

THE CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
and
THE CERTIFIED GENERAL ACCOUNTANTS OF ONTARIO

(CERTIFIED GENERAL ACCOUNTANTS ACT, 2010)
(CHARTERED ACCOUNTANTS ACT 2010)

TO: Elie Moyal, CPA, CGA

AND TO: The Discipline Committees of CGA Ontario and CPA Ontario

The Professional Conduct Committee of CGA Ontario hereby makes the following allegations against ELIE MOYAL, a member of CPA Ontario and CGA Ontario:

1. THAT the said Elie Moyal, in or about the period January 1, 2014 through September 30, 2014, while acting as accountant for "AC" and "RC", engaged in misconduct of a reprehensible or serious nature which reflected adversely on his honesty, integrity or trustworthiness, in that he misappropriated approximately \$30,000 from his clients, contrary to Rule 108 of the Rules of Conduct of CGA Ontario.
2. THAT the said Elie Moyal, in or about the period May 1, 2014 through September 30, 2014, while acting as accountant for "A Inc." engaged in misconduct of a reprehensible or serious nature which reflected adversely on his honesty, integrity or trustworthiness, in that he misappropriated approximately \$4,260 from his client, contrary to Rule 108 of the Rules of Conduct of CGA Ontario.
3. THAT the said Elie Moyal, in or about the period April 1, 2013 through September 30, 2014, while acting as accountant for "136XXXX Ontario Limited", engaged in misconduct of a reprehensible or serious nature which reflected adversely on his honesty, integrity or trustworthiness, in that he misappropriated approximately \$3,275 from his client, contrary to Rule 108 of the Rules of Conduct of CGA Ontario.
4. THAT the said Elie Moyal, in or about the period October 1, 2013 through September 30, 2014, while acting as accountant for "HG", engaged in misconduct of a reprehensible or serious nature which reflected adversely on his honesty, integrity or trustworthiness, in that he misappropriated approximately \$1,300 from his client, contrary to Rule 108 of the Rules of Conduct of CGA Ontario.

The Professional Conduct Committee of CPA Ontario hereby makes the following allegations against ELIE MOYAL, a member of CPA Ontario and CGA Ontario:

5. THAT the said Elie Moyal, in or about the period July 2, 2014 through September 30, 2014, while acting as accountant for AC and RC, failed to conduct himself in a manner which would maintain the good reputation of the profession and its ability to serve the public interest, in that he misappropriated approximately \$30,000 from his clients, contrary to Rule 201.1 of the Rules of Professional Conduct of CPA Ontario.
6. THAT the said Elie Moyal, in or about the period July 2, 2014 through September 30, 2014, while acting as accountant for A Inc. failed to conduct himself in a manner which would maintain the good reputation of the profession and its ability to serve the public interest, in that he misappropriated approximately \$4,260 from his client, contrary to Rule 201.1 of the Rules of Professional Conduct of CPA Ontario.
7. THAT the said Elie Moyal, in or about the period July 2, 2014 through September 30, 2014, while acting as accountant for 136XXXX Ontario Limited, failed to conduct himself in a manner which would maintain the good reputation of the profession and its ability to serve the public interest, in that he misappropriated approximately \$3,275 from his client, contrary to Rule 201.1 of the Rules of Professional Conduct of CPA Ontario.
8. THAT the said Elie Moyal, in or about the period July 2, 2014 through September 30, 2014, while acting as accountant for HG, failed to conduct himself in a manner which would maintain the good reputation of the profession and its ability to serve the public interest, in that he misappropriated approximately \$1,300 from his client, contrary to Rule 201.1 of the Rules of Professional Conduct of CPA Ontario.

Dated at Guelph, Ontario this ^{30th} day of ~~MARCH~~, 2017



D.J. CREMASCO, FCPA, FCA, CHAIR
PROFESSIONAL CONDUCT COMMITTEE

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against Elie Moyal, a member, under **Rule 108** of the Rules of Conduct of CGA Ontario and **Rule 201.1** of the Rules of Professional Conduct of CPA Ontario.

