

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **EVERARD ZYTVELD, CPA, CGA**, under **Rule 611** of the CGA Ontario Rules of Conduct and **Rule 104.2(c)** of the CPA Code of Professional Conduct.

TO: Everard Zytveld, CPA, CGA

AND TO: The Professional Conduct Committee

REASONS
(Decision and Order made May 3, 2017)

1. This tribunal of the Discipline Committee met on May 3, 2017 to hear allegations of professional misconduct brought by the Professional Conduct Committee against Everard Zytveld, a Member of CPA Ontario.
2. Ms. Melissa Gentili appeared on behalf of the Professional Conduct Committee (PCC). Mr. Zytveld attended via teleconference. Mr. Zytveld confirmed he understood that he had the right to be represented by counsel and was waiving that right. Mr. Glenn Stuart attended the hearing as counsel to the Discipline Committee.
3. The decision of the tribunal was made known at the conclusion of the hearing on May 3, 2017, and the written Decision and Order was sent to the parties on May 8, 2017. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegations, the decision, the order, and the reasons of the tribunal for its decision and order.

Allegations

4. The following allegations of professional misconduct were made against Mr. Zytveld by the Professional Conduct Committee of CGA Ontario and CPA Ontario on February 9, 2017:
 1. 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 Everard Zytveld, on or about November 1, 2016, 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.
 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 Everard Zytveld, on or about November 1, 2016, failed to comply with the request of the Professional Conduct Committee contrary to Rule 611 of the Code of Ethical Principles and Rules of Conduct, in that he did not attend as required by the terms of the Notice.

Plea

5. Mr. Zytveld entered a plea of not guilty to Allegation Nos. 1 and 2.

The case for the PCC

6. Ms. Gentili submitted that this is a case of failure to cooperate with the regulatory processes of CPA Ontario as required by Rule 104.2(c) and failure to comply with a request to attend before the PCC under Rule 611. The events leading up to the allegations are outlined in the Affidavit of Theresa M. Tonelli, CPA, CA, the Director of Professional Standards for CPA Ontario (Exhibit 1).

7. Ms. Tonelli had written to Mr. Zytveld on January 13, 2016, concerning a complaint that Mr. Zytveld had issued non-conventional reports attached to Statements of Operating Costs, which suggested a level of assurance that was likely not warranted. It was also alleged that Mr. Zytveld had prepared a publicly available document that implied compilation reports provide a greater level of assurance to the accuracy of the financial statements. Mr. Zytveld responded to Ms. Tonelli by letter, dated January 22, 2016, in which he indicated that he was unclear as to what the complaint was about, and he explained his position with regard to the concerns he believed were possibly raised by the complaint.

8. Mr. Zytveld's response was forwarded to the complainant who provided additional comments. In May 2016, the PCC reviewed and considered the file and determined that Mr. Zytveld be invited to attend a PCC meeting to provide further insight. Ms. Tonelli wrote to Mr. Zytveld on June 22, inviting him to the PCC meeting on July 26, 2016, and advising that it would give him an opportunity to discuss the matter further with the committee. Ms. Tonelli also invited Mr. Zytveld to contact her for information on specifics that might be discussed. Mr. Zytveld sent an email to Ms. Tonelli on July 5, 2016, responding that he would not attend the meeting.

9. Ms. Tonelli wrote to Mr. Zytveld on July 12, 2016, reiterating that the PCC had invited him to attend the meeting as they had additional questions in respect of the complaint. In light of Mr. Zytveld's response that he would not attend, Ms. Tonelli requested his availability to attend by teleconference. Mr. Zytveld responded that, before considering whether or not he would attend the PCC meeting in person or by teleconference, he was still awaiting details of the nature of the complaint since none of the previous correspondence had explained what he had done to deserve all this attention. Mr. Zytveld stated he would consider what options to take once clarification was received.

10. Ms. Tonelli wrote to Mr. Zytveld on July 13, attaching her January 13 letter and supporting documents, which outlined the nature of the complaint. She told Mr. Zytveld that the PCC had reviewed all the relevant supporting documentation of Mr. Zytveld and the complainant and required additional information before deciding on the next steps in the matter. Mr. Zytveld was asked to confirm his availability to attend the July 26 PCC meeting by teleconference.

