

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

*CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017*

**TO:** Stephen McCune CPA, CGA

**AND TO:** The Discipline Committee of CPA Ontario

The Professional Conduct Committees of CPA Ontario hereby make the following Allegations of Professional Misconduct against STEPHEN MCCUNE CPA, CGA, a member of CPA Ontario:

1. THAT the said Stephen McCune, in or about the period September 12, 2017 to February 6, 2018, 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 communications from CPA Ontario to which a written reply is specifically required, namely letters dated August 18, 2017, September 21, 2017, and January 2, 2018 from Ms. Theresa Tonelli, CPA, CA, Director of Standards Enforcement at CPA Ontario.
2. THAT the said Stephen McCune, in or about the period October 27, 2017 to February 6, 2018 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 communications from CPA Ontario to which a written reply is specifically required, namely letters dated October 6, 2017, November 20, 2017, and January 2, 2018 from Ms. Theresa Tonelli, CPA, CA, Director of Standards Enforcement at CPA Ontario.

Dated at Brampton, Ontario, this <sup>22<sup>nd</sup></sup> day of February 2018.



T. 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:** Allegations against **STEPHEN McCUNE**, a member of CPA Ontario, under **Rule 104.2(a)** of the Rules of Professional Conduct, as amended.

**TO:** Mr. Stephen McCune

**AND TO:** The Professional Conduct Committee

**DECISION AND ORDER MADE JUNE 6, 2018**

**DECISION**

The tribunal was satisfied that the Allegations were proven and constituted a breach of and **Rule 104.2(a)** of the Rules of Professional Conduct. Having breached this Rule, the tribunal determined that Stephen McCune ("Mr. McCune") has committed professional misconduct.

**ORDER**

The tribunal orders the following:

1. Mr. McCune be reprimanded in writing by the Chair of the hearing.
2. Mr. McCune shall pay a fine of \$5,000 to CPA Ontario within 3 months of this Order, by Thursday, September 6, 2018.
3. Mr. McCune is required to cooperate with the Professional Conduct Committee by responding to CPA Ontario's correspondence requesting replies to the complaints of his clients as set out in Ms. Tonelli's letters within 30 days of this Order, by Friday, July 6, 2018.
4. Notice of this Decision and Order, disclosing Mr. McCune's name, is to be given in the form and manner determined by the tribunal:
  - (a) to all members of CPA Ontario;
  - (b) to all provincial bodies;and shall be made available to the public.
5. In the event Mr. McCune 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 30 days from the date of his suspension. In the event he does not comply within the 30 day period, his membership in CPA Ontario shall be revoked, and notice of the revocation of his membership, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. McCune's practice, employment or residence. All costs associated with this publication shall be borne by Mr. McCune and shall be in addition to any other costs ordered by the tribunal.

6. Mr. McCune shall pay costs of \$4,000 to CPA Ontario within 3 months of this Order, by Thursday, September 6, 2018.

**DATED** at Toronto this 6<sup>th</sup> day of June, 2018



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

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Allegations against **STEPHEN McCUNE**, CPA, CGA, a member of CPA Ontario, under Rule **104.2(a)** of the Rules of Professional Conduct

**BETWEEN:**

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

**-and-**

**Stephen McCune**

**APPEARANCES**

**For the Professional Conduct Committee:** Julia McNabb, Counsel

**For Mr. McCune:** Present and Self Represented

Heard: June 6, 2018

Decision and Order effective: June 6, 2018

Release of written reasons: December 5, 2018

**REASONS FOR THE DECISION AND ORDER MADE JUNE 6, 2018**

**I. OVERVIEW**

- [1] This hearing was held to determine whether the allegations that Mr. McCune failed to cooperate with the regulatory process of the Chartered Professional Accountants of Ontario ("CPA Ontario") by failing to promptly reply in writing to communications from CPA Ontario relating to two investigations was established on the facts presented and, if so, whether the allegations amount to professional misconduct.
- [2] Mr. McCune obtained his CPA designation in 2014. He is self employed.
- [3] On July 4, 2017, a complaint was received by Standards Enforcement from a client of Mr. McCune's who advised that she had hired Mr. McCune in 2015 to clean up and re-submit tax returns for 2006, 2007 and 2008. According to the client, throughout their working relationship, Mr. McCune failed to respond to a number of the client's communications, failed to file the requisite tax returns on her behalf and failed to return documents to her in a timely fashion. On September 27, 2017, a second complaint was

received by Standards Enforcement from another client who had hired Mr. McCune in 2016 in order to assist the client with a CRA audit, to prepare the financial statements, and file the corporate income tax returns. The client complained that Mr. McCune missed deadlines and failed to communicate with the client.

- [4] Between September 2017 and February 2018, Mr. McCune failed to promptly reply in writing to a total of 6 letters containing requests for responses to the two complaints, sent to Mr. McCune by regular mail and registered mail, as well as by email, to addresses provided by Mr. McCune to CPA Ontario. While Mr. McCune replied to one letter regarding the second complaint, the response was not complete. Mr. McCune has not provided a response to the initial complaint and he has not provided all the information requested on the second complaint.
- [5] Mr. McCune admitted the allegations. He provided some context regarding the complaints and some information regarding his personal circumstances at the time of CPA Ontario's requests for responses.
- [6] The onus was on the PCC to show on a balance of probabilities that Mr. McCune's conduct breached Rule 104.2(a) of CPA Ontario's Code of Professional Conduct, and constituted professional misconduct.

## **II. PRELIMINARY ISSUES**

- [7] Both parties agreed there were no preliminary issues.

