

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

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

IN THE MATTER OF: ALLEGATIONS OF PROFESSIONAL
MISCONDUCT AGAINST TREVOR L.
BUTTLE, CPA, CA, A MEMBER OF
CPA ONTARIO BEFORE THE
DISCIPLINE COMMITTEE

SETTLEMENT AGREEMENT

***Made pursuant to Section 34 (3) (c) of the Chartered
Professional Accountants of Ontario Act, 2017 and to
CPAO Regulation 7-1, s.22.4***

Introduction

1. The Professional Conduct Committee approved draft Allegations against Trevor L. Buttle, CPA, CA ("Buttle"). **DOC 1001**
2. The draft Allegations pertain to Buttle's failure to use due care in the performance of his professional services while engaged to prepare and file income tax returns, GST/HST and financial statements for his clients "GH" and "SH" and their businesses. The draft Allegations further pertain to Buttle's failure to ensure that non-members associated with his public accounting practice abided by the Rules of Professional Conduct of the ICAO in performing professional services.

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

Member Background

5. Buttle became a Member of the Institute of Chartered Accountants of Ontario in 2000 while working at Grant Thornton. He then worked in industry with one company for four years as a controller. During that time he began a small accounting practice. He left his work as a controller to practice full time as T. Buttle and Associates in 2005. From 2008 through 2015 he practiced in association under the name Buttle and Tavano Professional Corporation. In August 2015, GBA LLP was formed with three partners, Buttle, "SA", CPA, CA, and "GG", FCPA, FCA. Buttle holds a public accounting license.
6. Buttle operates a general accounting practice, 9% of which is assurance engagements, 54% is Notice to Reader engagements, 26% is personal and trust tax returns, and approximately 9% corporate tax work.
7. "MA" is a non-designated accountant who joined Buttle's practice in 2009. He performs bookkeeping work for clients.
8. "AD" is a manager at GBA LLP, holding a CPA, CGA designation. At all material times, she was a non-member employed in Buttle's practice. She

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joined the practice in 2009 but was away on leave for twelve months commencing in the spring of 2010.

9. In May, 2012, Buttle was in a motorcycle accident which resulted in serious physical and brain injuries. He was unable to work for fourteen months. In July, 2013, he began returning to the office for a few hours a week. At the time of the investigation, he was working approximately four hours per day.

Background of the Complaint

10. Buttle came to the attention of the PCC as a result of a complaint received from former clients, GH and SH. The complaint alleged that the acts or omissions by Buttle in performing the services for which he was engaged resulted in a CRA audit of them and of their businesses which concluded that they owed over \$30,000 in HST and \$65,000 in personal income taxes. The complainants further stated that Buttle's failure to perform his professional services on a timely basis resulted in the assessment of significant penalties and arrears interest. **Doc 2001-2004**

11. In the fall of 2012, CRA conducted a payroll audit. Although it is not known what precipitated the audit, CRA extended the audit from payroll to look at all of the business activities. CRA concluded that the business was being operated as a sole proprietorship and not a corporation, and consequently that the income earned had not been correctly reported. A significant basis for this conclusion was that no bank account had been opened in the 641 name. SH & GH had continued to use the pre-existing S&GW bank account, and used invoices reflecting the HST number of S&GW.

12. CRA ultimately ruled that the payroll did not belong to 641 but rather to S&GW, the sole proprietorship. All profits of 641 were therefore attributed

to GH personally, with the associated reassessment resulting in an increase of \$150,000 in personal taxes owed. **Doc 3001**

13. AD handled the CRA audit for the clients without any supervision. Buttle was not available during the audit because he was incapacitated as a result of his motorcycle accident. He did attend at his office in February, 2013, contrary to medical advice in order to meet with the clients and advise them of the outcome of the audit and of the reassessment.

14. SH & GH were not in a position to pay these taxes and consequently filed for personal bankruptcy.

15. Buttle's response to the complaint against him is reproduced at **Doc 4001-4004**.

16. Ms. Linda A. Robinson, CPA, CA-IFA, (the "Investigator") was appointed to investigate.

Background of the Client Engagements

17. SH and GH are married. GH operates a welding business in the Greater Toronto Area for which SH performs bookkeeping services. SH and GH have limited business knowledge.

18. In late 2004 SH and GH engaged Buttle to provide accounting and income tax and HST¹ services. Buttle continued to act as their accountant until they terminated the relationship in late 2013.

¹ Effective July 1, 2010, Ontario converted from GST to HST. For purposes of this Agreement, the terms GST and HST are used interchangeably.

