

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

THE CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

TO: Shelley S. Shifman, CPA, CA

AND TO: The Discipline Committee of CPA Ontario

The Professional Conduct Committee hereby makes the following allegations against Shelley S. Shifman, a member:

1. THAT the said Shelley S. Shifman, in or about the period July 1, 1996 through March 31, 2011, while engaged to prepare Notice to Reader financial statements and tax returns for ****423 Ontario Limited, failed to perform his professional services with due care, contrary to Rule 202.1 of the Rules of Professional Conduct, in that he prepared and filed tax returns on behalf of ****423 Ontario Limited which were incomplete and incorrect and without having sufficient support for the income amount shown on the tax returns.
2. THAT the said Shelley S. Shifman, in or about the period July 1, 2010 through March 31, 2011, while engaged to prepare Notice to Reader financial statements and tax returns for ****423 Ontario Limited, for the year ended July 31, 2010, signed or associated himself with financial statements which he knew or should have known were false or misleading, contrary to Rule 205 of the Rules of Professional Conduct, in that:
 - a. He improperly grouped income taxes receivable with accounts receivable when the company had significant income taxes payable;
 - b. He improperly grouped intercompany advances, deposits, inventory and deferred costs together and disclosed them as deferred marketing costs on the balance sheet;
 - c. He improperly included certain expenses in cost of sales in order to allow the company to show lower gross margins; and
 - d. He disclosed that the financial statements included all of the entities which conduct similar business operations, however he failed to properly account for the intercompany transactions.

3. THAT the said Shelley S. Shifman, while engaged to represent ****423 Ontario Limited in dealing with CRA, failed to perform professional services with due care, contrary to Rule 202.1 of the Rules of Professional Conduct, in that:
- a. on or about February 12, 2010, he advised CRA that the company retained earnings as at July 2003 were \$31,871,400.24 when that figure was not the retained earnings of ****423 but was retained earnings from the company's combined internal balance sheet not adjusted for year-end entries from 1995 to 2003 and therefore did not represent the actual retained earnings for the year which were shown on the combined balance sheet prepared by him as \$15,828,356; and
 - b. in or about the period May 1, 1996 to February 28, 2012, he failed to obtain and provide CRA with the documents and information they requested.
4. THAT the said Shelley S. Shifman, while engaged as the accountant for "WCBJV", and while engaged in the practice of public accounting, failed to perform his professional services with due care, contrary to Rule 202.1 of the Rules of Professional Conduct, in that:
- a. in or about the period April 1, 2005 to October 31, 2006, without conducting sufficient due diligence, he introduced other clients of his accounting practice to invest in "WCBJV"; and
 - b. in or about the period August 1, 2010 to July 31, 2014, without conducting sufficient due diligence, he made statements to a client investor, AT, regarding the status of his investment, on which the client relied.
5. THAT the said Shelley S. Shifman, in or about the period February 1, 2011 to September 30, 2012, while engaged to prepare Notice to Reader financial statements for "WCBJV" for the years ended October 31, 2010 and October 31, 2011, failed to perform his professional services with due care, contrary to Rule 202.1 of the Rules of Professional Conduct, in that:
- a. he recorded, in the financial statements for the years ended October 31, 2010 and October 31, 2011, the cost of sales and administrative expenses in amounts equal to the amount of sales recorded, not the amounts of costs actually incurred on the property, which resulted in showing net income of \$nil; and
 - b. he misclassified several assets, liabilities and expenses in the financial statements.

Dated at Erin, Ontario, this 24th day of May, 2018



R. G. SIMON, 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 **Shelley S. Shifman**, a member of CPA Ontario, under **Rule 202.1** and **Rule 205** of the Rules of Professional Conduct, as amended.

TO: Mr. Shelley S. Shifman, CPA, CA
1210 Sheppard Ave. E., Ste. 218
North York, ON, M2K 1E3

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE August 7, 2018

DECISION

The Professional Conduct Committee having withdrawn Allegations No. 3(b) and 4, the Tribunal determined that the Allegations, as amended at the hearing, were proven and constituted a breach of **Rule 202.1** and **Rule 205** of the Rules of Professional Conduct. Having breached these Rules, the tribunal determined that Shelley S. Shifman ("Mr. Shifman") had committed professional misconduct.

