

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

*THE CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017*

**TO:** D. CHRIS TULLY (SUSPENDED)

**AND TO:** The Discipline Committee of CPA Ontario

The Professional Conduct Committee hereby makes the following Allegations against D. Chris Tully, a suspended member of CPA Ontario:

1. THAT the said D. Chris Tully, in or about the period September 19, 2016 to July 11, 2017 failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.1 of the CPA Code of Professional Conduct, in that he failed to provide documents or other information when requested to do so by the Professional Conduct Committee through its investigator and staff of CPA Ontario.
2. THAT having been personally served with a Notice to a Member to Attend Before the Professional Conduct Committees of CPA Ontario and CGA Ontario pursuant to Regulation 7-1 s.18, the said D. Chris Tully, on or about July 11, 2017, failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.2(c) of the CPA Code of Professional Conduct, in that he did not attend as required by the terms of the Notice.

Dated at Toronto, Ontario, this 14<sup>th</sup> day of September, 2017



R. DINSHAW, CPA, CA, DEPUTY CHAIR  
PROFESSIONAL CONDUCT COMMITTEE

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

*CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017*

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Allegations against **DAVID CHRISTOPHER TULLY**, a suspended member of CPA Ontario, under **Rule 104.1** and **Rule 104.2(c)** of the Rules of Professional Conduct, as amended.

**TO:** Mr. David Christopher Tully

**AND TO:** The Professional Conduct Committee

**DECISION AND ORDER MADE MAY 2, 2018**

**DECISION**

The tribunal was satisfied that the Allegations were proven and constituted a breach of **Rule 104.1** and **Rule 104.2(c)** of the Rules of Professional Conduct. Having breached these Rules, the tribunal determined that David Christopher Tully ("Mr. Tully") has committed professional misconduct.

**ORDER**

The Tribunal orders the following:

1. Mr. Tully be reprimanded in writing by the Chair of the hearing.
2. Mr. Tully shall pay a fine of \$3,500 to CPA Ontario within six months from the date this Decision and Order is made.
3. Mr. Tully is required to cooperate with the Professional Conduct Committee by providing the required documentation requested by the investigator in the email dated September 23, 2016 to Mr. Tully within 30 days of this order, by Friday, June 1, 2018, and that Mr. Tully attend an interview with the investigator within 60 days of this order, by Tuesday, July 3, 2018.
4. Notice of this Decision and Order, disclosing Mr. Tully's name, is to be given in the form and manner determined by the Discipline Committee:
  - (a) to all members of CPA Ontario;
  - (b) the Public Accountants Council for the Province of Ontario; and
  - (c) to all provincial bodies;

and shall be made available to the public.

5. In the event Mr. Tully fails to comply with the requirements of this Order, his membership shall be revoked, and notice of the revocation of his membership, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Tully's practice. All costs associated with this publication shall be borne by Mr. Tully and shall be in addition to any other costs ordered by the Committee.
6. Mr. Tully shall pay costs of \$13,000 to CPA Ontario within six months from the date this Decision and Order is made.

**DATED** at Toronto this 2<sup>nd</sup> day of May, 2018



Stephen Dineley, FCPA, FCA  
Discipline Committee – Deputy Chair

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Allegations against **DAVID CHRISTOPHER TULLY**, a suspended member of the Chartered Professional Accountants of Ontario, under **Rule 104.1** and **Rule 104.2(c)** of the Rules of Professional Conduct, as amended.

**BETWEEN:**

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

**-and-**

**Mr. David Christopher Tully**

**APPEARANCES:**

**For the Professional Conduct Committee:** Swapna Chandra, counsel

**For Mr. Tully:** Not Present and Not Represented

Heard: May 2, 2018

Decision and Order effective: May 2, 2018

Release of written reasons: July 31, 2018

**REASONS FOR THE DECISION AND ORDER MADE MAY 2, 2018**

**I. OVERVIEW**

- [1] This hearing was held to hear two allegations of professional misconduct made by the Professional Conduct Committee (“PCC”) of the Chartered Professional Accountants of Ontario (“CPA Ontario”) against David Christopher Tully. The first allegation is that he failed to provide documents and other information when requested to do so. The second allegation is that he failed to appear before the PCC of CPA Ontario and CGA Ontario when he was required to do so.
- [2] Mr. Tully obtained his Chartered Accountant designation in 1977, and, in 1990, he registered his sole proprietorship with CPA Ontario.
- [3] A complaint dated May 25, 2015, was received by Standards Enforcement of CPA

Ontario from a former client. The complaint asserted that Mr. Tully practiced public accounting without a valid licence. Standards Enforcement asked Mr. Tully to provide information with respect to the complaint. He did provide some information but failed to fully provide all requested information to either Standards Enforcement and subsequently to an investigator appointed by the PCC. He also failed to attend a meeting of the PCC after being required to do so.

