

**CERTIFIED MANAGEMENT ACCOUNTANTS OF ONTARIO  
DISCIPLINE COMMITTEE**

Anne Mackenzie, CMA (Chair of the Panel)	]	
David Debenham, CMA	]	
James Karas, (Public Member)	]	Tuesday, 28 February 2012
Salim Somani, CA, LPA	]	

IN THE MATTER of the *Certified Management Accountants Act, 2010*, Statutes of Ontario 2010, C.6, Schedule B, as amended (the “Act”);

AND IN THE MATTER of a Hearing of a matter regarding the conduct of MEMBER as directed by the Complaints Committee of Certified Management Accountants of Ontario (the “Corporation”) to be held according to the Act and Bylaws of the Corporation and the Rules of Procedure of the Discipline Committee of the Corporation.

BETWEEN:

Certified Management Accountants of Ontario

(Applicant)

-and-

Member (the “Respondent”)

(Respondent)

---

**ORDER**

---

THIS HEARING was heard at Victory Verbatim, Ernst & Young Tower, Suite 900, 222 Bay Street, Toronto, Ontario M5K 1H6, on Tuesday, the 28<sup>th</sup> day of February 2012, in the presence of the lawyer for the Applicant, with the Respondent and the lawyer for the Respondent attending electronically.

ON READING THE NOTICE OF HEARING filed by the Applicant, and upon hearing the agreed statement of fact and reviewing the exhibits filed, and upon hearing the evidence of the Respondent, and upon hearing the submissions of the lawyer for the Applicant and of the lawyer for the Respondent.

1. THE DISCIPLINE COMMITTEE FINDS AND DECLARES that the Member is guilty of professional misconduct as that term is defined in Section 3.4(a) of the “Professional Misconduct and Code of Professional Ethics Regulation”.

2. THE DISCIPLINE COMMITTEE ISSUES, under the authority of paragraph 6 of section 35(4) of the *Act*, a Reprimand the particulars of which are attached to this Order; and DIRECTS that such Reprimand be recorded on the Respondent's record.
3. THE DISCIPLINE COMMITTEE ORDERS, under the authority of paragraph 11 of section 35(4) of the *Certified Management Accountants Act, 2010*, and paragraph 16.6 of the Discipline Committee Rules that:
  - notice of the decision and order of the Discipline Committee and brief particulars of the professional misconduct be published and shall be distributed to the Board and to the Members in the CMA Ontario journal; and
  - the decision and order of the Discipline Committee, together with the written reasons for the decision with brief particulars of the finding of professional misconduct, will be published and maintained in the public area of CMA Ontario's website;
  - the Discipline Committee determines that the disclosure of the name of the Member is not required in the public interest and its disclosure would be unfair to the Member,
4. THE DISCIPLINE COMMITTEE ORDERS, under the authority of paragraph 12.3 of the Discipline Committee Rules that the cost of the Electronic Hearing shall be borne by the Respondent.

IN THE MATTER of the *Certified Management Accountants Act, 2010*, Statutes of Ontario 2010, C.6, Schedule B, as amended (the "*Act*");

AND IN THE MATTER of a Hearing of a matter regarding the conduct of MEMBER as directed by the Complaints Committee of Certified Management Accountants of Ontario (the "Corporation") to be held according to the *Act* and Bylaws of the Corporation and the Rules of Procedure of the Discipline Committee of the Corporation.

BETWEEN:

Certified Management Accountants of Ontario

(Applicant)

-and-

Member ("the Respondent")

(Respondent)

---

## REASONS OF THE DISCIPLINE COMMITTEE

---

Per: Ms. Mackenzie, Mr Debenham and Mr. Somani:

The formal Order of the Discipline Committee having been issued, these are the reasons for the decision and Order.

The Discipline Committee held a Hearing at Victory Verbatim, Ernst & Young Tower, Suite 900, 222 Bay St., Toronto, Ontario M5K 1H6, on Tuesday, the 28<sup>th</sup> day of February 2011, to hear evidence, submissions and argument and to deliver its decision; all to consider matters arising out of a complaint regarding the conduct of Member, a Member of Certified Management Accountants of Ontario.

