

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Amended Allegations against **JACK CAYNE, CPA, CGA**, a member of the Chartered Professional Accountants of Ontario, under **Rules 104, 206.1 and 218** of the CPA Ontario Code of Professional Conduct

TO: Jack Cayne

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE DECEMBER 13, 2023

DECISION AND ORDER

Having read the motion records, factums, and books of authorities filed by the parties regarding a motion for further disclosure brought by the moving party, Jack Cayne ("Cayne"), and having considered the parties' written and oral submissions at the hearing of the motion on October 5, 2023, the Panel grants partial relief and orders:

1. The PCC is to disclose to Cayne any and all CPA Ontario correspondence, including emails, letters, recordings and notes of phone calls and of voice mail messages from CPA Ontario to Cayne as referred to by Michael Weinman ("Weinman"), Director of Practice Inspection at CPA Ontario, in Weinman's April 7, 2022 Memorandum;
2. The PCC is to disclose to Cayne interview materials, including audio or video files of the interview of Weinman conducted by Jennifer Fisher ("Fisher"), Investigator, on December 19, 2022; as well as interview notes and/or summaries prepared by Fisher in relation to her interview of Weinman; and
3. The Panel defers the determination of the issue of costs to the panel presiding over the hearing on the merits.

DATED this 13th day of December, 2023



David Handley
Discipline Committee – Deputy Chair

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IN THE MATTER OF: Amended Allegations against **JACK CAYNE, CPA, CGA**, a member of the Chartered Professional Accountants of Ontario, under **Rules 104, 206.1 and 218** of the CPA Ontario Code of Professional Conduct

BETWEEN:

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

-and-

Jack Cayne

APPEARANCES

For the Professional Conduct Committee: Kelvin Kucey, Counsel

For Jack Cayne: Gary Srebrolow, Counsel

Motion heard: October 5, 2023

Release of written reasons: December 13, 2023

REASONS FOR THE DECISION ON JACK CAYNE'S MOTION FOR DISCLOSURE

I. OVERVIEW

- [1] Jack Cayne ("Member"), a member of CPA Ontario, is facing allegations of professional misconduct. He brought a motion seeking the disclosure of documents from CPA Ontario on the basis that these documents are relevant and necessary to make full answer and defence to the allegations.
- [2] The events upon which the Member's disclosure motion is based began in December 2021 when the Member's client instructed him not to provide CPA Ontario with working papers during a practice inspection. The Member sought guidance from CPA Ontario regarding how to handle the situation. He maintains he did not receive any guidance or response and proceeded to send in limited materials. In contrast to the Member's position that he did not receive any guidance, the materials he received in disclosure from CPA Ontario indicate that he was told the working papers were his property and that he could redact any identifying information from the working papers before he gave them to CPA Ontario.

- [3] Following an investigation, the PCC brought allegations against the Member, including that he failed to cooperate with the regulatory process of CPA Ontario in accordance with Rule 104 of the *CPA Ontario Code of Professional Conduct* (“Code”) when he failed to provide the working papers as requested; that he failed to take reasonable steps to maintain adequate documentation to reasonably evidence the nature and extent of the work he performed while engaged to perform assurance and other professional services contrary to Rule 218 of the *Code*; and that he failed to perform his professional services in accordance with generally accepted standards of practice contrary to Rule 206.1 of the *Code*.
- [4] The specific relief sought by the Member in this motion is:
- a) Any and all CPA Ontario internal notes, emails, memos and/or records arising from the December 2021 telephone calls received from the Member by CPA Ontario inquiring into the requested disclosure of working papers;
 - b) Any and all CPA Ontario internal notes, emails, memos, messages and/or records regarding any messages left for Michael Weinman, Director of Practice Inspection at CPA Ontario (“Weinman”), in December 2021 by CPA Ontario staff regarding the Member’s inquiries at that time;
 - c) Any and all CPA Ontario internal notes, emails, memos, messages and/or records regarding any messages made by and/or sent by Weinman, in December 2021, regarding the Member’s inquiries at that time;
 - d) Interview materials, audio, or video files, as well as any interview notes and/or summaries, prepared by Jennifer Fisher, Investigator (“Fisher”), with regard to her interview of Weinman on December 19, 2022;
 - e) The identity of the CPA Ontario staff member who spoke with the Member in early December 2021 when he called to inquire about his professional obligations; and
 - f) Such further and other information as may be reasonably requested at the hearing of the motion.
- [5] The PCC opposes the Member’s motion arguing that it has disclosed all relevant evidence and that the disclosure sought by the Member is irrelevant. The PCC argues that potential documentation and information related to the Member’s communications with CPA Ontario in December 2021 are not relevant to the current allegations before this Panel which relate to conduct between June 20, 2022 to March 31, 2023.
- [6] Both parties agree that the Member is entitled to all relevant information, whether inculpatory or exculpatory, relating to the allegations before this Panel.
- [7] Having considered the evidence presented and the submissions of counsel, this Panel orders that production be made of all communications or documentation of communications from Weinman and/or CPA Ontario staff to the Member in which the Member was advised the working papers were his and that he could redact the working papers at issue. This Panel also orders that all recordings of the interview of Weinman, conducted on December 19, 2022 by Fisher be disclosed to the Member.

