

**IN THE MATTER OF a Proceeding under
the *Certified General Accountants of Ontario Act, 1983*
IN THE MATTER OF a Complaint against Claude Vachon**

BETWEEN:

The Discipline Committee of the CGAO

- and -

Claude Vachon

Decision of the Professional Conduct Tribunal

Members of the Tribunal panel:

Donn Martinson, CGA, chair
Jane Rivers, CGA
Daniel Iggers (public representative)

Counsel:

Karen Jolley, for the Discipline Committee
Lindsay Lawrence, for the Tribunal

Hearing date:

June 25, 2009

A. INTRODUCTION

1. By Notice of Hearing dated April 27, 2009, the Professional Conduct Tribunal of the Certified General Accountants of Ontario advised the parties that a hearing would be conducted with respect to certain charges against Mr. Vachon under the CGAO's *Code of Ethical Principles and Rules of Conduct* (the "Code").
2. Specifically, Mr. Vachon was accused by the CGAO Discipline Committee of violating the following Rules:

Rule 610 Requirement to Reply in Writing

A member shall reply in writing to any request from the Association in which a written reply is specifically required.

Rule 611 Assistance to the Board

A member shall, when required, comply with the request of the board or its committees in the exercise of their duties in matters of the Act, By-Law Four or the *Code of Ethical Principles and Rules of Conduct*, and when required, produce any documents in the member's possession, custody or control, subject to Rules R104.2, R104.3, and R20.1.

B. NON-ATTENDANCE AT HEARING

3. The Notice of Hearing advised Mr. Vachon that the Tribunal would hear evidence regarding the charges against him at a hearing scheduled for June 25, 2009, commencing at 10:00 am, at the Network Court Reporting office. The Notice also advised him that he had the right to present evidence in his defence, as well as the right to be represented by counsel or an agent at the hearing. It further advised him that, if the Tribunal found him guilty of a contravention of the *Code*, it could order penalties against him pursuant to the CGAO's by-laws. Finally, it advised him that, if he failed to appear at the hearing, the Tribunal might conduct the hearing in his absence.

4. On May 29, 2009, Mr. Vachon sent an email to the Registrar for the Tribunal advising that he would not be attending at the hearing, and, as set out further below, stating his position on the charges against him and on the remedies sought by the discipline committee.
5. By way of letter dated June 1, 2009, the Registrar copied Mr. Vachon's correspondence to the members of the Professional Conduct Tribunal and to Ms. Jolley (counsel for the Discipline Committee). She further advised Mr. Vachon that, as set out in the Notice of Hearing, if he failed to appear, the hearing might be conducted in his absence.
6. Mr. Vachon did not attend the hearing, nor did any representative attend on his behalf.
7. We decided to proceed in his absence, since sufficient notice of the hearing had been provided to him, and no request for an adjournment was made.

C. EVIDENCE AND FACTS

8. The hearing proceeded without any testimony from witnesses. Ms. Jolley presented an affidavit of service, establishing that Mr. Vachon had been served with a Request to Admit, dated May 27, 2009, pursuant to the *Evidence Act*, R.S.O., 1990, c.E.23, as well as a Notice under the *Evidence Act*, dated May 27, 2009, advising him that the Discipline Committee intended to rely on certain facts and documents at the hearing. Mr. Vachon was advised that he had 20 days to respond to the Request to Admit. He was also advised that, if he failed to respond, he would be deemed to admit the truth of the facts and authenticity of the documents set out therein, for the purposes of the Tribunal proceeding. Mr. Vachon did not respond to the Request to Admit at any time.

9. Based on the facts deemed to be admitted by Mr. Vachon and the documents admitted into evidence at the hearing, the Tribunal makes the following findings of fact.
10. Mr. Vachon became a member of the CGAO in 2006.
11. On or about September 21, 2008, the CGAO received a complaint from Mr. Vachon entitled "Corruption Involving CGA members" ("the September 2008 letter"). The September 2008 letter alleges corruption and other wrongful and criminal conduct on the part of a number of members of the Association. The letter refers to information obtained through the *Privacy Act*, and *Public Servants Disclosure Protection Act*, and refers to a complaint made to Public Sector Integrity Canada, as well as to "a ministerial corruption complaint" and "severe civil and criminal charges". The letter requested that the CGAO "strip all of the above named CGAs of their designations as they have no ethics, no honour, no integrity, and no discipline to carry such a valuable title."
12. By letter to Mr. Vachon dated October 22, 2008, the CGAO, through its counsel, Ms. Jolley, advised that a number of searches had been conducted, but that it had been unable to locate any information about the various complaints, charges, information requests referred to in the September 2008 letter. This letter cautioned that Mr. Vachon was governed by the *Code* in making his allegations, and was required to act with integrity, not to be associated with deceptive information and to conduct himself in a manner that enhanced the profession. As a result, the CGAO requested documentation and information to corroborate the allegations he had made, and asked that this information be provided by November 3, 2008.
13. Mr. Vachon did not respond to the October 22, 2008 letter.

