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

APPEAL COMMITTEE

IN THE MATTER OF: An appeal by **SIDNEY M. KARMAZYN**, a suspended member of the Institute, of the Order of the Discipline Committee made on May 29, 2009, pursuant to the bylaws of the Institute, as amended.

TO: Mr. Sidney M. Karmazyn

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Order made July 7, 2010)

1. This appeal was heard by a panel of the Appeal Committee of the Institute of Chartered Accountants of Ontario on July 7, 2010. Paul Farley appeared on behalf of the Professional Conduct Committee. Mr. Karmazyn attended and was unrepresented by counsel. He confirmed he understood that he had the right to be represented by counsel, and that he was waiving that right.

2. The following charges, as amended at the hearing, were laid against Mr. Karmazyn by the Professional Conduct Committee on February 21, 2008:

1. THAT, the said Sidney M. Karmazyn, on or about May 4, 2007, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the rules of professional conduct in that;

    a) He prepared and sent to the Canada Revenue Agency a T4A Summary on behalf of Brannick Enterprises Ltd. and T4A Supplementaries for Michael Silver in the amount of $225,000 and for Mark Silver in the amount of $225,000 for the year ended December 31, 2006, when he knew or should have known that Michael Silver and Mark Silver were not employees, officers or directors of the company and the company did not make these payments to them;

    b) He prepared and sent to the Canada Revenue Agency a T4A Summary on behalf of Brannick Enterprises Ltd. and T4A Supplementary for Raymond Keshen in the amount of $150,000 for the year ended December 31, 2006, when he knew or should have known that the T4A income reported was incorrect.

2. THAT, the said Sidney M. Karmazyn, on or about May 4, 2007, signed or associated himself with correspondence and a T4A summary which he knew or should have known was false and misleading, contrary to Rule 205 of the rules of professional conduct in that;

a) He wrote to the Canada Revenue Agency and asserted that *"I have attempted to secure the correct SIN for the 2 recipients, however they were unwilling to provide their SIN's."* when he made no reasonable effort to obtain this information and was not told by the recipients that they would not provide their social insurance numbers;

b) He provided a T4A Summary to the Canada Revenue Agency certifying that the information contained therein was correct when it was not.

3. THAT, the said Sidney M. Karmazyn, on or about November 5, 2007, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the rules of professional conduct in that;

a) In furtherance of settlement discussions he threatened Mark Silver that he would notify the Canada Revenue Agency of his suspicions of tax improprieties by Mark Silver or companies he was associated with if there was no settlement and, in the event there was a settlement, he offered to delete files in his possession which he suspected would support assertions that Mark Silver or companies that he was associated with had evaded tax.

4. THAT, the said Sidney M. Karmazyn, ~~on~~ *in* or about ~~November 5, 2007~~ *October 2006* failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the rules of professional conduct in that;

a) He participated in a scheme to improperly divert a GST refund, the property of Brannick Enterprises Ltd., in the approximate amount of $117,000, from the company to his client, Louis Ronis and to himself.

3. The Decision and Order appealed from, dated May 29, 2009, reads as follows:

DECISION

THAT, having heard the plea of guilty to charge No. 2(a), having seen, heard, and considered the evidence, charge No. 4 having been amended at the hearing, the Discipline Committee finds Mr. Sidney M. Karmazyn guilty of charge Nos. 1, 2, 3 and 4.

ORDER

1. THAT Mr. Karmazyn be reprimanded in writing by the chair of the hearing.

2. THAT Mr. Karmazyn be and he is hereby fined the sum of $10,000 to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.

3. That Mr. Karmazyn be and he is hereby expelled from membership in the Institute.

4. THAT notice of this Decision and Order, disclosing Mr. Karmazyn'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; and
(b) to all provincial institutes/Ordre,
and shall be made available to the public.

5. THAT notice of the expulsion, disclosing Mr. Karmazyn's name, be given by publication on the Institute's website, in *The Globe and Mail* and in the *Toronto Star*. All costs associated with the publication shall be borne by Mr. Karmazyn and shall be in addition to any other costs ordered by the committee.

6. THAT Mr. Karmazyn 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.

AND IT IS FURTHER ORDERED:

7. THAT Mr. Karmazyn be and he is hereby charged costs fixed at $30,000 to be remitted to the Institute as follows:
- $10,000 within twelve (12) months;
- $10,000 within eighteen (18) months; and
- $10,000 within twenty-four (24) months

from the date this Decision and Order becomes final under the bylaws

4. On this appeal, Mr. Karmazyn seeks to have the quantum of the fine imposed and the costs assessed reduced. He also appeals the ordering of newspaper publicity.

Submissions

5. Mr. Karmazyn submitted that the fine and costs imposed were overly onerous. His finances had been affected by the recession, including savings lost in a home building venture in the US. He had returned to Canada in 2008 and was trying to rebuild his life and redeem himself. He noted that this was a single incident in a 30-year career as a Chartered Accountant and one for which he was not solely responsible. Mr. Karmazyn further sought a reduction in the fine and costs assessed to enable him to pay and seek readmission in future. With respect to the issue of publicity, he submitted there was no proof publicity had any deterrent value, that it would not protect the public, and would only hurt his efforts to rebuild his life and career.