The panel of the Discipline Committee conducting the hearing was composed of:

Anne Mackenzie, CMA (Chair of Panel)

David Debenham, CMA

James Karas, (Public Member)

Salim Somani, CA, LPA

Counsel for the Applicant was Ms. Catherine M. Patterson of Ferguson Patterson, Barristers & Solicitors.

Counsel for the Respondent was Mr. Mathew Halpin of Norton Rose Canada LLP, Barristers & Solicitors.

Counsel for the Discipline Committee was Mr. Bryan J. Buttigieg, of Miller Thomson LLP, Barristers & Solicitors.

The Respondent and his counsel were present by a video conference connection (at their request).

Ms. Patterson advised the Committee that the Applicant and the Respondent have agreed to a Statement of Facts.

Ms. Patterson tendered a Notice of Hearing in this matter dated January 27, 2012; this was marked as Exhibit 1.

Ms. Patterson tendered a print-out of the Summary of the Allegations that appeared on the Corporation's website; this was marked as Exhibit 2.

## **Preliminary Matters**

As no objections were raised against the matter proceeding or as to the jurisdiction of the Discipline Committee to hear the matter, the hearing commenced.

## **Charges**

Ms. Patterson read the charges as set out in the Notice of Hearing (Exhibit 1), as follows:

1. as a CMA District Committee member, in emails sent to all or certain members of the Committee and CMA Ontario staff, the Member expressed offensive and derogatory personal opinions inconsistent with professional communications by a CMA such as:
  - (a) “He (MB) is a real person who make it in the real world, not those on T4 or academic who could not even earn any money on his/her own; sorry, I only respect people who can earn real money on his/her own”
  - (b) “I never appreciate people, like KP or for that matters, Public servants.”
  - (c) “I have contempt for senior Public servants who think they are so good that they should go public with their objections or opinions against Government, or public, which employed them. They should quit and earn their own wages on their own, like most of us do in the private sector, instead of “yelling” from an ivory tower. Public servants like KP, RC ... or those public servant turned Coimmission chairmen (they sucked the ass of incumbent PM or Minister)! don’t deserve my respect. I don’t know them nor what (want) to know them. Please don’t let my adrenalin boiling on these useless persons, like Wikileaks Founder...”; and
2. as a CMA District Committee member, the Member made unsubstantiated allegations against the Chair of the Committee accusing him of having an “apartheid” mentality that was not inclusive of visible minorities which he asserted that the Chair had carried over from his former home of South Africa. The Member made the accusation initially in an email sent to the Chair and two other members of the Committee and a CMA Ontario staff member. Several hours later, the Member sent the email to all members of the Committee. When the Chair asked for an apology from the Member, the Member invited the Chair to take legal action against him if he disagreed with the Member’s characterization of him.

## **Plea**

The Respondent pleaded not guilty to the charges.

## **Other Evidence**

Ms. Patterson tendered an Agreed Statement of Facts which was marked as Exhibit 3.

Ms. Patterson also tendered a joint documents brief (exhibit 4). Ms. Patterson and Mr, Halpin confirmed that the authenticity of all documents were admitted and no issue was taken as to the names of the senders and recipients or the dates and times on which any of the emails in the joint book of documents were sent or received.

Ms. Patterson indicated that this concluded the case for the prosecution.

Mr. Halpin then called the Member as a witness. Following his testimony in chief, the Member was cross-examined by Ms Patterson.

### **Findings on the Charge**

In our professional lives we are all asked to work together by treating each other with courtesy and in good faith. It is therefore not surprising that section 3.4(a) of the CMAO's Professional Misconduct and Code of Professional Ethics Regulation ("the Regulation") requires our members to treat each other with courtesy and good faith. The unfortunate facts of this case require this committee to define precisely what that means.

