CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

CHARTERED PROFESSIONAL ACCOUNTANTS ACT OF ONTARIO, 2017

THE APPEAL COMMITTEE

IN THE MATTER OF: AN APPEAL BY SADAQUAT TANWEER, CPA, CMA, A MEMBER OF CPA ONTARIO OF THE DECISION AND ORDER OF THE DISCIPLINE COMMITTEE MADE NOVEMBER 30, 2020, PURSUANT TO RULE 23 OF THE RULES OF PRACTICE AND PROCEDURE

NOTICE OF APPEAL

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TO:	Sadaquat Tanweer, CPA, CMA
AND TO:	The Professional Conduct Committee

NOTICE OF APPEAL

THE APPELLANT, SADAQUAT TANWEER, appeals the Order of the Discipline Committee (hereinafter "the Committee´) made November 30, 2020.

THE APPELLANT ASKS:

1. That the Order of the Committee suspending the Appellant's membership with CPA Ontario for 18 months be set aside;

2. That the18 month suspension be reduced to a reasonable suspension in the range of three (3) to six (6) months as recommended and suggested by counsel both for the Appellant and Counsel to the Professional Conduct Committee of CPA Ontario(hereinafter "CPA Counsel").

3. Reducing the fine ordered by the Committee, to an amount suggested by the Appellant's counsel;

4. A reduction of the order of costs against the Member currently in the Amount of $18,000;

5. Costs of the herein appeal;

6. Such further and other relief as Counsel may request and as the Appeal Committee may permit.

THE GROUNDS FOR THE APPEAL are as follows:

1. The Appellant's admission of professional misconduct in the Agreed Statement of Facts should be the factual basis for any finding and decisions of the Committee.

2. The Appellant was deprived of the right to due process on the basis that the he was mislead that the hearing would be relying on the Agreed Statement of Facts, and no other evidence tendered or suggested by CPA's Counsel.

3. CPA's Counsel referred to extrinsic matters that were not within the "four corners" of the Agreed Statement of Fact.

4. CPA Counsel alleged that the Appellant committed wrongful or illegal acts by trying to divert attention away from himself by reporting alleged incidents of fraud to the police that was not in the ASF, nor was there ever any evidence to suggest that.

5. CPA Counsel suggested the Committee speculate on the Appellant's motives for reporting criminal acts to the police.

6. CPA Counsel was well aware based on the evidence that they had, that there was no evidence to suggest that the Appellant committed any criminal or fraudulent acts.

7. Notwithstanding CPA Counsel's opening statement that the Appellant did not participate in the fraud that first alerted the discipline committee to the Appellant, the CPA Counsel insinuated and made reference numerous times to the reasons and motives for the Appellants actions, which in fact were never agreed to, nor was there any sworn evidence of.

8. CPA Counsel never advised counsel for the Appellant that they would be alleging or insinuating that the Appellant committed fraud or knew of fraudulent mortgage applications being processed: if he had such notice the Appellant would have had the opportunity to refute the incorrect allegations by calling evidence and or filing Affidavits in support of his position that he had no knowledge of such acts.

9. The Committee considered submissions made by CPA's Counsel that were impermissible, to wit: speculative, unsworn and uncorroborated.

10. The Committee failed to give Deference to the range of sentence that was submitted by the Appellant's counsel and the CPA's Counsel.

11. The Committee did not give any weight to the Appellants true sign of remorse and prospects of rehabilitation.

12. No consideration was given to the Rehabilitation of the Appellant, when he clearly showed his prospects of rehabilitation by:

(a) Reporting criminal wrongdoing to the police.
(b) Accepting responsibility for his actions.
(c) Cooperating from the very beginning with the investigator, acknowledging his activities

13. The Appellant was denied due process by the fact that the CPA's Counsel deliberately mislead the Appellant on his position on sentence/penalty.

14. The Appellant was mislead into believing the position that the CPA's Counsel would ask for would be his final position as opposed to a minimum sentence (floor).

15.CPA Counsel advised the Committee that the ***minimum sentence*** should be what he was recommending, not that it was the appropriate penalty, instead encouraging/suggesting to the Committee that they can go above and beyond this position, thereby misleading the Appellant to the true position being advocated by CPA"s Counsel.

16. The penalties/sanctions imposed on the Appellant are excessive, and contravene the ***Canadian Charter of Rights and Freedoms,*** *the rules and principles of* ***natural justice*** and the laws of ***Ontario*** such that they would;

(a) Constitute cruel and unusual punishment;
(b) Be disproportionate to the act/conduct alleged;
(c) Fail to treat similar individuals equally;
(d) Fail to allow for full answer and defense

17. The Appellant has no prior disciplinary history and no criminal record nor are there any pending outstanding charges against Appellant.

18. The Appellant fully co-operated with the Investigator in the matter from the early stages;

19. The Appellant cannot make full answer and defense to the within Appeal as the Decisions of the Committee have not been provided.

20. Such further and other grounds that may be applicable on receipt of the written Decisions of the Committee and full review of the transcripts and

21. Such further and other grounds as Counsel for the Appellant may advise and this honourable Appeal Committee permit.

JURISDICTION OF THE APPEAL COMMITTEE:

It is respectfully submitted that the Appeal Committee has jurisdiction to hear the within Appeal pursuant to:

- Rule 23 of the Rules of Practice and Procedure
- Regulation 6-2
- Chartered Professional Accountant of Ontario Act, 2017, S.O. 2017

A final order in the within Appeal was made on November 30, 2020.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 23RD day of December 2020.

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

APPEAL COMMITTEE

IN THE MATTER OF: An appeal by Sadaquat Tanweer, a member of the CPA Ontario, of the Decision and Order of the Discipline Committee, made November 30, 2020, pursuant to Rule 23 of the Rules of Practice and Procedure.

APPEARANCES:

For the Professional Conduct Committee:	Paul Farley
For Sadaquat Tanweer:	Paul Dhaliwal
Heard:	July 16, 2021
Decision and Order Effective:	July 16, 2021
Release of Written Reasons:	September 13, 2021

REASONS FOR THE DECISION AND ORDER MADE JULY 16, 2021

1. Sadaquat Tanweer ("the Appellant") appeals the Decision and Order of the Discipline Committee of the Chartered Professional Accountants of Ontario (the "Committee") dated November 30, 2020. This Appeal was heard by a Panel of the Appeal Committee of the Chartered Professional Accountants of Ontario (the "Appeal Committee").

2. The appeal is dismissed. The following are the reasons of the Appeal Committee.

I. OVERVIEW

3. The hearing on the merits of this matter took place on November 30, 2020. The matter proceeded by way of an admission to the misconduct as described in the allegation, and an Agreed Statement of Facts ("ASF").

4. The Appellant admitted that he breached Rule 201.1 of the Chartered Professional Accountants of Ontario Code of Professional Conduct (the “Code”) and its predecessor provisions. Briefly, the facts underlying the misconduct are that the Appellant participated in a mortgage agency arrangement whereby he permitted a third party to impersonate him, access confidential software, process over 50 consumer mortgage transactions and claim over $236,000 in commissions from the brokerage that believed it was employing the Appellant.

5. The penalty portion of the hearing was contested. Counsel representing the Professional Conduct Committee (“PCC”), Mr. Kucey, sought a six-month suspension with terms. Counsel for the Appellant sought a 90-day suspension.

6. After hearing submissions from the parties, the Committee retired to deliberate. Upon return they imposed the following penalty (summarized):

1. A reprimand in writing;
2. A fine of $30,000;
3. A suspension of 18 months;
4. Publication of the decision;
5. Continuing professional development; and
6. Costs in the amount of $18,000.

7. The only issue on appeal was the length of suspension. The Appellant argued that the Committee erred in exceeding the length of suspension requested by the PCC. The Respondent on appeal conceded the appeal on the basis that the Committee failed to apply the correct legal test when rejecting the position on penalty of the PCC.

