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

*THE CHARTERED ACCOUNTANTS ACT, 2010*

**TO:** JOERN SCHOLZ, CPA, CA

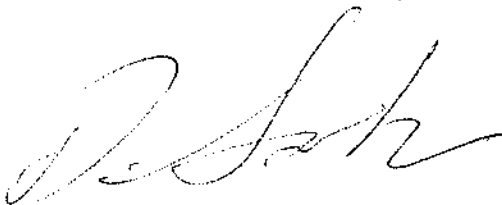
**AND TO:** The Discipline Committee of CPA Ontario

The Professional Conduct Committee hereby makes the following Allegations of professional misconduct against JOERN SCHOLZ, a Member of CPA Ontario:

1. THAT, the said Joern Scholz, in or about the period November 20, 2012 through January 31, 2013, while engaged to perform an audit of the financial statements of "XXCC 11\*\*" for the year ended June 30, 2012, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, contrary to Rule 206.1 of the Rules of Professional Conduct, in that:
  - a. he did not comply with Section 67(4) of the *Condominium Act, 1998* and failed to note in his audit report that "XXCC 11\*\*"'s Reserve Fund investments were not sufficient to fund the Reserve Fund;
  - b. he issued an unqualified audit report when he knew, or should have known, that the allocation of net assets between "XXCC 11\*\*"'s Operating Fund and Capital Asset Fund was materially incorrect and that the financial statements were not prepared in accordance with generally accepted accounting principles ("GAAP"); and
  - c. he issued an unqualified audit report when he knew, or should have known that "XXCC 11\*\*" was paying operating expenses from the Reserve Fund and that as a result, the financial statements were not prepared in accordance with the requirements of the *Condominium Act, 1998* or GAAP.

2. THAT, the said Joern Scholz, in or about the period November 20, 2012 through July 5, 2016, failed to retain 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 engagement, contrary to Rule 218 of the Rules of Professional Conduct, as amended, in that he failed to retain his working papers for the audit of "XXCC 11\*\*" for the year ended June 30, 2012.

Dated at Brampton, this 5<sup>th</sup> day of January, 2017.



A.J. SOKIC, CPA, CA, DEPUTY CHAIR  
PROFESSIONAL CONDUCT COMMITTEE

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

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Allegations against **JOERN SCHOLZ, CPA, CA**, a member, under **Rule 206.1** and **Rule 218** of the Rules of Professional Conduct.

**TO:** Mr. Joern Scholz, CPA, CA

**AND TO:** The Professional Conduct Committee

**DECISION AND ORDER MADE SEPTEMBER 13, 2017**

**DECISION**

The Discipline Committee, having seen and considered the evidence, including the agreed statement of facts filed, finds:

THAT Allegation Nos. 1 and 2 have been established;

THAT Rules 206.1 and 218 of the Rules of Professional Conduct have been breached; and

THAT Joern Scholz (Mr. Scholz) has thereby committed professional misconduct.

**ORDER**

IT IS ORDERED in respect of the Allegations:

1. THAT Mr. Scholz be reprimanded in writing by the Chair of the Discipline tribunal.
2. THAT Mr. Scholz be and he is hereby fined the sum of \$10,000 to be remitted to CPA Ontario within twenty-four (24) months from the date this Decision and Order of the Discipline Committee is made.
3. THAT Mr. Scholz' practice be and is hereby restricted to non-assurance engagements, restricting him from performing audit or review engagements.
4. THAT notice of the Decision and Order, disclosing Mr. Scholz' 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 restriction on practice disclosing Mr. Scholz' name, be given by publication on the CPA Ontario website and in *The Globe and Mail*. All costs associated with the publication shall be borne by Mr. Scholz and shall be in addition to any other costs ordered by the Discipline Committee.

AND IT IS FURTHER ORDERED:

6. THAT Mr. Scholz be and he is hereby charged costs fixed at \$14,000 to be remitted to CPA Ontario within twenty-four (24) months from the date this Decision and Order is made.

