

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **PUSHAP JINDAL, CPA, CGA**, a Member of the Chartered Professional Accountants of Ontario and The Certified General Accountants Association of Ontario, under Rules 101 and 607 of the CGA Ontario Rules of Conduct.

TO: Mr. Pushap Jindal

AND TO: The Professional Conduct Committee

REASONS

(Decision made April 18, 2017 and Order made April 20, 2017)

1. This tribunal of the Discipline Committee of the Chartered Professional Accountants of Ontario (“CPA Ontario”) and the Professional Conduct Tribunal of The Certified General Accountants Association of Ontario (“CGA Ontario”) (collectively the “Tribunals”) convened on October 21, 2016 to hear allegations of professional misconduct brought by the Professional Conduct Committee of CPA Ontario and the Discipline Committee of CGA Ontario (collectively “the Applicants”) against Pushap Jindal (“Mr. Jindal”), a Member. The hearing continued on January 10, 12 and 13, 2017, and April 17, 18 and 20, 2017.

2. On October 21, 2016, Mr. Harpreet Khukh (“Mr. Khukh”) appeared as counsel for Mr. Jindal, who attended with him. Mr. James Lane (“Mr. Lane”) subsequently appeared as counsel for Mr. Jindal, who attended with him on January 10, 12 and 13, 2017; and April 17, 18 and 20, 2017. Mr. Paul Farley (“Mr. Farley”) appeared as counsel for the Applicants. He had with him Ms. Melissa Gentili (“Ms. Gentili”), also legal counsel for the Applicants, and Ms. Anita Patel, CPA, CA, IFA, CFE, CPA (Illinois) (“Ms. Patel”), an investigator appointed by the Applicants. Mr. Robert Peck attended the hearing as counsel to the Tribunals.

3. The Decision of the Tribunals was made known on April 18, 2017 and the Order of the Tribunals was made known on April 20, 2017. The written Decision and Order was sent to the parties on April 21, 2017. These reasons, given pursuant to Rule 20.04 of the *Rules of Practice and Procedure*, include the allegations (as amended), the decision, the order, and the reasons of the Tribunals for their Decision and Order.

The Allegations

4. Allegations of professional misconduct were made under the Rules of Conduct and Code of Ethical Principles of CGA Ontario against Mr. Jindal by the Applicants on February 4, 2016. At the hearing on October 21, 2016, the allegations were amended on consent of all parties to read as follows:

1. THAT the said Pushap Jindal, in or about the period March 1, 2006 through September 30, 2006, while acting as the accountant/bookkeeper for "BGOB", did participate in a practice or act that would be of a nature to discredit the profession, contrary to Rule 101 of the Rules of Conduct, in that:
 - a) He made unauthorized payments to himself from companies "C" and "D" related to "BGOB" in the approximate amount of \$65,000 and did thereby misappropriate approximately \$65,000.

2. THAT the said Pushap Jindal, in or about 2006, while acting as the accountant/bookkeeper for "BGOB", did participate in a practice or act that would be of a nature to discredit the profession, contrary to Rule 101 of the Rules of Conduct, in that:
 - a) he knowingly participated in a plan to set up and use corporations for the purpose of removing funds from "BGOB" and/or "C" and/or "D" companies in an effort to reduce taxes properly payable by "C" and/or "D" and/or "BGOB".

3. THAT the said Pushap Jindal, in or about the period January 1, 2011 through June 30, 2014, failed to promptly inform the CGA Association of court proceedings that may cast doubt as to the member's honesty, Integrity or professional competence contrary to Rule 607 of the Rules of Conduct, and in particular failed to inform of:
 - a) An action brought by "C" company and "D" company, court file # CV-13-480739, for damages with respect to funds allegedly misappropriated in the amount of \$65,000;
 - b) An action brought by Royal bank of Canada, court file # CV-10-8599 for damages of \$2.5 million alleging negligence and or negligent misrepresentation and in the alternative damages for fraudulent misrepresentation or conspiracy to defraud.

Application for a stay

5. On October 21, 2016, Mr. Farley filed page 21 of the CGA Ontario Code of Ethical Principles and Rules of Conduct, April 2006 (Exhibit 1) and page 20 of the CGA Ontario Schedule A to the Association Bylaws: Code of Ethical Principles and Rules of Conduct, March 29, 2014 (Exhibit 2).

6. Mr. Khukh brought a motion for an order to stay the disciplinary proceeding. The motion was supported by a Motion Record (Exhibit 3), a Factum (Exhibit 4) and a Book of Authorities (Exhibit 5). The Motion Record included an affidavit of Mr. Jindal.

7. Mr. Khukh submitted that Mr. Jindal would be severely prejudiced in two civil action suits should the discipline matter proceed as scheduled. Mr. Khukh asserted that Mr. Jindal is no longer practising and as such, there is no potential risk posed to the public should a stay of the proceedings be granted. He also asked, in the alternative, for an adjournment until after the civil

proceedings between Mr. Jindal and the complainants has been determined.

8. Mr. Farley filed the responding party's Motion Record (Exhibit 6), a Factum (Exhibit 7) and Brief of Authorities (Exhibit 8).

9. Mr. Farley acknowledged that the Tribunals may grant a stay where it is demonstrated that the proceeding would be unfair to the point that they are contrary to the interest of justice. He submitted that the threshold to establish unfairness should be a high standard. Mr. Farley asserted that the civil process should not take priority over the regulatory process; that the public has an interest in a fair, open and just regulatory process that proceeds in an expeditious way.

10. In order to grant a stay the Tribunals must find that the proceedings would be unfair to the point that they are contrary to the interests of justice. The circumstances of a case necessitating a stay are extremely rare (see *Sazant v. College of Physicians and Surgeons of Ontario*, [2012] ONCA 727; *Blencoe v. British Columbia (Human Rights Commission)* [2000] S.C.J. No.43).

11. When an applicant asserts an abuse of process in disciplinary proceedings it is the conduct of the prosecuting body, not the conduct of the complainant, that must be for an improper purpose in order to constitute an abuse of process. (See *LSUC v. Igbinosun* 2010 ONLSHP 134). The applicant for the stay (Mr. Jindal) did not provide any evidence that proceeding would not be fair and there was no evidence the prosecution had an improper motive.