8. This appeal is dismissed. The Committee did not apply the wrong legal test when it imposed a suspension in excess of the position taken by the PCC. The parties were on notice there was a possibility that a suspension greater than six months could be imposed.

They had an opportunity to make submissions with respect to this possibility. Moreover, the Committee provided cogent reasons for the imposition of the 18-month suspension, they did not take into account irrelevant factors or facts not in evidence, they did not err in their assessment of the Appellant's remorse, and the penalty is fit and reasonable. The Appeal Committee sees no reason to interfere with the decision of the Discipline Committee.

II. THE DISCIPLINE COMMITTEE DECISION

1. Decision on Finding of Professional Misconduct

9. At the outset of the hearing, counsel for the PCC brought a motion, on consent, for leave to amend the allegation. The motion was granted. The Amended Allegation admitted to by the Appellant is set out below:

> *THAT the said Sadaquat Tanweer, in or about the period June 2013 through May 2019, while operating an accounting practice, participated in a pattern of conduct which discredited the profession contrary to section 3.4(b) of the CMA Code of Professional Ethics and failed to maintain the reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the CPA Rules of Professional Conduct ("CPA Rules") and the CPA Code of Professional Conduct ("Code"), in that he enabled and participated in a mortgage agency agreement, where he permitted a third party to impersonate him, access confidential software, process over 50 consumer mortgage transactions and claim over $236,000 in commissions from Tanweer's employing brokerage.*

10. As noted above, the finding portion of the hearing proceeded via ASF. The Committee cited from the ASF extensively at paragraph 11 of their reasons. In summary, the facts underlying the misconduct are that in or about early 2013, an individual named Ayaz Ahmed ("Ahmed") approached the Appellant with the idea for a business arrangement. Ahmed proposed that the Appellant obtain a mortgage agent license and

then permit Ahmed to pose as the Appellant and use the mortgage agent license as he saw fit.

11. The Appellant agreed to the above arrangement. In return, he was to receive 10% of any commissions obtained by Ahmed. Ahmed's motivation in proposing the arrangement was that it enabled him to work for two separate mortgage brokerage companies. This was in contravention of the law, which requires mortgage agents to work under the supervision of one and only one mortgage broker.

12. The Appellant attended an interview with a mortgage brokerage agency. Ahmed prepared and submitted the Appellant's application. The application contained a curriculum vitae ("CV") which included work experience the Appellant admitted he had never had. The Appellant was successful in obtaining the position, and after being offered employment, he applied for and received his mortgage license from what was then the Financial Services Commission of Ontario ("FSCO").

13. Ahmed used the Appellant's mortgage license for six years from 2013 to 2019. During this period, Ahmed processed 50 mortgages. The commissions on the 50 mortgages amounted to $236,000. In the majority of the transactions, the mortgage brokerage company deposited the commissions into a bank account controlled by the Appellant, and the Appellant disbursed Ahmed's share to him. The Appellant received $23,600 representing 10% of the commissions received by Ahmed.

14. The illegal scheme was halted when FSCO informed the mortgage brokerage company that it was investigating the Appellant's conduct. The Appellant's employment contract was terminated, and the Appellant surrendered his mortgage license.

15. Subsequently, the Appellant reported the arrangement to the police and disclosed that Ahmed had attached fraudulent documents, of which the Appellant was not aware, to some of the mortgage transactions.

16. The Committee relied exclusively on the ASF when making its decision. Notably, the Committee stated they had received answers from counsel in response to questions posed, but did not rely on those answers in reaching their conclusions.

17. The Committee found that the Appellant had breached Rules 201.1 of the CPA Ontario Code of Professional Conduct ("Code"), and its predecessor provisions, namely Rule 201.1 of the CPA Rules of Professional Conduct ("CPA Rules") and section 3.4(b) of the CMA Code of Professional Ethics, and that these breaches amounted to professional misconduct.

2. Decision on Sanction

a. The Sanction Phase of the Hearing

18. The PCC sought a six-month suspension, a fine of $27,000, full publication of the decision, including newspaper publication and $18,000 in costs. Although counsel for the PCC began his submissions by seeking a six-month suspension, in the course of his submissions his position evolved such that he invited the panel to impose a lengthier suspension if they saw fit to do so.

19. The Appellant sought a three-month suspension, a fine of $15,000, publication of the decision, but not in newspapers, and approximately $13,500 in costs.

20. Prior to the Committee retiring to deliberate, Independent Legal Counsel ("ILC") at the hearing provided the Committee with advice on a variety of issues. Of relevance to this appeal is the advice ILC provided to the Committee with respect to the PCC's position on penalty.

21. ILC cautioned the panel with respect to counsel for the PCC's invitation to impose a suspension greater than the six months he had initially proposed. ILC provided the following advice:

> My advice to you would be that the parties take positions before you to help to narrow and specify the issues that you need to address. Those positions are not necessarily binding, but they should be given significant weight in order to enhance the process. Otherwise, in effect parties could appear before you and simply take no position and leave you to decide things by first instance. So, I would express the view that there needs to be significant deference given to the range, and only if you are particularly concerned that you should be looking beyond that.

22. The parties were given an opportunity to comment on the advice of ILC. Mr. Kucey reiterated his position that the Committee was entitled to impose a suspension "well beyond" the PCC's position on sanction. In response, the Appellant's counsel urged the panel to listen to ILC's advice, and to give deference to the range of suspension suggested by the parties. Counsel for the Appellant cautioned the panel against succumbing to what he characterized as a "back door opportunity" they had been given by counsel for the PCC. Notably, counsel for the Appellant did not suggest that his client's agreement to a finding of misconduct was contingent on the position of the PCC that they would seek only a six-month suspension.

23. The Committee broke for lunch and deliberated. Upon return, they ordered a suspension of 18 months plus terms.

b. Reasons for Decision

24. In arriving at their decision, the Committee was well aware of the advice of ILC and the subsequent submissions of the parties, and specifically referenced it in their Reasons for Decision:

> Given the comment by PCC counsel regarding more severe sanctions, the Panel received advice from its counsel that it was not bound to the range of sanction framed by the submissions of counsel and that it ultimately could impose the sanction that was in the public interest. However, counsel for the Panel emphasized that the Panel should give significant weight to the range set out by the parties. After receiving the advice of counsel, the Panel heard submissions from both parties as to the appropriate sanction, including the possibility of a sanction beyond the range framed by counsel, and, in particular a sanction above the sanction sought by the PCC.[1]

25. The Committee was not satisfied that a six-month suspension was a fit sanction under the circumstances. The Committee concluded that the Appellant's conduct amounted to dishonest or fraudulent conduct with respect to, at a minimum, the mortgage brokerage who employed him, and FSCO. The Committee made the following observations about the importance of the sanction in this matter:

> The sanction imposed must convey a clear message to Mr. Tanweer, other members of the profession and the public that conduct of this nature was not acceptable for any member of CPA Ontario. The dishonest nature of the arrangement, which goes to the heart of an accountant's integrity, was central to the determination of a penalty that maintained the confidence of the public in the accounting profession.[2]

[1] *CPAO v. Tanweer (DC)*, January 6, 2021, ¶ 20
[2] *CPAO v. Tanweer, supra,* ¶ 21

26. The Committee went on to identify the factors contributing to the seriousness of the misconduct including[3]:

- The length of time the Appellant engaged in the misconduct (six years);
- The false information provided to the mortgage brokerage company in the course of the Appellant's employment application. The Committee did not necessarily attribute knowledge of the false credentials to the Appellant, but held him accountable for failing to review and correct the application;
- The Appellant knew that mortgage applications were being submitted and approved in his name when he had no involvement in said applications;
- The Appellant permitted a third party to use his personal credentials to provide regulated services to members of the public;
- The Appellant further deceived the mortgage brokerage company by having the commissions deposited to a bank account in his name; and
- The arrangement led to the illegal processing of approximately 50 mortgages.