ORDER

The Tribunal orders the following:

1. Mr. Shifman shall be reprimanded in writing by the Chair of the Tribunal.
2. Mr. Shifman shall pay a fine of \$10,000 to CPA Ontario within three years from the date this Decision and Order, such fine to be paid in three equal installments made on or before each of August 7, 2019, August 7, 2020 and August 7, 2021.
3. Mr. Shifman is suspended from the rights and privileges of membership in CPA Ontario for a period of four months from the date of this Order.
4. Notice of this Decision and Order, disclosing Mr. Shifman's name, shall be given in the form and manner determined by the Discipline Committee:
 - (a) to all members of CPA Ontario, and
 - (b) to all provincial bodies

and shall be made available to the public.

5. Notice of the suspension set out in paragraph 3 of this Order, disclosing Mr. Shifman's name, be given by publication on the CPA Ontario website and in *The Globe and Mail*. Mr. Shifman shall pay all costs associated with the publication and shall be in addition to any other costs ordered by the Tribunal.
6. Mr. Shifman is required to complete, by paying for and attending in their entirety, within twelve months from the date this Decision and Order is made, the following professional development courses or their replacement course :
 - GST/HST CRA Audit- CPA Ontario
 - Compilation Engagement- CPA Ontario
 - Ethical Principles and the Accounting Profession Code Decoded- CPA Canada.
7. In the event Mr. Shifman fails to comply with any of the requirements of this Order, he shall be suspended from membership in CPA Ontario until such time as he does comply, provided that he complies within 30 days from the date of his suspension. In the event he does not comply within 30 days of suspension, Mr. Shifman's 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 *The Globe and Mail*. All costs associated with this publication shall be borne by Mr. Shifman and shall be in addition to any other costs ordered by the tribunal.
8. Mr. Shifman shall pay costs of \$40,000 to CPA Ontario within three years from the date this Decision and Order is made, such costs to be paid in three equal installments made on or before each of August 7, 2019, August 7, 2020 and August 7, 2021.

DATED at Toronto this 7th day of August, 2018



Stuart Douglas, FCPA, FCA
Discipline Committee – Deputy Chair

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **SHELLEY S. SHIFMAN, CPA, CA**, a member of the Chartered Professional Accountants of Ontario, under **Rules 202.1 and 205** of the Rules of Professional Conduct, as amended.

BETWEEN:

Chartered Professional Accountants of Ontario Professional Conduct Committee

-and-

Shelley S. Shifman

APPEARANCES

For Professional Conduct Committee: Tamara Center

For Mr. Shifman: Christopher Hluchan

Heard: August 7, 2018
Decision and order date: August 7, 2018
Release of written reasons: September 25, 2018

I. Overview

- [1] This hearing was held to determine whether the allegations that Mr. Shifman had failed to perform his services with due care and the allegation that he had associated himself with financial statements that he knew or should have known were false and misleading were established and amounted to professional misconduct.
- [2] Mr. Shifman obtained his CA designation in 1975, and he became a CPA upon amalgamation of the accounting designations in 2014. After working in a growing firm for 18 years, he became a sole practitioner in 1994 and continued to practise in that manner to the date of the hearing.
- [3] The allegations before the tribunal arose from complaints by two former clients of Mr. Shifman, ****423 Ontario Ltd. and AT. Three of the allegations related to Mr. Shifman's dealings with ****423 Ontario Ltd.; the remaining allegation related to the investment of

AT's funds in a joint venture, WCBJV, to which Mr. Shifman introduced AT.