6. Mr. Farley submitted that the fine assessed of $10,000 is a reflection of the seriousness of the egregious conduct in this case, and well within the range of fines imposed in similar cases. He noted that the costs in the matter exceeded $80,000, and that it was appropriate the member bear a portion of those costs, as his behaviour caused them to be incurred. He also noted that the Discipline Committee considered Mr. Karmazyn's means in determining the quantum of the fine and costs, and in providing a significant period of time for their payment.

7. Mr. Farley further submitted that both the Discipline and Appeal Committees have held in many previous matters that publication of expulsion matters is necessary, except in rare and unusual circumstances, and that no such circumstances had been identified in this case. He noted that publicity is considered necessary to protect the reputation of the profession and the public interest.

Order

8. This panel of the Appeal Committee considered all the submissions, as well as the material filed in this matter and, after deliberations, dismissed the appeal. The parties were informed of the decision at the conclusion of the appeal, and were provided with a written Order dated July 8, 2010, as follows:

> HAVING heard and considered the submissions made by Sidney M. Karmazyn and on behalf of the Professional Conduct Committee, and having reviewed all of the documentation provided by the parties, the Appeal Committee dismisses the appeal of the Order of the Discipline Committee made on May 29, 2009.

Reasons

9. It has been stated on numerous occasions that the role of this Committee is not to retry the matter before it, but to determine whether the Discipline Committee committed any errors in its consideration of the evidence before it. Even greater deference is owed to the Discipline Committee in its consideration of sanctions and costs, and those orders should not be interfered with except in the clearest of instances. The mere fact the Appeal Committee might have reached a different conclusion on sanction does not justify altering the sanction imposed, unless that sanction is beyond the range of sanctions for similar conduct in similar circumstances.

10. The Panel has considered the submissions as to the quantum of the fine and the amount of costs assessed. It is unfortunate Mr. Karmazyn's personal financial circumstances are difficult. The Panel has heard nothing to indicate he cannot pay the amounts ordered, particularly given the time he has been granted in which to make payment.

11. Further, and equally important, with respect to the quantum of the fine, a review of the precedents and the circumstances of this matter establish that the quantum imposed is well within the appropriate range of fines.

12. Mr. Karmazyn was assessed less than 40% of the costs incurred in the investigation and hearing of this matter. The investigation and hearing were occasioned solely by his conduct. The membership as a whole must bear the remainder of those costs. We might have expected Mr. Karmazyn to be ordered to pay a greater proportion of the costs and can only conclude he was not because the Discipline Committee considered the global effect of the sanctions. There is no basis upon which it would be appropriate for this panel to reduce the costs.

13. Publicity is required to protect the reputation of the profession and the public interest. The Appeal Panel was not made aware of any rare and unusual circumstances in this case which would lead it to alter the decision of the Discipline Committee in this matter.

14. Mr. Karmazyn's conduct was extremely serious, and must be sanctioned as such by this Institute. The Discipline Committee made no errors in considering the evidence before it, or in ordering an appropriate sanction and costs. Their order should not be disturbed.

For these reasons, this panel of the Appeal Committee dismisses the appeal and confirms the order of the Discipline Committee.

DATED AT TORONTO THIS 23RD DAY OF AUGUST, 2010.
BY ORDER OF THE APPEAL COMMITTEE

A.R. BYRNE, FCA – CHAIR
APPEAL COMMITTEE

MEMBERS OF THE PANEL:

D.J. ANDERSON (PUBLIC REPRESENTATIVE)
D.W. DAFOE, FCA
B.C. FOSTER, FCA
P.A. GOGGINS, CA
M. STEBILA, CA

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **SIDNEY M. KARMAZYN, CA,** a member of the Institute, under **Rules 201.1 and 205** of the Rules of Professional Conduct, as amended.

TO: Mr. Sidney M. Karmazyn
91 Tansley Road
Thornhill, ON L4J 3Z5

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order made May 29, 2009)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met November 5 and 6, 2008, and May 25, 26, 27, and 29, 2009, to hear charges of professional misconduct brought by the Professional Conduct Committee against Sidney M. Karmazyn, CA, a member of the Institute.

2. Paul Farley appeared on behalf of the Professional Conduct Committee. Mr. Karmazyn attended and was represented by his counsel, James Lane.

3. The decision of the panel was made known at the conclusion of the hearing and the written Decision and Order sent to the parties on June 1, 2009. These reasons, given pursuant to Bylaw 574, contain the charges, the decision, the order, and the reasons of the panel for its decision and order.

PRELIMINARY MOTIONS

4. Prior to Mr. Karmazyn entering a plea to the charges, his counsel brought two motions seeking to exclude certain documents which he anticipated the Professional Conduct Committee would proffer as evidence.

5. One document was a case report of a civil lawsuit involving members of Mr. Karmazyn's family, in which Mr. Karmazyn had testified. His testimony was subject to some comment by the presiding judge. The matters involved in the lawsuit were completely separate from the allegations of professional misconduct Mr. Karmazyn faced in these proceedings.

6. After hearing submissions from both parties and deliberating, the panel made the following ruling:

> In this motion, Mr. Karmazyn seeks to exclude the document entered for identification in these proceedings as Exhibit 3, Tab 3, pages 3 and following, on the basis it is irrelevant to any fact in issue in this matter.