27. The Committee was not concerned with whether the mortgage transactions themselves were fraudulent in nature. Rather, the Committee was concerned entirely with whether the Appellant knew that the arrangement was dishonest. The Committee found that the Appellant clearly knew he had entered into an arrangement, the purpose of which was unlawful.[4]

28. Finally, the Committee found that the Appellant, as the CPA in the arrangement, had the primary responsibility to stop the plan or at least amend it to eliminate any impropriety. The Committee observed that "It is not enough for the CPA to do nothing and say that he was a victim of someone else. The expectations on a CPA, given the

[3] *CPAO v. Tanweer, supra,* ¶ 22
[4] *CPAO v. Tanweer, supra,* ¶ 28

privileged position of the profession and the trust placed in the members of the profession by the public, are greater than that."[5]

29. The Committee observed that the signing of the ASF and the admission of misconduct was evidence of remorse on the part of the Appellant. They remarked, however, that there was no evidence of remorse apart from these facts, and that the Appellant took no steps to come forward until after the arrangement was discovered by FSCO.[6]

30. In imposing an 18-month suspension, the Committee commented that revocation could be an appropriate penalty under the circumstances. However, they were mindful of ILC's advice and concluded that due to the position taken by counsel for the PCC, it would be inappropriate to impose the sanction of revocation.

III. PRELIMINARY ISSUES ON APPEAL

31. In his Notice of Appeal, the Appellant sought relief in the form of a reduction of the suspension, the fine and the costs ordered by the Committee. At the outset of oral argument, the Appellant informed the panel that he was abandoning his request for a reduction of the fine and costs ordered by the Committee, and was seeking only a reduction of the length of suspension.

32. In his factum, the Appellant took the position that the Committee had erred in rejecting a joint submission. At the outset of oral argument, the Appellant agreed that the

[5] *CPAO v. Tanweer, supra,* ¶ 32
[6] *CPAO v. Tanweer, supra,* ¶ 30

positions on penalty taken at the hearing by each party could not be characterized as a joint submission. The Appellant argued, however, that he had been denied procedural fairness when the Committee imposed a sanction higher than that requested by the PCC, without informing the parties of its intention, and without providing the Appellant with an opportunity to make submissions on the Committee's inclination to order a suspension of greater than six months.

33. The Respondent took the position that the ratio in *R. v. Anthony-Cook* applied to the Committee's decision, notwithstanding that the parties did not join in their submission on sanction. On June 16, 2021, ILC to the Appeal Committee wrote to the parties setting out her advice to the panel that the ratio in *R. v. Anthony-Cook*[7] did not apply to a situation where there is no joint submission, yet the Committee has exceeded the sanction requested by counsel for the PCC. ILC advised the Appeal Committee that the procedure in a recent Ontario Court of Appeal decision, *R. v. Blake-Samuels*[8], applied. The Chair of the Appeal Committee invited the parties to file written submissions with respect to this advice and they did so.

34. Both in supplementary written submissions and in oral argument, the Respondent reiterated that the ratio in *R. v. Anthony-Cook* applied to this matter, notwithstanding there was no joint submission, and reiterated that the Committee erred in rejecting the position of the PCC by failing to apply the test for rejection of joint submissions set out in *R. v. Anthony-Cook*.

[7] *R. v. Anthony-Cook*, 2016 SCC 43
[8] *R. v. Blake-Samuels*, 2021 ONCA 77

IV. STANDARD OF REVIEW

35. Generally speaking, the standard of review applied by the Appeal Committee to decisions of the Discipline Committee is reasonableness.[9]

36. However, when an Appellant alleges a breach of procedural fairness, the Appeal Committee is tasked with determining whether the breach occurred. If a breach of procedural fairness occurred, that breach cannot be deemed to be reasonable. In those circumstances, the decision of the Discipline Committee is not owed deference, and the Appeal Committee may allow the appeal and order a new hearing or allow the appeal and substitute its own decision.[10]

37. In the matter before us, the Appeal Committee has determined that no breach of procedural fairness occurred. In light of this, the Appeal Committee turned its attention to the Appellant's remaining grounds of appeal. Two of the grounds, whether the penalty was excessive and whether the Committee appropriately considered the Appellant's remorse, attract a standard of review of reasonableness.

38. In defining what is "reasonable", the Appeal Committee takes guidance from the recent decision of the Appeal Committee in *Makhija v. CPAO*[11]:

> [21] The recent Supreme Court of Canada decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* [2019] S.C.C.65 clarifies what is involved in a reasonableness review. At paragraph 83 of the decision, the Supreme Court of Canada explained the reasonableness analysis as follows:
>
> > … [A] court applying the reasonableness standard does not ask what decision it would have made in place of that of the

[9] *Chartered Professional Accountants of Ontario Act*, 2017, S.O. 2017, c. 8, Sched. 3, section 37(5)
[10] *Section 13, Regulation 6.3*, Adopted by the Council under the *Chartered Professional Accountants of Ontario Act, 2017* and the By-law on September 21, 2018, effective as of November 19, 2018 and as amended to April 30, 2021
[11] *Makhija v. CPAO (AC),* March 30, 2021, ¶ 21 - 24

> administrative decision maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a de novo analysis or seek to determine the "correct" solution to the problem. […] Instead, the reviewing court must consider only whether the decision made by the administrative decision maker -- including both the rationale for the decision and the outcome to which it led -- was unreasonable.
>
> [22] The Court described a reasonable decision as "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker." [para. 85] A reasonable decision "is one that is justified in light of the facts" [para. 126] and which meaningfully accounts "for the central issues and concerns raised by the parties." [para. 127]
>
> …
>
> [24] In summary, for a decision to be reasonable the reasoning by which a decision is reached must be internally coherent, rational and logical, and must not exhibit fatal flaws in its overarching logic. A decision is unreasonable if the conclusion reached cannot follow from the analysis undertaken or if the reasons, read in conjunction with the record, do not make it possible to understand the Discipline Committee's reasoning on a critical point. A reasonable decision is one that is justified in light of the facts. A decision will be unreasonable if the Discipline Committee has fundamentally misapprehended or failed to account for the evidence before it, or if the reasons do not meaningfully account for the central issues and concerns raised by the parties.

39. In considering the Appellant's two grounds of appeal set out above, we relied on the guidance provided by *Makhija* and *Vavilov, supra*.

V. THE SUBMISSIONS AND ARGUMENTS OF THE PARTIES

1. The Appellant's Submissions

40. In his Notice of Appeal, filed December 23, 2020, the Appellant listed 21 grounds of appeal. Ground 16 alleged that the sanction imposed was excessive, and contravened

the *Canadian Charter of Rights and Freedoms*, the rules and principles of natural justice and the laws of Ontario.

41. In his factum, the Appellant narrowed his grounds to six grounds which can be paraphrased as follows:

a. That counsel for the PCC made improper suggestions to the Committee that called for speculation;

b. That counsel for the PCC improperly suggested that the Committee need not follow the range of sentence that was proposed, and that such a suggestion violated the Appellant's right to procedural fairness;

c. That the Committee erred in finding that the Appellant was not remorseful for his conduct.

42. The Appellant argued that counsel for the PCC made the following submissions which were improper in that they were not based on the record and/or invited the Committee to speculate:

- That either the Appellant or Ahmed provided the CV containing false information to the mortgage brokerage firm (the ASF clearly stated it was Ahmed who provided it);
- That there was an ongoing shifting of accountability and responsibility by the Appellant;
- That the Committee ought to infer that the Appellant knew some of the mortgages were fraudulent;
- That the Appellant's motives for reporting the arrangement to the police were improper.

43. The Appellant submitted that counsel for the PCC triggered a breach of the Appellant's right to procedural fairness when he invited the Committee to impose a suspension that exceeded the six month position he originally advocated for.

