

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: An Allegation against **JOERN (JOHN) SCHOLZ, CPA, CA**, a
suspended member of the Chartered Professional Accountants of
Ontario, under **Rule 201.1** of the CPA Ontario Code of Professional
Conduct

BETWEEN:

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

-and-

Joern (John) Scholz

APPEARANCES:

For the Professional Conduct Committee: Julia McNabb, Counsel

For Mr. Scholz: Not Present and Not Represented

Heard: September 15, 2022

Decision and Order effective: September 15, 2022

Release of written reasons: October 17, 2022

REASONS FOR THE DECISION AND ORDER MADE SEPTEMBER 15, 2022

I. OVERVIEW

- [1] This hearing was held to determine whether the Allegation that Joern (John) Scholz failed to maintain the good reputation of the profession and its ability to serve the public interest when he was convicted of the criminal offence of Fraud Over \$5000 was established on the facts presented and, if so, whether the Allegation amounts to professional misconduct.
- [2] Mr. Scholz obtained his CA designation in 2000 and his CPA designation in 2012. Mr. Scholz was administratively suspended effective August 25, 2020.
- [3] On April 13, 2019, Mr. Scholz was convicted of one count of having defrauded the Government of Canada of income tax and GST/HST, in an amount over \$5000, contrary to s.380(1)(a) of the *Criminal Code of Canada*. On September 26, 2019, Mr. Scholz was

sentenced to a custodial sentence of 2 years less one day to be served in the community. The Court also imposed a fine of \$455,789 plus a Victim Fine Surcharge of 10%, all of which was to be paid in 18 months.

- [4] The Crown brought an application seeking leave to appeal and appeal against the sentence imposed. On July 13, 2021, the Court of Appeal granted leave to appeal and set aside the conditional sentence imposed by the trial judge. A custodial sentence of 3 years was imposed. The remaining terms of the sentence were upheld, including the fine. Only the Victim Fine Surcharge was set aside.
- [5] The onus was on the Professional Conduct Committee (PCC) to show on a balance of probabilities that Mr. Scholz's conviction of Fraud Over \$5000 breached Rule 201.1 of the *CPA Ontario Code of Professional Conduct*, and that his conduct constituted professional misconduct.

II. PRELIMINARY ISSUES

- [6] Neither Mr. Scholz nor a representative on his behalf appeared when the hearing commenced. Given his absence, the Panel had to be satisfied that Mr. Scholz had received proper notice of this hearing.
- [7] The onus was on the PCC to prove that Mr. Scholz had received proper notice of this proceeding.
- [8] On behalf of the PCC, Ms. McNabb filed the Affidavit of Alyssa Girardi, Professional Standards Coordinator for CPA Ontario (Exhibit 1) which contained evidence of the efforts made to communicate with Mr. Scholz and of his knowledge of the Allegation of Professional Misconduct (Allegation) and of the disciplinary proceeding.
- [9] Despite attempts to locate, communicate, and serve Mr. Scholz with the Allegation in January and February of 2022, by mid-February Mr. Scholz had not responded to the PCC's communications.
- [10] On February 15, 2022, the PCC served the Allegation on Mr. Scholz by email to the email address on record with CPA Ontario for Mr. Scholz. Having received no response from Mr. Scholz, on February 16, 2022, the PCC filed an *ex parte* motion with the Tribunals Office seeking an order for substituted service. The order was granted on April 6, 2022 and forwarded to Mr. Scholz the next day by email.
- [11] Having served Mr. Scholz pursuant to the terms of the order, Ms. McNabb proceeded to contact the Tribunals Office to set hearing dates. In April 2022, the Tribunal wrote to Mr. Scholz inviting him to provide his availability for hearing dates. In May, Mr. Scholz, writing from the email address on record with CPA Ontario, responded indicating that he was in the process of retaining counsel who would be requesting a Pre-Hearing Conference. Following an exchange involving Mr. Scholz in the month of June, a Pre-Hearing Conference was eventually scheduled for July 22, 2022 – a date which Mr. Scholz confirmed he would be available. Two days prior to the scheduled Pre-Hearing Conference, Mr. Scholz indicated in an email that he did not have a Pre-Hearing

Conference memorandum to file. A template of the memorandum was sent to him by the Tribunals Office.

