

CITATION: Richmond v. D.C.C.G.A.A.O., 2017 ONSC 1765
DIVISIONAL COURT FILE NO.: 131/16
DATE: 20170426

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
RSJ SHAW, MOLLOY and PATTILLO JJ.

BETWEEN:)
)
STEPHEN RICHMOND) *Gordon S. Campbell, for the Applicant*
)
Applicant)
)
- and -)
)
THE DISCIPLINE COMMITTEE OF) *Karen E. Jolley, for the Respondent*
THE CERTIFIED GENERAL) *Discipline Committee of the Certified*
ACCOUNTANTS ASSOCIATION OF) *General Accountants Association of*
ONTARIO) *Ontario*
[CHARTERED PROFESSIONAL)
ACCOUNTANTS OF ONTARIO],) *Lisa S. Braverman, for the Appeal*
AND THE PROFESSIONAL) *Tribunal*
CONDUCT TRIBUNAL OF THE)
CERTIFIED GENERAL)
ACCOUNTANTS ASSOCIATION OF)
ONTARIO [CHARTERED)
PROFESSIONAL ACCOUNTANTS)
OF ONTARIO)
)
Respondents)
)
)
)
) **HEARD:** November 15, 2016

L. A. PATTILLO J.

Introduction

[1] On November 4, 2014, the Applicant, Stephen Richmond ("Richmond"), a certified general accountant and a member of the Respondent the Certified General Accountants Association of Ontario ("CGAO") was found guilty of professional misconduct by the Professional Conduct Tribunal of the CGAO (the "Liability Decision").

[2] On February 10, 2015, the Professional Conduct Tribunal released its penalty decision which, among other things, revoked Richmond's membership in the CGAO and awarded costs of both hearings against Richmond in the amount of \$45,942.38 (the "Penalty Decision").

[3] Finally, on November 9, 2015, the Appeal Tribunal of the CGAO dismissed Richmond's appeal from both the Liability Decision and the Penalty Decision and awarded costs against Richmond of \$12,372.29 (the "Appeal Decision").

[4] Richmond brings this Application for judicial review for an Order in the nature of certiorari, quashing or setting aside in whole or in part the Liability Decision, the Penalty Decision and the Appeal Decision.

Background

[5] Richmond became a Certified General Accountant ("CGA") in 2005. Initially, he carried on a small practice out of his house which grew to approximately a dozen clients. In 2008, he moved to a small office in Cambridge, Ontario. In order to grow his practice, in November 2009 he purchased a tax preparation business in Kitchener, Ontario with about 150 clients including about 14 or 15 corporate/bookkeeping clients. The business was mainly personal tax returns but there was also some small business accounting, bookkeeping and preparation of tax returns. In addition to himself, Richmond also employed a bookkeeper part time.

[6] Five clients of Richmond and a fellow certified general accountant filed complaints with the CGAO relating to alleged misconduct that occurred between 2010 and 2012. The Discipline Committee of the CGAO investigated the complaints and referred the matter to the Professional Conduct Tribunal for a hearing. The Notice of Hearing was issued on January 15, 2014. Pursuant to the governing legislation, the parties to the hearing were the CGAO Discipline Committee and the member, Richmond: *Certified General Accountants Act* 2010, S.O. 2010, c. 6, Sch. A, s. 36(2) (the "Act").

[7] The Notice of Hearing was 12 pages in length and alleged that Richmond had committed 32 breaches of 5 provisions of the Code of Ethical Principles and five Rules of

Conduct. The particulars of the alleged inappropriate conduct relating to the clients included:

- Neglecting to do work clients had retained and paid him to do;
- Failing to file tax returns on time;
- Filing inaccurate tax returns;
- Failing to advise clients that they had income tax owing;
- Failing to inform or misinform clients about filing their tax returns on time;
- Making substantial bookkeeping errors;
- Refusing to file tax returns unless clients paid him additional sums;
- Refusing to return files belonging to clients unless they paid him requested sums;
- Failing to open mail received from the CRA on behalf of clients; and
- Failing to supervise staff properly.

