

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: An Allegation against **Jules Mathieu, CPA, CGA**, a suspended 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-

Jules Mathieu

APPEARANCES:

For the Professional Conduct Committee: Kelvin Kucey, Counsel

For Mr. Mathieu: Self-represented

Heard: May 13, 2022

Decision and Order effective: May 13, 2022

Release of written reasons: May 26, 2022

REASONS FOR THE DECISION AND ORDER MADE MAY 13, 2022

I. OVERVIEW

- [1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario (“PCC”) has made Allegations that Mr. Mathieu failed to cooperate with the regulatory process of the Chartered Professional Accountants of Ontario (“CPA Ontario”) by failing to reply promptly to communications from the Standards Enforcement department of CPA Ontario (“Standards Enforcement”) from October 12, 2021 to December 1, 2021. This hearing was held to determine whether the Allegations were established and whether the conduct breached Rule 104.2 of the CPA Ontario Code of Professional Conduct and amounted to professional misconduct.

- [2] Mr. Mathieu gained membership to CPA Ontario in 2014. At all material times he was employed as a financial officer with Public Works and Government Services Canada in Gatineau, Quebec. He does not hold a Public Accounting Licence and does not operate within a registered firm. Mr. Mathieu's membership in CPA Ontario was suspended on July 14, 2021 for his failure to pay Annual Dues and complete his CPD requirements, and remained suspended at the date of the hearing.

II. THE COMPLAINT AND THE ALLEGATIONS

- [3] In early September, 2021, during the review of a related matter, Standards Enforcement recognized that Mr. Mathieu may be engaging in the practice of public accounting without having a registered firm with CPA Ontario and without having a valid and active Public Accounting Licence. Standards Enforcement opened a complaint against Mr. Mathieu and contacted him several times, requiring a response. Mr. Mathieu did not respond to any of the communications from Standards Enforcement.
- [4] Mr. Mathieu admitted the Allegations of failure to co-operate made by the PCC. The onus was on the PCC to show on a balance of probabilities that Mr. Mathieu's conduct breached Rule 104.2 of the CPA Ontario Code of Professional Conduct and constituted professional misconduct.

III. PRELIMINARY ISSUES

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

IV. ISSUES

- [6] The Panel 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

- [7] The Panel found that the evidence established, on a balance of probabilities, the

facts set out in the Allegations of professional misconduct.

- [8] The Panel was satisfied that the Allegations constituted a breach of Rule 104.2 and, having breached this Rule, Mr. Mathieu committed professional misconduct.

VI. REASONS FOR THE DECISION ON MISCONDUCT

Findings Regarding the Conduct of Mr. Mathieu

- [9] Evidence in support of the Allegations was placed before the Panel through an Agreed Statement of Facts (ASF), which was made Exhibit 1, and a Document Brief to the Agreed Statement of Facts, which was made Exhibit 2.
- [10] On September 10, 2021, Standards Enforcement became aware that Mr. Mathieu apparently prepared an Independent Auditor's Report dated March 24, 2019, on behalf of the election campaign of a candidate for a municipal council, notwithstanding that Mr. Mathieu did not have a registered firm with CPA Ontario and did not have a Public Accounting Licence.
- [11] Standards Enforcement opened a complaint against Mr. Mathieu, and by letter dated September 21, 2021, a Standards Enforcement officer wrote to him requesting a written reply by October 12, 2021. The letter was sent to Mr. Mathieu at his email address on record with CPA Ontario, but Standards Enforcement received an electronic reply indicating that the email was undeliverable. The next day Standards Enforcement staff telephoned Mr. Mathieu at his preferred telephone and mobile numbers on record with CPA Ontario and left voicemail messages at both numbers asking Mr. Mathieu to contact her. Mr. Mathieu did not respond to either the email or voicemail messages.
- [12] On September 24, 2021 Standards Enforcement staff sent a copy of the September 21, 2021 letter to Mr. Mathieu at his preferred address on record with CPA Ontario, by registered mail. Canada Post confirmed the letter was delivered on October 6, 2021. The signature indicated that delivery was accepted by "J. Mathieu." Mr. Mathieu did not respond to the letter that was sent by registered mail.
- [13] On October 20, 2021 Standards Enforcement staff again wrote to Mr. Mathieu by email and registered mail requesting a response to the earlier communications, and specifically cited his obligation to co-operate under Rule 104 of the CPA Ontario Code of Professional Conduct. A response was requested by November 3, 2021.
- [14] Also on October 20, 2021 Standards Enforcement staff again left voicemail

message at both of Mr. Mathieu's telephone numbers on record with CPA Ontario, advising him of the correspondence from Standards Enforcement and of his requirement to respond to it.

