

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

THE CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **TONY BAKSH, CPA, CGA**, a member, under **Rules 104.1 and 104.2(c)** of the CPA Code of Professional Conduct

TO: Tony Baksh, CPA, CGA

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE AUGUST 9, 2017

DECISION

The Professional Conduct Committee having withdrawn Allegation Nos. 2 and 4

The Discipline Committee, having determined to proceed with the hearing in the absence of Tony Baksh (Mr. Baksh), being satisfied that he had proper notice of the hearing, and having seen, heard and considered the evidence, finds:

THAT Allegation Nos. 1 and 3 have been established;

THAT Rules 104.1 and 104.2(c) have been breached; and

THAT Mr. Baksh has thereby committed professional misconduct.

ORDER

IT IS ORDERED in respect of the Allegations:

1. THAT Mr. Baksh be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Baksh be and he is hereby fined the sum of \$3,500, to be remitted to the Chartered Professional Accountants of Ontario ("CPA Ontario") within six (6) months from the date this Decision and Order is made.
3. THAT Mr. Baksh be and he is hereby required to cooperate with the Professional Conduct Committee by attending a meeting with the investigator by September 15, 2017.
4. THAT notice of this Decision and Order, disclosing Mr. Baksh's name, be given in the form and manner determined by the Discipline Committee:
 - a) to all members of CPA Ontario,
 - b) to all provincial bodies,and shall be made available to the public.
5. THAT in the event Mr. Baksh 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 thirty(30) days from the date of his suspension. In the event he does not comply within the thirty (30) 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. Baksh's practice, residence or employment. All costs associated with this publication shall be borne by Mr. Baksh and shall be in addition to any other costs ordered by the Committee.

IT IS FURTHER ORDERED:

6. THAT Mr. Baksh be and he is hereby charged costs fixed at \$12,000, to be remitted to CPA Ontario within six (6) months from the date this Decision and Order is made.

DATED AT TORONTO THIS 11th DAY OF AUGUST, 2017
BY ORDER OF THE DISCIPLINE COMMITTEE



DIANE WILLIAMSON
ADJUDICATIVE TRIBUNALS SECRETARY

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

THE CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **TONY BAKSH, CPA, CGA**, a member, under **Rules 104.1 and 104.2(c)** of the CPA Code of Professional Conduct

TO: Tony Baksh, CPA, CGA

AND TO: The Professional Conduct Committee

REASONS

(Decision and Order made August 9, 2017)

1. This tribunal of the Discipline Committee met on August 9, 2017 to hear allegations of professional misconduct brought by the Professional Conduct Committee (PCC) against Tony Baksh, a member.

2. Ms. Alexandra Hersak appeared on behalf of the PCC. Mr. Baksh was not represented by counsel and did not attend. Mr. Glenn Stuart attended the hearing as counsel to the Discipline Committee.

Proceeding in Mr. Baksh's absence

3. The PCC introduced a number of documents to support its position that the hearing should proceed in Mr. Baksh's absence.

4. Ms. Hersak filed the Affidavit of Service of Mervyn Archdall, process server, sworn April 24, 2017 (Exhibit 1). Mr. Archdall stated that he had served Mr. Baksh with a letter from PCC counsel that contained the Allegations of Professional Misconduct and the outline of procedure at hearings by leaving the documents with Tony Baksh on April 20, 2017. Mr. Archdall was able to identify Mr. Baksh, as a person known to him. Other evidence before the tribunal, noted below, established that Mr. Archdall had met Mr. Baksh previously when serving other documents from the PCC.

5. Ms. Hersak filed a letter dated May 4, 2017 addressed to Mr. Baksh (Exhibit 2) sent by regular mail enclosing the disclosure documents. Mr. Baksh had returned the disclosure package sent by courier, but the documents sent by regular mail had not been returned by Canada Post.

6. Ms. Hersak filed a letter dated May 5, 2017 from Mr. Baksh (Exhibit 3) which made reference to and attached a copy of the Allegations of Professional Misconduct. This letter established that Mr. Baksh did receive the allegations. Mr. Baksh's letter stated that he had co-operated and chose not to provide the documents requested, that he was resigning his membership, and that he would ignore any further correspondence from CPA Ontario. Mr. Baksh indicated that he did not wish to be contacted by CPA Ontario.

7. Ms. Hersak filed a letter dated May 8, 2017 addressed to Mr. Baksh (Exhibit 4) advising that under CPA and CGA regulations, the Registrar could not accept a resignation request from a member who was the subject to allegations of professional misconduct. Ms. Hersak's letter also stated certain communications concerning the disciplinary process must continue to be sent to his address of record and that his correspondence would be provided to the Discipline

Committee. Ms. Hersak advised that the letter was not returned by Canada Post.

