

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **GARRY WILLIAM ROUND, CPA, CA**, under **Rules 104.1 and 104.2(c)** of the Rules of Professional Conduct, as amended.

TO: Mr. Garry W. Round, CPA, CA
17 Elderberry Court
Guelph, ON N1L 1K3

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE AUGUST 22, 2017

1. The motion of Mr. Round for an order to quash the disciplinary proceedings against Mr. Round and to declare that the investigation by the PCC is *ultra vires* the *CA Act*, Regulations and Bylaws, among other relief, is dismissed.
2. The Professional Conduct Committee is directed to make written submissions with respect to costs within 10 days of the date of this Decision and Order, not to exceed five pages, excluding the costs outline.
3. The Member may make responding submissions with respect to costs within 10 days of receipt of the submissions of the Professional Conduct Committee, also not to exceed five pages, excluding a costs outline, if any. The Professional Conduct Committee may make reply submissions within five days thereafter, not to exceed two pages.

DATED at Toronto, this 25th day of August 2017.



DIANE WILLIAMSON
ADJUDICATIVE TRIBUNALS SECRETARY

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TO: Mr. Garry W. Round, CPA, CA
17 Elderberry Court
Guelph, ON N1L 1K3

AND TO: The Professional Conduct Committee

ORDER MADE OCTOBER 17, 2017

After carefully reviewing the written submissions on behalf of both the Professional Conduct Committee and Garry William Round with respect to costs of the motion which was heard on June 28, 2017, the Discipline tribunal orders:

THAT costs payable to CPA Ontario fixed in the amount of \$9,600 be paid by Mr. Round no later than thirty (30) days from the date this Order is made.

DATED at Toronto, this 18th day of October 2017.



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 **GARRY WILLIAM ROUND, CPA, CA**, under **Rules 104.1 and 104.2(c)** of the Rules of Professional Conduct, as amended.

BETWEEN:

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

-and-

Garry William Round

APPEARANCES:

For Professional Conduct Committee: Alexandra Hersak and Melissa Gentili

For Garry William Round: Matthew Latella and Ahmed Shafey

Heard: June 28, 2017

Decision and order date: August 22, 2017 (merits)

October 17, 2017 (costs)

Release of written reasons: April 20, 2018

**Reasons for the Decision on the Motion regarding Jurisdiction, made August 22, 2017,
and Order regarding Costs made October 17, 2017**

I. Overview of Motion

[1] This tribunal of the Discipline Committee of the Chartered Professional Accountants of Ontario (“CPA Ontario”) convened on June 28, 2017 to hear a motion by Garry William Round (“Mr. Round”) for an Order, *inter alia*, quashing the Allegations of Professional Misconduct made against Mr. Round, dated April 17, 2015, and related disciplinary proceedings. Mr. Round also sought a declaration that the Professional Conduct Committee’s (“PCC”) investigation of Mr. Round and his employer, Ryan ULC (Unlimited Liability Corporation), was *ultra vires* the *Chartered Accountants Act*, S.O. 2010, c.6 Sched. C (the “Act”)¹, its bylaws and regulations. Lastly, Mr. Round sought a declaration

¹ The events given rise to this proceeding occurred before the passage of the *Chartered Professional Accountants Act, 2017*. As a result, the case was argued and decided on the basis of the predecessor Act. However, it was noted by counsel for the PCC at the outset of argument that there was no significant difference in the relevant portions of the two statutes and related regulations and by-laws.

that the practice structure rules of CPA Ontario in their application to Ryan ULC are “unreasonable, illegal, and unenforceable.”