- [12] On July 22, 2022, Mr. Scholz experienced technical difficulties and was unable to participate in the Pre-Hearing Conference. He again wrote to the Tribunals Office apologizing for the technical issues and providing dates for a further Pre-Hearing Conference. A Pre-Hearing Conference was set for August 11, 2022, and Mr. Scholz was asked to provide his memorandum by August 4, 2022.
- [13] Mr. Scholz did not attend the Pre-Hearing Conference on August 11, 2022. Attempts to contact him were futile. The Pre-Hearing Conference Report was emailed to Mr. Scholz. The report confirmed that the hearing date was set for September 15, 2022. Deadlines were set for the filing of evidence by the PCC and Mr. Scholz prior to the hearing.
- [14] On August 25, 2022, the Tribunals Office emailed Mr. Scholz and Ms. McNabb the Notice of Hearing and confirmed that the matter would proceed on September 15, 2022. Communications emailed to Mr. Scholz and received from Mr. Scholz were all from the same email address, which was on record with CPA Ontario.
- [15] Upon the completion of her submissions to this Panel, Ms. McNabb noted the time to be 10:00 a.m. The hearing had been set and did commence at 9:30 a.m. Neither Mr. Scholz nor a representative on his behalf had appeared during the hearing.
- [16] After considering the history of the communications to and from Mr. Scholz, the Panel was satisfied that Mr. Scholz had received proper notice of the hearing and decided to proceed in his absence.

III. ISSUES

- [17] The Panel proceeded to consider the following issues:
 - a) Did the evidence establish, on a balance of probabilities, the facts on which the Allegation by the PCC was based?
 - b) If the facts alleged by the PCC were proven on a balance of probabilities, did the Allegation constitute professional misconduct?

IV. DECISION

- [18] The Panel found that the evidence presented by the PCC established, on a balance of probabilities, the facts on which the Allegation was based.
- [19] The Panel was satisfied that the Allegation as alleged constituted a breach of Rule 201.1 of the *CPA Ontario Code of Professional Conduct* in that Mr. Scholz failed to act in a manner which would maintain the good reputation of the profession and its ability to serve the public interest.

- [20] The Panel went on to find that having breached this Rule, Mr. Scholz had committed professional misconduct.

V. REASONS FOR THE DECISION

Findings Regarding Conduct of Mr. Scholz

- [21] The PCC filed the Affidavit of Jahmila Martin, Professional Standards Coordinator for CPA Ontario (Exhibit 2). Ms. Martin's affidavit contained documents related to both the trial and appellate proceedings, as well as correspondence from Mr. Scholz and a newspaper article reporting the appellate court's findings. It is based on this evidence that this Panel has made the following findings.
- [22] CPA Ontario learned from an *Ontario Securities Commission News Release* dated July 19, 2016, that Mr. Scholz had been charged with eleven counts of Fraud Over \$5000 contrary to s.380(1)(a) of the *Criminal Code of Canada*. On October 14, 2016, CPA Ontario wrote to Mr. Scholz requesting that he provide information regarding the charges and criminal proceedings.
- [23] On March 11, 2019, Mr. Scholz pleaded not guilty to three counts of Fraud Over \$5000 before a jury presided over by Mr. Justice Goodman of the Superior Court of Justice, Hamilton.
- [24] After a 23-day trial, on April 13, 2019, the jury convicted Mr. Scholz of having, between December 31, 2010 and July 1, 2016, defrauded the Government of Canada of income tax and GST/HST payable by Mr. Scholz for the years of 2011 to 2015 inclusive. The jury acquitted Mr. Scholz of two other counts of Fraud Over \$5000.
- [25] The facts underpinning the finding of fraud are as follows: Mr. Scholz had created a unique Registered Retirement Savings Plan (RRSP) which he marketed to approximately 300 investors. The investment involved the transfer of his clients' RRSP monies to Western Pacific Trust Company (WPTC) in Vancouver, BC. In total, Mr. Scholz facilitated the transfer of over \$22 million. The monies were used to purchase shares of either Red Hill Capital or Northland Capital.
- [26] Over the course of several years, Mr. Scholz filed certain income tax forms with Canada Revenue Agency (CRA) that understated or did not report his true income or earnings from facilitating the transactions. In some years, he did not file any returns at all. Mr. Scholz also failed to remit GST/HST to the government for services rendered.
- [27] Following his conviction, the matter was eventually adjourned to September 26, 2019 for sentencing.
- [28] On August 19, 2019, following a brief exchange between Mr. Scholz and Theresa Tonelli, (then) Director, Standards Enforcement for CPA Ontario regarding the status of the investigation, Mr. Scholz reported that he had been found guilty of one count of Fraud Over \$5000. He advised that sentencing had been scheduled for September 26, 2019.