II. EVIDENCE BEFORE THE PANEL

- [8] The Member filed a Motion Record (Exhibit 1) in support of his motion. Included in this Motion Record were affidavits sworn by the Member (Exhibit 1: Tab 2), and his client ("PD") (Exhibit 1: Tab 3). The Member's affidavit was accompanied by a number of exhibits. The PCC also filed a Motion Record (Exhibit 3) which contained two affidavits by Alyssa Girardi ("Girardi"), a Professional Standards Coordinator in the Investigations and Prosecutions department of CPA Ontario (Exhibit 3: Tab 1 and Tab 2). Girardi's affidavits were supported by a number of exhibits. None of the affiants were called to give evidence or to be cross examined on the motion. The PCC did not take issue with the chronology of events as set out in the Member's factum.

III. RELEVANT BACKGROUND AND FACTS

- [9] In December 2021, as part of a CPA Ontario practice inspection of the Member's practice, the Member was asked to provide working papers relating to one of his clients ("TCM Inc."). The materials were to be provided to CPA Ontario by December 9, 2021.
- [10] On Friday, December 3, 2021, the Member advised the Director of TCM Inc. (PD) of the practice inspection and that he had been asked to provide TCM Inc.'s December 31, 2020 year-end file working papers to CPA Ontario. PD instructed the Member not to submit these working papers as TCM Inc. was in sensitive sale negotiations and had entered into a non-disclosure agreement with the potential purchaser. The Member was initially told that the transaction was to close on or about December 12, 2021.
- [11] Given PD's instructions, the Member was unsure as to how he could reconcile his duty of confidentiality to his client and his obligation to cooperate with CPA Ontario's practice inspection.
- [12] The Member reached out to CPA Ontario by phone on Monday, December 6, 2021, and on Tuesday, December 7, 2021 to seek an extension of the December 9, 2021 deadline to provide the requisite documentation. He also wished to discuss his concerns regarding his client's instructions not to share the working papers (his "confidentiality concerns"). In one of his calls to CPA Ontario, the Member spoke to a female staff person who advised that an extension of the deadline would not be granted. Regarding his confidentiality concerns, the Member was directed to speak to Michael Weinman, CPA Ontario's Director of Practice Inspection.
- [13] At the time of this call, the Member was informed by the staff person that Weinman was unavailable. The staff person advised that they would leave a message with Weinman requesting that he call the Member.
- [14] It is the Member's evidence that he did not receive any communication from Weinman or any supervisor. On Wednesday, December 7, 2021, the Member called the CPA Ontario office again and requested to speak to Weinman. The Member was again told by a staff person that Weinman would contact him. The staff person advised that the Member was still required to provide the requested information and documentation by December 9, 2021, as no extension would be granted.
- [15] According to the Member, neither Weinman nor anyone at CPA Ontario returned his

calls or provided him with guidance regarding his confidentiality concerns.

