CITATION: Olusegun v. Carleton, 2025 ONSC 2559
DIVISIONAL COURT FILE NO.: DC-24-00000541-00ML
DATE: 20250428

2025 ONSC 2559 (CanLII)

SUPERIOR COURT OF JUSTICE – ONTARIO DIVISIONAL COURT

RE: Isaac Olusegun, Appellant

AND:

Carleton University, Chartered Professional Accountants of Ontario, Naomi Fernano, and Rebecca Renfroe, Respondents

BEFORE: Justice S. Nakatsuru

COUNSEL: Isaac Olusegun, Self-represented Appellant

W. Webb and *M. Butskhrikidze*, for the Respondent, Chartered Professional Accountants of Ontario

HEARD: April 22, 2025, in Toronto by videoconference

ENDORSEMENT

[1] Isaac Olusegun (the "Appellant") was a student enrolled in Carleton University's Post-Baccalaureate Diploma in accounting in the fall of 2023. The Appellant believes that he was treated unfairly by Carleton University because it alleged that he committed an academic offence on a final exam. The final exam was in a course that qualifies as a prerequisite for entry to the accounting profession. In the Small Claims Court, he sued the university and the professors allegedly involved. The Appellant has also sued the regulator of accountants in Ontario, the Chartered Professional Accountants of Ontario ("CPAO"), for listing the course as a qualifying prerequisite program on their website.

[2] The Appellant appeals the Small Claims Court decision of Deputy Judge Lise Henrie (the "Motion Judg**e**") dated September 5, 2024. The decision struck the claim against the CPAO, without leave to amend. The Appellant seeks to overturn the decision on the basis that the Motion Judge made errors of law and mixed fact and law.

THE MOTION JUDGE'S DECISION

[3] The following are the arguments raised before the Motion Judge as summarized in her decision.

[4] The CPAO submitted that the Appellant's Statement of Claim disclosed no reasonable cause of action, is a waste of time, and should be struck pursuant to Rule 12.02(1) of the *Rules of the Small Claims Court*, O. Reg 258/98. The CPAO primarily relied on s. 64 of the *Chartered Professional Accountants of Ontario Act*, 2017, S.O. 2017, c. 8, Sched. 3 (the "*CPAO Act*"), which provided statutory immunity and that the Appellant had failed to provide any particulars that the CPAO did not act in good faith.

[5] The Appellant submitted to the Motion Judge that his claim rested on the CPAO's recommendations of Preparatory Courses on the CPAO website. Further, the Appellant submitted that the CPAO did not have statutory immunity because recognizing certain courses offered by Carleton University was an "overreach into a non-statutory function". The Appellant submitted that the CPAO's legal authority is only regarding Professional Education Program courses, not CPA Preparatory Courses. He argued that the *Public Accounting Act*, 2004, S.O. 2004, c. 8 was the governing legislation on the facts of the case.

[6] The CPAO's position was that their role is limited to recognizing courses that meet its minimum requirements for subject matter covered and hours of instruction. Their website lists the schools and courses that have been verified for entry into the CPA Professional Education Program. The CPAO submitted that this was not done in bad faith. Rather, it was to ensure that applications have the basic competencies required to protect the public.

[7] The Appellant further alleged that the CPAO was doing this to generate more profit as accredited applicants have to pay dues and that they favoured some schools over others.

[8] The Motion Judge held that the CPAO had met their onus in showing no viable cause of action against them. The Motion Judge found that the *CPAO Act* governed the CPAO and that the CPAO did not act outside of its mandate. Moreover, there was no evidence to show that the CPAO acted in bad faith, and the CPAO was not an agent for Carleton University. Therefore, the CPAO met the test for statutory immunity under s. 64 of the *CPAO Act*.

[9] Alternatively, the Motion Judge held that even without statutory immunity, there was no evidence that the Appellant's claim was viable. The CPAO showed, based upon an affidavit from Jacqueline Mulligan, Vice President of the CPAO, Education, that they did not owe the Appellant a duty of care, or that even if there was such a duty, that they had not breached it.

[10] The Motion Judge struck the claim, without leave to amend. Further, the Motion Judge denied the requested relief for a supervisory order on the basis that the Small Claims Court did not have the jurisdiction to grant the equitable relief. Additionally, the Motion Judge held that there would be no further amendments as it would not ensure the most expeditious and least expensive determination. Last, the Motion Judge held that the Appellant is to pay the CPAO costs of $100.

