

IN THE MATTER of the *Certified Management Accountants Act, 2010*, Statutes of Ontario 2010, C.6, Schedule B;

AND IN THE MATTER of the *Statutory Powers Procedure Act*, Revised Statutes of Ontario 1990, c.S.22, as amended;

AND IN THE MATTER of a disciplinary proceeding pursuant to Sections 32 and 33 of the Bylaws of the Certified Management Accountants of Ontario, as to complaints regarding the conduct of or actions of Kanagaratnam Ragulan.

BETWEEN:

Certified Management Accountants of Ontario  
("CMA Ontario")

(Applicant)

-and-

Kanagaratnam Ragulan (the "Respondent")

(Respondent)

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**DECISION AND REASONS OF THE DISCIPLINE COMMITTEE**

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The Discipline Committee held a Hearing at Victory Verbatim, Ernst & Young Tower, Suite 900, 222 Bay St., Toronto, Ontario M5K 1H6, on  
Thursday, 6 October 2011  
Wednesday, 12 October 2011, and  
Tuesday, 10 January 2012,

to hear evidence, and submissions and argument and to deliver its decision; all to consider matters arising out of a complaint regarding the conduct of Kanagaratnam Ragulan, a Member of Certified Management Accountants of Ontario.

The panel of the Discipline Committee conducting the hearing was composed of:

Eran Goldenberg, FCMA (Chair)

James Karas, (Public Member)

Betty Wong, CMA

Counsel for the Applicant was Ms. Catherine M. Patterson of Ferguson Patterson, Barristers & Solicitors.

The Respondent was present in person throughout. On 6 October 2011, he was represented by Michael Girard as counsel. Before the proceedings resumed on 12 October 2011, the Respondent had discharged his counsel, and the Respondent continued without representation.

Counsel for the Discipline Committee was Mr. Hugh M. Kelly, Q.C., of Miller Thomson, Barristers & Solicitors.

**Preliminary Matters**

The parties confirmed that there were no objections to the matter proceeding in accordance with the Rules of Procedure, nor as to the jurisdiction of the Discipline Committee to hear the matter.

Ms. Patterson moved that the name of the complainant and the complainant's corporation be redacted from the public record. The applicant argued that Mr. Ragulan's defence included damaging allegations with regard to the complaint's tax return. In the interests of encouraging other complainants to come forward the applicant asked that information identifying the name of the complaint and her corporation be redacted from the public record.

Mr. Girard opposed the motion on the grounds that as the Hearing was not conducted *In-Camera*, there were no reasons for suppressing the names

Initially reserving its decision on the motion, the Discipline Committee subsequently DIRECTED that the complainant's name and complainant's corporation shall be redacted from the Decision and Reasons, and from the record of exhibits.

### **Charges**

Ms. Patterson tendered a Notice of Return of Hearing in this matter dated June 24, 2011; this was marked as Exhibit 1.

Ms. Patterson read the charges (as set out in the Notice of Return of Hearing, Exhibit 1), as follows:

- 1) That Kanagaratnam Ragulan offered management accounting services on a contractual or fee for service basis to the complainant, the complainant's husband and the complainant's corporation either individually or through a sole proprietorship, partnership or corporation in which Kanagaratnam Ragulan, and/or persons with whom Kanagaratnam Ragulan did not deal at arm's length, are principals, owners, or part owners without registering the practice of Kanagaratnam Ragulan with CMA Ontario;
- 2) That Kanagaratnam Ragulan failed to provide/obtain a Letter of Engagement or Contract regarding the services to be performed for the complainant, the complainant's husband and the complainant's corporation;
- 3) That Kanagaratnam Ragulan failed to provide adequate and/or competent accounting services to the complainant, the complainant's husband and the complainant's corporation, particulars of which include:
  - (a) failing to include opening and closing inventories in the complainant's husband's 2005 Statement of Business Activities;
  - (b) failing to expense accounting fees in the complainant's husband's 2005 Statement of Business Activities;
  - (c) failing to expense accounting fees in the complainant's 2006 and 2007 Statement of Business Activities;
  - (d) alternating declarations of business activities between the complainant and the complainant's husband;

- (e) failing to attend meetings with the CRA auditors in January 2009 with the complainant's husband after agreeing to do so;
  - (f) failing to ensure that CRA filings for income tax and sales tax presented consistent information;
  - (g) failing to properly prepare the 2007 tax returns; and
  - (h) failing to prepare the 2008 financial statements and tax returns for which payment had been received;
- 4) That Kanagaratnam Ragulan purported to justify the failure to provide adequate management accounting services to the complainant, the complainant's husband and the complainant's corporation by reason of the low fee.

BY REASON OF the foregoing, it is alleged that Kanagaratnam Ragulan is guilty of professional misconduct as that term was defined in Sections 20(2)(a) and 20(2)(b) of the Bylaws in effect as of August 2002 and are in breach of Sections 19, 21(a)(i), 21(a)(ii), 21(a)(iii), 21(c)(iv), 21(d)(vi), and 21(e)(v) of the Bylaws in effect as of August 2002 and Rules 1, 8, and 11(e) of the Rules For Independent Consulting CMAs Offering Services to the Public in effect as of August 2001.

### **Plea**

The Respondent pleaded not guilty to the charges.

### **Extracts**

Relevant extracts from the Statute, Bylaws and Regulations of CMA Ontario are set out in Appendix 1.

### **Exhibits**

The complete list of exhibits is set out in Appendix 2.

### **Proceedings**

#### ***On the first day, 10 October 2011***

Ms. Patterson called four witnesses for CMA Ontario: the complainant, the complainant's husband, Mr. Glen Watson and Ms. Katharine M. Harvey. Mr. Girard called Siva Gunaratnam and Mr. Ragulan.

