



FOUNDED 1879

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

THE CHARTERED ACCOUNTANTS ACT, 2010

TO: THOMAS HAAR, CPA, CA
AND TO: The Discipline Committee of CPA Ontario

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

1. THAT the said Thomas Haar, in or about the period April 1, 2009 through August 31, 2009, while acting as a *de facto* receiver of "JTI/SI," knowingly failed to pay outstanding priority PST, GST and payroll source deductions in the approximate amount of \$300,000 in favour of repaying a debt owing to himself, and did thereby fail 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.
2. THAT the said Thomas Haar, in or about the period January 1, 2006 through October 31, 2007, while engaged to perform a review of the financial statements of "JTI" for the years ended June 30, 2006 and 2007, failed to hold himself free of any influence, interest, or relationship which, in respect of the engagement, impaired the Member's professional judgment or objectivity or which, in the view of a reasonable observer, would impair the Member's professional judgment or objectivity contrary to Rule 204.1 of the Rules of Professional Conduct in that:
 - a. his companies "O. Inc./111" held a 50% shareholding in "JTI";
 - b. his companies "O. Inc./111" held a \$1.1 million investment in "JTI"; and
 - c. his company "CP" advanced \$150,000 to "JTI."
3. THAT the said Thomas Haar, in or about the period September 1, 2006 through December 31, 2007, while acting as accountant for "JTI/SI" directed his client to issue a fictitious invoice to his company "CP" in the amount of \$159,000 in order to facilitate a tax deduction in "CP," and did thereby fail 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.

Dated at Toronto, Ontario, this 25th day of February, 2016.

L.E. DAVIS, 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
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **THOMAS HAAR, CPA, CA**, a Member of CPA Ontario, under **Rules 201.1 and 204.1** of the Rules of Professional Conduct, as amended.

TO: Mr. T. Haar
3097 Fireroute 30
Lakefield, ON K0L 2H0

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE FEBRUARY 1, 2017

DECISION

THAT Allegation No. 1 having been amended at the hearing, and having heard the plea of not guilty to Allegation No. 1 and the plea of guilty to Allegation Nos. 2 and 3, having seen, heard and considered the evidence, the Discipline Committee finds Thomas Haar guilty of Allegation Nos. 1, 2 and 3, and guilty of professional misconduct.

ORDER

IT IS ORDERED in respect of the Allegations:

1. THAT Mr. Haar be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Haar be and he is hereby fined the sum of \$25,000, to be remitted to the Chartered Professional Accountants of Ontario ("CPA Ontario") within twelve (12) months from the date this Decision and Order is made.
3. THAT Mr. Haar's membership in CPA Ontario be and it is hereby revoked.
4. THAT notice of this Decision and Order, disclosing Mr. Haar's 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. Haar's name, be given by publication on the CPA Ontario website and in *The Globe and Mail* and the *Peterborough Examiner*. All costs associated with the publications shall be borne by Mr. Haar and shall be

in addition to any other costs ordered by the committee.

6. THAT Mr. Haar 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. Haar be and he is hereby charged costs fixed at \$98,500, to be remitted to CPA Ontario within twelve (12) months from the date this Decision and Order is made.

DATED AT TORONTO THIS 7th DAY OF FEBRUARY, 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 **THOMAS HAAR, CPA, CA**, a Member of CPA Ontario, under **Rules 201.1 and 204.1** of the Rules of Professional Conduct, as amended.

TO: Mr. T. Haar

AND TO: The Professional Conduct Committee

REASONS

(Decision and Order made February 1, 2017)

1. This tribunal of the Discipline Committee met on January 30, 31 and February 1, 2017 to hear allegations of professional misconduct brought by the Professional Conduct Committee against Thomas Haar, a Member of CPA Ontario.

2. Ms. Alexandra Hersak appeared on behalf of the Professional Conduct Committee (PCC). Mr. Haar attended with his counsel, Mr. Jason Schmidt. 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 February 1, 2017, and the written Decision and Order was sent to the parties on February 7, 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, as amended at the hearing on consent, were made against Mr. Haar by the Professional Conduct Committee on February 25, 2016:

1. THAT the said Thomas Haar, in or about the period April 1, 2009 through August 31, 2009, while acting in the capacity of a receiver of "JTI/SI," knowingly failed to pay outstanding priority PST, GST and payroll source deductions in the approximate amount of \$300,000 in favour of repaying a debt owing to himself or his companies, and did thereby fail 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.
2. THAT the said Thomas Haar, in or about the period January 1, 2006 through October 31, 2007, while engaged to perform a review of the financial statements of "JTI" for the years ended June 30, 2006 and 2007, failed to hold himself free of any influence, interest, or relationship which, in respect of the engagement, impaired the Member's professional judgment or objectivity or which, in the view of a reasonable observer, would impair the Member's professional judgment or

objectivity contrary to Rule 204.1 of the Rules of Professional Conduct in that:

- a. his companies "O. Inc./111" held a 50% shareholding in "JTI";
 - b. his companies "O. Inc./111" held a \$1.1 million investment in "JTI"; and
 - c. his company "CP" advanced \$150,000 to "JTI."
3. THAT the said Thomas Haar, in or about the period September 1, 2006 through December 31, 2007, while acting as accountant for "JTI/SI" directed his client to issue a fictitious invoice to his company "CP" in the amount of \$159,000 in order to facilitate a tax deduction in "CP," and did thereby fail 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.

