

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **SHELLEY S. SHIFMAN, CPA, CA**, a member of the Chartered Professional Accountants of Ontario, under **Rules 104, 201.1 and 209.1** of the CPA Code of Professional Conduct and Allegations against **SHELLEY S. SHIFMAN, CPA, CA**, a member of the Chartered Professional Accountants of Ontario, under **Rules 201.1 and 209.1** of the CPA Code of Professional Conduct.

BETWEEN:

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

-and-

Shelley S. Shifman

APPEARANCES:

For the Professional Conduct Committee: Jonathan Smith, Counsel

For Shelley S. Shifman: Jakub Schnitzler, Counsel

Heard: May 16, 2024

Decision and Order effective: May 16, 2024

Release of written reasons: June 26, 2024

REASONS FOR THE DECISION AND ORDER MADE MAY 16, 2024

I. OVERVIEW

- [1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario (the “PCC”) made Allegations that Shelley S. Shifman (the “Member”) failed to maintain the good reputation of the profession and its ability to serve the public interest, engaged in prohibited borrowing from several clients, and failed to co-operate with the regulatory process of the Chartered Professional Accountants of Ontario (“CPA Ontario”).
- [2] This hearing was held to determine whether the Allegations were established and whether the conduct breached Rules 104, 201.1 and 209.1 of the CPA Code of Professional Conduct (the “Code”).

II. ALLEGATIONS

[3] The PCC made Allegations against the Member on October 5, 2023 (the “2023 Allegations”). The particulars of the 2023 Allegations are summarized as follows:

- (a) In or about the period July 15, 2021 through August 19, 2021, the Member borrowed from a corporate client (the “Corporate Client”) approximately \$225,000, contrary to Rule 209.1 of the *Code*, and this borrowing did not fall within an exception to the *Code*;
- (b) In or about the period July 1, 2021 through September 13, 2023, while engaged as the accountant for the Corporate Client, the Member failed to act at all times in a manner which maintained the good reputation of the profession and served the public interest, contrary to Rule 201.1 of the *Code*, when he solicited loans from the Corporate Client and:
 - (i) failed to take responsible steps to ensure the client obtained independent advice with respect to the loans; and
 - (ii) failed to repay the loans.
- (c) In or about the period from May 29, 2023 through September 13, 2023, the Member failed to co-operate with the regulatory process of CPA Ontario, contrary to Rule 104 of the *Code*, when he failed to provide documents or other information when requested to do so by the PCC through its investigator.

[4] The PCC made further Allegations against the Member on April 11, 2024 (the “2024 Allegations”). The particulars of the 2024 Allegations are summarized as follows:

- (a) In or about the period April 1, 2023 through April 30, 2023, the Member borrowed \$30,000 from his client (referred to herein as “K”), contrary to Rule 209.1 of the *Code*, and that this borrowing did not fall within an exception to the Rule;
- (b) In or about the period April 1, 2023 through April 10, 2024, the Member failed to act at all times in a manner which maintained the good reputation of the profession and served the public interest, contrary to Rule 201.1 of the *Code*, in that having solicited a loan from K, he:
 - (i) failed to document the loan;
 - (ii) issued a cheque to the Canada Revenue Agency on K’s behalf as purported repayment for the loan, knowing that he had insufficient funds for the cheque to clear; and
 - (iii) failed to repay the loan.

III. PRELIMINARY ISSUES

[5] At the outset of the hearing, the parties asked that the proceedings respecting the 2023 Allegations and the 2024 Allegations (collectively referred to as the “Allegations”) be heard

at the same time.

- [6] The Panel found that the two proceedings should be heard at the same time as they shared issues of law and fact and involved some of the same parties. The Panel made an order under Rule 6.01 of the [CPA Ontario Rules of Practice and Procedure](#) combining the two proceedings.

IV. ISSUES ON FINDING

- [7] 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 made 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?

V. DECISION ON FINDING

- [8] The Panel found that the evidence, namely the facts set out in two separate Agreed Statements of Facts, established on a balance of probabilities, the facts on which the Allegations were based.
- [9] The Panel was satisfied that the facts set out in the Allegations constituted breaches of Rules 104, 201.1 and 209.1 of the *Code* and, having breached these Rules, the Member committed professional misconduct.

