

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

DISCIPLINE COMMITTEE

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

TO: Michael G. Perris, CA
Perris & McIntyre LLP
2465 Lakeshore Road West
OAKVILLE, ON L6L 1H9

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision And Order Made May 15, 2006)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on May 15, 2006 to hear a charge brought by the Professional Conduct Committee against Michael G. Perris, a member of the Institute.
2. Ms. Barbara Glendinning appeared on behalf of the Professional Conduct Committee. She was accompanied by Ms. Kelly Khalilieh, CA, the investigator appointed by the Professional Conduct Committee. Mr. Perris was present and was represented by counsel, Ms. Deborah R. Squires.
3. The decision of the panel was made known to the parties at the conclusion of the hearing on May 15, 2006, and the written Decision and Order sent to them on May 16, 2006. These reasons, pursuant to Bylaw 574, include the charge, the decision, the order, and the reasons of the panel for its decision and order.

CHARGE

4. The following charge was laid by the Professional Conduct Committee against Mr. Perris on December 15, 2005:

THAT the said Michael George Perris, in or about the period November 8, 2005 through to December 12, 2005, 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.

PRELIMINARY MOTION

5. Prior to the entering of a plea, counsel for Mr. Perris brought a motion to have the hearing held *in camera*, pursuant to Bylaw 554(b), as intimate financial or personal matters might be disclosed at the hearing. In particular, Ms. Squires submitted that her client was concerned about having details of his marital situation and income presented in a public hearing, given that the original complainant, Mr. Anthony Crawford, was present in the room and had already taken legal action against Mr. Perris.

6. For the Professional Conduct Committee, Ms. Glendinning submitted that there is a presumption that the hearing should be held in public. She further submitted that personal and financial information of Mr. Perris was not part of the case for the Professional Conduct Committee and that, thus, there was every likelihood such information would not be presented to the panel.

7. After deliberating, the panel denied the motion to hear the matter *in camera*, ruling that the arguments had not persuaded it that the interests of the person affected outweighed the principle that hearings be open to the public. The panel also granted leave to the member to renew the application with respect to specific questions or lines of questioning.

PLEA

8. Mr. Perris entered a plea of not guilty to the charge.

EVIDENCE

9. Kelly Khalilieh, CA, testified for the Professional Conduct Committee. She is employed by the Institute as an investigator, and was instructed by the Professional Conduct Committee in June, 2005 to investigate a complaint made by Anthony Crawford with respect to an investment he had purchased from Mr. Perris, who was acting in his capacity as a salesman for Mikary Investments Ltd., a company which, according to Mr. Perris, is wholly owned by his estranged wife.

10. As a result of a complaint filed by Mr. Crawford, a former client, an investigation was commenced to determine whether there may have been a breach of Rule 207 (obtaining a fee without the knowledge of the client). The preliminary investigation established there was not a breach of Rule 207, but, rather, a potential breach of Rule 216 (accepting compensation for the referral of a client to a product or service). Mr. Perris provided information to Ms. Khalilieh during the course of that investigation.

11. After reviewing the matter on September 20, 2005 and again on November 8, 2005, the Professional Conduct Committee instructed Ms. Khalilieh to obtain further information from Mr. Perris. As a result, a letter was written on November 10, 2005 to Mr. Perris (Exhibit 2, Tab 4), which states in part:

Specifically, the committee asks you to make available to the investigator, Ms. Khalilieh:

- copies of your T-4's and tax returns for the years 1989, 1990, 1999 and 2000; and
- contact information for your wife, as you have indicated that she is in possession of all documentation relating to Mikary Investments.

12. Mr. Perris responded in writing on November 28, 2005 (Exhibit 2, Tab 5), stating, in part:

I am responding to your letter of November 10, 2005 and with the greatest of respect for both the committee and their directive, must decline providing the additional information requested by the Professional Conduct Committee.

[....]

It appears that the committee has gone beyond investigating Mr. Crawford's complaint, that aspects of his investment were concluded without his knowledge and consent, to investigating whether or not I received referral fees. My legal counsel has suggested that this section is irrelevant as Mikary did not earn a referral fee, but a commission that originated from the sale of a security. Based on this fact, there can be no indication that I am in violation of this section. In the course of the committee's investigation and my responses to the committee, I have specifically pointed out, on more than one occasion, that at no time did I receive any referral fee or commission generally or specifically arising from income earned by Mikary Investments Ltd.

