

IN THE COURT OF QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 38 OF
THE ACCOUNTING PROFESSION ACT

BETWEEN:

RAKESH KAUSHIK, CPA, CA

APPELLANT

-and-

**INSTITUTE OF CHARTERED PROFESSIONAL ACCOUNTANTS OF
SASKATCHEWAN AND THE PROFESSIONAL CONDUCT COMMITTEE,
Established pursuant to *The Accounting Profession Act***

RESPONDENT

**BRIEF OF LAW OF THE APPELLANT,
INSTITUTE OF CHARTERED PROFESSIONAL ACCOUNTS OF
SASKATCHEWAN AND THE PROFESSIONAL CONDUCT COMMITTEE**

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I. INTRODUCTION

1. Rakesh Kaushik, CPA, CA (the “Member”) appeals to the Court of Queen’s Bench from two decisions of the Board of the Institute of Chartered Professional Accountants of Saskatchewan (the “Board”, “Board Decision” and “First Appeal” respectively), who upheld the decisions of the Discipline Committee of The Institute of Chartered Professional Accountants (the “Discipline Committee”) regarding his professional misconduct and the penalty for same, pursuant to *The Accounting Profession Act* (the “Act”).
2. For the reasons set out herein, it is the position of the Mr. Kaushik that the Professional Conduct Committee (the “PCC”) without justification, and with prejudice made recommendations to prosecute the member. These recommendations were without merit. The Discipline Committee and the Board also disregarded almost all important facts relevant to these decisions. Accordingly, the Decisions of the Board should be quashed. The Member appeals two Decisions.
3. In law, selective enforcement occurs when officials such as prosecutors or regulators exercise enforcement discretion, which is the power to choose whether or how to punish a person. The biased use of enforcement discretion, such as that based on ignorance or corruption, is usually considered a legal abuse and a threat to the rule of law. These are two are such cases.

II. FACTS

4. Rakesh Kaushik, CPA, CA, (the Member), has been a member of the Institute of Chartered Professional Accountants of Saskatchewan since April 17th, 1984. The member is the sole partner of DNTW Chartered Professional Accountants LLP, Saskatoon (“DNTW”). Currently in public Practice for 37 years.
5. There has been no complaint against the member by any client in relation to any financial reports ever.
6. Kaushik was born in India in 1955, and moved to Canada and specifically to Saskatchewan in 1964. He attended high school in Kamsack and in 1974 moved to Saskatoon. After completing B.Comm with majors in Accounting and Finance, he articulated with Deloitte Haskins & Sells and obtained his Chartered Accountant designation.
7. From 1984 to 2005 Kaushik operated as Rakesh Kaushik, Chartered Accountant Professional Corporation. After 20 years as a sole practitioner, Kaushik looked for partners for expansion of resources, and growth.
8. In 2005, Kaushik met with the partners of DNTW LLP (**TAB 16**). The following partnership was formed DNTW LLP:
 - a) Adrian Nagy - Calgary
 - b) Dennis Dowling - Edmonton
 - c) Gianni Capozzi - Montreal
 - d) Steven Tabac – Montreal
 - e) Kuldeep Khanna - Montreal
 - f) Thomas Swindells - Ottawa
 - g) Graham Wheatly – Ottawa
 - h) Rakesh Kaushik - Saskatoon

Most of us were in business for more than 20 years, some more than 30 years.

With the new partners, Kaushik improved the Saskatoon office operations. New software, procedures, and resource library were added. The member started using

CaseWare, CCH Practice Management and other programs, and enrolled in the Microsoft Partner Programs, which enabled the office to incorporate the Microsoft 2003 Windows server.

Twice a month partners of DNTW held tele-conference call meetings to discuss office issues that practitioners normally have. We all helped each other become better business owners. This interaction changed me, and made me a better professional accountant to serve the public. We expanded our brain power, collectively. It was the perfect group to work with. If we had an issue, we could email one another.

7. From 1984 to 2011, the member performed all aspects of Professional Practice that included **audits of small charitable organizations and non-profit associations**. In essence, most of these audits required our firm to prepare the financial reports from records of the entity. Almost all of these small entities had board members that were volunteers. The bookkeeping function in these charities was normally assigned to the treasurer. The treasurers had very little knowledge of bookkeeping and reporting. To provide audited financial statement, our office was effectively involved in the preparation of the statements that included completing bank reconciliations, and making journal entries and general ledgers. In the course of preparing these statements - the audit functions of examining the bills, receipts, bank entries, and general ledgers were also completed. Our audit reports were completed and were discussed with the treasurer and other board members. On this basis we finalized and issued the audit reports. I believe this was typical practice of almost all Professional Accounting offices.
8. The DNTW Calgary office was a full service Professional Accounting Office with an audit division, and it was the largest office by revenue and employees. The partner, Adrian Nagy, had a complete firm. His office grew from 1 to 6 partners in 2007 and 2008.
9. In 2010 Kaushik purchased a building in Saskatoon with the intent of setting up a full service Professional Accounting Practice that included an audit division. The

aim was to have **4 – 6 partners and operating staff of 15-20**, an ideal professional group and a place to work. A 7,500 square foot office space was developed with 6 partner offices, with a large board room, and two smaller client signing offices. **This was a dream Kaushik had for more than 10 years.** As a student in Edmonton, Kaushik had seen a similar office with 4 partners and a staff of 16.

