

POHL, GERALD ANDREW

Notice of Discipline Committee Decision and Order Case #1809-19

Following the receipt of a Formal Complaint made by the Professional Conduct Committee, the Discipline Committee held a hearing regarding the conduct of Gerald Andrew Pohl, CPA, CGA ("Pohl") on December 2, 2020.

The Formal Complaint arose in the context of Pohl, for the period beginning in or about June 2016 and ending in or about July 2018, while engaged to provide professional services to a private farming enterprise and its shareholders, failed to provide services with due care and in compliance with *The Income Tax Act*. Specifically, the failure to complete and file the T2057 Elections on Disposition of Property by a Taxpayer to a Taxable Canadian Corporation by the deadline specified in section 85(6) of the *Income Tax Act* and the related consequences of that non-filing caused harm to the private farming enterprise and its shareholders.

The general nature of the formal complaints on which the Discipline Committee made a determination of guilt relate to professional misconduct as defined in section 26 of *The Accounting Profession Act* ("the Act") in that Pohl's conduct breached Bylaws 200.1 and 200.2 and Rules 201.1 and 202.1 made or continued pursuant to the Act.

Specifically, the Discipline Committee found:

That Pohl failed to provide services with due care and, thereby contravened section 52 of *The Accounting Profession Act*, SS 2014, C A-3.1 as he did breach Bylaw 200.1 and Rule 202.1 of the Institute of Chartered Professional Accountants of Saskatchewan Bylaws and Standards of Professional Conduct. Further, he failed on behalf of his clients to comply with *The Income Tax Act* and thereby is in breach of Bylaw 200.2 of the Institute of Chartered Professional Accountants of Saskatchewan Bylaws and Standards of Professional Conduct.

That Pohl failed to maintain the reputation of the profession, thereby contravened section 52 of *The Accounting Profession Act*, SS 2014, C A-3.1 as he did breach Rule 201.1 of the Institute of Chartered Professional Accountants of Saskatchewan Bylaws and Standards of Professional Conduct.

A copy of the Decision and Order dated December 15, 2020 is attached as Appendix A.

The Discipline Committee therefore issued the following Order:

- The member receives and acknowledges a reprimand signed by the discipline hearing panel chair,
- The member receives a fine of \$3,000,

- The member and his firm undergo a practice administration review. The practice administration review shall not be considered complete until the applicable regulatory committee has made a decision and that decision has been communicated to the member and his firm, and
- Publication in CPA Saskatchewan registrant newsletter and posting on the Institute's website on a named basis of a summary of the breach and sanction.

The text of relevant bylaws and rules of professional conduct:

Bylaws

200.1 Practice of the profession or services provided as a Chartered Professional Accountant shall be performed within the context of the following standards of conduct:

- (a) integrity;
- (b) objectivity;
- (c) competence; and
- (d) confidentiality.

200.2 A registrant or suspended registrant shall, at all times, exercise appropriate moral behaviour and shall comply with the laws of Canada and the province in which they reside or in which they provide professional services.

Rules of Professional Conduct

Maintenance of the Reputation of the Profession

201.1 A member, student or firm shall act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest.

Integrity and Due Care

202.1 A member, student or firm shall perform professional services with integrity and due care.

This notice is issued pursuant to Bylaw 49.1 and the terms of the Order.

Authorized by:
Leigha Hubick, CPA, CA
Registrar
CPA Saskatchewan

January 15, 2021

DECISION AND ORDER

Case #1809-19

{for purposes of publication client names have been generised}

IN THE MATTER OF *THE ACCOUNTING PROFESSION ACT*
OF THE PROVINCE OF SASKATCHEWAN

AND IN THE MATTER OF A HEARING BY THE DISCIPLINE COMMITTEE
OF THE INSTITUTE OF CHARTERED PROFESSIONAL ACCOUNTANTS
OF SASKATCHEWAN (THE INSTITUTE) CONCERNING FORMAL COMPLAINTS AGAINST
GERALD ANDREW POHL, CPA, CGA, BEING A REGISTRANT OF THE INSTITUTE

BETWEEN:

THE PROFESSIONAL CONDUCT COMMITTEE,
established pursuant to *The Accounting Profession Act*

- and -

GERALD ANDREW POHL, CPA, CGA AS THE RESPONDENT

This matter came before a discipline hearing panel of the Discipline Committee of The Institute for hearing on December 2, 2020. In this Decision and Order, Gerald Andrew Pohl, CPA, CGA is referred to as the respondent in respect of this proceeding, and as the registrant in respect of his conduct which is the subject of this proceeding.