- [2] Mr. Round based his request for relief on the argument that the PCC’s investigation into allegations of professional misconduct by Mr. Round was *ultra vires* the Act, bylaws and regulations. Mr. Round’s counsel argued that the PCC lacked the statutory authority to investigate Mr. Round because there was not a valid complaint against him. It was submitted that there could not be an investigation by the PCC without a complaint, and there could be no complaint without a complainant. Counsel submitted that the PCC could not act as its own complainant because it could not complain to itself under the wording of CPA Ontario’s *Regulation 7-1, Complaints*. It was the essence of his argument that, in the absence of such a complainant, PCC lacked the jurisdiction to investigate Mr. Round.
- [3] Mr. Round further argued that CPA Ontario lacked authority over Ryan ULC because Ryan ULC was not registered as a firm with CPA Ontario. CPA Ontario does not recognize the ULC corporate structure as an acceptable entity for registration in Ontario.
- [4] The PCC opposed the motion on all grounds. The PCC submitted that Mr. Round brought this Motion based on the definition of “complaint”, in isolation from the overall scheme of the Act, bylaws and regulations.

II. The relevant background and facts

- [5] It was agreed by both parties that Mr. Round was a member of CPA Ontario and the President, Canadian Operations, and Principal of Ryan ULC, which operates in Mississauga, Ontario. Ryan ULC was described in Mr. Round’s motion record (Exhibit 7, Tab 2) as a “Canadian affiliate of a global professional services firm, employing among other professionals, CPAs...”
- [6] By letter, dated June 12, 2014 (Exhibit 7, Tab 2A), the Director of Standards Enforcement for CPA Ontario advised Mr. Round, as president of Ryan ULC, that information had come to the attention of the PCC indicating that Ryan ULC had been offering accounting services to the public while not registered with CPA Ontario as a firm. Mr. Round’s initial counsel responded to the PCC commencing in late June 2014 and indicated that a response was being prepared. The deadline for the response was extended to August 25, 2014. Mr. Round subsequently changed counsel.
- [7] Mr. Round’s new counsel (Mr. Latella) responded to the PCC by letter August 25, 2014 (Exhibit 7, Tab 2D). In this correspondence, counsel raised the issues that ultimately became the foundation for this motion. He sought confirmation that the investigation related to Mr. Round and not Ryan ULC. He also asked for the identity of the complainant who made the complaint that triggered the investigation.
- [8] By letter, dated September 24, 2014 (Exhibit 7, Tab 2F), John Murray, the Vice-President of Standards Enforcement for CPA Ontario responded to Mr. Round’s counsel. Mr. Murray indicated that the PCC was trying to understand the services that members of CPA Ontario employed by Ryan ULC, including Mr. Round, were offering to the public. He confirmed that Standards Enforcement staff had looked at the website of Ryan ULC while reviewing an unrelated matter.
- [9] An exchange of correspondence followed this initial exchange as Mr. Round’s counsel sought further information about the focus of the investigation and the nature of the

complaint or information that triggered the investigation. Mr. Murray confirmed that Mr. Round was the subject of the investigation. He also declined to provide details about the information that came to the attention of the PCC and triggered the investigation, indicating that these details were not relevant. Mr. Murray also confirmed that there was no third-party complainant.