10. In 2012, the CPAs were instructed to stop providing the accounting services and audits simultaneously. These are two separate functions. Bookkeeping and financial report preparation had to be separated from the audit functions. Accordingly, Kaushik informed his audit clients that he could not continue as an auditor due to this conflict of interest. Kaushik effectively stopped audit work. In this period a practice file inspection resulted in CPA requesting a Corrective Action Plan for audit engagements. Since we stopped audit engagements, no **action plan was submitted.**

KAUSHIK – DEAN OFFICE MERGER

11. In summer of 2012 Kaushik met Mr. Glen Graham Dean, CPA CA with the intent to purchase the Dean's practice, and that Dean was planning to retire.

On November 18, 2012, Kaushik and Dean entered into purchase agreement to merge the Dean practice with DNTW.

Dean agreed to continue with the Audit practice for 18 months after the merger. Remember – Kaushik stopped audit work earlier in the year.

12. *Prior to the Purchase of the Dean's practice – In September 2012, Kaushik had discussions with the DNTW Partners at the Meeting in Calgary. The partners discussed the proposal of the purchase (TAB 19) and we decided not to make Dean a partner in DNTW, as it was only for 12-18 months. Dean had been in practice for more than 30 years, and "passed his entire file reviews with flying colors", and it would be easier to help him retire without incorporating him into the partnership.*

13. *Dean / Kaushik Purchase/Sale agreement was prepared by Mr. Rod Gall, Lawyer. (TAB 19) It was a very simple agreement.*

BOTH OF US UNDERSTOOD what each party had to do. Kaushik took the accounting and tax clients. Dean would continue to carry on with the audit division as he always had for years. Kaushik was not in a position to run the Audit Division. In the meantime, we looked for an Audit partner to replace Dean.

Dean completed 34 audits files in 2013 and 2014. The audit clients loved him. Dean continued to carry on with his audit practice in the same manner as he had for many years, and with the same audit programs and procedures. Dean continued to work with the clients, prepared the year end journal entries, and drafted the financial statement and the audit reports. Kaushik provided the clerical and administrative support. (Remember Kaushik had effectively stopped doing audits in 2012).

Kaushik was simply letting Dean Finish off his professional accounting career.

That is all Kaushik was involved with in 2013 and 2014.

Both of us were from the old school. Our word was our promise. It's the gold standard. Both of us wanted to help clients. The key word is help. The only difference was that I stopped helping audit clients, **BECAUSE**, there was a perceived conflict of interest as preparers and auditors.

14. In the merger with Dean's office, one of his key employees retired, and we were left shorthanded in the spring of 2013.

15. Two of the three practice review audit files, MUC and RVLB, were prepared by

Dean CPA, CA. One Audit file ICDC was prepared by Kaushik. The Review file (REM) was also prepared by Kaushik.

16. On July 7, 2013, a practice inspection (2013142018P) was done by Leigha Hubick. It was after merger with Dean. A corrective action plan was submitted, as there was possibility that Kaushik may be required to do some additional audits, resulting from Dean's departure. A corrective Action Plan was submitted (TAB 9)

THE ACTION PLAN WAS SUBMITTED. With no response from CPA (TAB 9)

12. From the third Practice review of the files – the PCC began investigation of DNTW Case #14-04 and #1405-C
13. The investigation was completed by Mr. Morgan Kennedy and Ms. Kim Kovren. The report was incomplete. Several discussions in our meeting were not included. Mr. Dean's involvement was crucial.

The report missed key issue – **the member did not prepare the audit files.** Mr. Dean was carrying on the audit practice in Kaushik's office.

- (a) The investigators did not accurately provide the role of Mr. Dean to PCC
- (b) The PCC decision to prosecute was made carelessly, in haste, without complete knowledge or consideration. The decision lacks credibility. PCC fails to contact the member
- (c) Subsequent to the Decision to Prosecute, PCC prepared two statements of facts for the member to sign. These statements were not acceptable to the member as it contained significant errors, and did not include most of the discussions with the investigators.
- (d) Kaushik advised Mr. Hill that the Joint Statement of facts need to be revised.

- (e) Mr. Berger, chair of the PCC did not seem to know what was happening during our telephone call related to our joint statement of facts we presented. The member was astonished during the telephone meeting with Ms. Hubick and Mr. Glen Berger, Chair of the PCC.
- (f) **At one point in the telephone call, Mr. Berger asked Mr. Kaushik if he had been “railroaded”. Then Kaushik replied an emphatic YES. It was incredible that our facts were not accepted by the PCC. After this, it has been a complete disaster for Kaushik.**
- (g) PCC did not accept a joint statement of facts submitted by the member. PCC abandoned their responsibility and Ms Hubick personally had taken control over the file from the PCC. Mr. William Hill, Registrar, provided all the additional support. Mr. Hill and Ms. Hubick began to prosecute directly, including all facets of prosecution. PCC’s only witness at the Discipline Committee hearing was Ms. Hubick (File Reviewer).
- (h) The Discipline Committee, after all the delays, prosecuted the member.
- (i) The CPA Board upheld the decision of DC

13. Mr. Lorne Horning & Gabe Ng HNG Accounting Group CPA

In fall of 2015, I met with Mr. Lorne Horning CPA and Mr. Gabe Ng, CPA to discuss merging our firms. Mr. Horning was in public practice for more than 35 years and had two new CPA’s as Partners. Mr. Horning also indicated that he wanted to retire. One of the CPA had recently left and Mr. Ng wanted to merge our firms. HNG had eight employees.

