

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **MUHAMMAD ALI, CPA, CGA**, a member of the Chartered Professional Accountants of Ontario, under **Rules 104.1 and 409** of the CPA Ontario Code of Professional Conduct

BETWEEN:

**Chartered Professional Accountants of Ontario
Professional Conduct Committee**

-and-

Muhammad Ali

APPEARANCES:

For the Professional Conduct Committee: Nisha Dhanoa, Counsel (August 4, 6, 11, 13, November 8, 9, 2021)

Lily Harmer, Counsel (February 22, 24, 25, 2022)

For Mr. Ali Ali Hamza Memon, Counsel (August 4, 6, 13, November 8, 9, 2021)

Muhammad Sarker, Counsel (August 11, 2021)

Obaidul Hoque, Counsel (February 22, 24, 25, 2022)

Heard: August 4, 6, 11, 13, November 8 and 9, 2021, February 22, 24, 25, 2022

Decision and Order effective: February 25, 2022

Release of written reasons: April 29, 2022

REASONS FOR THE DECISION AND ORDER MADE FEBRUARY 25, 2022

I. OVERVIEW

- [1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario (“PCC”) has made Allegations that Mr. Muhammad Ali, while a member of CPA Ontario, was associated with a corporation engaged in the practice of public accounting, contrary to Rule 409 of the CPA Ontario Code of Professional Conduct (the “Code”), and that he failed to co-operate with an investigation by CPA Ontario, contrary to Rule 104.1 of the Code. This hearing was held to determine whether the Allegations were established and whether the conduct breached the Code and amounted to professional misconduct.
- [2] Mr. Ali received his CPA and CGA designations and became a member of CPA Ontario on October 26, 2017.
- [3] AR Rahman Tax and Accounting Services Corporation (“ARR” or “ART”) was incorporated by Mr. Ali on September 26, 2014.
- [4] On September 25, 2018, CPA Ontario received a complaint from BV, who alleged that he had engaged ARR to complete a T2 return for his company, A&B Bookkeeping (“A&B”). He alleged that the tax return was completed incorrectly and that Mr. Ali refused to amend the return or refund his fee.
- [5] In response to the complaint, Standards Enforcement requested that Mr. Ali provide a written response to the issues raised in the complaint and provide documentation in relation to the tax return for A&B. Mr. Ali took the position that he was not responsible for the matters raised in the complaint and did not have access to the documents that were requested of him.
- [6] On November 25, 2019, the PCC commenced allegations against Mr. Ali that he failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.1 of the Code. A Discipline Committee hearing into this allegation was held on February 11, 2020. Relying on an Agreed Statement of Facts (“ASF”) and Mr. Ali’s admission of professional misconduct, the Discipline Committee made a finding of professional misconduct on February 11, 2020, and released its Reasons for Decision on March 4, 2020. [*Ali (Re)*, 2020 LNICAO 2]
- [7] Mr. Ali filed a Notice of Appeal of the decision, which he later abandoned.
- [8] Following the February 2020 hearing, the PCC appointed Ms. Patricia Harris to investigate the complaint of BV. Ms. Harris exchanged correspondence with Mr. Ali and his counsel, conducted two interviews of Mr. Ali, and prepared a report. The PCC filed allegations of professional misconduct against Mr. Ali on April 14, 2021, an amended version of which was filed on July 8, 2021, setting forth the allegation that Mr. Ali was associated with a corporation engaged in the practice

of public accounting contrary to Rule 409 of the Code, and the allegation that he failed to co-operate with an investigation.

- [9] The onus was on the PCC to show on a balance of probabilities that Mr. Ali's conduct breached Rules 409 and 104.1 of the Code.
- [10] The hearing was scheduled for four days, commencing August 4, 2021 and continuing on August 6, 11, and 13, 2021. Over these four days the Panel heard evidence from BV and Ms. Harris on behalf of the PCC, and from Dr. Shabnam Preet Kaur (a handwriting analyst) and Mr. Ali on his own behalf.
- [11] As the hearing was not completed within the 4 days, it was adjourned to future dates. At the resumption of the hearing on November 8, 2021, counsel for Mr. Ali sought an adjournment on the basis that Mr. Ali was unwell. On November 9, 2021, the Panel received a psychiatric report in support of the motion for the adjournment, and received submissions from both counsel. On November 9, 2021, the Panel granted the adjournment with terms including that Mr. Ali's membership be suspended on an interim basis. The Reasons for the adjournment Decision and Order were released on December 24, 2021.
- [12] At the resumption of the hearing on February 22, 2022, each party was represented by new counsel. The Panel was advised by counsel for Mr. Ali that Mr. Ali had changed his position and he would now admit that he breached Rule 104.1 and Rule 409 of the Code, and that these breaches amounted to professional misconduct. The parties requested an adjournment to the next day, at which time they would make submissions to the Panel. Submissions on conduct and sanction were completed on February 24, 2022 and the Panel provided its decision to the parties on February 25, 2022.

II. PRELIMINARY ISSUES

- [13] At the outset of the hearing an order was made excluding witnesses pursuant to Rule 19.02 of the Rules of Practice and Procedure.
- [14] Counsel for Mr. Ali sought an adjournment of the August 11 hearing date due to a conflict in his schedule, as he had another matter on that date. Counsel for the PCC opposed the adjournment request, as the August hearing dates had been canvassed in May and confirmed in June, and the hearing was unlikely to be completed in less than 4 days. The Panel considered the factors set out in Rule 14.03 of the Rules of Practice and Procedure. Given the costs of an adjournment, the potential impact on the availability of witnesses, and the public interest that hearings proceed on their scheduled dates, counsel are expected to attend on the hearing dates to which they have agreed unless they are prevented from doing so

due to exceptional circumstances. There was no evidence before the Panel of efforts made by counsel to Mr. Ali to avoid the adjournment of dates to which he had previously agreed, or of exceptional circumstances which prevented him from attending. The Panel declined to grant the adjournment request.

III. ISSUES

[15] The Panel identified the following issues arising from the Allegations:

- A. Did the evidence establish, on a balance of probabilities, the facts on which the Allegations by the PCC were based?
- B. If the facts alleged by the PCC were established on the evidence on a balance of probabilities, did the Allegations constitute professional misconduct?

IV. DECISION

[16] The Panel found that the evidence established, on a balance of probabilities, the facts set out in the Allegations of professional misconduct.

[17] The Panel was satisfied that the Allegations constituted a breach of Rule 104.1 and Rule 409 of the Code, and, having breached these Rules, Mr. Ali committed professional misconduct.

V. REASONS FOR THE DECISION

Findings regarding the Conduct of Mr. Ali

Allegation 1: Association with a corporation engaged in public accounting contrary to Rule 409 of the Code

[18] Mr. Ali was alleged to have associated with ARR, a corporation engaged in the practice of public accounting, between the period of October 2017 and March 2021, contrary to Rule 409 of the Code. Rule 409 permits such an association only if the member has registered the corporation with CPA Ontario. ARR was not registered with CPA Ontario.

[19] The allegation thus includes two elements to be proven on a balance of probabilities: (a) that Mr. Ali was associated with ARR, and (b) that ARR engaged in the practice of public accounting.

