

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Marianne Rivoalen
Madam Justice Freda M. Steel
Madam Justice Diana M. Cameron

BETWEEN:

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| <i>ACHAMYELESH ASFAW</i> |) | <i>S. B. Simmonds, K.C. and</i> |
| |) | <i>C. J. Suderman</i> |
| <i>Appellant</i> |) | <i>for the Appellant</i> |
| |) | |
| <i>- and -</i> |) | <i>T. L. Welsh and</i> |
| |) | <i>M. D. Grayson</i> |
| <i>CHARTERED PROFESSIONAL</i> |) | <i>for the Respondent</i> |
| <i>ACCOUNTANTS OF MANITOBA</i> |) | |
| |) | <i>Appeal heard and</i> |
| <i>Respondent</i> |) | <i>Decision pronounced:</i> |
| |) | <i>December 11, 2023</i> |

CAMERON JA (for the Court):

[1] This is an appeal as of right made pursuant to section 86(1) of *The Chartered Professional Accountants Act*, CCSM c C71 [the *Act*], of a decision of the discipline panel (the panel) of the respondent, the Chartered Professional Accountants of Manitoba (the CPA), finding the appellant guilty of committing acts of professional misconduct by (a) knowingly and falsely representing herself to the public as being eligible and qualified to provide public accounting services when she was not qualified to do so; and (b) performing other regulated services without obtaining a permit and without being registered to do so.

[2] The appellant also appeals the penalty imposed consisting of (a) a suspension of one month or until her website is brought into compliance with the *Act*, whichever period is longer; (b) the completion of an ethics course at her own cost, as selected by the CPA; (c) a fine of \$10,000; and (d) a payment of \$30,000 in costs.

[3] At the hearing, we dismissed the appeal with brief reasons to follow. These are those reasons.

[4] The grounds of appeal are that a breach of procedural fairness occurred when the panel requested submissions regarding appropriate sanctions after the hearing of the matter, but before the findings of guilt, and that this process resulted in an apprehension of bias.

[5] In support of her first ground, the appellant submits that the “high duty of procedural fairness” in this matter requires that the same procedure, as is followed in sentencing hearings in criminal matters, should have been applied to her process. That is, submissions on sanction should only be heard after a determination of guilt. We disagree.

[6] While a high duty of procedural fairness is required when a professional body is considering allegations of professional misconduct (see *Kuny v College of Registered Nurses of Manitoba*, 2017 MBCA 111 at para 17), the comparison of a criminal proceeding to the administrative one at issue in these proceedings is inappropriate.

[7] In our view, unlike the separate sentencing hearing required to be conducted after an offender has been found guilty of an offence as contemplated in section 720(1) of the *Criminal Code*, the panel correctly

determined that the *Act* allows for a single hearing regarding both guilt and sanction. Section 71(1) of the *Act* allows the discipline committee to determine its own practice and procedure subject to its bylaws (see Chartered Professional Accountants of Manitoba, “Bylaws” (23 June 2022), online (pdf): <www.cpamb.ca/common/Uploaded%20files/Regulatory/2022-cpa-manitoba-bylaws.pdf> (date accessed 11 December 2023) (the CPA bylaws)). Here, neither the *Act* nor the CPA bylaws require a separate hearing. Rather, sections 78 to 81 of the *Act* confirm the panel’s authority to make an order against a party at the conclusion of a professional misconduct hearing that results in a finding of guilt. Section 83(1) of the *Act* provides that a discipline panel “must make a written decision on the matter, consisting of its findings, any order made by it and the reasons for the decision.” Bylaw 960 of the CPA bylaws is similarly worded and refers to section 83 of the *Act*. This is to be contrasted to a finding of deemed professional misconduct made pursuant to section 79 of the *Act*. In that case, section 80(1) provides that the discipline panel “must give the person an opportunity to make submissions to it about any aspect of the matter.”

[8] In addition, the jurisprudence supports that a party’s procedural right to be heard in administrative proceedings does not necessarily amount to a right to have separate hearings on liability and sanction (see, for example, *Best Import Auto Ltd v Motor Dealer Council of British Columbia*, 2018 BCSC 834 [*Best Import*], where an application of the “fairness factors” (at para 50) enunciated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, led the Court to conclude that there was no right to separate hearings on liability and sanction); *Johal v Funeral Services*, 2012 ONCA 785 at para 9 [*Johal*], where the Court found no prejudice where the appellant was

given notice during the hearing on the merits of the possible sanctions; and *Therrien (Re)*, 2001 SCC 35 at paras 89-90 [*Therrien*], where a separate hearing was not required in circumstances both factually and legislatively similar to the present case.

[9] Furthermore, as in *Best Import, Johal* and *Therrien*, the facts in this case demonstrate that the appellant knew at the time of the hearing what the possible and requested sanctions were. She had two opportunities to make submissions regarding penalty. The first was at the conclusion of the hearing dealing with the alleged misconduct after counsel for the CPA's Complaints Investigation Committee made submissions regarding penalty and the second after counsel for the panel wrote to the parties asking for submissions regarding penalty should the panel find the appellant guilty of one or two of the charges against her. Despite being represented by counsel, the appellant chose not to take advantage of either opportunity.

[10] Regarding bias, we see no apprehended institutional bias, nor do we see any in the actions taken by the panel (see, for example, *The New Brunswick Real Estate Association v Moore*, 2007 NBCA 64, where the discipline committee's policy of having one hearing regarding both liability and penalty did not give rise to a reasonable apprehension of bias). The panel's request for submissions in the event that a finding of guilt was made was in compliance with the legislation and supported by the jurisprudence. The record demonstrates that the panel considered liability before sanctions.

[11] In the result, the appeal was dismissed with costs.

Cameron JA

I agree: _____ Rivoalen CJM

I agree: _____ Steel JA