19. Limited documentation related to the client engagements is available prior to 2009.

Failures to Use Due Care in Performing Professional Services and to Supervise Non-Members Associated with the Practice

Commencement of Engagement

20. When GH and SH initially retained Buttle, an engagement letter dated December 23, 2004, was prepared. **Doc 5001-5003** The terms included preparation of the 2004 personal tax returns, yearly annual financial planning review, monthly bookkeeping services and filing of all supporting documents, weekly processing of payroll information and pay stubs for employees, and monthly, quarterly and annual compliance or remittance forms such as GST, WSIB, payroll and income tax.
21. Buttle states that this engagement letter remained in place throughout his relationship with the clients, which ultimately terminated in 2013, although it is his practice to obtain a new engagement letter annually when compilation statements are presented. Buttle states in this case that the clients did not sign off on the files, and therefore he did not obtain an annual signed engagement letter.
22. Buttle's role in the engagement was dealing with the clients and planning. MA and AD dealt with the clients on day to day bookkeeping matters. There was little supervision or oversight of staff working on the engagement. MA and other bookkeeping staff such as co-op students were supervised by AD. Although AD was made responsible for this supervision, she performed a high-level review for reasonableness only. Her reviews consisted of simply ensuring that HST collected represented the correct percent of revenue. Monthly communications such as those regarding required remittances to the government were then forwarded to

the client without further review by Buttle. Buttle therefore failed to ensure MA and AD carried out their professional responsibilities with due care. Buttle's minimal supervision of staff is also evident based on the firm records for the client engagement.

23. At their first meeting, Buttle recommended that the clients incorporate their sole proprietorship "S&GW" for tax reasons, and on July 18, 2005 he incorporated 641XXXX Canada Inc. ("641") on their behalf.

24. GH and SH do not recall receiving any instructions from Buttle with respect to 641. Although Buttle believes that he provided the clients with oral instructions as to changes to be made to their business operations post-incorporation, no written instructions were provided.

25. The clients continued to conduct business in 641 as they had as a sole proprietorship. They continued to use the pre-existing bank account of S&GW rather than opening a new bank account for 641. The invoices used in the business continued to reflect the HST number of the sole proprietorship.

Financial Statements Not Prepared and Tax Filings Not Made on a Timely Basis

26. The compilation financial statements for 641 were not prepared on a timely basis. The compilations for the periods ended September 30, 2005-2009 were all prepared between January and March, 2010. Although Buttle states that the financial statements were not prepared annually because there were no taxes due, the table below demonstrates that 641 was earning considerable income and would therefore have been taxable.

Period ended	Notice to Reader Dated	Revenue (000's)	Salary & Management fees (000's)	Net income before tax (000's)	Document Reference
Sept 30, 2005	Jan 19, 2010	69	55	(32)	6005
Sept 30, 2006	Jan 20, 2010	231	84	26	6010
Sept 30, 2007	Jan 22, 2010	216	84	14	6015
Sept 30, 2008	Mar 5, 2010	274	63	81	6020
Sept 30, 2009	Mar 11, 2013	263	9	85	6025

27. Despite being engaged to do so, Buttle did not prepare financial statements for periods subsequent to 2009.

28. On a monthly basis, SH provided Buttle with a list of monies withdrawn from the business bank account and would in turn receive a statement of the withholdings to remit to CRA. These remittances related mainly to CPP and personal tax deductions although later WSIB was also remitted. SH also provided other financial information to Buttle during this period, such as lists of receivables and copies of the business' charge account statements. Notwithstanding the regular communication, Buttle was not preparing the financial statements nor the tax returns annually.

29. The financial information SH provided to Buttle monthly was also to be used to prepare the GST/HST returns. The clients understood that Buttle was preparing these returns on their behalf, as he had been engaged to do. It was not communicated to them that this work was not performed.

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Indicia that Problems Existed Between Sole Proprietorship and Corporate Entities

30. Although a variety of red flags existed that the business of 641 was not being operated as a corporation, neither Buttle nor his staff (MA and/or AD) took proper steps to address them.

