

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

DISCIPLINE COMMITTEE OF CPA ONTARIO

IN THE MATTER OF: A motion by **Suman Banerjee**, a former Member, for reconsideration of a Decision by the Discipline Committee of the Chartered Professional Accountants of Ontario, dated June 14, 2017, pursuant to the bylaws and regulations of CPA Ontario, as amended.

BETWEEN:

Suman Banerjee

Applicant

-and-

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

Respondent

Heard: October 22, 2020

Release of written decision and reasons: December 10, 2020

REASONS FOR THE DECISION ON MOTION MADE OCTOBER 22, 2020

[1] This is a motion brought by Suman Banerjee (the “Applicant”) seeking reconsideration of the Order of the Discipline Committee of the Chartered Professional Accountants of Ontario dated June 14, 2017 (the “Order”) pursuant to section 24 of Regulation 6.2.

[2] In this motion for reconsideration of the Order, the Applicant submitted that since October 2018, he has been unemployed and unable to find employment, in part

because of the publication of the Order. The Applicant asked that the fine of \$5,000 and the costs of \$15,000 be reduced to \$4,000 and that he be given a further twelve (12) months to pay. In his Factum, the Applicant also asked that his name be removed from the Decision and Order and from all future publications.

- [3] A panel of the Discipline Committee of CPA Ontario (“the Panel”) was convened to hear the motion and considered the matter on October 22, 2020. The Panel reviewed the facts of both parties and the supporting documents submitted by the parties, as well as legal authorities. In addition, the Panel heard the evidence of the Applicant. After hearing the evidence and deliberating, the Panel dismissed the motion for reconsideration.

I. BACKGROUND AND FACTS

- [4] The Applicant was found to have committed professional misconduct on the basis of an agreed statement of facts (“ASF”). In the ASF, the Applicant agreed that he had submitted a letter and curriculum vitae to a prospective employer indicating that he was a CPA and CGA when in fact he had not yet earned those designations. The Applicant misled the prospective employer by orally confirming that he received his certificate from CGA Ontario and then providing a false document that purported to be an invoice for CGA membership. The Applicant also agreed that he held himself out as a CGA on his Linked-In website when he was not a CGA. After CPA Ontario received a complaint about the Applicant’s conduct from the prospective employer, the Applicant attempted to mislead the CPA Ontario investigators by providing them with false information and documentation.
- [5] On June 14, 2017, following a determination that the Applicant had committed professional misconduct, the Discipline Committee considered the appropriate sanctions. The costs incurred in the investigation and prosecution of the case totaled approximately \$25,000 and it was submitted that the Applicant’s

continuing misrepresentations to the investigators was the driving force behind the investigation costs.

- [6] The Applicant's counsel told the Committee that the Applicant was employed only on a part-time basis and was paid on an hourly basis. Counsel noted that the fine and costs requested by the PCC were "...close to what [the Applicant] earns."
- [7] The Discipline Committee took into account the Applicant's financial issues and employment situation in its determination of the fine and costs and decided to give him three years to pay as opposed to the PCC's request that he be given two years to pay.
- [8] The Discipline Committee ordered, as follows:
1. *THAT [the Applicant] be reprimanded in writing by the Chair of the hearing.*
 2. *THAT [the Applicant] be and he is hereby fined the sum of \$5,000 to be remitted to CPA Ontario within thirty-six (36) months from the date this Order is made.*
 3. *THAT [the Applicant]'s membership in CPA Ontario be and is hereby suspended for a period of six (6) months from the date this Order is made.*
 4. *THAT [the Applicant] be and he is hereby required to complete, by paying for and attending, within twelve (12) months from the date this Order is made, the following professional development courses made available through CPA Canada:*
 - *Professional Ethics: Current challenges, underlying values Part 1 and Part 2*
 - *Ethical Principles and the accounting profession: Code decoded**or, in the event the course(s) listed above becomes unavailable, the successor course(s) which takes its place.*
 5. *THAT notice of this Decision and Order, disclosing [the Applicant]'s name, be given in the form and manner determined by the Discipline Committee:*
 - a) *to all members of CPA Ontario;*
 - b) *to all provincial bodies;*

and shall be made available to the public.