In November 2015 HNG Group moved their Professional Accounting Practice into one section (2,500 sq. ft.) of our 7,500 Sq. Ft. total area. HNG paid rent only. However, we shared the receptionist and the common reception area and bathrooms.

Almost immediately, after we started to get settled in, by the end of December 2015, Mr. Ng was required to leave our office. He informed us that the order was coming from Mr. William Hill to distance himself from Mr. Horning. The result was we could not merge our offices.

Mr. Horning continued to rent our office space till May 31, 2019. Our anticipated merger of the office never happened. His two partners had left the partnership.

Mr. Horning informed Kaushik that Mr. William Hill played a key role in his suspension from the CPA Saskatchewan.

If all the mergers were successful – (Dean, Kaushik, and HNG) – we would have achieved an office size of 16 on staff, with 4 partners and revenues of 2.2 million. The audit division would be about \$850,000. Exactly that is what I was planning for this space, as the DNTW Saskatoon LLP

14. PCC – Decision to Prosecute Kaushik

The decision to prosecute by the Professional Conduct Committee was made on April 16, 2021.

III. ISSUES

- A. Professional Conduct committee - What is the role of the professional conduct committee? Independent? Unbiased. Control over direction? Mastermind? Final Decision?**
 - B. Registrar – The role of the Registrar**
 - C. Conclusion**
-

A. **Professional Conduct Committee**

15. **Role the PCC failed in its responsibility to ensure fair treatment of the registrant and complainant Sec 491.1. The committee also failed in its responsibility under section 491.2((b) and (c)**

Section 487.1 All committees shall execute their mandate in a timely manner. – It took three years for PCC to prosecute and without input from the member.

16. The Decision of the PCC to prosecute the member was carried out with haste.

The supreme court of Canada in the Vavilov Decision (Administrative law — Judicial review — Standard of review — Proper approach to judicial review of administrative decisions — **Proper approach to reasonableness review.**

Judicial review is really about helping the court better understand the rationale for the underlying decision so that it can take its commitment to deference seriously. The cost of this participation is not insignificant.

It is conceptually useful to consider two types of fundamental flaws that tend to render a decision unreasonable. The first is a failure of rationality internal to the reasoning process. To be reasonable, a decision must be based on an internally coherent reasoning that is both rational and logical. A failure in this respect may lead a reviewing court to conclude that a decision must be set aside. Reasonableness review is not a line-by-line treasure hunt for error. However, the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic. Because formal reasons should be read in light of the record and with due sensitivity to the administrative regime in which they were given, a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an

irrational chain of analysis. A decision will also be unreasonable where the conclusion reached cannot follow from the analysis undertaken or if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point. Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies.

More generally, this appeal and its companion cases (*Bell Canada v. Canada (Attorney General)*, [2019 SCC 66](#)) provide an opportunity to consider and clarify the law applicable to the judicial review of administrative decisions as addressed in *Dunsmuir v. New Brunswick*, [2008 SCC 9](#), [2008] 1 S.C.R. 190, and subsequent cases. The submissions presented to the Court have highlighted two aspects of the current framework which need clarification. The first aspect is the analysis for determining the standard of review. The second aspect is the need for better guidance from this Court on the proper application of the reasonableness standard.

In setting out a revised framework, this decision departs from the Court's existing jurisprudence on standard of review in certain respects. **Any reconsideration of past precedents can be justified only by compelling circumstances and requires carefully weighing the impact on legal certainty and predictability against the costs of continuing to follow a flawed approach.** Although adhering to the established jurisprudence will generally promote certainty and predictability, in some instances doing so will create or perpetuate uncertainty. In such circumstances, **following a prior decision would be contrary to the underlying values of clarity and certainty in the law.**

. The revised standard of review analysis begins with a presumption that reasonableness is the applicable standard in all cases. Respect for these institutional design choices requires a reviewing court to adopt a posture of restraint. Thus, whenever a court reviews an administrative decision, it should start with the presumption that the **applicable standard of review for all aspects of that decision will be reasonableness.**

Relative expertise remains, however, a relevant consideration in conducting reasonableness review. Where a legislature has provided a statutory appeal mechanism, it has subjected the administrative regime to appellate oversight and it expects the court to scrutinize such administrative decisions on an appellate basis.

The application of the correctness standard for such questions therefore respects the unique role of the judiciary in interpreting the Constitution and ensures that courts are able to provide the last word on questions for which the rule of law requires consistency and for which a final and determinate answer is necessary.