#### ***On the second day, 12 October 2011,***

Mr. Ragulan moved for an adjournment on three grounds:

- on this day, 12 October 2011, the day of a full moon, is a religious holiday in his country;
- he was now unrepresented and had expected to be consulted as to a new date for continuation of the Hearing;

arising out of the first day of the Hearing, he had more materials to present and needed time to produce them.

Ms. Patterson disputed the calculation of the occurrence of the full moon at Toronto, noted that this date had been confirmed with Mr. Girard prior to his discharge by Mr. Ragulan, and required that Mr. Ragulan identify the new materials he sought to introduce.

Mr. Ragulan asserted on the first two grounds that Ms. Patterson was incorrect, and identified the documents as telephone conversations or correspondence between Mr. Ragulan and Ms. Harvey, and as correspondence between Mr. Ragulan and the complainant.

Ms. Patterson advised the Committee that the telephone conversations or correspondence with Ms. Harvey had related to his possible resignation as a CMA; and pointed out that, in accordance with the principle in *Browne v. Dunn*, the correspondence with the complainant would be inadmissible to contradict the testimony of the complainant unless the correspondence was put to her while she was giving evidence.

The Committee adjourned the Hearing until either 10 or 13 January 2012 as the parties would select and advise the members of the Committee.

***On the third day, 10 January 2012,***

Two motions were made to the Committee.

First, Ms. Patterson moved to amend the Notice of Hearing (Exhibit 1):

This motion would add the words “and August 2005” after the words “August 2002” in the third and fourth lines of the charges. She tendered extracts from the Bylaws of August 2002 and August 2005 both of which were entered as, respectively, Exhibit 11, and Exhibit 12. In addition, She tendered a copy of the decision of Justice D. A. Fairgrieve in the case of *Her Majesty the Queen v. Colin B. Cameron*, as standing for the proposition that the amendment could be made as long as it did not prejudice the Respondent in his ability to make full answer and defence.

Mr. Ragulan responded that he should have an adjournment to study and consider this amendment or that the charges should be withdrawn. He asserted that he was not represented by a lawyer, and that the rights of an accused are paramount.

In reply, Ms. Patterson asserted, on the basis of *Her Majesty the Queen v. Colin B. Cameron*, there is no prejudice and does not prevent him from making a full answer and defence.

Second, Mr. Ragulan moved to have Mr. Karas recuse himself:

In this motion, Mr. Ragulan asserted that, since Mr. Karas had been a member of the Panel of the Discipline Committee that had considered another complaint, he should not be sitting on the Panel in this matter.

In response, Ms. Patterson stated quite categorically that there was no reason to even suggest that Mr. Karas was in any way biased, and that this Panel of the Discipline Committee should not even entertain this motion.

After retiring to consider the motions, the Discipline Committee made the following rulings:

As to the motion to have Mr. Karas recuse himself:

The Committee refused the motion since there was not any reason to believe the he was biased in any way.

As to the motion to amend the Notice of Hearing (Exhibit 1):

The motion to amend the charges in the Notice of Hearing (Exhibit 1) to add the words “and August 2005” after the words “August 2002” in the third and fourth lines is granted.

The reasons for granting this amendment are as follows:

- as a CMA, Mr. Ragulan is deemed to know his professional obligation to comply with the CMA Ontario Bylaws;
- there is no prejudice to him nor produce any unfairness to him; as pointed out by Justice Fairgrieve in Exhibit 13,  
“... prejudice in the requisite sense means more than simply depriving the accused of the benefit of an ill-conceived legal argument that lacked validity in the first place. ... I think prejudice to the accused must relate to procedural unfairness or an interference with his ability to make full answer and defence or potentially produce some other identifiable unjust consequence.”
- an adjournment would only further delay the proceedings.

During the balance of this day, the parties made their submissions, and the Discipline Committee then retired to consider its decision.

### **Summary of Evidence**

The Discipline Committee heard the witnesses, reviewed all of the exhibits tendered as evidence, and considered the submissions of counsel for CMA Ontario and of Mr. Ragulan. It is convenient to summarize this evidence.

As part of her submissions, Ms. Patterson had prepared a summary of the evidence, a copy of which she handed to the Panel, with a copy to Mr. Ragulan. The Discipline Committee is grateful to Ms. Patterson for providing this summary and adopts portions as part of these reasons.

Mr. Ragulan was introduced to the complainant, the complainant’s husband and the complainant’s corporation in 2003 on the recommendation of a mutual associate. The complainant testified that she engaged Mr. Ragulan’s services as an accountant. In cross examination she said “Ragul is the one I hired.”

All of the invoices and bank statements would be picked up from the restaurant on a monthly basis and the complainant would email him the restaurant’s sales, breaking down in detail the PST and GST as well as gross and net earnings. Cash was paid for these services, and the complainant stated that neither she nor her husband ever received an invoice or receipt for such payment. When the corporation’s financial statements were prepared nothing was expensed for accounting fees.

Problems arose for the complainant as a result of a CRA audit in 2007. The complainant and the complainant’s husband met with CRA officials and gave them all of the information they required. The complainant and the complainant’s husband requested Mr. Ragulan’s assistance in dealing with the audit. He requested that they pay him \$500 for this assistance up front.

The complainant paid Mr. Ragulan \$250 initially. A date of January 14, 2009 was arranged to meet with the auditor. Mr. Ragulan cancelled that meeting, explaining, in his response to the complaint (Exhibit 2.B) that he did so because of a dispute with the client over the fee (i.e. he had not been paid the balance of the \$500 he had requested). An email from Hasnatul Sekander to the complainant dated January 13, 2009 (Exhibit 2.A p.15) notes that Mr. Ragulan had agreed to reduce his request for \$250 (mistakenly noted as \$25) to \$150 but that Mr. Ragulan had booked another appointment in Oshawa and so would have to cancel the meeting with CRA for the next day. That email requests a response to one of the employees who is helping “Ragul look after your companies (sic) accounts and he is still taking full responsibility of it.”

