

**CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO  
THE CERTIFIED GENERAL ACCOUNTANTS OF ONTARIO  
CERTIFIED GENERAL ACCOUNTANTS ACT, 2010  
(now CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017)**

**IN THE MATTER OF:** An appeal by the Discipline Committee of the Certified General Accountants Association of Ontario (Professional Conduct Committee of CPA Ontario in the matter of **PETER VOUDOURIS, CPA, CGA** of the Decision dated February 15, 2016 of the Professional Conduct Tribunal under **Rule 24** of the Rules of Practice and Procedure.

**TO:** The Discipline Committee of CGA Ontario (Professional Conduct Committee CPA Ontario)

**AND TO:** Peter Voudouris

**REASONS  
(Decision and Order of the Appeal Committee made January 25, 2017)**

1. This tribunal of the Appeal Committee of CGA Ontario and CPA Ontario ("the Tribunal") convened on January 24 and 25, 2017, to hear an appeal by the Professional Conduct Committee of CPA Ontario and the Discipline Committee of CGA Ontario ("the Appellant") from the Decision dated February 15, 2016 of the Professional Conduct Tribunal of CGA Ontario ("hearing tribunal").

2. Mr. Paul Farley appeared on behalf of the Appellant. Mr. Voudouris was present and was represented by his legal counsel Mr. John Polyzogopoulos. Mr. Glenn Stuart attended the hearing as counsel to the Tribunal.

3. The decision of the Tribunal was made known at the conclusion of the hearing on January 25, 2017, and the written Decision and Order was sent to the parties on February 2, 2017. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the decision, the order, and the reasons of the Tribunal for its decision and order.

4. On May 22, 2012, the Discipline Committee of CGA Ontario, being the complaints committee of CGA Ontario, referred allegations that Mr. Voudouris, a member of CGA Ontario and CPA Ontario, had engaged in professional misconduct contrary to the Rules of Conduct and Code of Ethical Principles of CGA Ontario. It was alleged that Mr. Voudouris had breached Rule 101 "Discredit", Rule 108 "Conduct Unbecoming", Rule 606(a) "Detrimental Actions" and Code Principle – Trust and Duties, based on fifty-nine particulars set out in the Notice of Hearing.

5. The relevant provisions of the Code of Ethical Principles read as follows:

**Rule 101 Discredit**

A member shall not permit the member's firm name or the member's name to be used with, participate in, or knowingly provide services to any practice, pronouncement, or act which would be of a nature to discredit the profession.

**Rule 108 Conduct Unbecoming**

It shall be unethical for a member or student, while acting in a professional capacity or

otherwise, to engage in misconduct of a reprehensible or serious nature which reflects on the member's or student's honesty, integrity, or trustworthiness or, is relevant to the person's suitability as a member of the profession.

#### Code Principle -- TRUST AND DUTIES

Members shall act in the interest of their clients, employers, and interested third parties, and shall be prepared to sacrifice their self-interest to do so. Members shall honour the trust bestowed on them by others, and shall not use their privileged position without their principal's knowledge and consent. Members shall strive to be independent of mind and in appearance.

#### R606 (a) Detrimental Actions

A member shall not participate in any action which is detrimental to the Association or the profession.

6. The hearing before the hearing tribunal proceeded for fourteen days between June and September 2015. Mr. Voudouris denied the allegations against him. In a decision, dated February 15, 2016, the majority of the hearing tribunal found that a number of the factual particulars were established but concluded that Mr. Voudouris had not breached Rule 101, Rule 108 or Rule 606(a) and Code Principle – Trust and Duties, and, therefore, had not committed professional misconduct on any of the allegations in the Notice of Hearing. The dissenting member of the hearing tribunal concluded that Mr. Voudouris had committed professional misconduct in respect of all of the allegations.

7. The hearing before the hearing tribunal in 2015 was not the first hearing of these allegations. The allegations had been heard by another panel of the Professional Conduct Committee of CGA Ontario in 2012-2013, and findings of professional misconduct had been made. These findings were upheld by the Appeal Tribunal of CGA Ontario on July 23, 2013. That decision, and the findings of professional misconduct, were set aside by the Divisional Court on April 3, 2014, and the allegations were referred back to a differently constituted panel. This led to the decision of the hearing panel at issue in this appeal.

#### ***Nature of the Appeal***

8. The Appellant appealed the finding by the majority of the hearing tribunal that Mr. Voudouris had not committed professional misconduct and asked that this finding be set aside and a finding of professional misconduct in regard to each allegation be substituted therefore.

9. At the commencement of the hearing of the appeal, the Index to the Appeal Book was filed as Exhibit 1, and the Tribunal confirmed that it had reviewed the Appeal Books (15 volumes), the facts of both parties, and the authorities provided by the parties.

#### ***Standard of Review by Appeal Committee***

10. At the outset of the hearing of the appeal, the Tribunal requested the positions of the parties with respect to the appropriate standard of review. Counsel to the Tribunal expressed the view that it was necessary for the Tribunal to consider the standard by which the Tribunal reviewed the decision of the hearing panel. Counsel to the Tribunal indicated that the common law created two standards of review: correctness and reasonableness, and the applicable standard varied by the nature of the question. Where the standard of reasonableness applied,

the Tribunal should not interfere unless the decision under review was unreasonable. A standard of correctness generally applied to questions of law, which meant that these questions had to be correct. However, counsel for the Tribunal provided the further opinion that a different standard could be created by legislation, citing the decision of the Ontario Court of Appeal in *Jacobs v. Ottawa (Police Service)*, 2016 ONCA 345, at para. 7.

11. In the present case, counsel advised that section 39(4) of the *Certified General Accountants Act* ("CGA Act") established the standard of review to be applied. This standard did not follow the typical language in the common law. That provision provided as follows:

On hearing the appeal, the appeal tribunal may,

- (a) In the case of an obvious error of fact, law or the application of relevant accounting principles or assurance standards, allow the appeal and make any decision or order that could have been made by the hearing tribunal; or
- (b) dismiss the appeal.

12. Mr. Farley, on behalf of the Appellant, disagreed with the opinion of counsel for the Tribunal and submitted that the standard of review had to follow the common law and that either the standard of reasonableness or correctness must apply. He submitted that the choice of those standards was determined by whether the Tribunal was in a different position than the hearing tribunal. If it was, as with findings of fact, it needed to be more deferential and apply the reasonableness standard. However, for questions of law, the Tribunal was in the same position as the hearing tribunal, and, consequently, the decisions of the hearing tribunal had to be correct. In response to a question from a member of the Tribunal, Mr. Farley submitted that, while legislation could set a standard of review by an appellate body, section 39(4) did not establish the standard of review to be applied by the Tribunal.

13. Mr. Polyzogopoulos, on behalf of the Respondent, submitted that the position of the Appellant in this appeal was different from the position taken by the Appellant in a previous appeal before the Appeal Tribunal of CGA Ontario in this same matter. At that time, the Appellant had contended that the standard set out in section 39(4) of the *CGA Act* applied. This position had been adopted by the Appeal Tribunal in its decision (Respondent's Brief of Authorities, Tab 1). While Mr. Polyzogopoulos conceded that this decision was not binding on the Tribunal, he submitted that it was persuasive. He also acknowledged that the Divisional Court, on a judicial review of that decision of the Appeal Tribunal, *Voudouris v. Appeal Tribunal*, 2014 ONSC 1865, did not reach a conclusion on this issue.

14. While Mr. Polyzogopoulos raised the possibility that the standard created by s. 39(4) was what the courts have called "patent unreasonableness", in his written and oral submissions, he acknowledged that the applicable test was really one of reasonableness. This meant that the decision only had to fall with a range of reasonable results. However, he submitted that the language of the *CGA Act* meant that the unreasonable aspect of the decision needed to be apparent on the face of the decision, without a great deal of searching. Mr. Polyzogopoulos emphasized that the Tribunal was not to retry the case and could not reverse the decision simply because it disagreed with the hearing tribunal.