*****423 Ontario Ltd. Complaint*

- [4] Mr. Shifman had been retained from 1995 until February 2012 as the accountant for a group of companies ("Groupco") that produced promotional materials. ****423 Ontario Ltd. was one of the companies in Groupco. During his work for the companies, Mr. Shifman prepared combined financial statements for Groupco based on the instructions of management, but he did not prepare individual financial statements for each company within the group. However, he did prepare tax returns for ****423 Ontario Ltd. This would have required an individual financial statement to be prepared for ****423 Ontario Ltd.
- [5] The allegations arose in connection with his preparation of Notice to Reader statements and tax returns for ****423 Ontario Ltd. during the period from July 2008 to March 2011. During that time, he prepared and filed tax returns for ****423 Ontario Ltd. without having sufficient support for the amount of income reported on the financial statements for ****423 Ontario Ltd. Mr. Shifman was aware, or should have been aware, that some of the resulting misstatements were false, misleading, or inaccurate.
- [6] The central issue that had arisen during the investigation was whether, as Mr. Shifman had contended, inadequate information had been provided by ****423 Ontario Ltd. and he could not prepare more complete and accurate financial statements, or whether, as PCC contended, Mr. Shifman had known that the information he received was inadequate and the statements and returns were incorrect, but he signed them nonetheless. Ultimately, Mr. Shifman acknowledged that the PCC position was correct, even if he had not received adequate information. He should have resigned from the engagement if the proper information was not forthcoming from his client.
- [7] In March 2012, after the termination of Mr. Shifman's engagement following a change in management at Groupco, another accountant, after undertaking substantial work with a significant fee cost to Groupco, had been able to assemble the necessary material and complete all of the statements and returns correctly, notwithstanding that Mr. Shifman did not do so.
- [8] ****423 Ontario Ltd. was charged almost \$8.5 million in interest and penalties by the Canada Revenue Agency ("CRA") as a result of the incorrect filings. At the time of the hearing, CRA continued to seek gross negligence penalties of approximately \$4 million, although ****423 Ontario Ltd. was challenging that position in Tax Court. Also, at the time of the hearing ****423 Ontario Ltd. bank loans continued to be classified as "special loans", with higher interest, because the financial statements could not be finalized until the CRA liability was confirmed. At the time of this hearing, the matter with CRA had not been fully resolved.

AT Complaint relating to WCBJV

- [9] The WCBJV project was a joint venture real estate development in eastern Ontario. Mr. Shifman was the accountant for WCBJV and introduced many clients to the joint venture

as investors, including his client AT. Ten investors were to invest \$100,000 each. Seven of the nine investors who advanced money were clients of Mr. Shifman, including the companies controlled by the developer. AT invested \$80,000, and a friend of his, who was a client of Mr. Shifman, invested \$20,000. Ultimately, the project failed, and the investors lost their money. There were ongoing law suits.

[10] Mr. Shifman prepared the financial statements of WCBJV for the years ended October 31, 2010 and 2011, on a Notice to reader basis, based on information from the developer. The allegations arose from the deficiencies identified in those statements with respect to the improper recording and misclassification of information and the cumulative impact of those errors.

[11] Mr. Shifman admitted that he had committed professional misconduct on the basis of the allegations, as amended at the hearing, and entered into two Agreed Statements of Facts with PCC, which formed the basis of the evidence before the tribunal.

II. Preliminary Issues

i) Amendment of Allegations

[12] The PCC advised the tribunal that it was withdrawing the fourth of the five allegations against Mr. Shifman, which alleged a failure to perform services with due care in relation to an investment for WCJBV. The PCC also indicated that it sought to withdraw particular 3(b). Mr. Shifman consented to both amendments.

[13] Based on the consent of the parties, the tribunal permitted both amendments.

III. Issues

[14] The tribunal identified the following issues arising from the allegations:

- a) Did the agreed evidence establish, on a balance of probabilities, the facts on which the particulars alleged by the PCC were based?
- b) If the particulars alleged by the PCC were established on the evidence on a balance of probabilities, did those particulars constitute professional misconduct?
- c) If the particulars alleged by the PCC constituted professional misconduct, was it appropriate for the tribunal to accept the joint submission with respect to penalty?

IV. Decision with Respect to Finding

[15] The tribunal found that the evidence agreed to between Mr. Shifman and the PCC in the Agreed Statements of Fact (Exhibit 1 and Exhibit 3) established the particulars set out in

the allegations of professional misconduct, on a balance of probabilities.