- [16] On December 7, 2021, the Member submitted materials to CPA Ontario as part of the practice inspection. It is the Member's evidence that as he did not have his client's consent to release TCM Inc.'s working papers, and as he had not received any guidance from Weinman or any other representative of CPA Ontario regarding his concerns relating to his obligations to his client, he proceeded to submit only the financial statements relating to TCM Inc. which were already a matter of public record.
- [17] Accompanying his materials was a letter dated December 7, 2021 to Nora Tyll, Practice Inspection Manager ("Tyll") explaining his confidentiality concerns. The Member indicated he had been instructed "to delay the submission of the practice inspection file for a few days" and that once his client's negotiations were concluded, he would submit the file. In an effort to meet his obligations to cooperate while also adhering to his duty of confidentiality to his client, the Member indicated he would submit the Review file to CPA Ontario, but acknowledged there would be "gaps" in the file, specifically in back-up and supporting schedules. He asked that the Reviewer take his explanation into account when reviewing the file. (Exhibit 1: Tab 2, Exhibit A)
- [18] The sale of TCM Inc. concluded on or about December 12, 2021. As part of the sale, the parties entered into a non-disclosure agreement which prohibits TCM Inc. from disclosing financial information. According to PD, the non-disclosure agreement remains in place for perpetuity. Upon learning of this agreement, the Member discussed his obligations to provide the working papers again with PD. PD again instructed him not to provide the requested materials. Over the course of the next year and a half, the Member contacted PD four to five times to inquire as to whether he could disclose the working papers to CPA Ontario. PD continued to refuse to consent to the release of the working papers relating to TCM Inc. to CPA Ontario. (Exhibit 1: Tab 3)
- [19] On or about January 2, 2022, the Member wrote to CPA Ontario regarding the practice inspection and the "predicament" he found himself in as a result of PD's instructions not to submit the working papers relating to TCM Inc. The Member set out the events that had transpired and explained why he had only provided parts of the file that were part of the "public record". In his letter, the Member acknowledged that the Reviewer would only be able to provide a report based on the limited materials the Member had provided. With this letter, the Member included a copy of his letter to Tyll, dated December 7, 2021. (Exhibit 1: Tab 2, Exhibit C)
- [20] On April 7, 2022, Weinman prepared a Memorandum for Karelyn Murray, Director, Standards Enforcement entitled "Practice Inspection Referral to Standards Enforcement ("Memorandum"). A copy of this Memorandum was disclosed to the Member by the PCC in the course of its prosecution. The Memorandum contains the underlying complaint to CPA Ontario's Standards Enforcement that resulted in the investigation of the Member. (Exhibit 1: Tab 2, Exhibit F)
- [21] In the Memorandum, Weinman advised that the practice inspector had inspected two files. He also advised that the Practice Inspection Committee ("PIC") had concluded that the Member's failure to maintain professional standards was sufficiently serious as to reflect upon the Member's professional competence.