> Mr. Farley, for the Professional Conduct Committee, has conceded the document has little independent relevance, and has been included only because other documents make reference to it.
>
> The document in question is the court judgment in a civil suit of some years ago involving some of Mr. Karmazyn's family. Mr. Karmazyn was not a party to that action. At the request of counsel, the panel has not examined the document.
>
> At this juncture, the panel finds the document appears to have no relevance to any fact in issue, and it therefore rules the document is not admissible.
>
> In making this ruling, the panel is mindful that it has yet to hear any evidence in this matter. It is possible the document may attain some relevance when evidence is called. Therefore, this ruling is without prejudice to the Professional Conduct Committee seeking to have the document admitted should it become relevant.

7. The second motion was directed to two documents, both communications from Mr. Karmazyn to other persons. Mr. Lane, on behalf of Mr. Karmazyn, submitted the documents should be excluded on the basis of settlement privilege. Each document contained an offer to settle an outstanding lawsuit in which Mr. Karmazyn was a named defendant and, while the parties in that matter and this one were not otherwise connected, the matters themselves were. In fact, the communications themselves were the subject of one of the charges of professional misconduct brought against Mr. Karmazyn.

8. While conceding the documents were covered by settlement privilege, the Professional Conduct Committee argued that the privilege was not absolute and was subject to a number of exceptions. The exception the panel was urged to find was that of a threat to commit an illegal or unlawful act.

9. After hearing and considering the submissions and the authorities to which it was directed, the panel made the following ruling:

> This preliminary motion brought by Mr. Karmazyn seeks the exclusion of two documents in this matter. Those documents have been marked for identification as Tabs 14 and 19 of Exhibit 2. The basis upon which the exclusion is being sought is that of settlement privilege.
>
> Both counsel are agreed that the two documents in question are privileged on the basis of settlement or without prejudice privilege. The panel has considered the factors for assessing the existence of that privilege, and finds that the documents are privileged. The issue for determination is, therefore, whether an exception to that privilege applies. Counsel for Mr. Karmazyn has conceded, for the purposes of the motion, that each document contains threats.
>
> The panel has considered the submissions made by counsel, and the information given to it. This is a motion brought on a preliminary basis, and the panel has no evidentiary framework in which to consider the documents or the statements contained in the documents. In the absence of that framework, the panel finds it cannot determine whether an exemption to privilege exists and whether the documents should or should not be excluded. The panel therefore reserves its decision on that point, and will receive the documents on a conditional basis.

The panel is aware of the concerns this procedure may cause, and, in deferring its ruling, understands it needs to be prepared to segregate any evidence that might be impacted by its ruling so that, if necessary, it is not influenced by and does not consider any evidence ruled to be inadmissible.

CHARGES

10. The following charges, as amended at the hearing on the application of the Professional Conduct Committee and consent of the member, were laid against Mr. Karmazyn by the Professional Conduct Committee on February 21, 2008:

1. THAT, the said Sidney M. Karmazyn, on or about May 4, 2007, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the rules of professional conduct in that;

    a) He prepared and sent to the Canada Revenue Agency a T4A Summary on behalf of Brannick Enterprises Ltd. and T4A Supplementaries for Michael Silver in the amount of $225,000 and for Mark Silver in the amount of $225,000 for the year ended December 31, 2006, when he knew or should have known that Michael Silver and Mark Silver were not employees, officers or directors of the company and the company did not make these payments to them;

    b) He prepared and sent to the Canada Revenue Agency a T4A Summary on behalf of Brannick Enterprises Ltd. and T4A Supplementary for Raymond Keshen in the amount of $150,000 for the year ended December 31, 2006, when he knew or should have known that the T4A income reported was incorrect.

2. THAT, the said Sidney M. Karmazyn, on or about May 4, 2007, signed or associated himself with correspondence and a T4A summary which he knew or should have known was false and misleading, contrary to Rule 205 of the rules of professional conduct in that;

    a) He wrote to the Canada Revenue Agency and asserted that *"I have attempted to secure the correct SIN for the 2 recipients, however they were unwilling to provide their SIN's."* when he made no reasonable effort to obtain this information and was not told by the recipients that they would not provide their social insurance numbers;

    b) He provided a T4A Summary to the Canada Revenue Agency certifying that the information contained therein was correct when it was not.

3. THAT, the said Sidney M. Karmazyn, on or about November 5, 2007, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the rules of professional conduct in that;

    a) In furtherance of settlement discussions he threatened Mark Silver that he

would notify the Canada Revenue Agency of his suspicions of tax improprieties by Mark Silver or companies he was associated with if there was no settlement and, in the event there was a settlement, he offered to delete files in his possession which he suspected would support assertions that Mark Silver or companies that he was associated with had evaded tax.

4. THAT, the said Sidney M. Karmazyn, ~~on~~ *in* or about ~~November 5, 2007~~ *October 2006* failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the rules of professional conduct in that;

   a) He participated in a scheme to improperly divert a GST refund, the property of Brannick Enterprises Ltd., in the approximate amount of $117,000, from the company to his client, Louis Ronis and to himself.