VI. REASONS FOR THE DECISION ON FINDING

- [10] The PCC relied wholly on two separate Agreed Statements of Facts (Exhibits 1 and 3) as evidence of the alleged misconduct of the Member. The Member agreed that he was bound by the admissions he made in the Agreed Statements of Facts and that he had committed professional misconduct when he breached Rules 104, 201.1 and 209.1 of the *Code*.
- [11] The following is a summary of the evidence contained in the Agreed Statements of Facts.

Member's Background

- [12] The Member obtained his Chartered Accountant designation in 1975 and began his career at a large, international accounting firm. He subsequently worked at a mid-sized Toronto accounting firm before opening his own firm, Shelley Shifman CPA (the "Firm") in 1994.
- [13] The Member held a Public Accountant Licence, however his renewal application was held in abeyance since 2022 as a result of the complaints leading to the Allegations.
- [14] Since 2021, the Firm and the Member's practice focused on compilation engagements and corporate and personal tax return preparation. The Firm had approximately 80-100 corporate clients and approximately 200 personal tax clients, the majority of which were related to the corporate clients.
- [15] The Member, along with his spouse, were officers and directors of Clubbish Investments

Inc. ("Clubbish"). Clubbish was incorporated by the Member in 1980 but became "inactive" in 1999. Despite this status, as of the date of the hearing, Clubbish held the lease to the Member's office space and had an active bank account and line of credit with one of Canada's largest banks. The Member used Clubbish accounts to pay Firm expenses and transfer funds from his personal accounts.

2023 Allegations – Member borrowed \$225,000 from Corporate Client

- [16] One of the complainants, D, retained the Member around 2010 to assist with his personal tax issues. The Member was D's personal tax accountant thereafter. D worked at a bank but was not involved in lending as part of his employment.
- [17] D was a founding partner along with R for the Corporate Client. R worked in the field of marketing and customer acquisition and was not involved in lending. The Corporate Client was engaged in performance marketing, specifically client acquisition, for various companies in the technology industry and was not in the business of private lending.
- [18] The Member was the accountant for the Corporate Client and prepared its unaudited compilation engagements for the fiscal years ending January 1, 2020 (six months) and January 1, 2021. He also prepared bookkeeping entries and HST returns. The Member had full knowledge of the Corporate Client's financial situation including revenue and cash flow.
- [19] The Corporate Client did well in its first fiscal year, but its business slowed with the COVID-19 pandemic. D and R began looking at other business opportunities to generate additional income from the equity in the Corporate Client. They expanded into other areas such as real estate and investments. D and R did not consider engaging in private lending, either personally or through the Corporate Client because they had no experience in this field.
- [20] The Member approached D and R shortly after completing the Notice to Reader for the 2021 fiscal year and the Corporate Client's HST return. He proposed a short-term "investment" opportunity for the Corporate Client while D and R considered other opportunities for its equity. He asked for a personal loan from the Corporate Client with the following terms:
 - (a) return of the principal after 3 months plus interest; and
 - (b) an interest rate of 7% annually.
- [21] The Member did not document any consideration of there being a possible conflict of interest or other issues related to borrowing from a client; and he could not recall the specifics of any discussions that may have occurred with R or D.
- [22] Unbeknownst to D and R, the purpose of the loan was to fund the Member's personal obligations, most notably a large renovation of the Member's family home. The Member was unable to seek or obtain funding through traditional lenders due to outstanding debt, including credit card debts, a private mortgage from another client, and debts of Clubbish.
- [23] D and R transferred the funds to the Member on July 15, 2021. The Member drafted and

signed a document entitled "Promissory Note" dated July 15, 2021 (the "July 15 Loan") and provided it to the Corporate Client. The July 15 Loan contained both typed and handwritten portions, and set out the terms of the unsecured loan, including but not limited to:

- (a) The principal sum was \$180,000;
- (b) Interest was charged at 7% annually, calculated from July 15, 2021;
- (c) The interest would be due and payable in advance; and
- (d) The outstanding balance of the principal would be due and payable on October 15, 2021, unless otherwise extended.