- [15] As of December 1, 2021, Mr. Mathieu failed to respond to the communications from Standards Enforcement.
- [16] Through the ASF Mr. Mathieu admitted the facts summarized above. The Panel was satisfied that the undisputed evidence in the ASF clearly and cogently demonstrated that the facts set out in the Allegations were established on a balance of probabilities.

Finding of Professional Misconduct

- [17] Through the ASF Mr. Mathieu admitted that these facts constitute professional misconduct in relation to the allegations of failing to comply with Rule 104.2 of the Code of Professional Conduct.
- [18] As the Panel in D'Orazio noted at para. 41:

It is integral that members of this profession respond promptly and substantively to complaints and to communications from CPA Ontario 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.

- [19] From this it follows, as the Panel in Baksh noted at para. 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. Failure to co-operate is a very serious matter, clearly constituting professional misconduct.

- [20] The Panel concluded that the Allegations, having been proven on the evidence, constituted a breach of Rule 104.2 of the Code.

VII. DECISION AS TO SANCTION

- [21] After considering the submissions of the PCC and of Mr. Mathieu, the Panel accepted the submissions of the PCC and concluded that the appropriate sanction was a reprimand, a fine of \$5,000 payable by December 30, 2023, and an order that Mr. Mathieu respond to the correspondence from Standards Enforcement by June 13, 2022, failing which Mr. Mathieu's membership would be revoked.

- [22] The Panel also ordered that if Mr. Mathieu's membership were revoked, the fact of the revocation would be published in a newspaper distributed in the geographic area of his practice.

VIII. REASONS FOR THE DECISION AS TO SANCTION

Position of the Parties

- [23] The PCC submitted that the appropriate sanction should consist of a reprimand, a fine of \$5,000 payable within 6 months, and a direction that Mr. Mathieu co-operate within 30 days of the order. The PCC further submitted that, if Mr. Mathieu failed to comply the terms of the order, his membership should be revoked.
- [24] In support of its position, the PCC relied on recent caselaw from the tribunal, which the PCC submitted established a fine of \$5000 as the standard fine for failure to co-operate. Specifically, the PCC identified the *D'Orazio* case as establishing the \$5,000 fine benchmark, which was subsequently adopted in *Ali, Cheng, and Little*. The PCC submitted that the caselaw on failure to co-operate emphasizes the importance of members complying with the regulatory processes of CPA Ontario. Failure to co-operate undermines CPA Ontario's ability to carry out its mandate.
- [25] In his submissions Mr. Mathieu apologized for his failure to respond to the communications from Standards Enforcement. He submitted that his lack of co-operation was not intentional but was the result of the number of things he was managing on the personal side at the time. He also submitted that he did not realize that he was required to respond to CPA Ontario communications during the period in which he was suspended, and that by the time he received the Notice of the Allegations he felt it was too late to respond. He acknowledged that he did not contact CPA Ontario at any time to confirm whether he was under an obligation to co-operate notwithstanding that he was suspended, or whether it was too late to co-operate after he received the Notice of Allegations.
- [26] Mr. Mathieu submitted that the fine sought by the PCC was too high, and would be onerous for him to pay given his financial situation. He asked that, in the circumstances, the Panel consider not imposing a fine, or imposing a smaller fine. He asked that, if a fine were imposed, he could be permitted additional time to pay the fine or permitted to pay the fine in installments. Mr. Mathieu did not otherwise dispute the position of the PCC on sanction.

Reasons for the Panel's Decision on Sanction

- [27] With respect to the PCC's request for a reprimand, a written reprimand clearly

communicates this Panel's censure to the Member, memorialized for all time. It is therefore a specific deterrent to the Member himself.

