



CHARTERED PROFESSIONAL
ACCOUNTANTS OF ONTARIO

SANCTION GUIDELINES

Pursuant to the *Chartered Professional Accountants of Ontario Act, 2017*, S.O. 2017, c. 8, Sched. 3 (the "Act"), CPA Ontario is a self-governing professional regulatory body entrusted with a public interest mandate to regulate its members, students and firms. Our mandate ensures that members of the public in Ontario are served by CPAs who meet high standards in learning, competence and professional conduct.

The Purpose of the Sanction Guidelines

The ability to sanction professional misconduct is an important aspect of CPA Ontario's self-regulatory authority. Where professional misconduct has been committed, the sanctions imposed must be proportionate to the misconduct. The purpose of sanctioning professional misconduct is to protect members of the public, promote public confidence in the profession, deter members of the profession from engaging in misconduct, and to maintain high ethical standards in the profession. Accordingly, sanctions should not be tantamount to a mere inconvenience to a member or seen to be simply the cost of doing business. Rather, they must be sufficient in scope and severity in order to maintain the good reputation of the profession. Sanctions must denounce the misconduct, deter members from engaging in similar misconduct, and they must in all cases promote and protect the public interest.

The determination of an appropriate sanction is fact-specific and subject to the discretion of the Discipline Committee. The Discipline Committee engages in an analysis of each individual case and exercises its judgment and discretion to decide what sanction should be imposed. A range of sanctions may be reasonable based on the facts of each case.

The Sanction Guidelines are intended to promote consistency, fairness and transparency, as well as to identify a number of factors that may be considered by the Professional Conduct Committee ("PCC") in forming sanction recommendations, the Discipline Committee in determining an appropriate sanction, the Appeal Committee when considering a sanctions appeal, as well as members of the public and profession alike. However, the Sanction Guidelines are not mandatory, nor do they outline an exhaustive list of factors that the Discipline Committee may consider.

The Sanction Guidelines may be revised from time to time, withdrawn, or replaced.

Factors to be Considered in Determining Sanctions

In any given case, the full range of facts, including any aggravating or mitigating circumstances, should be considered in determining whether any sanction is warranted and if so, the appropriate type of sanction. The key principles and factors set out below provide a framework to guide the PCC's sanction recommendations and are offered to assist the Discipline and Appeal Committees in their deliberations.

This framework is not static, nor does it provide an exhaustive list of all the principles or factors that may be applicable in any given case. The weight allocated to each factor will vary based on the case-specific circumstances and other factors relevant to the maintenance of the standards and reputation of the profession.

Specific and General Deterrence

Deterrence refers to the imposition of sanction for the purpose of discouraging members, students and firms from engaging in similar misconduct, thereby maintaining public confidence in the profession and protecting the public.

The objective of specific deterrence is to impose a sanction significant enough to discourage and deter the member, student or firm itself from engaging in future misconduct.

The objective of general deterrence is preventative in nature. Sanctions imposed in accordance with this principle are meant to discourage other members of the profession from engaging in similar misconduct. General deterrence is intended to serve as a caution and a reminder to the profession as a whole that such misconduct will not be tolerated. The principle of general deterrence may take precedence where the likelihood of specific deterrence or rehabilitation is minimal, or the governability of the subject is in question.

The evolving regulatory context and priorities, and specific matters affecting the reputation of the profession, are a consideration in recommending and determining sanctions. Where a particular type of professional misconduct appears to be escalating in scope and/or frequency, the severity of the sanction may be significantly increased from prior proceedings in order to maintain the good reputation of the profession and to effectively deter such misconduct.

Denunciation

To meet the objective of denunciation, the sanction ordered should be sufficient to articulate the unacceptability of the misconduct by the profession and to reassure the public that such misconduct will not be tolerated. Misconduct that is particularly egregious or shocking to the community requires denunciation through sanctions of proportionate severity.

Rehabilitation

Balanced with the objectives of specific and general deterrence, is the objective of rehabilitation. Where there is a realistic prospect of rehabilitation, a sanction should aim to ensure that, while not a 'mere inconvenience' to the subject, it is also not so severe as to effectively bar the subject's rehabilitation into the profession.

