

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** An Allegation against **Monica E. Banman, CPA, CMA**, a member of the Chartered Professional Accountants of Ontario, under **Rule 202.1** of the CPA Ontario Code of Professional Conduct

**BETWEEN:**

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

**-and-**

**Monica E. Banman**

**APPEARANCES:**

**For the Professional Conduct Committee:** Julia McNabb, Counsel

**For Ms. Banman:** Jakub Schnitzler, Counsel

**Heard:** February 23, 2023

**Decision and Order effective:** February 23, 2023

**Release of written reasons:** March 15, 2023

**REASONS FOR THE DECISION AND ORDER MADE FEBRUARY 23, 2023**

**I. OVERVIEW**

[1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario (“PCC”) has alleged that Monica E. Banman engaged in professional misconduct, by failing to perform professional services with due care when she prepared and filed her spouse’s tax returns for seven separate years.

[2] This hearing was held to determine whether the Allegation was established and whether the conduct breached Rule 202.1 of the CPA Ontario Code of Professional Conduct (“Code”), and whether the conduct amounted to professional misconduct.

[3] Ms. Banman began her career after graduating from Mohawk College in 1988, when she

joined a public accounting firm. She obtained her CMA designation in November 1990.

- [4] In May 1991, she began working at the headquarters of a Canadian restaurant as an assistant to the Controller and was promoted shortly thereafter to the position of Controller. During her time there, Ms. Banman was responsible for the accounting cycle and marketing funds for franchises.
- [5] From April 1993 to September 1994, Ms. Banman worked at a communications company as a Financial Accounting Supervisor. In this role, she oversaw financial reports that were sent to the company's head office in the United States. She had three employees reporting to her.
- [6] From the Fall of 1994 through to 2002, Ms. Banman left employment to stay home and raise her three children.
- [7] In January 2003, Ms. Banman returned to work part-time as a sole proprietor. Currently, Ms. Banman's primary work is as a sub-contractor to a small CPA firm based in Hamilton. In this role, she chiefly provides compilation services and supporting work on assurance engagements for another CPA who is signing off and who holds a public accounting licence. In addition, Ms. Banman has a small number of bookkeeping engagements and personal tax return clients.

## **II. THE COMPLAINT AND THE ALLEGATIONS**

### ***i. Background***

- [8] Ms. Banman's spouse, EB, is a tool and die designer. He has worked full time in his field for 26 years. EB's father "Beach", owns a company, SGP. SGP sells and installs anti-slip surface treatment on commercial properties.
- [9] EB was estranged from Beach for almost two decades. In and around 2008 or 2009, Beach made contact with EB and proposed an arrangement involving charitable donations whereby EB could reduce his taxes payable.
- [10] The arrangement did not comply with Canada Revenue Agency ("CRA") guidelines for claiming deductions for charitable donations. Notwithstanding this, Ms. Banman prepared and filed tax returns for her spouse, EB, for seven years wherein he benefitted financially from the donation arrangement.

**ii. The Complaint**

- [11] CPA Ontario was alerted to Ms. Banman's involvement in this matter by two Durham Regional Police Service Detective Constables. In November of 2020, the officers were investigating Beach for an unrelated fraud and stumbled upon the donation arrangement. They found Ms. Banman's business card in Beach's papers, as well as some text messages between Beach and EB which led them to believe Ms. Banman was involved in preparing tax returns relating to the donation arrangement.
- [12] On November 19, 2020, the two detectives submitted a complaint about Ms. Banman to CPA Ontario.
- [13] The police have not laid criminal charges against Ms. Banman, EB or Beach in relation to the donation arrangement.

**iii. The Allegation**

- [14] The PCC has alleged that Ms. Banman failed to perform professional services with due care in that she prepared and filed on behalf of her spouse, EB, personal tax returns which relied upon charitable donation receipts that did not comply with CRA guidelines.
- [15] Notably, the PCC did not allege that Ms. Banman knowingly participated in or facilitated a fraud on the CRA.
- [16] Ms. Banman signed an Agreed Statement of Facts ("ASF") and admitted the Allegation of professional misconduct made by the PCC and admitted that her conduct breached Rule 202.1 of the Code, and that her conduct constituted professional misconduct.

