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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO

TO: FRASER E. SIMPSON

AND TO: The Discipline Committee of the Institute of
Chartered Accountants of Ontario

The Professional Conduct Committee hereby makes the following charges against
Fraser E. Simpson, a suspended member of the Institute:

1. THAT, the said Fraser E. Simpson, in or about the period February 1, 2007 through May 31, 2008, practiced or held himself out to be a Chartered Accountant when his rights and privileges as a member were suspended, and did thereby contravene the provisions of Bylaw 106(5) of the Bylaws of the Institute contrary to Rule 101 of the rules of professional conduct.
2. THAT, the said Fraser E. Simpson, on or about August 20, 2007 associated himself with a statement or representation which he knew was false or misleading, contrary to Rule 205 of the rules of professional conduct in that:
 - a) He signed the passport application of J.S. and certified that "...the applicant...has been known personally to me for 3.5 years..." when the applicant was known to him for less than eight months
3. THAT, the said Fraser E. Simpson, on or about May 28, 2008, failed to conduct himself in a manner which would maintain the good reputation of the profession and its ability to serve the public interest in that, he sent an email which contained unprofessional, unfounded and damaging assertions against J.S.; contrary to Rule 201.1 of the rules of professional conduct.

Dated at Toronto, this 27th day of February 2009.

DAVID LOGAN, CA, DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **FRASER EDWARD SIMPSON**, a suspended member of the Institute, under **Rules 101, 201.1 and 205** of the Rules of Professional Conduct, as amended.

TO: Fraser Edward Simpson

AND TO: The Professional Conduct Committee, ICAO

DECISION AND ORDER MADE NOVEMBER 25, 2009

DECISION

THAT, having heard the plea of not guilty to charge Nos. 1, 2 and 3, and having seen, heard and considered the evidence, the Discipline Committee finds Mr. Fraser Edward Simpson guilty of charge Nos. 1, 2 and 3.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Simpson be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Simpson be and he is hereby fined the sum of \$5,000 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. Simpson be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Simpson'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 all provincial institutes/Ordre,and shall be made available to the public.
5. THAT Mr. Simpson surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

IT IS FURTHER ORDERED:

6. THAT Mr. Simpson be and he is hereby charged costs fixed at \$10,000 to be remitted to the Institute within twenty-four (24) months from the date this Decision and Order becomes final under the bylaws.

AND IT IS FURTHER ORDERED:

7. THAT, pursuant to the provisions of Bylaw 357, Mr. Simpson's readmission to membership on March 24, 2008 be and it is hereby revoked.

DATED AT TORONTO THIS 30TH DAY OF NOVEMBER, 2009
BY ORDER OF THE DISCIPLINE COMMITTEE

A handwritten signature in cursive script, appearing to read "Williamson".

DIANE WILLIAMSON
SECRETARY - DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **FRASER EDWARD SIMPSON**, a suspended member of the Institute, under **Rules 101, 201.1 and 205** of the Rules of Professional Conduct, as amended.

TO: Mr. Fraser Edward Simpson

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision and Order Made November 25, 2009)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario ("Institute") met on September 1, 2009, to hear charges of professional misconduct brought by the Professional Conduct Committee against Fraser Edward Simpson, a suspended member of the Institute.

2. The Professional Conduct Committee was represented by Paul Farley. He was accompanied by John Douglas, CA, the investigator appointed by the Professional Conduct Committee. Mr. Farley also identified two other witnesses for the Professional Conduct Committee, Wendy McClymont, the Institute's Director of Member and Student Records, and Jacqueline Saber, who were both present in the Council Chamber.

3. Mr. Simpson attended and was not represented. He had with him at the counsel table a friend, Blair Garrison, who he said would assist him but would not be a witness.

4. After the charges had been marked as Exhibit 1, and before the plea was taken, the panel heard an application for an adjournment, which it denied. The plea was then taken. Thereafter, Mr. Farley made an opening statement and called Ms. Saber as his first witness. At the conclusion of her cross-examination, the hearing adjourned until November 24, 2009, at which time Ms. McClymont and Mr. Douglas gave evidence. Mr. Simpson cross-examined both witnesses. The Professional Conduct Committee called no other witnesses. Mr. Simpson did not call evidence with respect to the charges.

5. After hearing submissions by both parties, the panel began deliberations with respect to the charges in the afternoon of November 24, 2009. The panel continued its deliberations on November 25, 2009, and found Mr. Simpson guilty of the three charges. As neither party called evidence with respect to sanction, the panel then heard submissions with respect to sanction and deliberated. The parties, who were not asked to wait to hear the decision, were informed of the sanction by e-mail on November 25, 2009.

6. The Decision and Order was sent to the parties on November 30, 2009. These reasons,

given pursuant to Bylaw 574, include the charges, the decision, the order and the reasons of the panel for its decision and order.

Request for an adjournment – September 1, 2009

7. Mr. Simpson gave three reasons for the requested adjournment. The first reason was that he wanted to seek counsel to represent him. He acknowledged that he had known for some time that he was entitled to counsel and that he intended to represent himself; however, he said that, as a result of a trial in the Small Claims Court the previous week, he thought it was important that he retain counsel. The second reason was to obtain a transcript of what the judge said at the conclusion of the Small Claims Court proceedings which Mr. Simpson asserted related to the Institute's responsibility with respect to the reversal of the credit card payment made by Marshall Sone to pay Mr. Simpson's readmission fees. The third reason was because he had not been given full disclosure by the Professional Conduct Committee. In particular, he wanted copies of complaints which the Professional Conduct Committee had received about his conduct.

8. The Professional Conduct Committee opposed Mr. Simpson's application for an adjournment. With respect to his wish to seek counsel to represent him, Mr. Farley noted that Mr. Simpson had many months to decide whether or not he would seek counsel and that it was too late at this stage of the proceedings to have an adjournment for this reason. With respect to the transcript of the proceedings in the civil action, Mr. Farley said the transcript was irrelevant as the parties to the proceeding were Mr. Simpson and Mr. Sone and, as the Institute was not a party to the proceedings, the decision could not bind it or authoritatively address the Institute's conduct. Mr. Farley said that full disclosure of the case brought against Mr. Simpson had been made including the complaints which led to the charges. He acknowledged that other complaints had been received, but no charge had been made with respect to those complaints and thus the complaints were irrelevant.

9. Mr. Simpson made submissions. He said he wanted to seek counsel to address the payment of his \$4,202.20 readmission fee by Mr. Sone's MasterCard, which was later reversed on instructions from Mr. Sone. It was Mr. Simpson's position that the reversal of the credit card payment was a fraud, and that the Institute owed him a duty to have MasterCard reinstate the payment and to maintain him as member in good standing.

10. It was the position of the Professional Conduct Committee that Mr. Simpson was obligated to pay his fees and that, as the fees had not been paid, he had been properly suspended.