[8] The complaint by the fellow CGA arose out of discussions the complainant had with Richmond about entering into partnership together and the subsequent signing of a five year lease for office space. The inappropriate conduct alleged was: actively misrepresenting his financial position; failing to disclose financial information; and failing to disclose the complaint made against him by CGAO and the impact it might have on his ability to practice prior to signing the lease.

The Liability Decision

[9] The disciplinary hearing took place before the Professional Conduct Tribunal over six days in June 2014 and included testimony from the five complainants and Richmond.

[10] The Liability Decision is 95 pages long. It can be broken down into the following areas:

1. A listing of the alleged provisions of the Code of Ethical Principles (“Code”) and Rules of Conduct (the “Rules”) as set out in the Notice of Hearing (pp. 1-5);

2. The particulars alleged in the Notice of Hearing in respect of each complainant (pp. 5-14);
3. A listing of the 48 exhibits filed at the hearing (pp. 14-18);
4. A listing of the agreed facts (by paragraph number only) arising from the CGAO's request to admit and Richmond's response by paragraph number only (p. 18);
5. A listing of the witnesses called by both parties (p. 18);
6. A summary of the evidence of each complainant and Richmond, by examination in chief, cross-examination and re-examination (pp. 18-65);
7. The Professional Conduct Tribunal's credibility findings for each complainant and Richmond (pp. 64-67);
8. The Professional Conduct Tribunal's findings of fact being a restatement of all the particulars in the Notice of Hearing except one which was withdrawn (pp. 67-75);
9. General finding that Richmond had breached five Code provisions and five Rules alleged and was guilty of professional misconduct (pp. 76-80);
10. Reasons for the decision consisting of a restatement of each Code provision or Rule followed by some of the particulars (pp. 80-94); and
11. A finding of professional misconduct with a list of Richmond's actions that constituted misconduct (pp. 94-95).

[11] The Professional Conduct Tribunal found Richmond guilty of professional misconduct in respect of 32 of the 33 allegations against him. (It did not make a finding that Richmond breached Rule 304 – Terms of Engagement because particulars of the allegation were not in the Notice of Hearing).

The Penalty Decision

[12] The penalty hearing took place over one day. Both the Discipline Committee and Richmond relied on the evidence which had been called at the liability hearing and no additional evidence was called.

[13] The Discipline Committee sought a penalty order that provided for: a reprimand for Richmond's breaches of the provisions of the Code of Ethics and Rules; revocation of his membership in the CGAO; a fine of \$9,000 consisting of a \$1,000 fine for each of the five provisions of the Code of Ethics and five rules that were breached; costs in the amount of \$61,010.93 being a partial rate of costs; and publication in various industry and CPGA media and the local Kitchener-Waterloo paper.

[14] In response, Richmond agreed with the Discipline Committee's request for the reprimand, the fine and the publications. Rather than revocation, however, he submitted that a suspension of between 12 and 18 months coupled with a restriction that he could not practice on his own, either indefinitely or for a limited period, was more appropriate given that he had no prior discipline history, no previous complaints and only a few clients were affected. Richmond further proposed a requirement that he participate in professional development remedial education. Richmond further submitted he pay in the range of \$15,000 to \$30,000 in costs with 2-3 years to pay both the fine and the costs given his dire financial circumstances.

[15] In the result, the Professional Conduct Tribunal imposed the following penalty:

1. A reprimand;
2. Revocation of Richmond's membership in the CGAO;
3. A \$9,000 fine;
4. Costs of \$5,000/day for the seven day hearing plus HST and disbursements for a total of \$45,942.38; and
5. Publication in various CGA media and the local Kitchener-Waterloo paper.