TO: Mr. Elie Moyal

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE AUGUST 29, 2017

DECISION

The Discipline Committee, having seen and considered the evidence, including the agreed statement of facts filed, finds:

THAT Allegation Nos. 1, 2, 3, 4, 5, 6, 7 and 8 have been established;

THAT Rule 108 of the Rules of Conduct of the Certified General Accountants of Ontario and Rule 201.1 of the Rules of Professional Conduct of the Chartered Professional Accountants of Ontario have been breached; and

THAT Elie Moyal (Mr. Moyal) has thereby committed professional misconduct.

ORDER

IT IS ORDERED in respect of the Allegations:

1. THAT Mr. Moyal be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Moyal be and he is hereby fined the sum of \$20,000, to be remitted to the Chartered Professional Accountants of Ontario ("CPA Ontario") within eighteen (18) months from the date this Decision and Order is made.
3. THAT Mr. Moyal's membership in CPA Ontario be and it is hereby revoked.
4. THAT notice of this Decision and Order, disclosing Mr. Moyal's name, be given in the form and manner determined by the Discipline Committee:
 - a) to all members of CPA Ontario,
 - b) to all provincial bodies,and shall be made available to the public.
5. THAT notice of the revocation of membership, disclosing Mr. Moyal's name, be given by publication on the CPA Ontario website and in *The Globe and Mail* newspaper. All costs associated with the publication shall be borne by Mr. Moyal and shall be in addition to any other costs ordered by the committee.

6. THAT Mr. Moyal surrender all certificates issued by CPA Ontario or its predecessor, including any membership certificate granting the Certified General Accountant (CGA) and Chartered Professional Accountant (CPA) designation, to the Adjudicative Tribunals Secretary within ten (10) days from the date this Decision and Order is made.

IT IS FURTHER ORDERED:

7. THAT Mr. Moyal be and he is hereby charged costs fixed at \$27,000, to be remitted to CPA Ontario within eighteen (18) months from the date this Decision and Order is made.

DATED AT TORONTO THIS 31st DAY OF AUGUST, 2017
BY ORDER OF THE DISCIPLINE COMMITTEE



DIANE WILLIAMSON
ADJUDICATIVE TRIBUNALS SECRETARY

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against Elie Moyal, a member, under **Rule 108** of the Rules of Conduct of CGA Ontario and **Rule 201.1** of the Rules of Professional Conduct of CPA Ontario.

TO: Mr. Elie Moyal

AND TO: The Professional Conduct Committee

REASONS

(Decision and Order made August 29, 2017)

1. This tribunal of the Discipline Committee met on August 29, 2017 to hear allegations of professional misconduct brought by the Professional Conduct Committee (PCC) against Elie Moyal, a Member of CPA Ontario.

2. Ms. Tamara Center appeared on behalf of the PCC, accompanied by the investigator, Mr. Scott Porter. Mr. Moyal attended with his counsel, Mr. James Lane. Mr. Glenn Stuart attended the hearing as counsel to the Discipline Committee.

3. The decision of the tribunal was made known at the conclusion of the hearing on August 29, 2017, and the written Decision and Order was sent to the parties on August 31, 2017. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegations, the decision, the order, and the reasons of the tribunal for its decision and order.

Allegations

4. The following allegations of professional misconduct were made against Mr. Moyal by the Professional Conduct Committee on March 30, 2017:

The Professional Conduct Committee of CGA Ontario hereby makes the following allegations against ELIE MOYAL, a member of CPA Ontario and CGA Ontario:

1. THAT the said Elie Moyal, in or about the period January 1, 2014 through September 30, 2014, while acting as accountant for "AC" and "RC", engaged in misconduct of a reprehensible or serious nature which reflected adversely on his honesty, integrity or trustworthiness, in that he misappropriated approximately \$30,000 from his clients, contrary to Rule 108 of the Rules of Conduct of CGA Ontario.
2. THAT the said Elie Moyal, in or about the period May 1, 2014 through September 30, 2014, while acting as accountant for "A Inc." engaged in misconduct of a reprehensible or serious nature which reflected adversely on his honesty, integrity or trustworthiness, in that he misappropriated approximately \$4,260 from his client, contrary to Rule 108 of the Rules of Conduct of CGA Ontario.