- [16] The tribunal was satisfied that the particulars alleged constituted breaches of Rules 202.1 and a breach of Rule 205, and, having breached these Rules, Mr. Shifman had committed professional misconduct.

V. Reasons for the Decision With Respect to Finding

a) Findings Regarding Conduct of Mr. Shifman

Allegation 1: Incomplete tax returns with Insufficient Support

- [17] By 2012, Groupco was having significant problems with its income tax and GST/HST filings. The problem for Groupco was either that returns had not been filed or the returns were incorrect because they were based on incomplete information, including not having the required financial statements including balance sheets or income statements attached to the tax returns. Mr. Shifman had not provided this information, including support for the GST/HST filings, even when requested by CRA. Due to the international nature of its business, Groupco was eligible for large GST/HST refunds. Mr. Shifman maintained that he was not receiving material from Groupco.
- [18] CRA commenced an audit of ****423 Ontario Ltd. and other companies in Groupco in 2006. Management was responsible for gathering any documentation requested. Any information gathered was provided to Mr. Shifman, who, in turn, passed it on to CRA. As a result of the audit, CRA issued assessments and reassessments to Groupco for the 1995 to 2009 tax years totaling more than \$103 million, including penalties and interests. Mr. Shifman and Groupco filed notices of objection.
- [19] Mr. Shifman prepared tax returns for ****423 Ontario Ltd., but he did not prepare tax returns for any other companies in Groupco. However, the only financial statements prepared by Mr. Shifman were combined statements for Groupco. As a result, there was no determination of income for ****423 Ontario Ltd. for accounting or tax purposes, which would have been the basis for its taxable income. Consequently, there was no support for the taxable income reported on the tax returns, and the returns were incomplete.
- [20] In seven of the nine tax years between July 31, 1995 and July 31, 2003, the taxable income of ****423 Ontario Ltd. was reported as \$200,000, which was the threshold for the small business deduction at the time, even though the net income on the financial statements was significantly more. Mr. Shifman explained this as being the result of “bonusing down” income to that amount by paying bonuses to management, with required income tax withholdings, and issuing T4s to them. He also indicated that “he went through the drawings account to determine the bonuses and cleared this amount through the T4s annually, therefore there were substantial accruals for bonuses each year.” There was no supporting documentation to substantiate Mr. Shifman’s statement regarding the paying of bonuses.

- [21] Mr. Shifman knew or ought to have known that the explanations he provided were not consistent as bonusing the company's income down to \$200,000 was not related to the shareholders' drawings. The bonuses would be calculated as the amount needed to reduce the taxable income to the \$200,000 threshold, based on the preliminary tax return. The drawings account reflected the amount paid to the shareholders during the year, without reference to the income of the company. As noted previously, there was no documentation to support Mr. Shifman's explanations.
- [22] When the successor accountant prepared financial statements for all of the companies in Groupco, including ****423 Ontario Ltd., the total income in the statements prepared by Mr. Shifman had been overstated by \$16,954,431, but the taxable income was understated by \$9,231,401. The figures in the GST/HST returns were very close in the calculations by both Mr. Shifman and the successor accountant, and ****423 Ontario Ltd. received a refund of approximately \$7 million for GST/HST.

Allegation 2 – False and Misleading Financial Statements for the year ended July 31, 2010