12. With respect to the alternate relief sought by Mr. Jindal including the request for an adjournment, primarily on the basis that proceeding will prejudice him, the panel concluded the basis for the relief sought was not established. Section 63 of the *Chartered Accountants Act, 2010* which applies to these proceedings, precludes the use of evidence, documents, orders, and decisions of the discipline proceedings in civil proceedings. Further, given the matters the panel must consider, set out in Rule 13.03 of the *Rules of Practice and Procedure*, the timing of the request, the public interest in proceeding, the uncertainty of the civil process; and, the fact the prejudice Mr. Jindal asserts is speculative as it assumes the discipline proceedings will prejudice him, were reasons for rejecting the relief sought. It has been clear since *Howe v. The Institute of Chartered Accountants of Ontario*, [1994] O.J. No. 2907; affirmed by the Court of Appeal for Ontario [1995] O.J. No. 2496, that the discipline tribunals of the profession do not grant adjournments because of civil proceedings against the member.

13. After considering the submissions of both parties, the Tribunals agreed with the arguments put forth by counsel for the Applicants. The Tribunals agreed with the Applicants that to continue with the hearing was in the best interests of the public and that there was no prejudice or unfairness to Mr. Jindal in his civil suits. The Tribunals therefore concluded that the request for a stay of proceedings would not be granted nor would an adjournment be granted.

14. After the decision was announced on the record, Mr. Farley filed a three volume Document brief, Exhibits 9, 10 and 11. After Mr. Jindal entered a plea, the hearing was adjourned until January 10, 11 and 13, 2017, dates which were agreed to by the parties.

Plea

15. On October 21, 2016, Mr. Jindal entered a plea of not guilty to Allegation No. 1 and a plea of guilty to Allegation Nos. 2 and 3.

The Case for the Applicants

16. On January 10, 2017, Mr. Farley filed a Transcript of the preliminary motion heard on October 21, 2016 (Exhibit 12), an Agreed Statement of Facts (Exhibit 13), and the 2006 Federal Tax Return of Pushap Jindal (Exhibit 14).

Agreed Statement of Facts

17. Mr. Jindal had been a CGA since 2004 and had practised as a sole practitioner in Mississauga since shortly after he became a member. In late 2004, early 2005, Mr. Jindal was retained by NK and LS to provide bookkeeping services to their transportation and trucking company, BGOC.

18. Over time NK and LS incorporated numerous companies affiliated with BGOC. Mr. Jindal was responsible for the bookkeeping with respect to BGOC and provided payroll and accounting services to two affiliated corporations, companies C and D, during the years 2005 and 2006.

19. In 2006, Mr. Jindal undertook a non-accounting role as project manager to develop two commercial properties owned by NK and LS. In late 2009 Mr. Jindal had a disagreement with NK and LS with respect to his remuneration for one of the commercial developments. This disagreement resulted in Mr. Jindal launching a civil suit against NK and LS for approximately \$1.5 million on January 5, 2011. The trial of this civil action was pending at the time of the hearing.

20. Following this dispute, Mr. Jindal stopped providing accounting and non-accounting services to NK, LS or any of their companies.

21. On May 17, 2013, C and D commenced a lawsuit against Mr. Jindal and his spouse, claiming that Mr. Jindal fraudulently misappropriated \$65,000. Mr. Jindal filed a Defence to the lawsuit, which claims that the monies were approved by C and D as compensation for his work. This civil suit had not been heard at the time of the hearing.

22. On July 21, 2014, two separate complaints were made to the Chartered Professional Accountants of Ontario by NK and LS, through the lawyer acting for them on the aforementioned civil actions.

23. Regarding Allegation No. 2, in 2006, while acting as the accountant/bookkeeper for BGOC, Mr. Jindal participated in a scheme to set up ten corporations with the intention that they be used to reduce taxes properly payable by BGOC or C or D. The corporations were either set up by Mr. Jindal or set up under his direction. These corporations were completely dormant and carried on no business.

24. The corporations were set up to charge "subcontractor expenses" to C or D even though

they provided no services to C or D. The intention in charging these expenses was to reduce the taxes properly payable by C, D and BGOC. BGOC taxes would be reduced as a result of C and D charging BGOC for services not performed.

25. The payments made by C and D to the ten inactive companies flowed through to an offshore company which in turn loaned the money back to a related BGOC company, BDL, to purchase real estate. After the real estate was purchased in early 2008, the ten corporations were all closed.

26. The funds that flowed from BGOC and C and D to the ten inactive companies and then to the offshore holding company during the period November 2005 through January 2007 was approximately \$2.2 million.

27. It is agreed that in participating in this scheme Mr. Jindal assisted the shareholders of BGOC in inappropriately reducing that company's income by \$2.2 million and thereby assisted in reducing taxes properly payable by BGOC and/or C and/or D.

28. Regarding Allegation 3, Mr. Jindal has been sued in two separate civil actions by the Royal Bank of Canada ("RBC") and by BGOC and C and D.

29. Mr. Jindal agrees that the action brought by C and D and the action brought by RBC are court proceedings that cast doubt as to his honesty, integrity or professional competence and he further agrees that he did not notify CGA Ontario of those proceedings as required by Rule 607 of the Rules of Conduct of CGA Ontario.

Evidence of Ms. Patel

30. Mr. Farley called Ms. Anita Patel, CPA, CA, IFA, CFE, CPA (Illinois), the investigator appointed by the Applicants, and she affirmed that her evidence would be truthful. Mr. Farley advised that Ms. Patel had been retained by the Applicants as a forensic investigator to look into the allegations made against Mr. Jindal.

31. Ms. Patel stated that C and D were incorporated in 2004. NK and LS were apparently planning to divide BGOC by use of these companies; however the division did not take place and C and D remained dormant until 2006. At that time NK and LS assigned each of the companies' five trucks and two drivers per truck. The companies were operational for 18 months, the life of a truck, and then became dormant. Mr. Jindal, as the person responsible for payroll, set up and implemented a payroll system including personal identification numbers ("PINs") for each of the drivers. Mr. Jindal was solely responsible for managing and directing electronic transfers of funds to the drivers' bank accounts. Mr. Jindal had access to and managed all payroll information.