MEMBER is 56 years old. He was born in Malaysia. His first language is Mandarin. He came to Canada 21 years ago. He has worked in a number of fields before he started practicing for nine years in the area of financial services. He acquired a tax practice in 2007, and he has a thriving practice. He has been a Certified Management Accountant since 2009. MEMBER, through his counsel, has invited this committee to take note that he has certain language and cultural barriers, which we acknowledge. However MEMBER is sufficiently fluent in English to have written a book (that was edited for grammar) and to have conducted various e-mail communications in English, and given his testimony in English to the point that MEMBER has satisfied us that he is sufficiently conversant in English to make himself understood.

This is the first time MEMBER has come before the Disciplinary Committee, and we are confident that it will be the last time as well. Unfortunately he became involved in a series of unfortunate events that require some recitation in detail.

MEMBER was invited onto the CMAO Eastern Ontario District Committee ("the EOD") on or in the summer of 2009. The complainant PC took over as Chair of the EOD in the fall of 2010 from BM. MEMBER was appointed by the EOD to be an Event Manager for an event originally scheduled for February 17, 2011. MEMBER's view of his role as "Event Manager" was one of virtually complete autonomy; he selected the speaker, arranged the date, time and location of the event, and did everything to make the event a success. That was his understanding of what other Event Managers did. It is unclear whether that was because of the rules, implicit or explicit, of the EOD, or because of the management style of the EOD, or its Chair at the time, BM. In any event, MEMBER certainly believed that this was his event to organize. If it succeeded it was his success. If it failed it was his failure. He certainly took "ownership" of the event by offering to pay for any losses, even though it was his understanding that the EOD did not finance individual events on a "profit only" basis, and that it was only after all the events for the year had been completed that the EOD were concerned about whether they had showed a profit or loss for the year.

MEMBER's evidence is that, PC, an employee of a large public company, and MEMBER would engage in banter about political matters in which MEMBER would adopt what he considered a Conservative point of view a more pro-private sector viewpoint and one which expected senior public servants not to be involved in partisan politics, and MEMBER perceived PC to be a Liberal

who took a contrary view to his own on these issues. Unfortunately this banter became unwanted baggage as the two carried on their committee work.

When MEMBER, as Event Manager, suggested a successful private sector CEO as a speaker, MEMBER testified that a phone call took place with PC where PC appeared to express concern about whether this speaker could draw a sufficient crowd in Ottawa as a “government town”. This was a perceived challenge to MEMBER on two bases: (1) it interfered with his discretion to choose the speaker as the Event Manager, and (2) it displayed a bias toward the public sector. It also cut to the core of MEMBER being allowed to be the Event Manager at all, since MEMBER had no connections with public sector employees or those who, like PC, received a “T4” slip, and had no need for MEMBER’s tax planning practice which was geared to the needs of entrepreneurs. As a result MEMBER felt the need to defend himself with a “dig”, as he describes it, on the form of his e-mail that appears on page 2 of the Joint Book of Documents (JBD) and allegation 1 (a) of the Notice of Hearing. That comment, and the follow up comment made on page 3 of the JBD (which appears as allegation 1(b) of the Notice of Hearing), were made in the context of a dispute within a committee over the appropriateness of the guest speaker, and the Event Manager’s breadth of discretion to choose that speaker.