8. Ms. Hersak filed the Affidavit of Diane Williamson, the Adjudicative Tribunals Secretary, sworn August 2, 2017 (Exhibit 5). Ms. Williamson stated that a letter requesting hearing date availability had been mailed to Mr. Baksh on May 29, 2017. In mid-June, the letter was returned by Canada Post. The words "Return to", with an arrow to the return address of CPA Ontario had been handwritten on the envelope. On June 19, 2017 a letter and notice of hearing were mailed to Mr. Baksh at his address of record. On July 4, 2017, the letter and notice were returned by Canada Post marked "moved/unknown/return to sender". The words "return to sender" had also been handwritten on the envelope. All of the letters were mailed to Mr. Baksh's address of record with CPA Ontario; there was no email address or other address of record.

9. The evidence demonstrated that the Allegations of Professional Misconduct and the Notice of Hearing had been served in accordance with the *Rules of Procedure*, and that Mr. Baksh had actually received the Allegations and chosen to refuse the other correspondence from the PCC. The tribunal was satisfied that Mr. Baksh had received proper notice of the hearing and decided to proceed in his absence.

Preliminary Matter

10. Counsel for the PCC raised a preliminary matter, arising from the passage of the *Chartered Professional Accountants of Ontario Act 2017* on May 17, 2017. At the time the allegations were brought, Mr. Baksh was subject to rules under the *Certified General Accountants Act, 2010* ("CGA Act"), as well as the *Chartered Accountants Act, 2010* ("CA Act"). As a result of the passing of the *Chartered Professional Accountants of Ontario Act 2017*, Mr. Baksh and other CPA members were subject to only the one piece of legislation. Ms. Hersak submitted that, in light of this change, it would be inappropriate to proceed with allegations under both sets of former Rules (and, therefore, both former Acts). As such, Allegation Nos. 2 and 4 were withdrawn by the PCC, and the tribunal agreed that this was appropriate.

11. The decision of the tribunal was made known at the conclusion of the hearing on August 9, 2017, and the written Decision and Order was sent to the parties on August 11, 2017. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegations, the decision, the order, and the reasons of the tribunal for its decision and order.

Allegations

12. The following allegations, as amended at the hearing, were made against Mr. Baksh by the Professional Conduct Committee on April 13, 2017:

1. THAT the said Tony Baksh, in or about the period December 1, 2016 to March 21, 2017 failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.1 of the CPA Code of Professional Conduct, in that:
 - a. he failed to provide information when requested to do so by the Professional Conduct Committee through its investigator; and
 - b. he failed to attend an interview as requested by the investigator appointed by the Professional Conduct Committee.
2. WITHDRAWN
3. THAT having been personally served with a Notice to a Member to Attend Before the Professional Conduct Committees of CPA Ontario and CGA Ontario pursuant

to Regulation 7-1 s.18, the said Tony Baksh, on or about March 21, 2017, failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.2(c) of the CPA Code of Professional Conduct, in that he did not attend as required by the terms of the Notice.

4. WITHDRAWN

Case for the PCC

13. Ms. Hersak filed the Affidavit of Theresa Tonelli, CPA, CA, Director of Standards Enforcement (Exhibit 6). A complaint had been received by Standards Enforcement from a former client who indicated Mr. Baksh had refused to respond to the client's enquiries regarding personal tax estimates and notice to reader financial statements. Ms. Tonelli wrote to Mr. Baksh on January 13, 2016, advising him of the complaint. Mr. Baksh responded on January 30, 2016, and Ms. Tonelli wrote to him on March 10, 2016, advising that his response would be forwarded to the complainant. Ms. Tonelli wrote to Mr. Baksh on June 8, 2016, requesting comments on information from the complainant to which he had not previously responded. Mr. Baksh responded with further comments on June 24, 2016, and he was advised that the matter would be reviewed by the PCC.

14. A second letter had been sent to Mr. Baksh on January 13, 2016, advising that in the course of reviewing the initial complaint, the PCC had become aware of potential issues related to his practice registration, in that it appeared he had been providing accounting services to the public without having a registered firm with CGA Ontario and CPA Ontario. Mr. Baksh responded on January 30, 2016, but he did not address all the questions. On March 14, 2016, a further letter was sent to Mr. Baksh requesting specific clarification. He responded on April 1, 2016 providing some information, stating that he had been retired since 2010 and referring to the enquiry as a "fishing expedition".