DATED AT TORONTO THIS 18TH DAY OF SEPTEMBER, 2017  
BY ORDER OF THE DISCIPLINE COMMITTEE



DIANE WILLIAMSON  
ADJUDICATIVE TRIBUNALS SECRETARY

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Allegations against **JOERN SCHOLZ, CPA, CA**, a member, under **Rule 206.1** and **Rule 218** of the Rules of Professional Conduct.

**TO:** Mr. Joern Scholz, CPA, CA

**AND TO:** The Professional Conduct Committee

**REASONS**

**(Decision and Order made September 13, 2017)**

1. This tribunal of the Discipline Committee of the Chartered Professional Accountants of Ontario met on September 13, 2017 to hear allegations of professional misconduct brought by the Professional Conduct Committee against Joern Scholz, a member of CPA Ontario.

2. Ms. Tamara Center appeared on behalf of the Professional Conduct Committee (PCC). Mr. Scholz attended on his own behalf via teleconference. Mr. Scholz confirmed he understood that he had the right to be represented by counsel and was waiving that right. Mr. Glenn Stuart attended the hearing as counsel to the Discipline Committee.

3. The decision of the tribunal was made known at the conclusion of the hearing on September 13, 2017, and the written Decision and Order was sent to the parties on September 18, 2017. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegations, the decision, the order, and the reasons of the tribunal for its decision and order.

**Allegations**

4. The following allegations of professional misconduct were made against Mr. Scholz by the Professional Conduct Committee on January 5, 2017:

1. THAT, the said Joern Scholz, in or about the period November 20, 2012 through January 31, 2013, while engaged to perform an audit of the financial statements of "XXCC 11\*\*" for the year ended June 30, 2012, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, contrary to Rule 206.1 of the Rules of Professional Conduct, in that:
  - a. he did not comply with Section 67(4) of the *Condominium Act, 1998* and failed to note in his audit report that "XXCC 11\*\*"'s Reserve Fund investments were not sufficient to fund the Reserve Fund;
  - b. he issued an unqualified audit report when he knew, or should have known, that the allocation of net assets between "XXCC 11\*\*"'s Operating Fund and Capital Asset Fund was materially incorrect and that the financial statements were not prepared in accordance with generally accepted accounting principles ("GAAP"); and

- c. he issued an unqualified audit report when he knew, or should have known that "XXCC 11\*\*" was paying operating expenses from the Reserve Fund and that as a result, the financial statements were not prepared in accordance with the requirements of the *Condominium Act*, 1998 or GAAP.
- 2. THAT, the said Joern Scholz, in or about the period November 20, 2012 through July 5, 2016, failed to retain 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 engagement, contrary to Rule 218 of the Rules of Professional Conduct, as amended, in that he failed to retain his working papers for the audit of "XXCC 11\*\*" for the year ended June 30, 2012.

### **Plea**

5. Mr. Scholz admitted Allegation Nos. 1 and 2. Mr. Scholz did not dispute that the evidence before the tribunal supported a finding of professional misconduct in relation to the Allegations.

### **Overview**

6. Ms. Center stated that the allegations pertained to the audit of a condominium corporation wherein Mr. Scholz attached his unqualified audit opinion to financial statements that were not prepared in accordance with generally accepted accounting principles (GAAP), and Mr. Scholz' failure to retain working papers for a reasonable period of time.

7. The case for the PCC was presented by way of an Agreed Statement of Facts (Exhibit 1). A Document Brief (Exhibit 2) and a Brief of Authorities (Exhibit 3) were also tendered in evidence on consent. There was no other evidence submitted by the parties on the issue of professional misconduct.

### **The relevant facts**

8. Mr. Scholz received his CA designation in 2000. He operated a small accounting practice as a sole practitioner between 2005 and December 2015, after which time the practice was wound down.

