

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: An Allegation against **Sumudu B. Gunathilaka, CPA, CMA**, 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-

Sumudu B. Gunathilaka

APPEARANCES:

For the Professional Conduct Committee: Lindsay Bandini, Counsel

For Sumudu B. Gunathilaka: Present and Self-represented

Heard: February 28, 2025

Decision and Order effective: February 28, 2025

Release of written reasons: March 17, 2025

REASONS FOR THE DECISION AND ORDER MADE FEBRUARY 28, 2025

I. OVERVIEW

- [1] This case is about the Member’s failure to cooperate with his governing body with respect to one investigation. On or about June 24, 2024, the Standards Enforcement Branch of the Chartered Professional Accountants of Ontario (“CPA Ontario”) opened an investigation into the conduct of Sumudu B. Gunathilaka (“the Member”). Multiple attempts to communicate with the Member were made. The Member failed to provide a substantive response to any of Standards Enforcement Staff’s requests for information in relation to this complaint. As a result, Staff were unable to investigate the complaint.
- [2] The evidence in support of the Allegation was tendered in the form of an Agreed Statement of Fact (“ASF”), signed February 3, 2025, and marked Exhibit 1. Evidence supporting the ASF was contained in a Joint Document Brief, marked Exhibit 2.

II. THE COMPLAINT AND THE ALLEGATIONS

- [3] The Professional Conduct Committee (“PCC”) of CPA Ontario made the following Allegation against the Member:

1. THAT the said Sumudu B. Gunathilaka, CPA, CMA, in or about the period of June 24, 2024 to August 29, 2024, failed to cooperate with the regulatory process of CPA Ontario, contrary to Rule 104.2 of the CPA Code of Professional Conduct, in that he failed to promptly reply in writing to communications from CPA Ontario to which a written reply is specifically required, namely correspondence of Teresa Warus, CPA, CA, Standards Enforcement Officer, dated June 24, 2024, July 19, 2024, August 1, 2024 and August 14, 2024.

III. ISSUES

- [4] 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 a balance of probabilities, did the Allegation constitute professional misconduct?
 - C. If the answer to B is yes, what is the appropriate sanction?

IV. DECISION AND ORDER

- [5] The Panel found that the evidence established, on a balance of probabilities, the facts set out in the Allegation of professional misconduct.
- [6] The Panel was satisfied that the Allegation constituted a breach of Rule 104.2 of the CPA Code of Professional Conduct (“the Code”), and having breached this Rule, the Member committed professional misconduct.
- [7] The Panel imposed the following Order on sanction and costs:
- 1. Sumudu B. Gunathilaka shall pay a fine of \$5,000 to CPA Ontario by August 28, 2026;
 - 2. Notice of this Decision and Order, disclosing Sumudu B. Gunathilaka’s name, is to be given in the form and manner determined by the Discipline Committee:
 - (a) to all members of CPA Ontario;
 - (b) to all provincial bodies;and shall be made available to the public;
 - 3. In the event Sumudu B. Gunathilaka fails to comply with the terms of this

Order, his membership in CPA Ontario shall be suspended until such time as he does comply, provided that he complies within 30 days from the date of his suspension. In the event he does not comply within the 30-day period, his membership in CPA Ontario shall be revoked, and notice of the revocation, disclosing his name, shall be given in the manner specified above, and in the *Simcoe.com* newspaper. All costs associated with this publication shall be borne by Sumudu B. Gunathilaka and shall be in addition to any other costs ordered by the Panel.

4. Sumudu B. Gunathilaka shall pay costs of \$2,800 to CPA Ontario by August 28, 2026.

V. REASONS FOR THE DECISION ON MISCONDUCT

The Member

- [8] The Member is 42 years old and graduated with a bachelor’s degree from Manchester Metropolitan University in 2013. The Member obtained his Certified Management Accountant (CMA) designation in 2013 and his Chartered Professional Accountant (CPA) designation in 2014.
- [9] Between 2014 and 2021 the Member worked at IK Ltd. and STS in Brampton, Ontario. In 2023, the Member started his sole proprietorship in private practice at SGCPA Professional Corporation in Brampton, Ontario.

Findings Regarding the Conduct of the Member

- [10] On or about May 28, 2024, Standards Enforcement received a complaint from a member of the public. The complainant alleged that the Member had charged them a monthly fee for bookkeeping services he had not provided. The complainant further alleged that the Member sent them and their spouse’s 2021 and 2022 personal tax returns (“T1s”) in an unencrypted email, despite the complainant’s instructions to the contrary. A file was opened for the purpose of investigating this matter.
- [11] Over a period of two months, the Member received five communications from Standards Enforcement Staff. The communications were sent to the Member’s email address or made to the phone number on record with CPA Ontario. The Member did not respond to Standards Enforcement Staff at all.
- [12] The chart below sets out the dates, format, and content of the communications sent from Standards Enforcement to the Member:

DATE	FORMAT OF COMMUNICATION	CONTENT
June 24, 2024	Email to sumudubg@yahoo.com and upload to FileCloud ¹	Correspondence was uploaded to FileCloud notifying the Member that a file had been opened relating to a client

¹ FileCloud is a secure file transfer application used by Standards Enforcement Staff to communicate with Members.

