

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** An Allegation against **David A. Young, 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-**

**David A. Young**

**APPEARANCES:**

<b>For the Professional Conduct Committee:</b>	Jonathan Smith, Counsel
<b>For David A. Young:</b>	Not Present and Not Represented
<b>Heard:</b>	January 24, 2024
<b>Decision and Order effective:</b>	January 24, 2024
<b>Release of written reasons:</b>	March 21, 2024

**REASONS FOR THE DECISION AND ORDER MADE JANUARY 24, 2024**

**I. OVERVIEW**

- [1] The Professional Conduct Committee (“PCC”) of the Chartered Professional Accountants of Ontario (“CPA Ontario”) alleged that in or about the period of June 12, 2023 and September 13, 2023, David A. Young (“Member”) failed to cooperate with the regulatory process of CPA Ontario contrary to Rule 104.2 of the CPA Ontario Code of Professional Conduct (“Code”) when he failed to promptly reply in writing as required to communications from CPA Ontario.
- [2] This hearing was held to determine whether the PCC had proven on a balance of probabilities that there was a breach of Rule 104.2 as alleged, and whether the breach amounted to professional misconduct.

**II. THE COMPLAINT AND THE ALLEGATION**

- [3] On March 6, 2023, CPA Ontario received a complaint from a former client of the Member. The former client alleged that the Member did not respond in a timely fashion to his communications and that the Member failed to provide the services agreed to.
- [4] On April 27, 2023, an email was sent to the Member's preferred email address of record advising him that correspondence had been uploaded to FileCloud. The correspondence notified the Member of the complaint and requested a response be provided in accordance with Rule 104 of the Code on or before May 18, 2023. A copy of the complaint was also uploaded to FileCloud.
- [5] Numerous requests for the Member's response to the complaint were sent from a CPA Ontario Standards Enforcement Officer to the Member by email to his preferred email address on record, including in correspondence dated May 31, 2023, June 19, 2023 and July 27, 2023. The Member provided no written response to the complaint.
- [6] On September 13, 2023, the matter was brought before the PCC and on September 26, 2023, an Allegation of Professional Misconduct ("Allegation") was issued alleging that the Member had failed to cooperate with the regulatory process of CPA Ontario, contrary to Rule 104.2 of the Code, in or about the period of June 12, 2023 and September 13, 2023. It was alleged that the Member had failed to promptly reply in writing to communications from CPA Ontario to which a written reply was specifically required, namely correspondence from a Standards Enforcement Officer, dated May 31, 2023, June 19, 2023 and July 27, 2023.

### **III. PRELIMINARY ISSUES**

- [7] The Member did not attend the hearing, nor did he seek an adjournment of the hearing. The PCC requested that the Panel proceed in the absence of the Member. In order to determine whether it would proceed with the hearing in the absence of the Member, the Panel had to determine whether the Member had received proper notice of the Allegation and of the hearing.
- [8] The PCC filed the Affidavit of Alyssa Grace Girardi affirmed on January 23, 2024 (Exhibit 1) which contained the Affidavit of Service of Beatrice Li, Process Server, sworn on October 5, 2023 (Exhibit A of Ms. Girardi's Affidavit). On October 3, 2023, Ms. Li personally served the Member with the Allegation and with a letter from Professional Standards Counsel ("PCC Counsel") dated September 26, 2023, containing information and resources regarding the disciplinary process. PCC Counsel advised the Member that he had 30 days within which to provide information to the Tribunal required to schedule the discipline hearing, failing which "a date for a discipline hearing may be set without your participation or consent." Contact information for both the Tribunals Office and PCC Counsel were provided in the letter.
- [9] PCC Counsel filed a copy of the Allegation with the Tribunals Office by email on October 12, 2023, as well as a copy of the Affidavit of Service on the Member. In an accompanying letter, PCC Counsel provided the Tribunals Office with his availability and position on the scheduling of the discipline hearing. The Member was copied on this correspondence at his preferred email address of record. None of the emails sent to the Member's preferred

email address were returned “undeliverable”.

