



FOUNDED 1879

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF
ONTARIO

DISCIPLINE COMMITTEE - CPA ONTARIO
RE: JEFFREY CHRISTIAN
EX: 1 FILED JAN 28 2016
OW

THE CHARTERED ACCOUNTANTS ACT, 2010

IN THE MATTER OF: ALLEGATIONS OF PROFESSIONAL
MISCONDUCT AGAINST JEFFREY W.
CHRISTIAN, CPA, CA, A MEMBER OF
CPA ONTARIO BEFORE THE
DISCIPLINE COMMITTEE

SETTLEMENT AGREEMENT

***Made pursuant to Section 34 (1)(c) of the Chartered
Accountants Act, 2010 and to ICAO Regulation 7-1, s.22.4***

Introduction

1. The Professional Conduct Committee approved draft Allegations against Jeffrey W. Christian, CPA, CA ("Christian") which are attached as Schedule "A" to this Agreement.
2. The draft Allegations pertain to Christian's failure to use due care in the performance of his professional services while engaged to prepare and file an income tax return for a deceased client. The draft Allegations further pertain to Christian's failure to communicate with and provide documents to an Executor of a deceased client's estate.
3. The documents referred to in this agreement are found in the Document Brief ("Doc").

4. The Professional Conduct Committee ("PCC") and Christian agree with the facts and conclusions set out in this settlement agreement for the purpose of this proceeding only, and further agree that this agreement of facts and conclusions is without prejudice to Christian in any other proceedings of any kind, including, but without limiting the generality of the forgoing, any civil or other proceedings which may be brought by any other person, corporation, regulatory body or agency.

Member Background

5. Christian became a Member of the Institute of Chartered Accountants of Ontario in 1991. He started his career at Laventhol and Horwath and later joined BDO in Toronto. He left BDO as a senior manager to join his father's small practice in Bolton, Ontario. On January 1, 2009, his practice joined BDO as its Bolton practice. On June 30, 2012, Christian separated from BDO, commencing practice as Christian & Company. He holds a public accounting licence.
6. Christian & Company typically employs five staff members, including one CPA, CGA, bookkeepers and other support staff. During tax season, the staff complement increases from five to approximately ten.
7. Christian & Company is a general accounting practice, performing two audits, 5 to 10 review engagements, 100 to 200 Notice to Reader engagements, and approximately 800 personal tax returns.

Background of the Complaint

8. Christian came to the attention of the PCC as a result of a complaint received from another Member ("MM") who had been retained to assist

"PVW" in fulfilling her duties as co-Executor of the estate of her late father, "DW" (the "Estate"). PVW is DW's oldest child from his first marriage.

9. The complaint alleged that Christian had failed to provide information requested by PVW and subsequently by MM, which was required by PVW to carry out her duties as Executor. MM stated that he had been retained to assist PVW after her attempts to obtain information from the Member had failed. **Doc 1**
10. Christian's response to the complaint against him is reproduced at **Doc 2**.
11. Ms. Jodie Wolkoff, CPA, CA, IFA, CBV, and Ms. Peggy Bennett, CPA, CA, (the "Investigators") were appointed to investigate.

Background of the Client Engagements

12. Christian was introduced to DW and his wife ("Mrs. DW") in the early 2000's. He was retained by DW and his wife to file their personal tax returns, and to prepare financial statements and tax returns for DW's private corporations.
13. DW passed away unexpectedly on December 23, 2009. At that time, in addition to the accounting services he provided to DW and Mrs. DW, Christian also provided bookkeeping, financial statement and tax return preparation services to three of DW's private corporations.
14. Christian acted as the accountant for the Estate until he resigned by way of a letter to PVW and Mrs. DW dated September 6, 2011. **Doc 2 p. 14**
15. As at February, 2015, Christian continued to provide accounting services to Mrs. DW.