- [24] The Member did not advise the Corporate Client to obtain independent legal advice before agreeing to the July 15 Loan.
- [25] On July 16, 2021, the Member transferred \$3,150 from the Clubbish account to the Corporate Client, representing prepayment of the interest on \$180,000 for three (3) months.
- [26] In August 2021, the Member approached the Corporate Client for two additional loans. The first loan was made on August 18, 2021 and was in the amount of \$20,000. It was on the same repayment terms as the July 15 Loan. The Member drafted and signed another Promissory Note but failed to advise the Corporate Client to obtain independent legal advice.
- [27] The third loan made to the Member by the Corporate Client was on August 19, 2021. This loan, which was in the amount of \$25,000, was on the same terms as the other loans. Again, the Member drafted and signed a "Promissory Note" but did not advise the Corporate Client to obtain independent legal advice.
- [28] On October 9, 2021, six days before the maturity date for all three loans, the Member contacted D and R by email and asked for an extension of time to repay the loans from October 15, 2021 to November 30, 2021. The Member confirmed that he would pay "the rest of the interest" up to October 15, 2021. The Member also asked for an additional loan of \$15,000 for an "unexpected payment."
- [29] D and R replied on October 11, 2021, stating that they could not extend any further funds to the Member or extend the deadline for repayment of the three loans to November 30 as they had another financial opportunity closing on December 3, 2021.
- [30] From November 26, 2021 to April 4, 2022, D wrote to the Member by email on ten occasions and also attempted to contact him by phone about repaying the loans. The Member was generally unresponsive.
- [31] On April 20, 2022, the Member and R had a phone conversation in which the Member stated that repayment would "be taken care of by the end of April." This did not happen.
- [32] D and R sent additional emails to the Member with respect to repayment on May 2, June 8 and July 1, 2022. In his email to the Member on June 8, 2022, R warned that the loans and all interest owing must be paid by June 30, 2022, or the Corporate Client would "pursue alternate action."

- [33] On June 8, 2022, the Member responded, stating he would "make every effort" to meet the deadline. R wrote back on June 9 and advised that June 30 was a "hard deadline" and suggested that they meet in person on June 17 to "put a repayment agreement in place."
- [34] The Corporate Client sent the Member a demand letter on June 15, 2022. The Member's only documented responses were as follows:
- (a) June 17: "No update yet"; and
 - (b) July 7: "Hi. Money is in process. Sorry for the delay but I was off sick. I will update you before the close of business tomorrow. Thank you."
- [35] R and D repeatedly told the Member in July and August 2022 that they required repayment immediately as it was delaying other projects. They also attempted to visit him personally at his office, without success. The Member continued to give limited responses and did not repay the loans.
- [36] In addition to the July 7 response, the Member provided other excuses and explanations as to why he could not make repayment, including:
- (a) The investment he made using the borrowed funds was an overseas investment. The funds were being held because of anti-money laundering restrictions;
 - (b) His sister died;
 - (c) His wife had health issues; and
 - (d) There was an issue related to refinancing involving his wife.
- [37] In December 2022, the Corporate Client retained legal counsel, GLG LLP ("GLG") to facilitate repayment of the loans. On December 9, 2022, GLG sent a letter to the Member demanding full repayment with interest by December 22, 2022, indicating that they would go to court if repayment was not made. The Member was advised that he must respond within seven days of the letter confirming receipt and his intention to repay as directed.
- [38] The Member responded to GLG on December 19, 2022, advising that his delay in responding was due to GLG's email being "deep in the junk email folder." The Member stated that he was "in the process of obtaining the funds required for the repayment of the loan but [he would] require some additional time..."
- [39] On December 20, 2022, GLG wrote to the Member, advising that the commencement of litigation would be delayed if:
- (a) a reasonable date of repayment of the full loan and legal fees was committed to; and
 - (b) supporting documentation was provided by the Member to evidence that he was applying to borrow the money to repay the loan.
- [40] Correspondence between GLG and the Member continued from January to March 2023 regarding repayment. GLG reiterated that failure to repay would result in litigation.
- [41] The Member did not repay the loans from the Corporate Client and on April 13, 2023, a statement of claim was issued against the Member, his wife and Clubbish, for the outstanding loans and accrued interest.

