

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

APPEAL COMMITTEE

IN THE MATTER OF: An appeal by **FRANK PRESTA, CA**, a member of the Institute, of the Decision and Order of the Discipline Committee made on December 3, 2008, pursuant to the bylaws of the Institute, as amended.

TO: Mr. Frank Presta, CA
Frank Presta, Chartered Accountant
539 Jevlan Drive, Suite A
WOODBIDGE, ON L4L 8W1

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision Made October 27, 2009)

1. This appeal was heard by a panel of the Appeal Committee of the Institute of Chartered Accountants of Ontario on October 27, 2009. Alexandra Hersak appeared on behalf of the Professional Conduct Committee. Mr. Presta was represented by Michael Girard.
2. The following charge was laid against Mr. Presta by the Professional Conduct Committee on March 21, 2007:

THAT, the said Frank Presta, in or about the period December 4, 2007 through to June 3, 2008, failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct an investigation on behalf of the Professional Conduct Committee, contrary to Rule 203.2(b) of the Rules of Professional Conduct.

3. The Decision and Order appealed from, dated November 27, 2007, reads as follows:

DECISION

THAT, having seen, heard and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Presta pursuant to Bylaw 560, being satisfied that he had proper notice of the hearing and his counsel having entered on his behalf a plea of not guilty to the charge, the Discipline Committee finds Mr. Frank Presta guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Presta be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Presta be and he is hereby fined the sum of \$3,500 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Presta cooperate in the Professional Conduct Committee investigation within ten (10) days from the date this Decision and Order becomes final under the bylaws, by providing to the Director of Standards Enforcement the documents requested in the letter to Mr. Presta dated February 12, 2008 contained at Tab 7 of Exhibit 4 filed at this hearing.
4. THAT Mr. Presta provide full and active cooperation as required by the Professional Conduct Committee in its continued investigation, in addition to the cooperation required in paragraph 3 of this Order.
5. THAT notice of this Decision and Order, disclosing Mr. Presta'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.
6. THAT in the event Mr. Presta fails to comply with the requirements of paragraph 3 of this Order, he shall thereupon be expelled from the rights and privileges of membership in the Institute and his public accounting licence shall thereupon be revoked, and notice of his expulsion and licence revocation, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Presta's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Presta and shall be in addition to any other costs ordered by the committee.
7. THAT in the event Mr. Presta fails to comply with any of the other requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute and his public accounting licence shall thereupon be suspended 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 his licence shall thereupon be revoked, and notice of his expulsion and licence suspension and revocation, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic

area of Mr. Presta's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Presta and shall be in addition to any other costs ordered by the committee.

AND IT IS FURTHER ORDERED:

8. THAT Mr. Presta be and he is hereby charged costs fixed at \$5,500 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
4. On this appeal, Mr. Presta seeks to have the finding of guilt overturned and an order dismissing the charges made.

Submissions

5. The parties each filed a factum with the panel, setting out their positions, and made oral arguments.
6. In essence, the submission on behalf of Mr. Presta is that the Discipline Committee erred in finding Mr. Presta had failed to cooperate with the investigation because he had provided all the documentation relevant to the initial complaint. Although the appellant's factum referred to elements of the sanction, this was not pursued in either the order sought from this panel or in oral argument.
7. It is the position of the Professional Conduct Committee that the documents requested and not provided clearly could be relevant to the investigation of the complaint, and that the Discipline Committee finding was made on ample evidence and should not be disturbed.

Analysis

8. As has been stated in numerous previous appeals, it is not the role of the Appeal Committee to retry the case or to substitute its judgment for that of the Discipline Committee. Rather, the Appeal Committee is to consider the record and determine, based on that record, whether the findings of fact made by the Discipline Committee are supported by the evidence, and whether the decision is supported by the facts and the law.
9. The facts in this matter were not disputed either before the Discipline Committee or this panel. In essence, Mr. Presta was investigated for an allegation of misconduct. He provided documentation to the investigator, who prepared a report to the Professional Conduct Committee, the body overseeing the investigation. The investigator was instructed to conduct further investigation and seek further documents. Mr. Presta declined to provide those documents, on the basis they were irrelevant. Mr. Presta was instructed to attend before the Professional Conduct Committee on three separate occasions, and did not do so. On one of those occasions he provided a doctor's note excusing him from attending.