Plea

5. Mr. Haar entered a plea of not guilty to Allegation No. 1 and a plea of guilty to Allegation Nos. 2 and 3.

The case for the PCC

6. Ms. Hersak, on behalf of the PCC, indicated in her opening statement that the complaint had been received from the shareholder of a former client. Mr. Haar had acted as accountant and financial advisor for the client, arranging loans and performing Review Engagement services. Mr. Haar subsequently took over the role of receiver when his client ran into financial difficulty. When Mr. Haar took on this role as receiver it became his duty to ensure that tax arrears were paid from the companies' cash flow, but these sums owing were not so remitted.

Evidence

7. Ms. Hersak called CJ, the complainant, who was sworn in as a witness. Ms. Hersak filed the Document Brief of the PCC (Exhibit 1) and the Timeline of Key Events (Exhibit 2), which were referred to in the course of CJ's evidence.

8. CJ was introduced to Mr. Haar in the 1990s at a social club by a mutual friend. CJ had an import wholesale company, JTI, and a company operating two ladies' clothing stores, SI. As the president, CJ managed the companies and, in particular, dealt with the suppliers of the growing businesses. At the time, CJ was looking for financial advice as his business was growing but needed financing. Mr. Haar assisted CJ to obtain a business line of credit. Mr. Haar became the companies' accountant in 2002 and prepared financial statements for the companies from 2004 to 2007 in addition to continuing to act as CJ's financial advisor.

9. In 2004, Mr. Haar arranged for further financing by way of a loan, through his former client, DH, of approximately \$850,000, plus \$200,000 for a put/call contract representing 50% of JTI shares. Weekly payments on the loan were required and made, but they ceased in 2005 when the business again became short of funds. In 2006, Mr. Haar arranged to purchase the loan and shares from LH (the widow of DH), so that Mr. Haar became a creditor and 50% share owner of JTI (through [REDACTED], companies he controlled). Mr. Haar continued to issue financial statements for the companies to which he appended his Review Engagement Reports.

10. The business again ran into financial difficulties as suppliers moved manufacturing from

Denmark to Hong Kong with an ensuing decline in merchandise quality, which, in turn, resulted in significant customer returns and cash flow problems.

11. In December 2008, the bank demanded repayment of the loan from JTI. A settlement was proposed with the bank, and, in May 2009, Mr. Haar, through his company Holdco, purchased the bank's security position in JTI. Mr. Haar proceeded to exercise significant influence (outlined in a hand written document that laid out a revised control environment for JTI and SI) over the affairs of the company including: taking on duties previously performed by CJ (approving inventory purchases and approving payments by signing suppliers and employee cheques), taking control of credit card receipts and providing bookkeeping services.

12. Sales were primarily by credit card. Credit card receipts were paid into a bank account stipulated in the credit card agreement between merchant and bank, the merchant agreement. As a result of the existing merchant agreement, receipts from credit card sales of SI continued to be deposited daily into an account over which CJ had signing authority. By agreement with Mr. Haar, these funds were transferred weekly to a new bank account controlled by Mr. Haar out of which suppliers and employees were paid. This arrangement continued for about three and one half months after which Mr. Haar became uninvolved when CJ and his wife GJ made other arrangements.

13. Evidence was provided to the tribunal (Exhibit 1, Tab 16 included copies of cheques paid from the Scotiabank account controlled by Mr. Haar, noted above) of payments to Mr. Haar's companies from the credit card sales receipts.

14. JTI owed tax arrears of approximately \$300,000 throughout this period. Mr. Haar received approximately \$301,000 from SI during the period he controlled the above bank account, but he did not pay the arrears out of these funds. GJ cashed out an RRSP for \$30,000 and transferred these funds to Mr. Haar; however, Mr. Haar failed to use this money to settle the arrears.

15. Mr. Haar prepared JTI's financial statements for fiscal 2007 and attached his Review Engagement Report. Note 5 of these financial statements, Shareholders' and Investors' Advances, disclosed the advances of \$1.1 million and \$150,000 from Mr. Haar's corporations. Mr. Haar's ownership of these creditors and his conflict of interest was not disclosed in the financial statements. The copy of this financial statement provided to the tribunal was unsigned but evidence was presented that Mr. Haar had signed prior financial statements and that these financial statements were provided to the bank. Mr. Haar did not dispute this evidence.