- [42] On or about January 10, 2023, D and R filed a complaint with CPA Ontario alleging that the Member had borrowed \$225,000 and failed to repay the same. They further alleged that the Member did not recommend that they seek independent legal advice before they loaned him the money.

2023 Allegations – Investigation of Complaint

- [43] On April 25, 2023, Ian Wintrip, CPA, CA, CBV, DIFA, CFF ("the Investigator") was appointed to investigate the complaint on behalf of the PCC. The Investigator wrote to the Member that day.
- [44] On May 15, 2023, the Investigator emailed the Member and requested that they meet at the Member's office on June 7 or 9, 2023. The Investigator asked for confirmation of the interview date by May 19 as well as production of 17 items before May 29.
- [45] The Investigator sent several reminders to the Member, however the Member did not provide the requested information. The Member gave the Investigator several explanations for his failure to provide the requested items (i.e. the email went to his junk folder, he had client meetings, he had begun to assemble the information, he had urgent client matters) and made numerous promises to produce the items. The Investigator eventually proposed that they meet during the week of July 3 for an interview and later extended that request to August 2, 3 or 4.
- [46] Shortly before the interview was to take place, the Investigator emailed the Member on July 31, stating that he was concerned that the Member was not responding to his emails. The Investigator asked for a status update on the requested items and reminded the Member of his obligations under Rule 104.1 and 104.2 and the potential consequences of non-cooperation.
- [47] The Member did not respond prior to the interview which was held by videoconference on August 8. During the interview, the Member admitted that he had not in fact begun to gather any of the information requested, despite his prior representations otherwise. The Member confirmed most of the information set out above respecting his relationships with D, R and the Corporate Client and the circumstances of borrowing monies from them without repayment as agreed.
- [48] The Investigator asked the Member if he had borrowed from other clients and the Member advised that there were two other individuals or businesses from whom he had borrowed monies, namely:
- (a) From 2016 to 2018, the Member borrowed from a numbered company owned by S, as a private first mortgage to fund renovations to the Member's personal residence; and
 - (b) From 2018, he borrowed from a client involved in real estate.
- [49] After the interview, the Investigator followed up with the Member by email asking him to provide five priority documents as well as medical information that might explain the Member's failure to co-operate with the investigation. The Member did not respond until August 14, when he again promised to send the material later that evening or the next

morning.

- [50] When he had not received any further documentation from the Member, the Investigator submitted his report to the PCC on August 24, 2023. The PCC considered the matter on September 13, 2023 and directed that the 2023 Allegations be made against the Member.
- [51] On February 12, 2024, six months after the PCC meeting date, the Member's lawyer provided some, but not all, of the documents requested by the Investigator.

Agreed Facts Regarding the 2024 Allegations

- [52] K was a 76-year-old retired dentist living and previously working in Toronto. K's principal income from 2020 to 2022 was from mortgage investments and capital gains on the sale of property that had previously been his dental office.
- [53] K retained the Member as his accountant beginning in 2018 for income tax preparation for himself and his wife, which included the compilation of K's investment income. Invoices showed that the Member provided K with "[c]onsultation during the year on financial matters."
- [54] K was the Member's client up until approximately June 1, 2023, the signature date for the Member's engagement letter for the completion of K's 2022 income tax return. The Member was K's authorized representative with the Canada Revenue Agency ("CRA").
- [55] On or around April 10, 2023, K and the Member met to discuss preparation of K's 2022 tax year filing. At the conclusion of the tax discussion, the Member asked if K could lend him \$30,000 for a period of one month. The Member told K that the money was needed to immediately cover business expenses due to the Member missing time sick with COVID-19.
- [56] The Member proposed to pay K interest at an annual rate of 12% and offered security for the loan in the form of a post-dated cheque from Clubbish dated May 11, 2023 (the "Clubbish Cheque") for \$30,300, which included the interest accrual.
- [57] K agreed to provide the loan because of his faith in the Member as a Chartered Professional Accountant and his own experience with the Member. K paid the Member \$8,000 in cash and the remaining \$22,000 in the form of a bank draft dated April 10, 2023. The loan was not formally documented nor did the Member advise K to seek independent legal advice.
- [58] Prior to the loan coming due on May 11, 2023, the Member contacted K and asked if the loan could be extended as his cash flow from his practice was less than expected. K agreed. There was no discussion about when the Clubbish Cheque would be deposited.
- [59] In and around June 23, 2023, K believed the Member should have sufficient funds to repay the loan and so he deposited the Clubbish Cheque into his bank account.
- [60] On June 26, 2023, K's bank issued a "Returned Item Advice" indicating that there were insufficient funds in the Clubbish account to cover the cheque. On the same day, K received an email from his bank advising that the available credit on his personal line of credit had fallen below \$100. K was charged an "NSF" fee for the Clubbish Cheque.