11. Mr. Zytveld emailed Ms. Tonelli on July 14 stating "*This is my final attempt to get a plain English summary of my "misdemeanor" or "the complaint" or whatever...No plain English means I will not be communicating with your committee at all in regards to "the complaint".*" Ms. Tonelli responded on July 15, again referring Mr. Zytveld to the complaint, CPA Ontario Rules 201.1 and 205, CGA Ontario Rules 101, 305, 401 and the Code Principle of Due Care and Professional Judgment. She indicated to Mr. Zytveld that the PCC would like to discuss some of the statements made in his Article as well as the composition of his practice and the types of

services offered to clients. Mr. Zytveld was again asked to confirm his attendance via teleconference at the July 26 PCC meeting.

12. Mr. Zytveld's July 18 response indicated that was his final reply. He added that he had no interest in meeting the committee and had no time or available funds for this kind of bureaucracy, and he submitted that this correspondence bordered on harassment. Mr. Zytveld did not attend the July 26, 2016 PCC meeting. The matter was considered in his absence and the PCC directed that Mr. Zytveld be served with a Notice to Attend before the PCC pursuant to Regulation 7-1.2.18.

13. Ms. Tonelli received an Affidavit of Service from the process server Matthew Kelly (Exhibit 2) indicating that on August 30, 2016, Mr. Zytveld was personally served with a letter and Notice to Attend requiring him to attend the November 1, 2016 meeting. The letter advised Mr. Zytveld that failure to attend could result in an allegation of misconduct under the CPA Code of Professional Conduct. On August 31, Ms. Tonelli received an email from Mr. Zytveld advising that he was resigning from CPA Ontario immediately. Mr. Zytveld did not attend the November 1, 2016 PCC meeting as required.

14. Ms. Gentili read the Notice to Attend before the Professional Conduct Committee into the record and stated there was no further evidence for the PCC.

The case for Mr. Zytveld

15. Mr. Zytveld indicated that he did not disagree with the facts set out in Ms. Tonelli's affidavit. Mr. Zytveld, after being sworn in as a witness, stated that he received correspondence about the complaint "out of the blue". He submitted that he had answered the complaint in his letter of January 22, 2016, and had asked if the problem was related to his "statement of operating costs" or if the issue was the wording in his paper written for non-accounting individuals.

16. Mr. Zytveld stated that he was referred to rules and regulations in Ms. Tonelli's letter, but he was not told what was wrong with the wording in his paper and why it was not acceptable to clients. Mr. Zytveld felt that CPA Ontario was not answering the proper enquiry of a member.

17. Mr. Zytveld submitted that the letter from Ms. Tonelli requested a meeting with the PCC but provided no explanation about the appropriateness of the wording of the paper. Rather, it merely quoted rules and regulations. Mr. Zytveld stated he was aware of the CGA rules and Code on the website but said he no longer had access to them.

18. Ms. Gentili had no further questions of Mr. Zytveld. In response to an enquiry from the tribunal, Ms. Gentili stated that Mr. Zytveld had attempted to resign but this was not permitted while a matter was under investigation.

Closing submissions

19. Ms. Gentili submitted that the evidence was clear, cogent and compelling that Mr. Zytveld acted contrary to both the CPA and CGA rules. The allegations and evidence were straightforward. Mr. Zytveld did not dispute that he received notice to attend before the PCC and that he was advised his failure to attend could result in allegations being made. Despite being given various opportunities, including the teleconference option, Mr. Zytveld did not attend before the PCC.

20. Ms. Gentili stated that the PCC had provided all the information to Mr. Zytveld and the complainant's letter clearly articulated the nature of the concern that clients may have been given an unwarranted level of assurance. Mr. Zytveld was provided with a full listing of the rules, code and regulations governing the matters requiring a response. Mr. Zytveld was fully aware of the nature and purpose of the meeting with the PCC. Despite being fair and giving Mr. Zytveld further opportunities to provide additional information and meet with the PCC, he declined the opportunity to speak directly with the PCC. Mr. Zytveld was ultimately served with a Notice to Attend, which was a mandatory, not optional, requirement to attend before the PCC. Ms. Gentili submitted that Mr. Zytveld did not provide a valid reason but just declined to attend.

21. Ms. Gentili submitted that Mr. Zytveld had breached the rules of CPA Ontario and CGA Ontario by his failure to attend before the PCC, noting that the underlying conduct was the same for both legacies.

22. Mr. Zytveld stated that he had no further submissions to add.

Decision

23. After deliberating, the tribunal found that the allegations had been proven. The tribunal announced the following decision:

THAT having seen, heard and considered the evidence, the Discipline Committee finds Everard Zytveld (Mr. Zytveld) guilty of Allegation Nos. 1 and 2 of professional misconduct.

