

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

THE CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

and

THE CERTIFIED GENERAL ACCOUNTANTS OF ONTARIO

(CHARTERED ACCOUNTANTS ACT 2010)

(CERTIFIED GENERAL ACCOUNTANTS ACT, 2010)

TO: MARCIA MOTAYNE (suspended)

AND TO: The Discipline Committee of CPA Ontario

The Professional Conduct Committee of CPA Ontario hereby makes the following Allegations of professional misconduct against MARCIA MOTAYNE, a suspended member of CPA Ontario:

1. THAT the said Maria Motayne in or about the period October 2012 through May 2015, while employed as Director of Finance and Administration at NVT, engaged in misconduct of a reprehensible or serious nature which reflected adversely on her honesty, integrity or trustworthiness, in that she misappropriated approximately \$800,000 from her employer, contrary to Rule 108 of the Rules of Conduct of CGA Ontario.
2. THAT the said Marcia Motayne in or about the period July 2, 2014 through May 2015 failed to conduct herself in a manner which will maintain the good reputation of the profession and its ability to service the public interest in that she, while employed as Director of Finance and Administration at NVT, misappropriated approximately \$400,000 from her employer, contrary to Rule 201.1 of the CPA Rules of Professional Conduct.

3. THAT the said Marcia Motayne failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.2 of the CPA Code of Professional Conduct, in that:
- a. In or about the period September 15, 2016 to March 20, 2017 she failed to promptly reply in writing to communications from CPA Ontario to which a written reply is specifically required, namely letters dated August 25, 2016, September 29, 2016, January 3, 2017, February 24, 2017 from Ms. Theresa Tonelli, CPA, CA, Director of Standards Enforcement at CPA Ontario.
 - b. In or about the period January 29, 2018 to March 5, 2018 she failed to attend an interview as requested by the investigator appointed by the Professional Conduct Committee.

Dated at Toronto, Ontario, this 25th day of July, 2018.



S. GASPARRO, CPA, CA, DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **MARCIA ALLISON MOTAYNE**, a suspended member of CPA Ontario, under **Rule 201.1** of the Rules of Professional Conduct, **Rule 104.2** of the CPA Code of Professional Conduct, as amended, and **Rule 108** of the Rules of Conduct of CGA Ontario.

TO: Ms. Marcia A. Motayne

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE FEBRUARY 26, 2019

DECISION

The Panel was satisfied that Marcia Allison Motayne (“Ms. Motayne”) had proper notice of today’s hearing and determined that the hearing would proceed in her absence.

The Panel was satisfied that the Allegations were proven and constituted a breach of Rule 201.1 of the Rules of Professional Conduct, Rule 104.2 of the CPA Code of Professional Conduct, as amended, and Rule 108 of the Rules of Conduct of CGA Ontario. The Panel determined that, having breached these rules, Ms. Motayne has committed professional misconduct.

ORDER

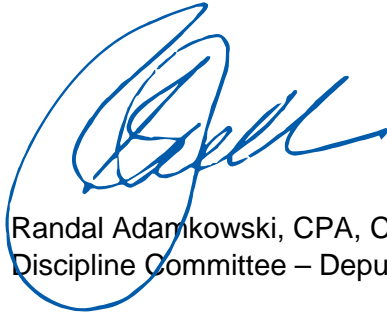
The Panel orders the following:

1. Ms. Motayne be reprimanded in writing by the Chair of the hearing.
2. Ms. Motayne shall pay a fine of \$40,000 to CPA Ontario by February 26, 2020.
3. Ms. Motayne’s membership with CPA Ontario is revoked.
4. Notice of this Decision and Order, disclosing Ms. Motayne’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. Notice of this Decision and Order disclosing Ms. Motayne’s name is to be given by publication on the CPA Ontario website, in *The Globe and Mail* and on *durhamregion.ca*.

Ms. Motayne shall pay all costs associated with the publication and shall be in addition to any other costs ordered by the Panel.

