



CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

*CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017*

**TO:** Sheldon P. Carr (suspended)

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

The Professional Conduct Committee of CPA Ontario hereby makes the following Allegations of professional misconduct against Sheldon P. Carr (suspended):

1. THAT the said Sheldon P. Carr, in or about the period December 1, 2014 through June 30, 2015, while engaged as the accountant and trustee of the estate of SK (the "Estate"), failed to conduct himself in a manner which would 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, in that he misappropriated approximately USD \$1,800,000 and CAD \$1,161,000 from the Estate.
2. THAT the said Sheldon P. Carr, in or about the period June 1, 2009 through November 30, 2010, while engaged as the accountant, director and officer of SKL, obtained guarantees from SKL for himself and his spouse, contrary to Rule 209.1 of the Rules of Professional Conduct.
3. THAT the said Sheldon P. Carr, in or about the period December 31, 2009 through December 31, 2014, while engaged to perform a compilation of the financial statements of SKL for the years ended December 31, 2009 to December 31, 2014, signed or associated himself with financial statements which he knew or should have known were false or misleading, contrary to Rule 205 of the Rules of Professional Conduct, in that the financial statements failed to disclose the guarantees which he obtained from SKL for himself and his spouse.
4. THAT the said Sheldon P. Carr, in or about the period December 1, 2014 through June 30, 2015, while engaged to perform a compilation of the financial statements of SKL for the year ended December 31, 2014, signed or associated himself with financial statements which he knew or should have known was false or misleading, contrary to Rule 205 of the Rules of Professional Conduct, in that the financial statements failed to disclose the transfer of USD \$1,800,000 from SKL to his spouse's account.



5. THAT the said Sheldon P. Carr, in or about the period September 1, 2016 through September 30, 2018, failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.1 of the CPA Code of Professional Conduct, in that:
- a. he failed to provide documents or other information when requested to do so by the Professional Conduct Committee through its investigator and staff of CPA Ontario; and
  - b. he failed to attend an interview as requested by the investigator appointed by the Professional Conduct Committee.

Dated at Toronto, Ontario, this 6 day of February, 2019

A handwritten signature in black ink that reads "Ken McKay".

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K.A. McKAY, CPA, CA, DEPUTY CHAIR  
PROFESSIONAL CONDUCT COMMITTEE

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Allegations against **SHELDON PAUL CARR**, a suspended member, under **Rule 201.1**, **Rule 205** and **Rule 209.1** of the Rules of Professional Conduct, and **Rule 104.1** of the CPA Code of Professional Conduct, as amended.

**TO:** Mr. Sheldon Paul Carr

**AND TO:** The Professional Conduct Committee

**DECISION AND ORDER MADE JUNE 5, 2019**

**DECISION**

The Panel was satisfied that Sheldon Paul Carr ("Mr. Carr") had proper notice of today's hearing and determined that the hearing would proceed in his absence.

The Panel was satisfied that the Allegations were proven and constituted a breach of Rule 201.1, Rule 205 and Rule 209.1 of the Rules of Professional Conduct, and Rule 104.1 of the CPA Code of Professional Conduct. The Panel determined that, having breached these rules, Mr. Carr committed professional misconduct.

**ORDER**

The Panel orders the following:

1. Mr. Carr be reprimanded in writing by the Chair of the hearing.
2. Mr. Carr shall pay a fine of \$75,000 to CPA Ontario by December 5, 2019.
3. Mr. Carr's membership with CPA Ontario is revoked.
4. Notice of this Decision and Order, disclosing Mr. Carr's name, is to be given in the form and manner determined by the Panel:
  - (a) to all members of CPA Ontario;
  - (b) to the Public Accountants Council;
  - (c) to all provincial bodies;and shall be made available to the public.

5. Notice of this Decision and Order disclosing Mr. Carr's name is to be given by publication on the CPA Ontario website, in the *National Post*, *The Globe and Mail*, the *Toronto Star* and in *Toronto Life* magazine. Mr. Carr shall pay all costs associated with the publication, which shall be in addition to any other costs ordered by the Panel.
6. Mr. Carr shall pay costs of \$43,800 to CPA Ontario by December 5, 2019.