While these e-mails were intended as a “dig” at PC’s alleged political views, they could reasonably be taken as part of informal discourse of committee members until PC mentioned “as a side note” that he found the comments about public servants offensive (JBD, page 3). At this point PC sent MEMBER a clear message to stop the banter and adopt a more professional tone in their discourse. PC, like every other member, has a right to insist that CMAO business be free of such informal banter, and while members have a right of freedom of expression, that expression is not part and parcel of CMAO business. Once PC asked MEMBER to stop, MEMBER continued with his ‘rant’ on page 4 of the JBD, in which MEMBER alleges he qualified his criticism of public servants to only certain senior public servants. While MEMBER pressed the point beyond what he should have, the committee was not prepared to find his final e-mail as unprofessional conduct as alleged in paragraph 1(c) of the Notice of Hearing as MEMBER said it was his last word on the subject and the receivers of the e-mail accepted as such with RV admonishing MEMBER to “refrain from inserting personal opinions and comments regarding subjects that are not relevant to the Committee’s activity. Each one of us have [sic] their own personal opinion about almost anything in this world, and not all of us share the same opinion(s) and that is perfectly fine. Therefore, I would suggest that, next time, we should have these discussions off-line and separate from our correspondence and meetings as members of the CMA [EOD]”. Unfortunately this sage advice was not followed, as we shall see. While in other circumstances these immoderate comments about civil servants, if published beyond the committee, might arguably be discreditable conduct to the profession within the meaning of Section 3(4) (b) the comments were restricted to committee and we need not deal that argument on our facts. At this juncture the comments have not risen to the point of a personal attack on the integrity of another member, and so we are not prepared to make a finding of guilt with respect to paragraph 1 of the Allegations in the Notice of Hearing regarding s.3.4 (a) of the Regulation.

Unfortunately the matter did not proceed smoothly from there. While MEMBER was making every effort to make “his” event a success, the date had to be changed to March 17, which was St. Patrick’s Day, and the school break when many families left Ottawa for the holiday. This was decided at the January 10 meeting, which failed to reach a quorum because only 4 members attended. MEMBER testified that at that meeting it was decided that the committee needed more members for the committee since it could not even achieve a quorum.

Because MEMBER’s speaker could not necessarily be available on any other date MEMBER arranged for a new speaker on March 17. Once again it was a private sector speaker. Once again, while PC approved the new speaker, in MEMBER’s view he did so with reservations, because he queried MEMBER about cancelling and getting the deposit back if breakeven could not be achieved vis-à-vis monies raised by the event (March 9, e-mail, JBD, p 10). MEMBER understood that the EOD looked at break even from an annual point of view, and in his mind his event was being unfairly singled out to show a profit when others did not have to. He offered to make up the difference, as MEMBER was determined to make “his” event a success. He would get another sponsor if need be. MEMBER was clearly taking “ownership” and responsibility for making the event a success, a highly commendable trait on his part. MEMBER offered to get another sponsor. PC said the EOD already had an exclusive sponsor. The two hadn’t spoken since November, and as far as MEMBER was concerned, there was no room now for them to “step back” and to speak over the phone to calm the waters, to use the vernacular.

At the March 8 meeting 3 new candidates were put forward for membership, confirming the EOD’s desire for fresh blood. MEMBER’s event proceeded and over forty people attended, which was very close to the break even point. MEMBER invited attendees to join the committee in accordance with the January 10 mandate as he understood it. PC stated that there was no room for new members, perhaps because of the 3 new candidates. MEMBER saw this as another attempt to embarrass MEMBER, and PC’s attempt to compromise by allowing MP, the new member as a volunteer, as too little, too late. PC had not reacted appropriately to MEMBER’s complaints about his over-supervision of him as being embarrassing and be-littling to him (“losing face”), and MEMBER felt it was time to publicly accuse PC of biased and unfair behaviour by way of first a blackberry message to PC (JBD, p17), and then to the EOD and others by the same message being “cc’d” from his computer five minutes later under the subject line “Your failings” (JBD, p.19) . MEMBER had had enough of having his authority as Event Manager, and even as a member of the EOD, undermined. He resigned, and he wanted to make it clear why. The various points in the e-mail are very clear in accusing PC of being a racist. There was no linguistic miscommunication here. The repeated references to “visible minorities” and the reference to apartheid and PC coming from South Africa left no room for doubt as to why MEMBER thought PC has undermined his authority as Event Manager and even as a committee member --- PC was being accused of being a racist. This is a very serious allegation, for if PC had discriminated against MEMBER based on his being a visible minority that would undoubtedly be professional misconduct. In the face of such an allegation PC gave MEMBER an opportunity to consider his position and either demonstrate, or withdraw, the allegation of racism. PC made it clear that he found that an unproven allegation of racism as unprofessional conduct and would make a complaint to the CMAO if the allegation

persisted. MEMBER chose to stand by his allegation and invite PC to deal with his lawyers. The matter then proceeded through the usual channels to this Committee.

