

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Allegations against **SANJIV K. GUPTA, CPA, CGA**, a member of the Chartered Professional Accountants of Ontario, under **Rules 101.1(b), 104, 201.1, 202, 205, and 210** of the CPA Ontario Code of Professional Conduct.

**TO:** Sanjiv K. Gupta

**AND TO:** The Professional Conduct Committee

**DECISION AND ORDER MADE NOVEMBER 14, 2024**

**DECISION**

Having read the motion records, factums, and brief of authorities filed by the parties regarding a motion by the moving party, Sanjiv K. Gupta ("Moving Party") for an Order permanently staying the proceedings and having considered the parties' written and oral submissions at the hearing of the motion on September 27, 2024, the Panel dismisses the motion.

**ORDER**

The Panel orders:

1. Within fourteen (14) days from the date of this Decision and Order, the Responding Party may provide written submissions respecting the costs of the motion to the Moving Party and file the submissions with the Tribunals Office;
2. Within fourteen (14) days from the receipt of the Responding Party's submissions, the Moving Party may provide written submissions respecting the costs of the motion to the Responding Party and file the submissions with the Tribunals Office; and
3. Each of the parties' written submissions (not including a Bill of Costs or Book of Authorities) shall not exceed two pages double-spaced.

**DATED** this 14<sup>th</sup> day of November, 2024



Bernard S. Schwartz, FCPA, FCA  
Discipline Committee – Chair

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**BETWEEN:**

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

**-and-**

**Sanjiv K. Gupta**

**APPEARANCES:**

**For the Professional Conduct Committee:** Jonathan Smith, Counsel

**For Sanjiv K. Gupta:** Present  
Jordan Goldblatt and Rachel Allen,  
Counsel

Heard: September 27, 2024

Decision and Order effective: November 14, 2024

Release of written reasons: November 14, 2024

**REASONS FOR THE DECISION ON SANJIV K. GUPTA'S MOTION TO STAY THE  
PROCEEDINGS MADE NOVEMBER 14, 2024**

**I. OVERVIEW**

- [1] Sanjiv K. Gupta ("Member") brought a motion seeking a stay of this disciplinary proceeding. The Member alleged that after the Chartered Professional Accountants of Ontario ("CPA Ontario") received a complaint about his professional conduct, it failed to follow the process for the review and investigation of complaints that are set out in its Act and Regulations. The Professional Conduct Committee of CPA Ontario ("PCC") argued that CPA Ontario complied with its intake and investigation procedures and there was no procedural unfairness to the Member. The PCC further submitted that even if there were procedural irregularities in the review and investigation of the complaint made against the Member, which it denied, the

remedy of a stay of proceedings is extraordinary and should not be granted in circumstances where there are allegations of serious professional misconduct.

- [2] A Panel of the Discipline Committee ("Panel") heard the argument for the motion on September 27, 2024. For the reasons set out below, the Member's motion was dismissed.

## **II. EVIDENCE BEFORE THE PANEL**

- [3] There was no oral testimony at the hearing of the motion but the following written evidence was submitted:
- a) Exhibit 1 – Motion Record of the Member, including:
    - i) Notice of Motion; and
    - ii) Affidavit of the Member sworn May 17, 2024.
  - b) Exhibit 2 – Affidavit of Service of the Motion Record of the Member
  - c) Exhibit 3 – Motion Record of the PCC, including:
    - i) Affidavit of Kelvin Kucey sworn September 6, 2024.
  - d) Exhibit 4 – Affidavit of Service of the Motion Record of the PCC.

## **III. RELEVANT BACKGROUND AND FACTS**

- [4] The Member obtained his CGA designation in 2003.
- [5] He incorporated a firm ("Member's Firm") in 2004 for tax preparation, bookkeeping, and assisting individuals and corporations in obtaining financing from financial institutions. This became his primary business in 2005.
- [6] The Member also became a real estate agent and set up his own realty brokerage ("Realty Brokerage") in 2014 for trading corporate realty, primarily gas stations.
- [7] In 2016, the Member registered a firm with CPA Ontario, but he stated that he did little business through that firm and focused on the Member's Firm instead. The Member has never held a Public Accounting Licence ("PAL").
- [8] On February 2, 2021, CPA Ontario received a complaint from a former client of the Member ("Complainant"). Additional information was received from the Complainant on April 7, 2021.
- [9] The Complainant alleged as follows:
- a) In 2014, the Member, through the Realty Brokerage, assisted the Complainant in purchasing a gas station, convenience store and restaurant ("Gas Station") with the purchase structured through a corporation jointly held by the Complainant and his wife ("241 Inc.").

- b) From 2015 to 2019, the Member, through the Member's Firm, completed the corporate bookkeeping and taxes for 241 Inc. and the personal taxes for the Complainant and his wife.
- c) In January 2018, the Complainant advised the Member that he wished to sell the Gas Station. The Member, through the Realty Brokerage, listed the property for sale. The listing price was reduced with the Complainant's consent.
- d) In August 2019, an individual who was purportedly the Member's friend (the "Purchaser") and her corporation ("Purchaser's Company"), made an offer to purchase the Gas Station. The Purchaser's Company was later changed to another numbered corporation ("265 Inc.").
- e) The purchase offer was shortly thereafter converted to a Share Purchase Agreement that would result in full ownership of 241 Inc. being transferred to the Purchaser's Company.
- f) The Purchaser was unable to secure independent financing, so it was proposed that an individual, RG, would act as a guarantor on the mortgage. The Complainant alleges that the Member did not advise him that RG was the Member's wife.
- g) It was ultimately agreed that the purchase would include a "renovation credit" to 265 Inc. for work allegedly planned by the Complainant but which was never completed.
- h) The full transaction was negotiated by the Member for all parties and the Member received a commission of \$43,000.
- i) It was later learned that RG, the Member's wife, was the 90% owner of the Purchaser's Company with the Purchaser (the Member's friend) only owning 10%. The Purchaser's Company subsequently sold the Gas Station at a significantly higher price than what the Complainant had received.