- [61] K wrote to the Member by email the same day and forwarded the email from his bank. He told the Member that the returned cheque needed to be covered as soon as possible as it was causing financial difficulties. K said he was willing to help the Member but not to his own detriment.
- [62] Two days later, the Member responded to K's email and advised that he would "take care of it," including any charges or costs caused by the delay. The Member added that he was "currently making arrangements to pay [the loan] back shortly."
- [63] The Panel noted that the above-noted discussions with K were taking place while the Member knew that he was being investigated by CPA Ontario because of his borrowing funds from the Corporate Client. On August 8, 2023, the Member met with the Investigator by videoconference but did not disclose that he had borrowed money from K (see paragraph [48] above).
- [64] In late-August 2023, K told the Member that he was going to Florida, and he had to make an installment payment to the CRA by September 15, 2023. K said that he was concerned that the Member had not repaid the loan. On August 22, 2023, the Member wrote a note to K that acknowledged that he owed "\$30,000 plus interest" and he expected to repay the loan by September 7, 2023. This was the first documented confirmation of the Member's loan from K and the interest terms.
- [65] The Member and K then had a conversation by phone during which the Member suggested that if a cheque to repay the loan was sent to Florida, there would be insufficient time for K to make payment to the CRA by September 15. The Member proposed to send a cheque to the CRA on behalf of K in the amount of \$30,000, to be applied to the installment account. K agreed.
- [66] On September 6, 2023, K asked the Member to confirm that he was going to make a payment of \$30,000 to the CRA on K's behalf. K specifically indicated that he did not want to be assessed interest and penalties if his tax installment was not paid on time and in full.
- [67] On September 7, 2023, the Member confirmed that he was forwarding a cheque for \$30,000 (the "Principal Cheque") to the CRA for receipt by September 15, 2023. He said he would send K a separate cheque for \$1,500, representing accrued interest (the "Interest Cheque"). The Member promised to email copies of the cheques to K. K thanked the Member and indicated that he would now be able to relax on his trip.
- [68] On September 19, 2023, K asked the Member to confirm that the cheque to the CRA was deposited into the CRA tax installment account. On September 20, the Member responded and stated that "the cheque was sent" and he would send a copy of the cheque. The Member asked K what he should do with the Interest Cheque. The Interest Cheque was dated September 13, 2023 but it was not mailed to K until October 2023 (and the Interest Cheque cleared).
- [69] Contrary to what the Member told K, he did not send any payment to the CRA as of September 20, 2023. The Member dated a cheque to the CRA for \$30,000 as of September 15, 2023, and completed a CRA installment remittance form. The Member did not send the cheque to the CRA until in and around October 14, 2023. The cheque was

received by the CRA on October 14, 2023, but not immediately deposited. When the Member sent the cheque to the CRA, he knew there were insufficient funds in his bank account to cover the payment.

- [70] K made enquiries of the CRA and learned that there was no record that his September installment had been paid. He asked the Member for a copy of the \$30,000 cheque to verify that payment had been made.
- [71] On November 2, 2023, the CRA deposited the cheque from the Member, however on November 15, 2023, the bank returned the Principal Cheque to the CRA due to insufficient funds.
- [72] In early January 2024, K learned about the returned cheque from CRA for the first time. He filed a complaint with CPA Ontario on January 7, 2024.
- [73] On February 9, 2024, K served and filed a statement of claim against the Member in the Superior Court of Justice seeking repayment of the outstanding loan and interest.
- [74] In March 2024, K again spoke to the Member regarding the outstanding loan. The Member promised to repay the loan but did not.
- [75] On March 12, 2024, the Investigator interviewed the Member, who admitted knowing about the loan to K during the earlier interview. When asked why he had not disclosed the loan to the Investigator, when expressly asked about loans from clients, the Member stated, "I don't know, it was an omission on my behalf. I may not even have thought about it. Not anything intentional. These discussions are nerve-racking."
- [76] The Investigator again asked the Member if there were any other client loans that he had not disclosed at the earlier interview. The Member admitted that he had borrowed from a client "HD" prior to the earlier investigation and interview. He stated that initially HD had provided him with \$50,000 to invest; however, the investment did not proceed, so he continued to "hold" the \$50,000. He said that he would pay HD 6% interest per annum. The Member stated that there is no documentation of the investment/loan with HD.