11. The charges relate to three distinct periods of time, namely:

- (a) February 1, 2007 to March 24, 2008, a period of time when Mr. Simpson was not a member of the Institute ;
- (b) March 24, 2008 to April 16, 2008, a period of time when Mr. Simpson had been readmitted to membership; and
- (c) April 16, 2008 to May 31, 2008, a period of time when Mr. Simpson's rights and privileges as a member of the Institute were suspended.

The issue raised by Mr. Simpson as to whether or not he was properly suspended is relevant only to (c) above, the third period of time, April 16, 2008 to May 31, 2008. There was no controversy about Mr. Simpson's status prior to April 16, 2008.

12. The panel concluded that the disclosure made was proper and would not be at issue. The complaints which led to the charges had been disclosed to Mr. Simpson. In the event a witness testified who Mr. Simpson believed was biased or prejudiced against him, he could ask the witness whether or not he or she had made a complaint.

13. The endorsements of the Records of the Small Claims Court actions did not support Mr. Simpson's contention that the court indicated that the Institute was at fault in some way with respect to the reversal of the credit card payment by Mr. Sone. The panel did not accept that the comments of the Small Claims Court judge with respect to a non-party (in this case the Institute) would be binding upon, or definitively determine the rights of, the non-party. Mr. Simpson did obtain judgment against Mr. Sone in a Small Claims Court action for \$1,000 and costs. He did not obtain judgment for \$4,202.20, nor did he obtain a judgment requiring Mr. Sone to pay the Institute \$4,202.20.

14. The credit card payment and its reversal by Mr. Sone was relevant only as to one and a half months of the 16-month period covered in the first charge. The credit card payment was entirely irrelevant to the second charge which relates to Mr. Simpson's conduct on or about August 20, 2007. The third charge, which relates to Mr. Simpson's conduct on or about May 28, 2008, does fall into the period of time when Mr. Simpson asserts that he was improperly suspended and is entitled to be considered a member of the ICAO. However, Rule 201.1, the rule that the third charge alleges was breached, applies to both suspended members and members. Accordingly, if Mr. Simpson were still entitled to be considered a member on May 28, 2008, the conduct asserted, if proved, would still be a breach of the rule.

15. The panel concluded that Mr. Simpson had ample opportunity to retain legal counsel to address the credit card payment and its reversal by Mr. Sone, which was a potential defence to part of one of the three charges. Mr. Simpson had contended from and after April 2008 that the credit card payment ought not to be reversed and he had known of the charges since February 27, 2009. The panel concluded that his request for the adjournment for this purpose was raised too late in the proceedings.

16. The panel also concluded that it would be unfair to the Professional Conduct Committee to adjourn the long scheduled hearing when it was ready to proceed on all three charges and had its witnesses in attendance.

The plea

17. The following charges were laid against Mr. Simpson by the Professional Conduct Committee on February 27, 2009:

1. THAT, the said Fraser E. Simpson, in or about the period February 1, 2007 through May 31, 2008, practiced or held himself out to be a Chartered Accountant when his rights and privileges as a member were suspended, and did thereby contravene the provisions of Bylaw 106(5) of the Bylaws of the Institute contrary to Rule 101 of the rules of professional conduct.
2. THAT, the said Fraser E. Simpson, on or about August 20, 2007 associated himself with a statement or representation which he knew was false or misleading, contrary to Rule 205 of the rules of professional conduct in that:
 - a) He signed the passport application of J.S. and certified that "...the applicant...has been known personally to me for 3.5

years...” when the applicant was known to him for less than eight months

3. THAT, the said Fraser E. Simpson, on or about May 28, 2008, failed to conduct himself in a manner which would maintain the good reputation of the profession and its ability to serve the public interest in that, he sent an email which contained unprofessional, unfounded and damaging assertions against J.S.; contrary to Rule 201.1 of the rules of professional conduct.

18. Mr. Simpson entered a plea of not guilty to each of the three charges.

The case for the Professional Conduct Committee

19. Mr. Farley made a brief opening statement. He said that the charges provided a road map of the case for the Professional Conduct Committee. He also said that the charges which related to the period of time when Mr. Simpson was a terminated member were referred to the Discipline Committee pursuant to Bylaw 357 as conduct which occurred prior to his readmission on March 24, 2008.

20. Ms. Saber’s evidence was heard in the afternoon of September 1, 2009. She testified that her husband, Mr. Sone, had made a MasterCard payment to the Institute of \$4,202.20 to pay for Mr. Simpson’s readmission fee. She further testified that there was an agreement that Mr. Simpson would repay Mr. Sone, and referred to the e-mail from Mr. Simpson to her of February 9, 2008, (Exhibit 6, Tab A, Tab 1). The subject of the e-mail was “Membership fees”. The e-mail said: “FYI, thanks. Jackie/Marshall can I pay back over March-April?” It was apparent from her cross-examination that she knew, at least after the fact, that Mr. Sone had caused the credit card payment to be reversed.

21. Ms. Saber testified that she had applied for and received a British passport and that she was present when Mr. Simpson signed her application form as a countersignatory on August 20, 2007. She identified the document at Exhibit 6, Tab B, Tab 1 as a photocopy of her passport application which Mr. Simpson had signed and identified himself thereon as a chartered accountant. She testified that she knew the application form required the countersignatory to have known the applicant for at least two years and that she had only known Mr. Simpson since February 2007. When cross-examined she acknowledged that she knew it was a fraudulent document in that Mr. Simpson had not known her for 3.5 years as he certified, however, she said that she did not know at that time that Mr. Simpson was not a CA.

22. In her examination-in-chief, Ms. Saber was referred to the e-mail of May 28, 2008, (Exhibit 6, Tab C, Tab 1) from Mr. Simpson to LinkedIn Customer Service which was copied to her. The subject of the e-mail was “RE: Marshall Sone”. The e-mail said that Mr. Sone had a “long sorted history” which included a conviction for fraud and expulsion from the Institute. After the reference to Mr. Sone, the e-mail included a paragraph which read: “Please keep an eye out for this fraudster. His wife is a real beauty too, her name is Jacqueline Saber and operates Saber and Sone Financial and Insurance Consultants Inc. Her specialty is credit card fraud”. Ms. Saber testified that she had not been convicted of credit card fraud or fraud of any type.

23. Ms. McClymont referred to a chart (Exhibit 10) which showed Mr. Simpson’s membership status since he was first admitted to membership on December 9, 1995. Including the period March 24, 2008 to April 16, 2008, Mr. Simpson had been a member on three different occasions. She identified the periods when Mr. Simpson was a member and copies of the letters which were sent to him on the two occasions prior to April 2008 when he was first

suspended and then terminated for his failure to pay fees.

24. Ms. McClymont testified that Mr. Simpson's application for readmission dated December 1, 2007, was incomplete and that it took a few weeks for Mr. Simpson to complete it. Ms. McClymont explained this raised a question as to whether or not he should be required to write the Chartered Accountants Reciprocity Examination (CARE), a requirement of applicants for readmission who have not been a member within the five year period prior to their application for readmission. Ultimately, it was determined that Mr. Simpson would not have to write the CARE. His application for readmission was considered and approved on March 24, 2008.