[20] The Panel had before it a prior finding of fact by a previous Panel of the Discipline Committee that Mr. Ali was the President, owner and manager of ARR during the period of July 1, 2019 to September 12, 2019 [*Ali (Re)*, 2020 LNICAO 2]. This

finding of fact was based on the ASF signed by Mr. Ali on January 28, 2020 [Exhibit 1, Tab 82], in which he agreed that “AR Rahman Tax (ART) is a tax and accounting business which, at all material times, was managed and owned by the Member.”

- [21] The PCC also led documentary evidence in support of the allegation that Mr. Ali was associated with ARR. The corporate records included in the PCC Document Brief [Exhibit 1, Tabs 52, 53, 55, 56] indicate that Mr. Ali incorporated ARR on September 26, 2014, and was initially the sole director, until his spouse, Ms. Sadia Shafique, CPA, CGA, was added as a director on October 21, 2014. On December 7, 2018, Mr. Ali added his two daughters as directors, making four in total with Mr. Ali and his spouse. On December 21, 2020, after Ms. Harris commenced her investigation, the records were revised to remove Mr. Ali as director, with an effective date back to February 1, 2017.
- [22] Mr. Ali’s Profile Report with CPA Ontario, based on information he provided, indicates that he has been an employee of ARR since 2014 in a variety of roles, including CEO, until he changed his profile in May 2019 [Exhibit 1, Tab 51 and 76]. This evidence was confirmed by Ms. Harris in her testimony.
- [23] Historical website data-captures for ARR show that Mr. Ali was listed on the ARR website in February 2017 as the first contact on the “Our Team” page of ARR [Exhibit 1, Tab 57], and that in April 2019, the ARR website described Mr. Ali as the CEO of ARR. [Exhibit 1, Tab 60]
- [24] In Mr. Ali’s LinkedIn profile from August 2019, he is identified as the “owner” of ARR. [Exhibit 1, Tab 62]

Evidence of BV

- [25] BV testified that he is the owner of A&B Bookkeeping Inc., a bookkeeping service in Toronto. He learned about ARR through an advertisement in the Toronto subway advertising tax services for individuals and corporations. BV further testified that:
 - (a) He called the number in the advertisement and made an appointment to see a CPA who could prepare a corporate return, and attended at the Yorkdale Mall office of ARR on September 7, 2018.
 - (b) He was led to an office where he met with Mr. Ali. He advised Mr. Ali that he was looking for a CPA to do his corporate tax return and had come to him because of the advertised price. He requested that his company’s T2 be prepared by a CPA.
 - (c) Mr. Ali advised BV that he would personally prepare it and he would honour the advertised price. Mr. Ali gave BV two business cards; one for ARR and the other for a company called MASS, which had an office

in Markham. Mr. Ali wrote the email addresses on the cards. He drew an arrow next to the admin@arrahmantax.com email address and identified this as the email address to use in respect of the T2 for his company.

- (d) Although BV did not notice it at the time, the same telephone number was listed for both businesses.
- (e) BV gave instructions to Mr. Ali regarding the T2, including that he was electing not to deduct the capital cost allowance (CCA). BV had brought his source documentation to this initial meeting and handed it to Mr. Ali.
- (f) BV believed that he was engaging ARR to complete the T2 and he believed that Mr. Ali was doing the work. When he emailed admin@arrahmantax.com, he believed that Mr. Ali was reading the emails.
- (g) BV was contacted on September 12, 2018 by ARR. He attended at the same office as previously, and signed the consent to e-file. He reviewed the return quickly and noticed an error with respect to the CCA. Mr. Ali came out of his office and BV told him about the errors. Mr. Ali said it could be corrected the next year.
- (h) After returning to his office, BV reviewed the return in more detail and then wrote to Mr. Ali that same day identifying the errors on the T2 and asked that ARR not file the T2 with CRA until it was corrected, and if it was already filed, to amend it. [Exhibit 1, Tab 1]
- (i) BV also called ARR to express his dissatisfaction, and was told to send the Notice of Assessment.
- (j) Upon receiving the Notice of Assessment, he sent it to ARR on September 22, 2018 and asked Mr. Ali how and when it would be corrected, and to see the amendment. [Exhibit 1, Tab 1]
- (k) On September 25, 2018 BV received an email from CC at ARR again requesting a copy of the Notice of Assessment. [Exhibit 1, Tab 80]
- (l) BV then called the ARR offices and spoke with the receptionist. He said he wanted to receive a refund or would file a complaint. He was told that Mr. Ali said to file a complaint.
- (m) BV wrote on September 25, 2018 advising that he had already provided the Notice of Assessment. He asked CC to advise Mr. Ali that if he was unwilling to refund his fee, he would file a complaint with CPA Ontario. [Exhibit 1, Tab 1]

(n) BV filed his complaint with CPA Ontario on September 25, 2018. [Exhibit 1, Tab 1]

Position and Evidence of Mr. Ali

- [26] Mr. Ali in his evidence on August 11, 2021 testified that the ASF he signed on January 28, 2020, stating that he was the President, owner and manager of ARR during the period of July 1, 2019 to September 12, 2019 was false. He testified that he signed the false document because he was under pressure to do so from the PCC prosecutor (not the prosecutor in this case) who had made racist comments to him. He also said he signed the false document to try to get rid of the problem, and so no one would have a 'bad impression' of CPA Ontario. In his evidence on August 13, 2021, Mr. Ali confirmed that he did not pursue the allegations against the PCC prosecutor. Mr. Ali had also abandoned his appeal in which had raised these allegations.
- [27] Mr. Ali asserted a number of claims in support of his position that he was not associated with ARR during this time period, including that he had previously sold his interest in ARR to his daughters.
- [28] Mr. Ali was inconsistent about the date of the purported sale. On March 10, 2020 Mr. Ali advised Standards Enforcement that he sold ARR to his daughters in December 2017, [Exhibit 1, Tab 85] and he repeated the assertion in his Notice of Appeal of the same date, which he later abandoned [Exhibit 1, Tab 86]. Through a letter from his counsel dated December 22, 2020, Mr. Ali claimed that he sold ARR to his daughters on February 1, 2017. [Exhibit 1, Tab 12]. In his evidence before the Panel on August 13, 2021, Mr. Ali explained the discrepancy in these dates as a "typo."
- [29] When he was asked for evidence of this sale, Mr. Ali provided a copy of an Asset Purchase Agreement ("APA") dated February 1, 2017 [Exhibit 1, Tab 24]. The parties to the APA were ARR and Mr. Ali's daughters, and it was purportedly signed by Mr. Ali on behalf of ARR and by his two daughters. The APA indicated that the assets of ARR would be sold for \$80,000. However, while the text of the APA provides for the transfer of certain of ARR's assets to Mr. Ali's daughters, it does not provide for a transfer of Mr. Ali's shares in ARR to his daughters.
- [30] Among the assets included in the APA were leases associated with ARR's Yorkdale and Scarborough offices. However, according to Mr. Ali's representations and the ARR website, ARR did not have a Yorkdale office on the date the APA was purportedly signed. Mr. Ali testified at the hearing that the Yorkdale lease had been included "in anticipation of obtaining" the location.
- [31] Mr. Ali's tax records do not reflect the receipt of the proceeds for the sale of ARR's

assets as set out in the APA. [Exhibit 1, Tab 25(b)]

- [32] In his testimony before the Panel on August 13, 2021, Mr. Ali testified that he could not say 'yes' or 'no' as to whether he signed the APA on February 1, 2017 because it was an 'informal agreement' and as Mr. Ali was attending to medical challenges. Mr. Ali also testified that he had not read the APA when he signed it and that he might have been in hospital at the time, but he cannot say one way or the other.