**DATED** at Toronto this 5<sup>th</sup> day of June, 2019



Stephen Dineley, FCPA, FCA  
Discipline Committee – Deputy Chair

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Allegations against **SHELDON PAUL CARR**, a suspended member, under **Rule 201.1**, **Rule 205** and **Rule 209.1** of the Rules of Professional Conduct, and **Rule 104.1** of the CPA Code of Professional Conduct, as amended.

**BETWEEN:**

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

**-and-**

**Mr. Sheldon Paul Carr**

**APPEARANCES:**

<b>For the Professional Conduct Committee:</b>	Andrew Faith, Counsel Madeline Brown, Counsel Jodie Wolkoff, Investigator
<b>For Mr. Carr:</b>	Not Present and Not Represented
Heard:	June 5, 2019
Decision and Order effective:	June 5, 2019
Release of written reasons:	August 15, 2019

**REASONS FOR THE DECISION AND ORDER MADE JUNE 5, 2019**

**I. OVERVIEW**

- [1] This hearing was held to determine whether the Allegations that Mr. Carr had failed to maintain the good reputation of the profession by misappropriating sums from a client; had inappropriately obtained guarantees from a client; had signed or associated himself with financial statements which he knew or should have known were false or misleading; and had failed to cooperate with the regulatory process of the Chartered Professional Accountants of Ontario ("CPA Ontario") were established and amounted to professional misconduct.
- [2] Mr. Carr obtained his CA designation in 1972. On February 10, 2017, Mr. Carr was

suspended from membership with CPA Ontario for failing to submit his 2015 continuing professional development declaration.

- [3] Mr. Carr provided professional services for JK and his family for virtually all of his lengthy career. After JK's death, Mr. Carr became a trusted advisor to his widow, SK and was a director of her holding company, SKL, which held the family's assets. After SK's death in 2014, he also became a trustee of her estate (the "Estate").
- [4] Concerns about Mr. Carr were first raised by the other trustees of the Estate when they became aware of irregular transfers from the Estate to Mr. Carr's personal accounts. These concerns led to the removal of Mr. Carr as Estate trustee, led to his resignation from his firm Collins Barrow, and formed the basis of a complaint to CPA Ontario by the managing partner of Collins Barrow. A second complaint against Mr. Carr based on these same concerns was made to CPA Ontario by the trustees of the Estate. CPA Ontario investigated these two complaints, with Mr. Carr refusing to cooperate.
- [5] At the hearing, the Professional Conduct Committee ("PCC") alleged that Mr. Carr misappropriated approximately USD \$1,800,000 and CAD \$1,161,000 from the Estate between December 2014 and June 30, 2015, contrary to Rule 201.1 of the Rules of Professional Conduct.
- [6] The PCC alleged that Mr. Carr improperly obtained guarantees from SKL for himself and his spouse while he was engaged as the accountant, director and officer of SKL during the period from June 2009 to November 30, 2010, contrary to Rule 209.1 of the Rules of Professional Conduct.
- [7] The PCC further alleged that Mr. Carr signed or associated himself with the financial statements of SKL that he knew or should have known were false or misleading in that: they failed to disclose the guarantees that he obtained from SKL for himself and his spouse; and in that they failed to disclose the transfer of USD \$1,800,000 from SKL to his spouse's account, contrary to Rule 205 of the Rules of Professional Conduct.
- [8] Finally, the PCC alleged that Mr. Carr failed to cooperate with the regulatory process of CPA Ontario contrary to Rule 104.1 of the CPA Code of Professional Conduct, in that he failed to provide documents and other information when requested to do so, and that he failed to attend an interview as requested, during the period from September 2016 through September 2018.
- [9] The onus was on the PCC to show on a balance of probabilities that Mr. Carr's conduct breached the Rules of Professional Conduct and the CPA Code of Professional Conduct, and constituted professional misconduct.

## **II. PRELIMINARY ISSUES**

- [10] Mr. Carr did not attend the hearing nor did he have a representative attend on his behalf.
- [11] To proceed in the absence of Mr. Carr, the Panel had to be satisfied that he had received proper notice of the hearing.