- [4] As a result of Mr. Tully's failure to co-operate with the investigation into the complaint, and for his failure to attend a meeting of the PCC, two allegations of professional misconduct were made against him on September 14, 2017.
- [5] The onus at the hearing was on the PCC to present clear, cogent and convincing evidence which established that on a balance of probabilities Mr. Tully's conduct, as alleged, breached the CPA Code of Professional Conduct and constituted professional misconduct.

## **II. PRELIMINARY ISSUE**

- [6] As Mr. Tully did not attend the hearing, the tribunal had to be satisfied that he had received proper notice of the hearing before proceeding to hear the case for the PCC.
- [7] The affidavit of Mervyn Archdall, sworn on September 20, 2018, states that he personally served the Allegations on Mr. Tully on June 19, 2017 (Exhibit 2).
- [8] Ms. Chandra filed the Affidavit of Kristen Couch ("Ms. Couch"), the Adjudicative Tribunals Assistant Secretary at CPA Ontario, sworn April 26, 2018 (Exhibit 1). Ms. Couch stated that a letter requesting hearing date availability had been emailed to Mr. Tully's email address of record on January 25, 2018. On February 6, 2018 a cover letter and Notice of Hearing were emailed to Mr. Tully, again, to his email address of record. Relay confirmation of this email was also provided. Mr. Tully did not respond directly to either email.
- [9] The tribunal was satisfied that Mr. Tully had been properly served with the Allegations and the Notice of the Hearing and decided to proceed in his absence.

## **III. ISSUES**

- [10] The tribunal identified two issues. The first issue was whether the case for the PCC satisfied the required standard of proof, namely that there was clear, cogent and convincing evidence, that on a balance of probabilities, the allegations were proven.
- [11] If the allegations were true, the tribunal had to decide a second issue, namely did the nature and impact of his conduct constitute professional misconduct.

## **IV. DECISION**

- [12] The tribunal found that the allegations were proven, and that Mr. Tully had breached sections 104.1 and 104.2(c) of the Rules of Professional Conduct. The tribunal also

found that his conduct, the breach of the Rules of Professional Conduct, constituted professional misconduct.

## V. THE RELEVANT FACTS

- [13] Ms. Chandra called Ms. Leigh Beijer, CPA, CA, the investigator appointed by the PCC and filed a Documents Brief (Exhibit 2) which contained copies of the relevant documents, particularly letters and emails to and from Mr. Tully which demonstrated the efforts made, first by Ms. Theresa Tonelli, CPA CA, the Director of Standards Enforcement, and later by Ms. Beijer, between September 23, 2015 and July 11, 2017 to investigate the complaint. The evidence also proved the investigation could not be completed because Mr. Tully did not cooperate. More particularly, the Tribunal found the relevant facts as set out below in paragraphs 14 to 18.
- [14] On May 25, 2015, a complaint that Mr. Tully had practiced public accounting without a valid licence contrary to the bylaws of CPA Ontario and to the *Public Accounting Act, 2004* was received by CPA Ontario. The complaint was made by the Manager of Finance and Administration as well as the Treasurer of a former client of Mr. Tully's. Auditor's Reports, signed by D Chris Tully in the five years, 2010 to 2014 were enclosed with the complaint.
- [15] Ms. Tonelli, wrote to Mr. Tully on September 23, 2015, advising him of the complaint and requesting information from him. Mr. Tully said he thought that he was licensed and provided some but not all of the information requested. Mr. Tully subsequently failed to respond fully to Ms. Tonelli's follow up letters of October 13, 2015, October 23, 2015, and February 8, 2016. On March 10, 2016, Ms. Tonelli wrote again requesting information and advising him that failure to respond by April 4, 2016 could result in an allegation or allegations of professional misconduct. On May 4, 2016, when no response had been received, Ms. Tonelli advised Mr. Tully by way of letter that the matter would be forwarded to the PCC for consideration.
- [16] The PCC considered the matter and appointed an investigator, Ms. Beijer to investigate the complaint and obtain the relevant information. Between September 19, 2016, and November 25, 2016, Ms. Beijer made several attempts to obtain specified information from Mr. Tully and to meet with him. Her emails and telephone calls, documented in the Document Brief, show that while Ms. Beijer's accommodated Mr. Tully's absence from the province, that despite his indication he would cooperate, he did not fully provide the information required. Ms. Beijer sent Mr. Tully a registered letter dated October 7, 2016, which reiterated the request for information and reminded Mr. Tully of his professional obligation to cooperate. The letter also referred to the possibility of an allegation or allegations of professional misconduct if he did cooperate and provide the requested information. Mr. Tully did provide some further information, which Ms. Beijer confirmed, but he did not fully respond to her request or meet with her on December 12, 2016 as she asked.
- [17] On February 10, 2017, Mr. Tully was advised by letter from counsel to the PCC that Mr.