[10] In his Complaint, the Complainant asked CPA Ontario to revoke the Member's licence because:

- a) The Member misled him about the true ownership of the Purchaser's Company/265 Inc., and about the Member's marital relationship with RG.
- b) The Member induced him to accept a purchase price below market value.
- c) The Member acted to financially benefit himself and his wife.
- d) The Member induced him to back date documents.
- e) The Member induced him to accept a renovation credit.
- f) The Member fraudulently misrepresented 241 Inc.'s financial records and urged the Complainant to sign and approve the financial statements.

[11] On February 19, 2024, the PCC made Allegations of Professional Misconduct against the

Member that included many of the issues raised by the Complainant and also the allegation that the Member issued a review engagement report for the financial statements of 241 Inc. without a valid PAL. It was also alleged that the Member failed to co-operate with the regulatory processes of CPA Ontario and attempted to mislead the PCC's investigators regarding the issuance of the review engagement report.

#### **IV. ISSUES ON MOTION**

[12] The following issues were raised by the Member in this motion:

- a) With respect to the review of the Complaint by the Vice President, Standards Enforcement ("VPSE" or "Standards Enforcement") from February 2022 to August 2023, did Standards Enforcement comply with the complaints review process in accordance with Regulation 15-1, and in particular:
  - i) Did Standards Enforcement comply with section 11, requiring them to conduct an "initial" review of the complaint and then review the complaint themselves or proceed with a review by the PCC?
  - ii) If Standards Enforcement and/or the PCC were conducting an investigation before August 2023, was the Member notified in accordance with section 19?
  - iii) If the Member was subject to an investigation prior to August 2023, was the Member cautioned about his duty to cooperate in accordance with subsection 19.3?
- b) With respect to the investigation of the Complaint by the PCC from August 2023 to January 2024:
  - i) Did the PCC give the Member sufficient notice that the mandate of the investigation had been expanded in accordance with section 19?
  - ii) Did the PCC give the Member notice of its decision to refer the complaint to the Discipline Committee in accordance with subsection 30.3?

#### **V. ANALYSIS AND DECISION**

- [13] In considering the facts and issues in this motion, the parties agreed that the onus of proof rested with the Member. The Member was required to prove, on a balance of probabilities, that CPA Ontario breached its statutory obligations, which resulted in procedural unfairness to the Member. If the Member established this, he was also required to prove that the appropriate remedy for such breaches would be to order a stay of his discipline hearing.
- [14] The Panel noted that the Member was entitled to a high degree of procedural fairness because the Allegations were serious and, if proven, would likely impact on his ability to practice his profession.

##### *a) Standards Enforcement Review of the Complaint*

- [15] On February 11, 2022, a Standards Enforcement coordinator with CPA Ontario wrote to the

Member and asked for his response to the Complaint by March 4, 2022. The Member provided a written response to the Standards Enforcement request on May 25, 2022 through MW, who was his lawyer at the time. MW did not question whether there was a requirement to provide this information.

[16] On November 29, 2022, a Standards Enforcement officer wrote to the Member again and sent him the additional documents received from the Complainant in April 2021 that may not have been sent to the Member prior to his counsel's May 25 written response. The Standards Enforcement officer asked the Member to respond to a list of allegations and questions. They explained that the Member must reply to these questions in accordance with Rule 104 of the *CPA Code of Professional Conduct* ("Code"). The Member did not respond to the November 29 letter.

[17] On January 3, 2023, the Standards Enforcement officer wrote to the Member asking for a response to their November 29 letter and advised, amongst other things:

"The Professional Conduct Committee is responsible for reviewing complaints made against Members. In order that this work may be promptly carried out, it is necessary for Members contacted to respond on a timely basis."

[18] According to the Member, he retained Jordan Goldblatt of AGB LLP ("Member's counsel") as his new counsel in November 2022. However, on January 11, 2023, the Member's former counsel wrote to Standards Enforcement and advised that their client could not respond due to a car accident and requested an extension to provide a written response, which was granted.

[19] In early 2023, the Member's newly appointed counsel wrote to Standards Enforcement and indicated that a substantive response to the November 29 letter would be provided on March 10, 2023. The Member's newly appointed counsel did not question whether the Member was required to respond to Standards Enforcement or the PCC.

[20] The Member's counsel responded to Standards Enforcement's questions about the Complaint on March 10, 2023. As part of his response, the Member included an appraisal report of the Gas Station prior to its sale. The appraisal report contained financial statements for 241 Inc., which referenced a "review engagement report" on page 1. Page 1 of the engagement report, however, was missing from the Member's productions.

[21] Standards Enforcement sent their review of the complaint to the PCC on July 12, 2023. On August 8, 2023, Kelvin Kucey, counsel for PCC, wrote to the Member's counsel and stated that as a result of "the preliminary review of the complaint" against the Member, the PCC was now moving forward with an investigation.

i. *Did Standards Enforcement comply with the complaint review process in section 11 of Regulation 15-1?*

[22] Regulation 15-1 is simply entitled "Complaints," and it governs the process for the review and investigation of complaints made to CPA Ontario. Sections 8 and 9 of Regulation 15-1 provide that the PCC has jurisdiction over all complaints made respecting CPA Ontario students, firms,

members and former members of CPA Ontario.

