

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **XIANGDONG (SHELDON) LU, CPA, CMA**, a member of the Chartered Professional Accountants of Ontario, under **Rules 201.1 and 205** of the CPA Ontario Code of Professional Conduct.

BETWEEN:

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

-and-

Xiangdong (Sheldon) Lu

APPEARANCES:

For the Professional Conduct Committee:	Jean lu, Counsel
For Xiangdong (Sheldon) Lu:	Not Present and Not Represented
Heard:	April 22, 2024
Decision and Order effective:	April 22, 2024
Release of written reasons:	May 31, 2024

REASONS FOR THE DECISION AND ORDER MADE APRIL 22, 2024

I. OVERVIEW

- [1] The Professional Conduct Committee (“PCC”) of the Chartered Professional Accountants of Ontario (“CPA Ontario”) alleged that between June 1 to June 30, 2019, during sale negotiations related to a franchise owned by Xiangdong (Sheldon) Lu (“the Member”), the Member made representations that he knew were false or misleading, contrary to Rule 205 of the CPA Ontario Code of Professional Conduct (“the Code”). It was also alleged that between June 9 to June 22, 2019, the Member failed to act in a manner which would maintain the good reputation of the profession and serve the public interest, contrary to Rule 201.1 of the Code.
- [2] The hearing was set to determine whether the evidence presented by the PCC established, on a balance of probabilities, the facts upon which the allegations made by the PCC were based, and whether the proven Allegations amounted to professional misconduct.

II. THE COMPLAINT AND THE ALLEGATIONS

- [3] In 2019, the Member was employed full-time as a Chartered Professional Accountant (“CPA”). Outside of his regular work hours, he managed two retail food franchises which he owned through his company, RI Inc. In August 2019, the Member sold one of the franchises subject to conditions set out in an Agreement of Purchase and Sale (“the Agreement”). One of the provisions in the Agreement permitted the Purchaser (“HW”) to observe the business for a period of two weeks (“the Observation Period”).
- [4] During the Observation Period, the Member voluntarily provided daily summaries representing the franchise store’s aggregate sales of food and drinks from the previous day (“the Daily Summaries”). Through the point-of-sale (“POS”) system, the Member recorded a series of temporary wholesale orders which inflated the daily sales for the franchise during the Observation Period. These wholesale orders were not recorded in the POS either before or after the Observation Period
- [5] The Member did not record the wholesale orders before or after the Observation Period because he wanted to avoid paying royalty fees to the franchisor. Those royalties were payable to the franchisor based on sales recorded in the POS system.

III. PRELIMINARY ISSUES

- [6] As the Member did not attend the hearing, the Panel considered whether it would proceed in his absence.
- [7] The Member did engage with the PCC prior to the hearing, having signed an Agreed Statement of Facts (“ASF”) and having advised PCC Counsel that he would not be attending the hearing.
- [8] In support of its position that the hearing should proceed in the absence of the Member, the PCC filed the Affidavit of Alyssa Grace Girardi, a Professional Standards Coordinator, in the Investigations and Prosecutions department of CPA Ontario (Exhibit 1) and the Affidavit of Service of Mervyn Archdall (“Archdall”), process server (Exhibit 2).
- [9] On December 14, 2023, Archdall personally served the Member with a letter from PCC Counsel, dated December 12, 2023, and the Allegations of professional misconduct, dated December 12, 2023.
- [10] The Allegations were filed with the Tribunals Office on December 18, 2023, and on January 15, 2024, the Tribunals Office issued a Notice of Pre-Hearing Conference (“PHC”) which was sent to PCC Counsel and the Member at his preferred email address on record with CPA Ontario. The Member attended the PHC which was held on February 28, 2024.
- [11] On February 29, 2024, the Tribunals Office issued a Notice of Hearing by email both to PCC Counsel and to the Member at his email address of record. The hearing was scheduled to proceed on April 22 and 23, 2024 via videoconference. The Notice of Hearing included the following caution: “If you choose not to attend this hearing, the Discipline Committee may proceed in your absence and you will not be entitled to further notice in the proceedings.”

