

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: 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: Present
Gary Srebrolow, Counsel

Heard: August 8 and 9, 2024; November 11, 21, 25, 26 and 29, 2024; and December 16, 2024.

Decision and Order effective: March 7, 2025

Release of written reasons: May 1, 2025

REASONS FOR THE DECISION AND ORDER MADE MARCH 7, 2025

I. OVERVIEW

- [1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario (the “PCC”) made Amended Allegations of Professional Misconduct that Jack Cayne (the “Member”) committed professional misconduct, being that he failed to co-operate with the regulatory processes of the Chartered Professional Accountants of Ontario (“CPA Ontario”), failed to maintain adequate documentation to reasonably evidence the nature and extent of work he performed, failed to perform certain professional services in accordance with generally accepted standards of practice of the profession, and failed to perform his professional services in accordance with his Quality Assurance Manual (“QAM”).

- [2] A preliminary motion was heard by the Discipline Committee on October 5, 2023 respecting the disclosure of documents by the PCC ([Chartered Professional Accountants of Ontario v. Cayne, 2023 ONCPA 19](#)).
- [3] This hearing was held to determine whether the Amended Allegations were established and whether the conduct breached Rules 104, 206.1 and 218 of the CPA Code of Professional Conduct (the “Code”).

II. THE COMPLAINT AND THE AMENDED ALLEGATIONS

- [4] The Member was subject to practice inspections in 2017, 2020 and 2021. In October 2021, the Member was contacted by CPA Ontario Practice Inspection and asked to provide his working paper file and other documents related to a Review Engagement that he performed for Company A for the year ending December 31, 2020 (the “Review Engagement”).
- [5] The Member did not provide Practice Inspection with the documents requested, saying that he was unable to do so because his client, the director of Company A, objected to his submission of any documents to CPA Ontario until after the imminent sale of Company A. The Member sought guidance from Practice Inspection, but they insisted that he provide his file for the Review Engagement because the working papers were his property and not the property of his client. Practice Inspection did not agree to give the Member an extension of time to comply with their requests to a date after the completion of the sale of Company A.
- [6] As a result of the Member’s failure to provide the necessary documents to complete a practice inspection of the Review Engagement file, the Practice Inspection Committee (“PIC”) found that the Member had failed to maintain professional standards and referred the matter to Standards Enforcement on April 7, 2022 (the “Complaint”).
- [7] Following an investigation, the PCC brought Allegations against the Member. The Allegations were later amended on August 16, 2023 (the “Amended Allegations”). The particulars of the Amended Allegations are summarized as follows:
1. Contrary to Rule 104 of the Code, in or about the period June 20, 2022 to March 31, 2023, while engaged to perform the review of the financial statements of Company A for the year ended December 31, 2020, the Member failed to co-operate with the regulatory processes of CPA Ontario, in that:
 - a. [deleted]
 - b. He failed to provide all relevant working papers to support the Company A engagement as requested in writing on May 30, 2022 by CPA Ontario's Standards Enforcement department;
 - c. He failed to provide the PCC's investigator with the same documentation he provided to CPA Ontario's Practice Inspector, thereby frustrating the investigator's ability to investigate the professional standards deficiencies cited by the Practice Inspection; and

- d. He failed to comply with the investigator's requests on January 5 and January 24, 2023, for him to provide her all the relevant working papers for the Company A engagement.
2. Contrary to Rule 218 of the Code, in or about the period August 1, 2022 to March 31, 2023, while engaged to perform assurance and other professional services, the Member failed to take reasonable steps to maintain adequate documentation to reasonably evidence the nature and extent of work he performed in that, as of August 1, 2022, when transitioning his practice to semi-retirement, the Member destroyed or caused to be destroyed all client files in his possession.
3. Contrary to Rule 206.1 of the Code, in or about the period December 1, 2020 to May 31, 2021, while engaged to perform the review of the financial statements of Company A for the year ended December 31, 2020, the Member failed to perform his professional services in accordance with generally accepted standards of practice of the profession, in that:
 - a. He failed to present sufficient documentation to support the issuance of an Independent Practitioner's Review Engagement Report;
 - b. He failed to provide sufficient appropriate evidence to support his conclusion of Company A as a going concern; and
 - c. He failed to document the basis of his conclusion on the financial statements.
4. Contrary to his QAM and Rule 206.1 of the Code, in or about the period December 1, 2021 to March 31, 2023, while acting as the lead engagement partner, the Member failed to perform his professional services in accordance with generally accepted standards of practice for the profession, in that:
 - a. He failed to complete, in any engagement, an assessment of whether the criteria requiring the performance of an engagement quality control review was met; and
 - b. He failed to comply with the QAM's working paper retention policies.

III. PRELIMINARY ISSUES AND MOTIONS

- [8] At the outset of the hearing, counsel for the PCC advised that they had one witness for the hearing, Jennifer Fisher, the person they appointed to investigate the Complaint. In addition to her oral testimony, the PCC submitted an Expert Evidence Motion Record (Exhibit 2) which was served on July 29, 2024 (10 days before the start of the hearing).
- [9] Counsel for the Member opposed the motion to qualify Ms. Fisher as an expert in this proceeding for two main reasons: although he did not challenge Ms. Fisher's professional qualifications, he argued that she was biased against the Member, in part because she conducted the investigation; and second, that the Member had not been given notice that Ms. Fisher was going to testify as an expert and the PCC had not complied with the [CPA Ontario Rules of Practice and Procedure](#) respecting notice of expert witnesses.