Handwriting Evidence

- [33] Mr. Ali called Dr. Shabnam Preet Kaur as an expert in forensic document examination. The Panel accepted Dr. Kaur's qualifications as an expert in this field. Dr. Kaur presented a report in which she had compared a series of cheques with handwriting on them purported to be that of Mr. Ali, with the handwriting on the business card that BV testified he was provided by Mr. Ali and on which he saw Mr. Ali write an email address for ARR. Dr. Kaur's evidence was that the writer of the handwriting on the business card was not the same writer of the handwriting on the cheques that had been provided to her.
- [34] Under cross-examination, Dr. Kaur agreed that she had not seen Mr. Ali write on the cheques provided to her, and that she had simply been told that it was Mr. Ali's writing on the cheques. She could not therefore confirm that the writing on the cheques, which she concluded was made by a different person than the person who made the writing on the business card, was that of Mr. Ali.
- [35] Given that the Panel received no admissible evidence that the writing on the cheques was that of Mr. Ali, it was unable to rely on the evidence of Dr. Kaur to conclude that the handwriting on the business card given by Mr. Ali to BV is not the handwriting of Mr. Ali.

Admission by Mr. Ali

- [36] After having led the above evidence in support of his position that he was not associated with ARR, on February 24, 2022 Mr. Ali admitted through his counsel that he had associated with ARR contrary to Rule 409 of the Code in the period from October 26, 2017 to March 9, 2021.

Finding of the Panel in respect of Allegation #1

- [37] The Panel concluded that the evidence established, on a balance of probabilities, the facts set out in the first Allegation of professional misconduct. Specifically, the Panel concluded that Mr. Ali was associated with ARR in the period from October 26, 2017 to March 9, 2021. The Panel accepted the evidence of BV, including that he attended at the office of ARR, that he met with Mr. Ali and that Mr. Ali told him that he would personally prepare his corporate tax return. The Panel accepted the

documentary evidence proffered by the PCC, including that which showed that Mr. Ali was identified on the ARR website as part of the ARR team in February 2017 and as the CEO of ARR in April 2019, the LinkedIn profiles of ARR and Mr. Ali which identified him as the owner of ARR in August 2019, Mr. Ali's Profile Report with CPA Ontario, and the corporate records of ARR.

- [38] The Panel also adverted to Rule 19.07 of the Rules of Practice and Procedure which permits the Discipline Committee to rely on the prior findings of facts contained in the Reasons for Decision of the Discipline Committee dated March 4, 2020, which found that Mr. Ali was the President, owner and manager of ARR during the time from July 1, 2019 to September 12, 2019. Mr. Ali abandoned his appeal of that decision and Mr. Ali's attempts to lead evidence contrary to that finding were also abandoned with his admission on February 24, 2022.
- [39] The Panel finds that, even absent Mr. Ali's admission on February 24, 2022, there is ample evidence before it on which to find that Mr. Ali was associated with ARR during the relevant period. The Panel found Mr. Ali's evidence that he was not associated with ARR during this period to be unpersuasive and not credible. Mr. Ali's evidence was contrary to the documentary evidence, and laden with inconsistencies.
- [40] The Panel found that ARR was engaged in the practice of public accounting. Section 1.1.53 of the Bylaw defines the "practice of public accounting" as, among other things, "taxation, insofar as it involves advice and counselling in an expert capacity, but excluding mechanical processing of returns." The Practice Advisory¹ indicates that there exists a presumption that most individuals would seek the services of a CPA for their expert knowledge of the Income Tax Act and professional judgement, and that the preparation of T2 corporate returns are considered to be providing accounting services to the public in "virtually every case."
- [41] The PCC in its submissions cited *Bellamy (Re)*, a 2005 case in which the Discipline Committee found that Mr. Bellamy breached Rule 409. The Panel agrees that the following excerpt from that case is relevant to the case of Mr. Ali, in emphasizing the importance of Rule 409 in precluding members from practicing through an unregistered corporation and thereby avoiding their professional obligations to their clients:

56 It is Mr. Bellamy's membership in the Institute which gives rise to these proceedings. Mr. Bellamy was not compelled to be a member of the Institute, but as a member he was and is obligated to follow the Rules of Professional Conduct. Mr. Bellamy was not free as a member to associate

¹ Professional Advisory Services Guidance re: Accounting Services to the Public (updated October 2020)

with Bellamy Ball if it practised public accounting within the meaning of the Institute's bylaws. In effect, Rule 409 precludes members from practising public accounting through a corporation and thereby avoiding, or attempting to avoid, the fiduciary and ethical obligations of members to their clients; and more particularly, to avoid the obligations of the Rules of Professional Conduct.

- [42] Based on the evidence before the Panel respecting ARR's preparation of BV's T2 corporate tax return, Mr. Ali's admissions, and the jurisprudence, the Panel finds there is clear, cogent and compelling evidence that Mr. Ali was associated with ARR during the relevant period and that ARR provided taxation services involving advice and counselling in an expert capacity, and thus was engaged in the practice of public accounting contrary to Rule 409.

Allegation 2: Failure to Co-operate

- [43] The evidence of Mr. Ali's failure to co-operate is not limited to the failure to provide requested documents. Many of the answers provided by Mr. Ali appear to have been intended to deceive, misdirect, obfuscate and thereby obstruct the investigation of CPA Ontario.
- [44] Ms. Harris, who was appointed by the PCC to investigate the complaint of BV in November 2020, testified before the Panel on August 4 and 6, 2021. Ms. Harris' evidence included reference to the materials in Exhibit 1, the PCC Document Brief, which contains a full set of correspondence between Ms. Harris, others from CPA Ontario, and Mr. Ali.
- [45] Ms. Harris made her first request to Mr. Ali for a response and documentation on November 27, 2020 with a deadline of December 7, 2020. The documents she requested included Mr. Ali's CV, the purchase and sale agreement for ARR, Mr. Ali's complete tax returns for 2018 and 2019, the A&B file, ARR's tax returns and corporate records, and information about the interaction between ARR and MASS. [Exhibit 1, Tab 3]
- [46] Due to Mr. Ali's representations about his and his spouse's health and his travel outside the country, the deadline was extended to January 15, 2021. [Exhibit 1, Tabs 3, 10]
- [47] Mr. Ali provided his first written response through his counsel, Mr. Memon, on December 18, 2020 [Exhibit 1, Tab 12]. The letter provided some responses to the BV complaint, but did not include any of the documentation requested. The cover letter to the response stated: "Your right to make any further requisitions is respectfully denied." In the body of the letter Mr. Memon stated "there is no reason to further continue questioning the Member", and "[f]urther questioning the Member... goes directly against the spirit of the Professional Code."

