

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: A motion for preliminary suspension of membership of **RAVENDRA KUMAR CHAUDHARY, CPA, CA**, a Member of CPA Ontario, under **Rules 10 and 12** of the Rules of Practice and Procedure.

TO: Ravendra Kumar Chaudhary

AND TO: The Professional Conduct Committee

ORDER MADE APRIL 10, 2015

IT IS ORDERED:

1. THAT Mr. Chaudhary's membership in CPA Ontario is hereby suspended and shall remain suspended pursuant to Section 36 of the *Chartered Accountants Act, 2010* and Rule 10 of the Rules of Practice until the earliest of the following:
 - (a) A tribunal varies or cancels the order on the consent of CPA Ontario and the respondent member prior to the hearing on the merits of the allegations, if any, to which this motion relates.
 - (b) A tribunal varies or cancels the order on the basis of fresh evidence or a material change in circumstances that is brought by CPA Ontario or the respondent member to the tribunal prior to the hearing on the merits of the allegations, if any, to which this motion relates.
 - (c) The tribunal presiding at the hearing on the merits of the allegations, if any, to which this motion relates, prior to disposing of the hearing, varies or cancels the order.
 - (d) The tribunal presiding at the hearing on the merits of the allegations, if any, to which this motion relates disposes of the hearing.
2. THAT Mr. Chaudhary surrender his CA and CPA certificates of membership in CPA Ontario to the Discipline Committee Secretary within ten (10) days from the date this Order is made, to be held during the period of suspension.
3. THAT notice of the suspension, disclosing Mr. Chaudhary's name, be given by publication on CPA Ontario's website and shall be made available to the public.

DATED at Toronto, this 17th day of April 2015.



DIANE WILLIAMSON
SECRETARY - DISCIPLINE COMMITTEE

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(THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO)
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TO: Ravendra Kumar Chaudhary

AND TO: The Professional Conduct Committee

MOTION REASONS
(Order made April 10, 2015)

1. This tribunal of the Discipline Committee met on April 10, 2015 to hear a Motion for Preliminary Suspension brought by the Professional Conduct Committee against Ravendra Kumar Chaudhary, a Member.

2. Mr. Paul Farley appeared on behalf of the Professional Conduct Committee (PCC). Mr. Chaudhary was present and was represented by his counsel, Mr. Michael Caroline. Mr. Glenn Stuart attended the hearing as counsel to the Discipline Committee.

3. The decision of the tribunal was made known at the conclusion of the hearing on April 10, 2015, and the written Order was sent to the parties on April 17, 2015. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the Order and the Reasons of the tribunal for its Order.

Background to the proceedings

4. On June 18, 2014, the PCC made a Motion for Preliminary Suspension pursuant to Rule 10 of the Rules of Practice and Procedure and section 36 of the *Chartered Accountants Act, 2010*. At a motion hearing held on January 28, 2015, Mr. Chaudhary's counsel requested an adjournment of the motion proceedings, which was opposed by the PCC. At this hearing Mr. Chaudhary was represented by Mr. Douglas Morton, a paralegal engaged by Mr. Michael Caroline, Mr. Chaudhary's counsel. The tribunal granted the adjournment to April 10, 2015, the earliest date Mr. Chaudhary's counsel was available. The tribunal also ordered a suspension of Mr. Chaudhary's membership until such time as the motion for preliminary suspension could be heard, as well as publicity of the suspension. Reasons for the Order were given on February 27, 2015.

5. At the hearing on January 28, 2015, Exhibits 1 through 5 were filed. Written submissions were provided by both counsel in support of their positions and considered by the tribunal in addition to the oral submissions made by counsel.

Submissions

6. The PCC objected to excerpts of the bail hearing being referred to in the Respondent's Motion Record (Exhibit 6) filed by Mr. Caroline. The PCC took the position that the excerpts would not present a complete picture to the tribunal and that the full transcript, which was

available, should be tendered. It was agreed by the parties and the tribunal that the full Transcript of the Bail Review Hearing would be tendered as Exhibit 7. Given that the bail hearing, and therefore the contents of the transcript, were under a publication ban, the tribunal ordered, with the consent of the parties, that the transcript (Exhibit 7) and the excerpt (Tab B of Exhibit 6), would be received in the absence of the public, pursuant to Rule 16.02 of the *Rules of Practice and Procedure*.

7. The PCC relied on the contents of the Motion Record (Exhibit 3), which includes the affidavit of Mr. Scott Porter, the investigator for the PCC. This Affidavit outlines the criminal charges laid by the RCMP alleging that Mr. Chaudhary and others defrauded the public by not using investor funds for their intended purpose and the CRA by issuing fraudulent tax receipts. Three counts of fraud in excess of \$5,000 were laid against Mr. Chaudhary. It was the position of the PCC that all of the pending charges relate to tax matters for which CPAs are relied on.