- [12] The PCC filed the Affidavit of Mervyn Archdall, Process Server, sworn on February 7, 2019 (Exhibit 1). Mr. Archdall confirmed that he had personally served Mr. Carr on February 7, 2019 with a letter dated February 6, 2019 from Tamara Center, Professional Standards Counsel for CPA Ontario, which informed Mr. Carr of the allegations of professional misconduct made against him. Ms. Center included a copy of the signed Allegations with her letter and she also provided information regarding the procedure related to discipline hearings.
- [13] The PCC also filed the Affidavit of Caroline Kelly, the Legal Coordinator at CPA Ontario, sworn on May 22, 2019 (Exhibit 2). In her affidavit Ms. Kelly advised that on February 21, 2019, Kristen Couch, Adjudicative Tribunals Assistant Secretary at CPA Ontario, sent an email to Mr. Carr at the email address which the PCC had used when filing the allegations with the tribunal, requesting that he provide to her, on or before March 22, 2019, his availability for a two-day hearing of the allegations laid against him.
- [14] On March 7, 2019, Mr. Carr emailed Ms. Couch stating that he would not be attending the hearing nor making any representations. On March 22, 2019, Ms. Couch emailed a Notice of Hearing to Mr. Carr confirming that the hearing was scheduled to proceed on June 5 and 6, 2019, at 10:00 a.m. Ms. Couch requested that Mr. Carr provide acknowledgment of receipt of the Notice of Hearing by signing a letter enclosed with the Notice. On May 12, 2019, Ms. Couch received an email from Mr. Carr which attached a Statement of Defence and an email dated March 30, 2019, from his lawyer. On May 13, 2019, Ms. Couch emailed Mr. Carr asking if Mr. Carr intended to waive solicitor-client privilege on the email dated March 30, 2019. Mr. Carr responded, confirming that he waived the privilege on that document.
- [15] Having reviewed the affidavits presented by the PCC, the Panel was satisfied that Mr. Carr had received proper notice of the hearing. Accordingly, the Panel decided to proceed in his absence.
- [16] A denial of the Allegations was entered on Mr. Carr's behalf.

### **III. ISSUES**

- [17] The Panel identified the following issues arising from the allegations:
- A. Did the evidence establish, on a balance of probabilities, the facts on which the allegations by the PCC were based?
  - B. If these facts were established on a balance of probabilities, did these facts constitute professional misconduct?
  - C. If these facts constituted professional misconduct, what were the appropriate sanctions?

### **IV. DECISION**

- [18] The Panel found that the evidence established, on a balance of probabilities, the facts

upon which the allegations were based.

- [19] The Panel was satisfied that the facts proven constituted a breach of Rule 201.1, Rule 205 and Rule 209.1 of the Rules of Professional Conduct, and Rule 104.1 of the CPA Code of Professional Conduct. The Panel found that having breached these rules, Mr. Carr had committed professional misconduct.

## V. REASONS FOR THE DECISION

### A. *Findings regarding Conduct of Mr. Carr*

- [20] The PCC called two witnesses: Jodie Wolkoff, CPA, CA, DIFA, CBV, CFF, a senior investigator with CPA Ontario who conducted the investigation in this matter; and, PK, the grandson of JK, a trustee of the estate of SK, and one of the complainants against Mr. Carr.

#### Mr. Carr's professional relationship with JK and his family

- [21] Mr. Carr began providing professional accounting services to JK in the 1960s. The Panel received affidavit evidence from JK's daughter RC (Exhibit 4) that Mr. Carr was the family's trusted financial advisor. As well as JK's accountant, Mr. Carr became the accountant of many other family members. JK trusted Mr. Carr and placed his faith in him, as did the rest of his family. Mr. Carr became more than the family's accountant; he was regularly included at family functions and treated like extended family.
- [22] Ms. Wolkoff testified that the JK family was a major client of Mr. Carr. Mr. Carr kept an office on Eglinton Avenue West in Toronto, separate from his main office at Collins Barrow. This office space was paid for by the JK family and was where he held the JK family financial records and worked on the JK family financial accounts. Mr. Carr also utilized a full-time bookkeeper paid by the JK family solely to assist him with the JK family file.
- [23] After JK died, the family estate was managed through JK's widow's holding company, SKL. Based on the results of her investigation, Ms. Wolkoff testified that SK was the 100% owner of SKL. SKL held portfolio investments for other related family entities as bare trustee, investing these funds on behalf of family members and their corporations. Referring to the SKL corporate profile report and SKL financial statements (Exhibit 3, Tabs 7 and 18 respectively), Ms. Wolkoff noted that Mr. Carr was a director and signing officer of SKL and acted as Secretary and Treasurer of the corporation. He was authorized to file the annual returns of SKL. The 'Notice to Reader' of the financial statements for SKL indicated that Mr. Carr, the engagement partner for the compilation engagement, was not independent of SKL as he was also a signing officer and director of SKL.
- [24] After SK died in October of 2015, Mr. Carr was appointed as a co-trustee of the Estate as directed by SK's will. PK testified that given Mr. Carr's long tenure as the family



accountant and having handled all of the family's financial matters for decades, the other trustees of the Estate decided that Mr. Carr should handle most of the tasks and duties of the trusteeship, while keeping the other trustees abreast of his actions.