- [48] A series of exchanges between Mr. Ali's counsel, Ms. Harris, and others at CPA Ontario ensued, in which Mr. Ali was reminded of his obligation to co-operate under the Rules and was requested to attend an interview.
- [49] Mr. Ali through his counsel provided partial responses, but took the position that he was unable to provide certain information since he was no longer involved with ARR, and since confidentiality reasons prevented ARR from disclosing information to him. For instance, by letter dated January 4, 2021, he claimed he could not disclose the name of the person who worked on the A&B tax return because to do so would place him "in breach of contract and be liable for damages." He advised Ms. Harris to contact ARR directly. [Exhibit 1, Tab 14]
- [50] In his letter of January 9, 2021 Mr. Ali took the position that CPA Ontario's requests for ARR documentation, including relating to the A&B file, effectively required Mr. Ali to "breach a valid Agreement between him and AR Rahman Tax and Accounting Services." Mr. Ali asserted that the request was procedurally unfair, and that "the courts will not look too kindly on it." [Exhibit 1, Tab 18]
- [51] Mr. Ali through his counsel also threatened to take legal action against CPA Ontario. In the letter dated January 4, 2021 he wrote:
- "We will hold CPA Ontario directly responsible if the Member's health condition is aggravated. Failure to comply with this demand has the effect of denying my client's basic legal fundamental rights; therefore, my client will be entitled to seek specific performance, an injunction, monetary damages, legal cost and any other relevant equitable and/or legal relief from you if his health deteriorates, caused by your actions. If my client's health deteriorates as a result of this, I will commence legal proceedings and this letter will be tendered as evidence of your failure to resolve this matter in a reasonable way." [Exhibit 1, Tab 18]
- [52] By letter dated January 15, 2021, Mr. Ali provided a number of the documents, including three CVs, the APA, the SFA, and his own 2018 and 2019 T1 personal tax returns. The cover email stated "Your right to make further requisitions is respectfully denied." [Exhibit 1, Tab 22]
- [53] Mr. Ali attended a virtual interview with Mr. Harris on January 26, 2021, with his counsel present. In the interview Mr. Ali, among other things:
- i) Stated that he did meet with BV, but that it was in his capacity with MASS. [Exhibit 1, Tab 46, p. 805]
 - ii) Stated that he was the 100% owner of MASS, which had no revenue or clients to date. [Exhibit 1, Tab 46, p. 843 and 847]

- iii) Would not disclose whether his daughters, who he said purchased ARR from him, are accountants. [Exhibit 1, Tab 46, p. 871]
- iv) Blamed others at ARR for the fact the website listed him as CEO of ARR in 2019, after he says he sold ARR to his daughters, and suggested he would sue his daughters as a result. [Exhibit 1, Tab 46, p. 952]
- v) Stated that he made up the contents of the CVs he provided to Ms. Harris. [Exhibit 1, Tab 46, p. 853]
- vi) Stated that the numbered company described in his CV had \$37.5 million in investment funds managed by his corporation, constituting his own funds [Exhibit 1, Tab 46, p. 859-860]. In his evidence before the Panel, Mr. Ali testified that it is not true that he manages \$37.5 million of funds. He said he just has a line of credit for \$375,000. He explained the discrepancy as caused by a typo.
- vii) Could not provide an explanation for how the Yorkdale lease, which was acquired after the APA was purportedly signed on February 1, 2017, could have been included in that APA. He said that maybe he signed the document, but maybe he did not. He said that maybe he was the owner of the business, but maybe he was not. [Exhibit 1, Tab 46, pp. 909-910]
- viii) Stated that he recorded the interview and that he will sue CPA Ontario and Ms. Harris, on the basis that she is forcing him to answer irrelevant questions. [Exhibit 1, Tab 46, p. 858]

[54] Following the interview, Ms. Harris wrote to Mr. Ali through his counsel requesting outstanding documents previously requested and additional documents arising from the interview, as well as a second interview [Exhibit 1, Tab 33]. A series of emails were subsequently exchanged between Ms. Harris and Mr. Ali's counsel respecting the timing of the document request and the timing of the interview. [Exhibit 1, Tab 35]

[55] A second virtual interview took place on February 8, 2021. In that interview, among other things, Mr. Ali:

- i) Indicated that he had recently discovered that he never owned MASS, but that his family had told him that he was the owner to give him a morale boost. [Exhibit 1, Tab 47, p. 1001]
- ii) Stated that he did not have access to records for MASS because he did not own MASS. [Exhibit 1, Tab 47, p. 1002]
- iii) Stated his spouse, Sadia Shafique was responsible for filing the MASS tax returns, and that she refused to provide him with a copy of them. [Exhibit 1, Tab

47, p. 1004]

- iv) Was not able to provide an explanation when Ms. Harris showed him a copy of publicly available documents demonstrating that both he and Ms. Shafique incorporated MASS and both were directors. [Exhibit 1, Tab 47, p. 1017-1020]
 - v) Acknowledged that he had seen the tax returns for MASS but that he could not provide them to Ms. Harris in accordance with her request because he did not have Ms. Shafique's consent. [Exhibit 1, Tab 47, p. 1027]
 - vi) Acknowledged that he has not been paid the full purchase price as set out in the APA and that he had not provided bank records showing the payments that had been made to him to date. [Exhibit 1, Tab 47, p. 1068-1075]
 - vii) When pressed again by Ms. Harris as to why the APA included the assignment of a lease for the Yorkdale office that did exist at the time the APA was purportedly signed, stated that it was included in anticipation of leasing that location in the future. [Exhibit 1, Tab 47, p. 1079-80]
 - viii) Could provide no explanation when he was shown publicly available corporate records demonstrating that he himself had added his daughters as Directors of ARR in December 2018, and did not remove himself, so he was still listed as a Director in 2018. [Exhibit 1, Tab 47, p. 1087-90]
 - ix) Acknowledged that he previously owned 100% of the common shares of ARR and that there is no documentation showing the transfer of his ownership of the ARR shares to his daughters. [Exhibit 1, Tab 47, p. 1102-06]
- [56] On February 10, 2021 Mr. Ali's lawyer sent Ms. Harris a letter attaching a statutory declaration taken on February 9, 2021 signed by Mr. Ali's daughters.² The statutory declaration states, among other things, that Mr. Ali's daughters bought ARR from Mr. Ali "sometime in February, 2017," that they have denied Mr. Ali's requests for lease agreements, T2 tax returns and T4s for ARR, that it was their fault the ARR webpage was not updated to remove Mr. Ali's name as CEO after he sold ARR to them; and that Mr. Ali has not provided tax and accounting services for ARR since he sold the company to them. They state the statutory declaration was made "to exhaust the responsibilities and obligations of Muhammad Ali towards ARR's clients". [Exhibit 1, Tab 43n]
- [57] In his letter to Ms. Harris of February 10, 2021 attaching this Statutory Declaration, Mr. Ali's counsel requests on behalf of Mr. Ali that the information already provided be submitted to the PCC "so that this matter can finally be dealt with". We believe making further requests for documentation will not be fruitful." [Exhibit 1, Tab 43(a)]

² Mr. Ali's daughters were scheduled to appear as witnesses on the day that Mr. Ali's counsel brought an adjournment request, November 8, 2021. They were never called by Mr. Ali as witnesses.