Allegation 1 – Failure to Use Due Care in Performing Professional Services

16. Christian's office prepared and filed DW's 2009 final tax return (the "Final Return.") **Doc 3** The information for the return was gathered by staff, who prepared the draft return. Christian reviewed the Final Return before it was filed.
17. Christian is familiar with preparing Final Returns for clients.
18. There were no working papers prepared with respect to DW's Final Return.
19. In past years, Christian had challenges obtaining information from DW and Mrs. DW to meet filing deadlines. He states that he prepared and filed DW's final return on the basis that it was better to file on time and make any necessary adjustments as required, when further information became available.
20. DW's Final Return was signed and its filing was authorized by Mrs. DW. The Final Return was filed by Christian on June 24, 2010. **Doc 4**

Failure to Obtain a Complete List of Assets

21. Paragraph 70(5)(a) of the *Income Tax Act* states that when a Canadian resident dies:

"the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of each capital property of the taxpayer and received proceeds of disposition therefore equal to the fair market value of the property immediately before death."
22. It is essential that the preparer of a final return for a taxpayer begin the process with a complete and accurate list of the person's assets as at the date of death. Without this list it is not possible to correctly report the deemed disposition of the taxpayer's assets.

23. Christian did not obtain a complete and accurate list of DW's assets at the date of death, nor did he make adequate efforts to compile such a list prior to completing the Final Return. The Member states that it is likely that this list was requested by his staff, but it was not received. At the time the Final Return was being prepared, he did not think DW owned many assets so he was not concerned about obtaining a list.
24. Although Christian was the accountant for DW's three private companies and therefore had knowledge of their existence, he failed to report their deemed disposition on the Final Return. He stated that the companies had no value and therefore the failure to report was not a concern.
25. Christian was unable to confirm whether a disposition listed on Schedule 3 of the T1 return **Doc 3 pp. 23-24** resulting in a capital loss of \$55,502 was the result of an actual disposition or of a deemed disposition at death. The Investigators were unable to ascertain to which assets this disposition related.
26. DW owned employee stock options in two companies at the date of his death which were exercised and sold after his death, in 2010. If a taxpayer dies owning unexercised employee stock options, the taxpayer must include in the year of death the amount by which the value of the option immediately after death exceeds the amount, if any, paid by the taxpayer to acquire the option. The taxpayer could then be eligible to claim the 50% deduction in computing taxable income from the deemed disposition of the option. Christian did not report the unexercised options on the Final Return.
27. Christian states that he was not aware that DW held these unexercised options at the date of death. He states that when he inquired about stock options DW may have held at death, he was told that all options had been exercised prior to the date of death. Having received this advice, Christian should have obtained the necessary information to report the exercise,

including the exercise price and fair value at date of exercise, but did not. This information could have been obtained directly from the company issuing the options, which has a reporting obligation in the year of exercise.

28. Christian should also have inquired as to what happened to the stock acquired on the exercise of the options. It would have been necessary to report either the actual disposition of that stock during DW's lifetime, or its deemed disposition at the date of death. These inquiries were not made.

29. Income of \$117,800 was reported on the Final Return related to deferred stock option benefits. **Doc 3 p. 60** Christian advised that the amount was comprised of deferred stock option benefits from 2007 for "A. Co." and from 2003 for "F. Co." No details of stock sales relating to these two options were reported by the client, hence the deferred income was recognized on the final return.

30. Christian did not follow up to determine the details of these options and the related stock. If no sales relating to the deferred income had occurred, then the options would still be on hand at the date of death and would need to be reported. If sales had occurred in prior years, then amendments would be required to report the deferred stock option benefits in the correct period.

31. It is agreed that Christian failed to obtain and/or compile a complete list of assets held by DW at the date of his death and he therefore did not prepare the Final Return accurately.

Failure to Obtain Wills

32. When a Canadian resident dies and a final tax return is being prepared, it is necessary to know the details of their will so that any deemed dispositions of assets can be treated correctly. As set out above, the

Income Tax Act requires the reporting of a deemed disposition of assets held at death at their fair market value.