- [23] Sections 11 through 16 of Regulation 15-1 provide for the “review” of complaints by both the VPSE and by the PCC.
- [24] Section 11 provides that all complaints will “initially” be reviewed by the VPSE. The purpose of the initial review is to obtain information so that VPSE can determine if the complaint should be sent to the PCC or remain with Standards Enforcement.
- [25] If the VPSE decides to refer the complaint to the PCC, the PCC must determine first if it has jurisdiction to review the complaint. If it has jurisdiction to review the complaint, the PCC will then determine if it appears that there has been a breach of the *Code* based on the information, documents and material provided (section 12). The PCC may then, amongst other options, refer the matter to the Discipline Committee (section 13).
- [26] If, on the other hand, the VPSE decides that there is jurisdiction to review the complaint and it appears that there has been a breach of the *Code*, they may, amongst other things, refer the complaint to the PCC or direct an investigation (section 14).
- [27] Counsel for the Member argued that section 11 provides a complete code for what should be done by the VPSE when CPA Ontario receives a complaint: They must forward the complaint (immediately) to the PCC, triggering sections 12 and 13 or they must keep the complaint, triggering sections 14 and 15. Counsel for the Member submitted that in asking the Member to provide documentation and answers to questions, Standards Enforcement was moving to an investigation by the PCC, which should only be commenced after the VPSE made the decision contemplated by section 11.
- [28] Counsel for the Member argued that the interpretation of section 11 of Regulation 15-1 is informed by section 34 of the *Chartered Professional Accountants of Ontario Act* (“*Act*”), which states that the complaints committee shall review every complaint about CPA Ontario members or firms and, if “the complaint” contains information suggesting that the member or firm have breached the *Code*, the PCC may investigate. Counsel for the Member argued that the reference in section 34 to “the complaint” was properly interpreted as “the complaint from the Complainant” and should not be given an expansive meaning which would include information obtained from the member.
- [29] Counsel for the Member argued that the process established by the *Code* and Regulation 15-1 should be interpreted as a system whereby Standards Enforcement collects information from the complainant and then the VPSE promptly makes a decision to keep the file or send it to the PCC. To ask questions of the Member, he argued, constitutes an investigation, which cannot be commenced until the VPSE makes the decision under section 11.
- [30] With respect to the question of whether Standards Enforcement was conducting an investigation alongside the PCC, counsel for the Member argued that information from the Member was not necessary to assess whether there was jurisdiction as required by sections 12 and 14.
- [31] In his concluding submissions, counsel for the Member submitted that ultimately, the question

for the Panel was whether it was fair to the Member for Standards Enforcement to continue its review for over one year.

- [32] Counsel for the PCC argued that from the time that the Member was notified of the complaint (February 2022) until the VPSE transferred the matter to the PCC (August 2023), this process was in accordance with the complaint review process contemplated by section 11 of Regulation 15-1.
- [33] Counsel for the PCC responded that Standards Enforcement carries out complaint intake and assessment work on behalf of the PCC, which has jurisdiction over all complaints (sections 8 and 9). The work done by Standards Enforcement is not a separate investigation, but rather the collection of information to facilitate the entire process. In endorsing a process where Standards Enforcement only gathers information from the complainant and not from the member, the PCC argued that the Member was advocating for a process with less natural justice and fewer procedural safeguards to its membership.
- [34] Counsel for the PCC noted that under section 5 of Regulation 15-1, both the PCC and the VPSE may at any time request further information, documents or materials from the complainant or any other person. Counsel for the PCC submitted that “any other person” includes the member. Also, both Standards Enforcement and the PCC may request any person to attend before them to answer questions or provide information, documents of materials under section 21. As such, Standards Enforcement had the authority to ask the Member for information and documents in February and November 2022.
- [35] With respect to section 34 of the *Act*, PCC counsel argued that the section is proscriptive, not restrictive. In other words, the reference to the PCC reviewing “every complaint” did not mean only the complaint received from the Complainant but could also include other information pertaining to the complaint.
- [36] Furthermore, counsel for the PCC argued that pursuant to subsections 64(1) and (2) the *Legislation Act, 2006*, the *Act* and CPA Ontario’s Regulations should be interpreted as being remedial and given a fair, large and liberal interpretation as best ensures the attainment of its objects. In *Abdul v. College of Pharmacists*, the Court of Appeal wrote:

The interpretive principle of strict compliance with and construction of professional discipline legislation to ensure procedural fairness to accused members is not exclusive or overriding. The Discipline Committee is required to interpret its enabling statute with a view to protecting the public interest in the proper regulation of the professions (para. [16]).<sup>1</sup>

- [37] Counsel for the PCC also referred to section 28 of the *Statutory Powers Procedures Act* (“SPPA”) that provides: “Substantial compliance with requirements respecting the content of forms, notices or documents under this Act or any rule made under this or any other Act is sufficient.”
- [38] Finally, with respect to all of the issues raised by the Member in this motion, counsel for the

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<sup>1</sup> *Abdul v. College of Pharmacists*, [2018 ONCA 699](#)



PCC argued that the Member had the benefit of counsel at all material times and there was no evidence that he was misled or confused about the nature of the process. More specifically, there was no evidence that the Member's counsel (neither former nor current) gave the Member any reason to believe at any time that CPA Ontario, specifically Standards Enforcement and/or PCC, were not adhering to the *Act* or the Regulations.

