

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **Jonid Hametaj, CPA, CA**, a member of the Chartered Professional Accountants of Ontario, under **Rule 104.2** of the CPA Ontario Code of Professional Conduct

BETWEEN:

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

- and -

Jonid Hametaj

APPEARANCES:

For the Professional Conduct Committee: Julia McNabb, Counsel

For Mr. Hametaj: Self-Represented

Heard: May 9, 2022

Decision and Order effective: May 9, 2022

Release of written reasons: May 18, 2022

REASONS FOR THE DECISION AND ORDER MADE MAY 9, 2022

I. OVERVIEW

- [1] The Professional Conduct Committee (“PCC”) of the Chartered Professional Accountants of Ontario (“CAPO”) has alleged that Mr. Jonid Hametaj, (“the Member”) engaged in professional misconduct, by failing to cooperate with two CPAO investigations.
- [2] This hearing was held to determine whether the Allegations were established and whether the conduct breached Rule 104.2 of the CPAO Code of Professional and whether the conduct amounted to professional misconduct.

- [3] The Member began his career at Pricewaterhouse Coopers LLP Canada, before gaining membership to CPAO in 2015. He then worked for a small accounting firm prior to establishing JH Accounting CPA Professional Corporation. In January 2019, the Member founded a new corporation, Progress Group Inc., which offers integrated bookkeeping, real estate, and wealth management services.
- [4] On March 11, 2021, the Member was found to have committed professional misconduct by failing to cooperate with three CPAO investigations.¹ The day prior to his hearing, the Member provided responses to the requests that had been made of him during the investigation. Subsequently, staff at CPAO determined that two of the three responses were sufficient. However, staff required further information relating to one of the responses. On June 21, 2021, CPAO received a new complaint against the Member. Staff requested responses of the Member. The Member did not provide the requested material in either of the above-noted investigations.
- [5] The Member admitted the Allegations of professional misconduct made by the PCC. The onus was on the PCC to show on a balance of probabilities that the Member's conduct breached Rule 104.2(a) of the CPAO Code of Professional Conduct and constituted professional misconduct.

II. THE ALLEGATIONS

- [6] The PCC of CPAO has made the following Allegations of professional misconduct against the Member:
1. THAT the said Jonid Hametaj, in or about the period August 6, 2021 to November 3, 2021, failed to co-operate with the regulatory process of CPAO, contrary to Rule 104.2 of the CPA Code of Professional Conduct ("the Code"), in that he failed to promptly reply in writing to communications from CPAO to which a written reply is specifically required, namely letters written from Standards Enforcement staff dated July 19, 2021, August 9, 2021, September 2, 2021, and October 1, 2021.
 2. THAT the said Jonid Hametaj, in or about the period September 7, 2021 to November 3, 2021, failed to co-operate with the regulatory process of CPAO, contrary to Rule 104.2 of the Code, in that he failed to promptly reply in writing to communications from CPAO to which a written reply is specifically required, namely letters written from Standards Enforcement staff dated August 16, 2021, September 2, 2021, and October 1, 2021.
- [7] In other words, it is alleged that the Member failed to respond promptly to letters from CPAO

¹ *CPAO Ontario v. Hametaj, March 30, 2022, Exhibit E to the Affidavit of Jennifer Carriere, Affirmed February 16, 2022* (Filed as Exhibit 1 at the Hearing).

Standards Enforcement staff dated July 19, August 9, August 16, September 2, and October 1 of last year. Though only Rule 1.04.2 is alleged to have been breached, we recite both branches of Rule 104 for context. Rules 104.1 and 104.2 of the Code state:

104.1 A member or firm shall co-operate with the regulatory processes of CPAO.

104.2 A member or firm shall: (a) promptly reply in writing to any communication from CPAO in which a written reply is specifically required; (b) promptly produce documents when required to do so by CPAO; and (c) attend in person in the manner requested when required to do so by CPAO in relation to the matters referred to in Rule 104.1.

The Allegations relate to an alleged breach of Rule 104.2(a).

III. PRELIMINARY ISSUES

[8] The parties raised no preliminary issues.

IV. ISSUES

[9] The Committee identified the following issues arising from the Allegations:

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

V. DECISION ON PROFESSIONAL MISCONDUCT

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

[11] The Committee was satisfied that the Allegations constituted a breach of Rule 104.2 (a) and, having breached the Rule, the Member committed professional misconduct.