16. CJ provided evidence that Mr. Haar requested that JTI issue an invoice to [REDACTED] charging a fee for services that were not performed. A payment by cheque from CPC to JTI in the amount of \$9,000 was made and deposited in December 2007, which was purported to be the GST portion of the above invoice made to make the transaction look legitimate. Mr. Haar confirmed that this was done to support an income tax deduction for his company.

17. Mr. Schmidt, on behalf of Mr. Haar, filed a Book of Documents (Exhibit 3). In cross-examination by Mr. Schmidt, CJ gave evidence that demonstrated that the control Mr. Haar exercised over the operations during the period of time that he owned shares of JTI and held certain security was clearly not absolute. CJ agreed that GJ managed the two stores, that the inventory remained at the stores, that GJ decided on inventory purchases, albeit with the approval of Mr. Haar, and that Mr. Haar went to the stores only occasionally. CJ further confirmed that Mr. Haar had his staff do the bookkeeping and prepare the cheques to pay the suppliers' accounts and employees, and that Mr. Haar was the signatory of these cheques. CJ

also indicated that Mr. Haar checked in weekly on how the business was operating.

18. CJ confirmed that he controlled the BMO account and decided how much of the credit card receipts were transferred to the bank account controlled by Mr. Haar, which at the beginning of this period was all, but later was less than all, of the receipts.

19. CJ further confirmed that, at the end of August 2009, he decided to end Mr. Haar's involvement in the companies. Mr. Schmidt suggested that this occurred when Mr. Haar established a new merchant agreement for credit card sales that would mean credit card receipts would be deposited directly into a bank account on which Mr. Haar would have sole signing authority. This new merchant agreement was never put in place.

20. Questions by the tribunal clarified that Mr. Haar became a director and officer of the companies once he took over and that most of the conditions in the handwritten document, noted above, were fulfilled.

21. Mr. Uwe Manski, FCPA, FCA, FCIRP, the investigator for the PCC provided evidence. The tribunal accepted Mr. Manski as an expert in bankruptcy and insolvency matters. His experience concerning financial statements and general accounting was also acknowledged.

22. Ms. Hersak filed a Book of Authorities (Exhibit 5) containing the *Retail Sales Tax Act*, *Income Tax Act*, *Excise Tax Act* and *Bankruptcy and Insolvency Act*, as well as ICAO Council Interpretation 64.

23. Mr. Manski interviewed CJ in June 2015 and the interview with Mr. Haar (Exhibit 6) took place in September 2015.

24. Mr. Manski referred to corporation profile reports contained in Exhibit 1 for JTI and SI showing CJ as the director, president and secretary at incorporation. At the time of incorporation in 1993, Mr. Haar owned 50% of ██████████ and searches for 2006 and 2009 show that he continued to do so at those times. Mr. Haar is shown as a director, officer, president and 70% owner of Holdco.

25. Mr. Manski confirmed the prior evidence provided to the tribunal with respect to the loan arranged with DH and LH, but he added that when DH died, Mr. Haar said he felt a moral obligation to LH and took over her position in the loan for this reason. Mr. Manski also indicated that Mr. Haar had said that he was holding his 50% shares in ██████████ in trust for LH, but Mr. Manski clarified that the documentation indicated Mr. Haar had become a 50% shareholder.

26. Mr. Manski stated that Mr. Haar was aware of the ongoing tax arrears in the amount of \$300,000 at the time he acquired the bank security and that the arrears were subject to deemed trust rules articulated under various government Acts relating to monies collected on behalf of the government, such as source deductions on payroll and sales tax on sales, which are applicable in this case. These rules create an entitlement for the government to be paid any available funds in preference to other creditors. Mr. Manski confirmed that Mr. Haar did not pay the arrears according to these deemed trust rules even though Mr. Haar was a specified person under the *Receivership Act*, and, as such, was responsible for ensuring that the deemed trust would be paid.

27. Mr. Manski stated that, in his opinion, in accordance with the *Bankruptcy and Insolvency Act*, once Mr. Haar took control of the inventory, which he did by causing to be implemented the new control environment (as set out in the hand written document referred to above), he

became the receiver and was obligated to fulfil the legal obligations of a receiver, including the deemed trust provisions.

28. Mr. Manski reported that Mr. Haar had told him that he devised the plan to liquidate the JTI/SI inventory, so that he could recover his advances in preference to repaying the tax arrears. Mr. Haar stated that the liquidation was done informally through a corporate name, CPC, in the hope that the government would not catch on and go after him personally, and Mr. Haar would thus be able to get some payback on his loans from the liquidation of JTI.

29. Mr. Manski gave evidence that he was of the opinion that Mr. Haar was the receiver of JTI/SI from May to August 2009. Mr. Haar had taken control of the inventory (accounts receivable were insignificant) by taking control of cash generated by credit card sales (cash sales or other forms of sales were inconsequential), which is the relevant test. He acknowledged that Mr. Haar may have believed he was not the receiver, but that was not relevant. Mr. Manski stated that possession of the inventory was not necessary to have control, and that control was the relevant test. Mr. Manski gave evidence that absolute control was not necessary to have control.

