

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

**APPEAL COMMITTEE**

**IN THE MATTER OF:** An appeal by **LAIRD WILLIAM SWEENEY** of the Decision and Order of the Discipline Committee made February 27, 2019, under Rule 23 of the Rules of Practice and procedure, as amended

**BETWEEN:**

**Laird William Sweeney**

**-and-**

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

**APPEARANCES:**

**For the Professional Conduct Committee:** Paul Farley, Counsel

**For Mr. Sweeney:** Not present and not represented

Heard: November 19, 2019

Decision and Order effective: November 19, 2019

Release of written reasons: December 27, 2019

**REASONS FOR DECISION AND ORDER MADE NOVEMBER 19, 2019**

**I. OVERVIEW**

- [1] Laird William Sweeney appealed the Decision of the Discipline Committee of the Chartered Professional Accountants of Ontario (“Discipline Committee”), dated February 27, 2019. The appeal was heard by a Panel of the Appeal Committee of the Chartered Professional Accountants of Ontario (“Panel”).
- [2] Mr. Sweeney obtained his CMA designation in 1993, and he became a CPA upon unification of the accounting designations in 2014. He was granted retired status by the Certified Management Accountants of Ontario (“CMA Ontario”) in 2009.
- [3] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario (“PCC”) made eight Allegations against Mr. Sweeney. The Allegations included that Mr. Sweeney had failed to perform professional services in accordance with the generally accepted standards of practice, had represented that he was retired and not practising, when, in fact, he had signed off on review engagements, had failed to register his practice when he continued to perform review engagements, took on work that he

was not competent to perform and had failed to maintain a public accounting license while engaged in the practice of public accounting. These were the subject of the hearing before the Discipline Committee, which led to the decision under appeal.

- [4] Most of the Allegations arose from three annual review engagements that Mr. Sweeney had apparently completed between April 1, 2012 and December 31, 2014, for a non-profit agency serving youth. Certain of the Allegations arose from Mr. Sweeney's representations during the investigation regarding questions arising from those matters.
- [5] Mr. Sweeney did not attend the hearing before the Discipline Committee. After reviewing the evidence presented, the Discipline Committee concluded that Mr. Sweeney had proper notice of the hearing and decided to proceed in his absence.
- [6] After hearing the evidence presented on behalf of the PCC, the Discipline Committee made findings of professional misconduct against Mr. Sweeney in relation to six of the eight Allegations. The Discipline Committee dismissed the remaining two allegations, one because there was insufficient evidence to support a finding on a balance of probabilities and the other because the Discipline Committee considered it redundant in the face of another Allegation.
- [7] The Discipline Committee ordered that Mr. Sweeney's membership in the Chartered Professional Accountants of Ontario ("CPA Ontario") be revoked, he be fined \$7,500, and he be reprimanded in writing. The Discipline Committee also ordered that he pay costs in the amount of \$13,500.
- [8] Mr. Sweeney filed a notice of appeal and an appeal book in support of his appeal, but he did not submit a factum detailing the arguments that he intended to advance as the grounds for interfering with the decision of the Discipline Committee.
- [9] At the conclusion of the argument on the appeal, the Panel concluded that the appeal would be dismissed with reasons to follow.

## **II. PRELIMINARY ISSUES**

- [10] At the outset of the hearing, counsel for the PCC told the Panel that Mr. Sweeney had advised CPA Ontario by email the previous day (Exhibit 1-F) that he was unable to attend the appeal hearing due to unspecified "health and medical reasons". This background and a summary of the communications with Mr. Sweeney regarding the date for the hearing of the appeal were put forward by affidavit of the Adjudicative Tribunals Assistant Secretary (Exhibit 1). The Adjudicative Tribunals Assistant Secretary had advised Mr. Sweeney the day before the hearing of the appeal that he could also attend by teleconference. He chose not to avail himself of that offer. Mr. Sweeney was not, however, requesting an adjournment of the hearing.
- [11] After considering the evidence with regard to the notice that Mr. Sweeney had received of this appeal, including the caution on the notice that indicated that the hearing could proceed in his absence if he did not attend, and the absence of a request for an adjournment, the Panel was satisfied that Mr. Sweeney had adequate notice of the hearing and that it was fair and reasonable to proceed in his absence.