1. *Burden of Proof*

[12] The burden of proof of the allegations lies with the PCC. The standard of proof is on the balance of probabilities, meaning whether it is more likely than not that the events occurred. The evidence must be sufficiently clear, convincing, and cogent to satisfy this

test.²

2. The Facts

i. The Previous Discipline Matter

- [13] The Member attended before us and admitted the facts as outlined in the two affidavits before us, and that those facts established the professional misconduct being alleged.
- [14] As is noted above, on March 11, 2021, a differently composed Discipline Committee found that the Member had failed to cooperate with the regulatory process of the CPAO in respect of three ongoing investigations. The salient features of the Committee's order were a reprimand, a fine of \$8,000, and the requirement to cooperate with the CPAO investigations within 30 days, or risk license suspension. In addition, the Member was required to pay \$3,380 in costs.
- [15] The Member complied with the financial terms of the March 11, 2021 Order. The Reasons of the March 11, 2021 Committee were issued on March 30, 2021. The Reasons disclose that the first complaint involved an allegation that the Member was operating as a Licenced Public Accountant, in spite of the fact that his Public Accounting Licence had been revoked, and further alleged that he was signing audit and financial statements for clients. A public accounting licence ("PAL") from CPAO is required to practice "public accounting" as described in section 2 of the Public Accounting Act³ because, for example, it requires the professional to sign reports or statements regarding assurance engagements (including an audit or review engagement). CPAO is the authorized designated body to license and govern our members in the practice of public accounting.
- [16] The second complaint involved allegations that the Member had misrepresented his firm's status as an approved training office for CPAO students.
- [17] The third complaint related to a former client of the Member's alleging that he had misappropriated funds, misrepresented his credentials as a Licenced Public Accountant, failed to complete services, and missed deadlines. On June 8, 2020, the CPAO notified the Member of this complaint and directed him to respond in writing by June 29, 2020. This complaint forms the basis of the First Complaint in this proceeding, as noted below.
- [18] The evening before the March 11 2021 hearing the Member submitted a substantive response to the three complaints. In its reasons for decision, the Committee pointed out that the PCC was not in a position at the hearing to evaluate whether the response fulfilled the Member's responsibility to cooperate with the CPAO's investigations, and accordingly

² *F.H. v. McDougall*, [2008] 3 S.C.R. 41, para 46

³ Public Accounting Act, 2004, S.O. 2004, c. 8

recognized the need for an order to cooperate.⁴

- [19] After the Committee's Order of March 11, 2021, the PCC issued Admonitions⁵ with respect to two of the three complaints for which the Member had failed to cooperate, and another Admonition with respect to an unrelated matter. CPAO found it necessary to proceed to investigate the third complaint, which becomes the First Complaint for present purposes.

ii. The First Complaint

- [20] The First Complaint against the Member in this proceeding comes from a former client and involves allegations of misappropriating \$441,000 of the client's funds, misrepresenting the Member's credentials, and failure to serve.
- [21] After the Member had been found to have misconducted himself by failing to respond to the requests for information relating to the above-noted complaint, CPAO staff sent him two letters, dated July 19, 2021, and July 30, 2021, requesting further information in relation to this complaint. The deadline for the Member's response was August 6, 2021.
- [22] On August 6, 2021, the day of the deadline, the Member sent CPAO an e-mail requesting a 30-day extension in order to "*provide an accurate and complete response*" to the July 19, 2021 letter. Further, the Member stated that he believed that the initial response deadline of August 6, 2021 was "*unrealistic*" as he was "*partially working in the summer as this [was his] Off Season*". On August 9, 2021 CPAO staff wrote the Member, copying his legal counsel, and informing him that the CPAO granted the Member an extension to August 30, 2021, for the submission of his response.

iii. The Second Complaint

- [23] On June 21, 2021, CPAO received a complaint against the Member from an anonymous complainant ("the Second Complaint"). This complaint formed no part of the March 11, 2021 proceeding. The Second Complaint alleged unethical practices including encouraging clients to report fraudulent information in their personal tax returns, participation in serious tax evasion schemes, and the provision of accounting services to the public outside of a

⁴ At para 44 of its March 30, 2021 reasons

⁵ Upon the conclusion of its investigation and review, the Professional Conduct Committee may make any of the following dispositions: Take no further action; Provide guidance, advice, or an admonishment to an accountant/student/firm; Negotiate a settlement agreement with an accountant/student/firm; Refer a matter to the Discipline Committee; Refer a matter directly to the Registrar for consideration; or Take any other appropriate remedial action.

registered firm with CPAO.