[29] In his letter dated August 19, 2019, Mr. Scholz indicated:

I further concede that in being convicted of the aforementioned offence, I have committed professional misconduct in relation to my membership in the Chartered Professional Accountants of Ontario. Therefore, I waive the benefit of any hearing and/or appeals and agree to surrender my membership in the Chartered Professional Accountants of Ontario forthwith.

[30] Despite his offer to resign, the investigation continued as Mr. Scholz had yet to be sentenced.

[31] Before proceeding to sentencing, the trial judge had to determine the quantum of the fraud as the Crown took the position that the fraud exceeded \$1 million dollars and amounts to a statutorily aggravating factor which triggers a more significant sentence of incarceration. The Crown claimed that the amount of income taxes evaded was \$605,355 and the amount of GST/HST that should have been paid was \$445,789.30. The total of these amounts was \$1,051,144.30. Mr. Scholz did not dispute the amount of GST/HST that should have been paid but did take issue with the calculation of the amount of income taxes owed.

[32] While the trial judge found that the Crown had not proven beyond a reasonable doubt that the quantum of the fraud exceeded \$1 million, he also found that “the magnitude of this fraud regarding income taxes evaded was significant” and that “the amount of the fraud against the Government of Canada may be close to the total amounts proffered by the Crown.”

[33] In determining the appropriate sentence, the trial judge took into consideration the following aggravating factors: the impact of the tax fraud on Canadian taxpayers, Mr. Scholz’s role over many years to commit the fraud, and the fact that his professional designation as a Chartered Professional Accountant helped him facilitate the fraud.

[34] This Panel adopts the trial judge’s description of Mr. Scholz’s failure to uphold his professional obligations:

[37] Indeed, while this occurrence cannot be described as a sophisticated fraud, its simplicity and ease of accomplishment was exacerbated by the fact that the accused is a Chartered Accountant. Unlike other reported cases, Mr. Scholz’s liability rests with his own personal income tax obligations. Mr. Scholz is a sophisticated professional who failed to deal with his own and corporate taxes. Given his business acumen and expertise he was well aware of the need to keep proper records and file accurate tax returns.

[35] The trial judge also found that the fraud appeared to be solely motivated by greed, noting that Mr. Scholz had the means to meet his tax obligations, but “deliberately” chose not to.

[36] In mitigation, the trial judge noted that Mr. Scholz was a first-time offender and that neither

addiction nor compulsion underlaid his conduct. He found Mr. Scholz to have the support of his family and that his prospect for rehabilitation was without obstacle. The trial judge also took into consideration the collateral consequences when sentencing Mr. Scholz, namely that Mr. Scholz would lose his professional designation as a Chartered Professional Accountant because of the offence, and that his ability to earn an income would be adversely affected. Despite his conduct, based on the evidence before the Court, including from the Crown's own witnesses, the trial judge also found that Mr. Scholz was otherwise a person of good character and noted he had expressed remorse for his actions.

- [37] The trial judge imposed a custodial sentence of two years less a day to be served conditionally. Conditions of the sentence included house arrest, a curfew and a requirement that Mr. Scholz complete 200 hours of community service. The Court also imposed a fine in the amount of \$445,789.30 representing the amount of GST/HST not disputed by Mr. Scholz. The fine and a Victim Fine Surcharge were to be paid within 18 months.
- [38] The Crown sought leave to appeal and an appeal of the sentence. On June 18, 2021, the Court of Appeal heard the application for leave and the appeal.
- [39] The Court of Appeal found that the trial judge had committed two errors. The first error being that he had imposed a sentence outside the range established by the Court of Appeal for major frauds without explaining the basis for departing from the range. The appropriate range for major frauds is three to five years.
- [40] Secondly, the Court of Appeal found that the trial judge failed to follow the necessary analytical process and consider all of the factors required before imposing a conditional sentence. The trial judge failed to first consider whether a sentence of less than two years was appropriate, nor did he address what the appropriate sentence should be.
- [41] In deciding to overturn the sentence imposed by the trial judge, the Court of Appeal made the following comments:

[20] In this case, of course, there were no specific individual victims of the respondent's offence. Rather, the victims were the taxpayers of Canada. The Government of Canada was deprived of tax revenue, which has the effect of increasing the tax burden on all other taxpayers in order to fund the work of the federal government. This very point was restated by this court in *Davatgar-Jafarpour*, at paras. 44-45. It was also made by the Quebec Court of Appeal in *R. c. Coffin*, 2005 QCCA 471, 210 C.C.C. (3d) 227, where the court rightly said, at para. 46: "Defrauding the government is equivalent to stealing from one's fellow citizens."