- [58] On February 18, 2021 Ms. Shafique wrote to Ms. Harris and indicated that she owned 100% of MASS [Exhibit 1, Tab 49]. That same day, Mr. Ali wrote to CPA Ontario to advise that MASS was sold “today through mutual understanding and without any consideration” and to “Please close the file” [Exhibit 1, Tab 50]. The corporate records show that also on that same day, Ms. Shafique was removed as Director of MASS and one of Mr. Ali’s daughters, who resides at the same address as Mr. Ali, was added as the replacement Director. [Exhibit 1, Tab 70]
- [59] Ms. Harris testified that the following documents were never provided by Mr. Ali over the course of the investigation:
- i) The email Mr. Ali had referenced that was sent with the PDF copy of the corporate tax return for A&B;
 - ii) The e-filing licenses for ARR and MASS;
 - iii) Complete MASS T2 corporate tax returns from 2017 to the present;
 - iv) List of all transactions over \$100 between ARR and MASS;
 - v) Details regarding the APA between ARR and Mr. Ali’s daughters, including the original email or letter to Mr. Ali or his daughters attaching the APA, and all relevant documentation prepared contemporaneously to the date of the signing of the APA;
 - vi) Copies of the leases for ARR locations referred to in the APA;
 - vii) Copies of leases for other ARR locations before February 2017;
 - viii) Copies of communications with landlords regarding the assignment of ARR’s leases to Mr. Ali’s daughters;
 - ix) A copy of ARR’s share register;
 - x) Documentation (bank account statements, wire transfer documents, etc.) reflecting payment of the \$80,000 purchase price from his daughters to Mr. Ali for the sale of ARR;
 - xi) ARR’s T2 corporate tax return and final assessment for final period ended 2017.
- [60] Ms. Harris testified that the BV complaint remains open as she was unable to fulfill her mandate to investigate the complaint.

Admission of Mr. Ali

- [61] On February 24, 2022 Mr. Ali admitted through his counsel that from January 15, 2021 through to March 9, 2021 he had failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.1 of the Code.

Finding of the Panel in respect of Allegation #2

- [62] The Panel concluded that the evidence established, on a balance of probabilities, the facts set out in the second Allegation of professional misconduct. Specifically, the Panel concluded that Mr. Ali from January 15, 2021 through to March 9, 2021 had failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.1 of the Code.
- [63] The Guidance to Rule 104 states that: “Lack of co-operation includes attempts to delay, mislead or misdirect CPA Ontario by concealing relevant information, providing false, incomplete or misleading statements or information, failing to respond to communications or otherwise obstructing the regulatory processes of CPA Ontario.”
- [64] The Panel finds, based on the documentary evidence and the testimony of Ms. Harris, that Mr. Ali had failed to provide documents or information when requested to do so by Ms. Harris. The Panel further finds that many of the responses that Mr. Ali did provide were incomplete or misleading.
- [65] The Panel found Mr. Ali’s explanations for the inconsistencies in the information provided during the investigation, such as that he made ‘typos’, to be unconvincing. Rather, the Panel finds that Mr. Ali made statements to CPA Ontario during the investigation that he thought would benefit his interest at the time, and changed his answers later when he realized they had not achieved that purpose.
- [66] The Panel finds that Mr. Ali attempted to obstruct the investigation of CPA Ontario by claiming that ownership changes in ARR and MASS precluded his access to the documents sought by CPA Ontario. The Panel finds that Mr. Ali’s threats to take legal action against CPA Ontario for its investigation of him also reflect his attempt to obstruct the investigation.
- [67] The recent case of *Law Society of Ontario v. Diamond* emphasizes that merely responding to the regulator’s questions and providing certain documentation does not constitute co-operation, if it is not done in good faith. The hearing panel characterized the sequence of requests and responses in that case as “a ‘cat and mouse game’ that has no place in the relationship between licensee and regulator.” [*LSUC v. Diamond*, 2017 ONLSTH 191 at para. 8]
- [68] In its reasons for decision upholding the *Diamond* decision at first instance, the Court of Appeal for Ontario set out the test for determining a failure to co-operate with the Law Society:

While articulated slightly differently by the Hearing Division, the Appeal

Division, and the Divisional Court, the following considerations emerge from those decisions: (a) all of the circumstances must be taken into account in determining whether a licensee has acted responsibly and in good faith to respond promptly and completely to the Law Society's inquiries; (b) good faith requires the licensee to be honest, open, and helpful to the Law Society; (c) good faith is more than an absence of bad faith; and (d) a licensee's uninformed ignorance of the record-keeping obligations cannot constitute a "good faith explanation" of the basis for the delay. [*LSO v. Diamond*, 2021 ONCA 255 at para. 50]

- [69] The Panel finds that Mr. Ali's responses to Ms. Harris, through his counsel, and during the two interviews she conducted, lacked good faith and were marked by an absence of honesty, openness, and helpfulness. The Panel finds that Mr. Ali's consistent efforts to deflect and redirect in his responses can be fairly characterized as an attempt to play a 'cat and mouse game' with his regulator.
- [70] Based on the evidence before the Panel, Mr. Ali's admission, and the jurisprudence, the Panel finds there is clear, cogent and compelling evidence that Mr. Ali failed to co-operate with the regulatory process of CPA Ontario.

Finding of Professional Misconduct

- [71] The Panel concluded that the Allegations, having been proven on the evidence, constituted breaches of Rule 104.1 and Rule 409 of the Code.

VI. DECISION AS TO SANCTION

- [72] After considering the evidence, the law, and the submissions of both parties, the Panel concluded that the appropriate sanction was the revocation of Mr. Ali's membership with CPA Ontario, a fine of \$10,000 payable within one year, a written reprimand and publication of the Decision and Order in the *Globe and Mail*.

VII. REASONS FOR DECISION AS TO SANCTION

Evidence relevant to Sanction

- [73] Other than the facts relating to Mr. Ali's misconduct, the only evidence before the Panel on sanction was the Guidance letter issued to Mr. Ali on October 19, 2017. [Exhibit 11, Tab 2]

Position of the PCC

- [74] The PCC submitted that the appropriate sanction should consist of the revocation

of Mr. Ali's membership in CPA Ontario, a fine of \$10,000, and a reprimand in writing.

- [75] The PCC sought revocation of Mr. Ali's membership on the basis that he has shown himself to be ungovernable. The PCC relied on the nature, duration, and repetitive character of the misconduct, Mr. Ali's discipline history, and the absence of mitigating factors to support its position that Mr. Ali is ungovernable.
- [76] Respecting Mr. Ali's history with CPA Ontario, the PCC introduced the letter of guidance delivered to Mr. Ali by the Chair of the PCC on October 19, 2017 [Exhibit 11, Tab 2]. This letter arose from a complaint that Mr. Ali had forged a document after making an error on a client's personal income tax return, while Mr. Ali was still a student member of CPA Ontario. The letter of guidance expresses concern with Mr. Ali's attitude, in failing to take responsibility for errors made by himself or his staff, and in attempting to transfer such responsibility to the client.
- [77] The PCC emphasized that less than two years after receiving this guidance letter, Mr. Ali again attempted to deflect responsibility in his response to the complaint made by BV. In the Reasons for Decision dated March 4, 2020, the Discipline Committee found that Mr. Ali had attempted to deflect and re-direct responsibility to others, and sought to shirk his responsibility as a member of the profession.
- [78] The PCC submitted that Mr. Ali's failure to co-operate in the matters before this Panel shows that his behaviour and excuses have not changed, notwithstanding the letter of guidance he received in October 2017 and the sanctions he received for failing to co-operate in February of 2020. The PCC submitted that Mr. Ali's past and current misconduct shows that he is unwilling to be governed by CPA Ontario.