- [39] The Panel found that section 11 of Regulation 15-1 does not limit the initial review of the complaint by the VPSE to information presented by the complainant. Section 5 clearly allows Standards Enforcement and the PCC "at any time" to request "further information, documents or materials from the Complainant or any other person." In the Panel's view, the reference to "at any time" would include the process where Standards Enforcement is conducting an initial review of the complaint for the VPSE to make their determination under section 11. "Further" information in section 5 suggests that the information is additional information to what has been provided by the Complainant. "Any other person" may be interpreted to include the Member. In fact, the Member is the person most likely to have additional information.
- [40] In considering section 34 of the *Act*, the Panel found that the reference to the review of a "complaint" is not restricted to the information provided by the Complainant. The "complaint" must be read more broadly and in a purposive way as provided by the *Legislation Act* and the jurisprudence referred to above. CPA Ontario must review the concerns of the complainant but in fairness to its members and the public, it may need to obtain more information from the member alleged to have done something wrong in order to make the decision contemplated by section 11.
- [41] There is clearly some overlap in the functions of the VPSE and the PCC when gathering information. Some of the information gathered by Standards Enforcement to assess whether the matter will be transferred to PCC may very well be used as part of the investigation. That does not mean, however, that the VPSE or Standards Enforcement is conducting an investigation, as set out in sections 17 to 22 of Regulation 15-1.
- [42] The Panel finds that the VPSE and Standards Enforcement were not conducting an investigation on their own behalf or on behalf of the PCC. It was merely conducting an initial review so that the VPSE could decide how to proceed with the complaint. The Panel found that there was no violation of the processes of Regulation 15-1 or section 34 of the *Act*.
- [43] Counsel for the Member asked the Panel to consider whether it was fair that the Member was asked to provide information to Standards Enforcement and the decision to send the matter to the PCC was not made until August 2023. While the process took time, the initial delay (May to November 2022) was caused by a possible administrative error because the Complainant's additional information may not have been sent to the Member. The later delay (November 2022 to March 2023) occurred when the Member did not respond to Standards Enforcement. The Panel found that the length of the review by the VPSE was not unreasonable or unfair to the Member in the circumstances.
- [44] In considering the overall fairness of the review process by Standards Enforcement, the Panel noted the Member was represented by counsel at all material times and neither he nor his counsel raised any concerns until after the matter was sent to the Discipline Committee. The Member did not experience any actual prejudice as a result of this process. To the extent that

the Member's counsel argued that total compliance with the regulatory process as set out in section 11 (and by reference to sections 12 and 14) was required, the Panel relied on the provisions of the *SPPA* respecting the interpretation of the Regulations and the overall purpose of the review process for complaints made against members. The information requested of the Member was required by both Standards Enforcement and the PCC to understand the complaint and make decisions about the appropriate regulatory response.

*ii. If Standards Enforcement was conducting an investigation, was the Member properly notified?*

- [45] Counsel for the Member argued that section 19 of Regulation 15-1 required that the Member be notified that he was the subject of an investigation during the period from February to January 2023.
- [46] Counsel for the PCC submitted that no investigation was commenced until July 12, 2023 and the Investigators were appointed on August 8, 2023. The Member was notified of PCC's intention to investigate the Complaint on August 8, 2023, within 30 days of the commencement of the investigation.
- [47] Counsel for the PCC asked the Panel to take into account section 28 of the *SPPA* if there are any concerns about procedural irregularities. The *SPPA* provides: "Substantial compliance with requirements respecting the content of forms, notices or documents under this Act or any rule made under this or any other Act is sufficient."
- [48] The *Act* requires written notification of the investigation and proof of the Investigator's appointment upon request. The Member made his first request of the appointment on February 27, 2024, after the PCC had directed that the matter be sent to the Discipline Committee.
- [49] As the Panel found that there was no investigation by the PCC at this time, there was no requirement to provide the notification set out in section 19.

*iii. If the Member was subject to an investigation prior to August 2023, was he given appropriate warning about his duty to cooperate?*

- [50] Counsel for the Member argued that although Standards Enforcement was communicating with the Member from February 2022 to August 2023, they were in effect conducting an investigation. As such, the Member should have been advised of his obligations to cooperate with the investigation as set out in section 19 of Regulation 15-1. In particular, subsection 19.3 stated that the subjects of investigations must be cautioned that their failure to produce a document "that is not privileged" may be a breach of their professional obligations. The Member did not identify any such documents in their motion but argued that this was an important exception to the requirement to cooperate.
- [51] Counsel for the PCC argued that the Member was not subject to an investigation during this period but in any event, the obligation of a member to cooperate with a review and an investigation is the same.
- [52] Counsel for the PCC further argued that the Member was represented by counsel during the

review by Standards Enforcement and at no time did he challenge the right of Standards Enforcement to require his cooperation with the regulatory process.