- [24] On August 16, 2021, CPAO wrote to the Member about these allegations, seeking a response by September 7, 2021.
- [25] At the Member's request, the September 7, 2021 deadline was extended to September 30, 2021. This pertained to both the First and Second Complaints.
- [26] After attempts to call the Member were unsuccessful, CPAO sent an email to the Member to remind him that a response was outstanding on two matters. On the deadline day of September 30, 2021, the Member advised CPAO by telephone that following an emergency leave of absence, he had returned from Europe on September 26, 2021, and he was working on a response as soon as possible. CPAO then granted the Member a further extension to submit his response to the First and Second Complaints on or before October 8, 2021. The Member's legal counsel was copied on this correspondence.
- [27] On October 6, 2021 the Member's legal counsel wrote to the CPAO to advise that her office was no longer representing the Member. She asked to be removed from any future correspondence regarding this matter and any other matters related to the Member.
- [28] The Member did not comply with the October 8, 2021 deadline, and in fact never responded to the CPAO's requests for information pertaining to the two complaints.
- [29] The Member's failure to respond to the two complaints can be summarized as follows:
- First Complaint: initial deadline of August 6, 2021, extended to August 30, 2021, extended to September 30, 2021 and then to October 8, 2021.
 - Second Complaint: initial deadline of September 7, 2021, extended to September 30, 2021 with the caveat of no further extensions, and then extended to October 8, 2021.
- [30] There were no communications between the Member and the CPAO until the Allegations were served on the Member on November 23, 2021. The Member attended a pre-hearing conference in March, and then attended this hearing. Still no substantive answers to either the First or Second Complaints have been filed.

3. *What Constitutes Professional Misconduct in the Context of Rule 104.2 (a)?*

- [31] As noted in the Preamble to the Code, "Where Guidance is provided, it is intended to assist in the understanding and application of the related Rule". The "Guidance" provisions are an advisory admonition about what a member should do in the circumstances because of the

rule; they do not expand or dilute the rule itself: ⁶ As the title suggests, they provide guidance and serve as an interpretative aid to the rules themselves. In this case the Guidance provisions of Rule 104 provide that:

- (1) *the regulatory processes of CPAO include practice inspections, investigations into professional conduct, disciplinary or other hearings, admission, registration, readmission or re-registration, revocation, and appeals of any decisions resulting from the aforementioned processes.*
- (2) *Lack of co-operation includes attempts to delay, mislead or misdirect CPAO by concealing relevant information, providing false, incomplete or misleading statements or information, failing to respond to communications or otherwise obstructing the regulatory processes of CPAO. Lack of co-operation does not include good faith assertions of legal privilege.*
- (3) *The requirement for prompt written replies and production of documents contemplates the establishment of a reasonable timeframe to respond to the request. Requests for reasonable extensions will not normally be refused; however, repeated requests without adequate grounds will be refused.*
- (4) *The requirement to co-operate with CPAO includes a requirement to co-operate with officers, staff, volunteers or agents acting on behalf of CPAO in matters described in Rules 104.1 and 104.2.⁷ (emphasis added)*

[32] As the Guidance provision makes clear, failing to respond to communications is a form of obstructing the regulatory processes of the CPAO. “Fundamentally, every professional has an obligation to co-operate with his [or her] self-governing body.”⁸ As has been recently pointed out by the Tribunal of the Chartered Professional Accountants of Alberta, cooperation with the regulator is of fundamental importance to maintaining public confidence in both the profession and the regulator:

In particular, a self-regulated profession such as the accounting profession requires its members to cooperate with the complaints inquiry process and; to disregard that process undermines the ability for the profession to self-regulate and thus undermines the profession... Being a self-regulating profession, the integrity of the profession is perhaps best seen by the public in the oversight of it. Regardless of the outcome of investigations or complaints, the ... public must believe that complaints will be taken seriously, that if allegations are investigated, [and] that investigation will be meaningful and taken seriously by all. ⁹