- [10] On March 4, 2015, counsel for the PCC delivered a notice to Mr. Round to attend before the PCC on March 24, 2015 (Exhibit 7, Tab 2M). Counsel for Mr. Round responded by letter, dated March 20, 2015 (Exhibit 7, Tab 2N), reiterating the requests made previously for further information, setting out their position on the legal issues and advising that they would be bringing an application for judicial review of the PCC's decision.
- [11] On May 7, 2015, the PCC served Mr. Round with Allegations of professional misconduct, dated April 17, 2015. The first allegation was that Mr. Round failed to cooperate with the regulatory processes of CPA Ontario, contrary to Rule 104.1 of the Rules of Professional Conduct (Rules), by failing to provide information requested by the Vice-President of Standards Enforcement from October 17, 2014 to March 24, 2015. The second allegation was that Mr. Round failed to attend before the PCC after having been personally served with a notice to attend, contrary to Rule 104.2(c) of the Rules of Professional Conduct.
- [12] On May 28, 2015, Mr. Round's counsel served counsel for the PCC with a Notice of an Application for Judicial Review. The application was heard by a three-member panel of the Divisional Court on October 26, 2015. The Divisional Court dismissed the application for judicial review for reasons, dated December 7, 2015: *Round v. Institute of Chartered Accountants of Ontario*, 2015 ONSC 7099. The Court of Appeal declined to grant leave to appeal.
- [13] The Divisional Court summarized its reasons for decision as follows at paragraph 5:
- The issues of jurisdiction should first be raised before the CPAO before this Court is called upon to review them. We see no breach of natural justice or procedural fairness with respect to the investigative procedure or the decision to proceed against Mr. Round for failing to cooperate with the CPAO investigation.
- [14] The Court further indicated, at paragraphs 14 and 15, that, while it had the power to intervene in an administrative proceeding, it would only do so in clear cases, of which this was not one:
- While this Court has the power to intervene in an administrative proceeding, it will rarely do so until the administrative process has run its course and all avenues of appeal within that process have been exhausted. This Court's reluctance to interfere, particularly at an early stage of an administrative proceeding, is grounded in public policy, respect for Parliamentary intention and deference to administrative tribunals. The efficacy of such tribunals depends on their ability to conduct their own matters in a timely and expeditious manner. Constant disruptions in the process while parties take their grievances to the Court are not, generally speaking, in the public interest. That is not to say that the Court will never intervene while an administrative process is still ongoing. However, this will normally only be justifiable where there is a clear excess of jurisdiction or egregious and irremediable breach of natural justice, and, even in those situations, the Court may decline to exercise its discretion.

In this case, the Applicant argues that the CPAO had no jurisdiction to investigate in the absence of an identified complainant. Even accepting that this is a “true” issue of jurisdiction (which is doubtful), it is our view that this is not an appropriate case for this Court to intervene. Central to the determination of the tribunal’s “jurisdiction” are issues involving the proper interpretation of the tribunal’s home statute, its ByLaws and its Regulations. The tribunal itself should be given the opportunity to interpret those sources and determine its own powers before this Court should offer its own interpretation. It is premature for this Court to deal with the issue now.

III. Issues

[15] The relevant issues for the tribunal to determine were the following:

- A. Does the PCC have the authority to initiate an investigation into the professional conduct of a member of CPA Ontario in the absence of an external complainant?
- B. Does the Discipline Committee have the authority to make a declaration concerning CPA Ontario’s Practice Structure Rules as they may apply to Round’s employer, Ryan ULC, and if so, are they legal, reasonable and enforceable?
- C. Does the PCC have the authority to prosecute Round for failing to cooperate with an investigation initiated by the PCC?

IV. Analysis and Decision

A. *Does the PCC have the authority to initiate an investigation into the professional conduct of a member of CPA Ontario in the absence of an external complainant?*

[16] The positions of both parties were based on the interpretation of the language of the various statutes, by-laws and regulations that govern the operation of CPA Ontario. Consequently, the tribunal focused its analysis on the language of those provisions.

[17] As noted by the parties, it was important for the tribunal to consider how the various enactments intersected with each other. The foundational authority is the *Act*. The provisions of the *Act* enable the creation of the other authorities, both in general and specific terms.

[18] Section 33 of the *Act* established the authority of the PCC, which is identified as “the complaints committee”:

The complaints committee shall review every complaint regarding the conduct of a member of the Institute or a firm and, if the complaint contains information suggesting that the member or firm may be guilty of breaching the rules of professional conduct established by the by-laws, the committee may investigate the matter.

[19] Certain terms, including “complaints committee” and “complaint” are not defined in the *Act*. The *Act* delegates the responsibility for defining these concepts to the CPA Ontario Council, which governs the affairs of CPA Ontario. To this end, sections 63(1) and 63(2) of the *Act* empowered the CPA Ontario Council to make by-laws, both generally and in relation to the complaints process:

- 63(1) The council may make by-laws necessary or desirable to conduct the business and carry out the objects of the Institute.
- 63(2) Without limiting the generality of subsection (1), the council may make by-laws with respect to the following matters:
- . . .
5. Establishing the committees required by this Act and any additional committees, governing the names, composition, powers, duties and quorums of the committees . . .
 15. Governing the conduct of members of the Institute and firms as Chartered Accountants, including,
 - i. providing for rules of professional conduct, and
 - ii. governing complaints and discipline, including specifying requirements for the making of complaints.

