

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

TO: Shamsuddin Tejani, CPA, CA

AND TO: The Discipline Committee of CPA Ontario

The Professional Conduct Committee of CPA Ontario hereby makes the following Allegations of professional misconduct against SHAMSUDDIN TEJANI, CPA, CA, a member of CPA Ontario:

1. THAT the said Shamsuddin Tejani, in or about the period of March 1, 2019 to July 31, 2019, while engaged to perform an audit of the financial statements of "F M Canada Inc." for the year ended March 31, 2019, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, contrary to Rule 206.1 of the Code of Professional Conduct, in that:
 - a. he failed to properly plan the audit and develop an overall audit strategy;
 - b. he failed to document an assessment of independence or come to a conclusion on compliance with independence requirements;
 - c. he failed to document his conclusion that appropriate procedures regarding the acceptance and continuance of client relationships and audit engagements have been followed and that conclusions reached in this regard are appropriate;
 - d. he failed to document any audit work done with respect to:
 - i. materiality
 - ii. understanding the entity and its environment
 - iii. internal control
 - iv. fraud risk
 - v. risk of material misstatement at the financial statement level and at the assertion level for classes of transactions and account balances;
 - e. he failed to test journal entries for unauthorized entries and management override;

- f. he failed to document what, if any, subsequent events review procedures were carried out;
 - g. he failed to adequately document substantive audit procedures performed on material classes of transaction and account balances including:
 - i. Accounts payable cut-off
 - ii. Expenses
 - iii. Inventory
 - iv. Revenues
 - h. he failed to ensure that the auditor's report referred to the financial statement notes;
 - i. he included in the auditor's report a reference to corresponding figures on the financial statements when it is not appropriate to do so.
2. THAT the said Shamsuddin Tejani, in or about the period of December 1, 2018 to May 31, 2019, while engaged to perform an audit of the financial statements of "RADC" for the year ended December 31, 2018, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, contrary to Rule 206.1 of the Code of Professional Conduct, in that:
- a. he failed to properly plan the audit and develop an overall audit strategy;
 - b. he failed to document an assessment of independence or come to a conclusion on compliance with independence requirements;
 - c. he failed to document his conclusion that appropriate procedures regarding the acceptance and continuance of client relationships and audit engagements have been followed and that conclusions reached in this regard are appropriate;
 - d. he failed to document an evaluation of whether an engagement quality control review was required;
 - e. he failed to document any audit work done with respect to:
 - i. materiality
 - ii. understanding the entity and its environment
 - iii. internal control
 - iv. fraud risk

- v. risk of material misstatement at the financial statement level and at the assertion level for classes of transactions and account balances
 - f. he failed to carry out appropriate audit procedures with respect to related parties;
 - g. he failed to test journal entries for unauthorized entries and management override;
 - h. he failed to document what, if any, subsequent events review procedures were carried out;
 - i. he failed to adequately document substantive audit procedures performed on material classes of transaction and account balances including:
 - i. Accounts payable cut-off
 - ii. Accounts receivable
 - iii. Expenses
 - iv. HST paid
 - v. Payroll
 - vi. Revenues
 - j. he failed to ensure that the auditor's report correctly identified the entity whose financial statements were being audited and to ensure the report referred to the financial statement notes;
 - k. he included in the auditor's report a reference to corresponding figures on the financial statements when it was not appropriate to do so.
3. THAT the said Shamsuddin Tejani, in or about the period of December 1, 2018 to May 31, 2019, while engaged to perform an audit of the financial statements of "MAC" for the year ended December 31, 2018, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, contrary to Rule 206.1 of the Code of Professional Conduct, in that:
- a. he failed to properly plan the audit and develop an overall audit strategy;
 - b. he failed to document an assessment of independence or come to a conclusion on compliance with independence requirements;
 - c. he failed to document his conclusion that appropriate procedures regarding the acceptance and continuance of client relationships and audit engagements have

been followed and that conclusions reached in this regard are appropriate;

