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CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF
ONTARIO
FORM 9A

THE CHARTERED ACCOUNTANTS ACT, 2010

TO: MICHAEL P. COOPER (suspended)

AND TO: The Discipline Committee of CPA Ontario

The Professional Conduct Committee hereby makes the following Allegation of professional misconduct against MICHAEL P. COOPER, a suspended Member of CPA Ontario:

1. THAT the said Michael P. Cooper, in or about the period June 4, 2014 to September 23, 2014, failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.2(a) of the Rules of Professional Conduct, in that he failed to promptly reply in writing to the following communications from CPA Ontario to which a written reply is specifically required, dated May 16 and June 26, 2014, from Ms. Theresa Tonelli, CA, Director of Professional Standards at CPA Ontario.

Dated at Kitchener, this 22nd day of October, 2014.

S.L. MINGIE, CPA, CA, CIPR, DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

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

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: **IN THE MATTER OF:** An Allegation against **MICHAEL PAUL COOPER**, a suspended Member, under **Rule 104.2(a)** of the Rules of Professional Conduct, as amended.

TO: Mr. Michael P. Cooper
4646 Dufferin Street, Unit 6
TORONTO, ON M3H 5S4

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE FEBRUARY 19, 2015

DECISION

THAT having determined to proceed with the hearing in the absence of Mr. Cooper, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to the Allegation, and having seen and considered the evidence, the Discipline Committee finds Michael Paul Cooper guilty of the Allegation of professional misconduct.

ORDER

IT IS ORDERED in respect of the Allegation:

1. THAT Mr. Cooper be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Cooper be and he is hereby fined the sum of \$3,500, to be remitted to the Chartered Professional Accountants of Ontario (registered business name of The Institute of Chartered Accountants of Ontario) ("CPA Ontario") within three (3) months from the date this Decision and Order is made.
3. THAT Mr. Cooper be and he is hereby required to cooperate with the Professional Conduct Committee by responding to the letter dated May 16, 2014 from the Director of Professional Standards within twenty (20) days from the date this Decision and Order is made.
4. THAT notice of this Decision and Order, disclosing Mr. Cooper's name, 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; and
 - (c) to all provincial bodies;and shall be made available to the public.
5. THAT in the event Mr. Cooper fails to comply with the requirements of this Order, he shall be suspended from membership in CPA Ontario until such time as he does comply, provided that he complies within twenty (20) days from the date of his suspension. In the event he does not comply within the twenty (20) day period, his membership in CPA Ontario shall thereupon be revoked, and notice of the revocation of his membership, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the

geographic area of Mr. Cooper's practice or employment. All costs associated with this publication shall be borne by Mr. Cooper and shall be in addition to any other costs ordered by the committee.

IT IS FURTHER ORDERED:

6. THAT Mr. Cooper be and he is hereby charged costs fixed at \$2,500, to be remitted to CPA Ontario within three (3) months from the date this Decision and Order is made.

DATED AT TORONTO THIS 20th DAY OF FEBRUARY, 2015
BY ORDER OF THE DISCIPLINE COMMITTEE



DIANE WILLIAMSON
SECRETARY - DISCIPLINE COMMITTEE

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
(THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO)
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: An Allegation against **MICHAEL PAUL COOPER**, a suspended Member, under **Rule 104.2(a)** of the Rules of Professional Conduct, as amended.

TO: Mr. Michael P. Cooper

AND TO: The Professional Conduct Committee

REASONS
(Decision and Order made February 19, 2015)

1. This tribunal of the Discipline Committee met on February 19, 2015 to hear an allegation of professional misconduct brought by the Professional Conduct Committee against Michael Paul Cooper, a suspended Member.

2. Ms. Melissa Gentili appeared on behalf of the Professional Conduct Committee (PCC), accompanied by Ms. Alix Hersak, counsel to the PCC. Mr. Cooper was not represented by counsel and did not attend. Mr. Glenn Stuart attended the hearing as counsel to the Discipline Committee.

Proceeding in Mr. Cooper's absence

3. Ms. Gentili filed the Affidavit of Service of the Allegation (Exhibit 1) that had been personally served on Mr. Cooper by Mr. Mervyn Archdall, process server. Mr. Cooper had identified himself to Mr. Archdall. Ms. Gentili filed the Affidavit of Diane Williamson (Exhibit 2) who affirmed that the notice of hearing had been sent to Mr. Cooper by email and mailed to the last known mailing address of Mr. Cooper.

4. In response to a question from the tribunal, Ms. Gentili stated that although Mr. Cooper occupies the same office space as a firm, there is no indication in CPA Ontario's member and firm records that he is affiliated with the firm. Ms. Gentili indicated that it would be improper to contact the firm about a confidential matter involving Mr. Cooper.

5. The tribunal determined that Mr. Cooper had received proper notice of the hearing and decided to proceed in his absence.