I would again remind the committee that there has been no complaint made against me with regard to receipt of referral fees and there is no basis for there to be such a complaint. I would suggest that the committee has extended the investigation beyond the issues of the original complaint and is at this point is overstepping its responsibility and authority. Based on conversations with government representatives and my legal counsel, further inquiries of this nature may be approaching harassment.

I have once again reviewed Bylaw 510(5) and Rule 203.2 of the rules of professional conduct as referred to in your letter of November 10, 2005 and do not believe that these sections apply. I have fully cooperated with the committee's investigation and attended meetings to answer questions and clarify matters when the opportunity was offered to me.

I would also like to point out that asking for copies of my personal income tax returns and T4 slips would not result in providing any consequential information related to the origin of the amount earned as a salary from the company. I have stated in my interrogations and to the committee before, that Mikary earned commission income from the sale of securities. At no time did that company or myself receive referral fees, contrary to Rule 216, from any source. The financial statements of Mikary Investments Ltd are currently not available and it is difficult to know if or when they might be obtained. Please be advised that there should be no contact by the ICAO with my estranged wife or her marital legal representatives. Once again, the company's financial statements would not appear to be relevant to the issues originating in Mr. Crawford's complaint.

I have cooperated with the committee's investigation to attempt to resolve the matters in Mr. Crawford's complaint and would be available and willing to attend the December meeting in order to complete this lengthy process and reach a conclusion. However, I consider the request for this current documentation, even if all of it was available, to be an intrusion on my privacy.

13. Mr. Perris did not provide any of the information sought by the Professional Conduct Committee in its letter of November 10, 2005 until May 10, 2006, at which time he, through his counsel, provided an electronic copy of his tax return for 2000 along with an income comparison to 1999.

14. In cross-examination, Ms. Khalilieh conceded that the Professional Conduct Committee knew the name and address of Mr. Perris' estranged wife, and could have made attempts to contact her directly. She stated she did not do so because she wanted Mr. Perris to confirm the information and she also wished to respect his instruction not to contact his wife.

15. With respect to the tax returns for 1989 and 1990, Mr. Perris informed her he had no paper copies of those returns, and that the copy on the computer was no longer accessible. However, summary information and copies of T4s are available from Canada Revenue Agency with the written authorization of the taxpayer, which Mr. Perris has not provided. The information he has provided conflicts with some of his earlier representations to her.

16. Mr. Perris, through his counsel, elected to call no evidence, and so the only evidence presented was that of Ms. Khalilieh, along with a Document Brief filed as Exhibit 2.

SUBMISSIONS

17. On behalf of the Professional Conduct Committee, Ms. Glendinning submitted that the Professional Conduct Committee has wide-ranging and unfettered powers to investigate any "act, omission, matter or thing" (Bylaw 510(5)(b)). She submitted that the Committee is not limited to allegations contained in a complaint, and that it is not up to the member to determine what information may be relevant and drew the panel's attention to the matter of *Spidalieri*, a decision of the Discipline Committee of the Institute, reasons issued April 30, 2002, in support of that proposition.

18. Ms. Glendinning further noted that it is not a defence to the charge of failing to cooperate that the member was acting on legal advice, and provided the cases of *Teltscher* (reasons issued December 18, 2001) and *Garside* (reasons issued April 7, 1999) to the panel. She also submitted that Mr. Perris' providing of some of the information requested six months later did not relieve him of the obligation to have cooperated more fully and quickly with the Professional Conduct Committee.

19. For Mr. Perris, Ms. Squires submitted that the Professional Conduct Committee had sufficient information to attempt to contact Mrs. Perris, and that Mr. Perris should not be sanctioned for his request that no contact be made. She further submitted that Mr. Perris has provided what information he has; that the information sought by the Professional Conduct Committee is not relevant and; that the quantum and source of his income for the years in question is completely irrelevant to the issue of whether he has breached Rule 216.

