
UPHOLDING PROCEDURAL FAIRNESS IN INTERNAL DISCIPLINE PROCEDURES

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A. INTRODUCTION

On April 7, 2014, a judicial review by the Ontario Superior Court of Justice Divisional Court of *Tsimidis v. Certified General Accountants of Ontario* quashed the order of Certified General Accountants of Ontario (“CGA Ontario”), as well as the order of its Appeals Committee.¹ The matter was remitted by the Court to the Appeals Committee for rehearing.

The Divisional Court found CGA Ontario to have breached its duties of natural justice, procedural fairness and to have made an unreasonable decision in expelling an applicant from its membership. Neither the written policies nor the procedure followed for disciplining the applicant were found adequate given the standard of procedural fairness he was warranted. This decision points out the importance of organizations becoming informed of applicable procedural rights, creating disciplinary policies which give respect to them and, most importantly, enforcing those policies consistently.

B. FACTS

CGA Ontario is a not-for-profit self-governing body that controls the Certified General Accountant (“CGA”) designation, professional standards, conduct and discipline of CGAs and students in the CGA program. The applicant in this case, Frank Tsimidis, was withdrawn as a student from the CGA program following an incident in which he was found to have in his possession study notes during a CGA

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¹ *Tsimidis v. Certified General Accountants of Ontario*, 2014 ONSC 4236, 120 OR (3d) 545 <<http://canlii.ca/t/g82nq>>.

examination. The notes were confiscated and a Report of Unauthorized Materials Used was prepared. Tsimidis admitted to having the notes on his desk, but claimed they were face down and beneath extra pens, his reading glasses, and his car keys. The CGA has rules on its website, in the Academic Integrity and Exam Violations section of the CGA Student Handbook (“Handbook”), as well as verbal warnings prior to examinations indicating that having any materials of this variety during an examination is contrary to the respondent’s rules of academic integrity.

Tsimidis later received a letter from the Senior Vice-President of Operations of CGA Ontario, informing him that he had been withdrawn from the CGA Ontario program effective immediately. Tsimidis was told he was allowed to submit a limited written statement to the CGA Ontario Appeals Committee, in which he could explain the incident but not give cause as to why he should not be withdrawn from the program. He was not granted an oral hearing. He was subsequently denied an appeal without reasons.

C. DISCUSSION

At issue in this case is whether Tsimidis was denied procedural fairness and natural justice, and further, whether the decisions of CGA Ontario were reasonable.

The Court identified the following 4 issues:

1. Whether CGA Ontario breached the rules of natural justice and the duty of procedural fairness?

The Court identified several instances of procedural unfairness, among these was that CGA Ontario did not notify the applicant of the accusation under review until after it was reviewed by CGA Ontario. In addition, CGA Ontario did not provide the applicant with an opportunity to appear in-person before the Vice-President of Student Services to show cause why the penalty of withdrawal should not be imposed, as mandated by its own Academic Integrity Process and Procedures.

2. Whether the decision of CGA Ontario was reasonable?

The Court found that the decision of CGA Ontario was unreasonable. Although CGA Ontario seemingly established a spectrum of reprimands in its Handbook, in a section entitled Exam Violations, it did not properly consider any option but expulsion. This section of the Handbook indicates that only more serious breaches warrant the greater punishment of being expelled. CGA

Ontario made this lack of consideration clear in a wrongfully identified “zero-tolerance” policy in its letter to Tsimidis. There was no evidence of a consideration of options in the academic sanction against the applicant, and since he was unable to make submissions on the appropriate penalty, this resulted in an unreasonable decision.

3. Whether the appeal to the Appeals Committee cured the procedural flaws in the proceedings before CGA Ontario?

The Court found that the applicable jurisprudence established that the denial of natural justice by CGA Ontario could have been cured by the appeal to the Appeals Committee.² The Appeals Committee failed to do so in this instance however, by failing to provide anything in the record to indicate whether the appeal was a reconsideration of the matter by means of an appeal *de novo* or a review of the CGA Ontario decision. Since it is not possible to determine the process of the Appeals Committee, it is not possible to ensure that they corrected any procedural flaws conducted during the initial sanctioning.

4. Whether the Appeals Committee breached the rules of natural justice and the duty of procedural fairness?

The Court in this case decided that the Appeals Committee also breached procedural fairness by not affording the applicant an opportunity to make submissions in-person as to the penalty. Further, it provided no reasons whatsoever for denying the appeal. Since this incident was in relation to the determination of a person’s livelihood, through the CGA accreditation process, courts have said that the matter must have a high standard of justice, including an oral hearing.³ Any similar accrediting body can expect to fall under the same standard under similar circumstances.

Despite Tsimidis admitting having the notes in his possession, it was the responsibility of both CGA Ontario and the Appeals Committee to determine the level of penalty that the violation attracted, rather than simply impose a maximum. The Court found that the Appeals Committee also breached its duty of procedural fairness.

² *King v. University of Saskatchewan*, 1969 CanLII 89 (SCC), [1969] S.C.R. 678.

³ *Kane v. Board of Governors of the University of British Columbia*, [1980] S.C.R. 1105.

D. CONCLUSION

Although the applicant in this case undoubtedly violated established rules and admitted to doing so, CGA Ontario breached its own rules of procedure, and further, did not afford the applicant the appropriate procedural fairness. This decision has implications for any charities and not-for-profits that conduct disciplinary procedures, not only those involved in accreditation processes. The same principles of procedural fairness and natural justice emerge in disciplinary hearings involving existing members as well as staff, although they may be subject to different standards. Organizations must be vigilant by identifying the appropriate administrative rights of the various individuals they interact with, creating policies which respect those rights, and critically, enforcing those policies properly so that reasonable decisions can be made.

The text of this decision can be found online at: <http://canlii.ca/t/g82nq>