⁶ Cf. [Stewart v Canadian Broadcasting Corp. \[1997\] OJ No 2271, 150 DLR \(4th\) 24, 72 ACWS \(3d\) 373, 1997 CarswellOnt 2491](#), para 211

⁷ <https://assets.cpaontario.ca/protecting-the-public/governance/pdfs/cpa-ontario-members-handbook.pdf>

⁸ *Artinian v. College of Physicians and Surgeons of Ontario (Div. Ct.)*, 1990 CanLII 6860, at (ON SC)

⁹ *Moberly (Re)*, 2019 ABCPA 24, para 74, 97 (CanLII)

- [33] Disciplinary proceedings serve to protect the public, by maintaining high professional standards, and preserving public confidence in the profession.¹⁰ Conduct that falls markedly below a standard of “honest, open, and helpful” assistance by the Member constitutes professional misconduct,¹¹ absent compelling evidence that demonstrates a member was unable to respond due to an illness or disability.¹² Conduct that is deserving of censure need not be disgraceful, dishonorable, or reprehensible. Attempts to fence with, hedge, or delay the regulator breach the Rule. However, conduct that is isolated, transitory, and out of character may not be sufficiently “marked” to warrant censure depending on the circumstances.
- [34] In this case the Member delayed the CPAO with respect to two complaints over an extended period of time without any substantive reply to their investigators. As the Member admitted, this constitutes professional misconduct. The Discipline Committee has no trouble finding that the PCC has proved on a balance of probabilities that the Member misconducted himself in accordance with the allegations as set out in the Notice of Allegations.
- [35] In making our finding of misconduct, the Committee did not rely on the prior finding of misconduct from March 11, 2021. The Committee only cites the March 11, 2021 decision to provide the narrative which led to the first allegation of failure to cooperate with a CPAO investigation in the Notice of Allegations before us.

VI. REASONS FOR DECISION AS TO SANCTION

1. Order

- [36] The Committee’s order can be summarized as follows:
1. Reprimand;
 2. 6 month suspension;
 3. Cooperation with the two investigations on or before May 24, 2022, failing which the Member’s license will be revoked;
 4. Fine of \$10,000 to be paid by November 9, 2022; and
 5. Publication.
- [37] The Committee also ordered \$4,800 in costs, payable on or before November 9, 2022.

2. Submissions on Sanction

¹⁰ Cf. Gavin MacKenzie, (July 1992) 11 Advocates’ Soc. J. No. 2, 3 – 30 (July, 1992)

¹¹ Law Society of Ontario v. Diamond, 2021 ONCA 255, para 50, 64-67 (CanLII)

¹² [Choy \(Re\), 2020 LNICAO 13](#), para 20

- [38] Counsel for the PCC sought an order very similar to the one imposed by the Committee with one difference. Counsel for the PCC did not seek a 6 month suspension.
- [39] The PCC's submissions echoed their submissions at the March 10, 2021 hearing, differing only in raising the fine to \$10,000 and providing the Member 15 days, rather than 30 days, to cooperate with the investigations. Counsel for the PCC submitted that the fine of \$10,000 and the 15 day deadline to cooperate to avoid revocation was sufficient to send a message that the Member's continued lack of cooperation was unacceptable.
- [40] Counsel for the PCC informed the Committee that there are no other cases wherein a Member was disciplined for a second failure to cooperate. In light of this, there are no similar cases which could assist the Committee with respect to parity. This is not precisely accurate. In the case of *CPAO v. Ali*, released April 29, 2022, the Member was disciplined a second time for failing to cooperate with a CPAO investigation. However, Mr. Ali appears to have engaged in significant dishonesty and was found by the Committee to be ungovernable. In light of this, the *Ali* case is not particularly helpful to this Committee in determining penalty.
- [41] The Member advised that he wished to be treated like other offenders, and therefore the fine should be \$5,000 and he should be given 30 days to cooperate. He repeatedly expressed remorse over his lack of cooperation and was prepared to move forward. He felt put upon by the PCC seeking a sanction in excess of those who had previously found to have committed professional misconduct by breaching Rule 104, and felt that PCC was unfairly singling him out by seeking a \$10,000 fine and giving him only 15 days to cooperate.
- [42] At this juncture, the Committee expressed their concern about the Member's ongoing failure to cooperate. They asked the Member why he had not produced the requested materials prior to the hearing date. The Member answered that tax season was very busy and he had not had time to respond. This was a most unsatisfactory answer as it did not explain the failure to respond both prior to and in the several months following the issuance of the Notice of Allegations. The Panel asked both the Member and Counsel for the PCC why he should be given a second chance. During this exchange, the Committee was left with the distinct impression that the Member did not understand that the Committee was considering imposing a sanction in excess of what Counsel for the PCC was seeking.
- [43] The Committee reserved. When the Committee returned to the Hearing, we clearly informed the parties that we were considering imposing a sanction greater than that requested by Counsel for the PCC. We specifically sought submissions on: (1) whether the Member was ungovernable; (2) immediate revocation; (3) immediate suspension; and (4) full indemnity costs.
- [44] We commend Ms. McNabb for her professionalism and ethics. Ms. McNabb, in the best tradition of prosecutors, maintained her position on sanction. She reiterated that it was the