Whether Ms. Fisher should be qualified to provide expert evidence

- [10] Ms. Fisher had FCPA and FCA designations and had been a CPA for 45 years. Most of her work involved audit or assurance work and she was a senior manager in her practice. Over the course of her career, Ms. Fisher said that she performed approximately 2,000 audits and 1,500 review engagements.
- [11] Since she retired from private practice in 2020, Ms. Fisher worked as a consultant to CPA Ontario. She completed 22 investigations for CPA Ontario, during which she reviewed Generally Accepted Accounting Principles (“GAAP”), Generally Accepted Auditing Standards (“GAAS”) and Canadian standards on Quality Control and Quality Management relevant to the preparation of assurance engagements.
- [12] When Ms. Fisher was retained by CPA Ontario in this matter, she was instructed to review the Complaint, the Review Engagement and the Member’s compliance with his QAM, amongst other things (her retainer is detailed in para. 48 below). Counsel for the PCC asked Ms. Fisher if she would have performed her review differently if she had been retained by the Member and she replied that she would not have had a different opinion.
- [13] Ms. Fisher testified that she signed an Acknowledgment of Expert’s Duty on July 23, 2024. In the Acknowledgement, Ms. Fisher declared that she would provide evidence in this proceeding that was fair, objective and non-partisan.
- [14] In cross-examination, Ms. Fisher was asked if she had originally been retained to provide expert evidence. She replied that her appointment letter stated that she might be required to be an expert.
- [15] Counsel for the Member suggested in cross-examination that Ms. Fisher had misled the Member about her role during her investigation. Ms. Fisher testified that she told the Member that she was a factfinder, but they never discussed whether she would be an expert witness. Ms. Fisher denied the assertion that she had made any promises to the Member that she would not act as an expert witness.
- [16] In response to questions from the Panel, Ms. Fisher testified that her qualifications as an expert had never been successfully challenged in a hearing
- [17] Counsel for the PCC argued that Ms. Fisher’s proposed evidence met the tests set out in the jurisprudence from the Supreme Court of Canada: it was relevant to the issues in the hearing; it was necessary for the Panel to have her expert testimony; and there were no exclusionary issues.
- [18] Counsel for the Member conceded that Ms. Fisher was professionally qualified to give expert evidence in this matter and that the Panel would benefit from expert evidence. Rather, he argued that Ms. Fisher was not impartial for the following reasons:
- (a) She was essentially an employee of CPA Ontario;
 - (b) Ms. Fisher had made misrepresentations to the Member during her interview when she said that she was merely a factfinder; and

- (c) Had the Member known that Ms. Fisher would be an expert witness, he might have answered her questions differently.
- [19] With respect to the challenge to Ms. Fisher's impartiality, the Panel was guided by the seminal case of [*White Burgess Langille Inman v. Abbott and Haliburton Co.*](#) ("*White Burgess*"). There, the Supreme Court of Canada noted that an expert has a duty to the adjudicative body and their duty is often formalized by the provision of an undertaking from the expert to provide independent judgment, uninfluenced by those who have retained them. The "acid test" is whether the expert's opinion would not change regardless of which party retained them. While experts are generally retained, instructed and paid by one of the adversaries, this fact cannot undermine their independence, impartiality or freedom from bias.
- [20] The Supreme Court found that where an expert has affirmed that they are aware of their duty to be impartial and independent, the burden is on the party opposing the admission of the evidence to show that "there is a realistic concern that the expert is unable and/or unwilling to comply with that duty" (para.48). Anything less than the expert demonstrating a clear unwillingness or inability to be objective and non-partisan should not lead to exclusion but would be considered in the overall weighing of costs and benefits of receiving the evidence (para. 49). The Court found that this threshold requirement is not particularly onerous, and it will likely be quite rare that a proposed expert's evidence would be ruled inadmissible for failing to meet it. The existence of some interest or a relationship (such as an employment relationship) does not automatically render the evidence inadmissible.
- [21] In keeping with the principles established by *White Burgess*, the Panel found that Ms. Fisher's execution of the Acknowledgement of Expert's Duty, wherein she agreed to provide opinion evidence that was fair, objective and non-partisan, was satisfactory evidence that she would attempt to provide her evidence in an impartial manner. She also testified under oath that her conclusions would have been the same had she been retained by the Member. There were no barriers to Ms. Fisher giving evidence. She therefore passed the "acid test" and the onus was on the Member to establish that she was not objective or partisan.
- [22] With respect to the Member's argument that Ms. Fisher's retainer by the PCC should disqualify her from giving evidence, counsel for the PCC provided the Panel with several Discipline Committee decisions where the Committee had found that a person who had acted as the investigator in a matter could provide expert evidence, including [*Wilson \(Re\)*](#), January 26, 2023 and [*Martin \(Re\)*](#), April 16, 2015). In *Martin* at para. 45, for example, the Discipline Committee noted that the dual role of investigator and expert is a well-established practice before the Discipline Committee of CPA Ontario and its predecessors.
- [23] The Panel found that there was no evidentiary basis for the argument that Ms. Fisher had misrepresented her role to the Member when she interviewed him. The Panel carefully reviewed the interview transcript, and she explained her role to the Member very clearly. The Member did not provide contrary evidence that he was, in fact, confused about this.
- [24] Furthermore, in respect of the Member's allegation that he had been tricked by Ms. Fisher,

there was no evidence that Ms. Fisher knew that she would be an expert witness at the time of the interview.

- [25] Finally, the Panel was unable to understand why Ms. Fisher's potential role as an expert would have impacted on the veracity of the Member's responses to her questions or his cooperation with the investigation.
- [26] In conclusion, the Panel found that Ms. Fisher was qualified to provide expert evidence and was satisfied that her evidence would be impartial.