- [53] Finally, counsel for the PCC argued that there was no evidence that the Member had suffered any prejudice as a result of the failure to warn him that he was not required to provide privileged documents. The Member's affidavit (Exhibit 1) did not indicate that he would not have cooperated fully if he had been given the warning under subsection 19.3.
- [54] This issue is largely moot because the Panel found that Standards Enforcement was not conducting an investigation but was rather gathering documents and information to make the determination about whether they should transfer the matter to the PCC as required by section 11. The exception to providing privileged documents under subsection 19.3 refers only to the requirements during investigations.
- [55] The caselaw provided by the PCC supported the proposition that members of CPA Ontario have an obligation to cooperate at all stages of a review and investigation. For example, in *Young*, the Discipline Panel noted that the obligation to respond to communications from Standards Enforcement is an ethical duty as a member of a regulated profession.<sup>2</sup> There, Mr. Young was contacted by Standards Enforcement and asked to provide a written response to the complaint (similar to the request made to the Member). When Mr. Young did not respond to Standards Enforcement, the Discipline Panel found that he had breached Rule 104 of the *Code*. They added that "failure to cooperate is serious as it has delayed CPA Ontario's ability to address the substantive complaint in a timely matter..." (para [74]). The Panel noted that there was no issue raised in *Young* that Standards Enforcement did not have the ability to request information from Mr. Young as part of its review process. Similarly in *Bates*, following receipt of a complaint, Standards Enforcement wrote to Mr. Bates and asked for his response to certain questions.<sup>3</sup> When Mr. Bates failed to respond to Standards Enforcement, the Discipline Committee found that he had breached Rule 104 of the *Code*.
- [56] It should be noted that section 104 of the *Code* provides that members shall cooperate with "the regulatory process of CPA Ontario" – it does not distinguish between cooperation with Standards Enforcement reviews or PCC investigations.
- [57] In conclusion, the Panel found that there was no obligation for CPA Ontario to provide the Member with a warning under subsection 19.3 because they were not conducting a PCC investigation. In any event, the issue is entirely theoretical as there was no evidence that the Member or his counsel provided any privileged documents under the mistaken belief that this was an investigation governed by section 19. There was nothing unfair in the requests made by Standards Enforcement that the Member cooperate with the review of the Complaint.

#### *b) Investigation of the Complaint by PCC*

- [58] The PCC appointed two investigators ("Investigator" or "Investigators") to investigate the Complaint. The Investigators were provided with the information gathered by Standards Enforcement, including documents submitted by or on behalf of the Member.

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<sup>2</sup> *Chartered Professional Accountants of Ontario v. Young*, [2024 ONCPA 7](#)

<sup>3</sup> *Chartered Professional Accountants of Ontario v. Bates*, [2024 ONCPA 5](#)

[59] On August 21, 2023, an Investigator told the Member's counsel that the anticipated timeline for the investigation was:

- a) They would interview the Member in late October.
- b) They would complete an investigative report by early November.
- c) The matter would be considered at the December 6, 2023 PCC meeting.

The Investigator asked the Member's counsel to provide additional documentation prior to the October interview, including financial documentation for 241 Inc. for the period of the Gas Station transaction.

[60] The interview of the Member took place on or about November 2, 2023, and the Investigator sent the Member's counsel a list of three additional questions and ten undertakings given by the Member during his interview, including undertakings to provide the Investigator with copies of the financial documents that were relied upon by the financial institutions respecting the Gas Station transaction ("Follow-up Questions").

[61] On November 8, 2023, the Member's lawyer asked the Investigator for an extension of time to answer the Follow-up Questions for health and religious reasons. The Investigator responded the same day, saying that Mr. Kucey had advised them to refuse the request for an extension of time (save certain undertakings) because of the timeline for provision of the Investigator's report and the PCC meeting. The Investigator offered other suggestions about how the Follow-up Questions could be quickly answered, including that the Investigator could attend at the Member's offices prior to the start of the religious holiday to collect documents or the Member could provide an authorization for the Investigator to obtain the documents directly from third parties. A further interview of the Member was requested regarding the Follow-up Questions.

[62] On November 9, 2023, the Investigator told Mr. Kucey that there were additional issues that were outside the scope of the initial mandate that might require further investigation. Mr. Kucey emailed the Member's counsel and stated that "the December interview date might be pushed as a result of the mandate expansion of the PCC's investigator." The Member's counsel responded a few minutes later and suggested some dates and times when they could discuss this matter.

[63] On November 14, 2023, the Member's counsel wrote to the Investigator and provided a partial response to the Follow-up Questions. In respect to the questions about the financial records of 241 Inc., the Member's counsel wrote "[the Member] was not providing accounting services to 241. He was acting as its bookkeeper. Accordingly, he did not indicate that financial information/tax returns were professionally prepared."

[64] Upon receipt of the November 14 letter, the Investigator raised concerns with Mr. Kucey that the Member was still not being cooperative and had failed to produce relevant information as part of their response.

[65] On November 20, 2023, Mr. Kucey and the Member's counsel spoke on the phone about the outstanding issues. According to the contemporaneous notes made by Mr. Kucey:

- a) He told the Member's counsel that Rule 104 requires full cooperation and he asked for counsel's assistance to ensure the Member's cooperation.
- b) He advised the Member's counsel that further to the Investigator's email of November 9, it was necessary to expand the mandate to determine the Member's involvement with financial statements for the Gas Station and to clarify what services he was providing to the Complainant as it appeared that the Member was providing assurance services, which he was not licensed to provide.
- c) He stated that while the Complainant addressed certain issues, CPA Ontario's jurisdiction extended to all of the Member's conduct and more information was required and cooperation necessary respecting the assurance issues.
- d) The expansion of the investigation mandate should not push the matter beyond the January 2024 PCC meeting.

[66] After concluding the phone call, Mr. Kucey emailed the Investigator and advised that she should expect contact from the Member's counsel, who understood the importance of cooperation and that the mandate would be expanded.

[67] A few minutes later, the Member's counsel emailed the Investigator and offered to cooperate fully. On November 21, 2023, the Investigator responded: "I am just compiling a new list of information requests based on your most recent responses/provision of information...and my expanded mandate."

[68] On November 23, 2023, the Investigator wrote to the Member's counsel with a detailed list of documents and information being sought. She indicated that she wanted to interview the Member again in December regarding the new information received. At no time did the Member's counsel question or otherwise challenge the expansion of the investigation or the need for a second interview.

[69] On December 7, 2023, the Investigator interviewed the Member for a second time in the presence of his counsel. During this interview, the Member was asked specific questions about the public accounting work he had allegedly performed without a PAL. No objection was raised to this line of questioning by the Member or his counsel on his behalf.