### The Guarantees

- [25] On June 11, 2009 Mr. Carr signed an application to RBC Dominion Securities ("RBC") for SKL to be a guarantor of his personal RBC trading account, and for him to be a guarantor for the SLK RBC account. In November of 2010, Mr. Carr applied to RBC for SKL to be a guarantor of his spouse's personal RBC trading account, also with a cross-guarantee (Exhibit 3, Tab 10). When SK signed these applications for the cross-guarantees, she was in her 90s.
- [26] Ms. Wolkoff testified that these applications for cross-guarantees resulted in cross-guarantees being placed on the RBC accounts of Mr. Carr, his spouse, and SKL. PK testified that he first learned of the cross-guarantees when he was called to a meeting with RBC in February of 2016. He explained that the guarantees by SKL acted as collateral for the margin trading accounts at RBC of Mr. Carr and his spouse. PK made reference to the RBC memo (Exhibit 3, Tab 35) prepared in advance of his meeting with RBC which addressed the cross-guarantees and identified the trading accounts of Mr. Carr and his spouse to which they applied.
- [27] At the time that Mr. Carr and his spouse obtained guarantees from SKL for their personal trading accounts at RBC, Mr. Carr was engaged as the accountant, director and officer of SKL.
- [28] The Panel found both Ms. Wolkoff and PK to be credible witnesses, and that their testimony, together with the documents introduced as exhibits, amounted to clear, cogent and compelling evidence establishing that Mr. Carr did obtain guarantees from SKL for himself and his spouse as alleged by the PCC.

### Misappropriation of Funds from SKL

#### **The USD \$1,800,000 transfer from SKL**

- [29] On December 22, 2014, Mr. Carr wrote to RBC and directed that USD \$1,800,000 be transferred from SKL into his spouse's account (Exhibit 3, Tab 21). The RBC US dollar account statement of SKL, dated December 31, 2014, shows a debit of \$1,800,000 on December 23, 2014 with the funds going to the RBC account belonging to Mr. Carr's spouse (Exhibit 3, Tab 22).
- [30] The balance sheet of the financial statements for SKL, as of December 31, 2014 (Exhibit 3, Tab 20), shows a reduction in funds held in trust of approximately CAD \$2,000,000; an amount equivalent to the USD \$1,800,000 transferred from SKL to Mr. Carr's spouse's personal trading account at RBC. Ms. Wolkoff testified that through her investigation she determined that none of the working papers relating to the 2014 financial statements of SKL held at Collins Barrow showed any record of this USD

\$1,800,000 transfer of funds from SKL to Mr. Carr's spouse, or provided an explanation for the transfer. The only documents which addressed the transfer were handwritten notes located at the Eglinton Avenue West office used by Mr. Carr exclusively for the JK family account. One document entitled "Capital Losses December 31, 2014" identified USD \$1,800,000 of "losses incurred but not paid until December 2014." The document listed losses in both Mr. Carr's RBC trading account and Mr. Carr's spouse's RBC trading account in 2011, 2012, and 2013, collectively adding up to USD \$1,800,000, or just over CAD \$2,000,000. Ms. Wolkoff testified that this document showed how the USD \$1,800,000 was used to cover the losses in the RBC trading accounts of Mr. Carr and his spouse. Further working papers located at the Eglinton Avenue West office revealed the USD \$1,800,000 loss being allocated among various companies held by family members, for which SKL was the bare trustee (Exhibit 3, Tabs 24 and 30). The memo for one of these General Journal entries stated: "prior year losses per S.C."

