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CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF
ONTARIO

FORM 9A

THE CHARTERED ACCOUNTANTS ACT, 2010

TO: GARRY W. ROUND, CPA, CA

AND TO: The Discipline Committee of CPA Ontario

The Professional Conduct Committee hereby makes the following Allegations of professional misconduct against GARRY W. ROUND, a Member of CPA Ontario:

1. THAT the said Garry W. Round, in or about the period October 17, 2014 to March 24, 2015 failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.1 of the Rules of Professional Conduct, in that:
 - a. he failed to provide the information requested by Mr. John Murray, Vice President of Standards Enforcement at CPA Ontario, in his letter dated September 24, 2014;
 - b. he failed to provide the information requested by Mr. John Murray, Vice President of Standards Enforcement at CPA Ontario, in his letter dated January 7, 2015; and
 - c. he failed to provide the information requested by Mr. John Murray, Vice President of Standards Enforcement at CPA Ontario, in his letter dated January 29, 2015.
2. THAT the said Garry W. Round, on or about the 24th day of March 2015, having been personally served with a Notice to attend before the Professional Conduct Committee of CPA Ontario on March 24, 2015, failed to attend as required contrary to Rule 104.2(c) of the Rules of Professional Conduct.

Dated at Guelph, this 17th day of April, 2015.

D.J. CREMASCO, FCPA, FCA, DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

Chartered Professional Accountants of Ontario is the registered name of The Institute of Chartered Accountants of Ontario.

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **GARRY WILLIAM ROUND**, a member of the Chartered Professional Accountant of Ontario, under **Rule 104.1** and **Rule 104.2(c)** of the Rules of Professional Conduct, as amended.

TO: Mr. Garry W. Round, CPA, CA

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE OCTOBER 16, 2018

DECISION

The tribunal concluded that Allegation No. 1 was proven and constituted a breach of **Rule 104.1** of the Rules of Professional Conduct. Having breached this Rule, the tribunal determined that Garry William Round (“Mr. Round”) has committed professional misconduct.

The tribunal further concluded that Allegation No. 2 was not proven.

ORDER

The tribunal orders the following:

1. The hearing before the tribunal with respect to penalty is adjourned to proceed on January 25, 2019.
2. Mr. Round shall attend before the Professional Conduct Committee meeting on January 8, 2019, to answer the questions as set out in the letter, dated September 24, 2014, from John W. Murray to Mr. Round.
3. The tribunal remains seized of the issue of penalty in this matter.

DATED at Toronto this 24th day of October, 2018



A. Douglas Nichols, FCPA, FCA
Discipline Committee - Chair

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **GARRY WILLIAM ROUND**, a member of the Chartered Professional Accountant of Ontario, under **Rule 104.1** and **Rule 104.2(c)** of the Rules of Professional Conduct, as amended.

TO: Mr. Garry W. Round, CPA, CA

AND TO: The Professional Conduct Committee

DECISION MADE OCTOBER 16, 2018 AND ORDER MADE JANUARY 25, 2019

DECISION

The Panel concluded that Allegation No. 1 was proven and constituted a breach of **Rule 104.1** of the Rules of Professional Conduct. Having breached this Rule, the Panel determined that Garry William Round (“Mr. Round”) has committed professional misconduct.

The Panel further concluded that Allegation No. 2 was not proven.

ORDER

The Panel orders the following:

1. Mr. Round be reprimanded in writing by the Chair of the hearing.
2. Mr. Round shall pay a fine of \$3,500 to CPA Ontario within 30 days of the date of this order, specifically by Monday, February 25, 2019.
3. Mr. Round is required to cooperate with the Professional Conduct Committee by providing the information requested in Mr. John W. Murray’s letter, dated September 24, 2014, including the disclosure of the names of CPA Ontario members who are employees with Ryan ULC, within 20 days of the date of this order, specifically by Thursday, February 14, 2019.
4. Notice of this Decision and Order, disclosing Mr. Round’s name, is to be given in the form and manner determined by the Panel:
 - (a) to all members of CPA Ontario;
 - (b) to all provincial bodies;and shall be made available to the public.

5. In the event Mr. Round fails to comply with the requirements of this Order, his membership in CPA Ontario shall be revoked, and notice of the revocation of his membership, disclosing his name, shall be given in the manner specified above, and in *The Globe and Mail*. All costs associated with this publication shall be borne by Mr. Round and shall be in addition to any other costs ordered by the Panel.
6. Mr. Round shall pay costs of \$14,600 to CPA Ontario within 30 days of the date of this order, specifically by Monday, February 25, 2019.

DATED at Toronto this 25th day of January, 2019



A. Douglas Nichols, FCPA, FCA
Discipline Committee - Chair

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **GARRY WILLIAM ROUND, CPA, CA**, under **Rules 104.1** and **104.2(c)** of the Rules of Professional Conduct, as amended.

BETWEEN:

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

-and-

Mr. Garry William Round

APPEARANCES:

For the Professional Conduct Committee:	Paul Farley, counsel
For Mr. Round:	Douglas Stewart, counsel
Heard:	October 16, 2018 and January 25, 2019
Decision date:	October 16, 2018
Order date:	January 25, 2019
Release of written reasons:	April 3, 2019

I. OVERVIEW

- [1] This hearing was held to determine whether the allegations that Mr. Round had failed to cooperate with the regulatory processes of the Chartered Professional Accountants of Ontario (“CPA Ontario) and failed to attend before the Professional Conduct Committee of CPA Ontario (“PCC”) were established and amounted to professional misconduct.
- [2] Mr. Round obtained his CA designation in 1995. In November 2012, the Institute of Chartered Accountants of Ontario issued the CPA designation to its members. Mr. Round was the President, Canadian Operations, and Principal of Ryan ULC, which operated in Mississauga, Ontario. Ryan ULC was, and continues to be, a global entity. Mr. Round had a small shareholding in the company, whose head office was in the United States.

- [3] The events leading to this hearing began in June 2014 when CPA Ontario wrote to Mr. Round to advise that information had come to the attention of the PCC indicating that Ryan ULC had been offering accounting services to the public while not registered with CPA Ontario as a firm. CPA Ontario requested information regarding the services provided by Ryan ULC and the identities of any CPAs working for Ryan ULC in Ontario.
- [4] Mr. Round responded to these requests by raising a number of questions as to the authority of CPA Ontario to seek this information. However, through extended correspondence between his counsel and CPA Ontario, he did not provide the requested information to CPA Ontario.
- [5] Eventually, Mr. Round was directed to attend before the PCC to speak to the information being requested. He did not attend on the date specified, after advising the PCC that he and his lawyer were not available that day.
- [6] On May 7, 2015, the PCC served Mr. Round with Allegations of professional misconduct, dated April 17, 2015. The first Allegation was that Mr. Round failed to cooperate with the regulatory processes of CPA Ontario, contrary to Rule 104.1 of the Rules of Professional Conduct ("*Rules*"), by failing to provide information requested by the Vice President of Standards Enforcement from October 17, 2014 to March 24, 2015. The second Allegation was that Mr. Round failed to attend before the PCC after having been personally served with a notice to attend, contrary to Rule 104.2(c) of the *Rules*.
- [7] On May 28, 2015, Mr. Round's counsel served the PCC with a Notice of an Application for Judicial Review of CPA Ontario's decision to proceed with a hearing of these Allegations. The application was heard on October 26, 2015. The Divisional Court dismissed the application for judicial review. The Court of Appeal declined to grant leave to appeal.
- [8] Two preliminary motions were considered by the Panel prior to the commencement of the hearing of the Allegations on their merits. One motion, heard March 23, 2017, related to the adequacy of disclosure by the PCC. The other motion, heard June 28, 2017, related to the jurisdiction of CPA Ontario and the Panel over the allegations. The Panel rendered decisions with respect to each motion. Reasons for those decisions were released prior to the commencement of this hearing.
- [9] This hearing on the merits proceeded on October 16, 2018. At the end of the hearing on that day, after making a decision with respect to the finding of professional misconduct, the Panel decided to defer its decision on sanctions so that Mr. Round would have a further opportunity to provide the PCC with the information sought by CPA Ontario. The Panel required Mr. Round to attend a further meeting of the PCC on January 7, 2019, prior to the hearing being resumed on January 25, 2019.
- [10] The onus was on the PCC to show, on a balance of probabilities, that Mr. Round's conduct breached CPA Ontario's Rules of Professional Conduct and constituted professional misconduct.