32. During the period of March 1, 2006 through September 30, 2006, while carrying out his responsibilities as the bookkeeper/accountant for BGOC, Mr. Jindal created two fictitious drivers and put them on the payrolls of C and D. Each fictitious driver was provided a PIN by Mr. Jindal who then ostensibly paid them a salary through the payroll accounts of C and D. Schedules prepared by C and D showed the dates of payment and the amounts paid to the fictitious drivers

as well as the bank accounts into which the funds were received.

33. Ms. Patel explained that Mr. Jindal caused 28 payments to fictitious drivers, totaling just over \$65,000, to be deposited into a bank account in the name of Mr. Jindal's sole proprietorship or into a bank account Mr. Jindal holds jointly with his spouse.

34. Ms. Patel stated that Mr. Jindal advised her that this was a method for him to get paid for services outside his accounting duties. Mr. Jindal said he was instructed to set up these fictitious drivers by NK and LS which would allow him to collect payment for additional services provided by him and to avoid paying taxes on the monies.

35. Ms. Patel stated that Mr. Jindal claimed to have reported the monies on his 2006 federal tax return (Exhibit 14) however it was not clear whether the \$65,000 was in fact included in the income reported. Ms. Patel indicated that Mr. Jindal did not provide a breakdown of the \$140,000 reported under "professional fees" nor was he able to substantiate where the remaining amount was earned.

Cross-examination of Ms. Patel

36. Mr. Lane, on behalf of Mr. Jindal, filed the Document Brief of Pushap Jindal, Vol. 1 (Exhibit 19) and a Supplemental Document Brief of Pushap Jindal, Vol. 3 (Exhibit 20).

37. In cross-examination by Mr. Lane, Ms. Patel confirmed that Mr. Jindal admitted to receiving approximately \$65,000 through artificial payroll payments. Ms. Patel said that Mr. Jindal disclosed the activities he performed to earn the \$65,000 which included talking with lenders, securing financing, representing the interests of BGOC at the bank and managing a parking lot for the company.

38. Ms. Patel stated that she did not receive any documentation to substantiate the performance of the work; however, Mr. Jindal's assertion that those expenses were not invoiced, in conjunction with the letter of engagement and the explanation from Mr. Jindal regarding client service fees from BGOC, C and D, satisfied Ms. Patel that the amount Mr. Jindal had outlined to her made sense.

Re-examination of Ms. Patel

39. Mr. Farley filed an email and attached schematic dated July 12, 2016 (Exhibit 15), a document also found in Exhibit 19. Ms. Patel explained that the schematic outlined the fund transfers within the various BGOC-owned companies which would then transfer the money, by bank draft, into an offshore account. Ms. Patel stated that Mr. Jindal and NK both recalled that approximately \$4.3 million in revenue had been diverted from BGOC, C and D via this tax evasion scheme.

40. In response to questions from the Tribunals, Ms. Patel affirmed that there were approximately 31 to 35 different companies under the BGOC umbrella. Mr. Jindal told her that, in addition to the 10 corporations central to Allegation No. 2 that were receiving funds from BGOC, C and D, there were at least four other companies that were dormant and pre-existed Mr. Jindal's employment with BGOC.

Examination of NK

41. Mr. Farley called NK, a shareholder and President of BGOOC, who affirmed to tell the truth.
42. NK explained that BGOOC was originally owned by himself and his partner LS. In 2004 they began experiencing difficulties and in anticipation of dividing the company and going their separate ways, C and D companies were registered by PB, their previous accountant and Mr. Jindal's former employer. NK and LS were able to resolve their differences but they decided to transfer ownership of BGOOC to four family trusts. This occurred sometime in 2005.
43. NK described the nature of BGOOC's business in early 2005 being mainly that of a transport company of parts for a large motor corporation. Mr. Jindal's compensation was calculated based on his provision of services for two hours per day, five days per week, 50 weeks per year. NK stated that Mr. Jindal's compensation was re-negotiated on two occasions as Mr. Jindal's duties with BGOOC changed.
44. NK stated that Mr. Jindal suggested that BGOOC purchase 10 new trucks for C and D to become operational. To ensure they could take advantage of a small business deduction, Mr. Jindal advised that the companies be at arm's length, and that payroll for C and D be transacted from Mr. Jindal's office and not from the BGOOC offices.
45. NK explained that in 2011, when he obtained banking records from Scotiabank for C and D's payrolls (Exhibit 9), he and LS noticed names of two drivers that they did not recall hiring. NK and LS hired an accountant (Exhibit 22) to review the records and it was determined that approximately \$65,000 was paid to two accounts with PIN numbers that seemed odd. Inquiries to the bank confirmed that the PIN numbers directed funds into accounts held or controlled by Mr. Jindal (Exhibit 23).
46. NK responded to the assertion of Mr. Jindal as presented by Ms. Patel – that Mr. Jindal was instructed to set up fictitious drivers by NK and LS thereby allowing Mr. Jindal to collect payment for additional services provided by him and to avoid paying taxes on the monies – and stated that there was no reason for BGOOC to pay Mr. Jindal in this manner. NK asserted that he did not authorize Mr. Jindal to create fictitious drivers and make payments through them to his own bank accounts or bank accounts under his control.
47. NK maintained that he and LS did not go to the police about the money on the advice of legal counsel they had retained at that time, DS. DS sent a letter to JK, litigation lawyer for Mr. Jindal, requesting an explanation for the transfer of the \$65,000 and production of the working papers and source documents for BGOOC companies that were in Mr. Jindal's possession.
48. Responses from JK were received by DS on July 14, 2011 (Exhibit 24) stating that Mr. Jindal would produce working papers once his outstanding expenses were paid and particulars must be provided regarding the explanation DS's clients were seeking.
49. NK asserted that Mr. Jindal was paid for Canada Revenue Agency (CRA) audit work on April 11, 2007 (Exhibit 25), the incorporation of the 10 fictitious companies on December 1,

2005 (Exhibit 26) and the arrangement of financing for two properties on August 16, 2007 (Exhibit 27).

Cross-examination of NK

50. NK asserted that he did not know who actually registered the 10 corporations nor was he aware of who completed the incorporation work. NK maintained he was only aware of the consulting invoices he received from Mr. Jindal (Exhibit 26).