[12] A document containing Mr. Sweeney's comments regarding the decision of the Discipline Committee was attached to the Affidavit of the Adjudicative Tribunals Assistant Secretary (Exhibit 1). Counsel for the PCC submitted that the Panel could consider the submissions made by Mr. Sweeney, but that it would be improper to consider the evidence included in the document from Mr. Sweeney, since it could only be considered if it met the test for fresh evidence on an appeal. Counsel to the Panel advised the Panel that this was the appropriate way to approach this document. The Panel proceeded on the basis that it could consider submissions from Mr. Sweeney, but it could not consider any evidence set out in the document.

### **III. DISCIPLINE COMMITTEE DECISION**

[13] All of the evidence before the Discipline Committee was presented through an investigator appointed by the PCC. The investigator summarized the facts related to the Allegations, including the representations made by Mr. Sweeney to the investigator.

[14] In its reasons, the Discipline Committee reviewed all of the evidence that was presented and considered it in relation to the Allegations. Allegations 1, 2, 5 and 8 all related to Mr. Sweeney's failure to maintain a public accounting licence. At paragraph 25 of its reasons, the Discipline Committee noted that Mr. Sweeney had told the investigator that he had never held a public accounting licence. Mr. Sweeney had also acknowledged that he had prepared review engagement reports, although he had no experience in doing so.

[15] In paragraph 29 of its reasons, the Discipline Committee noted that Mr. Sweeney had made a written representation to the investigator that his work was not intended as an audit and did not constitute a Notice to Reader review, although he acknowledged reviewing the financial statements. The Discipline Committee rejected Mr. Sweeney's characterization and found that Mr. Sweeney had been retained to prepare Engagement Reviews, which were to be submitted to the federal government in support of the organization's ongoing funding. The Discipline Committee further found that Mr. Sweeney did not have the licence or training to do this work, and he did not do the necessary work for the assignment.

[16] The Discipline Committee found at paragraph 30 of its reasons that ". . . the evidence proved on a balance of probabilities that Mr. Sweeney signed an Engagement Letter, prepared and issued Review Engagement Reports and supplemental Department of Justice Canada Standardize Reports to the Department of Justice, while he was not licensed as a public accountant." The Discipline Committee found, based on the evidence of the investigator, that there was none of the required documentation in Mr. Sweeney's file to substantiate a review engagement.

[17] Allegations 3 and 4 related to allegations that Mr. Sweeney had misled CMA Ontario regarding the status of his practice and continued to operate his practice without registration despite being disciplined for the same thing. In paragraphs 33 to 36 of its reasons, the Discipline Committee found that Mr. Sweeney had told CMA Ontario in May 2012 that he was retired, but, twelve days earlier, he had completed a review engagement. Mr. Sweeney had also signed an Agreed Statement of Facts in January

2014 confirming that he had retired in 2009. However, he then proceeded to complete review engagements in 2011, 2012, 2013, and 2014.

- [18] In paragraphs 37 to 39 of its reasons, the Discipline Committee found that Mr. Sweeney had admitted that he had breached the requirements of CMA Ontario by practising without registering his practice for 16 years. However, Mr. Sweeney signed two engagement reports in April and December 2014. Both dates were after the date of the Agreed Statement of Facts and the subsequent discipline decision by CMA Ontario. He signed one set of review engagement documents four days after the discipline decision. In response to correspondence from CPA Ontario in January 2018, Mr. Sweeney denied that his statements were false, but he acknowledged he had provided review engagement reports for a fee. In paragraph 42 of its reasons, the Discipline Committee noted that the evidence was overwhelming that Mr. Sweeney had issued review engagement reports while not licensed and that he had misled CMA Ontario in this respect.
- [19] The Discipline Committee found, at paragraph 12 of its reasons, that there was clear, cogent and convincing evidence to establish Allegations 1, 2, 3, 4, 5 and 8 on a balance of probabilities. At paragraph 13 of its Reasons, the Discipline Committee then proceeded to find that these actions constituted breaches of Rule 201.1 and Rule 206.1 of the Rules of Professional Conduct and section 3.1(c), section 3.4(b) and section 3.5(c) of the Professional Ethics Regulation of CMA Ontario, and, as a result of these breaches, Mr. Sweeney's actions constituted professional misconduct.
- [20] Having made these findings, the Discipline Committee concluded that Mr. Sweeney had flagrantly disregarded the standards of practice designed to protect the public and his pattern of behaviour showed that he was ungovernable. The Discipline Committee noted that Mr. Sweeney had been disciplined in 2014 for failing to register his practice with the regulator and had failed to cooperate with the investigation. The Discipline Committee concluded that it was necessary to revoke Mr. Sweeney's membership to preserve public confidence in the profession.