- [28] With respect to the order to co-operate, such an order gives the Member an opportunity to prove he is still governable, and respects the authority of his regulator. It gives him an opportunity to prove his remorse and rehabilitation.
- [29] As the Member is already suspended, the Panel agreed with the submission from the PCC that, in the event of a breach of the Order, Mr. Mathieu's membership should immediately be revoked. This provides both a specific and general deterrent.
- [30] With respect to the issue of whether the fine sought by the PCC is an appropriate sanction in this case, the Panel reviewed the cases referenced by the PCC, and also considered the Chartered Professional Accountants of Ontario Sanction Guidelines ["Sanction Guidelines"]. The Sanction Guidelines confirm there is no maximum or minimum fine that can be imposed, and that an appropriate fine ensures that the principles of specific and general deterrence are achieved, the public is protected, the reputation of the profession is maintained, such that the fine is not so small as to merely represent the costs of doing business or a licence fee.
- [31] Furthermore, the Discipline Committee is not bound by its prior decisions. As the Sanction Guidelines state:

In exercising its discretion, the Discipline Committee may consider any sanction previously ordered in circumstances involving similar types of professional misconduct. However, the Discipline Committee is not bound by its prior decisions. While prior decisions may be of assistance, a sanction will ultimately be determined by the Discipline Committee in light of the specific facts of the particular case and of current circumstances and concerns of the public and the profession.

- [32] The Panel adopts the reasoning expressed in *Little* at para. 35:

The Panel is not bound by previous decisions of the Discipline Committee, but in general, like cases should be treated alike. The penalty imposed should be in keeping with previous decisions in similar cases and be proportionate to the nature of the misconduct and circumstances of the specific case. A review of recent cases addressing a member's failure to cooperate reveals a relative uniformity in the sanction imposed for this professional misconduct, including written reprimands, fines up to \$5,000, the requirement to co-operate within a defined time period, and the consequences (suspension and/or revocation) in the event of non-compliance with the Panel's order. The *D'Orazio* case provides a recent

example of this approach.

- [33] The Panel finds that a fine is necessary in the circumstances of this case to emphasize to Mr. Mathieu and the membership at large the importance that every Member co-operate with CPA Ontario, so that it is able to fully and promptly investigate all complaints within its purview. It must be clear to all members of the profession, and to the public, that non-co-operation leads to serious consequences.
- [34] With respect to the quantum of the fine, the Panel does not consider the \$5000 fine sought by the PCC to be a standard fine, a floor beneath which the Panel may not fall, or a ceiling beyond which it may not venture. The Panel does find that a \$5000 fine is appropriate in this case. The Panel recognizes there was no evidence presented to suggest that Mr. Mathieu had a prior disciplinary history, and that he should be credited with accepting responsibility for his misconduct through admitting the allegations, agreeing to the statement of facts, and agreeing to most of the PCC's submissions on sanction. The Panel also notes that Mr. Mathieu expressed remorse for his misconduct.
- [35] The Panel does not accept as justification for Mr. Mathieu's failure to co-operate his misguided notion that he was under no obligation to respond to CPA Ontario while he was suspended, and notes that Mr. Mathieu failed to follow up with CPA Ontario so that he could be set straight on his error. Had Mr. Mathieu returned the calls from CPA Ontario, he may also have learned that nothing prevented him from co-operating with the investigation even after he received the Notice of Allegations.
- [36] The Panel found that Mr. Mathieu's submissions regarding his difficulty in paying a fine of this amount should be addressed through extending the time required to pay, rather than reducing the amount of the fine, in order to not dilute the deterrence effect of the fine or the weight of this Panel's message to Mr. Mathieu that his responsibility to co-operate with CPA Ontario is not optional.

IX. COSTS

- [37] The law is settled that an order against Mr. Mathieu 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 of the costs of the investigation, prosecution and hearing arising from the member's misconduct.
- [38] Costs are awarded at the discretion of the Discipline Committee. Pursuant to

paragraph 40 of By-Law 6-2, this Panel may require Mr. Mathieu to pay all or part of the costs of the investigation and the hearing.

- [39] It has become customary for the PCC to file a Costs Outline in the same form as used in civil proceedings, and to seek 2/3 of the costs incurred in the investigation and prosecution of the matter.
- [40] The PCC Costs Outline is found at Exhibit 3. It totals \$4,842.41, 2/3 of which is approximately \$3,200.00, the amount sought by the PCC. Mr. Mathieu agrees with the PCC cost submission.
- [41] As there is nothing exceptional in this case to justify varying from the usual partial indemnity rate, the Panel orders a cost award of \$3,200.00, payable by December 30, 2023.

Dated this 26th day of May, 2022



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

Members of the Panel

Catherine Wong, CPA, CA, PMP
Olga Wong, CPA, CGA
Catherine Kenwell, Public Representative

Independent Legal Counsel

John Dent, Barrister & Solicitor