FINDINGS AND DECISION

20. The facts in this matter are not in dispute, and the panel accepts the evidence of Ms. Khalilieh on those facts.

21. After deliberation, the panel found that the evidence was clear, cogent and convincing, and supported the allegations set out in the charge. In particular, the panel found that Mr. Perris was obligated to cooperate with the Professional Conduct Committee investigation and that he, by failing to provide information required of him at the time it was required, did not cooperate with that

investigation. The panel further found that the breach of Rule 203.2 was sufficiently significant so as to constitute professional misconduct.

22. The panel found Mr. Perris guilty of the charge in the following decision:

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Michael G. Perris guilty of the charge.

REASONS FOR THE DECISION

23. The panel was very concerned about Mr. Perris' demeanour during the course of the investigation to date. Rather than cooperate with the investigation and provide information or documentation required by the investigator in accordance with Bylaw 510(5) and Rule 203.2 of the Rules of Professional Conduct, Mr. Perris responded with his own interpretation of the rules and what information or evidence the investigation required. It is apparent that Mr. Perris did not fully cooperate with the investigator and was prepared to provide only information with respect to matters which he was prepared to acknowledge were relevant.

24. Mr. Perris could have expedited the investigation by providing the contact coordinates for his estranged wife and by providing Revenue Canada with a letter authorizing them to communicate with the ICAO and provide them with the information requested, if possible.

25. The panel is of the view that the Professional Conduct Committee did not have to prove to Mr. Perris that the documents requested were relevant but only that they could be relevant to the investigation.

SANCTION

26. Neither party called any evidence on the issue of sanction.

27. The Professional Conduct Committee submitted that a sanction of: a written reprimand, a fine in the range of \$3,000 – 5,000; an order directing full cooperation with the Professional Conduct Committee; and the usual publicity would fulfill the principles of deterrence and rehabilitation. The Professional Conduct Committee also sought costs in the amount of \$7,500.

28. Ms. Glendinning submitted that the quantum of the fine sought was to ensure it was not merely a licensing fee, and to provide some penalty for the delay in bringing this matter to a conclusion. Further, the order enforcing cooperation had the intent of making clear to Mr. Perris that cooperation had to be on the terms of the investigator, not his, and that merely providing some information was insufficient. With respect to notice, she noted that there were no rare and unusual circumstances to militate against informing the profession and the public.

29. On the issue of costs, Ms. Glendinning provided the panel with an Outline of Costs (Exhibit 6) setting out the cost of preparing for an anticipated two day hearing (which was the estimated time by both counsel) and the investigation of the complaint of failing to cooperate. Efforts were made to ensure that no investigative time relating to any substantive complaint or concern was included, and the total of \$9,226.50 was further reduced to the \$7,500 sought.

30. Ms. Squires, on behalf of Mr. Perris, pointed out that the member had cooperated with much of the Professional Conduct Committee investigation, and that there was no evidence of any high-handed behaviour on his part. She noted that there is no time limitation on the matters that may be investigated by the Professional Conduct Committee, despite the Institute's advice to its members

to retain documents for ten years. Further, she noted that, should a member take issue with the scope or demands of a Professional Conduct Committee investigation, he has no recourse short of the Discipline Committee. In the circumstances, she submitted that the fine and costs sought by the Professional Conduct Committee were harsh, and questioned the need for the hours of hearing preparation claimed. She suggested that the panel order either a fine or costs.

31. Ms. Squires submitted that Mr. Perris has been an exemplary member of the Institute for many years, and that he was attempting to cooperate with the Professional Conduct Committee to the best of his ability in trying circumstances. She further submitted that neither a fine nor a substantial costs order was required.

ORDER

32. After consideration, the panel made the following order:

IT IS ORDERED in respect of the charge:

1. THAT Mr. Perris be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Perris be and he is hereby fined the sum of \$4,000, to be remitted to the Institute as follows:
 - (a) \$2,000 by June 30, 2006; and
 - (b) \$2,000 by December 31, 2006.
3. THAT Mr. Perris be and he is hereby charged costs fixed at \$7,500 to be remitted to the Institute as follows:
 - (a) \$3,750 by June 30, 2006, and
 - (b) \$3,750 by December 31, 2006.
4. THAT Mr. Perris provide full and active co-operation as required by the Professional Conduct Committee in its investigation.
5. THAT notice of this Decision and Order, disclosing Mr. Perris' 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 the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
6. THAT in the event Mr. Perris fails to comply with any of the requirements of paragraph 2 or 3 of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies by March 31, 2007, and in the event he does not comply by that date, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Perris' practice.

REASONS FOR THE ORDER

Reprimand

33. The panel ordered Mr. Perris be reprimanded in writing by the Chair of the panel in order to stress to him the importance of cooperating fully with the governing body of his profession, and the inappropriateness for determining for himself the acceptable breadth of their investigation.

Fine

34. The fine is intended to be both a general and specific deterrent. In the panel's view, a fine of \$4,000 is appropriate to the circumstances of the case in order to demonstrate the necessity of cooperating with an investigation being conducted by the Professional Conduct Committee.

Costs

35. Mr. Perris' failure to cooperate promptly and fully with the requests of the investigator gave rise to a significant amount of additional time being spent by counsel and the investigator for the Professional Conduct Committee. In addition, this entire hearing should have been completely unnecessary but was required to deal with Mr. Perris' non-compliance with the requirements of the Professional Conduct Committee investigation. It is appropriate that the member charged and found guilty, rather than the membership at large, bear a significant portion of these costs. The costs awarded will not fully indemnify the Institute for the costs of the proceedings.

Order for Cooperation

36. Mr. Perris was admonished to cooperate fully and actively with the investigation in order to allow the Professional Conduct Committee to complete this investigation without further delay.

Notice

37. Publishing the summary of discipline matters along with a member's name serves many purposes. It educates and deters other members of the profession; it deters the member disciplined; and it demonstrates to the public that the Institute is fulfilling its mandate to protect the public interest and preserve the standards of the profession. As there are no rare and unusual circumstances brought to the attention of the panel, there is no reason why notice should not be given and these purposes fulfilled.

Failure to Comply

38. In order to ensure that its orders are respected and complied with by the member, there needs to be some sanction for failing to do so. While the issue of further cooperation has been dealt with above, should Mr. Perris fail to pay the fine and costs as ordered he will be suspended from membership until he fully complies or until March 31, 2007, whichever comes first. If he still has not complied, he will have demonstrated he is not fit to remain a member and he will be expelled.

DATED AT TORONTO THIS 6TH DAY OF JULY, 2006
BY ORDER OF THE DISCIPLINE COMMITTEE

M.B. MARTENFELD, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R.J. ADAMKOWSKI, CA
P.M. CLEVELAND, FCA
A. HANSON, CA
B.M. SOLWAY (PUBLIC REPRESENTATIVE)

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

APPEAL COMMITTEE

IN THE MATTER OF: An appeal by **MICHAEL GEORGE PERRIS, CA**, a member of the Institute against the Decision and Order of the Discipline Committee made on May 15, 2006 pursuant to the bylaws of the Institute, as amended.

TO: Mr. Michael G. Perris, CA
Perris & McIntyre LLP
2465 Lakeshore Road West
OAKVILLE, ON L6L 1H9

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision Made January 30, 2007)

1. This appeal was heard by a panel of the Appeal Committee of the Institute of Chartered Accountants of Ontario on January 30, 2007. Mr. Paul Farley appeared on behalf of the Professional Conduct Committee. Mr. Perris attended and was represented by Ms. Deborah Squires.

2. The following charge was laid against Mr. Perris by the Professional Conduct Committee on December 15, 2005:

THAT the said Michael George Perris, in or about the period November 8, 2005 through to December 12, 2005, 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.

3. The Decision and Order appealed from, dated May 16, 2006, reads as follows:

DECISION

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Michael G. Perris guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Perris be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Perris be and he is hereby fined the sum of \$4,000, to be remitted to the Institute as follows:

- (a) \$2,000 by June 30, 2006; and
 - (b) \$2,000 by December 31, 2006.
 - 3. THAT Mr. Perris be and he is hereby charged costs fixed at \$7,500 to be remitted to the Institute as follows:
 - (a) \$3,750 by June 30, 2006, and
 - (b) \$3,750 by December 31, 2006.
 - 4. THAT Mr. Perris provide full and active co-operation as required by the Professional Conduct Committee in its investigation.
 - 5. THAT notice of this Decision and Order, disclosing Mr. Perris' 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 the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
 - 6. THAT in the event Mr. Perris fails to comply with any of the requirements of paragraph 2 or 3 of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies by March 31, 2007, and in the event he does not comply by that date, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Perris' practice.
4. On this appeal, Mr. Parris seeks to have the finding of guilty overturned and either a finding of not guilty substituted or a hearing *de novo* ordered. In the alternative, he seeks a setting aside of the fine and costs ordered, and the imposition of a fine in the amount of \$1,000 and costs in the amount of \$2,000.

Submissions

5. On behalf of Mr. Perris, Ms. Squires submitted that the Discipline Committee erred in failing to consider whether the documents required by the Professional Conduct Committee and not provided by Mr. Perris were relevant to the investigation, and by failing to find that Mr. Perris' assertion they were not relevant was a defence to the charge.
6. She further submitted that the matters being investigated were so old that a limitation period should be considered to have expired and that, therefore, the investigation was without proper authority.
7. On the issue of the quantum of the fine and the costs, Ms. Squires submitted that they were excessive in the circumstances, and far exceeded what was reasonable. She provided authority in support of her position that a fine of \$1,000 to \$2,000 would be appropriate, and further submitted that the costs should be considerably less than \$7,000 for a half day hearing.
8. Mr. Farley submitted that there is no limitation period on investigations by self-regulated

professions, and that the Discipline Committee had rejected that argument by Mr. Perris.

9. He further submitted that Rule 203.2 requires a member to cooperate with an investigation, not to determine its course and extent, and that Mr. Perris had no right to himself determine what was and was not relevant or to decide whether to provide documents on that basis.

10. With respect to a hearing *de novo*, Mr. Farley submitted that none of the prerequisites set out in the bylaws for ordering such a hearing exist in this case.

11. On the issue of the fine and costs, Mr. Farley drew the panel's attention to the principles of appeal which permit an Appeal Committee only to alter sanctions imposed by a Discipline Committee when such sanctions are manifestly unjust or beyond the appropriate range for the conduct. He submitted that the fine and the costs awarded were both within the range, and provided authority to support that position. He further noted that the hearing had consumed a full day.

Decision

12. Having considered all the material contained in the Appeal Book (Exhibit 1) as well as the Factum and Book of Authorities of each of the parties (Exhibits 2 – 5) and the submissions made, this panel of the Appeal Committee dismissed the appeal.

Reasons

13. Although the Notice of Appeal sought a hearing *de novo*, that remedy was not argued before this panel. The panel agrees with the submission of the Professional Conduct Committee that there are no grounds for ordering such a hearing.

14. The panel, in essence, had two issues to consider. The first issue was whether the Discipline Committee erred in finding Mr. Perris guilty of a charge under Rule 203.2. The second issue concerned the amount of the fine levied in the amount of \$4,000 and the costs awarded in the amount of \$7,500.

15. It was the appellant's position that the finding of guilt under Rule 203.2 was in error for two reasons. Firstly, the Discipline Committee failed to consider the issue of time limitation as the charge emanated from a complaint dating back to 1989 and 1990. Secondly, the Discipline Committee failed to consider that the information being requested from Mr. Perris, if available, would not have helped in the original investigation and was therefore irrelevant. The Appeal Committee was not persuaded by these arguments.

16. Bylaw 510(5)(b) gives the Professional Conduct Committee the power to conduct such investigations as it deems proper to be assured that there are no violations of the bylaws, Rules of Professional Conduct or regulations of the Institute. Rule 203.2 clearly states that a member shall cooperate 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.

17. Mr. Perris refused to produce certain documents for the investigator appointed by the Professional Conduct Committee as he deemed them to be irrelevant to the original complaint. Mr. Perris' letter dated November 28, 2005 to the Professional Conduct Committee clearly states that "he must decline providing the additional information requested by the Professional Conduct Committee".