### **The CAD \$1,161,000 million transfer from SKL**

- [31] On April 14, 2015, Mr. Carr wrote to RBC and directed that CAD \$492,000 be transferred from SKL into Mr. Carr's spouse's account (Exhibit 3, Tab 26). On the same date, Mr. Carr wrote to RBC and directed that CAD \$669,000 be transferred from SKL into his own personal trading account (Exhibit 3, Tab 27). The RBC Canadian dollar account statement of SKL, dated June 30, 2015, showed a debit of \$492,000 on June 3, 2015 with the funds going to the RBC account belonging to Mr. Carr's spouse, and a debit of \$669,000 on June 3, 2015 with the funds going to the RBC account belonging to Mr. Carr (Exhibit 3, Tab 28). Together, these amounts totaled CAD \$1,161,000.
- [32] Ms. Wolkoff testified that, as was the case with the USD \$1,800,000 transfer, the only documents which addressed the transfers totaling CAD \$1,161,000 were handwritten notes located at the Eglinton Avenue West office used by Mr. Carr exclusively for the JK family account. One document entitled "Realized Loss in 2015 – pertains to 2014" allocated the \$1,161,000 among three companies held by family members, for which SKL was the bare trustee (Exhibit 3, Tab 29). The memo for one of these General Journal entries stated "Year end adj. Book capital loss per S.C." (Exhibit 3, Tab 30).
- [33] The Panel found Ms. Wolkoff to be a credible witness, and her testimony, together with the documents introduced as exhibits, amounted to clear, cogent and compelling evidence establishing the facts of misappropriation by Mr. Carr, on which the allegations of discreditable conduct are based.

### The Financial Statements of SKL did not disclose the Guarantees

- [34] At the time that Mr. Carr and his spouse obtained guarantees from SKL for their personal trading accounts at RBC, Mr. Carr was the engagement partner for the compilation engagement of SKL, as well as a director and signing officer of SKL. The financial statements of SKL from 2009 to 2014 did not disclose the guarantees he and his spouse obtained from SKL (Exhibit 5, Tabs 11, 12, 14, 16, 18 and 20). The "Notice to Reader" accompanying the financial statements disclosed that Mr. Carr, the engagement

partner for the compilation engagement, was not independent of SKL as he was also a signing officer and director of SKL. However, the "Notice to Reader" did not disclose the guarantees from SKL that he and his spouse obtained. Ms. Wolkoff testified that Mr. Carr was required to sign an independence form with Collins Barrow every year, but that he never disclosed the guarantees on these forms, and that none of the SKL working papers at Collins Barrow included reference to the guarantees.

- [35] The Panel found that the evidence of Ms. Wolkoff and the documents introduced as exhibits amounted to clear, cogent and compelling evidence establishing the fact that the financial statements of SKL did not disclose the guarantees.
- [36] The Panel found that Mr. Carr would have had knowledge of the guarantees which he personally applied for and which he personally obtained. As engagement partner for the compilation engagement of SKL, Mr. Carr associated himself with financial statements which he knew were false or misleading as they did not disclose the guarantees.

#### The Financial Statements of SKL did not disclose the transfer

- [37] The financial statements for SKL for the year ended December 31, 2014 did not disclose the December 2014 transfer of USD \$1,800,000 from SKL to Mr. Carr's spouse's account (Exhibit 3, Tab 20). Mr. Carr was engaged to perform the compilation of the financial statements of SKL for this period (Exhibit 3, Tab 19). The only indication in the financial statements of any reduction of funds held by SKL is the reduction in the funds held in trust of approximately CAD \$2,000,000, as shown on the balance sheet (Exhibit 3, Tab 10). There is no disclosure that this reduction was due to a transfer of funds to Mr. Carr's spouse in this amount or that Mr. Carr or his spouse received any benefit from SKL.
- [38] The Panel found that the documents introduced as exhibits amounted to clear, cogent and compelling evidence establishing the fact that the financial statements of SKL did not disclose the transfers of USD \$1,800,000.
- [39] The Panel found that Mr. Carr would have had knowledge of the transfer of USD \$1,800,000 from SKL to his spouse's account, which he personally authorized. As engagement partner for the compilation engagement of SKL, Mr. Carr associated himself with financial statements which he knew were false or misleading as they did not disclose the transfer.

#### Statement of Defence of Sheldon Carr

- [40] As noted above, Mr. Carr received notice of the hearing but did not attend the hearing, nor did counsel attend on his behalf. Accordingly, the Panel heard no evidence or explanation from Mr. Carr in respect of the allegations against him. Mr. Carr did, however, send to CPA Ontario a copy of the Statement of Defence, Counterclaim and Crossclaim (the "Statement") filed by his counsel in response to a civil lawsuit in which similar allegations respecting the guarantees and the misappropriation of funds from SKL were made (Exhibit 2, Tab G).

