

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO  
(THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO)  
*CHARTERED ACCOUNTANTS ACT, 2010*

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** An Allegation against **JEFFREY DAVID HOLMES, CPA, CA**, a Member of CPA Ontario, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

**TO:** Mr. Jeffrey D. Holmes

**AND TO:** The Professional Conduct Committee

**REASONS**

**(Decision and Order made October 28, 2016)**

1. This tribunal of the Discipline Committee met on October 28, 2016 to hear an allegation of professional misconduct brought by the Professional Conduct Committee (PCC) against Jeffrey David Holmes, CPA, CA, a Member of CPA Ontario.

2. Ms. Tamara Center appeared on behalf of the PCC. Mr. Holmes, with his counsel Mr. Wayne Chorney, attended via teleconference. Ms. Lisa Braverman attended the hearing as counsel to the Discipline Committee.

3. As a preliminary matter, the Chair read the Decision made on October 26, 2016:

Having considered the Notice of Motion by Jeffrey David Holmes, the submission by Mr. Holmes' counsel, and the consent by counsel for the Professional Conduct Committee, a tribunal consisting of the Chair grants the motion. The hearing of Jeffrey David Holmes before the Discipline Committee of the Chartered Professional Accountants of Ontario shall be held as an electronic hearing on October 28, 2016 as scheduled, in that Jeffrey David Holmes and his legal counsel are allowed to participate in the Discipline Committee hearing electronically.

4. The decision of the tribunal was made known at the conclusion of the hearing on October 28, 2016, and the written Decision and Order was sent to the parties on November 1, 2016. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegation, the decision, the order, and the reasons of the tribunal for its decision and order.

**Allegation**

5. The following Allegation of professional misconduct was made against Mr. Holmes by the PCC on August 9, 2016:

THAT the said Jeffrey D. Holmes, on or about the 23<sup>rd</sup> day of April, 2015, was convicted of offences pursuant to Section 334(a) and Section 122 of the Criminal Code of Canada including the offence of stealing money of a value exceeding five thousand dollars and the offence of committing a breach of trust in connection with the duties of his office, as set out in Schedule "A" attached, and did thereby fail to act in a manner which will

maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the Rules of Professional Conduct.

(\*Schedule A is not attached to this document)

### **Plea**

6. Mr. Holmes entered a plea of guilty to the Allegation.

### **The case for the PCC**

7. Ms. Center advised the tribunal that this case was based on fraudulent criminal conduct and that in April 2015, Mr. Holmes pled guilty and was found guilty of theft over \$5,000 and breach of trust under Section 334(a) and Section 122 of the *Criminal Code*. While working as the business administrator (considered to be a financial officer as he was at the top of finance of the organization) for a public health agency (the "agency"), Mr. Holmes misappropriated approximately \$435,000 from the organization.

8. Ms. Center filed a Brief of Authorities (Exhibit 1) containing the relevant sections of the *Criminal Code*, and the *Evidence Act* and the relevant Rules of the Rules of Professional Conduct and Rules of Practice and Procedure of CPA Ontario pertaining to this matter. Ms. Center submitted that when a member is the subject of an allegation under Rule 201.1 for a matter referred to in Rule 102.1(a), there is a rebuttable presumption that the member failed to maintain the good reputation of the profession and its ability to serve the public interest. Ms. Center suggested that the rebuttable presumption applied to Mr. Holmes because all three requirements in Rule 201.2 were met.

9. Ms. Center filed a Certified Copy of the Information (Exhibit 2) and a Document Brief (Exhibit 3) containing the transcript of proceedings before the courts and the reasons for judgment of Justice Dunn. In April 2015, Mr. Holmes pled guilty to one count of theft and one count of breach of trust before the Ontario Court of Justice. Mr. Holmes was found guilty on both of those counts. Mr. Holmes received a conditional sentence of two years less a day followed by 18 months of probation. He was also required to perform 100 hours of voluntary community service within 18 months.