33. There are relieving provisions throughout the *Act* that permit the deemed dispositions to be reported at various other values in certain circumstances. For this reason, in order to accurately prepare the Final Return it is necessary that the tax preparer review the terms of the taxpayer's will to determine to whom the various assets are going to be distributed.
34. DW had a "primary will" dealing with all of his assets other than "any shares or other interests which I may own in the capital of "DW&P Inc." or in the capital of any other private corporations, any amounts receivable owing to me from any such corporation, and any assets held in trust for me by any such corporation." He also had a "secondary will," dealing with his corporate assets.
35. Christian did not have a copy of DW's primary or secondary will at the time he prepared DW's Final Return, nor did he make adequate efforts to obtain the wills. He states that his staff would have verbally requested a copy of the will from Mrs. DW, but it was not provided. No written request was made for the will to be provided. Christian did not attempt to contact a lawyer about the will.
36. Christian did not receive a copy of the secondary will until January, 2011 when it was provided to him by PVW. Up until this time, Christian was not aware that PVW was an Executor of the Estate.
37. The secondary will bequeathed DW's corporate assets equally to his four children. These assets should have been reported as deemed dispositions at fair market value on the Final Return for DW but were not.

38. Although it does not appear from the draft financial statements that DW's three companies had any value, the financial statements for one of the companies which were prepared by Christian indicated that there was an outstanding shareholder loan owing to DW of \$148,093. **Doc 5** This loan would be considered a capital asset owned by DW at the date of death and therefore subject to the deemed disposition rules of the Act, but it was not reported on the Final Return.

39. Christian did not have a copy of DW's primary will and he believes that his office never received a copy. He was not aware that he did not have a copy of the primary will until the Investigators requested it from him in 2014.

40. The primary will named Mrs. DW as DW's beneficiary "under any Registered Retirement Savings Plans, Registered Retirement Income Funds, Deferred Profit Sharing plans, pension plans, and annuities purchased therefrom which I may own at the time of my death." Christian needed this information in order to know that there was no requirement to report an income inclusion for the RRSP on the final return.

41. DW's primary will left the residue of his Estate equally to his four children. Christian did not have a list of assets at the date of death and could not know what assets, if any, would comprise the residue of the Estate. The effect of such assets on the Final Return is therefore unknown.

42. It is agreed that Christian failed to obtain and review the contents of the primary and secondary wills of DW prior to preparing and filing the Final Return and he therefore did not prepare and file the Final Return accurately.

Failure to Determine Tax Consequences of U.S. Assets

43. On June 22, 2004, DW and Mrs. DW transferred certain U.S. residential property (the "Property") to a trust (the "Trust"). The Trust document

indicates that it was a Revocable Living Trust, and DW and Mrs. DW were both settlors and beneficiaries of the Trust.

44. A Revocable Living Trust is often used in the U.S. to avoid probate, but it is not effective to avoid U.S. estate tax. It is subject to U.S. estate tax on death.
45. The transfer of a U.S. property to a Revocable Living Trust is treated as a disposition at fair market value for Canadian tax purposes. Such a trust is treated as a Canadian resident trust because the trustees are Canadian residents, as are the beneficiaries. Accordingly, there are reporting requirements for the Trust in Canada.
46. Although the Trust is subject to U.S. estate tax on death, it is subject to the 21 year rule for trusts in Canada. Under this tax rule, trusts are deemed to have disposed of all their assets at fair market value every 21 years if they have not been distributed to the beneficiaries by then. Tax is then payable by the trust on any accrued gains at that time. There is therefore a mismatch of the timing of tax and taxpayers, which can lead to double taxation because foreign tax credits are not available.
47. Christian is not experienced in U.S. tax matters.
48. Christian was aware of the Property but was unsure of its ownership. He believed at all material times that it was owned by a U.S. trust. In 2004 when the Property was transferred to the Trust, Christian was the accountant responsible for filing the personal income tax returns for DW and Mrs. DW. It is not known whether or not the disposition of the property to the Trust was reported correctly on these Canadian tax returns at the time the Trust was settled.