Whether PCC had given the Member notice of Ms. Fisher's expert evidence

- [27] During the argument respecting the qualifications of Ms. Fisher, the Member's counsel also argued that the PCC had not complied with their obligation to give notice that they were calling expert evidence. Counsel for the Member said that they only became aware that Ms. Fisher would be asked to give expert evidence on July 29, 2024, when the Expert Evidence Motion Record (Exhibit 2) was served upon them. He argued that the timelines for notice of expert evidence and service of motions under the Rules of Practice and Procedure were not met.
- [28] Counsel for the Member argued that the Panel should not hear Ms. Fisher's evidence because they had insufficient notice that she would appear as an expert at the hearing. He argued that because proper notice was not provided, there was a denial of natural justice because they were unable to prepare their cross-examination of Ms. Fisher or present their own expert to respond to Ms. Fisher's testimony.
- [29] Counsel for the PCC submitted that the Member had been advised that Ms. Fisher would be called to give evidence and said that he had provided the Member with her CV as early as July 5, 2023. The Chair asked counsel for the PCC if there was a document where he stated that Ms. Fisher would be called to give expert evidence at the hearing. PCC counsel was unable to locate such a document.
- [30] Counsel for the PCC then argued that the Member should have appreciated that Ms. Fisher's report dated February 21, 2023 was also her expert's report. He added that he had encouraged the Member's counsel to obtain their own expert evidence on standards on several occasions.
- [31] The Panel was concerned that the Member did not have clear notice that Ms. Fisher would be called to give expert evidence at the hearing. In particular, the Panel accepted the submission of counsel for the Member that they needed time to retain an expert to respond to Ms. Fisher's report.
- [32] The Panel concluded, however, that the appropriate remedy for this situation was not to prevent Ms. Fisher from providing expert evidence. The Panel adjourned the hearing for three months so that the Member could retain an expert opinion respecting these matters as he requested. Despite this adjournment, the Member did not present any expert evidence during the hearing.

IV. ISSUES ON FINDING

- [33] The Panel identified the following issues arising from the Amended Allegations:
- (a) Did the evidence establish, on a balance of probabilities, the facts on which the Allegations made by the PCC were based?
 - (b) If the facts alleged by the PCC were established on the evidence on a balance of probabilities, did the Allegations constitute professional misconduct?

V. DECISION ON FINDING

- [34] The Majority of the Panel found that the evidence established on a balance of probabilities, the facts on which the Amended Allegations were based, with the exception of Allegation 1(c).
- [35] The Majority of the Panel was satisfied that Allegations 1(b), 1(d), 2, 3(a), 3(b), 3(c), 4(a) and 4(b) were proven and constituted breaches of Rules 104, 206.1 and 218 of the Code. The Panel determined that, having breached these Rules, the Member committed professional misconduct.
- [36] The Dissenting Panel Member, Ms. Ramsay, found that the evidence failed to establish the facts on which Allegation 4(b) was based, but she otherwise agreed with the Majority.

VI. REASONS FOR DECISION ON FINDING OF PROFESSIONAL MISCONDUCT

- [37] The Panel carefully reviewed the Amended Allegations and the evidence and submissions of the parties.
- [38] In addition to the issues raised in the Amended Allegations, in his closing submissions (on finding), counsel for the Member argued that the CPA Ontario regulatory process was unfair to the Member and there had been bias against him. In his closing submissions (on finding), counsel for the PCC argued that the Member is ungovernable. These issues are discussed below.

Member's Background

- [39] The Member obtained his B. Comm from McGill University and an MBA from York University. He graduated from the CGA program in 1987. He received his Public Accounting Licence ("PAL") in early 2013. The Member testified that at one time, he sat on the CGA Public Practice Committee, which is the equivalent of CPA Ontario's Discipline Committee.
- [40] The Member worked for accounting firms from 1974 to 1982. In 1982, he started his sole proprietorship professional accounting practice. His PAL was renewed in August 2022.
- [41] In his practice inspection planning questionnaire for an inspection in 2020 ("Questionnaire"), the Member reported that he had engaged in two audits (50 hours), 10 review engagements (250 hours), 75 compilation engagements (750 hours) and other work including assurance engagements and taxation engagements (total hours 2,600). None of the staff at the Member's office had professional designations.
- [42] The following year, the Member reported that he had no audits, two review engagements

and eight compilation engagements (total hours 1,685). In 2022, the Member advised that he had an annual six-figure income which was exclusively for tax services (preparation of personal and corporate tax returns, estate taxes and bringing cases to tax court).

- [43] The Member advised Ms. Fisher that in December 2022, he decided to slow down and concentrate his practice on income tax advice and preparing a limited number of personal and corporate income tax returns.
- [44] During the investigation in early 2024, when he was asked to provide the working paper files for the engagements that he reported on the Questionnaire, the Member told Ms. Fisher that he closed his office on Victoria Park Avenue effective on August 1, 2023 (but maintained a mailing address there) and “shredded all files that I had at that time”.

Member's Practice Inspection

- [45] The Member had a practice inspection in 2017, and no further action was warranted. In 2020, the Member had a full inspection, and the result was that another full inspection was required in 2021. According to Ms. Fisher, the fact that the Member had an inspection in 2021 (rather than three years after the 2020 inspection) signified that there were reportable deficiencies related to the Member's professional standards found in the 2020 inspection.
- [46] The following is a brief summary of the correspondence and communication between the Member and Practice Inspection:
 - (a) October 21, 2021 – Practice Inspection asked the Member to submit his working paper file in support of the Review Engagement.
 - (b) December 2, 2021 – The Member explained to CPA Ontario that Company A was in the midst of being acquired and the date of closing would be in the next two weeks. He said that the director of Company A had requested that he not submit his file to CPA Ontario until after the acquisition was successfully completed.
 - (c) December 6, 2021 – The Member testified that on the morning of December 6, 2021 he made several phone calls to CPA Ontario and re-sent his letter dated December 2, 2021 to make sure they had it. The Member testified that a CPA Ontario representative said that they would deliver his message to Michael Weinman, the Director of Practice Inspection.

According to the staff notes of the Member's phone call on December 8, 2021, he “wanted to propose a “hypothetical” question of what if he resigned from the file before the inspection date (December 8, 2021) but then the client rehired him later.” The staff wrote that they explained that the Member must still submit the requested documentation to Practice Inspection, and he could contact Practice Advisory if he had any further questions.