PLEA

11. Mr. Karmazyn pleaded guilty to particular a) of charge No. 2, and not guilty to all the remaining charges. He acknowledged he understood that, on the basis of the plea of guilty and on that basis alone, he could be found guilty of professional misconduct.

EVIDENCE

12. The evidence in this matter was provided by a number of documents filed by the parties, as well as evidence given by Michael Norman Silver, Raymond Keshen, Robert Gordon Robertson, CA, who was the investigator appointed by the Professional Conduct Committee in this matter, and Mr. Karmazyn himself. Most of the basic facts of the matter are not in dispute, and are set out briefly below.

13. Mark Silver owns a number of companies, including Optus Mortgage Corporation (OMC), Shalcor Management Inc. (Shalcor) and Aurora Gardens Development (Aurora). His brother, Michael Silver, is a lawyer licensed to practise in Ontario and acts for his brother and the companies. Michael Silver testified he has no ownership interest in any of his brother's companies.

14. Aurora was incorporated to acquire 163 partially serviced residential lots in the town of Aurora. Most of those lots were sold to and built on by Geranium Homes (Geranium). There were approximately 41 lots not acquired by Geranium.

15. Raymond Keshen, who was working for Geranium as a marketing consultant approached Mark Silver about a joint venture to develop the remaining 41 lots. Mr. Keshen incorporated, in 2001, Brannick Enterprises Ltd. (Brannick), to manage the Aurora development. Mr. Keshen knew Louis Ronis from a prior Geranium project in Barrie, where Mr. Ronis had been the construction superintendent Mr. Keshen brought Mr. Ronis to the Aurora development to provide the necessary construction expertise. At some point during their association, Mr. Keshen made Mr. Ronis an equal shareholder, as well as an officer and director of Brannick.

16. Together Brannick and Aurora incorporated a third company, Optus Home Corporation (OHC). Brannick was a one-third shareholder, with Aurora holding the other two-thirds of the outstanding shares. By a Management Agreement (Exhibit 2, Tab 2), OHC acknowledged that Aurora owned the building lots and Aurora agreed to retain OHC to build and market homes on those lots. OHC was to bear all the costs associated with the construction and marketing of these

homes.

17. The homes were built and sold by 2005. In 2004, Mr. Keshen and Mr. Ronis approached Mark Silver with a proposal to purchase four lots in North York and build homes on these lots. Mr. Silver declined to become a partner in that project, but did offer to finance it through OMC. Brannick accepted that offer.

18. Unfortunately, due to cost overruns, the real estate market and a decline in Mr. Keshen's health, the North York project was not financially successful resulting in a shortfall in the repayment of loans made by OMC. OMC and Brannick agreed that monies owing to Brannick from the Aurora development would be held back to offset the shortfall from the North York project (Exhibit 2, Tab 5).

19. Mr. Karmazyn was the accountant for Brannick, as well for Mr. Ronis and Mr. Keshen personally. Mr. Karmazyn became convinced that Optus was not accounting properly for the profits from the Aurora development and, accordingly, did not properly reflect the full profit owing to Brannick. He also became convinced that Mr. Keshen was taking monies in excess of his entitlement from Brannick vis-à-vis his arrangement with Mr. Ronis.

20. Mr. Ronis had another accountant (who was referred by Mr. Karmazyn) prepare a summary of receipts and disbursements for Brannick from the company's date of incorporation to January 2005 (Exhibit 2, Tab 8). That summary showed that Mr. Keshen had used a debit card to makes purchases and withdrawals over that time totalling approximately $101,000.

21. There had been an understanding between Mr. Keshen, Mr. Ronis and OMC that funds resulting from a GST refund application which had been prepared by Mr. Karmazyn would be paid over to OMC to repay, in part, amounts still owing to OMC. In October, 2006, Brannick received the GST rebate cheque in the amount of approximately $117,000, relating to the development of the North York properties. This cheque was mailed by CRA to Mr. Karmazyn, as he had applied for the rebate on behalf of Brannick and had used his address. Mr. Karmazyn gave the cheque to Mr. Ronis.

22. The GST cheque was not deposited to the Brannick account which had previously been opened at Scotiabank, where all cheques were to be signed by both Mr. Ronis and Mr. Keshen. Instead, Mr. Karmazyn introduced Mr. Ronis to the account manager at another branch of Scotiabank, and Mr. Ronis opened an account for Brannick there. Mr. Ronis was the sole signing officer on that account. The GST cheque was deposited to this second account.

23. Mr. Ronis disbursed the funds from the account, writing a cheque to Mr. Karmazyn in the amount of $74,420 to repay personal loans and pay accounting fees, and the rest to himself (Exhibit 3, Tab 2). Prior to the time the GST was deposited and withdrawn, Mr. Karmazyn and Mr. Ronis were both aware that OMC had notified Brannick that it took the position OMC had the right to the GST refund as a result of the loan repayment shortfall that it had suffered. Further, the opening of the second bank account, and the depositing and withdrawal of funds was done without Mr. Keshen's knowledge or consent. Mr. Keshen became aware of the circumstances of the second bank account, and he informed Mark and Michael Silver. Mr. Keshen and OMC sued Mr. Ronis, Mr. Karmazyn, and Brannick for the return of the GST monies.