17 491.1 The role of the Professional Conduct Committee is to provide the public with a mechanism for bringing professional conduct issues and other matters to the Institute for consideration, **while ensuring fair treatment of the registrant and complainant.**

491.2 Pursuant to section 28 of the Act, the Professional Conduct Committee has responsibility to:

- (a) Review and investigate initial written complaints and requests made by the Board, subject to sections 29 and 35 of the Act;

- (b) make recommendations regarding the resolution of complaints;
and**
- (c) facilitate the mediation of complaints
alleging that a registrant is guilty of
professional misconduct or professional
incompetence.**

491.3 In performing its duties the Professional Conduct Committee may:

- (a) Maintain a list of members who are qualified
to and who consent to act as investigators,
and to update this list at least annually;**
- (b) seek a legal opinion on any matter over which it has jurisdiction;
and**
- (c) use the services of an Institute employee
including but not limited to the Registrar, or
legal counsel to prosecute professional
conduct matters identified in formal
complaints.**

**491.4 The Professional Conduct Committee shall prepare and
forward a formal complaint to the Discipline
Committee, without having to first investigate the
matter, when a registrant that has been convicted of
an offence pursuant to the Criminal Code.**

**491.8 The chair and the vice-chair of the Professional Conduct Committee
shall have the authority to:**

- (a) direct the Registrar and Institute staff to perform tasks on behalf
of the Professional Conduct Committee;**
- (b) prepare a report to the Board regarding
professional | conduct cases and issues
encountered by the Professional Conduct
Committee at least every six (6) months or
more frequently as determined necessary by
the chair; and**

(c) perform all other tasks assigned to the position of chair as are identified in the Bylaw 42.1.

491.12 The Professional Conduct Committee shall be supported by the Registrar and any institute employees designated by the Registrar

18. The Discipline Committee is a specialized body which has been tasked with determining what constitutes professional misconduct. The DC missed the role of Mr. Dean (the effective partner) on the audits. The DC Decision is a **rubber stamp** for the recommendations of the PCC.

19. The Supreme Court Decision on Vavilov continues.

There is also a need for better guidance from the Court on the proper application of the reasonableness standard, what that standard entails and how it should be applied in practice. Reasonableness review is meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. Its starting point lies in the principle of judicial restraint and in demonstrating respect for the distinct role of administrative decision makers. However, it is not a “rubber-stamping” process or a means of sheltering decision makers from accountability. While courts must recognize the legitimacy and authority of administrative decision makers and adopt a posture of respect, administrative decision makers must adopt a culture of justification and demonstrate that their exercise of delegated public power can be justified. In conducting reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale, to ensure that the decision as a whole is transparent, intelligible and justified. Judicial review is concerned with both the outcome of the decision and the reasoning process that led to that outcome. To accept otherwise would undermine, rather than

demonstrate respect toward, the institutional role of the administrative decision maker.

21. While speaking about the standard in the context of judicial review, the summary articulated by the Supreme Court in *VAVILOV* is helpful:

It is conceptually useful to consider two types of fundamental flaws that tend to render a decision unreasonable. The first is a failure of rationality internal to the reasoning process. To be reasonable, a decision must be based on an internally coherent reasoning that is both rational and logical. A failure in this respect may lead a reviewing court to conclude that a decision must be set aside. Reasonableness review is not a line-by-line treasure hunt for error. However, the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic. **Because formal reasons should be read in light of the record and with due sensitivity to the administrative regime in which they were given, a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis. A decision will also be unreasonable where the conclusion reached cannot follow from the analysis undertaken or if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point. Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies.**

22. Given all of the above, the PCC and the DC failed to look at any alternative results but to prosecute. Once the decision to prosecute was made on April 16, 2016, the member respectfully submits that the appropriate standard of review of the Board Decision is unreasonable, and unjustifiable, and inconsistent with the facts. The recommendations and the resulting Decisions of Discipline Committee and the Board lack intelligibility, and biased, and on self-preservation basis, including the Registrar and the File reviewer, who have been instrumental in the prosecution process.

24. The Member submits that the standard applied by the PCC and DC are

unreasonable.

Has the Discipline Committee and Board complied with the rules of procedural fairness?

Role – Professional Conduct Committee (Tab 7)

25. The role of the Professional Conduct Committee (PCC) is clearly specified in the Institute of Chartered Professional Accountants Rules under 491.1 to 491.12.

491.1 Explicitly states:

The role of the Professional Conduct Committee is to provide the public with a mechanism for bringing professional conduct issues and other matters to the Institute for consideration, while ensuring fair treatment of the registrant and the complainant.

26. The PCC, on **April 6, 2016**, made the recommendation to prosecute the member. **(TAB 6)**

It is the member's respectful submission that PCC acted without proper reason and investigation, **without due care**, made the recommendations to prosecute in a conference call. The nature of Bias, and lack of clarity, and integrity, can be dealt with in tandem. The PCC failed in its own responsibility to ensure "**fair treatment of the registrant and complainant.**"

April 6, 2016 - The PCC meeting was in the format of a **CONFERENCE CALL**. The meeting began at 8:35 am with Mr. Guest Morgan Kennedy FCPA FCA (Investigator) and Ms. Kim Korven LLM (Investigator).

Mr. Kennedy left the meeting at 9:25 am

Some discussion was held. No details in the minutes are available.

Six recommendations were made in support of the prosecution of

Kaushik

Within an hour the discussion was over. It is impossible to understand what was discussed and what files were presented in the hour. How were the investigators' report and the related audit files examined in the conference call?