- [22] In a section of the Memorandum entitled “Additional Information”, Weinman noted as follows:
- During the course of arranging the inspection, PI had several correspondences with [the Member], whereby he stated that his client objected to his providing his files to us. We informed [the Member] that the working papers were his property, not his client’s and he could redact any identifying information should he wish to. Despite this, PI was only provided with “limited parts of the file” for inspection.
- [23] On April 7, 2022, Weinman wrote to the Member advising that based on the Reportable Deficiencies reviewed by the PIC, it had determined that the Member’s failure to meet professional standards in relation to a limited review of a sample of engagements was serious and that the matter was being referred to the Professional Conduct Committee for an independent inspection. (Exhibit 1: Tab 4)
- [24] On May 30, 2022, Andrea Fadel, Standards Enforcement Officer (“Fadel”) wrote to the Member regarding the complaint received by PIC. Fadel requested that the Member respond to the issues raised in the complaint. One of the allegations was that the Member “only provided limited parts of each file to Practice Inspection despite requests for the entire file and accommodations being provided”. (Exhibit 3: Tab 2, Exhibit A)
- [25] Fadel’s letter did not specify what “accommodations” had been provided to the Member.
- [26] In a letter dated June 16, 2022, the Member wrote to Fadel denying the allegations made by PIC. In his responses to the various allegations as set out in Fadel’s May 30th letter, the Member explained that he had found himself in a conflicted position trying to balance his obligations to meet professional standards with his duty of confidentiality owed to his client. The Member provided a detailed account of his attempts to seek guidance from CPA Ontario in December 2021. The Member advised that he had provided “as much documentation to the Committee as [he] could while still adhering to the spirit of the client’s request.” (Exhibit 1: Tab 2, Exhibit D)
- [27] In a letter dated November 30, 2022, the Member was advised by Professional Standards Counsel (“Counsel for the PCC”) that the PCC had moved to investigate the complaint made by the PIC and that Fisher had been appointed as the investigator in the matter. (Exhibit 3: Tab 2, Exhibit C)
- [28] As part of her investigation, Fisher interviewed Weinman on December 19, 2022.
- [29] On January 5 and 24, 2023, the Member was interviewed by Fisher. In both interviews, the Member was asked to provide the working papers for the TCM Inc. engagement. Referencing his letter of June 16, 2022 to CPA Ontario, the Member reviewed with Fisher his efforts to seek guidance from CPA Ontario in December 2021 regarding his confidentiality concerns. The transcripts reveal that at no time during either interview did Fisher ask the Member about any correspondence or communications from Weinman or CPA Ontario responding to his attempts to seek guidance in December 2021. According to the transcripts, Fisher did not suggest to the Member during either interview that he had in fact received guidance from Practice Inspection or from CPA Ontario regarding his control over his files or on the possibility

of redacting the documents his client had instructed the Member not to produce. (Exhibit 1: Tab 2, Exhibit B)

[30] In the Investigator Report she prepared dated February 21, 2023, Fisher noted that the issues under investigation had been brought to the attention of CPA Ontario “as a result of a complaint filed by Weinman, Director, Practice Inspection.” Fisher indicated in her report that as part of her investigation she had interviewed Weinman. (Exhibit 1: Tab 2, Exhibit E)

[31] In describing the nature of the issues under investigation, Fisher reported that “(t)he focus of the deficiencies raised in the complaint was that documentation was omitted when the file was presented to the PIC.” She noted that the Member had not provided working papers based on a restriction from his client and went on to report:

[The Member] was advised by PI that the working papers were his property and not the clients (sic) and that he could provide redacted documents for inspection.

[32] On June 1, 2023, the PCC issued Allegations of professional misconduct against the Member, including an allegation that in or about December 1, 2021 to March 31, 2023, the Member “failed to provide all relevant working papers to the TCM Inc. engagement as requested, to CPA Ontario’s appointed Practice Inspector (PI) for a December 16, 2021 practice inspection.” It was also alleged that he had failed to perform his professional services in accordance with generally accepted standards of practice of the profession when he failed to present sufficient documentation and evidence to support his review of the financial statements of TCM Inc. for the year ended December 31, 2020. The Allegations were served on the Member on June 21, 2023 and were filed electronically with the Tribunals Office on July 4, 2023 copying the Member’s email address. (Exhibit 3: Tab 1, Exhibits A-C)

[33] By way of letter dated July 5, 2023, Counsel for the PCC wrote to the Member, providing him with the “Investigator Report” prepared by Fisher and with a Document Brief dated February 21, 2023, which Counsel for the PCC advised had been previously provided to the Member. Fisher’s Curriculum Vitae was also provided. Counsel for the PCC indicated that the prosecution anticipated calling Fisher as a witness before the Disciplinary Hearing, noting that her anticipated evidence was set out in her report. (Exhibit 3: Tab 1, Exhibit D)

[34] On July 31, 2023, a Pre-Hearing Conference was held during which a disclosure request was made by Counsel for the Member. Following the Pre-Hearing Conference, the Member’s Counsel wrote to Counsel for the PCC requesting the following disclosure:

i) Interview materials, including audio/video files of the interviews, interview notes and summaries prepared and relied on by the investigator for the interviews of:

(1) Michael Weinman, December 19, 2022

(2) [The Member], January 5, 2023

(3) [The Member], January 24, 2023

- ii) CPAO notes and records received from [the Member] in December 2021 and internal memos relating to his inquiries of CPA Ontario, including any messages received and/or notes/memos made by CPAO staff and/or Mr. Weinman regarding telephone calls and/or messages received from [the Member] in December 2021 regarding such issues. (Exhibit 1: Tab 2, Exhibit H)
- [35] That same day Counsel for the PCC responded advising that he would seek instructions regarding the Member's disclosure request. Counsel for the PCC noted that pursuant to the CPA Ontario *Rules of Practice and Procedure*, the Member was "entitled to a copy of the PCC investigator's report and a will say statement of Mr. Weinman, if he is a witness of the PCC, nothing more." (Exhibit 1: Tab 2, Exhibit I)
- [36] The audio recordings of Fisher's interviews of the Member conducted on January 5 and 24, 2023 were provided to the Member by the PCC via FileCloud that same day. No further disclosure was provided by the PCC to the Member. (Exhibit 3: Tab 1, Exhibit E)
- [37] On August 11, 2023, Counsel for the Member filed a Pre-Hearing Conference brief in which he indicated his client's intention to bring a disclosure motion. On August 14, 2023, Counsel for the PCC advised that he intended to amend the Allegations.
- [38] On August 17, 2023, following a Pre-Hearing Conference, Amended Allegations of professional misconduct were served and filed. The amendments made to the original Allegations changed the period within which the Member was alleged to have failed to cooperate with the regulatory processes of CPA Ontario from December 1, 2022 to March 31, 2023 to June 20, 2022 to March 31, 2023. The original allegation that the Member had failed to provide all relevant working papers to support the TCM Inc. engagement as requested by CPA Ontario's appointed Practice Inspector for a December 16, 2021 practice inspection, was deleted.

IV. ISSUE

- [39] The issue before the Panel on the pre-hearing motion was whether the disclosure sought by the Member is relevant and necessary to make full answer and defence to the allegations of professional misconduct made against him.

V. ANALYSIS AND DECISION

- [40] Rule 10.01 of the CPA Ontario *Rules of Practice and Procedure* requires CPA Ontario to make disclosure in the following instances:
- (1) CPA Ontario, as a party, shall make such disclosure to the subject of the proceeding as is required by law and, without limiting the generality of the foregoing, shall provide to the subject of the proceeding:
 - (a) a copy of every document upon which CPA Ontario intends to rely as evidence and the opportunity to examine any other relevant document;
 - (b) a list of witnesses that CPA Ontario intends to call; and

(c) a written summary of the anticipated oral evidence of each witness
CPA Ontario intends to call.

- [41] Section 8 of the *Statutory Powers and Procedure Act* provides further guidance in determining what kind of disclosure should be made, including in matters involving allegations of professional misconduct:

8. Where the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto. R.S.O. 1990, c. S.22, s.8.

- [42] Both parties agree that the principles found in [R. v. Stinchcombe, \[1991\] 3 S.C.R. 326](#) are applicable to these proceedings and require that all relevant information be disclosed to the defence, whether inculpatory or exculpatory (p.343). As the late Honourable Mr. Justice Sopinka found in *Stinchcombe*:

(T)he fruits of the investigation which are in the possession of counsel for the Crown are not property of the Crown for use in securing a conviction but the property of the public to be used to ensure that justice is done. (p.333)

(The Crown) need not produce what is clearly irrelevant. (p.339)

(A)ll statements obtained from persons who have provided relevant information to the authorities should be produced notwithstanding that they are not proposed as Crown witnesses. (p.345)

i. The PCC's Position

- [43] The PCC takes the position that an assessment of relevant disclosure is limited to the allegations before the Panel. The Amended Allegations do not include an allegation that the Member failed to cooperate with the practice inspection. Rather, the Amended Allegations allege that the Member failed to cooperate with CPA Ontario's regulatory processes during the period of June 20, 2022 to March 31, 2023. It is the PCC's position that the Member had a statutory and regulatory obligation to provide CPA Ontario with the documents requested by Standards Enforcement and by the PCC's Investigator during the regulatory process. The PCC took the position that what transpired in December 2021 regarding the practice inspection is irrelevant to the issues before this Panel. The PCC goes on to argue that as the events surrounding the practice inspection are irrelevant to the allegations before this Panel, there is no obligation for the PCC to disclose the documentation and information surrounding those events as sought by the Member in his disclosure motion.