- [10] On October 13, 2023, the Tribunals Office wrote to PCC Counsel and the Member by email, confirming receipt of the Allegation and seeking information from the parties in order to set a date for a Pre-Hearing Conference and for the disciplinary hearing. The parties were asked to respond with dates by November 13, 2023.
- [11] On October 19, 2023, PCC counsel wrote to the Member by email sent to his preferred email address of record providing documents the PCC intended to rely on at the discipline hearing. PCC Counsel also advised the Member of the PCC’s position on sanctions in the event a finding of professional misconduct was made. PCC Counsel reminded the Member of his obligations to provide information to the Tribunals Office that is required to set the discipline hearing. PCC Counsel advised the Member that if he did not provide the information requested of him to the Tribunals Office, a date for a disciplinary hearing might be unilaterally set by the Tribunals Office. PCC Counsel invited the Member to contact him with any questions.
- [12] As the Member did not respond to the Tribunals Office’s requests for hearing dates, on November 14, 2023, the Tribunals Office sent an email to the Member’s preferred email address of record providing him with a final extension of 3 days within which to provide the previously requested information. The Member was advised that if he failed to respond, a hearing would be scheduled without notice to him. The Member did not respond.
- [13] Having received no response from the Member to its November 14, 2023 correspondence, the Tribunals Office again wrote to the Member on November 22, 2023 at his preferred email address of record, advising that it would be proceeding to schedule a one day electronic hearing in the month of January 2024. The Member was requested to provide his availability on any of the dates set out in the email by November 27, 2023. The Tribunals Office invited the parties to contact it should there be any questions. The Member did not respond.
- [14] On November 29, 2023, the Tribunals Office sent an email to the Member and PCC Counsel advising that a discipline hearing had been set for January 24, 2024 at 9:30 a.m. In addition to providing the Notice of Hearing dated November 29, 2023, the email contained the Tribunal Guide to Electronic Hearings and a schedule for the filing of documents and a witness list in advance of the hearing which were to be provided by January 17, 2024. The parties were asked to confirm receipt of the schedule. The Member did not respond.
- [15] On January 16, 2024, on behalf of the PCC Counsel, copies of documentation the PCC intended to rely on at the disciplinary hearing, namely the Affidavit of Tatiana Rabinovitch, a Brief of Authorities, a Costs Outline and a draft Decision and Order were emailed to the Tribunals Office and copied to the Member. An updated Costs Outline and updated draft Decision and Order were sent on January 19, 2024 to the Tribunals Office and copied to the Member to his preferred email address of record. The email invited the parties to contact the Professional Standards Coordinator or PCC Counsel with any questions.
- [16] On Friday, January 19, 2024, shortly before 3:00 p.m. the Member left a voice mail message for PCC Counsel. According to PCC Counsel, the Member indicated he had noticed an email from PCC Counsel “the other day” and that he did not monitor his email account. The

Member confirmed his understanding that “there’s something next Wednesday” and advised he would not be able to attend due to a family or personal commitment. The Member indicated that had CPA Ontario called his office, his voicemail message would have revealed the issues he had been dealing with. The Member also indicated he does not rely on email.

- [17] Shortly after having received the voicemail message from the Member, PCC Counsel contacted him by telephone. PCC Counsel summarized the notes he made of their discussion in an email sent to the Member and copied to the Tribunals Office on January 22, 2024 (“summary”).
- [18] According to PCC Counsel’s summary of their January 19, 2023 telephone conversation, the Member had advised he had been dealing with personal and medical issues in the past year. The Member advised that he did “not really check (his) email” and that he had close to 1,000 unread messages in his inbox. The Member advised that his preferred email address on file with CPA Ontario was not the right email to be using to communicate with him. He informed PCC Counsel that had CPA Ontario called him, they would have received an outgoing message explaining the issues he was facing. While the Member suggested CPA Ontario could have communicated with him by mail to his PO Box, he understood that this was not possible.
- [19] The Member also advised PCC Counsel that he would not be attending the upcoming disciplinary hearing because he does not use virtual tools and would be attending a funeral. The Member expressed regret for not responding to CPA Ontario, but indicated he could not attend the hearing and was unavailable. According to the summary, PCC Counsel explained the potential sanctions the Member could be facing in the event the hearing proceeded and a finding of professional misconduct was made. The Member indicated that he would pay any fines if ordered and was aware of the potential consequences, including revocation should he be ordered to cooperate and fail to do so. The Member did not indicate he wanted to adjourn the hearing.
- [20] PCC Counsel advised the Member that if there was a medical issue he wanted the Discipline Committee to consider in assessing whether the hearing should proceed, or on the issues of conduct and possibly sanction, PCC Counsel would present such information to the Discipline Committee. The Member responded that he would not be providing any documents and that “there won’t be anything”.
- [21] PCC Counsel advised that the PCC would ask that the hearing proceed in the absence of the Member. He further advised that the decision as to whether the discipline hearing would proceed in the Member’s absence would be made by the Discipline Committee. If the Discipline Committee were to proceed with the hearing in the Member’s absence, the Discipline Committee would decide whether the Member engaged in professional misconduct for not cooperating with Standards Enforcement during the complaint review. The PCC would ask that sanctions be imposed if such a finding was made. In response, the Member advised that, based on his overall circumstances, he “(didn’t) have the window or time to deal with it now”.
- [22] On January 22, 2024, PCC Counsel sent an email to the Member to four email addresses, including the Member’s preferred email address. The email summarized the January 19,