Later that same day Hasnatul Sekander wrote to the complainant advising her that a new date for the audit meeting had been arranged for January 22 at 10:30 (Exhibit 2.A p.15).

On January 21, 2009 Hasnatul Sekander wrote to the complainant asking if there was an agreement to the \$150.00. The complainant responded to him the next day saying (Exhibit 4):

“We will pay Ragul the balance owing of \$150 cash payment. We are trusting that Ragul will bring this audit to an end and that he will communicate this with the auditor as it has gone on for too long. I am asking Ragul to make sure that the auditor has all the information they need so that it will come to fruition in favour of us. This payment will be considered full payment for the audit, however, if Ragul has to go and/or provide further information for this audit, it will be considered fully paid. [The complainant’s husband] will meet him at the office at 10:30 am today and will pay him after the meeting is concluded.”

Mr. Ragulan testified that he refused to attend at the audit on these terms because the complainant’s terms of payment were improper because it tied payment to the results of the audit. The complainant complained that Mr. Ragulan did not advise her and her husband that he would not attend; and that when the complainant’s husband went to the meeting, he was informed that Mr. Ragulan was not attending as a result of a death in the family.

A further meeting was arranged with CRA for January 29, 2009 at 10:30. On January 23, 2009, the complainant sent an email to Mr. Ragulan and Mr. Sekander confirming the new time of the audit, and requested that Mr. Ragulan confirm he would attend. Not having received such confirmation, the complainant emailed Mr. Ragulan on January 28, 2009 requesting that he confirm his attendance at the audit the next day. Mr. Ragulan responded that he had never received confirmation that the complainant and the complainant’s husband would be paying the \$250, second half of the audit fee (not \$150 as previously agreed) prior to his attendance at the CRA meeting and accordingly he had made other plans. The complainant’s husband attended the audit alone and it was at this point that he realized the seriousness of the situation whereupon the complainant and her husband hired Mr. Glenn Watson.

Mr. Ragulan testified that he was directed in his actions by Siva Gunaratnam who purchased the business of Kasi & Visvar in 2006. Mr. Ragulan testified that he was instructed to charge \$500 for an audit regardless of the work that is done and that until the fee is paid nothing is done. Mr. Ragulan testified, “Unless we have the money prior to going to the audit we are not to do anything.” In fact, all he did was to pick up and deliver documents.

Mr. Ragulan retained a lawyer, Balachandran Muthaiah to collect the \$250 “audit balance.” The invoice from Kasi & Visvar for this work is dated November 11, 2007 – which predates the audit by 18 months. On cross examination Mr. Ragulan confirmed that the only work he did relative to the audit was to pick up and deliver some financial records and deliver them to the CRA office in Scarborough. He did not review the records or meet with CRA at the time of the delivery.

It was Mr. Watson who discovered that the income disclosed for income tax purposes on their tax returns did not match the income disclosed for GST purposes. In his evidence, Mr. Watson expressed confidence that this discrepancy was the reason for the CRA audit. Through Mr. Watson’s efforts, the complainant and her husband also learned of numerous other discrepancies and errors in their tax returns. Examples include

- (a) failing to include opening and closing inventories in the complainant’s husband’s 2005 Statement of Business Activities;
- (b) failing to expense accounting fees in the complainant’s husband’s 2005 Statement of Business Activities;
- (c) failing to expense accounting fees in the complainant’s 2006 and 2007 Statement of Business Activities;
- (d) alternating declarations of business activities between the complainant’s husband and the complainant; and
- (e) failing to ensure that CRA filings for income tax and sales tax presented consistent information;

Mr. Ragulan acknowledged these failings but pointed out that he, in fact, did not perform the accounting and bookkeeping work such as that for which the complainant and the complainant’s husband paid, and he took no responsibility for its accuracy. He said that the services provided by Kasi & Visvar were restricted to picking up the monthly invoices and bank statements (and the cheque or cash payment), entering the information into Excel and/or QuickBooks and then doing the tax returns. Mr. Ragulan did not perform any of these functions, and he did not review any of the entries. At first the work was done in-house, and then later overseas in India. Mr. Ragulan testified that no one at Kasi & Visvar was responsible for the complainant’s corporation accounting work. Mr. Ragulan said that his job was meeting people, talking on the phone etc. ... but that he doesn’t like to do accounting work.

In re-examination by his lawyer, Mr. Ragulan acknowledged that no one attended to issues raised by staff where they were unsuccessful in attempts to do something. On the other hand, Mr. Sekander’s email asserts (Exhibit 2.A. p.15) “If any questions please reply to the employees for they are only trying to help Ragul look after your companies (sic) accounts and he is still taking full responsibility of it.”

In his response to the letter of complaint at page B3 of Exhibit 2, Mr. Ragulan explains that for a fee of \$100 a month:

“I cannot be, as a CMA, with a 25 years of experience do everything, meaning preparing financial statement, calculation and calling her to inform her about the PST and GST amounts, etc. doing it myself. The company have to use other staff

in order to run a business efficiently and since the beginning I always tell her it's not me alone.”

According to her testimony, the complainant, while aware that others were helping Mr. Ragulan look after the accounts, did not know that Mr. Ragulan had no involvement in the accounts of the complainant, the complainant's husband and the complainant's corporation, and that he took no responsibility for the accuracy of the work.