[20] Several Bylaws were significant to the issue before the tribunal. The Professional Conduct Committee was defined as the complaints committee under the *Act* by By-Law 3.18.1.1.

[21] By-Law 2.1 was significant because it defined the limits of the authority of the Council of CPA Ontario to make regulations. The Council was empowered to make regulations, with regard to any matter not inconsistent with provincial or federal legislation or the bylaws of CPA Ontario, and in particular may make regulations pursuant to or in furtherance of the objects set out in the Act.

[22] Bylaws 7.3.1 and 7.3.2 specifically addressed the complaint process:

7.3.1 A complaint regarding a Member, Student, Applicant, membership candidate or firm shall be made in the form and manner specified in the regulations.

7.3.2 The Professional Conduct Committee may, in its sole discretion, consider information received from any source a complaint, and review and investigate accordingly.

[23] Following from By-Law 7.3.1, the Regulations contained provisions related to complaints. Sections 1 to 3 of Regulation 7-1 read as follows:

1. In this regulation, words have the same meaning as they do in the Act and bylaws and:

1.1 “complainant” includes a person making a complaint to the Professional Conduct Committee regarding the conduct of a Member, Student or Firm, and a person acting on their behalf, but does not include any other person, regardless of interest.

2. A complaint received from any person shall be in writing and shall include:

2.1 contact information of the complainant, including, if the complainant is not an individual, the name of the contact individual;

2.2 the name and contact information, if known of the member, Student, Applicant or firm complained of;

- 2.3 a summary of the matter complained of;
 - 2.4 any information and copies of any documents in the possession or control of the complainant that support the complaint; and
 - 2.5 the name and contact information of any person known to the complainant likely to possess or control any information or documents relevant to the complaint.
3. Notwithstanding section 2, the Professional Conduct Committee may take notice of any information, whether published or not, that comes to the attention and may, but is not required to, consider such information as a complaint.

[24] In reaching its decision, the tribunal adopted the principles of statutory interpretation that counsel for Mr. Round summarized in paragraphs 48 and 49 of his factum, citing paragraph 21 of the decision of the Supreme Court of Canada in *Re Rizzo & Rizzo Shoes Ltd.* [1988] 1 S.C.R. 27. The fundamental premise was stated there to be the following:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.

[25] Accordingly, the tribunal first considered the plain meaning of the words in the *Act*, the By-Laws and the Regulations. In addition, the tribunal took guidance from section 64(1) of the *Legislation Act, 2006, S.O. 2006, c.21, Sched. F*, which stated, “An Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects.”

[26] The tribunal concluded from its reading of the *Act*, By-Laws and Regulation that the PCC had the authority to consider information from *any source* that might indicate professional misconduct by a member or firm, to constitute a complaint that could be considered worthy of further enquiry. The tribunal first considered the relevant provisions of the *Act*.

[27] Section 33 of the *Act* makes clear that the complaints committee, that is, PCC, “*shall review every complaint* regarding the conduct of a member of the Institute or a firm” and may investigate where the complaint provides information suggesting that the member has engaged in professional misconduct. The language used, notably the term “every complaint”, suggests that the Legislature conferred a broad authority on PCC. There is no language in the section limiting the scope of the term “complaint” to complaints from external persons. A further definition of the term complaint was left to the By-Law.

[28] The By-Law emphasizes the broad authority of the PCC established in the Act. By-Law 7.3.2 provided that PCC can consider “information received from any source” to be a complaint. In the tribunal’s view, the words “any source” indicated that there was no restriction limiting the scope of the information that could be considered by the PCC and which could serve as a basis for further investigation. An expansive interpretation of complaint was reinforced further by the statement in that same By-Law that what may be considered to be a complaint was in *the sole discretion* of PCC.