We are left with the question we started with. In our professional lives we are all asked to work together by treating each other with "courtesy and in good faith". What does that mean? "Courtesy" means that we treat each other with mutual respect and individual dignity. Sometimes this requires us to listen patiently to others as they express their personal views, but it is also subject to the right to insist that those views no longer be expressed when we find them offensive and we give notice to the speaker that offence has been taken. It certainly means that we do not make unfounded accusations of improper behaviour, of which racism is one of the most serious given that it is legislatively prohibited as well as being contrary to the rules of professional conduct. The appropriate course of action when one is being treated inappropriately is to seek an explanation of same, if that was practicable, as could have occurred in the circumstances of this case if RV's advice had been followed.

MEMBER experienced a severe and grievous adverse impact to his own sense of dignity and self-respect and dignity as a result of perceiving that he was treated differently by PC on several occasions including, challenging his choice of speaker in November, appearing to require his event to run at a profit when profitability was only viewed from an annual perspective for other events, MEMBER inferring that PC was hinting at cancelling his Event by asking about the return of the deposit from the venue and later hinting that MEMBER should resign, PC said MP (MEMBER's candidate for the EOD) was not welcome to join as a member, PC "cc'd" JD when he was told by MEMBER not to do so, and finally PC required MEMBER not to take any further initiatives on behalf of the EOD without his permission, or that of RV.

If PC had been allowed to respond to these detailed allegations of differential treatment we do not know how he would have responded. Whether PC would have alleged that (1) MEMBER misunderstood the autonomy given to an Event Manager because he had not been party to previous Chair-Event Manager communications since disputes were handled by private e-mails or off-line, (2) he and his predecessor simply had different styles as chairs, and he was more "hands on", (3) whether he would agree that MEMBER was being treated differently, (4) whether he had legitimate grounds for treating MEMBER differently, or whether there was a personality clash, (4) whether he was acting under the advice or direction of JD or someone in the EOD, (5) political disagreements or personality clashes had infected the relationship, or (6) there was some other reason for any allegedly differential treatment, we will never know.

What we do know is that MEMBER did not persist in the allegations against PC and he offered a belated apology, and now both parties considered the matter closed, although the Corporation did not. This leaves us with an unfounded allegation of racism (and that allegation is unmistakable, and not the result of any miscommunication, language of cultural barriers). On the other hand MEMBER's feelings of embarrassment are just as genuine as his sense of outrage for not only not being appreciated for all his hard work for the EOD, but for what he feels was his public denigration, if not humiliation for his efforts. In these circumstances the Committee feels that the facts of this case should form an "object lesson" on how not to behave in the face of perceived unfair treatment, and

not an "abject lesson" in the sense of an excessively harsh or vile punishment made to teach a lesson by publishing his name and our findings so that he can be further humiliated by our findings, which are intended to instruct not to punish, in this case.

MEMBER gave evidence that in Canada people don't question other person's credentials--- if someone says he is a doctor, then he is accepted as a doctor. He then asked why PC kept questioning him and what he said. The larger point that MEMBER missed is that as a matter of professional courtesy, we do not assume the worst of fellow members, we assume the best, and conduct ourselves accordingly. If something is amiss, we assume an innocent explanation and not impropriety. We accept an innocent explanation in the absence of evidence to the contrary, and in the face of evidence of impropriety we turn the evidence over to the proper authorities, who then determine proper or improper behaviour based on a presumption of innocence. All of these principles are subsumed in the idea of treating members with courtesy and good faith. MEMBER's good faith belief in PC's "guilt" is therefore not a defence. One has to act with courtesy, based on mutual respect and dignity, and give a fellow member the benefit of the doubt whatever one's innermost belief of guilt or innocence may be. In this MEMBER failed the test of courtesy toward PC and his personal conviction that PC treated him differently because he was a visible minority is not a defence to his discourteous behaviour.