27. On June 23, 2017, without consultation with the member, PCC prepared two Joint Statement of facts, Part I, and Part II, for each of the cases #14-04 and #1405-0C for signature of guilt for the member. (TAB 7)

28. **Supreme Court has stated that:**

"Reasonableness" and "correctness" may sound like normal everyday words. But they have special meanings in law. A "reasonable" decision is based on a logical chain of reasoning. It has to make sense in light of the law and the facts. A "correct" decision is the only right answer in light of the law and the facts (TAB 18)

The Alberta Law Review – (TAB 22 – Page 255)

. The Supreme Court of Canada held that "the classification of statutory function as judicial, quasi-judicial or administrative is often very difficult," and had generated unjust results where individuals affected by a decision of an administrative body received no procedural fairness at common law.⁴² Finally, in *Cardinal v. Director of Kent institution*,⁴³ the Supreme Court of Canada adopted the current formulation of the threshold for procedural fairness, as when an administrative decision affects a person's "**rights, privileges or interests**,"⁴⁴ which avoids characterizing the nature of the decision maker. Some remnants of the old distinction have remained, however, in Canadian law. For example, in the *Baker* case, the Supreme Court of Canada held that the "**nature of the decision being made and the process followed in making it**"⁴⁵ is a factor for the reviewing court to consider as one part of a multifactorial analysis in determining the degree of procedural fairness required in the circumstances. In other words, the more the decision maker looks and acts like a court, the more procedural fairness will be required of it.

29. In *Mavis Baker Minister of Citizenship and Immigration*, (TAB 25) the Court provided a summary of the law of bias in administrative tribunals as follows:

However, the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic. *Because formal reasons should be read in light of the record and with due sensitivity to the administrative regime in which they were given, a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis. A decision will also be unreasonable where the conclusion reached cannot follow from the analysis undertaken or if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point. Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies.*

The second type of fundamental flaw arises when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it. Although reasonableness is a single standard that already accounts for context, and elements of a decision's context should not modulate the standard or the degree of scrutiny by the reviewing court, what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review. These contextual constraints dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt. The governing statutory scheme, other relevant statutory or common law, the principles of statutory interpretation, the evidence before the decision maker and facts of which the decision maker may take notice, the submissions of the parties, *the past practices and decisions of the administrative body, and the potential impact of the decision on the individual to whom it applies, are all elements that will generally be relevant in evaluating whether a given decision is reasonable.* Such elements are not a checklist; they may vary in significance depending on the context and will necessarily interact with one another.

Accordingly, a reviewing court may find that a decision is unreasonable when examined against these contextual considerations. Because administrative

decision makers receive their powers by statute, the governing statutory scheme is likely to be the most salient aspect of the legal context relevant to a particular decision

30. Supreme Court states the following:

It is conceptually useful to consider two types of fundamental flaws that tend to render a decision unreasonable. **The first is a failure of rationality internal to the reasoning process. To be reasonable, a decision must be based on an internally coherent reasoning that is both rational and logical. A failure in this respect may lead a reviewing court to conclude that a decision must be set aside.** Reasonableness review is not a line-by-line treasure hunt for error.

However, the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic. **Because formal reasons should be read in light of the record and with due sensitivity to the administrative regime in which they were given, a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis. A decision will also be unreasonable where the conclusion reached cannot follow from the analysis undertaken or if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point. Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies.**

31. It is clear why the Member is of the opinion the PCC lacked substantial material and evidence, on April 6, 2016 to make the recommendations that it did. **Furthermore it shut the door on the member's facts as presented. (TAB 8)**

32. It appears that only the PCC Chair and the File Reviewer, and input from the Registrar, were the only Decision makers in the recommendations. The Registrar appears to have ruled that the only option was to accept the PCC Joint Statement

of Facts or attend the Formal Hearing of the Discipline Committee.

33. It is the duty of Discipline Committee and the CPA Board Panel to review the complete submissions, including copies of the Audit Files Prepared by Dean.
34. In addition, the member notes the following:
 - i) Kaushik's involvement in the files was minimal
 - ii) None of the Financial Reports contained errors
 - iii) No adjustments were recommended to the client
 - iv) No funds were missing or fraud was committed
 - v) Kaushik is not a threat to the public
 - vi) It was never Kaushik's intention to carry on with Dean's audit practice. DNTW wanted an audit partner for the firm (Kaushik advertised for an audit partner)
 - vii) Kaushik hired a full time CGA student to work with Dean from November 2013 to April 30, 2014. Mr. Mahill was hired to take over the audit files from Dean. He had two classes remaining to become CPA. Now, he has his own CPA Practice in Saskatoon
 - viii) The Professional Conduct Committee, The Discipline Committee, and the CPA Board did **not contact Glen Graham Dean**, to determine his involvement.
 - ix) The Professional Conduct Committee, The Discipline Committee, and the CPA Board Panel did **not contact the Clients**, for any clarification of Kaushik's and Dean's involvement in these files.
 - x) The joint statement of facts presented by Kaushik were ignored by the Board
 - xi) **PCC's, and Registrar's and File Reviewers were fixated on prosecution of Kaushik.** They fell in the tunnel vision. Facts that supported Kaushik were ignored. Hence biased to prosecute only
 - xii) **File reviewer, Ms. Hubick** was the only witness at the hearing
 - xiii) **Ms. Hubick's resume included directing prosecution (TAB 12)**
 - xiv) **Ms. Hubick is the current Registrar**

Delay

35. The delay first happened at the PCC Level. Kaushik's joint Statement of fact presented to PCC was apparently dismissed. **The expedited hearing option was taken away by the Registrar and the PCC.** Member was denied natural justice, the ability to be heard on the fast track, Expedited Hearing.