51. NK stated that the original intention of the 10 companies incorporated by Mr. Jindal was that they be active. However, when business began to slow at the end of 2006, Mr. Jindal suggested the structure whereby funds were transferred from the BGOB companies through the 10 dormant companies and into an offshore account. Those funds were received by relatives of NK and LS, deposited by these relatives into an Ontario numbered company's account that would then loan the monies back to BGOB.

52. Mr. Lane filed a page from the BGOB General Ledger dated March 31, 2002 (Exhibit 16). NK confirmed that the written direction, "Remove last names" next to the circled last name of NK's father was in his handwriting. NK asserted that it was as per Mr. Jindal's advice, when Mr. Jindal was recreating the accounting, that the last name of NK's father should be removed. However he was unaware of the reason for this advice.

53. NK asserted that Mr. Jindal, as per an email communication dated November 23, 2005 from Mr. Jindal to NK (Exhibit 19), was compensated for the work he completed for the CRA audit that commenced in October 2005 (Exhibit 25).

54. NK stated that there was never a formal contract with Mr. Jindal. If there were services not covered by the scope of the verbally agreed compensation, Mr. Jindal was to advise NK and LS upfront and Mr. Jindal would be duly compensated upon completion.

55. NK stated that Mr. Jindal's second base compensation change in 2008 was because the only service provided by Mr. Jindal at that point was to upload the payroll for BGOB. Mr. Jindal was no longer involved with the development company and he ceased providing services altogether in early 2010.

56. Regarding Mr. Jindal's involvement in obtaining financing for the purchase of investment properties in early 2007, NK asserted that financing was not required as they paid cash for the property. They did not hire Mr. Jindal for that purpose. NK stated that Mr. Jindal became involved in the property businesses or in arranging financing for other companies but, NK and LS never hired him to do this, therefore, according to NK Mr. Jindal was not entitled to payment for any work undertaken for this purpose.

57. NK stated that in September of 2010, Mr. Jindal contacted them demanding compensation for the project work for the property developments. NK asserted that Mr. Jindal was asking for \$500,000 but other professionals were only asking \$250,000 for similar services. NK explained that he and LS were trying to be accommodating because Mr. Jindal explained he was experiencing financial difficulties.

58. Mr. Lane filed email correspondence dated September 20, October 19 and November 2, 2010 (Exhibit 17). NK maintained that the offer of money made to Mr. Jindal in the correspondence was not for Mr. Jindal's services but out of courtesy as Mr. Jindal said he was having a difficult time financially.

59. NK stated that in January 2011, he was served with a lawsuit claiming unpaid compensation for the property development project. NK claimed that the intent behind Mr. Jindal filing the January 2011 lawsuit was evidence of Mr. Jindal's dishonesty. NK asserted that he felt there must be additional deceptions if someone can fall so low as to file a lawsuit for services already paid for.

60. When Mr. Jindal would not produce books and records as requested (Exhibit 24), NK and LS went to Scotiabank to get their financial records. Once the e-statements and cancelled cheques were received from the bank, NK and LS retained KG (Exhibit 22) to evaluate the accounting.

61. Upon reviewing the ledger, NK and LS identified two drivers' names they knew were not employed by C or D. After receiving an accounting from KG's office, the drivers' names and the PIN numbers not matching any of their records, NK and LS went back to the bank in September 2011 to confirm whose accounts were in receipt of the monies paid to the unknown PIN numbers. Those accounts were that of Mr. Jindal and jointly with his wife.

62. NK stated that they did not go to the police as that was not the advice he and LS received from their lawyer. However in April 2012, they brought a small claims action to obtain documents still in Mr. Jindal's possession and in 2013, they filed a claim against Mr. Jindal for the \$65,000.

63. NK confirmed that complaints were made by his and LS's new lawyer to CPA Ontario in July of 2014. NK explained the reason they waited three years after learning Mr. Jindal took \$65,000 to make a complaint was that it was their lawyer's plan of action.

Re-examination of NK

64. NK asserted that Mr. Jindal would present an invoice and would expect to be paid immediately. NK stated that he and LS complied with that expectation and would provide a cheque to Mr. Jindal by the time he would leave BGOC.

65. NK confirmed that their first reaction, upon concluding that Mr. Jindal had stolen from them, was to go to their lawyer and seek an explanation from Mr. Jindal. NK restated that they hired an accountant, KG, to determine if a fraud had taken place.

66. In response to questions from the Tribunals regarding why NK believed payments to the two fictitious drivers took place only between March 2006 and September 2006, NK asserted that around September 2006, the life of the trucks would have been at an end and at that particular point, business had started to go down and there was no reason for them to buy more trucks.

67. When asked by the Tribunals about the description for services on the November 30, 2005 invoice, “for consulting services for the period from April 05 to June 05” (Exhibit 26), the invoice which NK identified as being for the incorporation of the 10 fictitious companies, NK stated that he did not pay attention to the descriptions, only the amounts.

The case for Mr. Jindal

68. Mr. Lane filed BGOOC Financial Statements for the years ending March 31, 2005, March 31, 2006 and March 31, 2008 (Exhibit 18) and a Supplementary Document Brief of Pushap Jindal, Volume 4 (Exhibit 28) which he referred to during the course of his submissions.

Examination of Mr. Jindal

69. Mr. Lane called Mr. Jindal and he affirmed that he would tell the truth.

70. Mr. Jindal confirmed that he worked for the firm of PB from sometime in 2000 until the end of 2004. During that period, Mr. Jindal handled the quarterly bookkeeping and GST returns for BGOOC, a client of PB. Upon leaving PB’s employ to open his own practice, NK and LS approached Mr. Jindal to provide accounting services for BGOOC.

71. Mr. Jindal stated that there was only an oral agreement with NK and LS regarding his practice’s involvement with handling the accounting for BGOOC.

72. Mr. Jindal asserted that BGOOC was not a simple business as submitted by NK, stating that any company with \$24 to \$26 million in revenue and 90 to 100 drivers and trucks is not simple. BGOOC had two internal bookkeepers, a dispatcher and multiple departments.

73. Mr. Jindal maintained that NK was financially competent, that NK would review the bank balances, invoices and payments of all of the BGOOC companies and review and respond to Excel spreadsheets. Mr. Jindal spoke of one particular example (Exhibit 19) to illustrate NK’s diligence: an email from NK inquiring about an incorrect bank balance on a spreadsheet Mr. Jindal provided for one of the smaller BGOOC companies.