- [12] In an email dated April 4, 2024, the Member advised PCC Counsel that while he was prepared to admit the Allegations and the facts as set out in the draft ASF, he was not in favour of the proposed sanction of a 12-month suspension and, he would prefer a reduction in the fine and Bill of Costs sought by the PCC. The Member advised he would not be attending the hearing as he was unable to plan his time and location for the next few months. He had previously mentioned in an earlier email that he had been experiencing some life-changing events within his family and would be travelling overseas.
- [13] On April 5, 2024, PCC Counsel responded to the Member asking that he carefully review the ASF, and if in agreement, execute the document. The PCC provided a revised Bill of Costs for the Member's consideration and invited the Member to provide additional documents or cases which the Member might wish to rely upon, and which would be added to the Document Brief and Brief of Authorities. Finally, PCC Counsel outlined the consequences of not attending the hearing, including that his absence might amount to a deemed waiver of his rights to make submissions to the Discipline Committee. PCC Counsel also inquired as to whether the Member intended to seek an adjournment of the hearing.
- [14] On April 7, 2024, the Member provided a signed ASF to PCC Counsel. Later that day, he sent an email to PCC Counsel and the Tribunals Office advising that he could not attend the hearing as scheduled due to an illness in the family. He requested a 6 to 8 month adjournment. He also indicated that if the adjournment was not granted, the hearing should proceed on the scheduled dates without him.
- [15] On April 8, 2024, PCC Counsel filed additional materials with the Tribunals Office and advised that the PCC would not consent to the requested adjournment as the hearing was set to proceed electronically and argued that the Member could participate from any location.
- [16] On April 10, 2024, the Tribunals Office wrote to the parties and advised that the Member would need to bring a motion under Rule 14 of the *Rules of Practice and Procedure* if he intended to seek an adjournment of the hearing. The Member did not file such a motion.
- [17] On April 15, 2024, the Tribunals Office wrote to the Member seeking his consent to vacate the hearing date of April 23, 2024. In response, the Member forwarded his email of April 7, 2024 confirming that he was unavailable for the hearing and that he would not be attending. In response to a follow up email from the Tribunals Office later that same day, the Member confirmed that the April 23, 2024, hearing date could be vacated. On April 15, 2024, a revised Notice of Hearing, confirming that the hearing would be held on April 22, 2024, was sent to the parties by email.
- [18] The evidence before this Panel clearly shows that the Member was aware of the Allegations made against him. He participated in the preliminary steps of the disciplinary process by attending a PHC and by entering into an ASF which contained not only admissions to facts, but also admissions to the Allegations made against him. While the Member initially requested an adjournment of the hearing, he did not bring a motion seeking an adjournment as the Tribunals Office advised was necessary when the PCC opposed his request.

- [19] PCC Counsel was asked to explain to the Panel the reasons for its refusal to consent to the adjournment request made by the Member. PCC Counsel advised its opposition was based on its desire to move disciplinary matters along expeditiously. Given the time between the alleged misconduct, the investigation of this matter and the hearing, a further 6 to 8 month adjournment of the matter was not in the public interest, the PCC argued. The hearing was only one day and was to be conducted electronically, allowing the Member to attend from any location.
- [20] Having considered the evidence before it, and in the interests of ensuring that disciplinary matters are dealt with expeditiously to ensure the public's protection and to maintain its confidence in CPA Ontario's ability to regulate its members in a timely manner, the Panel concluded that it was appropriate to proceed with the hearing in the absence of the Member. The Member was properly notified of the Allegations made against him as well as the hearing date. While he indicated in an email that he wanted an adjournment of the hearing for 6 to 8 months, when advised he would need to bring a motion seeking an adjournment given the PCC would not consent, the Member did not bring a motion for adjournment. There is no evidence before this Panel that confirms that the Member could not have attended the hearing electronically, other than the Member's vague references to having to travel abroad and events relating to family.

IV. ISSUES

- [21] While the Panel decided to proceed in the absence of the Member, the onus remains on the PCC to prove, on a balance of probabilities, the facts upon which the Allegations were based.
- [22] If the Panel finds the facts alleged have been proven on a balance of probabilities, the Panel must then consider whether those facts constitute professional misconduct.

V. DECISION

- [23] The Panel found that the evidence established, on a balance of probabilities, the facts upon which the Allegations made by the PCC were based.
- [24] The Panel proceeded to find that the Member's conduct amounted to breaches of Rules 201.1 and 205 of the Code, and that those breaches constituted professional misconduct.

VI. REASONS FOR THE DECISION ON MISCONDUCT

Findings Regarding the Conduct of the Member

- [25] The PCC filed an ASF executed by PCC Counsel and the Member on April 6, 2024 (Exhibit 3) with an accompanying Document Brief (Exhibit 4). The ASF clearly sets out the Allegations against the Member as well as a series of facts both parties have agreed to for the purpose of this proceeding. The PCC did not call any witnesses.
- [26] The Member obtained his CMA designation in 2007 and became a CPA, CMA when the designations merged in 2012. This was noted on the Member's LinkedIn professional profile and HW was aware that the Member was a CPA. He is currently employed on a full-time basis

with a specialty engineering and environmental services firm as a Finance Business Partner. In this role, the Member provides operation/business decision support, business process improvement and management reporting.

- [27] In 2018, the Member opened two retail food franchises. Both franchises (“Yonge Store” and what would become the “Jane Store”) were investments owned by the Member’s company, RI Inc. The Member managed the franchises outside of his work hours, through RI Inc.
- [28] In August 2019, the Member sold the Yonge Store to a company owned by the Purchaser, HW. The Member continues to own the Jane Store.
- [29] As a part of the Agreement, dated April 19, 2019, HW was entitled to observe the operations of the franchise during business hours for a period of two weeks (“the Observation Period”), which was exercised between June 9 and June 22, 2019. If HW was not satisfied with the business, the offer to purchase the franchise would be null and void, and the deposit paid by HW would be refunded.
- [30] While not a condition of the Agreement, commencing on the second day of the Observation Period, the Member provided HW with Daily Summaries for the Yonge Store prepared using the previous day’s sales recorded in the Yonge Store POS system. According to the Daily Summaries, the business had an average daily revenue of approximately \$1,172 on weekdays, and \$976 on weekends during the Observation Period.
- [31] Upon assuming operation of the Yonge Store, HW noticed that the total daily sales for the Yonge Store were approximately \$300 or 30% lower than the amounts that he recalled being shown on the Daily Summaries during the Observation Period. Further investigation of the Hourly Sales Report revealed one or two substantial transactions, generally occurring at the start of each day, totaling approximately \$300 a day during the Observation Period. There were no similar substantial transactions noted by HW in the Hourly Sales Reports for the periods before or after the Observation Period.
- [32] The Member acknowledged that during the Observation Period, daily sales were higher due to wholesale orders for baked goods (“Wholesale Orders”) sold by RI Inc. to a new supplier (“TDB”) who was unrelated to any business owned by the Member. The Wholesale Orders took place before and after the Observation Period but were only recorded in the Yonge Store POS system during the Observation Period.
- [33] TDB was a new supplier for the Yonge Store and had asked the Member to assist with some baking as TDB could not meet the demand for baked goods. The Member had agreed to assist and from May 31, 2019 to July 3, 2019, TDB delivered baking supplies to the Jane Store, where the Member baked the goods and then personally delivered the baked goods to TDB where he would pick up an envelope of cash for his payment.
- [34] The Member agreed to the following facts:
 - a) HW did not have access to the POS system and was not permitted to speak with employees during the Observation Period;
 - b) The Member was aware that the Wholesale Order arrangement was temporary in nature

but did not tell HW;

- c) HW had no means to independently discern that the Wholesale Orders were temporary;
- d) The daily sales were approximately 30% higher during the Observation Period than in the periods prior to and following the Observation Period; and
- e) The daily sales during the Observation Period were inflated as a result of the Member recording the Wholesale Orders through the POS system.

[35] The Member advised that he did not record the Wholesale Orders in the POS system of the Yonge Store before or after the Observation Period because he wanted to avoid paying royalty fees to the franchisor. According to the Member, royalties payable to the franchisor were based on sales recorded in the POS system. By not recording the sales through the POS system, the Member was able to avoid paying the royalty fees.

