

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **Derek A. de Gannes, CPA, CA**, a member of the Chartered Professional Accountants of Ontario, under **Rules 201.1, 202** and **303.1** of the CPA Ontario Rules of Professional Conduct and CPA Ontario Code of Professional Conduct

BETWEEN:

**Chartered Professional Accountants of Ontario
Professional Conduct Committee**

-and-

Derek A. de Gannes

APPEARANCES:

For the Professional Conduct Committee: Kelvin Kucey, Counsel

For Mr. de Gannes: James Lane, Counsel

Heard: February 11, 2022

Decision and Order effective: February 11, 2022

Release of written reasons: March 14, 2022

REASONS FOR THE DECISION AND ORDER MADE FEBRUARY 11, 2022

I. OVERVIEW

- [1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario ("PCC") has alleged that Mr. Derek de Gannes engaged in professional misconduct, by way of three separate Allegations.
- [2] This hearing was held to determine whether the Allegations were established and whether the conduct breached Rules 201.1, 202 and 303.1 of the CPA Ontario Rules of Professional Conduct and CPA Ontario Code of Professional Conduct, and whether the conduct amounted to professional misconduct.

- [3] Mr. de Gannes obtained his CA designation in 1988 and has been a member of CPA Ontario and its predecessor Institute since 1988.
- [4] From March 2005 to December 2009, Mr. de Gannes was employed by Soberman LLP, now Crowe Soberman LLP, holding the title of Senior Manager, Tax.
- [5] From January 2010 to September 2017, Mr. de Gannes was employed by CW Partners LLP, now Baker Tilly LLP. He was promoted from the title of Senior Manager, Tax to Tax Partner in January 2012.
- [6] In October 2017 Mr. de Gannes was employed as Director, Domestic and International Tax, at Collins Barrow (Toronto), which merged with RSM Canada LLP in December 2017.
- [7] From December 2017 to May 2019, Mr. de Gannes was employed with RSM as Lead Tax Director. He was promoted to Senior Director – Business Tax in May 2019 and was then named Senior Director – Private Client Services, in June 2020.
- [8] Mr. de Gannes left RSM on or about September 14, 2021 and is currently unemployed.

II. THE COMPLAINT AND THE ALLEGATIONS

- [9] On February 4, 2020, a former client of Mr. de Gannes, SC, filed a complaint against Mr. de Gannes with the CPA Ontario.
- [10] Mr. de Gannes was engaged to prepare and file corporate and personal tax returns for SC and her company GH Ltd. for a period of twelve years. SC complained that for a period of eight years, Mr. de Gannes failed to file the corporate tax returns for GH Ltd., he failed to inform SC that he had not filed the corporate tax returns for GH Ltd., and he advised SC that GH Ltd. would have no corporate tax liabilities, when in fact there were significant amounts owing.
- [11] In addition, Mr. de Gannes failed to provide information and documents to SC upon request and failed to provide SC's successor accountants with information in a timely manner.
- [12] On or about October 17, 2019, CRA assessed GH Ltd. as owing \$333,707.11 in back taxes. GH Ltd. was required to pay an additional \$73,618.10; \$40,713.21 in interest and \$32,904.89 in penalties, due to the late filings.

- [13] Mr. de Gannes admitted the Allegations of professional misconduct made by the PCC and admitted that his conduct breached Rules 201.1, 202 and 303.1 of the CPA Ontario Rules of Professional Conduct and CPA Ontario Code of Professional Conduct and constituted professional misconduct.

III. PRELIMINARY ISSUES

- [14] At the outset of the hearing, the parties informed the Panel that they had agreed to two minor changes to the Agreed Statement of Facts (“ASF”). The parties were instructed by the Panel to make the change to the ASF, to initial the changes, and to file the amended ASF. The parties filed the amended ASF on the day of the hearing. The Panel had marked the original ASF as Exhibit 1. The Panel simply replaced the original ASF with the amended ASF, marked as Exhibit 1.

IV. ISSUES

- [15] The Panel identified the following issues arising from the Allegations:
- A. Did the evidence establish, on a balance of probabilities, the facts on which the Allegations by the PCC were based?
 - B. If the facts alleged by the PCC were established on the evidence on a balance of probabilities, did the Allegations constitute professional misconduct?