10. In presenting the case for the PCC, Ms. Center reviewed the documents filed. No other evidence was called on behalf of the PCC.

### **The relevant facts**

11. Ms. Center read the brief overview by the Crown of the facts from the transcript of proceedings. Mr. Holmes had been the business administrator (considered to be a financial officer as he was at the top of finance of the organization) for a public health agency with sole responsibility for the financial aspects of the organization, controlling monies coming in and out. Questionable expenditures were uncovered relating to Mr. Holmes and as a result of an audit, approximately \$435,000 in corporate VISA transactions from the corporate VISA of Mr. Holmes were identified that were of a personal nature and not related to Mr. Holmes' employment. From 2006 to 2013, Mr. Holmes had taken cash advances and made expenditures of a personal nature through the use of a corporate credit card which had been issued to him by his employer.

12. A police investigation took place; Mr. Holmes turned himself in, was arrested and charged with theft over \$5,000 and breach of trust. Mr. Holmes pled guilty and was found guilty

of both counts. Based on the conditions of the sentence, after December 21, 2016, Mr. Holmes will no longer be confined to his home and will be able to work.

### **Submissions**

13. Ms. Center submitted that throughout the criminal proceedings, Mr. Holmes was referred to as a chartered accountant which reflects negatively on the profession. Ms. Center submitted that the tribunal had the authority to rely on the documents that had been filed in this matter including the guilty finding and that the transcript may be admitted as evidence. Ms. Center stated that based on the balance of probabilities there is clear, cogent and convincing evidence that Mr. Holmes breached Rule 201.1. Mr. Holmes pled and was found guilty under the *Criminal Code*. Mr. Holmes failed to rebut the presumption. Mr. Holmes had failed to act in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, and must be found guilty of the allegation of professional misconduct under Rule 201.1.

14. Mr. Chorney submitted that Mr. Holmes had no evidence to rebut the presumption and had entered a plea of guilty. Mr. Chorney submitted that a finding of professional misconduct can be made.

### **Decision**

15. After deliberating, the tribunal found, on the uncontested evidence, that the allegation had been proven. The tribunal announced the following decision:

THAT having heard the plea of guilty to Allegation No. 1, and having seen and considered the evidence, the Discipline Committee finds Jeffrey David Holmes guilty of Allegation No. 1 and guilty of professional misconduct.

### **Reasons for Decision**

16. Having seen and considered the evidence and submissions provided by both parties, the tribunal concluded that the evidence was clear, cogent and convincing and was sufficient to prove the allegation on the balance of probabilities. Mr. Holmes pleaded guilty to the allegation in this hearing, failed to rebut the presumption, and also pleaded guilty and was found guilty of theft and breach of trust by the Ontario Court of Justice. Both parties agreed that the submissions by Ms. Center on behalf of the PCC were consistent with the findings of the court.

17. The tribunal found as facts that Mr. Holmes had been the business administrator (considered to be a financial officer as he was at the top of finance of the organization) of the agency for 12 years before his employment was terminated. Over a period of seven years, Mr. Holmes misappropriated over \$434,000, involving approximately 3,800 transactions, by using his employer's corporate VISA, and bypassed the formal processing of the transactions by paying for the VISA purchases by electronic fund transfers from the organization's bank account. The tribunal had no difficulty in reaching the conclusion that the allegation had been proven on the balance of probabilities.

### **Submissions on Sanction**

18. Ms. Center, on behalf of the PCC, submitted that an appropriate sanction in this matter would be: a written reprimand, revocation of membership, a fine in the amount of \$20,000, the

usual publicity to all members and the public, including newspaper publication in the *Sault Star* and *Globe and Mail* or *Toronto Star*, and costs in the amount of two-thirds of the actual costs incurred. Ms. Center stated that the PCC would have no objection to allowing a reasonable time for Mr. Holmes to pay the fine and costs, say two or three years.