Position of Mr. Ali

- [79] Mr. Ali did not take issue with the PCC position respecting the reprimand, or the proposed fine of \$10,000. However, Mr. Ali denied that he was ungovernable, and disputed that his membership should be revoked. In his written submissions, Mr. Ali argued that an appropriate sanction would include a lengthy suspension, followed by an indefinite suspension pending co-operation, or in the alternative, permission to resign. In his oral submissions, Mr. Ali's counsel focused on the appropriateness of a lengthy suspension rather than on permission to resign.
- [80] Through his counsel Mr. Ali relied on *LSO v. Shifman*, 2014 ONLSTA 21. In that case the Appeal Division opined that ungovernability is tied to the principle of progressive discipline, which recognizes that where less serious misconduct repeats, sanctions must increase for subsequent offences [para. 23]. He also relied on *LSO v. Isaac*, 2019 ONLSTH 51, where in spite of the fact that the lawyer had been the subject of three previous disciplinary proceedings, the hearing panel

did not make a finding of ungovernability. In that case the Panel found that, applying the principle of progressive discipline, the misconduct could be appropriately addressed by a lesser penalty than revocation.

- [81] Mr. Ali emphasized that he participated fully in the proceedings, in spite of his health concerns. He emphasized that his admissions, though late, eliminated the need for further hearing days and should be taken as evidence that he is remorseful and that he is governable. Mr. Ali submitted that he complied with the Order of the Discipline Committee dated February 11, 2020 by responding to CPA Ontario's inquiries. Mr. Ali also submitted that unlike other cases of revocation, there is no evidence that the public has been harmed by his actions through incompetence or nefarious acts. In fact, the underlying complaint by BV against Mr. Ali has not been proven.
- [82] Mr. Ali submitted that the allegations, admitted by him, of improperly associating with ARR contrary to Rule 409 and failing to co-operate contrary to Rule 104.1, are simply insufficiently serious to warrant revocation. He had previously been sanctioned with a reprimand and a fine. Pursuant to the principle of progressive discipline, the next step would be to impose a suspension. Mr. Ali submitted that the objectives of specific and general deterrence, rehabilitation, and maintaining public confidence in the profession would be best served by a doubling of Mr. Ali's previous fine, and the imposition of a lengthy suspension which would continue pending full co-operation.

Reasons for the Panel's Decision on Sanction

The Test for Ungovernability

- [83] Whereas the Discipline Committee has in the past found members to be ungovernable and revoked their membership on that basis,³ the Discipline Committee's caselaw has not explicitly spelled out the test to be applied in determining ungovernability. The Panel finds that the approach set out by the Appeal Panel in *LSO v. Shifman* is helpful in identifying the factors to consider in determining whether a member is ungovernable, and what sanction should be imposed.
- [84] As noted in para. 18 of *Shifman*, relatively minor misconduct will lead to revocation or permission to surrender where the regulated professional has shown, through his or her repeated actions despite disciplinary penalties, an inability or unwillingness to be governed by the regulator. Ungovernability is aimed at addressing circumstances where the regulated professional "did not get the message."

³ See, for example, *Sweeney (Re)*, 2019 LNICAO 10.

[85] The Appeal Panel in *Shifman* addressed the relationship between ungovernability and the principle of progressive discipline:

21 Ungovernability is closely tied to the principle of progressive discipline. It recognizes that where less serious misconduct repeats, sanctions must increase for subsequent offences. At a certain point, progressive sanctions will reach the point where it is found that the licensee will not accept the authority of the Law Society and they cannot continue as a lawyer or paralegal. In circumstances where the previous misconduct was more serious, a further finding of misconduct may be sufficient.

22 The determination of ungovernability is not based solely on a judgment of the Panel about whether the licensee will be respectful of the Law Society's authority in the future. The present misconduct, considered in light of past misconduct and sanctions, must objectively be sufficiently serious that revocation or permission to surrender is an appropriate penalty.

[86] In para. 25, the Appeal Panel framed the principles to be considered in relation to ungovernability as a two-part analysis:

- (1) Is the nature, duration and repetitive character of the licensee's present and past misconduct sufficiently serious that it suggests an unwillingness or inability to be governed by the Law Society, notwithstanding progressively increased penalties for repeated incidents of misconduct?
- (2) If so, in light of all of the circumstances, is revocation appropriate? This involves balancing the nature of the misconduct and disciplinary history against mitigating factors including:
 - a. any character evidence;
 - b. the existence of remorse and a recognition and understanding of the seriousness of the misconduct;
 - c. evidence that the licensee is willing to be governed by the Society;
 - d. medical or other evidence that explains (although does not excuse) the misconduct;
 - e. the likelihood of future misconduct, having regard to any treatment or other remedial efforts undertaken;
 - f. the licensee's ongoing co-operation with the Society in addressing the outstanding matters that are the subject of the misconduct and other regulatory matters.

[87] The Panel adopts this approach to the analysis of ungovernability. The Panel first considered whether the nature, duration and repetitive character of Mr. Ali's present and past misconduct is sufficiently serious that it suggests an

unwillingness or inability to be governed by CPA Ontario, notwithstanding the previous sanctions he has received.

Past Conduct of Mr. Ali

- [88] The Panel considered Mr. Ali's conduct dating from his response to the complaint of MD which alleged forgery, and the letter of guidance he received in relation to that complaint from the Chair of the PCC on October 19, 2017. The Chair of the PCC wrote:

The Committee is concerned with the attitude you had displayed in this matter. As a professional, you should take responsibility for errors made by yourself and your staff in filing the clients' personal income tax returns (T1s), or on other engagements, rather than attempting to transfer such responsibility to the client.

...

The Committee further draws your attention to CPA Ontario Rule 205 and CGA Ontario Rule 402, which prohibit a member from signing or associating with any letter, report, statement, representation or financial statement that the member knows, or should know, is false or misleading. In light of the allegations of forgery made by [MD] in this case, the Committee has concerns that your staff are not following proper control procedures. The Committee advises that you should ensure that clients sign all documents and forms as required. [Exhibit 11, Tab 2]

- [89] BV raised concerns about Mr. Ali's processing of his company's income tax return in September of 2018, less than a year after Mr. Ali received the guidance letter. According to the evidence of BV, Mr. Ali's response to his concern was that he should go ahead and complain to CPA Ontario. When BV did so, Mr. Ali's response to Standards Enforcement was to question why he was being held accountable for the issues raised in the complaint, and to assert that CPA Ontario was required to prove to him how he was responsible for the work in question.
- [90] In response to further questions from Standards Enforcement, Mr. Ali stated that he had ceased working with ARR in December 2018 and that it was BV's responsibility to contact ARR directly. Notwithstanding further requests made by Standards Enforcement, Mr. Ali provided no further information to CPA Ontario.
- [91] After the PCC alleged that Mr. Ali had failed to co-operate with the investigation, and in advance of the February 11, 2020 hearing into the allegation, Mr. Ali signed an ASF dated January 28, 2020 in which he acknowledged that he was the owner and manager of ARR at all material times, and that he failed to co-operate with the investigation in breach of Rule 104.1 of the Code.
- [92] In its reasons dated March 4, 2020, the Discipline Committee found that Mr. Ali, in his response to the investigation, had attempted to deflect and re-direct

responsibility to others. At para. 31 the Chair wrote:

The Panel found Mr. Ali's attempts to deflect and re-direct responsibility to others is not only non-responsive, but shows a lack of appreciation for his responsibilities as President of ART and as a member of CPA Ontario.

- [93] The Panel continued by emphasizing in para. 32 Mr. Ali's obligation to respond to the complaint even if the work complained of was completed by another:

As the President of ART at the time the alleged service issues arose, Mr. Ali had a responsibility to respond to the inquiries made of him by CPA Ontario. Even if the work in question was completed by another, the complaint was directed to Mr. Ali and a response was required.