The discipline hearing panel's decisions with respect to this matter are:

DETERMINATION ON FORMAL COMPLAINTS:

Formal Complaint A:

That the discipline hearing panel accepts the respondent's admission of professional misconduct as noted in the formal complaint made pursuant to *The Accounting Profession Act*:

That Pohl, for the period beginning in or about June 2016 and ending in or about July 2018, while engaged to provide professional services to two related individual clients (S and N) and one related corporate client (Farm Co.), (hereinafter collectively referred to as "the client"), is guilty of professional misconduct as defined in section 26 of *The Accounting Profession Act*, SS 2014, c A-3.1.

That Pohl failed to provide services with due care and, thereby contravened section 52 of *The Accounting Profession Act*, SS 2014, C A-3.1 as he did breach Bylaw 200.1 and Rule 202.1 of the Institute of Chartered Professional Accountants of Saskatchewan Bylaws and Standards of Professional Conduct. Further, he failed on behalf of his clients to comply with *The Income Tax Act* and thereby is in breach of Bylaw 200.2 of the Institute of Chartered Professional Accountants of Saskatchewan Bylaws and Standards of Professional Conduct.

The Discipline Hearing Panel's reasons in support of its determination:

1. Consideration of allegations:

- A. That the following allegations relating to the respondent's conduct are proven:
1. Failed to complete and file the T2057 Elections on Disposition of Property by a Taxpayer to a Taxable Canadian Corporation for the client Farm Co. by the deadline specified in section 85(6) of the *Income Tax Act*,
 2. Failed to correctly report net income for income tax purposes on the T2 Corporate Income Tax Returns for the client Farm Co. for 2016 and 2017,
 3. Failed to correctly report the assets, liabilities and equity of [the client Farm Co. on Schedule 100 of the T2 Corporate Income Tax Return for 2016 and 2017, and
 4. Failed to correctly report the total income, specifically the taxable capital gain, on the T1 General Income Tax Returns for the clients S and N for 2016, as required by section 3 of *The Income Tax Act*.

- B. That the following facts (contained in the 'Statement of Agreed Facts') are relevant and substantive of the respondent's conduct in this matter:

Allegation 1:

- The evidence agreed by the respondent and the Professional Conduct Committee (the parties to this matter) (Facts 1 through 6) related to Jurisdiction and Relevant Guidance as well as Subject Matter – Background and Entities.
- The evidence agreed by the parties (Facts 9 through 13 and related exhibits) show acknowledgment of the respondent and the successor accountant that the T2057 was not prepared and filed, this supports application of Bylaw 200.1 (competence), Bylaw 200.2 (laws of Canada – *Income Tax Act*) and Rule 202.1 (due care).

Allegation 2:

- The evidence agreed by the parties (Facts 1 through 6) related to Jurisdiction and Relevant Guidance as well as Subject Matter – Background and Entities.
- The evidence agreed by the parties (Facts 17 through 26 and related exhibits) show that the correct net income for income tax purposes on the T2 for the client Farm Co. for 2016 and 2017 was not reported as evidenced by the revised returns and Notice of Reassessments. This supports application of Bylaw 200.1 (competence) and Rule 202.1 (due care).

Allegation 3:

- The evidence agreed by the parties (Facts 1 through 6) related to Jurisdiction and Relevant Guidance as well as Subject Matter – Background and Entities.
- The evidence agreed by the parties (Facts 17 through 26 and related exhibits) show that the correct assets, liabilities and equity for income tax purposes on the T2 for the client Farm Co. for 2016 and 2017 was not reported as evidenced by the revised returns and Notice of Reassessments. This supports application of Bylaw 200.1 (competence) and Rule 202.1 (due care).

Allegation 4:

- The evidence agreed by the parties (Facts 1 through 6) related to Jurisdiction and Relevant Guidance as well as Subject Matter – Background and Entities.
- The evidence agreed by the parties (Facts 27 through 38 and related exhibits) show the correct total income on the T1's for the clients S and N for 2016 was not reported as evidenced by the revised returns and Notice of Reassessments. This supports application of Bylaw 200.1 (competence), Bylaw 200.2 (laws of Canada – *The Income Tax Act*) and Rule 202.1 (due care).

2. Consideration of evidence:

That the discipline hearing panel received and accepted a joint submission from the respondent and the Professional Conduct Committee (the parties) of an agreed statement of facts as the evidence of the respondent's conduct, and these facts support that the respondent did breach the bylaws and rules noted in the formal complaints, as admitted by the respondent.