15. After considering all of the submissions of the parties and the advice of its counsel, the Tribunal concluded that the language of s. 39(4) of the *CGA Act* only permitted the Tribunal to interfere with the decision of the hearing tribunal if the errors, either of fact, law or mixed fact and law, were obvious, or unreasonable. While the Tribunal accepted that a different standard, or standards, might apply in a case that was not subject to the *CGA Act*, the Tribunal found that

it was bound by the legislation applicable at the time of this appeal. For this reason, the Tribunal agreed with counsel for the Respondent that it was not permitted to interfere with the decision of the hearing tribunal if it merely disagreed with the conclusion of the hearing tribunal or would have reached a different decision.

***Summary of Relevant Findings of Fact by Hearing Tribunal***

16. For the most part, the findings of fact made by the hearing tribunal were not in dispute on the appeal. The case before the hearing tribunal had proceeded mainly on the basis of an agreed statement of facts, and the hearing tribunal adopted these facts as part of their findings. The hearing tribunal made additional findings based on the oral testimony they received and inferences from the evidence.

17. Mr. Voudouris was a CGA. For over 13 years as a CGA, he had been the personal accountant for EL and his company, preparing personal and corporate tax returns and providing bookkeeping services. A partner in Mr. Voudouris' firm acted as a financial adviser to EL.

18. In 2007, Mr. Voudouris had borrowed \$75,000 from EL with no supporting documentation or promissory note. The money was subsequently repaid with interest.

19. Mr. Voudouris was also the accountant for PT for many years. Mr. Voudouris was aware that PT had significant cash flow problems, resulting in Mr. Voudouris advancing money to PT between 2006 and 2008, which was not repaid. By late 2008, PT had outstanding invoices for \$91,000 due to Mr. Voudouris for accounting services.

20. In late 2008, despite these cash flow problems, PT approached Mr. Voudouris to invest with him in the purchase of five McDonald's restaurants. PT represented that Mr. Voudouris could obtain an interest of 20% in the venture. Mr. Voudouris agreed to invest \$300,000, along with a set-off of \$100,000 owed to him by PT, in this venture at PT's urging.

21. After Mr. Voudouris invested funds in these franchises, PT asked him if he knew of other investors. While still acting as EL's accountant, Mr. Voudouris introduced EL to this apparent investment opportunity involving PT and the franchises. EL would not have met PT or been introduced to this venture but for the introduction by Mr. Voudouris. As a result, meetings were arranged between the three parties at Mr. Voudouris' accounting office.

22. Prior to introducing EL to this investment with PT, Mr. Voudouris did no substantive due diligence to confirm the legitimacy of the transaction.

23. After meeting with PT, EL suggested to Mr. Voudouris that they see a lawyer. Mr. Voudouris said he was not prepared to see a lawyer and advised EL not to call the McDonald's head office. EL did not seek legal advice thereafter.

24. EL, after investing \$70,000, indicated that he would invest no more money without documentation. As a result, Mr. Voudouris drew up an agreement and term sheet for EL to sign. EL gave Mr. Voudouris further monies for the investment, totaling \$380,000, in exchange for what was understood to be a 20% interest in the venture. On Mr. Voudouris' advice, EL advanced funds through a line of credit secured against his home. The funds were transmitted through a company Mr. Voudouris had incorporated for this purpose and were then all given to PT by Mr. Voudouris.

25. When EL asked Mr. Voudouris questions about the investment after advancing the



funds, EL was shown a series of letters on the letterhead of McDonald's regarding the transaction and its status as well as a copy of a letter that purported to set out the closing procedures for the transaction. Only one of these letters was provided to EL by Mr. Voudouris.

26. Mr. Voudouris did not advise EL, prior to EL investing these funds in this venture, that Mr. Voudouris had been lending money to PT due to PT's cash flow problems or that PT owed approximately \$91,000 to Mr. Voudouris for unpaid invoices. The hearing tribunal found that if EL had known this information EL might have considered the investment with PT to be a risk.

27. EL did not receive any return of his investment funds or an interest in the alleged McDonald's franchises. PT has been charged with fraud in relation to alleged schemes involving the purchases of McDonald's franchises.

### ***Decision of the Majority of the Hearing Tribunal***

28. The majority of the hearing tribunal drew a number of inferences from the facts before them. The majority was satisfied that Mr. Voudouris acted in good faith when he approached EL and did not participate in any fraud or wrongdoing. They concluded that Mr. Voudouris saw the investment as a good business opportunity for himself and EL. In those circumstances, the majority of the hearing panel reached the following conclusion:

There was no discredit to the profession, there was no lack of integrity by Mr. Voudouris or dishonesty on his part, Mr. Voudouris did not do any act that was detrimental to the Association or the profession, when he asked [EL] if he was interested in investing in the purchase of a 20% interest in [PT's] investment with McDonalds.

29. The majority of the hearing tribunal accepted that Mr. Voudouris advised EL that he could not represent EL in regard to the investment because both EL and PT were clients and Mr. Voudouris was also investing. They concluded that, as a result of this disclosure that EL was not, in fact, Mr. Voudouris' client for the purpose of this transaction. As a result, the majority concluded that the Code Principle – Trust and Duties did not apply and was, therefore, not breached.

30. The majority relied on the evidence provided by EL in an earlier civil proceeding in which he acknowledged that he knew he could not rely on Mr. Voudouris for advice on the transaction. This was contrary to his evidence before the hearing tribunal. The majority of the panel also relied on the fact that EL undertook some due diligence himself and had opportunities to ask PT questions. They also relied on their conclusion that EL had an opportunity to consult a lawyer, but he did not, although Mr. Voudouris had encouraged him to do so.

31. After finding that Mr. Voudouris was not acting as EL's accountant in relation to the investment, the majority expressly declined to infer that Mr. Voudouris owed EL a reasonable standard of care when Mr. Voudouris involved EL in the venture. In this regard, they concluded that expert evidence as to the standard of care of a reasonably prudent accountant in these circumstances was necessary, and such evidence had not been adduced before the hearing tribunal. The majority rejected the position of the now Appellant that expert evidence was only required in cases involving alleged breaches of specific standards of practice, concluding that the distinction was arbitrary. The majority concluded that they could not rely on their own knowledge to determine the standard of care.

32. The majority of the hearing tribunal was also not satisfied that a fiduciary obligation was properly implied from Mr. Voudouris to EL. The majority relied on the fact that both Mr.

Voudouris and EL lost substantial sums of money to conclude that Mr. Voudouris had not preferred his interests to those of EL.

33. The majority concluded that Mr. Voudouris was not complicit in the suspected fraud and believed the documents on McDonald's letterhead to be legitimate. In turn, they found that EL had admitted he had not paid much attention to these letters. These findings supported their conclusion that Mr. Voudouris had not been dishonest or failed to act in the interests of his client when he gave the one letter on McDonald's letterhead to EL and made copies of other documents and gave them to EL without inquiring about their legitimacy. Similarly, the majority concluded that the fact that Mr. Voudouris told EL not to talk to McDonald's did not breach any of the identified Rules.

34. The majority of the hearing tribunal concluded that the fact that Mr. Voudouris did not disclose to EL the information about the amount of PT's indebtedness to Mr. Voudouris and that this amount was credited to Mr. Voudouris' investment in the venture was not, in itself, proof of professional misconduct. They found that there was evidence of a discussion between Mr. Voudouris and PT regarding "crossing cheques" that suggested that EL would have been aware that Mr. Voudouris had invested some money in cash and the rest would be offset by other indebtedness. They concluded that EL could have figured out this breakdown of this indebtedness from the numbers he had.

35. The majority of the panel also concluded that it was not prepared to assess whether the disclosure made by Mr. Voudouris was adequate without expert evidence as to the standards of disclosure.

36. For all of these reasons, the majority concluded that Mr. Voudouris did not breach the Rules cited in the allegations and had not committed professional misconduct.