30. Mr. Manski confirmed that a deemed trust would end when there were no longer any assets in a company. Mr. Manski further stated that multiple parties can be responsible for a deemed trust as anyone who takes over, such as Mr. Haar, is liable as well.

31. In this case, CJ did not transfer all of the credit receipts deposited to JTI/SI bank account to the account controlled by Mr. Haar, but Mr. Haar had implemented a reasonable control system for obtaining these funds.

32. In redirect examination by Ms. Hersak, and in response to questions from the tribunal, Mr. Manski clarified that Mr. Haar had previously acted as the receiver of [REDACTED] and then acquired control of that company.

33. Mr. Scott Porter, CPA, CA, IFA, a forensic investigator for the PCC had interviewed the complainant and Mr. Haar during his investigation of Mr. Haar.

34. In respect of Allegation No. 2, Mr. Porter stated that Mr. Haar's company [REDACTED] held a 50% share in JTI and the operating company CP was 70% owned by Mr. Haar. Mr. Haar was the sole director of [REDACTED]. Mr. Haar was the signing partner of the public accounting firm who issued financial statements for JTI for the years 2004 to 2007, although Mr. Haar subsequently said he was not responsible for 2007. In 2007, he was in negotiations to sell his practice to another accountant, but there was never a written agreement and the purchase did not go through. Mr. Porter confirmed that Mr. Haar did hold a public accounting licence at the time he issued the financial statements.

35. Mr. Porter corroborated evidence about Mr. Haar's loans to JTI and ownership of JTI common shares.

36. Mr. Porter gave evidence that Mr. Haar's company, [REDACTED], made a further \$150,000 advance to JTI. Mr. Haar had indicated this was because [REDACTED] happened at the time to have the money to make this further injection. Mr. Haar had said he felt a moral obligation to take control and to be proactive in order to recover the money advanced by LH to JTI.

37. In respect of Allegation No. 3, Mr. Porter referred to the evidence contained in an email

requesting the fictitious invoice in the amount of \$150,000 plus \$9,000 GST charging for development and marketing services (Exhibit 4, Tab 20 and 21) from SI to [REDACTED]. In his interview with Mr. Porter, CJ said that no such services were performed and that the invoice was issued for tax deduction purposes. Mr. Haar had stated during his interview with the investigators that the invoice was a way to eliminate a bad debt and get a tax deduction.

The case for Mr. Haar

38. At the outset of his evidence, Mr. Haar stated that his recollection might be imperfect as the events had occurred many years ago. He also told the tribunal that he had not practised accounting since he retired in 2012.

39. Mr. Haar confirmed details of his initial meeting with CJ in the 1990s and background about how their relationship developed.

40. Mr. Haar stated that he thought there were about \$2.1 million in assets in the business, but there were also a lot of liabilities.

41. Mr. Haar elaborated on previous evidence about the "kitchen table" hand written agreement with CJ. Mr. Haar set up a new company CPC and would be a 50% shareholder of JT1. The ultimate objective was to get the company back on its feet.

42. Mr. Haar stated that he understood the role of a receiver and it was never his intention to be the receiver or gain control of the inventory. In the beginning, Mr. Haar thought he was being kept informed on all matters, and he thought sales were pretty good at the retail locations. He confirmed that a new bank account was opened with Scotiabank for CPC to deal with the business transactions of the business. Mr. Haar felt that CJ was not providing 100% of the proceeds, so he negotiated a new merchant agreement and ordered new credit card plates in early August, but shortly after doing so Mr. Haar was no longer involved with the company.

43. Mr. Haar confirmed to Ms. Hersak that he understood the subject of the PCC's investigation during his meeting with Mr. Porter and Mr. Manski and the seriousness of the matter. He agreed that the transcript of the interview was accurate.

44. Mr. Haar confirmed that he was aware that CJ was in arrears for sales tax and deductions at source. At the time Mr. Haar took over the bank security, there was over \$300,000 in monies owing and the bank was willing to sell its position at a loss. Mr. Haar confirmed that business assets were sold off and none of the proceeds were used to pay Revenue Canada. Mr. Haar stated that he knew Revenue Canada had priority, but that he also had priority since he was in the same position as the bank.

45. Mr. Haar responded that there were assets in the companies when he took over the security along with DH and that he was acting as the trustee for DH and LH. Mr. Haar confirmed that there was no trust agreement between him and DH and LH. Mr. Haar confirmed that he had signed the assignment of loan agreement from LH.