[70] As a result of the second interview, the Investigator emailed the Member's counsel and advised of some further information that was being sought and requested that it be provided on or before January 9, 2024, so that the PCC could be properly updated for its meeting on January 10. On January 9, the Member's counsel provided a written response to the additional inquiries. They raised no issue with the investigation or its expansion at that time.

[71] Prior to the PCC meeting, the Member and his counsel were provided with the document brief relied upon by the PCC. Again, no objection was raised as to the expansion of the mandate.

[72] On January 10, 2024, the PCC considered the investigative report and met with the Member in the presence of his legal counsel. The PCC thereafter directed that the matter proceed to the Discipline Committee to review allegations of professional misconduct.

[73] On January 11, 2024, Mr. Kucey wrote to the Member's counsel to advise that the PCC had moved to draft allegations of professional misconduct against the Member. No complaint with the substance or sufficiency of this notification was raised by the Member's counsel in his reply email on the same day. The Member's counsel wrote: "Once the allegations are finalized, we would be appreciative of an opportunity to meet to discuss resolution opportunities."

[74] On February 19, 2024, the Member was served with the Allegations of Professional Misconduct.

[75] On February 27, 2024, the Member's counsel wrote to Mr. Kucey and raised some of the issues on this motion, which in summary were as follows:

- a) The Allegations before the Discipline Committee exceeded the scope of the Investigation and the original allegations made by the Complainant.
- b) The Member was not given any notice of the expansion in the investigative mandate.

The Member's counsel advised that the Member was seeking a complete stay of proceedings as no other possible remedy was sufficient to address the procedural unfairness.

*i. Did the Member receive notice of expanded mandate?*

[76] The Member's sworn affidavit stated that he was advised by his counsel that the particulars of the expansion [of the mandate] were never explained to him. Mr. Kucey's affidavit, which attached his notes of his November 20 call with the Member's counsel, stated that they had discussed the expanded investigation mandate and in particular the concerns that the Member was providing assurance services without a PAL. The Member's counsel did not provide his own evidence about the conversation on November 20.

[77] In the circumstances, the Panel found that the Member through counsel was advised orally by Mr. Kucey of the expanded investigation mandate.

[78] The Panel also found that the Investigator referred to the expanded mandate by letter dated November 21, 2023.

[79] The Member argued that while he may have been given oral notice of the expansion of the investigation mandate, he should have been given written notice of the expanded mandate as provided by section 19 of Regulation 15-1, which states:

19. The subjects of the investigation and, if applicable, their Firms shall be notified in writing of the investigation and of the matters being investigated and shall also be notified of any expansion or alteration of the matters investigated. The notices shall..." (emphasis added).

[80] Counsel for the Member argued that the reference to "notices" in section 19 must refer to the notice of the original investigation mandate and the expanded mandate.

[81] Counsel for the PCC argued:

- a) The mandate of the investigation was not actually expanded because its scope fell within

the original Complaint about the Member's involvement with the Gas Station transaction.

- b) In the alternative, if the investigation mandate was expanded, the Member was advised of the new issue orally and his counsel was told about the details of the mandate expansion in a phone call with Mr. Kucey on November 20, 2023. The Member also attended the interview on December 7, 2023 with respect to those issues.
- c) Furthermore, section 19 of Regulation 15-1 refers to written notice of the investigation but "notification" of any expansion or alteration in the matters investigated is not specified as a written notice.
- d) The PCC substantially complied with section 19 as required by section 28 of the *SPPA*.
- e) Finally, the Member's counsel never raised this as an issue until February 27, 2024, after the PCC directed that the matter proceed to the Discipline Committee to review allegations of professional misconduct.

[82] The Panel found that although the issue of the Member's provision of unauthorized PAL services flowed from the original complaint, Mr. Kucey and the Investigator both characterized it as an expansion of the investigation mandate. As such, the Member was entitled to notice of the new issue as set out in section 19 of Regulation 15-1.

[83] Under section 19 of Regulation 15-1, it is clearly specified that notice of the initial investigation must be in writing. However, there is no requirement that the notice of the expanded mandate be in writing. The Panel therefore found that the PCC complied with its statutory notice requirements.

*ii. Did the Member receive timely notice of the PCC's determination?*

[84] Counsel for the Member argued that he did not receive notice of the outcome of the PCC decision within 30 days as required by section 30 of Regulation 15-1, which provides:

30. The Professional Conduct Committee shall provide, in writing, its determination made under section 26 and an explanation of any determination made under subsection 26.1 [take no further action], 26.2 [guidance and admonishment], or 26.3 [refer to the Registrar] to:

...

30.3 the subjects of the investigation....

within 30 Days of making the determination.

[85] The meeting of the PCC was on January 10, 2024 and the Member submitted that he did not receive notification until February 19, 2024, when counsel for the PCC sent the Allegations to him.

[86] Counsel for the PCC argued that notice of the January 10 meeting was given to the Member by email dated January 11, 2024, when the Member's counsel was advised in writing that the PCC had moved to draft Allegations of Professional Misconduct against the Member. Counsel

for the PCC submitted that section 30 of Regulation 15-1 merely required notice that the PCC had made a determination to proceed with Allegations and that notice was required.