14. By letter dated November 13, 2008, Ms. Jolley advised Mr. Vachon that the Discipline Committee had reviewed the September 2008 letter and had determined that there was no basis for the complaint against the CGAs named in the letter. She advised that the Discipline Committee had noted the seriousness of the allegations and the failure to provide any support for the allegations, despite the request to do so. Ms. Jolley then advised that the Committee had decided to treat the September 2008 letter as the basis for a complaint against Mr. Vachon, and that the Committee was providing him with a formal opportunity to respond. The letter went on to require, within two weeks, the production of specific information and documentation to support the allegations he had made.
15. In mid-November, Mr. Vachon sent a series of three emails to Ms. Jolley. Initially, these emails asserted that her request for information was "fraudulent and/or illegal" and that he would not send information until he had "proof that she was hired by CGA Ontario." He alternately asserted that the information requested was not relevant, and that the Committee would not be able to review the information at its next meeting because "it would take a minimum of 1000 hours to read, analyse and comprehend the complexity of this case and the magnitude of the crimes committed going back to 1999."
16. Subsequently, by email dated November 17, 2008, Mr. Vachon advised Ms. Jolley that he had not received her October 22, 2008 letter, but assured that he would forward all documents to her office. He indicated that it would be difficult to get the documents compiled within two weeks, but that he would provide the information "at the latest by December 5, 2008."
17. By email dated November 21, 2008, Ms. Jolley reminded Mr. Vachon that members are obliged to respond to requests of the Discipline Committee for information and documentation. Ms. Jolley acknowledged the request to extend

the time for response to December 5, 2008 and confirmed that the Committee would await his response until that date.

18. On November 25, 2008, Mr. Vachon sent Ms. Jolley an email which stated "here is some of the evidence". This email attached a fax cover sheet dated from November 2008, from Mr. Vachon, with the recipient information blacked out. It also attached four print-outs from the Canada Post website concerning the tracking of items of registered mail.
19. On November 26, 2008, Ms. Jolley advised, on behalf of the Committee, that the documents provided did support a finding of wrongdoing or even an allegation of wrongdoing, and again requested that he provide the documentation to support the allegations he had made.
20. Mr. Vachon did not respond to the November 26, 2008 correspondence.
21. By letter dated January 13, 2009, Ms. Jolley again restated the Committee's request for information/documentation, and advised that a failure to respond to the Committee's request might be considered a breach of Rules 610 and 611 of the Code. He was given a new deadline of February 20, 2009 for providing the information/ documentation.
22. Mr. Vachon did not respond to the January 13, 2009 letter.
23. By letter dated February 26, 2009, Ms. Jolley, on the Committee's behalf, gave him a final opportunity to provide the requested information/ documentation, and again gave a new deadline, this time of March 6, 2009.
24. On March 1, 2009, Mr. Vachon sent an email to the Association, alleging that the Committee was harassing him, and threatening to "disclose" the actions of the Committee and its counsel "in a report to the House of Commons along with your

involvement with a decade old scandal through the protection of CGAs involved in illegal activity, proven beyond any doubt”.

25. By letter dated March 2, 2009 addressed to the CGAO's President, Mr. Vachon making various allegations against the CGAO and calling the request for information "devious and malicious".
26. By email dated March 3, 2009, Mr. Vachon purportedly sent his "resignation certificates" and attached photographs of his defaced CGAO and CGA Canada certificates.
27. On March 3, 2009, the Association responded to Mr. Vachon's email, advising him that his purported resignation did not halt an action brought by the Discipline Committee and that the Committee would be reviewing his file on March 11, 2009. The Association quoted Article 3(1) of its By-Law Four, which states:

Any member may tender a written resignation to the board and any firm may make a voluntary request to cancel a certificate of authorization, but neither shall take effect until all arrears of fees, special assessments and other indebtedness to the Association have been fully paid and all outstanding competence and disciplinary complaints against the member and, or, the firm, have been completed and the member or firm has fully satisfied all sanctions imposed by a tribunal.