MEMBER testified that his instinct was much the same as the Toronto shopkeeper who chased a shoplifter down the street, and who was charged with assault by the police--- that he felt impelled to self-help in the face of being insulted to the very core of his being. He also testified that he has learned his lesson, and than in future he will seek the assistance of the appropriate authorities if he feels he has been wronged rather than resort to self-help. MEMBER is a successful member of the CMAO who has expended much time, energy and personal resources supporting EOD, and it is important that we recognize his valuable contribution when we weigh the appropriate remedy in this case. We recognize MEMBER's contributions as a member who has demonstrated a keen interest to contribute of his time and resources to the profession through his dedication of time to the district association, his willingness to contribute to any losses for his event, his willingness to share newly purchased audio visual equipment and his staff's time to the event. We also acknowledge that in a number of e-mails he tried to draw back from the conflict by trying to resolve things amicably (pages 14, 15 of JBD) and that we are satisfied that he has learned his lesson, and while this does not absolve him of his responsibility to be courteous, the Committee recognizes his contribution to the CMAO and his efforts in this decision. In order to balance the scales however we also must recognize PC's efforts in a variety of e-mails to placate MEMBER's concerns both in terms of ultimately approving his choice of speakers, allowing MP to sit as a volunteer on the EOD, and in his other comments where he appeared to at least meet MEMBER half way, but which MEMBER perceived as extending an open right hand while he was being slapped with the left. PC's e-mails quite reasonably bear a benign interpretation of a newly appointed Chair trying to assist an Event Manager, and the Committee does not accept MEMBER's more cynical interpretation of those communications (although we accept MEMBER truly believes his interpretation). We see nothing in the evidence to suggest that MEMBER failed to act with competence, or failed to devote himself to high ideals of personal honour and professional integrity. MEMBER thought he was defending his

right to be recognized as a competent Event Manager, and he was defending his personal sense of personal honour and professional integrity. He simply went about it the wrong way. In the end result the EOD lost two valuable volunteers, as PC made extensive efforts to ensure the event was a success and also tried to pull back from a final irreconcilable conflict with MEMBER until the very end. Alas, it was not to be and the CMAO, and the EOD, are the poorer for it.

## **Publication**

Some of the closing submissions of the Corporation were not helpful. It does not assist this body to provide guidelines from other jurisdictions as to what is professional conduct if the Corporation does not publish the guidelines for CMAO members to follow. While limiting publication lessens transparency, we could help but follow recent precedents of this body where we had made non-publication orders in far more serious circumstances. There was no submission that there had been a notice to the profession by way of the website, newspapers and the like that CMAO policy has changed regarding publication to suggest that in the face of those precedents henceforth the Corporation would seek publication on a "names included" basis in order to increase the transparency of the CMAO, and that the members should govern themselves accordingly.

## **Costs**

In a similar vein, a regulatory amendment that allows this body to award costs is not a mandate to award costs, particularly when the regulations suggest that the member may be awarded costs of an electronic hearing, but no costs may be awarded against the Corporation. In these circumstances this committee was again guided by its past practices on the theory that like cases should be decided alike, and we found MEMBER's transgression to be on the lower end of the scale of cases decided by this committee. MEMBER has satisfied us that his error of judgment in not withdrawing his accusation at PC's invitation, and persisting with it after having been given an opportunity to withdraw, was a transitory error of judgment that will not be repeated.

## **Order**

Accordingly we ordered as follows:

"The Member is hereby reprimanded for his/her conduct pursuant to Section 35 (4)6 of the CMA Act and such reprimand shall remain on the Member's record. However, any publication of this reprimand shall not make any reference to the member or any other party personally in accordance with Section 15.6.1 of the CMA Discipline Committee Rules as to do so is not required in the public interest and its disclosure would be unfair to the Member. The Member bears his own costs of the electronic hearing"

All of which is submitted this 28<sup>th</sup> day of February 2012

Per: Mr James Karas (dissenting):

I have had the benefit of reading the reasons of my fellow Panel members. I find myself unable to agree with their decision that a finding of guilt is appropriate based on evidence before us.