8. The PCC also referred to Mr. Chaudhary's bail conditions (Exhibit 5) and submitted that the terms do not address the protection of the public with regard to Mr. Chaudhary's status as a CPA and the reputation of the profession.

9. Mr. Farley submitted that, under the *Chartered Accountants Act 2010* and Rule 10 of the Rules of Practice and Procedure, the tribunal has the authority to order a suspension either before or after allegations have been made by the PCC. Under Regulation 7-1, the PCC can apply for such an order if such order would reduce the risk to members of the public or the public interest. The matter could be brought back before the tribunal if there were a material change, such as an acquittal of Mr. Chaudhary of the criminal charges.

10. The PCC also relied on the press release issued by the RCMP that describes a fraudulent investment scheme where thousands of investors and the government have lost millions of dollars. The concern raised by the PCC was that if the tribunal did not suspend Mr. Chaudhary, he would still be able to use CPA, CA after his name, a designation that is trusted by the public. The impact of Mr. Chaudhary being able to hold himself out as a CPA, CA, while facing such serious charges that went to the core of what CPAs do, would undermine the public's confidence in the profession and the integrity of its members, and in the ability of the CPA Ontario to regulate its members. If there was no suspension order, it was submitted that there would be a significant risk of harm to the public.

11. The PCC submitted that the presumption of innocence must give way to the protection of the public and the impact on the reputation of the profession. In this respect, reliance was placed on *Aris v. Ontario College of Teachers*, 2011 ONSC 1202, and *Chen v. Law Society of Manitoba*, 2000 MBCA 26, both cases considering preliminary suspensions on the basis of criminal charges being laid against a professional.

12. The PCC submitted that in past cases before the Discipline Committee involving moral turpitude, the penalty has been expulsion or revocation of membership, and an interim suspension ordered prior to the hearing of the allegations. Further, it was indicated by Mr. Farley that if circumstances change, the matter can be brought back before the same tribunal for reconsideration.

13. In response, counsel for Mr. Chaudhary referred to the 2015 Tax Court decision in *J.G. Simard v. Her Majesty The Queen* case (Exhibit 8), which involved persons charged under the *Criminal Code* but not convicted. Counsel submitted that the only evidence on which the PCC was relying to support its request for the preliminary suspension of Mr. Chaudhary were two press releases and unproven criminal charges.

14. Mr. Chaudhary's counsel submitted that there is a need to know what the PCC's allegations are against Mr. Chaudhary before proceeding with a preliminary suspension, noting that there was no evidence of actual misconduct and no allegations have been made by the PCC. The criminal charges are not yet proved, and the conditions of Mr. Chaudhary's bail have now been loosened. The press releases in this matter were merely unsubstantiated allegations that have not been proven.

15. Mr. Chaudhary's counsel highlighted a memo to file by Mr. Porter that reflected a discussion with the RCMP sergeant in charge of the criminal investigation (Exhibit 6, Tab 1D). Although the officer declined to share non-public information as the case was ongoing, he suggested that Mr. Porter follow-up with two potential witnesses who worked closely with Mr. Chaudhary; however, there was no evidence these inquiries were ever pursued. Counsel further submitted that there is no evidence Mr. Chaudhary was involved in putting this marketing scheme together, and it is assumed he was involved only because he is an accountant. Counsel asserted that this is a serious charge without evidence to support it.

16. Mr. Chaudhary's counsel submitted that, as there has been no finding in the court, Mr. Chaudhary is presumed innocent; moreover, his bail conditions have been loosened. He took the position that the cases referred to by the PCC all involve allegations that had been tried in the courts. He added that, since the PCC has not laid allegations in this matter, there is no way of knowing what those allegations will be.

17. His counsel submitted that the suspension of Mr. Chaudhary should be set aside, that he should not have to pay for the newspaper costs ordered at the hearing in January, and that he should be awarded costs in this proceeding.

18. On the matter of costs, counsel to the tribunal and the Chair raised with counsel during argument that there did not appear to be jurisdiction in the *CA Act* for the tribunal to award costs to the Member and requested the basis on which the request was made. Counsel conceded this point and did not pursue this request thereafter.

19. The PCC, in reply, submitted that the charges before the courts involve defrauding the public with investor funds and issuing fraudulent tax receipts, which are matters of moral turpitude. Counsel asserted that when a CPA is facing three serious criminal charges, there is a risk to the public that is not addressed by the bail conditions and asked that the tribunal consider what impact there would be on the public if Mr. Chaudhary were still allowed to hold himself out as a CPA.