24. By letter dated May 4, 2007, Mr. Karmazyn sent a T4A summary and T4A copies to the Canada Revenue Agency (CRA), on behalf of Brannick. There were three T4As for 2006 attached – one to Michael Silver in the amount of $225,000, one to Mark Silver for the same amount, and one to Mr. Keshen for $150,000. The summary showed the total to be $600,000, and Mr.

Karmazyn signed the summary, certifying it to be correct (Exhibit 2, Tab 15).

25. At no time, during 2006 or during any other period, were Mark or Michael Silver officers, directors, shareholders, employees, contractors or agents of Brannick; nor had they received any payments from Brannick. At no time did Michael Silver have any interest in OMC or Aurora, or in any of his brother's companies. Mr. Karmazyn's rationale for issuing the T4A slips was that Mark Silver's companies, particularly OMC and Aurora, had failed to account properly to Brannick, and had concealed profits due to Brannick.

26. Mr. Karmazyn issued the T4A to Mr. Keshen based on the summary prepared for Mr. Ronis of the disbursements from Brannick of approximately $101,000.

27. In his covering letter to CRA, Mr. Karmazyn told CRA that: "I have attempted to secure the correct sin for [Mark and Michael Silver], however they were unwilling to provide their sin's." (Exhibit 2, Tab 15). Mr. Karmazyn admitted that he had never asked the Silvers for their social insurance numbers. He testified he had left voice messages for the Silvers, asking for a return call but without divulging a reason for the call.

28. By letter dated November 5, 2007, Mr. Karmazyn wrote to Mark Silver, offering to settle the lawsuit on certain terms and conditions (Exhibit 2, Tab 19). This document was one of those whose admissibility was challenged on the basis of settlement privilege. Attached to the letter were a number of other documents, including a copy of a complaint made to the Institute about Mr. Karmazyn by Michael Silver on or about May 30, 2007 and the Institute's request of Mr. Karmazyn for information (Exhibit 2, Tab 21), and a two-page Google summary relating to Joseph Burnett and Burnac Corp., which spoke of a number of investigations by Canadian and American tax authorities, and his trial for tax evasion (Exhibit 3, Tab 3).

29. The November letter indicates that, if the settlement is agreed to, certain actions will not take place, including a complaint of serious misconduct to the Law Society of Upper Canada against Michael Silver, and a deletion of copies of files concerning Mark Silver's companies in Mr. Karmazyn's possession.

30. The lawsuit was eventually settled, on terms and conditions bearing no reference to the November letter proposal, and the GST monies previously deposited by Mr. Ronis in a new Brannick bank account were paid over to OMC. There were a number of other admissions in the release, which was signed by Mr. Karmazyn (Exhibit 2, Tab 23).

FINDING

31. After considering the evidence, and the submissions made by counsel, the panel made the following decision:

> THAT, having heard the plea of guilty to charge No. 2(a), having seen, heard, and considered the evidence, charge No. 4 having been amended at the hearing, the Discipline Committee finds Mr. Sidney M. Karmazyn guilty of charge Nos. 1, 2, 3 and 4.

REASONS FOR FINDING

32. As well as the undisputed evidence outlined above, the panel heard a considerable amount of contentious testimony. Much of that testimony, while it illustrated a deteriorating and increasingly

acrimonious business relationship between the various persons and entities, is not relevant to the charges. Where necessary, the panel has made findings of fact pertaining to the conflicting accounts, but only where necessary.

Letter to CRA – Social Insurance Numbers – Charge No. 2 (a)

33. Mr. Karmazyn has pleaded guilty to this charge. In his evidence, he characterized his communication to CRA as a "poor choice of words". It was a great deal more. In his correspondence to CRA, Mr. Karmazyn clearly stated that he had sought the SINs and had been refused. The necessary implication is that Messrs. Silver were attempting to avoid identification to CRA. Both the statement and the implication were untrue and are likely to cause the Silvers to have difficulties with CRA in the future.

34. The statement was both false and misleading. It was made by a member of the Institute to a government agency. It has potentially serious consequences to the persons about whom it was made. The breach of Rule 205 is significant and constitutes professional misconduct.

T4As issued to the Silvers – Charge No. 1 (a)

35. Mr. Karmazyn, purportedly acting on behalf on Brannick, issued T4As for 2006 to Mark and Michael Silver. When he did so, he knew neither of the Silvers was an officer, director, shareholder, employee, contractor or agent for Brannick. He also knew that Brannick had made no payment to either of the Silvers.

36. Mr. Karmazyn's justification for issuing the T4As was that the companies owned and controlled by Mark Silver and, in particular, OHC, were withholding monies owed to Brannick. Mr. Karmazyn based that belief on the assets listed on the OHC fiscal 2005 balance sheet, which showed a bank balance of $1,168,025 along with a number of loans receivable for an asset total of $1,598,170. Mr. Karmazyn's reasoning was that, as the Aurora development was essentially complete, the remaining assets in the company were the profits owed to Aurora and Brannick.

37. That simplistic and illogical analysis ignores the liabilities of OHC, also set out on the balance sheet, including a $1.2 million loan payable to Shalcor. It also ignores any reference to the revenues from the sale of the homes and the costs of building those homes. Simply to decide the bank balance at a particular moment in time should be equated with net profit is nonsensical. Mr. Karmazyn is a chartered accountant. It is inconceivable that he came to a simplistic conclusion based on funds on deposit in a bank account at a certain point in time and ignored the source of these funds, being a loan from Shalcor.

38. As Mr. Karmazyn admitted in his evidence, any T4A should have been issued by OHC, not Brannick. Brannick was the recipient of funds, not the provider. His explanation for having Brannick issue was that OHC wouldn't.

39. Even if Brannick were somehow responsible for making a payment, or receiving one, the payments would be between three companies – Brannick, OHC and Aurora, not any individuals. Mr. Karmazyn's explanation for issuing the T4As to individuals was that the companies were owned and controlled by Mark Silver. He also stated that he believed Michael Silver had an interest in the companies, as Michael Silver represented them at meetings. Mr. Karmazyn took no steps to verify that belief and, in fact, Michael Silver had no interest in his brother's companies.

40. Mr. Karmazyn issued T4As for payments that were never made, to persons to whom no payment was ever made. Those T4As were false. That action constituted professional misconduct.

T4A issued to Keshen – Charge No. 1 (b)

41. Brannick was incorporated in February, 2001 by Ray Keshen. At some point, several years later, Louis Ronis became an equal shareholder in the company. The panel heard a significant amount of conflicting evidence as to when Mr. Ronis became a shareholder. For the purpose of determining whether Mr. Karmazyn is guilty of this charge, it is not necessary to decide when that admission as a shareholder took effect.

42. Mr. Karmazyn testified that Mr. Ronis became concerned that Mr. Keshen was taking more from Brannick than he was entitled to. Despite the fact that, at that time, Mr. Karmazyn was the accountant for Brannick, as well as Mr. Keshen and Mr. Ronis, Mr. Karmazyn testified that he did not look into the complaint but directed Mr. Ronis to another accountant. That accountant prepared a summary of receipts and disbursements for Brannick relating to transactions between the company and Mr. Keshen (Exhibit 2, Tab 8).

43. That summary which commences December, 2000 and ends January, 2005, indicates that, during that period, Mr. Keshen withdrew $60,464.52 in cash and made $41,439.60 in debit card purchases. From this summary, Mr. Karmazyn concluded that Mr. Keshen had withdrawn at least $100,000 inappropriately from the company. He estimated, without any evidence, that the amount had to be at least $150,000, and that was what he reported on the T4A issued to Mr. Keshen.

44. In coming to his conclusions, Mr. Karmazyn relied completely on the summary prepared by the other accountant, and he took no steps to confirm its accuracy. Further, he assumed that all the debit transactions were personal rather than business expenses. He never sought an explanation from Mr. Keshen; nor did he inform Mr. Keshen he was issuing a T4A for $150,000.

45. Mr. Keshen testified that the cash withdrawals and point of sale transactions were either his draws or business expenses. Mr. Karmazyn is unable to assist with whether that position is correct, as he did not investigate the purpose of any of the expenditures. Mr. Karmazyn was also unable to explain why he determined $150,000 was the accurate amount to report.

46. For Mr. Karmazyn to have acted as he did strains credulity. He exposed Mr. Keshen to a significant tax liability without taking any steps to ensure that liability had properly arisen and without informing Mr. Keshen of his intent. His actions fall vastly below the base line of competence or integrity expected of every chartered accountant, and constitute professional misconduct.

T4A Summary – Charge No. 2 (b)

47. Mr. Karmazyn provided a T4A summary to the CRA. That summary indicated Brannick had paid $600,000 in fees which were represented in the T4As. Mr. Karmazyn signed the certification on the summary. That certification reads: “I certify that the information given in this T4A return (T4A Summary and related T4A slips) is, to the best of my knowledge, correct and complete.” (Exhibit 2, Tab 15)

48. The information given on the T4As was not correct. For the reasons set out above, Mr. Karmazyn could not have believed it was correct. His failure to take even the most basic steps to verify the information and his irrational conclusion that Brannick was owed funds cannot excuse him or his actions. His actions went far beyond negligence and constituted a deliberate attempt to have an untrue state of affairs accepted as true. Signing the certification was professional misconduct.

Diversion of GST Refund – Charge No. 4

49. Mr. Karmazyn was the accountant for Brannick. He knew that Brannick was being financed for the North York project by OMC. Based on evidence received and testimony heard by the panel, the panel concluded that Mr. Karmazyn was aware that OMC had advised Mr. Ronis and Mr. Karmazyn that the GST refund funds were to be paid over to OMC.

50. Mr. Karmazyn applied for the GST refund on behalf of Brannick. The refund cheque was sent by CRA to Mr. Karmazyn's office address, as CRA was directed to do. He testified he gave the refund to an authorized officer of Brannick, being Mr. Ronis. In fact, he did much more. Before he had even received the refund cheque, he had crossed the line from accountant to advocate. He had received certain information from Louis Ronis and had taken up Mr. Ronis' cause and complaints against Ray Keshen. Further, he had lent funds to Mr. Ronis and Mr. Ronis used some of the GST refund to repay his loan from Mr. Karmazyn.