9. The issues giving rise to the Allegations came to the attention of the PCC when the treasurer of XXCC 11\*\* ("the Corporation") made a complaint that Mr. Scholz had not disclosed in his report or in the financial statements of the Corporation to which he attached his audit report that funds from the Reserve Fund were being incorrectly used by the former management company to pay operating expenses of the Corporation in contravention of the *Condominium Act* ("the Act"). This created a material misstatement of both the Reserve Fund and the Operating Fund. A subsequent audit also disclosed a further material misallocation, this time between the Operating Fund and the Capital Asset Fund, which together with the above noted misallocation eliminated the Operating Fund surplus originally reported, and instead created a deficit.

10. Mr. Scholz had been retained by the Corporation, a condominium property incorporated under the *Act* as a not-for-profit without share capital. The Corporation maintained the common elements and provided common services to the condominium owners. Mr. Scholz had been retained to audit the financial statements for the year ended June 30, 2012 in accordance with

the terms of the engagement letter.

*Allegation No. 1(a)*

11. On November 28, 2012, Mr. Scholz issued an unqualified audit opinion on the financial statements of the Corporation. At the Corporation's Annual General Meeting (AGM) in January 2013, Mr. Scholz reported that the status of the Reserve Fund was in good standing with a balance of \$529,000.

12. After approval by the Board, a new auditor, SC, was appointed in the fall of 2013. On January 14, 2014, SC issued an unqualified audit opinion of the financial statements of the Corporation for the year ended June 30, 2013. At the AGM in March 2014, SC reported that there were several problems with the Corporation's prior year's financial statements. Money contributed to the Reserve Fund did not get deposited into that Fund's bank account and was used instead to pay operating expenses, leaving the Reserve Fund underfunded by \$296,160, in contravention of the *Act*. The Corporation's owners were therefore required to pay a special assessment of \$274,513 to bring the Reserve Fund into compliance with the requirements of the *Act*.

13. Under the *Act*, money in the Reserve Fund can only be used for major replacements and repairs to common elements or assets of the corporation. The corporation is required to periodically conduct a Reserve Fund study to ensure that the amount of money in the Reserve Fund and the amount of contributions collected from the owners is adequate to provide for future major replacements and repairs.

14. The management company handling the Corporation's affairs prior to 2013 had paid operating expenses from member's contributions that were intended for the Corporation's Reserve Fund and did not reflect this misallocation of assets in the Corporation's accounts. The Reserve Fund assets, net of the operating expense payments made, were less than the Reserve Fund study required. Mr. Scholz did not include in his report that the Corporation's financial statements did not comply with the *Act*'s statutory requirement that the reserve fund balance had to be equal to or greater than the amount required by the Reserve Fund study.

15. The parties agreed that Mr. Scholz failed to perform his professional services in accordance with generally accepted standards of practice of the profession (GASP), contrary to Rule 206.1, in that he issued an unqualified audit report on the financial statements without disclosing that the Reserve Fund investments were materially insufficient to fund the Reserve Fund, as required under Section 93 and 94 of the *Act*, and failed to note in his audit report that the Company was in violation of Section 67(4) of the *Act*.

*Allegation No. 1(b)*

16. The Company had an Operating Fund, a Capital Asset Fund and a Reserve Fund. The financial statements issued by Mr. Scholz reported Capital Assets of \$310,000, a bank loan related to the Capital Assets of \$14,821 and a Capital Asset Fund balance (which should be the difference between the Capital Assets and any related liability) of \$21,348, with no reconciliation or explanation provided to explain the difference between that amount and the difference between the Capital assets and the related bank loan.

17. SC was required to restate the Corporation's fiscal 2012 financial statements during completion of the 2013 audit and adjust the Capital Asset Fund by \$275,686 to correct the above noted unreconcilable difference. It follows that the Operating Fund was overstated by this amount and restating it converted the Operating Fund's previously reported surplus balance to a deficit of \$263,542, a material difference from the balance originally reported. The financial statements

originally reported on by Mr. Scholz were thus materially misstated.