10. The issue before the Discipline Committee was whether Mr. Presta's conduct during the investigation constituted a failure to cooperate, contrary to the Rules of Professional Conduct. The Discipline Committee was conscious of the question of relevance, and considered the documents requested specifically on that basis. It found the documents could be relevant to the investigation of the complaint.

11. The allegation was that Mr. Presta had used his firm to help conceal assets of a client in a matrimonial dispute. The documents requested were the financial records of the firm. The Discipline Committee "concluded that the documents and explanations requested could well be relevant to the complaint." That conclusion is reasonable on the facts. Indeed, the conclusion is inescapable. The complaint included allegations that the firm had invoiced and recorded client services and payments falsely, and that the firm had later refunded monies to the client. It is reasonable to believe that the financial records of the firm would contain evidence to confirm or refute those allegations.

12. The Discipline Committee found that the test for relevance in these circumstances was not whether the member under investigation decided the information was relevant, but whether, viewed objectively, the information could be relevant. That is a correct statement. An investigation by the Professional Conduct Committee is not driven or shaped by the will of the person under investigation. Were it so, the concept of self-regulation would be a sham. Nor is the investigator confined to the original complaint, unable to follow evidence of additional possible misconduct. Although it is not necessary to decide this matter, it is clear that effective self-regulation requires the regulator to have the power to follow an investigation where it leads, without unnecessary barriers and constraints.

13. The appellant has argued that Mr. Presta cooperated sufficiently to enable the investigator to report to the Professional Conduct Committee and that, therefore, the investigation of the complaint had to be concluded at that point. Any documentation required after that report had to be irrelevant to the original complaint. The implication is that Mr. Presta's attendance was therefore unnecessary, despite the requirement to attend. That position misapprehends the role of the Professional Conduct Committee. That Committee is an investigation committee, not an adjudication one. It does not sit in judgment of allegations of misconduct, it seeks evidence to determine what happened. It directs the investigation and the investigator. A report to the Professional Conduct Committee is a detailing of the investigation to date. The report is neither provided to nor relied upon by the Discipline Committee, the body with the responsibility of determining whether professional misconduct has been proven.

14. While it was not raised as a ground of appeal or in its factum, in oral arguments the appellant submitted that the expansion of the investigation without notice to Mr. Presta breached the principles of natural justice. As indicated above, the mere instruction by the Professional Conduct Committee to make further inquiries does not constitute an expansion of the investigation. There is no evidence to support the position there was an expansion of the investigation. Even if there were an expansion, the conduct of a chartered accountant is always subject to the scrutiny of the governing body, and a chartered accountant is required to cooperate with an investigation. The Professional Conduct Committee does not make any findings as to misconduct. The giving of notice could impact on neither the chartered accountant's rights nor his obligations, and must be seen as a courtesy rather than a requirement.

Decision

15. Having considered the record, the submissions of the parties, and the law, this panel of the Appeal Committee finds that the Discipline Committee committed no errors in its consideration of this matter. The Decision and Order of the Discipline Committee are upheld, and this appeal is dismissed.

DATED AT TORONTO THIS 16TH DAY OF DECEMBER, 2009
BY ORDER OF THE APPEAL COMMITTEE

S.R. MEEK, FCA – DEPUTY CHAIR
APPEAL COMMITTEE

MEMBERS OF THE PANEL:

D.J. ANDERSON (PUBLIC REPRESENTATIVE)
P.B.A. CLARKSON, CA
M. LANGER, FCA
J.F. OLAFSON, CA

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: A charge against **FRANK PRESTA, CA**, a member of the Institute, under **Rule 203.2** of the Rules of Professional Conduct, as amended.