Finding of Professional Misconduct

- [77] Although the Member admitted that he breached Rules 104, 201.1 and 209.1, the Panel carefully reviewed the facts as set out above and the provisions of the *Code* to ensure that they could make this finding based upon the evidence.
- [78] With respect to Rule 209.1 of the *Code*, members are not permitted to borrow from their clients unless the loan has been made under normal commercial terms and the clients are a bank or an entity in the business of private lending. Another exception to the prohibition of borrowing money from clients is where the client is a family member, or an entity significantly influenced by the family member.
- [79] The Panel found that the Member borrowed monies from the Corporate Client and K, as well as several other clients. None of these clients were permissible lenders under Rule 209.1 or 209.2 of the *Code*.
- [80] With respect to Rule 201.1 of the *Code*, a member or firm shall act at all times in a manner

which will maintain the good reputation of the profession and serve the public interest.

[81] The Panel found that there were numerous times during the period from July 2021 to April 2024 where the Member acted without integrity, and failed to maintain the good reputation of the profession and serve the public interest, including but not limited to:

- (a) Exploiting his CPA designation to gain the trust of his client, thereby leveraging his professional status to secure loans under false pretenses;
- (b) Using confidential information about the finances of his clients that he obtained as their CPA to request loans;
- (c) Borrowing money from clients when he knew or ought to have known that he would be unable to repay them;
- (d) Failing to disclose the purpose of the loans to these clients and/or misleading them about the purpose of the loans;
- (e) Failing to advise these clients to obtain independent legal advice about the loans and their terms;
- (f) Failing to honour the terms of the loans and/or to repay the loans in full to the Corporate Client and K;
- (g) Giving misleading and/or false reasons for his failure to pay and making unfulfilled promises to pay;
- (h) Failing to communicate with his clients, particularly when they were looking for answers about why he had not repaid the loans and they had explained the precarious financial position that they were placed in because of his failure to repay the loans;
- (i) Failing to respond to the Investigator in a timely way and misleading the Investigator by stating that he was gathering information when in fact he had not done anything; and
- (j) Misleading the Investigator about the number of clients from whom he had borrowed.

[82] The Panel concluded that the two Agreed Statements of Facts provided clear, cogent and compelling evidence that proved the Allegations on a balance of probabilities and established that the Member breached Rules 104, 201.1 and 209.1 of the *Code*.

VII. DECISION AS TO SANCTION

[83] After considering the joint submission of the parties, the Panel concluded that the appropriate sanction was revocation, a \$50,000 fine payable to CPA Ontario by May 16, 2026, and notice of the Decision and Order disclosing the Member's name to be given to all members of CPA Ontario, all provincial bodies, and made available to the public on the CPA Ontario website and in the *Globe and Mail*.

VIII. REASONS FOR DECISION AS TO SANCTION

[84] The purpose of sanction in a professional discipline matter is to provide specific deterrence

to the member who has committed professional misconduct and general deterrence to the members of the profession at large. Sanctions are intended to demonstrate to the public that CPA Ontario is serious about disciplining its members for contraventions of the *Code*, to protect the public and to maintain public confidence in the profession.

- [85] Prior to the hearing, the parties came to an agreement about the proposed sanctions and costs, which was presented to the Panel.
- [86] Where there is a joint submission from the parties about the appropriate sanction, the agreement reached by the parties is entitled to a high level of deference. A joint submission should be adopted unless it is contrary to the public interest, and it would bring the regulatory process into disrepute because it was beyond the reasonable range of sanction for similar professional misconduct. In the words of Justice Moldaver of the Supreme Court of Canada in the matter of [*R. v. Anthony Cook*](#), rejection of a joint submission:

“denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons ... to believe that the proper functioning of the justice system had broken down” (para 34).