[36] In explaining why he recorded the Wholesale Orders through the POS system at the Yonge Store as opposed to the Jane Store where the items were baked, the Member advised he was working as the manager at the Yonge Store. He also explained that had the sales been recorded in the Jane Store (where the items were baked and from where they were delivered), his manager at the Jane Store would have been entitled to receive a bonus based on the increased sale of goods. Since the Member was responsible for the work associated with the Wholesale Orders, his manager should not have been entitled to benefit from those sales.

Finding of Professional Misconduct

[37] When considering the Member's conduct in relation to his professional obligations, the Panel concluded that the Member's conduct breached Rules 205 and 201.1 of the Code. The Panel also found that the breaches of the Code amounted to professional misconduct.

[38] In the ASF, the Member agreed that by recording the Wholesale Orders through the Yonge Store's POS system during the Observation Period without providing information as to the temporary nature of those sales, the Member made statements and representations that he knew were false or misleading and thereby failed to act in a manner which would maintain the good reputation of the profession and serve the public interest.

[39] It is clear from the evidence that the Member voluntarily provided Daily Summaries which were inflated. The Member did not advise HW of the temporary nature of these Wholesale Orders. HW did not have access to the POS system or to employees during the Observation Period and had no means by which to independently discern that the Wholesale Orders were temporary. Such conduct is a clear breach of Rule 205.

[40] In addition to the impact of his actions on HW's ability to properly observe and evaluate the franchise during the Observation Period, the Member did not record the Wholesale Orders before or after the Observation Period in order to avoid paying royalty fees to the franchisor.

[41] Finally, the Member also chose to record the Wholesale Orders at the Yonge Store, as opposed to the Jane Store where he baked the goods. As the Member had baked the goods, he felt the Manager of the Jane Store should not be entitled to a bonus based on the increased

sale of goods.

- [42] When considered together, this Panel finds that the Member's actions amounted to a serious lapse in judgment. While the conduct may have arisen outside of the Member's employment as a CPA, a member of this profession does not remove his ethical obligations, as one would remove a hat. The ethical obligations of this profession, including acting with integrity, honesty and candour, require our members to maintain high ethical standards – at work and beyond. It is clear from the evidence before this Panel that the Member acted in a variety of ways that failed to maintain the good reputation of this profession, and in so doing, breached Rule 201.1 of the Code.

VII. DECISION AS TO SANCTION

- [43] The PCC sought the following sanctions: a written reprimand from the Chair; a fine in the amount of \$15,000 payable within 12 months; a 12 month suspension of the Member's membership in CPA Ontario; completion of a prescribed professional development course in the area of ethics; publicity to all members of CPA Ontario and to all provincial bodies, and a compliance requirement that, if breached, would trigger the revocation of the Member's membership in CPA Ontario, if the non-compliance is not cured within 30 days.
- [44] While the Member was not present and did not present submissions or materials regarding his position on sanctions and costs, counsel for the PCC advised the Panel that prior to the hearing, the Member had indicated in an email that he felt the fine and costs sought by the PCC were excessive and that he should not be suspended.
- [45] After considering the evidence before it, as well as the case law and submissions by the PCC, the Panel ordered that the Member's membership with CPA Ontario be suspended for 12 months, effective the date of the Panel's Decision and Order ("the Order").
- [46] The Panel also ordered a fine in the amount of \$15,000 to be paid within 12 months of the Order, being April 22, 2025.
- [47] The Panel ordered the Member to attend and successfully complete 10 hours of professional development courses offered by CPA Ontario related to the ethical obligations of a Chartered Professional Accountant, specifically courses that provide understanding of the Code of Professional Conduct, within 12 months of the Order, being April 22, 2025. All costs associated with these courses are to be borne by the Member.
- [48] The Chair of the Panel will reprimand the Member in writing.
- [49] Notice of the Panel's Order, disclosing the Member's name, is to be given in the form and manner determined by the Discipline Committee to all members of CPA Ontario and to all provincial bodies. Such notice shall be made available to the public.
- [50] In the event that the Member fails to comply with any terms of the Panel's Order, his membership with CPA Ontario shall be suspended until such time as he does comply, provided he complies within 30 days of the date of his suspension. In the event that he does not comply within the 30-day period, his membership in CPA Ontario shall be revoked. Notice of the revocation of membership, disclosing the Member's name, shall be given in the same

manner as specified above, as well as in a newspaper distributed in the geographic area of the Member's practice or residence. All costs associated with this publication shall be borne by the Member and shall be in addition to any other costs ordered by the Panel.

