

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **SUNNY S. KHOSLA, CPA, CA**, a member of the Chartered Professional Accountants of Ontario, under **Rules 201.1 and 205** of the CPA Ontario Code of Professional Conduct

BETWEEN:

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

-and-

Sunny S. Khosla

APPEARANCES:

For the Professional Conduct Committee:	Jean Iu, Counsel
For Sunny S. Khosla:	Present Michael Burokas, Counsel
Heard:	November 20, 2023
Decision and Order effective:	November 20, 2023
Release of written reasons:	January 2, 2024

REASONS FOR THE DECISION AND ORDER MADE NOVEMBER 20, 2023

I. OVERVIEW

- [1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario (“PCC”) has alleged that Sunny S. Khosla (“the Member”) engaged in professional misconduct by way of two Allegations.
- [2] This hearing was held to determine whether the Allegations were established, whether the conduct breached Rules 201.1 and 205 of the CPA Ontario Code of Professional Conduct (“the Code”) and whether the conduct amounted to professional misconduct.
- [3] The hearing proceeded on November 20, 2023 via videoconference as enabled by the CPA Ontario Rules of Practice and Procedure.

- [4] The Member obtained his CA designation in 2012 and has been a member of CPA Ontario since that time.
- [5] The onus was on the PCC to prove, on a balance of probabilities, that the Member's conduct breached the Code and, if so, whether that amounted to professional misconduct.

II. THE COMPLAINT AND THE ALLEGATIONS

- [6] It was alleged that the Member, in his capacity as Chief Financial Officer ("CFO") of an Ottawa based startup company, misappropriated approximately \$974,535 from his employer. It was further alleged that to conceal his theft, the Member prepared false statements by recording the funds that he had misappropriated as legitimate business expenses incurred by his employer.
- [7] The Member admitted the Allegations made by the PCC. He admitted that his conduct breached Rules 201.1 and 205 of the Code and that his conduct constituted professional misconduct.

III. PRELIMINARY ISSUES

- [8] At the outset of the hearing, counsel for the Member asked that the Member be permitted to keep his camera off during the hearing. A medical note was submitted advising that the Member had recently suffered a concussion and it was recommended that "he refrain from and (sic) screen time." Counsel for the PCC did not oppose the Member's request. Given his medical circumstances and after having the Member briefly turn on his camera to confirm his presence, the Panel agreed to permit the Member to keep his camera off during the hearing.

IV. ISSUES

- [9] 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 a balance of probabilities, did the Allegations constitute professional misconduct?

V. DECISION

- [10] The Panel found that the evidence established, on a balance of probabilities, the facts set out in the Allegations of professional misconduct.
- [11] The Panel was satisfied that the Allegations constituted breaches of Rules 201.1 and 205 of the Code and, having breached those Rules, the Member committed professional misconduct.

VI. REASONS FOR THE DECISION ON MISCONDUCT

Findings Regarding the Conduct of the Member

- [12] The parties proceeded by an Agreed Statement of Facts, dated November 14, 2023 (“ASF”) which was made Exhibit 1. The parties tendered no further evidence during the conduct portion of the hearing.
- [13] In 2018, the Member was the CFO of “R” Inc., a tech start-up company which operated an online rental marketplace, helping users to access a wide range of items. For approximately nine months, the Member worked on a contract basis and invoiced “R” Inc. for his services through his own company, “CMC” Inc. In May 2019, the Member became a full-time employee as CFO of “R” Inc.
- [14] “R” Inc. used QuickBooks online as its accounting software. The Member was responsible for most of the entries into QuickBooks and reviewed the financial information of the company. As CFO, the Member had access to all of “R” Inc’s bank accounts, including accounts from related companies.
- [15] Between January 2018 and August 2020, the Member misappropriated \$974,535 from “R” Inc.
- [16] The Member was able to misappropriate the money by transferring funds to either his own bank account or credit card account or his wife’s bank or credit card account and disguising the receipt of the transfers by recording entries into the company’s books to reflect the transfers as transactions with the company’s actual vendors.
- [17] The misappropriation came to light in August 2020, when a representative of “R” Inc.’s bank contacted the company to inquire about seven transfers from the company’s account to an individual who was later identified as the Member’s wife.
- [18] The Member was confronted with the transactions. He initially explained that the transfers were reimbursements for expenses and provided a link to invoices and spreadsheets detailing transactions during this time period.
- [19] The following day, the Member emailed his employer and confessed to the misappropriation, expressing remorse and attaching a spreadsheet. In the email, he stated that he owed the company \$359,524 and that he fully intended to repay the funds. The spreadsheet detailed amounts the Member took from the company between January 27, 2020 and July 1, 2020.
- [20] On the same day, the Member sent a second email, attaching a spreadsheet itemizing transactions from January 5, 2018 to July 2, 2020 totalling \$840,881.31. In that same email, the Member disclosed the following:
- a. The schedule represented amounts he took from “R” Inc, but that he could not support as company expenses;
 - b. He would pay it all back and in case he was missing anything he would pay back \$875,000; and
 - c. He offered to sell equities he owned of \$430,000 early the following week and would provide the balance within 30 days.