18. It is the Appeal Committee's determination that the Discipline Committee made no error in fact in determining that Mr. Perris was not prepared to cooperate with the Professional Conduct Committee in providing the required information. Their decision rightfully concluded that Mr. Perris was obligated to cooperate with the Professional Conduct Committee under Rule 203.2 and he did not.

19. Ms. Squires argued that the Discipline Committee did not consider the issue of a limitation period in that the original complaint dated back to 1989 and 1990 and therefore was stale dated. The Appeal Committee accepts Mr. Farley's argument that a limitation period was not at issue. The matter at issue was Mr. Perris' failure to fully cooperate with a current ongoing investigation by the Professional Conduct Committee.

20. Ms. Squires argued that the information being requested was not relevant to the original complaint. The Appeal Committee is not persuaded by this argument. The investigation concerned the investment company and Mr. Perris' financial relationship with it. The Discipline Committee, in its reasons, rightfully stated that the Professional Conduct Committee need not prove to the member that the documents are relevant but only that they could be relevant to the investigation.

21. The Appeal Committee has considered the quantum of the fine of \$4,000. The Appeal Committee notes that the Professional Conduct Committee proposed a fine in the range of \$3,000 and \$5,000 to the Discipline Committee whereas the appellant submitted that no fine was necessary. The Discipline Committee ordered a fine of \$4,000 payable in two installments. There is ample evidence in court decisions that an Appeal Committee should not alter sanctions unless they are unreasonable. The Appeal Committee is of the view that the amount of \$4,000 is within the acceptable range. As the due dates for payment as prescribed by the Discipline Committee have now passed, the appellant is given until May 31, 2007 to pay the fine.

22. The Appeal Committee has considered the costs awarded in the amount of \$7,500. The same principle of not altering sanctions, unless unreasonable, here applies. Mr. Farley referred us to a Schedule of Costs totaling \$9,226.50 that supported the amount of \$7,500 ordered by the Discipline Committee. The Appeal Committee is concerned that the amount of \$7,500 was on the high side of the range for a hearing lasting one day but is not prepared to alter the amount, although some concern has been expressed that high fines and high cost recoveries might preclude some members from seeking justice through our discipline process. As the due dates for payment as prescribed by the by the Discipline Committee have now passed, the appellant is given to May 31, 2007 to pay the costs.

Costs

23. Mr. Farley has sought costs of this appeal. An exhibit was filed setting out the costs of the appeal hearing as \$7,435.50. It was Mr. Farley's position that Mr. Perris should bear a significant portion of the costs and recommended the amount of \$5,000.

24. Ms. Squires' response was that she accepted that Mr. Perris could be expected to bear a portion of the costs but suggested an amount of \$3,500 to \$3,700 was more reasonable as it covered the out-of-pocket costs plus a share of the Professional Conducts Committee's counsel cost.

25. The Appeal Committee was prepared to consider awarding costs against Mr. Perris, although there appears to be no precedent for awarding costs of an appeal. The legal counsel for the Appeal Committee has referred the panel to Section 8 (1)(g) and Section 8 (1)(h) of the *Chartered Accountants Act, 1956* and to Bylaw 600.

26. Section 8 (1)(g) sets out the powers of the Discipline Committee, including the power to fine and charge the costs to a member. Section 8 (1)(h) does not appear to give the same power to the Appeal Committee. However Bylaw 601(6) gives the Appeal Committee all the powers conferred on the Discipline Committee.

27. As the jurisdiction of the Appeal Committee to order costs of the appeal did not appear settled, the panel requested written submissions on the issue from both parties.

28. Subsequently, the panel received an indication in writing from Mr. Farley that the Professional Conduct Committee was abandoning its request for an order of costs of the appeal. There is therefore no need for the panel to rule on the matter of costs, and the panel will leave the jurisdictional issue for another case.

DATED AT TORONTO THIS 24TH DAY OF APRIL, 2007
BY ORDER OF THE APPEAL COMMITTEE

C. J. BURKE, FCA – CHAIR
APPEAL COMMITTEE

MEMBERS OF THE PANEL:

E.A. ARCHIBALD, CA
L.P. BOOKMAN, CA
S.F. MITCHELL, CA
L.L. WORTHINGTON, FCA
B. BOWDEN (PUBLIC REPRESENTATIVE)