[29] Mr. Latella submitted that, notwithstanding the foregoing, the language of Regulation 7-1, read in the ordinary grammatical sense, limited PCC to investigating “complaints” received from people other than the PCC or CPA Ontario. He submitted that the definition of

complainant in section 1.1 of Regulation 7-1 required a complainant to be someone other than the PCC because the definition included “a person making a complaint to the Professional Conduct Committee”, but expressly did “not include any other person”. It was submitted that PCC could not make a complaint to itself and, therefore, could not satisfy that provision. In turn, the balance of the definition excluded anyone else – such as the PCC itself. Any other interpretation, in his submission, would read these words out of the provision, which would be contrary to established rules of interpretation.

[30] Mr. Latella submitted that section 2 of Regulation 7-1 set out requirements for the form of a complaint “received from any person”. He submitted that this language required a complainant, other than the PCC or CPA Ontario, to make a complaint in order for the PCC to be able to receive it. Mr. Latella acknowledged that the language of section 3 of the same Regulation exempted its provisions, allowing for consideration of any information, from section two. However, he noted that the same clause did not exempt section 3 from the definition in section 1.1.

[31] The tribunal did not accept Mr. Latella’s submission in this regard for three reasons. First, the language of the Act and the By-Laws clearly established a broad scope for the powers of the PCC, in accordance with the mandate of CPA Ontario to regulate the profession. Bylaw 7.3.2. expressly authorizes the PCC to consider any information it receives, from any source, regarding alleged professional misconduct of a member as a complaint. There is no requirement that the “information” be brought forward by a “complainant” or even that there be a complainant for the “information” to be considered a complaint. The language of these provisions supported the conclusion that a complaint was not limited to the narrower definition of complaint or complainant urged upon the tribunal on behalf of Mr. Round. At the same time, the Act clearly limited the regulation-making authority of the Council of CPA Ontario to regulations that were “not inconsistent with provincial or federal legislation or the bylaws of CPA Ontario”. In the tribunal’s view, the interpretation of the language of Regulation 7-1 put forward by Mr. Latella would not be consistent with the relevant provisions of either the Act or the By-law. The Regulation must be consistent with the legislation that permits the creation of the Regulation. The provisions of the Act and the By-Law must prevail.

[32] Second, the interpretation of Regulation 7-1 advanced on behalf of Mr. Round could not be reconciled with the mandate of CPA Ontario to “promote and protect the public interest by governing and regulating the practice of individuals and firms as Chartered Accountants” (Act, s. 4(e)) and the case law that confirms the governing legislation of a self-regulating profession must be interpreted liberally to allow the profession sufficient authority to fulfil that mandate. The tribunal took guidance from the words of the Divisional Court in *Wise v. Law Society of Upper Canada*, [2010] OJ No. 2158, summarizing the law in this regard, and, in particular, the following excerpt at paras. 16-18:

The Court of Appeal has held, with respect to a professional self-regulating body, that “it would take clear words” from the legislature to deprive an investigator of the powers necessary to carry out an investigation:

[In *Pharmascience v. Binet* the Supreme Court] emphasized the onerous obligation placed on self-regulating bodies to protect the public. It follows that those given this obligation have the duty to inquire into the conduct of the members and “will have sufficiently effective means at their disposal to gather all information relevant

to determining whether a complaint should be lodged:" at para. 37. In view of this principle, it would take clear words to deprive the investigator of powers necessary to carry out this important public interest.

Gore v. College of Physicians and Surgeons (2009), 2009 ONCA 546 (CanLII), 96 O.R. (3d) 241 (Ont. C.A.) at para. 17.

The Court of Appeal cautioned against interpreting narrowly the investigation powers of a professional self-regulating body, the effect of which may be to preclude it from employing the best means by which to "uncover the truth" and "protect the public".

I can see no principled basis for distorting the ordinary meaning of "inquire into and examine the practice" to exclude the means of investigation that in some circumstances are most likely to uncover the truth and therefore best protect the public.