THE COURT'S JURISDICTION

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[11] The Divisional Court has jurisdiction to hear an appeal pursuant to s. 31(a) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. from a final order of the Small Claims Court. Leave to appeal is not required.

STANDARD OF REVIEW

[12] Appellate standards of review apply. Questions of law are reviewable on a correctness standard. Questions of fact and questions of mixed fact and law are reviewable on a standard of palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 23, at para. 37.

ANALYSIS

[13] Rule 12.02(1) of the *Rules of the Small Claims Court* is situated somewhere between a motion to strike and a motion for summary judgment under the *Rules of Civil Procedure*. A Rule 12.02(1) motion is "[…]brought in the spirit of the summary nature of Small Claims Court proceedings and involves an analysis of whether a reasonable cause of action has been disclosed or whether the proceeding should be ended at an early stage because its continuation would be "inflammatory", a "waste of time" or a "nuisance": *Van de Vrande v. Butkowsky*, 2010 ONCA 230, 99 O.R. (3d) 641 (C.A.), at paras. 19-21.

[14] I will list each ground of appeal as best they can be discerned from the Appellant's factum and oral submissions. Some objections will be grouped together for the sake of convenience.

Issue 1: Did the Motion Judge err in finding that the CPAO acted within the scope of its statutory objects and err in declining to rely on the *Public Accounting Act*?

[15] The Appellant submits that analyzing ss. 2, 5, and 64 of the *CPAO Act* and ss. 2 and 3 of the *Public Accounting Act*, 2004, S.O. 2004, c. 8 (which the Appellant refers to as the "Governing Act") demonstrates that "if the legislature has expressly excluded CPA Ontario from acting in a particular accounting field, any involvement in such business, including recommending any person in that area, cannot be done in good faith." The Appellant submits that the Motion Judge erroneously and selectively chose to consider only portions of the law relevant to her analysis while overlooking other crucial law. Namely, the *Public Accounting Act*.

[16] The Appellant submits that the CPAO's overall mandate is to protect the public interest. Thus, the CPAO must regulate its members with the broader goal of protecting the public interest in mind. The Appellant submits that the CPAO did not do this. The CPAO acted outside its statutory authority because Prerequisite Education Programs are outside its jurisdiction. Thus, the CPAO acted intentionally and illegally by recommending the course he took at Carleton University. Hence, it was open to be sued in this action and cannot rely on statutory immunity from liability.

[17] I do not give effect to this ground of appeal.

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[18] The CPAO acted well within its legislative mandate when advising the public through its website of the minimum requirements of courses that it would recognize including at universities like Carleton University. Section 65 of the *CPAO Act* empowers the regulatory body to make by-laws including ones relating to requirements for entrance into the profession. As permitted by its legislative authority, on May 19, 2014, Council for the CPAO passed a by-law, "Academic Prerequisite Review and Recognition Standards", which amongst other things, notes that a student can enter the CPAO's own training program "through the successful completion of CPA Ontario-recognized, academic institution, degree-credit courses…" and sets out the standards required for such courses.

[19] The Appellant's contention that the Motion Judge erred by not referring to the "Governing Act" misunderstands the *Public Accounting Act*, which is concerned with the licensing and regulation of public accounting or assurance services, a subset of services that licensed CPAs may provide with additional qualifications and training. The *Public Accounting Act* is not concerned with the requirements for admission to the CPAO licensing process.

[20] The Motion Judge did not err by failing to refer to or rely upon legislation that is irrelevant to the CPAO's authority to assess undergraduate courses and to the Appellant's claim which has nothing to do with public accounting. Moreover, the Motion Judge did not err regarding the way she dealt with the CPAO's enabling legislative framework in doing what it did that the Appellant sought to sue CPAO for.

Issue 2: Did the Motion Judge err in dealing with immunity from liability?

[21] Section 64 provides the CPAO with statutory immunity for:

> any act done in good faith in the exercise or performance or the intended exercise or performance of any power or duty of CPA Ontario under this Act, a predecessor Act or the *Public Accounting Act*, 2004, or for any alleged neglect or default in the exercise or performance in good faith of such power or duty.

[22] First, the Appellant submits that the Motion Judge erred in finding that the CPAO acted within the scope of its statutory objects and was therefore immune. As I have found above, there is no error in this regard.