[16] In reaching the decision that Richmond's membership in the CGAO should be revoked, the Professional Conduct Tribunal referred to the "egregious and serious" nature of the conduct, the volume of the breaches, the impact on the complainants and the period of time over which the conduct occurred. It concluded that revocation was necessary to protect the public interest and for both specific and general deterrence.

[17] In respect of costs, the Professional Conduct Tribunal relied on earlier decisions to award a daily rate of \$5,000 given the number of breaches, the complexity of the hearing and the failure to admit any professional misconduct. The PCT did not accept Richmond's request for time to pay without stating why. It did refer to Richmond's evidence of financial distress but concluded that he was the author of his own misfortune.

The Appeal Decision

[18] The Appeal Decision is 49 pages in length and can be broken down into the following topics: a brief overview (p. 2); a listing of the documents entered into evidence including the Notice of Appeal, the Appeal Books and the transcripts of the evidence and submissions at the hearing and the penalty hearing (pp. 2-3); a listing of each the five Rules and five Ethical Principles which were alleged against Richmond (pp. 3-6); a listing of the particulars of the allegations in the Notice of Hearing (pp. 6-17); the decision of the Professional Conduct Tribunal that Richmond breached each of the provisions of the Code of Ethical Principles and Rules of Conduct alleged, again setting out each Rule or Ethical Principle (pp. 21); the penalty order of the Professional Conduct Tribunal (pp. 21-22); the relief sought on appeal (p. 22); the grounds of appeal as listed in the notice of appeal and the appellant's factum (pp. 22-27); the submissions of the appellant (pp. 27-34); the submissions of the Discipline Committee (pp. 34-38); the reply submissions of the appellant (p. 39); the cost submissions of the appellant (pp. 39-41); the cost submissions of the Discipline Committee (pp. 41-42); the decision of the Appeal Tribunal (p. 42); and the reasons for decision of the Appeal Tribunal (pp. 43-47); and costs (pp. 47-49).

[19] In its reasons for decision dismissing the appeal from both the Liability Decision and the Penalty Decision, the Appeal Tribunal stated that it was not persuaded that there was an obvious error of fact, law or the application of relevant accounting principles or assurance standards. In addressing the seven grounds of appeal raised by the appellant, the Appeal Tribunal concluded that the evidence supported the findings of the Professional Conduct Tribunal and the Liability Decision set out sufficiently detailed descriptions of the content of each provision found to have been breached and described how Richmond violated each provision. There was no obvious error of fact or law.

[20] In respect of credibility, the Appeal Panel found that the Professional Conduct Tribunal's findings on credibility were not unreasonable and are owed deference.

[21] In addressing the Penalty Decision, the Appeal Tribunal concluded the penalty reached was not based on any failure to apply correct legal principles nor was it harsh, excessive or grossly disproportionate in relation to Richmond's conduct. There was no obvious error and the penalties were not unreasonable. Further, the quantum of the costs award was reasonable and supported by other decisions of the Professional Conduct

Tribunal. Finally, the Professional Conduct Tribunal clearly considered Richmond's financial circumstances and it did not err in failing to give him time to pay.

[22] Finally, while the issues raised on appeal were acknowledged not to be frivolous, the Appeal Tribunal considered that it was appropriate that Richmond pay some of the costs incurred by the Discipline Committee. The Appeal Tribunal accordingly ordered Richmond pay \$12,372.29 in costs which was the amount requested by the Discipline Committee.

The Position of the Applicant

[23] Richmond submits that each of the Liability Decision, the Penalty Decision and the Appeal Decision were unreasonable and cannot stand. Specifically he submits that the Tribunals' interpretations of the CGAO professional standards and/or conclusions on guilt are not "justified, transparent and intelligible" and further that their decisions were unreasonable for making formulaic findings of credibility, conclusory findings of fact and failing to adequately explain the rejection of the entirety of Richmond's evidence. Richmond further submits that both the penalty of revocation of membership and the failure to give Richmond time to pay the fine and costs against him were unreasonable.