2024 telephone conversation between the two parties.

- [23] On January 24, 2024, the Member sent an email to PCC Counsel, attaching a letter (Exhibit 2). The letter referenced an email address for the Member which was not one of the four email addresses PCC Counsel had sent his January 22, 2024 email to, nor was this new email address listed as the Member's preferred or alternate email address with CPA Ontario.
- [24] In his letter sent on January 24, 2024, the Member responded to the points set out in PCC Counsel's email of January 22, 2024, by providing further details regarding: his medical situation since 2015; the difficulties he had encountered trying to find other CPAs to take on his clients, and the struggles the Member has faced dealing with his practice and his health issues. Despite indicating he was experiencing difficulties completing tasks in a timely manner, the Member appears to be continuing to practice. Despite indicating that his medical condition impacted his ability to communicate with CPA Ontario, it appears from his January 24, 2024 letter that the Member continues to practice.
- [25] Despite noting that he would be out of town attending a family funeral service on the day of the hearing, the Member again did not indicate he wanted an adjournment of the hearing. Nor did the Member advise he would have someone else attend the hearing on his behalf. He provided no evidence to corroborate his position that he was unable to participate in the hearing.
- [26] On January 24, 2024, the Member did not attend the hearing, nor did anyone appear on his behalf. PCC Counsel took the position that the hearing should proceed in the Member's absence.
- [27] After carefully considering the evidence before it, the Panel was satisfied that the Member was aware of the Allegation made against him and of the upcoming hearing date. The Member was personally served with the Allegation. A number of emails regarding the scheduling of the hearing were sent by the Tribunals Office and PCC Counsel to the Member's preferred email of record. None of these communications were returned "undeliverable". The Notice of Hearing date was emailed to the Member on November 29, 2023, to his preferred email address of record. The email was not returned "undeliverable". It is clear from the Member's telephone conversation with PCC Counsel on January 19, 2024, the Member was aware of the discipline hearing set for January 24, 2024, and that the PCC would be asking that the hearing proceed in the Member's absence.
- [28] PCC Counsel communicated the PCC's position on sanction to the Member in his email of October 19, 2023 in the event a finding of professional misconduct for failure to cooperate with CPA Ontario be made. In his telephone conversation with the Member on January 19, 2024, PCC Counsel also explained the potential sanctions that the Member could be facing if the Discipline Committee chose to proceed in his absence and if a finding of professional misconduct was made.
- [29] Despite being aware of the potential consequences for not attending the hearing, the Member did not indicate he wanted an adjournment of the hearing in either his telephone conversation with PCC Counsel on January 19, 2024, or in his email of January 24, 2024.

- [30] Given its determination that the Member had proper notice of both the Allegation made against him and of the hearing date, the Panel proceeded to consider the Allegation of professional misconduct in the Member's absence.

#### **IV. ISSUES**

- [31] In order to determine whether the Member had engaged in professional misconduct as alleged, the Panel went on to consider the following issues:
- a) Did the evidence establish, on a balance of probabilities, the facts on which the Allegation by the PCC was based?
  - b) If the facts alleged by the PCC were established on the evidence on a balance of probabilities, did those facts constitute professional misconduct?

#### **V. DECISION**

- [32] The Panel found that the evidence presented by PCC Counsel did establish, on a balance of probabilities, that in or about the period of June 12, 2023 and September 13, 2023, the Member failed to cooperate with the regulatory process of CPA Ontario. In so doing, the Panel found the Member had breached Rule 104.2 of the Code.
- [33] The Panel went on to find that the Member's repeated failure to promptly reply in writing, as specifically required, to correspondence dated May 31, 2023, June 19, 2023 and July 27, 2023 from a Standards Enforcement Officer, amounted to professional misconduct.