[23] Second, the Appellant then discusses the CPAO's alleged fraudulent acts. The Appellant submits that the CPAO committed fraud and acted in bad faith such that "when a regulatory body intentionally acts outside its statutory boundaries, it cannot hide behind immunity". The Appellant relies on *Finney v. Barreau du Québec*, 2004 SCC 36, [2004] 2 S.C.R. 17 and *Roncarelli v. Duplessis*, [1959] S.C.R. 121 for the principles regarding claiming immunity and good faith. The Appellant submits that the CPAO acted in bad faith and thus, cannot be shielded by s. 64.

[24] In my view, the Appellant is attempting to relitigate a factual finding of good faith made by the Motion Judge without pointing to any error of law or palpable and overriding error on this issue. All the CPAO's actions fell squarely within its mandate. The CPAO acted in good faith in

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establishing and maintaining CPA admissions requirements. Moreover, the CPAO's involvement in the core dispute the Appellant has with Carleton University is tenuous and remote. Any suggestion that the CPAO acted as an agent for the university or as a co-conspirator is speculative and fanciful. Clearly, the Motion Judge accepted the evidence presented by the CPAO, something she was entitled to do. This finding attracts considerable deference on appeal and the Appellant has shown no basis to overturn it.

Issue 3: Did the Motion Judge demonstrate a reasonable apprehension of bias?

[25] While the Appellant characterizes this as a breach of procedural fairness, the thrust of his complaint is that the Motion Judge demonstrated a reasonable apprehension of bias in the way she conducted the hearing.

[26] The Appellant raises numerous complaints in this regard. He submits that the Motion Judge failed to handle the motion efficiently, economically, and to consider the law she was required to. Generally, it is submitted that she compromised fairness and justice. More significantly, the Appellant submits that the Motion Judge failed to remain impartial, neutral, and solely focused on justice. The Appellant asserts that the Motion Judge should have allowed him to present his case more fully, and by failing to do so, affected the outcome of the case. The Appellant submits that as soon as he started presenting his case, the Motion Judge started asking questions. The Appellant interpreted her conduct as disinterest to his cause and showing favoritism or bias towards the CPAO. The Appellant submits that this bias coupled with the Motion Judge's failure to thoroughly review his written submissions, fundamentally breached his right to be heard on issues of "national importance".

[27] The test for a reasonable apprehension of bias is whether an informed person, viewing the matter realistically and practically, would think it is more likely than not that the decision-maker would not decide fairly. The threshold is high, and the onus lies with the person alleging the bias: *R. v. MacMillan*, 2024 ONCA 115, at paras. 75, 77 citing de Grandpré J. in his dissenting reasons in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369, at pp. 394-95.

[28] I do not accept this ground of appeal for the following reasons.

[29] While not always fatal, usually the issue of bias should be raised before the judge against whom the claim is made, and not for the first time on appeal: *2343680 Ontario Inc. v. Talpade*, 2023 ONCA 154, at para. 5.

[30] Failing to do so in the case at bar, has consequences for the appeal. I appreciate that the motion was not transcribed. The Appellant cannot be faulted for failing to present a record of the motion on the appeal. That said, nothing in the Motion Judge's reasons suggest any bias or partiality. No issue that could reasonably raise the prospect that the hearing was unfair is dealt with in the decision. On the appeal, even giving full allowance for the fact that the Appellant is self-represented, he has not presented any admissible evidence supporting his allegations.

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[31] Finally, some of the Appellant's objections do not hold much weight. For example, a judge can ask questions during submissions to clarify a point or test a party's submissions. Also, efficiency concerns must be balanced with other considerations underpinning a fair hearing. Failing to consider the law may lead to a ground of appeal but does not mean the hearing is unfair or that the judge is biased. I do not question that the Appellant may subjectively feel that he did not get a fair hearing, but those subjective feelings do not overcome the presumption of impartiality: *Beard Winter LLP v. Shekhdar*, 2016 ONCA 493, at para. 12.

Issue 4: Did the Motion Judge make any palpable and overriding errors in striking out the claim against the CPAO?

[32] Here too, the Appellant raises several grounds.

[33] First, the Appellant submits that the Motion Judge erred at paragraph 7 of her decision by willfully disregarding the Affidavit of Service and other documents. The Appellant concedes that this does not change the outcome of the motion but submits that it undermines his ability to represent himself.

[34] I see no error in that portion of the decision. The Motion Judge was merely outlining the procedural history of the case. Failing to mention these documents, even if it had been an error, in the Appellant's own concession is not an overriding one.