It is entirely possible that with the revised joint statements of facts, as presented by Kaushik, show that PCC had no grounds to recommend the charges. All this could be stopped by the Chair, Mr. Berger and Ms. Hubick. There would be no need for the FORMAL HEARING.

36. The member submits there was no delay in providing the Corrective Action Plan for Audits because the member stopped doing audits in 2012. Accordingly, no corrective action plan was required. The PCC was made aware of a Corrective Action Plan as soon as the Member was required to do additional audits as Mr. Dean was leaving and no other Audit Partner was found for the Saskatoon office.

Should the Board's Decision be set aside?

37. This Court is to consider whether the Board Decision was reasonable in determining that the Decision of the Discipline Committee was reasonable. In essence, by appealing to the Court of Queen's Bench, the Court must determine also whether the Penalty Decision and Conduct Decision were reasonable.

38. **Supreme Court provides the following:**

"Reasonableness" and "correctness" may sound like normal everyday words. But they have special meanings in law. **A "reasonable" decision is based on a logical chain of reasoning. It has to make sense in light of the law and the**

facts. A "correct" decision is the *only right answer* in light of the law and the facts

The Supreme Court of Canada Decision – Docket 37748: Minister of Citizenship and immigration (Appellant) and Alexander Vavilov (Respondent) Noted on Page 9, the importance of the following:

There is also a need for better guidance from the Court on the proper application of the reasonableness standard, what that standard entails and how it should be applied in practice. Reasonableness review is meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. Its starting point lies in the principle of judicial restraint and in demonstrating respect for the distinct role of administrative decision makers. However, it is not a “rubber-stamping” process or a means of sheltering decision makers from accountability. **While courts must recognize the legitimacy and authority of administrative decision makers and adopt a posture of respect, administrative decision makers must adopt a culture of justification and demonstrate that their exercise of delegated public power can be justified. In conducting reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale, to ensure that the decision as a whole is transparent, intelligible and justified. Judicial review is concerned with both the outcome of the decision and the reasoning process that led to that outcome.** To accept otherwise would undermine, rather than demonstrate respect toward, the institutional role of the administrative decision maker.

39. So who is the mastermind of the prosecution? Mr. Berger, Chair of Professional Conduct Committee, did not appear to be in control during the telephone meeting. It is in Ms. Hubick resume that she is responsible for the direction of the

prosecution. (TAB 12) Ms. Hubick is the only witness at the Discipline Hearing. She is the current Registrar. Mr. Hill also played a significant role as almost all information passed by him. Mr. Hill has supported the prosecution. **Mr. Hill and Ms. Hubick may have controlled the entire process.** The Discipline Committee and the Board blindly supported the prosecution.

40. Several factors have been recognized in the jurisprudence as relevant to determining what is required by the common law duty of procedural fairness in a given set of circumstances. One important consideration is the nature of the decision being made and the process followed in making it. In *Knight, supra*, at p. 683, it was held that “the closeness of the administrative process to the judicial process should indicate how much of those governing principles should be imported into the realm of administrative decision making”. The more the process provided for, the function of the tribunal, the nature of the decision-making body, and the determinations that must be made to reach a decision resemble judicial decision making, the more likely it is that procedural protections closer to the trial model will be required by the duty of fairness. See also *Old St. Boniface, supra*, at p. 1191; *Russell v. Duke of Norfolk*, [1949] 1 All E.R. 109 (C.A.), at p. 118; *Syndicat des employés de production du Québec et de l’Acadie v. Canada (Canadian Human Rights Commission)*, [1989] 2 S.C.R. 879, at p. 896, *per Sopinka J.* As is set out in subsection 38(1), the Court has broad authority in determining an appeal, similar to that of the Board under section 37 of the Act. The Court may dismiss the appeal, quash the finding of guilt, direct a new hearing or further inquiries by the Discipline Committee, vary the order of the Discipline Committee, or substitute its own decision from the decision appealed from. The Court may further make any order as to costs that it considers appropriate (s. 37(6)).

A third factor in determining the nature and extent of the duty of fairness owed is the importance of the decision to the individual or individuals affected. The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that

will be mandated. This was expressed, for example, by Dickson J. (as he then was) in *Kane v. Board of Governors of the University of British Columbia*, [1980] 1 S.C.R. 1105, at p. 1113:

A high standard of justice is required when the right to continue in one's profession or employment is at stake. . . . A disciplinary suspension can have grave and permanent consequences upon a professional career.

In the modern state the decisions of administrative bodies can have a more immediate and profound impact on people's lives than the decisions of courts, and public law has since *Ridge v. Baldwin* [1963] 2 All E.R. 66, [1964] A.C. 40 been alive to that fact. While the judicial character of a function may elevate the practical requirements of fairness above what they would otherwise be, for example by requiring contentious evidence to be given and tested orally, what makes it "judicial" in this sense is principally the nature of the issue it has to determine, not the formal status of the deciding body.