49. Christian knew that DW and Mrs. DW were dealing with a U.S. tax lawyer or accountant but he was never in contact with that individual. He made no attempt to obtain the Trust document.

50. Christian had not seen any of the Trust documents until June 27, 2011, when PVW emailed the Trust Agreement to him. At that time he did not know why PVW had sent the Trust Agreement to him because "it was nothing he was dealing with." Christian does not recall if he opened the Trust document which was an attachment to PVW's June 27 email.

51. To ensure proper preparation of the Final Return, it was necessary for Christian to consult with a U.S. tax advisor to determine the U.S. tax consequences to DW with respect to the Trust at the time of his death, because those consequences may have impacted his Canadian return. Christian did not consult with DW's U.S. tax accountant or lawyer, and did not seek out U.S. tax advice from any other professional with relevant expertise.

52. It is agreed that Christian failed to determine the U.S. tax consequences of DW's interest in a U.S. trust, of which he was aware, and he therefore did not prepare the Final Return accurately.

Allegation 2 – Failure to Communicate with Executor

53. On or about March 12, 2010, PVW met with Mrs. DW and Mrs. DW's lawyer, HB. HB provided PVW with a copy of DW's will. At this meeting, PVW learned that she was a co-Executor of the Estate, along with Mrs. DW.

54. On March 16, 2010, PVW received an email from Mrs. DW, notifying her that Christian was an accountant in Bolton who would be preparing all of

DW's taxes. Beginning in April, 2010, PVW corresponded directly with Christian regarding the Estate.

55. Between April and May, 2010, PVW and Christian had been corresponding regarding various tax questions PVW had regarding the Estate. On or about May 6, 2010, DW's personal banker informed Mrs. DW and PVW that Christian had confirmed DW's 2009 tax liability as \$57,108. The funds were released to pay the 2009 taxes, and Christian filed the Final Return on June 24, 2010.
56. In February, 2011, PVW and Mrs. DW agreed to meet to deal with any outstanding issues regarding the Estate. In or about this time, the relationship between the two co-Executors deteriorated. PVW believed that Mrs. DW may have been withholding information about Estate assets.
57. On May 26, 2011, PVW asked Christian for documentation related to DW's 2008, 2009, and 2010 personal taxes in order to determine how much tax the Estate might still owe. **Doc 6 p. 69** Christian advised that DW "does not have a 2010 tax return to file" and that he was "getting the three corporate entities together, as part of that could you please provide the full names and SIN numbers of the beneficiaries?" **Doc 6 p. 71** At this time PVW learned that DW owned three private corporations that had been left to her and her siblings.
58. PVW and met in June, 2011. Christian states that he was concerned that PVW had begun asking questions about issues which he believed were not relevant to her role as Executor, such as U.S. assets, and spousal RRSP payouts. At the end of the meeting Christian made the following note on his file: "*Conclusion: [Mrs. DW] if it costs you 60000 to get rid of the family I would do it.*" **Doc 7** He states that this reflected his concern that the Estate would never be settled.

59. On July 21, 2011, PVW notified Christian that she had retained MM to assist her in carrying out her duties as co-Executor of the Estate. She further instructed him to “desist from sending any returns or adjustments to CRA for [DW, the Estate, or DW’s corporations]” and requested the Business Numbers for the corporations (the “BN”s). **Doc 8 pp. 77-78**

60. Also on July 21, 2011, MM wrote to Christian requesting documentation to assist PVW in her role as co-Executor of the Estate. **Doc 1 pp. 8-10**

Among the information requested was:

- DW’s final tax return;
- A complete list of assets held by DW at the date of death;
- DW’s 2008 personal tax return;
- Financial information and location of minute books for each of DW’s private corporations;
- Details of individual or spousal RRSP contributions made post-DW’s death; and
- Details of all shares held by DW or by any companies in which he had an interest.

