

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

**IN THE MATTER OF a Complaint against
Peter Chiu**

BETWEEN

The Discipline Committee of the CGAO

- and -

Peter Chiu

Decision of the Professional Conduct Tribunal

Members of the Tribunal: D. Alan Jones, FCGA, Chair
Dan Coghlan, CGA
David Handley

Appearances: Karen Jolley, counsel for the Discipline Committee
Frederine Chiu, agent for Peter Chiu
Cynthia Petersen, counsel for the Tribunal

Hearing Date: February 27, 2006

Pursuant to a notice of hearing dated November 7, 2005, Peter Chiu was charged by the CGAO Discipline Committee with violating the following rules of the CGAO's *Code of Ethical Principles and Rules of Conduct*:

Rule 101 – Discredit

A member shall not permit the member's firm name or the member's name to be used with, participate in, or knowingly provide services to any practice, pronouncement, or act that would be of a nature to discredit the profession.

Rule 102 – Unlawful Activity

A member shall not permit the member's firm name or the member's name to be used with, participate in, or provide services to any activity that the member knows, or which a reasonably prudent person would believe, to be unlawful.

Rule 606 – Detrimental Actions

A member shall not participate in any action that is detrimental to the Association or the profession.

Rule 607 – Evidence of Professional Misconduct

A member who has been found guilty or granted an absolute or conditional discharge of any criminal or similar offence, which may cast doubt as to that member's honesty, integrity or professional competency, shall promptly inform the Association of the conviction, finding of guilt or discharge, as the case may be, when the right of appeal has been exhausted or expired. In such cases, the member may be charged with professional misconduct by the member's provincial ethics committee. A certificate of conviction by any competent court shall be sufficient evidence of the conviction and the perpetration of the offence.

Rule 607.1 - Criminal and Similar Offences

Criminal or similar offences include, but are not limited to, the following offences:

- (a) fraud, theft, forgery or income tax evasion;
- (b) violation of the provisions of any securities legislation; or
- (c) any criminal or similar offence for conduct in, or related to, the member's professional capacity or for conduct in circumstances where there was reliance on their membership in, or association with, the Association.

The particulars of the charges against Mr. Chiu are that, between 1991 and 2001, he defrauded his employer, Hooper Holmes Canada Limited, of more than \$2.5 million.

The evidence at the hearing showed that Mr. Chiu was charged with several criminal offences in December 2001. He pleaded guilty to a single charge of fraud over \$5,000 on September 12, 2005 and the remaining charges were withdrawn. He was sentenced to 3 years in custody on November 9, 2005.

A certificate of conviction, transcript from the criminal proceeding, and Reasons for Sentencing were entered into evidence before us at the hearing. They showed that Mr. Chiu was hired as controller for Hooper Holmes, located in Scarborough, Ontario, in 1989. He was promoted to Chief Financial Officer a few years later. He abused his position by writing company cheques to himself and covering up his actions so that his colleagues and employer were unaware. Over a period of approximately 10 years, he wrote 182 cheques to himself, thereby defrauding the company of \$2,568,432.64. He was caught in 2001 when he went on vacation and another employee noticed that a returned cheque was made out to him.

According to the Reasons for Sentencing in Mr. Chiu's criminal trial, approximately \$400,000 was recovered by Hooper-Holmes through civil proceedings against Mr. Chiu. Mrs. Chiu advised the Tribunal that she borrowed money and mortgaged the family home in order to make payments to Hooper Holmes. She also advised us (and the court judgment confirmed that) after Mr. Chiu's employment with Hooper Holmes was terminated, he found another job with the Ontario government and made efforts to repay Hooper Holmes some of the monies he had taken. Mr. Chiu told the criminal court "that he will continue for the rest of his working life to make restitution to his former employer" but estimated that "these efforts would likely amount to slightly more than \$200,000 or less than 10% of the amount taken". The trial judge stated:

"I do not doubt the sincerity of that offer nor do I quarrel that Mr. Chiu is offering everything that he can given his current level of income. It does not change the fact, however, that the overall level of restitution would be minimal. Finally, Mr. Chiu has expressed remorse for his actions and I believe that he was sincere in doing so." (Reasons for Sentencing, p.5)

The judge also found that there is "no evidence that he has hidden or stashed away any of the money he obtained by defrauding his former employer" (Reasons for Sentencing, p.7).