6. The decision of the tribunal was made known at the conclusion of the hearing on February 19, 2015, and the written Decision and Order was sent to the parties on February 20, 2015. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegation, the decision, the order, and the reasons of the tribunal for its decision and order.

Allegation

7. The following allegation was made against Mr. Cooper by the Professional Conduct

Committee on October 22, 2014:

THAT the said Michael P. Cooper, in or about the period June 4, 2014 to September 23, 2014, failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.2(a) of the Rules of Professional Conduct, in that he failed to promptly reply in writing to the following communications from CPA Ontario to which a written reply is specifically required, dated May 16 and June 26, 2014, from Ms. Theresa Tonelli, CA, Director of Professional Standards at CPA Ontario.

Plea

8. A plea of not guilty to the allegation was entered on Mr. Cooper's behalf.

Submissions of the PCC

9. Ms. Gentili submitted that this is a case of failure to cooperate with the regulatory processes as required by Rule 104.2. The events leading up to the allegation are outlined in the Affidavit of Theresa M. Tonelli, CPA, CA, the Director of Professional Standards (Exhibit 3). Ms. Tonelli had written to Mr. Cooper on May 16, 2014 concerning a complaint from a client, requesting a response by June 4, 2014. The client had retained Mr. Cooper in March 2012 to prepare her personal tax return but, despite numerous phone calls and meetings, the work had not been completed. The client also indicated that Mr. Cooper was a partner in the firm at the same address. CPA Ontario's records indicate that Mr. Cooper is a sole practitioner, using the same business and email address as the firm, and he is not listed as an employee or partner of the firm.

10. The letter of May 16, 2014 was sent to Mr. Cooper by regular and registered mail and cautioned him that failure to respond could result in allegations being made against him. The registered letter was signed for, and the copy sent by regular mail was not returned by Canada Post.

11. In the absence of a response, Ms. Tonelli wrote to Mr. Cooper again on June 26, 2014, asking for a response by July 14, 2014 and reminding him that failure to respond could result in a referral to PCC. The registered letter was returned unclaimed by Canada Post, but the letter sent by regular mail was not returned. No response was received to the letters, and Mr. Cooper did not reply to a voicemail message left by Ms. Tonelli on August 27, 2014.

12. Ms. Gentili stated that all correspondence was directed to Mr. Cooper's address of record with CPA Ontario. Although required under Bylaw 4.10, Mr. Cooper does not have a residential address on record as evidenced in the Certified Statement of Tom Warner, VP, Registrar (Exhibit 4). In March 2014, Mr. Cooper's residential address was removed at his request from CPA Ontario's records.

13. Ms. Gentili noted that Mr. Warner indicated in his statement that Mr. Cooper's membership in CPA Ontario was suspended in July 2014 for failing to submit annual membership dues and the continuing professional development declaration.

14. Ms. Gentili submitted that the evidence is clear, cogent and compelling that Mr. Cooper had not provided any form of response to letters and a phone message, contrary to Rule 104.2, and he should be found guilty of the allegation of professional misconduct.

The Decision

15. The tribunal found, on the uncontested evidence, that the allegation had been proven. After deliberating, the tribunal announced the following decision:

THAT having determined to proceed with the hearing in the absence of Mr. Cooper, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to the Allegation, and having seen and considered the evidence, the Discipline Committee finds Michael Paul Cooper guilty of the Allegation of professional misconduct.

Reasons for Decision

16. Having seen and considered the evidence provided on behalf of the PCC by Ms. Gentili, the tribunal concluded that the evidence was clear, cogent and compelling to prove the allegation.

17. Mr. Cooper, despite opportunities to communicate with Ms. Tonelli, had failed to do so, thereby preventing the PCC from conducting an investigation into the complaint received, contrary to Rule 104.2(a).

Sanction

18. Ms. Gentili made submissions on sanction and filed a second Affidavit of Theresa M. Tonelli, CPA, CA (Exhibit 5) concerning a further complaint received in June 2014 from another client of Mr. Cooper concerning his failure to prepare and file corporate tax returns. The client complained that Mr. Cooper had failed to return phone calls and emails and had not returned documents that had been provided by the client.

19. The affidavit stated that Ms. Tonelli had written to Mr. Cooper, by registered letter and by regular mail, on October 22 and December 12, 2014, advising that failure to respond would result in a referral to the PCC. The registered letters were signed for, and the regular mail letters have not been returned by Canada Post. The letters were directed to Mr. Cooper's address of record, and to date there has been no contact from Mr. Cooper.

20. Ms. Gentili submitted that Mr. Cooper's failure to respond to this second complaint raises the question of his governability.

21. Ms. Gentili, on behalf of the PCC, submitted that an appropriate sanction in this matter would be: a written reprimand from the chair of the tribunal; a fine in the amount of \$3,500; a response to Ms. Tonelli's letter within 15 days, followed by suspension and then revocation if he does not cooperate, and the usual order with respect to publicity. The PCC also sought an order for costs of approximately one-half of the costs incurred.