Preliminary Issue of Standing

[24] During the course of the submissions by counsel for the Discipline Committee on the Application, it became apparent that counsel for the Appeal Tribunal intended to make submissions on the reasonableness of the Appeal Tribunal's decision.

[25] At the conclusion of counsel for the Discipline Committee's submissions, we raised our concern with counsel for the Appeal Tribunal as to whether, given that the merits of the decisions had been fully addressed by counsel for the Discipline Committee, the Appeal Tribunal had any standing to address the court on the issues raised by Richmond other than in respect of the standard of review.

[26] Counsel for the Appeal Tribunal relied on *C.A.I.M.A.W. v. Paccar of Canada Ltd.*, [1989] 2 S.C.R. 983 to support the submission that the Appeal Tribunal was entitled to standing to argue the merits of the Application. In that case, LeBel J. (Dickson CJC concurring) granted standing to the Industrial Relations Council of B.C. (formerly the Labor Board) to address standard of review and jurisdiction.

[27] More recently, the issue of tribunal standing was addressed by the Supreme Court in *Ontario (Energy Board) v. Ontario Power Generation*, [2015] 3 S.C.R. 147; 2015 SCC 44 which was an appeal by the Energy Board (the Board) from a decision of the Ontario Court of Appeal setting aside the Divisional Court's decision upholding the Board's decision to disallow certain payment amounts applied for by Ontario Power Generation

(OPG) as part of its rate application. One of the issues raised by OPG was the standing of the Board to act as a party in the appeal from its own decision.

[28] In holding that the Board's participation in the appeal was proper, Rothstein J., on behalf of the Court, reviewed a number of cases that had considered the issue of tribunal standing including *Northwestern Utilities Ltd. v. City of Edmonton*, [1979] 1 S.C.R. 684 and *Paccar*. In *Northwestern*, Estey J. stated that it had been the policy of the Court to limit the role of administrative tribunals whose decisions were before the Court, even where the right to appear was given by statute, to an explanatory role with reference to the record before the board and representations on jurisdiction. Rothstein J. noted that subsequent courts have struggled with how to reconcile the *Northwestern* and *Paccar* decisions.

[29] After reviewing the cases, Rothstein J. concluded that the determination of standing was ultimately a matter of discretion. He stated at paragraph 57:

I am thus of the opinion that tribunal standing is a matter to be determined by the court conducting the first-instance review in accordance with the principled exercise of that court's discretion. In exercising its discretion, the court is required to balance the need for fully informed adjudication against the importance of maintaining tribunal impartiality.

[30] The learned Judge then went on at paragraphs 58 and 59 of the *Energy Board* decision to set out some of the factors a court should consider in exercising its discretion to permit tribunal standing including: whether the tribunal's governing statute expressly grants the tribunal standing to argue the merits; whether the review is otherwise unopposed or there are other parties with the necessary knowledge and expertise available to oppose; and whether the tribunal carries on an adjudicatory function as opposed to a policy-making, regulatory or investigative role.

[31] In the present case, there is nothing in the Act, the Appeal Tribunal's constituting statute, which grants to it the right to argue the merits of its decision on a review. Further, this is not a situation in which the issues raised by the appellant would be unopposed unless the tribunal were given standing. The parties before both levels of tribunal (the Professional Conduct Tribunal and the Hearing Tribunal) were the Discipline Committee of the CGAO and Richmond. The merits of any appeal or judicial review are properly addressed by these two adversarial parties. The Appeal Tribunal's role is as an adjudicatory body, similar to the role of the Professional Conduct Tribunal. Those adjudicatory roles are to be contrasted to that of the Discipline Committee, which is a party and plays an adversarial role. The Discipline Committee, as a committee and representative of the CGAO, also has an investigative, policy-making and public interest role and has the knowledge and expertise to fully address all of the issues raised. Given that the issues raised on the Application were fully argued by the Discipline Committee,

we were unanimously of the view that the Appeal Tribunal's standing on the Application should be restricted to arguing just standard of review and not whether the decisions of the Professional Conduct Appeal and the Appeal Tribunal were reasonable.