The evidence for the prosecution was presented to us in the form of an agreed statement of facts (Ex 3). No witness was called by the prosecutor. Instead she relied solely on the agreed statement of facts to support her position that the member should be convicted of all charges. The member testified in his own defence at some length and was cross examined by the prosecutor. Neither party called the complainant as a witness.

MEMBER has a successful practice. He was invited to volunteer with the CMAO Eastern Ontario District Committee ("EOD") by a former chair. All the events in question took place in the course of his volunteer work for the EOD. There is no suggestion that MEMBER stood to gain anything financially from being a member of the EOD. He gave freely of his time to the EOD. One of the responsibilities he undertook was the organization of an EOD dinner event.

MEMBER's evidence before us described incidents of personal conflict between himself and the complainant, PC who at the time was the new chair of the EOD. He described the conflict as initially being "political banter" which appears to have escalated to the point where he felt he had been humiliated by PC before the other members of the EOD resulting in MEMBER resigning and his sending the unfortunate e-mail that gave rise to the complaint.

In his evidence, MEMBER described that he felt PC consistently treated him differently than other members of the EOD by questioning MEMBER's decisions and activities related to his EOD responsibilities. In particular, MEMBER described how his initial choice of a speaker for the proposed EOD event was challenged by PC both during a telephone conversation and in subsequent e-mails. As the event approached, MEMBER was questioned by PC about the enrolment numbers and was given reason to believe that PC was considering cancelling the event as late as one week before its scheduled date. When MEMBER, during the event (which by all accounts was successful) and believing he was following the direction established by the committee, solicited and found a willing volunteer committee member, he was completely unprepared for the reaction of PC who informed him that the committee was "full". MEMBER tried to convey to us the significance of what would happen if he were forced to tell the volunteer that there was no room on the committee after he had publicly announced the EOD was looking for new volunteers: in his own words this would cause him to "lose face". Words alone however, do not describe the cultural significance to MEMBER of such an outcome. In describing how he felt to us MEMBER broke down and cried. The same happened when he heard his counsel describe these events in his closing submissions. The events in question took place almost a year ago. Yet the pain is clearly still very real to MEMBER.

The sincerity of MEMBER's reaction was unchallenged before us. His view that he felt consistently belittled by PC was also unchallenged. No evidence was put forward to contradict or challenge his statement that in his view PC would compliment him with one hand and slap him in the face with the other at the same time.

For reasons unknown to us, the Panel did not have the benefit of hearing from the complainant. In reaching my decision, I am making no assessment of the conduct of the complainant. Nor would it be fair of me to do so under the circumstances. I am not prepared on the evidence before us to reach any conclusion that the complainant was indeed biased against MEMBER as alleged by MEMBER or that PC intended his actions or words to have the effects they did on MEMBER. At the same time, I have no doubt about the truthfulness of MEMBER's assertions about how he felt he was being treated by PC and there is no evidence to contradict the fact that he felt completely humiliated by PC's conduct regardless of any objective intentions on the part of PC to insult.

I agree that the member should have chosen his words more carefully. I find that the member regrets what he did. MEMBER has provided an apology to PC which has been accepted. In my view, the impact of PC's conduct on MEMBER affected MEMBER to the very core of his being in a way that is difficult for those of us of a different culture to fully appreciate. But having had an opportunity to hear and view MEMBER in person I have no doubt of the sincerity of his description of how fundamentally hurt he was by his perception of the events that unfolded in his dealings with PC. Faced with this uncontradicted evidence I find myself unable to find the member guilty of professional misconduct in reacting the way he did. What transpired was unfortunate. It should have been handled in a different way. But the events must be evaluated in the overall context as best as it can be determined from the evidence before us. In doing so I simply find myself unable to agree with the decision of my fellow panel members and would direct that all charges against MEMBER be dismissed.

All of which is submitted this 28<sup>th</sup> day of February 2012