- [87] Section 30.3 of Regulation 15-1 requires that written notice be given to the subject of the investigation of the PCC's "determination" to refer the matter to the Discipline Committee. Under subsection 26.3, the PCC may "refer the matter, in whole or in part, to the Discipline Committee." There is no requirement that the PCC must notify the Member of the detailed allegations that will be reviewed by the Discipline Committee.
- [88] Section 30 states that "an explanation" must be provided to the subject of the investigation if the PCC determines that no further action will be taken, guidance and admonishment will be given to the Member or the matter is going to be referred to the Registrar. It appeared that the Member was asking the PCC to provide "an explanation" for the PCC decision to refer the matter to the Discipline Committee rather than notice of the determination. This was not required in the Member's case.
- [89] In conclusion, the Panel found that the Member was provided with notice of the PCC's determination within 30 days as required by section 30 of Regulation 15-1 and there was no procedural irregularity or unfairness to the Member.

*c) Remedy of Stay of Proceedings*

- [90] Although the Panel found no breaches of procedural justice or procedural unfairness to the Member, even if there had been the procedural irregularities alleged by the Member, the Panel found that the remedy of ordering a stay of the discipline proceedings against the Member would be disproportionate and not consistent with CPA Ontario's mandate of protecting the public interest.
- [91] A stay of proceeding is an equitable remedy. In *R. v Babos*, the Supreme Court of Canada found in the context of a criminal appeal, that a stay should only be granted on rare occasions where the accused's right to a fair trial was jeopardized or where there was a risk that the procedural issues undermined the integrity of the judicial system. The Court set out the following test for a stay of proceedings which has been adopted by administrative tribunals:
- a) There must be prejudice to the accused's right to a fair trial [or hearing] or the integrity of the justice system that "will be manifested, perpetuated or aggravated through the conduct of the trial, or by its outcome."
  - b) There must be no alternative remedy capable of redressing prejudice.
  - c) Where there is still uncertainty over whether a stay is warranted after steps (1) and (2), the Court is required to balance the interests in favour of granting a stay (para [180]).<sup>4</sup>
- [92] Counsel for the Member argued that there was prejudice to the Member because he was not notified of the expanded investigation mandate and the Member was wrongfully compelled to provide information. He also submitted that the integrity of CPA Ontario was impacted

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<sup>4</sup> *R. v. Babos*, [2014 SCC 16](#)



because it had not followed its review and investigation processes.

- [93] Counsel for the PCC argued that even if there were breaches of the processes set out in Regulation 15-1, they did not rise to the level where a stay of the discipline proceeding should be granted. The Member did not suffer any actual prejudice that would prevent a fair discipline proceeding and the alleged breaches of the Regulations were not egregious.
- [94] The Panel considered the remedy of a stay of these proceedings and found that if the alleged breaches of the CPA Ontario review and investigation procedures had been proven by the Member, the appropriate remedy would not have been a stay of proceedings. From February 2022 to August 2023, the Member was represented by counsel, and he did not challenge his obligation to cooperate with Standards Enforcement or whether he was being investigated. He was unable to assert that he experienced any actual prejudice from this process, and in particular, counsel for the Member did not submit that the process would have any impact on the Member's right to have a fair discipline hearing. The Panel found that the Allegations of Professional Conduct should be heard by the Discipline Committee in keeping with the mandate of CPA Ontario to assure the public that it was regulating the profession in the interests of the public.

## **VI. ORDER**

- [95] The Panel dismissed the motion. The parties will each be permitted to make written submissions respecting the costs of this motion.

**DATED** this 14<sup>th</sup> day of November, 2024



Bernard S. Schwartz, FCPA, FCA  
Discipline Committee – Chair

Independent Legal Counsel  
Susan J. Heakes, Barrister & Solicitor

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Allegations against **SANJIV K. GUPTA, CPA, CGA**, a member of the Chartered Professional Accountants of Ontario, under **Rules 101.1(b), 104, 201.1, 202, 205, and 210** of the CPA Ontario Code of Professional Conduct.

**TO:** Sanjiv K. Gupta

**AND TO:** The Professional Conduct Committee

**DECISION AND ORDER MADE DECEMBER 20, 2024**

**DECISION AND ORDER**

Sanjiv K. Gupta (the “Moving Party”) brought a motion for an Order permanently staying the proceedings. The Panel heard the motion on September 27, 2024. On November 14, 2024, the Panel dismissed the motion and ordered the parties to provide written submissions respecting the costs of the motion. Having considered the written submissions of the parties, the Panel orders:

1. The Moving Party (Sanjiv K. Gupta) shall pay costs fixed in the amount of \$9,500 to the Chartered Professional Accountants of Ontario by January 31, 2025.

**DATED** this 20<sup>th</sup> day of December, 2024



Bernard S. Schwartz, FCPA, FCA  
Discipline Committee – Chair

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Allegations against **SANJIV K. GUPTA, CPA, CGA**, a member of the Chartered Professional Accountants of Ontario, under **Rules 101.1(b), 104, 201.1, 202, 205, and 210** of the CPA Ontario Code of Professional Conduct.

**BETWEEN:**

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

**-and-**

**Sanjiv K. Gupta**

**APPEARANCES:**

**For the Professional Conduct Committee:** Jonathan Smith, Counsel

**For Sanjiv K. Gupta:** Jordan Goldblatt and Rachel Allen,  
Counsel

Motion Heard: September 27, 2024

Release of written reasons: January 2, 2025

**REASONS FOR THE COSTS DECISION ON SANJIV K. GUPTA’S MOTION TO STAY THE  
PROCEEDINGS MADE DECEMBER 20, 2024**

**I. OVERVIEW**

- [1] Sanjiv K. Gupta (“Member”) brought a motion seeking a stay of this disciplinary proceeding. A Panel of the Discipline Committee (“Panel”) dismissed the motion and invited the parties to make costs submissions in writing.
- [2] For the reasons set out below, on December 20, 2024, the Panel ordered the Member to pay costs fixed in the amount of \$9,500 to the Chartered Professional Accountants of Ontario (“CPA Ontario”) by January 31, 2025.