There was a discrepancy in the evidence as to the ownership of Kasi & Visvar:

Mr. Ragulan's own letter dated July 16, 2009, in response to the complaint (Exhibit 2.B. p.1) advised the Complaints Committee that his father owns Kasi and Visvar.

The letter dated April 22, 2009, from the lawyer, Mr. Balachandran Muthaiah, to the complainant and/or the complainant's husband and copied to Mr. Ragulan o/a Kasi & Visvar (Exhibit 2.A. p.17) stated that he “acts for Mr. Kanagaratnam Ragul o/a Kasi & Visvar in the collection of an outstanding account for the services rendered in the latter part of 2009. My client indicates that he had provided professional accounting services for you or to your business [the complainant's corporation]”

Mr. Siva Gunaratnam testified that he was the owner of Kasi & Visvar through a numbered company, 1428705 Ontario Inc., having purchased it in 2006 from Mr. Ragulan's father.

Two invoices to the complainant's corporation show a return address of Mr. Ragulan's home (Exhibit 2.A. pp. 11 and 12).

Mr. Gunaratnam testified that he is a student studying social work, and a community activist. He has a very minimal understanding of accounting, unable to discern the difference between bookkeeping and accounting; he seemed to know very little about the business. He did not produce any share certificates, not any corporate minute books to verify his ownership of the numbered company.

What is displayed on different internet sites demonstrates that Kasi & Visvar is an accounting firm, and that Mr. Ragulan is **a** principal if not **the** principal. The following internet references, all in Exhibit 2.C, illustrate:

at page 16, the home page of the Kasi & Visvar website describes the firm as a full service accounting firm in which the email contact is Mr. Ragulan;

at page 18 the Service Overview of Kasi & Visvar is represented as Certified Management Accountants;

at page 19 the Firm Profile of Kasi & Visvar is represented as having been established in the year 2000 with two CMAs and 9 accounting assistants, providing “a one-stop solution for businesses”;

at page 20, the testimonial for Kasi & Visvar from a client singles out Mr. Ragulan;

at pages 21 and 22, a Canpages site provides the contact particulars for Kasi & Visvar at the home address, telephone and fax numbers of Mr. Ragulan, and displays a map to that address;

at pages 23-25, the posting of the Kasi & Visvar blogspot is signed by Kasi & Visvar, Accountants and Management Consultants, recording home telephone and fax numbers of Mr. Ragulan;

at pages 27 and 28, the Facebook listing for Kasi Visvar records the name of Kasi & Visvar, Accountants and Management Consultants, and provides the contact particulars at the home address, telephone and fax numbers of Mr. Ragulan.

Mr. Ragulan acknowledged that there were inaccuracies in the information on these web sites but declined to accept responsibility for those inaccuracies, claiming that various students and others were responsible for what is contained in the postings and that he neither gave instructions for nor reviewed the content.

As evidence that he was only an employee of Kasi & Visvar, Mr. Ragulan tendered two exhibits:

Exhibit 7, a letter dated June 7, 2010, from Siva Gunaratnam on the letterhead of Kasi & Visvar, addressed to Ms. Katharine Harvey, stating that “Mr. K. Ragulan at all time worked under my instructions. In all matters he consulted me on issues.”; and

Exhibit 8, copies of his CRA T4 slips for the years 2007, 2008 and 2009 (Exhibit 8).

When confronted with the fact that the form of the latter slips was the 2010 form, he acknowledged that these were not the original T4 slips, but that, for the purposes of the Hearing, he had printed the forms from the raw data on his computer records, and that the computer program itself printed the data information on the 2010 form.

### **Submissions on Charges**

#### ***Ms. Patterson***

Ms. Patterson made the following submissions on the evidence.

In his dealings with the complainant and the complainant's husband over the audit Mr. Ragulan failed to act with responsibility for and fidelity to public needs [s. 21(a)(i)] and failed to act with fairness and loyalty to his clients [(s. 21(a) (ii)].

Mr. Ragulan did not provide the complainant and the complainant's husband with a clear understanding of the scope and objectives of the work that he was going to do for the \$500 fee contrary to s. 21(c)(iv) of the Bylaws.

Although there is nothing wrong with the delegation of professional activities if the client is aware of the delegation and the CMA remains responsible for the final work product, in this case the client, while aware that others were helping Mr. Ragulan look after the accounts, did not know that Mr. Ragulan had no involvement in their accounts and took no responsibility for the accuracy of the work. A CMA, moreover, cannot excuse shoddy work by saying “I wasn’t paid enough to do proper work.”

Such an attitude is inconsistent with two specific Bylaw requirements:

as set out in section 21(d)(vi) of the Bylaws, a CMA will uphold the principle of adequate compensation for management accounting work

as set out in Rule 11(e) of the Rules for Independent Consulting CMAs, due care will be exercised throughout the application of prudent and professional judgement.

When asked about the letter dated April 22, 2009, from Mr. Muthaiah to the complainant (Exhibit 2.A. p.17), Mr. Ragulan said that Mr. Muthaiah was also a client, demonstrating there is another client who is unaware that Mr. Ragulan and Kasi & Visvar are not one and the same.

The evidence respecting the internet references to Kasi & Visvar (Exhibit 2.C. pp.16-35) does not suggest a firm in which all of the information is input offshore and that all Mr. Ragulan does is to talk on the phone to people; nor is it consistent with Mr. Ragulan’s response to the Complaints Committee (Exhibit 2.B. p.1) “As of now I’m spending very minimum hours at Kasi and Visvar, only if it’s absolutely necessary for me to get involved.

The evidence taken as a whole indicates that Mr. Ragulan is the true owner of Kasi & Visvar, and as such

was obligated to register the practice and

is a consulting CMA required to comply with the Rules governing Consulting CMAs.