Balancing these factors, I disagree with the holding of the Federal Court of Appeal in *Shah, supra*, at p. 239, that the duty of fairness owed in these circumstances is simply "minimal". Rather, the circumstances require a full and fair consideration of the issues, and the claimant and others whose important interests are affected by the decision in a fundamental way must have a meaningful opportunity to present the various types of evidence relevant to their case and have it fully and fairly considered.

The importance of a decision to the individuals affected, therefore, constitutes a significant factor affecting the content of the duty of procedural fairness.

The next issue is whether, taking into account the other factors related to the determination of the content of the duty of fairness, the failure to accord an oral hearing an

41. The member submits that the application of the reasonableness standard to the Board Decision should result in a decision by the Court to quash the Decision of the Board. The decision of the CPA Board Panel is clearly not supported by the facts.
42. As indicated above, the Member has articulated the specific grounds of appeal. After dealing with the procedural issues outlined above, the member submits that there were two primary issues before the Board, which may form the basis of the Court's inquiry on appeal:
 - (a) Was it reasonable of the Board to determine that the Discipline Committee was reasonable in finding that the Member failed to cooperate with the regulatory process of the Institute; and
 - (b) Was it reasonable of the Board to determine that the Discipline Committee was reasonable in finding that the Member conducted himself in a way that is inimical to the best interests of the public and the members of the Institute?
43. In analyzing these two issues, it is clear that the appeal must be allowed.
44. The duties and objects of the Institute are set out in section 4 of the Act:
 - (1) It is the duty of the institute at all times:
 - (a) To serve and protect the public; and
 - (b) To exercise its powers and discharge its responsibilities in the public interest.
 - (2) The objects of the institute are:
 - (a) To regulate the practice of the profession and to govern the registrants in accordance with this Act and the bylaws; and
 - (b) To assure the public of the knowledge, skill, proficiency and competency of registrants in the practice of professional accounting and other services provided by registrants.

Reasonable Apprehension of Bias

The test for reasonable apprehension of bias was set out by de Grandpré J., writing in dissent, in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369, at p. 394:

. . . the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. . . [T]hat test is “what would an informed person, viewing the matter realistically and practically -- and having thought the matter through -- conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.”

45. It is with these duties and objects in mind that the member suggests that:
- i) the **PCC failed to carry out its role to provide for fair treatment of the member and the complainant (Hubick)**
 - ii) the Discipline Committee determined, and the Board upheld, that the Member committed professional misconduct. The Board rubber stamped the Decision. At all levels, each party failed to understand Kaushik’s involvement in the audit files.
 - iii) The PCC failed to contact the member prior to issuing recommendations to prosecute on two cases.
 - iv) ***CPA Board, Discipline Committee, and the Professional Conduct Committee decision makers must adopt a culture of justification and demonstrate that their exercise of delegated public power can be justified. To accept otherwise would undermine, rather than demonstrate respect toward, the institutional role of the administrative decision maker.***
 - v) ***Judicial review is concerned with both the outcome of the decision and the reasoning process that led to that outcome.***

46. Bylaw 193.1 of the Institute states that:

193.1 A member, student or firm shall cooperate with the regulatory processes of the Institute.

47. **At all times, for 37 years, the Member has cooperated** with the regulatory process that the Institute prescribed. The Corrective Action Plan was prepared with the assistance of our Toronto Partner (**Joe MacDonald CPA, CA**) of DNTW. This Action Plan was submitted to CPA Saskatchewan, once the member was required to audit files again.

48. The Discipline Committee found the Member was in breach of the following bylaws:

202.1 A member, student or firm shall perform professional services with integrity and due care.

203.1 A member shall sustain professional competence by keeping informed of, and complying with, developments in professional standards in all functions in which the member practices or is relied upon because of the member's calling.

206.1 A member or firm engaged in the practice of public accounting shall perform professional services in accordance with generally accepted standards of practice of the profession.

49. The PCC used cookie cutter charges. There is no threat to the public in relation to the member. Professional misconduct charge is overstated. No disgrace of the profession has been proven.

50. The member submits that it was **grossly unreasonable** for the Board to conclude, as it did, and that the Discipline Committee's decisions fell outside the acceptable outcomes. **All critical and crucial facts are ignored**, just like the Professional Conduct Committee that refused to accept the Joint Statement of Facts submitted

by the member on September 27, 2017.

51. *It appears to the member, that the PCC's normal course of action and mode of operations entails recommending prosecution, without regard, even on limited information, supplied by the investigators, and subsequently preparing its own joint statement of facts for signatures for the member to serve its own goal of prosecution. The PCC determines that there is no room for additional facts. THE DOOR IS SHUT. Apparently any facts in favor of the member are not acceptable. Accordingly, this methodology is NOT consistent with its role to provide for fair treatment of the member. This FORCES formal discipline hearings. It infringes on the impartiality of the PCC. The cost of the formal hearing is atrocious. It violates the fundamental principle of fairness to the member.*

MOTION TO HALT THE BOARD HEARING

52. Sean Sinclair and PCC Motion – Attempt to stop the Appeal to the Board Hearing

May 22, 2019:

On May 22, 2019 – Mr. Sean Sinclair served the Board of CPA Saskatchewan with a Brief of Law on behalf of the Professional Conduct Committee (TAB 15)

PCC took the position that the appeal with respect to the Board Hearing was outside the Appeal Period of 30 Days. Sec 37(1) of the Accountants Act

This was clearly an attempt by the PCC and Mr. Sinclair to halt the Board Hearing.