**II. ANALYSIS AND DECISION**

- [3] Counsel for the Professional Conduct Committee (“PCC”) asked for an award of \$9,500 in

costs, which was approximately 2/3 of the fees and disbursements they had incurred in respect to the motion. They asked that these costs be paid within 30 days. Counsel for the PCC provided a Bill of Costs dated November 26, 2024 in support of this request.

- [4] Counsel for the PCC argued that these costs were fair and appropriate for the following reasons:
- a) The motion was complex and effectively challenged the entire regulatory scheme of CPA Ontario for complaint reviews and investigations, as well as the actions of Standards Enforcement, the investigator and PCC's legal counsel.
  - b) As such, substantial factums, oral submissions, materials and legal authorities were required.
  - c) Rule 20 of the *Rules of Practice and Procedure* ("*Rules*") provides authority for the Panel to award costs.
  - d) Costs are not a penalty, but rather they are intended to indemnify the PCC, subject to the discretion of the Discipline Committee.
  - e) It is standard practice for the Discipline Committee to award 2/3 of the PCC's costs.
- [5] Counsel for the Member argued that Rule 20 provides two barriers for the costs award requested by the PCC:
- a) Costs can only be ordered by a "Panel of the Discipline Committee," and a "Panel" must include at least three members of the Discipline Committee. Here, only one member of the Discipline Committee heard the motion.
  - b) Rule 20.01(2) provides that costs may only be awarded against a party who acted frivolously, vexatiously or unreasonably, or in bad faith. There was no evidence that the Member had acted in such a manner in bringing this motion.
- [6] In the alternative, counsel for the Member submitted that the costs requested were unjustifiably high because the issues were straightforward, there were no cross-examinations, and the parties merely applied the law to the facts. They suggested that \$5,000 would be a more reasonable amount if there is jurisdiction to award costs.
- [7] Given the jurisdictional issue raised by the Member, the Panel agreed that the parties could provide reply and sur reply submissions.
- [8] Counsel for the PCC argued that Rule 1.02 of the *Rules* defines "Panel" as "the member or members of an adjudicative committee assigned to a particular hearing." Rules 13.01(2) and (3) allow for a motion to be heard by a Panel consisting of a single member. Rule 20, therefore, gives jurisdiction for a Panel of a Discipline Committee consisting of one member to order costs.
- [9] Counsel for the PCC further argued that Rule 20.01(1) does not require that the conduct of the Member bringing a motion be unreasonable, frivolous, vexatious or carried on in bad faith.

- [10] Counsel for the Member argued Rule 20.01(1) only applies if there is an appeal. If there is no appeal, Rule 20.01(2) applies. They added that there are many definitions of “Panel” in CPA Ontario’s Regulations.
- [11] The Panel carefully considered the arguments of counsel. First, in considering whether Rule 20 provides jurisdiction for a Panel consisting of one member to order costs, the only definition of “Panel” that directly applies to Rule 20 is found in Rule 1.02, which specifically defines “Panel” as including one member of the adjudicative committee assigned to a hearing. A “hearing” is defined under Rule 1.02 as a hearing on the merits, including a motion. Under Rule 13.01(2), unless directed otherwise, a motion may be heard by a Panel consisting of a single member. Rule 20 therefore permits a Panel of the Discipline Committee composed of a single member to award costs.
- [12] Second, Rule 20.01(1) clearly provides the Panel with jurisdiction to award costs without making a finding respecting the Member’s conduct. Rule 20.01 provides that “a Panel of the Discipline Committee ... may make an order requiring a party other than CPA Ontario to pay costs....” While “a Panel of an Appeal Committee hearing an appeal from a decision of the Discipline Committee” also has jurisdiction to make a costs order, this does not restrict the jurisdiction of a Panel of the Discipline Committee. Counsel for the Member suggested that Rule 20.01(1) be read to state that a “Panel of the Discipline Committee ... hearing an appeal...” only has jurisdiction to order costs, but this is nonsensical as a Panel of the Discipline Committee does not hear appeals.
- [13] In conclusion, the Panel found that it had jurisdiction to order costs in this matter. To find otherwise would result in there being no (or strictly limited) costs consequences for motions heard by a single Panel member. Since most motions are heard by a single member of the Discipline Committee pursuant to Rule 13, the interpretation of the *Rules* suggested by the Member would mean that the general membership of CPA Ontario would bear the costs of unsuccessful motions, regardless of their merits. This interpretation would be inconsistent with the jurisprudence of CPA Ontario with respect to costs.
- [14] While Rule 20.01(3) allows the determination of costs of a motion to be deferred to the Panel presiding over the hearing of the merits, given the nature of this motion, which was entirely procedural and had no relation to the merits of the case, it was appropriate to order costs at this stage in the proceeding.
- [15] With respect to the quantum of costs claimed by the PCC, the Panel noted that the motion was complex and raised important issues relating to CPA Ontario’s processes and the integrity of its staff. The relief claimed, namely a stay of these proceedings against the Member, was serious and would have had a significant impact on CPA Ontario’s mandate to regulate in the public interest. In the circumstances, the Panel found that the amount claimed by PCC was fair and reasonable.

### III. ORDER

- [16] The Panel ordered that the Member shall pay costs fixed at \$9,500 to CPA Ontario by January 31, 2025.

**DATED** this 2<sup>nd</sup> day of January 2025

A handwritten signature in black ink, reading "Bernard S. Schwartz". The signature is written in a cursive, flowing style.

Bernard S. Schwartz, FCPA, FCA  
Discipline Committee – Chair

Independent Legal Counsel  
Susan J. Heakes, Barrister & Solicitor