44. The Appellant initially argued that the Committee erroneously rejected the joint submission of the parties. In supplementary written argument, the Appellant conceded there was no joint submission. He submitted, however, that the Committee erred in failing to provide the parties with notice that it intended to exceed the six-month position taken by counsel for the PCC and in failing to provide the Appellant with the opportunity to make further submissions.

45. The Appellant also submitted that the Committee erred in finding that the Appellant was not genuinely remorseful for his conduct in the face of evidence that the Appellant had reported the arrangement to the police, cooperated with the investigation, signed an ASF and expressed his remorse to the Committee via his counsel.

46. In his factum, the Appellant did not address Ground 16 of his Notice of Appeal, that the sanction imposed was excessive. Nevertheless, given his arguments on appeal, the Appeal Committee considered that ground and addresses it in these reasons.

2. The Respondent's Submissions

47. The Respondent conceded the appeal. Counsel for the Respondent took the position that the parties had not proposed a joint submission on sanction. We agree with that view. Nevertheless, he contended that the Appellant had been advised of the sanction the PCC would seek and acted on that advice when he signed the ASF and admitted to the misconduct. In light of this, he argued, the Committee erred in exceeding the sanction requested by the PCC. During oral argument, the Appeal Committee asked Mr. Farley whether there was any evidence on the record in support of his assertion that, in making his decision to sign the ASF and admit the misconduct, the Appellant had relied

on the knowledge that the PCC would seek a six-month suspension. Mr. Farley confirmed there was nothing on the record in support of this assertion. The Appeal Committee notes there was no fresh evidence motion tendered on appeal, providing evidence in support of this assertion.

48. The Respondent further submitted that although the parties had not proposed a joint submission to the Committee, the test set out in *R. v. Anthony-Cook* nevertheless applied. During oral argument, the Appeal Committee asked Mr. Farley to confirm that when he was referring to the test in *R. v. Anthony-Cook*, he was referring to the following oft-cited paragraph:

> [34] … a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold — and for good reason, as I shall explain.[12]

49. Mr. Farley confirmed that in his view, the above-noted test applied to the present matter where there was no joint submission but the Committee had imposed a sanction greater than that proposed by the PCC. Mr. Farley suggested, by way of illustration, that the Committee could simply substitute "plea agreement" for joint submission in the above-noted paragraph and the same principles would apply. Mr. Farley submitted that the Committee erred in imposing a suspension greater than six months because a six-month suspension is not so unhinged from the circumstances of the offence or the offender that

[12] *R. v. Anthony-Cook, supra,* ¶ 34

it would lead a reasonable person to believe that the proper functioning of the justice system had broken down.

VI. ANALYSIS OF THE ISSUES

50. The Appeal Committee considered the following four issues:

1. Did the Committee err in failing to apply the test in *R. v. Anthony-Cook* when exceeding the sanction sought by the PCC?
2. If not, did the Committee cause a denial of procedural fairness by failing to inform the parties of its intention to impose a suspension of greater than six months and in failing to solicit the parties' submissions on same?
3. Did the Committee err by taking into account irrelevant factors or facts not in evidence?
4. Did the Committee err by failing to take into account or place sufficient weight on the Appellant's expression of remorse? and
5. Was the penalty imposed reasonable?

1. The Test in *R. v. Anthony-Cook*

51. The Appeal Committee has arrived at the conclusion that the test articulated in *R. v. Anthony-Cook* does not apply to matters where there is no joint submission. In light of this, we conclude that the Discipline Committee did not err in failing to apply the test when imposing a sanction that exceeded that originally proposed by counsel for the PCC.

52. In the case of *R. v. Blake-Samuels*, the Court of Appeal for Ontario rejected the argument that the test in *R. v. Anthony-Cook* applies in circumstances where there is no joint submission but a judge imposes a sanction in excess of the Crown's position. The Court confirmed the longstanding principle that judges retain discretion to exceed the

Crown's position on sentencing. The Court cautioned, however, that a judge who intends to exceed the Crown's position on sentencing must follow a clearly delineated process.[13]

53. In order to deviate from the Crown's sentencing position, a trial judge must abide by the following three requirements:[14]

1. They must inform the parties that they are considering exceeding the Crown's position and they must provide the parties with the opportunity to make further submissions;
2. They must provide reasons for why they imposed a sentence in excess of the Crown's position; and
3. The sentence must be reasonable.

54. The Court characterized the failure to inform the parties and give them an opportunity to make further submissions as a denial of procedural fairness.

55. The Appeal Committee is aware that *R. v. Blake-Samuels* was decided after the Discipline Committee heard the Appellant's matter on November 30, 2020. However, the decision in *R. v. Blake-Samuels* is merely the latest iteration in a long line of cases standing for the proposition that the failure of a judge to provide the parties with an opportunity to address the possibility that the Court would impose a sentence greater than that proposed by the Crown constitutes a denial of procedural fairness. The decision in *R. v. Blake-Samuels* moved the law forward so that the failure to provide the parties with an opportunity to make submissions if the sentencing judge intends to exceed the sentence proposed by the Crown cannot be cured on appeal. That failure entitles an

[13] *R. v. Blake-Samuels, supra,* ¶ 29
[14] *R. v. Blake-Samuels, supra,* ¶ 32 - 39

appellate court to dispense with deference and perform its own fresh sentencing analysis to determine a fit sentence.[15]

56. In light of the above, the Appeal Committee has approached this appeal by assessing whether the Discipline Committee applied the process and met the requirements set out in *R. v. Blake-Samuels*. As will be seen in the next section of our reasons, we have concluded that the Committee did apply the process articulated in *R. v. Blake-Samuels* and did in fact provide the parties with an opportunity to make submissions on the possibility of the Committee imposing a suspension greater than six months. Had we concluded that the parties were not provided with an opportunity to make submissions, we would have allowed the appeal and performed our own fresh analysis to determine a fit sanction without regard to the Discipline Committee's decision.

2. Was the Appellant Denied Procedural Fairness?

57. The Appellant submits he was denied the opportunity to make submissions on the possibility that the Committee might impose a sanction in excess of the six months proposed by the PCC. The Appeal Committee acknowledges the Discipline Committee did not explicitly state they were considering imposing a suspension of 18 months. Nevertheless, the issue of exceeding the position of the PCC was front and centre at the hearing. The Appellant was undoubtably on notice there was a possibility the Discipline Committee would impose a suspension of greater than six months.

58. As we noted above, ILC to the Committee advised the Committee they ought to place significant deference on the initial range proposed by the parties of a three to six

[15] *R. v. Blake-Samuels, supra,* ¶ 36 - 39

month suspension. He informed them that while they had the discretion to exceed the six months requested by the PCC, they should proceed with caution. The parties were invited to and did provide submissions on this very issue. Mr. Kucey doubled down and invited the Committee to impose a suspension "well beyond" the six months he had originally suggested. Counsel for the Appellant made submissions. He cautioned the Committee that they ought to follow ILC's advice. Importantly, he did not assert that his client had relied on the six-month position when making his decision to sign the ASF and admit to the misconduct.

59. During oral argument on appeal (and in their respective facta), both counsel for the Appellant and counsel for the Respondent submitted that the Appellant had signed an ASF and admitted to the misconduct in part in reliance on the PCC's assurance that they would seek a suspension of no greater than six months. The Appeal Committee cannot rely on this assertion as there was no evidence on the record in support thereof. This is particularly important in light of the opportunity afforded to the Appellant's counsel to inform the Discipline Committee of the factors his client took into account when signing the ASF and admitting to the misconduct.

60. These reasons should in no way be interpreted as condoning Mr. Kucey's approach. It is inappropriate for counsel for the PCC to take one position at the outset of his submissions and then change positions mid-stream and invite the panel to impose a more significant sanction. Notwithstanding this, the Appellant was given a fair opportunity to make submissions on the possibility that the Committee would impose a suspension of greater than six months. In our view, this cured any potential prejudice arising from Mr. Kucey's approach to the matter.