6. Ms. Motayne shall pay costs of \$26,500 to CPA Ontario by February 26, 2020.

DATED at Toronto this 26th day of February, 2019



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 **MARCIA ALLISON MOTAYNE**, a suspended member of CPA Ontario, under **Rule 201.1** of the Rules of Professional Conduct, **Rule 104.2** of the CPA Code of Professional Conduct, as amended, and **Rule 108** of the Rules of Conduct of CGA Ontario.

BETWEEN:

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

-and-

Ms. Marcia Motayne

APPEARANCES:

For the Professional Conduct Committee: Julia McNabb, Counsel
Karen Ho James, Investigator

For Ms. Motayne: Not Present and Not Represented

Heard: February 26, 2019

Decision and Order effective: February 26, 2019

Release of written reasons: April 29, 2019

REASONS FOR THE DECISION AND ORDER MADE FEBRUARY 26, 2019

I. OVERVIEW

[1] This hearing was held to determine whether the Allegations that Ms. Motayne had failed to maintain the good reputation of the profession by misappropriating sums from her employer, and failing to cooperate with the regulatory process of the Chartered Professional Accountants of Ontario, were established on a balance of probabilities and amounted to professional misconduct.

[2] Ms. Motayne obtained her Certified General Accountant (“CGA”) designation in 2009 and became a CPA upon unification of the accounting designations in 2014. She began working at New Visions Toronto (“NVT”), a non-profit organization, in 2008, in a

managerial role and became Director of Finance for NVT upon obtaining her CGA. In that position she was responsible for control and oversight of the payroll process, including authorization of all electronic fund transfers. She remained in that position until she was terminated in August 2015. From the information provided to the Panel, Ms. Motayne is currently unemployed.

- [3] After Ms. Motayne was terminated from NVT, her replacement as Director of Finance identified irregularities in payments made to employees and former employees of the organization. An internal investigation revealed over 100 improper transfers which were traced to different bank accounts under the control of Ms. Motayne.
- [4] NVT contacted the police in September 2015, which resulted in criminal fraud charges being laid against Ms. Motayne. The criminal charges are still being prosecuted.
- [5] In December 2015, NVT contacted CPA Ontario, which conducted its own investigation. NVT also launched a civil suit against Ms. Motayne, and in May 2018, the Superior Court of Justice granted judgment to NVT against Ms. Motayne for damages arising from the misappropriation.
- [6] At the hearing, the Professional Conduct Committee ("PCC") alleged that Ms. Motayne misappropriated approximately \$800,000 from NVT between October 2012 and May 2015, which amounted to misconduct of a reprehensible or serious nature and reflected adversely on her honesty, integrity, and trustworthiness, contrary to Rule 108 of the Rules of Conduct of CGA Ontario.
- [7] The PCC further alleged that the misappropriation that occurred from the date the current CPA Rules of Professional Conduct came into effect, July 2, 2014, through May 2015 also violated Rule 201.1 of the CPA Rules of Professional Conduct, in that it represented a failure of Ms. Motayne to conduct herself in a manner which maintained the good reputation of the profession and its ability to serve the public interest. The approximate amount misappropriated during this period was \$400,000 of the \$800,000 misappropriated from NVT in total.
- [8] The PCC also alleged at the hearing that Ms. Motayne failed to cooperate with the regulatory process of CPA Ontario contrary to Rule 104.2 of the CPA Code of Professional Conduct, in that she failed to reply to communications from the CPA Ontario in the period from September 15, 2016 to March 20, 2017, and that she failed to attend an interview as requested by the investigator appointed by the PCC, in the period between January 29, 2018 and March 5, 2018.
- [9] On February 8, 2017, Ms. Motayne was suspended from membership with CPA Ontario for failing to submit her 2016 membership dues ("AMD"), and her 2015 continuing professional development declaration.
- [10] The onus was on the PCC to show, on a balance of probabilities, that Ms. Motayne's conduct breached the CPA Ontario's Rules of Professional Conduct, the CPA Code of Professional Conduct, and the CGA Ontario Rules of Conduct, and constituted professional misconduct.