46. Mr. Haar stated that he had not intended to take control of the inventory. Mr. Haar stated that the purchase of the security agreement gave him the inventory. Mr. Haar stated that there were enough assets and there should have been lots of money in the business. Mr. Haar confirmed that he controlled the inventory through the security instruments, but Mr. Schmidt in closing asserted that this control was more about ownership than it was about control for the purposes of the *Bankruptcy and Insolvency Act*.

Submissions

47. Ms. Hersak submitted that Mr. Haar had pleaded guilty to Allegation Nos. 2 and 3, and the tribunal had heard uncontroverted evidence in support of those pleas. The evidence established that Mr. Haar had failed to maintain the good reputation of the profession and had failed to maintain his independence and objectivity in these respects.

48. In respect of Allegation No. 1, Mr. Manski testified that his expert opinion, which was unrefuted, was that Mr. Haar was a "de facto" receiver, whose duty in law was to ensure that the source deductions and sales tax be paid in priority to any other debts. In Mr. Manski's opinion, Mr. Haar held a security interest in JTI. He took control of the assets, in particular the inventory and the cash from sales of inventory, and determined how it was spent as part of the liquidation plan. By taking control, Mr. Haar met the definition of a receiver under the *Bankruptcy and Insolvency Act*. During interviews with the investigators, and in this hearing, Mr. Haar acknowledged he was aware of the ongoing tax arrears, their special priority and that they were subject to the deemed trust.

49. Ms. Hersak submitted that Mr. Haar made a clear choice when he devised the plan to run JTI, take control of the assets and not pay the arrears of PST, GST and payroll source deductions. Mr. Haar purposely ignored the requirements of the *Retail Sales Tax Act*, the *Excise Tax Act*, the *Income Tax Act* and the *Bankruptcy and Insolvency Act* in order to pay a debt owing to himself.

50. Ms. Hersak submitted that Mr. Haar had concerns about the financial position of the company when he took the security interest and was motivated to get his money out of the company and get his debt paid first. No attempt was made by Mr. Haar to pay the tax arrears from May 2009 to August 2009. Mr. Haar was fully aware of the facts and knew those arrears had to be paid before other debts. However, instead, Mr. Haar tried to run the company, distancing himself by using a corporation, and get his money first, hoping the government would not catch on and hold Mr. Haar responsible for the arrears.

62. Prior to Mr. Schmidt making closing submissions, an issue was raised by counsel to the Discipline Committee concerning the term "de facto" receiver which more appropriately should be termed "de jure". After discussion, the parties and the tribunal agreed to remove the words "as a de facto" and insert "in the capacity of" and the words "or his companies" after "a debt owing to himself" in Allegation No. 1.

63. Ms. Hersak submitted that, based on the facts in evidence, including Mr. Manski's opinion, there was clear, cogent and convincing evidence for a finding that Mr. Haar was guilty of professional misconduct on the basis set out in Allegation No. 1, as amended.

64. Ms. Hersak submitted that the evidence supported Mr. Haar's guilty pleas to Allegations Nos. 2 and 3. Mr. Haar performed review engagements for JTI while holding an interest through companies that he controlled, contrary to Rule 204.1.

65. Ms. Hersak submitted that once Mr. Haar, through his companies, took the assignment of LH and DH's loan to JTI, while continuing to perform a review for JTI, he no longer maintained his independence. Mr. Haar became a secured creditor of JTI, through his [REDACTED] company, in the amount of \$1.1 million and a 50% shareholder. Mr. Haar admitted that he was aware of the ongoing arrears of the businesses and the extent of those arrears. Mr. Haar took over the bank security and the associated mortgage when the loan was called, becoming a

secured creditor for a client company.

66. Ms. Hersak submitted that the uncontroverted evidence showed that Mr. Haar directed CJ to issue an invoice in the amount of \$150,000, plus GST of \$9,000, for which no services were performed. There is no tax deduction permissible for the fictitious invoice that is at the heart of Allegation No. 3.

67. Mr. Schmidt submitted that, with respect to Allegation No. 1, it was common ground that the companies owed the government a variety of remittances and taxes in the amount of approximately \$300,000 and that a deemed trust in favour of the government existed over the assets of the companies for taxes that were not remitted.

68. In respect of Allegation No. 1, Mr. Schmidt submitted that, as a precondition to a finding that the Allegation was established, the tribunal must determine that Mr. Haar was actually a receiver for the purposes of Section 243 of the *Bankruptcy and Insolvency Act*.

69. Mr. Schmidt submitted that Mr. Haar never obtained possession of the inventory, or possession and control of the accounts receivable or the property of the companies. To become a receiver for the purposes of the Act, Mr. Haar must be found to have taken control of all or substantially all of the inventory of the companies. In his interviews, Mr. Haar had made legal conclusions, which he was not qualified to make, equating the bank holding a mortgage as having control over a property and relating that to the security interest that his company purchased from the TD Bank. Mr. Schmidt submitted that these statements were legally incorrect as having a security interest does not mean taking control of the assets.