Order

20. After deliberating, the tribunal made the following order:

IT IS ORDERED:

1. THAT Mr. Chaudhary's membership in CPA Ontario is hereby suspended and shall remain suspended pursuant to Section 36 of the *Chartered Accountants Act, 2010* and Rule 10 of the Rules of Practice until the earliest of the following:
 - (a) A tribunal varies or cancels the order on the consent of CPA Ontario and the respondent member prior to the hearing on the merits of the allegations, if any, to which this motion relates.

- (b) A tribunal varies or cancels the order on the basis of fresh evidence or a material change in circumstances that is brought by CPA Ontario or the respondent member to the tribunal prior to the hearing on the merits of the allegations, if any, to which this motion relates.
 - (c) The tribunal presiding at the hearing on the merits of the allegations, if any, to which this motion relates, prior to disposing of the hearing, varies or cancels the order.
 - (d) The tribunal presiding at the hearing on the merits of the allegations, if any, to which this motion relates disposes of the hearing.
2. THAT Mr. Chaudhary surrender his CA and CPA certificates of membership in CPA Ontario to the Discipline Committee Secretary within ten (10) days from the date this Order is made, to be held during the period of suspension.
 3. THAT notice of the suspension, disclosing Mr. Chaudhary's name, be given by publication on CPA Ontario's website and shall be made available to the public.

Reasons

21. In arriving at the Order, the tribunal carefully and thoroughly considered the evidence contained in the eight exhibits filed, and the oral and written submissions of the PCC and Mr. Chaudhary's counsel.

22. The tribunal was satisfied that the *Chartered Accountants Act, 2010* and the CPAO Rules of Practice and Procedure gave the tribunal authority to suspend a member on an interim basis if it was "satisfied that the public may be at risk should the order not be made, and that the making of the order is likely to reduce that risk". In accordance with Rule 10.07, the Order provides for earlier consideration of his membership restoration should circumstances materially change.

23. The tribunal determined that the three serious criminal charges, and the related bail conditions were sufficient to warrant a preliminary suspension of Mr. Chaudhary.

24. Mr. Chaudhary's counsel submitted that the bail conditions for Mr. Chaudhary had been "loosened." The "loosened" bail conditions involved a relaxation of travel restrictions and permitted contact with the principals of the subject organization. The revised bail conditions also included a doubling of the amount of bail and a requirement that his wife, who is his surety, accompany him on his travel, as well as other travel conditions

25. In his submissions, Mr. Chaudhary's counsel emphasized the fact that there is a presumption of innocence when criminal charges are laid in both the Canadian Charter of Rights and in case law, and bail, with restrictions, recognizes the rights of the accused not to be incarcerated if they do not present a danger to the public.

26. Mr. Chaudhary was granted bail, and the bail conditions covered activities that would protect the public from the activities that gave rise to the charges against Mr. Chaudhary. The tribunal agrees with Mr. Chaudhary's position on this issue, but the bail conditions do not provide protection for the public's reliance on the assurance of the CPA and CA designation and the public interest in regard to other professional services which may be rendered by Mr. Chaudhary as a CPA, CA. The CPA, CA designations provide necessary credibility to the public in accounting and business related matters, and that credibility is jeopardized when

someone facing serious criminal charges is allowed to hold himself out to the public as a CPA, CA. The preliminary suspension provides this public protection.

27. At this point in the progress of the criminal charges, it is not known exactly what the nature and extent of Mr. Chaudhary's involvement in the alleged fraudulent scheme was. There was enough of a nexus for the RCMP to lay three criminal charges against Mr. Chaudhary and others involved in the organization.

28. His counsel submitted that Mr. Chaudhary needs to know what the PCC's allegations against him are since there is no evidence of misconduct against him and no allegations have been made. The preliminary suspension is ordered based on the three serious criminal charges which have been laid by the RCMP. Based on the undisputed information the tribunal has, the charges are not likely to be heard until sometime late in 2015 or in 2016. Had a preliminary suspension not been ordered, Mr. Chaudhary could be representing himself as a member of CPA Ontario and using his designation until the criminal court had rendered a decision on the charges.

29. The tribunal gave little weight to the RCMP press release that was included in the exhibits. It was treated as background information; however, given its nature, it was not relied on in making its order.

30. In the matter of publicity, Mr. Chaudhary's membership in CPA Ontario was suspended on January 28, 2015 pending this preliminary motion hearing. The January 28, 2015 Order included publication of his suspension in *The Globe and Mail* newspaper. The tribunal determined that the information available to the public through the CPA Ontario website of Mr. Chaudhary's suspension was sufficient information to the membership and the public, since the notification of Mr. Chaudhary's suspension was recently published in the newspaper.

DATED AT TORONTO THIS *22nd* DAY OF JUNE, 2015
BY ORDER OF THE DISCIPLINE COMMITTEE



A.D. NICHOLS, FCPA, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

B.G. ALLENDORF, CPA, CA

A.R. DAVIDSON, CPA, CA

P. McBURNEY (PUBLIC REPRESENTATIVE)