- [23] Mr. Shifman discussed the financial statements with the vice-president of Finance ("VP") of Groupco. Mr. Shifman prepared the Notice to Reader financial statements based on the company's trial balance and would regroup it based on these discussions and the instructions of the VP. The VP told Mr. Shifman that management wanted the statements to reflect the company being "profitable enough but not too profitable". Groupco did not want to disclose its gross profit margins.
- [24] Mr. Shifman knew or ought to have known the limitations of the company's accounting information and that the client's instructions to present the financial statements in a certain way was improper. Mr. Shifman should have either communicated his concerns to management regarding the limitations of the accounting information and ensured that the financial statements were correct or he should have resigned from the engagement.
- [25] The financial statements prepared by Mr. Shifman for the year ended July 31, 2010, were incorrect in four principal ways.
- [26] On the balance sheet, Mr. Shifman grouped an amount for income taxes receivable and the accounts receivable under the heading of accounts receivable. This was done on the client's instructions. Mr. Shifman knew or ought to have known that these should not have been grouped together. Similarly, there should not have been a receivable balance for income taxes given the significant reassessments proposed by CRA. The successor accountant demonstrated that almost \$2.8 million in income taxes were payable for this year end.
- [27] Mr. Shifman also grouped intercompany advances, deposits, inventory and deferred costs together under the heading "deferred marketing costs". The intercompany balances should have been eliminated against each other because the financial statements were combined for all of Groupco. Mr. Shifman knew or ought to have known that grouping these accounts together was false and misleading because the underlying nature of the transactions was not reported to the users of the financial statements. In addition, this

amount was shown as a credit balance on the trial balance but as a debit balance on the balance sheet.

- [28] On the instructions of the VP of Groupco, Mr. Shifman incorrectly included certain expenses in costs of sales that should not have been there in order to show lower gross margins. Mr. Shifman knew or ought to have known that this made the statements false and misleading as this misallocation of expenses could have changed the way external users interpreted the financial results of the company.
- [29] Finally, Mr. Shifman did not properly account for the intercompany transactions because he understood that the bank wanted to see the whole operation (as opposed to the individual companies) and Groupco did not want to divulge any specific information to anyone else seeing the financial statements. Mr. Shifman stated that all of the transactions in Groupco were maintained in a combined general ledger, and there were no staff available to prepare individual financial statements. He never reconciled the accounts. Given that Mr. Shifman was aware that the record keeping was neither current nor fully reconciled and that the bank reconciliations were at least two years behind, he knew or ought to have known that the financial statements were false and misleading.
- [30] Groupco's successor accountant disaggregated the entries in the combined general ledger and created the necessary journal entries, so that the bank accounts could be reconciled.

Allegation 3

- [31] During the CRA audit, the VP of Groupco provided a trial balance showing retained earnings in the amount of \$31,871,400.24. This was the amount at July 31, 2003. However, the amount at the beginning of the 2004 fiscal year was \$132,494.61 less than the closing amount for 2003. When CRA inquired about these amounts, Mr. Shifman provided an explanation for the discrepancy, but he did not address the actual amount of the retained earnings.
- [32] Both retained earnings amounts were incorrect because they were taken from Groupco's combined internal accounting records and the general ledger had not been adjusted for year-end entries from 1995 to 2003 because the Groupco's books were not closed at each year-end. The combined balance sheet issued by Mr. Shifman for the July 31, 2003, year-end showed retained earnings of \$15,828,356.
- [33] In February 2011, CRA provided Groupco with a schedule reconciling each year's taxable income to the retained earnings figure prepared by Mr. Shifman. The schedule revealed a discrepancy of \$30,031,208 in unreported income, which should have been included in net income. CRA indicated that the magnitude of this overstatement could not have been explained by simple bookkeeping errors and imposed penalties for gross negligence.

Allegation 5

- [34] The Notice to Reader financial statements that Mr. Shifman prepared for the WCBJV for the years ended October 31, 2010 and October 31, 2011 contained many errors, which

were the basis for Allegation 5.