15. The PCC considered both matters in November 2016 and directed that an investigator be appointed to obtain additional information and clarification on some matters where the information received appeared to be contradictory. Mr. Baksh was so advised by letter dated December 6, 2016, sent by registered and regular mail, from Ms. Hersak, and was made aware of the powers and authority of the investigator appointed by the PCC under the *CGA Act* and *CA Act*.

16. Ms. Karen Ho James, the investigator appointed by the PCC, was sworn in as a witness. Ms. Hersak filed a Document Brief (Exhibit 7) containing communications to Mr. Baksh regarding the appointment of Ms. Ho James and requests for response and attendance before the PCC.

17. Ms. Ho James stated that she had been appointed to inquire into allegations made by the complainant and to do a further investigation arising out of additional issues identified by the PCC. Ms. Ho James stated that there were many inconsistencies in the information provided that had to be sorted out. In particular, although Mr. Baksh claimed to have retired in 2010, he was still providing accounting services in 2014 and still seemed to be involved with the unregistered tax preparation and accounting company.

18. In January 2017, after leaving voicemail messages, Ms. Ho James spoke briefly to Mr. Baksh who advised he was going away and did not want to commit to a meeting date. Mr. Baksh indicated that he had no further information and thought the investigation was a "waste of time" and was not a priority for him. Mr. Baksh would not provide an email address to Ms. Ho James, preferring she contact him by telephone.

19. On February 21, 2017, Ms. Ho James phoned Mr. Baksh to arrange an interview. Mr. Baksh indicated he had nothing further to add and stated the investigation was “a nuisance and a bother”. Mr. Baksh told Ms. Ho James he would not attend interviews and was prepared for the PCC to proceed without further input from him. Mr. Baksh refused to confirm in writing that he would not attend a meeting and advised Ms. Ho James that further phone calls would be deemed harassment. Ms. Ho James followed up the phone call with a letter, dated February 22, 2017 (Exhibit 7, Tab 2) summarizing the conversation and reminding Mr. Baksh of his obligations as a member under the Bylaws, Rules and Regulations. Mr. Baksh was advised that if Ms. Ho James did not hear from Mr. Baksh by March 1, 2017, his failure to co-operate would be referred to the PCC and could result in allegations being made against him.

20. Ms. Hersak wrote to Mr. Baksh on March 6, 2017, and provided him with a notice that he was required to attend a meeting with the PCC, pursuant to Regulation 7-1, s. 18, on March 21, 2017. The letter was sent by regular mail and by process server. The process server, Mr. Archdall, left the letter with Mr. Baksh who identified himself to Mr. Archdall. A brief of documents to be relied upon by the PCC at the March 21 meeting was couriered to Mr. Baksh on March 7, 2017.

21. Ms. Ho James indicated that Mr. Baksh responded to Ms. Hersak by letter dated March 14, 2017. In that letter, Mr. Baksh stated that he would not be attending the PCC meeting due to various reasons, including family commitment; he had already told the investigator he had nothing to add; he believed he had fully co-operated with responses to questions and requests for information; and, he felt his attendance would serve no purpose because he would not answer any more questions or provide any more information. As indicated in the letter, Mr. Baksh did not attend the meeting with the PCC.

22. In her closing argument, Ms. Hersak submitted that the evidence was clear, cogent and convincing that Mr. Baksh failed to co-operate in accordance with Rules 104.1 and 104.2(c). Mr. Baksh was unwilling to provide an email address to the investigator to facilitate contact with him and refused to meet with the investigator. Standards Enforcement had provided Mr. Baksh with a very clear and specific list of questions to which Mr. Baksh had not responded satisfactorily. Although Mr. Baksh did respond to some communications from Ms. Ho James, she was unable to obtain all the necessary information from Mr. Baksh to complete her investigation because he refused to provide it. Mr. Baksh failed to attend before the PCC and made it clear he would not attend a PCC meeting or meet with the investigator.

23. In the submission of the PCC, Mr. Baksh’s failure to provide all the requested information, meet with the investigator and attend a meeting before the PCC prevented the PCC from fulfilling its mandate. The PCC has a duty to review all complaints and investigate any matters that may arise in the course of its review. Without having a full picture from Mr. Baksh in respect of firm registration issues and the nature of the work undertaken for clients, the PCC was unable to decide how to proceed with the matter.

24. As a result of Mr. Baksh’s lack of cooperation, the investigator could not complete her fact-finding report and the PCC could not carry out its mandate. Ms. Hersak submitted that Mr. Baksh’s conduct is contrary to Rules 104.1 and 104.2(c) of the CPA Code of Professional Conduct and he should be found guilty of the allegations of professional misconduct.