Accordingly Mr. Ragulan was in breach of

Rule I which requires him to register his practice;

Rule 8 requiring a Letter of Engagement or Contract when the fees are expected to be greater than \$200; and

Rule 11(e) requiring him to take due care by applying prudent and professional judgment.

In summary, Ms. Patterson submitted that the business model upon which Kasi & Visvar was based was premised on Mr. Ragulan’s breach of the By-law requiring a Member to act at all times with competence through devotion to high ideals of personal honour and professional

integrity of Mr. Ragulan. Mr. Ragulan was the front man. His role was to meet with the clients and he was and continues to be showcased prominently in its internet advertising. Clients can well anticipate that they will be provided with competent services from CMAs and their accounting assistants. Instead what they obtain, really, is merely a courier service to persons in India who input data under the direction of and responsibility to no one. It is a “bait and switch”, and if Mr. Ragulan was truly nothing more than an employee, then at least after August 2005 he was in breach of his obligation to ensure that his employer abided by the By-laws of the Corporation.

### ***Mr. Ragulam***

The Respondent asserted that he had not breached any of his obligations as a CMA and that he should therefore not be found guilty of all of the charges.

Mr. Ragulan claimed that he is not an independent consulting CMA because neither he nor someone with whom he is not at arm’s length owns the practice of Kasi and Visvar. He asserted that the business of Kasi and Visvar was purchased by Mr. Gunaratnam from Mr. Ragulan’s father in 2006, and that there was no relationship between Mr. Gunaratnam and Mr. Ragulan other than employer-employee. He also stated that he did not determine the fees charged nor the steps taken to collect outstanding charges, but that he simply followed instructions given to him.

He stated that he had registered as a CMA offering his services to the public in 2006, that he had not requested its cancellation and that he had no idea how that cancellation had come about.

He contended that he was not responsible for the content of the web sites.

He asserted that the complainant and the complainant’s husband were not credible, as they had signed the certification that the information on the tax returns was accurate even though afterwards they blamed him for the errors.

He confirmed that he did not appear at the CRA meeting, but that was because the clients had refused to pay his fee.

Mr. Ragulan claimed that he could not be held responsible for the work done by Kasi & Visvar when, to the knowledge of the complainant, the work was done by others in the company.

It was Mr. Ragulan’s position that on the first two charges set out in the Notice of Hearing (Exhibit 1) it was reasonable to conclude that he was at arm’s length from Kasi & Visvar, and therefore should be found not guilty on these charges. It was his position on the last two charges set out in the Notice of Hearing that he was only an employee and therefore not responsible for any inadequacy in the services provided to the complainant, the complainant’s husband and the complainant’s corporation.

## **Analysis and Findings**

### ***General***

There were significant differences between the evidence led by Ms. Patterson, and that brought on behalf of Mr. Ragulan. The Committee is of the opinion that where the evidence was contradictory, reliance cannot be placed upon the evidence provided by Mr. Ragulan and his witness, but rather, must be placed upon other evidence. In particular, in some instances, the assertions put forward by Mr. Gunaratnam and Mr. Ragulan stretched credibility beyond the believable.

### ***Fees and Compensation***

When Mr. Ragulan started to provide the services to the complainant in 2003, she understood that there would be a monthly charge of \$80 which she paid in cash (Exhibit 2.A.p.1). She also understood that the fees for attending the meeting with CRA would be \$500, payable half in advance and the balance upon completion (Exhibit 2.A.p.3), although there were subsequent negotiations as to the amount of the balance. On this issue, the Committee cannot find that Mr. Ragulan breached Section 21.(c)(iv).

The Committee assessed that there was insufficient evidence to permit it to conclude that Mr. Ragulan had failed to uphold the principle of adequate compensation. On this issue, the Committee cannot find that Mr. Ragulan breached Section 21.(d)(vi).

### ***Ownership and Control of Kasi & Visvar***

The Committee considered the evidence of ownership of Kasi & Visvar, but considers that the issue of control of Kasi & Visvar is of more importance, in fact pivotal, in considering the charges of professional misconduct against Mr. Ragulan.

The evidence as to the ownership and control of Kasi & Visvar is contradictory. On the one hand the web sites indicate that Ragul Kanagaratnam is the principal of Kasi & Visvar (Exhibits 2.C. page 20 and following). On the other hand, Mr. Ragulan testified that as of July 1, 2006 Kasi & Visvar was owned by Mr. Gunaratnam. In his July 2009 response to the Chair of the Complaints Committee (Exhibit 2.B., page 1), he stated that Kasi & Visvar was owned by his, Mr. Ragulan's, father. The Committee was not impressed with his "explanation" that the response to the Complaints Committee referred to time period in the past in part because, as previously noted, there is no such indication in the letter.

Supporting his assertion that he was just an employee of Kasi & Visvar, Mr. Ragulan tendered T4 slips (Exhibit 8) which were created using the 2010 tax form showing a salary amount quite inconsistent with what one would expect of a qualified CMA. The Committee simply does not accept that this, or any other credible evidence, establishes that Mr. Ragulan was just an employee. On the contrary, the Committee has concluded that Mr. Ragulan, whether or not the formal owner, was at all material times in control of Kasi & Visvar. Even if the Committee were to accept the assertions of Mr. Gunaratnam that he is the owner and director, the directing mind of Kasi & Visvar was Mr. Ragulan.

Taken as a whole, evidence suggested that Mr. Ragulan had significant responsibilities at Kasi & Visvar despite his assertion that he was not carrying on accounting work. The Complainant's

evidence was that Mr. Ragulan was in charge of the work that Kasi & Visvar did on her behalf. Mr. Gunaratnam testified that he was not very involved in the business and that Mr. Ragulan had responsibility for many key aspects of Kasi & Visvar's business. The Committee does not accept the veracity of his response that the reason for the listed address of Kasi & Visvar on its Facebook page listing being at Mr. Ragulan's home address, was for mail purposes only.