A Practice Inspection manager wrote to the Member in response to his request for an extension and advised him that it was denied. She told him that the file of Company A belonged to the Member, not the client, and the Review Engagement working paper files and supporting documentation must be submitted.

- (d) December 7, 2021 – The Member wrote back to the Practice Inspection manager and explained that he was in a difficult ethical position because his client had “expressly asked [him] to delay the submission of the practice inspection file for a few days,” adding that once the client’s negotiations were concluded, he would “submit the file to the association forthwith.”

The Practice Inspection manager explained to the Member that notwithstanding the client’s current situation, the Review Engagement working paper files they requested belonged to the Member’s firm and it was inappropriate to consider amending the timing of an inspection based on the client’s instructions. They asked that the requested working papers be submitted by December 8, 2021 in accordance with the Regulations.

The Member replied that the work was completed and reviewed, but “there is no way that the Reviewer will be able to see the supporting schedules, etc. due to the ethical bind that I find myself in.”

- (e) December 8, 2021 – The Member provided a file to Practice Inspection, noting that the file was not as complete as he would have wanted: “It was a compromise position allowing me to submit certain parts of the file that were already on “public record” while still maintaining confidentiality under the Rules of Professional Conduct”.
- (f) December 16, 2021 – Michael Weinman issued a draft reportable deficiencies report (“Deficiencies Report”) and requested a reply from the Member within 21 days. The Member was advised that he could redact or otherwise delete client names to protect his client’s confidentiality. (The Member testified that this was not a solution because he had only one client for whom he had conducted a review engagement and therefore CPA Ontario would be able to identify Company A if he provided his working papers to them.)

Staff at Practice Inspection phoned the Member to discuss the deficiencies identified in the Deficiencies Report.

- (g) January 2, 2022 – The Member wrote to CPA Ontario and explained that his client objected to the submission of his file for Company A because of sensitive negotiations and “the rules of conduct for Licence Accountants state that member shall not disclose any confidential information without the specific consent of the client.” He explained that he had attempted to negotiate an extension of time with staff so that he could make disclosure once the negotiations were concluded. He gave the Practice Inspector “only limited parts of the file” and responded to the deficiencies.

- [47] On April 7, 2022, the PIC submitted a complaint to the PCC. The Member was advised that the PIC had reviewed the reportable deficiencies and as a result found that the Member had failed to meet professional standards.

Investigation of Member’s Conduct

- [48] Ms. Fisher was retained by CPA Ontario in May 2022 and was asked to review the following:

- (a) The Member's standards of practice in the review engagement of Company A for the Review Engagement and for the compilation engagement for Company B for the year ended July 31, 2021 (Company B was not an issue in the hearing);
 - (b) Two other working paper files if available (no such engagements were provided by the Member);
 - (c) The facts and circumstances of the Member's refusal to submit the review engagement file for Company A as requested by Practice Inspection;
 - (d) Whether the Member continued to provide assurance services as part of his practice (the Member advised that he had not continued this part of his practice); and
 - (e) The firm's quality control standards.
- [49] On May 30, 2022, Ms. Fisher advised the Member of her retainer and asked the Member to provide various documents required for her investigation, including documents related to the Company A Review Engagement.
- [50] The Member responded to Ms. Fisher on June 16, 2022 and explained that with respect to Company A, he was bound by his duty of confidentiality and his client had instructed him not to disclose his working papers when CPA Ontario made its original request. He complained that despite this dilemma, the Practice Inspection had insisted that he make disclosure in December 2021.
- [51] During the course of the investigation, the Member provided Ms. Fisher with the following documents related to Company A: a document dated December 1, 2020 ("Review Engagement Letter"), a letter to the Director of Company A (Mr. D) dated May 2, 2021 ("Letter of Management's Representations"), a Waiver of Appointment of Auditor dated December 1, 2020, Company A's Financial Statement dated December 31, 2020, the worksheet to calculate general ledger balances after the year-end adjustments, the grouping schedule for the general ledger balances to the financial statements and the year-end adjusting entries (signed by the Director of Company A). There were no other documents to support the Independent Practitioner's Review Engagement Report for Company A. In addition, the Member provided his Quality Assurance Manual.
- [52] Ms. Fisher interviewed the Member on January 5 and 30, 2023.
- [53] On February 15, 2023, the Member signed a Confirmation of Completeness of Production of Files to Investigator indicating that he had given Ms. Fisher his working paper files, documents, schedules and papers relating to the review engagement of Company A and the compilation engagement of Company B.
- [54] Ms. Fisher submitted her report to the PCC on February 21, 2023.

ISSUE 1: Rule 104 – Failure to Co-operate

Particulars (b) and (d) – Failure to provide working papers in support of the Review Engagement of Company A to CPA Ontario

- [55] There was no dispute that the Member did not provide CPA Ontario with all relevant

working papers for his Review Engagement as requested in writing on May 30, 2022. It was also not disputed that the Member did not comply with Ms. Fisher's requests on January 5 and January 24, 2023 to provide her with all the relevant working papers for the Review Engagement.

- [56] Rule 104.1 of the Code mandates that members must co-operate with the regulatory processes of CPA Ontario. These processes include practice inspections and PCC investigations. Under Rule 104.2, members are required to promptly produce documents when asked to do so by CPA Ontario.
- [57] The Code does not contain any exceptions to Rule 104 requirements, however the Guidance respecting the Rule states that there is an exception with respect to legal privilege. The Member did not assert that his refusal to comply with the requests of Practice Inspection and Ms. Fisher were related to any legal privilege.
- [58] The Member argued that he was not required to co-operate with his regulator because:
 - (a) The documents requested by CPA Ontario (his working papers) for the Review Engagement were confidential.
 - (b) His client at Company A instructed him not to disclose any documents to CPA Ontario.
 - (c) He in fact co-operated with CPA Ontario in that he replied to CPA Ontario's correspondence in a prompt manner.
 - (d) CPA Ontario did not provide him with sufficient guidance respecting his "ethical dilemma."