The Decision

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

DECISION

The Professional Conduct Committee having withdrawn Allegation Nos. 2 and 4

The Discipline Committee, having determined to proceed with the hearing in the absence of Tony Baksh (Mr. Baksh), being satisfied that he had proper notice of the hearing, and having seen, heard and considered the evidence, finds:

THAT Allegation Nos. 1 and 3 have been established;

THAT Rules 104.1 and 104.2(c) have been breached; and

THAT Mr. Baksh has thereby committed professional misconduct.

Reasons for Decision

26. Having seen, heard and considered the evidence provided on behalf of the PCC by Ms. Hersak, the tribunal concluded that the evidence was clear, cogent and convincing to prove the allegations on a balance of probabilities.

27. The privilege of membership in CPA Ontario carries with it a duty to actively co-operate with the regulator to resolve all matters where the regulator is acting to protect the public and the good name of the profession. This is essential to the viability of the profession continuing as a self-regulating profession. Failing to co-operate is a very serious matter, clearly constituting professional misconduct.

28. Mr. Baksh had been provided with several opportunities to provide the requested information and meet with the investigator, Ms. Ho James. He was given ample opportunity to comply with the various requests and requirements of the PCC, the investigator, Standards Enforcement and Counsel to the PCC. He provided superficial responses to the investigator, setting out his position, but he did not provide substantive responses or the specific information requested. Mr. Baksh chose not to comply with the direction given by CPA Ontario. For these reasons, the tribunal was satisfied that he had committed professional misconduct in respect of both allegations.

Sanction

29. Ms. Hersak 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; the usual order with respect to publicity and an order that Mr. Baksh co-operate by attending a meeting with the investigator prior to September 15, 2017, followed by suspension of membership for 30 days and then revocation including newspaper publicity if he does not co-operate. The PCC also sought an order that Mr. Baksh pay approximately two-thirds of the costs incurred.

30. Ms. Hersak submitted that a mitigating factor was that Mr. Baksh did respond to the initial complaint and did provide answers to some of the questions. She submitted that it was also a mitigating factor that Mr. Baksh had never been before a discipline tribunal of CGA Ontario or CPA Ontario.

31. The aggravating factors, Ms. Hersak submitted, included the fact that several attempts had been made to obtain additional information from Mr. Baksh. The information would not have been difficult to provide, and there was no evidence that Mr. Baksh had attempted to obtain the details requested. Ms. Ho James had been unable to complete her investigation, and the PCC had been unable to assess the matter. Mr. Baksh's refusal to provide further information and meet with the investigator had prevented the PCC from making a fully informed

decision and had impeded the PCC from carrying out its mandate. Mr. Baksh had not sought to facilitate the process by attending the scheduled PCC meeting or making himself available to meet with the investigator. His actions had wasted the time of staff, the investigator, the tribunal and the PCC, which could have been avoided by his co-operation. Ms. Hersak submitted that the aggravating factors far outweighed the mitigating factors of this case.

32. Ms. Hersak submitted that the sanctions requested would address general and specific deterrence, as well as rehabilitation and protection of the public.

33. Ms. Hersak stated that a reprimand acts as a specific deterrent and is intended to highlight the importance of co-operation with the PCC processes. The \$3,500 fine proposed in this case would act as a specific and general deterrent to like-minded members.

34. Ms. Hersak submitted that the order to co-operate and meet with the investigator would provide Mr. Baksh with an opportunity to prove he is still governable and respects the authority of his regulator. If he fails to co-operate, Mr. Baksh's membership would be suspended; continued lack of co-operation would demonstrate that he was not governable and would result in the revocation of his membership.

35. Publication is an effective general and specific deterrent and informs the public and the other provincial bodies of the conduct of members of CPA Ontario. Only rare and unusual circumstances would warrant a member's name not being publicized, and there was no evidence that such circumstances existed in this case.

36. Ms. Hersak filed a Costs Outline (Exhibit 8) showing the costs incurred for investigation and counsel fees to be just under \$18,050, of which the PCC was seeking partial indemnity costs of \$12,000. This amount reflected approximately two-thirds of the costs incurred, which reflected the usual practice at the time of the hearing. Ms. Hersak noted that costs are at the tribunal's discretion, and the PCC had no objection to allowing Mr. Baksh six months to one year to pay the costs and the fine requested.

37. Ms. Hersak distributed a case brief containing four matters involving failure to co-operate with the regulatory processes and submitted that the sanctions requested for Mr. Baksh are within the range of similar cases.