51. According to Mr. Karmazyn, Mr. Ronis told him that Mr. Keshen wanted to resign from Brannick. Instead of speaking directly with Mr. Keshen (his client) to confirm this information, Mr. Karmazyn gave Mr. Ronis a standard form of resignation to be filled in to evidence Mr. Keshen's resignation, then accepted Mr. Ronis' verbal statement that Mr. Keshen had resigned.

52. During this same time period, Mr. Keshen, on Mr. Karmazyn's evidence, was asking about the expected arrival of the GST refund. Mr. Karmazyn didn't assist him, instead telling him to call CRA and ask about the status of the refund himself. Mr. Karmazyn never questioned Mr. Keshen's interest in the refund or his authority to inquire about the refund, thereby bringing into question the credibility of his testimony that he believed that Mr. Keshen had resigned as an officer and shareholder of Brannick.

53. The panel has also considered the actions of Mr. Karmazyn and Mr. Ronis when the GST refund cheque was received. Brannick had a corporate bank account which required the signatures of both Mr. Keshen and Mr. Ronis, but the cheque was not deposited in this bank account. Instead, Mr. Karmazyn facilitated the opening of another account which required only the signature of Mr. Ronis. His explanation for doing so was that Mr. Ronis was concerned that Mr. Keshen still had access to the original account. If Mr. Keshen had truly resigned from Brannick, Mr. Karmazyn and Mr. Ronis could have presented that resignation to the bank, and had Mr. Keshen removed as a signing officer. They did not do so.

54. Not only was the GST refund cheque deposited to a new account, the funds were immediately withdrawn to the benefit of Mr. Karmazyn and Mr. Ronis. The haste of this transaction, coupled with the other surrounding circumstances, lead inexorably to the conclusion that Mr. Karmazyn acted as he did because he knew Mr. Keshen had an interest in Brannick at the time and he intended to deprive Brannick and its creditor, OMC, of funds to which it was entitled. The panel has so concluded.

55. This conclusion is supported by the evidence of Mr. Keshen, and by the evidence of Mr. Karmazyn himself, when he testified that the Brannick corporate books were not changed until some time later, and were, in fact, changed by him. It is also supported, although the panel did not rely on this evidence to reach its conclusion, by the admissions made by Mr. Karmazyn in the settling of a subsequent lawsuit.

56. Mr. Karmazyn was a party to the improper diversion of the GST refund. He is guilty of this

charge.

Threatening Criminal Action - Charge No. 3

57. At the commencement of the hearing, Mr. Lane, on behalf of Mr. Karmazyn, brought a motion to exclude the documents that provide the basis for this charge on the grounds the documents are covered by settlement privilege. Mr. Farley, while conceding the documents were of a nature that might attract such privilege, argued that settlement privilege was not absolute and that the documents were admissible under an exemption to the privilege.

58. As the motion was brought prior to the hearing of any evidence, the panel did not have the evidentiary basis upon which to consider whether such an exemption could be established. Therefore, after considering the submissions and law presented to it, the panel made the ruling reproduced earlier in these reasons at paragraph 9.

59. At the conclusion of the evidence, the panel received further submissions on the issue of whether the Professional Conduct Committee had established, on the balance of probabilities, an exemption to the settlement privilege otherwise protecting the documents in question.

60. Having considered the submissions and the law, the panel made the following ruling:

> This is the ruling of the Discipline Committee on the admissibility of the documents contained at Tabs 14 and 19 of Exhibit 2 in these proceedings. On November 6, 2008, the Committee ruled that both documents were covered by settlement privilege and thus would not be admissible unless under an exception to that privilege. The Committee further ruled that it could not determine whether such a basis existed without having an evidentiary framework for consideration. The evidence in this matter has now been heard, and counsel have made submissions on the existence of an exemption to the privilege.
>
> This panel finds that, on a balance of probabilities, there has not been a threat to act in an unlawful or criminal manner with respect to Tab 14. We rule that this document is not admissible, and it and any evidence concerning it will not be considered by the panel.
>
> The panel finds that the document at Tab 19 is admissible. On a balance of probabilities, particularly when considered in the context of the attachments to that Tab and the evidence of all witnesses, including Mr. Karmazyn himself, the panel finds the document does contain a threat to commit an unlawful or criminal act. Settlement privilege is not absolute, and the exception to it we have found renders the document admissible.

61. Both counsel conceded that, if the document was admitted by the panel, it was determinative of Mr. Karmazyn's guilt on this charge. With all due respect, the panel does not agree. The panel must consider the document and the admitted threat contained therein, and determine whether the threat is of such a nature as to constitute professional misconduct.

62. The document at Exhibit 2, Tab 19 is a letter from Mr. Karmazyn to Michael Silver, in which he sets out certain possible settlement scenarios. The threat arises from his stated intention, should one of the scenarios not be accepted, to provide CRA with purported evidence of wrongdoing by Mark Silver's company, and to report Michael Silver to the Law Society for serious

allegations of misconduct. Attached to that letter were extracts from an internet search summarizing the decade-long trial of Joseph Burnett wherein Mr. Burnett had been charged with tax evasion. The clear implication was that Mr. Karmazyn was prepared to accuse Mark Silver of similar malfeasance and have Mark Silver face a similar criminal ordeal. In addition, Mr. Karmazyn had threatened Michael Silver with facing a process before his governing body that might end his career and livelihood.