3. THAT the said Elie Moyal, in or about the period April 1, 2013 through September 30, 2014, while acting as accountant for "136XXXX Ontario Limited", engaged in misconduct of a reprehensible or serious nature which reflected adversely on his honesty, integrity or trustworthiness, in that he misappropriated approximately \$3,275 from his client, contrary to Rule 108 of the Rules of Conduct of CGA Ontario.
4. THAT the said Elie Moyal, in or about the period October 1, 2013 through September 30, 2014, while acting as accountant for "HG", engaged in misconduct of a reprehensible or serious nature which reflected adversely on his honesty, integrity or trustworthiness, in that he misappropriated approximately \$1,300 from his client, contrary to Rule 108 of the Rules of Conduct of CGA Ontario.

The Professional Conduct Committee of CPA Ontario hereby makes the following allegations against ELIE MOYAL, a member of CPA Ontario and CGA Ontario:

5. THAT the said Elie Moyal, in or about the period July 2, 2014 through September 30, 2014, while acting as accountant for AC and RC, failed to conduct himself in a manner which would maintain the good reputation of the profession and its ability to serve the public interest, in that he misappropriated approximately \$30,000 from his clients, contrary to Rule 201.1 of the Rules of Professional Conduct of CPA Ontario.
6. THAT the said Elie Moyal, in or about the period July 2, 2014 through September 30, 2014, while acting as accountant for A Inc. failed to conduct himself in a manner which would maintain the good reputation of the profession and its ability to serve the public interest, in that he misappropriated approximately \$4,260 from his client, contrary to Rule 201.1 of the Rules of Professional Conduct of CPA Ontario.
7. THAT the said Elie Moyal, in or about the period July 2, 2014 through September 30, 2014, while acting as accountant for 136XXXX Ontario Limited, failed to conduct himself in a manner which would maintain the good reputation of the profession and its ability to serve the public interest, in that he misappropriated approximately \$3,275 from his client, contrary to Rule 201.1 of the Rules of Professional Conduct of CPA Ontario.
8. THAT the said Elie Moyal, in or about the period July 2, 2014 through September 30, 2014, while acting as accountant for HG, failed to conduct himself in a manner which would maintain the good reputation of the profession and its ability to serve the public interest, in that he misappropriated approximately \$1,300 from his client, contrary to Rule 201.1 of the Rules of Professional Conduct of CPA Ontario.

Plea

5. Mr. Moyal admitted Allegation Nos. 1 through 8. Mr. Moyal did not dispute that the

evidence before the tribunal supported a finding of professional misconduct in relation to the Allegations.

The case for the PCC

6. The case for the PCC was presented by way of an Agreed Statement of Facts (Exhibit 1), and there was no other evidence submitted by the parties on the issue of professional misconduct. A Document Brief (Exhibit 2), and a Timeline document (Exhibit 3) were also tendered in evidence on consent.

The relevant facts

7. Mr. Moyal had been in his own practice since 2005, performing notice to reader corporate tax engagements, personal tax engagements and consulting work. Mr. Moyal had an in-depth knowledge of personal tax issues.

8. The matter came to the attention of the PCC as a result of a complaint from former clients, AC and RC, who claimed Mr. Moyal lied about the eligible amounts of prior years' tax credits and benefit claims and deposited four cheques from Canada Revenue Agency (CRA), received on his clients' behalf, into his own bank accounts. In the course of investigating this complaint, the investigator for the PCC discovered another similar situation with a different client, and Mr. Moyal disclosed two additional situations in which he had deposited client refunds from CRA into his own accounts without forwarding the payments to the clients.

9. During the period from April 18, 2013 to August 6, 2014, Mr. Moyal deposited \$38,930.89 in client funds paid by CRA into his own accounts without the clients' knowledge and without forwarding the payments to the clients.