- [35] In both the 2010 and 2011 financial statements of WCBJV, Mr. Shifman recorded the cost of sales and administrative expenses in amounts equal to the amount of sales recorded, not the amount of costs actually incurred on the property. This resulted in incorrectly showing net income of \$nil for each year end. He also misclassified several assets, liabilities and expenses in these financial statements.
- [36] As noted in the Agreed Statement of Facts for WCBJV (Exhibit 3), the PCC appointed Mr. Paul Gibel, FCPA, FCA as an investigator who reviewed the WCBJV financial statements and working papers of Mr. Shifman for the 2010 and 2011 fiscal years. He noted the deficiencies in the financial statements that are reflected in Allegation 5. These deficiencies and comments are summarized in paragraphs 19 to 28 of Exhibit 3. The misclassification by Mr. Shifman in the financial statements of WCBJV of several assets, liabilities and expenses are set out in paragraphs 29 to 37.
- [37] As summarized in paragraph 38 of the WCBJV Agreed Statement of Facts, "the cumulation of errors in the Notice to Reader Financial statements for WCBJV for the years ended October 31, 2010 and October 31, 2011, Shifman failed to perform his professional services with due care contrary to Rule 202.1 of the Rules of Professional Conduct."
- [38] Based on Mr. Shifman's admission, and the agreed facts summarized above, the tribunal found that Mr. Shifman had submitted incorrect tax returns and signed incorrect financial statements, when he knew or should have known they were incorrect, as set out in the particulars of the allegations, as amended.

b) Finding of Professional Misconduct

- [39] When tax returns are submitted by a CPA, they are expected to be correct because the CPA is expected to perform his services with due care. This obligation is captured in Rule 202.1. Similarly, when a CPA signs financial statements, he represents to the reader that they are correct. This is again a consequence of the CPA's obligation to perform his duties with due care. Where the CPA knows or ought to know, of the inaccuracies, and signs the statements in any event, he breaches important professional obligations of not only due care but candour. These duties are framed in Rules 202.1 and 205.
- [40] Mr. Shifman has properly acknowledged that his conduct breached Rules 202.1 and 205. In the tribunal's view, those breaches necessarily amount to professional misconduct due to the impact they have on the public's ability to rely on a CPA.
- [41] As a result, the tribunal found that Mr. Shifman breached Rules 202.1 and 205 of the Rules of Professional Conduct and thereby committed professional misconduct.

VI. Sanctions

- [42] The parties jointly submitted to the tribunal that the appropriate sanction was the following: a written reprimand; a fine of \$10,000; a 4 month suspension; 3 continuing professional development courses; publicity in the usual course, as well as publication in the *Globe and Mail*, and costs in the amount of \$40,000. The costs and fine were to be paid in equal annual installments in 2019, 2020 and 2021. If Mr. Shifman did not comply with any of these provisions, he would be suspended for 30 days, and if he still did not comply, his membership would be revoked.
- [43] The tribunal received evidence that Mr. Shifman had received guidance or admonition (as it was formerly called) from CPA Ontario, or its predecessor, the Institute of Chartered Accountants of Ontario, on seven occasions since 2002. Although these did not amount to formal discipline, they reflected that Mr. Shifman's professional obligations had been brought to his attention repeatedly without a clear change in behaviour. In addition, Mr. Shifman had been found guilty of professional misconduct and suspended for three months in 1993. Given its age of an event 25 years ago, and the different factual circumstances, the PCC, and this tribunal, acknowledged this earlier misconduct but put little weight on this previous finding.
- [44] The tribunal was aware that a joint submission should not be rejected unless it would bring the administration of justice into disrepute or be contrary to the public interest. The test could also be framed as to whether the joint submission was within the range of reasonable dispositions demonstrated by similar cases.
- [45] As referenced by the PCC in its submissions, the deference to be given to a joint submission was further explained by the Supreme Court of Canada in its decision in *R. v. Anthony-Cook*, 2016 SCC 43, [2016] 2 SCR 204, at paragraphs 32-34:

Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. But, what does this threshold mean? Two decisions from the Newfoundland and Labrador Court of Appeal are helpful in this regard.

In *Druken*, at para. 29, the court held that 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". And, as stated by the same court in *R. v. B.O.2*, 2010 NLCA 19, at para. 56 (CanLII), when assessing a joint submission, trial judges should "avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts".

In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee. They emphasize that 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. (Emphasis added.)