- [42] While the trial judge considered the fact that Mr. Scholz was a first-time offender and that he was of good character as being mitigating factors, the Court of Appeal noted that these factors "are not factors that will operate to reduce the sentence in a fraud case below the usual range. This is because it is those very factors that generally permit the offender to

commit the offence". In support of this observation, at para. 24 of its decision, the Court of Appeal referenced its decision in *R. v. Drabinsky*, 2011 ONCA 582, at para. 167:

Second, individuals who perpetrate frauds like these are usually seen in the community as solid, responsible and law-abiding citizens. Often they suffer personal and financial ruin as a result of the exposure of their frauds. Those factors cannot, however, alone justify any departure from the range. **The offender's prior good character and standing in the community are to some extent the tools by which they commit and sustain frauds over lengthy time periods. Considerable personal hardship, if not ruin, is virtually inevitable upon exposure of one's involvement in these kinds of frauds. It cannot be regarded as the kind of unusual circumstance meriting departure from the range.** (emphasis ours)

- [43] On July 13, 2021, the Court of Appeal allowed the appeal and overturned the trial judge's sentence. The Court of Appeal imposed a custodial sentence of three years. Mr. Scholz was given credit for the time already served on the conditional sentence, amounting to 1 year and 10 months. This left Mr. Scholz with 1 year and 2 months to be served in custody. While the fine and time to pay remained the same, the Victim Fine Surcharge was waived.

Finding of Professional Misconduct

- [44] The onus was on the PCC to show on a balance of probabilities that Mr. Scholz's conduct breached Rule 201.1 of the *CPA Ontario Code of Professional Conduct*, and that such conduct constituted professional misconduct.
- [45] The Panel found that there was clear, cogent and compelling evidence presented by the PCC proving that Mr. Scholz had failed to maintain the good reputation of the profession. As proven by the certified copy of the Court's Indictment, Mr. Scholz was convicted of the criminal offence of Fraud Over \$5000 on April 13, 2019. According to the decisions of the trial judge and the Court of Appeal, Mr. Scholz had engaged in a large-scale fraud on the federal government, in relation to his personal income tax filings and failure to submit GST/HST on services rendered. Specifically, Mr. Scholz had failed to remit income tax and provided misleading information to the tax authorities. As both the trial judge and the Court of Appeal noted, his conduct did not only impact the federal government, but also impacted Canadian taxpayers. The fraudulent conduct took place over a number of years and was motivated by greed. The amount of the fraud was close to \$1 million.
- [46] Both the trial judge and the Court of Appeal took into consideration Mr. Scholz's professional designation. In his judgment, the trial judge noted that one of the aggravating factors he considered was that Mr. Scholz's professional designation meant that Mr. Scholz was well aware of his obligations to prepare proper records and to meet his tax obligations. The Court also found that "he had the financial means to satisfy his tax obligations, but he deliberately chose not to do so."
- [47] The trial judge also noted that Mr. Scholz would lose his professional designation as a Chartered Professional Accountant.

- [48] While the Crown appealed the sentence imposed by the trial judge, Mr. Scholz did not appeal the conviction. The Court of Appeal, in reviewing the sentence imposed by the trial judge, saw fit to increase his sentence to a penitentiary sentence of 3 years after all the factors, both aggravating and mitigating, were taken into consideration. The Court of Appeal upheld the trial judge's imposition of a fine in the amount of \$445,789.30.
- [49] Despite his knowledge and professional obligations, Mr. Scholz chose to deliberately ignore his personal and corporate tax obligations. This was a significant fraud committed by an individual who had the professional designation and knowledge to specifically understand the impact of his actions, not only on the taxpayers of Canada, but on the reputation of this profession. In his correspondence to Ms. Tonelli dated August 19, 2019, Mr. Scholz himself conceded that "in being convicted of (Fraud Over \$5000), I have committed professional misconduct in relation to my membership in the Chartered Professional Accountants of Ontario."