6. *THAT Mr. Banerjee surrender his CGA and CPA certificates to the Adjudicative Tribunals Secretary within ten (10) days from the date this Order is made to be held during the period of suspension and thereafter returned to Mr. Banerjee.*
7. *THAT in the event Mr. Banerjee fails to comply with 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 sixty (60) days from the date of his suspension. In the event he does not comply within the sixty (60) day period, his membership in CPA Ontario shall thereupon 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 Mr. Banerjee's employment. All costs associated with this publication shall be borne by Mr. Banerjee and shall be in addition to any other costs ordered by the committee.*
8. *THAT [the Applicant] be and he is hereby charged costs fixed at \$15,000 to be remitted to CPA Ontario within thirty-six (36) months from the date this Order is made.*

[9] After the Order was issued, the Applicant appealed the Order with respect to sanction. When he failed to perfect the appeal, the appeal was deemed abandoned in September 2017.

[10] The Applicant brought this motion for reconsideration on August 28, 2020 and asked that the combined fine and costs of \$20,000 be reduced to \$4,000 and that he be given an additional twelve (12) months to pay the reduced amount.

[11] In his Factum, the Applicant stated, in part, as follows:

- He became unemployed in October 2018 when his employer found out about his misconduct. He was since denied employment when his misconduct has come to light.
- He received no income other than Employment Insurance after October 2018.

- His Employment Insurance and savings were exhausted.
- He “responded to Standards Enforcement in a respectful and timely manner and cooperated with the investigator and PCC”.
- He exhibited remorse by his guilty plea at an early stage and entered an ASF, hence the hearing did not take a full day. He also submitted an apology letter.
- He was “undergoing personal, financial and health issues at the time of the misconduct and did not realize when this misconduct spiraled out of control.”
- He fulfilled the other requirements of the Order (suspension and professional development courses).
- He was unable to advance the appeal of the sanctions in 2017 as he could not afford the expense of the transcripts.
- His membership was suspended as of August 4, 2020.

[12] In the Applicant's Factum, he asked that his name be removed from “the original and all subsequent publications, notice of decision and order.” He compared the Order with other Discipline Committee orders and argued that it was “on the harsher side.”

[13] Counsel for the PCC argued that the Applicant failed to establish, on a balance of probabilities, that the conditions for reconsideration as set out in section 24 of Regulation 6-2 had been met.

[14] During the hearing of the motion, although the Applicant initially indicated that he did not wish to provide oral evidence, the Panel allowed his oral evidence when it became apparent that his written materials did not contain all of the evidence that he wished to submit on the motion. The Applicant testified that he had not made any attempts to pay the fine or costs because he had not had any income since

October 2018. He added that between the time the Order was issued (June 2017) and October 2018, he worked on a part-time basis and his income barely covered his living expenses. Since October 2018, the Applicant testified that he had made many applications for employment in “regular industry positions”, however in several instances, the prospective employers were not prepared to move forward with his applications once they learned of his discipline history with CPA Ontario. The Applicant admitted that he was not always upfront with prospective employers about his “past mistake” and assumed that they discovered it by googling his name or contacting CPA Ontario. The Applicant advised that he was not working with an employment agency because two agencies had refused to work with him because of his discipline history.

[15] On cross-examination, the Applicant was asked about his financial circumstances in 2017 when the Order was made. He agreed that he did not have enough money at that time to pay the fine and costs and that he was working part-time or sporadically. The Appellant agreed that this information was before the panel in 2017 and that as a result of his financial situation at that time, he was given three years to pay the fine and costs rather than the two years sought by the PCC.

[16] The Applicant was asked by a panel member if he considered working outside of the accounting profession after 2018 and he indicated that he recently considered bookkeeping positions and he applied for a position as a contact-tracer for public health.

II. PRELIMINARY ISSUE

[17] The Applicant asked that an email chain between himself and counsel to the PCC and to the Adjudicative Tribunals Clerk (Bianca D’Souza) be admitted into evidence.

- [18] The Applicant advised that the email chain was relevant to the issues around the deadlines for filing this motion and compliance with the Order. He indicated that he wished to show that he had gone through the proper channels at CPA Ontario. When counsel for the PCC advised that the timing of the motion was not going to be raised as an issue in the motion, the Applicant withdrew his request for submission of the email.

III. ISSUES ON MOTION

- [19] The issue on this appeal was whether the Applicant established, on a balance of probabilities, that the Panel should reconsider the Order as it pertained to the fine, costs and publication, pursuant to section 24.2 of Regulation 6-2.

IV. DECISION

- [20] The Panel unanimously found that the Applicant failed to establish that the criteria for reconsideration had been met and the Panel dismissed the motion.