#### **VI. REASONS FOR THE DECISION ON MISCONDUCT**

##### *Findings Regarding the Conduct of the Member*

- [34] The evidence presented by PCC Counsel consisted of the Affidavit of Alyssa Girardi affirmed on January 23, 2024 (Exhibit 1), the letter of the Member sent to PCC Counsel on January 24, 2024 (Exhibit 2), and the Affidavit of Tatiana Rabinovitch affirmed on January 12, 2024 (Exhibit 3). PCC Counsel did not call any witnesses.
- [35] On March 6, 2023, CPA Ontario received a complaint from a former client of the Member. The complainant alleged that the Member had failed to complete T1s for her and her spouse for 2014 to 2017 despite having delivered their records for these years to the Member in the fall of 2015, spring of 2016 and on July 12, 2019. The complainant and her brother, who had originally referred her to the Member, called and emailed the Member. The Member eventually responded, apologizing and explaining that he had been dealing with a family member's health issues. He gave assurances that he would attend to the filings and personally address interest issues arising from the delayed filings. Despite his assurances, nothing was done. The complainant continued to contact the Member. The complainant advised that the Member did not respond, and the filings had not been completed.

##### **A. First Email to Member**

- [36] On April 27, 2023, Standards Enforcement Staff ("SE Staff") wrote to the Member at his

preferred email address on record with CPA Ontario, advising that correspondence had been uploaded to FileCloud. In the body of the email, SE Staff advised the Member that a written reply to the letter was required in accordance with Rule 104 of the Code on or before May 18, 2023. The email was not returned “undeliverable”.

- [37] The correspondence uploaded to FileCloud was a letter dated April 27, 2023, advising the Member of the complaint and requesting a response, in accordance with Rule 104 of the Code, no later than May 18, 2023. The letter also advised that a failure to respond to the letter would be referred to the PCC and could result in an allegation or allegations of professional misconduct. According to the FileCloud activity log, the Member viewed this correspondence on April 27 and May 12, 2023.
- [38] On May 18, 2023, the Member sent an email from his preferred email address on record to Standards Enforcement advising that he was unable to access the documents in FileCloud and was unable to upload his correspondence.
- [39] Attached to the Member’s email was an undated letter in which the Member requested an extension “due to personal health matters and family events that have occurred impacting [his] ability to process matters in a timely manner.” He also advised that due to the time of year, he would not have time to properly respond. The Member did not indicate how long of an extension he required. The Member also provided a number of documents relating to his FileCloud account and requested that the FileCloud documents be consolidated under an alternate email address.

#### B. Second Email to Member

- [40] On May 19, 2023, a Standards Enforcement Coordinator responded to the Member’s email of May 18 confirming that the FileCloud documents had been consolidated to the Member’s alternate email address. The letter advised that while the Member’s written response was to have been provided by May 18, 2023, in light of his request for an extension, the Member was directed to provide his response “as soon as possible”. Instructions were provided as to how to access FileCloud and an email address was provided in the event the Member had issues with accessing FileCloud. This email message was not returned “undeliverable”.
- [41] On May 23, 2023, the Member changed his preferred email address. The Member also changed his alternate email address.

#### C. First Voicemail Message Left for Member

- [42] As the Member did not provide written representations, on May 29, 2023, SE Staff left a voicemail message on the Member’s preferred telephone number on record with CPA Ontario. The Member’s telephone greeting indicated that the Member was unavailable and invited the caller to leave a message. SE Staff left a message advising that they were calling regarding the correspondence which had been uploaded to FileCloud on April 27, 2023. SE Staff provided information regarding the information consolidated, as per the Member’s request, on FileCloud and how to access the information. SE Staff requested that the Member send his response “as soon as possible” and invited him to contact her should he continue to have issues accessing FileCloud.