31. File records indicate that SH wrote to Buttle and/or his staff on November 5, 2009, stating:

"I have noticed that our business number expired Apr./08... I wanted to renew it online but I am not sure if the company is incorporated or sole prop... As I remember [Buttle] changing things around in regards to the business." Doc 7001

32. MA replied on the same day providing two HST numbers, one for the sole proprietorship and one for 641. SH replied:

"...our master business license shows S&GW – sole proprietorship/business name registration # XXXXX effective date: April 25, 2003 expires: April 24, 2008. Is this something different from what you have? Should I go ahead and re-register the business name as it has expired last year?" Doc 7003

33. When MA instructed SH to re-register and to update for the Canada Corporation information, SH responded:

"I did update online but did not see your message about updating for Corporation...so I did it for the sole prop. Some of the questions were tricky so not sure if I answered correctly...Will this be a problem? I know we have the two companies?? Is one sole prop. and one incorp.? It is confusing to me." Doc 7004

34. On November 13, 2009, SH again wrote to MA:

"I am still having trouble registering the business name. As it has expired I need to apply as a NEW name registration...I started to apply as a corporation as you suggested but the first question I don't understand? Can you please help me....I am confused if we are incorporated or sole prop. Or both" **Doc 7005**

The question which confused SH related to the name under which the business was to operate. The instructions indicated that a business name had to be registered if it was different than the name on the Articles of Incorporation. S&GW had never been registered as the name under which 641 was to operate.

35. SH continued to write to MA on November 16, 2009, asking *"have you heard from [Buttle] in regards to our business name registration...S&GW – sole prop. or incorporated?"* **Doc 7006** Two days later she wrote to ask *"I am also faxing you the business license that has expired, can you let me know how I should renew? as S&GW, sole prop. or incorporated?"* **Doc 7007**

36. No written response was provided by Buttle or his staff to resolve this matter.

37. Buttle was aware that there may not have been a new bank account opened for 641, as he wrote to SH on June 9, 2009 requesting various documents, and inquired *"Do you have a separate bank account for the numbered company or is everything done through S&G still?"* **Doc 8001**

38. On November 16, 2010, more than one year later, SH wrote to Buttle and his staff to advise that she had received a cheque from the Ministry of

Revenue made out to 641 but that she was unable to cash it as the business bank account was in the name of S&GW. Doc 7008

Inconsistent use of Names and Numbers

39. Although the sole proprietorship (S&GW) and the corporation (641) had different names and business numbers, HST was being filed under both numbers simultaneously. Buttle states that HST was filed and paid under S&GW for the management fees earned by GH, and under the 641 number for net HST collected on sales.
40. CRA filings were not always made under the correct number which may have been a basis for CRA's decision to conduct an audit. For 2010 and 2011, the employer's name on GH's T4 is stated as GH rather than "641", and the payroll account number is that associated with S&GW. However, GH could only earn employment income from a corporation and not from the sole proprietorship. Buttle states that the use of this name and number was a clerical error.
41. Buttle sent monthly communications to SH with instructions as to the amount of withholdings to be remitted for CPP and income tax. The communications were headed interchangeably as "GH – S&GW" or "641." Although Buttle states that these instructions were for SH and were not forwarded to CRA confusion existed. MA who was tasked with calculating the withholdings and instructing SH on the amounts to remit was not clear about the different business numbers and their uses. MA had not been properly trained to understand the significance of interchanging a corporation and sole proprietorship from CRA perspective and the ramifications of not using the correct account numbers.

Timeliness of HST Returns

42. Annually, CRA would arbitrarily assess an amount due from S&GW or from 641 and charged a "failure to file penalty," which according to Buttle would be charged if the filing was late. Subsequent to the arbitrary assessment, Buttle would prepare and file the HST return and the arbitrary assessment made by CRA would be reversed. In addition, arrears interest was charged as the clients did not make their payments on a timely basis.

43. For an individual, HST is due 5 ½ months after year end (or June 15) and for a corporation, three months after the reporting period ends (September 30). Buttle filed the returns electronically, however they were filed with significant delays as set out in the charts below:

Personal HST (S&GW) for the year ended:

Period end	Filing deadline	Actual filing date	Delay	Document Reference
December 31, 2006	June 15, 2007	July 2009	25 months	9001
December 31, 2007	June 15, 2008	June 8 2009	12 months	10001
December 31, 2008	June 15, 2009	July 20, 2009	1 month	10002
December 31, 2009	June 15, 2010	November 16, 2010	5 months	10003

Corporate HST (641) for the year ended:

Period end	Filing deadline	Actual filing date	Delay	Document Reference
September 30, 2006	December 31, 2006	November 2007	11 months	9002
September 30, 2007	December 31, 2007	June 8 2009	18 months	11001
September 30, 2008	December 31, 2008	November 18, 2009	10 ½ months	11002
September 30, 2009	December 31, 2009	December 31, 2009	On time	11003

44. GH and SH believed their affairs to be in order until they received a Requirement to Pay notice from CRA dated October 16, 2007 **Doc 12001** and their bank account was frozen. In May, 2007 CRA made an arbitrary assessment because the 641 HST return had not been filed, and the notice stated that 641 owed over \$19,000.