70. Mr. Schmidt submitted that Mr. Manski's opinion that Mr. Haar was a receiver for the purposes of Section 243 was based on the assumption that Mr. Haar had control of the inventory, and he asserted this was not based on the facts in evidence. As of May 2009, CJ and his companies had control and possession of the inventory, with Mr. Haar performing what amounted to bookkeeping services dependent on information provided by CJ. CJ's wife continued to run the retail operations where the inventory was physically held. Mr. Haar lacked an understanding of the quantum, quality or location of the inventory as CJ controlled all of that information. CJ had sole control over the credit card sales of the inventory and provided proceeds to Mr. Haar at his discretion, keeping approximately \$210,000 back. No accounting of cash sales was provided to Mr. Haar.

71. Mr. Schmidt stated that, despite what was contained in the kitchen table document discussed at the meeting between Mr. Haar, CJ and GJ, Mr. Haar did not in fact take control of the inventory of the companies. Mr. Schmidt submitted that CJ never had any intention of relinquishing control of the inventory and Mr. Haar did not have any power over the credit card sales.

72. Mr. Schmidt submitted that Mr. Haar was not a receiver for the purposes of Section 243 of the *Bankruptcy and Insolvency Act* and must be found not guilty of Allegation No. 1.

73. Ms. Hersak responded that Mr. Manski's opinion was based on his expertise in bankruptcy and insolvency matters and the evidence provided during interviews with Mr. Haar; there was no other expert called to refute Mr. Manski's evidence.

74. Ms. Hersak submitted that Mr. Haar did control the inventory, had direction over the allocation of the cash and devised the plans to sell the companies' inventory.

Decision

75. After deliberating, the tribunal found that the allegations had been proven. The tribunal announced the following decision:

THAT Allegation No. 1 having been amended at the hearing, and having heard the plea of not guilty to Allegation No. 1 and the plea of guilty to Allegation Nos. 2 and 3, having seen, heard and considered the evidence, the Discipline Committee finds Thomas Haar guilty of Allegation Nos. 1, 2 and 3, and guilty of professional misconduct.

Reasons for Decision

76. The tribunal considered the evidence and arguments presented by Ms. Hersak for the PCC and Mr. Schmidt for the member, Mr. Haar, and considered all the testimony provided in this hearing. The tribunal also heard and took into consideration the pleas of guilty to Allegation Nos. 2 and 3. Given these pleas, the tribunal concentrated its efforts on the question as to whether these allegations constituted professional misconduct. Mr. Haar pleaded not guilty to Allegation No. 1, and so the tribunal needed to first determine if the factual basis for the Allegation was proven by the PCC, and, if so, whether it constituted professional misconduct.

77. The first issue in Allegation No. 1 was whether Mr. Haar was acting in the capacity of receiver of JTI/SI. The tribunal considered and accepted the expert testimony that outlined what an assessment of the capacity of a receiver entailed under the rules that existed during the time of this alleged activity. This testimony made it clear that no formal appointment was necessary and neither was any special designation required for a person to become a receiver. A consideration of the actions of the receiver can determine if that person is acting in the capacity of receiver. Mr. Schmidt made it clear, however, that it was not enough to "believe" that one is a receiver, and, similarly, it was not enough that one had the "right" to be a receiver or act in the capacity of one. The person must act like a receiver on the evidence. In this case, the tribunal found that the critical question was "Did Mr. Haar take control of all or substantially all the inventory of JTI/SI?" Mr. Haar did have certain rights to support taking control of the inventory, namely, share ownership and security agreements, but Mr. Haar did not act on these rights, and they did not contribute to his control of the inventory. This did not determine the question, however. Although the evidence demonstrated that Mr. Haar did not take physical possession of the inventory, the tribunal accepted the uncontradicted expert testimony that physical control was not necessary to a finding of control.

78. Other factors point in favour of the conclusion that Mr. Haar did have control of the assets and, in particular, the inventory of JTI/SI. Mr. Haar put GJ in place as a manager answering to him and reduced the relative power of CJ in the business through the handwritten agreement. He identified that sales of inventory were predominantly by credit card transactions, and he consequently required that the funds from these transactions be paid over to him. He then sought to improve control of the credit card transactions by negotiating a new merchant agreement that would cause them to be deposited to a bank account he controlled. He also put himself into the position of approving new purchases, so GJ and CJ could not encumber the companies' cash without his authorization. Further, he used the money in that bank account to retire debts as he alone determined, thereby demonstrating he had control over the completion of the commercial transactions involving inventory. Finally, Mr. Haar changed the beneficiary under the inventory insurance policy to his benefit so that he had control over the inventory if it was lost in a fire. The tribunal concluded that, based on its consideration of all the evidence and

the various indications of control, Mr. Haar had taken control of substantially all the inventory of JTI/SI and, consequently, was acting as receiver and had the responsibility to meet the requirements of a receiver under the guiding legislation.