Mr. Chiu was incarcerated at the time of the hearing in this matter. His wife, Frederine Chiu, appeared before the Tribunal to make submissions on his behalf. In addition to making submissions, she provided the Tribunal with a copy of letter from Mr. Chiu dated February 6, 2006, which we have reviewed and considered. The parties also made additional written submissions to the Tribunal after the conclusion of the oral hearing on February 27, 2006. Those submissions have also been reviewed and considered by the Tribunal.

Issues

Mr. Chiu admits the charges against him, so there is no dispute that he violated the CGAO's *Code of Ethical Principles and Rules of Conduct*. He also consents to expulsion from the Association, which was the only penalty sought by the Discipline Committee.

The only issue before us was whether or not Mr. Chiu's expulsion ought to be published in *CGAO Statements* (which also appears on the CGAO website) and a community newspaper. The Discipline Committee proposes to publish Mr. Chiu's expulsion in the *Statements* and in the *Toronto Star*. Mr. Chiu requests that the Tribunal order that no publication be made. In the Alternative, Mrs. Chiu submitted that, if publication is required, then it should be only in the *Statements*. In the further alternative, she submitted that if publication in a newspaper is required, then it should be only in the *Markham Economist and Sun*.

It should be noted that, according to the evidence presented at the hearing, the charges against Mr. Chiu were originally published in the *Toronto Star* in December 2001. Neither Mr. Chiu's conviction in September 2005 nor his sentencing in November 2005 were published in any newspaper.

By Law Requirements

Section 21(1), Article 9, By Law Four of the CGAO's By Laws stipulates that the Association shall release Tribunal decisions to the public and to CGAO members where a member has been expelled from membership. Exceptions to this general rule of publication are narrowly circumscribed by section 21(2) which states:

Notice of expulsion of a member shall be given to the public by publication in a newspaper or newspapers distributed in the geographic area of the member's current or former practice, employment and/or residence, or in such other manner as the Association may determine to be appropriate, unless the tribunal determines that the circumstances of the case are of a nature that such notice is not in the public interest and would be unduly unfair to the member, in which case the tribunal shall provide written reasons for not ordering publication of the notice.

Section 21(3) provides that "the onus of proving to the tribunal that a notice of expulsion should not be released to the public or to members is on the member."

The Association is therefore required by the By Law to publish Mr. Chiu's expulsion publicly and within its membership unless Mr. Chiu persuades the Tribunal of two things, namely (1) that publication is not in the public interest in the circumstances of this case and (2) that publication would be unduly unfair to Mr. Chiu in the circumstances of this case. It is important to note that neither of these two criteria alone is sufficient. The By Law clearly requires that both criteria be met before the Tribunal can order an exception to the general rule of publication.

Discipline Committee's Submissions

Ms. Jolley, on behalf of the Discipline Committee, argued that there is nothing significantly different about this case relative to other cases involving members who

commit fraud. She submitted that there were no particular circumstances that would justify an exception to the publication rule.

Ms. Jolley argued that the purpose of publishing a member's expulsion is not limited to specific deterrence, but rather includes the aims of general deterrence and of achieving transparency in the disciplinary process. As a self-regulating profession, she stated, the CGAO must ensure that public confidence is maintained in the discipline process, and publicity is essential for maintaining public confidence in the Association's ability to self-govern.

Ms. Jolley referred the Tribunal to a number of professional discipline cases in which the Discipline Committee of the Institute of Chartered Accountants of Ontario ordered publication of expulsion orders. In those cases, the Committee emphasized the importance of publication as a means of effecting general deterrence. In the *Adair* and *Stinchcombe* cases, the Committee suggested that the embarrassment to a member's family that is occasioned by publication of the member's expulsion may be the single most significant penalty that deters other members from committing similar offences. The cases also highlighted the importance of transparency in the disciplinary processes of self-governing professional bodies.

Ms. Jolley submitted that the reasoning in the Institute cases should be followed by the Tribunal. Referring specifically to the above-noted requirements of the By Law, she submitted that the public interest would best be served by publication of Mr. Chiu's expulsion in this case. With respect to the impact that publication might have on him personally, she argued that it would not be "unduly unfair". She stressed the seriousness of his offence, the fact that it was a calculated act involving multiple transactions and very large sums of money, rather than an impulsive act or momentary lapse of judgement. She further noted that the trial judge in the criminal proceeding had concluded that Mr. Chiu's actions were motivated by greed. In all the circumstances of this case, she submitted, there was no basis for deviating from the general rule that expulsion should be published both in *Statements* and in a newspaper.

Ms. Jolley argued that the *Toronto Star* was the appropriate newspaper, since that was where Mr. Chiu's charges were published in 2001, and since its distribution would cover both his place of residence and the location of his former employer.

Submissions on Behalf of Mr. Chiu

Ms. Chiu made compelling submissions on behalf of her husband, urging the Tribunal not to publish his expulsion. She described the extreme emotional and financial toll that Mr. Chiu's criminal actions have taken on her and their two children. She explained that, despite her anger toward him for his deceitful actions, she decided to remain committed to their marriage and hopes to be able to rebuild a new life with him after his release from custody. They have two children in University. She pleaded with the Tribunal not to make an order that would jeopardize their family's ability to start a new life.

Ms. Chiu is a real estate broker who spent more than two decades building a reputation for herself in a relatively closed community. Her business includes some property and investment management, which requires clients to entrust her with their money. She worked hard to develop her clientele and suffered a serious setback in her business when the charges against her husband were published in the *Toronto Star* in 2001. She explained that some of her clients lost trust in her. She described how she received calls from bankers and from clients inquiring about the criminal charges. She said that it was difficult for her to persuade clients to continue to trust her, even though she had no involvement in nor any knowledge of her husband's criminal activities. Her reputation and business were harmed by the publication of the criminal charges against him and she has spent the past few years trying to re-establish herself. It has been extremely difficult for her to engage in sales work while under the psychological and emotional stress that her husband's incarceration has created. Since November of last year, she has not been able to "smile, talk to people, show houses" and otherwise engage in the activities required to successfully pursue sales.

Ms. Chiu argued that, if her husband's expulsion from the CGAO is published in the newspaper, she will suffer further losses to her business, which she may never be able to recover. She stated that she did not think she could rebuild her client base once again.

Ms. Chiu also argued that, if the expulsion is published in the newspaper and/or *Statements*, her husband is likely to lose his current job with the Ontario government. She explained that his employer is unaware of his criminal conviction and that Mr. Chiu is currently on a leave of absence from work. (Mr. Chiu's letter states: "I have gained trust with my current employer. I am presently on leave of absence for personal circumstances.") She was certain that, if the employer discovered his conviction for fraud, his employment would be terminated. Although he does not require a CGA designation in his current position, many of his colleagues are CGAs and publication of his expulsion in *Statements* would therefore likely result in his employer learning about his conviction. As a man in his 50s, Mr. Chiu has few other job prospects. (In his letter, Mr. Chiu stated: "I am 50 years old and possess no other skill, limited by chronic back pain and right arm, would be difficult, if not impossible, to be employed, especially with my notice of expulsion publicized.") Ms. Chiu argued that loss of his employment would be devastating for their family, particularly since her business has suffered financially in recent years. Since his incarceration in November, she has been the family's sole income provider. She has been struggling financially to make mortgage payments and to pay for her children's university education. She also financed Mr. Chiu's legal defence.

In short, Ms. Chiu argued that both she and her children would suffer, in addition to Mr. Chiu, if his government employment were lost. She also submitted that his ability to make further restitution to Hooper Holmes would be compromised if he lost his job. She explained that her children would not only suffer financially, but also emotionally, as a result of the embarrassment that publication of their father's expulsion would generate.

Ms. Chiu argued that the public interest would not be jeopardized if there was no publication of the expulsion in this case because Mr. Chiu does not work in public practice. His crime, while serious, involved only one victim – his former employer – not

numerous clients. Moreover, in his government job, Mr. Chiu is a financial analyst and does not have responsibility for handling any funds, so there is no risk that he will re-offend by defrauding his current employer.

Finally, Ms. Chiu urged the Tribunal to give Mr. Chiu a chance to start over. She stated that he regrets his misconduct and recognizes that many people suffered as a result of his actions. She submitted that "overall he is a good person, a good husband, a good father, and good son-in-law."

In his own letter to the Tribunal, Mr. Chiu reiterated many of the points made by Ms. Chiu. He also submitted:

"I am currently following a correctional plan prepared by Correctional Services Canada for reintegration to the society upon release from a Federal Institution on Day Parole in early May 2006. Notifying the public and to other CGA members about my expulsion would defeat the spirit and process of my reintegration to the society."

He further stated: "I am a changed and corrected person since my arrest and seek a new life."

