

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **MICHAEL E. SPITTERS, CPA, CA**, a member of the Chartered Professional Accountants of Ontario, under **Rules 104.2 and 201.1** of the CPA Ontario Code of Professional Conduct

BETWEEN:

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

-and-

Michael E. Spitters

APPEARANCES:

For the Professional Conduct Committee:	Melissa MacKewn and Asli Deniz Eke, Counsel
For Michael E. Spitters:	Present Gordon Campbell, Counsel
Heard:	August 30, 2023
Decision and Order effective:	August 30, 2023
Release of written reasons:	September 18, 2023

REASONS FOR THE DECISION AND ORDER MADE AUGUST 30, 2023

I. OVERVIEW

- [1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario (“PCC”) has alleged that Michael E. Spitters, CPA, CA (“Spitters” or “the Member”) misappropriated \$33,219.97 from his employer and failed to cooperate with the regulatory process of CPA Ontario.
- [2] During the relevant time, Spitters was employed at or associated with ST, a global organization based in Ontario. ST manufactures information technology (IT) connectivity

accessories.

- [3] Spitters was employed at ST as a Corporate Accountant from April 2018 to November 2020. In November 2020, Spitters resigned from ST and in December of 2020, began working as a manager in finance and accounting for another company, OP, and is currently their Director of Finance.
- [4] While employed at OP, Spitters provided consulting services to ST. He provided these services from November of 2020 to July of 2021.
- [5] In September of 2020, Spitters misappropriated \$33,219.97 from ST. He concealed the misappropriation from ST for a period of approximately 16 months.
- [6] After the misappropriation was discovered and a complaint was made to CPA Ontario, Spitters failed to cooperate with CPA Ontario's investigation for a period of just over three months. Thereafter, Spitters engaged meaningfully, albeit not fully, with his regulator.

II. THE COMPLAINT AND THE ALLEGATIONS

- [7] ST first discovered the misappropriation in January of 2022, approximately 16 months after the misappropriation occurred. ST commenced an internal investigation and discovered that Spitters was responsible.
- [8] On March 16, 2022, three CPAs employed by ST made a complaint to CPA Ontario in accordance with Rule 211 of the CPA Code of Professional Conduct ("the Code") which requires members to report any information concerning an apparent breach of the Code by another member.
- [9] On August 12, 2022, Counsel for the PCC wrote to Spitters advising him that an investigator had been appointed to investigate the complaint made by ST. Spitters did not respond substantively to the investigator's requests for information for a period of three months.
- [10] Ultimately, Spitters engaged in the regulatory process by attending interviews and producing most of the documentation requested. Spitters failed, however, to produce all of the material requested by the investigator.
- [11] On March 14, 2023, the PCC issued the following Allegations of professional misconduct:

1. THAT the said Michael E. Spitters, in or about the period July 1, 2020 through January 31, 2022, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that he, while employed at "Company S", misappropriated approximately \$33,219 from his employer, contrary to Rule 201.1 of the CPA Code of Professional Conduct.

2. THAT the said Michael E. Spitters, in or about the period August 1, 2022 through February 28, 2023, failed to cooperate with the regulatory process of CPA Ontario contrary to Rule 104.2 of the CPA Code of Professional Conduct.

III. PRELIMINARY ISSUES

[12] Neither party raised any preliminary issues.

IV. ISSUES

[13] The Panel identified the following issues arising from the Allegations:

- A. Did the evidence establish, on a balance of probabilities, the facts on which the Allegations by the PCC were based?
- B. If the facts alleged by the PCC were established on the evidence on a balance of probabilities, did the Allegations constitute professional misconduct?
- C. If the answer to B. is yes, what is the appropriate sanction?

V. DECISION

[14] The Member signed an Agreed Statement of Facts ("ASF") admitting to the facts and admitting that the facts constituted professional misconduct as set out in the Allegations.

[15] The Panel found that the evidence established, on a balance of probabilities, the facts set out in the Allegations of professional misconduct.

[16] The Panel was satisfied that the Allegations constituted a breach of Rules 201.1 and 104.2 and, having breached these Rules, the Member had committed professional misconduct.

[17] The parties provided a joint submission on sanction and costs which was accepted by the Panel. In accordance with the joint submission, the Panel imposed the following Order on sanction and costs:

- 1. Michael E. Spitters' membership with the Chartered Professional Accountants of Ontario ("CPA Ontario") is revoked, effective the date of this Decision and

Order;

2. Michael E. Spitters shall pay a fine of \$30,000 to CPA Ontario by August 30, 2025;
3. Michael E. Spitters shall be reprimanded in writing by the Chair of the hearing;
4. Notice of this Decision and Order, disclosing Michael E. Spitters' name, is to be given in the form and manner determined by the Discipline Committee:
 - (a) to all members of CPA Ontario;
 - (b) to all provincial bodies;and shall be made available to the public.
5. Notice of this Decision and Order disclosing Michael E. Spitters' name is to be given by publication on the CPA Ontario website and in the London Free Press. Michael E. Spitters shall pay all costs associated with this publication, which shall be in addition to any other costs ordered by the Panel; and
6. Michael E. Spitters shall pay costs of \$80,000 to CPA Ontario by August 30, 2025.

VI. REASONS FOR THE DECISION ON MISCONDUCT

Findings Regarding the Conduct of Mr. Spitters - Misappropriation of \$33,219.97 - Overview

- [18] As the Corporate Accountant for ST, one of Spitters' duties was the filing and remittance of GST/HST returns. As is explained in detail below, over the course of two months Spitters manipulated corporate records to deliberately cause an overpayment relating to one of ST's HST returns. The result was that ST overpaid CRA in the amount of \$33,219.97 and was correspondingly owed \$33,219.97. Spitters registered his and his wife's joint bank account with CRA as the direct deposit account for HST refunds. Spitters then instructed CRA to refund ST's overpayment of \$33,219.97 via direct deposit to Spitters' personal bank account.
- [19] Once the funds were received in Spitters' personal bank account, he utilized the funds for approximately one year. After one year, Spitters reimbursed CRA to the credit of ST's corporate tax instalment account. During this entire period, ST was deprived of the use of the funds and was not informed with respect to the overpayment or the refund. ST only discovered the misappropriation 16 months after it occurred when CRA alerted them to the fact that they had a \$33,219.97 credit relating to one HST return. After receiving this information, ST conducted an investigation which revealed Spitters' culpability.

Detailed Recitation of the Facts

- [20] On July 20, 2020, Spitters filed ST's HST return for the June 30, 2020 reporting period. The HST return which was filed showed a balance owing to CRA of \$13,918.67.
- [21] However, Spitters manually adjusted the Excel formula in ST's HST accounting working papers by \$33,219.97, so that the balance owing to CRA was \$47,138.64.
- [22] In order to support the adjusted balance owing, Spitters internally requested the invoice to support a particular bank reconciliation entry, posted on June 30, 2020 in the amount of \$33,219.97 (equal to the amount manually adjusted in the HST accounting working papers, noted above).
- [23] This particular bank reconciliation entry was debited to the HST/GST receivable general ledger account, and the input tax credit from this entry was claimed on the June 30, 2020 HST return filed by Spitters.
- [24] As a result, the manual adjustment of ST's HST working papers had the effect of overpaying the June 30, 2020 HST return by an amount equal to an input tax credit claimed on the return.
- [25] Accordingly, on July 21, 2020, Spitters executed a payment of \$47,138.64 on behalf of ST with respect to the June 30, 2020 HST return. This resulted in an overpayment to CRA in the amount of \$33,219.97. The payment was debited to the HST/GST clearing general ledger account.
- [26] On August 4, 2020, a journal entry was posted to credit the uncleared balance of \$33,219.97 in the HST/GST clearing account and debit the HST/GST receivable account.
- [27] As a result, the journal entry had the effect of overstating the input tax credits on ST's July 31, 2020 HST return by \$33,219.97.
- [28] On August 18, 2020, Spitters manually adjusted the HST Excel accounting working paper to remove the previous adjustment (the addition of the \$33,219.97) to the June HST Working Paper.
- [29] On August 20, 2020, Spitters filed ST's July 2020 HST return with CRA. Previously, CRA had opened a case due to the overpayment of the June 2020 HST return.

- [30] Prior to Spitters' employment with ST, the company did not have a direct deposit system set up with CRA. On August 28, 2020, Spitters entered his personal bank account information, for an account he held jointly with his wife, into ST's CRA account, designating his personal account as the account into which CRA would deposit ST's GST/HST refunds.
- [31] On September 3, 2020, Spitters instructed CRA to refund the overpayment of \$33,219.97. On September 16, 2020, CRA refunded \$33,245.39, representing the amount owing plus interest, by way of direct deposit to the Spitters' personal bank account.
- [32] On November 9, 2020, \$8,000 was transferred from Spitters' bank account to pay down the balance on his credit card. On August 23, 2021, a transfer of \$31,000 was made to Spitters' TFSA.

Spitters Returns the funds to CRA and Responds to ST's Investigation

- [33] Spitters returned the \$33,245.39 to CRA to the credit of ST's corporate tax instalment account in September 2021 via personal cheque made out to the Receiver General.
- [34] Spitters did not inform anyone at ST about the overpayment, the direct deposit to his personal bank account or his reimbursement to the CRA.
- [35] ST only became aware of the misappropriation in January of 2022 when CRA notified ST that they had an HST credit. ST commenced an investigation. After discovering what had occurred, Spitters was asked about the HST credit. While Spitters did not deny that the credit occurred as a result of a payment he had made to CRA, he was not forthcoming with respect to his actions vis-à-vis the misappropriation.

Spitters' Multiple Opportunities to Inform ST of His Receipt and Return of the Funds

- [36] Over a 16-month period, Spitters had multiple opportunities to inform ST that he had caused CRA to deposit funds belonging to ST into his personal bank account, that he had kept those funds in his bank accounts for over a year, and that he had reimbursed CRA without informing ST, thus depriving ST of the use of those funds for over 16 months.
- [37] Clearly, Spitters could have informed ST at any time of his misappropriation. There were, however, two additional occasions when funds were deposited to his personal bank account which required Spitters to provide an explanation to other employees of ST. In

the course of the explanation, Spitters covered up his earlier misappropriation.

- [38] The first instance when funds were deposited to Spitters' bank account after September of 2020 was in March of 2021. On March 10, 2021, CRA deposited \$94,998.47 relating to ST's January 2021 HST return into Spitters' bank account. The next day, March 11, 2021, Spitters returned the entire amount to CRA, crediting ST's corporate tax instalment account, rather than to ST directly. The return of this payment was posted on ST's CRA corporate tax instalment account for November 30, 2020.
- [39] On March 16, 2021, Spitters sent an email to LL, a staff accountant at ST requesting a journal entry to be made related to the return of the \$94,998.47. Spitters stated: "... the Feb HST refund you booked to the bank account was actually transferred to the corporate instalment account" and instructed LL to reallocate the payment from the bank account to the corporate instalment account. Spitters did not advise LL that he himself had written a cheque to CRA in the amount of \$94,998.47 to the credit of ST's CRA corporate installment account.
- [40] No one at ST was aware that the funds had been deposited to Spitters' personal bank account or that he had caused his and his wife's joint account to be entered with CRA as ST's direct deposit account.
- [41] In April of 2021, Spitters contacted CRA and requested that the direct deposit information for ST's HST account be cancelled. The reason he gave was that ST was moving banks. This was, of course, false, as ST was not moving banks. Spitters did not tell anyone at ST about his conversation with CRA.
- [42] The second opportunity for disclosing his misappropriation arose in September of 2021. Despite Spitters' April request, it appears CRA did not cancel the direct deposit information. On September 13, 2021, CRA deposited \$53,422.50 into the Spitters' bank account. The funds related to ST's Canada Emergency Rent Subsidy ("CERS").
- [43] One week later, on September 22, 2021, Spitters returned the \$53,422.50 to CRA, crediting ST's CRA corporate tax instalment account. Shortly thereafter, Spitters contacted ST to advise that a deposit in the amount of \$53,422.50 had been received in his personal bank account.
- [44] In an email dated September 30, 2021, in response to an inquiry from ST, Spitters

confirmed that the \$53,422.50 came from him and stated the following:

I also had a call with the CRA earlier this week to try to find out what happened. Still not exactly sure, but several months ago when there was the CRA data breach and a number of user accounts were compromised, my personal account was one of the accounts the CRA locked out. After a few weeks of being locked out i was able to re-authenticate myself, and as part of this I had to re-enter my direct deposit information. So wondering if something happened at this point.

- [45] Spitters misstated the facts in the email quoted above. The truth was that in August of 2020, he himself had registered his and his wife's personal bank account with CRA as ST's designated direct deposit account. The registration of the Spitters' personal bank account as ST's direct deposit account for CRA was not a mistake. It was not due to user accounts being compromised, nor did it occur only a few months earlier. The Panel finds that in misstating the facts as he did, Spitters deliberately and intentionally covered up his earlier misappropriation.

The Results of ST's Investigation

- [46] On January 11, 2022, CRA issued a letter advising ST that it had an outstanding credit of \$33,245.39 for its September 30, 2021 HST filing period. CRA believed the credit to be attributable to the September 30, 2021 filing period because CRA had received the payment from Spitters on September 29, 2021.
- [47] ST contacted CRA to inquire about the payment as the payment did not originate from ST. The CRA informed ST that the CRA had released a direct deposit payment in the amount of \$33,245.39 to Spitters' personal bank account on September 16, 2020, and that Spitters had written a personal cheque in the same amount dated September 15, 2021 made out to the Receiver General and to be credited to ST's corporate tax instalment account.
- [48] Following this conversation, ST reviewed its internal accounting records and discovered all the steps Spitters took, and which have been set out in these reasons above, to orchestrate the misappropriation of the funds.
- [49] ST then asked Spitters if he could shed any light on the above-noted circumstances, to which he replied that he did not know where the credit originated and could not remember anything during the period which would explain how the balance should be applied. He further stated he did not remember setting up direct deposit for ST's HST account or calling the CRA to request the direct deposit information be cancelled.

- [50] On January 25, 2022, ST corrected its July 31, 2020 HST return which resulted in ST paying CRA approximately \$2,401.02 in interest and penalties. Spitters has not reimbursed ST for the interest and penalties he caused it to incur with CRA nor has he reimbursed ST for its costs, whether direct or opportunity, as related to the loss of use of \$33,219.97 for approximately 16 months.

Failure to Cooperate with CPA Ontario's Investigation

- [51] Spitters was first informed of ST's complaint to CPA Ontario on August 12, 2022. CPA Ontario staff sent three emails, one letter and left one voicemail for Spitters before he responded to his regulator's communications. After this initial response, Spitters ignored communications from CPA Ontario staff for a period of three months. After a three-month period, Spitters engaged with the process, attended a number of meetings, and produced most, albeit not all, of the documents requested. Below is a chart setting out the communications and meetings between the parties as well as the Member's responses.

DATE	FORMAT OF COMMUNICATION	CONTENT	MEMBER'S RESPONSE
August 12, 2022	Email enclosing Letter (personal email address)	PCC Counsel wrote to Spitters at his personal email address advising him an investigation had been instructed into a complaint made by ST employees	None
August 16, 2022	Email (personal email address)	Investigator requested a date for an interview	None
August 16, 2022	Email (personal email address)	Investigator advised Spitters that a delivery and read receipt had been added to her earlier email	None
August 22, 2022	Voicemail	Investigator left Spitters a voicemail message requesting he contact her as soon as possible	None
August 22, 2022	Email (work email address)	Investigator asked Spitters to check his personal email.	None
August 25, 2022	Email (personal and work email addresses)	Investigator summarized her attempts to reach Spitters and requested a response by August 29, 2022 regarding a virtual meeting	Spitters responded on August 29, 2022 and confirmed his availability for a virtual meeting on September 20, 2022

DATE	FORMAT OF COMMUNICATION	CONTENT	MEMBER'S RESPONSE
August 29, 2022	Email (personal email address)	Investigator advised she would (and did) send a calendar invitation for a September 20, 2022 virtual meeting	None
August 29, 2022	Email (personal email address)	Investigator sent an invitation for a virtual meeting scheduled for September 20, 2022	None
August 31, 2022	Email (personal email address)	Investigator asked Spitters to accept the calendar invitation previously sent. Investigator also asked Spitters to begin gathering banking information relating to the direct deposits from CRA	None
August 31, 2022	Email (work email address)	Investigator advised Spitters that an email had been sent to his personal email address	None
September 6, 2022	Email (personal and work email addresses)	Investigator requested a reply by September 7, 2022 regarding Spitters' attendance at the September 20 th virtual meeting	None
September 7, 2022	Email enclosing Letter (personal and work email addresses)	Investigator attached her September 6, 2022 email, reminded Spitters of his obligation to cooperate and asked for confirmation of his attendance at the September 20 th meeting by September 8 th . Investigator also requested a variety of information to be provided by September 13, 2022. Finally, the Investigator advised Spitters that the matter was scheduled to be heard by the PCC on December 7, 2022	None

DATE	FORMAT OF COMMUNICATION	CONTENT	MEMBER'S RESPONSE
September 15, 2022	Email enclosing Letter (personal and work email addresses)	PCC Counsel reminded Spitters of everything the Investigator had set out in her September 7, 2022 letter. Counsel added that Spitters' failure to respond could result in an allegation of professional misconduct pursuant to Rule 104	None
September 16, 2022	Email enclosing Letter (personal and work email addresses)	Investigator set out the list of outstanding questions and requests requiring a response and requested a response by September 21, 2022	None
September 19, 2022	Email (personal and work email addresses)	Investigator noted Spitters had not acknowledged he would attend the virtual interview scheduled for September 20, 2022	Spitters responded by cancelling the meeting due to "an unexpected emergency"
September 19, 2022	Email (personal email address)	Investigator asked Spitters to identify the unexpected emergency and to indicate whether he was available on the afternoon of the 20 th	None
September 20, 2022	Email (personal and work addresses)	Investigator repeated her request for the previously requested information and sought to reschedule the virtual meeting	None
September 27, 2022	Phone call	Investigator called Spitters at his work number and spoke with a staff member who advised her Spitters was in a meeting. Investigator left her name, identified herself as an investigator with CPAO, and left a call back number	None
September 29, 2022	Email enclosing Letter (personal	Investigator summarized previous	None

DATE	FORMAT OF COMMUNICATION	CONTENT	MEMBER'S RESPONSE
	and work email addresses)	communications, provided a deadline of October 6, 2022 for delivery of the previously requested information, reminded Spitters of his duty to cooperate , and informed him his matter was scheduled to be heard by the PCC on December 7, 2022	
November 23, 2022	Personal Service of Notice to Attend before the PCC	The Notice required Spitters to attend at a virtual meeting of the PCC on December 7, 2022	None
December 7, 2022	Virtual Meeting with PCC	N/A	Spitters attended the virtual meeting on December 7, 2022 and informed the PCC that he would cooperate with the investigation going forward
December 8, 2022	Email (personal address)	Investigator asked Spitters to confirm his attendance at a virtual interview scheduled for December 19, 2022	Spitters responded in the affirmative on December 9, 2022
December 11, 2022	Email (personal address)	Investigator requested delivery of the pertinent information on or before December 16, 2022	Spitters responded on December 16, 2022 requesting more time to gather documents and a postponement of the interview
December 19, 2022	Virtual Interview	N/A	Spitters attended
December 22, 2022	Virtual Interview	N/A	Spitters attended
January 5, 2023	Virtual Interview	N/A	Spitters attended
January 6, 2023	Virtual Interview	N/A	Spitters attended

[52] Following the PCC meeting, Spitters provided some but not all of the requested

information to the Investigator, including copies of some account statements, cheques and other information previously requested.

Finding of Professional Misconduct

- [53] Through the ASF and the accompanying Document Book, Spitters admitted these facts and admitted that these facts constitute professional misconduct in relation to the Allegations before the Panel.
- [54] The Panel concluded that the Allegations, having been proved on a balance of probabilities, through clear and cogent evidence, constituted a breach of Rules 201.1 and 104.2 of the Code.

VII. DECISION AS TO SANCTION

Evidence in Relation to Sanction

- [55] Neither party led evidence on sanction, other than the PCC's costs outline.
- [56] The parties entered into a joint submission on sanction. The Panel accepted the joint submission. The Panel's Order is set out in paragraph 17 above.

VIII. REASONS FOR THE DECISION AS TO SANCTION

- [57] A joint submission should be adopted unless it is contrary to the public interest or would bring the regulatory process into disrepute because it was beyond the reasonable range of sanction.¹
- [58] The Panel accepts the joint submission as being reasonable and appropriate under the circumstances.

Revocation

- [59] The parties filed extensive authorities on sanction imposed in misappropriation cases. In each and every misappropriation case the sanction of revocation has been imposed by the Tribunal. Counsel for the PCC informed the Panel that in their extensive review of the case law they could not find one case involving misappropriation wherein the sanction of revocation was not imposed.
- [60] As the Panel in *Re Marcus* (cited in *Re Sheikh*) noted:

¹ [R. v. Anthony-Cook, 2016 SCC 43 ¶ 34](#)

Misappropriation demonstrates a lack of integrity and is devastating to a profession that exists on its good reputation. It cannot be countenanced by that profession, or by the public the profession serves. Therefore, except in the most rare and exceptional of circumstances, a member who misappropriates must be expelled.²

[61] The Panel in *Re Siddiqi* stated that when a member commits “crimes of dishonesty” the presumptive penalty for such conduct is revocation. The Panel further stated that the only way to rebut this presumption is to advance evidence at the sanction phase of the hearing which amounts to extraordinary circumstances.³ By way of example, exceptional circumstances may exist when there is compelling psychological or psychiatric evidence which explains why the misconduct occurred, and which suggests the misconduct was out of character and unlikely to re-occur.

[62] The invocation of presumptive revocation in cases of misappropriation articulated by the Panels in *Re Marcus*, *Re Sheikh*, and *Re Siddiqi* accords with the ratio expressed by the Divisional Court and the Court of Appeal for Ontario in relation to lawyers who misappropriate trust funds or engage in fraud. In *Bishop v. Law Society of Upper Canada*, the Divisional Court upheld the penalty of revocation imposed in a mortgage fraud case. In so doing, the Divisional Court made the following comments about the appropriateness of presumptive penalties:

[30] ... there is nothing *per se* objectionable to a profession setting out presumptive penalties for breaches of different types of professional obligations. It is no different than appellate courts setting out presumptive penalties for certain types of offences. Moreover, it is not accurate to characterize such presumptive penalties as “mandatory minimums” with all of the attendant concerns that may accompany statutorily mandated sentences. **Rather, presumptive penalties act as a guide, both for the entity imposing the penalty and for the persons who may be subject to such penalties.** [emphasis added]⁴

[63] In order to rebut the presumption of revocation in misappropriation or fraud cases, exceptional circumstances must normally “... rise to the level where it would be obvious to other members of the profession, and to the public, that the underlying circumstances of the individual clearly obviated the need to provide reassurance to them of the integrity

² [khalid-sheikh-D-21-008.pdf \(cpaontario.ca\)](#) ¶ 59

³ [Siddiqi, Sameen \(Discipline\) \(cpaontario.ca\)](#) ¶ 18

⁴ *Bishop v. Law Society of Upper Canada*, [2014 ONSC 5057](#), ¶ 30 also see: *Law Society of Upper Canada v. Abbott*, [2017 ONCA 525](#), ¶ 17 - 21

of the profession.”⁵ Although exceptional circumstances certainly exist, they are rare.⁶

- [64] This Panel adopts the reasoning of the Panels in *Re Marcus*, *Re Sheikh*, and *Re Siddiqi* and agrees that the presumptive penalty for misappropriation must be revocation. The Member engaged in what can only be described as an egregious breach of trust in a variety of ways. The misappropriation alone would have attracted the sanction of revocation. However, the manipulation of the financial records, the registration of his own personal account for CRA’s direct deposits to the credit of ST, the fact that he utilized the funds for a period of approximately one year, the falsehoods he relayed to CRA, and the deceit perpetrated on management for a period of 16 months are all aggravating factors which reinforce the appropriateness of the sanction of revocation.
- [65] Moreover, ST was required to pay over \$2,000 in penalties and interest to CRA as a result of the Member’s conduct. The Member never reimbursed ST for this expenditure. Although the Member’s counsel suggested the Member was remorseful, the Panel is skeptical of counsel’s assertion of remorse on behalf of his client when the Member made no attempt to make ST whole. In any event, remorse alone would not be sufficient to rebut the presumptive sanction of revocation.
- [66] The Member has no discipline history, and he signed a full ASF. While these are mitigating factors, they are not extraordinary, such that the presumption of revocation is rebutted. The Member did not adduce any evidence in mitigation and specifically no evidence of exceptional circumstances. As such, revocation is the only appropriate penalty. Nothing short of revocation will serve as a general deterrent. More importantly, the sanction of revocation is necessary to instill and maintain public confidence in CPA Ontario’s ability to regulate the profession in the public interest.

\$30,000 Fine

- [67] Counsel for the PCC explained that the \$30,000 fine was arrived at by allocating \$5,000 to the Member’s failure to cooperate with the investigation, and \$25,000 to the finding of misappropriation.
- [68] The Panel is satisfied that these two figures fall within the reasonable range of fines for

⁵ *Bishop, supra*, ¶ 31

⁶ *Abbott, supra*, ¶ 21 - 26

each of the findings of misconduct.

Written Reprimand

[69] The Panel has no problem imposing a written reprimand in this manner as it was a term of the joint submission. The Panel queries, however, whether a written reprimand in cases of membership revocation serves any particular purpose. This is especially so when the member's conduct is subject to censure in these reasons for decision, which are published on the CPA Ontario website and CanLii and are available to any member of the public who wishes to read them.

[70] This issue was raised in *Re Adams* where the Panel was asked to impose a written reprimand in addition to revocation. The Panel declined to order a written reprimand as it found the written reprimand would not contribute meaningfully to the sanction given that the member's license was being revoked:

The tribunal decided that it would be appropriate to limit our communication to Mr. Adams to the Decision and Order and these reasons. His membership has been revoked. He has also been ordered to pay a fine, which in his circumstances, is significant. We do not think our denunciation of his conduct could be clearer. We see no benefit to communicate further with him. We do not want a written reprimand to soften our decision and so consequently we did not order one.⁷

[71] The Panel agrees with the Adams Panel that the revocation of the Member's membership, the \$30,000 fine and these reasons for decision are clear denunciations of the Member's conduct. A written reprimand does not contribute significantly or at all to the denunciation. However, as noted, because it is a joint submission, the Panel agreed to order a written reprimand.

Publication

[72] The Panel is satisfied that Terms 4 and 5 of the Order requiring publication of this decision in a variety of ways is required and falls within the reasonable range of sanctions.

IX. COSTS

[73] The law is settled that an order against a member for costs with respect to disciplinary proceedings is not a penalty. Costs are intended to indemnify the PCC, based on the underlying principle that the profession, as a whole, should not bear all of the costs of the

⁷ [Stephen Adams \(Discipline Committee\) \(cpaontario.ca\)](#) ¶ 30

investigation, prosecution and hearing arising from the member's misconduct.

- [74] Costs are awarded at the discretion of the Panel. It has become customary for the PCC to file a Costs Outline in the same form as used in civil proceedings, and to seek 2/3 of the costs incurred in the investigation and prosecution of the matter.
- [75] In this matter, the PCC filed a Costs Outline. Legal fees and disbursements, including the cost of the investigation, amounted to \$129,000. The parties agreed on costs in the amount of \$80,000.
- [76] The costs award of \$80,000 is at the high end of the range, partly due to the fact that external counsel was retained, their rates being higher than that of counsel employed by CPA Ontario. The Member, however, contributed to the higher than usual costs when he failed to cooperate with the investigation, and waited until the eleventh hour to sign a full ASF. Counsel retained by the PCC had to prepare for a three-day hearing which only resolved the evening before the first day. Counsel then had to work many hours to revise the hearing materials accordingly.
- [77] The Panel is prepared to order the Member to pay \$80,000 in costs to CPA Ontario on or before August 30, 2025.

DATED this 18th day of September, 2023



Bernard S. Schwartz, FCPA, FCA
Discipline Committee – Deputy Chair

Members of the Panel

Charlie Baek, CPA, CMA
James Blackwell, CPA, CA
Barbara Ramsay, Public Representative
John Wilkinson, Public Representative

Independent Legal Counsel

Lisa Freeman