VIII. REASONS FOR THE DECISION AS TO SANCTION

- [51] The Panel was gravely concerned by the Member's actions. The Member, while not required to, voluntarily provided Daily Summaries to HW during the Observation Period that he knew were not accurate and were consequently false and misleading. The Member continued to provide this inaccurate information not in a single instance, but over the entire duration of the Observation Period, in 14 separate instances. At no time during this period did the Member disclose to HW that the increased sales were the result of a temporary Wholesale Order.
- [52] The Member's actions also deprived the franchisor of royalties to which it would have been entitled, and denied the manager of the Jane Store a possible bonus had the Wholesale Orders been properly included in the Daily Sale Summaries at the Jane Store.
- [53] While the inflated amounts are arguably relatively small, the deception was intended to entice the Purchaser to complete the purchase of the franchise, which would directly benefit the Member.
- [54] The Panel deliberated on the amount of fine and found it to be appropriate considering the repeated intentional acts of deception undertaken by the Member.
- [55] While the Member's actions took place outside his role as a CPA, HW knew the Member to be a CPA. With the CPA designation comes an expectation that one can rely upon the representations of a member of this profession. The designation connotes integrity, good character and honesty.
- [56] Aside from the admissions found in the ASF which was entered into almost five years after the misconduct, the Member provided no written statement of remorse or further insight into his actions. He did not attend the hearing.
- [57] The Panel seriously considered the possibility of revoking the Member's membership. However, based on the Member's admissions in the ASF, the Panel believed that the sanctions to be imposed will provide the Member with not only specific deterrence, but also an opportunity to rehabilitate himself. In particular, the requirement that he complete 10 hours of professional development courses pertaining to ethics will hopefully assist the Member in his reflections on his past conduct and provide him with a blueprint for a future course of action.
- [58] Honesty, integrity, candour and good character are traits integral to being a member of CPA Ontario and must be upheld, whether working as a CPA, or conducting oneself in other businesses.
- [59] The sanctions imposed, particularly the fine and the suspension, are intended to send a clear message to the profession: Members of CPA Ontario do not remove the mantle of integrity when outside of the workplace. In order to maintain the reputation of this profession, its members are required to act with honesty, integrity and candour in their professional and

personal interactions.

IX. COSTS

- [60] The PCC sought costs in the amount of \$26,000, representing 2/3 of costs for the investigation and prosecution, payable within 12 months of the Panel's Order, being April 22, 2025.
- [61] In support of its position on sanction, the PCC filed a Bill of Costs and Costs Appendix (Exhibit 5). In response to inquiries by the Panel relating to costs incurred during the investigative stage, the PCC filed six invoices for the services rendered by the investigator with carriage of the investigation of this matter, Ian Wintrip ("Wintrip") (Exhibit 6). The PCC also called Wintrip to testify regarding any questions the Panel had regarding the extent of his investigation and the consequential costs.
- [62] Given the initial explanations offered by the Member in response to the Allegations, as well as the amount of time required to review records relating to the business, the Panel was satisfied with the explanations provided by Wintrip regarding the time spent on the investigation.
- [63] While the Member did cooperate by entering into an ASF shortly prior to the hearing, costs of the investigation and the prosecution were incurred as a result of the Member's conduct. It is therefore appropriate that CPA Ontario be indemnified to the extent proposed.
- [64] Even though the Panel did not hear from the Member as to his financial position, it considered the cumulative impact of the sanctions being imposed on the Member. As the Member was to be suspended, required to pay a fine of \$15,000 and incur additional costs for professional development courses, the Panel ordered that costs in the amount of \$26,000 be paid. The Panel also ordered that payment of the costs be made within two years of the date of the Order, being April 22, 2026, instead of the 12 months as sought by the PCC.

DATED this 31st day of May, 2024



Richa Khanna, CPA, CA, LPA
Discipline Committee – Deputy Chair

Members of the Panel

Marianne Park-Ruffin, Public Representative
Barbara Ramsay, Public Representative
Michelle Sauv  , CPA, CA

Independent Legal Counsel

Nadia Liva, Barrister & Solicitor