

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **WAJDE HASSAN DARWISH, CA**, a suspended member of the Institute, under **Rules 201.1, 203.2(b) and 205** of the Rules of Professional Conduct, as amended.

TO: Mr. Wajde Hassan Darwish, CA
381 Rivertrace Close
LONDON, ON N5G 5J8

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision And Order Made October 27, 2004)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on October 6, 7 and 27, 2004 to hear charges brought the Professional Conduct Committee against Wajde Hassan Darwish, a suspended member of the Institute.
2. The Professional Conduct Committee was represented by Ms. Barbara Glendinning. She was accompanied by the investigator appointed by the Professional Conduct Committee, Mr. Bruce Armstrong, CA. Also in attendance with Ms. Glendinning was Mr. Michael Bondy, CA, a partner of the firm Kime, Mills, Dunlop LLP in London, Ontario, a witness for the Professional Conduct Committee.
3. Mr. Wajde Darwish appeared with his counsel, Mr. Angelo D'Ascenio.
4. Also in attendance was Mr. Bill Simpson, counsel for Mr. Mohen Janakiraman. Mr. Janakiraman was a representative of a related group of companies, referred to in the charges and in these reasons as "The P. Group". Charges Nos. 1 to 4 allege that Mr. Darwish breached the Rules of Professional Conduct when he was the chief financial officer of The P Group.
5. The decision and order of the panel was made known at the hearing on October 27, 2004. The formal, written decision and order was signed by the secretary to the Discipline Committee and sent to the parties on November 9, 2004.

6. These reasons, given in writing pursuant to Bylaw 574, set out the charges, the decision, the order and the reasons of this panel of the Discipline Committee for its decision and order.

PRELIMINARY MATTERS

7. In order to understand the proceedings on October 27, 2004, the decision and order of the panel made that day and the reasons for the decision and order, it is necessary to set out some background.

8. Mr. Darwish had been found guilty of professional misconduct on November 26, 2002. The order of the Discipline Committee on that date permitted Mr. Darwish to resign his membership in the Institute on certain terms and conditions. The order was not finalized because of the ongoing investigation and eventually the charges made against Mr. Darwish on December 18, 2003, the charges Mr. Darwish faced at this hearing. But it was clear when the hearing began that Mr. Darwish would not continue to be a chartered accountant in Ontario.

9. The P. Group and Mr. Darwish are parties to an action in the Superior Court of Ontario. In this civil action, the former employer companies allege that Mr. Darwish misappropriated funds and claim damages in the amount of \$4,000,000. Mr. Darwish alleges that he is a beneficial owner of 10% of the employer group of companies, which are owned and controlled by Mr. Kadrie, and he asserts that he is entitled to further compensation.

10. The civil action has not proceeded to the point where relevant documents had been exchanged in September 2004. In fact, it seems that little has happened in the action after the plaintiffs filed a Reply and Defence to Counterclaim in January, 2004.

11. It became apparent in September 2004 that the real issue, so far as Mr. Darwish was concerned, was Charge No. 3, a charge that he misappropriated approximately \$2,000,000 from The P. Group. Mr. D'Ascenio asserted that documents in the possession of The P. Group had to be produced in order for Mr. Darwish to properly defend himself on Charge No. 3.

12. In this regard Mr. D'Ascenio sought an adjournment of the hearing with respect to Charge No. 3, and only that charge, in a motion brought before a special Assignment Hearing on September 22, 2004. The motion was denied. Also, on September 22, 2004 the chair of the panel at the special Assignment Hearing refused to quash the summons to a witness which Mr. D'Ascenio had obtained and served on Mr. Janakiraman, as a representative of The P. Group. The chair made it clear at that Assignment Hearing that Mr. Darwish had a right to copies of relevant documents so that he could defend himself on Charge No. 3.

13. On October 27, 2004 there was still an issue as to whether or not Mr. Darwish, through his counsel, Mr. D'Ascenio had been given copies of the relevant documents. The purpose of the hearing was to determine whether or not Mr. Darwish had breached the Rules of Professional Conduct. However, it appeared the hearing was being protracted, if not sidetracked, by concerns which related to the civil dispute between The P. Group and Mr. Darwish.