- d. he failed to document an evaluation of whether an engagement quality control review was required;
 - e. he failed to document any audit work done with respect to:
 - i. materiality
 - ii. understanding the entity and its environment
 - iii. internal control
 - iv. fraud risk
 - v. risk of material misstatement at the financial statement level and at the assertion level for classes of transactions and account balances
 - f. he failed to test journal entries for unauthorized entries and management override;
 - g. he failed to adequately document substantive audit procedures performed on material classes of transaction and account balances including:
 - i. Expenses
 - ii. Revenues
 - h. he included in the auditor's report a reference to corresponding figures on the financial statements when it was not appropriate to do so.
4. THAT the said Shamsuddin Tejani, in or about the period of December 1, 2018 to June 31, 2019, while engaged to perform a review of the financial statements of "MTFXG Inc." for the year ended December 31, 2018, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, contrary to Rule 206.1 of the Code of Professional Conduct, in that:
- a. he failed to document that he had completed an assessment with respect to the acceptance and continuance of the client relationship and review engagement;
 - b. he failed to document compliance with relevant ethical requirements including those pertaining to independence;
 - c. he failed to document an understanding of the entity and its environment, and the applicable financial reporting framework, including the entity's accounting systems and accounting records;

- d. he failed to document the determination of materiality for the financial statements as a whole;
 - e. he failed to document the areas in the financial statements where material misstatements are likely to arise;
 - f. he failed to sufficiently document the inquiry and analytical procedures performed on the following material items and/or areas in the financial statements where material misstatements are likely to arise:
 - i. Related party receivables
 - ii. accounts payable
 - iii. sales
 - iv. cost of sales
 - v. gross margin
 - vi. expenses
 - vii. payroll
 - g. he failed to ensure that the report for the review engagement was in compliance with the requirements of CSRE 2400 Engagements to Review Historical Financial Statements;
 - h. he failed to adequately document the results obtained, and the conclusions reached, with respect to the nature, timing and extent of review procedures performed.
5. THAT the said Shamsuddin Tejani, in or about the period of October 1, 2018 to January 31, 2019, while engaged to perform a review of the financial statements of "CT Inc." for the year ended October 31, 2018, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, contrary to Rule 206.1 of the Code of Professional Conduct, in that:
- a. he failed to document that he had completed an assessment with respect to the acceptance and continuance of the client relationship and review engagement;
 - b. he failed to document compliance with relevant ethical requirements including those pertaining to independence;
 - c. he failed to document an understanding of the entity and its environment, and the applicable financial reporting framework, including the entity's accounting

systems and accounting records;

- d. he failed to document the determination of materiality for the financial statements as a whole;
- e. he failed to document the areas in the financial statements where material misstatements are likely to arise;
- f. he failed to sufficiently document the inquiry and analytical procedures performed on the following material items and/or areas in the financial statements where material misstatements are likely to arise:
 - i. Related party receivables
 - ii. accounts payable
 - iii. sales
 - iv. cost of sales
 - v. gross margin
 - vi. expenses
 - vii. payroll
- g. he failed to ensure that the report for the review engagement was in compliance with the requirements of CSRE 2400 Engagements to Review Historical Financial Statements;
- h. he failed to adequately document the results obtained, and the conclusions reached, with respect to the nature, timing and extent of review procedures performed.

Dated at Aurora, Ontario, this 24th day of February 2021.



H.G. FAGAN, FCPA, FCA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **SHAMSUDDIN TEJANI**, a Member of the Chartered Professional Accountants of Ontario, under **Rule 206.1** of the CPA Code of Professional Conduct.

TO: Shamsuddin Tejani, CPA, CA

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE JUNE 1, 2021

DECISION

The Allegations that Shamsuddin Tejani breached Rule 206.1 of the CPA Code of Professional Conduct are established, and constitute professional misconduct.