- [94] In determining the appropriate sanction, the Panel considered the letter of guidance that Mr. Ali had received in October of 2017, and the submission made by Mr. Ali. Mr. Ali testified to the Panel that he had learned from the guidance delivered to him in 2017 and that it has been and continues to be his intention to be governed by CPA Ontario. He testified that he was impacted by his health conditions but is now in a position to respond to the inquiries made of him and that he had already submitted a response.
- [95] The Panel in its reasons held that at no time during the investigation did Mr. Ali advise CPA Ontario that health issues prohibited him from responding to the inquiries made of him. Rather, he dismissed the inquiries as not being matters for which he was responsible. The Panel found that Mr. Ali "sought to shirk his responsibility." [para. 41]
- [96] The Panel ordered that Mr. Ali be reprimanded, pay a fine of \$5000, and co-operate with CPA Ontario by providing a full response to the inquiries made by Standards Enforcement. Failure to comply with the Order would lead to a suspension until such time as he did comply.
- [97] On March 3, 2020 Mr. Ali provided his response to the inquiries of Standards Enforcement pursuant to the Panel's order of February 11, 2020. In his response, Mr. Ali stated, contrary to the ASF he had signed on January 28, 2020, that he was not the owner of ARR. He also stated that he had never been contacted by BV, is not part of ARR, and has no information about any correspondence relating to ARR and A&B Bookkeeping. [Exhibit 1, Tab 83]
- [98] On March 10, 2020 Mr. Ali then filed a Notice of Appeal of the Decision of February 11, 2020 [Exhibit 1, Tab 86]. In his Notice of Appeal Mr. Ali raised, among other grounds, that:

(a) The hearing was inappropriate since there was no reason for him to

- reply to the inquiries made since he is not a party to this case;
- (b) The prehearing was “kind of threatening”;
 - (c) He was misled into signing papers;
 - (d) There was a conspiracy against him;
 - (e) He was not the owner of ARR after selling it in December 2017, and it was an error of the Panel to find that he was the owner at all material times;
 - (f) Standards Enforcement was pursuing a personal grudge against him;
 - (g) The Discipline Committee was not impartial.

[99] This Notice of Appeal was eventually withdrawn by Mr. Ali.

Present Conduct of Mr. Ali

[100] Mr. Ali’s attempts to distance himself from the ASF he signed on January 28, 2020, his decision to once again deny his association with ARR, and his refusal to provide CPA Ontario with the answers it was seeking in response to the BV complaint, led the PCC to authorize the appointment of Ms. Harris as an investigator into the complaint of BV.

[101] The exchanges between Mr. Ali, his counsel, and Ms. Harris are summarized in the section on “Failure to Co-operate” above and are reproduced in full in Exhibit 1. Mr. Ali continued to disassociate himself from the ASF he had signed, and his responses to Ms. Harris can be characterized as a continued refusal to take responsibility, and as attempts at deflection, redirection, and obfuscation.

[102] Among the many topic areas in which Mr. Ali demonstrated this approach, two examples will be summarized below, based on the evidence set out above in the section entitled “Findings Regarding Conduct of Mr. Ali”.

Examples of Mr. Ali’s obstruction re: his involvement with ARR

[103] Mr. Ali went to considerable lengths to try to convince CPA Ontario that he should not be held accountable to BV or to CPA Ontario for RR’s work on BV’s tax return on the basis that he had sold ARR to his daughters. Mr. Ali’s responses respecting the purported sale were unconvincing and inconsistent. At various points he claimed that he ceased working with ARR in December 2018, that he sold it in December 2017, and that he sold it in February 2017.

[104] Mr. Ali told CPA Ontario that he could not provide any ARR documents, including those relating to BV’s tax return, because he no longer owned the company and his daughters, the current owners, refused his requests. Among the reasons Mr.

Ali gave for the refusal were purported privacy or confidentiality requirements, which he could not produce or elaborate on.

- [105] When pressed for evidence of the sale of his interest in ARR to his daughters, Mr. Ali produced two documents purportedly signed February 1, 2017 by himself and his daughters, the previously mentioned APA and the Shared Facilities Agreement (SFA). But when interviewed, Mr. Ali could not say when he signed the APA, where he signed the APA, or whether he had even read the APA.
- [106] The documents provided by Mr. Ali are highly suspect, in that the APA, while not mentioning the sale of Mr. Ali's actual shares in ARR, did reference the assignment of a lease which did not exist as of February 1, 2017. When asked how the APA could include the transfer of a lease for an office location which did not yet exist, Mr. Ali was unable to provide a coherent explanation. He later suggested the lease must have been included in anticipation that it would be signed in the future. Similarly, the SFA referenced the corporation, MASS, which was not yet incorporated as of February 1, 2017. Further, the corporate records of ARR show that Mr. Ali added his two daughters as directors in December of 2018, and that he remained a director until after the investigation started in December 2020.

Examples of Mr. Ali's obstruction re: his involvement with MASS

- [107] In an attempt to avoid accountability for the processing by ARR of BV's tax return, Mr. Ali also claimed that he was working with MASS, not ARR, at the time of BV's complaint. Mr. Ali claimed that while he did meet with BV, he did so as a representative of MASS, not ARR, and that MASS was not hired by BV.
- [108] Mr. Ali told CPA Ontario that he owned 100% of MASS and described his role as "Manager Operations, Accounts, Business Development and Admin." He told CPA Ontario that MASS had its own clients, separate from ARR, and charged a higher rate than ARR. However, upon questioning by CPA Ontario, Mr. Ali later stated that MASS had never had even a single client, and had generated no revenue from the date of its incorporation in 2017. When he was pressed to provide income tax returns for MASS showing its revenue, Mr. Ali told CPA Ontario that he had been deceived by his family into believing he owned MASS but that it was really owned by his spouse, and because she refused to release the income tax returns to him, he was unable to comply with CPA Ontario's request for those documents. This representation is contrary to the corporate records obtained by CPA Ontario which indicate that MASS was incorporated by Mr. Ali and his spouse in June of 2017 and that on January 29, 2021 his spouse removed Mr. Ali as director, with an end date of June 16, 2017.
- [109] When CPA Ontario requested the documents from Mr. Ali's spouse, also a member of CPA Ontario, Mr. Ali wrote to CPA Ontario advising that MASS had

been sold for no consideration and asked that the file be closed. The corporate records show that Mr. Ali's spouse was removed as director and replaced by one of Mr. Ali's daughters on the same day that Mr. Ali wrote to CPA Ontario.

Is Mr. Ali's conduct sufficiently serious that it suggests an unwillingness to be governed?

[110] The Panel finds that the nature, duration, and repetitive nature of Mr. Ali's conduct is sufficiently serious to suggest an unwillingness or inability to be governed. The duration of the conduct covers the majority of Mr. Ali's short career with CPA Ontario. His refusal to take responsibility, his attempts to blame others, and his attempts to redirect and obfuscate have been consistent and repetitive.

[111] Contrary to the submissions of his counsel, the Panel finds the nature of Mr. Ali's conduct to be very serious. Mr. Ali's conduct in responding to complaints about him are entirely lacking in the required good faith, honesty, openness and helpfulness. They are instead characterized as evasive and even deceiving, as Mr. Ali provided explanations that defied common sense and were inconsistent with the available documentary evidence. The Panel is left with the unfortunate impression that Mr. Ali could simply not be relied upon to respond truthfully to the inquiries put to him. On this evidence, the Panel finds that Mr. Ali is ungovernable.