Mr. Chiu also asked the Tribunal to take into consideration his full cooperation with the CGAO in the discipline process. The fact of his cooperation was confirmed by the testimony of Ralph Palumbo at the hearing (a witness on behalf of the Discipline Committee). He testified that Mr. Chiu voluntarily suspended his CGAO membership when the criminal charges were laid against him, pending resolution of the criminal proceedings. Mr. Chiu also voluntarily surrendered his CGAO certificates after his conviction.

In written submissions to the Tribunal after the hearing, Ms. Chiu requested that, if the Tribunal insists on publication, then it should only be in *Statements* or, alternatively, in the *Markham Economist and Sun*, a newspaper in circulation in the area of their residence. Ms. Jolley responded that publication in the *Toronto Sun* is appropriate because that was the newspaper in which the charges against Mr. Chiu were first published and also because the victim of Mr. Chiu's criminal conduct (his former employer) is located in Scarborough, not Markham.

Decision

Mr. Chiu admits the charges against him and does not dispute that he violated the CGAO's *Code of Ethics and Rules of Conduct*. He consents to expulsion from the Association and the Tribunal unanimously accepts that this is the appropriate penalty, given the gravity of his offence. Consequently, Mr. Chiu is hereby ordered expelled from the CGAO.

For the reasons that follow, the Tribunal concludes that Mr. Chiu's expulsion should be published in the *Toronto Star* and the *CGAO Statements*. We gave serious consideration to Ms. Chiu's submissions and found her arguments to be very compelling, but in the end, we found that Mr. Chiu has not met his onus of establishing the two elements required by subsection 21(2) of Article 9. Specifically, while we recognize the negative impact that publication will have on Ms. Chiu and her children, Mr. Chiu has not persuaded us that giving notice of his expulsion to the public would be "unduly unfair" to him (as opposed to his family).

Subsection 21(2) requires publication of expulsion orders except where the member persuades the Tribunal that it would not be in the public interest and would be unduly unfair to him. As noted above, both of these elements must be met in order to obtain a publication ban from the Tribunal. In Mr. Chiu's case, the public interest is difficult to assess, since the "public" consists of many different people and they have divergent interests. In our view, the public includes the Chiu family, as well as Mr. Chiu's former and current employers.

Publication of Mr. Chiu's expulsion is obviously not in his family's interest. While it is arguable that publication of a member's expulsion would never be in the member's family's interest, we believe that this case is unique, since the potential harm to Ms. Chiu is exacerbated by the specific nature of her occupation. Publication of her husband's expulsion will not simply result in embarrassment to her, but may also have serious adverse effects on her career, reputation and earning potential. As the sole supporter of her two children, their interests are also potentially jeopardized. Furthermore, it was apparent from Ms. Chiu's presentation at the hearing, that publication will also likely have severe emotional consequences for her personally. We believe that these are relevant factors under the By Law, which weigh against publication.

On the other hand, we are also required to consider the interests of other members of the public, including Mr. Chiu's current employer. The evidence reveals that Mr. Chiu's employer is not aware of his conviction and has granted him a leave of absence from work for personal circumstances. We believe that it is in his employer's interest to know the true reason for Mr. Chiu's absence from work (i.e., incarceration for large scale fraud committed against his former employer). This factor therefore weighs in favour of publication.

Mr. Chiu's former employer, Hooper Holmes Canada Limited, is another member of the public whose interests must be considered. Mr. Chiu argued that, if his expulsion is published, it will likely result in termination of his current employment and diminished job prospects, which in turn will hamper his ability to make restitution to Hooper Holmes. While we accept that this is another relevant factor for consideration, we also believe that, as the victim of Mr. Chiu's criminal conduct, Hooper Holmes has an interest in knowing that Mr. Chiu has been appropriately disciplined by the professional organization of which he was a member at the time of his offences. Publication could therefore have both beneficial and negative effects on the interests of Mr. Chiu's former employer.

Finally, we accept Ms. Jolley's submission that the broader public interest is served by penalties that achieve general deterrence. Publication of Mr. Chiu's expulsion in the newspaper, with all of the consequences that flow from it, is one means of deterring other CGAs from engaging in similar misconduct. Publication in the *Statements* alone would not necessarily achieve the same effect.

The Tribunal struggled to weigh and balance all of these competing factors in trying to determine whether publication would ultimately be in the public interest. In the end, we concluded that it was unnecessary to decide, because Mr. Chiu has not satisfied the second element required by subsection 21(2) of the By Law. Specifically, Mr. Chiu did not persuade us that it would be unduly unfair to him to publish his expulsion.