THE CHARGES AND THE PLEA

14. The charges, made by the Professional Conduct Committee against Mr. Darwish, a suspended member on December 18, 2003, as amended at the hearing on October 6, 2004, read:

1. THAT the said Wajde Hassan Darwish, in or about the period July 1, 2002 to September 30, 2002, while engaged as the CFO for "The P. Group", associated himself with reports, statements and representations which he knew were false, contrary to Rule 205 of the rules of professional conduct in that, without authority from the firm of chartered accountants "KMD, LLP" to use their name or letterhead, he prepared and delivered to the Bank of Montreal:
 - a) false financial statements for O. F. Sales (1981) Limited for the year ended December 31, 2001 to which he attached a Review Engagement Report dated May 21, 2002 and signed "KMD LLP";
 - b) false financial statements for T. Limited for the year ended December 31, 2001 to which he attached a Review Engagement Report dated June 23, 2002 and signed "KMD, LLP";
 - c) false financial statements for B. Sales & Service (1968) Limited for the year ended June 30, 2001 to which he attached a Review Engagement Report dated December 21, 2001 and signed "KMD, LLP";
 - d) false financial statements for 139##### Ontario Limited for the year ended December 31, 2001 to which he attached a Notice to Reader Report dated June 23, 2002 and signed "KMD, LLP";
 - e) false financial statements for 142##### Ontario Limited for the year ended December 31, 2001 to which he attached a Notice to Reader Report dated June 23, 2002 and signed "KMD, LLP";
2. THAT the said Wajde Hassan Darwish, in or about the period July 1, 2000 through November 30, 2002, while engaged as the CFO of "The P. Group", associated himself with reports, statements and representations which he knew were false, contrary to Rule 205 of the rules of professional conduct in that, without authority from the firm of chartered accountants "KMD, LLP" to use their name or letterhead, he prepared and provided to the Bank of Nova Scotia:
 - a) false financial statements for O. F. Sales(1981) Limited for the year ended December 31, 2001 to which he attached a Review Engagement Report dated May 21, 2002 and signed "KMD, LLP";
 - b) false financial statements for T. Limited for the year ended December 31, 2001 to which he attached a Review Engagement

Report dated June 23, 2002 and signed "KMD, LLP";

- c) false financial statements for T. Limited for the year ended December 31, 2000 to which he attached a Review Engagement Report dated June 25, 2001 and signed "KMD, LLP";
 - d) false financial statements for B. Sales & Service (1968) Limited for the year ended June 30, 2001 to which he attached a Review Engagement Report dated December 21, 2001 and signed "KMD, LLP";
 - e) false financial statements for B. Sales & Service (1968) Limited for the year ended June 30, 2000 to which he attached a Review Engagement Report dated December 17, 2000 and signed "KMD, LLP";
 - f) false financial statements for 139#### Ontario Limited for the year ended December 31, 2001 to which he attached a Notice to Reader Report dated June 23, 2002 and signed "KMD, LLP";
 - g) false financial statements for 142#### Ontario Limited for the year ended December 31, 2001 to which he attached a Notice to Reader Report dated June 23, 2002 and signed "KMD, LLP";
 - h) false financial statements for 399#### Ontario Limited for the year ended December 31, 2001 to which he attached a Notice to Reader Report dated June 23, 2002 and signed "KMD, LLP";
 - i) false financial statements for 399#### Ontario Limited for the year ended December 31, 2000 to which he attached a Notice to Reader Report dated June 26, 2001 and signed "KMD, LLP";
 - j) false financial statements for P. A. Rental & Leasing Ltd. for the year ended December 31, 2001 to which he attached a Notice to Reader Report dated August 26, 2002 and signed "KMD, LLP".
3. THAT the said Wajde Hassan Darwish, in or about the period January 1, 2000 to December 31, 2002, while engaged as the CFO for "The P. Group", failed to conduct himself in a manner that 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 he misappropriated approximately \$2 million from the companies comprising "The P. Group".
4. THAT the said Wajde Hassan Darwish, in or about the period January 1, 2000 through December 31, 2002, failed to conduct himself in a manner that 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 while engaged as the CFO of "The P.