79. The second critical issue in Allegation No. 1 is whether Mr. Haar knowingly failed to pay outstanding priority amounts to the government while acting as a receiver. The testimony of the expert witness clearly demonstrated that Mr. Haar had a responsibility under the applicable legislation to pay these arrears. The evidence was clear that Mr. Haar was aware of the deemed trust rules covering the arrears and admitted such under oath. His long business experience in public accounting and in the area of business turnarounds and workouts, and particularly his previous experience acting as a receiver, corroborated the evidence that Mr. Haar was aware of these responsibilities. Mr. Haar testified that he thought the government might not pursue him for this liability, instead of accepting a proactive responsibility to comply with these rules. The tribunal was satisfied by all of this evidence that the failure to pay these amounts to the government was not an inadvertent failure to comply with the rules, but a deliberate action. Instead of being paid to the government as was required under the Act, Mr. Haar used these funds to improve his financial position. The tribunal concluded that the allegation was proven by clear and cogent evidence and that Mr. Haar knowingly failed to comply with requirements to pay the trust funds to the government and, in doing so, benefitted himself. On this basis, the tribunal concluded that Mr. Haar's actions did result in professional misconduct.

80. Mr. Haar pleaded guilty to Allegation Nos. 2 and 3. The tribunal was satisfied that the evidence was sufficient to support the pleas and made findings of professional misconduct on these two allegations.

81. Mr. Haar performed Review Engagement services for his client JTI/SI that were provided to their banker as well as to the shareholders of the companies. During this time, Mr. Haar (through a company he controlled) owned common shares of JTI, and JTI was also indebted to this company in the amount of \$1,100,000 and to another of his companies in the amount of \$150,000. These facts were proven and constitute clear and cogent evidence that Mr. Haar is guilty of Allegation No. 2 and that his actions constitute professional misconduct.

82. In addition, the tribunal received undisputed evidence that Mr. Haar requested that his client provide his company with an invoice in an attempt to convert the loan that was payable by his client to a company controlled by him to a deduction from ordinary income under the *Income Tax Act*. The evidence was clear that no such deduction was permissible. Further, Mr. Haar's company's cheque paying the GST on this invoice clearly corroborated the other evidence supporting the allegation and provided proof that Mr. Haar had instigated this false transaction. This position was also supported by Mr. Haar's testimony. The tribunal found this evidence to be clear and cogent and supportive of a finding of guilty of Allegation No. 3 and a finding of professional misconduct.

Submissions on Sanction

83. Ms. Hersak filed a Sanction Evidence Brief (Exhibit 7); Mr. Schmidt offered no additional evidence on sanction.

84. Ms. Hersak submitted that the documents contained in the brief should be taken into consideration by the tribunal. In 1992, Mr. Haar was expelled by order of the Discipline Committee arising from his conviction under the *Income Tax Act* for conspiring with others to evade the payment of taxes. Mr. Haar was reinstated to membership in 1995 by the

Applications Committee, which accepted that he had been rehabilitated at that time. Mr. Haar was also given guidance by the PCC in 1998 for a failure to disclose a conflict in a notice to reader communication.

85. Ms. Hersak, on behalf of the PCC, submitted that an appropriate sanction in this matter would be: a written reprimand; a fine in the amount of \$25,000; revocation of membership; and full publicity to all members and the public, including newspaper publication. The PCC also sought an order for 50% of the actual costs incurred, to be fixed at \$98,500.

86. Ms. Hersak submitted that Mr. Haar was found guilty of professional misconduct under Rules 201.1 and 204.1, involving integrity, independence and honesty, which go to the heart of the profession. Despite his awareness that Revenue Canada expected to be paid forthwith, the deemed trust was not paid. Mr. Haar attempted to blur the lines of independence and objectivity by holding an interest in the client's business. In the review statements relied on by the bank, it was not apparent that Mr. Haar was an investor in the business.

87. Ms. Hersak submitted that Mr. Haar was a repeat offender whose previous expulsion was for a similar matter. The Applications Committee's trust was misplaced when they agreed to reinstate his membership. This is a very serious second offence, and Mr. Haar has already been given a chance but failed to prove himself. Rehabilitation must give way to specific and general deterrence in a case of dishonesty. Revocation restores the public's faith and trust that the profession takes such matters seriously.

88. Ms. Hersak stated that the aggravating factors included knowingly acting in a manner that contravened the *Bankruptcy and Insolvency Act*; deliberately participating in a plan to avoid the remittance of taxes owing; involving a client in issuing a false invoice; being a repeat offender; and, showing no sign of remorse.

89. Ms. Hersak stated that the mitigating factors were that Mr. Haar cooperated with the PCC investigation and had entered a guilty plea to two of the three allegations. Ms. Hersak submitted that the aggravating factors significantly outweighed the mitigating factors.