28. Mr. Vachon did not respond to the Association's March 3, 2009 correspondence.
29. The Discipline Committee decided to lay the above-noted charges against Mr. Vachon and referred the matter to the Tribunal for a hearing.

D. SUBMISSIONS

30. In her submissions to the Tribunal, Ms. Jolley stressed that Mr. Vachon had made very serious allegations of misconduct against other members of the Association, including allegations of corruption and criminal activity. She noted that the Discipline Committee took these allegations seriously, and had endeavoured independently to locate information about the various complaints, charges, and information requests Mr. Vachon had alluded to in his September 2008 letter. When the Committee was unable to locate any information concerning these allegations, it requested that Mr. Vachon provide the information/documentation that would enable it to investigate.
31. Ms. Jolley argued that Mr. Vachon had violated Rules 610 and 611 of the *Code*. She emphasized that he was provided with several opportunities to provide the requested information/ documentation. She submitted that, while he alternately refused to cooperate and provided assurances that information would be forthcoming, he provided, in the end, no substantive responses to the Committee's requests for information/ documentation. The few documents he had provided did not support his allegations of wrongdoing. She further noted that the Committee had fully advised Mr. Vachon that it had decided to treat the September 2008 letter as a complaint against Mr. Vachon, and that a failure to respond might warrant disciplinary action.
32. In his email to the Registrar, Mr. Vachon stated, *inter alia*, that the September 2008 letter was "the truth to the best of [his] knowledge", that he had "responded on November 25, 2008 with sufficient evidence to show that [his] email was true", and that the CGAO was filing "a false complaint against [him] with no evidence of wrongdoing whatsoever."
33. Ms. Jolley requested that the Tribunal order the following sanctions for Mr. Vachon's breaches:

- (i) A reprimand for breaching the Rules;
 - (ii) An order that he be suspended for 60 days;
 - (iii) An order that, within the 60 days, Mr. Vachon fully respond to the committee's letters dated October 22, 2008, November 13, 2008 and January 13, 2009, and provide the documents requested in those letters;
 - (iv) An order that he be expelled on the 61st day if he has not complied with the order to disclose the requested information/ documents;
 - (v) An order that he pay a fine in the amount of \$3,000; and
 - (vi) An order that he contribute to the CGAO's costs of the proceeding, in the amount of \$5,000.
34. Ms. Jolley noted that the Committee was not seeking the return of his CGAO certificates; since Mr. Vachon had already returned his (defaced) certificates in conjunction with his purported resignation.
35. Ms. Jolley referred to the Tribunal's decision in the Doma and Nagy cases, in which a member was found to have violated Rules 610 and 611. She noted that she had provided copies of those decisions to Mr. Vachon, so that he would be aware of the potential consequences of failing to respond to the Committee's requests.
36. In the Nagy case, the Tribunal reprimanded the member, suspended him for one month, directed him to return his membership certificates, and directed him to provide the CGAO with requested information and documentation within one month, failing which he would be expelled. The Tribunal also ordered him to pay a fine in the amount of \$3,000 and costs to the Discipline Committee in the amount of \$2,500.
37. In the Doma case, the Tribunal reprimanded the member, suspended him for one month, and directed him to provide the CGAO with requested information. If he did not comply with the request within 30 days, his suspension would continue for

a further 30 days. If he failed to provide the information within 60 days, he would be expelled. The Tribunal also directed that he surrender his certificates for the duration of the suspension, and ordered him to pay a fine in the amount of \$3,000 and costs to the Discipline Committee in the amount of \$5,000.