V. DECISION

- [16] The Panel found that the evidence established, on a balance of probabilities, the facts set out in the Allegations of professional misconduct.
- [17] The Panel was satisfied that the Allegations constituted a breach of Rules 201.1, 202 and 303.1 of the CPA Ontario Rules of Professional Conduct and CPA Ontario Code of Professional Conduct and, having breached these Rules, Mr. de Gannes committed professional misconduct.

VI. REASONS FOR THE DECISION ON MISCONDUCT

Findings Regarding the Conduct of Mr. de Gannes

- [18] The parties filed an ASF, which was made Exhibit 1. The parties provided supporting documentation for the ASF via a Document Brief, which was made Exhibit 2. The parties tendered no further evidence in the conduct portion of the hearing, or in the sanction portion.
- [19] SC first engaged Mr. de Gannes in 2007 to prepare and file her personal tax returns and the corporate tax returns for GH Ltd.
- [20] SC suffers from a learning disability and relies heavily on her professional advisers to provide her with thorough and comprehensive advice.
- [21] From 2007 to 2018, Mr. de Gannes fulfilled the terms of his engagement without incident in relation to the preparation and filing of SC's personal tax returns and the T5's pertaining to GH Ltd. and SC. He also filed the corporate tax returns of GH Ltd. for the years 2006 to 2011.
- [22] Mr. de Gannes failed, however, to file the corporate tax returns of GH Ltd. for the years 2012 to 2018.
- [23] Each year from 2013 to 2019, Mr. de Gannes informed SC that he had filed GH Ltd.'s corporate tax returns for the previous year and that there was no corporate tax owing. These representations were false.
- [24] Moreover, in each of 2013, 2014, 2015, 2016 and 2017, Mr. de Gannes received notices from Canada Revenue Agency ("CRA") to file the corporate tax returns of GH Ltd. for the previous year. Mr. de Gannes failed to respond to these notices and failed to inform SC that he had received these notices.
- [25] On or about January 15, 2019, SC, through Mr. de Gannes' former employer, Crowe Soberman LLP, learned that GH Ltd.'s tax returns had not been filed since 2011.
- [26] From January 15, 2019 to July 2019, SC attempted to contact Mr. de Gannes regarding the information passed on to her from his former employer. Mr. de Gannes failed to respond to SC's communications in a timely way and failed to provide her with the documents and information she requested from him.
- [27] In July 2019, SC retained G&G Partnership ("G&G") as successor accountants. Mr. de Gannes failed to respond to G&G's requests for relevant information and documentation in a timely manner.
- [28] In or about August 2019, G&G processed GH Ltd.'s taxes for 2012-2018.

- [29] On or about October 17, 2019 CRA assessed GH Ltd. as owing \$333,707.11. GH Ltd. was required to pay an additional \$73,618.10; \$40,713.21 in interest and \$32,904.89 in penalties, due to the late filings.
- [30] A Request for Taxpayer Relief, regarding the penalties and interest remains outstanding.

Finding of Professional Misconduct

- [31] Through the ASF, Mr. de Gannes admitted that these facts constitute professional misconduct in relation to the three Allegations before the Panel.
- [32] The Panel concluded that the Allegations, having been proven on a balance of probabilities, through clear and cogent evidence, constituted breaches of Rules 201.1, 202 and 303.1 of the CPA Ontario Rules of Professional Conduct and CPA Ontario Code of Professional Conduct.

VII. DECISION AS TO SANCTION

- [33] The parties presented a joint submission on sanction to the Panel. The salient features of the joint submission are a six-month suspension and a \$10,000 fine.
- [34] The Panel accepted the joint submission of the parties and ordered, *inter alia*, that Mr. de Gannes be suspended for six months, effective immediately, and pay a \$10,000 fine by February 10, 2023.
- [35] The Panel also administered an oral reprimand pursuant to the joint submission.

VIII. REASONS FOR THE DECISION ON SANCTION

- [36] The Panel recognizes that a joint submission is entitled to a high level of deference. A joint submission should be adopted unless it is contrary to the public interest or would bring the regulatory process into disrepute because it was beyond the reasonable range of sanction. In the words of Justice Moldaver in the matter of *R. v. Anthony Cook*:¹

[34] ... a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that

¹ [*R. v. Anthony-Cook*, 2016 SCC 43 ¶ 34](#)

its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold — and for good reason, as I shall explain.