19. Ms. Center stated that Mr. Holmes was not opposing the proposed sanctions, except for the quantum of the fine.

20. Ms. Center filed an article from the *Sault Star* (Exhibit 4) concerning Mr. Holmes' sentencing hearing, which included aggravating and mitigating factors that were considered by the court. Ms. Center stated that Mr. Holmes was again publicly identified as a chartered accountant in this article.

21. Ms. Center submitted that Mr. Holmes, while in a position of trust, misappropriated funds from his employer. Misappropriation is theft and cannot be tolerated by the profession. Revocation of membership will act as the ultimate specific deterrent and a general deterrent to other like-minded members. Protection of the public will be addressed and public confidence in the integrity of the profession will be restored, by revocation.

22. Ms. Center stated that aggravating and mitigating factors had been taken into account by the judge in the criminal case. Ms. Center submitted that the aggravating factors included the breach of a position of trust. A great deal of trust was given to Mr. Holmes by his employer by virtue of Mr. Holmes' credentials and position. The amount of the loss was significant and Mr. Holmes did not cease his actions until he was caught. The misappropriation took place over a period of seven years, involving approximately 3,800 transactions. Ms. Center submitted that Mr. Holmes had been motivated by pure greed, and his actions had a negative impact on his employer and the community.

23. Ms. Center submitted that the mitigating factors were that by pleading guilty to the criminal charges, Mr. Holmes had prevented a lengthy trial. Ms. Center also noted that Mr. Holmes pleaded guilty before this tribunal. Mr. Holmes had expressed genuine remorse in a letter to the PCC. Ms. Center noted that he was also remorseful in the criminal proceeding by expressing an apology to his employer, the profession and his family. He was a first time offender in the criminal courts and there is no prior history of any disciplinary matter undertaken by CPA Ontario. Mr. Holmes' reputation in his community is destroyed, he has lost a good paying job and he fully expects to lose his CPA, CA designation. Mr. Holmes did cooperate with the police and has made partial restitution to his employer in the amount of \$280,000. He fully cooperated with the PCC in its investigation.

24. Ms. Center stated that the aggravating factors far outweigh the mitigating factors in this case. The sanctions proposed by the PCC appropriately deal with the principles of general and specific deterrence. Ms. Center submitted that the reprimand highlights the seriousness of the conduct. A fine of \$20,000 is within the range of fines ordered in moral turpitude/misappropriation cases, and revocation is necessary in a case of theft and abuse of trust. Publicity is the most effective specific deterrent and general deterrent to like-minded members, and ensures public confidence in the profession. The newspaper publicity will let the membership and the public know that Mr. Holmes' membership in CPA Ontario has been revoked, and there are no rare and unusual circumstances that would prevent publication.

25. Ms. Center filed a Costs Outline (Exhibit 5) showing that the actual costs were \$7,547.20, of which the PCC was seeking approximately two-thirds in the amount of \$5,000 be paid by Mr. Holmes.

26. Ms. Center distributed a Case Brief containing the Discipline Committee cases of *Adams, Bertrand, Doutre, McIntyre* and *Shillington*, noting that the cases contain a common theme involving misappropriation of funds from a client or employer, breach of trust and abuse of power, resulting in revocation. Ms. Center submitted that the sanctions requested by the PCC for Mr. Holmes are appropriate and in keeping with the cases.

27. Mr. Chorney, who stated he is representing Mr. Holmes on a *pro bono* basis, submitted that Mr. Holmes has admitted his guilt and concedes to the penalties being sought by the PCC with the exception of the amount of the fine. Mr. Chorney emphasized that Mr. Holmes' only disagreement with Ms. Center's submissions on sanction was with respect to the quantum of the fine being requested by the PCC.

28. Mr. Chorney stated that Mr. Holmes is well aware of his wrong doing, has reflected on comments made by the judge during his criminal case and has received counseling. Mr. Chorney stated that Mr. Holmes has no prior criminal record and no prior discipline history. Mr. Holmes pleaded guilty in the criminal case and before the Discipline Committee tribunal. Mr. Holmes was in a position of trust. Mr. Holmes was motivated by greed and a sense of entitlement. Mr. Chorney stated that Mr. Holmes is genuinely remorseful and has made restitution in the amount of \$280,000. Mr. Holmes has lost a good job and his reputation is ruined by the publicity in the small community where he lives.