There is no doubt that publication is unfair to his spouse, who has already suffered considerably as a result of his misconduct, but that is not the standard articulated by the By Law. In order to avoid publication, Mr. Chiu must persuade us that it would be unduly unfair to him.

We considered Mr. and Ms. Chiu's pleas to give Mr. Chiu a chance to start a new life upon his release from custody. However, we reject Mr. Chiu's argument that "notifying the public and to other CGA members about my expulsion would defeat the spirit and process of my reintegration to the society." Reintegration to society should be undertaken by Mr. Chiu in a spirit of accepting responsibility for his past actions, not concealing them. We recognize that his reintegration will be more challenging if his current employer, co-workers, friends and acquaintances learn that he has been expelled from the CGAO, but we do not believe that this challenge is "unfair" to him.

In assessing the fairness of any penalty (including publication), it is relevant to consider the seriousness of the member's misconduct. In this case, Mr. Chiu's misconduct involved repeated pre-meditated actions over a long period of time, a breach of his employer's trust, and large sums of money. We therefore do not feel that publication is unfair to him, even if it results in termination of his current employment and/or reduced job prospects in the future. There was no evidence that other serious consequences would likely flow from publication. The anticipated consequence (i.e., impact on his employability) is not exceptional – it is a consequence that might flow from publication of a member's expulsion in any case. To ban publication on this basis would therefore undermine the intent of subsection 21(2) of the By Law, which is clearly to ban publication only in exceptional cases.

Finally, while we are very sympathetic to Ms. Chiu, we do not agree that publication in the Markham newspaper would be sufficient. That newspaper does not have broad circulation and, in particular, would not likely reach either his current or former employers, both of whom have an interest in knowing the outcome of this disciplinary proceeding.

Based on all of the above, we order that Mr. Chiu be expelled from the Association and that his expulsion be published in *CGA Statements* and in the *Toronto Star*.

Costs

The Discipline Committee requested an order of costs in the amount of \$1,500. Ms. Jolley noted that this amount represents only a partial contribution to the total costs incurred by the CGAO in connection with this proceeding. She argued that it would be unfair for membership dues to be used to cover the entire costs of the proceeding.

Ms. Chiu argued that no costs should be awarded. She referred to the difficult financial circumstances that she and her husband are already experiencing. She also noted that Mr. Chiu had been very cooperative throughout the disciplinary process and had admitted his guilt and accepted responsibility for his actions.

Since the Discipline Committee was successful in this matter, the Tribunal finds that it is appropriate to award costs. However, we have decided to reduce the amount of costs in light of the following considerations: (1) although Ms. Chiu was not successful in her request for a non-publication order, we found that her position and her arguments had considerable merit; (2) Mr. Chiu admitted his actions and consented to expulsion, thereby shortening the hearing process; (3) Mr. Chiu cooperated throughout the disciplinary process and his cooperation mitigated the costs that the CGAO would otherwise have incurred in prosecuting this matter; (4) the hearing was completed in half a day.

We therefore order Mr. Chiu to pay the Discipline Committee \$750 toward its costs of this proceeding.

Dated this 20th day of March, 2006



D. Alan Jones, FCGA
for the Professional Conduct Tribunal

CONCURRING DECISION OF DAVID HANDLEY:

I have read and generally agree with the decision of my colleagues. However, I wish to add my own reasons to those articulated by the chairperson.

Having concluded that publication of Mr. Chiu's expulsion would not be "unduly unfair" to him, we have no choice but to order publication in this case. Subsection 21(2) of Article 9 of By Law Four states that publication "shall" be made "unless the tribunal determines that the circumstances of the case are of a nature that such notice is not in the public interest and would be unduly unfair to the member" (emphasis added). There is no ambiguity in the By Law and we have no jurisdiction to ban publication unless both of these elements are satisfied. Since the element of unfairness to the member is not

satisfied in this case, publication of the member's expulsion must follow, regardless of whether or not it is in the public interest.

I therefore agree with my colleagues that publication is the outcome required by the By Law in this case, but I question whether it is a fair or appropriate outcome. In my view, the publication of Mr. Chiu's expulsion in the newspaper is not in the public interest, given the very serious consequences to Ms. Chiu and her children. I am particularly concerned about the period of time that has passed since Mr. Chiu was originally charged and since the allegations against him were first published in the media (in December 2001). The criminal trial process was lengthy and resulted in considerable delay in bringing this matter to resolution. Consequently, four years passed before there was a conviction. Once the conviction was entered, the CGAO discipline process moved swiftly and was resolved expeditiously, but the fact remains that more than four years have now passed since the original publication of the charges against Mr. Chiu.