Order

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

IT IS ORDERED in respect of the Allegations:

1. THAT Mr. Baksh be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Baksh be and he is hereby fined the sum of \$3,500, to be remitted to the Chartered Professional Accountants of Ontario ("CPA Ontario") within six (6) months from the date this Decision and Order is made.
3. THAT Mr. Baksh be and he is hereby required to co-operate with the Professional Conduct Committee by attending a meeting with the investigator by September 15, 2017.
4. THAT notice of this Decision and Order, disclosing Mr. Baksh's name, be given

in the form and manner determined by the Discipline Committee:

- a) to all members of CPA Ontario,
 - b) to all provincial bodies,
- and shall be made available to the public.

5. THAT in the event Mr. Baksh 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 thirty (30) days from the date of his suspension. In the event he does not comply within the thirty (30) 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. Baksh's practice, residence or employment. All costs associated with this publication shall be borne by Mr. Baksh and shall be in addition to any other costs ordered by the Committee.

IT IS FURTHER ORDERED:

6. THAT Mr. Baksh be and he is hereby charged costs fixed at \$12,000, to be remitted to CPA Ontario within six (6) months from the date this Decision and Order is made.

Reasons for Sanctions

39. Mr. Baksh's misconduct required sanctions that would do three things: provide Mr. Baksh with an opportunity to demonstrate that he is governable; specifically deter Mr. Baksh from similar future misconduct; and deter other members from similar misconduct.

40. The term of the order requiring Mr. Baksh to co-operate with the PCC by attending a meeting with the investigator by September 15, 2017 would give Mr. Baksh an opportunity to demonstrate that he is governable.

41. The reprimand was imposed to stress to Mr. Baksh that his conduct was unacceptable.

42. The fine is intended to specifically deter Mr. Baksh from repeating his misconduct and also to deter other members from similar misconduct. The appropriate quantum was \$3,500, based on the range of fines in other cases, and six months was a reasonable amount of time in which he could pay it.

43. The general deterrence goal would not be achieved without publication because no one would know about the sanction. The profession must know about the response of CPA Ontario to this type of misconduct to be deterred from committing the same misconduct. Accordingly, publication was ordered.

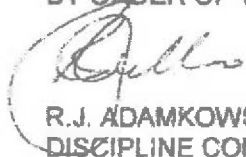
44. In the event Mr. Baksh fails to comply with the terms of this order, the tribunal concluded that this would constitute proof that Mr. Baksh is not governable. The tribunal ordered a suspension period intended to be a last opportunity for Mr. Baksh to comply and show he was governable, followed by revocation if he did not avail himself of that opportunity. Notice of such revocation of Mr. Baksh's membership in a local newspaper was then ordered to ensure the public is aware that CPA Ontario was serious about its regulatory role. There was no indication

that rare or unusual circumstances existed that would justify withholding Mr. Baksh's name from the notice.

Costs

45. Mr. Baksh's misconduct was the sole reason the costs set out in the Costs Outline, which the tribunal found to be reasonable, were incurred. The tribunal determined that the concept of partial indemnity was fairly applied by ordering Mr. Baksh to pay \$12,000 of these costs.

DATED AT TORONTO THIS 17TH DAY OF NOVEMBER, 2017
BY ORDER OF THE DISCIPLINE COMMITTEE



R.J. ADAMKOWSKI, CPA, CA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

G.G. IRELAND, CPA, CA

S.Z. SOMANI, CPA, CA

B. KUCHTA (PUBLIC REPRESENTATIVE)

THE CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
and
THE CERTIFIED GENERAL ACCOUNTANTS OF ONTARIO

(CHARTERED ACCOUNTANTS ACT 2010)
(CERTIFIED GENERAL ACCOUNTANTS ACT, 2010)

TO: TONY BAKSH, CPA, CGA

AND TO: The Discipline Committees of CPA Ontario and CGA Ontario

The Professional Conduct Committees of CPA Ontario and CGA Ontario hereby make the following Allegations against Tony Baksh, a Member of CPA Ontario and CGA Ontario:

1. THAT the said Tony Baksh, in or about the period December 1, 2016 to March 21, 2017 failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.1 of the CPA Code of Professional Conduct, in that:
 - a. he failed to provide information when requested to do so by the Professional Conduct Committee through its investigator; and
 - b. he failed to attend an interview as requested by the investigator appointed by the Professional Conduct Committee

2. THAT having been personally served with a Notice to a Member to Attend Before the Professional Conduct Committees of CPA Ontario and CGA Ontario pursuant to Regulation 7-1 s.18, the said Tony Baksh, on or about March 21, 2017, failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.2(c) of the CPA Code of Professional Conduct, in that he did not attend as required by the terms of the Notice.

Dated at Guelph, this 13th day of April, 2017.



D.J. CREMASCO, FCPA, FCA, DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE