



CPA

CHARTERED
PROFESSIONAL
ACCOUNTANTS
ONTARIO

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

TO: GERALD L. HANDSOR, CPA, CA
AND TO: The Discipline Committee of CPA Ontario

The Professional Conduct Committee of CPA Ontario hereby makes the following Allegation of professional misconduct against Gerald L. Handsor, CPA, CA, a member of CPA Ontario:

1. THAT the said Gerald L. Handsor, in or about the period January 1, 2018 to April 10, 2018, 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:
 - a. he failed to provide information when requested to do so by the Professional Conduct Committee through its investigator.

Dated at Toronto, Ontario, this 10th day of April, 2018.

A.J. SOKIC, 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: An allegation against **GERALD LEVERN HANDSOR, CPA, CA**, under **Rule 104.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Gerald Levern Handsor

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE JULY 19, 2018

DECISION

The tribunal was satisfied that the Allegations were proven and constituted a breach of and **Rule 104.1** of the Rules of Professional Conduct. Having breached this Rule, the tribunal determined that Gerald Levern Handsor has committed professional misconduct.

ORDER

The tribunal orders the following:

1. Mr. Handsor be reprimanded in writing by the Chair of the hearing.
2. Mr. Handsor shall pay a fine of \$3,500 to CPA Ontario within 18 months of this Order, by Monday, January 20, 2020.
3. Mr. Handsor shall cooperate with the Professional Conduct Committee by providing the outstanding information requested in the email dated January 22, 2018 from CPA Ontario's investigator, W. David Sanderson, no later than August 20, 2018, sent in care of CPA Ontario at 69 Bloor Street East, Toronto, ON.
4. Notice of the Decision and Order, disclosing Mr. Handsor's name, shall be given in the form and manner determined by the Discipline Committee:
 - (a) to all members of CPA Ontario;
 - (b) to the Public Accountants Council for the Province of Ontario;
 - (c) to all provincial bodies;and shall be made available to the public.
5. In the event Mr. Handsor fails to comply with the requirements of this Order, he shall be

suspended from membership in CPA Ontario and his public accounting licence shall also be suspended until such time as he does comply, provided that he complies within 30 days from the date of his suspension. In the event he does not comply within 30 days of suspension, Mr. Handsor's membership in CPA Ontario and his public accounting licence 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 Windsor area newspaper. All costs associated with this publication shall be borne by Mr. Handsor and shall be in addition to any other costs ordered by the tribunal.

6. Mr. Handsor shall pay costs of \$5,000 to CPA Ontario within 18 months of this Order, by Monday, January 20, 2020.

DATED at Toronto this 19th day of July, 2018



Randal Adamkowski, CPA, CA
Discipline Committee – Deputy Chair

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **GERALD LEVERN HANDSOR, CPA, CA**, a member of CPA Ontario, under **Rule 104.1** of the Code of Professional Conduct, as amended.

BETWEEN:

Chartered Professional Accountants of Ontario Professional Conduct Committee

-and-

Gerald Levern Handsor

APPEARANCES

For Professional Conduct Committee: Alexandra Hersak, Counsel

For Mr. Handsor: Present and Self-Represented

Heard: July 19, 2018
Decision and order date: July 19, 2018
Release of written reasons: October 16, 2018

I. Overview

- [1] This hearing was held to determine whether the allegation of failing to cooperate with the regulatory process of CPA Ontario, which had been laid against Mr. Handsor, amounted to professional misconduct.
- [2] Mr. Handsor obtained his CPA designation in 1984. He worked as a sole practitioner in his own name. He indicated to the tribunal that he was intending on winding down his practice and retiring by December 31, 2018.
- [3] The Practice Inspection Committee complained to the Professional Conduct Committee (“PCC”) regarding Mr. Handsor in April 2017 after Mr. Handsor failed to demonstrate sufficient corrective action after three practice reviews over a three year period. The PCC wrote to Mr. Handsor to request a response to the complaint. Mr. Handsor responded in a

timely way to the first two letters from PCC.

- [4] The PCC identified areas of concern in the responses from Mr. Handsor and decided further investigation was required. On November 16, 2017, the PCC appointed an investigator, Mr. Sanderson, who then provided Mr. Handsor with a list of client files that he wished to review. To the date of the hearing, these files had not been provided to Mr. Sanderson.
- [5] Mr. Sanderson was later asked by the PCC to investigate two additional complaints from members of the public regarding alleged failures to file tax returns.
- [6] During the course of the investigation, Mr. Handsor had provided medical notes that he said demonstrated a mental health condition that impacted on his ability to respond to the investigation.
- [7] The PCC alleged that Mr. Handsor had failed to cooperate with the regulatory process between January 1 and April 10, 2018, by failing to provide information requested by the investigator.
- [8] At the outset of the hearing, Mr. Handsor stated that he admitted the allegation against him and that he was not disputing the facts to be presented by PCC with respect to his non-cooperation. As discussed later in these reasons, he subsequently appeared to pull back from that admission to the extent that he raised an issue with his capacity that, if accepted by the tribunal, would amount to a defence.
- [9] The onus was on the PCC to show on a balance of probabilities that Mr. Handsor's conduct breached the CPA Ontario's Code of Professional Misconduct, and constituted professional misconduct.

II. Preliminary Issues

- [10] There were no preliminary matters raised before the tribunal.

III. Issues

- [11] The tribunal identified the following issues arising from the allegation:

- a) Did the evidence establish, on a balance of probabilities, the facts on which the particular alleged by the PCC were based?
- b) If the particular alleged by the PCC was established based upon the evidence, on a balance of probabilities, did that particular constitute professional misconduct?

IV. Decision

- [12] The tribunal found, on a balance of probabilities, that the evidence established and supported the particular set out in the allegation of professional misconduct.
- [13] The tribunal was satisfied that the particular alleged constituted a breach of Rules 104.1, and, having breached this Rule, Mr. Handsor had committed professional misconduct in all of the circumstances of this case.

V. Reasons for the Decision

a) Findings Regarding Conduct of Mr. Handsor

- [14] The facts regarding the chronology of events were not contested by Mr. Handsor. Commencing January 2, 2018, Mr. Sanderson made repeated attempts to obtain required information and documentation to complete his report to PCC with respect to the identified issues. By January 20, 2018, Mr. Handsor provided a client list.
- [15] Following this, and commencing on January 22, 2018, there were repeated attempts to gain access to specified files of Mr. Handsor and to interview him about his practice. Such attempts included numerous phone calls, emails, follow-up correspondence from Mr. Sanderson and the PCC, and even an impromptu visit to the office of the member on April 18, 2018 by Mr. Sanderson. No files were supplied to Mr. Sanderson by Mr. Handsor throughout this time, and, in fact, as at July 19, 2018, he still had not provided the requested files to Mr. Sanderson.
- [16] Mr. Sanderson also asked to meet with the member in order to ask questions concerning the investigation. The member refused all such requests.
- [17] During the course of the initial investigation, PCC directed Mr. Sanderson to include two complaints from member of the public in his investigation. In March 2018, Mr. Sanderson asked Mr. Handsor to meet with him regarding these matters. Mr. Handsor did not do so.
- [18] The tribunal noted that the requests made by Mr. Sanderson of Mr. Handsor were far from onerous. Mr. Sanderson asked to see five of Mr. Handsor's files concerning engagements that were clearly completed. Three of these files had previously been provided to the Practice Inspection Committee, so, in fact, only 2 new files were being requested. At the same time, Mr. Handsor's failure to provide the files frustrated Mr. Sanderson's ability to investigate the matters.
- [19] Mr. Handsor backed away from his admission to the allegation toward the end of the hearing. He suggested that he felt pressured to "admit his guilt" and that he thought he had no choice but to admit the allegation. However, he still did not dispute the evidence that the tribunal had heard. The tribunal was satisfied that, independent of the admission of the allegation, the tribunal received sufficient evidence to establish the facts on which the allegation of professional misconduct was based.
- [20] The tribunal found that, as alleged, Mr. Handsor failed to provide information properly

requested by the PCC and its investigator. Moreover, the evidence demonstrated that Mr. Handsor had thereby breached Rule 104.1.

b) Finding of Professional Misconduct

- [21] The tribunal found that Mr. Handsor committed professional misconduct in that he breached Rule 104.1 of the Code of Professional Conduct, as amended, and the evidence did not establish any circumstances that would support a conclusion that this breach did not amount to professional misconduct.
- [22] Mr. Handsor submitted that his diagnosed mental health concerns prevented him from complying. Mr. Handsor provided evidence with respect to his capacity to cooperate with the investigation that the tribunal carefully analyzed in considering whether Mr. Handsor's acts, or omissions, amounted to professional misconduct. This evidence needed to be considered for the tribunal to be satisfied that Mr. Handsor was *able* to cooperate with the investigator during the period from January 2, 2018 through to April, 2018, and even subsequently. If Mr. Handsor was not *able* to cooperate due to a disability, then the failure to cooperate, although it clearly happened, could not be considered misconduct as Mr. Handsor had not been acting freely and willingly. To put it another way, if he was incapable of cooperating, it would be unfair to find that his failure to cooperate amounted to professional misconduct.
- [23] In emails as early as February 8, 2018, Mr. Handsor referred to "stress and anxiety". In correspondence going back to his initial response to the PCC on July 27, 2017, he repeatedly referred to retirement and his efforts to find help with his practice. There were three separate letters from medical practitioners: two from his physician, Dr. Burke (Exhibit 1, Tab 19), including one response to correspondence from Ms. Hersak, and one from Dr. McGrory, a psychologist, which was dated July 16, 2018 (Exhibit 3), just days before the hearing. In addition, during the hearing, Mr. Handsor explained his lack of responsiveness in terms of the depression from which he had suffered for a number of years, and indicated that he was hospitalized for his condition and needed to close his practice for a time.
- [24] It is undeniable that Mr. Handsor had medical issues that prevented him from acting at the level one would normally expect of a practising CPA. He indicated that he had been off work for the seven weeks prior to the hearing. The issue for the tribunal was whether this incapacity reached the level that was sufficient to excuse the conduct of Mr. Handsor and warrant the dismissal of the allegation against him. In the tribunal's view, the evidence did not meet this threshold.
- [25] The letters from Mr. Handsor's doctors fell short of the mark that would need to be met in order for the tribunal to find that Mr. Handsor was not capable of cooperating with the investigator. They clearly did tell a story of someone who was suffering from an illness that impacted on his ability to function at full capacity. But, they do not demonstrate that he could not function at the material times. Although Mr. Handsor told the tribunal that

both health care practitioners had told him to close his office and take a leave of absence in the last year, this concern was not expressed in their letters. Moreover, without any explanation of the basis for this view, the tribunal was not able to rely on this assertion as evidence that Mr. Handsor was unable to respond to the requests for information.

- [26] For example, Dr. Burke said that Mr. Handsor had “difficulties with concentration, slow functioning as well as significant psychiatric symptoms which are holding him back.” Dr. McGrory stated similarly that Mr. Handsor was “struggling with low mood, lack of motivation, social isolation, anxiety and loss of energy.” Both of these observations speak to an impairment in ability, and not incapacity.
- [27] The tribunal also considered evidence other than the opinions offered by the health care practitioners in reaching its conclusion. The tribunal noted that during the entire period of the alleged non-cooperation Mr. Handsor was providing services to the public. For example, Mr. Sanderson attended at Mr. Handsor’s office in April 2018. Although Mr. Handsor did not provide the material sought, saying that it was not ready, he was in his office and serving clients. In his evidence before the tribunal, Mr. Handsor indicated that he was in the office reluctantly because he was rushing to meet tax filing deadlines. While this service was not without complaint, the fact that Mr. Handsor had sufficient capacity to offer services to the public underscored that he had the capacity to respond to the enquiries of Mr. Sanderson.
- [28] There was further evidence including the two complaints from former clients of Mr. Handsor based on poor service issues that were rudimentary in nature.
- [29] It was also apparent that the complaints from Mr. Handsor’s dissatisfied clients were put to rest because Mr. Handsor did eventually provide them with the material that they needed. This demonstrated that, while his practice did not run smoothly, Mr. Handsor was able to eventually get things done. This was consistent with a finding that Mr. Handsor’s capacity was only diminished, but not eliminated.
- [30] Mr. Handsor’s lack of cooperation was almost total, and this was not consistent with the doctors’ diagnoses or his provision of services. This is particularly so in light of the relatively elementary level of cooperation requested of Mr. Handsor by Mr. Sanderson.
- [31] It was also significant to the tribunal that the letters were only that. There was no opportunity to ask questions of either doctor, which would have been the case if one or both doctors had been made available to give evidence before the tribunal in person or by telephone. Moreover, when Dr. Burke was invited to elaborate on his comments in writing by providing specific elements of his diagnosis, his response was wanting. Consequently, the weight that the tribunal could place on this evidence was diminished and less than what it may have otherwise garnered.
- [32] The tribunal concluded that the impairment of Mr. Handsor’s functioning, as detailed in these letters, was not sufficient to find he did not have the capacity to cooperate with the investigation.

[33] Finally, as indicated above, the tribunal noted that, late in the hearing, Mr. Handsor seemed to back away from his admission of the allegation that he failed to cooperate with the investigation. The tribunal considered what, if any, impact this change in position should have had on its deliberations. The tribunal concluded that Mr. Handsor's admission had very little impact on its decision. The tribunal reached its conclusion regarding the finding of professional misconduct without reliance on Mr. Handsor's admission. The tribunal fully considered the evidence with respect to the argument that Mr. Handsor lacked capacity and found that the evidence was not adequate to support such a conclusion. Given the serious impediment non-cooperation presented to the completion of the investigation, the tribunal was satisfied that the evidence showed that Mr. Handsor had committed professional misconduct.

VI. Sanctions

[34] The tribunal considered the position of the PCC with respect to the penalty to be imposed in this matter. The PCC had sought the following: a reprimand; a fine of \$3,500; an order that Mr. Handsor comply with the investigator's requests within 30 days; an order that Mr. Handsor's membership would be suspended for 30 days if he breached any term of the order, and if he did not remedy his breach, his membership would be revoked; and, publicity in the ordinary course, including notice to the Public Accounting Council.

[35] The tribunal was satisfied that the sanctions proposed in this case were very much in line with those in a number of similar cases brought to its attention by the PCC. In those circumstances, the tribunal found that the sanctions, in their combined effect, were sufficient to address the principles of specific deterrence, deterrence and rehabilitation.

VII. Costs

[36] The PCC sought two-thirds of the costs incurred in the investigation and prosecution of this allegation, which were listed in their Costs Outline (Exhibit 5) as \$22,145. It was submitted that this would amount to \$14,500. The tribunal rejected this position.

[37] The tribunal considered costs of \$5,000 to be appropriate considering all the facts of this case, and three facts in particular. First, the tribunal considered the evidence of the financial circumstances of Mr. Handsor, that is, his lack of substantial assets or source of revenue that would allow him to pay more, to be a mitigating circumstance with regard to costs. The tribunal noted that the PCC did not vigorously challenge Mr. Handsor on this issue.

[38] Second, the tribunal concluded that only costs related to the breach of Rule 104.1 should be awarded in a prosecution for that breach. As a result, the tribunal discounted those costs that appeared to relate to matters not being pursued at this time.

[39] Finally, PCC had not taken into account Mr. Handsor's medical circumstances in formulating their position on costs. While the tribunal was not satisfied that PCC's

approach should have been any different than it was, the tribunal concluded that Mr. Handsor's health was a factor that had to be considered in determining the fair quantum of costs in this case.

[40] The tribunal was also satisfied that the time to pay was appropriate given the current financial circumstances of Mr. Handsor.

DATED AT TORONTO THIS 16TH DAY OF OCTOBER, 2018



R. ADAMKOWSKI, CPA, CA – DEPUTY CHAIR

MEMBERS OF THE TRIBUNAL

P. BUSCH, CPA, CA

D, HANDLEY (PUBLIC REPRESENTATIVE)

S. SOLMANI, CPA, CA

Independent Legal Counsel: Glenn Stuart