In accordance with this principle, among the other factors considered and in light of the nature of the misconduct at issue, the subject's potential ability to be rehabilitated, and whether the subject poses an ongoing risk of harm to the public and to the reputation of the profession is a relevant consideration.

Proportionality

The sanction imposed should be proportionate to the seriousness of the professional misconduct at issue, with the protection of the public remaining a paramount objective.

To achieve the objectives of specific and general deterrence, the member, student or firm should not be seen to have benefitted from the misconduct. Further, as a matter of proportionality, the severity of a sanction may be impacted by such matters as the financial resources of the subject and/or the size of the firm and its personnel. Practically then, a penalty that would be substantial for an individual or a small firm might, for example, be seen as merely the 'cost of doing business' for a large firm. Accordingly, there are several factors that will be considered in order to impose a sanction that is proportional in the circumstances of each individual case.

Where sanctions have been imposed on the member, student or firm in another criminal or regulatory proceeding for the same misconduct, consideration may be given to the cumulative effect of all sanctions imposed. Nonetheless, a penalty imposed in another forum will not be a substitute for the imposition of appropriate sanctions by CPA Ontario on its members, students and firms.

Seriousness of Misconduct

The seriousness of the misconduct is a critical factor when determining the nature and scope of the appropriate sanction. The following is an illustrative, non-exhaustive list of the key factors which may be considered:

- a) The duration of the misconduct;
- b) Whether the misconduct was an isolated incident or was repetitive or ongoing;
- c) Whether the misconduct was premeditated, intentional, willfully blind, or reckless;
- d) Whether the misconduct involved ethical violations;
- e) Whether the misconduct was dishonest;
- f) Whether the subject received financial benefit from the misconduct;
- g) Whether the misconduct facilitated the commission of a crime by others;
- h) Whether the misconduct created a risk of, or caused actual harm to others;
- i) The vulnerability of the victims of the misconduct;
- j) The impact of the misconduct on others;
- k) Whether the subject acted in a supervisory capacity;
- l) Whether the subject demonstrated insight and an understanding of the misconduct;
- m) Whether the subject implemented corrective measures to avoid recurrence of the misconduct; and
- n) Whether the misconduct could undermine confidence in the standards of conduct of members of CPA Ontario or undermine the effectiveness of the regulatory role of CPA Ontario.

Harm or Risk of Harm

The extent of harm caused by the misconduct, including whether the misconduct caused or risked significant financial harm to member(s) of the public, as well as the number of people affected by the misconduct, are all considerations in determining the appropriate sanction. An effort to quantify the harm may be done by considering the type of financial transactions at issue, the number of transactions and the length of time over which they occurred, the amount of money lost, and the number of people affected by the misconduct.

In addition to financial harm, professional misconduct may cause emotional, physical, and mental harm to members of the public.

Furthermore, misconduct may cause reputational harm to the profession. The impact of the misconduct on the reputation and integrity of the profession as a whole should be a relevant consideration.

Prior Misconduct

The subject's criminal record or record of prior disciplinary history, either with CPA Ontario or another regulatory authority, as well as any guidance or admonishment previously given by the PCC for similar or identical misconduct, may be a serious aggravating factor that may warrant a more severe sanction than would otherwise be imposed. The existence of a prior discipline history may suggest that the previous sanction imposed on the member, student or firm did not achieve the goal of specific deterrence in that it did not act as a sufficient deterrent. Such circumstances may warrant progressively more severe sanctions for each successive finding of professional misconduct.

Additionally, in cases of recurring misconduct, the recurrence may also demonstrate that the member, student or firm is unwilling to abide by the regulatory authority of CPA Ontario. This prevents the regulator from fulfilling its obligation to regulate the profession in the public interest. In such circumstances, it is open to the Discipline Committee to find that the subject is ungovernable. Where a finding of 'ungovernability' has been made, the sanctions of revocation of membership or deregistration are warranted.

Where the prior misconduct is different in nature and/or where a significant amount of time has passed since its occurrence, the prior misconduct, while still relevant, may have less weight.

Findings and Admissions in Related Proceedings

CPA Ontario's Code of Professional Conduct and Student Code of Conduct (the "Codes") require members, students and firms to notify CPA Ontario after having been convicted in any jurisdiction of an offence of fraud, theft, or similar offences related to financial matters, or a serious criminal offence that is not related to financial matters but that is of such a nature that it diminishes the good reputation of the profession or fails to serve the public interest, or any repeat criminal offence.

In addition, members, students and firms are required to report to CPA Ontario any finding of guilt or settlement with respect to violations of securities legislation and certain violations of tax laws.

Findings or admissions in related proceedings are relevant in determining an appropriate sanction. A criminal offence or breach of other laws/regulatory obligations, as outlined above will also diminish the good reputation of the profession and put the public at risk. Accordingly, the related criminal and/or regulatory sanction(s) imposed may be a factor considered when determining the appropriate sanction.

Cooperation

The Codes require members, students, and firms to cooperate promptly and fully in the regulatory processes of CPA Ontario. This includes investigations into professional conduct, disciplinary or other hearings, and appeals of any decisions resulting from such proceedings.

The Codes require a member, student or firm to promptly reply to any communications, produce documents and attend in person when required by CPA Ontario.

Where failure to cooperate demonstrates that a member, student or firm is ungovernable, the sanction of revocation of membership or deregistration is warranted.

The Impact of Previous Decisions

In exercising its discretion, the Discipline Committee may consider any sanction previously ordered in circumstances involving similar types of professional misconduct. However, the Discipline Committee is not bound by its prior decisions. While prior decisions may be of assistance, a sanction will ultimately be determined by the Discipline Committee in light of the specific facts of the particular case and of current circumstances and concerns of the public and the profession.

The Discipline Committee may exercise its discretion to depart from previously established ranges of sanction and to impose a sanction that it concludes is appropriate in the circumstances of a particular case and that is appropriately responsive to the evolving needs and nature of the profession, and the challenges with which it is faced.

Types of Sanctions Imposed

The Discipline Committee may impose any of the sanctions set out in section 35(4) of the Act.

Sanctions may be imposed alone or in combination, depending on the nature and seriousness of the misconduct, any relevant aggravating or mitigating circumstances, the applicable sanctioning principles, and of current circumstances and concerns of the public and the profession.

Fines

A fine is a monetary sanction that can be imposed upon a member, student or firm. While fines range in quantum, there is no statutory maximum in respect of the fine that may be imposed by the Discipline or Appeal Committees.

To ensure that the principles of specific and general deterrence are achieved, the public is protected, and the reputation of the profession is maintained, the amount of a fine should not merely constitute 'the cost of doing business or a licence fee'.

The quantum of a fine should also reflect current economic realities and social values. Fines previously levied for similar misconduct may be insufficient to meet current objectives of deterrence and denunciation or in light of an evolving professional and regulatory landscape.

Suspensions

The Discipline Committee may suspend a subject's membership in CPA Ontario for a specified period. A suspension may include such terms and conditions that the Discipline Committee considers appropriate in the circumstances.

A suspension may be particularly warranted where the misconduct involved elements of dishonesty, repetitive acts of deceit or negligence, or significant failures to comply with professional standards. Additional considerations relating to the potential implementation of a suspension include deliberateness or recklessness of the misconduct, the duration of the misconduct, the risk or extent of the harm caused by the misconduct, the likelihood of recurrence of the misconduct, and the existence of a prior disciplinary record.

Where a suspension is found to be appropriate in the circumstances of the case, it should be significant enough that it does not amount to a mere inconvenience to the member. Conversely, a suspension should not be tantamount to a revocation. The objectives of specific and general deterrence should be weighed against a member's prospect for rehabilitation.

While each case is fact specific, the PCC will generally seek periods of suspension of six months or greater in order to effectively meet sanctioning principles and to address issues of current concern to the public and the profession. Circumstances of the case, which include mitigating factors, may warrant otherwise.