II. PRELIMINARY ISSUES

- [11] At the commencement of the hearing of the Allegations on October 16, 2018, the Chair of the Panel indicated that one member of the Panel that had heard the motions, Mr. Emuan, was unable to continue with the hearing. In the usual course, the same panel would hear the matter on the merits as had heard the preliminary motions. However, the Panel was satisfied that the remaining members of the Panel could proceed with the hearing of the Allegations on the basis of subsection 4.4(1) of the *Statutory Powers Procedure Act*, given that Mr. Emuan was “unable, for any reason, to complete the hearing”. Neither party objected to proceeding on this basis.
- [12] No further preliminary issues were raised on these hearing dates.

III. ISSUES

- [13] 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 underlying the Allegations by the PCC were established on the evidence on a balance of probabilities, did those particulars constitute professional misconduct?

IV. DECISION ON FINDING

- [14] The Panel found that the evidence established, on a balance of probabilities, the facts underlying the Allegations of professional misconduct, specifically, that Mr. Round had failed to provide the information requested by CPA Ontario and he had failed to attend before the PCC after being given Notice to Attend. The Panel found the evidence pertaining to these particulars to be clear, cogent and convincing.
- [15] The Panel concluded that the first Allegation constituted a breach of Rule 104.1, and, having breached this Rule, Mr. Round had committed professional misconduct. However, the Panel unanimously concluded that, based on all of the facts of this case, the second Allegation, while it was a technical breach of Rule 104.2(c), did not constitute professional misconduct by Mr. Round.

V. REASONS FOR THE DECISION OF FINDING

Findings Regarding Conduct of Mr. Round

- [16] By letter, dated June 12, 2014 (Exhibit 1, Tab 2), the Director of Standards Enforcement for CPA Ontario advised Mr. Round, as president of Ryan ULC, that information had come to the attention of the PCC indicating that Ryan ULC had been offering accounting services to the public while not registered with CPA Ontario as a firm.
- [17] Mr. Round’s original counsel responded to the PCC in late June 2014 and indicated that a response was being prepared. The deadline for the response was extended to August 25, 2014. Mr. Round subsequently changed counsel.

- [18] Mr. Round's new counsel, Mr. Latella, responded to the PCC by letter August 25, 2014 (Exhibit 1, Tab 7). In this correspondence, counsel sought confirmation that the investigation related to Mr. Round and not Ryan ULC. He asked for the identity of the complainant who made the complaint that triggered the investigation, on the basis that a complainant was necessary to establish CPA Ontario's jurisdiction. Mr. Latella also stated that Ryan ULC had been operating in Ontario for many years and asked about the impetus for the letter from CPA Ontario, and whether something had changed since Ryan ULC entered the Ontario market either regarding the mandate of CPA Ontario or its predecessor bodies, or with respect to the business of Ryan ULC.
- [19] By letter, dated September 24, 2014 (Exhibit 1, Tab 8), John Murray, the Vice President of Standards Enforcement for CPA Ontario, responded to Mr. Latella and indicated that the PCC was trying to understand the services that members of CPA Ontario employed by Ryan ULC, including Mr. Round, were offering to the public.
- [20] Mr. Murray's letter of September 24, 2014 letter asked for the following specific information:
- A full and complete response is required from your client to assist the Committee [PCC] in assessing whether or not Ryan has complied with the Rules. With this in mind, please provide:*
- *a detailed description of all services provided by Ryan's staff who are CPA Ontario Members (for each type of service, please include (i) the nature of the clients to whom the services are provided and (ii) an indication of the approximate percentage of Ryan's overall business that each service comprises); and*
 - *the names of all CPA Ontario Members involved in these activities.*
- [21] The letter concluded by requesting the information by October 17, 2014 in accordance with Rule 104 of the *Rules* and noted that failure to provide the information may result in the PCC pursuing allegations of professional misconduct.
- [22] Mr. Round did not provide the information requested by October 17, 2014.
- [23] From October 2014 to February 2015, a further exchange of correspondence occurred between Mr. Murray and Mr. Latella as Mr. Latella sought further information about the focus of the investigation and the nature of the complaint or information that triggered the investigation. Mr. Murray largely reiterated the response in his letter of September 24, 2014.
- [24] Throughout this exchange of correspondence, Mr. Murray reiterated that Mr. Round had a duty to cooperate with CPA Ontario's investigation, without qualification. On behalf of Mr. Round, Mr. Latella reiterated that Mr. Round wanted to cooperate, but that he required answers to his questions before he could do so.
- [25] On March 4, 2015, counsel for the PCC served Mr. Round personally with a Notice to Attend, requiring his attendance before the PCC on March 24, 2015 (Exhibit 1, Tab 15). The letter advised Mr. Round that failure to attend may result in an Allegation of

Misconduct against him under the *Rules*.