DATE	FORMAT OF COMMUNICATION	CONTENT
		complaint regarding a charge for fees for services not delivered and a potential privacy breach. The complaint was attached to the correspondence, and Staff asked the Member to provide a response to the issues raised in the complaint. A deadline of July 8, 2024 for the Member's response was set.
July 11, 2024	Voicemail left for the Member on the number on file with CPA Ontario	Staff informed the Member that an email was sent to him on June 24, 2024 and that a file was uploaded to FileCloud. Staff requested that the Member check his email and respond. Staff also offered assistance.
July 19, 2024	Email to sumudubg@yahoo.com and upload to FileCloud	Correspondence was uploaded to FileCloud noting that the Member had not responded to the June 24, 2024 correspondence and reminding the Member of his obligations under Rule 104 of the Code. The letter noted that failure to respond could result in allegations of professional misconduct. A new deadline of July 26, 2024 for receipt of the Member's representations was set.
August 1, 2024	Email to sumudubg@yahoo.com and upload to FileCloud	Correspondence was uploaded to FileCloud noting that the Member had not responded to the June 24 and July 19, 2024 correspondence and reminding the Member of his obligations under Rule 104 of the Code. The letter noted that failure to respond could result in allegations of professional misconduct. A new deadline of August 9, 2024 for receipt of the Member's representations was set.
August 14, 2024	Email to sumudubg@yahoo.com and upload to FileCloud	Correspondence was uploaded to FileCloud noting that the Member had not responded to the June 24, July 19, and August 1, 2024 correspondence and reminding the Member of his obligations under Rule 104 of the Code. The letter noted that failure to respond could result in allegations of professional misconduct. A new deadline of August 21, 2024 for receipt of the Member's representations was set.

- [13] Due to the Member's failure to respond to Standards Enforcement Staff, an Allegation in this matter was issued on September 27, 2024. A little over three months later, on January 2, 2025, the Member provided a complete response to the requests for information from Standards Enforcement Staff.

Finding of Professional Misconduct

- [14] Rule 104.2 of the Code requires members to cooperate with the regulatory processes of CPA Ontario. For ease of reference Rule 104.2 is set out in relevant part below:

104.2 A member or firm shall:

- (a) promptly reply in writing to any communication from CPA Ontario in which a written reply is specifically requested;
- (b) promptly produce documents when required to do so by CPA Ontario; and...

- [15] The Member signed an ASF (Exhibit 1) agreeing to the facts and agreeing that the facts constituted a breach of Rule 104.2 of the Code and thus constituted professional misconduct. At the hearing, the Chair of the Hearing Panel confirmed with the Member that he agreed to the facts and agreed that the facts constituted professional misconduct as alleged.

- [16] There is no question that the Member breached Rule 104.2. It is indisputable that the Member failed to respond to staff's requests for information until after the Allegation was issued. The Panel had no trouble finding that the Member committed professional misconduct in the manner alleged.

- [17] After confirming the Member's agreement with the Allegation, the Panel asked the Member why he did not respond to the correspondence from his governing body. The Member explained that at the beginning of 2022, he purchased a practice comprised of 800 personal tax clients and 300 corporate tax clients. Shortly after the Member purchased the practice, one or two key employees left the firm. The Member then had to hire and train new employees. These circumstances left him overwhelmed and extremely busy. In the face of this, he prioritized his clients rather than his responsibilities to CPA Ontario.

- [18] The Panel further asked the Member if he knew he was required to respond to CPA Ontario's requests for information. The Member said he was unaware of his obligation to respond.

VI. DECISION AS TO SANCTION

Evidence in Relation to Sanction

- [19] Neither party led evidence on sanction.

- [20] The parties entered into a joint submission on sanction. The Panel accepted the joint submission. The Panel's Order is set out in paragraph 8 above.

- [21] In her submissions on sanction, Counsel for the PCC set out the following factors in support of the joint submission on sanction:
- i. the proposed sanction is the standard penalty for a member who fails to cooperate but has provided a complete response prior to the hearing;
 - ii. the Member very quickly entered into an ASF;
 - iii. the Member admitted professional misconduct shortly after the Allegation was issued; and
 - iv. the Member has learned from this proceeding and clearly understands his obligations.
- [22] The Member neither testified nor made submissions on sanction. The Panel had concerns about the Member's statement earlier on in the hearing that he did not know he had an obligation to respond to his governing body. In light of their concerns, the Panel proceeded to ask a series of questions aimed at gauging the Member's understanding of his responsibilities and how he intended to prevent future misconduct.
- [23] The Member responded by confirming he now understands the Code requires him to respond to his governing body, and now that he has experienced the consequences of failing to respond, he will be sure to prioritize responding to his governing body in the future.
- [24] The Panel further asked the Member if he feels he has an adequate understanding of the entire breadth of the Code. The Member responded by saying there is only one CPA in his firm, himself, and that he will make it a priority in the next six months to read the Code and understand it in its entirety.
- [25] This answer prompted the Panel to ask the Member if he was suggesting that he was not familiar with the Code outside of Rule 104.2, but that he would familiarize himself with the Code in the next six months. The Member responded in the affirmative.
- [26] After a subsequent question, the Member confirmed that not only would he familiarize himself with the Code, he would also comply with it.

