

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **MARK A. WALES, CPA, CA**, a 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-

Mark A. Wales

APPEARANCES:

For the Professional Conduct Committee:	Julia McNabb, Counsel
For Mr. Wales:	Not Present and Not Represented
Heard:	October 20, 2022
Decision and Order effective:	October 20, 2022
Release of written reasons:	November 11, 2022

REASONS FOR THE DECISION AND ORDER MADE OCTOBER 20, 2022

I. OVERVIEW

- [1] This case is about the Member's failure to cooperate with his governing body with respect to three investigations. Three complaints were filed against the Member on August 26, 2020, January 19, 2021, and February 25, 2022. Investigations were opened in respect of each complaint and multiple attempts to communicate with the Member were made. The Member failed to respond to any of Standards Enforcement staff's requests for information in relation to each of these complaints. As a result, staff were unable to investigate the complaints. On June 3, 2022, Standards Enforcement staff opened three new files relating to the Member's failure to cooperate with each of the three investigations.

- [2] The evidence in support of the three allegations was tendered in the form of the Affidavit of Alberta Tam, affirmed September 30, 2022, and marked Exhibit 2.
- [3] The Member's failure to cooperate with his governing body lasted for a period of almost two years. This is unacceptable by any standard.

II. THE ALLEGATIONS

- [4] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario ("PCC") has made the following Allegations against the Member:
 - 1. THAT the said Mark A. Wales, in or about the period December 4, 2020 to July 6, 2022 failed to cooperate with the regulatory process of CPA Ontario, contrary to Rule 104.2 of the CPA Code 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 written from Standards Enforcement staff dated November 13, 2020, January 5, 2021, June 30, 2021, March 24, 2022, and April 25, 2022.
 - 2. THAT the said Mark A. Wales, in or about the period May 14, 2021 to July 6, 2022 failed to cooperate with the regulatory process of CPA Ontario, contrary to Rule 104.2 of the CPA Code 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 written from Standards Enforcement staff dated April 22, 2021, June 23, 2021, March 24, 2022, and April 25, 2022.
 - 3. THAT the said Mark A. Wales, in or about the period April 14, 2022 to July 6, 2022 failed to cooperate with the regulatory process of CPA Ontario, contrary to Rule 104.2 of the CPA Code 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 written from Standards Enforcement staff dated March 24, 2022, April 25, 2022, and May 19, 2022.

III. PRELIMINARY ISSUES

- [5] The Member did not appear at his hearing, nor was he represented. Counsel for the PCC, Julia McNabb, tendered the Affidavit of Alyssa Grace Girardi, a Professional Standards Coordinator with CPA Ontario. Ms. Girardi's Affidavit, affirmed September 30, 2022, was marked as Exhibit 1 to the hearing. The Panel was satisfied from reviewing Ms. Girardi's Affidavit that the Member was aware of the proceedings, and was properly informed of the date of the proceedings.
- [6] Specifically, on July 20, 2022, a process server attended at the Member's home office

and personally served the Member with the Allegations of professional misconduct. Accompanying the Allegations was correspondence from Ms. McNabb. The letter clearly states that should the Member fail to communicate with the Tribunals Office, a date for a discipline hearing could be set without his participation or consent.

- [7] On August 3, 2022, Counsel for the PCC filed the Allegations with the Tribunals Office, via email. The Member was copied on this correspondence to his e-mail address on record with CPA Ontario. Between August 4 and September 22, 2022, the Member was written to or copied on four emails from the Tribunals Office. The subject of each of these emails was the scheduling of hearing dates. The Member did not engage.
- [8] On September 26, 2022, the Tribunals Office emailed the parties, attaching a Notice of Hearing for a single day hearing on October 20, 2022, to commence at 9:30 a.m.
- [9] The Panel is satisfied that the Member was properly served with both the Allegations and the Notice of Hearing, in accordance with Rule 8.01 of the *Rules of Practice and Procedure*. The hearing proceeded in the Member's absence.

IV. ISSUES

- [10] 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?
 - C. If the answer to B. is yes, what is the appropriate sanction?