In those intervening years, Mr. Chiu's children and particularly his wife have dealt with the consequences of the charges against him and of the original publication. Specifically, Ms. Chiu suffered significant adversity in her professional career, from which she is just beginning to recover. She also struggled with the stress placed upon her marriage as a result of Mr. Chiu's deceit and the harm that his conduct caused her and her children. She explained at the hearing how long it took her to work through those issues and arrive at the conclusion that she would support her husband and forgive his actions. Republication of the charges against Mr. Chiu, which will form part of the public notice regarding his expulsion, will reopen wounds for Ms. Chiu, resulting in further setbacks for her both professionally and personally.

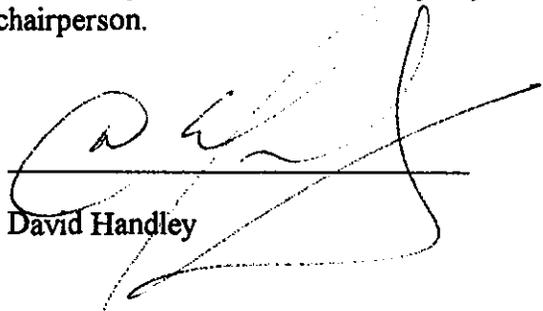
While I recognize the need for the CGAO to be seen by the public at large to be functioning appropriately as a self-regulating profession, I do not think that the need for transparency in the disciplinary process extends to the point where it ought to become punitive for an innocent party.

I understand that we must consider the interests of all members of the public, not just those of Ms. Chiu and her children. Although I recognize that there are others who may have an interest in receiving notice of Mr. Chiu's expulsion, I do not believe that their interests outweigh those of Mr. Chiu's family in this particular case. His former employer could be advised of the outcome of this proceeding by the Discipline Committee providing it with a copy of this decision. As for his new employer, I question whether it is the CGAO's responsibility to ensure that it has knowledge of Mr. Chiu's past actions. That employer presumably had an opportunity to verify Mr. Chiu's employment references and complete a background check before it hired him. Finally, while the issue of general deterrence is important, I think it could be satisfied with publication in CGAO *Statements* in the circumstances of this case. On balance, therefore, I conclude that publication of Mr. Chiu's expulsion in the newspaper is not in the public interest.

It is in light of this conclusion that I question the fairness of a publication order in this case. I also wonder whether the Association really intended the By Law to require

publication of a member's expulsion even when a Tribunal concludes that publication is not in the public interest. But the language of the By Law, which clearly requires this interpretation, has tied our hands in this matter. We have no jurisdiction to ban publication unless we conclude that it would be unduly unfair to Mr. Chiu, regardless of whether it is unduly unfair to his family, or otherwise contrary to the public interest.

Thus I am reluctantly in agreement with the publication order in this case, although I would order that publication should only be made in the *CGAO Statements* and the Markham newspaper, rather than the *Toronto Star*. The By Law does not, in my view, require publication in the *Toronto Star* and I would therefore respectfully dissent from the majority decision on that one point. I am in agreement with the majority decision on costs, for the reasons articulated by the chairperson.



David Handley

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. The 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.

IN THE MATTER OF a proceeding under the
Certified General Accountants of Ontario Act, 1983

IN THE MATTER OF a decision of the Professional Conduct
Tribunal of the Certified General Accounts of Ontario, relating
to a complaint against Peter Chiu

BETWEEN:

Peter Chiu

(Appellant)

- and -

The Discipline Committee of the CGAO

(Respondent)

DECISION OF THE APPEAL TRIBUNAL

Mr. Chiu, who was the subject of a decision of the Professional Conduct Tribunal dated March 20, 2006, has requested an extension of time for filing an appeal. For the reasons that follow, the request is hereby denied.

Background

In November 2005, Mr. Chiu was charged with violating the rules of the CGAO's *Code of Ethical Principles and Rules of Conduct*. The matter was referred to the Professional Conduct Tribunal for a discipline hearing. Mr. Chiu was incarcerated at the time of the hearing and, rather than seek release from custody to attend the hearing, he chose to send an agent to make submissions on his behalf. He provided the Professional Conduct Tribunal with written authorization to permit his wife, Frederino Chiu, to act as his agent and appear at the hearing. The hearing was held on February 27, 2006 and Ms. Chiu participated fully as agent for Mr. Chiu.