Group” he falsified and manipulated the books and records of the companies comprising “The P. Group”.

5. THAT the said Wajde Hassan Darwish, in or about the period May 5, 2003 through December 15, 2003 failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct an investigation on behalf of the professional conduct committee, contrary to Rule 203.2(b) of the rules of professional conduct.

15. Mr. Darwish entered a plea of not guilty to each of the five charges.

OPENING STATEMENTS

16. Ms. Glendinning made an opening statement and filed a three volume Document Brief (Exhibit 14). She also filed a document entitled “Statement of Facts” (Exhibit 15). Ms. Glendinning advised the panel, and Mr. D’Ascenio confirmed, that the evidence with respect to Charges Nos. 1, 2, 4, and 5 would be uncontested. This evidence would be set out in Exhibit 15, the Statement of Facts. However, the Professional Conduct Committee reserved the right to call witnesses with respect to these four charges and Mr. D’Ascenio would be entitled to cross-examine such witnesses. Further, Mr. D’Ascenio stipulated that the evidence was being put forward on an uncontested basis on the understanding that that evidence would not be taken as an admission on Mr. Darwish’s part.

17. In addition to clarifying the basis on which Exhibit 15 was filed on consent, Mr. D’Ascenio also made an opening statement. He said that Charge No. 3 would be vigorously defended. He said that with respect to Charge No. 3 the panel would have to determine both whether or not Mr. Darwish was entitled to the money taken (was it owed to him) and whether he took it with the knowledge and approval of Mr. Kadrie.

THE EVIDENCE

18. Ms. Glendinning called Mr. Michael Bondy of the firm Kime, Mills, Dunlop LLP (KMD LLP) in London Ontario. KMD LLP were the external accountants for The P. Group owned by Mr. Emain Kadrie. KMD LLP had been the external accountants since 1993, and at one time Mr. Darwish worked for KMD LLP. In his evidence, Mr. Bondy made reference to documents set out in the Document Brief (Exhibit 14).

19. Mr. Bondy’s testimony commenced late in the afternoon of October 6, and he was still under cross-examination when the hearing adjourned on October 7.

CHARGE NO. 3 IS WITHDRAWN

20. As set out above, there were still difficulties with respect to the production of documents which Mr. Darwish was entitled to when the hearing reconvened on October 27, 2004. It was also clear, at that time, that it was highly unlikely the Professional Conduct Committee would be able to prove its case with respect to Charge No. 3 unless Mr. Kadrie was called as a witness.

21. In the course of the hearing on October 27, 2004, apparently after it became clear that Mr. Kadrie would not testify, the Professional Conduct Committee withdrew Charge No. 3. The withdrawal of Charge No. 3 in fact ended the contest between the parties. The Professional Conduct Committee closed its case, which consisted of the uncontested evidence set out in the Statement of Facts and the testimony of Mr. Bondy.

22. The panel heard submissions with respect to Charges Nos. 1, 2, 4 and 5. The hearing then recessed while the panel deliberated.

DECISION ON THE CHARGES

23. The panel is satisfied that the allegations set out in the four charges has been proven. Mr. Darwish attached false financial statements to Review Engagement Reports and Notice to Reader Reports, signed them KMD LLP and gave the reports to the Bank of Montreal or the Bank of Nova Scotia. He also falsified the books and records of The P Group. This is egregious professional misconduct and the panel finds Mr. Darwish guilty of Charges Nos. 1, 2, and 4.

24. Mr. Darwish also refused to cooperate with the investigator appointed by the Professional Conduct Committee. Accordingly, the panel finds him guilty of Charge No. 5.