63. These threats are serious. It appears from the letter, and the relationship between Mr. Karmazyn and the Silver brothers, that Mr. Karmazyn was quite prepared to carry them out. The alternative for the Silvers was to accept a settlement that was clearly to their detriment. It is inconceivable that a chartered accountant would act in such a manner, and that he did so constitutes professional misconduct.

SANCTION

64. Neither party called any evidence on sanction, although Mr. Karmazyn did testify on the issue of his finances, in response to a question from the panel. On behalf of the Professional Conduct Committee, Mr. Farley characterized the conduct as demonstrating a complete lack of integrity and honesty. The only mitigating factor he noted was Mr. Karmazyn's cooperation with the investigation and, he submitted, that mitigation was far outweighed by the aggravating factors, including the lack of even a scintilla of remorse, the damage to the reputation of the profession caused by making false statements to CRA, an agency which relies on the probity of chartered accountants, and the potential harm to others, including the Silver brothers.

65. Mr. Farley submitted that the primary principles of sanctioning were general deterrence and protection of the public, and sought: a reprimand in writing; a fine in the amount of $10,000; expulsion; and full publicity. He also sought an order for the payment of costs. While acknowledging there have been no previous cases of similar conduct by members, he provided the panel with a number of precedents decided on similar principles.

66. Mr. Lane, on behalf of Mr. Karmazyn, urged the panel to see his client as someone who identified too closely with someone he believed had been treated badly. He submitted Mr. Karmazyn did not profit personally by his acts, but was motivated by a desire to help another.

67. Mr. Lane acknowledged the gravity of the offences, but submitted that the principles of sanctioning could be appropriately addressed without the necessity of an expulsion. He submitted that a sanction of: a written reprimand, a fine, publicity and a lengthy suspension should be imposed. He also agreed that Mr. Karmazyn should pay a portion of the costs of the investigation and hearing. With respect to the quantum of the fine and costs, he noted Mr. Karmazyn's current financial circumstances and submitted a fine of $5,000 and costs of $10,000 would be appropriate.

ORDER

68. After considering the facts of this case, the submissions of counsel, and the evidence of Mr. Karmazyn on sanction, the panel made the following order:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Karmazyn be reprimanded in writing by the chair of the hearing.

2. THAT Mr. Karmazyn be and he is hereby fined the sum of $10,000 to be

remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.

3. That Mr. Karmazyn be and he is hereby expelled from membership in the Institute.

4. THAT notice of this Decision and Order, disclosing Mr. Karmazyn'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; and
   (b) to all provincial institutes/Ordre,
   and shall be made available to the public.

5. THAT notice of the expulsion, disclosing Mr. Karmazyn's name, be given by publication on the Institute's website, in The Globe and Mail and in the Toronto Star. All costs associated with the publication shall be borne by Mr. Karmazyn and shall be in addition to any other costs ordered by the committee.

6. THAT Mr. Karmazyn 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.

AND IT IS FURTHER ORDERED:

7. THAT Mr. Karmazyn be and he is hereby charged costs fixed at $30,000 to be remitted to the Institute as follows:
   - $10,000 within twelve (12) months;
   - $10,000 within eighteen (18) months; and
   - $10,000 within twenty-four (24) months

   from the date this Decision and Order becomes final under the bylaws.

REASONS FOR THE ORDER

69. Mr. Karmazyn's conduct is almost beyond comprehension. He filed documents he knew to be false with CRA, he made statements to CRA knowing they were false, he diverted monies to his own benefit, and he made threats in an attempt to influence a judicial process.

70. Mr. Lane has suggested that Mr. Karmazyn should remain a member of this profession. The panel sees no indication that Mr. Karmazyn has recognized the nature or gravity of his conduct. In addition, he has not displayed any remorse over his actions.

71. The panel was unanimous in its conclusion that Mr. Karmazyn must be expelled. The public, which expects and is entitled to expect a high degree of professionalism and probity from every chartered accountant, requires that Mr. Karmazyn's actions be met with this sanction.

72. Each of the charges of which Mr. Karmazyn has been found guilty, taken separately and in isolation, warrants the sanction of expulsion. Each demonstrates an utter lack of professional integrity. No other sanction but expulsion is acceptable.

73. Publicity is required to demonstrate to the membership and the public the denunciation of

such conduct. Publicity may assist in restoring the good name of the profession treated so cavalierly by Mr. Karmazyn. It will also aid in protecting the public from Mr. Karmazyn, and serve to educate and warn other members.

74. A fine will likewise act as both a specific and general deterrent. Given the order of expulsion, and Mr. Karmazyn's financial circumstances, a quantum less than the conduct would otherwise require has been ordered. The panel has also taken those circumstances into account in assessing the appropriate quantum of costs.

DATED AT TORONTO THIS 25TH DAY OF AUGUST, 2009
BY ORDER OF THE DISCIPLINE COMMITTEE

M.B. MARTENFELD, FCA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:
R.J. ADAMKOWSKI, CA
S.M. DOUGLAS, FCA
S.J. HOLTOM, CA
B.M. SOLWAY (PUBLIC REPRESENTATIVE)