74. In addressing how the tax evasion scheme evolved, Mr. Jindal explained that he noticed there were expenses being claimed for BGOOC that should not have been while he was working for PB. Once he began working directly with BGOOC, Mr. Jindal said that he had advised NK and LS they should file corrections for tax returns back to 2001 and they approved Mr. Jindal to recreate the general ledgers (“GL”).

75. Mr. Jindal stated that during the course of the reconciliation he became aware that NK’s father was being paid for his services but he was not declaring the money on his personal tax returns. Upon pointing this out to NK, Mr. Jindal was instructed to remove the father’s last name from the GL (Exhibit 16).

76. Regarding NK’s statement that Mr. Jindal was paid for his work on the 2005 CRA audit in 2007 (Exhibit 25), Mr. Jindal reminded the Tribunals that he was impatient to be paid and the invoice is dated approximately one year after the end of the audit. Mr. Jindal further stated that the invoice was for “consulting services.” Mr. Jindal stated that the description “consulting

services” was used only when the invoice was for services he provided to other companies under the BGOC umbrella. These services would be invoiced as “consulting services” to BGOC so that they could use the deductions (Exhibit 28).

77. Mr. Lane filed a List of Corporate Entities who retained the services of Mr. Jindal between 2005 and 2009 (Exhibit 21). Mr. Jindal confirmed that all of the companies listed were under the BGOC umbrella although not all of them were active. Mr. Jindal again explained that services he provided to any of the BGOC umbrella companies were consolidated, as directed by NK and LS, and billed to BGOC.

78. Mr. Jindal referred to Exhibit 26, addressing NK’s evidence that this invoice was payment for the incorporation of 10 companies. Mr. Jindal asserted that the incorporations were not completed until December 2, 2005 and he would not have invoiced for his services until they were all completed. Mr. Jindal also stated that the incorporation fee for a single company is not \$592 as asserted by NK, but would have been an even number more in the range of \$750 (Exhibit 20).

79. Mr. Jindal asserted that the outstanding amount for services in 2005 totaled approximately \$90,000. However, when NK instructed Mr. Jindal to take \$65,000 “tax-free” from C and D companies, Mr. Jindal decided that he would not be paid otherwise. Bi-weekly payments from March 2006 to September 2006 were processed through C and D’s payroll to two fictitious drivers. Mr. Jindal asserted that it is not possible that NK did not know the bi-weekly payments were being made in this way as payroll was the only real expense for those companies. NK and LS had online access to the bank accounts and they would regularly check the balances. Mr. Jindal stated that NK and LS knew how much was being sent to the corporations and they would not have overlooked an \$11,000 transaction. Mr. Jindal further stated that no additional funds were taken after the \$65,000 was paid.

80. Mr. Jindal maintained that there are no invoices for the incorporation of the 10 fictitious companies, CRA audit work and 2005 financing arrangements as compensation for all of the aforementioned was included in the \$65,000 that was paid to him via the two fictitious drivers between March and September 2006.

81. Mr. Jindal addressed the statement made by NK when asked why he thought Mr. Jindal stopped the payments in September 2006; that business was declining and the trucks were traded out at that time. Mr. Jindal said that revenues did not start declining in 2006 but only started to decrease sometime in 2007, as shown by the 2008 year-end financials (Exhibit 18). Mr. Jindal provided that the trucks were not traded at the end of 2006 but in January of 2007 (Exhibit 28).

82. Mr. Jindal explained that the arrangement of financing is a separate activity from payroll services and it is not unusual to be paid above and beyond payroll and accounting services for this type of work. Mr. Jindal stated that the fee he was paid for accounting services, which was re-negotiated on two separate occasions, did not include fees for project work such as bank financing.

83. Mr. Jindal asserted that over the five-year period he worked with BGOC he had arranged

several financings for them. Some of the financings he charged for and others he did not depending on the amount of financing required.

84. Mr. Jindal stated that it was difficult to get paid for his extra services as it was hard to convince NK and LS of the work he had done, but they always paid in the end. Mr. Jindal maintained that they were on good terms and therefore there was no written agreement needed.

85. Mr. Jindal responded to NK's assertion that NK and LS did not approve the investigation into financing for the 2007 projects so therefore Mr. Jindal was not entitled to compensation. Mr. Jindal maintained that you cannot approach a bank asking for \$26 million in financing without a lot of private information and the knowledge or consent of those applying for the loan.

86. Mr. Jindal stated that when the property acquisition and development projects of 2007 for which he had acted as project coordinator were nearing completion – the fall of 2009 – Mr. Jindal put together his accounts for compensation and submitted them to NK and LS. Mr. Jindal stated that they were unable to negotiate reasonable terms and, in the end, he filed a lawsuit on December 31, 2010.

87. Mr. Jindal asserted that NK and LS indirectly threatened him on June 26, 2011 with criminal charges and cancellation of his CPA membership if he did not drop the lawsuit (Exhibit 29). On May 17, 2013, a Statement of Claim was filed by C and D companies for \$65,000 and complaints were filed with CPA Ontario against Mr. Jindal on July 21, 2014.

Cross-examination of Mr. Jindal

88. Mr. Jindal maintained that when the 10 companies were incorporated in 2005, they were incorporated with a view to use them legitimately but in 2006, Mr. Jindal was fully aware that the corporations were used to transfer money out of BGOIC in order to avoid taxes.

89. Mr. Jindal confirmed that there was no invoice detailing the \$65,000 that he took out of C and D companies. However Mr. Jindal asserted that the \$65,000 did not compensate for the project work he is now seeking remuneration for through civil litigation.

90. Mr. Jindal asserted that although there was no written communication regarding an agreement that NK and LS pay him \$65,000 through fictitious drivers, it does not mean that the agreement did not exist. Mr. Jindal stated that there was no email or written agreement regarding his initial accounting services contract for \$30,000 nor either of the subsequent re-negotiated contracts.

91. Mr. Jindal stated that tax avoidance on the \$65,000 was not his intention, although it was suggested by NK. Mr. Jindal held that the money was recorded on his income tax return under professional fees and reasserted that none of the work done on land development was included in the \$65,000.