Member's working papers were not confidential

- [59] The Code defines confidential information as information acquired in the course of a professional services relationship with the party. The term "acquired" is not defined. Working papers are documents where the CPA "shows their work," thereby confirming that they have reviewed the information provided by their client and applied GAAP, CSRE, and other Canadian standards on Quality Control and Quality Management relevant to the preparation of assurance engagements. The working papers are clearly the property of the practitioner, not the client, so that if challenged, the CPA can support the work that they have performed.
- [60] Furthermore, while Rule 208.1 states that a member shall not disclose any confidential information concerning the affairs of any client, former client, employer or former employer, the Code sets out a number of exceptions to the requirement of maintaining confidentiality, including Rule 208.1(c), that states that there is no duty of confidentiality when information is required under lawful authority or in the proper exercise of CPA Ontario's duties.
- [61] The issue of client confidentiality in the context of a CPA Ontario investigation has been considered by the Discipline Committee on many occasions and the Discipline Committee has consistently ruled that members are required to cooperate with CPA Ontario requests for information regardless of their client's instructions or alleged confidentiality. For example, in [Merle \(Re\)](#), July 19, 2017, Mr. Merle unsuccessfully argued that the

investigator's document request was a breach of confidentiality and a "witch hunt" concerning other clients. In dismissing his argument, the Discipline Committee stated at para. 19:

Rule 208 of the Code of Professional Conduct sets out that a member's duty of confidentiality to a client does not excuse the member from complying with requests from CPA Ontario in the exercise of its duties. Further, the PCC is subject to the confidentiality provisions of the CA Act and the CGA Act in preserving the secrecy of information or material.

- [62] The Panel found that the proposition that a member's working papers cannot be disclosed to CPA Ontario because they are confidential would render meaningless CPA Ontario's review of their members' compliance with the Code and professional standards. Without a mechanism to compel the production of documents that demonstrate that the member's work was performed in accordance with professional standards, CPA Ontario could not fulfill its mandate to protect the public.

Member cannot rely on client's instructions restricting disclosure to CPA Ontario

- [63] The Panel also found that Mr. D's instructions to the Member not to disclose anything to CPA Ontario did not trump the Member's professional obligations. The Panel was surprised that the Member even asked the client for permission to disclose his own working papers. The Member appeared to be aware that his client could not interfere with his professional duties. In his engagement letter to Company A dated December 1, 2020, the Member wrote that he would not provide confidential information about Company A to third parties without prior consent "unless required to do so by legal authority of the Code."
- [64] A similar situation involving instructions not to disclose a member's working papers arose in [Round \(Re\)](#), January 25, 2019, where Mr. Round argued that his employer told him not to provide any information to CPA Ontario. The Discipline Committee found that even if Mr. Round's employer had taken this position (which was not clearly established), it did not relieve him of his professional obligations. The Committee recognized that Mr. Round was faced with a hard choice: to comply with the request from his regulator or comply with a direction from his employer. However, the Committee concluded that as a member of this profession, that choice should have been clear. Mr. Round, or any member, is obliged to comply with requests from the regulator. The Committee found that Mr. Round had engaged in professional misconduct by choosing not to do so:

In the Panel's view, the contention that a member could be relieved of his duty to cooperate by the instructions of his employer was very problematic. Accepting that argument would open the door to the many employers who employ CPAs to obstruct CPA Ontario in its regulation of its members. Such a scenario cannot be reconciled with CPA Ontario's statutory mandate to regulate the profession in the public interest. The facts in this case demonstrated that problem abundantly: the decision made by a board based outside of Canada and comprised of people who were not members of CPA Ontario were determining how, and whether, CPA Ontario could conduct an investigation. That was not a

situation that could be permitted in a self-regulated profession.

Counsel for Mr. Round emphasized that the information sought did not belong to Mr. Round, and it was not his to provide. However, the Panel was satisfied that the information related to activities in which Mr. Round and other members of CPA Ontario may have been involved. In this way, the information implicated Mr. Round's professional activities and triggered his duty to cooperate, regardless of whether others may have an interest in the information.

Prompt Communications with CPA Ontario do not constitute co-operation

[65] CPA Ontario jurisprudence is clear that mere engagement with the regulator does not constitute co-operation. In *Round*, for example, CPA Ontario requested information regarding the firm's services and the identities of the firm's CPAs working in Ontario. Mr. Round responded to these requests by raising a number of questions as to the authority of CPA Ontario to seek this information. Despite extended correspondence between his counsel and CPA Ontario, Mr. Round did not provide the requested information to CPA Ontario.

[66] The Committee in *Round* at para. 37 directed that the duty to co-operate is a substantive duty not simply a procedural one, stating:

Members are required to not only acknowledge correspondence from CPA Ontario but to provide the information sought in that correspondence. Anything less would allow the efforts of CPA Ontario to regulate the profession in order to protect the public to be frustrated by formal responses that did not answer the questions asked, as in this case.

[67] At para. 38, the Committee concluded:

Mr. Round's acknowledgment of the correspondence and the provision of responses setting out his reasons for not responding did not change the key fact: he did not provide what was sought. Consequently, those factors did not detract from the Panel's conclusion that his failure to cooperate was professional misconduct.

[68] Mr. Round applied to the Court for judicial review of CPA Ontario's decision to proceed to a hearing because of his failure to co-operate. The Divisional Court dismissed the application, and the Court of Appeal declined leave to appeal. The Divisional Court agreed with the Committee at para. 33, stating that "it is not for Mr. Round to challenge the bona fides of the investigation at this stage. His duty is to cooperate."