- [44] In support of its argument, the PCC relied on this Tribunal's reasoning in [Fragale \(Re\), 2018 LNICAO 41](#), as set out in paragraphs 30 to 34. Applying the principles found in *Stinchcombe*, the Tribunal concluded that Fragale was only entitled to disclosure which was relevant to the allegations which were the subject of the allegations which were before the Tribunal. Those allegations were that Fragale had failed to cooperate. The disclosure sought by Fragale related to the substantive investigation which had not yet been completed.

- [45] The PCC also relied on the Divisional Court's decision in [D'Mello v. LSUC, 2015 ONSC 5841](#) who similarly upheld that while the disclosure sought might be relevant to substantive issues yet to be the subject of prosecution, only disclosure of information and documentation relevant to the allegation of failure to cooperate, which was the only allegation before the hearing panel, need be disclosed.
- [46] The PCC also relied on the Divisional Court decision in [Round v. Institute of Chartered Accountants of Ontario, 2015 ONSC 7099](#) which similarly stated the member was not entitled to disclosure of the identity of a Standards Enforcement employee who had reported issues with the member's website which became the complaint upon which a substantive investigation arose. The Discipline Committee found that the employee's identity was not relevant to the allegation before it – namely that Round had failed to cooperate.

ii. The Member's Position

- [47] In order to make full answer and defence to the allegations before this Panel, the Member argues that the disclosure he seeks is relevant to the allegation that he failed to cooperate with the regulatory processes of CPA Ontario when he did not provide all relevant working papers for TCM Inc. for review as requested. He also argues that the disclosure sought is relevant to the allegation that the Member failed to perform professional services in accordance with generally accepted standards of practice of the profession, as the allegation relates to the failure to provide sufficient documentation and appropriate evidence to support his review engagement report and his conclusions on the financial statements.
- [48] The Member does not dispute that the PCC is entitled to amend the allegations. It is his position that the amendments to the allegations do not render the events that occurred in December 2021 irrelevant. Rather, those events underpin all that follows and are crucial to the Member's defence. He argues that the facts that prevented him from providing documents in December 2021, prevented him from sharing documents with CPA Ontario in 2022 to 2023. It is also his position that his inability to provide documentation during the practice inspection resulted in the deficiencies that are the subject of one of the allegations against him.
- [49] The Member argues that the internal records of CPA Ontario regarding his inquiries made in December 2021, as well as the name of the employee with whom he spoke, are required to substantiate his efforts to seek guidance from CPA Ontario. The Member maintains that at no time did CPA Ontario provide him with any guidance on how to handle his obligations to cooperate with the practice inspection and his duty of confidentiality to his client. He argues that the disclosure sought will provide the Member with insight into CPA Ontario's reaction to his inquiries.
- [50] With respect to his request for materials related to the interview of Weinman, the Member notes that Weinman made the complaint which commenced the investigation against him. Weinman was also interviewed by the Investigator as was noted in the Investigator Report. It is his position that the interview of the complainant is directly relevant to his ability to make full answer and defence.
- [51] The Member argued that he is entitled to all relevant disclosure, including exculpatory

evidence, as well as evidence “outside” of the investigation – namely all non-privileged materials and information relating to the inquiries he made in December 2021. He relies on the decisions of the [Law Society of Upper Canada v. Savone, 2015 ONLSTA 26](#) and [Law Society of Upper Canada v. Keshen, 2016 ONLSTH 86](#) to support his argument that he is entitled to all potentially relevant disclosure in the possession of CPA Ontario.

iii. The Panel’s Findings

a. Internal CPA Ontario materials arising from the December 2021 calls received by CPA Ontario from the Member