Raymond Harris, FCPA, FCA, had been appointed by the PCC as co-investigator with Ms. Beijer, to inquire into the complaint made against him. The letter stated that the PCC would be considering this matter and the investigation conducted by Ms. Beijer and Mr. Harris at its July 11, 2017 meeting. Ms. Beijer and Mr. Harris emailed Mr. Tully several times between April 5, 2017 and April 28, 2017, but no response was received.

- [18] Mr. Tully was personally served with a letter from counsel to the PCC, dated June 16, 2017, advising him that his attendance was required at the PCC meeting being held on July 11, 2017, and failure to attend could result in an allegation of professional misconduct. Mr. Tully did not attend the July 11, 2017 meeting.

## **VI. CONCLUSION REGARDING THE ALLEGATIONS**

- [19] The facts set out above, based on evidence the tribunal found to be clear, cogent and convincing, prove both allegations to be substantiated. Mr. Tully did not fully provide the information he was properly asked to provide, he did not meet with the investigator as he should have and he did not attend the meeting of the PCC as required. Mr. Tully breached Rules 104.1 and 104.2(c) of the CPA Code of Professional Conduct.
- [20] His conduct demonstrated an inability or unwillingness to cooperate with the regulatory processes of CPA Ontario and raise the question of whether he is unwilling or unable to be governed. His conduct prevented CPA Ontario from determining the nature of his practice and whether his practice met the required standard. Accordingly, CPA Ontario was unable to carry out its public mandate. The nature of his conduct departed significantly from that required of a member and the impact of his conduct was serious.
- [21] Accordingly, the tribunal found that Mr. Tully's conduct constituted professional misconduct.

## **VII. SANCTION**

- [22] The tribunal found the sanctions, including the reprimand, amount of the fine proposed and required cooperation, to be within the range found in the cases put forward by PCC and found that such sanctions are in the public's interest. The order proposed by the PCC satisfied the principles that apply when a sanction is imposed.
- [23] The amount of the fine and the publication of notice of the decision and order are intended to act as a general deterrent. The discipline process itself, the reprimand, the publication of notice and the fine should specifically deter Mr. Tully from similar conduct in the future.
- [24] The opportunity for Mr. Tully to cooperate and thus maintain his membership is consistent with other cases. Early in the process Mr. Tully indicated he did intend to cooperate and he did provide some of the information requested.
- [25] The tribunal concluded that the proposed sanctions were appropriate given that public confidence in the profession's ability to self-regulate must be maintained. Mr. Tully's behavior strikes at the heart of the profession's ability to self-regulate and its ability to

govern its members.

### VIII. COSTS

[26] Costs are an indemnity and not an additional fine. The tribunal was provided with evidence of many attempts by Standards Enforcement and the investigator to communicate with Mr. Tully. The Tribunal was satisfied that the investigation did proceed to some extent on the matter under investigation. Since the matter before the Tribunal was with respect to cooperation a 50% cost recovery was considered appropriate and it was ordered that Mr. Tully pay costs fixed in the amount of \$13,000 within 6 months. The costs ordered represent approximately one-half of the actual costs incurred by the PCC, being \$26,293 (Exhibit 4).

Dated at Toronto this 31<sup>st</sup> day of July, 2018



Stephen Dineley, FCPA, FCA  
Discipline Committee – (Deputy) Chair

#### Members of the Tribunal

Jeremy Cole, CPA, CA  
Veronica Green-Dimitroff, CPA, CMA  
Salim Somani, CPA, CA  
David Handley (Public Representative)

#### Independent Legal Counsel

Robert Peck  
Barrister & Solicitor