ORDER

IT IS ORDERED THAT:

1. Shamsuddin Tejani be reprimanded in writing by the Chair of the hearing;
2. Shamsuddin Tejani shall pay a fine of \$10,000 to the Chartered Professional Accountants of Ontario ("CPA Ontario") by June 1, 2023;
3. Shamsuddin Tejani shall attend and successfully complete, By June 1, 2023, the following professional development courses offered by CPA Ontario (or their successor courses):
 - Auditing and Accounting for ONT Condo Corporations;
 - Review Engagements – Application of the Standards);
 - Internal Control;
 - ASPE - Review of the Standards; and
 - ASPE – Disclosure and Presentation.
4. Shamsuddin Tejani shall, no later than July 2, 2021, enter into a Supervision Agreement for a period of 24 months, commencing with the first audit work undertaken by Shamsuddin Tejani subsequent to this Order. The Agreement and choice of Supervisor are to be approved by the Director of Standards Enforcement. The Supervisor will review all assurance work undertaken by Shamsuddin Tejani, and all costs associated with the Supervision Agreement will be borne by Shamsuddin Tejani.

5. The Professional Conduct Committee will re-investigate Shamsuddin Tejani's practice following the supervisory period, with the costs of the re-investigation, up to \$3,500, borne by Shamsuddin Tejani;
6. Notice of this Decision and Order, disclosing Shamsuddin Tejani's name, is to be given in the form and manner determined by the Discipline Committee:
 - a. to all members of CPA Ontario;
 - b. to the Public Accounting Standards Committee; and
 - c. to all provincial bodiesand shall be made available to the public;
7. In the event Shamsuddin Tejani fails to comply with the terms of this Order, his membership with CPA Ontario shall be suspended until such time as he does comply, provided that he complies within three months of the date of his suspension. In the event he does not comply within the three-month period, his membership in CPA Ontario shall be revoked and notice of the revocation of his membership, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Shamsuddin Tejani's practice or residence. All costs associated with this publication shall be borne by Shamsuddin Tejani and shall be in addition to other costs ordered by the panel;

AND THAT:

8. Shamsuddin Tejani shall pay costs of \$10,000 to CPA Ontario by June 1, 2023.

DATED at Toronto this 1st day of June, 2021.



David Debenham
Discipline Committee

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations of professional misconduct against **Shamsuddin Tejani, CPA, CA**, a member of the Chartered Professional Accountants of Ontario, under **Rule 206.1** of the *CPA Code of Professional Conduct*

BETWEEN:

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

-and-

Shamsuddin Tejani

APPEARANCES:

For the Professional Conduct Committee: Paul Farley, Counsel

For Mr. Tejani: Present and self-represented

Heard: June 1, 2021

Decision and Order effective: June 1, 2021

Release of written reasons: June 15, 2021

REASONS FOR DECISION AND ORDER MADE JUNE 1, 2021

I. OVERVIEW

- [1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario ("PCC") has made Allegations that Mr. Shamsuddin Tejani, ("the Member"), failed to perform professional work in accordance with generally accepted standards of the profession, with respect to three audit and two review engagements.
- [2] This hearing proceeded on June 1, 2021, via videoconference, as enabled by the Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020, which grants the tribunal wide powers to determine the format of the hearing and is paramount to any other legislation or rules containing provisions to the contrary.
- [3] The Panel received and reviewed the following materials for the hearing:
 - Allegations of Professional Misconduct (not marked as an Exhibit)

- Agreed Statement of Facts (“ASF”), Exhibit 1
- Document Brief to the ASF, Exhibit 2
- Standards Brief, Exhibit 3
- Submission in Support of a Joint Submission on Sanction, Exhibit 4
- The Authorities Brief, which was not marked as an Exhibit

[4] The Member signed an ASF and admitted the Allegations of professional misconduct made by the PCC. The onus was on the PCC to show on a balance of probabilities that the Member’s conduct breached the identified Rule and constituted professional misconduct.

II. PRELIMINARY ISSUES

[5] Both parties agreed there were no preliminary issues.