61. In order to withstand appellate scrutiny, the Committee's decision must disclose clear and cogent reasons for exceeding the PCC's position. Finally, the 18-month suspension must be reasonable.

62. The Committee provided coherent, rational and logical reasons for its decision. Their decision is easy to understand and is justified on the facts. They did not fundamentally misapprehend the evidence, nor did they fail to account for evidence before them. Most importantly, the 18-month suspension is reasonable.

3. Did the Committee Take Into Account Irrelevant Factors or Facts Not in Evidence?

63. The Appellant alleges that counsel for the PCC made suggestions to the Discipline Committee that were incorrect or called for speculation. The impugned submissions are set out in these reasons at paragraph 42, but reproduced below for ease of reference:

- That either the Appellant or Ahmed provided the CV containing false information to the mortgage brokerage firm (the ASF clearly stated it was Ahmed who provided it);
- That there was an ongoing shifting of accountability and responsibility by the Appellant;
- That the Committee ought to infer that the Appellant knew some of the mortgages were fraudulent;
- That the Appellant's motives for reporting the arrangement to the police were improper.

64. This ground can only succeed if the Committee erred by relying on counsel's submissions. We find the Committee made no such error.

65. The Committee clearly stated they relied exclusively on the ASF. In reference to the CV, they indicated that while Ahmed provided the CV to the mortgage brokerage firm, the Appellant was at fault for failing to review and correct it. We agree with this assessment. The Committee relied on the ASF in finding that the Appellant placed primary responsibility for the arrangement on Ahmed. In our view, it was open to the Committee to make such a finding based on paragraphs 19 and 26 of the ASF. The Committee specifically rejected counsel's submission that they ought to infer that the Appellant knew some of the mortgages were fraudulent. They based their decision entirely on the Appellant's dishonesty in participating in the arrangement. The Committee did not comment on the Appellant's motives for reporting the arrangement to the police.

66. We find the Committee did not take into account irrelevant factors when making their decision on sanction. As such, this ground of appeal must fail.

4. Did the Committee Err in Their Consideration of the Appellant's Remorse?

67. The Appellant further asserts that the Discipline Committee erred in finding that the Appellant was not genuinely remorseful. Evidence of remorse is but one factor a Discipline Committee considers when determining sanction. In *Law Society of Ontario v. Chung*[16], the Hearing Panel listed the following factors (in relevant part) a tribunal tasked with determining an appropriate sanction in a discipline matter ought to consider:

(a) the existence or absence of a prior disciplinary record;

(b) the existence or absence of remorse, acceptance of responsibility or an understanding of the effect of the misconduct on others;

(c) the extent and duration of the misconduct;

[16] *Law Society of Ontario v. Chung* 2021 ONLSTH 44, ¶ 112

(d) the potential impact of the member's misconduct upon others;

(e) whether the member has admitted misconduct, and obviated the necessity of its proof;

(f) whether there are extenuating circumstances (medical, family-related or others) that might explain, in whole or in part, the misconduct; and

(g) whether the misconduct is out-of-character or, conversely, likely to recur.

68. In rendering their decision, the Discipline Committee gave consideration to the level of remorse demonstrated by the Appellant. The Committee acknowledged that the signing of the ASF and the admission of misconduct constituted evidence of remorse. However, the Committee also considered other important and relevant factors such as the extent and duration of the conduct, the impact of the conduct on others, and the fact there were no extenuating circumstances explaining the misconduct. Given the gravity of the misconduct, the Appeal Committee found that the Discipline Committee's assessment of the nature and extent of the Appellant's expression of remorse and the weight they placed on it when fashioning a sanction was reasonable.

69. We find the Committee did not err in placing little importance on the evidence of the Appellant's remorse, such as it was. Consequently, this ground must fail.

5. Was the Sanction Reasonable?

70. Notwithstanding that we have found there was no denial of procedural fairness, the Appellant has also appealed the sanction on the ground that it is excessive or unreasonable. We reject this ground of appeal as well. The penalty of 18 months was reasonable under the circumstances.

71. In imposing an 18-month suspension, the Discipline Committee made the following observations:

> [21] After considering all of the submissions of counsel, the Panel concluded that Mr. Tanweer's misconduct was more severe than suggested by either counsel. In the Panel's view, the misconduct established on the evidence amounted to dishonest or fraudulent conduct with respect to, at a minimum, RMA and FSCO, if not the parties involved in the mortgages. The sanction imposed must convey a clear message to Mr. Tanweer, other members of the profession and the public that conduct of this nature was not acceptable for any member of CPA Ontario. The dishonest nature of the arrangement, which goes to the heart of an accountant's integrity, was central to the determination of a penalty that maintained the confidence of the public in the accounting profession.[17]

72. The Appeal Committee considers this to be a reasonable assessment. In addition to all the factors cited by the Discipline Committee, the Appeal Committee harboured concerns about the potential privacy breach aspect of the Appellant's participation in the illegal arrangement. In permitting Ahmed to use his identity and process mortgage transactions, the Appellant was not in a position to ensure safeguards were in place to protect the privacy of the individuals obtaining mortgages. We agree with the Discipline Committee that the maintenance of public confidence in the accounting profession militates in favour of a significant sanction.

73. The sanction imposed by the Discipline Committee is reasonable. This ground too, must fail.

VII. CONCLUSION

74. The Discipline Committee provided the parties with an opportunity to make submissions with respect to the possibility that they would impose a sanction greater than

[17] *CPAO v. Tanweer, supra,* ¶ 6

that requested by the PCC. The Appellant was not denied procedural fairness. The test set out in *R. v. Anthony-Cook* does not apply in matters where the parties have not proposed a joint submission. Therefore, the Committee did not err in failing to apply the test when rejecting the PCC's position on sanction. The Committee did not take into account irrelevant factors or facts not in evidence, nor did they err in their assessment of the Appellant's remorse. The sanction was reasonable and the reasons given were clear, comprehensible and did not contain errors of law.

75. The appeal is hereby dismissed.

VIII. COSTS

76. Mr. Farley indicated he is not seeking the PCC's costs on this appeal. We agree this is not an appropriate case for costs.

Dated this 13th day of September, 2021

Elaine Sequeira, FCPA, FCA, CFP
Appeal Committee – Chair

Members of the Panel
Daniel Coghlan, CPA, CGA
Stephen Meek, FCPA, FCA
Virendra Sahni, Public Representative
Salim Somani, CPA

Independent Legal Council
Lisa Freeman, Barrister & Solicitor

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **SADAQUAT TANWEER, CPA, CMA**, a member of the Chartered Professional Accountants of Ontario, under **Rules 201.1** of the Chartered Professional Accountants of Ontario Code of Professional Conduct.

BETWEEN:

Chartered Professional Accountants of Ontario
Professional Conduct Committee

-and-

Sadaquat Tanweer

APPEARANCES:

For the Professional Conduct Committee:	Kelvin Kucey, Counsel
For Mr. Tanweer:	Paul Dhaliwal, Counsel
Heard:	November 30, 2020
Decision and Order effective:	November 30, 2020
Release of written reasons:	January 6, 2021

REASONS FOR DECISION AND ORDER MADE NOVEMBER 30, 2020

I. OVERVIEW

[1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario ("PCC") had made an Allegation that Mr. Tanweer had failed to maintain the good reputation of the profession and discredited the profession by enabling and participating in a mortgage agency arrangement, whereby he permitted a third party to impersonate him, access confidential software, process over 50 consumer mortgage transactions and claim over $236,000 in commissions from the brokerage that employed Mr. Tanweer.

[2] This hearing was held by videoconference before the Discipline Committee of the Chartered Professional Accountants of Ontario ("CPA Ontario") ("Panel") to determine whether the Allegation was established and whether the conduct breached Rules 201.1 of the CPA Ontario Code of Professional Conduct ("Code"), and its predecessor provisions, namely Rule 201.1 of the CPA Rules of Professional Conduct ("CPA Rules") and section 3.4(b) of the CMA Code of Professional Ethics and amounted to professional misconduct.