VII. REASONS FOR THE DECISION AS TO SANCTION

- [27] A joint submission should be accepted unless it is contrary to the public interest or would bring the regulatory process into disrepute because it fell outside the reasonable range of sanction. In the words of Justice Moldaver in the matter of *R. v. Anthony-Cook*:²

[34] ... a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant

² *R. v. Anthony-Cook*, 2016 SCC 43 ¶ 34. See also: *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303 and *Chartered Professional Accountants of Ontario v. Sapi*, 2022 ONCPA 10 ¶ 59

circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold — and for good reason, as I shall explain.

- [28] While the ratio in *R. v. Anthony-Cook* requires the Panel to accept a joint submission unless we can demonstrate it is not in the public interest to do so, there is a corollary obligation on the parties to provide the Panel with evidence in support of a joint submission:

[54] Counsel should, of course, provide the court with a full account of the circumstances of the offender, the offence, and the joint submission without waiting for a specific request from the trial judge. **As trial judges are obliged to depart only rarely from joint submissions, there is a “corollary obligation upon counsel” to ensure that they “amply justify their position on the facts of the case as presented in open court”** (Martin Committee Report, at p. 329). **Sentencing — including sentencing based on a joint submission — cannot be done in the dark.** The Crown and the defence must “provide the trial judge not only with the proposed sentence, but with a full description of the facts relevant to the offender and the offence”, in order to give the judge “a proper basis upon which to determine whether [the joint submission] should be accepted” (*DeSousa*, at para. 15; see also *Sinclair*, at para. 14).³ [emphasis added]

- [29] The panel notes that, in CPA Ontario hearings, parties often focus excessively on the high threshold for rejecting a joint submission, while failing to adequately fulfill their obligation to thoroughly justify the proposed joint agreement.
- [30] In this matter, the parties ought to have ensured that the circumstances surrounding the Member’s failure to cooperate with CPA Ontario were before the Panel. The Panel recognizes the Member was self-represented. However, this type of evidence could have been included in the ASF and should not have been left to the Panel to tease out of the Member.
- [31] The Panel was surprised that a member who became a CPA in 2014 would be unaware of his obligation to respond to his governing body. The Panel’s concern was further amplified when the Member indicated he was not familiar with the Code but would dedicate himself to reviewing it within the next six months. The Code of Ethics of any professional organization provides essential guidelines to shape the behaviours and ultimately the practice of its members and, in doing so, promotes integrity and member performance consistent with its organizational values. It is, therefore, a dynamic and evolving document. Members are expected to remain consistently familiar with its contents and uphold its principles at all times, ensuring compliance with the highest ethical standards. The Member is serving some 1100 clients. The Panel expects him to be knowledgeable and compliant

³ *R. v. Anthony Cook*, ¶ 54

with the Code today, not six months from now.

- [32] The sanction proposed is the standard penalty for a member who fails to cooperate with CPA Ontario, but who provides a complete response before the hearing. Nevertheless, the Panel remains concerned that the public might have been better protected by including an additional term requiring timely and specific remedial education.
- [33] Ultimately, however, the Panel reluctantly concluded that the proposed sanction is reasonable and does not discredit the administration of justice.

VIII. COSTS

- [34] The law is settled that an order against a member for costs with respect to the disciplinary proceeding is not a penalty. Costs are intended to indemnify the PCC, based on the underlying principle that the profession, as a whole, should not bear all of the costs of the investigation, prosecution and hearing arising from the member's misconduct.
- [35] Costs are awarded at the discretion of the Discipline Committee. It has become customary for the PCC to file a Bill of Costs in the same form as used in civil proceedings, and to seek 2/3 of the costs incurred in the investigation and prosecution of the matter.
- [36] In this matter, the PCC filed a Bill of Costs, marked Exhibit 3. Legal fees and disbursements amounted to \$4,344.92. The parties agreed on costs in the amount of \$2,800. This is an ordinary costs award which the Panel is prepared to order.
- [37] The Panel orders the Member to pay costs of \$2,800 to CPA Ontario on or before August 28, 2026.

DATED this 17th day of March, 2025



John Love, CPA, CMA
Discipline Committee – Deputy Chair

Members of the Panel
Kane Porter, CPA, CA
Barbara Ramsay, Public Representative

Independent Legal Counsel
Lisa Freeman, Barrister & Solicitor