25. Ms. McClymont identified a copy of the Readmission to Membership-Application Form (Exhibit 7) which is stamped receipted January 16, 2008. This form indicated that the readmission fee of \$4,202.20 was paid by a MasterCard payment from Marshall Sone. Ms. McClymont testified that on March 28, 2008, the Institute received a chargeback adjustment advice from Global Payments Direct ("GPD") which indicated that the Institute's account had been adjusted and the payment of \$4,202.20 previously given had been reversed because the cardholder claimed the charge was unauthorized. GPD asked the Institute to provide information and signed proof of delivery, it apparently being assumed that the payment had been made for goods received (Exhibit 3, Tab 2).

26. Ms. McClymont testified about the attempt the Institute had made to rebut the chargeback as it sent a copy of the application for readmission with the credit card authorization noted on it (Exhibit 3, Tab 3). This rebuttal was refused by GPD and the Institute was advised by a memorandum dated April, 4, 2008, that to restore the credit the Institute would have to provide a magnetically swiped/manually imprinted sales draft or proof of delivery to the cardholder's billing address to remedy the chargeback (Exhibit 3, Tab 4).

27. Ms. McClymont testified that as the Institute did not have a sales draft or proof of delivery, the payment could not be reinstated. Mr. Simpson was notified by e-mail and a letter dated April 11, 2008, that the Institute's rebuttal had been denied and that the fee was then outstanding. In cross-examination, Mr. Simpson challenged Ms. McClymont as to why no further action had been taken. She responded that it was not possible for the Institute to take further action.

28. Ms. McClymont identified copies of the correspondence sent to Mr. Simpson on April 11, 2008, and April 16, 2008 (Exhibit 3, Tab 4). The letter of April 16, 2008, to Mr. Simpson, among other things, advised that as a consequence of suspension he could not use the designation Chartered Accountant or the initials "CA" in Ontario.

29. Mr. Douglas' evidence-in-chief was heard prior to the lunch break on November 24, 2009. He was cross-examined after lunch. He testified that during the investigation he had met with and interviewed Mr. Simpson who acknowledged that he had received the correspondence from the Institute of April 11, 2008, advising that the fees should be paid by April 15, 2008, and that he had not paid the fees. Mr. Simpson also acknowledged receipt of the registered letter of April 16, 2008, and the original of the copies of the e-mails and correspondence included in the Document Brief (Exhibit 6) and the Supplementary Document Brief (Exhibit 3).

30. Mr. Douglas testified that he was present at the Professional Conduct Committee meeting when Mr. Simpson was asked about the signature as countersignatory on the passport application and that Mr. Simpson had said that he did not recall signing the form but that the signature appeared to be his. In cross-examination, Mr. Douglas said that he was not a

handwriting expert but that the signature appeared to him to be similar to other signatures which Mr. Simpson acknowledged were his.

31. Mr. Douglas, who by his estimate had investigated more than 50 cases of fraud or potential fraud for the RCMP and other police services over the last twenty years, was asked about the credit card payment and its reversal in cross-examination. Mr. Douglas testified that Mr. Sone admitted during the investigation that he had made the payment and subsequently written a letter to MasterCard dated March 3, 2008, (Exhibit 3, Tab 2) saying that he had not authorized the transaction of \$4,202.20. Mr. Douglas said that this was a contradiction on Mr. Sone's part but he did not see enough evidence to establish fraud.

32. Mr. Simpson made a statement after the Professional Conduct Committee had closed its case. Mr. Simpson did not call evidence. He had said in the morning of November 24, 2009, that he wanted to call Mr. Valente, his previous employer, as a witness. However, after lunch he said that he had spoken with Mr. Valente's office, that Mr. Valente was not available, and that he did not wish to call him as a witness.

33. With respect to the first charge, Mr. Simpson said that his fees had been paid by Mr. Sone and that he had the right to use the CA designation after that. It was his position that the Institute should not have allowed Mr. Sone to reverse the payment and, accordingly, his fees were paid and he was a member with the right to use the designation after April 16, 2008.

34. With respect to the second charge, Mr. Simpson denied that he had signed the passport application. He said the panel should dismiss Ms. Saber's testimony as she had no credibility.

35. With respect to the third charge, Mr. Simpson asserted that Ms. Saber's complaint was vindictive and unjustified and that the Institute had acted unreasonably in investigating and prosecuting him as a result of her complaint.

36. In answer to a question from a member of the panel, Mr. Simpson said that he did not try to negotiate an extension of the period of time in which to pay his membership fee in April 2008 as he did not have the money then, or since, to pay the fees. He also asserted that his fees had been paid and that should have been the end of the matter.

37. Mr. Simpson confirmed in response to another question from a member of the panel that in his view it was fraud for Mr. Sone to cause the credit card payment to be reversed. He asserted that the Institute had failed in its duty to him by not going after Mr. Sone and GPD to have the payment restored. He also said that any improper use of the designation or initials "CA" was inadvertent and in this regard he referred specifically to the audit confirmation letters (Exhibit 6, Tab A, Tab 5).

38. Following Mr. Simpson's statement, Mr. Farley made submissions. He submitted that the only evidence the panel had was the clear, cogent and compelling evidence of the Professional Conduct Committee. He said that with respect to the first charge it was clear that Mr. Simpson knew that he did not have the right to use the designation Chartered Accountant or the initials CA but he did so. Mr. Farley also submitted that in April 2008 Mr. Simpson had wrongly concluded that the Institute's problem with respect to the fees was with Mr. Sone. He asserted that Mr. Simpson had refused to take responsibility for the payment of his own fees.

39. With respect to the passport application, Mr. Farley submitted that Ms. Saber's testimony should be accepted. He submitted that if Mr. Simpson thought that his signature had been forged he would have said so from the beginning of the investigation, and in particular, he would

not have told the Professional Conduct Committee that he could not remember signing the form but it appeared to be his signature.

40. With respect to the third charge, Mr. Farley submitted that the comments in the e-mail of May 28, 2008, were unprofessional and damaging to Ms. Saber and that they were entirely unfounded and unjustified.

41. Mr. Simpson also made brief submissions. He said that he had not gained financially by his conduct, that the Institute should have an intake counsel to screen complaints and should not have accepted a complaint from Ms. Saber. He submitted there was no credible evidence to support the charges. He did say that he regretted the e-mail he sent on May 28, 2008; but that it was sent without malice and that he had apologized for it.

Decision

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

THAT, having heard the plea of not guilty to charge Nos. 1, 2 and 3, and having seen, heard and considered the evidence, the Discipline Committee finds Mr. Fraser Edward Simpson guilty of charge Nos. 1, 2 and 3.

The relevant facts

43. The relevant background and facts of this case, as the panel finds them to be, are set out in paragraphs 44 to 55 below.