Reasons for Decision

24. Having seen, heard and considered the evidence and submissions provided by both parties, the tribunal concluded that the evidence was clear, cogent and convincing and was sufficient to prove Allegation Nos. 1 and 2.

25. Mr. Zytveld had been provided with several opportunities to appear before PCC to discuss, provide explanations, and to receive input from the PCC regarding the complaint that had been made against him. Unlike the initial invitation to attend the PCC meeting, which was not a mandatory request, the Notice to Attend required Mr. Zytveld to attend. It was a mandatory direction, and a failure to comply with the Notice to Attend constituted professional misconduct. Mr. Zytveld chose not to comply with the direction given to him by CPA Ontario and was therefore guilty of the two Allegations of professional misconduct.

Submissions on Sanction

26. Ms. Gentili stated that there was no additional evidence on sanction. Ms. Gentili, on behalf of the PCC, submitted that an appropriate sanction in this matter would be: a written reprimand, a fine in the amount of \$3,500, an order that Mr. Zytveld cooperate by attending the next PCC meeting, and the usual publicity to all members and the public. Failure to comply would result in suspension for 20 days and then revocation of membership. The PCC also sought an order for two-thirds of the actual costs incurred.

27. Ms. Gentili submitted that the mitigating factors were that Mr. Zytveld had no history before the Discipline Committee, had initially responded to the complaint and was in attendance at the hearing via teleconference.

28. Ms. Gentili stated that the aggravating factors included that Mr. Zytveld chose not to attend the PCC meeting, although he was given many opportunities to attend a PCC meeting, in person or by teleconference. Mr. Zytveld's actions had wasted the time and resources of CPA Ontario, including costs for process server, hearing preparation time and counsel fees, and time spent by Ms. Tonelli on numerous correspondence attempts. Ms. Gentili submitted all of this could have been avoided if Mr. Zytveld had simply met with the PCC to further discuss the complaint. Mr. Zytveld's attitude cast doubt on his willingness to be governed by the rules and regulations of CPA Ontario, particularly characterizing the PCC's attempts to obtain information as harassment. Mr. Zytveld had shown a lack of respect towards his governing body.

29. Ms. Gentili submitted that the principles of specific and general deterrence and rehabilitation would be addressed by the sanctions requested. The reprimand would emphasize the seriousness of Mr. Zytveld's behavior. The fine of \$3,500 proposed was appropriate and would address general and specific deterrence. Full cooperation by members is critical and shows respect for CPA Ontario and a willingness to be governed. It also allows the PCC to fulfil its mandate to investigate all complaints received. Publicity is the key to specific and general deterrence and provides information to the public. There were no rare and unusual circumstances not to order publicity on the CPA Ontario website, in *D & A Magazine* and inform the other provincial bodies.

30. Ms. Gentili filed a Costs Outline (Exhibit 3) and stated that, since there was no investigator, the total costs were about \$6,900, and the costs requested by the PCC of \$4,600 represent approximately two-thirds of the actual costs incurred. Ms. Gentili submitted that costs are an indemnity, not a penalty, and the member whose actions caused the hearing is expected to bear a portion of the costs. Ms. Gentili stated that the tribunal had discretion to make adjustments to the costs requested to account for a shorter hearing day than anticipated.

31. Ms. Gentili distributed a Case Brief containing the CPA Ontario Discipline Committee cases of *Presta*, *Croucher*, *Gunn*, *Titus* and *Cooper*, which deal with failure to cooperate matters where members were given several opportunities to cooperate but chose not to do so.

32. Mr. Zytveld submitted that the fine and costs requested are quite steep and not warranted. He stated that if CPA Ontario had communicated a further explanation of the nature of the complaint, this situation could have been avoided.

33. Mr. Zytveld stated that at the time of the June 26, 2016 meeting request from Ms. Tonelli, his wife was in the hospital. In his email of July 18, 2016, Mr. Zytveld indicated he was busy between visiting the hospital and answering correspondence.

34. Mr. Zytveld submitted that he was retired, but his attendance at a future meeting of the PCC would depend on the timing, as he was away in August and September. Mr. Zytveld indicated his willingness to meet with the committee and confirmed his availability for the June 6, 2017 PCC meeting.

35. After deliberating and announcing the terms of the order, the tribunal clarified with the parties that if Mr. Zytveld did not attend the June 6, 2017 PCC meeting, he would have to provide an explanation satisfactory to the Discipline tribunal chair within 10 days from the June 6 meeting date.