90. Ms. Hersak submitted that the fine proposed would address the principles of general and specific deterrence for Mr. Haar and reflected the serious consequences to like-minded members. Ms. Hersak stated that revocation was the most appropriate sanction for Mr. Haar's actions.

91. Publicity is a key element to specific deterrence and lets the public know that such behaviour is taken seriously by the profession. It must be made clear that Mr. Haar is no longer a member, and there are no rare or unusual reasons not to order publicity. Newspaper publicity is mandated for revocation and a local newspaper was suggested in the Peterborough or Oshawa area, in Cobourg where his business is located or in a general publication such as the *Globe & Mail* or the *Toronto Star*.

92. Ms. Hersak filed a Costs Outline (Exhibit 8) stating that costs are an indemnity, not a penalty, and are meant to reimburse a portion of the costs incurred as a result of the member's conduct. There was a significant and broad investigation into this matter and the costs requested of \$98,500 are approximately 50% of the actual costs incurred.

93. Ms. Hersak distributed a Case Brief containing the CPA Ontario cases of *Marcus, Slavens, Lange, Lambe, Greenwood* and *Roy*, which dealt with independence matters. The

Roy case involved a member who was revoked, given a second chance by being readmitted to membership, and then was subsequently revoked for similar misconduct.

94. In his submissions on penalty, Mr. Schmidt did not take issue with the PCC's position regarding the reprimand and the revocation of Mr. Haar's membership. Mr. Schmidt stated that a fine of \$15,000 would be more appropriate and the costs incurred of approximately \$198,000 should not all be attributed to Mr. Haar. The scope of the investigation led to high costs that should be boiled down to a more appropriate amount to be paid within 12 months. Mr. Schmidt suggested costs of \$15,000 are more in keeping with precedent cases.

95. Mr. Schmidt stated that since Mr. Haar has not been in practice since 2012, publication in the *Peterborough Examiner* would be more appropriate.

Order

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

IT IS ORDERED in respect of the Allegations:

1. THAT Mr. Haar be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Haar be and he is hereby fined the sum of \$25,000, to be remitted to the Chartered Professional Accountants of Ontario ("CPA Ontario") within twelve (12) months from the date this Decision and Order is made.
3. THAT Mr. Haar's membership in CPA Ontario be and it is hereby revoked.
4. THAT notice of this Decision and Order, disclosing Mr. Haar's 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. Haar's name, be given by publication on the CPA Ontario website and in *The Globe and Mail* and the *Peterborough Examiner*. All costs associated with the publications shall be borne by Mr. Haar and shall be in addition to any other costs ordered by the committee.
6. THAT Mr. Haar 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. Haar be and he is hereby charged costs fixed at \$98,500, to be remitted to CPA Ontario within twelve (12) months from the date this Decision and Order is made.

Reasons for Sanctions

97. The actions of Mr. Haar proven during this hearing were serious breaches of rules of professional conduct necessitating a substantial fine that clearly sends a message to the public and other members of the profession that such actions will not be tolerated by its members.

98. The protection of the public from members who fail to follow our rules of professional conduct, especially when such misbehavior forms a repetitive pattern, is paramount. For this reason, the tribunal determined to order the revocation of Mr. Haar's membership. Mr. Haar's membership has been revoked before for similar activity and Allegation Nos. 1 and 3 are similar to the underlying misconduct at that time. The pattern of current misconduct shown with respect to his affairs is clearly not acceptable to the tribunal because such misconduct puts the reputation of our profession at risk. The misconduct demonstrates a lack of integrity and a failure to recognize the importance of independence to the role of the CPA. It is not acceptable for Mr. Haar to continue to hold himself out as or be seen by the public to be a CPA.

99. Notice and publication are important elements of sanction to ensure that members and the public are aware of our efforts to protect the reputation of the profession.

Reasons for Costs

100. The tribunal found the costs to be reasonable given the allegations and the extent of materials that needed to be prepared for the hearing. The tribunal supports the premise that costs are intended as an indemnity.

101. It is true that the quantum of costs awarded in this case are greater than in other cases, but the relevant comparison is to the costs actually incurred and not to such other cases. Mr. Haar certainly could have provided his proactive cooperation during the investigation of his case, reducing the costs eventually incurred, but instead apparently chose to wait to see what evidence the PCC was able to cobble together. To be clear, he was fully entitled to do that, and the tribunal does not infer anything from it, but he must live with the consequences in terms of costs. His strategy clearly correlated with the quantum of costs eventually incurred by CPA Ontario, and, as such, the costs ordered are reasonable in the opinion of the tribunal.

DATED AT TORONTO THIS *11TH* DAY OF AUGUST, 2017
BY ORDER OF THE DISCIPLINE COMMITTEE



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

MEMBERS OF THE TRIBUNAL:

R. CARRINGTON (PUBLIC REPRESENTATIVE)
R.S. DUSCHEK, CPA, CA
D.L. KNIGHT, FCPA, FCA