- [41] In his email to CPA Ontario, Mr. Carr indicated the Statement was being provided “for your records.” It was not clear whether Mr. Carr sought for this Panel to consider the Statement as his defence to the allegations made by the PCC.
- [42] The PCC in its submissions urged the Panel to give some weight to the Statement. The PCC took the Panel through certain paragraphs of the Statement including a blanket denial that Mr. Carr had obtained the guarantees by SKL of his personal accounts at RBC and that he had transferred funds from SKL to his personal accounts. The PCC also identified that the Statement included an alternative pleading which acknowledged the guarantees and the transfers, but provided an explanation for them. The alternative pleading included claims that: Mr. Carr had been engaged in speculative trading on his personal RBC accounts which amounted to gambling. RBC ignored this risky trading behaviour and in fact encouraged it by recommending that Mr. Carr obtain the cross-guarantees as a means of permitting him to trade at a much higher volume on borrowed credit. In doing so, RBC failed in its duties towards Mr. Carr for which it should be liable. The alternative pleading also claimed that RBC instructed Mr. Carr to transfer money from the SKL account to cover a portion of the losses he had incurred through trading on his personal accounts. The transfers did not amount to misappropriation because the funds were not withdrawn by Mr. Carr from his trading accounts after the transfer from SKL was made.
- [43] The PCC submitted that the Statement shows Mr. Carr effectively admits that he took the SKL funds without permission for his own benefit, that he obtained the guarantees from SKL for his personal trading accounts for his own benefit, and that he blamed RBC for allowing this to happen.
- [44] The Panel, in its deliberation, did not place any weight on the Statement. Regardless, the Panel would not have found that any of the explanations offered in the alternative pleading could have amounted to a defence to the allegations
- [45] Further, the Panel did not adopt the PCC’s position that the Statement could be used as evidence of an admission by Mr. Carr; that he had obtained the cross-guarantees and that he had transferred the funds from SKL to his personal trading accounts. The Panel relied exclusively on the testimony of Ms. Wolkoff and PK, and the documents referenced above, and finds that the evidence established the facts on which the allegations by the PCC were based.

#### Failure to Cooperate

- [46] Ms. Wolkoff provided evidence about Mr. Carr’s failure to cooperate with the CPA Ontario investigation into the complaints made against him respecting SKL.
- [47] Exhibit 3, Volume 2 included correspondence between CPA Ontario, Mr. Carr, and his lawyer. On August 9, 2016, Ms. McFarlane, a Standards Enforcement Officer with CPA Ontario, wrote to Mr. Carr and advised him that a complaint had been made to CPA Ontario by the managing partner at Collins Barrow (Tab 38). The letter indicated that a written reply was required by September 8, 2016 and cautioned that failure to respond

could result in allegations of professional misconduct. The letter was sent by courier, and returned marked “undelivered” to CPA Ontario. A follow up letter was sent August 25, 2016 by courier and regular mail and required a response by September 22, 2016. A further follow up letter, which referenced attempts to reach Mr. Carr by telephone, was sent October 20, 2016 and required a response by November 4, 2016.