Adequacy of CPA Ontario's communications with Member

[69] The Member argued that while he did not provide the documents requested to Practice Inspection or to Ms. Fisher, CPA Ontario had a positive obligation to address his concerns.

[70] The Panel found that CPA Ontario, particularly Practice Inspection, could have managed the Member interaction and communication process more positively. A discussion with the Member that confirmed his control over the working papers, addressed his privacy

concerns as related to the sharing of identifiable documents, and clarified that client instructions did not stop him from co-operating with his regulator may have delivered a more positive and timely solution. In reviewing the correspondence and hearing the evidence of the Member, it was clear that the Member was becoming increasingly frustrated and aggravated by the failure of CPA Ontario staff to speak with him directly.

- [71] That said, the Panel found that CPA Ontario's treatment of the Member did not mitigate against his requirement to fully co-operate with the regulatory process. In *Round* at para. 39, the Discipline Committee found that the requirement to co-operate and provide relevant information to CPA Ontario when requested is absolute:

Once the information was requested, it needed to be provided. Any other conclusion would undermine the overriding obligation on members of the profession to cooperate with an investigation, which allows investigations to be more efficient and streamlined.

- [72] There is no statutory obligation on the part of CPA Ontario to explain why it is requesting information or to negotiate terms of the member's engagement with them. While good relations with its membership are important to support and develop member engagement and aid the regulator in meeting its overarching goal of public protection, the Code does not set out any such requirement.
- [73] Counsel for the Member also raised concerns about the lack of clarity over whether the Member could redact or anonymize his working papers for Company A before providing them to Practice Inspection. The Member submitted that he performed only one engagement review and so, there would be no point in removing Company A's name from the documents provided to CPA Ontario.
- [74] In conclusion, the Panel unanimously found that the Member failed to co-operate with the practice inspection and the investigation of his conduct contrary to Rule 104.

Particular (c) – Failure to Provide the Investigator with documents provided to Practice Inspection

- [75] Ms. Fisher testified that she believed that the documentation that the Member gave her was "significantly less" than the documentation provided to Practice Inspection. This position was based largely on her review of the practice deficiencies.
- [76] In cross-examination, Ms. Fisher said that she never received a list of documents that the Member provided to Practice Inspection and she did not follow up with them regarding what documents they had been given. She fairly admitted that she could not say with certainty that she received fewer records from the Member than those received by Practice Inspection. She said that she had a "good conclusion" that this was the case, but not certainty.
- [77] The Member testified that he provided the same documents to Practice Inspection and to Ms. Fisher.
- [78] The PCC had the onus of establishing the allegations in the Amended Allegations on a balance of probabilities. The Panel unanimously found that the evidence did not establish

the allegation contained in Particular 1(c) of the Amended Allegations.

ISSUE 2: Rule 218 – Failure to Maintain client files for a reasonable period of time

- [79] Under Rule 218 of the Code, Members must take reasonable steps to maintain information for which they or their firm is responsible, including retaining for a reasonable period of time such working papers, records or other documentation which reasonably evidence the nature and extent of the work done in respect of any professional service.
- [80] The Code does not define a “reasonable period of time”, and it is clearly dependent on the nature of the work performed by the Member. In [*Kutum \(Re\)*](#), May 15, 2013, at para. 27, for example, the Panel stated:
- Failure to retain adequate documentation of the procedures done, particularly when there are so many questions or issues about the financial statements, amounts to an evasion of professional responsibility.
- [81] Following the Member’s interview with Ms. Fisher on January 5, 2023, Ms. Fisher emailed the Member on January 30, 2023 and asked him to produce the financial statements and working paper files for his engagements with Company A and Company B.
- [82] On January 31, 2023, the Member replied:
- I am sorry that I cannot comply with your request(s).
- When I decided to become semi-retired I closed my office on Victoria Park Avenue (but maintained the mailing address there) and shredded all files that I had at that time. I figured that I would not need to access them any longer.
- [83] Ms. Fisher responded on February 1, 2023 and reminded the Member that the Canada Revenue Agency (“CRA”) requires documents to be retained for seven years. She referred the Member to his obligations under Rule 218.
- [84] The next day, the Member replied saying that he was under no obligation to CRA concerning his clients’ files and he believed that a “reasonable period of time” concluded when he chose to be semi-retired. Ms. Fisher then explained to him that CRA requires the retention of Form T183s for at least six years from the date that the return was filed and asked him to confirm that his offices at Victoria Park Avenue were closed.
- [85] The Member replied on February 2, 2023 that he included all T183 forms with the papers that were shredded and if CRA asked him for these, they were no longer in his possession. He also confirmed that the Victoria Park office was closed, but he maintained it as a mailing address.
- [86] During his testimony, the Member said that his versions of the T183s were on a computer program. He testified that he had a tax program that generated T183s, and he kept them “on the Cloud” with the tax returns of the clients. In response to questions from the Panel, it became apparent that the Member had not retained original copies of these documents and that if CRA required production of original forms, he would generate new copies and obtain signatures from his clients after the fact.

- [87] The Member also testified that during a discussion with Ms. Fisher (after he told her that he had shredded his files), he did not “really understand” what she was asking about and gave an answer that was incomplete. He stated that he had shredded “some really old files” and although he initially told Ms. Fisher that he had shredded everything, this was a mistake and he told her later that “hey, I was wrong.” (This evidence was inconsistent with the written evidence and the evidence of Ms. Fisher. Counsel for PCC objected to it because of the rule in *Browne v. Dunn*, which is discussed below.)
- [88] The Panel noted that the Member did not provide any supporting evidence for the assertion that he retained his client files, either “on the Cloud” or in his office. At no time did he produce the documents requested by Ms. Fisher or produce evidence that he had retained electronic versions of documents.
- [89] As discussed above, when Ms. Fisher was cross-examined by the Member’s counsel, she was not asked any questions about this new position taken by the Member. This was in violation of the rule in *Browne v. Dunn* because Ms. Fisher was not provided with an opportunity to speak to the veracity of the Member’s evidence while she was testifying. This impacted on the weight which the Panel gave to the Member’s evidence on this subject.
- [90] The Panel concluded that even accepting the Member’s evidence set out above, which was not accepted by the Majority, it was not disputed that the Member destroyed some of his client’s paper files in the summer of 2022. Furthermore, it was not disputed that the Member failed to maintain original copies of the T183 forms for his clients as required by CRA.
- [91] In conclusion, the Panel unanimously found that the evidence supported this Amended Allegation.