18. The parties agreed that Mr. Scholz failed to perform his professional services in accordance with GASP, contrary to Rule 206.1 in that he issued an unqualified audit opinion on the financial statements when he knew or should have known that the allocation of net assets between the Operating Fund and Capital Asset Fund was materially incorrect and the financial statements were not prepared in accordance with GAAP, as required under Section 66 of the *Act*.

*Allegation No. 1(c)*

19. The Company paid for operating expenses with Reserve Fund contributions, contrary to Section 95 of the *Act* and section 4410.06 of the *CICA Handbook – Accounting Standards for Not-for-Profit Organizations*. The financial statements prepared by Mr. Scholz failed to notify the owners that the Company was paying operating expenses from assets of the Reserve Fund.

20. The parties agreed that Mr. Scholz failed to perform his professional services in accordance with GASP, contrary to Rule 206.1 in that he issued an unqualified audit opinion on the financial statements when he knew or should have known operating expenses were being paid from assets of the Reserve Fund in violation of the *Act*, and that as a result the financial statements were not prepared in accordance with GAAP.

*Allegation No. 2*

21. SC, the successor auditor, requested files from Mr. Scholz relating to his audit of the financial statements. Mr. Scholz advised SC, and subsequently CPA Ontario, that a computer virus had destroyed his Caseware files, including the working papers relating to the audit of the financial statements. At the time, Mr. Scholz was in possession of paper copies of the working paper files, but he did not provide them to SC.

22. Standards enforcement staff from CPA Ontario advised Mr. Scholz of the complaint by the Corporation by letter dated January 28, 2015, and he was therefore aware that the complaint related to the audit of the financial statements of the Corporation. In May 2016, Mr. Scholz was advised that an investigator had been appointed. In July 2016, Mr. Scholz's working paper files, including the Corporation's files relating to the audit of the financial statements that were the subject of the investigation, were destroyed. Mr. Scholz advised the PCC investigator that the boxes were shredded in error by his wife who had sent five boxes of the Company's documents for shredding along with 25 other boxes that Mr. Scholz had intended to shred.

23. Mr. Scholz admitted that he failed to retain his working papers for the audit of the financial statements of the Corporation for a reasonable period of time, contrary to Rule 218. Mr. Scholz was ultimately responsible to retain, for a reasonable period of time, working papers, records or other documentation which reasonably evidenced the nature and extent of the work done. Mr. Scholz' documents were in fact destroyed in the midst of the PCC's investigation.

**Decision**

24. After deliberating, the tribunal found that Allegation Nos. 1 and 2 had been established based on the uncontested evidence and Mr. Scholz' admissions. The tribunal announced the following decision:



The Discipline Committee, having seen and considered the evidence, including the agreed statement of facts filed, finds:

THAT Allegation Nos. 1 and 2 have been established;

THAT Rules 206.1 and 218 of the Rules of Professional Conduct have been breached; and

THAT Joern Scholz (Mr. Scholz) has thereby committed professional misconduct.

### **Reasons for Decision**

25. The tribunal found that the evidence of professional misconduct having been committed by Mr. Scholz with respect to each of Allegations No. 1 and 2 was clear, cogent and convincing. Mr. Scholz also acknowledged before the tribunal that he had committed professional misconduct with respect to both Allegations.

26. There were no facts in dispute in this case. Mr. Scholz issued an unqualified audit opinion and thereby associated himself with financial statements that were materially incorrect and he should have known that they were incorrect.

27. In addition, the evidence clearly established that Mr. Scholz failed to retain evidence of his audit work related to these financial statements. The working paper files, that should have contained such evidence, were under Mr. Scholz' control and power and it was his responsibility to take steps to safeguard these computer and paper files.

28. The absence of working papers did not create any doubt about the finding related to allegation 1 as the correct application of generally accepted audit standards would have led to the conclusion that the Corporation's financial statements were materially incorrect and lacked appropriate disclosures.

29. The tribunal concluded that these facts demonstrated that Mr. Scholz breached Rules 206.1 and 218 as alleged and had thereby committed professional misconduct.