- [48] A lawyer representing Mr. Carr wrote to CPA Ontario on November 4, 2016. The letter expressed the position that owing to ongoing civil litigation, it was not appropriate for Mr. Carr to provide a substantive response to the complaint. It requested that the investigation be stayed until a final judicial determination had been made in the litigation.
- [49] By letter dated November 29, 2016, Melissa Gentili, Associate Counsel with CPA Ontario, responded by noting that Mr. Carr had an obligation to respond to and cooperate with the PCC and that the existence of civil litigation did not preclude him from this obligation. Ms. Gentili outlined the requirement to cooperate under the CPA Code of Professional Conduct and emphasized that a substantive response was required by December 16, 2016. Ms. Gentili also advised that a failure to provide the response would be referred to the PCC and may result in an allegation of professional misconduct. Finally, Ms. Gentili noted section 61 of the *Chartered Accountants Act, 2010* which provided, among other things, that no document prepared for or statement given at a proceeding under the *Act* is admissible in any civil proceeding, other than a proceeding under the *Act*.
- [50] By letter dated December 16, 2016, counsel for Mr. Carr provided two affidavits to CPA Ontario that had been prepared in the context of the civil litigation. On February 23, 2017 CPA Ontario replied to Mr. Carr’s counsel noting that the affidavits did not address the serious allegations related to the misappropriation of funds. The response from CPA Ontario reiterated that Mr. Carr was required to provide a substantive response in accordance with Rule 104 of the CPA Code of Professional Conduct, and required that response by March 20, 2017, lest the failure to respond be referred to the PCC.
- [51] Counsel to Mr. Carr responded to CPA Ontario on March 20, 2017, restating the position that it was not appropriate for Mr. Carr to provide a substantive response while the civil litigation was ongoing.
- [52] On August 21, 2017, CPA Ontario wrote to Mr. Carr, copying his counsel, to advise that the PCC had determined that further information needed to be obtained, and that Ms. Wolkoff had been appointed as the new investigator for this purpose. By letter dated October 11, 2017, Ms. Wolkoff requested Mr. Carr’s availability for an interview with her. Ms. Wolkoff followed up with letters to Mr. Carr’s lawyer on October 20, 2017 and December 5, 2017. On December 5, 2017, Mr. Carr’s lawyer wrote to Ms. Wolkoff indicating that he would advise Mr. Carr of her request, but that Mr. Carr was unlikely to agree to a meeting with her. Ms. Wolkoff did not hear back from Mr. Carr about the requested meeting.
- [53] On November 29, 2017, a complaint was filed by the trustees of SK’s estate with CPA Ontario and a new series of correspondence was initiated seeking Mr. Carr’s substantive response to the claims made in that complaint. The initial letter from CPA Ontario to Mr.

Carr was dated December 8, 2017, and required a response from him by December 21, 2017. The only response came from Mr. Carr's lawyer, seeking the letter that was inadvertently not attached to the email by which it was sent. A follow up letter from CPA Ontario dated January 16, 2018 went unanswered.

- [54] On September 17, 2018, Ms. Wolkoff wrote to Mr. Carr's lawyer, noting that that CPA Ontario had received no response to its requests. Ms. Wolkoff sought confirmation as to whether the lawyer continued to act for Mr. Carr. On September 27, 2018, Ms. Wolkoff received confirmation from the lawyer that he no longer acted for Mr. Carr.
- [55] Ms. Wolkoff testified that CPA Ontario received no substantive response to the allegations from Mr. Carr or his counsel, and that Mr. Carr did not respond to her request for an interview.
- [56] Based on the evidence of Ms. Wolkoff and the documentary correspondence in Exhibit 3, it was clear to the Panel that Mr. Carr never provided a substantive response to the complaints made against him respecting SKL, notwithstanding numerous requests to do so. Further, Mr. Carr refused to participate in a meeting with Ms. Wolkoff notwithstanding the requests for a meeting which were sent to both Mr. Carr and his counsel at the time.
- [57] The Panel finds that this clear, cogent and compelling evidence establishes the facts of non-cooperation by Mr. Carr on which the allegations of professional misconduct are based.

*B. Finding of Professional Misconduct*

- [58] The Panel found that the fact that Mr. Carr, while engaged as the accountant, director and officer of SKL, obtained guarantees from SKL for himself and his spouse contrary to Rule 209.1 of the Rules of Professional Conduct, constituted professional misconduct. Rule 209.1 specifically prohibits a member of CPA Ontario from obtaining a loan or guarantee from a client unless certain circumstances exist, such as if the client is a bank, none of which apply to this case.
- [59] The Panel found that Mr. Carr's misappropriation of approximately USD \$1,800,000 and CAD \$1,161,000 from SKL undeniably amounted to professional misconduct. Mr. Carr was in a position of trust with SKL due to his status as a CPA member, and due to his role as accountant, officer and director of SKL. Mr. Carr exploited that position of trust to misappropriate SKL funds for his own purposes. In the Panel's view, misappropriation is conduct of a most reprehensible nature and constitutes a profound failure of Mr. Carr to conduct himself in a manner which would 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.
- [60] The Panel found that Mr. Carr, while engaged to perform a compilation of the financial statements of SKL for the years ended December 31, 2009 to December 31, 2014, associated himself with financial statements that he knew were false or misleading in that they did not disclose the guarantees to Mr. Carr and his spouse. This conduct was contrary to Rule 205 of the Rules of Professional Conduct and necessarily constituted

professional misconduct.