ISSUE 3: Rule 206.1 – Failure to Perform Professional Services in accordance with generally accepted standards of practice of the profession

- [92] The PCC alleged that the Member did not comply with generally accepted standards of practice of the profession in three respects:
- (a) He failed to present sufficient documentation to support the issuance of an Independent Practitioner’s Review Engagement Report;
 - (b) He failed to provide sufficient appropriate evidence to support his conclusion that Company A was a going concern; and
 - (c) He failed to document the basis of his conclusion on the financial statements (emphasis added).
- [93] Rule 206.1 of the Code requires members or firms to perform professional services in accordance with generally accepted standards of practice of the profession.
- [94] In his closing submissions, the Member did not dispute that CPA Ontario did not have sufficient documentation to review his compliance with professional standards. Rather, the Member’s position was that he had an ethical dilemma in providing these documents to

CPA Ontario.

- [95] During her evidence, Ms. Fisher clearly established that because the Member had not produced his working paper file for the Company A Review Engagement, she could not affirm (or deny) that he had complied with generally accepted standards of practice.
- [96] Ms. Fisher gave extensive testimony that, based on the few documents that she had received from the Member, it appeared that the Member's work related to the Company A Review Engagement was substandard. In particular, she noted that the assessment of Company A as a going concern was inconsistent with the company's financial position at the time as evidenced in the general ledger's balances.
- [97] While the Panel accepted Ms. Fisher's expert evidence respecting her analysis of the Company A financial statement, it was not necessary to establish that the Member had in fact failed to conduct his Review Engagement of Company A in accordance with professional standards. The Member's failure to produce his working papers which would support the work that he had done in respect of the review engagement was sufficient to establish the allegation contained in Particulars 3(a), 3(b) and 3(c) of the Amended Allegations.

ISSUE 4: Failure to Comply with Firm's Quality Control Standards

- [98] PCC alleged that the Member did not comply with the standards required in his own QAM and Rule 206.1 of the Code in two respects:
- (a) He failed to complete, in any engagement, an assessment of whether the criteria requiring the performance of an engagement quality control review was met; and
 - (b) He failed to comply with the QAM's working paper retention policies.

Engagement Quality Control

- [99] Ms. Fisher testified that the requirement that public accountants have a QAM was implemented in 2009. The Member obtained his PAL in 2013, so he should have had a QAM.
- [100] In the Member's QAM, he was required to have a cyclical monitoring engagement every three years. In other words, someone should have been appointed to be his external monitor every three years. The Member should have had two cyclical engagements after he received his PAL designation and before the 2021 practice inspection. He retained an outside reviewer in February 2022, which was the first time he had retained a monitor.
- [101] The Member did not contest that he had failed to comply with his QAM but argued that he had remedied the problem by retaining an outside reviewer.
- [102] The Panel found that the Member's failure to comply with his Firm's Quality Control Standards constituted professional misconduct. His retainer of an outside reviewer may be considered when the Panel is considering possible sanctions for the Member's professional misconduct.

Working Paper Retention Policies

- [103] The Member's QAM included the policies around working paper retention. Section 11.7 of the QAM provided that "the practitioner is responsible for ensuring that engagement documentation is retained for a minimum of seven years after the report release date." During the retention period, the engagement documentation must:
- (a) be kept in a secure place where file access and retrieval is limited to authorized personnel; and
 - (b) include a complete record of additions and changes made to engagement documentation after the engagement files have been completed.
- [104] The Majority of the Panel found that the PCC provided compelling evidence from the Member's own correspondence to Ms. Fisher that he did not adhere to the working paper retention policies included in his QAM when he shredded his files in or about August 2022.
- [105] The Minority of the Panel, Ms. Ramsay, accepted the evidence of the Member that he retained client information electronically after August 2022. She therefore found that the PCC failed to establish on a balance of probabilities that the evidence supported this finding of professional misconduct.

Other Issues – Member's argument respecting alleged bias

- [106] In the Member's submissions on finding, he argued that CPA Ontario was biased against him. He gave three examples of this alleged bias:
- (a) When Mr. Weinman briefed Ms. Fisher about what had occurred between the Member and Practice Inspection, he told her that the Member probably did not have a working paper file for his Review Engagement of Company A and the Panel received evidence that Ms. Fisher recorded these comments as part of her preparatory notes in advance of her assignment;
 - (b) In her investigation report, Ms. Fisher did not use the phrase "ethical dilemma" to describe the Member's concerns about disclosing Company A documents against the wishes of his client; and
 - (c) During the hearing, counsel for the PCC was unduly aggressive towards the Member and made disparaging and derogatory comments about him. On several occasions, counsel for the PCC referred to the Member as a "liar." For example, on one occasion when casting aspersions on the veracity of the Member's testimony, counsel for the PCC suggested to the Panel that the Member was engaging in an "aw shucks kind of little old man thing" and that the Member's evidence "is a nice snapshot of the true nature of [the Member.]....He's going to burn everybody [at CPA Ontario] down to get what he wants." When counsel for the Member objected to these comments, counsel for PCC responded that he should "listen for a change" and the exchange became very heated.
- [107] With respect to the derogatory comments made about the Member by PCC counsel during the hearing, while the Chair admonished counsel repeatedly for these comments, they were ongoing. While the Panel appreciates that hearings can be emotional for all participants, the Panel expects that all counsel will act respectfully and dispassionately to

ensure that CPA Ontario hearings remain fair and respectful. The Panel found that many of the comments and the tone used by counsel for the PCC respecting the Member and his counsel were neither appropriate nor helpful and lacked the civility that was expected.