Standard of Review

[32] The parties agree and I concur that the standard of review is reasonableness.

[33] The reasonableness standard of review for decisions of both conduct and appeal tribunals of self-governing professions, including the CGAO has been well established. See: *Silverman v. Institute of Chartered Accountants of Ontario*, [1997] O.J. No. 411 (Div. Ct.) at para. 3; *John Doe v. Institute of Chartered Accountants of Ontario*, [2005] O.J. No. 3013 (Div. Ct.) at paras. 13-18; *Feil v. Certified General Accountants Assn. of British Columbia*, [2015] B.C. J. No. 601 (S.C.) at paras. 13-16.

[34] In *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190; 2008 SCC 9 at para.47, the Court explained the reasonableness standard as follows:

Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of facts and law.

[35] In *Vancouver International Airport Authority v. P.S.A.C.*, 2010 FCA 158, [2010] F.C. J. No. 809 (F.C.A.) at para. 16(d), Stratas J.A. elaborated on the justification, transparency and intelligibility criteria:

Justification and intelligibility are present when a basis for a decision has been given, and the basis is understandable, with some discernable rationality and logic. Transparency speaks to the ability of observers to scrutinize and understand what an administrative decision-maker has decided and why. In this case, this would include the parties to the proceeding, the employees whose positions were in issue, and employees, employers, unions and businesses that

may face similar issues in the future. Transparency, though, is not just limited to observers who have a specific interest in the decision. The broader public also has an interest in transparency: in this case, the Board is a public institution of government and part of our democratic governance structure.

[36] In *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, [2011] 3 S.C.R. 708, 2011 SCC 62, the Court considered the issue of whether an arbitrator's reasons satisfied the "justification, transparency and intelligibility" criteria in *Dunsmuir*. In answering that question, Abella J., on behalf of the Court, concluded that the adequacy of a tribunal's reasons is not, on its own, a discrete basis for judicial review (para. 14). Rather, any challenge to the reasoning/result of a decision must be made within the reasonableness analysis (para. 22).

[37] In conducting a reasonableness analysis in respect of a decision, Abella J. set out a number of factors to be considered including:

- i. The reasons must be read as a whole together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes (para. 14);
- ii. The reasons, when read in light of the evidence before the tribunal and the nature of its statutory task, should adequately explain the bases of the decision. (para. 18)
- iii. Courts should not substitute their own reasons, but may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome (para. 15);
- iv. If the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met (para. 16);

Analysis

[38] The Appeal Tribunal essentially upheld all findings in the Liability Decision as being correct in law and reasonable. Therefore, in order to review the reasonableness of the Appeal Tribunal decision, it is necessary to consider the reasonableness of the underlying Liability Decision.

[39] In my view, the Liability Decision has a number of significant issues which, when considered as a whole, having regard to the evidence, results in the Liability Decision lacking justification, intelligibility and transparency. More specifically, there is no basis given for the decision reached in order to assess the reasonableness of the outcome. The Liability Decision, notwithstanding its length, simply does not adequately explain the

given for the decision reached in order to assess the reasonableness of the outcome. The Liability Decision, notwithstanding its length, simply does not adequately explain the Professional Conduct Tribunal's reasons for decision. As a result, the Liability Decision is not reasonable and therefore cannot stand.

[40] As a whole, the Liability Decision is formulaic, repetitive and incomprehensible. Although it sets out its decision, the Professional Conduct Tribunal fails to adequately explain how it reached that decision. The Liability Decision is largely a "cut and paste job," drawn mainly from the Code and Rule provisions alleged to have been breached and the particulars in the Notice of Hearing. Nowhere is there an analysis of the evidence in relation to the allegations. To the extent that the Professional Conduct Tribunal purports to find that Richmond breached either a Rule or the Code in respect of a complainant, the finding is conclusory without any analysis as to how it was reached.