Allegations 1 and 5 – Clients AC and RC

10. AC met with Mr. Moyal in 2011 in order to incorporate a company. In 2013, AC asked Mr. Moyal to prepare and file 2012 tax returns for himself and his wife, RC. As AC and RC were not current on their tax filings, at Mr. Moyal's request, they signed T1013 forms authorizing Mr. Moyal to view the status of their personal returns. At Mr. Moyal's further request, AC and RC arranged for CRA to send mail directly to Mr. Moyal's office. Mr. Moyal had advised them that he could track the progress of their refunds if he received the cheques directly.

11. Mr. Moyal reviewed the status of AC and RC's returns online; this showed that they were in arrears for 2007 to 2011. Mr. Moyal completed the tax returns for those years by September 2013 and they were signed by AC and RC. Mr. Moyal also discussed with AC whether the family was possibly eligible for the Canadian Child Tax Benefit (CCTB) for prior years, which Mr. Moyal estimated at approximately \$50,000. Mr. Moyal prepared a fee agreement, signed by AC, which indicated that any refunds received would "be split 40% each between me...and the taxpayer(s)." No fees were to be paid if there were no refunds. Mr. Moyal was engaged by AC for other services outside the contingency arrangement including bookkeeping and corporate tax preparation, and this work was performed by Mr. Moyal in December 2013 and January 2014.

12. In January 2014, Mr. Moyal received two cheques from CRA for sales tax credits payable to AC c/o Elie Moyal CGA. He was able to deposit the first cheque in the amount of \$3,822 into his own account. The bank initially rejected the second deposit of \$3,240.49 because the name of the payee was different than the name on the account. Mr. Moyal later spoke with AC, but he did not advise AC that he had received either of these cheques. After that conversation, Mr. Moyal was successful on a second attempt to deposit the amount of the second cheque into his own account.

13. In February 2014, Mr. Moyal received a cheque from CRA in the amount of \$27,070.84 in relation to a CCTB refund payable to RC. When AC picked up the cheque, a dispute ensued about Mr. Moyal's contingency fee. AC's position was that Mr. Moyal wanted a cash payment of \$14,000 under the contingency agreement, and AC objected and requested a detailed invoice. Mr. Moyal's position was that he provided a detailed invoice at that time. Mr. Moyal did not inform AC about the two CRA cheques he had deposited into his own account during this conversation.

14. In March 2014, Mr. Moyal received additional cheques from CRA payable to RC c/o Elie Moyal, CGA; \$18,467.67 for an additional CCTB refund and \$4,500 for a Universal Child Care Benefit. After a first attempt, where the \$18,467.67 cheque was rejected because he was not the payee, Mr. Moyal was able to successfully deposit this amount into his bank account on a second attempt. In May, Mr. Moyal transferred \$18,467.67 from his business account to his personal bank account. Mr. Moyal did not advise RC and AC that he had deposited this cheque into his account.

15. In March 2014, RC contacted CRA to advise that they were in a dispute with Mr. Moyal and wanted him removed from their account as their representative. CRA informed RC that refunds had been issued for \$4,500 and \$18,467.67. Upon receipt of an affidavit from RC advising that the cheques had not been received, CRA issued replacement cheques for these amounts.

16. In July 2014, after several months without making contact with RC or AC, Mr. Moyal sent an email offering to decrease his contingency fee from 40% to 20%, plus other fees for the work not covered by the contingency agreement in order to settle his account. This would mean an amount due to Mr. Moyal of \$9,000 (reduced from \$14,134). When no response was received, Mr. Moyal again contacted RC and AC on August 1, 2014.

17. On August 6, 2014, Mr. Moyal deposited the \$4,500 cheque received from CRA in March 2014 into his own account. As of that date, Mr. Moyal had not informed RC or AC about the four cheques totaling \$30,030 received from CRA that he had deposited into his own account.