Revocations

Revocation of membership or deregistration is warranted where the protection of the public interest or reputation of the profession requires that the member, student or firm be removed from the profession. Revocation or deregistration is the most severe sanction that can be imposed by the Discipline Committee.

The following is an illustrative, non-exhaustive list of the types of misconduct that may warrant a revocation of membership or deregistration:

- Dishonesty and/or serious ethical misconduct, such as theft or tax evasion;
- The subject has demonstrated an unwillingness to comply with regulatory requirements (ungovernability);
- The subject does not recognize that his/her conduct was improper;
- The misconduct has caused significant harm to the public;
- The misconduct involves criminal or quasi-criminal activity; or
- The subject has been convicted of or admitted to serious offences in proceedings initiated by other regulators, or the criminal justice system.

Practice Restrictions

Practice restrictions are generally imposed in cases of pervasive failures to meet professional standards or failures to maintain professional competence in a specific area of practice.

In certain circumstances, a restriction on performing certain types of engagements may strike an appropriate balance between the objective of protecting the public and allowing the member to practise in areas in which he or she is competent. The potential for rehabilitation may also be a relevant consideration.

Notice and Publicity

The publication of disciplinary sanctions acts as both a specific and general deterrent and serves an important continuing education function for members of the profession.

CPA Ontario Regulation 6-2 requires that notice of all disciplinary hearings, settlement agreements, decisions, orders and written reasons of the Discipline Committee be posted on CPA Ontario's website.

In addition, notice of findings of professional misconduct, along with brief particulars of the misconduct, the name of the subject of that finding and the sanction(s) imposed is required to be given to:

- All members;
- The Public Accountants Council, if the member is licensed or authorized to practise public accounting; and
- All provincial chartered professional accounting bodies.

Notice of the revocation of the membership of a member, as well as of any restriction, suspension or revocation of a Public Accounting Licence or Public Accounting Licensing Board's Certificate of Authorization, is required to be given in a newspaper, typically in the geographic area where the subject practiced or resides, at the subject's expense unless otherwise ordered by the Discipline Committee.

Newspaper publication may be ordered in other cases when such notice is necessary and appropriate in order to bring a specific matter to the attention of the public.

Tribunal proceedings should in general be open to the public and tribunal decisions should be accessible to the public. This is particularly important to CPA Ontario because it is a self-governing professional regulatory body. It allows members of the public and the profession to observe the outcome of disciplinary proceedings. This serves to encourage public confidence in the ability of CPA Ontario to effectively govern the profession and it serves to educate and notify the profession of regulatory issues of which members, students and firms should be made aware.

Rehabilitative Measures

In some cases, a sanction order may be rehabilitative or remedial in nature. For example, a rehabilitative or remedial order may be warranted where the misconduct at issue relates to the technical standards of the profession. Such orders aim to ensure that the subject will practice in a manner that complies with the standards of the profession, thus strengthening the subject's practice as well as the reputation of the profession.

Orders primarily directed at a subject's rehabilitation may be appropriate where the subject is governable, and is both willing to be, and capable of being, rehabilitated.

Rehabilitative measures may include, for example, completion of specified professional development courses and a period of practice supervision followed by reinvestigation by the PCC. The costs associated with such measures are to be borne by the member.

Orders for reinvestigation are intended to ensure that any rehabilitative measures imposed have achieved their purpose. If a reinvestigation demonstrates that a member has not been successfully rehabilitated, the likely outcome would be a further disciplinary proceeding.

Impact of Non-Compliance with Orders

Failure to comply with any terms of an order of the Discipline or Appeal Committee, including a failure to pay a fine or a costs award, may result in a period of suspension, followed by revocation of membership or deregistration in cases of continuing failure to comply.

It is within the discretion of the Discipline or Appeal Committee to order the immediate revocation of membership or deregistration for failure to comply.

Settlement agreements approved by the Discipline Committee are enforceable in accordance with their terms and, together with orders of the Discipline Committee and orders of the Appeal Committee are enforceable in the courts.

Any consequence set out in an order or settlement agreement with respect to non-compliance with its terms also applies to the requirement to pay costs.