- [37] The Committee agreed that a six-month suspension was an appropriate sanction given the gravity of the misconduct. SC is a person with a disability. She trusted her professional advisers to be competent and trustworthy. Not only did Mr. de Gannes fail to provide her with competent service, he misled her about the services provided.
- [38] The consequences of Mr. de Gannes' conduct are significant. CRA has assessed GH Ltd. as owing \$333,707.11 in back taxes. Moreover, GH Ltd. was required to pay an additional \$73,618.10 in interest and penalties. Although SC has filed a Request for Taxpayer Relief, it has not yet been determined. Even if she is successful in her bid for relief, Mr. de Gannes' conduct placed her at risk of having to pay these additional costs.
- [39] The Panel is extremely disappointed in Mr. de Gannes for conducting himself in this manner. A CPA designation connotes professionalism, integrity and trustworthiness. Mr. de Gannes was a senior member of the profession who rose to prominence at the various firms with which he practiced. Members of the public should be able to rely on a senior CPA such as Mr. de Gannes to be reliable, dependable, and candid. Mr. de Gannes' conduct vis-à-vis SC, is just the opposite and is a blight on the good reputation of the profession.

IX. COSTS

- [40] The parties disagreed with respect to the quantum of costs. Counsel for the PCC requested a costs order equal to two thirds of the actual costs expended in the investigation and prosecution of this matter. Counsel for Mr. de Gannes sought a costs order equal to half the actual costs expended to investigate and prosecute this matter.
- [41] The law is settled that an order against Mr. de Gannes for costs with respect to the disciplinary proceeding is not a penalty. Costs are intended to indemnify the PCC, based on the underlying principle that the profession as a whole should not bear all the costs of the investigation, prosecution and hearing arising from the member's misconduct.

- [42] Costs are awarded at the discretion of the Discipline Committee. It has become customary for the PCC to file a Costs Outline, and to seek 2/3 of the costs incurred in the investigation and prosecution of the matter.
- [43] The PCC Costs Outline was made Exhibit 3. It totals \$44,228.12, 2/3 of which amounts to \$29,485.13.
- [44] Mr. de Gannes sought a costs order in the amount of \$22,000, representing roughly half of the costs incurred by the PCC. Counsel for Mr. de Gannes provided the following reasons in support of this request:
- The Panel should be careful not to settle too comfortably into any rule of thumb such as a default position that 2/3 is appropriate;
 - Mr. de Gannes took full responsibility for his conduct at the investigation phase of this matter, and signed an ASF, thus shortening the proceedings;
 - Had Mr. de Gannes contested the Allegations, the hearing would have taken several days, and required multiple witnesses; and
 - Imposing a costs order representing 50% of the costs rather than 2/3 would send a strong message to the profession that settlement is encouraged and rewarded.
- [45] The Panel is not persuaded by these submissions. Had the hearing been fully contested, the costs would have been exponentially greater. Assuming the PCC was able to prove the misconduct after a contested hearing, Mr. de Gannes would be liable for costs far in excess of the \$29,485.13 sought and ordered in this matter. That fact, in and of itself, is an obvious incentive for members to settle matters and avoid contested hearings. A further reduction is neither necessary as a means to encourage settlement, nor does it align with the principle that the profession ought not to shoulder an unreasonable proportion of the cost of investigations and discipline.
- [46] The Panel agrees with Mr. de Gannes that an award of costs is discretionary. Mr. de Gannes did not provide evidence of impecuniosity or strained financial circumstances, or any other evidence relevant to an award of costs. In the absence of such evidence, the Panel sees no reason to depart from the customary award representing 2/3 of the actual costs.
- [47] The Panel orders a cost award of \$29,485.13, payable on or before February 10, 2023.

Dated this 14th day of March, 2022

A handwritten signature in black ink, appearing to read 'Fahad Meer', with a horizontal line above it and a flourish below.

Fahad Meer, CPA, CA
Discipline Committee – Deputy Chair

Members of the Panel

Timothy Galvin, CPA, CA, CMA, LPA
Brian Mbesha, CPA, CGA
Catherine Kenwell, Public Representative
Marianne Park, Public Representative

Independent Legal Counsel

Lisa Freeman, Barrister & Solicitor