Kaushik prepared a Brief of Law that was accepted by the Board of CPA
The Board Panel finally got the hearing date.

The member found the process very time consuming and taxing

The Board failed to comprehend the 30 day time (Section 37(1)) to appeal on its own. The member prepared the Brief of Law to educate the Board on the legality of that section of Accountants Act. Kaushik's Brief of Law finally resulted in the Board Hearing. (TAB 15)

53. The Discipline Committee rubber stamped the recommendations of the PCC.
54. The Discipline Committee failed to understand and accept the contents of the audit files. These were Dean's files. The PCC simply did not accept that the files were prepared by Mr. Dean, the effective audit partner. The decision defies logic.
55. Professional Conduct Committee, and the Discipline Committee, and Board used a very narrow interpretation of "Partner". Dean was treated by Kaushik as a real partner. Dean carried on a full audit practice in DNTW LLP. Kaushik did not instruct, plan, or supervise Dean's work. This is clear in the audit files. Dean set his own schedule with the Audit clients. Kaushik did not even meet the audit clients in most cases. These clients did not even come to the DNTW office. Kaushik abandoned the audit division due to failure to find an audit partner. Kaushik already had a full accounting Practice for 37 years.
56. Dean applied the same audit programs, file structures, methodologies from 2007 and on. Any deficiencies in the two files examined by Ms. Hubick would exist in each of the files prepared by Dean in our office (34) and up to 150 files in his own office, from 2002 to 2012. If the PCC found that these deficiencies in the audit files required additional protection for the public, then why did the investigation stop at only two files? Mr. Dean assured us that his practice review passed with flying colors. There was no discussion with Dean about his files. Why Not??

57. Discipline Committee's decision was not logical. Not within a range of acceptable outcomes; the Board's Decision to dismiss the First Appeal was unreasonable, and should be quashed.
58. The costs incurred by the Institute, excluding the costs of these appeals, are estimated at over \$82,000.00
59. The costs incurred by the member exceed \$120,000 (TAB 20)
60. PCC Decision to Prosecute DID NOT FALL within a range of reasonable outcomes.

61. Kaushik has no significant role in the audits prepared by Dean
 - i) Professional Conduct Committee failed or refused to understand Dean's involvement, the effective partner
 - ii) Audited Financial Statement and Reports required no further adjustments
 - iii) Professional Conduct Committee did not discover material misstatements in the reports
 - iv) There was no attempt by the member to fool, or deceive public by partner
 - v) No errors were found in the financial statements and reports
 - vi) No funds were missing
 - vii) Tunnel vision after recommendations by the Professional Conduct Committee, Discipline Committee, and the Board of Chartered Professional Accountant, effectively, rubber stamped the recommendations and Formal Complaint and Notice of Hearing prepared by Mr. Hill on April 26th, 2018.
 - viii) Investigators failed to provide full and complete findings

62. **The joint statement of facts prepared by KAUSHIK, was rejected; In essence - The fundamental decency of self-regulation is missing**

Classic Tunnel visions – rejected facts in favor of Member

PCC - Cherry picked facts – prepared joint statement of fact to prosecute

Ignored the fact that Dean participated as a partner.

Incomplete investigation failed to disclose facts discussed with Kaushik

Kovren (Investigator) showed substantial interest in the fact that Mr. Horning and HNG Accounting Group were located in our office

No damage to the public was reported.

File reviewer – Hubick Directing prosecution on peer to peer discipline hearings part of Hubick resume

63. **PROTECTION OF THE PUBLIC**

The member sees nothing here that required to protect the public.

- 1) No damage to the Public is proven
- 2) First and foremost, Kaushik did not carry on the audit practice of Dean.
- 3) Dean prepared 34 audit files in DNTW office and at least 150 audit files since 2007. All the files are prepared in the same manner and audit programs.
- 4) PCC did not contact Dean's Clients to warn of possible deficiencies
- 5) No financial loss to any client
- 6) PCC prosecuted Kaushik without cause. This is not consistent with protecting the public.
- 7) The Decision of the Board Panel only protects the Professional

Conduct Committee and the Discipline Committee

c. **CONCLUSIONS**

64. For all of the foregoing reasons, Kaushik asks that the appeals of the two Cases be allowed. **Appeal to the court be allowed.**
65. The Member further suggests that it is appropriate for the PCC to bear the costs associated with this appeal.
66. Subsequent to the Discipline Committee Decision Mr. Nicholas Stooshinoff refused to Appeal the Decision to the Board of Institute of Chartered Professional Accountants of Saskatchewan. **Stooshinoff Effectively abandoned the Member.**
69. The direct cost to the member is 139,638 so far
70. The loss of status and mental anguish is incredible on the member and family for seven years

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 20th day of September, 2021.

Per: _____

Rakesh Kaushik, CPA CA
Self-Represented

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TAB DESCRIPTION

Court Cases:

25. *Mavis Baker v. Minister of Citizenship File No. 25823*
 26. *Minister of Citizenship v Vavilov - Supreme Court of Canada December 19, 2019*
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