- [26] By letter dated March 20, 2015 (Exhibit 1, Tab 16), Mr. Latella acknowledged receipt of the letter of March 4, 2015, and the Notice before the PCC. Mr. Latella advised that “we are not available to attend on March 24, 2015 and ask that, in the future, you extend our client the courtesy of prior consultation before purporting to unilaterally set meeting dates.” He added, “As you have already acknowledged, this matter is not the result of a complaint by a member of the public and, accordingly, there is neither any urgency to the situation, nor any prejudice occasioned by postponing any such meeting.”
- [27] On March 23, 2015, Mr. Murray emailed a letter to Mr. Latella (Exhibit 1, Tab 17) to advise him that Mr. Round had been served with the Notice to attend the March 24, 2015 meeting of the PCC and that his attendance was to “provide information and answer questions in furtherance of the committee’s investigation.” Mr. Latella responded the same date (Exhibit 1, Tab 18) seeking a substantive response to his earlier correspondence and reiterating a willingness to discuss a “less contentious path towards resolving this matter.”
- [28] Neither Mr. Latella nor Mr. Round attended the PCC meeting on March 24, 2015.
- [29] By letter, dated April 16, 2015 (Exhibit 1, Tab 19), counsel for the PCC advised Mr. Round’s counsel that Allegations of Misconduct had been authorized against Mr. Round. Mr. Latella responded by letter, dated April 30, 2015 (Exhibit 1, Tab 20), indicating that he could accept service of the Allegations but taking the position that the hearing should be stayed pending an Application for Judicial Review to be brought on behalf of Mr. Round.
- [30] By letter, dated May 1, 2015, to Mr. Latella (Exhibit 1, Tab 21), counsel for the PCC summarized the PCC’s position and confirmed that the PCC was not prepared to continue the correspondence regarding issues that had previously been addressed.
- [31] At the conclusion of this correspondence, and to the date of the hearing on October 16, 2018, Mr. Round had not provided the information sought by CPA Ontario.
- [32] The Panel was satisfied that the foregoing facts, which were largely undisputed, were established on all of the evidence. These facts demonstrated that the PCC had requested information from Mr. Round, and, while he responded formally to those inquiries, he did not provide the information. Similarly, the PCC had served Mr. Round with a Notice to Attend a meeting of the PCC on one date, and he had not attended. The Panel found that these were the facts on which the Allegations were based.

Finding of Professional Misconduct

Allegation No. 1: Failure to Provide Information

- [33] The duty on every member of CPA Ontario is to cooperate with CPA Ontario when it is investigating concerns regarding the conduct of a member is well-established. It is expressly set out in Rule 104.1. It was also reiterated in Mr. Round’s particular circumstances by the Divisional Court when it dismissed Mr. Round’s application for judicial

review of the decision to issue the Notice of Allegations that culminated in this hearing: *Round v. Institute of Chartered Accountants of Ontario*, 2015 ONSC 7099 (Exhibit 4, Tab 1). The Court made the following findings:

. . . Mr. Round clearly had a duty to cooperate and provide the information requested by the CPAO [CPA Ontario]. Despite the many declarations in the letters written by his counsel to the CPAO, that Mr. Round wished to cooperate with the PCC's process and investigation, he clearly did not. He never provided the information or the documents requested by the CPAO leading to the Notice to a Member to Attend before Professional Conduct Committee and ultimately to the disciplinary process.

. . . It is not for Mr. Round to challenge the bona fides of the investigation at this stage. His duty is to cooperate. (paras. 17 and 18)

- [34] This Panel heard more complete evidence than the Court, but the Panel reached the same conclusion, that Mr. Round had a duty to cooperate and had breached that duty. The issue that the Panel then had to consider was whether the breach of this duty amounted to professional misconduct.
- [35] Mr. Round's defence to the first Allegation, relating to his failure to cooperate, turned on two arguments. First, it was submitted that Mr. Round had cooperated to the extent possible by responding to the letters from the PCC and providing what information he could. Second, it was submitted that Mr. Round was put in an untenable position because the information sought was not his information, but information belonging to his employer, Ryan ULC. It was Mr. Round's position that Ryan ULC, at least initially, refused to release any information to CPA Ontario, and consequently, he could not release the information sought to the PCC and CPA Ontario.
- [36] The Panel rejected both of these arguments.
- [37] With regard to the first argument, the Panel concluded that the duty to cooperate was a substantive duty, and not simply a procedural one. The duty does not merely require members to acknowledge correspondence from CPA Ontario without providing any substantive response. Of course, if that was the extent of the duty, Mr. Round would have complied. In the Panel's view, such an interpretation would make no sense. Members are required to not only acknowledge correspondence from CPA Ontario but to provide the information sought in that correspondence. Anything less would allow the efforts of CPA Ontario to regulate the profession in order to protect the public to be frustrated by formal responses that did not answer the questions asked, as in this case.
- [38] The correspondence from CPA Ontario, beginning with the letter, dated September 24, 2014, from Mr. Murray, made very clear the specific material that was sought. Notwithstanding that the request was unequivocal, and repeated several times, Mr. Round did not produce the material requested. The Panel found that this refusal to produce the material amounted to professional misconduct. Mr. Round's acknowledgement of the correspondence and the provision of responses setting out his reasons for not responding did not change the key fact: he did not provide what was

sought. Consequently, those factors did not detract from the Panel's conclusion that his failure to cooperate was professional misconduct.

- [39] The Panel considered the fact that the information sought, such as which members of CPA Ontario worked with Ryan ULC, could be obtained through other avenues. However, that was not a relevant consideration in determining whether Mr. Round failed to cooperate by failing to produce documents once requested by the PCC. The only consideration was that the PCC requested the information. Once the information was requested, it needed to be provided. Any other conclusion would undermine the overriding obligation on members of the profession to cooperate with an investigation, which allows investigations to be more efficient and streamlined.
- [40] The essence of Mr. Round's second argument, that he could not provide the information sought because it was not his information, amounted to an argument that there could be reasons that would justify a member from not cooperating with CPA Ontario. In the Panel's view, no such reasons existed or could exist. As was implicit in the decision of the Divisional Court, the duty to cooperate is not a conditional obligation. This conclusion was consistent with the broad investigative powers conveyed to CPA Ontario by s. 50 of the *Chartered Professional Accountants of Ontario Act, 2017* (as it was named by the time of the hearing) and by other cases from this Committee where explanations regarding competing interests were rejected: for example, *Re Bertrand*, November 19, 2010, ICAO Discipline Committee at paras 21 and 22, where the existence of criminal charges was rejected as a reason for refusing to cooperate.
- [41] In the Panel's view, Mr. Round was aware that he had not cooperated fully, but he relied on the assertion that Ryan ULC would not allow him to cooperate by providing information that they said related to their affairs. However, Mr. Round's obligation was to provide the information sought, and the fact that his employer may have told him not to provide any information did not relieve him of his professional obligation. The Panel recognized that Mr. Round was faced with a hard choice to make: comply with a request from his regulator or comply with a direction from his employer. In the Panel's view, as a member of this profession, that choice should have been clear. Mr. Round, or any member, is obliged to comply with requests from the regulator. The Panel found that he had engaged in professional misconduct by choosing not to do so.
- [42] In the Panel's view, the contention that a member could be relieved of his duty to cooperate by the instructions of his employer was very problematic. Accepting that argument would open the door to the many employers who employ CPAs to obstruct CPA Ontario in its regulation of its members. Such a scenario cannot be reconciled with CPA Ontario's statutory mandate to regulate the profession in the public interest. The facts in this case demonstrated that problem abundantly: the decisions made by a board based outside of Canada and comprised of people who were not members of CPA Ontario were determining how, and whether, CPA Ontario could conduct an investigation. That was not a situation that could be permitted in a self-regulated profession.
- [43] Counsel for Mr. Round emphasized that the information sought did not belong to Mr.

Round, and it was not his to provide. However, the Panel was satisfied that the information related to activities in which Mr. Round and other members of CPA Ontario may have been involved. In this way, the information implicated Mr. Round's professional activities and triggered his duty to cooperate, regardless of whether others may have had an interest in the information.

- [44] For these reasons, the Panel found that Mr. Round committed professional misconduct in that he breached Rule 104.1 of the Rules as a result of his failure to cooperate with the regulatory processes of CPA Ontario by failing to provide the information requested of him.

Allegation No. 2: Failure to Attend Before the PCC

- [45] The factual elements of the second Allegation were that a Notice to Attend a meeting of the PCC had been served on Mr. Round and that he had not attended the meeting. As noted above, these facts were established in the evidence. However, the Panel had to consider whether those facts, in the context of all of the evidence, amounted to professional misconduct. The Panel was not satisfied that the evidence met that threshold.
- [46] The Panel considered this Allegation separately from the Allegation involving Mr. Round's failure to provide information to the PCC. As discussed above, that Allegation was clearly established. However, the specific Allegation that Mr. Round committed professional misconduct by breaching section 104.2(c), as drafted, related to conduct *other than* his failure to provide a response.
- [47] The PCC provided a Notice to Mr. Round requiring him to attend a meeting with the PCC. One notice was provided for one specific meeting. Mr. Round, through counsel, responded to indicate that they were not available on the given date and asked for alternative dates. No alternative dates were provided, and the PCC proceeded to pursue an allegation of professional misconduct.
- [48] The Panel was not prepared to conclude that the failure to attend one meeting, whose date was chosen unilaterally by the PCC, and, where the member advised that he was not available on that specific date, was sufficient to amount to professional misconduct. In the Panel's view, the member had to be given a reasonable opportunity to attend the meeting with the PCC before the failure to attend could amount to professional misconduct. That opportunity could have been provided by consulting on possible dates in advance or offering alternatives once it was known that Mr. Round was not available. That was not done.
- [49] Mr. Murray did testify that Mr. Round's counsel had not contacted him to canvass dates, and no explanation was provided as to why Mr. Round could not attend. However, given that the onus rested on PCC to move the matter forward, the Panel did not consider these facts to be sufficient to demonstrate that Mr. Round had a reasonable opportunity to attend.
- [50] For these reasons, the Panel found that Mr. Round's failure to attend the PCC meeting on January 8, 2019, did not amount to professional misconduct, and dismissed that

Allegation.

VI. DECISION ON SANCTIONS

- [51] After considering all of the evidence tendered on both October 16, 2018, and January 25, 2019, and the submissions of counsel, the Panel decided to impose the following sanctions on Mr. Round:
- a) A reprimand in writing by the Chair;
 - b) A fine of \$3,500, payable to CPA Ontario;
 - c) A requirement that Mr. Round cooperate with the PCC by providing the information requested in Mr. John W. Murray's letter, dated September 24, 2014, including the disclosure of the names of CPA Ontario members who are employees with Ryan ULC, within 20 days of the date of the Order;
 - d) The decision and order would be publicized in the usual manner; and,
 - e) A provision that Mr. Round's membership would be revoked if he did not comply with any other term of the Order.

VII. REASONS FOR DECISION ON SANCTIONS

- [52] After making its findings with respect to professional misconduct on October 16, 2018, the Panel adjourned the sanction portion of the hearing to allow Mr. Round to attend before a meeting of the PCC in January 2019 and provide the information that had been sought initially in Mr. Murray's letter of September 24, 2014. At the resumption of the hearing, the Panel heard evidence regarding Mr. Round's response to that direction.
- [53] By letter, dated December 21, 2018, from his counsel to counsel for the PCC (Exhibit 5, Tab 1), Mr. Round provided a detailed description of the services provided by CPA members employed by Ryan ULC. He suggested that he was not providing the names of the employed CPA members because that information might be unnecessary in light of that information. Before the Panel, Mr. Round said that he was providing the description of services, with the approval of Ryan ULC, so that CPA Ontario could decide if they were providing accounting services. He indicated that he was seeking to have his response to the second question deferred. Mr. Round noted that the board of Ryan ULC was concerned with what use might be made of that information and they did not want the services of Ryan ULC interrupted.
- [54] On January 8, 2019, Mr. Round attended before the PCC and offered to discuss the services provided by Ryan ULC. However, Mr. Round refused to provide the names of any of the approximately 110 members of CPA Ontario who were employed by Ryan ULC on the basis that he had not been authorized to do so by the board of Ryan ULC. His response was the same when asked directly by the Chair of the PCC. He had not provided that information by the resumption of the hearing. In other words, Mr. Round had not provided all of the requested information.
- [55] In considering what would be an appropriate sanction in this case, the Panel sought to

determine what sanction would best ensure that Mr. Round provided the information sought by the PCC. It was necessary that the PCC obtained this information so that it could fulfil its mandate to protect the public by fully investigating the issues of concern.

- [56] The Panel rejected the submission by counsel for Mr. Round that he should have more time to provide the information. The panel concluded that Mr. Round had had ample time to respond to the PCC. In fact, he had had almost four and a half years to respond. In the unusual circumstances of this case, after announcing its decision on finding in October 2018, the Panel had provided Mr. Round with a further opportunity to respond to the PCC – an indulgence – insofar as the sanctions hearing was adjourned until after Mr. Round could attend at the PCC meeting in early January 2019. That decision was exceptional in itself. The reason for that indulgence was the Panel's conclusion that Mr. Round had not been provided with a reasonable opportunity to attend before the PCC when invited. A further indulgence of this sort in the terms of a sanction, whose only purpose would be a second "second chance", would threaten to undermine public confidence in the regulatory process of CPA Ontario. For this reason, the Panel was not persuaded by the submission on behalf of Mr. Round that he should be provided with more time to respond.
- [57] The Panel then assessed what other sanctions would encourage Mr. Round's response. The Panel considered whether a suspension of Mr. Round's membership, if he did not provide the information in the specified timeframe, would sufficiently achieve this objective. While this was less than the alternative sanction sought by the PCC, the Panel found that fairness required it to consider whether the lesser sanction would suffice. This option would preserve the jurisdiction of CPA Ontario over Mr. Round.
- [58] At the same time, the Panel considered whether the revocation of Mr. Round's membership if he did not provide the required materials would create a situation where Mr. Round never provided the information sought and the issues regarding his business at Ryan ULC were not answered. This outcome could impair CPA Ontario's ability to fully investigate issues that had to be explored to protect the public interest.
- [59] The Panel was somewhat sympathetic to Mr. Round's situation; however, the Panel concluded that protecting the public interest was more important than enabling Mr. Round to conduct his business interests without regard to the public. The "screen shots" promoting Ryan ULC's business included the CPA professional designations of Mr. Round. Those designations lent the professional credibility of membership in CPA Ontario to the business being conducted by Mr. Round and Ryan ULC. The public would be entitled to rely on these professional designations as evidence of Mr. Round's (and, by extension, Ryan ULC's) expertise.
- [60] Ultimately, the Panel was not persuaded that the possibility of a suspension was a sufficient motivation for Mr. Round to provide the required information. For approximately four years, Mr. Round had been aware of the risk of disciplinary sanction if the information was not provided. He ought to have been aware that there was the prospect of a suspension. Nonetheless, he did not provide the information. Mr. Round's refusal impeded the ability of the PCC to move forward with an investigation. In that regard, it

was significant to the Panel that all of the information sought was only the information set out in a very preliminary letter from CPA Ontario, even before an investigation had commenced.

- [61] While the Panel recognized that there was a risk that Mr. Round would never provide the information if his membership was revoked, the Panel was satisfied that a member who refused to cooperate with the PCC, even in the face of imminent revocation could not remain a member. This consideration outweighed the potential negative impact on the PCC's investigation if an answer was never obtained from Mr. Round regarding the issues raised by the investigation. Accordingly, the Panel concluded that revocation was the appropriate outcome if Mr. Round continued to refuse to cooperate.
- [62] Nonetheless, the Panel accepted that it was preferable to have Mr. Round as a member than have him leave the profession. He had a long and unblemished career and could contribute more to the profession if he chose to do so. But, he had to first choose to cooperate with the PCC as he was obliged to do.
- [63] The Panel found that Mr. Round's decision to not cooperate with CPA Ontario was his decision, and his alone. As a professional, he could not be fettered by the direction of his head office. Such a direction in no way mitigated his obligation as member of CPA Ontario to cooperate with its regulatory processes. In any event, Mr. Round endorsed the position taken by the board of Ryan ULC. In response to a question from the Panel, Mr. Round acknowledged that he agreed with the board's position because he did not know to what use the further information would be put by CPA Ontario.
- [64] Moreover, the Panel was concerned that Mr. Round's failure to provide a substantive response to the PCC was the result of a desire by Mr. Round not to have any disciplinary sanction interfere with his business or the business of Ryan ULC. In the Panel's view, this was not an acceptable justification for not responding and actually aggravated the seriousness of the misconduct. Business concerns simply cannot – and do not – trump professional obligations.
- [65] The sanction in this case had to balance the need for rehabilitation against the need for specific deterrence to Mr. Round and general deterrence to other members of the profession. The element of rehabilitation was reflected in the fact that Mr. Round had a final opportunity to cooperate. Mr. Round had been given many opportunities to provide the information sought, and he had chosen not to do so. He had been given several indulgences through his correspondence between his counsel and CPA Ontario from September 2014 to May 2015. He had further ongoing opportunity after being reminded of the paramount nature of his duty to cooperate by the Divisional Court in December 2015. That opportunity continued after this Panel decided the preliminary motions. And, he was given another opportunity by the Panel after the finding of professional misconduct was made in October 2018. The Panel's order was intended to be Mr. Round's final opportunity to choose to cooperate fully, as he is obliged to do.
- [66] The other elements of the sanction imposed on Mr. Round, including the consequence if Mr. Round did not cooperate, had to convey a deterrent message. The Panel was satisfied that this was necessary even in the face of mitigating factors such as Mr.

Round's long and unblemished career as a CPA. The Panel was satisfied that the penalty, as proposed by the PCC, balanced these considerations appropriately.

- [67] The Panel recognized that Mr. Round provided some of the information sought to the PCC when he attended the meeting in January 2019. However, while a partial response was a step forward, it was inadequate. It is not for a member to decide what they will provide to the PCC and if there will be some portion of the information sought that may be sufficient. The duty to cooperate does not trigger a negotiation, as Mr. Round's ultimate response appeared to suggest.
- [68] While Mr. Round's partial cooperation by engaging in dialogue with the PCC, even though he did not provide all of the material to the PCC, had some mitigating value in penalty, the Panel found that the principal value to Mr. Round of this action was a very concrete one: he remained a member without sanction from the hearing in October 2018 to January 2019, even though he had been found to have failed to provide the necessary information to the PCC.
- [69] The Panel had concerns as to the deterrent effect that a fine of \$3,500 would have on Mr. Round. It appeared likely, from the evidence of Mr. Round with respect to the involvement of Ryan ULC in this matter, that Ryan ULC could be funding the payment of any fine. If that were the case, a fine of that magnitude would likely only be a "cost of doing business", rather than a deterrent. However, the Panel was prepared to give Mr. Round the benefit of the doubt in this regard and accept that he would be paying any fine himself. Consequently, the Panel found that the fine sought was not unreasonable and imposed a fine in that amount.
- [70] The Panel was satisfied that 30 days was an ample period in the circumstances within which Mr. Round would have to pay the fine. Counsel for Mr. Round did not argue otherwise.

VIII. COSTS

- [71] The Panel accepted the position of the PCC, that Mr. Round should be responsible for two-thirds of the costs incurred by PCC in the investigation and prosecution of this allegation. It is well-established by recent decisions of the Discipline Committee that this allocation balances the member's obligation to contribute to the costs incurred due to his misconduct with the profession's obligation to contribute to the costs of regulating the profession.
- [72] Counsel for Mr. Round noted that there had been mixed success at the hearing, to the extent that one of the allegations had been dismissed and one had been found established. While this was correct, the primary Allegation was that Mr. Round had not cooperated with the investigation by the PCC, and the Panel found that Allegation had been established. Moreover, while the Panel dismissed the second Allegation, it was with the intention that Mr. Round could have a reasonable opportunity to attend before the PCC. This indulgence lengthened the hearing process by requiring another date. Mr. Round also did not avail himself of the opportunity to produce the information sought.

These considerations effectively balance each other out.

- [73] Counsel for Mr. Round also raised the fact that he had paid a significant amount of costs already in the preliminary motions. The Panel did not find this consideration persuasive. Costs are an indemnity. Mr. Round paid other costs in related proceedings because he initiated those proceedings and was unsuccessful. Additional time and resources were expended to respond to those motions. After the hearing on the merits, there were more costs to indemnify.
- [74] The costs outline submitted by the PCC (Exhibit 8) indicated that the total costs incurred excluding the preliminary motions, the costs of which had been considered separately, were \$22,265.01.
- [75] The Panel was satisfied that it was appropriate for Mr. Round to pay costs in the amount of \$14,600 to CPA Ontario within 30 days of the date of the order. This amount, being approximately two-thirds of the actual costs, adequately balanced the competing factors in the circumstances of this case.

Dated at Toronto this 3rd day of April, 2019.



A. Douglas Nichols, FCPA, FCA
Discipline Committee – Chair

Members of the Panel

James Blackwell, CPA, CA
John Friday, FCPA, FCA
Barry Solway (Public Representative)

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