Order

36. After deliberating, the tribunal made the following order:

1. THAT Mr. Zytveld be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Zytveld be and he is hereby fined the sum of \$2,000, to be remitted to the Chartered Professional Accountants of Ontario ("CPA Ontario") within twelve (12) months from the date this Decision and Order is made.
3. THAT Mr. Zytveld be and he is hereby required to cooperate with the Professional Conduct Committee by attending the meeting scheduled for June 6, 2017 in person or by teleconference. If Mr. Zytveld fails to attend the June 6, 2017 Professional Conduct Committee meeting, he must provide an explanation satisfactory to the Discipline tribunal Chair within ten (10) days of the June 6 meeting.
4. THAT notice of this Decision and Order, disclosing Mr. Zytveld's name, be given in the form and manner determined by the Discipline Committee:
 - a) to all members of CPA Ontario,
 - b) to all provincial bodies,and shall be made available to the public.
5. THAT in the event Mr. Zytveld fails to comply with the requirements of paragraphs 2 and 7 of this Order, he shall be suspended from membership in CPA Ontario and CGA Ontario until such time as he does comply, provided that he complies within twenty (20) days from the date of his suspension. In the event he does not comply within the twenty (20) day period, his membership in CPA Ontario and CGA Ontario shall thereupon 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. Zytveld's practice, residence or employment. All costs associated with this publication shall be borne by Mr. Zytveld and shall be in addition to any other costs ordered by the committee.
6. THAT in the event Mr. Zytveld fails to comply with the requirements of paragraph 3 of this Order, his membership in CPA Ontario and CGA Ontario shall thereupon 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. Zytveld's practice, residence or employment. All costs associated with this publication shall be borne by Mr. Zytveld and shall be in addition to any other costs ordered by the committee.

IT IS FURTHER ORDERED:

7. THAT Mr. Zytveld be and he is hereby charged costs fixed at \$3,600, to be remitted to CPA Ontario within twelve (12) months from the date this Decision and Order is made.

Reasons for Sanctions

37. It is expected by the public and by the members of CPA Ontario that members comply with the Rules of Professional Conduct. Failure to do so will result in sanctions commensurate with the conduct of the member for the purpose of confirming to the public that CPA Ontario takes these matters seriously. The sanctions are levied as both a specific deterrent to the member and a general deterrent for the membership at large.

38. A written reprimand to the member is a specific deterrent to emphasize the importance of adherence to the Rules of Professional Conduct.

39. The tribunal determined that a fine of \$2,000 was appropriate in this case as Mr. Zytveld appeared not to fully understand the importance of his requirement to cooperate with PCC's request to discuss and review the complaint against him. He had made some attempt to obtain clarification as to the basis of the complaint, however, he did not comply with the rules. The tribunal reduced the fine from that requested by PCC as they were satisfied that some effort to address the complaint had been made by Mr. Zytveld. Twelve months to pay the fine was considered fair and reasonable by the tribunal.

40. As noted in the sanctions, he was also given another opportunity to appear before the PCC on June 6, 2017 to discuss the complaint. The requirement for Mr. Zytveld to attend at the PCC meeting on June 6, in the opinion of the tribunal, was a fair and reasonable requirement requested by the PCC. It affords the member another opportunity to discuss the complaint against him. Should Mr. Zytveld not comply without a reasonable and valid explanation, his failure to attend will result in serious consequences. The tribunal concluded that this sanction provided a specific deterrent to Mr. Zytveld and a general deterrent to the membership. The tribunal also was satisfied that this sanction served the interests of the public.

41. Publication to other members and on the website and to other provincial CPA bodies serves as a general deterrent for members and provides the public with the necessary information regarding this particular event.

Reasons for Costs

42. Mr. Zytveld was charged costs of \$3,600 and was given up to 12 months to pay, the same time period for the payment of the fine. The amount requested by PCC of \$4,600 was reduced to reflect the shorter time required for the hearing. Mr. Zytveld's failure to attend PCC meetings, as requested and required under the rules, contributed to the costs being incurred, so it was appropriate that he bear a portion of those costs.

DATED AT TORONTO THIS *1ST* DAY OF AUGUST, 2017
BY ORDER OF THE DISCIPLINE COMMITTEE


S.M. DOUGLAS, FCPA, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL

J. BIANCUCCI, CPA, CGA
G.G. IRELAND, CPA, CA
B. KUCHTA (PUBLIC REPRESENTATIVE)