61. MM sent follow-up emails on August 15 and 24, 2011 requesting a response from Christian. When MM called Christian’s office, he was advised that Christian would not be responding to him. **Doc 1 pp. 6-8**

62. On August 23, 2011, PVW emailed and called Christian to again request the BNs. She received a response from one of Christian’s staff: “I apologize for the misunderstanding. I have been informed that you are not to call here. If you need any information you are required to go through your lawyers, sorry for the inconvenience. Have a nice day.” Subsequently, PVW sent several other emails to Christian requesting his response to her questions and information requests, but he did not respond. **Doc 8 pp. 79-88**

63. MM wrote to Christian again on September 1, 2011 requesting a response by September 9, 2011, failing which he would contact the ICAO. **Doc 1 pp. 5-6**
64. Christian resigned as "accountants for the Estate of DW" by letter of September 6, 2011, citing apparent disputes between the executors and conflicting instructions. Christian attached two invoices dated August 31, 2011 requesting payment. His letter stated "We will provide information to [MM] in due course." **Doc 2 pp. 14-16**
65. In light of Christian's resignation, MM wrote to him on September 14, 2011, repeating his prior information request, and additionally requesting the complete files for each of DW's three private companies, for the years 2008-2011. MM contacted Christian again on September 22 and 27, 2011, but did not receive a substantive response. He then filed a complaint against Christian. **Doc 1 pp. 2-4**
66. Christian states that he did not respond to MM because he was consulting with BDO legal counsel as to what information he could provide to PVW. He states that he was concerned that the co-Executors were in conflict and that some of the information requested by PVW may have been confidential information of Mrs. DW.
67. Christian states that had the two invoices dated August 31, 2011 **Doc 2 pp. 15-16** been paid, he would have provided the information that he knew was not confidential to PVW and MM. At no time did Christian communicate this to PVW or to MM.
68. PVW, as co-Executor, was unable to determine what work had been performed by Christian, and whether he had acted in accordance with the instructions in DW's wills because she had not received the information she had requested from Christian. She was therefore unable to determine

the appropriateness of Christian's accounts and whether or not the Estate should pay them.

69. After MM's complaint was filed, Christian states that he thought he would receive direction from the ICAO as to what he should provide to MM.

70. As at February 10, 2015, the date on which he met with the PCC in respect of this matter, Christian had not provided the information requested by MM on PVW's behalf in his email dated July 21, 2011.

71. Since Christian's resignation in September 2011, no tax and/or accounting work has been completed regarding the Estate and its assets because Christian has not released the requested documents to PVW or MM.

72. It is agreed that Christian failed to communicate with and provide documents to the Executor "PVW" and her accountant as requested to enable them to understand what work he had performed in respect of the Return and to facilitate the administration of the Estate of "DW."

Terms of Settlement

73. Christian and the Professional Conduct Committee agree to the following Terms of Settlement:

- a) Christian will pay a fine in the amount of \$5,000 within 18 months of this agreement receiving approval of the Discipline Committee;
- b) Christian will attend, within 18 months of the time the Discipline Committee accepts this Settlement Agreement, the following professional development courses offered by CPA Ontario (or the successor courses):
 - *Death and Taxes;*
 - *High Risk Areas of Tax;*
 - *Responsibilities of an Executor;*
 - *US Real Estate – Personal Investment: Canadian & US Tax Implications; and*
- c) Notice of the terms of this Settlement is to be published in accordance with the provisions of ICAO Regulation 7-3, s. 22, including notice to be given to CPA Canada, the Public Accountants' Council and in a CPA Ontario publication;
- d) Christian will pay costs in the amount of \$15,000 within 18 months of this agreement receiving approval of the Discipline Committee; and
- e) A failure by Christian to comply with any of the terms of settlement will result in his suspension from membership in the Institute which suspension will continue until he complies PROVIDED THAT if his suspension under this section continues for three months his membership in the ICAO/CPA Ontario will be revoked with full publicity in accordance with Regulation 7-3(23).