II. PRELIMINARY ISSUES

- [11] Ms. Motayne was not represented by counsel and did not attend the hearing. To proceed in her absence, the Panel had to be satisfied that she had received proper notice of the hearing.
- [12] The PCC filed two affidavits which addressed the issue of service. The first affidavit was sworn by McCartney Bailey, a coordinator in the Professional Standards Division of CPA Ontario, on October 18, 2018 (Exhibit 1). It set out the unsuccessful attempts to serve Ms. Motayne using the contact information on record, and an apparently successful attempt to reach Ms. Motayne using an alternative address obtained from Ms. Motayne's court filing in the civil suit launched against her by NVT.
- [13] The second affidavit was sworn by Caroline Kelly, the Tribunals Clerk at CPA Ontario, on February 21, 2019 (Exhibit 2). It included the order for Substituted Service made by the Chair of the Discipline Committee on November 5, 2018, which provided that substituted service for Ms. Motayne could be made to the alternative address that CPA Ontario had obtained from her civil court filing (Exhibit 2-A). The affidavit also referenced the email exchanges between CPA Ontario and Ms. Motayne, using the alternate contact information approved for substituted service, in which Ms. Motayne took the position that she was unable to attend the hearing and provided a letter from her doctor in support of that position (Exhibits 2-C and 2-D).
- [14] As a result of Ms. Motayne's position, the Chair of the Discipline Committee ordered that a motion by Ms. Motayne to defer the hearing would be heard in writing (Exhibit 2-E). On January 9, 2019, the Panel denied the motion and ordered that a date for the hearing be set as soon as practicable. The Panel further ordered that Ms. Motayne may bring a fresh motion to the Panel assigned to the hearing on the merits requesting an adjournment on the basis of additional medical evidence. The affidavit included this order (Exhibit 2-F), and also indicated that Ms. Motayne was served pursuant to the Order for Substituted Service with the Notice of Hearing for this proceeding.
- [15] In response to a question from the Panel, counsel for the PCC confirmed that it had received no response from Ms. Motayne to the Notice, no further communications from Ms. Motayne, and no further medical evidence in respect of her previous position that she was unable to attend the hearing.
- [16] Based on the foregoing evidence, the Panel was satisfied that Ms. Motayne had received proper notice of the hearing, and had not brought a fresh motion for an adjournment of the hearing. Accordingly, the Panel decided to proceed in her absence.
- [17] A denial of the allegations was entered on Ms. Motayne's behalf.

III. ISSUES

- [18] The Panel identified the following issues arising from the allegations:
- a) On the balance of probabilities, did the evidence establish the facts on which the allegations by the PCC were based?

- b) If these facts were established on the evidence on a balance of probabilities basis, did these facts constitute professional misconduct?
- c) If the facts alleged by the PCC constituted professional misconduct, what were the appropriate sanctions?

IV. DECISION

- [19] The Panel found that the evidence established, on the balance of probabilities, the facts on which the allegations by the PCC were based.
- [20] The Panel was satisfied that the facts alleged constituted a breach of Rule 108 of the Rules of Conduct of CGA Ontario, a breach of Rule 201.1 of the CPA Ontario Rules of Professional Conduct, and a breach of Rule 104.2 of the CPA Code of Professional Conduct, and, by having breached these Rules, Ms. Motayne had committed professional misconduct.

V. REASONS FOR THE DECISION

Findings regarding Conduct of Ms. Motayne

Misappropriation of Funds from NVT

- [21] The PCC called Mr. Andy Rotsma as its first witness. Mr. Rotsma was the Executive Director of NVT during the time of the misappropriations, and held that position with NVT at the time of the hearing.
- [22] Mr. Rotsma provided testimony about the nature of Ms. Motayne's work at NVT, how the misappropriation was discovered, the findings of the internal investigation conducted into the misappropriation, and the actions taken by NVT to attempt to recover the amounts misappropriated.
- [23] When Mr. Rotsma began as Executive Director in June 2012, Ms. Motayne had already been working at NVT for four years. Her position in June 2012 was Director of Finance and Human Resources, which included responsibility for the day-to-day operation of finances, the relationship with the funders of NVT, all banking operations, and overseeing all payroll operations.
- [24] Mr. Rotsma testified about the transition to the internal payroll processing at NVT in October 2012, intended to save money by not having to pay an external payroll provider. As a result of this change, Ms. Motayne continued in her role providing oversight of the payroll process. A payroll technician would gather the payroll information for all staff in all locations and provide this information to Ms. Motayne. Ms. Motayne had sole authority to approve the payments and to authorize the bank to process the payments so they would be directly deposited into each employee bank account by electronic fund transfer.
- [25] NVT's external auditors first raised questions about the charity's financial reporting in June 2015. In response, Ms. Motayne requested additional time to address the issues