- [61] The Panel found that Mr. Carr, while engaged to perform a compilation of the financial statements of SKL for the year ended December 31, 2014, associated himself with financial statements that he knew were false or misleading in that the financial statements did not disclose the transfer of USD \$1,800,000 from SKL to his spouse's account. This breach was in violation of Rule 205 of the Rules of Professional Conduct and undeniably amounted to professional misconduct.
- [62] The Panel found that Mr. Carr committed professional misconduct in that he breached Rule 104.1 of the CPA Code of Professional Conduct, and the evidence did not establish any circumstances that would support a conclusion that this breach did not amount to professional misconduct. Mr. Carr failed to provide documents when requested to do so by the PCC through its investigator and staff at CPA Ontario and he failed to attend an interview as requested by the investigator. The fact that during this period of non-cooperation there was outstanding civil litigation does not relieve Mr. Carr, or any member, of the requirement to cooperate with the regulatory process of CPA Ontario.

## **VI. SANCTIONS**

- [63] The Panel accepted the position of the PCC's submission on the appropriate penalty in this matter. Given that Mr. Carr's conduct constituted a most severe breach of trust, the Panel concluded that the sanction imposed had to emphasize deterrence, and had to assure the public that CPA Ontario is protecting the public interest.
- [64] The misappropriation of funds by a CPA from his client is serious misconduct in any circumstances. In this case, Mr. Carr utilized his position in SKL as a director and officer with signing authority to misappropriate approximately \$3,000,000 for his own personal use, and then concealed the misappropriation by failing to disclose it in the financial statements of SKL for which he was the engagement partner.
- [65] The harm that Mr. Carr caused to the JK family, beyond the significant financial loss, was highlighted by JK's daughter RC in her affidavit (Exhibit 4). She wrote that she had trusted Mr. Carr for over 40 years and felt that he had betrayed her father and her entire family, manipulated her mother, and completely abused the family's trust in him. She wrote of the physical and emotional impact of Mr. Carr's misconduct on her, including her difficulty sleeping, feelings of humiliation and embarrassment, and feelings of distrust towards others. PK, in his evidence, also testified to the emotional impact of discovering Mr. Carr's misconduct. He testified that Mr. Carr had been part of JK and family's world, and treated as part of the extended family. This meant Mr. Carr's wrongdoing was a deeply personal betrayal. PK testified that this betrayal was traumatic for him and for his family, and that the harm was exacerbated by the significant media coverage his family received following the revelation of Mr. Carr's wrongdoings.
- [66] Mr. Carr conveyed no remorse for his actions nor did he take responsibility for them. He failed to cooperate with CPA Ontario's investigation and did not participate in the hearing.



- [67] The only mitigating factor was that Mr. Carr had no prior discipline history.
- [68] Turning to the specific sanctions imposed, a reprimand is necessary to highlight the seriousness of the misconduct. The fine of \$75,000 is at the higher end of the range of other serious cases of misappropriation, and reflects the seriousness of the wrongdoing. It is intended to act as a specific deterrence as well as a general deterrence, representing a significant personal consequence of the misconduct.
- [69] Revocation of Mr. Carr's membership is the most serious sanction and the only one appropriate in cases of misappropriation for personal gain. It is a necessary penalty to ensure the protection of the public and to convey the message that this conduct is not tolerated by CPA Ontario. Publication of the revocation in the Globe and Mail, the National Post, and other Toronto media where Mr. Carr practiced and which covered the allegations against Mr. Carr involving the JK family, is necessary for the public to have confidence that CPA Ontario is regulating its members in the public interest, while also providing additional specific and general deterrence.

## **VII. COSTS**

- [70] Costs are imposed as an indemnity, not as an additional fine. The PCC presented a Costs Outline (Exhibit 5) and sought a costs award of two-thirds of the actual costs incurred, amounting to \$43,800.00. The Panel finds that this costs award is in-line with precedents and is appropriate in the circumstances of this case.

Dated at Toronto this 15<sup>th</sup> day of August, 2019



Stephen Dineley, FCPA, FCA  
Discipline Committee – Deputy Chair

### Members of the Panel

Mark I. Feldstein, CPA, CA  
David Handley (Public Representative)  
Catherine Kenwell (Public Representative)

### Independent Legal Counsel

John Dent, Barrister & Solicitor