25. When the hearing resumed, the Chair read the decision of the panel for the record. He said:

THAT, having seen, heard and considered the evidence, charge No. 3 having been withdrawn by the Professional Conduct Committee, and charge No. 2 having been amended at the hearing, the Discipline Committee finds Wajde Hassan Darwish guilty of charges Nos. 1, 2 as amended, 4 and 5.

SANCTION

26. Counsel made submissions with respect to sanction, following which the panel deliberated.

27. The order sent to the parties on November 9, 2004 reads as follows:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Darwish be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Darwish be and he is hereby fined the sum of \$25,000, 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. Darwish be and he is hereby charged costs fixed at \$5,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Darwish be and he is hereby expelled from membership in the Institute.
5. THAT notice of this Decision and Order, disclosing Mr. Darwish'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 the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in The London Free Press.
6. THAT Mr. Darwish 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.

REASONS FOR THE SANCTION

Reprimand

28. The panel concluded that a reprimand is required to stress to Mr. Darwish that his conduct is unacceptable.

Fine & Expulsion

29. Charges Nos. 1, 2, and 4 succinctly summarize misconduct which in and of itself requires a substantial fine and expulsion as a general deterrent.

30. It is also clear that the only way to specifically deter Mr. Darwish from misconducting himself as a chartered accountant is to expel him from membership so that he is not a chartered accountant.

31. Mr. Darwish's refusal to cooperate with officers, servants, or agents of the Institute, Charge No. 5, makes it clear that he is ungovernable and should be expelled on that basis.

32. Mr. Darwish undertook in writing not to apply for readmission to the Institute. This undertaking was accepted by the panel and taken into consideration when determining the appropriate sanction. As he is not a member his certificate of membership should be returned to the Institute.

NOTICE

33. The panel ordered notice of Mr. Darwish's expulsion, including notice in the *London Free Press* to make it known to the profession and the community where he lived and worked that he is no longer a member of the Institute.

COSTS

34. Mr. Darwish's misconduct is solely responsible for the costs of the investigation. The cost of the investigation and the hearing itself substantially exceed the amount of costs awarded, namely \$5,000. However, if the Professional Conduct Committee had withdrawn Charge No. 3 in September, 2004 rather than on the third day of the hearing, this would have been a one day hearing. As Charge No. 3 was ultimately withdrawn the panel thought the appropriate order for costs was \$5,000.

DATED AT TORONTO THIS 16TH DAY OF JANUARY, 2006
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

S.F. DINELEY, FCA
D.O. STIER, CA
H.G. TARADAY
R.A. VICKERS, FCA
N.C. AGARWAL (Public Representative)

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

APPEAL COMMITTEE

IN THE MATTER OF: An appeal by **WAJDE HASSAN DARWISH**, a suspended member of the Institute against the Decision and Order of the Discipline Committee made on October 27, 2004 pursuant to the bylaws of the Institute, as amended.

TO: Mr. Wajde Hassan Darwish
381 Rivertrace Close
London, ON N5G 5J8

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision Made February 13, 2007)

1. This appeal was heard by a panel of the Appeal Committee of the Institute of Chartered Accountants of Ontario on February 13, 2007. Mr. Paul Farley appeared on behalf of the Professional Conduct Committee. Mr. Darwish attended and was represented by Mr. William Trudell.

2. The following charges, as amended at the hearing before the Discipline Committee, were laid against Mr. Darwish by the Professional Conduct Committee on December 18, 2003:

1. THAT the said Wajde Hassan Darwish, in or about the period July 1, 2002 to September 30, 2002, while engaged as the CFO for "The P. Group", associated himself with reports, statements and representations which he knew were false, contrary to Rule 205 of the rules of professional conduct in that, without authority from the firm of chartered accountants "KMD, LLP" to use their name or letterhead, he prepared and delivered to the Bank of Montreal:
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 - c) false financial statements for B. Sales & Service (1968) Limited

for the year ended June 30, 2001 to which he attached a Review Engagement Report dated December 21, 2001 and signed "KMD, LLP";