- [21] The Member explained the difference in the two totals. The lower total represented funds that he transferred from “R” Inc. in 2020 to his personal accounts. The higher total represented funds that he transferred to himself from the companies accounts between January 2018 and July 2020. He stated that he used the funds to pay for legitimate business expenses related to both companies but also to pay for personal expenses that had not been authorized.
- [22] The Member’s employment was terminated on August 13, 2020. Following his termination, “R” Inc. engaged a large Firm (“Firm”) to investigate the misappropriation. The Member fully cooperated with the investigation. He provided his bank and credit card statements and answered questions from investigators.
- [23] In August 2020, the Member prepared a spreadsheet that detailed the amounts that he had transferred from “R” Inc.’s account to himself, the amounts that related to corporate expenses and the reimbursements he made to the company between January 2018 and August 2020.
- [24] The final spreadsheet indicated that between January 2018 and August 2020, the Member transferred \$2.6 million to himself of which \$974,535 did not relate to “R” Inc.’s business expenses and which had not been approved by management.
- [25] The Member repaid \$1.068 million to “R” Inc., representing the misappropriated funds as well as the cost of the Firm investigation.

Finding of Professional Misconduct

- [26] Through the ASF, the Member admitted that these facts constitute professional misconduct in relation to the two Allegations before the Panel.
- [27] The Panel concluded that the Allegations, having been proven on the balance probabilities, through clear and cogent evidence, constituted breaches of Rules 201.1 and 205 of the Code.

VII. DECISION AS TO SANCTION

- [28] Counsel for the PCC sought the following as an appropriate sanction in this matter: a written reprimand, a fine in the amount of \$30,000, that the Member’s membership in CPA Ontario be revoked, full publicity disclosing the Member’s name to all members of CPA Ontario and all provincial bodies as well as the public, and notice of the Decision and Order to be given by publication in the Globe and Mail newspaper. The PCC also sought costs.
- [29] Counsel for the Member agreed that revocation and a written reprimand were appropriate. However, it was submitted that given the Member’s current financial circumstances, the imposition of a fine and costs would be unduly punitive. Further, notifying members of CPA Ontario and all provincial bodies of the Member’s name and finding of professional misconduct would be unnecessarily harsh.
- [30] In support of his position that he was unable to pay a fine, the Member provided an Affidavit setting out his family’s current financial circumstances. In the Affidavit, which was marked as Exhibit 2, the Member provided the following evidence which was not challenged by counsel for the PCC:

- a. That the Member is married with two children.
- b. He is the Director of Finance with “M” Company through “CMC” Inc., a corporation in which the member is the sole owner and director.
- c. The Member receives a base gross salary in addition to bonuses based on company performance.
- d. His wife is employed but is currently on maternity leave.
- e. The Member and his family have limited savings and investments.
- f. He has substantial credit card debt.
- g. “CMC” Inc. has limited cash and a significant debt owing to the Federal government that the company pays down monthly.
- h. “CMC” Inc. has no income aside from acting as an independent contractor for the purposes of the Member’s position with “M” Company.

[31] Having considered all the evidence, the law, the submissions of both parties, and the aggravating and mitigating factors, the Panel concluded that the appropriate sanctions are summarized as follows:

- 1. revocation of membership effective the date of the Decision and Order;
- 2. fine of \$40,000 payable to CPA Ontario by November 20, 2026;
- 3. oral reprimand by the Chair of the hearing;
- 4. notice of the Decision and Order, disclosing [the Member]’s name, is to be given:
 - (i) to all members of CPA Ontario;
 - (ii) to all provincial bodies;
 and shall be made available to the public;
- 5. notice of the Decision and Order, disclosing the Member’s name, is to be given by publication on the CPA Ontario website and in a local Ottawa newspaper, the costs of which shall be borne by the Member and are in addition to any other costs ordered by the Panel, by November 20, 2026.

The Panel also ordered costs in the amount of \$17,000, payable by November 20, 2026.

VIII. REASONS FOR THE DECISION AS TO SANCTION

[32] In any discipline proceeding, a Panel must consider all principles of sanction including those articulated in the [*Chartered Professional Accountants of Ontario Sanction Guidelines*](#). In applying these principles, the Panel concluded that a significant penalty was necessary to protect members of the public, to deter other members from engaging in misconduct and to maintain the public's confidence in the profession.

- [33] The Panel recognized that there were mitigating factors in this case, including the Member's acceptance of responsibility and restitution. However, the Panel determined that to fulfill its mandate to protect the public, its primary focus in the determination of sanctions in these circumstances must be general deterrence. The misappropriation of funds from an employer reflects the highest level of impropriety and moral turpitude. The Panel must send a strong message that it will not tolerate this type of misconduct.
- [34] The Panel concluded that revocation was necessary to deter this extremely serious misconduct. Indeed, the case law is very clear that absent significant extenuating or mitigating circumstances, revocation is the only appropriate remedy in cases of misappropriation for personal profit. Deterrence is fully served by revocation. Public confidence in the profession is maintained by the revocation of membership of those who engage in dishonest behaviour.
- [35] Misappropriation is theft. It is something that cannot be tolerated by the profession. Moreover, the Member's conduct was not an isolated event. It took place over a period of two years, involving multiple transactions and resulted in him receiving almost one million dollars. There was no evidence provided to explain why the Member chose to steal from his employer. In the absence of such evidence, the only reasonable inference to draw is that his actions were motivated by pure greed and a sense of entitlement.
- [36] The Member's multiple acts of breach of trust strike at the heart of the integrity of the accounting profession. He acted dishonestly and put his own interests ahead of those of his employer. The Member demonstrated a shockingly long pattern of dishonesty and untrustworthiness that undermines public confidence in the standards of members of CPA Ontario and the effectiveness of the regulatory role of CPA Ontario.
- [37] Honesty and integrity are the hallmarks of the accounting profession. The Member showed a total disregard to both foundational qualities. Members of the public must be able to trust CPAs and to rely on their honesty. There is an expectation that CPA Ontario will severely discipline members who do not maintain those foundations covenants. As stated in [*Re White*](#):
- “...any action by a member of the Institute which tarnishes the good reputation of the profession necessarily impairs the profession's ability to serve the public interest, and any action which impairs the profession's ability to serve the public invariably tarnishes the profession's reputation.”
- [38] Having a demonstrably untrustworthy member tarnishes our profession's reputation in the eyes of the public, which in turn hinders CPA Ontario's ability to govern its members in the public interest. Revocation of membership or deregistration is warranted in this case where the protection of the public interest or reputation of the profession requires that the member be removed from the profession. Revocation or deregistration is the most severe sanction that can be imposed by the Discipline Committee, but the lack of sufficient mitigating factors in this case makes revocation both necessary and appropriate.
- [39] Misappropriation demonstrates a lack of integrity and is devastating to a profession that exists on its good reputation. It cannot be countenanced by that profession, or by the public the profession serves. Therefore, except in the most rare and exceptional of circumstances, a

member who misappropriates must be expelled.