#### **IV. ISSUES RAISED ON APPEAL**

- [21] In his Notice of Appeal, Mr. Sweeney took the position that the Allegations were unfounded and the investigation flawed. He said that he had always abided by the relevant Rules. Although he indicated that he would provide further details of his grounds of appeal once he received the reasons of the Discipline Committee, he never did so.
- [22] In his email on November 18, 2019, to the Adjudicative Tribunal Assistant Secretary (Exhibit 1-F), Mr. Sweeney asserted that he did not practise as a public accountant, but he also maintained that he was unaware he needed a public accounting licence to prepare and sign a review engagement. He also said that he had never provided misleading or false information to CMA Ontario. He did not identify any particular errors he was arguing the Discipline Committee made.
- [23] In the absence of a clear description of the issues in the appeal from Mr. Sweeney, the

Panel was guided by the framing by the PCC of the following three issues that this Panel had to consider:

- a) Was the decision of the Discipline Committee that Allegations 1, 2, 3, 4, 5 and 8 were proven and constituted a breach of Rule 201.1 and Rule 206.1 of the Rules of Professional Conduct and section 3.1(c), section 3.4(b) and section 3.5(c) of the Professional Ethics Regulation of CMA Ontario reasonable given the evidence before the Discipline Committee?
- b) Was the decision of the Discipline Committee that the Allegations found to be established on the evidence constituted professional misconduct reasonable?
- c) Was the decision of the Discipline Committee with respect to sanctions and costs reasonable?

## V. STANDARD OF REVIEW

[24] Counsel for the PCC submitted to the panel that this appeal was not a hearing *de novo* of the original Allegations. Rather, it was an appeal on the record, as contained in the Appeal Book. He submitted that deference was owed to the findings of fact by the Discipline Committee and that the Panel should only interfere with the decision of the Discipline Committee if it was unreasonable.

[25] The Panel agreed with the PCC as to the nature of the role of this Panel in considering an appeal. The Panel adopted the statement of law regarding the applicable standard of review that was set out by the Appeal Committee in the recent decision of *Re Wall* (July 19, 2019), at paragraphs 23 to 26:

[23] Section 37(4) of the Act empowers the Appeal Committee to determine any question of law or mixed fact and law that arises in an appeal. That power however is limited by s.37 (5) of the Act, which prohibits the Appeal Committee from making a decision under section 37(4)(a) or (b) of the Act unless the Appeal Panel determines that the decision or order of the Discipline Committee is “unreasonable”.

[24] Regulation 7-3 [now 6-3] under the Act, directs the Appeal Committee not to rehear the matter, but rather directs the Appeal Committee to decide whether, on the record, the final decision and order of the Discipline Committee are reasonable on the evidence and on the law.

[25] Reasonableness is a deferential standard. While a review for reasonableness requires the reviewing body to consider whether the reasons given disclose a decision making process which contains “justification, transparency and intelligibility”, it also recognizes that a decision may not lead to one and only one conclusion, but rather, may fall within a range of possible, acceptable conclusions (*Dunsmuir v. New Brunswick*, 2008 SCC 9 (CanLII), [2008] 1 S.C.R. 190, para.47). Even if the decision of the Discipline Committee is not one which the Appeal Committee would have made, if the decision falls within a range of possible acceptable outcomes and identified the analysis leading to that decision,

the Appeal Committee shall not interfere.

- [26] A Discipline Committee is not expected to address every piece of evidence or address every submission made before it in its reasons. “The reasons for decision in professional discipline cases must address the major points in the case” providing “the path” taken by the Discipline Committee in reaching its ultimate conclusion. The Discipline Committee is not however, required to “describe every landmark along the way” (*Barrington v. Institute of Chartered Accountants (Ontario)*, 2011 ONCA, 409, para.114).

