

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: An Allegation against **SCOTT D. BATES, CPA, CA**, a member of the Chartered Professional Accountants of Ontario, under **Rule 104.2** of the CPA Ontario Code of Professional Conduct.

BETWEEN:

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

-and-

Scott D. Bates

APPEARANCES:

For the Professional Conduct Committee:	Jonathan Smith, Counsel
For Scott D. Bates:	Not Present and Not Represented
Heard:	January 25, 2024
Decision and Order effective:	January 25, 2024
Release of written reasons:	February 20, 2024

REASONS FOR THE DECISION AND ORDER MADE JANUARY 25, 2024

I. OVERVIEW

- [1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario (“PCC”) has alleged that between July 1, 2023 and August 31, 2023, Scott D. Bates (“Member”) failed to cooperate with the regulatory process of the Chartered Professional Accountants of Ontario (“CPA Ontario”) by failing to promptly reply in writing to communications from the Standards Enforcement department of CPA Ontario (“Standards Enforcement”) to which a written reply was specifically required.
- [2] This hearing was held to determine whether the Allegation of professional misconduct was established and, if so, whether the conduct breached Rule 104.2 of the CPA Ontario Code of Professional Conduct (“the Code”) and amounted to professional misconduct.
- [3] The Member has been a member of CPA Ontario since 2014. He had previously held a

Public Accounting Licence but that licence lapsed in 2022.

II. THE COMPLAINT AND THE ALLEGATION

- [4] On April 29, 2023, CPA Ontario received a complaint from a former personal and business income tax client of the Member. It was alleged that the Member had not returned the client's source documents which were needed to prepare the client's tax returns. It was further alleged that the Member was unresponsive to the client's correspondences, including several emails and phone messages.
- [5] On July 14, 2023, Standards Enforcement notified the Member of the complaint by sending a letter through FileCloud, a file sharing program used by Standards Enforcement to share documents with members of CPA Ontario. Standards Enforcement advised the Member that he was required to respond in accordance with Rule 104 of the Code and requested his response on or before July 28, 2023.
- [6] The Member acknowledged receiving the message that a document had been uploaded to FileCloud. However, he stated that he did not have the password to log into the application. After troubleshooting issues around FileCloud access, the FileCloud activity log indicates that the Member viewed the July 14, 2023 correspondence on July 17, 2023. The Member did not provide a response to the complaint.
- [7] On July 31, 2023, Standards Enforcement sent a follow-up letter to the Member advising that a written reply was required in accordance with Rule 104 of the Code and requesting that he respond on or before August 8, 2023. The Member did not respond to this letter.
- [8] On August 10, 2023, Standards Enforcement sent another email to the Member advising him that a letter had been uploaded to FileCloud and attached to the e-mail as a password protected document. In the e-mail, Standards Enforcement requested a response on or before August 17, 2023. The correspondence was a letter dated August 9, 2023 following up on the letters of July 14 and 31, 2023. In addition, Standards Enforcement called the Member at his office and left a voicemail following up on the previous letters and reminding the Member that a response was due on or before August 17, 2023.
- [9] On August 16, 2023, Standards Enforcement called the Member again and left another message reminding him that his response was due on or before August 17, 2023, in accordance with Rule 104 of the Code. The Member did not respond to the August 10th letter or any of the voicemail messages.
- [10] The Member has not provided any response to the complaint received by Standards Enforcement.

III. PRELIMINARY ISSUES

- [11] The Member did not attend the hearing, nor did he have a representative attend on his behalf. To proceed in his absence, the Panel had to be satisfied that the Member had received proper notice of the Allegation and the hearing. After waiting approximately 15 minutes for the Member to attend, the Panel sought evidence from the PCC that he had received proper notice.

- [12] PCC relied on the affidavit of Alyssa Grace Girardi (Exhibit 1), a Professional Standards Coordinator in the Investigations and Prosecutions department of the Professional Standards division of CPA Ontario. It establishes that the Member was served with the Allegation of professional misconduct on September 13, 2023.
- [13] The Affidavit further establishes that on November 30, 2023, the Tribunals Office sent an email to the Member and the PCC with the Notice of Hearing for this matter. The Notice of Hearing confirmed that the hearing was scheduled to proceed on January 25, 2024 at 9:30 a.m. by videoconference. The Notice of Hearing also advised the Member that if he chose not to attend the hearing, the Discipline Committee may proceed in his absence.
- [14] Based on this evidence, the Panel was satisfied that the Member had received proper notice of the Allegation and the hearing and determined that it would proceed in his absence.

IV. ISSUES

- [15] The Panel identified the following issues arising from the Allegation:
- A. Did the evidence establish, on a balance of probabilities, the facts on which the Allegation by the PCC was based?
 - B. If the facts alleged by the PCC were established on the evidence on a balance of probabilities, did those facts constitute professional misconduct?

V. DECISION

- [16] The Panel was satisfied that the evidence established, on a balance of probabilities, the facts set out in the Allegation of professional misconduct.
- [17] The Panel was satisfied that the Allegation constituted a breach of Rule 104.2 of the Code and having breached this Rule, the Member committed professional misconduct.

VI. REASONS FOR THE DECISION ON MISCONDUCT

Findings Regarding the Conduct of the Member

- [18] The evidence in support of the Allegation was placed before the Panel through the affidavit of Stephanie Chow, a Standards Enforcement Officer with CPA Ontario (Exhibit 2).
- [19] Over a period of two months, the Member received five communications from Standards Enforcement. These were sent either to his preferred email address or telephone number on record with CPA Ontario.
- [20] According to the FileCloud activity log, the Member viewed the correspondence dated July 14, 2023 and, as such, he was aware of the initial complaint and the duty to respond in writing to CPA Ontario. The Member failed to respond to the complaint as required. By the time of the hearing, he failed to respond in writing to Standards Enforcement.