## **III. ISSUES**

- [8] The Tribunal identified the following issues arising from the allegations:
- a) Did the evidence establish, on a balance of probabilities, the facts on which the particulars alleged by the PCC were based?
  - b) If the particulars alleged by the PCC were established on the evidence presented on a balance of probabilities, did the particulars constitute professional misconduct?

## **IV. DECISION**

- [9] The Tribunal found that the evidence established, on a balance of probabilities, the facts on which the allegations were based.
- [10] The Tribunal was satisfied that the allegations alleged constituted a breach of Rule 104.2(a) of CPA Ontario's Rules of Professional Conduct and, having breached this Rule, Mr. McCune had committed professional misconduct.

## V. REASONS FOR THE DECISION

### a) *Findings Regarding Conduct of Mr. McCune*

[11] The uncontested evidence upon which the Tribunal's decision was founded consisted of an Affidavit of Ms. Theresa Tonelli, the Director of Standards Enforcement of CPA Ontario, together with a number of exhibits referred to in the Affidavit. These documents substantiated the two allegations against Mr. McCune.

[12] Over the course of approximately six months, Ms. Tonelli wrote several letters to Mr. McCune requesting information regarding two complaints received by the PCC, and gave Mr. McCune deadlines to produce the requested information and materials. Copies of the two complaint letters from the clients were included with each of the several letters sent to Mr. McCune, ensuring that he would be familiar with the issues of the complaints. The letters from Ms. Tonelli included a warning that further action would be taken against Mr. McCune should he fail to respond to the letters on a timely basis. Mr. McCune's responses to these letters were not received by CPA Ontario within the reply deadlines set by Ms. Tonelli.

### b) *Finding of Professional Misconduct*

[13] The onus was on the PCC to show on a balance of probabilities that Mr. McCune's conduct breached CPA of Ontario's Code of Professional Conduct, and constituted professional misconduct.

[14] Mr. McCune pleaded guilty to the allegations, offering an explanation for his conduct. Mr. McCune explained that he has had his accounting practice for approximately 16 years and may have taken on more work than he could handle. During the period covered by the allegations, he moved his office to different premises however, he acknowledged receipt of all letters from CPA Ontario. Mr. McCune submitted that part of his difficulties with one of the complainants was that the complainant travelled frequently, and it was difficult to obtain information from him while he was away. He also alluded to some family issues.

[15] The Tribunal assigned little weight to Mr. McCune's submissions. There was no meaningful explanation as to why he did not reply to letters from CPA Ontario. Mr. McCune had a duty to communicate with CPA Ontario and he failed to do so. There was no mention in the complaint letter regarding the complainant being unavailable because of travel.

[16] The Tribunal concluded that Mr. McCune's failure to answer Ms. Tonelli's letters regarding the two complaints constituted findings of failing to cooperate with CPA Ontario on a timely basis. The Tribunal concluded that the Affidavit and related exhibits constituted clear, cogent and convincing evidence that Mr. McCune breached Rule 104.2(a) of the CPA Ontario Rules of Professional Conduct regarding the aforementioned two complaints.

## **VI. SANCTIONS**

- [17] The Tribunal accepted the proposed sanctions put forward to by the PCC, finding the sanctions reasonable and not contrary to the public interest.
- [18] In considering the PCC's submission, the Tribunal was required to consider whether the proposed sanctions were within the range of reasonable sanctions for similar misconduct and whether the sanctions were not contrary to the public interest.

## **VII. REASONS FOR SANCTIONS**

- [19] The written reprimand will impress upon Mr. McCune the seriousness of his conduct. It also serves to deter others from *neglecting* their duty to cooperate with the PCC on a timely basis.
- [20] The fine of \$5,000 is considered appropriate given the seriousness of Mr. McCune's conduct. The fine imposed reflected an increase from similar cases in the Case Brief presented by the PCC. The Tribunal considered the quantum of the fine appropriate given that there were two complaints of the same nature within a short period of time. Mr. McCune chose not to reply to the several letters sent to him by the PCC. Mr. McCune failed to cooperate with the PCC on a timely basis, resulting in additional staff time taken to administer the lack of cooperation. The sanctions imposed by the Tribunal were not considered to be contrary to the public interest. The quantum of the fine serves as a deterrent to Mr. McCune should he, in the future be placed in a similar situation. Mr. McCune had a duty to cooperate with the PCC and he did not.
- [21] Publication of the Notice of the Decision and Order serves as specific and general deterrence.
- [22] Mr. McCune was given the opportunity to commence his rehabilitation in a positive way by cooperating with the PCC within 30 days of the ORDER. This time period would enable Mr. McCune to organize his files in an orderly fashion to enable an efficient exchange of information with the PCC. The Tribunal determined that Mr. McCune's cooperation is essential to CPA Ontario in administering its professional conduct matters. Should he fail to cooperate with CPA Ontario on a timely basis, the Tribunal concluded that harsh sanctions would be the result of his failing to cooperate.

## **VIII. COSTS**

- [23] Costs are imposed as an indemnity, not as an additional fine. The PCC presented a Costs Outline. The Tribunal ordered costs in the amount of \$4,000 to be paid within 3 months of the Order.
- [24] The Tribunal found the Cost Outline presented reasonable costs and considered it appropriate to order cost recovery in the amount of \$4,000. These costs do not represent the full amount of the costs incurred.

**DATED** at Toronto this 5<sup>th</sup> day of December, 2018



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

Members of the Tribunal

Catherine Kenwell (Public Representative)

David Knight, FCPA, FCA

Gord Krofchick, CPA, CA

Jane Rivers, CPA, CGA

Independent Legal Counsel

Nadia Liva, Barrister & Solicitor