Mr. Ragulan placed much emphasis on the fact that he was at arm's length from the corporation that operated Kasi & Visvar, and therefore had no obligation to register as a Consulting CMA. But, given the nature of his relationship to Kasi & Visvar, the Discipline Committee finds that Mr. Ragulan was indeed offering his services to the public as a principal of Kasi & Visvar, and under the Bylaws and Regulations of CMA Ontario, was obliged to register his practice.

### ***Service Performance***

The Discipline Committee finds that Mr. Ragulan was negligent in performing the services he undertook for the complainant, the complainant's husband and the complainant's corporation. This is illustrated by the failure to communicate with his clients on a timely basis, or at all at times. In addition, he was responsible to the preparation of the GST Returns and the Income Tax Returns, and yet, the figures on the two Returns for the same time period did not correspond.

One must question what value Mr. Ragulan thought he could bring to the meeting with CRA in circumstances in which he or his office had made such basic errors on the financial statements and Mr. Ragulan claimed no oversight responsibility for them.

The Discipline Committee finds that Mr. Ragulan consistently tried to evade any personal responsibility for anything that was done or not done during the time (particularly the later time) that he was providing service to the complainant, the complainant's husband and the complainant's corporation. The failure to communicate with the clients; the deficiencies in the inputting of data on the computers of complainant, the complainant's husband and the complainant's corporation; the failure to prepare proper reconciliations; the failure to file accurate tax returns; the incorrect and/or misleading entries on the web sites — according to Mr. Ragulan's testimony, the responsibility for all of these were not his, but someone else's.

### ***Conclusion***

To perhaps state the obvious, these are findings that Mr. Ragulan failed to act responsibly with fidelity to client needs, with any sense of fairness to or with any real care for his clients. These findings demonstrate a person who failed to exercise the professional judgment, responsibility and prudence that is expected of a CMA.

Accordingly, the Discipline Committee finds that the Respondent failed to comply with the requirements of section 19 of the By-laws; sections 21.(a)(i), 21.(a)(ii), and 21.(e)(v) of the Code of Professional Ethics; and Rules 1, 8 and 11.(e) of the Rules for Independent Consulting CMAs Offering Services to the Public. Such failures constitute professional misconduct by the Respondent as that term is defined in the By-laws, and the Professional Misconduct and Code of Professional Ethics Regulation of CMA Ontario.

## Submissions on Penalty

Ms. Patterson requested the following penalty:

under the authority of paragraph 6 of section 35(4) of the *Certified Management Accountants Act, 2010*, the Respondent be reprimanded, with the reprimand to be recorded on the Respondent's record;

under the authority of paragraph 8 of section 35(4) of the *Certified Management Accountants Act, 2010*, the imposition of a fine of \$5,000 payable within sixty (60) days;

under the authority of paragraph 11 of section 35(4) of the *Certified Management Accountants Act, 2010*, that within 6 months, the Respondent be required to comply with all of the professional practice requirements for Consulting CMAs offering financial statement preparation and income tax services to the public, including but not limited to registering all of his professional practices, and within 6 months, complete the Consulting CMA courses listed in 3(2)(a) and 3(3) of the Independent Consulting CMA's Offering Services to the Public Regulation;

under the authority of paragraph 11 of section 35(4) of the *Certified Management Accountants Act, 2010*, that the Committee order the Respondent to correct within 30 days all information as to his knowledge, credentials, experience and services, and remove inaccurate information from all his (and the companies he works for) websites, blogs and social media, such order to take effect immediately;

the notice of the decision and order of the Discipline Committee disclosing the professional misconduct be published and distributed to the Board of Directors of CMA Ontario, to the Members in the CMA Ontario journal, and on the CMA Ontario website, including the name of the Respondent;

under the authority of paragraph 10 of section 35(4) of the *Certified Management Accountants Act, 2010*, that if the Respondent breaches any of the order, Respondent's membership be revoked.

The Respondent advised that had nothing to say regarding penalty.

## Order

Having found the Respondent guilty of professional misconduct as noted above, the Discipline Committee unanimously orders as follows:

1. THE DISCIPLINE COMMITTEE FINDS AND DECLARES that Kanagaratnam Ragulan is guilty of professional misconduct as that term is defined in section 20(2)(a) and section 20(2)(b) of the Bylaws in effect as of August 2002 and August 2005; and in breach of sections 19, 21(a)(i), 21(a)(ii), 21(a)(iii) and 21(e)(v) of the Bylaws in effect as of August 2002 and August 2005; and Rules 1, 8, and 11(e) of the Rules for Independent Consulting CMAs Offering Services to the Public in effect as of August 2001; and not

guilty of a breach of section 21(c)(iv) or section 21(d)(vi) of the Bylaws in effect as of August 2002 and August 2005.