The Court of Appeal also stated, in *obiter dicta*, that when a legislature imposes upon members of a self-regulating body a duty to cooperate with investigations, then the powers of investigation granted to the body should be interpreted broadly . . .

- [33] The tribunal concluded that, in the absence of clear language to the contrary, the provisions of the Regulation had to be interpreted in a way that provided the PCC with the necessary powers to conduct an investigation into information that suggested professional misconduct. The Regulation contained no such clear language to the contrary, and the interpretation urged on behalf of Mr. Round unnecessarily undermined the PCC's authority to investigate possible misconduct. To the contrary, the By-Law provided the PCC with sole discretion to determine if any information received should be investigated. This discretion was consistent with the PCC's mandate to protect the public interest.
- [34] Mr. Latella referred at length to *Swanson v. Institute of Chartered Accountants of Saskatchewan* [2007] SKQB 480. In particular, Mr. Latella relied on a statement, at paragraph 45 of the court's decision, that indicated that there was "no benefit to the public or to the members in permitting the professional conduct committee to root around for something to investigate, regardless of whether it relates to a complaint". In that case, a committee of the Saskatchewan Institute's Professional Conduct Committee (SPCC), in conducting an investigation of professional misconduct of a member, came across new information while reviewing the working paper files of the member, Mr. Swanson. The new information was not part of the original complaint framed by the complainant. The SPCC pursued the investigation of the new information without treating the newly found information as a new complaint. The court found that the complainant may not have properly articulated the original complaint to include this information, but the new information was sufficiently related to the original complaint to fall within the jurisdiction of the SPCC and to warrant an expansion of the investigation to include the new information. The tribunal concluded that this case was of no assistance in its deliberations in the instant motion. First, the comment relied on by Mr. Latella was *obiter* in that it was not essential to the decision of the court. The comment actually was contrary to the ultimate decision of the court on its facts. Second, the tribunal could not reconcile this comment, in a Saskatchewan case, with decisions of Ontario courts that are binding upon it, such as

those noted in paragraph 33, above. Third, the *Swanson* case considered the statutory framework in place in Saskatchewan. That framework was different from that in place in Ontario for CPA Ontario. The focus of the instant motion was the jurisdiction of the CPA Ontario.

- [35] The tribunal accepted that it would not be unusual for the PCC to receive information from newspaper articles, court proceedings, regulatory bodies, or the public regarding a member of CPA Ontario who has allegedly breached the rules of professional conduct. The PCC could not turn a blind eye to information that came to its attention that might suggest professional misconduct by a member or firm.
- [36] Third, the tribunal did not agree that the language of Regulation 7-1 itself was properly interpreted in the manner suggested by Mr. Latella. Section 3 of Regulation 7-1 provides that it operates, “Notwithstanding section 2...”. This caveat is necessary because the language of section 2 suggests that complaints are made by people, and those people, upon a reading of the whole section, are likely external to CPA Ontario. However, section 3 explicitly indicates that the PCC is not limited to complaints of this sort. The PCC can take “notice of *any* information, whether published or not”. This cannot be reconciled with section 2, and therefore the “notwithstanding” clause is necessary. However, the language of the Regulation does not require that the terms of section 3 operate notwithstanding section 1.1, because the term complainant is not used in section 1.1. Section 1.1 only defines the term “complainant”. There is no requirement for or mention of a complainant under section 3. As a result, the language of section 1.1 is irrelevant to a determination of the scope of the authority set out in section 3.
- [37] For all of these reasons, the tribunal found that the PCC did have the authority to investigate a matter without there being a complainant external to CPA Ontario and dismissed this aspect of Mr. Round’s motion.

B. Does the Discipline Committee have the authority to make a declaration concerning CPA Ontario’s Practice Structure Rules as they may apply to Round’s employer, Ryan ULC, and if so, are they legal, reasonable and enforceable?