- d) false financial statements for 139##### Ontario Limited for the year ended December 31, 2001 to which he attached a Notice to Reader Report dated June 23, 2002 and signed "KMD, LLP";
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2. THAT the said Wajde Hassan Darwish, in or about the period July 1, 2000 through November 30, 2002, while engaged as the CFO of "The P. Group", associated himself with reports, statements and representations which he knew were false, contrary to Rule 205 of the rules of professional conduct in that, without authority from the firm of chartered accountants "KMD, LLP" to use their name or letterhead, he prepared and provided to the Bank of Nova Scotia:
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 - c) false financial statements for T. Limited for the year ended December 31, 2000 to which he attached a Review Engagement Report dated June 25, 2001 and signed "KMD, LLP";
 - d) false financial statements for B. Sales & Service (1968) Limited for the year ended June 30, 2001 to which he attached a Review Engagement Report dated December 21, 2001 and signed "KMD, LLP";
 - e) false financial statements for B. Sales & Service (1968) Limited for the year ended ~~December 31, 2000~~ June 30, 2000 to which he attached a Review Engagement Report dated December 17, ~~2004~~ 2000 and signed "KMD, LLP";
 - f) false financial statements for 139##### Ontario Limited for the year ended December 31, 2001 to which he attached a Notice to Reader Report dated June 23, 2002 and signed "KMD, LLP";
 - g) false financial statements for 142##### Ontario Limited for the

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- h) false financial statements for 399### Ontario Limited for the year ended December 31, 2001 to which he attached a Notice to Reader Report dated June 23, 2002 and signed "KMD, LLP";
- i) false financial statements for 399### Ontario Limited for the year ended December 31, 2000 to which he attached a Notice to Reader Report dated June 26, 2001 and signed "KMD, LLP";
- j) false financial statements for P. A. Rental & Leasing Ltd. for the year ended December 31, 2001 to which he attached a Notice to Reader Report dated August 26, 2002 and signed "KMD, LLP".

- 3. THAT the said Wajde Hassan Darwish, in or about the period January 1, 2000 to December 31, 2002, while engaged as the CFO for "The P. Group", failed to conduct himself in a manner that 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 he misappropriated approximately \$2 million from the companies comprising "The P. Group".
- 4. THAT the said Wajde Hassan Darwish, in or about the period January 1, 2000 through December 31, 2002, failed to conduct himself in a manner that 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 while engaged as the CFO of "The P. Group" he falsified and manipulated the books and records of the companies comprising "The P. Group".
- 5. THAT the said Wajde Hassan Darwish, in or about the period May 5, 2003 through December 15, 2003 failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct an investigation on behalf of the professional conduct committee, contrary to Rule 203.2(b) of the rules of professional conduct.

3. The Decision and Order appealed from, dated November 9, 2004, reads as follows:

DECISION

THAT, having seen, heard and considered the evidence, charge No. 3 having been withdrawn by the Professional Conduct Committee, and charge No. 2 having been amended at the hearing, the Discipline Committee finds Wajde Hassan Darwish guilty of charges Nos. 1, 2 as amended, 4 and 5.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Darwish be reprimanded in writing by the chair of the hearing.
 2. THAT Mr. Darwish be and he is hereby fined the sum of \$25,000, 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. Darwish be and he is hereby charged costs fixed at \$5,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
 4. THAT Mr. Darwish be and he is hereby expelled from membership in the Institute.
 5. THAT notice of this Decision and Order, disclosing Mr. Darwish'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 the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in *The London Free Press*.
 6. THAT Mr. Darwish 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.
4. On this appeal, Mr. Darwish seeks that the decision and order of the Discipline Committee be set aside and that a decision be made dismissing the charges.

Background

5. On November 26, 2002, at the first hearing (the "First Hearing"), Mr. Darwish pleaded guilty to six charges of professional misconduct ("the Previous Charges"). He was found guilty and that Discipline Committee ordered, *inter alia*, that he be permitted to resign on the fulfillment of other terms of the order. To the date of this appeal that decision and sanction have not been appealed.
6. Subsequent to that hearing, a further complaint of misconduct regarding Mr. Darwish was received by the Professional Conduct Committee. The Professional Conduct Committee commenced an investigation on January 15, 2003, at the very latest, with the appointment of an investigator.