Is Revocation the Appropriate Sanction?

[112] Having found Mr. Ali to be ungovernable, the second step pursuant to the *Shifman* approach is to determine whether, in light of all the circumstances, revocation is the appropriate sanction. In this step, the Panel considered the following mitigating factors which could lead a Panel to a sanction less than revocation:

(1) Character Evidence

No character evidence was presented on behalf of Mr. Ali.

(2) The Existence of remorse and a recognition and understanding of the seriousness of the misconduct

Mr. Ali made no expression of remorse, or expressed a recognition or understanding of the seriousness of his misconduct. Prior to his admission of misconduct, Mr. Ali took a defiant position in which he denied responsibility, threatened legal action against CPA Ontario and made implausible claims contrary to documentary evidence. Given Mr. Ali's prior approach to the allegations, the Panel does not accept the position of Mr. Ali's counsel that merely because Mr. Ali belatedly admitted the Allegations should the Panel infer remorse.

(3) Evidence that Mr. Ali is willing to be governed by CPA Ontario

The Panel has received no evidence that Mr. Ali is willing to be governed by CPA Ontario. Given his actions noted immediately above, the Panel does not accept the position of Mr. Ali's counsel that Mr. Ali's continued attendance at the hearing, and his belated admission of the Allegations, is evidence of a willingness to be governed by CPA Ontario.

(4) Medical or other evidence that explains (but does not excuse) the conduct

At various times during the investigation and hearing Mr. Ali made reference to the medical challenges he has faced. While Mr. Ali asserted in some of his correspondence with Ms. Harris that his medical circumstances required additional time to respond, Mr. Ali did not attempt to rely on medical evidence as a mitigating factor for sanction. The Panel does not doubt that Mr. Ali has suffered from various medical issues, but it does not find that any medical evidence it has received explains the misconduct on which it relies to find Mr. Ali to be ungovernable.

(5) The likelihood of future misconduct, having regard to any treatment or other remedial efforts undertaken

Mr. Ali presented no evidence of any treatment or other remedial efforts. Based on the evidence before it of Mr. Ali's persistent and repetitive misconduct, the Panel finds a high likelihood of future misconduct.

(6) Mr. Ali's ongoing co-operation with CPA Ontario in addressing the outstanding matters that are the subject of the misconduct and other regulatory matters

Mr. Ali presented no evidence to support a finding that he is now co-operating with CPA Ontario in addressing the outstanding matters. The complaint of BV remains open because Mr. Ali has not provided CPA Ontario with the information it has been seeking since 2019. If Mr. Ali wished to co-operate with CPA Ontario he could have complied with the outstanding requests of Ms. Harris at any time, but he has failed to do so.

[113] The above analysis reveals no mitigating factors in favour of Mr. Ali which can be balanced against the nature of his misconduct.

[114] The Panel finds no basis on which to impose a lesser penalty than revocation. The absence of any mitigating factors, including evidence of rehabilitation or even remorse, undermine the argument that a suspension could be an appropriate sanction. At his previous hearing in February 2020 Mr. Ali testified that he had learned from the guidance delivered to him in 2017 and that it was his intention to

be governed by CPA Ontario. However, following that hearing Mr. Ali proceeded to try to distance himself from the ASF he had signed and to engage in a pattern of deceit and obfuscation in his communications with CPA Ontario. Mr. Ali has provided this Panel with no reason to believe he will not continue this pattern of conduct in the future, if he is permitted to remain a member of CPA Ontario.

[115] The absence of any mitigating factors also undermines the argument that Mr. Ali should be permitted to resign. Without a satisfactory explanation for his misconduct, the principles of general and specific deterrence require Mr. Ali's revocation. The penalty imposed must ensure that the member and others who might be so inclined are deterred from choosing a sustained course of action to impede through deceit and obfuscation CPA Ontario's investigations into allegations made against them.

[116] The Panel echoes the sentiments expressed by the Discipline Committee in the case of *Sweeney (Re)* 2019 LNICAO 10, at para. 46:

Mr. Sweeney's flagrant disregard for the standards of the profession and his reckless, if not deceitful, interaction with CMA Ontario and CPA Ontario go well beyond the threshold of behavior that mandates the revocation of membership. We cannot continue to embrace as one of our own someone who is so disrespectful regarding professional standards that serve to protect the public and the public interest. Mr. Sweeney is clearly not governable, and the sanctions imposed on him must reflect our conclusions in a way that sends the clearest message possible to the members of this profession and to the public: we do not tolerate such rogue behavior. Should Mr. Sweeney wish to pursue his rehabilitation it must be outside of our profession.

[117] Mr. Ali's deliberate, ongoing attempts to evade, obfuscate and obstruct the investigation, his lack of any remorse or insight, and his unwillingness to be accountable for his professional misconduct or be governed by CPA Ontario require the revocation of his membership to protect the public interest and the reputation of the profession. Simply put, Mr. Ali's behaviour cannot be countenanced. He has forfeited his right to be a member of this honourable profession.

[118] The remaining sanctions were jointly proposed by both parties, and the Panel finds them to be appropriate in the circumstances of this case.

VIII. COSTS

[119] The law is settled that an order against Mr. Ali for costs with respect to the disciplinary proceeding is not a penalty. Costs are intended to indemnify the PCC,

based on the underlying principle that the profession as a whole should not bear all of the costs of the investigation, prosecution and hearing arising from the member's misconduct.

- [120] Costs are awarded at the discretion of the Discipline Committee. It has become customary for the PCC to file a Costs Outline in the same form as used in civil proceedings, and to seek 2/3 of the costs incurred in the investigation and prosecution of the matter.
- [121] The PCC Costs Outline is found at Exhibit 12.
- [122] The Panel takes this opportunity to address Mr. Ali's submission that portions of the hearing were unnecessary and that expenses could have been avoided. He submitted that the PCC could have chosen simply to rely on the ASF signed on January 28, 2020 and the finding by the Discipline Committee in its reasons of March 4, 2020, to prove that Mr. Ali was the owner of ARR during the relevant time and therefore he was associated with ARR contrary to Rule 409.
- [123] The Panel rejects this submission on the basis that it was Mr. Ali's own actions, in resiling from the ASF he had signed, and in taking the position during the subsequent investigation by Ms. Harris that he was in fact not the owner of ARR, which required the matter to be addressed at the hearing. Mr. Ali led evidence contrary to the prior finding of fact in an apparent attempt to convince the Panel to reject that prior finding of fact. It is not for Mr. Ali to now say that the PCC expended unnecessary resources in attempting to prove a fact that Mr. Ali himself had disputed.
- [124] Given the obstructive behaviour of Mr. Ali, the Panel considered supporting a higher costs award. However, the Panel determined it was most appropriate to order costs of 2/3 of the \$108,361.14 enumerated in the PCC Costs Outline, amounting to a costs award payable by Mr. Ali of \$72,240.74.

Dated this 29th day of April, 2022

A handwritten signature in black ink, appearing to read 'R. Adamkowski', enclosed within a large, loopy circular flourish.

Randal Adamkowski, CPA, CA
Discipline Committee – Chair

Members of the Panel

Peter-John Vaillancourt, CPA, CGA

Catherine Kenwell, Public Representative

Independent Legal Counsel

John Dent, Barrister & Solicitor