- [52] The Member requests that this Panel order the disclosure of “any and all CPA Ontario internal notes, emails, memos and/or records arising from the December 2021 telephone calls received from [the Member] inquiring about the requested disclosure of files”, as well as of similar documents, relating to and including messages left by the Member for Weinman in December 2021 regarding the Member’s inquiries.
- [53] The Member made efforts to seek information and guidance from CPA Ontario in December 2021 to address what he perceived to be an ethical conflict. The PCC does not dispute that these efforts were made.
- [54] It is the Member’s position that he received no information or guidance from CPA Ontario. He was left to decide on his own how best to proceed. He concluded he could only provide some of the working papers relating to his review of TCM Inc.’s financial statements.
- [55] It is an undisputed fact that the Member made inquiries before submitting his files in December 2021. His decision not to provide all the requested working papers was made in the absence of information from CPA Ontario. Why he received no response from CPA Ontario in December 2021 is irrelevant to his decision to only provide partial documentation. As such, the request to provide the internal CPA Ontario materials arising from the Member’s inquiries in December 2021 is denied.

b. Internal CPA Ontario materials regarding messages from Weinman in December 2021 regarding the Member’s Inquiries and Fisher’s Interview of Weinman

- [56] The Member has also asked that this Panel order the production of “any and all CPA Ontario internal notes, emails, memos, messages and/or records regarding any messages made by and/or sent by Weinman, in December 2021, regarding the Member’s inquiries at that time”.
- [57] In his Memorandum dated April 7, 2022 to the Director, Standards Enforcement, setting out his complaint against the Member, Weinman advised the Director as follows:

During the course of arranging the inspection, PI had several correspondences with [the Member], whereby he stated that his client objected to his providing his files to us. We informed [the Member] that the working papers were his property, not his client’s and he could redact any identifying information should he wish to. Despite this, PI

was only provided with “limited parts of the file” for inspection.

- [58] In his affidavit, the Member stated that he had never been provided with the information contained in Weinman’s April 7, 2022 Memorandum, specifically that identifying information could be redacted. (Exhibit 1: Tab 2, para. 48)
- [59] In Fisher’s January 5, 2023 interview of the Member, while noting that she appreciated the concern about confidentiality that the Member faced given his client’s position, Fisher advised the Member that she still required all his working papers in support of the opinion he had provided on the TCM Inc. Review Engagement Report. The Member responded that he had provided what he was able to provide and that he could not provide any further documentation at the time of the interview due to the confidentiality issues he believed he could not breach. (Exhibit 1: Tab 2, Exhibit B: page 12 to 14 of interview transcript, lines 5 to 10)
- [60] In addressing the concerns regarding his professional competency, the Member explained to Fisher that he could not provide the requisite documentation due to the perceived confidentiality dilemma, impacting on the Practice Inspector’s ability to properly evaluate his ability to meet the generally accepted standards of practice. (Exhibit 1: Tab 2, Exhibit B: page 21, lines 14 to 25)
- [61] In her January 23, 2023 follow up interview of the Member, Fisher confirmed with the Member that TCM Inc. had been sold and that the company was no longer the Member’s client. She went on to inquire as to why a restriction would continue on the Member’s ability to provide the working papers. The Member explained that the shareholders were under a non-disclosure agreement for several years after the sale and that the non-disclosure agreement also applied to the Member. (Exhibit 1: Tab 2, Exhibit B: page 42, line 1) Fisher went on to review the documents the Member had provided regarding TCM Inc. and again requested that the Member provide some of the underlying working papers referenced in the documents he had provided or an index of the working paper file. The Member advised he could not provide any further documents or the index advising that he had provided what he felt he was comfortable providing and that “[he] can’t go much further.” (Exhibit 1: Tab 2, Exhibit B: page 45, lines 5 to 14)
- [62] On February 21, 2023, Fisher completed her Investigator Report. As part of the investigation, Fisher had reviewed the complaint made by Weinman dated April 7, 2022, documents provided by the Member (including financial and working papers related to TCM Inc.), as well as the Member’s letter dated June 16, 2022. She noted that she had interviewed Weinman on December 19, 2022 as well as the Member on January 5 and 23, 2023. (Exhibit 1: Tab 2, Exhibit E, page 2 of the Investigator Report)
- [63] In her report, Fisher noted “(t)he focus of the deficiencies raised in the complaint was that documentation was omitted when the file was presented to the PIC. [The Member] objected to providing working papers to PI, based on a restriction from the director of TCM Inc. (the client review engagement subject to PI). [The Member] was advised by PI that the working papers were his property and not the clients (sic) and that he could provide redacted documents for the inspection.” (Exhibit 1: Tab 2, Exhibit E, page 2 of the Investigator Report)