### **Joint Submission on Penalty**

30. Ms. Center advised the tribunal that there was no additional evidence on sanction. Ms. Center proceeded to advise that proposed sanctions were being jointly submitted by the PCC and Mr. Scholz.

31. The joint submission on sanction included the following provisions: a written reprimand, a fine in the amount of \$10,000, a practice restriction to non-assurance work and full publicity to all members and the public, including newspaper publication of the practice restriction in the *Globe and Mail*. The parties also jointly submitted that there should be an order for costs in the amount of \$15,000, representing approximately two-thirds of the actual costs incurred. The PCC was not opposed to Mr. Scholz being given 24 months as a reasonable time to pay the fine and costs.

32. The PCC filed a Costs Outline (Exhibit 4) that indicated actual costs of \$22,700.

33. After hearing the joint submission, the tribunal noted that the consequences of a failure to comply with the terms of the order had not been specified within the submission. Ms. Center

indicated that such term was a normal component of the order, and, in any event, the tribunal had the jurisdiction to include such term, in order to give the order "teeth" if the member failed to comply.

34. The position taken by Ms. Center raised a concern for the tribunal as to whether the non-compliance term was part of the joint submission or not, and, if not, whether it could be considered by the tribunal. In the circumstances, Mr. Scholz was permitted to give evidence regarding his understanding of the joint submission. Mr. Scholz stated that he had entered into an agreement on sanction which did not include consequences in the event of non-compliance even though he had specifically asked by email about additional terms during his negotiation with Ms. Center. Throughout the communications regarding sanction, there had been no reference to a non-compliance term. Ms. Center did not dispute this version of events. Mr. Scholz stated that he had every intention of paying the costs and fines, but could not predict what might happen two years from now. Mr. Scholz also noted that he felt that there was a "financial pistol" to his head to proceed with the hearing, so the possibility of an adjournment to consider his position was not realistic for him.

35. Counsel for the tribunal advised the tribunal that they needed to consider that, if this additional term was not included in the joint submission, they could not know if Mr. Scholz would have agreed to the Agreed Statement of Facts or the agreed sanctions as outlined to the tribunal by Ms. Center, if the above noted usual compliance term had been included.

36. Ms. Center took the position that the PCC was not prepared to agree to an order that did not include a term with respect to failure to comply with the Order because it was a term that, in her submission, was implicit in all orders.

## **Order**

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

IT IS ORDERED in respect of the Allegations:

1. THAT Mr. Scholz be reprimanded in writing by the Chair of the Discipline tribunal.
2. THAT Mr. Scholz be and he is hereby fined the sum of \$10,000 to be remitted to CPA Ontario within twenty-four (24) months from the date this Decision and Order of the Discipline Committee is made.
3. THAT Mr. Scholz' practice be and is hereby restricted to non-assurance engagements, restricting him from performing audit or review engagements.
4. THAT notice of the Decision and Order, disclosing Mr. Scholz' 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 restriction on practice disclosing Mr. Scholz' name, be given by publication on the CPA Ontario website and in *The Globe and Mail*. All costs

associated with the publication shall be borne by Mr. Scholz and shall be in addition to any other costs ordered by the Discipline Committee.

**AND IT IS FURTHER ORDERED:**

6. THAT Mr. Scholz be and he is hereby charged costs fixed at \$14,000 to be remitted to CPA Ontario within twenty-four (24) months from the date this Decision and Order is made.

**Reasons for Sanctions**

38. There was no issue raised in submissions before the tribunal that the law required the tribunal to give deference to a joint submission unless it was outside the reasonable range of outcomes and contrary to the public interest.

39. Given the issue raised during the presentation of the joint submission, as a preliminary question, the tribunal needed to first determine whether the joint submission before the tribunal included the non-compliance term based on the evidence before the tribunal. The tribunal determined it needed to proceed with an extra measure of caution concerning the request by PCC to add a compliance term where there was a question whether it had been raised during the negotiation of the joint submission, noting that Mr. Scholz had not been, and still was not, represented by counsel.