18. In August 2014, Mr. Moyal threatened RC and AC with legal action if his invoice of \$14,134 was not paid. AC again requested that Mr. Moyal send him a detailed invoice, which Mr. Moyal then provided. The invoice did not provide any credit for the four cheques Mr. Moyal had received and deposited. As a result of the cheques deposited to Mr. Moyal's benefit, Mr. Moyal actually owed money to RC and AC.

19. In September 2014, RC responded to Mr. Moyal's threats by sending him an email in which she accused him of committing fraud. RC stated that Mr. Moyal had deposited the \$18,467 refund in his own account without her permission and without advising her he had received it. In subsequent emails to RC, Mr. Moyal explained that the cheques were deposited in error, the funds were being held in trust, he was issuing a revised invoice and, the \$18,467.17 amount would be deposited into RC's personal CRA account. Mr. Moyal did subsequently deposit this

amount to RC's personal CRA account. He did not advise AC and RC about the other funds he had deposited to his account. Mr. Moyal continued to pursue payment of his fees for services rendered to RC and AC.

20. On September 5, 2014, Mr. Moyal advised RC and AC that he had returned all their funds to CRA. In the week of September 6, 2014, Mr. Moyal did repay the \$4,500 cheque to CRA, backdating his covering letter to August 15, 2014. On September 18, 2014, Mr. Moyal provided his counsel's contact information to RC and AC after they requested it. At the same time, he informed them about the \$3,240.49 and \$3,822 cheques and continued to press AC and RC for a "fair approach" to the settlement of his account.

21. After AC contacted CRA about the last two cheques, AC was reimbursed for these amounts, and CRA removed these amounts from Mr. Moyal's account. Adjustments were made by CRA to Mr. Moyal's account so that the \$4,500 and \$18,467 amounts were repaid only once to RC. Mr. Moyal was not paid for any of his services to AC and RC. The amounts misappropriated were in excess of any amounts owing to Mr. Moyal from AC and RC.

Allegations 2 and 6 – Client A Inc.

22. Client SM, the owner of A Inc., asked Mr. Moyal to prepare corporate tax returns, as well as personal tax returns for himself and his family. SM had signed a form authorizing Mr. Moyal to act as the representative of A Inc. in relation to CRA. Mr. Moyal changed the mailing address on the A Inc. account without the consent of A Inc., which is allowed for corporate accounts.

23. During the course of their relationship, SM promptly paid Mr. Moyal's invoices, including those related to fees in connection with the eventual dissolution of A Inc. On or around December 31, 2013, after Mr. Moyal's last invoice had been paid, Mr. Moyal received a cheque from CRA payable to A Inc. for \$4,260 relating to the recovery of taxes for non-capital losses. Mr. Moyal did not tell SM he had received the cheque. On April 14, 2014, Mr. Moyal attempted to deposit the cheque into his own account. Since the payee name was different, the bank initially rejected the deposit.

24. Mr. Moyal opened a new numbered account on May 13, 2014 operating as "A", without obtaining permission to open any accounts under A Inc.'s name. The cheque for \$4,260 was deposited into this account on May 22, 2014. At the time of the deposit, A Inc. had already been dissolved, and no fees were owing to Mr. Moyal. These funds were withdrawn from the account on five occasions between May and June, and the account was closed in August 2014.

25. After Mr. Moyal was accused of fraud by RC, he took steps to repay SM the amount of the CRA refund plus interest. Mr. Moyal could not recall how he arrived at the accrued interest amount. Although Mr. Moyal referred to "funds held in Trust" in his letter to SM returning the funds, the funds were not held in trust.

Allegations 3 and 7 – Client 136XXXX Ontario Limited

26. HT owned 136XXXX Ontario Limited, a numbered company used for his business. HT's own accountant prepared his personal tax returns and referred him to Mr. Moyal for corporate tax return work, which Mr. Moyal had performed from 2006 to 2011. Mr. Moyal also prepared HT's personal tax return for 2011. During the course of their relationship, HT promptly paid the invoices issued by Mr. Moyal. Mr. Moyal was an authorized representative for HT's corporation with CRA, and the mailing address was changed on the CRA file to Mr. Moyal's office.