[35] Second, the Appellant submits that the Motion Judge erred by relying solely on the CPAO's reply factum. The Appellant submits that the Motion Judge failed to adequately consider the broader context and evidence presented.

[36] I see no palpable and overriding error in this regard. The Motion Judge's reasons demonstrate that she had regard to the evidence and grappled with the key issues before her.

[37] Third, the Appellant submits that the Motion Judge's consistent reference to exclusive or primary laws reveal a clear error in judgment that will invalidate the decision. The Appellant submits there were legal and factual misinterpretations. The Appellant submits that the Motion Judge failed to determine what the Appellant believes was the true issue: what qualifies a person to be a student with the CPAO.

[38] I do not accept this submission. As I have already decided, the Motion Judge correctly determined the authority CPAO acted under. This was a main issue that she resolved. Moreover, she found the CPAO to be immune from liability. It was not necessary for her to address broader issues that were not engaged by the motion.

[39] Fourth, the Appellant submits that the Motion Judge erred by focusing on the CPAO's lack of control over the quality of the courses, rather than the recommendation. The Appellant submits that no recommendation could go without implicitly validating the institution's quality. The Appellant discusses consumer protection legislation and submits that the CPAO is bound to it.

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[40] I find no palpable or overriding error. The Motion Judge did avert to the evidence required to decide the issues including exactly what was being litigated in the Appellant's Statement of Claim and what he plead against the CPAO. It was not required of her to discuss other legislation that was not relevant to the claim.

[41] Fifth, the Appellant submits that the Motion Judge willfully disregarded the facts and reconstructed her own narrative. In this, she delved into unrelated issues rather than focusing on the issues that the Appellant's submits were important.

[42] In response to this broad challenge to the decision, I find that the Motion Judge made no palpable and overriding error in this regard.

[43] Finally, although not required to dispose of this ground of appeal, there is some merit to the CPAO's position on this appeal that none of the Appellant's alleged errors are overriding. This is because the Motion Judge held that the claim would still be dismissed on the alternative basis that the Appellant failed to show that the CPAO, as a regulator, owed a duty of care or breached their duty to the Appellant: *Montgomery v. Seiden*, 2012 ONSC 6235, at paras. 55-57; *Carnegie v. Rasmussen Starr Ruddy* (1994), 19 O.R. (3d) 272 (C.A.), at p. 11; *Morgis v. Thomson Kernaghan & Co*. (2003), 65 O.R. (3d) 321 (C.A.), at paras. 24-27.

Issue 5: Did the CPAO enact subordinate legislation that is *ultra vires*?

[44] The Appellant submits that if the CPAO enacted any subordinate legislation without the prerequisite authority from the enabling statute, the recent Supreme Court of Canada decision *Auer v. Auer*, 2024 SCC 36, 497 D.L.R. (4th) 381, would render the legislation a nullity. The Appellant submits that because the Preparatory Courses fall outside the CPAO's governing legislation, any by-law concerning the courses cannot be upheld.

[45] Two reasons exist to reject this ground of appeal.

[46] First, this issue arises for the first time on appeal. The Appellant's claim did not seek relief in this nature, he did not raise this issue on the motion below, he did not raise the issue about the *vires* of subordinate legislation in his notice of appeal, and he has not identified the subordinate legislation that he seeks to challenge. I agree that it would be unfair to require the CPAO to respond to an unparticularized allegation of this nature for the first time on appeal: *Kaiman v. Graham*, 2009 ONCA 77, 245 O.A.C. 130, at para. 18.

[47] Second, I cannot see how this properly arises in the Appellant's Small Claims action. It is really a matter for judicial review.

Issue 6: Did Deputy Judge Stauffer err in adjourning the settlement conference?

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[48] Regarding the appeal of Deputy Judge Stauffer's decision, the Appellant is not objecting to the Deputy Judge's decision to adjourn the settlement conference. Rather, the Appellant takes offence with some of the email communications conducted in order to do that.

[49] This is not a matter that falls within the jurisdiction of this appeal court.

DISPOSITION

[50] For these reasons, the appeal is dismissed.

[51] Regarding costs, after hearing the parties' submissions and considering all the relevant factors, a fair and reasonable award in all the circumstances is that the Appellant is to pay the Respondent the sum of $2,000, all inclusive.

Justice S. Nakatsuru

Released: April 28, 2025.

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