Formal Complaint B:

That the discipline hearing panel accepts the respondent's admission of professional misconduct as noted in the formal complaint made pursuant to *The Accounting Profession Act*:

That Pohl, for the period beginning in or about June 2016 and ending in or about July 2018, while engaged to provide professional services to two related individual clients (S and N) and one related corporate client (Farm Co.), (hereinafter collectively referred to as "the client"), is guilty of professional misconduct as defined in section 26 of *The Accounting Profession Act*, SS 2014, c A-3.1, in that he:

That Pohl failed to maintain the reputation of the profession, thereby contravened section 52 of *The Accounting Profession Act*, SS 2014, C A-3.1 as he did breach Rule 201.1 of the Institute of Chartered Professional Accountants of Saskatchewan Bylaws and Standards of Professional Conduct.

The Discipline Hearing Panel's reasons in support of its determination:

1. Consideration of allegations:

A. That the following allegation relating to the respondent's conduct is proven:

1. The registrant failed to maintain the reputation of the profession, thereby contravened section 52 of *The Accounting Profession Act*, SS 2014, C 1-3.1 as he did breach Rule 201.1 of the Institute of Chartered Professional Accountants of Saskatchewan Bylaws and Standards of Professional Conduct.

B. That the following facts (contained in the 'Statement of Agreed Facts') are relevant and substantive of the respondent's conduct in this matter:

- The evidence agreed by the parties (Facts 1 through 6) related to Jurisdiction and Relevant Guidance as well as Subject Matter – Background and Entities.
- The evidence agreed by the parties (Facts 9, 11, 12, 26, 39, 40 and related exhibits) specifically show the lack of due care and/or competence in serving this client which harms the reputation of the profession.

2. Consideration of evidence:

That the discipline hearing panel received and accepted a joint submission from the respondent and the Professional Conduct Committee (the parties) of an agreed statement of facts as the evidence of the respondent's conduct, and these facts supported that the respondent did breach the rule noted in the formal complaints, as admitted by the respondent.

DETERMINATION ON SANCTION:

Sanctions:

Having considered and accepted the joint submission on sanction of the respondent and the PCC, that the following Orders of Sanction and Costs are made:

- a) The member receives and acknowledges a reprimand signed by the discipline hearing panel chair,
- b) The member receives a fine of \$3,000,
- c) The member and his firm undergo a practice administration review. The practice administration review shall not be considered complete until the applicable regulatory committee has made a decision and that decision has been communicated to the member and his firm, and
- d) Publication in CPA Saskatchewan registrant newsletter and posting on the Institute's website on a named basis of a summary of the breach and sanction.

With respect to costs, in that this matter was dealt with by way of full joint submission by the parties, no costs are ordered or assessed to the respondent.

The Discipline Hearing Panel rationale for sanction:

The discipline hearing panel received and accepted the joint submission of the parties.

The discipline hearing panel agrees that the following sanction objectives are relevant to the case:

- a) Rehabilitation;
- b) Specific deterrence; and
- c) General deterrence.

That the following mitigating and aggravating factors, which are in evidence, are considered indicators of the degree of actual harm, and/or the risk of future harm, to the public or the reputation of the profession. Therefore, they are relevant in the determination of the nature and quantum of the appropriate sanction:

- a) Mitigating factors:
 - i) The member acknowledged responsibility for the work that was incorrectly completed or not completed,
 - ii) The member cooperated with the successor accountant and identified all known issues to be reviewed, and
 - iii) The members insurer (CPA Professional Liability Plan Inc.) made an offer dated August 27, 2020 to settle with the clients in the amount of \$6,869.60.
- b) Aggravating factors:
 - i) The member was aware of the outstanding tax filing and did not take steps to complete the work.

Additional conditions to the Decision and Order:

- A. Failure to comply with all aspects of the Order within 60 days of receipt of the Order shall result in the respondent's registration rights being suspended, with publication in *CPA SK Connect* and the appropriate regional newspaper on a named basis.
- B. The respondent's registration rights shall be reinstated provided within a further 60 days, the registrant complies with all aspects of the Order and pays a reinstatement fee of \$325, plus the cost of publishing the suspension notice referred to in additional condition A.
- C. Failure to comply with all aspects of the Order within 120 days of receipt of the Order shall result in the respondent being expelled, with publication in *CPA SK Connect* and the appropriate regional newspaper on a named basis.



Dwayne Dahl, CPA, CA
Chair, Discipline Hearing Panel

December 15, 2020
Date Approved



Jana Blais, CPA, CMA
Secretary, Discipline Hearing Panel

December 15, 2020
Date Approved