#### D. Third Email to Member

- [43] On May 31, 2023, SE Staff sent an email to both the Member's updated preferred email address and his previous alternate email address on record, advising that correspondence from a Standards Enforcement Officer had been uploaded to FileCloud. The email provided instructions as to how to access FileCloud and noted that the "complaints process" is paperless and communications must be in a digital or electronic format. An email address of Standards Enforcement was provided to address any question or requests for accommodation. The email was not returned as "undeliverable".
- [44] The uploaded correspondence was a letter from SE Staff of the same date confirming that the Member's request for an extension of time for his response to the April 27, 2023, which he was to have provided in accordance with Rule 104 of the Code had been granted and that his response to the letter of April 27, 2023, was due on June 12, 2023.
- [45] The Member was also informed that if he required an additional extension, he would be required to provide a fulsome explanation for his request, as well as supporting documentation (such as a medical note) addressing his inability to provide written representations or to participate in the regulatory process, as well as a prognosis as to when he would be able to. A contact email address was provided for Standards Enforcement if the Member had any questions.
- [46] The FileCloud activity log indicates that the Member did not view the uploaded correspondence.

#### E. Second Voicemail Message for Member

- [47] On June 13, 2023, SE Staff called the Member at his preferred telephone number of record. The Member's outgoing message indicated that he was "in the midst of a COVID infection" and invited the caller to leave a message to which the Member would try to respond as soon as he could. SE Staff left a voicemail message advising that they had not yet received the Member's response to the April 27, 2023 letter despite having been granted an extension to June 12, 2023. SE Staff requested that the Member provide his response that day via FileCloud or by email. The Member was invited to contact SE Staff by email if he was having any issues with accessing FileCloud. The Member did not return the telephone call, nor did he provide a written response as requested.

#### F. Fourth Email to Member

- [48] On June 19, 2023, SE Staff again sent an email to the Member at to his updated preferred and alternate email addresses on record, as well as to his previous alternate email address advising that correspondence had been uploaded to FileCloud. The email advised that the Member was to provide a response by June 28, 2023, in accordance with Rule 104 of the Code, to the uploaded correspondence. Instructions and contact information were provided in the event the Member had difficulty accessing FileCloud. This email was not returned as "undeliverable".
- [49] The correspondence uploaded to FileCloud was a letter of the same date from SE Staff



confirming that despite the extension granted, the Member had not responded to the May 31, 2023 letter nor had he provided written representations as requested in the April 27, 2023 letter disclosing the complaint.

- [50] The Member was given a further extension to June 28, 2023. The Member was reminded that his written reply was required in accordance with Rule 104 of the Code and that a failure to provide a written reply by June 28 would be referred to the PCC and could result in an allegation or allegations of professional misconduct. The provisions of Rule 104, specifically Rule 104.1 and 104.2 were copied into the letter. Copies of the April 27 and May 31, 2023 letters previously sent to the Member were enclosed with the letter.
- [51] FileCloud activity showed that user “info\_645e7597520e6” viewed the correspondence on June 20, 2023.
- [52] The Member provided no reply to the May 31, 2023 letter, nor did he provide a written response to the April 27, 2023 letter and complaint.

#### G. Fifth Email to Member

- [53] On July 11, 2023, SE Staff again wrote an email to the Member at his updated preferred and alternate email address, as well as to his previous alternate email address on record. SE Staff advised that correspondence had been uploaded to FileCloud and also informed the Member that his written response to the letter which was required in accordance with Rule 104 of the Code, was due on or before July 18, 2023. The Member was reminded that his failure to respond by that date would be referred to the PCC and could result in allegations of professional misconduct. A copy of the uploaded correspondence was also appended to the July 11, 2023 email. This email was not returned as “undeliverable”.
- [54] The uploaded correspondence was a letter of the same date from SE Staff confirming that the Member’s responses to the May 31 and June 19, 2023 letters had not been received. SE Staff advised the Member that his written reply was required pursuant to Rule 104 of the Code. The Member was given until July 18, 2023 to provide the response. The Member was again reminded that a failure to respond by the deadline would be referred to the PCC and could result in allegations of professional misconduct. The provisions of Rule 104 were copied into the body of the letter. Copies of the letters sent on April 27, May 31 and June 19, 2023, were enclosed with this letter.
- [55] The FileCloud activity log revealed that the Member did not view the uploaded correspondence. Upon review of the materials sent to the Member, SE Staff noted that the uploaded letter contained typographical errors in two of the listed email addresses, although the errors were not made in the actual email addresses used when sending the July 11 email. SE Staff also realized that the password required to access the letter attached to the July 11 email had not been sent to the Member.