III. ISSUES

[6] The Panel identified the following issues arising from the Allegations:

- (a) Did the evidence establish, on a balance of probabilities, the facts on which the Allegations by the PCC were based?
- (b) If the facts alleged by the PCC were established on the evidence on a balance of probabilities, did the Allegations constitute professional misconduct?
- (c) If the Allegations constitute professional misconduct, should the Panel accept the joint submission on penalty proposed by the parties?

IV. DECISION

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

[8] The Panel was satisfied that the Allegations constituted breaches of Rule 206.1 of the Code of Professional Conduct and, having breached this Rule, the Member committed professional misconduct.

[9] The Panel accepted the joint submission on sanction proposed by the parties.

V. REASONS FOR DECISION ON PROFESSIONAL MISCONDUCT

Background of the Member

[10] The Member obtained a Bachelor of Commerce degree from The University of Karachi, Pakistan in 1983, and obtained his Chartered Accountant designation from The Institute of Chartered Accountants of Pakistan in 1988. He became a CPA through The Colorado State Board of Accountancy in 1996 and became a

Member of The Institute of Chartered Accountants of Ontario in 2000. He joined the firm of Kassim-Lakha Abdulla & Co., Chartered Accountants in 2007 as a partner. Kassim-Lakha Abdulla & Co. ceased operations effective December 31, 2009.

- [11] Chan Tejani LLP was formed on October 22, 2009 and began a public accounting practice on January 1, 2010. Mr. Chan, the Member's former partner, passed away in July 2016. Since that date, the Member is the only partner of the firm which includes two accounting staff members and one administrative assistant.

The Misconduct

- [12] Evidence in support of the Allegations was placed before the Panel through an ASF and a Document Brief accompanying the ASF.
- [13] This matter arose from a reinspection of the Member's practice. As a result of this reinspection, the Practice Inspection Committee referred the Member to the Professional Conduct Committee for independent investigation.
- [14] The ASF clearly sets out a number of instances in which the member failed to perform his professional services in accordance with generally accepted standards of practice of the profession in relation to three audits and two reviews.
- [15] Generally speaking, the Member failed to conform to some or all of the following standards in relation to the three audits:
- (a) He failed to properly plan the audit and develop an overall audit strategy;
 - (b) He failed to document an assessment of independence or come to a conclusion on compliance with independence requirements;
 - (c) He failed to document his conclusion that appropriate procedures regarding the acceptance and continuance of client relationships and audit engagements have been followed and that conclusions reached in this regard are appropriate;
 - (d) He failed to document any audit work done with respect to: materiality, understanding the entity and its environment, internal control, fraud risk and risk of material misstatement at the financial statement level and at the assertion level for classes of transactions and account balances;
 - (e) He failed to test journal entries for unauthorized entries and management override;
 - (f) He failed to document what, if any, subsequent events review procedures were carried out;
 - (g) He failed to adequately document substantive audit procedures performed on material classes of transaction and account balances including: Accounts payable cut-off, Accounts receivable, Expenses, HST paid, Payroll, Revenues;

- (h) He failed to ensure that the auditor's report referred to the financial statement notes;
- (i) He included in the auditor's report a reference to corresponding figures on the financial statements when it is not appropriate to do so;
- (j) He failed to document an evaluation of whether an engagement quality control review was required;
- (k) He failed to carry out appropriate audit procedures with respect to related parties; and
- (l) He failed to ensure that the auditor's report correctly identified the entity whose financial statements were being audited and to ensure the report referred to the financial statement notes.

[16] Generally speaking, the Member failed to conform to the following standards in each of the two reviews:

- (a) He failed to document that he had completed an assessment with respect to the acceptance and continuance of the client relationship and review engagement;
- (b) He failed to document compliance with relevant ethical requirements including those pertaining to independence;
- (c) He failed to document an understanding of the entity and its environment, and the applicable financial reporting framework, including the entity's accounting systems and accounting records;
- (d) He failed to document the determination of materiality for the financial statements as a whole;
- (e) He failed to document the areas in the financial statements where material misstatements are likely to arise;
- (f) He failed to ensure that the report for the review engagement was in compliance with the requirements of CSRE 2400 Engagements to Review Historical Financial Statements; and
- (g) He failed to adequately document the results obtained, and the conclusions reached, with respect to the nature, timing and extent of review procedures performed.