29. A Hearing Brief was distributed on Mr. Chorney's behalf which contained a letter from Mr. Holmes' probation and parole officer/conditional sentence supervisor (Exhibit 6) attesting to his compliance with the conditions ordered by the court, including reporting in to his supervisor and performing 100 hours of community service work. The Hearing Brief contained the following Discipline Committee cases: *Shilson, Sitter, Galluzzo, Allen, Falco, Kroeker, Torch* and *Bogart*.

30. Mr. Chorney submitted that Mr. Holmes' position is that he cannot pay a large fine and will need time to pay. He has not been employed in the past year because of the conditional sentence order; it is unknown who will hire him but he does not want to leave the community.

31. Mr. Chorney submitted that a fine of \$10,000 would be more appropriate and that Mr. Holmes be allowed two to three years to pay the fine and costs.

#### **Evidence on Sanction**

32. Mr. Holmes, who was affirmed as a witness via teleconference, stated that he has been unable to work in the past year, he intends to seek employment at the beginning of 2017 once he is no longer precluded from leaving his home, and has been doing community service teaching literacy, math and computer training. He indicated that he has been working mostly doing computer training. He has no prospects but hopes he may be able to operate his own computer training business through Ontario Works. Mr. Holmes told the tribunal that he is nearing retirement age as he is 60 years old and outlined his financial situation. Mr. Holmes stated that he was motivated by greed and a degree of entitlement, as he felt he had other skills beyond his position and his responsibilities had increased and grew rapidly. Mr. Holmes clarified that he was a business administrator, not a CFO. On cross-examination, he agreed that he was a financial officer. Mr. Holmes stated that he is proud of his CPA, CA designation and apologized to CPA Ontario and its membership.



### Further Submissions on Sanction

33. Ms. Center submitted that the evidence demonstrates that Mr. Holmes has the ability to pay. Ms. Center submitted that the cases distributed support a fine of \$20,000, noting that a fine is a general deterrent but costs are more discretionary. Ms. Center distributed the *Minetto* and *Boulbee* cases which addressed timelines and ability to pay fines, noting that in past cases inability to pay is a factor but has not been given significant weight by tribunals in misappropriation cases such as *Minetto*.

34. Mr. Chorney responded that Mr. Holmes only takes issue with the quantum of the fine being proposed, in light of his limited and speculative prospects to obtain contracts or employment.

### Order

35. After deliberating, the tribunal made the following order:

1. THAT Mr. Holmes be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Holmes be and he is hereby fined the sum of \$20,000, to be remitted to the Chartered Professional Accountants of Ontario ("CPA Ontario") within thirty-six (36) months from the date this Decision and Order is made.
3. THAT Mr. Holmes' membership in CPA Ontario be and it is hereby revoked.
4. THAT notice of this Decision and Order, disclosing Mr. Holmes' name, be given in the form and manner determined by the Discipline Committee:
  - (a) to all members of CPA Ontario; and
  - (b) to all provincial bodies;
 and shall be made available to the public.
5. THAT notice of the revocation of membership, disclosing Mr. Holmes' name, be given by publication on the CPA Ontario website and in *The Globe and Mail* and the *Sault Star* newspapers. All costs associated with the publications shall be borne by Mr. Holmes and shall be in addition to any other costs ordered by the committee.
6. THAT Mr. Holmes surrender all certificates issued by CPA Ontario or its predecessor, including any membership certificate granting the Chartered Accountant (CA) and Chartered Professional Accountant (CPA) designation, to the Adjudicative Tribunals Secretary within ten (10) days from the date this Decision and Order is made.