#### H. Sixth Email to Member

- [56] As a result of these errors, on July 27, 2023, SE Staff sent an email to the Member’s updated preferred and alternate email address, as well as to his previous alternate email address on

record. In the email, SE Staff advised the Member that correspondence had been uploaded to FileCloud. A copy of the uploaded correspondence was also attached to the email. A password was sent under separate cover. The email advised the Member that his written reply required in accordance with Rule 104 of the Code was required by August 2, 2023. The Member was again reminded that a failure to provide a response by the deadline provided would be referred to the PCC and could result in allegations of professional misconduct. Directions on how to access FileCloud and how to contact SE Staff were included in the email. The email was not returned as “undeliverable”.

[57] The uploaded correspondence of the same date was a letter from SE Staff confirming that the Member’s written response had not been received. The Member was again reminded that his written reply to the July 27, 2023 letter was required in accordance with Rule 104 of the Code and that the reply was to be provided on or before August 2, 2023. The actual provisions of Rule 104 were again included in the letter. The Member was reminded that a failure to respond by August 2, 2023 would be referred to the PCC and could result in allegations of professional misconduct. Copies of previous correspondence dated April 27, May 31, June 19, and July 11, 2023, were enclosed.

[58] The FileCloud activity log indicated that the Member did not view this correspondence.

I. The Member’s letter received January 24, 2024

[59] In his letter sent to PCC Counsel on January 24, 2024, the Member indicated that he had suffered both personal and medical issues since 2015. While the Member listed a number of medical issues, he provided no medical documentation to corroborate the history he detailed. The Member indicated that his “ability to respond and take any action is compromised” and that while he had sought to refer clients to other accounting firms over the past four years, those efforts were unsuccessful. It appears from his letter that the Member has continued to practice despite the challenges he has faced. While the Member indicated “[he] regret[s] what has occurred to many of [his] clients and people [he has] dealt with”, he failed to specify exactly what conduct he regretted.

*Finding of Professional Misconduct*

[60] Despite the Member’s absence, the onus remained on the PCC to prove on a balance of probabilities that the Member’s conduct breached Rule 104.2 of the Code, and that the breach amounted to professional misconduct.

[61] It is clear from the evidence before this Panel that the Member was aware of his obligation to respond to correspondence from CPA Ontario since the spring of 2023. The April 27, 2023 email advised the Member that a written response was required to correspondence which had been uploaded to FileCloud and that the written response was due on or before May 18, 2023. The FileCloud activity log showed that the Member viewed the uploaded correspondence on both April 27, 2023 and May 12, 2023. On May 18, 2023, the Member wrote to Standards Enforcement by email advising he could not access FileCloud and requesting an extension of the deadline set in the April 27, 2023 email due to personal health matters and family events. The next day, Standards Enforcement sent an email to the Member confirming that the FileCloud documents had been consolidated as per the Member’s request and advising that the Member’s written representations were due as soon

as possible.

- [62] SE Staff communicated with the Member through his preferred and alternate email addresses and his preferred telephone number on record. None of the emails sent to the Member were returned as “undeliverable”. Even after the Member updated his email addresses on May 23, 2023, SE Staff sent emails to the updated addresses, and continued to send emails to a previous alternate email address which the Member had requested be the address to which FileCloud documents be consolidated.
- [63] Upon not receiving any written responses from the Member, on May 29 and again on June 13, 2023, SE Staff attempted to reach the Member by telephone at the preferred telephone number on record. Staff were greeted with voicemail messages advising that the Member was unavailable and subsequently, that he had COVID. Neither message provided an alternate contact, nor did the messages reveal when the Member would respond. SE Staff left voicemail messages on both occasions, advising they were calling regarding correspondence sent to the Member on April 27, 2023 to which the Member had not replied. In the Member’s email of January 24, 2024, the Member claimed to have attempted to call CPA Ontario, but he provided no dates and there is no evidence of any messages having been received from the Member.
- [64] In addition to sending the original request for a written response to the complaint on April 27, 2023, SE Staff sent three further emails, dated May 31, June 19, and July 27, 2023 to the Member’s preferred and alternate email addresses on record. All three emails advised that correspondence had been uploaded to FileCloud and provided instructions as to how to access FileCloud, as well as a contact email address should there be any issues with accessing the documents through FileCloud. The June 19 and July 27 emails reminded the Member of his obligations in accordance with Rule 104 of the Code, to provide written replies to the correspondence sent on those dates. Those reminders also warned the Member that a failure to respond by the day provided would be referred to the PCC and could result in allegations of professional misconduct. Even if the Member did not access the correspondence uploaded to FileCloud, the emails, which were not returned as “undeliverable” clearly advised the Member of the jeopardy he faced if he did not respond.
- [65] The uploaded correspondence of May 31, June 19 and July 27, 2023 all clearly reminded the Member of his obligations in accordance with Rule 104 regarding his obligation to respond in writing. In the May 31, 2023 uploaded letter, SE Staff provided direction regarding what kind of information and documentation would be required if further extensions were needed. Both the June 19 and July 27, 2023 uploaded letters not only referenced Rule 104, but the Rule was actually copied into the body of the letters. Enclosed with the June 19 and July 27, 2023 letters were copies of the original April 27, 2023 letter, as well as copies of the May 31 and June 19, 2023 letters. All three letters contained an email address and telephone number for SE Staff in the event the Member had questions or concerns.
- [66] Despite originally requiring that the Member provide a written response to the April 27, 2023 letter by May 18, 2023, following the Member’s request for an extension made on May 18, 2023, SE Staff extended the deadline repeatedly. The final deadline provided to the Member by which his written responses were to be provided was August 2, 2023 (more than