#### ***Decision of the Minority of the Hearing Tribunal***

37. The dissenting member of the hearing tribunal relied on substantially the same findings of fact as the majority, but she emphasized different facts and drew different inferences from them. In particular, the dissenting member identified five findings of fact that were central to her decision: (1) Mr. Voudouris involved EL in the venture with PT; (2) Mr. Voudouris did not undertake any substantive due diligence before involving EL; (3) Mr. Voudouris told EL not to contact McDonald's; (4) Mr. Voudouris gave EL a letter purporting to be from McDonald's without inquiring into its legitimacy; and, (5) Mr. Voudouris withheld relevant information from EL regarding Mr. Voudouris' investment in the transaction and PT's financial history. Based on these findings, the dissenting member concluded that Mr. Voudouris had breached the provisions of the Rules set out in the allegations.

38. The dissenting member concluded that the fact that all of the meetings between EL, PT and Mr. Voudouris occurred at Mr. Voudouris' office demonstrated that there was a continuing accountant-client relationship between Mr. Voudouris and EL.

39. The dissenting member found that Mr. Voudouris should not have approached EL to invest in this venture when Mr. Voudouris was aware of PT's financial troubles. By doing so, Mr. Voudouris permitted his name to be associated with an act that would be of such a nature as to bring discredit to the profession.

40. The dissenting member also found that it was unreasonable for an accountant to proceed with an undocumented deal without due diligence, especially when Mr. Voudouris had

knowledge of PT's financial difficulties. The fact that the venture was purportedly backed by McDonald's, as advanced by Mr. Voudouris, was found to be an insufficient justification for Mr. Voudouris, as an accountant, not complete any due diligence. The dissenting member concluded that the absence of any due diligence by Mr. Voudouris indicated that he had not honoured the trust placed in him by EL, and he thereby violated the Code Principle regarding trust.

41. Further, the dissenting member found that the fact that Mr. Voudouris would involve EL in the venture, based only on the assurances from PT and without any due diligence, constituted conduct that reflected on Mr. Voudouris' honesty and integrity. As noted in her reasons for decision (p. 64, Appeal Book, Vol. 1), "[EL] trusted Mr. Voudouris and Mr. Voudouris acted in an untrustworthy manner." For these reasons, the dissenting member also concluded that Mr. Voudouris' actions constituted conduct that was detrimental to the accounting profession and constituted professional misconduct.

### ***The Issues on Appeal***

42. The Appellant raised five issues on the appeal:
- a. Did the hearing tribunal err in concluding that EL was not a client with respect to the investment in issue and that there was no evidence to suggest that Mr. Voudouris had a fiduciary duty to EL?
  - b. Did the hearing tribunal err in concluding that expert evidence was required to establish that a duty of care was imposed on the member with respect to the EL's involvement with the investment?
  - c. Did the hearing tribunal err in concluding that, without expert evidence, they could make no determination as to the required standards of disclosure by Mr. Voudouris to EL of information known to Mr. Voudouris that was relevant to the investment and they could not determine that non-disclosure was inappropriate?
  - d. Did the hearing tribunal err in concluding that Mr. Voudouris owed no duty of care to EL because EL was not a client of Mr. Voudouris? and
  - e. Did the hearing tribunal err in law in concluding that there was no breach of the Rules of Conduct or the Code Principle – Trust and Duties when Mr. Voudouris undertook no due diligence before involving EL because he was not a client?

### ***Submissions on behalf of the Appellant***

#### ***EL as a client in regard to the investment***

43. The Appellant submitted that Mr. Voudouris could not, as the majority of the hearing tribunal found, be EL's accountant for some purposes, but not for the purposes of the investment. A CGA, CPA could not avoid the existence of an accountant-client relationship, and the obligations that went with that, by unilaterally asserting that the client was not a client for a specific purpose. It was submitted that, because EL was a client when Mr. Voudouris introduced EL to the transaction, he remained a client for the purposes of the transaction. The relationship only ended in 2010, after the investment had been made.

44. Mr. Farley submitted that clients are vulnerable due to the trust they place in their accountants. This trust does not change from one transaction to another. To protect that trust, and the clients who are vulnerable to the actions of an accountant as a result, the existence of an accountant-client relationship must be construed broadly.

45. Mr. Farley submitted that EL placed a significant level of trust in Mr. Voudouris, as evidenced by EL's \$75,000 loan to Mr. Voudouris with no supporting documentation or promissory note. In Mr. Voudouris' testimony before the hearing tribunal, he acknowledged there was no documentation to support the loan because EL trusted him.

46. EL had looked to Mr. Voudouris, his accountant, for advice based on a relationship of trust. When Mr. Voudouris introduced EL to the investment with PT, after Mr. Voudouris had himself invested, he was in effect saying to EL that this was a good investment in the view of his accountant of many years. The fact that Mr. Voudouris said that he was not acting for EL on the transaction did not diminish the trust that EL placed in him on the basis of their existing relationship.

47. Mr. Farley stated that there was clear evidence before the hearing tribunal that there was a client/accountant relationship between Mr. Voudouris and EL which continued throughout the period set out in the allegations. Mr. Voudouris had brought the investment to EL while he was a client and had conducted meetings of the parties at his accounting office. Mr. Voudouris never stopped being the accountant for EL throughout the period involving the McDonald's investment. Mr. Farley stated that the PC tribunal had erred in its conclusion that because Mr. Voudouris had disclosed that he was an investor and said he could not act for EL in the McDonald's matter, that Code Principle – Trust and Duties was not breached. Mr. Farley submitted that a member cannot continue a client/accountant relationship but opt out of a particular transaction. In his submission, the disclosure by Mr. Voudouris of his involvement and his relationship with PT did not act as a "get out of jail free card".

#### ***Whether Expert Evidence Required***

48. Mr. Farley submitted that the adjudicative tribunals of CPA Ontario and CGA Ontario are expert professional tribunals and do not require an expert to provide evidence that a member has breached a Rule of Conduct. He noted that in many discipline cases over the years, no expert has been called to give such opinion. The reason for this was the expertise that the tribunals were assumed to have as self-regulating professions comprised largely of members of the profession.

49. As examples of findings made by adjudicative tribunals at the predecessor of CPA Ontario in other cases involving allegations similar to those in this case, Mr. Farley referred to the cases of *Re Delahaye*, [2013] LNICAO 8 and *ICAO v. Shilson*, [2008] LNICAO 1 ("*Shilson*"). Both cases involved non-disclosure of material information to clients who were being induced by the accountant to invest funds in transactions. In neither case was expert evidence required to establish whether the disclosure made was adequate or what disclosure ought to have been made.

50. Mr. Farley asked, rhetorically, what an expert testifying before the hearing tribunal would be expert in. He submitted that the hearing tribunal did not need the assistance of an expert to conclude that it was professional misconduct to involve a client in a transaction without due diligence and without disclosing information he had. The necessary information would be in the knowledge of any CPA and would be in the knowledge of any tribunal of CPA Ontario or CGA Ontario.

51. Mr. Farley stated that the hearing tribunal abdicated its responsibility by not using their own knowledge base to decide whether the disclosure made by Mr. Voudouris was inadequate to meet his professional obligations.



52. Mr. Farley submitted that this Tribunal was in a position to decide that, based on the factual evidence in this case, the majority of the hearing tribunal made an error in law when it found that it required expert evidence of the disclosure that an accountant had to make when investing with a client and the standard of care the accountant owed. For that reason, he submitted that the decision reached by the hearing tribunal should not be given deference. However, he argued that, even if the decision was assessed against a standard of reasonableness, the decision of the majority on this point was not within a reasonable range of options.

53. Mr. Farley stated there was clear and compelling evidence that Mr. Voudouris did not act in the best interest of his client and his conduct discredited the profession. The facts as found demonstrated professional misconduct without any additional expert evidence, and the decision of the majority of the hearing tribunal that expert evidence was required, and that the allegations of professional misconduct had not been proven as a result, was unsupportable and should be set aside.