TO: Mr. Frank Presta, CA
Frank Presta, Chartered Accountant
4550 Highway 7
Suite 130
Vaughan, ON L4L 4Y7

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order Made December 3, 2008)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on December 3, 2008, to hear a charge of professional misconduct brought by the Professional Conduct Committee against Frank Presta, CA, a member of the Institute.
2. The Professional Conduct Committee was represented by Alexandra Hersak. She was accompanied by Jodie Wolkoff, CA,CA-IFA, the investigator appointed by the Professional Conduct Committee.
3. Mr. Presta was not present at the hearing. Michael Girard, his counsel, was present and said that he wished to file a letter from Mr. Presta which among other things explained his absence. Ms. Hersak objected to the letter being entered into evidence. Mr. Girard confirmed that Mr. Presta knew of the hearing and said that he had represented Mr. Presta before the Professional Conduct Committee.
4. The panel was satisfied that Mr. Presta had received notice of the hearing and ruled that it would proceed in his absence pursuant to Bylaw 560. The panel also ruled that it would not receive the letter Mr. Girard proffered at that time.
5. The decision of the panel was made known at the conclusion of the hearing on December 3, 2008, and the written Decision and Order was sent to the parties on December 15, 2008. These reasons, given pursuant to Bylaw 574, include the charge, the decision, the order, and the reasons of the panel for its decision and order.

Charge

6. The following charge was laid against Mr. Presta by the Professional Conduct Committee on June 11, 2008:

THAT the said Frank Presta, in or about the period December 4, 2007, through to June 3, 2008, failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct an investigation on behalf of the Professional Conduct Committee, contrary to Rule 203.2 of the Rules of Professional Conduct.

Plea

7. Mr. Girard entered a plea of not guilty to the charge on behalf of Mr. Presta.

Proceedings with respect to the Charge

8. Ms. Hersak made a brief overview of the case for the Professional Conduct Committee. She also filed an Affidavit of Tatiana Rabinovitch, CA, which was sworn on December 1, 2008 (Exhibit 3). The Affidavit referred to, and had attached to it, correspondence between Mr. Presta and the Professional Conduct Committee and other relevant documents.

9. Ms. Hersak also filed a Document Brief (Exhibit 4) which included the letter of complaint and correspondence between Ms. Wolkoff and Mr. Presta. Ms. Hersak filed, as a separate document (Exhibit 5), a schedule which was referred to in the complaint letter (Exhibit 4, Tab 1). This schedule shows that the client (or the client's companies) was invoiced a total of \$433,385.31 between April 29, 2003, and January 14, 2004, of which a total of \$287,807.50 was paid to Mr. Presta personally or reimbursed to the client.

10. Ms. Hersak called Ms. Wolkoff as a witness. In her testimony, she made reference to Exhibits 4 and 5 and filed a summary of the requests she made subsequent to February 5, 2008, for information from Mr. Presta or his partner (Exhibit 6). Mr. Girard cross-examined Ms. Wolkoff after which Ms. Hersak closed the case for the Professional Conduct Committee.

11. Mr. Girard did not call evidence on behalf of the member. He did, with the panel's permission, file the letter from Mr. Presta addressed to the Discipline Committee. The letter, dated November 20, 2008, was marked as Exhibit 7.

12. Both Ms. Hersak and Mr. Girard made submissions. Ms. Hersak submitted that the clear, cogent and compelling evidence established that Mr. Presta did not provide the required information subsequent to his meeting with Ms. Wolkoff on January 4, 2008, and that he did not attend, as he was required to, the Professional Conduct meetings held on February 5, 2008, and June 3, 2008.

13. Ms. Hersak submitted that the Professional Conduct Committee did not have to establish that the requested information was relevant to the investigation, only that it could be relevant to the investigation.

14. Mr. Girard, in his submission, pointed out that Mr. Presta had met with Ms. Wolkoff in 2007 and that she had been able to complete a report in November 2007.

Decision

15. After hearing the submissions, the panel deliberated and made the following decision:

THAT, having seen, heard and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Presta pursuant to Bylaw 560, being satisfied that he had proper notice of the hearing and his counsel having entered on his behalf a plea of not guilty to the charge, the Discipline Committee finds Mr. Frank Presta guilty of the charge.

Relevant facts

16. The relevant facts, as the panel finds them to be, are set out in paragraphs 17 to 25 below.

17. The part of the complaint which is relevant to the charge alleges that Mr. Presta's accounting firm had a role in concealing the income of a client who was engaged in a matrimonial dispute. The complaint asserted that Mr. Presta had acknowledged that the invoices of the accounting firm had been recorded as "accounting expenses" of the client's company but the invoices were for "retainers", that the work described in the invoices had not been carried out, and that later the amounts in excess of the actual work done were refunded to the client, or as directed by the client (Exhibit 4, Tab 1).

18. The Professional Conduct Committee appointed Ms. Wolkoff to investigate. She met with Mr. Presta and drafted a report to the Professional Conduct Committee dated November 11, 2007. Mr. Presta was directed to attend the Professional Conduct Committee meeting of December 4, 2007. He did not attend the meeting but sent a letter from his doctor which explained his absence. His doctor's letter, in part, stated, "...I think that the appropriate time to reschedule his appearance should be sometime in the early New Year" (Exhibit 3, Tab C).

19. The Professional Conduct Committee directed Ms. Wolkoff to obtain more information from Mr. Presta. She met with him again on January 4, 2008. As a result of that meeting, she expected to receive more documents and explanations, some of which Mr. Presta provided with a letter dated January 18, 2008 (Exhibit 4, Tab 3). However, there were other documents and explanations which Mr. Presta did not provide. Ms. Wolkoff wrote to him by e-mail on January 21, 2008, (Exhibit 4, Tab 4) and by letter dated January 29, 2008, setting out the required documents and explanations which she had not yet received (Exhibit 4, Tab 5).

20. Mr. Presta responded with an e-mail dated January 31, 2008, in which he wrote, "I have supplied information pursuant to our meeting which strictly relates to the issues raised in the complaint" (Exhibit 4, Tab 6).

21. Mr. Presta was asked to attend the Professional Conduct Committee meeting of February 5, 2008. He did not do so. While he gave no explanation for not attending, Mr. Girard did attend on his behalf. Ms. Wolkoff also attended the meeting. In a letter dated February 12, 2008, (Exhibit 4, Tab 7) Ms. Wolkoff wrote to Mr. Presta. Her letter reads, in part, as follows:

At the meeting of the Professional Conduct Committee (PCC) of the Institute of Chartered Accountants of Ontario on February 5, 2008, Mr. Girard notified the committee that you had agreed to provide the documentation required for our investigation. Please provide the following documentation:

- (i) Presta Caparrotta LLP's (PCLLP) complete financial statements for the years ended December 31, 2003 to 2005, including any notice to reader reports and notes to the financial statements.
- (ii) A reconciliation of Mr. Presta's partnership draws for the period January to December 2003 of \$903,960 to the withdrawals reported in PCLLP's financial statements for the year ended December 31 2003 of \$65,845.
- (iii) Explanations for all reconciling items noted in ii) above.
- (iv) PCLLP's complete detailed general ledger for the years 2003 to 2005.
- (v) A detailed breakdown of the amount reported as "Outside services" of \$242,884 on PCLLP's financial statements for the year ended December 31, 2003.

Please provide the above requested information by end of day Friday February 22, 2008.

Once I have received and reviewed the requested information I will likely have follow-up questions and will contact you shortly thereafter to arrange a convenient time to discuss.

22. Mr. Presta's e-mail reply of February 26, 2008 (Exhibit 4, Tab 9) stated, among other things:

...I have previously forwarded all the information requested concerning the complaint ...Again, I instructed Mr. Girard to notify the professional conduct committee that I will forward all relevant and reasonable information concerning the aforementioned complaint. I have, to date, sent to you all the pertinent information related strictly to the complaint.

23. On February 28, 2008, Ms. Wolkoff sent an e-mail to Mr. Presta's partner requesting the documents and explanations set out in her letter of February 12, 2008 (Exhibit 4, Tab 10). Mr. Presta replied by e-mail dated March 7, 2008, (Exhibit 4, Tab

11) stating that he would return to the office on March 17 and, "...I intend to provide all the requested information in full upon my return".

24. In fact, Mr. Presta did not send Ms. Wolkoff the requested information. In response to a further request from her, Mr. Presta sent the following e-mail to Ms. Wolkoff, dated April 9, 2008:

In response to your latest email, please note that the chair of the professional conduct committee has requested that I appear before the committee on June 3, 2008. At that time, as requested, I will provide the committee information related to the complaint, which has been previously provided. As such, please do not forward any further requests for additional information as the committee is requesting information related to the complaint. Please see attached copy of the committee's letter. (Exhibit 4, Tab 14)

25. Mr. Presta did not provide the information Ms. Wolkoff requested. Mr. Presta did not attend the Professional Conduct Committee meeting of June 3, 2008. He provided no explanation for his failure to attend.

Conclusion

26. The panel concluded that Mr. Presta ceased to cooperate with the Professional Conduct Committee and its investigator after January 18, 2008. He did not provide the documents and explanations requested and he did not attend the Professional Conduct Committee meeting on either February 5, 2008, or June 3, 2008. Mr. Presta presented no evidence to explain his absence from either of the meetings.

27. It appears from Mr. Presta's e-mails of January 31, 2008, and April 9, 2008, that it was his position that the requested documents and explanations were not related to the complaint. There are two problems with this position. First, Mr. Presta said that he would provide the requested information on his return to his office on March 17, 2008. Earlier, he had Mr. Girard advise the Professional Conduct Committee that he would provide the documentation required for the investigation. Second, the issue is not whether Mr. Presta thinks the documents and explanations are related to the complaint or relevant to the investigation, but rather whether the information could be relevant to the investigation. This is not a case where the question of potential relevance is difficult to decide. The panel readily concluded that the documents and explanations requested could well be relevant to the complaint.

28. Mr. Girard pointed out that Mr. Presta did cooperate in 2007. He met with Ms. Wolkoff, who was able to complete a report dated November 11, 2007. However, the charge is that he did not cooperate between December 4, 2007 and June 3, 2008. As he refused to cooperate during this period of time, it is clear the allegation set out in the charge was proven.

29. Mr. Presta's refusal to cooperate constituted professional misconduct and he was found guilty of the charge.

Sanction

30. Ms. Hersak outlined the terms of the order requested by the Professional Conduct Committee, namely: a reprimand; a fine of \$5,000; a requirement that Mr. Presta cooperate generally with the Professional Conduct Committee; a specific requirement that Mr. Presta cooperate by providing, in full, the documents and information requested in Ms. Wolkoff's letter of February 12, 2008, within 10 days of the Decision and Order becoming final, failing which he would be expelled; the usual notice or publication of the decision and order; and costs in the amount of \$5,500.

31. Ms. Hersak characterized Mr. Presta's refusal to cooperate as egregious. She pointed out that he had many opportunities to cooperate and on two occasions he said that he would send the required documents and information, but he did not do so.

32. Ms. Hersak submitted that the three principles which govern the imposition of sanction, general deterrence, specific deterrence and rehabilitation were all relevant. However, she submitted that in this case general deterrence and specific deterrence should have priority.

33. Ms. Hersak submitted that governability was an issue and that the order should make it clear that Mr. Presta would have a relatively short period of time to provide the documents and explanations set out in Ms. Wolkoff's letter of February 12, 2008, failing which he should be expelled.

34. Ms. Hersak acknowledged that there were mitigating factors, and in particular, that early in the investigation Mr. Presta did cooperate. However, she submitted that his refusal for many months to produce the required documents and explanations, even when he had agreed to do so, where aggravating factors which far outweighed his early cooperation. She pointed out that he was not dependant on others to comply with the request.

35. Ms. Hersak referred to the cases of *Greer* (January 2007) and (April 2008); *Perris* (May 2006); *Croucher* (June 2008); *Spidalieri* (February 2002) and the recent Decision and Order in *Carson* (October 2008) as precedents supporting the terms of the order she requested.

36. Ms. Hersak filed a Costs Outline (Exhibit 10) which disclosed that the costs of the investigation, prosecution, and hearing exceeded \$11,000. She asked that Mr. Presta be ordered to pay \$5,500 as a partial indemnity to the Institute for the costs incurred solely on account of his misconduct.

37. Mr. Girard submitted that Mr. Presta had not acted in a way which should lead the panel to conclude that he was ungovernable. Mr. Girard submitted that Mr. Presta had a different view of what was proper and appropriate with respect to his response to the Professional Conduct Committee, and that while in retrospect it could be said that his view was wrong, there was no basis to conclude that he was not governable.

38. Mr. Girard pointed out that Mr. Presta had been a member for 17 years, and that this was his first involvement with the discipline process of the Institute. Mr. Girard suggested that a more appropriate fine would be \$3,000 and he asked that the payment of any fine or costs be spread out over a period of time.

Order

39. After hearing the submissions and deliberating, the panel made the following order:

IT IS ORDERED in respect of the charge:

1. THAT Mr. Presta be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Presta be and he is hereby fined the sum of \$3,500 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Presta cooperate in the Professional Conduct Committee investigation within ten (10) days from the date this Decision and Order becomes final under the bylaws, by providing to the Director of Standards Enforcement the documents requested in the letter to Mr. Presta dated February 12, 2008 contained at Tab 7 of Exhibit 4 filed at this hearing.
4. THAT Mr. Presta provide full and active cooperation as required by the Professional Conduct Committee in its continued investigation, in addition to the cooperation required in paragraph 3 of this Order.
5. THAT notice of this Decision and Order, disclosing Mr. Presta'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.
6. THAT in the event Mr. Presta fails to comply with the requirements of paragraph 3 of this Order, he shall thereupon be expelled from the rights and privileges of membership in the Institute and his public accounting licence shall thereupon be revoked, and notice of his expulsion and licence revocation, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Presta's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Presta and shall be in addition to any other costs ordered by the committee.
7. THAT in the event Mr. Presta fails to comply with any of the other requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute and his public accounting licence shall thereupon be suspended 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 his licence shall thereupon be revoked, and notice of his expulsion and licence suspension and revocation, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Presta's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Presta and shall be in addition to any other costs ordered by the committee.

AND IT IS FURTHER ORDERED:

8. THAT Mr. Presta be and he is hereby charged costs fixed at \$5,500 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.

The objective of the order

40. The panel concluded that Mr. Presta's misconduct required it to impose a sanction which would do three things: first, provide Mr. Presta with an opportunity to demonstrate that he was governable; second, specifically deter Mr. Presta from similar misconduct in the future; and third, generally deter other members from similar misconduct.

Provide the requested information

41. The term of the order requiring Mr. Presta to provide the requested documents and explanations within 10 days of the order becoming final is intended to give Mr. Presta one last opportunity to demonstrate that he is governable. Mr. Presta will have had a year or more to provide to the investigator the documents and explanations which he should have provided in February 2008. If he fails to comply with this term of the Order, he should thereupon be expelled.

Reprimand

42. The reprimand was imposed to stress to Mr. Presta that his conduct was unacceptable.

Fine

43. The fine is intended to specifically deter Mr. Presta from repeating his misconduct and to deter other members from similar misconduct. The panel concluded that the appropriate fine would be \$3,500 and that Mr. Presta should be given 12 months to pay it.

Notice of the Decision and Order

44. The purpose of general deterrence will not be achieved if the profession does not know of the Decision and Order. The publication of the notice is also intended to demonstrate to the profession and the public that the Institute takes its role as the regulator of the chartered accounting profession seriously. There was no suggestion

that there were rare and unusual circumstances which would justify withholding Mr. Presta's name from the notice.

Notice of Expulsion

45. The bylaws require that notice be given to the public by publication in a newspaper where Mr. Presta resides or practices if he is expelled from membership and his public accounting licence is revoked.

Costs

46. The order for costs is made to partially indemnify the Institute for the costs of the investigation, prosecution, and hearing. Mr. Presta's misconduct was the sole reason the Institute incurred the costs set out in the Costs Outline which the panel found to be reasonable. It is not appropriate that the membership as a whole should bear all of these costs; rather it is appropriate that Mr. Presta reimburse the Institute for 50% of these costs. As with the fine, the panel concluded that Mr. Presta should have a period of 12 months in which to reimburse the Institute.

DATED AT TORONTO THIS 17th DAY OF JUNE, 2009.
BY ORDER OF THE DISCIPLINE COMMITTEE

D.W. DAFOE, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

S.F. DINELEY, FCA
P. MCBURNEY (Public Representative)