[41] At pages 67 to 76 of the Liability Decision, the Professional Conduct Tribunal sets out its findings of fact. In doing so, it merely restates all but three of the particulars contained in the Notice of Hearing in respect of each complainant without any reference to the evidence or other discussion. They are no more than conclusory findings.

[42] Under the heading Reasons for Decision at page 80 of the Liability Decision, the Professional Conduct Tribunal once again sets out each Rule or Code alleged to have been breached and then lists some of its findings of fact followed by the conclusion that Richmond breached the Rule or Code provision. Once again, there is no analysis in respect of the evidence. Nor is there any discussion of how the facts constitute a breach of the Rule or Code in question.

[43] For example, in respect of Rule 403, Association with Financial Information, the Rule provides that a member shall not be associated with any letter, report, statement, representation, financial statement or tax filing that he knows or ought to know is false and misleading. The Professional Conduct Tribunal found that Richmond breached that Rule in respect of two clients but in doing so made no determination based on the evidence as to whether Richmond knew or ought to have known that the statement or document was "false or misleading".

[44] My biggest concern with respect to the Liability Decision, however, is in relation to the Professional Conduct Tribunal's assessment of credibility.

[45] The Professional Conduct Tribunal's findings in respect of each of the six complainants were identical. They did not involve any assessment of the evidence either in relation to the documentation filed or in comparison to Richmond's evidence. The Professional Conduct Tribunal's credibility assessment was purely formulaic and conclusory.

[46] By way of illustration, for each complainant, the Professional Conduct Tribunal repeated the same identical paragraph except for the complainant's name. The paragraph stated (filling in the complainant's name for the Blank):

The panel found [Blank] and his/her testimony to be credible. [Blank] gave his/her evidence in a clear and concise manner. In terms of ability to recall, [Blank] had a good memory of the events and gave his evidence without hesitation. In terms of appearance and demeanour, [Blank] appeared to be honest, was not nervous and maintained good eye contact. In terms of probability, [Blank's] evidence was believable. In terms of external consistency, [Blank's] evidence was consistent with the documents entered as exhibits at the hearing. In terms of internal consistency, [Blank's] evidence was consistent in his/her examination in chief and cross-examination.

[47] The above credibility assessment was repeated for each of the six complainants. It was clearly and problematically formulaic. It involved no consideration of the witness' actual evidence and how that evidence compared to other evidence, including Richmond's testimony.

[48] Having dealt with the credibility of each of the six complainants in an identical manner, the Professional Conduct Tribunal next went on to consider Richmond's credibility at pp. 66 and 67 of the Liability Decision as follows:

The panel found Mr. Richmond and his testimony not to be credible. Mr. Richmond's evidence was unclear and rambling at times. In terms of ability to recall, Mr. Richmond had difficulty recalling some events. At times, Mr. Richmond said: I don't recall or similar phrases. In terms of appearance and demeanor, Mr. Richmond appeared nervous, was evasive in his answers to some of the questions and at times was aloof in giving testimony in terms of probability, some of Mr. Richmond's evidence seemed unbelievable. In terms of external consistency, some of Mr. Richmond's evidence was contradicted by the evidence of one or more of the Association's witnesses at the hearing. In terms of internal consistency, some of Mr. Richmond's evidence on cross-examination was inconsistent with his evidence in his examination in chief.

[49] As can be seen, the Professional Conduct Tribunal's assessment of Richmond's credibility is virtually the mirror opposite of its complainants' credibility assessments. Again, it is formulaic and conclusory. Although there is some reference to Richmond's evidence generally, there is no attempt to analyze it against the exhibits or other evidence. It refers to the same credibility markers mentioned for the other complainants without any reference to Richmond's specific evidence. In that regard, Richmond testified before the Professional Conduct Tribunal for two days. During his testimony he responded to

each of the complainants' testimony concerning their allegations against him. In respect of some of those allegations, Richmond did not dispute the complainant's testimony, but he often gave an explanation. In respect of a number of the complainant allegations, however, Richmond denied the allegation. There is no consideration of either the conflicts or the explanation.