raised, and subsequently took a sick leave on the advice of her doctor. In her absence, NVT brought in "SE", an experienced CPA, CA, to review the accounting procedures at NVT and make recommendations to improve financial oversight. Upon her return from sick leave in July 2015, Ms. Motayne opposed these recommendations. At that time Mr. Rotsma did not suspect a fraud had occurred, but had sufficient concerns with Ms. Motayne's performance that her employment was terminated in August 2015.

- [26] Subsequent to Ms. Motayne's termination, SE took over duties as Director of Finance. She soon discovered payroll payments apparently made to employees who were no longer working for NVT. Ultimately the NVT internal investigation revealed over 100 improper payroll transfers made to six different accounts, all controlled by Ms. Motayne.
- [27] Mr. Rotsma testified that he contacted the police in September 2015 and provided the results of this investigation. The police took steps to access the bank information for the six accounts in question, and shared that information with NVT. Ms. Motayne was charged with fraud over \$5000.
- [28] Mr. Rotsma also testified that NVT succeeded in a civil action against Ms. Motayne. In the Endorsement of Justice Schreck, dated May 23, 2018 (Exhibit 3), summary judgment was granted in favour of NVT in the amount of \$904,784.80.
- [29] The PCC called Karen Ho James, CPA, CA, as its second and final witness. She was appointed by CPA Ontario in November 2017 as an investigator into the complaint by NVT. Ms. Ho James took the Panel through the documents that she relied upon in performing her investigation, and explained in detail how she arrived at her findings. The PCC's Document Brief, comprised of three volumes, was marked as Exhibit 5.
- [30] Volume 2 of the Document Brief included reports from the TD Bank showing each electronic fund transfer from the NVT bank account to specific employee numbers from the years 2012 to 2015 (Tabs 3, 4 and 5). The transfers to illegitimate employee numbers were highlighted by SE. Volume 2 of the Document Brief also contained the payroll reports of NVT which showed the net amounts that should have been withdrawn from the bank for payroll each period (Tab 6). This figure was used by Ms. Ho James to perform reconciliations with the NVT bank statements to identify the amount which was improperly paid out in relation to illegitimate employee numbers.
- [31] Volume 3 of the Document Brief contained the statements related to the six bank accounts controlled by Ms. Motayne to which the improper payments were made. Ms. Ho James was able to cross-reference the suspect electronic fund transfers identified in the NVT banking records with entries in these bank statements. Ms. Ho James found that the sum of the improper payments made each period totaled the difference between the amount that should have been paid out, according to the payroll records of NVT, and the amount that was actually paid out, according to the banking records.
- [32] Ms. Ho James created a spreadsheet documenting these transactions (Exhibit 5, Volume 2, Tab 12). In addition to the over 100 fraudulent payroll transactions, Ms. Ho James also identified a singular fraudulent payment traced to one of Ms. Motayne's accounts for approximately \$84,000 (Exhibit 5, Volume 2, Tab 8). The total amount of

fraudulent payments to Ms. Motayne's accounts from NVT funds, as set out in Ms. Ho James' chart, is approximately \$820,000 (Exhibit 5, Volume 2, Tab 12).

- [33] The Panel found both Mr. Rotsma and Ms. Ho James to be credible witnesses and that their testimony, together with the documents introduced as exhibits, amounted to clear, cogent, and compelling evidence, establishing the facts of misappropriation by Ms. Motayne on which the allegations of discreditable conduct are based.