45. This filing was made **Doc 9002** in November 2007, and the assessment was corrected, reflecting \$6,000 as the amount owing by 641.

46. The client bank accounts were frozen for a second time when they received a Requirement to Pay Notice from CRA dated November 4, 2009 **Doc 13001** stating that 641 owed over \$17,000 in respect of HST. GH and SH contacted Buttle, and the freeze was lifted. The HST return for the

September 30, 2008 year end was subsequently filed on November 18, 2009 **Doc 11002** indicating the amount owing to be approximately \$8,500.

47. After the CRA payroll audit, no reconciliation was done by Buttle to ensure that the HST returns were assessed correctly.

Acknowledgement

48. It is agreed that Buttle, while engaged to provide tax and accounting services for SH, GH, and their businesses, failed to use due care in the performance of his professional services in that he failed to prepare financial statements on a timely basis or at all, failed to prepare corporate income taxes on a timely basis or at all, and failed to prepare and file GST/HST returns on a timely basis, contrary to the Rules of Professional Conduct.

49. It is agreed that Buttle, while engaged to provide tax and accounting services for SH, GH, and their businesses, failed to use due care in the performance of his professional services in that having recommended that SH and GH incorporate their sole proprietorship, and having incorporated that entity on their behalf, he failed to ensure that they set up a corporate bank account, that they revised their invoices to reflect the corporate entity, and that government filings were made under the proper account number, contrary to the Rules of Professional Conduct.

50. It is agreed that Buttle, while engaged in the practice of public accounting and while associated in such practice with the non-members MA and AD, failed to ensure that MA and AD performed professional services in connection with the Engagement with due care, contrary to the Rules of Professional Conduct.

Terms of Settlement

51. Buttle and the Professional Conduct Committee agree to the following

Terms of Settlement:

- a) Buttle will pay a fine in the amount of \$5,000 within 18 months of this agreement receiving approval of the Discipline Committee;
- b) Buttle will attend, within 18 months of the time the Discipline Committee accepts this Settlement Agreement, the following professional development courses offered by CPA Ontario (or the successor courses):
 - *Review Engagements – File Review;*
 - *Income Tax Planning Refresher for Personal Tax; and*
 - *Compilation Engagements – Experienced Practitioners*
- c) Notice of the terms of this Settlement is to be published in accordance with the provisions of CPA Ontario Regulation 7-3, s. 22, including notice to be given to all provincial bodies, the Public Accountants' Council and in a CPA Ontario publication;
- d) Buttle will pay costs in the amount of \$12,000 within 18 months of this agreement receiving approval of the Discipline Committee; and
- e) A failure by Buttle to comply with any of the terms of settlement will result in his suspension from membership in the Institute which suspension will continue until he complies PROVIDED THAT if his suspension under this section continues for three months his membership in the CPA Ontario will be revoked with full publicity in accordance with Regulation 7-3(23).

52. Should the Discipline Committee accept this Settlement Agreement, Buttle agrees to waive his right to a full hearing, judicial review or appeal of the matter subject to the Settlement Agreement. Upon the member fulfilling the requirements of this Settlement Agreement, the draft allegations approved by the Professional Conduct Committee and dated August, 2016, shall be forever stayed.

53. If for any reason this Settlement Agreement is not approved by the Discipline Committee, then:

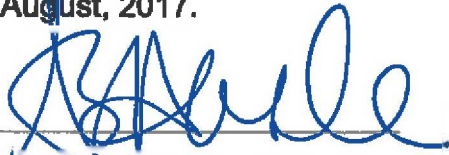
- a) This Settlement Agreement and its terms, including all Settlement Negotiations between the Professional Conduct Committee and Buttle leading up to its presentation to the Discipline Committee, shall be without prejudice to the Professional Conduct Committee and Buttle; and
- b) The Professional Conduct Committee and Buttle shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations, or negotiating a new Settlement Agreement, unaffected by this Settlement Agreement or the Settlement Negotiations.

Disclosure of Settlement Agreement

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

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

All of which is agreed to for the purpose of this proceeding alone this 10th day of August, 2017.



ALEXANDRA E. HERSAK

On behalf of:
THE PROFESSIONAL CONDUCT COMMITTEE



TREVOR L. BUTTLE, CPA, CA on
his own behalf