22. The aggravating factors, Ms. Gentili stated, include the fact that two similar complaints have been received from clients of Mr. Cooper. Despite two letters, email and a voicemail message left for Mr. Cooper, he chose not to respond. The second complaint letter was delivered on the same day notice of the allegations was delivered to Mr. Cooper's business address. Mr. Cooper has wasted time and resources of the PCC and CPA Ontario staff and chose not to attend the hearing before the discipline tribunal. His actions, or lack thereof, have impeded the PCC from fulfilling its mandate. Mr. Cooper had requested the removal of his home address from CPA Ontario's records in contravention of the Bylaws.

23. Ms. Gentili submitted that a mitigating factor is that Mr. Cooper has never been before the Discipline Committee in the past.

24. Ms. Gentili stated that a reprimand addresses the professional misconduct of Mr. Cooper and would act as a specific deterrent. The proposed fine would act as a specific and general

deterrent to like-minded Members and falls within the range of similar cases. Publicity is the key to general and specific deterrence.

25. Ms. Gentili stated that requiring a response to the letters would give Mr. Cooper a further opportunity to respond to the complaint. If he chooses not to take this further chance to cooperate, then suspension and ultimately revocation would result, along with further publicity.

26. Ms. Gentili filed a Costs Outline (Exhibit 6) showing the costs to be just over \$7,200, of which the PCC was seeking approximately half. Ms. Gentili noted that the costs were based on a full-day hearing and left it up to the tribunal to reduce the amount if they felt this would be appropriate.

27. Ms. Gentili distributed an Authorities Brief containing similar cases under Rule 104.2(a). Ms. Gentili referred to the case brief containing the decisions regarding *Zhu*, *Root*, *Ross*, and *Hubbard*, pointing out that the precedents contained a common theme of failure to cooperate with the regulatory processes of CPA Ontario.

Order

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

IT IS ORDERED in respect of the Allegation:

1. THAT Mr. Cooper be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Cooper be and he is hereby fined the sum of \$3,500, to be remitted to the Chartered Professional Accountants of Ontario (registered business name of The Institute of Chartered Accountants of Ontario) ("CPA Ontario") within three (3) months from the date this Decision and Order is made.
3. THAT Mr. Cooper be and he is hereby required to cooperate with the Professional Conduct Committee by responding to the letter dated May 16, 2014 from the Director of Professional Standards within twenty (20) days from the date this Decision and Order is made.
4. THAT notice of this Decision and Order, disclosing Mr. Cooper's name, 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; and
 - (c) to all provincial bodies;
 and shall be made available to the public.
5. THAT in the event Mr. Cooper fails to comply with the requirements of this Order, he shall be suspended from membership in CPA Ontario until such time as he does comply, provided that he complies within twenty (20) days from the date of his suspension. In the event he does not comply within the twenty (20) day period, his membership in CPA Ontario shall thereupon be revoked, and notice of the revocation of his membership, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Cooper's practice or employment. All costs associated with this publication shall be borne by Mr. Cooper and shall be in addition to any other costs ordered by the committee.

IT IS FURTHER ORDERED:

6. THAT Mr. Cooper be and he is hereby charged costs fixed at \$2,500, to be remitted to CPA Ontario within three (3) months from the date this Decision and Order is made.

Reasons for Sanctions

29. After the tribunal had deliberated and stated its decision, Ms. Gentili presented an affidavit concerning a second complaint. The tribunal took both complaints into consideration in its deliberations on sanction.

30. The aggravating factors in this matter were dominant and exceeded the mitigating factor that Mr. Cooper had no history before the Discipline Committee.

31. Mr. Cooper was given several opportunities to respond to CPA Ontario but chose not to do so. The order providing Mr. Cooper with a further opportunity to respond within 20 days will ensure the public's interest in having complaints addressed and resolved. The consequences of his further failure to respond will provide specific and general deterrence.

32. The allegation against Mr. Cooper was that he failed to co-operate with the regulatory process of CPA Ontario and the matter at issue related to a complaint from a member of the public. Such matters are serious and affect CPA Ontario's responsibility to protect the public.

33. The tribunal concluded that the sanctions, including a reprimand from the Chair of the tribunal, the fine and publicity, were appropriate to provide for both specific and general deterrence.

Costs

34. A costs outline was filed showing costs incurred by the PCC of approximately \$7,200. The tribunal agreed that costs of \$2,500 should be ordered against Mr. Cooper, which represents a partial indemnity for the costs incurred. The hearing did not take a full day so the amount requested by the PCC was reduced accordingly.

DATED AT TORONTO THIS 27TH DAY OF MARCH, 2015
BY ORDER OF THE DISCIPLINE COMMITTEE



J.A. CULLEMORE, FCPA, FCA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

R.H. CARRINGTON (PUBLIC REPRESENTATIVE)
C. DANCHUK, CPA, CA
A.R. DAVIDSON, CPA, CA