- [87] Counsel for the PCC and the Member submitted that the joint submission was reasonable and fair, and that to reject the joint submission would bring the regulatory process of CPA Ontario into disrepute. The Panel considered the Member’s considerable discipline and guidance history as well as the mitigating and aggravating circumstances in these matters. For the reasons set out below, the Panel accepted the joint submission.

Member’s Discipline and Guidance History

- [88] The Member had an egregious and extensive discipline and guidance history. The following is a summary of that history, with emphasis on some of the historic regulatory issues relevant to some of the issues in this hearing.
- [89] With respect to the following seven letters of guidance that the Member received from CPA Ontario, the Panel noted that findings of professional misconduct were not formally made in these instances as they would following a hearing. However, these admonishments from his regulator should have served as a warning to the Member prior to engaging in any further professional misconduct:
- (a) January 16, 2002 – The Member was given guidance about performing his professional services with integrity. In particular, he did not document a transaction involving a loan from a client to a company. This raised a concern as the company had a liability to pay the loan which was not reflected in the company’s financial statements;
 - (b) June 6, 2008 – The Deputy Chair of the PCC sent a letter of caution to the Member, drawing the Member’s attention to his obligation to respond to a CPA Ontario investigation and to co-operate with a practice inspection or review on a timely basis;
 - (c) January 4, 2013 – The Deputy Chair of the PCC sent a letter of caution to the Member when he failed to co-operate with a practice inspection. The Member was

sternly advised that his conduct failed to maintain the good reputation of the profession and it impacted negatively on his client, who had made a complaint, and on CPA Ontario. The PCC found the Member's conduct was "a serious departure from the conduct expected of a chartered accountant," and warned that any future non-compliance with his obligations to co-operate could result in more serious sanctions, such as an administrative suspension. The PCC noted that this was the second time that the Member had been before the Committee because he had failed to co-operate with a practice inspection;

- (d) January 31, 2013 – The Chair of the PCC reviewed information concerning the Member's promotion or sale of time-share weeks in a company. The PCC cautioned the Member that by referring clients to this company, which resulted in the Member or the Firm receiving a direct or indirect benefit, he had contravened the *Code*;
- (e) February 14, 2013 – The Chair of the PCC reminded the Member of his duty to co-operate with the regulatory process after receiving two complaints. The Committee noted that it was mindful of the fact that this was the Member's second admonishment for failing to co-operate with a practice inspection;
- (f) July 12, 2016 – The Deputy Chair of the PCC sent a letter of caution to the Member following a complaint and investigation that found that the Member failed to communicate in a timely and effective manner with a client, the client's counsel and the successor accountant. The Chair added that the PCC was "very concerned about the number of times it had received complaints against [him], and the resulting disciplinary action and guidance that was provided to [him] by the Committee. The Deputy Chair of the PCC also noted that the Member had exhibited "a pattern of behaviour that reflect[ed] negatively on the profession."; and
- (g) July 5, 2017 – The Deputy Chair of the PCC sent a letter of caution to the Member following a complaint and investigation that revealed that the Member had inadequate internal controls and procedures relating to the supervision of staff and oversight of accounts. This led to the deposit of two client cheques that improperly remained in the Member's account.

[90] The Member was also the subject of two discipline hearings in 1993 and 2017:

- (a) September 29, 1993 – The Member was found guilty of four charges of professional misconduct under Rules 201, 202, 207 and 212. The Member was found to have improperly induced investors in respect of a limited partnership, holding their monies in trust, and when the limited partnership was floundering, he withdrew money that he had loaned to the limited partnership. The Member was suspended for three (3) months, and he was ordered to pay a fine of \$10,000; and
- (b) August 7, 2018 – This hearing against the Member resulted in the Member being the subject of a four-month suspension, a fine of \$10,000, mandatory professional development courses and costs of \$40,000. There were two complaints at the hearing:
 - (i) ****423 Ontario Ltd. - This numbered company was the Member's client.