Finding of Professional Misconduct

- [21] The Panel was satisfied that the evidence constituted clear, cogent and convincing evidence of the Member's failure to respond to the letters and phone calls from CPA Ontario.
- [22] Given multiple opportunities, the Member failed to respond to any communication from Standards Enforcement. He was properly notified of the complaint against him and the requirement that if he failed to respond, discipline proceedings would be brought against him. Absent credible evidence which demonstrates a member was unable to respond, the failure to respond promptly and completely constitutes a breach of Rule 104. Accordingly, this Panel had no hesitation finding that the Member's failure to cooperate in violation of Rule 104.2 constitutes professional misconduct.

VII. DECISION AS TO SANCTION

- [23] After considering the law and the submissions of PCC, the Panel concluded that the appropriate sanction was a \$5,000 fine payable to CPA Ontario by February 25, 2024. Notice of this Decision and Order disclosing the Member's name will be given to all members of CPA Ontario, to all provincial bodies and it will also be made available to the public.
- [24] In addition, the Member was ordered to cooperate with the regulatory process of CPA Ontario. The Panel gave him until February 25, 2024 to respond to the letters from Standards Enforcement dated July 14, 2023, July 31, 2023, and August 9, 2023.
- [25] Should the Member fail to comply with this Order, his membership with CPA Ontario will be suspended until such time as he does comply, provided that he complies within 30 days of the date of his suspension. If he does not comply within the 30-day period, his membership in CPA Ontario shall be revoked and notice of the revocation, disclosing the Member's name will be given in a manner specified above, and in the *Toronto Star* newspaper. All costs associated with this publication shall be borne by the Member and shall be in addition to other costs ordered by the Panel.

VIII. REASONS FOR THE DECISION AS TO SANCTION

- [26] In any discipline proceeding, a Panel must consider all principles of sanction including those articulated in the [Chartered Professional Accountants of Ontario Sanction Guidelines](#). Further, s. 15 of Regulation 6-2 states that in determining appropriate sanctions, the Panel:

15.1 shall consider any aggravating and mitigating factors;

15.2 may consider relevant principles, that may include:

15.2.1 protection of the public interest;

15.2.2 general deterrence of the membership;

15.2.3 specific deterrence of the Member;

15.2.4 rehabilitation of the member; and

15.2.5 denunciation.

- [27] As the Member did not participate in the hearing, the Panel did not have the benefit of any evidence in mitigation nor any submission from him about the appropriate sanction. The PCC did not file evidence on sanction, other than a costs outline. The Panel, however, relied on the fact that as of the date of hearing, the Member had not responded at all to the requests for information from Standards Enforcement.
- [28] In the Panel's view, the sanctions imposed were necessary to protect members of the public, promote public confidence in the profession, deter other members from engaging in misconduct and to maintain the public's confidence in the profession.
- [29] The absence of any response reflects the Member's lack of respect for, and indifference to, his regulating body. To fulfill its mandate to protect the public interest, CPA Ontario must ensure the accountability of its members. Rule 104, which requires members to cooperate with the regulatory process, is critical for this purpose. To properly investigate a public complaint, Standards Enforcement must be able to access information in a timely manner. If members fail to respond, the ability for CPA Ontario to fulfill its mandate of governing the profession is frustrated.
- [30] The failure to respond to requests from Standards Enforcement has a real and tangible impact on the ability of CPA Ontario to investigate matters. This impacts the integrity of the investigative process and affects public perception of CPA Ontario's ability to effectively regulate its members. Moreover, it has interfered with CPA Ontario's ability to investigate the underlying complaint regarding the Member's client not receiving documentation necessary for her to comply with her reporting obligations.
- [31] The sanction imposed will send a message to the profession that failing to respond to communications from CPA Ontario will be taken seriously. Further, it conveys to the Member the seriousness of his conduct and will help him to consider the steps he must take to rehabilitate his conduct. The sanction will also impress upon the Member the importance of responding to correspondence from CPA Ontario and of the need to cooperate in a timely manner.
- [32] The threat of suspension and/or revocation for failing to cooperate will hopefully compel the Member to participate in the investigative process as required.
- [33] Publication of the decision and order serves an important role in achieving specific and general deterrence. This action informs members of the profession that there are consequences when they violate the Code.
- [34] The fine sought by the PCC reflected the standard fine imposed when a member has failed to cooperate with CPA Ontario and has not remedied that failure prior to the hearing. Although the Panel concluded that a \$5,000 fine was appropriate in the circumstances, it was concerned that the PCC continues, as a matter of course, to default to that quantum in any case where a member fails to cooperate. The Panel is of the view that the

significance of a \$5,000 fine today has changed compared to its impact in previous years. In the Panel's view, increasing the quantum of the fine to properly reflect factors such as inflation and economic change should be considered in future cases of failing to cooperate.

IX. COSTS

- [35] The law is settled that an order for costs with respect to the disciplinary proceeding is not a penalty. Costs are intended to indemnify the PCC based on the principle that the profession should not bear all of the costs of the investigation, prosecution and hearing arising from the member's misconduct. It is customary for the PCC to seek 2/3 of the costs incurred during the investigation and prosecution of the matter.
- [36] The PCC sought two thirds of the costs incurred, as reflected in their Costs Outline (Exhibit 3). The Panel concluded that the quantum of costs was reasonable and ordered that the Member pay costs in the amount of \$4,100.

DATED this 20th day of February, 2024



John Love, CPA, CMA
Discipline Committee – Deputy Chair

Members of the Panel

Jaspreet Singh, CPA, LPA
Nancy Tran, Public Representative
John Wilkinson, Public Representative

Independent Legal Counsel

Seth Weinstein, Barrister & Solicitor