**III. PRELIMINARY ISSUES**

- [17] Neither party raised any preliminary issues.

**IV. ISSUES**

- [18] The Committee identified the following issues arising from the Allegation:
- A. Did the evidence establish, on a balance of probabilities, the facts on which the Allegation by the PCC was based?
  - B. If the facts alleged by the PCC were established on the evidence on a balance of probabilities, did the Allegation constitute professional misconduct?

## **V. DECISION**

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

[20] The Committee was satisfied that the Allegation constituted a breach of Rule 202.1 and, having breached this Rule, Ms. Banman had committed professional misconduct.

## **VI. REASONS FOR THE DECISION**

### **1. *Findings Regarding the Conduct of Ms. Banman***

#### ***i. The Donation Arrangement and Ms. Banman's Involvement***

[21] The donation arrangement involved Beach providing SGP's services to registered charities, typically municipalities, schools, universities and hospitals. SGP would charge the registered charities for the service. The charity would pay the invoice in full to SGP, after which Beach would withdraw the same amount of money from SGP and make a donation to the registered charity. Beach would then direct the registered charity to provide the donation receipt to EB, amongst others. EB would claim the donation as a tax deduction on his tax filings and would receive the credit from the CRA. To be clear, EB never utilized his own funds to make donations to any of the registered charities from which he received a donation receipt.

[22] By way of example, if SGP provided a school with anti-slip services at a cost of \$100,000, SGP would invoice the school and the school would pay SGP \$100,000. SGP would then pay Beach \$100,000, and Beach would personally donate the \$100,000 back to the school. Beach would then direct the school to provide one or more donation receipts to one or more people involved in the arrangement. If, by way of example, EB received a donation receipt in the amount of \$25,000 in relation to the \$100,000 donation, he would claim it against his income.

[23] After receiving his refund from the CRA, which took into account the tax deduction arising from the donation, EB would pay Beach an amount equivalent to 17% of the charitable donation amount. All participants in the arrangement paid Beach the 17% amount.

[24] The donation arrangement continued for seven years over a period spanning from 2009 to 2017. EB did not claim any amounts from this donation arrangement in his personal tax return for 2015 and 2016.

[25] Ms. Banman prepared and filed the tax returns including the donation receipts on behalf of her spouse for the years 2009, 2010, 2011, 2012, 2013, 2014 and 2017.

[26] The table below sets out the donations claimed by EB, the tax credits related to the SGP donations, and EB's total donation tax credits:

TAXYEAR	SGP DONATIONS CLAIMED BY E.B.	TAXCREDITS RELATED TO SGP DONATIONS	TOTAL DONATION TAX CREDITS FOR THE TAXYEAR	DIFFERENCE
2009	\$80,000	\$32,090	\$32,181	\$91
2010	65,000	26,064	25,341	(723)
2011	49,000	19,638	20,554	916
2012	40,000	16,024	16,080	56
2013	60,000	24,056	24,120	64
2014	31,000	12,409	12,444	35
2017	61,000	24,457	24,229	(228)
Total	<u>\$386,000</u>	<u>\$154,738</u>	<u>\$154,949</u>	<u>\$211</u>

[27] EB, and by extension Ms. Banman, benefitted by receiving \$154,738 of which EB paid Beach \$65,620 (17% of \$386,000). The net benefit to EB, and by extension Ms. Banman, was \$89,118.

**ii. Research Conducted by Ms. Banman Prior to Preparing and Filing EB's Tax Returns**

[28] Ms. Banman asked EB a number of questions about the arrangement, but never spoke directly to Beach. She satisfied herself that it was acceptable for a company to provide services to a charitable organization, be paid for the services and then donate the money back to the charity. Ms. Banman asked her spouse to inquire with Beach how the withdrawal from SGP was to be accounted for. EB told Ms. Banman that SGP owed Beach a substantial amount of money. She was satisfied that the withdrawal would not be claimed as a business expense and that it would go against what was owed to its shareholder, Beach.

[29] Ms. Banman did not review SGP's financial statements or perform any verification regarding the information provided by Beach to EB and ultimately to her.