Analysis

[17] The Panel had no trouble in finding, on a balance of probabilities, that the Member engaged in professional misconduct as set out in the ASF. In particular, the Panel finds that the Member breached Canadian Auditing Standards 210, 220, 230, 240, 300, 320, 330, 500, 501, 520, 550, 560, 570, 700, 710, Canadian Standard on Review Engagements 2400 and 9200, and Canadian Standard on Quality Control 1.

- [18] The Panel relies on the facts as set out in the ASF and the Member's admission to both the facts and the Allegations of professional misconduct.

VI. REASONS FOR DECISION ON SANCTION

Joint Submission on Sanction

- [19] The PCC and the Member proposed a joint submission for the Panel's consideration, including the following:
- (a) A reprimand.
 - (b) A payment by way of fine in the amount of \$10,000.
 - (c) A payment by way of costs in the amount of \$10,000.
 - (d) An Order that the Member attend, within 24 months of the time the Discipline Committee makes its Order, a number of specified professional development courses offered by CPA Ontario (or their successor courses):
 - (e) An Order that the Member, no later than 30 days after the making of the Order, enter into a Supervision Agreement (approved by the Director of Standards Enforcement ("the Director")) with a Supervisor (approved by the Director). The Supervisor is required to review all assurance work undertaken by the Member for 24 months. The 24-month supervisory period will commence with the first audit work undertaken by the Member following the Order. All costs associated with the supervision will be borne by the Member.
 - (f) The PCC will re-investigate the Member's practice following the supervisory period with the costs of the re-investigation, up to \$3,500, to be borne by the Member.
 - (g) Notice of the terms of the Order is to be given to all members of CPA Ontario, the Public Accounting Standards Committee, and all provincial CPA bodies.
 - (h) The Member will be allowed 24 months to pay the fine and costs.
 - (i) A failure by the Member to comply with any of the terms of the Order will result in his suspension from membership in CPA Ontario which suspension will continue until he complies with the Order PROVIDED THAT if the Member's suspension under this section continues for three months his membership in CPA Ontario will be revoked with full publicity in accordance with Regulation 6-2 section 48.
- [20] The Panel accepts the joint submission on sanction for the reasons set out below.

Principles Applicable to Joint Submissions

- [21] In *R. v. Anthony-Cook*¹ the Supreme Court of Canada articulated the proper approach to a joint submission on sentencing in a criminal law context. The test applied by the Court is whether the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. (“the Public Interest Test”).² Under this test, a joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system.
- [22] In other words, trial judges should avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts. The public interest test emphasizes that a joint submission should not be rejected lightly, and rejection connotes 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.”*³
- [23] The Court in *R. v. Anthony-Cook* set out six principles, summarized below:⁴
1. If a trial judge is considering a joint submission, she or he must do so on an “as-is” basis. This means that adding to or excluding a term of the order constitutes a rejection of a joint submission. The only exception is to this is if the parties have omitted a mandatory term;
 2. The principles engaged in considering a joint submission apply both to “jumping” or “undercutting” a joint submission;
 3. The circumstances leading to the joint submission are relevant to a judge’s consideration of whether the proposed sentence is in the public interest. For example, any benefits obtained by the Crown or concessions made by the accused may make a sentence more compelling than a joint submission resulting only from the accused’s realization that a conviction was inevitable;
 4. If the trial judge is not satisfied with the sentence proposed by counsel, fundamental fairness dictates that an opportunity be afforded to counsel to make further submissions in an attempt to address the judge’s concerns before the sentence is imposed. The judge should notify counsel that he or

¹ 2016 SCC 43 (CanLii)

² Id at para 5

³ Id para 33-34

⁴ Id para 51-60

she has concerns, and invite further submissions on those concerns, including the possibility of allowing the accused to withdraw his or her guilty plea;

5. If the trial judge's concerns about the joint submission are not alleviated, the judge may allow the accused to apply to withdraw his or her guilty plea.
6. Judges who remain unsatisfied by counsel's submissions should provide clear and cogent reasons for departing from the joint submission. These reasons will help explain to the parties why the proposed sentence was unacceptable and may assist them in the resolution of future cases. Reasons will also facilitate appellate review.