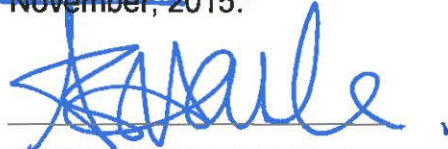
74. Should the Discipline Committee accept this Settlement Agreement, Christian agrees to waive his right to a full hearing, judicial review or appeal of the matter subject to the Settlement Agreement. Upon the member fulfilling the requirements of this Settlement Agreement, the draft allegations approved by the Professional Conduct Committee and dated May, 2015, shall be forever stayed.
75. If for any reason this Settlement Agreement is not approved by the Discipline Committee, then:
- a) This Settlement Agreement and its terms, including all Settlement Negotiations between the Professional Conduct Committee and Christian leading up to its presentation to the Discipline Committee, shall be without prejudice to the Professional Conduct Committee and Christian; and
 - b) The Professional Conduct Committee and Christian shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations, or negotiating a new Settlement Agreement, unaffected by this Settlement Agreement or the Settlement Negotiations.

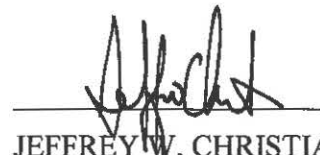
Disclosure of Settlement Agreement

76. This Settlement Agreement and its terms will be treated as confidential by the Professional Conduct Committee and Christian, until approved by the Discipline Committee, and forever if for any reason whatsoever this Settlement Agreement is not approved by the Discipline Committee, except with the written consent of the Professional Conduct Committee and Christian, or, as may be required by law.

77. Any obligations of confidentiality shall terminate upon approval of the Settlement Agreement by the Discipline Committee.

All of which is agreed to for the purpose of this proceeding alone this 14 day of December November, 2015.


ALEXANDRA E. HERSAK


JEFFREY W. CHRISTIAN, CPA,
CA on his own behalf

On behalf of:
THE PROFESSIONAL CONDUCT COMMITTEE



FOUNDED 1879

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF
ONTARIO
FORM 9A

THE CHARTERED ACCOUNTANTS ACT, 2010

TO: JEFFREY W. CHRISTIAN, CPA, CA "SCHEDULE A"

AND TO: The Discipline Committee of CPA Ontario

The Professional Conduct Committee hereby makes the following Allegations of professional misconduct against JEFFREY W. CHRISTIAN, a Member of CPA Ontario:

1. THAT the said Jeffrey W. Christian, in or about the period December 23, 2009 to September 30, 2011, while engaged to prepare and file the final T1 income tax return (the "Return") for the late "DW," failed to use due care in the performance of his professional services contrary to Rule 202.1 of the Rules of Professional Conduct, in that:
 - a. he failed to obtain and/or compile a complete list of assets held by DW at the date of death;
 - b. he failed to obtain and review the contents of the primary and secondary wills of DW prior to preparing and filing the Return; and
 - c. he failed to determine the U.S. tax consequences of DW's interest in a U.S. trust, of which he was aware.
2. THAT the said Jeffrey W. Christian, in or about the period July 1, 2011 to February 10, 2015, failed to communicate with and provide documents to the Executor "PVW" and her accountant as requested to enable them to understand what work he had performed in respect of the Return and to facilitate the administration of the Estate of "DW", and did thereby fail to maintain the reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the Rules of Professional Conduct.

Dated at Toronto, this day of May, 2015.

S.GASPARRO, CPA, CA, DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

Chartered Professional Accountants of Ontario is the registered name of The Institute of Chartered Accountants of Ontario.