40. Based on the uncontradicted evidence of Mr. Scholz that a non-compliance term had not been discussed with him, the tribunal was compelled to conclude that the term did not, and could not, form part of the joint submission, even though it might usually be part of the order sought by PCC. Prior to the hearing, it had not been sought by the PCC in this case. The tribunal proceeded to assess the appropriateness of the joint submission without that term.

41. The tribunal had to consider whether the joint submission was within the range of reasonable dispositions and, specifically, if the absence of the compliance term would put the order, considering all of its terms, outside the reasonable range and contrary to the public interest. The tribunal was aware that deference should be given to a joint submission unless the submission was truly unreasonable and not within the range demonstrated by similar cases.

42. The tribunal concluded that in the absence of the compliance term requested by PCC that the PCC would be able to pursue remedies that would have the same or similar results as the application of the noted compliance term, should the need arise. Consequently, the tribunal was satisfied that the exclusion of such an additional term did not put the order in its entirety outside the reasonable range of dispositions, considering the applicable principles and similar cases.

43. The tribunal agreed with the submission by Ms. Center that the proposed sanctions were within the range of previous cases considering the specifics of this case. In the tribunal's view, general deterrence was the most important principal of sanction in this case. The role of the auditor of a condominium corporation is classic. The annual financial statements are prepared by a management company who is separate from the oversight and ownership group. The elected board provides oversight but might often lack certain experience or training. The role of auditor is to ensure that the financial statements report fairly the results of operations and the financial position of the corporation to the board and the owners including all required disclosures. Other practitioners need to know that an audit failure, especially in circumstances such as this where it is so clear that the primary role of the auditor is to protect the owners, will

not be tolerated by the profession. The second allegation also called for sanctions that focus on general deterrence because retention of proof of compliance with professional standards is an essential standard without which standards enforcement would be greatly impaired.

44. The tribunal agreed that the terms restricting Mr. Scholz' practice and providing publication were appropriate sanctions focused correctly on general deterrence. The tribunal also agreed that general deterrence was further achieved by imposing a sufficient fine to demonstrate that non-compliance was not merely met by a token amount, that might be considered a "fee", that could justify the penalty of non-compliance as a cost of doing business. In this case, the tribunal agreed that a fine of \$10,000 was appropriate.

45. The tribunal was satisfied that the restricted practice and fine ordered also sufficiently met the specific deterrence objective, when taken together with the written reprimand and publication, as Mr. Scholz was no longer practicing public accounting.

46. On balance, the tribunal was satisfied that the joint submission was within the reasonable range of sanctions for similar misconduct and not contrary to the public interest. For these reasons, the tribunal accepted the joint submission.

#### **Reasons for Costs**

47. It is clear that costs are an indemnity, not a penalty. The joint submission sought \$15,000 for costs, being two-thirds of the actual costs incurred by the PCC. However, Ms. Center indicated that the costs were based on a full day being required for the hearing, and, as this time was shortened, the tribunal could consider some adjustment to the costs being requested.

48. The tribunal accepted the joint submission that Mr. Scholz should pay two-thirds of the costs but agreed that an adjustment to the calculation was appropriate due to the reduction in hearing time. The tribunal determined that \$14,000 was the appropriate indemnity for Mr. Scholz to partially repay CPA Ontario for its costs.

DATED AT TORONTO THIS 9th DAY OF FEBRUARY, 2018  
BY ORDER OF THE DISCIPLINE COMMITTEE



R.J. ADAMKOWSKI, CPA, CA – DEPUTY CHAIR  
DISCIPLINE COMMITTEE

#### **MEMBERS OF THE TRIBUNAL:**

J.C. BLACKWELL, CPA, CA  
C.M. MACLELLAN, FCPA, FCA  
D. HANDLEY (PUBLIC REPRESENTATIVE)