V. REASONS FOR DECISION

- [21] The Discipline Committee may reconsider a decision or order made by a panel of the Discipline Committee pursuant to section 24 of Regulation 6-2. The onus is on the party bringing the motion for reconsideration to establish, on a balance of probabilities, that the Order should be reconsidered (section 27 of Regulation 6-2).

- [22] Under section 24.2 of Regulation 6-2, a motion for reconsideration may be considered at any time if:

24.2.1 one or more of the conditions set out in sections 24.1.2, 24.1.3 or 24.1.4 exist; and

24.2.2 the decision or order, or part of the decision or order, will result in a miscarriage of justice that may be prevented by the reconsideration.

- [23] Section 24.1.2 of Regulation 6-2 provides that a reconsideration can take place if the applicant establishes that a material change in circumstances has occurred that obstructs or impedes the purpose and intent of the decision and order, or a part thereof. Section 24.1.3 of Regulation 6-2 provides for a reconsideration if the material change makes the decision or order incapable of being reasonably complied with or fulfilled. Section 24.1.4 is not relevant in this motion. A “material change in circumstances” relates to a situation that was not contemplated when the decision or order was made. It is generally understood to be a substantial, unusual, unanticipated and involuntary situation or circumstance.
- [24] The Panel noted that a motion for reconsideration is different from an appeal. In an appeal, the issue is whether the decision or order being appealed has been shown to be unreasonable. In a motion for reconsideration, the decision or order is presumed to be reasonable and the correctness of the order or decision is presumed.

Did the Applicant Establish a Material Change in Circumstances that Obstructed or Impeded the Purpose and Intent of the Order?

- [25] The Panel considered the purpose and intent of the provisions of the Order that the Applicant wanted it to reconsider, namely the fine, the costs and the publication order. The Panel concluded that the Applicant failed to establish that his change in financial circumstances, namely his unemployment since October 2018, obstructed or impeded the intention behind the Order.
- [26] A fine is generally imposed in cases where there is moral turpitude. For example, in *ICAO v Orland* (May 4, 2011), where the member attempted to mislead the investigators by producing working papers that were altered from the originals and signed and backdated, the DC noted that “*the magnitude of the fine serves*

as a specific deterrent to reinforce to Mr. Orland that misleading the Institute is a very serious matter, and not one to be taken lightly...The fine serves as a general deterrent to others that such conduct is unacceptable.”

- [27] Here, the DC found that the Applicant had been dishonest with both his prospective employer and with the investigators of CPA Ontario. If the fine was reduced as requested by the Applicant, the specific and general deterrent effect of the fine would be eliminated and thus the very purpose and intent of the Order, which was to deter the Applicant and like-minded members and student members, would be defeated.
- [28] The costs award contained in the Order was clearly a reflection of the costs that were actually incurred was a result of the Applicant's misconduct. Despite his comments in his Factum that he had “responded to Standards Enforcement in a respectful and timely manner, and cooperated with the investigator and PCC”, the Applicant in fact complicated the investigation by providing false information and documents. The membership of CPA Ontario should not be required to bear the costs that were incurred as a result of the misconduct of the Applicant. The purpose and intent of a costs award is to charge the costs of the investigation and prosecution to the person responsible.
- [29] The purpose of publication orders is well settled in the disciplinary process of CPA Ontario. In *ICAO v Finkelman and Solman* (June 28, 1989), the panel noted that the bylaw with respect to publication of decisions was based on the principle of general deterrence and the importance of confidence in the openness of the discipline process. The panel indicated that a publication ban would only be ordered in rare and unusual circumstances.
- [30] The Order required publication of the decision and order including the Applicant's name. The Applicant was unable to establish that there was a material change in

circumstances other than his belief that prospective employers would not hire him because of the publication. The Applicant did not provide any evidence or specific examples of this having occurred. Furthermore, as noted by counsel for the PCC, the Applicant's situation was not unusual: publication of professional misconduct may impede employment for students or members who have been found to have committed misconduct. CPA Ontario has found that the importance of transparency in the regulatory process and the public interest generally outweighs the effects of publicity on individuals.

- [31] In conclusion, the Panel found that the Applicant failed to establish that his change in financial circumstances obstructed or impeded the purpose and intent of the Order.

Did the Applicant Establish a Material Change in his Financial Circumstances that Made the Decision Reasonably Incapable of Being Complied with or fulfilled?

- [32] The Panel found that there was no evidence that the Appellant's financial circumstances changed from June 2017 until October 2018. The Appellant admitted on cross-examination that he was employed on a part-time basis in June 2017 and continued to work on a part-time or sporadic basis until October 2018. During this sixteen-month period, there was no change in the Appellant's financial circumstances. Despite this, the Appellant made no attempt to pay any of the fine or the costs.
- [33] While the Applicant was unemployed after October 2018, the Panel found that he failed to establish that his inability to earn income for the past two years represented a material change in circumstance and that he was incapable of paying the fine and costs. Despite the fact that his financial situation since June 2017 was the central issue in the motion, the Applicant did not produce any evidence of his job searches, such as applications or covering letters. In his oral

evidence, the Applicant admitted that until recently, he had only applied to positions related to accounting. Given that he was indebted to CPA Ontario, the Panel found that the Applicant failed to establish that he was unable to earn any income to pay some or all of the fine and costs, and thus comply with the Order.

- [34] Furthermore, the Applicant provided the Panel with no evidence respecting his debts, liabilities or expenses since October 2018, other than a letter from an uncle indicating that he had depleted his savings. Although he submitted that his limited income after the Order did not cover his living expenses, the Applicant provided no evidence of what those expenses consisted of. The Applicant was trained as an accountant and would have been expected to provide more helpful documentation if he intended to convince the Panel of his inability to pay the fine and costs.
- [35] The Panel found that a “material change in circumstances” ought not to be found if the circumstances could have been avoided or were self-imposed. A reconsideration provides extraordinary relief in the event of unforeseen circumstances where it would be unfair to the moving party to require compliance with a decision of CPA Ontario. Here, the Appellant admitted that he searched for employment in the accounting field rather than employment that would allow him to pay the debt he owed to CPA Ontario. While the Appellant was free to make that choice, he cannot then say he was unable to pay his debt.
- [36] Although the Applicant indicated in his Factum that he was “undergoing personal, financial and health issues” at the time of the misconduct, he did not provide any evidence that he had health issues that prevented him from finding work.
- [37] The Panel carefully reviewed the caselaw where individuals asked for a reduction in costs due to their inability to pay. The Discipline Committee has generally rejected arguments based on an inability to pay. In *Strohyj*, for example, the member made an assignment in bankruptcy prior to the hearing. The panel held

that “even given Mr. Strohyj’s financial circumstances, the suggested fine of \$2,500 did not take into account the ongoing nature of Mr. Strohyj’s offences.”

The panel increased the fine from the \$2,500 recommended by the PCC to \$3,500 to reflect their concern for Mr. Strohyj’s misconduct. (*ICAO v Strohyj*, September 28, 2001)

- [38] In conclusion, the Panel found that the Applicant failed to establish that he experienced a “material change in circumstances” that prevented him from complying with or fulfilling the terms of the Order.

Did the Applicant establish that the Order Would Result in a Miscarriage of Justice?

- [39] The Panel found that the Applicant failed to establish that there would be a miscarriage of justice if this matter were not reconsidered. As set out above, the Panel found that the Applicant had a significant amount of time to pay the costs and the fine that were ordered against him and was concerned that during the first sixteen months after the Order was issued, the Applicant made no attempts to pay even a portion of these debts.
- [40] The Panel found that the Order gave the Applicant ample time to comply with its financial terms and the Applicant’s current inability to pay the fine and costs, while unfortunate, does not constitute a miscarriage of justice as contemplated by Regulation 6-2.
- [41] As set out above, the publication of a decision and order impacts on all students and members in the same manner. It is part of the process and mandate of CPA Ontario to provide a transparent disciplinary system. The Applicant failed to establish that there was anything in his particular situation that rendered the publication provisions of the Order to be a “miscarriage of justice.”

[42] In conclusion, the Panel found that the Applicant failed to establish that the criteria for reconsideration under section 24 of Regulation 6-2 were met and the Panel dismissed the Applicant's motion.

Dated at Toronto, Ontario this 10th day of December, 2020



Stuart M. Douglas, FCPA, FCA
Discipline Committee – Deputy Chair

Members of the Panel

David Handley, Public Representative
Catherine Kenwell, Public Representative
Salim Somani, CPA, CA, CPA, CA (B.C.), CPA (USA)
Peter-John Vaillancourt, CPA, CGA

Independent Legal Counsel

Susan J. Heakes