- [40] In addition to revocation, the Panel concluded that a substantial fine was necessary to reflect the seriousness of the Member's misconduct. In making this determination and in arriving at the quantum on the fine in these circumstances, the Panel balanced all the aggravating and mitigating circumstances present.
- [41] The Panel recognized that there were several mitigating factors demonstrated by the evidence. The Member had no discipline history. He had cooperated with the investigation by the PCC as well as the Firm investigation. That cooperation culminated in him admitting professional misconduct and signing an ASF. Further, the Member repaid all the money he had stolen. However, when assessing whether a fine was appropriate, these factors could not overcome the substantial and sustained moral turpitude of the misconduct.
- [42] The Member should be credited for accepting responsibility and repaying his ill-gotten gains. However, it should be noted that the Member did not stop his illegal behaviour on his own. He only did so when he was confronted by his employer about the suspicious transactions. He only decided to pay the money back after he was caught by his employer. While his cooperation in the investigative process should be commended, it is the Panel's view that cooperation should be the baseline expectation when a member has been caught engaging in such serious impropriety. Cooperation in these circumstances should not be relied upon as a sole basis to depart from the imposition of reasonable sanctions.
- [43] While the Panel understands that the Member's financial circumstances have been impacted by his conduct, this was the product of his own doing. Further, any hardship caused by a fine can be addressed by providing the Member an extended period in which to make the payment.
- [44] Fines are routinely imposed in cases of misappropriation and the Panel sees no reason why it should deviate from that practice in these circumstances. Although the Member has already paid a significant amount of money, he has simply repaid money that he was not entitled to have. Other than paying for the costs associated with the investigation, the Member has not paid any financial penalty for his misconduct.
- [45] In the Panel's view, it is not enough for a person to simply disgorge themselves of money to which they were not entitled. General and specific deterrence requires that a fine also be imposed. Without a fine, a member could simply choose to steal money knowing that, at worst, they would be required to pay the money back. Instead, to deter this behaviour members should know that not only will they be stripped of their ill-gotten gains but that they will also face a severe financial penalty.
- [46] The Panel was not satisfied that the quantum of fine as suggested by the PCC adequately reflected the Member's sustained and pervasive misconduct. Consequently, the Panel invited the parties to make further submissions on the appropriateness of the proposed fine.
- [47] As PCC counsel acknowledged at the hearing, a \$30,000 fine is at the very low end of the range of similar cases contained in the case briefs. Indeed, when this issue was raised by the Chair, counsel for the PCC acknowledged that the low end of the range of fines in similar cases has been increasing over the years. In the Panel's view, a \$40,000 fine was necessary

to serve as a specific deterrent to the Member and a general deterrent to the membership should they contemplate similar misconduct. The Panel considered the Member's financial circumstances, as well as other mitigating factors, and ordered that he be given a period of three years in which to pay the fine.

- [48] The notice of the Decision and Order serves to inform the membership of the Member's name and revocation of membership. Indeed, Regulation 6-2 mandates that notice of a finding of professional misconduct and the sanction imposed shall be given to all members and provincial bodies. In these circumstances, the protection of the public interest must take priority over the Member's concerns of the impact such publication would have on his reputation. Counsel for the Member provided no authority supporting his position that the Member's name and circumstances be withheld from publication. In the Panel's view there was nothing in this case that would justify withholding the Member's name and circumstances from publication. Publication serves to inform the public of the transparency of CPA Ontario's disciplinary process and protects the public by informing the community of the revocation of the Member's membership.
- [49] Although both parties sought a written reprimand, the Panel was of the view that an oral reprimand was more effective in serving as a specific deterrent to the Member as it allowed the Panel to speak directly to him to emphasize the seriousness of the professional misconduct and the high standard of ethical conduct expected of a member.

IX. COSTS

- [50] The Panel accepted the position of the PCC that the Member should be responsible for two-thirds of the costs incurred by the PCC in the investigation and prosecution of the Allegations. Although the costs were limited by the Member's cooperation, they were only incurred at all because of his actions. Consequently, it is appropriate that he indemnify CPA Ontario to the extent sought. Again, mindful of the Member's current financial circumstances, the Panel determined that it should allow the same extended payment terms as it did with the fine.

DATED this 2nd day of January, 2024



Fahad Meer, CPA, CA
Discipline Committee – Deputy Chair

Members of the Panel
Alexandra Finkel, CPA, CA
Janice Sheehy, CPA, CMA
Marianne Park-Ruffin, Public Representative

Independent Legal Counsel
Seth Weinstein, Barrister and Solicitor