VI. REASONS FOR SANCTIONS

- [50] By way of sanction, the PCC sought a written reprimand by the Chair; a fine within the range of \$60,000 to \$70,000; revocation of membership; Notice of this Decision and Order disclosing Mr. Scholz's name to all members of CPA Ontario and all provincial bodies as well as the public; publication on the CPA Ontario website and in *The Hamilton Spectator*, costs of which to be borne by Mr. Scholz.
- [51] When considering the appropriate sanction in this matter, the Panel considered mitigating and aggravating circumstances. Mr. Scholz did not attend this hearing, nor did he submit any materials for this Panel to consider. The only mitigating factor considered was that Mr. Scholz had himself acknowledged that his conduct was such that his membership in this profession should be terminated.
- [52] Unlike many before this Panel who have argued that the absence of a disciplinary history is a mitigating factor, the same consideration could not be afforded to Mr. Scholz. In 2017, Mr. Scholz was found to have breached the *Code of Professional Conduct* by failing to properly perform his professional services in accordance with the generally accepted standards of practice of the profession and failing to retain proper records.
- [53] While Mr. Scholz initially participated in this disciplinary process, he failed to fully cooperate by not attending the Pre-Hearing Conference or this hearing thereby denying this Panel the opportunity to determine whether Mr. Scholz had any remorse for his actions, not only regarding the impact of his actions on Canadian taxpayers, but on the reputation of this profession.
- [54] By way of aggravating factors, this Panel noted that the fraudulent conduct spanned a period of 5½ years and involved a significant loss, amounting to close to \$1 million. Not only was the Government of Canada defrauded of funds, Mr. Scholz's conduct also increased the tax burden on other Canadian taxpayers. As a Chartered Professional Accountant, Mr. Scholz had the requisite knowledge not only regarding his obligations to pay personal and corporate taxes, but also regarding the operation of the tax system.

- [55] In determining the appropriate sanctions in this matter, the Panel considered specific and general deterrence. In matters where members of our profession, who are in the unique position of knowing the obligations and workings of the tax system, abuse their position of trust, their knowledge, and the reputation of our profession, call for the ultimate sanction: revocation of membership. Such a sanction sends a clear message to the public and to members of our profession, that such conduct cannot and will not be tolerated. The revocation of Mr. Scholz's membership also serves as a safeguard to the public.
- [56] This Panel finds that a reprimand in writing from the Chair will highlight to Mr. Scholz the severity of his conduct and will serve as a specific deterrent. Such a sanction will also reinforce the high standards expected of a CPA member.
- [57] A fine is appropriate considering the misconduct. In determining the appropriate amount of the fine, this Panel reviewed the case law presented by the PCC and determined that a fine in the amount of \$60,000 would send a clear message to both Mr. Scholz and the profession that such conduct will attract significant fines. The Panel, not having any submissions from Mr. Scholz regarding the time he would need to pay the fine, accepted the PCC's submission and imposed a period of 6 months within which to pay the fine.
- [58] Full publicity of this decision as proposed by the PCC is appropriate. Such publicity acts as a further deterrent to members contemplating similar misconduct and sends a clear message to the public that CPA Ontario will not tolerate such egregious conduct. Publication also protects the public, as it is a public declaration that Mr. Scholz can no longer provide public accounting services as a Chartered Professional Accountant.

VII. COSTS

- [59] The PCC sought costs in the amount of \$5000 to be paid within 6 months. Costs are not considered a sanction, but rather are imposed as on indemnity basis. The profession should not bear the costs of members such as Mr. Scholz who choose to abandon their professional obligations.
- [60] The PCC presented a Costs Outline (Exhibit 3) for the Panel's consideration. There were no costs for an investigation given the court proceedings in which Mr. Scholz's conviction and sentence provided the requisite evidence to make the findings made by this Panel. Mr. Scholz's lack of cooperation in accepting service of the Allegation resulted in the need for a motion for substituted service. His failure to attend the Pre-Hearing Conference required the expenditure of resources which were not fully utilized. The PCC presented its evidence in an efficient manner resulting in the hearing taking only half a day. As such, the hearing was completed in half a day.
- [61] This Panel accepted the PCC's bill of costs and awarded costs in the amount of \$5000 to be paid within 6 months.

Dated this 17th day of October, 2022

A handwritten signature in black ink, appearing to read "Andrea Mintz". The signature is fluid and cursive, with the first name "Andrea" written in a larger, more prominent script than the last name "Mintz".

Andrea Mintz, CPA, CA, LPA
Discipline Committee – Deputy Chair

Members of the Panel

Joel Emuan, CPA, CMA
Hamid Farooq, CPA, CGA
Catherine Kenwell, Public Representative

Independent Legal Counsel

Nadia Liva, Barrister & Solicitor