7. That investigation resulted in charges of professional misconduct being laid against Mr. Darwish on December 18, 2003. Hearing dates in October, 2004, were set.

8. Prior to the hearing date, Mr. Darwish brought a motion for the adjournment of one of the charges. That motion was denied. Mr. Darwish brought a series of preliminary motions at the outset of the hearing (the "Second Hearing"); these were all denied. On the third day of the hearing, Mr. Darwish brought a motion to stay the same charge he had attempted to have adjourned. After some discussion between counsel, that charge was withdrawn by the Professional Conduct Committee, and Mr. Darwish did not contest the evidence on the remaining charges.

9. At the Second Hearing, on October 27, 2004, Mr. Darwish was found guilty of certain charges and, *inter alia*, ordered expelled from the Institute. It is the decision and order arising from the Second Hearing which Mr. Darwish has appealed.

10. The bylaws of the Institute provide that the Decision and Order of the Discipline Committee are not final until the issuance of reasons and the expiry of the appeal period. The reasons for both the Decision and Order on the Previous Charges which were heard at the First Hearing were not released until January 16, 2006, the same day as the reasons were released relating to the charges heard at the Second Hearing.

11. At no time prior to the release of the reasons in the Second Hearing did Mr. Darwish object to the jurisdiction of the Professional Conduct Committee to investigate, or the Discipline Committee to hear, the charges under appeal which were heard at the Second Hearing.

12. Paragraph 8 of the reasons of the Discipline Committee in the Second Hearing indicated as follows:

Mr. Darwish had been found guilty of professional misconduct on November 26, 2002. The order of the Discipline Committee on that date permitted Mr. Darwish to resign his membership in the Institute on certain terms and conditions. The order was not finalized because of the ongoing investigation and eventually the charges made against Mr. Darwish on December 18, 2003, the charges Mr. Darwish faced at this hearing. But it was clear when the hearing began that Mr. Darwish would not continue to be a chartered accountant in Ontario.

13. It is the above-quoted paragraph which forms the primary basis for Mr. Darwish's appeal.

Submissions

14. Mr. Trudell, on behalf of Mr. Darwish, submitted that the Professional Conduct Committee and Discipline Committee lacked jurisdiction to investigate and dispose of the charges under appeal, as Mr. Darwish had been granted permission to resign prior to the commencement of the investigation and, thus, the Institute had no further jurisdiction over him.

15. Mr. Trudell further submitted that, even if the Professional Conduct Committee and Discipline Committee had jurisdiction over Mr. Darwish, the investigation and hearing were an abuse of process, a denial of natural justice and a breach of procedural fairness in violation of fundamental justice.

16. In support of the jurisdictional ground, Mr. Trudell argued that the Institute only has jurisdiction over members, not members who have resigned. Although Mr. Darwish remains a member of the Institute, he has been forced to do so against his will and against his interest by the conduct of the Discipline Committee on the First Hearing; namely, deliberately and inappropriately withholding their Reasons so that the Discipline Committee hearing the Second Hearing would retain jurisdiction.

17. The same argument is also relevant to Mr. Darwish's second ground of appeal. Mr. Trudell argued that the first Discipline Committee breached its duty to act fairly by withholding its Reasons and stopping Mr. Darwish from acting as he would otherwise have been entitled to. Mr. Trudell submitted that the Decision and Order of the Discipline Committee who heard the First Hearing created in Mr. Darwish a legitimate expectation that the matter would be finalized and he would be permitted to resign within a reasonable period of time after the First Hearing was concluded. The inordinate and improper delay frustrated that legitimate expectation, exposing Mr. Darwish to further peril, and tainted the prosecution relating to the Second Hearing.

18. Mr. Trudell further submitted the improper purpose of delay in issuing the Reasons arising from the First Hearing amounted to an abuse of process for which the only appropriate remedy would be the dismissal of the charges under appeal.