92. Mr. Lane had no further questions for Mr. Jindal.

Closing Submissions

93. Mr. Farley submitted that Mr. Jindal had pleaded guilty to Allegation Nos. 2 and 3 and the Tribunals had heard the unopposed evidence in support of that plea, evidence that Mr. Jindal had failed to report court proceedings that may cast doubt as to the member's honesty, integrity or professional competence and evidence of his participation in a scheme to reduce taxes properly payable by BGOc.

94. Mr. Farley submitted that based on the facts in evidence there is clear, cogent and convincing evidence for a finding of guilty on Allegation Nos. 2 and 3.

95. Mr. Farley stated that with regard to Allegation No. 1, Mr. Jindal claimed that the money was not misappropriated but was payment for services provided to BGOc in addition to the services provided as a bookkeeper. Mr. Farley submitted that by his plea to the other allegations, Mr. Jindal had admitted he is dishonest, that he prepared false and misleading documents for a client and filed false tax returns. Mr. Farley asked the Tribunals, in considering credibility, to consider why the principals of BGOc would agree to a fraudulent arrangement for payment of services when there was no benefit to them, only risk of exposure to investigations by CRA if not the police. Mr. Farley further questioned why the principals would not have suggested Mr. Jindal accept payment for other services in a similar manner.

96. Mr. Farley submitted that the odd numbers of the payments to the two fictitious drivers indicate an attempt to cover up a fraud. Mr. Farley acknowledged credibility issues with the witness for the Applicants (NK); however he asserted that NK's explanation makes sense.

97. Mr. Farley proposed that a multi-million dollar company does not retain legal counsel and sue for \$65,000 unless there is a principle at stake or unless the trust imposed in an employee has been abused.

98. Mr. Farley submitted that based on the facts in evidence there is clear, cogent and convincing evidence for a finding of guilty on Allegation No. 1.

99. Mr. Lane submitted that the guilty plea supports a finding of guilt on Allegation Nos. 2 and 3. Mr. Jindal does not admit to misappropriation as contended in Allegation No. 1, and Mr. Lane submitted that the case ultimately comes down to credibility between NK and Mr. Jindal.

100. Mr. Lane submitted that NK attempted to portray himself as someone lacking skill and attention with regard to the monitoring of the finances of his company. However, by NK's own account, in only a few years he went from being a driver with a couple of trucks to managing a fleet with property development prospects. As provided for in evidence, NK was diligent and took issue with even nominal differences between spreadsheets and bank account balances.

101. Mr. Lane asserted that NK benefited from paying Mr. Jindal through the use of fictitious drivers. NK used this method of payment for the purposes of negotiation. Mr. Jindal estimated the cost for his services was closer to \$90,000 and he received \$65,000.

102. Mr. Lane asserted that throughout his testimony, NK was consistently inaccurate

regarding the timing of events. Mr. Lane submitted that those discrepancies become material when paired with the question by the Tribunals of why NK believed Mr. Jindal stopped taking money in September of 2006. NK stated that the revenues were dropping off and the trucks were sold. However, Mr. Jindal provided evidence that the revenues were still increasing in the fall of 2006 and the trucks were not sold until January of 2007.

103. Mr. Lane submitted that Mr. Jindal would not have performed a large amount of work without ensuring he was going to be paid for it in some fashion. Mr. Lane stated that Mr. Jindal is the kind of person who wants to get paid and that there are no invoices reflecting payment for this work is a strong indication of some sort of an agreement for the \$65,000 explaining why Mr. Jindal did not continue his insistence on being paid for those services.

104. Mr. Lane submitted that there is no suggestion that Mr. Jindal misappropriated funds in any other way at any other time. Mr. Lane questioned why someone who consistently misappropriated money would stop when the opportunity was still there and why that person would continue on in the employ of the company they misappropriated money from for a number of years and not take anything else.

105. Mr. Lane submitted that if Mr. Jindal was not entitled to payment for work on the property development projects, it does not make sense that NK and LS would meet with Mr. Jindal in the fall of 2010 to negotiate payment. NK stated that Mr. Jindal was not owed any money but that he and LS would give him something to appease him. Mr. Lane submitted that \$100,000 is a lot of money to pay someone that didn't provide services.

106. Mr. Lane stated that upon being served with Mr. Jindal's statement of claim in January of 2011, NK asserted that Mr. Jindal's demand showed such dishonesty that an audit was triggered to find other misdeeds. Mr. Lane proposed that there was no logical explanation provided by NK for looking back five to six years for these misdeeds. Mr. Lane submitted that the accountant NK retained to review the records was not qualified to detect fraud and yet, within a relatively short period of time, the \$65,000 anomaly was discovered. Mr. Lane suggested that an investigator, upon finding something wrong, would not have stopped upon discovering one anomaly but would have continued investigating.

107. Mr. Lane submitted that based on the facts in evidence there is no choice but to find Mr. Jindal guilty on Allegation Nos. 2 and 3; however the case has not been made for Allegation No. 1, the misappropriation of \$65,000.

108. Mr. Farley responded with regard to the issue of credibility that there is no question regarding Ms. Patel's evidence nor her credibility, only the credibility between Mr. Jindal and NK should be weighed.

109. Mr. Farley provided that there is no motivation for NK to lie, as section 63 of the Certified General Accountants Act states that no record of a proceeding, no document or statement given at such a proceeding and no decision or order made in such a proceeding is admissible in any civil proceeding.

110. Mr. Farley responded to why someone committing a fraud would cut off at \$65,000; as

with many other cases of misappropriation, the member believed they were entitled to the money. Mr. Farley asserted that Mr. Jindal has this same sense of entitlement.

111. Mr. Farley submitted that the accountant hired by NK in 2011 was quick to uncover the fraud as the investigation was focused on work done by Jindal in his office; a small scope.

Decision

112. After deliberating, the Tribunals found that the Allegation No. 1 had not been proven and Allegation Nos. 2 and 3 had been proven. The Tribunals announced the following decision:

The Tribunals, having heard the plea of not guilty to Allegation No. 1 and guilty to Allegation Nos. 2 and 3 dated February 4, 2016, as amended on October 21, 2016 and having seen, heard and considered the evidence filed, including the agreed statement of facts, the Discipline Committee of the Chartered Professional Accountants of Ontario ("CPA Ontario") and the Professional Conduct Tribunal of The Certified General Accountants Association of Ontario ("CGA Ontario") find Pushap Jindal ("Mr. Jindal") not guilty of Allegation No.1 and guilty of Allegation Nos. 2 and 3.