V. DECISION AND ORDER

- [11] The Panel found that the evidence established, on a balance of probabilities, the facts set out in the Allegations of professional misconduct.
- [12] The Panel was satisfied that the Allegations constituted a breach of Rule 104.2 of the *CPA Ontario Code of Professional Conduct*, and, having breached these Rules, the Member committed professional misconduct.
- [13] The Panel imposed the following Order on sanction and costs:
 - 1. Mark A. Wales be reprimanded in writing by the Chair of the hearing;
 - 2. Mark A. Wales shall pay a fine of \$10,000 to the Chartered Professional

Accountants of Ontario ("CPA Ontario") by April 20, 2023;

3. Mark A. Wales shall cooperate with the Professional Conduct Committee by November 4, 2022 by providing full responses to the correspondence from Standards Enforcement staff relating to files 612428, 612824, 613309;
4. Notice of this Decision and Order, disclosing Mark A. Wales' name, is to 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. In the event Mark A. Wales fails to comply with the terms of this Order, his membership in CPA Ontario shall be suspended 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, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mark A. Wales' practice. All costs associated with this publication shall be borne by Mark A. Wales and shall be in addition to any other costs ordered by the Panel.

AND THAT:

6. Mark A. Wales shall pay costs of \$3,400 to CPA Ontario by April 20, 2023.

VI. REASONS FOR THE DECISION ON MISCONDUCT

Findings Regarding the Conduct of Mr. Wales

- [14] Over a period of 23 months, in relation to three investigations, the Member received 19 communications from Standards Enforcement staff. The communications were sent to the Member's email address on record with CPA Ontario and to two of the Member's phone numbers on record with CPA Ontario. The Member did not respond to any communication, nor did he provide the requested information.

[15] The chart below sets out the dates and format of the requests:

	DATE	Format of Request
Complaint #1	November 13, 2020	Email
	January 7, 2021	Email (enclosing letter dated January 5, 2021)
	January 8, 2021	Telephone (left voicemail on one number)
	February 18, 2021	Telephone (left voicemail on one number)
	June 30, 2021	Email
	March 24, 2022	Email
	April 25, 2022	Email
Complaint #2	April 22, 2021	Email
	June 23, 2021	Email
	March 24, 2022	Email
	April 25, 2022	Email
Complaint #3	March 24, 2022	Email
	April 25, 2022	Email
	May 19, 2022	Email
	June 3, 2022	Telephone (left voicemail on two numbers)
All Three Complaints	March 24, 2022	Telephone (left voicemail on two numbers)
	April 22, 2022	Telephone (left voicemail on two numbers)
	May 11, 2022	Telephone (left voicemail on two numbers)
	May 11, 2022	Email

[16] Most of the emails sent by Standards Enforcement staff to the Member provided him with a link to FileCloud, a secure file sharing program that allows users to exchange documents. The FileCloud links sent to the Member contained documents relevant to the investigation, which could be downloaded by the Member. Some of the emails also attached the documents (password protected), to ensure the Member could access the documents without having to download them from FileCloud. A second email would then be sent providing the Member with the password. We were informed by Counsel for the PCC that this was an additional step taken by staff in response to the Member's complete lack of engagement.

[17] None of the emails sent to the Member by Standards Enforcement staff were returned as undeliverable. The voicemail messages left by staff followed outgoing messages identifying the phone numbers called as belonging to "Mark".

- [18] In order to prove the facts underlying the misconduct, the PCC only had to prove that the requests were made to the email address and telephone number on record with CPA Ontario. In addition, however, Counsel for the PCC provided evidence demonstrating that on March 7, 2021 and June 23, 2021, the Member downloaded information uploaded to FileCloud by staff. The downloaded information was provided to the Member via three separate emails. The Panel was informed that the Member's action in downloading the information from FileCloud, was indicative of his receipt of staff's emails.
- [19] The Panel finds that the PCC has proved the facts underlying the misconduct on a balance of probabilities. Indeed, Standards Enforcement staff made every foreseeable attempt to ensure the Member had notice of their requests for information.