38. Ms. Jolley also referred to a number of similar cases before other professional discipline tribunals, in which uncooperative members were suspended from their organizations, with an order that they be expelled if certain conditions were not met, and fines were imposed in the range of \$3,500 to \$6,500.
39. In his email to the Registrar, Mr. Vachon stated that he should not be ordered to pay a fine or costs. He asserted that his case was different from the Nagy and Doma cases, because there was no substance to the case against him, and because there had been no complaint from a client or CGA member. He argued his case was different because no investigator had been appointed, and because the other cases were more complex and involved more work on the part of the CGAO. He further argued that the CGAO had generated "unnecessary legal fees" because he had requested that they stop communicating with him, he had not asked them to send him letters or the discipline brief, and they should have accepted his resignation. Finally, he asserted that he could not afford to pay a fine.
40. In response to questions from the Tribunal, Ms. Jolley argued that the CGAO was entitled to act on the September 2008 letter and address the subsequent failures to respond to the Committee's requests. She stressed the importance of consistency with the existing jurisprudence and noted that there was no evidence of impecuniosity. She noted that, while no investigator had been appointed in this case, various legal searches had been conducted with respect to the actions/charges described in the September 2008 letter. She also noted that, given the

seriousness of the allegations, legal counsel had been involved from an early stage.

E. RULING

41. Based on the evidence submitted at the hearing, we have concluded that Mr. Vachon violated Rules 610 and 611 of the *Code*, which requires members to reply in writing to written requests from the Association and to produce documents within their possession and control.
42. Mr. Vachon did not reply to much of the CGAO's correspondence. Although he did reply to some of the CGAO's correspondence, his replies generally indicated a refusal to cooperate. In some instances he indicated that he would cooperate, but the information/ documentation requested was not subsequently provided. The few documents which he did provide (the fax cover letter and the registered mail tracking sheets) did not substantively respond to the Association's requests. Ultimately, he provided no information or documentation to support the allegations in the September 2008 letter, much less any information or documentation upon which the Association could conduct a further investigation.
43. Mr. Vachon's communications were, for the above reasons, unsatisfactory and did not comply with his obligations under Rules 610 and 611. He was put on notice by the CGAO that his responses were inadequate and was given numerous opportunities to furnish the necessary information/documentation. His failure to do so was in violation of Rules 610 and 611.
44. In the circumstances of this case, we agree with the Discipline Committee that Mr. Vachon should be provided with an opportunity to comply with his obligations and return to good standing in the Association.

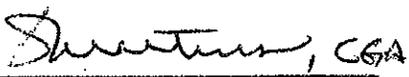
45. However, some sanctions are required in order to ensure that he is governable as a member, and that he appreciates the seriousness and importance of his professional obligations. Sanctions are also required in order to permit the CGAO to fulfill its role as a professional regulator, in the public interest.
46. In consideration of all the evidence and submissions, we have concluded that the following penalties constitute the most appropriate sanctions in the circumstances of this case.

F. ORDERS

47. We order that Mr. Vachon be immediately suspended from membership in the CGAO for 30 days (commencing the date of this decision). While the Discipline Committee requested a suspension of 60 days, we are of the view that 60 days is too lengthy and that 30 days is ample time to allow him to respond.
48. We order Mr. Vachon to comply with the CGAO's request for information by fully responding to the Committee's letters of October 22, 2008, November 13, 2008 and January 13, 2009, and providing the documents requested therein. If Mr. Vachon fails to do within 30 days (of the date of this decision), he shall be expelled from the CGAO.
49. We remain seized of this matter in the event that the parties have a dispute about whether or not Mr. Vachon has complied with the above order. In the event of such a dispute, the parties may refer the matter back to us for further consideration.
50. We order Mr. Vachon to pay a fine in the amount of \$3,000. We believe that the facts and circumstances of this case are comparable to the Nagy and Doma cases, and that the fine imposed in those cases is also appropriate here.

51. Finally, we order Mr. Vachon to pay costs to the CGAO Discipline Committee in the amount of \$5,000. We accept that, although no investigator was appointed in this case, there were costs associated with the involvement of legal counsel and the various searches conducted with respect to the actions/ charges described in the September 2008 letter. We believe that these legal fees were not "unnecessary" as argued by Mr. Vachon, but rather stemmed from the serious allegations he made, and his failure to respond to promptly and substantively to the Association's requests.

Dated this 13th day of July, 2009.



Donn Martinson, Chair
(for the Tribunal)

I concur with the decision and reasons of the Chair, Donn Martinson.

"Jane Rivers"

Jane Rivers, CGA

I dissent (attached)

"Daniel Iggers"

Daniel Iggers, public representative

DISSENT

I do not agree with my colleagues that a fine or costs should be imposed in this case.