The Member prepared and signed tax returns for ****423 Ontario Ltd. from July 2008 to March 2011 which contained misstatements that were false, misleading, or inaccurate. Despite the Member's attempts to lay blame for the misinformation on his client, the Panel found that the Member was aware of these misstatements, or he should have been aware and not filed the statements known to be false. ****423 Ontario Ltd. was charged almost \$8.5 million in interest and penalties by the CRA as a result of the Member's misleading and inaccurate filings and the CRA was seeking gross negligence penalties of \$4 million at the time of the hearing.

- (ii) WCBJV - The Member was the accountant for WCBJV, a joint venture real estate development and introduced many of his clients to the company as investors. Ultimately the project failed, and the investors lost their money. The Member prepared the financial statements for WCBJV for 2010 and 2011 and those statements had deficiencies that related to the improper recording and misclassification of information and the cumulative impact of those errors.

Aggravating Circumstances

- [91] Counsel for the PCC argued that the Member's discipline history was an aggravating factor. The Member had been subject to several cautions and letters of guidance as well as two discipline hearings that resulted in a four-month suspension of his membership. Counsel pointed out some common themes that related to the matters before this Panel, including the misuse of client monies and failing to co-operate with CPA Ontario investigations.
- [92] Furthermore, counsel for the PCC noted that in the past, the Member had been required to take courses in ethics and been cautioned to be adherent to his ethical duties.
- [93] Counsel for the PCC submitted that in light of the Member's discipline history, as well as the professional misconduct found in this matter, the Panel should conclude that the Member was ungovernable.

Mitigating Circumstances

- [94] Counsel for the Member noted that the Member had taken responsibility for his actions in signing the Agreements of Facts and agreeing to the joint submission on penalty. In doing so, the Member saved the time and expense of a fully contested hearing.
- [95] In addition, counsel for the Member said that the Member intended to make payment for the outstanding amounts on the loans. The Member participated in the interview with the Investigator and co-operated with the investigation after he retained counsel. Counsel stated that the Member is currently enrolled in continuing education in ethics.

Analysis of Penalty

- [96] The Panel found that revocation of the Member's membership in CPA Ontario was the only possible outcome for this matter and fully endorsed the joint submission. The Panel

was shocked at the Member's lengthy history of disregarding his professional obligations as a CPA.

- [97] It was deeply concerning that the Member had apparently learned nothing from the several letters of guidance or two findings of professional misconduct following hearings before the Discipline Committee where he received reprimands and his membership was suspended. The Member had clearly not benefitted from the courses in ethics ordered by the Discipline Committee.
- [98] The totality of the evidence revealed an individual who on multiple occasions had preferred his own financial interests to those of his clients. His clients relied on his integrity and trusted him, in part because of his membership in CPA Ontario. The Member used information that he had obtained from these clients as a trusted advisor for his own purposes. In doing so, the Member harmed his clients, but also caused the reputation of all CPAs to be tarnished by his unethical conduct.
- [99] Furthermore, when the Member's misconduct was reported to CPA Ontario, the Member delayed the investigation and intentionally mislead the Investigator respecting his efforts collecting documents and the extent of his professional misconduct (i.e. not disclosing that he was currently engaged in borrowing from a client, K, at the time of his interview and failing to disclose all of the clients from whom he had borrowed).
- [100] The Panel concluded that the Member was ungovernable in that he would likely continue to breach his ethical obligations as a CPA and would not be compliant with his obligations to co-operate with CPA Ontario's regulatory processes. The Panel found that revocation of the membership of the Member was appropriate and necessary to protect the public and the reputation of CPA Ontario.

IX. COSTS

- [101] With respect to costs, 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 should not bear all of the costs of the investigation, prosecution and hearing arising from the member's misconduct.
- [102] The PCC requested costs of \$25,000. The Panel reviewed the PCC's Bill of Costs (Exhibit 5) and found that the costs were fair and reasonable.

DATED this 26th day of June, 2024

A handwritten signature in blue ink, appearing to read 'A. Finkel', with a stylized flourish at the end.

Alexandra Finkel, CPA, CA
Discipline Committee – Deputy Chair

Members of the Panel

Hardeep Singh Brar, CPA, CGA

Jeremy Cole, FCPA, FCA

Marianne Park-Ruffin, Public Representative

John Wilkinson, Public Representative

Independent Legal Counsel

Susan Heakes, Barrister & Solicitor