- [108] The Panel did not find that the investigation of this matter by Ms. Fisher was ultimately compromised by Michael Weinman's comments. The Minority Panel member was very troubled by Mr. Weinman's comment about whether the Member in fact had a working paper file for Company A and found it to be inappropriate and unfair to the Member.
- [109] Although Ms. Fisher failed to characterize the Member's concerns as an "ethical dilemma", she attached the Member's letter to CPA Ontario dated June 16, 2023 to her investigation report and stated that the Member's interpretation of the Code was that he could not disclose confidential information without the consent of his client. The Panel found that Ms. Fisher's report fairly identified the position of the Member.
- [110] While the Panel found that PCC counsel's conduct referenced above was not pertinent to the issues on finding, the Panel may consider these issues when determining the appropriate sanctions in this matter.

Other Issues – PCC's argument respecting alleged ungovernability

- [111] Counsel for the PCC made extensive arguments asking the Panel to find that the Member is ungovernable based on his conduct before and during the hearing. The following is a list of the key evidence referenced by the PCC, with the Panel's analysis related to each item:
- (a) During the course of the investigation, the Member relied upon an engagement letter and a letter of management's representations as part of his file for Company A. When Mr. D testified, he indicated that the signatures on these documents were not his, and it was not clear that he had even seen these documents previously.
- The Panel accepted the uncontested evidence of Mr. D, who was a witness for the Member and who was reliable and credible. Pursuant to CSRE 2400 paragraphs 68 and 103, letters of management's representations must be signed by the client before the financial statement is issued. At the very least, the Member was relying upon documents with forged signatures. It was reasonable to assume that the Member, who worked with Mr. D for many years, was aware that he had not signed these documents.
 - The Panel found that Mr. D's evidence that he had not signed the documents presented by the Member to CPA Ontario as authorized and executed by him was very concerning and will take this into account when considering sanctions.
- (b) The Member provided false information to CPA Ontario about his work and the time spent on assurance matters in the Questionnaire.
- While the Member admitted at the hearing that he had submitted incorrect evidence to CPA Ontario in the Questionnaire, the Panel was concerned by his

lack of candour at the time that he submitted the documents.

- (c) The Member advised Ms. Fisher that he had closed his office and was semi-retired, but in fact his office was continuing to be used and was listed on a public website as being open.
- The Panel found that the Member's explanation that he was in the process of retiring, but things changed in the process was possible. If this was the case, it was regrettable that the Member did not clearly communicate with CPA Ontario and Ms. Fisher regarding this change in his status. The Panel also found that it was equally possible that the Member was becoming frustrated with CPA Ontario's enquiries and his comments about shredding documents and closing his office may have been his attempt to shut down the investigator's numerous questions and requests for documents. It was not clear from the evidence whether the Member had been intentionally untruthful with Ms. Fisher about these matters.
- (d) The Member signed a Confirmation of Production when in fact he had not provided Ms. Fisher with complete disclosure.
- Again, the Member showed a lack of care in providing accurate representations to CPA Ontario.
- (e) The Member's evidence about the sale of Company A and the non-disclosure agreement was different than Mr. D's recollection of these events. The Member testified that he only learned of the sale of Company A in December 2021 when he learned of the reinspection. Mr. D testified that the Member was aware of the sale, although he may not have known the particulars.
- As set out above, the Panel found that Mr. D's evidence was clear, cogent and compelling. The Member's representations to CPA Ontario were not accurate.
- (f) One of the reasons given by the Member to Ms. Fisher for not producing his working papers was that he was subject to a non-disclosure agreement relating to the sale of Company A. Mr. D testified that the Member was not a signatory to this agreement. The Member never received a copy of this agreement and Mr. D did not tell him that he was bound by the non-disclosure agreement.
- The Panel found that the Member's representations to CPA Ontario that he was prohibited from providing his regulator with his working papers for the Company A engagement due to the non-disclosure agreement were disingenuous.
- (g) The Member produced documents to CPA Ontario relating to Company A, including the financial statement at issue, against the instructions of Mr. D. He testified that this was not contrary to his client's wishes because the financial statement was public. Mr. D was puzzled by this suggestion and easily confirmed that this was not true.

- The Panel was also surprised to hear a CPA Ontario member with many years of experience say that he believed that all financial statements issued in Canada, for both public and private companies, were available for public consumption on a website.

(h) The Member repeated to CPA Ontario several times that he would provide the information requested after the sale. This was not consistent with the evidence of Mr. D, who testified that his only instructions to the Member were that he should not provide any Company A documents to CPA Ontario.


- While it may have been wishful thinking on the part of the Member that he might be able to comply with CPA Ontario's requests for his working paper files in the future, he should not have promised to produce the requested documents to CPA Ontario in the circumstances. It appeared that the Member was making promises to Practice Inspection to produce the documents after the sale of Company A to delay the practice inspection.

[112] The Panel found that, while these issues are serious, the issue of governability in this case related to sanction rather than finding.

VII. ORDER

[113] The Panel remains seized of the issue of sanction and costs in this matter. The hearing will resume on June 16, 2025 to hear submissions of the parties respecting sanction and costs.

DATED this 1st day of May, 2025



Bernard S. Schwartz, FCPA, FCA
Discipline Committee – Chair

Members of the Panel

Peter Albert, CPA, CA, LPA
Marianne Park-Ruffin, Public Representative
Barbara Ramsay, Public Representative

Independent Legal Counsel

Susan Heakes, Barrister & Solicitor