There is ample precedent for imposing fines on members who deliberately fail to respond to communications from the Association, and who deliberately fail to respond appropriately to requests to provide information.

As well, the Tribunal has the jurisdiction to order that a member pay costs. Costs normally are awarded in cases where a member is found to have engaged in improper conduct.

However, I am not persuaded that this is a case where either a fine or costs are appropriate. In my view, the content of the Member's communications with the Association suggests that this case differs from the usual case of failure to cooperate that merits a fine and costs.

This case begins with an e-mail from the Member to the Association that contains multiple allegations, referring to corruption, illegal acts, collusion, conspiracy, fraud and cover-up, obstruction and defamation, harassment and the destruction of his personal life and his career. The Member alludes to "severe civil and criminal charges" and to \$20 million in damages. He refers to the Prime Minister, the Minister of Revenue and the CRA Commissioner being briefed, and to matters being referred to the Public Sector Integrity Commissioner. He states that the "illegal and criminal activity is estimated to be ten folds that of the sponsorship scandal".

The character of the Member's allegations is such that it is hard to believe that the Association seriously expected that their request actually would elicit a response that would support the Member's allegations. In fact, it seems predictable, given the state of mind that seems to be reflected in the Member's communications, that he would conclude that the Association was part of a conspiracy against him. It seems clear from the Association's response to the Member's initial e-mail, that the Association's concern was not the merits of the allegations that he made, but his conduct in making the allegations.

Eventually, following further exchanges of communications with the Association, the Member returned his certificates, which he had defaced, and tendered his resignation as a Member. The Member also declined to attend the hearing. The Association declined to accept the Member's resignation, and took the position, which it was entitled to do, that the Member was not entitled to resign while a disciplinary matter was pending.

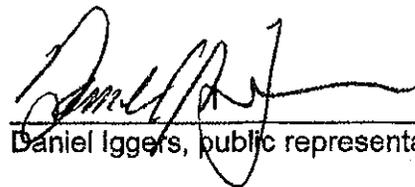
The Association seems to have concluded, when it received the initial e-mail from the Member, that the Member appeared to be conducting himself in a manner that was inappropriate for a Member, and decided that it would be appropriate for the Member to be dealt with through the Association's discipline process. The Association used the disciplinary tools that were available to address the problem of the Member's bizarre conduct.

I am not convinced, however, that it is appropriate in this case to either levy a fine or require the Member to pay costs. The Member's bizarre responses to the Association in my view were entirely consistent with his initial e-mail. It was entirely predictable from the outset that the Member would not satisfy the Association's request to back up his allegations. The content of the Member's communications to the Association, and the allegations of nefarious activities directed by a number of individuals against the Member, suggest that the Member is a troubled individual.

Asking the Member to respond, when it was predictable that he would not respond in a satisfactory way, then incurring investigation costs and initiating a disciplinary process based on his failure to cooperate, and eventually seeking a fine and a costs order based on the Member's predictable response, in my opinion does not seem to be an optimal way to address the problem that the Member's conduct presented. In the circumstances, neither a fine nor a costs order seem to be appropriate.

I do not mean to suggest here that the Association acted improperly or in bad faith in asking the Member to back up his allegations, and in initiating the disciplinary proceeding that is before the panel. It may be that the Association needs to find an alternative approach for cases such as this. Bill 158, which was introduced this year but has not yet passed through all readings, would create a capacity committee and capacity tribunal, and would establish various mechanisms for investigating and addressing information which suggests that a member is incapacitated, including in some circumstances medical or psychological assessment.

Dated this 10th day of July, 2009,


Daniel Iggers, public representative

NOTICE

This decision of the Professional Conduct Tribunal may be appealed to an Appeal Tribunal within thirty (30) days of the sending of this decision.

A Notice of Appeal must be in writing, addressed to the Secretary of the Association (Certified General Accountants Association of Ontario, 240 Eglinton Avenue East, Toronto, Ontario, M4P 1K8) and must contain the grounds for the appeal.

TAKE NOTE THAT, in an appeal, the Appellant bears the onus of obtaining copies of the transcript of the hearing before the Professional Conduct Tribunal for the Appeal Tribunal (4 copies) and for the Respondent (1 copy).

According to Article 9 of By-Law Four, a Notice of Appeal that fails to contain the grounds for the appeal, together with evidence that demonstrates that a transcript of the hearing giving rise to the appeal has been ordered, shall be invalid.