2. THE DISCIPLINE COMMITTEE ISSUES, under the authority of paragraph 6 of section 35(4) of the *Certified Management Accountants Act, 2010*, a Reprimand the particulars of which are attached to this Order; and DIRECTS that such Reprimand be recorded on the Respondent's record.
3. THE DISCIPLINE COMMITTEE ORDERS, under the authority of paragraph 11 of section 35(4) of the *Certified Management Accountants Act, 2010*, that:
  - a. notice of the decision and order of the Discipline Committee and brief particulars of the professional misconduct be published with the name of the Member and shall be distributed to the Board and to the Members in the CMA Ontario journal; and
  - b. the decision and order of the Discipline Committee, together with the written reasons for the decision and the name of the Member with brief particulars of the finding of professional misconduct, will be published and maintained in the public area of CMA Ontario's website;
4. THE DISCIPLINE COMMITTEE DIRECTS, under the authority of paragraph 8 of section 35(4) of the *Certified Management Accountants Act, 2010*, that the Respondent pay a fine of three thousand dollars (\$3,000); and SPECIFIES that such payment shall be made on or before the 60<sup>th</sup> day after the date of this Order.
5. THE DISCIPLINE COMMITTEE ORDERS, under the authority of paragraph 11 of section 35(4) of the *Certified Management Accountants Act, 2010*, that the Respondent shall take all steps necessary to ensure that all communications to or with the public regarding the Respondent's professional services including companies for or through which the Respondent works or provides services contain accurate information as to his knowledge, credentials, experience and services; and to take effect on the date pronounced, 10 January 2012, further DIRECTS that the Respondent shall, by 15 February 2012, correct or remove inaccurate information as to the same, from all websites, blogs and social media over which he, or companies for or through which the Respondent works or provides services, has authority, control or authorship rights.
6. THE DISCIPLINE COMMITTEE ORDERS, under the authority of paragraph 11 of section 35(4) of the *Certified Management Accountants Act, 2010*, that on or before 6 months from the date of this order the Respondent shall comply with all of the professional practice requirements for Consulting CMAs offering financial statement preparation and income tax services to the public, including but not limited to registering all of his professional practices (including Kasi & Visvar), and on or before 6 months from the date of this Order, completing the Consulting CMA courses listed in 3(2)(a) and 3(3) of the Independent Consulting CMA's Offering Services to the Public Regulation.
7. THE DISCIPLINE COMMITTEE ORDERS, under the authority of paragraph 11 of section 35(4) of the *Certified Management Accountants Act, 2010*, that the Respondent shall take one or more courses to cover "Professionalism and Ethical Behaviour" as he

may be guided or directed by CMA Ontario, to be commenced within one (1) year of this Order and to be completed promptly thereafter.

8. THE DISCIPLINE COMMITTEE UNANIMOUSLY DIRECTS, under the authority of paragraph 10 of section 35(4) of the *Certified Management Accountants Act, 2010*, that a failure to comply with any of this Order shall result in the revocation of the Respondent's membership.

Decision and Order rendered on the 10<sup>th</sup> day of January 2012, and these Reasons released on the day of February 2012.

## APPENDIX 1 – EXTRACTS FROM STATUTE, BYLAWS AND REGULATIONS

### Statute

The *Certified Management Accountants Act, 2010, S.O. 2010, C. 6 (the "CMA Act")* provides in part:

17. Subject to the by-laws, a member of the Corporation has the right to use the designations "Certified Management Accountant", "comptable en management accrédité", "Registered Industrial Accountant" and "comptable en administration industrielle", and to use the initials "C.M.A.", "CMA", "R.I.A." and "RIA".

35. (1) The discipline committee shall hear every matter referred to it by the complaints committee.

(3) The discipline committee shall find a member or firm guilty of professional misconduct if in the committee's opinion the member or firm is guilty of professional misconduct as defined in the by-laws.

(4) If the discipline committee finds a member or firm guilty of professional misconduct, it may by order do one or more of the following:

1. If at least two-thirds of the committee hearing the matter agrees, revoke the member's membership or the firm's registration.
2. Suspend the member's membership or the firm's registration for a period determined in accordance with the by-laws.
3. Despite section 17, direct that a member whose membership is suspended refrain from using any designation, term, title, initials or description implying that the member is practising as a Certified Management Accountant or a Registered Industrial Accountant during the period of suspension.
4. Determine the timing and manner of the return of a certificate of membership to the Corporation by an individual whose membership is suspended or revoked.
5. Impose restrictions or conditions on the right of the member or firm to practise as a Certified Management Accountant.
6. Issue a reprimand and, if the committee considers it appropriate, direct that the reprimand be recorded in the register.
7. Direct the member or firm to take any specified rehabilitative measure, including requiring the member or any member practising as a Certified Management Accountant through the firm to successfully complete specified professional development courses or to seek specified counselling or treatment.
8. Direct the member or firm to pay a fine and specify the timing and manner of payment.
9. Direct that the imposition of a measure under this subsection be postponed for a specified period or on specified terms, including the successful completion of specified courses of study.
10. Direct that a failure to comply with the committee's order shall result in the revocation of the member's membership or the firm's registration.
11. Make any other order that the committee considers appropriate in the circumstances.

(5) Unless the discipline committee orders otherwise, a final decision or order of the committee under this section takes effect on the day on which the time to appeal ... expires, if no notice of appeal is filed with the appeal committee in accordance with that subsection.

## By-laws

The By-laws of CMA Ontario in force as of August 2002 provide in part as follows:

### 19. Rules of Conduct

All Members will comply with and their conduct will be governed by the by-laws and Code of Professional Ethics of the Society and the rules, standards and policies established or adopted by the Board from time to time.

### 20. Professional Misconduct

(1) In this section, “negligence” means an act or an omission in the carrying out of the work by a Member that constitutes a failure to maintain the standards that a reasonable and prudent Member of equivalent designation in the Society would maintain in the circumstances.

(2) For the purposes of the by-laws, “professional misconduct” means:

- (a) negligence;
- (b) a breach by a Member of the Act or the by-laws:

...

### 21. Code of Professional Ethics

All Members will adhere to the following “Code of Professional Ethics” of the Society:

- (a) A Member will act at all times with:
  - (i) responsibility for and fidelity to public needs;
  - (ii) fairness and loyalty to such Member’s associates, clients and employers; and
  - (iii) competence through devotion to high ideals of personal honour and professional Integrity.