[3] Mr. Tanweer obtained his CMA designation in September 2011. He subsequently received a CPA designation and became a member of CPA Ontario upon amalgamation in 2014. At all material times, Mr. Tanweer operated as a sole practitioner accountant practising under the name Sun Accountax in Mississauga, Ontario. Sun Accountax's advertised services included: personal and corporate tax returns, consultation and restructuring, accounting and bookkeeping, strategic business planning, incorporation of companies, financial statements, loans and financing, mortgages and payroll.

[4] On May 3, 2019, the Financial Services Commission of Ontario ("FSCO") notified CPA Ontario that it was investigating Mr. Tanweer in relation to multiple instances of mortgage fraud. CPA Ontario appointed an investigator to investigate the complaint on February 12, 2020.

[5] Mr. Tanweer admitted the amended Allegation of professional misconduct made by the PCC. The onus was on the PCC to show on a balance of probabilities that Mr. Tanweer's conduct breached the identified Rules and constituted professional misconduct.

II. PRELIMINARY ISSUES

[6] At the outset of the hearing, counsel for Mr. Tanweer had difficulties in connecting to the videoconference hearing. After several unsuccessful attempts to join the videoconference, counsel asked if he could attend by way of telephone connection only, that is, without video connection. The Panel permitted this request.

[7] Counsel for the PCC advised the Panel that the PCC was seeking to amend the Allegation, on consent, by replacing the word "scheme" with "arrangement" and deleting the phrase "among other things". It was noted that the parties had entered an Agreed Statement of Facts based on the amended Allegation. The Panel allowed the amendment of the Allegation on the consent of the parties.

III. ISSUES

[8] The Panel identified the following issues arising from the Allegation:

A. Did the evidence establish, on a balance of probabilities, the facts on which the Allegation by the PCC were based?

B. If the facts alleged by the PCC were established on the evidence on a balance of probabilities, did the Allegation constitute professional misconduct?

IV. DECISION

[9] The Panel found that the evidence established, on a balance of probabilities, the facts set out in the Allegation of professional misconduct.

[10] The Panel was satisfied that the Allegation constituted a breach of Rule 201.1 of the Code, Rule 201.1 of the CPA Rules and section 3.4(b) of the CMA Code of Professional Ethics, and, having breached these Rules, Mr. Tanweer had committed professional misconduct.

V. REASONS FOR THE DECISION

Findings regarding Conduct of Mr. Tanweer

[11] The evidence in support of the Allegation was placed before the Panel by way of an Agreed Statement of Facts (Exhibit 1) and an accompanying Document Brief (Exhibit 2). The Agreed Statement of Facts concisely summarized the facts relevant to the amended Allegation as follows:

(a) In or about early 2013, Ayaz Ahmed ("Ahmed") approached Mr. Tanweer with a proposition that required Mr. Tanweer to obtain a mortgage agent licence through the FSCO ('Mortgage Licence"), and then permit Ahmed to use Mr. Tanweer's mortgage agent credentials as he saw fit. In return, without having to do any additional work related to the business of arranging mortgage financing, Ahmed would split any earned commissions with Mr. Tanweer and share client information to assist Mr. Tanweer in expanding his accounting practice.

(b) Mr. Tanweer agreed to Ahmed's proposal. Ahmed covered all the costs of Mr. Tanweer obtaining and then maintaining his Mortgage Licence.

(c) At all material times, Ahmed held a mortgage agent licence and was exclusively employed by a mortgage brokerage company, Mortgage Alliance Maple Mortgages ("MAMM").

(d) On June 7, 2013, Mr. Tanweer obtained his mortgage agent certification, from the Real Estate and Mortgage Institute of Canada Inc.

(e) A mortgage agent is legally required to work under the supervision of a licensed mortgage broker and may only work for one mortgage brokerage.

(f) On June 21, 2013, Mr. Tanweer applied for employment as a mortgage agent with Real Mortgage Associates ("RMA"), a mortgage brokerage. RMA mortgage agents worked independently outside of the office, are unsupervised and their mortgage files are not routinely reviewed.

(g) Ahmed prepared and submitted Mr. Tanweer's application paperwork for the RMA employment application. This documentation in support of Mr. Tanweer's employment application included a curriculum vitae that falsely stated that he had worked for TD Bank as a mobile mortgage specialist since 2009 (Exhibit 2, Tab 3). The curriculum vitae did not accurately reflect Mr. Tanweer's actual credentials as shown on his LinkedIn profile: Exhibit 2, Tab 1.

(h) Mr. Tanweer was interviewed for the mortgage agent role by RMA. Based on his application and interview, RMA hired Mr. Tanweer as a mortgage agent and initiated his application for a Mortgage Licence with FSCO. FSCO subsequently issued Mr. Tanweer a Mortgage Licence.

(i) As part of their business model, which facilitated the independence of RMA's mortgage agents, RMA used their agents' personal email addresses for all company related emails. Mr. Tanweer provided his personal email address to RMA.

(j) Once Mr. Tanweer was hired by RMA and provided with personalized access to RMA's Filogix portal, Mr. Tanweer created an RMA email for Ahmed's use and passed on his Filogix portal password to him. Filogix is an online hub of the Canadian mortgage industry that connects brokerages to lenders and provides a secure document management exchange for the processing of mortgage applications.

(k) From 2013 to 2019, Ahmed illegally processed approximately 50 mortgage applications either through Mr. Tanweer's Filogix identifier account or by sending the applications directly to RMA through his RMA email account without using Mr. Tanweer's Filogix identifier.

(l) Most of the 50 mortgage transactions were filed under Mr. Tanweer's RMA Filogix account or otherwise directly submitted to RMA, with the relevant documents showing his signature as the mortgage agent, although Mr. Tanweer did not actually sign any of the documents. This information would be passed through RMA and the lenders that RMA was contracted to represent. Mr. Tanweer maintained that Ahmed sent some of the mortgage applications directly to one person at RMA (being the same person who interviewed Mr. Tanweer).

(m) In accordance with his employment contract with RMA, Tanweer was paid a commission, into a bank account he designated, on each of the mortgage transactions that were approved by one of RMA's lenders.

(n) Commissions paid by lenders are based on the total value of the mortgage loan and split 95%-5% between the brokerage and the agent, in favour of the mortgage agent. Of the mortgage transactions reviewed by CPA Ontario's investigator, RMA's payments to Mr. Tanweer averaged approximately $5,500 per mortgage.

(o) RMA commission payments to Mr. Tanweer were paid into bank accounts held by Mr. Tanweer. These accounts included a bank account belonging to RAAHAM Mortgage Services Inc., a corporation whose director was identified in federal corporation records as "Ayaz Ahmad", rather than Ahmed in his actual name (Exhibit 2, Tab 4).

(p) During the operation of their agreement, Mr. Tanweer was paid over $236,000 in commissions, which he then split with Ahmed, 10%-90% in favour of Ahmed.

(q) Mr. Tanweer maintained that he and Ahmed were participating in co-brokering of mortgages. This was incorrect. Co-brokering is the process whereby one mortgage brokerage, through an agent under its oversight, works with a mortgage agent employed by another independent brokerage, to secure lender approval for a client and then sharing the commission arising from the approved loan between the two brokerages.

(r) The mortgage agent agreement created and operated by Mr. Tanweer and Ahmad from 2013 to 2019 was improper.

(s) On April 16, 2019 FSCO notified RMA of its investigation into Mr. Tanweer's conduct. RMA immediately terminated Mr. Tanweer's employment contract, thereby halting his ability to use his Mortgage Licence (Exhibit 2, Tab 5).

(t) On May 10, 2019, Mr. Tanweer surrendered his Mortgage Licence and notified the police that there were fraudulent documents attached to mortgage applications that were processed through his name and account by Ahmed, of which he was not aware.

[12] The Panel also received answers from counsel in response to questions from the Panel. The Panel did not rely on these answers in reaching its conclusions and based its decision on the Agreed Statement of Facts, the documents filed on consent and the reasonable inferences from that evidence.

[13] The Panel was satisfied that the agreed facts, as supported by the admitted documents, provided clear, cogent and compelling evidence to demonstrate that Mr. Tanweer had participated in an arrangement with Ahmed whereby he permitted Ahmed to use Mr. Tanweer's Mortgage Licence and mortgage credentials to pose as Mr. Tanweer and access the confidential system established by RMA for the filing of mortgage applications. In this manner, Mr. Tanweer enabled Ahmed to process approximately 50 consumer mortgage transactions and claim over $236,000 in commissions from the brokerage that purportedly employed Mr. Tanweer, which commissions were then split with Mr. Tanweer.

Finding of Professional Misconduct

[14] In the Agreed Statement of Facts, and through counsel, Mr. Tanweer admitted the Allegation and that conduct set out in the Allegation constituted professional misconduct. The Panel accepted that admission.

[15] As set out further in its reasons regarding sanction, the Panel found that Mr. Tanweer's participation in the arrangement with Ahmed was not conduct that could be reconciled with the profession's reputation, particularly its reputation for integrity and candour, which was necessary to fulfil the role of a CPA. As set out in section 3.4(b) of the CMA Code of Professional Ethics, which governed Mr. Tanweer when he first entered the arrangement, Mr. Tanweer's conduct brought discredit on the profession. Accordingly, the Panel was satisfied that Mr. Tanweer had failed to maintain the good reputation of the profession and protect the public interest, contrary to each of the rules cited in the Allegation, and noted at paragraph 2 of these Reasons. Based on all of the evidence, and Mr. Tanweer's admission, the Panel concluded on a balance of probabilities that Mr. Tanweer had engaged in professional misconduct.

VI. DECISION AS TO SANCTION

[16] After considering the evidence, the law and the submissions of both parties, the Panel concluded that the appropriate sanction was a written reprimand, a fine of $30,000 payable within 24 months, the suspension of Mr. Tanweer's membership for a period of 18 months, effective immediately, a requirement that Mr. Tanweer successfully complete two specified courses in professional ethics before his reinstatement and the usual order as to publication of the decision to all members of CPA Ontario and the decision being available to members of the public, with the disclosure of Mr. Tanweer's name.

[17] The Panel also concluded that the fact of the suspension of Mr. Tanweer's membership would be published in the Brampton Guardian and the Mississauga News, with the costs to be borne by Mr. Tanweer.

VII. REASONS FOR DECISION AS TO SANCTION

[18] The PCC sought a sanction that included a written reprimand, a fine of $27,000, a six-month suspension of Mr. Tanweer's membership, and full publication of the decision, including newspaper publication. Counsel for PCC indicated that the amount of the fine was based on the amount of the profit obtained by Mr. Tanweer from his participation in this arrangement. Although the PCC sought a suspension of six months, counsel for the PCC submitted that the Panel could consider a longer suspension or even revocation after he reviewed some earlier cases decided by the Discipline Committee.

[19] Counsel for Mr. Tanweer submitted that an appropriate sanction would be a suspension of Mr. Tanweer's membership for three months, a fine of $15,000, with time to pay due to the impact of the pandemic, and electronic publication of the decision but not publication in newspapers.

[20] Given the comment by PCC counsel regarding more severe sanctions, the Panel received advice from its counsel that it was not bound to the range of sanction framed by the submissions of counsel and that it ultimately could impose the sanction that was in the public interest. However, counsel for the Panel emphasized that the Panel should give significant weight to the range set out by the parties. After receiving the advice of counsel, the Panel heard submissions from both parties as to the appropriate sanction, including the possibility of a sanction beyond the range framed by counsel, and, in particular a sanction above the sanction sought by the PCC.

[21] After considering all of the submissions of counsel, the Panel concluded that Mr. Tanweer's misconduct was more severe than suggested by either counsel. In the Panel's view, the misconduct established on the evidence amounted to dishonest or fraudulent conduct with respect to, at a minimum, RMA and FSCO, if not the

parties involved in the mortgages. The sanction imposed must convey a clear message to Mr. Tanweer, other members of the profession and the public that conduct of this nature was not acceptable for any member of CPA Ontario. The dishonest nature of the arrangement, which goes to the heart of an accountant's integrity, was central to the determination of a penalty that maintained the confidence of the public in the accounting profession.

[22] The Panel identified in the evidence a number of elements of the proven misconduct that supported the conclusion that the misconduct was very serious. The problematic elements of the arrangement itself can be summarized as follows:

- The misconduct involved a pattern of conduct that continued over several years (2013 to 2019).
- The arrangement between Ahmed and Mr. Tanweer involved false information being given to RMA in the form of the curriculum vitae that purported to reflect Mr. Tanweer's credentials. Mr. Tanweer knew that an application had been submitted on his behalf by Ahmed. Even if he did not submit the information himself, and there was also no evidence that he had reviewed the application, he did not take any steps to review, and correct, the information. The Panel was satisfied that he was aware that this information could be false (since he was unqualified for the position without the false information about prior mortgage experience) and he proceeded with the application process despite this knowledge.
- Mr. Tanweer knew that mortgage applications were being submitted, and approved, in his name. Counsel submitted that Mr. Tanweer did not know that applications were signed with his name. Whether he knew that his signature was applied to these applications was beside the point. The fact remained that he knew these applications were being submitted in his name: that was the crux of the arrangement.
- Mr. Tanweer permitted a third party to use personal credentials obtained in his name to provide regulated services to public. The Panel did not accept the argument that seriousness of the misconduct was somehow lessened by the fact that Mr. Tanweer did not allow Ahmed to use his CPA designation. The fact that Mr. Tanweer permitted the misuse of the privilege of his Mortgage Licence, in a regulated activity, was equally serious in terms of its impact on Mr. Tanweer's integrity. When a CPA is in any public role, all of the conduct of that CPA must meet the standards of integrity expected of all CPA members.

- Mr. Tanweer continued with the arrangement, even though he knew from the outset that Ahmed was not entitled to use his credentials. Even apart from what Mr. Tanweer would have learned in the mortgage agent training, the Panel was satisfied that it was obvious to Mr. Tanweer, or any reasonable person, that it was improper to allow use of his mortgage credentials as he did under the arrangement.
- The arrangement was structured to provide the appearance that Mr. Tanweer received funds, even though they were being split. This added to the deception. Moreover, some of these funds were directed to the account of a company, RAAHAM Mortgage Services Inc., which was registered through a false name for Ahmed.
- The arrangement led to the illegal processing of approximately 50 mortgages by Ahmed. The processing of these transactions would not have been possible without Mr. Tanweer's complicity.

[23] There were a number of other aggravating factors in Mr. Tanweer's misconduct.

[24] The Panel found that the deception by Mr. Tanweer misled RMA when he purported to seek employment from that company. Whether he actively created the false application or not, he was complicit in that deception. He continued that deception for six years (2013-2019) when he allowed Ahmed to process mortgage transactions in his name.

[25] Counsel for Mr. Tanweer submitted that RMA was not misled because someone within RMA was complicit in the conduct. The Panel was not satisfied that the evidence before the Panel established this conclusion on a balance of probabilities. However, even if it were true that one person within the company was complicit in the dishonesty, the fact that someone within RMA was complicit in any dishonest conduct does not mean that RMA, as a corporation, was not misled by the deception.

[26] In the Panel's view, Mr. Tanweer also misled FSCO, as regulator, because he sought and obtained credentials, namely a Mortgage Licence, that allowed him to participate in a regulated field and he then misused those credentials by allowing someone other than himself to use them. The arrangement allowed Ahmed to work for two mortgage brokerages – which was prohibited conduct for a mortgage agent under the regulatory framework established by FSCO. While Mr. Tanweer may or may not have turned his mind to the specific reason why the arrangement was improper, the Panel was satisfied that he was aware that the arrangement was improper given it involved a misrepresentation as to who was conducting business under his personal Mortgage Licence and personal identifiers.