#### ***Findings regarding Absence of Duty if Not Client***

54. Mr. Farley submitted that the majority of the hearing panel erred when it concluded that Mr. Voudouris owed no duty to EL in the absence of a specific accountant-client relationship. The language of the Rules did not limit their application to conduct in an accountant's professional capacity. Given the trust relationship between an accountant and a client, the professional obligations, including fiduciary duties that Mr. Farley submitted were established, existed beyond the strict boundaries of a relationship.

55. Mr. Farley submitted that, prior to approaching EL about the investment, Mr. Voudouris had done no due diligence as to the viability of the investment or even the terms of the investment. Mr. Voudouris had admitted this before the hearing tribunal. Mr. Farley submitted that Mr. Voudouris involved his client in a transaction without performing due diligence of any kind and acted in his own self-interest, breaching the trust placed in him by his client.

56. In addition, Mr. Voudouris did not disclose to his client that PT had cash flow issues, knowing that he was a bad risk with bills outstanding. The hearing tribunal acknowledged that this could have impacted EL's decision about the investment.

57. Mr. Farley asked that this Tribunal do what, in his submission, the majority of the hearing tribunal declined to do: examine the evidence with the expertise of CPAs and decide whether there was professional misconduct. He noted that this is what the dissenting member had done.

58. Mr. Farley submitted that the majority of the hearing tribunal had failed in its interpretation of the uncontested findings of fact. In his submission, the facts found clearly supported a finding that Mr. Voudouris breached the Code Principle and the Rules.

#### ***Submissions on behalf of Mr. Voudouris***

59. Mr. Polyzogopoulos submitted that the appeal should be dismissed in its entirety because the hearing tribunal came to the correct conclusion that there was no professional misconduct under the Rules and the Code Principle on the part of Mr. Voudouris. Moreover, deference was owed to the tribunal that heard and saw the witnesses, reviewed and heard submissions and came to its conclusion after lengthy deliberations. It was not the role of this Tribunal to retry the case or substitute its own decision.

60. It was submitted that there were four key findings of fact from which all aspects of the decision followed. First, Mr. Voudouris disclosed the conflict when he brought EL into the transaction and told him he could not assist EL on the transaction. Second, the hearing tribunal accepted that EL had admitted he could not rely on Mr. Voudouris for advice on the transaction. Third, Mr. Voudouris acted in good faith and had not been dishonest or involved in a fraudulent scheme. Fourth, there was no evidence that the underlying transaction was fraudulent.

61. Mr. Polyzogopoulos made extensive submissions regarding the evidence before the hearing tribunal and reviewed the findings of fact in some detail. He stated that the findings of facts were fully set out in the hearing tribunal's Reasons, including but not limited to, those based on the amended Agreed Statement of Facts signed by the parties and should be relied on rather than the facts set out in the Appellant's factum.

62. Important evidence was also given by Mr. Voudouris and EL. Both were found to be partly credible. However, Mr. Polyzogopoulos submitted that the hearing tribunal rejected the evidence of EL in several places where it conflicted with the evidence of Mr. Voudouris, and they preferred Mr. Voudouris' evidence on all key points.

***EL as a client in regard to the investment***

63. Mr. Polyzogopoulos submitted that Mr. Voudouris was not acting on behalf of EL in a professional context and was not hired to provide advice or conduct due diligence in the McDonalds investment. Although Mr. Voudouris had acted for EL in other matters, Mr. Voudouris was never hired by EL to provide him with advice about the McDonald's transaction or perform due diligence, and this was understood by EL. Mr. Voudouris had agreed that the participants would see a lawyer once the deal was closed and he told EL he was free to talk to a lawyer.

64. Mr. Polyzogopoulos submitted that Mr. Voudouris had fulfilled his professional obligations to EL by telling him that he could not advise him on this transaction. As well, the majority of the hearing panel found as a fact that EL had acknowledged that he could not rely on Mr. Voudouris for advice. Mr. Polyzogopoulos said that part of a trust relationship, such as that between accountant and client, was being upfront with the other party regarding what was to be done and what was not to be done. It was not a "get of jail free card", but a recognition that Mr. Voudouris had fulfilled his obligation to EL by being candid with him about the limits of what he could do. Mr. Voudouris was entitled to set limits on their relationship, and his obligations to EL, and he did so.

65. It was submitted that, as a result of Mr. Voudouris' express indication to EL that he could not advise EL on the transaction, the majority of the hearing tribunal reasonably found on the facts of this case that there was not an accountant-client relationship regarding this transaction.

66. Mr. Polyzogopoulos also addressed the application of the obligations created by the specific Rules identified in the notice of hearing to the facts of this case. He submitted that three of the four Rules that the Appellants had alleged were breached by Mr. Voudouris referred to knowledge, participation or integrity. This meant that, if there was a fraudulent scheme that the evidence would need to show that Mr. Voudouris was involved in the fraud or, at a minimum, knew that something was wrong and went ahead anyhow. However, the undisputed finding was that Mr. Voudouris acted in good faith, so the evidence would not support a finding of knowledge.

67. Mr. Polyzogopoulos emphasized the finding by the hearing tribunal that Mr. Voudouris

was not the one who showed the letters from McDonalds to the EL, with the exception of the letter, dated March 3, 2009. He submitted that this demonstrated that Mr. Voudouris was not complicit in the actions of PT.

68. Similarly, Mr. Polyzogopoulos submitted that the Rules referred to honesty and integrity, and the evidence did not support a finding that Mr. Voudouris had acted dishonestly or without integrity. There was no evidence or proof of fraud concerning this McDonald's venture, only speculation, and the police had not been contacted.

69. It was submitted that there had to be limits on the scope of the Rules: they were not all-encompassing (either in relation to the Rules or the scope of the accountant-client relationship). He used the example of an accountant being paid for his or her services. Seeking payment, in effect, put the accountant's interests before those of the client. However, this was obviously acceptable, even though the plain language of the Code Principle indicated that an accountant would sacrifice their self-interest for the interests of the client.

#### ***Whether Expert Evidence Required***

70. Mr. Polyzogopoulos submitted that the majority of the hearing panel correctly found that they required expert evidence to demonstrate the applicable standard of care that Mr. Voudouris may have owed to EL in the absence of an accountant-client relationship and the information that Mr. Voudouris would have had to disclose to EL in the circumstances. He submitted that, in the absence of any expert evidence of this sort, a finding of professional misconduct could not be made.

71. It was common ground between the parties that expert evidence was required where an allegation of professional misconduct involved a question as to whether the member had complied with standards of practice, for example, in relation to an assurance engagement. The applicable guidelines would be identified through an expert in those cases. Mr. Polyzogopoulos submitted that the majority correctly found that there was no valid distinction between those cases and the present case. If expert evidence of those standards was required, then expert evidence was required to establish the standard of care or disclosure obligation triggered on these facts.

#### ***Findings regarding Absence of Duty if Not Client***

72. It was submitted on behalf of Mr. Voudouris that there was no accountant-client relationship with respect to the investment. Mr. Polyzogopoulos submitted that there was mutual trust between EL and Mr. Voudouris, and Mr. Voudouris had met his obligations to be up front in what he could or could not do in respect of advising on the investment.

73. Mr. Polyzogopoulos submitted that the issue was not whether the rules applied to Mr. Voudouris in the transaction, but whether Mr. Voudouris discharged his obligations under those Rules by the disclosure of the limits on the advice he could provide. He stressed that the Rule required the fiduciary to give warning to the vulnerable party, so the latter could protect themselves. The Rule made clear that it was acceptable to proceed after obtaining the informed consent of the vulnerable party. In Mr. Polyzogopoulos' submission, that had been done by Mr. Voudouris.

74. To the extent that there was any kind of obligation owed by Mr. Voudouris to EL to disclose particular information, Mr. Polyzogopoulos submitted that the majority of the hearing tribunal had made findings of fact that supported their conclusion that Mr. Voudouris had

actually disclosed the information regarding the four points raised by the Appellant.