four months after the Member was first advised of the complaint against him and required to provide a written response).

[67] This Panel finds that despite being given ample opportunity to provide written responses to the correspondence of May 31, June 19 and July 27, 2023, the Member provided no written response as required.

[68] When considering whether the failure to respond amounted to a breach of Rule 104 of the Code, the Panel reviewed the comments found in *Hametaj (Re)*:

[56] The obligation to respond to communications from the CPAO is not a mere technical or bureaucratic requirement; it is an ethical duty as a member of a regulated profession...That includes co-operating with investigations into complaints, so that members of the public have confidence that when they raise concerns about a member, those concerns can be investigated and appropriate action taken, if necessary.

[57] As noted in *Re Little*, 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.

[69] The Member was repeatedly advised of his obligation to provide written responses pursuant to Rule 104 of the Code and the potential jeopardy he faced if he did not reply. Each letter provided the Member with contact information for SE Staff yet there is no evidence, other than the Member's claims that he made three calls, two of which were through the main line, of any emails or telephone conversations with SE Staff or other members of CPA Ontario.

[70] CPA Ontario requires its members to provide updated contact information, including telephone numbers, mailing addresses and email addresses to which communications are sent. It is reasonable for CPA Ontario to expect that its members are monitoring their emails, telephone message systems and mail. If a member is unable to access a mode of communication and requires an accommodation to do so, it is the member's responsibility to seek assistance and/or an accommodation.

[71] In his letter sent on January 24, 2024, the Member indicated he had made two calls through CPA Ontario's general board, and a third call. He provided no details as to the dates of the calls, who he spoke to if anyone, whether he left voicemail messages, and if he did, whether he provided the reason for his calls. The Member initially engaged with SE Staff in May 2023, and was able to update his preferred and alternate email addresses that same month. After this access, there is no other evidence that the Member engaged in the regulatory process in any way until the eve of the disciplinary hearing.

- [72] In his letter sent on January 24, 2024, it appears the Member acknowledged receiving several of the emails sent by Standards Enforcement. He advised that his ability to respond and to take action had been compromised, yet he provided no medical documentation to corroborate these statements.
- [73] Even after having been served with the Notice of Hearing and the Allegation, the Member made no attempt to submit a written response to the complaint or the communications sent to him on May 31, June 19 and July 27, 2023.
- [74] Based on the clear, cogent and convincing evidence presented by the PCC, this Panel finds that the Member failed to cooperate with the regulatory process of CPA Ontario when he failed to provide written responses to communications from CPA Ontario dated May 31, June 19 and July 27, 2023 to which a written response was required. The failure to cooperate is serious as it has delayed CPA Ontario's ability to address the substantive complaint in a timely manner and has expended both time and resources. The Panel finds the Member's conduct to have breached Rule 104 of the Code and finds that the breach amounts to professional misconduct.

## **VII. DECISION AS TO SANCTION**

- [75] After considering the law and the submissions of PCC, the Panel concluded that the appropriate sanction was a \$5,000 fine payable to CPA Ontario by February 24, 2024. Notice of this Decision and Order disclosing the Member's name will be given to all members of CPA Ontario, to all provincial bodies and it will also be made available to the public.
- [76] In addition, the Member was ordered to cooperate with the regulatory process of CPA Ontario. The Panel gave the Member until February 24, 2024 to respond to the letters from Standards Enforcement dated May 31, 2023, June 19, 2023 and July 27, 2023.
- [77] Should the Member fail to comply with this Order, his membership with CPA Ontario will be suspended until such time as he does comply, provided that he complies within 30 days from the date of his suspension. If he does not comply within the 30-day period, his membership in CPA Ontario shall be revoked and notice of the revocation, disclosing the Member's name will be given in a manner specified above, and in the Waterloo Region Record newspaper. All costs associated with this publication shall be borne by the Member and shall be in addition to other costs ordered by the Panel.