[27] There was no evidence that Mr. Tanweer had any legitimate business interest in obtaining a Mortgage Licence. Although he referenced mortgages in his website, there was no indication that he placed mortgages himself in addition to those brokered by Ahmed under the arrangement. Mr. Tanweer obtained regulated credentials for the sole purpose of engaging in unlawful conduct.

[28] Mr. Tanweer maintained that he did not know about the fraudulent nature of any transactions and only discovered this when FSCO intervened. Whether the transactions arranged by Ahmed were fraudulent in themselves was not relevant to an assessment of Mr. Tanweer's misconduct. The issue was whether he knew that the arrangement itself was dishonest. In the Panel's view, he clearly knew – or at the very least turned a blind eye to the fact - that he had entered an arrangement whose purpose was unlawful.

[29] Mr. Tanweer profited from the unlawful arrangement to the extent of approximately $23,000, without having to do any additional work. This self-enrichment was a clear aggravating factor. Counsel for the PCC submitted that the sanction should include some term that would disgorge these profits from Mr. Tanweer. The Panel concluded that such an explicit term was not necessary, but took the amount of profit into account in setting the amount of the fine.

[30] The Panel also concluded that Mr. Tanweer had not really accepted any responsibility for his involvement in this arrangement. While the Panel recognized that he had signed an Agreed Statement of Facts and admitted misconduct, there was no evidence of remorse apart from these facts or of any taking of responsibility before that time. In particular, the Panel relied on the fact that Mr. Tanweer had not taken any steps to come forward before the situation was discovered by FSCO.

[31] Moreover, the positions taken in the Agreed Statement indicated to the Panel that Mr. Tanweer placed primary responsibility for the arrangement on Ahmed. The Panel did not accept this characterization. Mr. Tanweer played a central role in this arrangement, and the arrangement could not have proceeded without his involvement. Even if Ahmed devised the arrangement, the Panel found Mr. Tanweer equally responsible for its implementation.

[32] In the Panel's view, when there is something wrong with a plan or proposal being discussed, the CPA should lead the charge to stop the plan or amend the plan to eliminate any impropriety. It is not enough for the CPA to point to others involved in the discussion as the ones to blame. It is not enough for the CPA to do nothing and say that he was a victim of someone else. The expectations on a CPA, given the privileged position of the profession and the trust placed in the members of the profession by the public, are greater than that.

[33] The Panel recognized that there were mitigating factors in favour of Mr. Tanweer. He did not have a discipline history prior to these events. There was no evidence that anyone had suffered losses on the underlying mortgage transactions. Also,

while there was some suggestion that one or more of the transactions established by Ahmed may have been fraudulent in themselves, there was no evidence to demonstrate that. Mr. Tanweer had voluntarily surrendered his Mortgage Licence. And, as noted, Mr. Tanweer admitted professional misconduct and entered an Agreed Statement of Facts.

[34] Notwithstanding these mitigating factors, the Panel concluded that the seriousness of the misconduct required a sanction greater than the three to six month range set out by counsel. The Panel was consequently required to determine an appropriate sanction from first principles. The Panel found that the cases cited were not particularly helpful in this regard as they were determined on their specific, and quite unique facts. However, the Panel did note that the cases cited with respect to a member assisting dishonest conduct by another person all involved suspensions of at least six months. The most analogous case was the decision of the Discipline Committee in Horsley (Re) (August 16, 2016), in which Mr. Horsley had not taken appropriate care to ensure the accuracy of the financial information for a company of which he was Chief Financial Officer and allowed his name to be associated with the financial information, nonetheless. Mr. Horsley's membership was revoked.

[35] The Panel did consider whether revocation was the appropriate sanction given that the misconduct involved dishonesty, which undermined the essential character trait required of all members of CPA Ontario: integrity. However, the Panel was mindful of the advice of its counsel, which was not disputed by either party, that the Panel had to give some weight to the positions of the party. Since the PCC had not sought revocation of Mr. Tanweer's membership, the Panel concluded that it would not be appropriate to impose that sanction at this point.

[36] In addition, the Panel was satisfied that Mr. Tanweer could be rehabilitated. While there was a clear need for a sanction that deterred Mr. Tanweer and others from this sort of conduct, the Panel recognized that it was necessary to also consider whether these goals could be met while allowing, and supporting, the member's rehabilitation as a member who met the standards of the profession. The Panel accepted that this could be possible in this case given the steps he had taken in admitting his misconduct. However, the Panel concluded that further education of the member was necessary to support this rehabilitation, and, for this reason, directed that Mr. Tanweer complete substantial continuing professional development related to the issues raised by the Allegation before he could return to practice.

[37] While allowing for Mr. Tanweer's rehabilitation, the Panel did conclude that a substantial suspension was required to express its disapproval of a member engaged in dishonest conduct and convey to the profession and the public that

such misconduct would be met with very serious sanctions. For these reasons, the Panel found that a suspension of 18 months was appropriate.

[38] With respect to the amount of the fine, the Panel considered the profit that Mr. Tanweer recovered and concluded that the penalty had to be greater than that amount. In the Panel's view, there needed to be an additional amount included in setting the amount of the fine to avoid the fine simply becoming a cost of doing business. The Panel accepted that more time to pay the fine than would usually be granted was appropriate as a result of the economic impact of the COVID-19 pandemic and made its order accordingly.

[39] In the Panel's view, the serious nature of Mr. Tanweer's conduct, and the fact that his practice involved services to many members of the public, required that there be publication of the decision in two newspapers in the geographic area of Mr. Tanweer's practice. Even though Mr. Tanweer now expressed some remorse through his admission of misconduct, The Panel concluded that the fact that Mr. Tanweer had admitted misconduct did not provide sufficient assurance that he would not engage in similar misconduct in the future unless the public was made aware that he could not act as a Chartered Accountant.

[40] The Panel recognized that newspaper publication of the suspension was not required under section 48 of Regulation 6-2 because Mr. Tanweer did not have a public accounting licence. However, the Panel found that it had authority under section 50 to order publication in any form where it considered it appropriate.

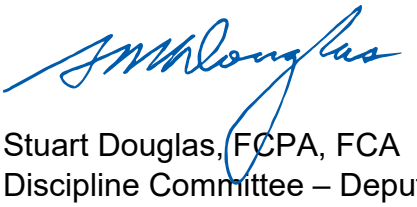
VIII. COSTS

[41] The PCC asked the Panel to award costs equal to two thirds of the costs incurred by the PCC in the prosecution of this matter, as reflected in the Costs Outline filed as Exhibit 3. As those costs totaled slightly more than $27,000, this request would amount to a costs award of $18,000. Counsel for Mr. Tanweer submitted that the costs award should only be 50% of the costs incurred by the PCC because Mr. Tanweer had moved the hearing process forward efficiently and in cooperation with the PCC.

[42] In recent decisions, the Discipline Committee has recognized that a costs award against a member equal to two-thirds of the actual costs incurred by the PCC set the appropriate balance between the member's obligation to reimburse costs incurred as a result of his own misconduct and the profession's obligation to bear some cost for regulating its members. The Panel found no reason to depart from this proposition here. The benefit of Mr. Tanweer's cooperation in the hearing process was reflected in a reduction of the total costs of the PCC. The Panel did not see any reason to discount the costs award further.

[43] The Panel ordered that Mr. Tanweer pay costs in the amount of $18,000 within 24 months of the order being made. The Panel allowed this amount of time to pay in recognition of the financial hardships caused by the COIVD-19 pandemic.

Dated at Toronto this 6th day of January, 2021



Stuart Douglas, FCPA, FCA
Discipline Committee – Deputy Chair

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Rebecca Huang (Public Representative)
Catherine Kenwell (Public Representative)
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