75. First, the majority found that Mr. Voudouris had made EL aware of PT's past debts because EL had been present when there was a discussion about exchanging cheques. The majority concluded that this was sufficient information from which EL would have understood that there were amounts owing to Mr. Voudouris and that these amounts were being set off as part of Mr. Voudouris' investment. The majority also concluded, as a finding of fact, that EL was aware of PT's cash flow issues. Mr. Polyzogopoulos submitted that the other two alleged non-disclosures, regarding NSF cheques and tax returns, were not supported on the evidence. The issue of NSF cheques from PT occurred after EL's involvement in the investment venture.

76. Mr. Polyzogopoulos stated that Mr. Voudouris had trusted his client, PT, with whom he had done business for a number of years. Mr. Voudouris invested in the McDonald's venture and subsequently involved EL in the venture in good faith. Mr. Voudouris had disclosed to EL at the outset that PT was also a client, and that he could not provide advice on the investment as he was involved as an investor. EL and Mr. Voudouris had the same information when they decided to invest, specifically, that PT's money was tied up in the deposit with McDonald's and he needed to bring in partners.

77. Mr. Polyzogopoulos submitted that the hearing tribunal had correctly dismissed the allegations against Mr. Voudouris, so this appeal should be dismissed. In the event the appeal was granted, he submitted that this Tribunal should not substitute its own decision on the facts, given findings of credibility had been made. Instead, the Tribunal should set aside the hearing tribunal's decision, and the Appellant can then decide whether to pursue the matter by way of a fresh hearing before a newly constituted hearing tribunal.

### ***Reply Submissions of the Appellant***

78. Mr. Farley submitted that there was no allegation that Mr. Voudouris knew that the investment venture may have been fraudulent. Proof of fraud was not required to prove a breach of the Rules and Code. The issues involved what Mr. Voudouris did or did not do in light of his client relationship with EL, which put him in a conflict of interest, and the lack of due diligence in assessing the investment venture.

79. Mr. Farley submitted that EL maintained he was not advised of the amount of the outstanding invoices to PT and that those amounts would be credited to Mr. Voudouris' investment. EL had also maintained that he was not aware prior to advancing funds that Mr. Voudouris was lending money to PT due to cash flow problems.

80. Mr. Farley submitted that members of the public would think that, on the facts of this case, Mr. Voudouris failed to act in the best interest of his client, which was detrimental to the Association or the profession, contrary to Rule 606. The client/accountant relationship is sacrosanct and is based on trust. A breach of that trust affects all clients and impacts the membership in general.

### ***Decision***

81. After deliberating, the Tribunal announced the following decision:

THAT having seen and considered the submissions made on behalf of Peter Voudouris and on behalf of the Appellants (the Discipline Committee of CGA Ontario and Professional Conduct Committee of CPA Ontario), the Appeal Committee allows the



appeal of the Appellants and sets aside the Decision of the Professional Conduct Tribunal of CGA Ontario dated February 15, 2016. The Appeal Committee finds Peter Voudouris guilty of the four (4) charges laid under Rule 101, Rule 108, Code Principle – Trust and Duties and Rule 606(a) of the Rules of Conduct and the Code of Ethical Principles, and of professional misconduct.

### ***Reasons for the Decision***

82. As noted at the outset of these reasons, the Tribunal was required to review the record of the proceedings before the hearing tribunal and the reasons of that tribunal to determine if there was an “obvious error” in the decision and order of the hearing tribunal. In other words, the Tribunal had to determine if the decision of the majority of the hearing panel was reasonable in light of all of the evidence and the law.

83. The Tribunal, after hearing the submissions of both parties, and reviewing the evidence that had been before the hearing tribunal, including the Agreed Statement of Facts and the transcripts of that tribunal’s proceedings, concluded that the decision of the majority of the hearing tribunal contained one or more obvious errors and accordingly was not a reasonable decision. In those circumstances, the decision had to be set aside.

84. The Tribunal identified two principal errors that undermined the reasonableness of the decision under review. First, the Tribunal concluded that the finding that an accountant-client relationship did not exist between Mr. Voudouris and EL was not supported by any reasonable interpretation of the evidence and the applicable principles of law. As a result, the consequent decision, based on this finding, that the obligations owed by Mr. Voudouris to EL were not defined by the Rules and the Code was not reasonably available to the hearing tribunal.

85. Second, the Tribunal concluded that the majority of the hearing panel erred in law when it decided that it required expert evidence with respect to the obligations that an accountant owed to his client in these circumstances. Given the well-established principles of law relevant to the expertise of a professional disciplinary body, the majority decision did not fall within the range of reasonable interpretations of the evidence required to establish professional misconduct. Having made an unreasonable decision on this point, the decision of the majority to not make a finding of professional misconduct due to the absence of such evidence had to be set aside.

86. A significant amount of time was spent in written and oral argument as to whether the relationship between Mr. Voudouris and EL was a fiduciary one. Given the Tribunal’s decision with respect to the existence of an ongoing accountant-client relationship between these individuals, the Tribunal concluded that it did not need to determine whether a fiduciary duty existed outside such a relationship. Whether the accountant-client relationship is a fiduciary one or not, the Code of Ethical Principles and Rules of Conduct, as applicable to the facts in this proceeding, define the relevant expectations of an accountant.

### ***EL was a client in regard to the investment***

87. The Tribunal was satisfied that Mr. Voudouris had a long-standing accountant-client relationship with EL. This was not disputed by Mr. Voudouris on the evidence. However, Mr. Voudouris asserted, in effect, that this investment transaction was set apart from the larger accountant-client relationship because Mr. Voudouris had advised EL that Mr. Voudouris had an interest in the transaction and could not advise EL on the transaction.

88. In the Tribunal's view, where there is a long-standing accountant-client relationship, particular transactions cannot be treated by the accountant as not falling within that relationship. The Tribunal accepted the submissions of the Appellant in this regard. Even though Mr. Voudouris said that he could not advise EL on this transaction, suggesting that there was no accountant-client relationship, the Tribunal was satisfied that the trust relationship that existed between Mr. Voudouris and EL continued to exist and define how they related to one another. Put another way, even if Mr. Voudouris was not advising EL on this transaction, he remained EL's accountant and EL was entitled to put greater reliance on any representations Mr. Voudouris made to him than would otherwise be the case. The Tribunal was satisfied on the evidence that the broader accountant-client relationship continued between Mr. Voudouris and EL at the time of the investment. The Tribunal concluded as a result that this relationship, and the corresponding Rules and Ethical Principles, defined the obligations Mr. Voudouris owed to EL in this transaction.

### ***Expert Evidence Concerning General Obligation Not Required***

89. The Tribunal was satisfied that, as a matter of law, a disciplinary tribunal of a self-regulating profession could rely on its own expertise in applying the Rules of Conduct to a professional's conduct or assessing whether particular actions or inactions by a professional constitute professional misconduct. The Manitoba Court of Appeal in *Law Society of Manitoba v. Savino* [1983] M.J. No. 206 framed the issue in these terms at paragraphs 17 and 18:

Our Legislature has given the Benchers [the people responsible for the Law Society] the right to pass rules and regulations as well as the right to enforce them. It would be ridiculous and lacking in common sense to call upon another body of men and women to hear and dispose of complaints of professional misconduct. Professional misconduct is a wide and general term. It is conduct which would reasonably be regarded as disgraceful, dishonorable or unbecoming of a member of the profession by his well respected brethren in the group – persons of integrity and good reputation amongst the membership.

No one is better qualified to say what constitutes professional misconduct than a group of practicing barristers who are themselves subject to the rules established by their governing body.

90. The same principles were set out clearly by the Ontario Divisional Court in *Re Milstein and Ontario College of Pharmacy et al. (No. 2)* (1976), 13 O.R.(2d) 700 at paragraph 41:

One of the essential indicia of a self-governing profession is the power of self-discipline. That authority is embodied in the legislation pertaining to the profession. The power of self-discipline perpetuated in the enabling legislation must be based on the principle that members of the profession are uniquely and best qualified to establish the standards of professional conduct. Members of the profession can best determine whether the conduct of a fellow member has fallen below the requisite standards and determine the consequences. The peers of the professional person are deemed to have and, indeed, they must have special knowledge, training and skill that particularly adapts them to formulate their own professional standards and to judge the conduct of a member of their profession. No other body could appreciate as well the problems and frustrations that beset a fellow member.