27. In 2012, HT advised Mr. Moyal that he no longer needed the numbered company and Mr. Moyal effected the dissolution of the company on April 3, 2013. After the dissolution, HT no longer used Mr. Moyal's services. In February and March 2013, Mr. Moyal received three GST/HST cheques from CRA totaling \$3,275.44 for the company, all of which he deposited into his own account. No money for fees was owed to Mr. Moyal by the company, and by that time HT had already asked Mr. Moyal to dissolve the company.

28. After Mr. Moyal was accused of fraud by RC in September 2014, he took steps to repay the amount of the GST/HST credit, plus interest, to HT. Mr. Moyal could not recall how he arrived at the accrued interest amount, and, although Mr. Moyal referred to "funds held in Trust" in his letter returning the funds to HT, the funds were not held in trust.

Allegations 4 and 8 – Misappropriation from HG

29. Mr. Moyal met HG around 2009. Mr. Moyal performed minimal corporate work for HG, primarily providing personal tax services for HG. Mr. Moyal was an authorized representative for HG with CRA and received HG's CRA mail and cheques. Mr. Moyal could not recall if he advised HG that he was receiving her CRA cheques and depositing them into his account. From August to December 2013, Mr. Moyal received three CRA cheques totaling \$1,365.29 for HG c/o Elie Moyal, CGA which he deposited into his professional corporation bank account.

30. Mr. Moyal issued one invoice to HG on April 10, 2014 for \$316.40 for preparation of tax returns for 2012. There was no credit on his invoice for the three cheques received from CRA, which had been deposited into Mr. Moyal's own account.

31. After RC accused Mr. Moyal of fraud in September 2014, Mr. Moyal met with HG and repaid the funds. Mr. Moyal sent HG a letter and new invoice which applied the \$1,365.29 plus accrued interest to the amount charged for the tax work. Although Mr. Moyal made reference to "funds held in Trust" in his letter to HG, he admitted there was no trust account and could not recall how he arrived at the interest amount.

Decision

32. After deliberating, the tribunal found that the allegations had been proven based on the uncontested evidence and Mr. Moyal's admissions. The tribunal announced the following decision:

DECISION

The Discipline Committee, having seen and considered the evidence, including the agreed statement of facts filed, finds:

THAT Allegation Nos. 1, 2, 3, 4, 5, 6, 7 and 8 have been established;

THAT Rule 108 of the Rules of Conduct of the Certified General Accountants of Ontario and Rule 201.1 of the Rules of Professional Conduct of the Chartered Professional Accountants of Ontario have been breached; and

THAT Elie Moyal (Mr. Moyal) has thereby committed professional misconduct.

Reasons for Decision

33. The tribunal found that the evidence of professional misconduct having been committed by Mr. Moyal with respect to each of Allegations No. 1, 2, 3, 4, 5, 6, 7, and 8 was clear, cogent and convincing. Mr. Moyal also acknowledged before the tribunal that he had committed professional misconduct with respect to all eight Allegations.

34. Mr. Moyal negotiated 11 cheques issued by CRA that were made out to four clients or their corporations and deposited the funds into his own accounts. He thereby misappropriated their funds that were issued to the clients by CRA. His conduct was deliberate and deceitful. He was dishonest and lacked integrity in his dealings with his clients' funds.

35. He was disingenuous when he stated to his clients that their funds were in trust accounts when, in fact, and to his knowledge, they were not. Mr. Moyal did ultimately acknowledge his wrong doing but only after a client queried him and accused him of fraud. Mr. Moyal's actions constituted professional misconduct.

Evidence on Sanction

36. After being sworn in as a witness, Mr. Moyal read from a prepared statement that he wanted to have considered by the tribunal in its decision with respect to sanction. Mr. Moyal asked forgiveness of his family and the profession and expressed his apologies for his actions and the mistakes he made during a stressful and emotional period of his life. Mr. Moyal stated that he took full responsibility for his actions, was consumed with guilt and was truly remorseful. He stated that he had sought professional help and would never do anything further to jeopardize the profession.