Finding of Professional Misconduct

- [20] Rule 104.2 of the *CPA Ontario Code of Professional Conduct* requires members to cooperate with the regulatory processes of CPA Ontario. For ease of reference Rule 104 is set out below:
- 104.1 A member or firm shall co-operate with the regulatory processes of CPA Ontario.
- 104.2 A member or firm shall:
- (a) promptly reply in writing to any communication from CPA Ontario in which a written reply is specifically required;
 - (b) promptly produce documents when required to do so by CPA Ontario; and
 - (c) attend in person in the manner requested when required to do so by CPA Ontario in relation to the matters referred to in Rule 104.1.
- [21] There is no question that the Member breached Rules 104.1 and 104.2. Not only did the Member fail to respond promptly to staff's requests for information, he failed to respond at all. The Panel has no trouble finding that the Member committed professional misconduct in the manner alleged.

VII. REASONS FOR DECISION AS TO SANCTION

Evidence in Relation to Sanction

- [22] No additional evidence was led by Counsel for the PCC in relation to sanction. As the Member was neither present nor represented, he did not provide evidence in relation to sanction. Counsel for the PCC informed the Panel that the one mitigating factor on

sanction was that the Member does not have a discipline history.

The PCC's Submission on Sanction

[23] Counsel for the PCC sought the following sanction:

1. Mark A. Wales be reprimanded in writing by the Chair of the hearing;
2. Mark A. Wales shall pay a fine of \$8,000 to the Chartered Professional Accountants of Ontario ("CPA Ontario") by April 20, 2023;
3. Mark A. Wales shall cooperate with the Professional Conduct Committee by November 20, 2022 by providing full responses to the correspondence from Standards Enforcement staff relating to files 612428, 612824, 613309;
4. Notice of this Decision and Order, disclosing Mark A. Wales' name, is to 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. In the event Mark A. Wales fails to comply with the terms of this Order, his membership in CPA Ontario shall be suspended 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, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mark A. Wales' practice. All costs associated with this publication shall be borne by Mark A. Wales and shall be in addition to any other costs ordered by the Panel.

AND THAT:

6. Mark A. Wales shall pay costs of \$3,400 to CPA Ontario by April 20, 2023.

[24] As is set out in paragraph 13 above, the Panel accepted counsel's submission with two variations:

1. The Panel imposed a \$10,000 fine rather than the \$8,000 proposed by Counsel for the PCC; and
2. The Panel gave the Member 15 days rather than 30 days to cooperate fully with Standard Enforcement staff's requests for information prior to being suspended.

The \$10,000 Fine

- [25] Typically, when a member fails to cooperate with CPA Ontario's regulatory process, a \$5,000 fine is imposed. This, however, is usually in matters where the member failed to respond to requests for information in relation to **one** investigation. When multiple investigations are involved, a stronger rebuke is necessary.
- [26] In *CPA Ontario v. Hametaj* (March 30, 2021), the member failed to cooperate with requests for information in relation to three investigations. Counsel for the PCC requested a fine of \$10,000, while Mr. Hametaj requested a fine of \$4,000. The Panel imposed a fine of \$8,000. In doing so, the Panel took into account the following aggravating (a and b) and mitigating (c to e) factors:
- a. The failure to respond involved three investigations;
 - b. The duration of the misconduct was inordinately long – 11 months;
 - c. Mr. Hametaj accepted responsibility for his conduct and signed an ASF;
 - d. Mr. Hametaj submitted a substantive response to CPA Ontario the evening before the hearing. Although staff did not have an opportunity to review and assess the response for completeness, the fact of the submission was acknowledged on the record by both parties; and
 - e. During the period of non-cooperation, Mr. Hametaj experienced a number of hardships which contributed to his failure to cooperate. Those hardships included a marital breakdown, the ill health of his father, and significant turnover at Mr. Hametaj's company.
- [27] The Panel in *CPA Ontario v. Hametaj* concluded that the length of time (11 months) over which Mr. Hametaj failed to cooperate, in conjunction with the fact that the failure to cooperate involved three investigations necessitated a more significant fine than the standard \$5,000. However, the Panel did not accept that it was appropriate to impose a \$10,000 fine, representing double the prevailing norm. Taking into account both the aggravating and mitigating factors, the Panel held that a fine in the amount of \$8,000 would achieve the goals of specific deterrence, general deterrence and the maintenance of public confidence in the profession.
- [28] Counsel for the PCC also provided the Panel with a second decision, also involving Mr. Hametaj (2022). In the second decision, the Panel imposed a fine of \$10,000 due to the fact that this was Mr. Hametaj's second finding of misconduct for failing to cooperate with CPA Ontario's regulatory process.
- [29] In the case before us, the Member failed to cooperate with CPA Ontario's regulatory process for almost two years. His failure to cooperate has frustrated three separate investigations. The Member's conduct demonstrates a lack of respect for the process