[30] Ms. Banman further stated she was told that a number of the registered charities involved in the donation arrangement had the arrangement proposal reviewed by external third parties. As many of the organizations were government funded, she assumed and relied

upon the assumption that they would have done their due diligence before issuing donation receipts.

[31] In conducting her research, Ms. Banman reviewed the CRA's Guidance CPC-010 "*Issuing a receipt in the name other than the donor's*" which states that the charity may only issue a receipt to the individual if there is evidence to show that the individual is the true donor. Ms. Banman advised the Investigators that she was of the view that it was appropriate to consider EB the "true donor", as it was her understanding that the money belonged to EB. However, this is inconsistent with what actually occurred. EB never had the funds in his bank account, nor was he gifted the funds in the form of a bank draft which he signed over to the charities. Rather, Beach paid the charities directly and instructed them to provide the donation receipts to third parties, including EB.

[32] Ms. Banman did not reach out to the CRA or anyone else to discuss the legitimacy of the Donation Arrangement.

**iii. The Arrangement Did Not Comply with CRA Guidelines<sup>1</sup>**

[33] The generally accepted principles regarding whether a charitable gift will be recognized by the CRA, indicates that the following conditions must be met:

- a. The property transferred must be owned by the donor;
- b. There must be a voluntary transfer of property to a qualified donee; and
- c. No benefit or consideration must flow to the donor.

[34] There is no indication that EB received consideration from the charities in exchange for the gift. Accordingly, whether EB was legitimately entitled to the donation credits depends on whether he had a beneficial ownership of the gifted property and whether he voluntarily transferred the property to the charities.

[35] Ms. Banman acknowledged that the money purportedly gifted by Beach to EB would not have been voluntarily transferred to the charitable organization by EB had it not been for the Donation Arrangement. Ms. Banman further confirmed that EB did not have the option

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<sup>1</sup> See: [Issuing a receipt in a name other than the donor's - Canada.ca](#) (Tab 8 of Exhibit 2) and [Who is the true donor of this gift - Canada.ca](#) (Tab 9 of Exhibit 2)

Also see Tab 10 of Exhibit 2: *Her Majesty the Queen. v. Friedberg* 92 DTC 8031 (1991) Federal Court of Appeal

to keep the purported gift or to do as he wished with the funds.

### ***Finding of Professional Misconduct***

- [36] Through the ASF Ms. Banman admitted these facts and admitted that these facts constitute professional misconduct in relation to the Allegation before the Committee.
- [37] The Committee concluded that the Allegation, having been proven on a balance of probabilities, through clear and cogent evidence, constituted a breach of Rule 202.1 of the Code.

### **VII. DECISION AS TO SANCTION**

- [38] The parties presented a joint submission on sanction to the Committee. The salient features of the joint submission are a \$20,000 fine, a written reprimand, and the completion of three professional development courses.
- [39] The Committee accepted the joint submission of the parties.

### **VIII. REASONS FOR DECISION AS TO SANCTION**

- [40] The Committee recognizes that a joint submission is entitled to a high level of deference. A joint submission should be adopted unless it is contrary to the public interest or would bring the regulatory process into disrepute because it was beyond the reasonable range of sanction. In the words of Justice Moldaver in the matter of *R. v. Anthony Cook*:<sup>2</sup>

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

- [41] The Committee agreed that a \$20,000 fine, a written reprimand and relevant professional development is an appropriate sanction for the misconduct at issue, and that acceptance of the joint submission is not contrary to the public interest. While a short suspension

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<sup>2</sup> [\*R. v. Anthony-Cook\*, 2016 SCC 43 ¶ 34](#)

would also have been within the reasonable range of sanctions, the Committee is not entitled to reject a joint submission merely because if, left to our own devices, we may have imposed a more significant penalty.

[42] The Committee considered the following aggravating factors:

*i. Length of Time Over Which the Misconduct Occurred*

Ms. Banman prepared and filed seven tax returns on behalf of EB over a period of nine years. Ms. Banman had more than enough time to consider the donation arrangement and whether it was in compliance with the CRA guidelines for charitable donations.