[24] The principles outlined in *R. v. Anthony-Cook* are applicable to the professional discipline context. In *Reault v. Law Society of Saskatchewan*,⁵ the court recognized the importance of plea bargaining to the disciplinary process. If the parties negotiating compromise agreements cannot expect their efforts will be respected, there is little incentive to attempt to negotiate a resolution.⁶ It follows that a Discipline Committee ("DC") has a duty to consider the joint submission, confirm that it understands it is constrained in considering the joint submission, and give reasons as to why it is inappropriate; not within the range of sentences; unfit or unreasonable; and contrary to the public interest. If the DC is of the view the joint submission on penalty is not an appropriate disposition in the case before them, then it is required to give cogent reasons as to why it is inappropriate. Failure to do so leads to the inevitable conclusion that the decision of the DC is itself unreasonable.⁷

[25] In *re Hoey and Woodcraft*⁸ The DC of the Institute of Chartered Accountants of Ontario accepted the principles set out above, and gave good and cogent reasons why it did not accept the joint submissions in that case. However, the DC failed to signal to the parties that it was contemplating a more severe sanction than was contemplated by the joint submission, and failed to provide the parties with an opportunity to make submissions based on the potential deviation from the joint submissions. Asking the parties if they have anything more to add is insufficient for this purpose. They must be aware that a more severe sanction is in the offing.

The Appropriateness of the Sanctions in this Matter

[26] Counsel representing the PCC directed the Panel to a series of precedents in similar cases.

⁵ [2009] SKCA 81 (CanLii)

⁶ Id at para 19

⁷ Id at para 28

⁸https://ebusiness.cpaontario.ca/discipline/ReturnFile_Action.cfm?Required=hoey ;
https://ebusiness.cpaontario.ca/discipline/ReturnFile_Action.cfm?Required=woodcroft

- [27] The following precedents presented by the PCC involve settlement agreements, save for Morgan. A Settlement Agreement is distinguished from the present case because it does not involve an admission of guilt by the Member.
- [28] The first precedent is CPAO v. *Lopez*,⁹ the member was a sole practitioner who had been referred to the PCC as a result of the findings of the Practice Inspection Committee with respect to a failure to maintain the standards of practice of the profession. All four of the Allegations against Lopez involved audit engagements and, like this case, all four Allegations contained numerous particulars showing how the member did not perform his professional services in accordance with generally accepted standards of practice of the profession. The penalty agreed to in the Settlement Agreement and accepted by the DC included: a) A fine of \$7,500; b) Professional development; c) Supervised practice for 24 months; d) Reinvestigation by the PCC with costs up to \$3,500 to be borne by the member; e) Publicity; and f) Costs in the amount of \$15,000.
- [29] In CPAO v. *McInnis* ¹⁰– McInnis, like the Member, was a sole practitioner who had been referred to the PCC as a result of the findings of the Practice Inspection Committee with respect to a failure to maintain audit standards. All of the Allegations against McInnis were with respect to maintaining generally accepted standards of practice in carrying out the review of the financial statements of four different companies over two years. The terms of Settlement, which were accepted by the DC, included: a) A fine of \$5,000; b) Professional development; c) Supervised practice for 18 months; d) Reinvestigation by the PCC with costs up to \$3,500 to be borne by the member; e) Publicity; and f) Costs in the amount of \$15,000.
- [30] In *Re Paloc*¹¹ the matter also proceeded by way of Settlement Agreement which was approved by the DC. Paloc was a sole practitioner during the period that he provided professional services which were not in accordance with generally accepted standards of practice of the profession. In his case the professional services involved five audits over three years and the matter was referred to the PCC by Practice Inspection. The Settlement Agreement shows numerous disclosure deficiencies and failures to properly document as required by generally accepted standards of practice. When material errors were discovered in financial statements that he had provided an opinion on, he did not consider Handbook provisions with respect to the withdrawal and reissuance of financial statements. The terms of Settlement agreed to and accepted by the DC included: a) A fine of \$5,000; b) Professional development; c) Supervised practice for 18 months; d) Reinvestigation by the PCC with costs up to \$2,500 to be borne by the member; e) Publicity; and f) Costs in the amount of \$5,000.