## **VIII. REASONS FOR THE DECISION AS TO SANCTION**

- [78] After making a finding of professional misconduct, pursuant to s. 15.1 of Reg. 6-2, a Panel shall consider any aggravating and mitigating factors, and pursuant to s. 15.2, may consider a number of other relevant principles, including protection of the public interest, general deterrence, specific deterrence, rehabilitation of the member, and denunciation.
- [79] As the Member did not participate in the hearing, the Panel did not have the benefit of any evidence in mitigation, nor submissions from him about the appropriate sanction. While the Member provided some information regarding health and family issues, he failed to provide substantive credible evidence that he was unable to respond to CPA Ontario's inquiries due to illness or disability. The PCC did not file evidence on sanction, but did file a Costs Outline.

The Panel relied on the fact that as of the date of hearing, the Member had not responded to the requests for information from Standards Enforcement.

- [80] All members of this profession have an obligation to respond promptly and substantively to complaints and communications from CPA Ontario. Such cooperation ensures the proper governance of the profession's members and maintains the public's confidence in the profession to regulate itself. The failure to respond to requests from Standards Enforcement has a real and tangible impact on the ability of CPA Ontario to investigate matters. This impacts the integrity of the investigative process and affects public perception of CPA Ontario's ability to effectively regulate its members.
- [81] In light of the Member's assurances that he would cooperate, he is being given an opportunity to do so. The Member is being ordered to provide responses to the letters from Standards Enforcement staff, dated May 31, June 19 and July 27, 2023 within 30 days of the Order. Should the Member fail to respond within 30 days of the Order, he will be suspended until such time as he does cooperate. If he cooperates within 30 days of his suspension, no further sanction will be imposed. However, if the Member continues to fail to cooperate, his membership will be revoked. Such a sanction acts both as a specific and general deterrent as it affords the Member an opportunity to comply, while at the same time, should he fail to do so, sends a clear message to the profession and the public that such conduct will not be tolerated.
- [82] The sanctions being imposed address both specific and general deterrence. The fine falls within the range of fines imposed in similar cases. The requirement that the Member cooperate within 30 days of the Order allows the Member sufficient time to bring himself into compliance. The threat of suspension and/or revocation for failing to cooperate will hopefully compel the Member to participate in the investigative process as required.
- [83] In order to ensure that members of this profession and of the public are aware that such conduct will not be tolerated, the notice of this decision and order ensures that the profession and the public are informed of the actions taken by CPA Ontario when its members breach the Code. Should the Member's membership be revoked, it is important, and required, that notice of the revocation be published in a newspaper in the region where the Member practices to ensure the public is made aware that the Member can no longer provide services as a Member of this profession.

## **IX. COSTS**

- [84] The imposition of costs is not intended to be a form of punishment and is not part of the sanctions sought against the Member. Rather, costs ensure that the profession does not bear all of the costs of the regulatory and disciplinary processes arising from the Member's misconduct.
- [85] Counsel for the PCC filed a Costs Outline setting out the costs of the investigation and prosecution of this matter. PCC Counsel sought 2/3 of the costs incurred, amounting to \$4,000, to be paid within 30 days of this Panel's Order.
- [86] The Panel is satisfied that an order reflecting 2/3 of the amount of costs incurred in this

matter is appropriate and in keeping with the jurisprudence of this Tribunal. The Panel therefore accepted and adopted the submission of PCC Counsel and ordered costs in the amount of \$4,000 to be paid within 30 days of this Order.

**DATED** this 21<sup>st</sup> day of March, 2024

A handwritten signature in dark ink, appearing to be 'John Love', with a stylized loop at the end.

John Love, CPA, CMA  
Discipline Committee – Deputy Chair

Members of the Panel

Imran Kamal, Public Representative  
Barbara Ramsay, Public Representative  
Jaspreet Singh, CPA, LPA

Independent Legal Counsel

Nadia Liva, Barrister & Solicitor