view of the PCC that the Member was deserving of one last chance, and that the proposed sanction departed sufficiently from the prevailing norm such that it addressed the aggravating circumstances. She advised, however, that suspension was the most acceptable option if the Committee felt that the PCC's proposed order was insufficient.

- [45] Counsel for the PCC submitted that costs are not in fact part of the penalty, but serve the sole purpose of indemnification. She submitted that costs are not the correct avenue through which the Committee should express its censure of the Member's conduct. Finally, Counsel for the PCC urged the Committee to maintain the normal practice of ordering two thirds of the actual costs incurred.
- [46] The Member advised that revocation was obviously too punitive, and that a suspension would harm his employee, his clients, and others as well as being unfair to him. When asked how this Committee should protect the public interest, the Member responded with the need of the CPAO to protect and assist its Members, and that as a Member who had punctually paid his dues, he had a right to expect better from the CPAO.
- [47] After the above-noted exchanges, the Committee retired to deliberate. Upon returning we informed the parties we were imposing a 6 month suspension. The Committee was mindful that the Member had not anticipated a suspension prior to the hearing, and may not be prepared to wind down his practice immediately. We asked the Member how long it would take him to wind down his practice, and he refused to provide us with an answer. In the absence of any information regarding the length of time required to wind down his practice, the Committee decided a week would be sufficient. In light of this, we ordered that the six month suspension would commence on May 16, 2022.

3. Analysis

i. The Purpose of Sanction

- [48] The principles surrounding sanctions are described in the CPAO "Sanction Guidelines."¹³ Because we use concepts that are used in sentencing in criminal cases, it is important at the outset to note that determining sanctions in a disciplinary proceeding is different from the criminal law process. The critical distinction is that a criminal court judge is rarely concerned with the collective reputation of an accused's peer group and is free to focus instead specific deterrence, general deterrence and rehabilitation. On the other hand, the disciplinary committee must always take into account the collective reputation of the Member's peer group -- the accounting profession. Indeed, the case law suggests that this is one of the fundamental purposes of a Committee's sanctions order.

¹³ <https://assets.cpaontario.ca/protecting-the-public/governance/pdfs/cpa-ontario-misconduct-sanction-guidelines.pdf>

- [49] Public confidence in the accounting profession is based on such matters as a member's credibility, integrity, character, reputation and fitness.¹⁴ Integrity implies adherence to moral and ethical principles on the basis of which peers and the public can evaluate the 'soundness' (or consistency) of a person's moral character and, ultimately, their honesty, accountability, and responsibility.¹⁵ The failure to cooperate with the regulator speaks ill of a member's integrity and character because it reflects a refusal to facilitate one's accountability to one's peers and the public. A self-regulating profession cannot tolerate such behavior as it can undermine public confidence in the ability of the regulator to govern the profession in the public interest.
- [50] The sanctions in this case must address the following factors: the public interest in the completion of the investigation, the need for rehabilitation of the Member, specific deterrence to ensure the Member's compliance with his obligation to cooperate, prevention of further breaches of the Code, and general deterrence of members. Sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence), and to deter others from engaging in similar misconduct (general deterrence). General deterrence can be achieved if a sanction strikes an appropriate balance by addressing a member's specific misconduct, but is also in line with previous cases. Any sanction imposed must be proportionate to the conduct at issue and should be similar to sanctions imposed on respondents for similar contraventions in similar circumstances, accounting for relevant mitigating and aggravating factors on the facts of the particular case.¹⁶
- [51] Most importantly, public confidence in the profession of accountants and the CPAO as a regulator is more important than the fortunes of any one member.¹⁷

ii. The Importance of Compliance with Rule 104.2 (a)

- [52] In order to inhibit future breaches of Rule 104.2 (a) by either the Member or others, the Committee is compelled to explain why a lack of cooperation is intolerable. Members and firms are expected to avoid any action that would discredit the profession. Integrity requires members and firms to be timely, straightforward, honest and fair dealing in all professional relationships.¹⁸ Professional behavior and personal integrity are the twin pillars of any

¹⁴ [Law Society of Upper Canada v Nicholson, \[2015\] LSDD No 123, 2015 ONLSTH 110](#), para 46

¹⁵ Prato, G.B. (2015). Integrity, Public Accountability and Responsibility: Comparative Anthropology in South Europe. 213 in: Hardi, P., Heywood, P.M., Torsello, D. (eds) Debates of Corruption and Integrity. Political Corruption and Governance. Palgrave Macmillan, London.

¹⁶ *Turcotte (Re)*, 2017 LNIROC 45, para 67

¹⁷ <https://assets.cpaontario.ca/protecting-the-public/hearings-appeals/cases/cma/1011page21028.pdf>

¹⁸ <https://assets.cpaontario.ca/members/regulations-guidance/pdfs/CPA-Ontario-Code-of-professional-conduct.pdf>, pages 2-3

member of a self-regulating profession.

- [53] One cannot overstate the importance to our society of the proper regulation of professions. The importance of monitoring competence and supervising the conduct of professionals' stems from the extent to which the public places trust in them. The privilege of professional self-regulation therefore places the individuals responsible for enforcing professional discipline under an onerous obligation. The delegation of powers by the state comes with it the regulator's responsibility for providing adequate protection for the public¹⁹.
- [54] Public trust, transparency, and accountability go together. CPAO can be entrusted with a self-regulatory role so long as it is transparent with the way it governs its members and holds them accountable for their acts and omissions. Compliance with accepted standards and an ethical manner (competence and integrity) must be reinforced by investigative and disciplinary systems. Where non-compliance or misconduct are suspected, the public must be confident in the self-regulated systems in place that are designed to hold professionals accountable are efficient, effective, and timely.
- [55] The reputation of the accounting profession rests on the public's confidence that self-regulation is taken seriously by its members' recognizing their reciprocal obligation to be immediately accountable to the CPAO for their acts or omissions. Prompt and complete responses are essential to moving investigations forward. Delays in doing so can only serve to shake the public's confidence in the CPAO's self-regulatory authority. The public mandate of the CPAO includes the requirement to determine whether its membership is abiding by the standards of competence and ethical codes of the profession. Any member who fails to cooperate with the CPAO fulfilling that mandate calls into question not only the CPAO's ability to fulfill its mandate, but also calls into question whether the member is capable of being governed.²⁰ As noted in the *D'Orazio* decision: "It is integral that members of this profession respond promptly and substantively to complaints and to communications from CPAO in order to ensure proper governance of both this profession's members and its students. A failure to respond jeopardizes the collection of information required to address a complaint."²¹ As a result, it is a fundamental obligation of every professional to co-operate with his or her self-governing body.²²
- [56] The obligation to respond to communications from the CPAO is not a mere technical or bureaucratic requirement; it is an ethical duty as a member of a regulated profession. Being

¹⁹ *Pharmascience Inc. v. Binet*, 2006 SCC 48, para 36

²⁰ Tully (Re), 2018 LNICAO 26, para 20

²¹ D'Orazio (Re), 2020 LNICAO 6, para 41; re Lazar, para 39;

<https://assets.cpaontario.ca/protecting-the-public/hearings-appeals/cases/2012-2021/david-s-lazar-D-21-018-reasons-for-decision.pdf>

²² Reid v. College of Chiropractors of Ontario, [2016] O.J. No. 3080, para 59 (Div'l Ct) following *Artinian v. College of Physicians and Surgeons of Ontario*, [1990] O.J. No. 1116, para 9

an accounting professional is about more than having technical knowledge and skills. Professionals who provide and charge for services that, by law, others cannot provide, commit to the public and their clients that they will act within the framework established by statute, by-laws and rules. That includes co-operating with investigations into complaints, so that members of the public have confidence that when they raise concerns about a member, those concerns can be investigated and appropriate action taken, if necessary.²³

- [57] As noted in *Re Little*,²⁴ a member's failure to cooperate delays investigations, jeopardizes the collection of evidence including documents that are destroyed over time, and the erosion of the recollection of witnesses, and ultimately results in a backlog of investigations. This can all lead to erosion of public confidence in the self-regulatory authority of the tribunal. Furthermore, members must be aware that their failure to co-operate and respond in a prompt and substantive fashion results in the implementation of a second investigative process to compel the member's compliance. This diverts CPAO attention from the primary complaint or investigation at a cost of time and resources funded by all members. The failure to cooperate cannot be condoned by sanctions that amount to little more than the cost of doing business.

iii. The Reasons for Imposing a 6 Month Suspension on the Member

- [58] In its March 30, 2021 Reasons for Decision, the previous Committee noted a number of mitigating factors based on the Member's personal circumstances. They also noted significant aggravating factors, such as the Member continued to run his practice and engage in business travel while he was not cooperating with CPAO's investigations, the prolonged length of time over which the Member failed to cooperate with CPAO, and the fact that he failed to cooperate with three (3) separate investigations into his practice. The Committee noted: "The Committee finds that this prolonged failure to cooperate with three separate investigations shows a lack of respect for the process and undermines the ability of CPAO to fulfill its public mandate to effectively regulate its members".²⁵ Nevertheless, the Committee felt constrained to accept the parties' joint submissions with respect to the reprimand, the order to cooperate, and publication.²⁶
- [59] The path of this matter is littered with a litany of obfuscations and excuses. As early as June, 2020 the Member was repeatedly promising to make the CPAO investigations his "highest priority", and to provide a written response within the next 24 hours. The lack of responses carried through to the First and Second Complaints, to the point that the Member became pre-occupied with extending deadlines. By August 6, 2021, the Member complained that

²³ *Law Society of Ontario v. Saskin*, [2021] L.S.D.D. No. 7 | 2021 ONLSTH 8, para 41

²⁴ *Little (Re)*, 2021 LNICAO 2, para 29

²⁵ Reasons of March 30, 2021, para 46

²⁶ *Id*, para 43

the CPAO's latest deadline was too severe because it was the summer and he was only partially working as summer was his "off-season". He asked for a "final deadline" of September 30, 2021, and then proceeded to ignore that deadline too.

- [60] The Member discharged his lawyer in early October, 2021. The Member received three Admonishments from the PCC, all dated November 23, 2021. None of that motivated the Member to action. The Member advised that he and his assistant were busy during tax season serving the needs of his clients, without explaining why (1) he could not respond to the CPAO during the summer off-season because he was not working full time, while (2) he could not respond to the CPAO during March and April because he was working full time. The Member did not explain why there was no period during the year in which he could have answered the CPAO's queries. The fact is, the Member was simply not motivated to do so, and always found something else to do.
- [61] The evidence discloses that the Member did not prioritize his requirement to respond to the CPAO in the way contemplated by the standard, resulting in a breach of a multitude of deadlines, at least one of which he, himself, proposed. It follows that the Member's breach of Rule 104 is intolerable, and cannot be repeated.
- [62] The Member did not seem to have received the message from the March 30, 2021 Reasons that the duty to cooperate required the Member to promptly drop everything and focus on the CPAO's request for information. Even as late as September 30, 2021, the member was asserting to the CPAO that "... this was the first time he'd been in this situation, and didn't know how to maneuver multiple matters..." Of course, this statement simply overlooks the fact that the Member had already gone through the disciplinary process leading to the March 11, 2021 order, and had still failed to recognize the need to prioritize the CPAO investigation over any other tasks.
- [63] The Member ignored his commitment to the CPAO that was given as part of his counsel's March 10, 2021 submissions to the March 11, 2021 Committee, whereby "The Member recognizes that he failed to provide CPAO with a response to this complaint in a timely manner. The Member offers his full cooperation to CPAO with this matter and any other matter moving forward."²⁷ In this context "this matter" references the third complaint before the March 11 Committee, and which continued as the First Complaint in this proceeding.
- [64] Rather than belatedly responding on the eve of hearing this time, the Member simply apologized to the Committee and sought a sanction commensurate with his previous appearance and that of first "offenders".
- [65] The Member also simply ignored the rebuke of the previous Committee stating the Member's conduct "shows a lack of respect for the process and undermines the ability of CPAO to

²⁷ "Submissions on Behalf of John Hametaj" dated March 10, 2021, page 7

fulfill its public mandate to effectively regulate its members.”²⁸

- [66] The Member provided no credible explanation for his failure to cooperate. As was the case in *Re Little*, “...he did not assert, or provide evidence, that his ...issues prevented him from complying with his professional obligations to cooperate with the regulatory process. Absent credible evidence that demonstrates a member was unable to respond due to an illness or disability, the failure of a member to respond constitutes a breach of Rule 104.”²⁹ In this case the Member did not demonstrate such an inability to respond over the extended period of time.
- [67] In summary, the Committee has considered the following aggravating factors:
- i. the Member’s failure to heed the rebuke of the previous Committee;
 - ii. the length of time within which he failed to respond to the CPAO from July 2021 to the present;
 - iii. the fact that the three admonitions he received from the PCC did not spur him into action; and
 - iv. the fact that with the benefit of counsel on the last occasion, the Member understood the need to produce the requested material prior to the hearing, yet failed to do so on this occasion.
- [68] The Committee views the Member’s failure to cooperate as reprehensible as it has resulted in CPAO’s inability to respond to complaints made by members of the public in any meaningful way. This has the potential to undermine the public’s faith in the ability of the CPAO to govern itself and its members.
- [69] Given the aggravating facts of this case, the Committee imposed a 6 month suspension. In our view, a significant suspension is required to promote public confidence in the profession, achieve specific and general deterrence and maintain the high ethical standards of the profession.
- [70] The Committee was inclined to order immediate revocation, but ultimately decided to give the Member one last chance. Given the present history, a reasonable observer might conclude that the Member refused to be governed. Those matters that were raised before the March 10, 2021 Committee as mitigating factors were not raised by the Member before us. Instead, the Member raised the vagaries of his business situation, and how the demands of his business had diverted his attention. We do not find these explanations credible given the period of delay in this case. Nevertheless, “*There is still scope for mercy to drop as the*

²⁸ March 10, 2021 decision, para 46

²⁹ *Re Little*, supra, emphasis in original

gentle rain from heaven and for it to season justice."³⁰ That seasoning must come after the public interest is served, however. Firstly, and most importantly, our sanctions must protect the good name of the profession, and in so doing, must consider how the public can best be protected.³¹ After much reflection, the Committee found that the 6 month suspension could protect the public while at the same time saving a member with less than a decade experience from immediate revocation. While we accept that the suspension will negatively impact the Member's business, it appears to be the only way to secure the Member's attention and put him on the road to rehabilitation and cooperation with his regulator.

VII. COSTS

- [71] The law is settled that an order against a member for costs with respect to the disciplinary proceeding is not a penalty. Costs are intended to indemnify the PCC, based on the underlying principle that the profession, as a whole, should not bear all the costs of the investigation, prosecution and hearing arising from the member's misconduct.
- [72] Costs are awarded at the discretion of the Discipline Committee. It has become customary for the PCC to file a Costs Outline, and to seek 2/3 of the costs incurred in the investigation and prosecution of the matter.
- [73] Counsel for the PCC filed a Costs Outline demonstrating that the costs for the investigation and prosecution of this matter amounted to \$7,296.51. Counsel for the PCC requested a costs order in the amount of \$4,800, payable by November 9, 2022. The Member did not object to this amount nor to the time within which to pay.
- [74] The Committee accedes to the request of the PCC for costs, and orders a cost award of \$4,800, payable on or before November 9, 2022.

Dated this 18th day of May, 2022



David Debenham, FCPA, FCMA, LLB
Discipline Committee – Deputy Chair

³⁰ *Lawson v Solicitors Regulation Authority* [2015] EWHC 1237 (Admin) (05 May 2015), para 24

³¹ *The Law Society of Ireland -v- Callanan* [2018] IEHC 160 (11 April 2018), para 9

Members of the Panel

Richa Khanna, CPA, CA, LPA

Catherine Wong, CPA, CA, PMP

Marianne Park, Public Representative

Independent Legal Counsel

Lisa Freeman, Barrister & Solicitor