- [38] In his Motion Mr. Round also sought two declarations. First, Mr. Round sought an Order declaring the Purported Structure Investigation by the PCC of Ryan ULC *ultra vires* of the Act, its bylaws and regulations. Second, Mr. Round sought an Order declaring Rule 409, Bylaw 4.17.2 and sections 2 and 3 of *Regulation 4-6, Practice Structure*, to be “unreasonable, illegal and unenforceable.”
- [39] In the tribunal’s view, the Discipline Committee does not have the jurisdiction to grant a declaration. Under section 35 of the *Act*, the Discipline Committee was established to determine allegations of professional misconduct. The Discipline Committee has the authority to make the orders set out in section 35(4) of the *Act* when a finding of misconduct is made. As noted in the course of the submissions on behalf of PCC, an administrative tribunal’s jurisdiction is limited to the powers given by its empowering statute and the powers necessarily implied by the language of the statute and its purpose.² The Discipline Committee must necessarily have the authority to issue procedural orders

² *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 SCR 1722, para. 50.

to control its process and to meet its duty of fairness to the members before it. However, this could not be said for a declaration of rights that were not necessarily before the tribunal. The tribunal concluded that there was no basis on which the power to grant a declaration could be necessarily implied into the jurisdiction of the Discipline Committee.

[40] Even if the Discipline Committee had jurisdiction to grant declarations, the tribunal would have declined to grant the declarations sought. It was not disputed that Ryan ULC was not registered as a firm with CPA Ontario. It was also not disputed that Ryan ULC was not eligible, as an unlimited liability corporation (“ULC”), to be registered as a firm due to the provisions of *Regulation 4-6, Practice Structure*, section 2, which excluded ULCs from the permitted forms of practice. In the tribunal’s view, the reasons for Ryan ULC not being registered as a firm were irrelevant. The tribunal concluded that CPA Ontario had no jurisdiction over Ryan ULC since the corporation was not registered with CPA Ontario. Moreover, Ryan ULC was not a party to the proceedings before the tribunal, and the tribunal was satisfied that it also lacked jurisdiction for this reason. In the absence of jurisdiction, the tribunal could not make a declaration regarding Ryan ULC’s corporate structure.

[41] Similarly, the second declaration sought in the Motion related to the legality, reasonableness and enforceability of the Practice Structure Rules, *as they apply to Ryan ULC*. Mr. Round, not Ryan ULC, was the party before the tribunal. To the extent that Ryan ULC was not a party before this tribunal, the tribunal concluded that it lacked any jurisdiction to either determine the rights of a party not before it or make a declaration related to those rights.

C. Does the PCC have the authority to prosecute Round for failing to cooperate with an investigation initiated by the PCC?

[42] As noted above, it was not disputed that Mr. Round was a member of CPA Ontario. CPA Ontario Bylaw 2.2, Compliance – General, states:

All Members, Students, Applicants, and firms, including professional corporations, by their application for or continuance of membership or registration shall agree and shall be deemed to have agreed with CPA Ontario to the terms of the bylaws, Rules of Professional Conduct and regulations of CPA Ontario, as applicable, and all acts or things done thereunder, including the giving of any notice, publishing or releasing information and the interpretation of any bylaw, rule of professional conduct or regulation by the Council pursuant to these bylaws.

[43] Rule 104.1 of CPA Ontario’s *Rules of Professional Conduct* states, “A member, student or firm shall co-operate with the regulatory process of CPA Ontario”. Rule 104.2(c) states that a member shall: “attend in person in the manner requested when required to do so by CPA Ontario in relation to the matters referred to in Rule 104.1.” The tribunal concluded that CPA Ontario did have jurisdiction over Mr. Round in matters of professional conduct because he was a member. Given that conclusion, it followed that the PCC had authority to make an allegation of professional misconduct if it believed that Mr. Round had not complied with Rule 104.1, which applied to all members.

[44] The tribunal noted that the Divisional Court had commented, at paras. 17 and 18, in *Round v. Institute of Chartered Accountants of Ontario*, 2015 ONSC 7099, that Mr. Round had

the same obligation as other members of CPA Ontario to cooperate with investigations conducted by the PCC. It was not an answer to challenge the *bona fides* of the investigation at that early stage.