91. The Tribunal found that the comments in these cases with respect to lawyers and the Law Society apply equally to accountants and members of the hearing tribunal or this Tribunal. This conclusion was confirmed by the Ontario Court of Appeal in *Barrington v. Institute of Chartered Accountants of Ontario*, 2011 ONCA 409. In that case, the Court indicated that the Discipline Committee had been entitled to reject the expert evidence before it and reach its own conclusion on the evidence. The Court stated at paragraph 102,

As an expert tribunal, it was entitled to use its expertise to assess the evidence before it.

92. The Tribunal found that it followed from these principles that the hearing tribunal was entitled to make conclusions as to whether Mr. Voudouris had taken sufficient steps to meet his professional obligations in dealing with EL. These were not questions involving specialized knowledge pertaining to assurance standards. These questions were fundamental to any accountant's relationships with his or her clients. An assessment of what the appropriate disclosure by Mr. Voudouris would be in the circumstances was something that would be understood by any CPA or CGA, CPA. The Tribunal concluded that, in declining to exercise its own professional expertise in the absence of "expert evidence", the hearing tribunal had reached an unreasonable conclusion in law.

#### ***Level of Knowledge Required***

93. The Tribunal also considered it necessary to decide one other argument advanced on behalf of Mr. Voudouris, that is, the argument that the necessary level of knowledge of the underlying fraud on the part of Mr. Voudouris had not been established to support a finding of professional misconduct. The related argument was that the evidence did not establish that there had been a fraudulent act.

94. The Tribunal did not accept the submissions of the Respondent on this point. The Tribunal concluded that knowledge of an underlying fraud was not required to establish professional misconduct. The language of Rules 101 and 606(a) required that Mr. Voudouris *participate* in an action that was detrimental to or discredited the profession. The Rules did not require that he directed the action or even was aware of its nature once he participated in the action. The language of these Rules did not require that Mr. Voudouris knew that there was fraud or that there was a fraudulent transaction. The Tribunal was satisfied that the evidence clearly showed that he participated in the action in question, the investment, because he was an investor and he introduced EL to the investment.

95. Similarly, Rule 108 prohibited conduct that might *reflect* on a member's integrity. The Tribunal was satisfied that Rule did not require that Mr. Voudouris' conduct itself be found to be dishonest to establish a breach of this Rule if the conduct nonetheless impaired his integrity. In the Tribunal's view, the lack of disclosure did impair Mr. Voudouris' integrity.

#### ***Consequence of Finding of Unreasonable Decision***

96. Having found that the decision of the majority of the hearing tribunal was unreasonable, the Tribunal concluded that appeal should be allowed and the decision of the majority of the hearing tribunal set aside, but it had to determine what decision it could make to give effect to that conclusion. Both s. 39(4) of the *CGA Act* and section 19 of Regulation 7-3 of CPA Ontario provide that the Tribunal has the power to make any decision and order that the tribunal appealed from could have made.

97. The Tribunal rejected the submission on behalf of Mr. Voudouris that they should simply set aside the decision of the hearing tribunal and leave a decision as to next steps to the Appellants. In the Tribunal's view, this would be an abdication of its role to determine matters in the public interest. Although the Tribunal considered whether it could send the matter back before a different panel of the Professional Conduct Committee (now Discipline Committee), the Tribunal concluded that it was appropriate to make the decision that the hearing tribunal was required to make, namely whether there was professional misconduct. This decision reflected the clear powers provided to the Tribunal by the applicable statute and regulation.

98. The undisputed evidence showed that Mr. Voudouris introduced his client, EL, to the McDonalds' transaction without undertaking due diligence prior to suggesting he invest in the venture. Mr. Voudouris had relied on the word of another client (PT) and the fact that the investment was in McDonalds, whose name alone apparently gave him comfort in the authenticity and reliability of the investment. He had not made further inquiries although he had information that reasonably raised questions about PT's financial position. Mr. Voudouris was well aware of PT's cash flow problems as he had loaned money to him. Based on his knowledge of PT's financial situation, the Tribunal concluded that it was unreasonable that a professional accountant would not undertake any due diligence, rely blindly on the McDonald's name in a letter provided by PT and involve his client without disclosing all information about the nature of his own investment and PT's monetary history.

99. In addition, on the evidence before the hearing tribunal and this Tribunal, Mr. Voudouris advised EL how best to structure the advance of funds. EL trusted Mr. Voudouris, as a professional accountant who was supposed to be knowledgeable in financial matters, and got involved in the investment venture relying on his word. EL did suggest to Mr. Voudouris that he should see a lawyer about this investment; however, Mr. Voudouris indicated that he was not prepared to see a lawyer at this stage. It is reasonable that this response, regardless of any suggestion that EL could see a lawyer on his own, would discourage a trusting client from seeking legal advice unilaterally. In the view of the Tribunal, Mr. Voudouris was under a professional obligation to ensure that his client received independent advice at some point in the process given his involvement in the loan.

100. In the Tribunal's view, given the trust involved in the accountant-client relationship, Mr. Voudouris' failure to conduct due diligence, thereby exposing his client to risk, was in breach of Rule 101 and brought discredit to the profession. The Tribunal was also satisfied that Mr. Voudouris had engaged in misconduct of a serious nature in relation to EL that reflected negatively on his integrity, trustworthiness or suitability as a member of the profession, contrary to Rule 108. In this regard, the Tribunal found that not only did Mr. Voudouris not take steps to protect EL, but he made representations to EL, such as advising him not to call the McDonalds' head office, that impaired EL's ability to protect his own interests.

101. The Tribunal was satisfied that the evidence demonstrated that Mr. Voudouris had not acted in the best interest of his client, contrary to the Code Principle – Trust and Duties. Moreover, Mr. Voudouris' actions reflected a primary attention to his own interests. The Tribunal was also satisfied that the evidence established that Mr. Voudouris' actions breached Rule 606(a) because they were detrimental to the accounting profession. Mr. Voudouris failed to verify documentation or seek confirmation through a third party before involving his client, EL, in a venture of which Mr. Voudouris had no real knowledge. These actions fell below the level of caution and vigilance that the public would expect of the accounting profession.



102. In reaching the preceding conclusions, the Tribunal substantially agreed with the analysis of the dissenting member of the hearing tribunal in reaching her conclusion that Mr. Voudouris was guilty of professional misconduct. For all of these reasons, the Tribunal concluded that it was appropriate to make findings of professional misconduct with respect to each of the four allegations.

### ***Sanction***

103. Having reached the conclusion that Mr. Voudouris was guilty of professional misconduct in regard to all four allegations, the Tribunal needed to determine what the appropriate order to be made was and requested the submissions of the parties in that regard

### ***Submissions of Appellant Regarding Sanction***

104. Mr. Farley, on behalf of the Appellant, submitted that an appropriate sanction in this matter would be a written reprimand; a fine in the amount of \$4,000, suspension from membership for a period of 18 months and the usual publicity to all Members and the public, including newspaper publication in the area of Mr. Voudouris' practice.

105. Mr. Farley submitted that the appropriate sanctions had to address the principles of specific and general deterrence and rehabilitation, taking into account aggravating and mitigating circumstances.

106. In Mr. Farley's submission, there were five aggravating factors: Mr. Voudouris abdicated his professional responsibilities to a long-standing client and put his own interests before those of his client; Mr. Voudouris involved his client in an investment while doing no due diligence and withholding significant information that was relevant to the risk of the investment; the quantum of monies involved was significant; Mr. Voudouris received five separate cheques over four months from his client, which gave him opportunity to reconsider the situation; and Mr. Voudouris, throughout the hearing, had shown no recognition of any wrongdoing.