Reasons for the Decision

113. Mr. Jindal plead guilty to Allegations 2 and 3. With respect to Allegation 3, there were two lawsuits identified, neither of which was reported to CGA at the time that they were initiated. This failure to report was required under the Rules and Mr. Jindal acknowledged that he was guilty of this failure. With respect to Allegation No. 2 whereby Mr. Jindal participated in a plan that resulted in taxes not properly being paid by BGO and/or companies C and D, Mr. Jindal acknowledged his involvement and plead guilty to this allegation. The panel therefore found Mr. Jindal guilty of Allegations 2 and 3.

114. The prosecution in this case, as in all cases, acknowledged that it had the burden of proving, on the balance of probabilities, that it was more likely the allegation was true than that it was not true. This is the burden of proof in civil proceedings not the burden of proof in criminal proceedings which is proof beyond a reasonable doubt. The prosecution also acknowledged, as it typically does, that as this is a professional discipline proceeding the evidence required to satisfy the burden of proof must be clear, cogent and convincing.

115. Allegation No. 1 that Mr. Jindal made unauthorized payments of \$65,000 from companies "C" and "D" and therefore misappropriated \$65,000 required counsel for the Applicants to present evidence that was "clear, cogent and convincing" in order for the panel to find Mr. Jindal guilty of allegation No. 1. In their deliberations, the panel considered the credibility of both Mr. Jindal and NK regarding the evidence presented with respect to the alleged misappropriation of the \$65,000. The evidence presented by the Applicants did not meet this test.

116. The contested issue is whether Mr. Jindal misappropriated \$65,000. NK said he did. Mr. Jindal said he didn't and that NK agreed, in fact suggested, that he take \$65,000 in remuneration for non-accounting work by way of "wages for fictitious drivers." There is no

question that Mr. Jindal set up payroll accounts for two fictitious drivers and he himself or he and his wife received the money. The issue is whether NK agreed that he do this in order to compensate for the non-accounting work.

117. As this is a question of credibility, the Tribunals carefully considered the consistency of the evidence of each, both with respect to all of the evidence they gave and with each other's evidence. In addition, the Tribunals considered their demeanor and whether their evidence comports with the conduct one would expect from them, given their position, knowledge, experience and education.

118. Generally speaking, neither Mr. Jindal nor NK were credible. Mr. Jindal admits he knowingly participated in a scheme to reduce taxes properly payable, apparently by an amount of \$2.2 million. While not the main beneficiary or architect of the plan, he actively participated. The participation included preparing tax returns he knew were false and misleading. Such misconduct, in a core activity of practice which is essential to the profession and fundamentally important to the public it serves, demonstrates an egregious lack of integrity. This misconduct, and other improper conduct in his professional capacity – typically associating with false information – left the Tribunals with no choice but to conclude that, generally speaking, Mr. Jindal lacked credibility.

119. The panel also found NK was not credible. His evidence to the effect that he was “innocent” of the tax implication of the conduct of the companies (just followed professional advice) whereby more than \$4 million was sent offshore to his or his partner's relatives is not believable. His denial of knowledge of the day-to-day financial affairs of BGOC was not credible. His instruction to remove his father's last name from company records to preclude CRA from attributing the income to his father and his question about the details of parking fees and correcting financial information about another subsidiary demonstrated that, while his master's degree was in engineering, he could, and did, review and understand the financial information he received regularly.

120. The evidence of Mr. Jindal with respect to compensation for the accounting and non-accounting services made more sense and was more consistent with the documents than NK's. The evidence which did not support the assertion that Mr. Jindal took the \$65,000 without the knowledge of NK and/or LS included the undernoted facts: (a) the time of the removal of the funds was limited to the period between March and September 2006; (b) the query of the taking of the \$65,000 by NK only arose in 2010 after Mr. Jindal sought payment for his services for the land transaction; (c) only at this time was an accountant engaged to review the \$65,000 funds removal; (d) in January 2011 Mr. Jindal had a Statement of Claim served on NK and his entities in an effort to recover funds he believed he was owed for the land transactions; (e) NK and LS did not report this event to the police and as at the hearing there was still no report to the police regarding the purported misappropriation; (f) while Mr. Jindal was complicit in removing the funds as he did, it was also beneficial to BGOC to spread the payment over months rather than pay \$65,000 at one time.

121. With respect to the specific issue of the alleged misappropriation of \$65,000, the weighting of the evidence was such that the evidence of Mr. Jindal was more credible than that

of NK (LS was not called as a witness) and therefore the panel concluded that Mr. Jindal was not guilty of Allegation No. 1.

Submissions on Sanction

122. Mr. Farley distributed a Brief of Authorities and a Supplemental Brief of Authorities and stated that his submissions would focus upon the allegations where there was a finding of guilt.

123. Mr. Farley, on behalf of the Applicants, submitted that an appropriate sanction in this matter would be: a written reprimand; a fine in the amount of \$20,000; revocation of membership; and full publicity to all members and the public, including newspaper publication. The Applicants also sought an order for costs incurred for the preliminary motion and costs incurred for the hearing.

124. Mr. Farley submitted that the consequences of the misconduct found in this case must be significant, particularly with regard to the severe nature of the misconduct of Allegation No. 2, moral turpitude, and of Allegation No. 3, governability. The sanctions recommended by the Applicants address the specific and general deterrence appropriate to misconduct of this nature.

125. Mr. Farley stated that the aggravating factors included the sophistication of the scheme, the substantial amount of money channeled out of BGO, Mr. Jindal's association with false financial statements for 10 separate companies and the subsequent tax returns filed with CRA for each of the 10 companies, a distinct lack of remorse and the severity of the nature of the misconduct.

126. Mr. Farley stated that the only mitigating factor is that Mr. Jindal cooperated with the investigation.

127. Mr. Farley referred to *Marcus* in the Supplemental Brief of Authorities addressing the reason behind the reduced fine. The Tribunals noted that the quantum of a fine must reflect the gravity of the offence but it must also take into account the financial circumstances of the member. Mr. Farley agreed that it would not be appropriate for a tribunal to order a fine outside the means of a member; however that is not the present case.

128. Mr. Farley submitted that the fine proposed will deal with the principles of general and specific deterrence for Mr. Jindal and it reflects the serious consequences to like-minded members.