### IT IS FURTHER ORDERED:

7. THAT Mr. Holmes be and he is hereby charged costs fixed at \$5,000, to be remitted to CPA Ontario within thirty-six (36) months from the date this Decision and Order is made.

## **Reasons for Sanctions**

36. The tribunal concluded that the written reprimand was necessary to reinforce the fact that Mr. Holmes' misconduct was not acceptable to CPA Ontario and his misconduct did not serve the public interest. The written reprimand was also necessary to serve as a specific deterrent should Mr. Holmes ever contemplate such dishonesty in the future.

37. The tribunal deliberated as to the quantum of the fine. Ms. Center submitted that the appropriate amount of the fine should be \$20,000 which she considered to be in the range of fines ordered involving similar incidents of misappropriation. She also submitted that the PCC would not be opposed to giving Mr. Holmes two to three years to pay the fine. Mr. Chorney submitted that Mr. Holmes has not been employed in the past year and cannot pay a large fine. He submitted that a fine of \$10,000 would be appropriate in the circumstances, and that he be given two to three years to pay the fine. He reminded the tribunal that this issue, the quantum of the fine, was the only matter of disagreement with the PCC in this hearing.

38. Along with the submissions of both counsel, the tribunal carefully considered the quantum of the misappropriation, the length of time Mr. Holmes carried out this misappropriation, the number of transactions made by Mr. Holmes, his avoidance of the employer's policy for the use of the company credit card and bypassing the internal controls in place for recording and paying for the transactions. The tribunal also took into consideration that Mr. Holmes made restitution to his employer in the amount of \$280,000 and has made significant progress in his rehabilitation and re-introduction into his community. The tribunal concluded that a fine of \$20,000 was appropriate in the circumstances and allowed Mr. Holmes to pay the fine within three years. The quantum of the fine sends a strong message to Mr. Holmes, the profession and members of the public that CPA Ontario has no tolerance for acts of moral turpitude.

39. The gravity of Mr. Holmes' actions over a seven-year period was a calculated course of conduct to increase his standard of living at the expense of his employer. He worked long hours and was away from his home travelling for a number of periods of time; however, these working conditions cannot be justified as a reason to steal from his employer. He abused his highly respected position of trust. His trusted position as a financial officer enabled him to carry out this misappropriation. The tribunal concluded that revocation of membership was appropriate given the seriousness of his misconduct.

40. Full publicity, as set out in paragraphs 4 and 5 of the Order above, serves to advise the members of CPA Ontario and the public of the findings of the tribunal. The publication of these findings provides transparency to the public of the CPA Ontario disciplinary process, and its protection of the public interest. Publication also serves as a notice to members and the public that CPA Ontario is vigilant in upholding the reputation and integrity of the profession. There were no rare and unusual circumstances that would support withholding Mr. Holmes' name from publication.

41. The tribunal concluded that the sanctions imposed on Mr. Holmes are within the range of sanctions previously imposed on members in similar cases.

## **Reasons for Costs**

42. Ms. Center filed a Costs Outline showing costs incurred of approximately \$7,500 and submitted that approximately two-thirds of the costs, being \$5,000, should be borne by Mr. Holmes. Mr. Holmes did not dispute the amount of costs being sought by the PCC. The

tribunal agreed with Ms. Center's submission that \$5,000 was within the range of costs awarded in recent similar cases. The tribunal determined that Mr. Holmes' misconduct resulted in this hearing and he should bear a portion of the costs for the hearing, approximately two-thirds of the costs. The tribunal took into consideration Mr. Holmes' financial situation and ordered the costs to be paid within three years.

DATED AT TORONTO THIS 27<sup>TH</sup> DAY OF MARCH, 2017  
BY ORDER OF THE DISCIPLINE COMMITTEE



A.D. NICHOLS, FCPA, FCA – DEPUTY CHAIR  
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

R. CARRINGTON (PUBLIC REPRESENTATIVE)

R.A. FERNANDES, CPA, CA

H.I. SHAFIE, FCPA, FCMA