Positions Regarding Sanction

37. The PCC sought the following as an appropriate sanction in this matter: a written reprimand; a fine in the amount of \$20,000; revocation of membership; and, full publicity including publication in *The Globe and Mail* newspaper.

38. The PCC also sought costs in the amount of \$27,000. Ms. Center presented a Costs Outline (Exhibit 4) that indicated that the actual costs were just over \$41,000. The amount sought was about two-thirds of the actual costs.

39. Mr. Lane submitted on behalf of Mr. Moyal that, instead of revocation, Mr. Moyal could be subject to a three-year suspension, given what he identified as the mitigating circumstances in the case. If a suspension was ordered, Mr. Moyal did not dispute the other terms sought by the PCC. However, if revocation was ordered, Mr. Lane asked that the amount of the fine be reduced.

40. Mr. Lane also requested that an award of costs in the amount of \$20,000 be considered. This would represent fifty percent of the costs as ordered in the past, rather than two-thirds ordered in more recent cases.

Order

41. After deliberating, the tribunal made the following order:

IT IS ORDERED in respect of the Allegations:

1. THAT Mr. Moyal be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Moyal be and he is hereby fined the sum of \$20,000, to be remitted to the Chartered Professional Accountants of Ontario ("CPA Ontario") within eighteen (18) months from the date this Decision and Order is made.
3. THAT Mr. Moyal's membership in CPA Ontario be and it is hereby revoked.
4. THAT notice of this Decision and Order, disclosing Mr. Moyal's name, be given in the form and manner determined by the Discipline Committee:
 - a) to all members of CPA Ontario,
 - b) to all provincial bodies,
 and shall be made available to the public.
5. THAT notice of the revocation of membership, disclosing Mr. Moyal's name, be given by publication on the CPA Ontario website and in *The Globe and Mail* newspaper. All costs associated with the publication shall be borne by Mr. Moyal and shall be in addition to any other costs ordered by the committee.
6. THAT Mr. Moyal surrender all certificates issued by CPA Ontario or its predecessor, including any membership certificate granting the Certified General Accountant (CGA) and Chartered Professional Accountant (CPA) designation, to the Adjudicative Tribunals Secretary within ten (10) days from the date this Decision and Order is made.

IT IS FURTHER ORDERED:

7. THAT Mr. Moyal be and he is hereby charged costs fixed at \$27,000, to be remitted to CPA Ontario within eighteen (18) months from the date this Decision and Order is made.

Reasons for Sanctions

42. In its deliberations regarding sanctions, the tribunal put particular weight on the seriousness of Mr. Moyal's conduct. Mr. Moyal misappropriated approximately \$39,000 of his clients' funds, in multiple instances over a 16 month period. This was theft. This shows his lack of integrity as a professional. He was in a position of trust, and he breached this trust by converting client monies to his own use. He was not forthcoming to the investigator as to the extent of the number of cheques improperly negotiated by him and the number of clients from whom he misappropriated funds. The funds were not repaid to his clients until he was confronted with allegations of fraud by one of his clients.

43. Mr. Moyal further demonstrated a lack of integrity and judgment when, after the bank rejected the cheques payable to his clients that he tried to deposit to his own account, he attempted a second time, successfully, to deposit the cheques. In doing so, Mr. Moyal made a conscious decision to make further deliberate efforts to misappropriate the funds, including

opening a second bank account, rather than allowing himself to take the proper action by providing these cheques to their rightful owners – his clients. He had the same opportunity to make the right choice each time he received a cheque, and he did not avail himself of that opportunity. His scheme was one of deceit, dishonesty and such conduct is not tolerated by the profession.

44. There were mitigating factors noted by counsel. Mr. Moyal had a long career, unblemished by previous findings of misconduct. Mr. Moyal had cooperated with the PCC regarding the initial complaint and eventually admitted that other clients were involved. However, he was not forthcoming about the number of clients involved when he first was questioned by the investigator. Mr. Moyal admitted that he had committed professional misconduct before this tribunal, entered an Agreed Statement of Facts, which shortened the proceedings, and expressed his remorse to the tribunal. Eventually, Mr. Moyal made full restitution to his clients, with interest, and foregone any claim to fees from AC and RC. Of course, the value of that step was diminished given his delay in making restitution and the fact that it was not forthcoming until complaints had been made by clients and he was accused of fraud.