...

- (c) A Member will:
  - ...
  - (iv) take all reasonable steps, in arranging any engagement as a consultant, to establish a clear understanding of the scope and objectives of the work before it is commenced and will furnish the client with an estimate of cost, preferably before the engagement is commenced, but in any event as soon as possible thereafter.

- (d) A Member will:
  - ...
  - (vi) uphold the principle of adequate compensation for management accounting work; ...

- (e) A Member will:
  - ...
  - (v) endeavour to ensure that a professional partnership or company, with which such Member is associated as a partner, principal, director or officer abides by the Code of Professional Ethics and the rules of professional conduct established by the Society.

The By-laws of CMA Ontario in force as of August 2005 provide in part as follows:

**21. Code of Professional Ethics**

All Members will adhere to the following “Code of Professional Ethics” of the Society:

(e) A Member will:

...

(v) endeavour to ensure that a professional partnership or company, with which such Member is associated as a partner, principal, director, officer, associate or employee, abides by the Code of Professional Ethics and the rules of professional conduct established by the Society.

**Professional Misconduct and Code of Professional Ethics Regulation**

The Professional Misconduct and Code of Professional Ethics Regulation of CMA Ontario (the “Code”) provides in part as follows:

2.2 For the purposes of the by-laws, “professional misconduct” means:

...

(b) a breach by a Member, Student or Firm of the Act or the by-laws;

...

3.1 A Member, Student or Firm will act at all times with:

(a) responsibility for and fidelity to public needs;

(b) fairness and loyalty to such Member’s, Student’s or Firm’s associates, clients and employers; and

(c) competence through devotion to high ideals of personal honour and professional integrity.

3.3 A Member, Student or Firm will:

(d) take all reasonable steps, in arranging any engagement as a consultant, to establish a clear understanding of the scope and objectives of the work before it is commenced and will furnish the client with an estimate of cost, preferably before the engagement is commenced, but in any event as soon as possible thereafter.

3.5 A Member, Student or Firm will:

(e) endeavour to ensure that a professional partnership or company, with which such Member, Student or Firm is associated as a partner, principal, director, officer, associate or employee, abides by the Code of Professional Ethics and the Rules of Professional Conduct established by CMA Ontario.

**Independent Consulting CMAs Offering Services to the Public Regulation**

The *Rules for Independent Consulting CMAs Offering Services to the Public Regulation* in force August 2001 provide in part:

“Consulting CMAs” are self-employed, independent strategic and financial management professionals who offer their services, either directly or indirectly, individually or through a sole proprietorship, partnership or corporation, in which they or persons with whom they do not deal at arm’s length are principals, owners or part owners, to the public on either a

contractual or fee for service basis and the client relies on the Member's expertise by virtue of their membership in the Society.

1. Practice Registration

All Consulting CMAs, part-time and full-time, are required to register their practice with the Society within sixty days of commencing a practice. Practices will be considered as operative on the earliest date that services are provided. Failure to register may result in sanctions.

8. Letter of Engagement/Contract

Where fees for an engagement are greater than \$200, a Consulting CMA will provide/obtain a Letter of Engagement or Contract outlining the service to be performed, the timing of delivery, the terms and basis of the fee structure, and other information that is relevant to the engagement.

A Letter of Engagement / contract will be renewed at least every three years with a continuous client

11. Conduct and Competence

(e) *Due Care* – due care will be exercised through the application of prudent and professional judgement.

**APPENDIX 2 - LIST OF EXHIBITS**

Exhibit 1	Notice of Hearing in this matter dated June 24, 2011.
Exhibit 2	CMA Document Brief
Exhibit 3	Copies of email message from Respondent to the complainant's corporation dated 28 January 2009, with threads of earlier messages attached
Exhibit 4	Copies of email message from the complainant's corporation to the Respondent dated 28 January 2009, with threads of earlier messages attached
Exhibit 5	Copy of Master Business Licence dated 2003-10-16 issued by the Province of Ontario
Exhibit 6	Copy of Oncorp.com Form 1 CIA Initial Return/Notice of Change – Confirmation of Filing submitted May 03, 2010
Exhibit 7	Copy of letter dated June 7, 2010 addressed to Katharine M. Harvey, signed by Siva Gunaratnam as Director on the letterhead of Kasi & Visvar
Exhibit 8	Copies of T4 slips (2010 version) purporting to be issued by 1428705 Ontario Inc. to Kanagaratnam Ragulan for the years 2007, 2008 and 2009
Exhibit 9	Copy of Certified Members Offering Services To The Public Practice Registration Form dated March 1 / 06 signed by Ragul Kanagaratnam
Exhibit 10	Copy of "The Full Moon Calendar 2011" to which is attached an exchange of email messages between Michael Girard and the Respondent
Exhibit 11	Extract from the By-law of The Society of Management Accountants of Ontario dated August 2002
Exhibit 12	Extract from the By-law of The Society of Management Accountants of Ontario dated August 2005
Exhibit 13	Copy of the Reasons of Justice D. A. Fairgrieve in the case of <i>Her Majesty the Queen v. Colin B. Cameron</i>
Exhibit 14	Copy of the Reasons of Deputy Judge M H. Porter in the case of <i>White Snow Enterprises Inc. v. The Minister of National Revenue</i>
Exhibit 15	Printout of the Scheduled Hearing Notice published on the CMA Ontario website
Exhibit 16	Copy of the CMA Ontario Brochure "The CMA Accreditation Process, 2011-2012"
Exhibit 17	Copy of the The Society of Management Accountants of Ontario (CMA Ontario) "Rules for Independent Consulting CMAs Offering Services to the Public" dated August 2001