129. Mr. Farley stated that revocation is the most appropriate sanction for Mr. Jindal's actions.

130. Mr. Farley referred to the *Bogart* case found in the Brief of Authorities and submitted that publicity is a key element to specific deterrence, especially in cases of dishonesty. Publicity lets the public know that such behaviour is taken seriously by the profession. It must be made clear that Mr. Jindal is no longer a member and there are no rare or unusual reasons not to order publicity. Newspaper publicity is mandated for revocation; a local newspaper in the Brampton area and *The Globe and Mail* were recommended.

131. Mr. Farley filed a Costs Outline for Motion Hearing on October 20, 2017 (Exhibit 30) and a Costs Outline for Discipline Hearing (Exhibit 31) stating that costs are an indemnity not a penalty and they are meant to reimburse a portion of the costs incurred as a result of the member's conduct. As there was a finding of not guilty on Allegation No. 1, the Applicants were seeking only one-third of the actual costs incurred for the hearing, costs fixed at \$35,000. Mr. Farley asserted that the preliminary motion was a misuse of the Tribunals' time and therefore the Applicants were seeking full recovery of the actual costs incurred for the motion hearing, costs fixed at \$16,570.

132. Mr. Lane, for Mr. Jindal, agreed that the misconduct he pleaded guilty to should result in revocation and publication. However, the five and a half days of proceedings took place to determine a single charge of misappropriation for which the finding was not guilty; therefore a fine of \$5000 and no costs was suggested as appropriate.

Order

133. After deliberating, the Tribunals made the following Order:

IT IS ORDERED in respect of the Allegations:

1. THAT Mr. Jindal be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Jindal be and he is hereby fined the sum of \$20,000, to be remitted to CPA Ontario within six (6) months from the date this Decision and Order is made.
3. THAT Mr. Jindal's membership in CPA Ontario and CGA Ontario be and it is hereby revoked.
4. THAT notice of this Decision and Order, disclosing Mr. Jindal's name, be given in the form and manner determined by the Discipline Committee:
 - a) to all members of CPA Ontario; and
 - b) to all provincial bodies;and shall be made available to the public.
5. THAT notice of the revocation of membership, disclosing Mr. Jindal's name, be given by publication on the CPA Ontario website and in *The Globe and Mail* and *Brampton Guardian*. All costs associated with the publications shall be borne by Mr. Jindal and shall be in addition to any other costs ordered by the committee.
6. THAT Mr. Jindal surrender all certificates issued by CPA Ontario and CGA Ontario, including any membership certificate granting the Certified General Accountant (CGA) and Chartered Professional Accountant (CPA) designation, to the Adjudicative Tribunals Secretary within ten (10) days from the date this Decision and Order is made.

IT IS FURTHER ORDERED:

7. THAT Mr. Jindal be and he is hereby charged costs fixed at \$51,570, to be remitted to CPA Ontario within six (6) months from the date this Decision and Order is made.

Reasons for Sanctions

134. A written reprimand from the Chair serves as a specific deterrent to Mr. Jindal in order to emphasize the seriousness of his misconduct as well as to reinforce the high standard of conduct expected of a member.

135. A monetary fine serves as a general deterrent to the membership. The Tribunals determined that a fine was appropriate for Mr. Jindal's conduct. As noted by counsel for the Applicants, Mr. Jindal participated in a sophisticated tax evasion scheme over a period of time that resulted in the diversion of approximately \$2.2 million in revenue. Tax evasion is as serious as stealing. In addition Mr. Jindal was associated with false financial statements and tax returns for ten (10) companies. The Tribunals believed that a fine of \$20,000 was appropriate given the severity of the misconduct and that the amount was within the appropriate range based upon the brief of authorities provided by counsel for the Applicants. There was no evidence of hardship presented and the panel believed that a period of up to six (6) months from the date of the Decision and Order was appropriate for payment of the fine.

136. Mr. Jindal had agreed at the outset of the hearing that his membership should be revoked. The tax evasion program was akin to stealing as noted by counsel for the Applicants and the accompanying financial statements that were false and misleading along with the tax returns filed represented conduct that warranted the revocation of Mr. Jindal's membership. Counsel for Mr. Jindal acknowledged that Mr. Jindal's sanctions should include the revocation of his membership.

137. Full publicity including notice of the revocation of membership disclosing Mr. Jindal's name, by publication on the CPA Ontario website, and in the Globe and Mail along with publication in the Brampton Guardian, is appropriate to protect the interest of the public. There were no rare and unusual circumstances that would support non-publication. The publications also serve as a notice to members and the public that CPA Ontario is vigilant in maintaining its reputation of integrity and the notice is also in keeping with the transparency of the disciplinary process of CPA Ontario.

Reasons for Costs

138. Mr. Jindal was charged total costs of \$51,570 to be paid within six (6) months from the date of the Decision and Order. The total costs were comprised of two parts: \$16,570 related to the Motion heard on October 21, 2016; and \$35,000 for the hearing days pertaining to the Allegations. The hearing costs of \$35,000 represented 1/3 of the total. Typically the Applicants ask for 2/3 of the total costs but given that there was no finding of guilt for Allegation No. 1 the Applicants reduced their request. The Tribunals agreed with the Applicants that the investigation into Mr. Jindal's conduct was necessary given the complaints made and the investigation was a significant portion of the total costs. The Tribunals agreed that the total motion costs should be paid for by the member as the unsuccessful motion was advanced primarily to serve the member's interests regarding his civil litigation. The Tribunals agreed that the hearing costs

representing 1/3 of the total costs was fair given the two findings of guilt and the one finding of not guilty. It is relevant that while Mr. Jindal was found not guilty on Allegation No. 1, the scheme which he agreed to and put into effect not only warranted an investigation, it made the allegation possible. It wasn't proper professional conduct. The time period of six (6) months to pay the costs is consistent with the time to pay the fine

DATED AT TORONTO THIS 14th DAY OF SEPTEMBER, 2017
BY ORDER OF THE DISCIPLINE COMMITTEE



S.M. DOUGLAS, FCPA, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNALS

- J. BIANCUCCI, CPA, CGA
- D. KNIGHT, FCPA, FCA
- S. SOMANI, CPA, CA
- C. KENWELL (Public Representative)