45. In the circumstances, it was clear to the tribunal that the aggravating factors clearly outweighed the mitigating factors.

46. The reprimand in writing from the Chair serves as a specific deterrent to Mr. Moyal to emphasize the seriousness of his misconduct and to reinforce the high standard of conduct expected of a member.

47. The fine of \$20,000 was in the range of similar cases set out in the PCC's' Case Brief, including the Institute of Chartered Accountants cases of *Giustini*, 2011 LNICAO 21; *Bell*, 2009 LNICAO 2; *McWilliams*, 2008 LNICAO 3; *Silverberg*, 2012 LNICAO 9; *Butler*, 2010 LNICAO 5; and, *McLeod*, 2002 LNICAO 1, all of which dealt with misappropriation of funds from clients or firms. The tribunal did not agree with the submission on behalf of Mr. Moyal that there was any sufficient basis to distinguish this situation from those cases. The fine serves as a specific deterrent to the member and a general deterrent to the membership.

48. Revocation of Mr. Moyal's membership in CPA Ontario was appropriate given the gravity of the misconduct. The facts of this case clearly demonstrate a lack of integrity and a violation of the trust of clients. Mr. Moyal can reflect on the seriousness of his conduct and rehabilitation outside of the profession. Mr. Moyal's conduct will not be tolerated by CPA Ontario, and revocation of his membership will help to protect the public.

49. In matters involving dishonesty and moral turpitude, such as this case, rehabilitation must give way to specific and general deterrence. An order, such as that sought by Mr. Moyal, would inappropriately favour rehabilitation in the face of clear dishonesty. Moreover, if Mr. Moyal were only suspended for a given period and then automatically reinstated, there would be no assurance that he had been rehabilitated from the person who acted with such a lack of integrity. Revocation would require him to go through the readmission process after five years if Mr. Moyal chose to seek membership again. This provides a safeguard for the public.

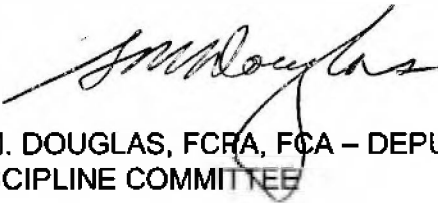
50. Full publicity including notice of the revocation of membership disclosing Mr. Moyal's name, by publication on the CPA Ontario website and in *The Globe and Mail*, was appropriate to protect the interest of the public and deter other members from similar misconduct. There were no rare or unusual circumstances that would support non-publication, which is only granted in

exceptional circumstances. Publication also serves as a notice to members and the public that CPA Ontario is vigilant in maintaining its reputation of integrity, and the notice is also in keeping with the transparency of the disciplinary process of CPA Ontario. Publication of the revocation also ensures that the public is aware that Mr. Moyal can no longer provide services as a member of CPA Ontario.

Reasons for Costs

51. The costs of the investigation and prosecution were approximately \$41,000. It was Mr. Moyal's conduct that necessitated the investigation and the hearing. Not until the investigator conducted his investigation did the extent of the misappropriation of funds become evident, and the investigation was prolonged by the fact that Mr. Moyal was not forthcoming at the outset about the extent of the misappropriations. The tribunal accepted the PCC's submission that costs of \$27,000, representing two-thirds of the total costs, was appropriate and in line with the recent trends in decisions of the Discipline Committee. The costs are a partial indemnity and not an additional fine.

DATED AT TORONTO THIS 14TH DAY OF DECEMBER, 2017
BY ORDER OF THE DISCIPLINE COMMITTEE



S.M. DOUGLAS, FCRA, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

T.M. GALVIN, CPA, CA, CMA

S.R. LOWE, CPA, CA

P. McBURNEY (PUBLIC REPRESENTATIVE)