⁹ https://ebusiness.cpaontario.ca/discipline/ReturnFile_Action.cfm?Required=lopezS

¹⁰ [https://ebusiness.cpaontario.ca/discipline/ReturnFile_Action.cfm?Required=McInnis Settlement 20190809](https://ebusiness.cpaontario.ca/discipline/ReturnFile_Action.cfm?Required=McInnis_Settlement_20190809)

¹¹ https://ebusiness.cpaontario.ca/discipline/ReturnFile_Action.cfm?Required=paloc%20settlement

- [31] In *CPAO v. Morgan*¹² (“Morgan”) there were four allegations alleging a failure to perform professional services in accordance with generally accepted standards of practice of the profession contrary to Rule 206.1. Each Allegation had many particulars, as set out in paragraph 8 of the reasons for decision of the DC. Morgan did not attend and a plea of not guilty to the Allegations was entered on his behalf (para. 9). The sanction imposed by the DC included a reprimand (paragraph 74), a) A fine of \$7,500; b) Professional development; c) Supervised practice for 24 months; d) Reinvestigation by the PCC with costs up to \$2,500 to be borne by the member; e) Publicity in the usual way; and f) Costs in the amount of \$12,500. In imposing sanction, the DC noted that: “...The public deserves, and the profession demands practitioners who meet the standards of the profession. Despite the opportunities available through Practice Inspection and the chances the PIC gave Mr. Morgan, he did not bring his standards of practice up as required.” The DC went on to say (para. 75) that the courses and reinvestigation are intended to allow Morgan to rehabilitate himself.
- [32] In *Re Hambley*,¹³ Hambley was another sole practitioner who had been referred to the PCC as a result of the findings of the Practice Inspection Committee with respect to a failure to maintain audit standards. There were three draft allegations brought, each with multiple particulars, alleging that Hambley had failed to perform his professional services in accordance with generally accepted standards of practice of the profession. The terms of settlement agreed to and accepted by the DC included: a) A fine of \$5,000; b) A restriction on his practice to exclude assurance work; c) Publicity in accordance with the Regulations; and d) Costs in the amount of \$10,700.

Consequences for Failure to Comply

- [33] In every case involving a sanction imposed by the DC, where a member is required to comply with an Order of the DC, there is a clause, like that agreed to in this case that provides a consequence for the failure to do so. This ensures the protection of the public because, the PCC argues, if the member does not comply with the terms of the sanction order, the member will present a risk to the public and should be suspended and ultimately, if the suspension continues, their membership should be revoked.

The Joint Submission is In the Public Interest

- [34] As the Court in *Nanson v. Saskatchewan College of Psychologists* observed, there is not a “one size fits all” mode of sentencing. Rather, penalty is a highly individualized process. A penalty ought to be appropriate to the gravity of the acts and the degree of responsibility of the offender. Of great import to this panel is the following observation made by the Saskatchewan Court of Appeal:

¹² https://ebusiness.cpaontario.ca/discipline/ReturnFile_Action.cfm?Required=morgan

¹³ [ReturnFile_Action.cfm \(cpaontario.ca\)](#)

To say that any transgression must result in receiving a particular penalty or other consequence is not in accord with a proper and reasonable assessment of such calculus.¹⁴