*ii. The Obvious Inappropriateness of the Arrangement*

The PCC accepted Ms. Banman's claims to having conducted research of her own and having satisfied herself that the donation arrangement was legitimate. While the Committee is bound to accept the facts as agreed to in the ASF, the Committee finds that Ms. Banman's position in this regard strains credulity. The donation arrangement is, on its face, highly suspect. This should have been evident to anyone, and especially to a CPA with Ms. Banman's level of experience.

Moreover, no extensive research was required. As we have pointed out earlier in these reasons, a quick search of the CRA website would have revealed both the information video with transcript, [Who is the true donor of this gift - Canada.ca](#) and the policy entitled [Issuing a receipt in a name other than the donor's - Canada.ca](#).

Both documents make it very clear that charities may only issue donation receipts to the "true donor" of a gift. The "true donor" is defined as the person who made the donation to the charity in question. Ms. Banman knew that her spouse had not utilized his own funds to make donations to any of the charities that issued receipts, yet she prepared and filed his tax returns as though he had.

*iii. Benefit to Ms. Banman*

Over the nine year period the donation arrangement was in place, EB received tax credits amounting to \$154,738. As EB's spouse, Ms. Banman benefitted from these improper tax credits either directly or indirectly.

[43] The Committee also considered the following mitigating factors:

*i. Remorse*

Although Ms. Banman did not make a statement of remorse to the Committee, she expressed remorse in a written communication from her counsel to the Investigator, dated May 27, 2022 (Tab 2.5 of Exhibit 2). Prior to this matter being scheduled for a hearing, Ms. Banman enrolled in two CPA Ontario courses: "Ethics and Independence: Case Studies of What Can Go Wrong" and "Ethics for Accountants." The Committee applauds Ms. Banman for recognizing improvement in these areas was required and for taking proactive steps in that regard.



*ii. Cooperation*

Ms. Banman fully cooperated with the investigation. Ms. Banman signed an ASF and entered into a joint submission on penalty at the earliest opportunity. The Committee views such cooperation as indicative of insight and the capacity for rehabilitation.

*iii. No Discipline History*

Ms. Banman has no discipline history with CPA Ontario.

*iv. Family Dynamics*

There were some sensitive family dynamics at play which provide some context for why Ms. Banman may not have been appropriately skeptical of the arrangement.

- [44] The Committee observes that a \$20,000 fine is a substantial amount, rarely imposed at this Tribunal. It is our belief that a \$20,000 fine achieves the goals of specific and general deterrence. The professional development courses ordered are appropriate under the circumstances as two of the three focus on ethics and the third focuses on tax preparation skills. The Committee has ordered these courses in addition to the two courses Ms. Banman completed prior to the hearing being scheduled. Overall, the Committee accepts the sanction as appropriate and reasonable under the circumstances.

**IX. COSTS**

- [45] The law is settled that an order against a member for costs with respect to the disciplinary proceeding is not a penalty. Costs are intended to indemnify the PCC, based on the underlying principle that the profession, as a whole, should not bear all of the costs of the investigation, prosecution and hearing arising from the member's misconduct.
- [46] Costs are awarded at the discretion of the Discipline Committee. It has become customary for the PCC to file a Costs Outline in the same form as used in civil proceedings, and to seek 2/3 of the costs incurred in the investigation and prosecution of the matter.
- [47] In this matter, the PCC filed a Costs Outline. Legal fees and disbursements, including the cost of the investigation, amounted to \$47,725. The parties agreed on costs in the amount of \$30,000. This is an ordinary costs award which the Committee is prepared to order.
- [48] The Committee orders Ms. Banman to pay costs of \$30,000 to CPA Ontario on or before February 23, 2024.

**DATED** this 15<sup>th</sup> day of March, 2023

A handwritten signature in dark ink, appearing to read "Andrea Mintz". The signature is fluid and cursive, with a large initial 'A' and a stylized 'M'.

Andrea Mintz, CPA, CA, LPA  
Discipline Committee – Chair

Members of the Panel

Alexander Metaxas-Mariatos, CPA, CMA  
Vincci So, CPA, CMA  
Marianne Park, Public Representative

Independent Legal Counsel

Lisa Freeman, Barrister & Solicitor