19. On behalf of the Professional Conduct Committee, Mr. Farley submitted that, as Mr. Darwish was and is a member of the Institute, the Professional Conduct Committee and Discipline Committee had jurisdiction to investigate and hear the matter under appeal.

20. Mr. Farley pointed out that there is no specific time period within which the Reasons of a Discipline Committee are to be issued, and that, even after issuance, the Decision and Order would not become final until the expiry of the appeal period, a period of approximately forty days from the issuing of the Reasons for Decision.

21. Therefore, at the time the investigation commenced into the charges under appeal, even if there had been no delay in the releasing of the reasons, Mr. Darwish would have been a member of the Institute.

22. Mr. Farley further submitted that resignations are governed by Bylaw 306, which reads:

- (1) Any member may submit a written application to resign from membership in the Institute to the membership committee unless:
 - (a) the member's practicing unit is the subject of a practice inspection or a practice reinspection;
 - (b) the member's professional conduct is

- i. the subject of an investigation by the professional conduct committee, or
- ii. the subject of charges made by the professional conduct committee;
- (c) the member has not fully complied with an order of the discipline committee or the appeal committee.

23. Based on that bylaw, he argued that, after the commencement of the investigation of the charges under appeal, Mr. Darwish would not have been permitted to resign and that, therefore, there was nothing improper in the Institute retaining jurisdiction over him. The delay in the release of the Reasons on the charges by the Discipline sitting on the First Hearing was irrelevant.

24. With respect to the second ground of appeal, Mr. Farley noted that Mr. Darwish had ample opportunity to challenge the jurisdiction of either the Professional Conduct Committee or the Discipline Committee, and he failed to do so. He urged this panel to find that such inaction was tantamount to acquiescence and to find that Mr. Darwish had waived any right to argue a denial of natural justice or an abuse of process.

25. Mr. Farley further submitted that Mr. Darwish's failure to object to the process before the Discipline Committee precluded an evidentiary record from being created, which has led to an appeal based on speculation rather than fact. In particular, he characterizes as speculative the assertion that Mr. Darwish would have resigned his membership in the Institute prior to the conclusion of the charges under appeal, and the statement that the Professional Conduct Committee had influenced the Discipline Committee in the First Hearing in the timing of the issuing of the Reasons for Decision.

26. In conclusion, Mr. Farley drew the panel's attention to the grave nature of the misconduct of which Mr. Darwish had been found guilty, and submitted that the public interest could not possibly be served by allowing the appeal.

27. In reply, Mr. Trudell argued that the order of the Discipline Committee permitting Mr. Darwish to resign over-rode the provisions of Bylaw 306 and that, therefore, Mr. Darwish's resignation was not contingent on his meeting the terms of that bylaw. He reiterated his position that, but for the undue delay in the release of the reasons on the previous charges, the Institute would have been without jurisdiction to deal with the charges under appeal.

Decision

28. After considering 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 allowed the appeal and ordered the matter remitted to the Discipline Committee for a new hearing.

Reasons

29. This was an extremely difficult appeal to decide. The charges of which Mr. Darwish was found guilty in the Second Hearing are extremely serious and strike at the very foundation of the profession. Mr. Darwish did not appeal his conviction at the

Second Hearing on the basis that he did not commit the misconduct of which he was found guilty. Nor is Mr. Darwish appealing based on any alleged error of the Discipline Committee which ordered Mr. Darwish's expulsion at the Second Hearing. In fact, this panel finds that, at the Second Hearing, the conduct of the Professional Conduct Committee and the Discipline Committee was entirely appropriate and proper.

30. Instead, this appeal is based on the action of another Discipline Committee who heard the First Hearing, whose Decision and Order have not been appealed. Further, Mr. Darwish does not argue that there was any error in the conduct or the results of the First Hearing. Rather, he submits that the action taken by the Discipline Committee after the conclusion of the First Hearing, in terms of delaying the release of the reasons with respect to the First Hearing has resulted in the Institute losing jurisdiction over Mr. Darwish and has resulted in a denial of natural justice and/or abuse of process.

