ensuring that one is in compliance with the Bylaws, Regulations and Rules of Professional Conduct, whether acting as an employee or within the confines of one's own practice. The fact that there were no complaints or claims made against Mr. Farronato is not necessarily a mitigating factor given the type of services provided. The Panel felt the higher fine was appropriate to reflect the fact that Mr. Farronato was not in compliance with the Rules and Regulations for 13 years. He should have rectified this breach of the Rules on his own, and much sooner. This fine also takes into consideration the failure of Mr. Farronato to exercise care when making representations to his regulator. The Panel also found that six months to pay the fine was reasonable. Both parties were in agreement with the time to pay.

[73] In the event that Mr. Farronato fails to comply with the requirements of the Order, it is appropriate that his membership be suspended until he comes within compliance. However, if he does not become compliant within 30 days of the date of his suspension, it is appropriate that his membership be revoked.

VII. COSTS

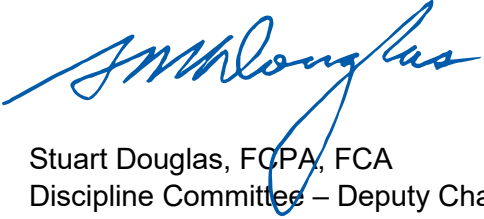
[74] With respect to the issue of costs, the PCC presented a Costs Outline setting out the costs for the investigation and prosecution of this matter. The PCC did not seek full indemnity for costs, but rather partial indemnity in the amount of 50%, being \$54,000. Typically, the PCC seeks two thirds of the actual costs, but in this case they gave consideration to how and when two counsel were required and reduced their costs accordingly.

[75] In support of its submission, the PCC argued that as a result of Mr. Farronato's conduct in the course of the investigation and following the issuance of the initial allegations against him, the costs of the prosecution increased. Mr. Farronato had provided both a written response as well as answers during two interviews during the investigative process. He later took a different position which, the PCC argued, resulted in the need for additional preparation time and the need to prepare for potential alternative defences.

[76] The Panel considered the arguments and submissions regarding costs as they related to

two counsel for PCC and the need for additional time by PCC to deal with new information arising from interviews and new documents during the investigative process. The Panel accepted that the additional discount provided by PCC properly and adequately dealt with any possible cost duplications. Costs of \$54,000 are appropriate, with time to pay, six months from the date of the Decision and Order.

Dated at Toronto this 29th day of October, 2019



Stuart Douglas, FCPA, FCA
Discipline Committee – Deputy Chair

Members of the Panel

Bryan Allendorf, CPA, CA
Rudolf Duschek, CPA, CA
Catherine Kenwell (Public Representative)

Independent Legal Counsel

Nadia Liva, Barrister & Solicitor