- [46] There was no issue before the tribunal that the test applied in a criminal proceeding applies equally in a regulatory proceeding such as the present matter.
- [47] The PCC presented cases to the tribunal that, in the submission of PCC, were helpful in demonstrating the range of penalty applicable to the type of misconduct that Mr. Shifman was found to have committed. The tribunal was concerned that there were no more recent decisions that could be analogized to the facts of this case. The nature of the misconduct by the member in the cases presented by PCC, for the most part, was similar to the misconduct of Mr. Shifman. However, the cases in the Case Brief were dated as far back as 1997 and the most current was 2011. The tribunal, in its deliberations, reviewed the sanctions in the joint submission and discussed whether there may be more current and similar cases that, if presented, may have altered the types of sanctions being proposed for Mr. Shifman. Essentially, the tribunal was concerned that more current similar fact cases may have indicated that the proposed sanctions were below the range of sanctions imposed by the Discipline Committee more recently in similar cases. The tribunal ultimately concluded that it was obliged to accept the cases that were presented by the parties and that the joint submission was within the “range of reasonable dispositions”.
- [48] The sanctions submitted satisfied the principles of general deterrence, specific deterrence and provides for rehabilitation of the member. The fine and publication of the misconduct, both to the public and to the membership of CPA Ontario, provide specific and general deterrence to both the member and to the membership at large. The publications of the misconduct of Mr. Shifman, and the sanction imposed, also confirm to the public that CPA Ontario takes these matters very seriously. The professional development courses provide and allow for rehabilitation of the member. The suspension of Mr. Shifman provides a protection to the public and also provides a general deterrent to the members of CPA Ontario. There was concern that perhaps the period of suspension should be longer; however, the tribunal concluded that, overall, the public interest was sufficiently protected by the recommended period of four months, such that the joint submission could not be said to bring the administration of justice into disrepute.
- [49] For these reasons, the tribunal was satisfied that the joint submission was not contrary to the public interest, and given the level of deference that must be given to a joint submission, the tribunal accepted the joint submission and made its order accordingly.

VII. Costs

- [50] The tribunal accepted the joint submission that Mr. Shifman should be responsible for costs in the agreed sum of \$40,000, to be paid in three equal instalments over the next three years.

DATED AT TORONTO THIS 25th DAY OF SEPTEMBER, 2018

A handwritten signature in blue ink, appearing to read 'S. Douglas', is positioned above the printed name.

S. DOUGLAS, FCPA, FCA – DEPUTY CHAIR

MEMBERS OF THE TRIBUNAL

R. HUANG (PUBLIC REPRESENTATIVE)

J. RIVERS, CPA, CGA

S. SOLMANI, CPA, CA, LPA

Independent Legal Counsel: Glenn Stuart

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: A motion by **SHELLEY S. SHIFMAN**, under **Rule 13** of the CPA Ontario Rules of Practice and Procedure, as amended.

TO: Chris Hluchan, Counsel
Shelley Shifman

AND TO: The Professional Conduct Committee

DECISION MADE SEPTEMBER 9, 2019

Counsel for the member provided written submissions and consented to the hearing being held in writing. Counsel for the Professional Conduct Committee ("PCC") confirmed that having read the member's submission they did not object to the member's request, but neither did they consent to it. Rather, they submitted that they would leave the matter to the discretion of the Panel.

The Panel determined that because the PCC did not consent, the member's request must be considered on its merits and the issue to be determined was: would the amended order, if approved, alter the substance of the original order, and if not, was the request reasonable?

The Panel determined that, as amended, the Order would have essentially the same deterrence value as the original order and so the amendment did not alter the substance of the original order. Further, the requested extension in time to complete the professional development courses was reasonable in that an extension would allow the member the ability to comply with the Order.

The Panel determined that the original Order of August 7, 2018 is to be varied as:

The due date for the professional development courses, or their replacement course, as detailed in paragraph 6 of the August 7, 2018 Order, will now be due October 18, 2019 instead of August 7, 2019, peremptory to the member.

The Panel also determined that the suspension of the member, pursuant to paragraph 7 of the August 7, 2018 Order, will remain in effect until the above provision is complied with. In all other respects the original order will remain unchanged.

The Panel would like to remind Mr. Shifman that while suspended, he may not hold himself out as a CPA, CA.

DATED at Toronto this 9th day of September, 2019



Stuart Douglas, FCPA, FCA
Discipline Committee – Deputy Chair