Jurisdiction

31. Mr. Darwish's first ground of appeal is that the second investigation and hearing was without jurisdiction, as, had not the first Discipline Committee acted improperly in delaying the release of its Reasons, he would have been able to resign his membership in the Institute.

32. At the time that the Discipline Committee made its decision in the Second Hearing, Mr. Darwish had not been able to resign and, accordingly, the Institute had jurisdiction over Mr. Darwish. In other words, at the time of the Second Hearing there is no doubt that Mr. Darwish remained a member of the Institute. Why Mr. Darwish remained a member of the Institute is a different question which relates more to the second ground of Mr. Darwish's appeal. Accordingly, the Institute had jurisdiction over Mr. Darwish.

33. Given that the panel has decided that there was jurisdiction over Mr. Darwish, this panel does not have to decide for the purposes of this appeal whether Bylaw 306 governs all resignations including those which form part of a Discipline Committee Order. However, the Appeal Committee does not necessarily agree with Mr. Trudell's submission that, by the Discipline Committee on the First Hearing permitting Mr. Darwish to resign, it "over-rode" the provisions of Bylaw 306. That will have to be decided at a later time.

Natural Justice/ Abuse of Process

34. The panel found the second ground of the appeal more troubling. The appellant asserts that the sole purpose for the inordinately long delay in the issuance of the reasons for the previous charges was so that the Institute could improperly retain jurisdiction over Mr. Darwish. The only evidence of that purpose comes not from the Discipline Committee who heard the First Hearing, but the Discipline Committee on the Second Hearing and, in particular, paragraph 8 of its Reasons which is quoted above. This appeal panel is not prepared to find, based on the evidence before it, that the Discipline Committee who heard the First Hearing deliberately withheld its reasons so that the Institute could retain jurisdiction.

35. However, the fact remains that the Reasons were not issued until more than three years after the First Hearing and were released on the same day as the Reasons were released for the Second Hearing. These facts, on their face, give rise to the potential perception that the Reasons arising from the First Hearing were purposely delayed. The lengthy delay, and the reason for the delay as described by the Discipline Committee hearing the Second Hearing, gives the impression that the delay may have occurred to thwart Mr. Darwish's ability to resign.

36. There is nothing before this appeal panel to indicate that either Mr. Darwish or the Professional Conduct Committee was or should have been aware at the time of the Second Hearing that there was anything unusual in the process with respect to the First Hearing and, in particular, the reasons for the delayed release of the Reasons with respect to the First Hearing. Therefore, this is not an issue which could have or should have been raised at the Second Hearing, and the panel makes no adverse inference from the failure to do so.

37. The panel is not prepared to find that the Second Hearing constituted an abuse of process or constituted a breach of natural justice. However, because there may be a potential perception that the release of the Reasons with respect to the First Hearing was manipulated, that perception alone was sufficient to cause the appeal of the Second Hearing to be allowed. Justice must not only be done but be seen to be done.

New Hearing

38. The appellant has sought dismissal of the charges in the Second Hearing. We decline to do so. On the evidence before us, Mr. Darwish is charged with very serious professional misconduct. Those charges should be dealt with on their merits.

39. The appellant argued on this appeal that, if the Reasons from the First Hearing had been released earlier, the result in the Second Hearing might have been different. Accordingly, the appropriate remedy is to try, as best as possible, to put Mr. Darwish back in the position he would have been in had the Reasons arising from the First Hearing been released within a more reasonable time after the First Hearing concluded. By sending the charges in the Second Hearing back for a rehearing, Mr. Darwish will, to the extent possible, be put back in the position he would have been in if the Reasons in the First Hearing had been released in a more timely fashion.

DATED AT TORONTO THIS 16TH DAY OF APRIL, 2007
BY ORDER OF THE APPEAL COMMITTEE

C. J. BURKE, FCA – CHAIR
THE APPEAL COMMITTEE

MEMBERS OF THE PANEL:

R.D. DAWE, CA
P.B.A. CLARKSON, CA
M.A. PORTELANCE, CA
B. BOWDEN (PUBLIC REPRESENTATIVE)