## VI. REASONS FOR DECISION

### *Findings Supported by Evidence*

- [26] Counsel for the PCC identified the principal findings of fact by the Discipline Committee and cross-referenced them to the documents or testimony on which the findings had been based. In particular, he referenced the documents that demonstrated the representations Mr. Sweeney had made to the investigator regarding his status and the nature of the work he was providing. The Panel observed that a large portion of the evidence before the Discipline Committee was comprised of statements provided by Mr. Sweeney himself to the investigator or CPA Ontario. There was no evidence in the record that Mr. Sweeney had ever denied making these statements.
- [27] The Panel reviewed the record to determine if the findings by the Discipline Committee with respect to the Allegations were reasonably supported by the evidence and if the Discipline Committee’s reasons showed its analysis. In the absence of Mr. Sweeney, the evidence relied on by the Discipline Committee was not challenged, and there was no evidence in the record that refuted or contradicted the essential evidence. The Panel concluded that the findings of the Discipline Committee with respect to each of the Allegations found to be established were amply supported by the evidence and the reasons of the Discipline Committee set out the rationale for each finding.
- [28] The Panel observed that Mr. Sweeney advanced essentially the same general arguments in his brief email of November 18, 2019, as he had advanced to CPA Ontario during investigation. In particular, he argued that he had not practised as a public accountant and he did not mislead CMA Ontario. The Discipline Committee rejected those arguments, and this Panel identified no error that would render the Discipline Committee’s findings unreasonable.
- [29] The findings made by the Discipline Committee with respect to the six Allegations were clearly contrary to the clear language of the standards of practice and rules defining the limits of proper conduct of a CPA set out in Rule 201.1 and Rule 206.1 of the Rules of Professional Conduct and section 3.1(c), section 3.4(b) and section 3.5(c) of the Professional Ethics Regulation of CMA Ontario.
- [30] Consequently, the Panel found the findings of the Discipline Committee with respect to the Allegations being established were reasonable and that there was no basis to interfere with the decision of the Discipline Committee in this regard.

*Decision regarding Professional Misconduct Reasonable*

[31] The Discipline Committee found that the identified breaches of the Rules of Professional Conduct and the Professional Ethics Regulation of CMA Ontario constituted professional misconduct. In general, such a conclusion would be reasonable. The Panel found that this conclusion was reasonable in this case given the nature of the breaches.

*Decision regarding Sanction Reasonable*

[32] In its reasons with respect to sanction, the Discipline Committee carefully reviewed the factors that supported their view that the misconduct of Mr. Sweeney was serious and warranted revocation to protect the public interest. In particular, the Discipline Committee relied on its conclusion that Mr. Sweeney was ungovernable. This conclusion was based on Mr. Sweeney's failure over a prolonged period to comply with the regulatory requirements for operating his practice, despite being disciplined for the same or similar misconduct at the relevant times.

[33] The sanction imposed by the Discipline Committee fell within the range of sanctions imposed in other cases involving ungovernability, which were brought to the Panel's attention by the PCC. In these circumstances, the Panel found that the Discipline Committee's decision regarding sanction was reasonable. The Panel found no basis on which to interfere with the decision of the Discipline Committee.

**VII. COSTS ON APPEAL**

[34] The PCC provided a costs outline summarizing the costs incurred by the PCC in responding to Mr. Sweeney's appeal. The outline showed total costs of \$12,555.00, although counsel fairly conceded that this included a full day of hearing, when only a half day had been required.

[35] Counsel for the PCC observed that it was not reasonable that Mr. Sweeney start an appeal and then simply step back without actually abandoning it. The logical consequence of this action was that Mr. Sweeney should bear a portion of the costs incurred by the PCC to respond to the appeal. The Panel agreed that Mr. Sweeney should pay two-thirds of the costs of the PCC in the circumstances.

[36] Although Mr. Sweeney alluded to impecuniosity in his submissions, there was no evidence before either the Panel or the Discipline Committee to demonstrate this. In the absence of this evidence, the Panel was unable to consider Mr. Sweeney's personal financial circumstances in imposing costs.

[37] After considering the costs outline presented by the PCC, the Panel ordered that Mr. Sweeney pay costs in the amount of \$7,000 within six months of the order being made.

Dated at Toronto this 27<sup>th</sup> day of December, 2019



Laurence Bookman, CPA, CA  
Appeal Committee – Chair

Members of the Panel

Daniel Iggers (Public Representative)  
Jeffrey Nightingale, CPA, CA

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