[50] While the Professional Conduct Tribunal listed evidence from the complainants about various failures on Richmond's part in concluding that Richmond breached the CGAO's rules of conduct, there was no analysis of the allegations having regard to what Richmond said in response to each allegation.

[51] Counsel for the Discipline Committee agreed that credibility was an important factor in the Professional Conduct Tribunal coming to its decision. In the absence of any meaningful credibility assessment by the Professional Conduct Tribunal, it is simply not possible to understand how it came to its decision concerning the facts and in respect of each of the allegations of misconduct. Simply put, the Liability Decision does not lend itself to meaningful judicial review.

[52] Nor do I consider that, given the inadequacy of the Professional Conduct Tribunal's reasons for the Liability Decision as discussed, that it is possible for this court to look to the record to assess the reasonableness of the outcome (*Newfoundland Nurses*, para. 15). At its heart, the outcome depends on a determination of the credibility of the complainants and Richmond which the Professional Conduct Tribunal failed to properly address. A failure to properly consider and determine credibility cannot be remedied from a review of the record.

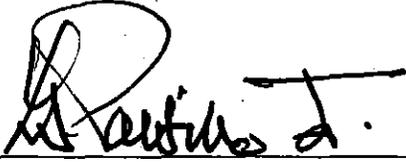
Conclusion

[53] Based on my conclusion that the Liability Decision is unreasonable and therefore must be set aside, it follows that both the Penalty Decision and the Appeal Decision cannot stand and must be set aside as well.

[54] In both the Notice of Application and his factum, Richmond requests that in the event the Professional Conduct Tribunal and Appeal Tribunal decisions are set aside, this court should decide both the liability, penalty and cost issues. Such a course is not appropriate in light of my conclusions concerning the Decisions, particularly in respect of credibility.

[55] The appropriate course is to remit the entire matter back to the Professional Conduct Tribunal, differently constituted, for a rehearing in respect of all or some of the allegations, as the Discipline Committee determines.

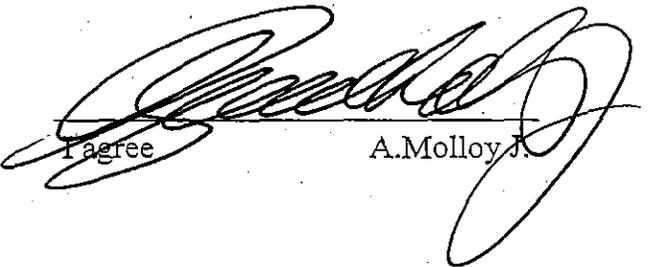
[56] Counsel agreed at the conclusion of the argument that the successful party was entitled to costs of the Application in the amount of \$12,500. Accordingly, as Richmond was successful on the Application he is awarded costs of \$12,500.



L. Pattillo J.



I agree Shaw RSJ.



I agree A. Molloy J.

Released: APR 26 2017

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SHAW R.S.J., MOLLOY and PATTILLO JJ.

BETWEEN:

STEPHEN RICHMOND

Applicant

- and -

**THE DISCIPLINE COMMITTEE OF THE
CERTIFIED GENERAL ACCOUNTANTS
ASSOCIATION OF ONTARIO
[CHARTERED PROFESSIONAL
ACCOUNTANTS OF ONTARIO], AND THE
PROFESSIONAL CONDUCT TRIBUNAL OF THE
CERTIFIED GENERAL ACCOUNTANTS
ASSOCIATION OF ONTARIO [CHARTERED
PROFESSIONAL ACCOUNTANTS OF
ONTARIO**

Respondents

REASONS FOR JUDGMENT

L. A. PATTILLO J.