- [45] The tribunal was satisfied that PCC was entitled to bring forward allegations that Mr. Round did not cooperate with its investigation and that, in doing so, it acted within the jurisdiction conferred on CPA Ontario by the *Act*, Bylaws and Regulations. Whether Mr. Round did or did not breach that obligation will be the subject of the hearing of the merits of the allegations and can only be determined at that time.

V. Conclusion Regarding Substance of Motion

- [46] The tribunal focused on the issue of CPA Ontario's jurisdiction over Mr. Round and whether the PCC had the authority to act on, and investigate information that came to its attention that might reflect on Mr. Round's professional conduct, and if so, whether it had the requisite authority to commence these proceedings on the basis of an alleged failure to cooperate with the subsequent investigation. The tribunal concluded that PCC did have authority to commence its investigation on information that came into its possession under the *Act*, Bylaws and Regulations. In turn, the tribunal was satisfied that the PCC had the authority to commence these proceedings.
- [47] The tribunal concluded that CPA Ontario did not have jurisdiction over Ryan ULC since the corporation was not registered with CPA Ontario. The tribunal also lacked the authority to give declaratory relief. For these reasons, the tribunal concluded that it did not have the authority to make the declarations sought by Round.
- [48] For the reasons stated above, the tribunal dismissed the motion for an order quashing the disciplinary hearings against Mr. Round on the basis that the investigation by the PCC was *ultra vires* the *Act*, Bylaws and Regulations, among other relief sought.

VI. Costs

The PCC position on costs

- [49] The PCC submitted a Costs Outline which detailed a total of \$14,415 in costs being incurred in relation to the motion. The costs claimed for PCC counsel were based on nominal hourly rates, depending on the year of their call to the bar, as drawn from the Costs Grid used under the *Rules of Civil Procedure*. The PCC submitted that these hourly rates were "extremely low compared to rates charged by counsel in private practice."
- [50] The PCC asked that the tribunal order Mr. Round to pay two-thirds of the PCC's costs of the motion in the amount of \$ 9,600 to be paid within 30 days.

Mr. Round's position on costs

- [51] Mr. Round submitted that any order for costs should be deferred until the matter was determined on its merits. He further submitted that an order of no costs should be considered because discipline proceedings were akin to criminal proceedings.
- [52] Mr. Round did not challenge the quantum or time period for payment of the costs sought.

Tribunal's Reasons regarding Costs

- [53] The tribunal determined that the arguments advanced by both parties with respect to costs mirrored the submissions advanced in relation to the previous disclosure motion in this proceeding. Consequently, the reasons for the tribunal's decision regarding costs in relation to this motion were the same as its reasons for costs in relation to the previous motion. The tribunal adopted its reasons, dated December 7, 2017, for an order of costs on the motion heard March 23, 2017, and incorporated them into these reasons by reference.
- [54] For the reasons delivered December 7, 2017, the tribunal concluded that it was appropriate to not defer an order for costs, and the tribunal proceeded to determine the appropriate amount of costs to be paid. The amounts incurred by the PCC were not challenged by Mr. Round.
- [55] The PCC requested approximately two-thirds of the total costs of \$14,415. The tribunal recognized that the disciplinary process is part of the activities of the disciplinary authority of CPA Ontario over its members and the membership as a whole should bear some of the costs. In other words, CPA Ontario should bear some of the costs of the hearing. In the tribunal's view, the partial indemnity hourly rates and the two-third share reflected an appropriate allocation of costs between the parties.

VII. Order

- [56] For the preceding reasons, the tribunal dismissed the motion by Mr. Round and ordered him to pay costs to CPA Ontario fixed in the amount of \$ 9,600 within thirty days from the date of the order.

Dated at Toronto this 20th day of April, 2018



A. Douglas Nichols, FCPA, FCA
Discipline Committee – Chair

Tribunal Members

James Blackwell, CPA, CA
Joel Emuan, CPA, CMA
John Friday, FCPA, FCA
Barry Solway (Public Representative)

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