and undermines the ability of CPA Ontario to fulfill its mandate to effectively regulate the profession. A member cannot shirk their responsibilities to respond to their regulator while continuing to practice and enjoy the benefits of their designation. In the matter before us, the Member has not appeared, and unlike Mr. Hametaj (2021), has not provided the Panel with evidence of any mitigating factors. Absent any significant mitigating factors, it is our view that a fine of \$10,000 is an appropriate and necessary tool with which to maintain the high ethical standards of the profession and to promote public confidence in the ability of CPA Ontario to govern the profession in the public interest.

The Imposition of a 15-Day Time Frame to Cooperate Prior to Suspension

[30] Typically, in non-cooperation cases, the member is given 30 days to cooperate with the regulatory process prior to being suspended. In this matter, the Member has failed to cooperate with CPA Ontario's regulatory process for 23 months. This far exceeds the duration of misconduct in the cases Counsel for the PCC presented to the Panel (1.5 to 11 months). It is not in the public interest to permit Mr. Wales to continue practicing for another 30 days when he has had nearly two years to respond to requests for information from Standards Enforcement staff.

[31] In *CPA Ontario v. Hametaj* (2022), the Panel gave Mr. Hametaj 15 days to cooperate with the regulatory process, failing which his license would be revoked. The 15-day time frame was imposed in recognition of the fact that this was Mr. Hametaj's second time in discipline. In their reasons on sanction, the Panel made the following observations about the need for a strong response to a continued failure to cooperate:

[57] ... a member's failure to cooperate delays investigations, jeopardizes the collection of evidence including documents that are destroyed over time, and the erosion of the recollection of witnesses, and ultimately results in a backlog of investigations. This can all lead to erosion of public confidence in the self-regulatory authority of the tribunal. Furthermore, members must be aware that their failure to co-operate and respond in a prompt and substantive fashion results in the implementation of a second investigative process to compel the member's compliance. This diverts CPAO attention from the primary complaint or investigation at a cost of time and resources funded by all members. The failure to cooperate cannot be condoned by sanctions that amount to little more than the cost of doing business.

[32] The Panel agrees with those comments and believes that the imposition of a 15-day time frame within which to respond to these investigations is appropriate in this instance. The Member's lack of response over a 23-month period is unacceptable. This time frame will send a strong message to the Member, the profession, and the public that CPA Ontario roundly condemns continued failures to cooperate.

VIII. COSTS

- [33] The law is settled that an order against a member 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 the costs of the investigation, prosecution and hearing arising from the member's misconduct.
- [34] Costs are awarded at the discretion of the Discipline Committee. It has become customary for the PCC to file a Costs Outline, and to seek 2/3 of the costs incurred in the investigation and prosecution of the matter.
- [35] Counsel for the PCC filed a Costs Outline demonstrating that the costs for the prosecution of this matter amounted to \$5,162.18. The Costs Outline did not include the costs of the investigation. Counsel for the PCC requested a costs order in the amount of \$3,400, payable by April 20, 2023.
- [36] The Panel accedes to the request of the PCC for costs, and orders a cost award of \$3,400, payable by April 20, 2023.

DATED this 11th day of November, 2022



Andrea Mintz, CPA, CA, LPA
Discipline Committee – Deputy Chair

Members of the Panel

Alexander Metaxas-Mariatos, CPA, CMA
Richa Khanna, CPA, CA, LPA
David Handley, Public Representative

Independent Legal Counsel

Lisa Freeman, Barrister & Solicitor