Findings of Fact of Justice Schreck

- [34] While in the Panel's view the evidence it heard at the hearing established, on a balance of probabilities, the facts related to the misappropriation by Ms. Motayne, the Panel also had the benefit of the decision of Justice Schreck granting judgment to NVT in its civil lawsuit against Ms. Motayne (Exhibit 3). Pursuant to Rule 19.07 of the Rules of Practice and Procedure, the findings of fact by Justice Schreck in his reasons for decision are proof of the facts so found, given there was no evidence to the contrary, there was no appeal of the decision, and that Ms. Motayne was a party to the proceeding giving rise to the decision.
- [35] In his endorsement, Justice Schreck wrote that Ms. Motayne did not deny that she was responsible for the payroll, that the funds were transferred, or that she owned the accounts to which they were transferred. He found that she did not deny that she was responsible for transferring the funds, but maintained that she had no memory of having done so. Justice Schreck found that she presented no evidence suggesting that any other person could have been responsible for the transfers, or any evidence that she was entitled to any of the money.
- [36] Justice Schreck also set out the elements of civil fraud and found they were met, in this case, as the evidence established that Ms. Motayne made false representations to NVT about the purpose of the transfers, as well as the reasons for the budgetary shortfalls. Justice Schreck found that Ms. Motayne was in charge of the NVT payroll and owned the bank accounts the money was transferred to, and that she was responsible for preparing the false accounting records that reflected the transfers. Given that she owned the accounts, Justice Schreck found that she must have been responsible for the withdrawal of the funds from them. Justice Schreck also found that Ms. Motayne violated the fiduciary duty that she owed NVT.
- [37] The findings of fact by Justice Schreck provided additional evidence in support of the Panel's finding that the allegations of misappropriation by Ms. Motayne had been established.

Failure to Cooperate

- [38] Ms. Ho James also provided evidence about Ms. Motayne's failure to cooperate with the CPA Ontario investigation into the allegations of her misappropriation of funds from NVT.
- [39] On August 25, 2016, the Director of Standards Enforcement at CPA Ontario, Ms.

Theresa Tonelli, Director of Standards Enforcement at CPA Ontario, wrote to Ms. Motayne and advised her that a matter had been brought to the attention of the PCC by SE on behalf of NVT. Materials that had been provided to CPA Ontario by SE were enclosed with the correspondence (Exhibit 5, Volume 1, Tab 3). The letter indicated that a written reply was required by September 15, 2016, and cautioned that a failure to respond could result in allegations of professional misconduct. The letter was sent to Ms. Motayne's address on record with CPA Ontario. Ms. Motayne did not respond.

- [40] Follow up letters were sent to Ms. Motayne on September 29, 2016, and January 3, 2017 (Exhibit 5, Volume 1, Tab 3). The latter required a response by January 13, 2017, with the caution that failure to respond could result in an allegation of professional misconduct against her.
- [41] By letter dated February 15, 2017, a lawyer wrote to Ms. Tonelli indicating that he had been consulted by Ms. Motayne about the CPA Ontario investigation and expected to be retained by Ms. Motayne (Exhibit 5, Volume 1, Tab 4). The lawyer indicated that Ms. Motayne would refuse to answer questions from CPA Ontario on the grounds that it could impede her ability to defend herself at the criminal trial. Ms. Motayne was copied on the letter.
- [42] By letter dated February 24, 2017, Ms. Tonelli responded to the lawyer's letter by outlining the requirement under Rule 104 of the CPA Code of Professional Conduct, and emphasized that a substantive response by Ms. Motayne to the allegations was required by March 20, 2017, notwithstanding the outstanding criminal charges (Exhibit 5, Volume 1, Tab 4). The letter was copied to Ms. Motayne.
- [43] By letter dated March 20, 2017 the lawyer responded, reiterating the position that Ms. Motayne would not answer the CPA Ontario investigative questions given the criminal proceedings against her (Exhibit 5, Volume 1, Tab 5). Ms. Motayne was copied on the letter.
- [44] By letter dated April 19, 2017, the lawyer for Ms. Motayne provided an update on the status of the civil matter (Exhibit 5, Volume 1, Tab 6). No substantive response from Ms. Motayne was provided. Ms. Motayne was copied on the letter.
- [45] By letter dated May 16, 2017, Ms. Tonelli wrote the lawyer to request information about the type of work Ms. Motayne had performed over the past two years, to request an update on the criminal matter, and to request Ms. Motayne's statement of defence in the civil matter (Exhibit 5, Volume 1, Tab 7). Ms. Motayne was copied on the letter.
- [46] By letter dated May 25, 2017, the lawyer responded, providing the requested information (Exhibit 5, Volume 1, Tab 8). The lawyer also advised that he was not on record for Ms. Motayne respecting the CPA Ontario matter. Ms. Motayne was copied on the letter.
- [47] On January 29, 2018, Ms. Ho James emailed Ms. Motayne, copying the lawyer, to arrange a meeting to obtain Ms. Motayne's response to the allegations by NVT. Ms. Ho James requested a response by February 2, 2018 (Exhibit 5, Volume 1, Tab 9). Ms. Ho James received an automated notice that the message could not be delivered to Ms. Motayne's email address.

- [48] On January 30, 2018, the lawyer responded to Ms. Ho James by email. He indicated that he forwarded the message to Ms. Motayne, and that his advice remained that she not respond to any questions from CPA Ontario about NVT until the completion of the criminal matter (Exhibit 5, Volume 1, Tab 10).
- [49] By letter dated January 31, 2018, Ms. Ho James wrote to Ms. Motayne, summarizing her email exchange with the lawyer, and reiterating her request for a meeting to obtain Ms. Motayne's response regarding the allegations of NVT (Exhibit 5, Volume 1, Tab 11). The letter provided potential dates for the meeting and reminded Ms. Motayne of her obligation to cooperate pursuant to Rule 104 of the CPA Code of Professional Conduct, and that failure to cooperate would require a referral to the PCC and may result in allegations of professional misconduct against her. The letter indicated that failure to respond by February 12, 2018 would result in Ms. Ho James submitting her report to the PCC without the benefit of Ms. Motayne's response. Ms. Ho James testified that the letter was sent by courier and regular mail. The letter sent by courier was returned, but the letter sent by regular mail was not returned.
- [50] On March 5, 2018, Ms. Ho James had a further email exchange with the lawyer in which she sought, and he provided, an update on the status of the civil proceeding (Exhibit 5, Volume 1, Tab 12). The lawyer also made reference to medical issues that Ms. Motayne had raised in the context of the civil proceeding, and provided materials that Ms. Motayne had filed in the civil proceedings.
- [51] Based on the evidence of Ms. Ho James and the documentary correspondence in Exhibit 5, Volume 1, it is clear to the Panel that at no time did Ms. Motayne provide a substantive response to the allegations against her by NVT, notwithstanding numerous requests to do so. Further, it is clear that Ms. Motayne refused to participate in a meeting with Ms. Ho James, notwithstanding two requests which were sent to her via email and by letter, and which were copied to the lawyer who was assisting her with this matter. The Panel found that this clear, cogent, and compelling evidence established the facts of non-cooperation by Ms. Motayne on which the allegation of professional misconduct was based.

Finding of Professional Misconduct

- [52] The period of time during which Ms. Motayne misappropriated monies from her employer occurred between October 2012 and May 2015. During the period of October 2012 to July 1, 2014, Ms. Motayne was governed by the CGA Ontario Rules of Conduct. On July 2, 2014, CGA Ontario unified with CPA Ontario and from that day forward, she was also governed by CPA Ontario's Rules of Professional Conduct and the subsequent CPA Code of Professional Conduct as of February 26, 2016.
- [53] The Panel found that the fact that Ms. Motayne misappropriated over \$800,000 from her employer constituted professional misconduct. Ms. Motayne was in a position of trust due to her status as a CPA, and she used that position to deceive NVT and misappropriate its funds for her own purposes. In the Panel's view, this misappropriation is conduct of a reprehensible nature which clearly reflects adversely on her honesty,

integrity, and trustworthiness contrary to Rule 108 of the Rules of Conduct of CGA Ontario, thus constituting professional misconduct.

- [54] Similarly, the misappropriation of NVT funds by Ms. Motayne that occurred after she became governed by CPA Ontario's Rules of Professional Conduct on July 2, 2014, constituted a profound failure to conduct herself in a manner which would maintain the good reputation of the profession and its ability to service the public interest, contrary to Rule 201.1 of the CPA Ontario Rules of Professional Conduct, thus constituting professional misconduct.
- [55] The Panel found that Ms. Motayne's failure to promptly reply in writing to communications from CPA Ontario to which a written reply was specifically required, namely letters dated August 25, 2016, September 29, 2016, January 3, 2017, and February 24, 2017, as well as her failure to attend an interview as requested by the investigator, amounted to a failure to co-operate with the regulatory process of CPA Ontario, contrary to Rule 104.2 of the CPA Code of Professional Conduct, thus constituting professional misconduct. The fact that during this period of non-cooperation there were outstanding criminal charges against her does not relieve Ms. Motayne of the requirement to co-operate with the regulatory process of CPA Ontario.

VI. SANCTIONS

- [56] The Panel accepted the position of the PCC with regards to the appropriate penalty in this matter. Given that Ms. Motayne's conduct constitutes a most severe breach of trust, through repeated, deliberate and deceitful acts, including an approach specifically designed to conceal her actions over a significant period of time, the Panel finds that the sanction imposed has to emphasize general and specific deterrence, and has to assure the public that CPA Ontario is protecting the public interest.
- [57] The misappropriation of funds by a CPA from her employer is serious misconduct in any circumstance, but considering that NVT is a charity serving individuals with complex disabilities, Ms. Motayne's actions were particularly egregious. Mr. Rotsma spoke of the harmful impact of Ms. Motayne's misconduct on NVT, its employees, its Board of Directors, its volunteers and, in particular, the families that it serves.
- [58] Ms. Motayne conveyed no remorse for her actions, nor did she take responsibility for them. She failed to cooperate with CPA Ontario's investigation and did not participate in the hearing.
- [59] Ms. Motayne had no prior discipline history, which was a mitigating factor. There were references in some of the documentary evidence to Ms. Motayne's mental state. However, in the absence of testimony from Ms. Motayne or a medical practitioner which could be tested in cross-examination, the Panel accorded this evidence little weight and did not consider it to be a mitigating factor.
- [60] Turning to the specific sanctions imposed, a reprimand is necessary to highlight the seriousness of the misconduct. The fine of \$40,000 acts as both specific and general deterrence, representing a significant personal consequence of the misconduct, and is

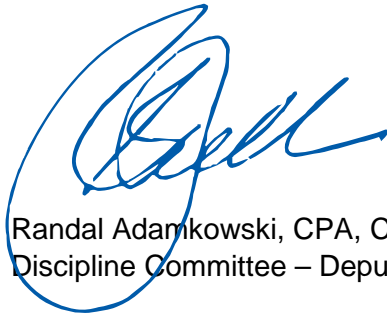
within the range of other serious cases of misappropriation.

- [61] Revocation of Ms. Motayne's membership is the most serious sanction and the only one appropriate in cases of misappropriation for personal profit. It is a necessary penalty to ensure the protection of the public and to convey the message that this conduct was not, and is not, tolerated. Publication of the revocation, both in Durham where Ms. Motayne currently lives and in the Globe and Mail where NVT provides its services, is necessary for the public to have confidence that CPA Ontario is regulating its members in the public interest, while also providing additional specific and general deterrence.

VII. COSTS

- [62] The PCC presented a costs outline (Exhibit 6), and sought a costs award of two-thirds of the actual costs incurred, amounting to \$26,500.00, to be paid within twelve months. The Panel finds that this costs award is in-line with precedents and is appropriate in the circumstances of this case.

Dated at Toronto this 29th day of April, 2019



Randal Adamkowski, CPA, CA
Discipline Committee – Deputy Chair

Members of the Panel

Mark Feldstein, CPA, CA
Catherine Kenwell (Public Representative)
Barry Solway (Public Representative)
Peter-John Vaillancourt, CPA, CGA

Independent Legal Counsel

John Dent, Barrister & Solicitor