- [64] In his affidavit the Member noted, and the transcripts of his interviews by Fisher confirm, that at no time during the course of her interviews of the Member did Fisher refer to or discuss the possibility of redacting information in the working papers. (Exhibit 1: Tab 2, para. 50 and Tab 2: Exhibit B)
- [65] According to Weinman and Fisher, the Member was advised the working papers were not his and that he could redact identifying information from the papers. The Member is adamant he was not provided such guidance at any time.
- [66] If the guidance was not provided as presented by Weinman and Fisher, and as the Member maintains it was not, then the Memorandum and the Investigator Report contain false information. If the guidance was given, the decision to disregard the guidance is relevant to the Member's intentions in December 2021 and throughout the regulatory process.
- [67] The amendment of the Allegations of Professional Misconduct which narrowed the time period of the alleged misconduct from December 1, 2021 to March 31, 2023 to June 20, 2022 to March 31, 2023 does not render irrelevant all events which occurred prior to the dates within which the alleged misconduct occurred. The Member is not prevented from relying on events preceding June 20, 2022 in his defence.
- [68] In order to discern whether the Member's conduct rises to the level of professional misconduct, his understanding of his obligations is a relevant consideration for the Hearing Panel which will consider the substantive allegations.
- [69] In conclusion, this Panel finds that the "several correspondences" Weinman referred to in his complaint of April 7, 2022, are relevant and should be disclosed to the Member.
- [70] Moreover, given that Fisher interviewed Weinman prior to issuing her report and referenced his complaint of April 7, 2022, this Panel also finds that information provided by Weinman to Fisher in the course of her investigation amounts to "fruits of the investigation," which is relevant to the Member's ability to make full answer and defence, and should be disclosed. As such, the interview of Weinman on December 19, 2022 by Fisher should be disclosed, including all audio/video recordings of the interview, any notes made during the interview by Fisher, and any summaries of the interview made by Fisher.

c. Identity of the Staff Person who spoke to the Member in December 2021

- [71] The Member requests that the identity of the CPA Ontario staff member who spoke with him in early December 2021 be disclosed.
- [72] As noted above regarding the internal CPA Ontario materials pertaining to the Member's December 2021 inquiries, the PCC does not contest the Member's assertions that he spoke to a CPA Ontario staff member who in turn told him that the extension for submitting documents for the practice inspection would not be extended. Nor has the PCC challenged the Member's claims that he was told by that staff member that he should speak to Weinman and that a message would be left by the staff member for Weinman asking that he call the Member. As such, the request that the identity of the staff person be provided to the Member is denied.

VI. COSTS OF THE MOTION

[73] In light of the Panel's decision on the motion, the issue of costs relating to the motion are to be addressed at the completion of the hearing on the merits.

VII. ORDER

[74] The Panel orders the following partial relief:

- i) The PCC is to disclose to the Member any and all CPA Ontario correspondence, including emails, letters, recordings and notes of phone calls and of voice mail messages from CPA Ontario to the Member as referred to by Weinman, Director of Practice Inspection at CPA Ontario, in Weinman's April 7, 2022 Memorandum; and
- ii) The PCC is to disclose to the Member interview materials, including audio or video files of the interview of Weinman conducted by Fisher, Investigator, on December 19, 2022; as well as interview notes and/or summaries prepared by Fisher in relation to her interview of Weinman.

DATED this 13th day of December, 2023

A handwritten signature in black ink, appearing to read 'D. Handley', with a stylized flourish at the end.

David Handley
Discipline Committee – Deputy Chair

Independent Legal Counsel
Nadia Liva, Barrister & Solicitor