44. Between December 9, 1993, and November 25, 2009, Mr. Simpson was a member in good standing of the Institute on three different occasions for a total of 41 months. Mr. Simpson was admitted to membership by examination in December 1993 and remained a member in good standing until he was suspended on June 30, 1995, for his failure to remit the 1995 – 1996 annual membership fee. As he had still not paid the required membership fee on August 1, 1995, his membership was terminated.

45. Mr. Simpson applied for readmission to the Institute and it was granted on December 14, 2000. He was suspended for failure to pay the annual membership fee which was due not later than June 3, 2002. As he had still not paid the required membership fee on December 2, 2002, his membership was terminated and he was notified of the termination by a registered letter dated December 2, 2002 (Exhibit 2, Tab 9). The letter included the following sentence: “You are reminded that, as with suspension, termination precludes the use in Ontario of the designation “chartered accountant” and the initials “CA” or “FCA”.”

46. Mr. Simpson applied for readmission on December 1, 2007. The application form indicated that the amount of \$4,202.20, the fee for readmission including membership for the 2007 – 2008 year of \$4,202.20 was paid by a MasterCard payment of Marshall Sone. The Readmission to Membership – Application Form required Mr. Simpson to make four declarations. The second declaration related to conduct which could reasonably be considered a violation of the Rules of Professional Conduct (Exhibit 2, Tab 6). Mr. Simpson declared, by checking the appropriate box, that:

Since the date of my resignation, termination or expulsion: I have not, to the best of my knowledge and belief, engaged in conduct that, if engaged in by a member of the Institute, could reasonably be considered a violation of the rules of

professional conduct or provisions of the Public Accounting Act, 2004.

47. Mr. Simpson was advised by a letter dated December 10, 2007, of the need to provide further information with respect to his application for readmission. He provided the required information, MasterCard credited the Institute with the amount of \$4,202.20 and Mr. Simpson was readmitted to membership on March 24, 2008.

48. On March 28, 2008, the Institute received notice that the credit card payment had been reversed as the cardholder claimed it was unauthorized. The Institute provided the information it had to rebut the chargeback, but the rebuttal was refused.

49. Mr. Simpson was advised by a letter of April 11, 2008, sent by registered mail, as well as by an e-mail of that same date, that MasterCard had denied the payment and that he was requested to make the payment of \$4,202.20 on or before 5:00 P.M. on Tuesday, April 15, 2008, to ensure that his membership remained in good standing. Mr. Simpson did not make the payment.

50. On April 16, 2008, the Vice-President and Registrar notified Mr. Simpson by registered mail, which was delivered on April 18, 2008, that he had been suspended because the credit card payment had been reversed and he had not, as requested, paid the outstanding fees by April 15, 2008.

51. Mr. Simpson took the position that the Institute had been paid, that the credit card payment was valid, that Mr. Sone was not in a position to have the payment reversed, that the Institute should have required MasterCard to reinstate the credit and that he should continue as a member in good standing. He did not request the Vice-President and Registrar to allow him a period of time, beyond April 15, 2008, to make arrangements to pay the required fees.

Charge 1 - Use of the Designation

52. The panel accepted the uncontradicted evidence that between February 1, 2007 and May 31, 2008, Mr. Simpson used the designation Chartered Accountant and the initials "CA" although he was not entitled to do so. As is clear from the Document Brief (Exhibit 6) and the Supplementary Document Brief (Exhibit 3), there are many examples of the improper use of the designation or initials "CA". While it is not necessary to itemize all of the occasions on which Mr. Simpson ignored Bylaw 106(5) and thus breached Rule 101, the six examples set out below make it clear that his improper use of the designation or the initials was not an isolated mistake:

- (a) Mr. Simpson used the initials C.A. after his signature as countersignatory when he signed the British passport application for Ms. Saber on August 20, 2007 (Exhibit 6, Tab B, Tab 1);
- (b) Mr. Simpson sent audit confirmation letters dated January 24, 2008, and January 26, 2008, as Fraser Simpson, C.A. of Valente, Pacitti, (Exhibit 6, Tab 5);
- (c) The e-mail Mr. Simpson sent Ms. Saber on February 9, 2008, expressing thanks for the payment of his fees was sent from Fraser E. Simpson, B.A.,C.A. of Valente, Pacitti, Chartered Accountants LLP (Exhibit 6, Tab A, Tab 1, page 114);
- (d) On May 9, 2008, Mr. Simpson sent an e-mail to Robert Gubbins, the subject being

- Mr. Sone. The e-mail asked Mr. Gubbins "How is the investigation proceeding?" The name on the e-mail, in bold letters as on many of the e-mails, is Fraser E. Simpson, B.A., C.A. (Exhibit 6, Tab 3, page 317);
- (e) Mr. Simpson complained to the Law Society of Upper Canada about a solicitor who acted for Mr. Sone. His letter to the intake counsel of the Law Society of Upper Canada dated Monday, May 12, 2008, is signed Fraser Simpson, B.A., C.A. (Exhibit 3, Tab 6); and
 - (f) Mr. Simpson identified himself as the CA for the client in the complaint he sent to the Law Society of Upper Canada on May 26, 2008 (Exhibit 3, Tab 7).

53. Mr. Simpson did not suggest that he had a right to call himself a chartered accountant or use the initials "CA" in the period February 1, 2007 of March 24, 2008.

Charge 2 – a false and misleading statement

54. On August 20, 2007, Mr. Simpson certified, as the countersignatory of Ms. Saber's British passport application, that he had known her for 3.5 years and he gave his professional designation as a CA. Both statements were false. Mr. Simpson had known Ms. Saber only since February 2007 and he was not a chartered accountant in August 2007.

Charge 3 – failing to maintain the good reputation of the profession

55. Mr. Simpson stated, in an e-mail to a third person, which he copied to Ms. Saber, that Ms. Saber specialized in credit card fraud. On the evidence the panel heard there was no basis at all for this statement and the panel found that in writing the e-mail which contained unprofessional, unfounded and damaging assertions against Ms. Saber, Mr. Simpson had failed to maintain the good reputation of the profession and its ability to serve the public interest.

Conclusion re the charges

56. The panel concluded on the facts set out above that each of the three charges had been proven. The breach of Rule 205 (charge 2), knowingly certifying information to a government authority which was inaccurate in and of itself constitutes professional misconduct. Making damaging and unfounded assertions about another person failed to maintain the good reputation of the profession and therefore its ability to serve the public interest contrary to Rule 201.1 (charge 3) was also professional misconduct.

57. The panel recognizes that not every violation of Bylaw 106(5) and thus not every breach of Rule 101 (charge 1) necessarily constitutes professional misconduct. However, the repeated misrepresentations are inexcusable and constitute professional misconduct. As the charges had been proven and Mr. Simpson's misconduct constituted professional misconduct, he was found guilty of all three charges.

58. The panel also concluded that the declaration which Mr. Simpson made when he applied for readmission in December 2007, which is set out in paragraph 46 above, was both false and misleading and Mr. Simpson knew or should have known it was both false and misleading. Certifying false information to a government authority and falsely representing himself to be a chartered accountant when he was not, clearly violated the Rules of Professional Conduct, and in particular Rules 201.1 and 205.

59. It will be clear from the facts found and the conclusions set out above that the panel found Mr. Simpson's defences and contentions to be without merit. The panel wishes to comment on two of the defences raised. The first was that his fees had been paid and he was improperly suspended which, if true, would be a defence to part of the first charge. He asserted that Mr. Sone had committed a fraud and that the Institute had not only condoned the fraud but breached a duty to him. An allegation of fraud is not evidence of fraud. The evidence did suggest that Mr. Sone had changed his mind but it did not establish that he deceived someone to make money or obtained an advantage illegally. The civil dispute between Mr. Sone and Mr. Simpson is not evidence of fraud. The civil courts can, and apparently did, deal with Mr. Simpson's claim against Mr. Sone. The Institute could and did look to Mr. Simpson to pay his fees. It had no legal right to look to Mr. Sone to pay Mr. Simpson's fees.

60. The other defence raised by Mr. Simpson which the panel wishes to comment on was that Ms. Saber was not a credible witness; in fact, he asserted that she and Mr. Sone were so disreputable that the Professional Conduct Committee ought not to have considered their complaint. It is not a defence to a charge to assert that the Professional Conduct Committee should not have considered the complaint. The issue is not the merits of a complaint but the merits of the charge, which is made based on the investigation. In this case the investigation disclosed, and the prosecution established, serious professional misconduct on Mr. Simpson's part. The only issue of credibility regarding Ms. Saber's testimony was her evidence with respect to Mr. Simpson signing her passport application. The panel accepted her evidence in this regard.

SANCTION

61. Neither party called evidence with respect to sanction. Both parties made submissions with respect to sanction.

62. Mr. Farley said that the sanction requested by the Professional Conduct Committee, pursuant to Bylaw 530, was premised on the assumption the Mr. Simpson was governable. The sanction sought included: a written reprimand from the Chair; a fine in the amount of \$5,000; a suspension for 12 months; and the usual notice to the profession, the CICA, the Public Accountants Council for the Province of Ontario and the public. Mr. Farley also asked that the panel assess costs against Mr. Simpson in the amount of \$10,000.

63. The Professional Conduct Committee also asked the Discipline Committee to revoke Mr. Simpson's readmission of March 24, 2008, pursuant to Bylaw 357(2) as the declaration Mr. Simpson made was false and misleading and he knew or should have known it. Mr. Farley pointed out that the language of Bylaw 357 (2) was mandatory with respect to the revocation of Mr. Simpson's membership.

64. Mr. Farley filed an Authorities Brief (Exhibit 12), and he referred to the cases of: *Margel* (1996); *Welsh* (2002); and *Carson* (2003) as precedents for the requested reprimand, fine, suspension and notice.

65. Mr. Farley submitted that an important aggravating factor in this case was the attitude of Mr. Simpson who, even at the sanction stage of the proceeding, did not acknowledge that he did anything wrong and expressed no regret or remorse for his misconduct.

66. Mr. Farley filed a Costs Outline (Exhibit 13) which showed that the costs of the hearing to be \$39,318.

67. Mr. Simpson said that he did not show any remorse because he had not done anything wrong. He characterized the case brought against him as an embarrassment. He said that the Institute should screen complaints, that it was an outrage to accept a complaint from Mr. Sone or Ms. Saber, that their evidence should be rejected, and that in putting their evidence forward the Professional Conduct Committee had been incompetent.

68. Mr. Simpson repeated his assertion that the Institute owed him a fiduciary duty and ought to have pursued the reversal of the MasterCard payment and reinstated him to membership. He asserted that the fraud had still not been reported.

69. Mr. Simpson said he had no comment with respect to the requested reprimand; that he did not deserve a 12 month suspension; that he had not signed the passport application; and that Mr. Douglas was incompetent to consider that he had. He characterized the request for costs as outrageous. He distinguished the precedents from his case on the basis that the members in the other cases had admitted that they acted dishonestly whereas he had not.

70. When the parties had concluded their submissions, the panel raised a number of issues with its counsel and, as a result, the parties were asked to return to the Council Chamber and address two issues.

71. The first issue was whether or not Mr. Simpson was governable. Mr. Farley acknowledged that the panel was in the best position to determine whether or not he was governable. Mr. Simpson submitted that he had cooperated and repeated that he was not remorseful because he did not do anything wrong and, thus, there was no issue with governability.

72. The second issue raised was whether or not the panel had the jurisdiction to both expel Mr. Simpson from membership and revoke his readmission to membership of March 24, 2008.

73. Mr. Farley submitted that as Mr. Simpson had been readmitted, he was a member, and could be sanctioned pursuant to Bylaw 530. He also submitted that his readmission to membership of March 24, 2008, should be revoked under Bylaw 357 (2).

74. Mr. Simpson reiterated that he had cooperated with the investigation and that it was unfair for the Institute to investigate and prosecute him on account of complaints from Mr. Sone and Ms. Saber.

Order

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

IT IS ORDERED in respect of the charges:

1. THAT Mr. Simpson be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Simpson be and he is hereby fined the sum of \$5,000 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. Simpson be and he is hereby expelled from membership in the

Institute.

4. THAT notice of this Decision and Order, disclosing Mr. Simpson'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 all provincial institutes/Ordre,
 and shall be made available to the public.
5. THAT Mr. Simpson surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

IT IS FURTHER ORDERED:

6. THAT Mr. Simpson be and he is hereby charged costs fixed at \$10,000 to be remitted to the Institute within twenty-four (24) months from the date this Decision and Order becomes final under the bylaws.

AND IT IS FURTHER ORDERED:

7. THAT, pursuant to the provisions of Bylaw 357, Mr. Simpson's readmission to membership on March 24, 2008 be and it is hereby revoked.

Governability

76. The sanction proposed by the Professional Conduct Committee to be imposed pursuant to Bylaw 530 for Mr. Simpson's misconduct, namely: a reprimand; a fine; a suspension and the usual order for notice was made on the assumption that Mr. Simpson was governable.

77. The panel concluded that Mr. Simpson was not governable and that it would not be in the public interest or the interest of the profession for Mr. Simpson to remain entitled, after a suspension for a specified period of time expired, to have the privileges of membership restored. Accordingly, the panel concluded that Mr. Simpson should be expelled.

78. Mr. Simpson's conduct, taken as a whole, demonstrated that he did not act with honesty and integrity, essential requirements for a chartered accountant. His conduct from February 1, 2007 to May 30, 2008, showed that he was not a person whose word could be trusted. He was willing to associate himself with false and misleading statements knowing that a government authority would rely on them. He repeatedly misrepresented himself to be a chartered accountant when he was not entitled to do so.

79. With respect to the misconduct which resulted in his conviction on the third charge, while a breach of Rule 201.1 is often, in and of itself, grounds for expulsion, Mr. Simpson's breach of Rule 201.1 would not necessarily require expulsion. Accordingly, if the only issue had been that misconduct, the proposed sanction would fall within the range of appropriate sanction. But that misconduct was not the only issue. Mr. Simpson was found guilty of two other serious charges and there is the fundamental problem that the panel felt that he is not governable.

80. Even if Mr. Simpson's conduct after April 16, 2008, is ignored, it is apparent that his conduct from February 1, 2007 to March 24, 2008, is reprehensible. Yet even at this hearing, Mr. Simpson asserted that he had done nothing wrong and the Professional Conduct Committee should be embarrassed because they brought charges against him. Mr. Simpson's unwillingness or inability to recognize and take responsibility for his misconduct was another factor which persuaded the panel that he is not governable and should not be entrusted with membership in the Institute.

Reprimand

81. The written reprimand was ordered to emphasize to Mr. Simpson that his conduct failed to meet the conduct required of members.

Fine

82. The panel concluded that the principles of specific and general deterrence required that there be a fine of \$5,000.

Notice

83. The Discipline Committee and the Appeal Committee have established that notice to the profession, disclosing the member's name, serves the purposes of specific and general deterrence. The notice informs the membership at large and the public. The notice also demonstrates that the Institute takes the obligation to govern its members' conduct seriously.

84. It has been held that it is only in the most rare and unusual circumstances that the name of the member should be withheld from the notice. As members value their reputations, the effectiveness of the notice lies in the fact that members know that, should they misconduct themselves, the fact of their misconduct and the sanction imposed will be made known to the profession and made available to the public. In this case, there were no rare and unusual circumstances that outweighed the need for publication of the notice disclosing the member's name.

Costs

85. The costs of the investigation were incurred solely because of Mr. Simpson's misconduct. The Professional Conduct Committee had the obligation to consider the complaint and to prosecute Mr. Simpson in light of what their investigation uncovered. There is an argument, a strong one in cases like this, that the member whose misconduct resulted in the costs should fully indemnify the Institute for those costs. The Professional Conduct Committee asked only for a partial indemnity in the amount of \$10,000, and the panel concluded that the requested order was reasonable.

Revocation

86. The bylaws which are applicable make it clear that in the circumstances of this case the panel has no choice but to revoke Mr. Simpson's readmission of March 24, 2008. The evidence is overwhelming that the declaration Mr. Simpson made on his readmission application, referred to in paragraph 46 above, was both false and misleading and that Mr. Simpson knew or should have known that it was false and misleading. This is not a case of an innocent mistake or understandable confusion.

87. As this is the first case in which the Discipline Committee has been asked to revoke a readmission to membership pursuant to Bylaw 357, it seems appropriate to set out the relevant provisions of the Bylaw.

Bylaw 357 (1) Professional conduct committee to investigate

If, following a former member's readmission to membership, a complaint is made against the member in respect of misconduct alleged to have occurred during the time between the member's resignation, termination or expulsion and his or her readmission, the complaint shall be investigated by the professional conduct committee and, after such investigation, the professional conduct committee may, in its absolute discretion, either conclude the investigation and take no further action, or refer the matter to the discipline committee for a hearing.

357 (2) Revocation of readmission by discipline committee

If, after conducting a hearing into a matter referred to it by the professional conduct committee pursuant to clause (1), the discipline committee finds that the declaration filed in purported compliance with Bylaw 355 was false or misleading, by reason of a failure to specify in the declaration conduct which the member knew or should have known was conduct which, if engaged in by a member, could reasonably be considered a violation of the rules of professional conduct, then upon such finding the member's readmission to membership shall be revoked.

357 (3) Discipline committee procedure

The procedure before and at a discipline committee hearing held pursuant to clause (2) shall be in accordance with the provisions of Bylaws 550-599.

DATED AT TORONTO THIS 8TH DAY OF APRIL, 2010
BY ORDER OF THE DISCIPLINE COMMITTEE


M.B. MARTENFELD, FCA - CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R.H. CARRINGTON (PUBLIC REPRESENTATIVE)
A.R. DAVIDSON, CA
R.A. VICKERS, FCA

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: A motion by **FRASER SIMPSON**, a revoked Member, for a reconsideration of the Order of the Discipline Committee made on November 25, 2009, pursuant to Rule 21 of the Rules of Practice and Procedure.

TO: Mr. Fraser Simpson
10 Milner Gate
THORNHILL, ON L4J 2N4

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE JANUARY 19, 2016

DECISION

THAT having heard the submissions made by Mr. Simpson, and the submissions made by Mr. Farley on behalf of the Professional Conduct Committee, and having considered the materials filed by Mr. Simpson and Mr. Farley, the Discipline Committee dismisses Mr. Simpson's motion for reconsideration and confirms the Order of the Discipline Committee made on November 25, 2009.

ORDER

THAT Mr. Simpson be and he is hereby charged costs fixed at \$10,000 to be remitted to CPA Ontario within six (6) months from the date this Decision and Order is made.

DATED AT TORONTO THIS 20th DAY OF JANUARY, 2016
BY ORDER OF THE DISCIPLINE COMMITTEE



DIANE WILLIAMSON
ADJUDICATIVE TRIBUNALS SECRETARY

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: A motion by **FRASER SIMPSON**, a revoked Member, for reconsideration of the Order of the Discipline Committee made on November 25, 2009, pursuant to Rule 21 of the Rules of Practice and Procedure.

TO: Mr. Fraser Simpson

AND TO: The Professional Conduct Committee

REASONS

(Decision and Order made January 19, 2016)

1. This tribunal of the Discipline Committee met on January 19, 2016 to hear a motion for reconsideration of the Order of the Discipline Committee made on November 25, 2009 brought by Fraser Simpson, a revoked Member of CPA Ontario.

2. Paul Farley appeared on behalf of the Professional Conduct Committee (PCC). Mr. Simpson attended without counsel. At the outset of the hearing, Mr. Simpson confirmed he understood that he had the right to be represented by counsel and waived that right. Lisa Braverman attended the hearing as counsel to the Discipline Committee.

3. The written Decision and Order was sent to the parties on January 20, 2016. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the decision, the order, and the reasons of the tribunal for its decision and order.

Motion

4. Mr. Simpson, by Notice of Motion dated October 19, 2015, sought an order:

To set aside the order date November 25, 2009 by M.B. Martenfeld
and to put the moving party back in the position he was in before the
tort.

5. The Order made on November 25, 2009, reads as follows:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Simpson be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Simpson be and he is hereby fined the sum of \$5,000 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. Simpson be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Simpson'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 all provincial institutes/Ordre,
and shall be made available to the public.

5. THAT Mr. Simpson surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

IT IS FURTHER ORDERED:

6. THAT Mr. Simpson be and he is hereby charged costs fixed at \$10,000 to be remitted to the Institute within twenty-four (24) months from the date this Decision and Order becomes final under the bylaws.

AND IT IS FURTHER ORDERED:

7. THAT, pursuant to the provisions of Bylaw 357, Mr. Simpson's readmission to membership on March 24, 2008 be and it is hereby revoked.

6. In his Notice of Motion, Mr. Simpson identified one ground for his motion:

There is fresh evidence issued by the Canada Revenue Agency that conflicts with a critical fact used to initially proceed with disciplinary charges and to subsequently commence a disciplinary hearing. The fact relates to the payment of professional dues which have been confirmed by the Tax Court of Canada and the Canada Revenue Agency.

7. Mr. Simpson filed a Motion Record (Exhibit 1), Applicant's Factum (Exhibit 2), Supplementary Motion Record (Exhibit 3) and a Book of Authorities. Mr. Farley filed a Respondent's Motion Record and Compendium (Exhibit 4) and Written Argument of the Respondent (Exhibit 5).

Submissions of the Parties

Submissions of Mr. Simpson

8. Mr. Simpson requested that his motion for reconsideration of the Order of the Discipline Committee made on November 25, 2009 be granted. The hearing and the subsequent Order of the Discipline Committee of November 25, 2009 was based on evidence gathered by an investigation by the PCC into the actions of Mr. Simpson during a time when he was suspended from the ICAO. Mr. Simpson was suspended from the ICAO for outstanding membership fees. These membership fees were paid by a credit card transaction on a credit card of a third party who later cancelled the credit card payment on the basis that he did not authorize the payment. Mr. Simpson claims that the third party's statement that he did not authorize the payment was a lie and so this action results in a fraud by the third party against the ICAO that should not involve him. That is, he should not have been held responsible for the fraud, and he should not have therefore been suspended from membership. If he had not been suspended, then he would not have been found guilty of holding himself out as a CA while suspended. Further, he believes that if he had not been inappropriately suspended, then he would not have been investigated. He emphasized that there should not have been an investigation. If there was no investigation, his actions of professional misconduct would not have been uncovered and no charges would have been laid. Therefore, Mr. Simpson believes that proof that he was the unwitting victim of a fraud perpetrated against the ICAO and that his membership fees were paid would make the Order of the Discipline Committee baseless.

9. Mr. Simpson presented as proof that his membership fees were paid a letter from the Canada Revenue Agency Appeals Division dated January 12, 2015 that includes in its seventh

paragraph the sentence: "The decision of the court rendered on August 18, 2014 was that these fees were not deductible as they were paid by your employer." The Judgment of this court dated August 18, 2014 was provided to this tribunal but not the written reasons of this court. The Judgment indicated: The Appeal from the assessment made under the *Income Tax Act* for the 2009 taxation year is allowed, without costs, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Consent to Judgment filed on August 11, 2014. Mr. Simpson argued that this Judgment confirmed the payment of his membership fees. Mr. Simpson provided this tribunal with a copy of his Notice of Appeal to the Tax Court of Canada that includes paragraph (f): "The dues were paid pursuant to an employment agreement." In paragraph (g), he asked the Tax Court of Canada to allow the deduction for professional fees.

10. In his verbal presentation to the tribunal and in his written materials, Mr. Simpson requests that the Discipline Committee quash the Order of November 25, 2009, that Mr. Simpson be awarded costs, and that such further relief be ordered as the tribunal deems just. Mr. Simpson stated that the Discipline Committee had erred in their finding that the membership fees were not paid and therefore he should be provided with the relief that he requested.

11. Mr. Simpson submitted that one of the witnesses (the complainant) at the Discipline Committee hearing had no credibility, and clearly had a vendetta after Mr. Simpson reported the complainant's husband's fraudulent activities to his former employers.

12. Mr. Simpson indicated that claiming his innocence or challenging a charge of professional misconduct does not make him ungovernable and therefore the Discipline Committee's finding that he was ungovernable was incorrect, harsh and heavy-handed. Mr. Simpson submitted that the Order of the Discipline Committee should be struck.

13. Mr. Simpson provided a Book of Authorities to the tribunal which had the following cases: *Serca Foodservice Inc. v. Canadian Imperial Bank of Commerce*, 2000 CanLII 22767 (Ontario Superior Court of Justice), *Canadian Imperial Bank of Commerce v. Deloitte & Touche*, 2014 ONCA 89 (CanLII) and *Livent Inc. v. Deloitte & Touche LLP*, 2014 ONSC 2176 (CanLII). Mr. Simpson also referred to these cases in his written materials. Mr. Simpson also submitted that since his disciplinary hearing was under the *Chartered Accountants Act, 1956* and not under the *Chartered Accountants Act, 2010*, he should have been allowed to submit disciplinary hearing documents in the court proceedings.

Submissions of the Professional Conduct Committee

14. Counsel for the Professional Conduct Committee requested that Mr. Simpson's motion for reconsideration of the Order of the Discipline Committee made on November 25, 2009 be dismissed. The PCC submitted that the Tax Court decision had no relevance because the findings made by the Discipline Committee were not based on whether the professional fees of Mr. Simpson were paid or not paid. Mr. Farley furthered his argument that the Tax Court decision was not relevant since the court did not address the issue of the subsequent reversal of the payment. There was no mention by Mr. Simpson in his Notice of Appeal to the Tax Court of Canada that payment of the professional fees was reversed shortly after payment. This suggested that the Tax Court did not have all the relevant facts.

15. The statement in the letter from the Canada Revenue Agency Appeals Division dated January 12, 2015 regarding Mr. Simpson's professional fees being "paid" had nothing to do with the findings on which the tribunal determined Mr. Simpson's guilt. Mr. Farley stated that the Tax Court decision is not fresh evidence that would effect a material change in circumstances relating to the Order of November 25, 2009. Mr. Farley submitted that Allegation No. 1 concerned Mr. Simpson holding himself out as a CA while under suspension. Mr. Farley submitted that Mr. Simpson was made aware by a letter and email communication from ICAO that MasterCard had denied the payment. Mr. Simpson had been advised that if he did not pay the outstanding fees by a certain

date, his membership would be suspended. Mr. Simpson did not make the payment and he was notified that his membership had been suspended. Mr. Simpson was suspended and he knew that he was suspended but he held himself out as a CA. Mr. Farley submitted that Mr. Simpson was aware that his fees had not been paid, including at the time of filing the tax appeal, and made a decision not to submit payment to ICAO. In relation to the first allegation, the Discipline Committee accepted the uncontradicted evidence of the PCC that between February 1, 2007 and May 31, 2008, Mr. Simpson used the designation Chartered Accountant and the initials "CA" when he was not entitled to do so.

16. Mr. Farley submitted that Allegation Nos. 2 and 3 had less to do with Mr. Simpson's membership status. In relation to the second allegation, the Discipline Committee found that Mr. Simpson had falsely certified a passport application for his employer's spouse by stating that he had known the applicant for over three years when in fact he had only known the applicant for six months. Mr. Simpson had also signed the passport application as a CA at a time when he was not entitled to use the designation. The third allegation dealt with a communication which the Discipline Committee found contained unprofessional, damaging and unfounded comments about his employer's spouse.

17. Mr. Farley stated that the Discipline Committee hearing had taken place over three days with the Discipline Committee hearing and seeing evidence in real time from witnesses, including the investigator. In addition to finding Mr. Simpson guilty of all three allegations, the tribunal had concluded that Mr. Simpson was not governable and ordered that he be expelled from membership.

18. Mr. Farley submitted that as was the case during the Discipline Committee hearing in 2009, Mr. Simpson still takes no responsibility for his own actions and claims not to be at fault, blaming Mr. Farley, CPA Ontario staff and the original complainants.

19. Mr. Farley submitted that Mr. Simpson has provided no information on this motion that would warrant interference with the findings of the Discipline Committee and the original Order of the Discipline Committee made on November 25, 2009. Mr. Farley indicated that none of the grounds for reconsideration under Rule 21.01(2) are applicable in this case. Mr. Farley submitted that Mr. Simpson has failed to prove in his written or oral submissions that he has met any of the grounds for reconsideration in Rule 21.01(2).

Reply Submissions of Mr. Simpson

20. In reply, Mr. Simpson indicated that the issue of the fees is relevant, as they were paid and the chargeback was clearly a fraud which was known by Mr. Farley. Mr. Simpson stated that the Tax Court has confirmed that his fees were paid and he wants his money back.

Decision

21. After deliberating, the tribunal made the following decision:

THAT having heard the submissions made by Mr. Simpson, and the submissions made by Mr. Farley on behalf of the Professional Conduct Committee, and having considered the materials filed by Mr. Simpson and Mr. Farley, the Discipline Committee dismisses Mr. Simpson's motion for reconsideration and confirms the Order of the Discipline Committee made on November 25, 2009.

Reasons for Decision

22. The tribunal notes that during the course of this hearing, Mr. Simpson was allowed significant latitude to describe the facts and circumstances of the case from his point of view. This was allowed in order to ensure that the tribunal heard all the facts and considered the former member's position fully. However, we must note that all of Mr. Simpson's comments were

considered by this tribunal as background information. The tribunal accepted the facts of the case as originally found by the Discipline Committee and set out in their reasons. Accepting those findings of fact made by the Discipline Committee, this hearing on Mr. Simpson's motion for reconsideration was extremely limited and must deal only with matters relating to Rule 21. This hearing was not an opportunity for Mr. Simpson to retry his case or to object to the findings of fact made by the Discipline Committee.

23. The tribunal found that Mr. Simpson had not convinced this tribunal of the Discipline Committee that he met any of the grounds for reconsideration set out in subparagraphs (a), (b), (c) or (d) in paragraph (2) of Rule 21.01 of the Rules of Practice and Procedure. In particular, Mr. Simpson had not convinced this tribunal of the Discipline Committee that he met any of the following grounds for reconsideration:

- (a) there has been a material change in circumstances significant enough that the order or a part of the order is no longer necessary;
- (b) there has been a material change in circumstances significant enough that the order or a part of the order now obstructs or impedes the purpose and intent of the order;
- (c) there has been a material change in circumstances significant enough that the order or a part of the order is no longer reasonably capable of being complied with or fulfilled; or
- (d) the order or a part of the order is no longer legally valid or enforceable.

24. The tribunal found that the Tax Court finding, as set out in the letter from the Canada Revenue Agency Appeals Division dated January 12, 2015, about the payment of Mr. Simpson's membership fees, is not a material change in circumstances that affects the decision of the Discipline Committee on the charges of which Mr. Simpson was found guilty or the Order of the Discipline Committee made on November 25, 2009. It appears to the tribunal that the use of the term "paid by your employer" was lifted from the facts presented to the Tax Court by Mr. Simpson himself and was not an independent finding of fact by the Tax Court. Further, the tribunal felt that its determination that this Tax Court finding is irrelevant would be the same, even if the Tax Court had directly made a decision on that matter as opposed to simply regurgitating the position and the facts put forward by Mr. Simpson in his appeal to the Tax Court. This is because it is the belief of the tribunal that the grounds on which Mr. Simpson was suspended at the time, failing to pay outstanding membership fees, is not the relevant point. The relevant point is that Mr. Simpson was suspended and that finding himself in that position he would then have been compelled to have taken steps to obtain the removal of the suspension before continuing to hold himself out as a Chartered Accountant. He failed to do this and he was found by the Discipline Committee to have used the designation Chartered Accountant and the initials "CA" when he was not entitled to do so. The finding of the Tax Court does not excuse or otherwise make his failure to do so acceptable nor does it constitute a material change in circumstances.

25. Our actions as CPAs/CAs is what defines us as professionals, not whether we successfully avoid being caught failing to abide by our Rules of Professional Conduct. The tribunal was of one mind that Mr. Simpson has continued to prove that he is not fit to be a member of CPA Ontario because he fails to understand this fundamental concept.

26. The tribunal found Mr. Simpson's motion for reconsideration to be entirely without merit.

Submissions on Costs

27. On costs, Mr. Simpson indicated that even though the Rule does not address costs for the moving party on a motion for reconsideration, he did not believe costs are intended as a one-way street. Mr. Simpson submitted that if he was to be successful on his motion for reconsideration, costs should be available to him for the purpose of natural justice and to even the playing field.

28. Mr. Farley filed a Costs Outline (Exhibit 6). Mr. Farley requested that Mr. Simpson be ordered to pay costs in the amount of \$10,055.00 to reimburse CPA Ontario for 100% of the costs incurred in responding to this motion. Mr. Farley submitted that this motion has no merit and has no reasonable possibility of success. Mr. Farley referred to Rule 19, paragraph 3, in Exhibit 4, tab 5 which sets out the ability of the tribunal hearing a motion for reconsideration to make an order requiring the party, other than CPA Ontario, to pay costs.

Order

29. After deliberating, the tribunal made the following order:

THAT Mr. Simpson be and he is hereby charged costs fixed at \$10,000 to be remitted to CPA Ontario within six (6) months from the date this Decision and Order is made.

Reasons for Order

30. The tribunal found Mr. Simpson's motion for reconsideration to be entirely without merit. Mr. Simpson was not able to satisfy this tribunal that he met any of the grounds for reconsideration in Rule 21. Mr. Simpson, in our view, has abused Rule 21 which is clearly there to deal with matters involving a miscarriage of justice brought on by material changes in circumstances. As such, there is no reason for this tribunal to order CPA Ontario, even if Rule 19 allowed for this, to pay any portion of Mr. Simpson's costs. The tribunal determined that the amount of costs sought by Mr. Farley was reasonable and therefore ordered Mr. Simpson to pay \$10,000 in costs to CPA Ontario.

DATED AT TORONTO THIS 22ND DAY OF APRIL, 2016
BY ORDER OF THE DISCIPLINE COMMITTEE



R.J. ADAMKOWSKI, CPA, CA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

P.A. BUSCH, CPA, CA

A.B. MINTZ, CPA, CA

P. McBURNEY, Public Representative