- [35] Under s. 35 (4) of Chartered Professional Accountants of Ontario Act, 2017, ('the Act')¹⁵ If the DC finds a member guilty of professional misconduct, it may order one or more of the following (in relevant part):
1. Revoke the member's membership;
 2. Suspend the member's membership;
 3. Impose restrictions or conditions on the right of the member to practise as a Chartered Professional Accountant or, his or her use of the designations or the initials connoting his or her membership;
 4. Reprimand the member;
 5. Direct the member to pay a fine and specify the timing and manner of payment;
 6. Direct the member to take any specified rehabilitative measure, including requiring the member to successfully complete specified professional development courses or to seek specified counselling or treatment;
 7. Require a practice inspection under s.41 of the Act on such terms and conditions as the committee may specify;
- [36] In any given case, the full range of facts and circumstances should be considered in determining whether any sanction is appropriate. The weight allocated to each factor will vary based on the case-specific circumstances and other factors relevant to the maintenance of the standards and reputation of the profession.
- [37] The Panel is satisfied that the Joint Submission amply satisfies the public interest test. In particular, the Panel accepts that courses and reinvestigation have been agreed to in this case, to allow the Member to rehabilitate himself. With respect to the fine and publicity these will help to secure the principle of specific and general deterrence. The PCC argues that the same principle applies here.
- [38] One area of concern for the Panel is the reprimand, which has the flavour of the kind of "cookie cutter" penalty that was frowned upon in *Nanson*, above. However, in our view, in this case, a reprimand fulfils the four purposes typically identified in professional discipline cases as the objectives of sanction¹⁶:
- (a) Specific deterrence requires a reprimand to deter a repetition of the behavior by the Member;

¹⁴ *Nanson v. Saskatchewan College of Psychologists*, 2013 SKQB 191, para 36-40

¹⁵ SO 2017, c 8, Sch 3

¹⁶ *Law Society of Upper Canada v. Hawa*, 2014 ONLSTH 69, at para 22 (CanLII)

- (b) General deterrence. It must be clear to the profession that serious, repeated, intentional or unethical behavior will result in a reprimand. A public reprimand makes clear to the profession that the conduct in question rises above an isolated, technical" or less serious breach;
- (c) Rehabilitation, restitution and improving the competence of a particular member where a member has had ample opportunity to mend her or his ways, prevent future breaches of standards by taking preventative measures, and fails to prevent repeated or serious breaches of standards, a public reprimand is required.
- (d) The maintaining of public confidence in the profession. This purpose is the most fundamental and the most important. The public must be able to have confidence that members will be sanctioned for anything less than strict compliance with the rules that protect the public.

[39] On the facts of this case, we have to look at: a) The duration of the misconduct; b) the repetitive or ongoing nature of the misconduct; c) the potential the misconduct created a risk of harm to others; (d) the subject acted without any supervisor and without any checks or other measures to avoid recurrence of the misconduct; and e) Whether the misconduct could undermine confidence in the standards of conduct of members of CPA Ontario. In this case, the conduct occurred over a period of nine months, the Member had previously been the subject of a reinspection of his practice, and the conduct is serious. On the other hand, the Member explained to us in his submissions that prior to the misconduct his business partner had become very ill and ultimately passed away. The Member himself fell into a depression. He assured the Panel that he now has access to resources to assist him with any mental health issues that arise. In all of the circumstances, we conclude that a reprimand is warranted. We are not suggesting that a reprimand is appropriate in every case involving a finding or concession of professional misconduct involving standards or otherwise. Rather, each case must be considered on its own merits.

[40] As indicated above, the Panel accepts the joint submission proposed by the parties and in accordance with the Order attached to these reasons.

Dated this 15th day of June, 2021.



David Debenham, FCPA, FCMA
Discipline Committee – Deputy Chair

Members of the Panel

Jeremy Cole, FCPA, FCA, LPA
Gary Katz, CPA, CA

Catherine Kenwell (Public Representative)
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