107. Mr. Farley acknowledged that Mr. Voudouris had already been through the disciplinary process and the courts, which represented stress and a financial burden that he should not have been put through.

108. Mr. Farley submitted that the fine, suspension and publicity proposed would address specific and general deterrence, along with rehabilitation of Mr. Voudouris.

109. Mr. Farley noted similarities between this case and a number of cases from the Institute of Chartered Accountants of Ontario and CGA Ontario that he placed before the Tribunal in a Supplementary Book of Authorities, including *Stewart*, *Stanleigh*, and *Shilson*. In *Shilson*, the member had not protected his client by borrowing over \$400,000 in 11 transactions without advising of the risks, providing security or advising her to obtain legal advice. Mr. Shilson had been expelled from membership. In *Re Stewart*, 2003 LNICAO 1, the member had no personal gain but he was aware of the fraud in the underlying transaction. Mr. Stewart was expelled. In *CGAO v. Stanleigh* (May 2005, unreported), the former clients' new accountant was advised by Mr. Stanleigh of an investment opportunity for the clients. The clients provided investment funds to Mr. Stanleigh who did no due diligence and failed to return the monies. Mr. Stanleigh was expelled from CGA Ontario.

110. In addition, Mr. Farley brought the Tribunal's attention to *Re Lupinski*, 1992 LNICAO 5. Although the facts of this case were distinguishable from the case on appeal, the principles set

out at paragraphs 13 and 14 regarding the importance of accountants demonstrating high levels of integrity and trustworthiness were relevant to the case before the Tribunal.

111. Mr. Farley submitted that in this case, EL trusted and relied on Mr. Voudouris in investing his savings. Mr. Farley stated that a client should feel secure that the accountant's advice can be relied on and that due diligence had been carried out.

112. Mr. Farley filed a Costs Outline (Exhibit 2) in support of the Appellant's request for costs for both the proceedings before the hearing tribunal and this appeal. The Appellant did not seek the costs of the first hearing, the first appeal, the appeal to Divisional Court or the investigation, in recognition of the lengthy history of this matter and the mixed success of the parties.

113. The Costs Outline showed the legal fees and disbursements of approximately \$180,000 for the proceedings before the tribunal. This was reduced, on a partial indemnity basis, to \$70,000. The costs requested for the appeal were \$28,000, which had been reduced from the actual costs. The Appellant was therefore seeking a total of \$98,000 in costs.

#### ***Submissions on behalf of Mr. Voudouris Regarding Sanction***

114. Mr. Polyzogopoulos submitted that the objectives of the Association under the *CGA Act* were to promote and protect the public interest by governing and regulating its members and to protect the welfare and interests of the Association. Specific and general deterrence of members from engaging in further misconduct and rehabilitation were relevant factors in determining protection of the public. However, the need to maintain the public's confidence in the integrity of the profession should not result in a penalty that was disparate with penalties in other cases.

115. Mr. Polyzogopoulos submitted that there are a number of mitigating factors that may be considered in determining the proper penalty for an offence, referencing *Jaswal v Medical Board (Newfoundland)* (1996), 42 Admin LR(2d) 233 (Nfld TD) and *Re Dagneau*, 1992 LNICAO 18. He identified five in particular in this case.

116. First, Mr. Polyzogopoulos noted that Mr. Voudouris had no discipline history and no history of any past complaint against Mr. Voudouris in over 26 years as a member. Second, the disciplinary process itself had lasted five years and had been stressful and costly to the member. He stressed that no one should have to go through that. In the addition, the publicity resulting from the process had been damaging to the member's professional reputation and business.

117. Third, Mr. Polyzogopoulos submitted that there had been no "knowing, wrongful, intentional misconduct" regarding the McDonald's transaction. Mr. Voudouris had no reason to question the legitimacy of the investment and did not intentionally breach any rule. Mr. Voudouris had tried to meet his obligations and the fact that he tried to encourage EL to see a lawyer showed that any breach was not intentional.

118. Fourth, if there had been a fraud, Mr. Voudouris was as much the victim of his client, PT, as EL was. Mr. Polyzogopoulos submitted that Mr. Voudouris' biggest failing had been trusting his client, PT.

119. Fifth, Mr. Polyzogopoulos submitted that EL brought a civil suit against Mr. Voudouris, which had now been resolved, prior to making a complaint to CGA Ontario. Mr. Voudouris was initially denied coverage through CGA Ontario's insurer since the allegations involved

investment advice; this decision was later reversed. Mr. Polyzogopoulos submitted that EL had acknowledged he had brought the complaint on the advice of his lawyer to move the civil claim forward.

120. Mr. Polyzogopoulos stated that EL had been in business for decades and he freely decided to proceed with the investments. Mr. Voudouris had been sympathetic towards EL and never intended or wished that his money would be lost.

121. Mr. Polyzogopoulos submitted that Mr. Voudouris had been punished enough, and while he did not partake in intentional misconduct, this experience would deter him from trusting another person in future like he trusted PT. As there was no intentional misconduct, there was no need for rehabilitation.

122. There were five hearings in total with a cost of over \$150,000 in legal fees. The initial conviction of misconduct, which was upheld on the first appeal, was overturned by the Divisional Court and referred back to the Professional Conduct Tribunal. Mr. Polyzogopoulos suggested that no fine should be assessed against Mr. Voudouris, due to the out-of-pocket expenses already incurred of approximately \$175,000, including the current hearing. Mr. Polyzogopoulos submitted that, if there was a fine, the general rule appeared to be a fine of \$1,000 for every breach of the rules, which in this case would total \$4,000.

123. Mr. Polyzogopoulos stated that the rules were vague and open-ended, of general application covering intentional misconduct, and there was no violation of a specific rule. As there was no bad intention, the sanctions should be a minor punishment. He submitted that a reprimand would be a sufficient penalty in the circumstances.

124. In respect of costs, it was submitted that Mr. Voudouris fully cooperated with the investigation and during the hearings, including signing an agreed statement of facts, which should have shortened the process, but it did not due to how the prosecution was conducted (by counsel before Mr. Farley). This matter should have ended in 2013 but was still ongoing in 2017. Mr. Polyzogopoulos indicated that the previous counsel had indicated that there was a general rule that \$5,000 per hearing day would be awarded for costs. Since there were 14 hearings days, \$70,000 in costs should have been requested. He suggested that much time was wasted before the hearing tribunal with EL's testimony.

125. Mr. Polyzogopoulos submitted that there should be no costs assessed against Mr. Voudouris for the same reasons he had submitted that there should be no fine.

126. Mr. Polyzogopoulos requested that the effective date of the Order be varied under Rule 20.02(1) of the Rules of Practice and Procedure until after the Tribunal's reasons are issued. Mr. Farley objected to this request for a delay of the effective date as it diverged from the usual principle in Rule 20.01 that an Order be effective on the date it was made.

### ***Reply submissions on Sanction***

127. In reply, Mr. Farley submitted that, regardless of what positions may have been taken by previous counsel, there were no rules or guidelines for awarding \$5,000 per day for costs or \$1,000 per infraction for fines. The costs requested were fair, and no attempt was being made to recover any court costs. The appeal costs had been reduced substantially, but, in the end, the member whose misconduct caused the investigation and subsequent hearing must bear a portion of the costs.

128. Mr. Farley stated that Mr. Voudouris' request for a reprimand suggests that he still does not understand the gravity of his conduct or the principles of sentencing. There would be no impact on the member or the membership if a reprimand was considered an appropriate sanction for such conduct. Mr. Farley stated that the motives of the complainant were irrelevant to the sanction in this proceeding. The conduct of the member and the penalty ordered must be proportionate. The public must be protected by the principles of sentencing.

129. Finally, Mr. Farley submitted that the Rules were not vague. They were clear for any member of the profession, and Mr. Voudouris had been found guilty of breaching all four Rules.

### **Order**

130. After deliberating, the Tribunal made the following order:

IT IS ORDERED in respect of the Charges:

1. THAT Mr. Voudouris be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Voudouris be and he is hereby fined the sum of \$4,000, to be remitted to the Chartered Professional Accountants of Ontario ("CPA Ontario") within one (1) year from the effective date of the Order.
3. THAT Mr. Voudouris' membership in the Chartered Professional Accountants of Ontario and The Certified General Accountants Association of Ontario be and it is hereby suspended for a period of nine (9) months from the effective date of the Order.
4. THAT Mr. Voudouris surrender his CGA and CPA certificates to the adjudicative tribunals secretary within ten (10) days from the effective date of the Order to be held during the period of suspension and thereafter returned to Mr. Voudouris. In the event Mr. Voudouris fails to surrender his certificates within this ten-day period, his suspension pursuant to paragraph 3 shall be extended one day for each day the certificates remain undelivered to the secretary.
5. THAT notice of this Decision and Order, disclosing Mr. Voudouris's name, be given in the form and manner determined by the Appeal Committee:
  - (a) to all members of CPA Ontario; and
  - (b) to all provincial bodies;and shall be made available to the public.
6. THAT in the event Mr. Voudouris fails to comply with the requirements of this Order, his membership in the Chartered Professional Accountants of Ontario and The Certified General Accountants Association of Ontario shall thereupon be revoked, and notice of the revocation of his membership, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Voudouris' practice, employment or residence. All costs associated with this publication shall be borne by Mr. Voudouris and shall be in addition to any other costs ordered by the committee.

IT IS FURTHER ORDERED:

7. THAT Mr. Voudouris be and he is hereby charged costs fixed at \$45,000, to be



remitted to the Chartered Professional Accountants of Ontario ("CPA Ontario") within one (1) year from the effective date of the Order.

8. THAT the effective date of the Order is the date the Reasons of the Appeal Committee are issued to the parties to this Appeal.

### **Reasons for Sanctions**

131. The sanction imposed by the Tribunal must be appropriate for the misconduct that has been proven in the context of the relevant mitigating and aggravating circumstances. Accordingly, the Tribunal considered the nature, extent and impact of the misconduct, based on the evidence before it, as well as the relevant circumstances, taking into account the submissions of the parties.

132. When determining a sanction, the Tribunal must act fairly, which among other things, requires the sanction imposed be consistent with sanctions imposed in similar cases. It is recognized that few, if any, cases are exactly alike. Even where the misconduct in two cases has breached the same rule, the nature, extent and impact of the misconduct may be quite different. In this case, the precedents brought to the Tribunal's attention were not sufficiently comparable to the case at hand to be helpful with respect to the overall penalty, although elements of the sanction imposed provided some guidance. The Tribunal had to consider the appropriate sanction largely as a matter of first principle.

133. The Tribunal accepted that the relevant principles of sanction included general deterrence, specific deterrence and rehabilitation. Which principles will have priority in the Tribunal's consideration depend on the facts and circumstances of the misconduct.

134. A reprimand by the Chair of the Tribunal acts as a specific deterrent to the member whose actions have brought him before the Tribunal. Where there has been a finding of professional misconduct it is necessary as the very minimum manner in which the conduct can be denounced and the member can be made to appreciate that the misconduct cannot occur again.

135. The Tribunal was satisfied that a fine was appropriate because the misconduct was not inconsequential. The nature of the misconduct also required that a message of general deterrence be sent to the membership. The magnitude of that message had to reflect the seriousness of the misconduct, tempered by mitigating and aggravating circumstances. The Tribunal concluded that the fine of \$4,000 suggested by the Appellant was appropriate in this case as it helped serve as a general deterrent and was consistent with fines levied in cases where the misconduct was similar to the misconduct in this case.

136. The Tribunal did not accept that an appropriate fine could be calculated by a mathematical formula. There is no rule that a fine of \$1,000 should be imposed for each rule breached. As noted by counsel for the Appellant, such a rule would overlook the different natures and significance of the various rules.

137. The Tribunal also concluded that a suspension was required given the significance of the misconduct and its connection to the core values of the profession, the risk to Mr. Voudouris' client and the evidence available to Mr. Voudouris to identify that risk.

138. The Tribunal agreed with the observations of the Discipline Committee in the *Lupinski* case, at paragraphs 13 and 14:

The public expects a chartered accountant to demonstrate high levels of integrity and trustworthiness. Any action by a member which betrays the public's trust tarnishes the image of the profession as a whole. The Mission Statement recently adopted by the Institute states:

The Institute ensures that chartered accountants are the recognized professionals who add credibility to information.

Any professional misconduct that hinders the efforts of members of the Institute to be recognized as the professionals who add credibility to information must be dealt with in a serious manner. The principle of general deterrence is the overriding consideration in cases such as this.

139. The misconduct in this case, even though Mr. Voudouris was not actually aware of the fraud, undermined the credibility of members of the profession as validators of information by appearing to lower the standard of diligence required of accountants. The misconduct violated the trust of the public. Rather than protecting his client, he recklessly proceeded with a transaction about which he knew very little. In that context, a suspension was necessary as a deterrent to other members of the profession and as a specific deterrent to this member. As well, a significant suspension was required to demonstrate to the public that this misconduct was serious and would be treated accordingly by CPA Ontario.

140. At the same time, the Tribunal agreed with Mr. Polyzogopoulos that Mr. Voudouris had been dealing with this issue for a number of years and had learned from that experience in itself. Balancing these factors, the Tribunal concluded that a suspension of nine months was appropriate in this case.

141. The Tribunal was also satisfied that general deterrence required publication of a notice disclosing Mr. Voudouris' name and the suspension of his membership. The profession and the public must be made aware that this type of conduct by a member of the profession is not tolerated. Accordingly, the Tribunal ordered the usual publication.

142. The Tribunal recognized that under the Rules of Procedure applicable to these proceedings the presumption was that orders were effective as of the date on which they were made. There are clearly strong policy reasons for this presumption given the need to protect the public when a member is found to have engaged in professional misconduct and a sanction is imposed. However, the Tribunal recognized that it must consider the application of general rules in the specific circumstances of this case. This case had a lengthy and unique history. In the last chapter of that history, Mr. Voudouris had been found to have not engaged in professional misconduct. The Tribunal, in the unique circumstances of this particular hearing, felt that it was appropriate to defer the effective date of the Order until these reasons were released to the parties.

### **Reasons for Costs**

143. The Tribunal recognized that the applicable principle to be followed in assessing costs is that the member should be responsible for a portion of the costs of the hearing and the profession should bear a portion of the costs as part of their public mandate and its responsibility as a self-regulating profession. Applying that principle here, Mr. Voudouris should bear a portion of the costs as it was his actions that caused the costs, which are an indemnity rather than a penalty, to be incurred.

144. The Tribunal reviewed the costs outline submitted by Mr. Farley and the submissions of both parties with respect to costs. The Tribunal accepted that there was no mathematical formula for the determination of costs. In particular, there is no rule that the calculation of costs is based on a fixed amount, such as \$5,000, multiplied by the number of days of hearing. While there is a general practice that a member who has been found to have engaged in professional misconduct will be ordered to bear two-thirds of the actual costs incurred, costs are ultimately determined in the discretion of the Tribunal.

145. In assessing costs, the Tribunal accepted the submission, which was not disputed, that Mr. Voudouris had incurred substantial costs through the proceedings to date and that responsibility for all of those costs could not be attributed to him. In the Tribunal's view, it was not appropriate to unduly burden the member with the usual proportion of costs given the history of this matter.

146. Considering all of the circumstances of this case, the Tribunal concluded that it was appropriate to order Mr. Voudouris to pay costs in the amount of \$45,000.

DATED AT TORONTO THIS *14<sup>TH</sup>* DAY OF NOVEMBER, 2017  
BY ORDER OF THE APPEAL COMMITTEE



L.P. BOOKMAN, CPA, CA – DEPUTY CHAIR  
APPEAL COMMITTEE

MEMBERS OF THE TRIBUNAL:

S. KARAS (PUBLIC REPRESENTATIVE)

I. PINSKY, CPA, CGA

V.A. REZZA, CPA, CA