Mr. Chiu, through his agent, admitted the charges against him and did not contest the penalties sought by the Discipline Committee at the hearing. The only issue in dispute between the parties at the hearing was whether or not the CGAO should publish notice of Mr. Chiu's expulsion from the Association and, if so, in which publications. Ms. Chiu urged the Tribunal not to publish the expulsion at all, or at least not in the newspaper, and if necessary, only in a local Markham newspaper. The Committee's position was that there was no basis for an exception to the requirement under the Association's by law to publish the expulsion in both the newspaper and

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the *CGAO Statements*. The Committee argued that the *Toronto Star* was the appropriate newspaper in which to publish the Tribunal's decision.

The Committee also sought an order of costs in the amount of \$1,500, which was contested by Ms. Chiu.

The Professional Conduct Tribunal issued its decision on March 20, 2006. The majority of the Tribunal ordered publication of Mr. Chiu's expulsion in the *CGAO Statements* and the *Toronto Star*. One member of the Tribunal dissented, concluding that publication in a local Markham newspaper would be sufficient. The Tribunal was unanimous in its decision to award the Committee \$750 in costs.

The Tribunal's decision was sent to the parties, in accordance with the requirements of the CGAO's bylaws, on March 20, 2006. It was delivered by registered mail to Mr. Chiu's agent, Frederine Chiu. The decision included the following 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. The Notice of Appeal must be in writing, addressed to the Secretary of the Association (Certified General Accountants Association of Ontario, 2-10 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.

No appeal was filed by Mr. Chiu.

On Friday March 24, 2006, the Registrar of the Appeal Tribunal received a letter from Ms. Chiu, dated May 22, 2006 (sic), in which she confirmed that she had received the Tribunal's decision. She stated that she was "very upset" by the decision and wrote: "I CANNOT and DO NOT want to disclose this information to" Peter Chiu, because it would upset him. She mentioned that she would "consider" an appeal and requested information regarding the procedure for filing an appeal.

The Registrar responded to Ms. Chiu's correspondence on Monday March 27, 2006 and reiterated the information regarding the procedure for filing an appeal. Ms. Chiu was advised that any appeal must be filed with 30 days of the sending of the Professional Conduct Tribunal's

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decision, namely by April 19, 2006. Details of the bylaw requirements for filing an appeal were contained in the letter, including the requirement to order copies of the transcript of the Tribunal's proceedings to be included in the record on appeal.

On April 20, 2006, the Registrar received by regular mail a letter from Peter Chiu dated April 5, 2006, in which he requested an extension of time to May 30, 2006 for filing an appeal. He gave the following reasons:

1. *I was advised verbally of the Tribunal's decision and it may take several more days before I receive a copy of same for me to review and understand.*
2. *My agent of the subject matter while I am incarcerated, my wife Frederine Chiu, will be out of town by the time you read this letter and will not be available until after April 14, 2006. This does not give sufficient time to request transcripts of the February 27, 2006 hearing, as well as forwarding same to me for review and understand. (sic)*
3. *All relevant documents for the subject matter are not with me and I need extra time for my wife to locate and forward same to me for review.*
4. *It normally takes five to six working days to send documents from my residence to my current institution and vice versa.*

Mr. Chiu also requested that a copy of the appeal procedure be sent to his wife so that she could forward it to him. As noted above, details of the appeal procedure had already been sent to his wife by letter dated March 27, 2006.

Mr. Chiu did not send a copy of his letter to counsel for the Discipline Committee, but requested that it be forwarded to her. The Registrar forwarded the letter on April 20, 2006 and requested the Committee's submissions with respect to the request for a time extension. Counsel for the Committee responded on April 21, 2006, as follows:

1. *The deadline is not a discretionary one. The appeal must be commenced within 30 days and it was not.*
2. *Mr. Chiu's agent was advised 3 weeks ago that the appeal deadline was April 19 and no steps were taken.*
3. *There having been no appeal, the discipline committee has put in place the publication.*

Decision

Notwithstanding that the matter may be moot, since the Discipline Committee has already placed the disputed publication, the Appeal Tribunal has considered Mr. Chiu's request.

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The Discipline Committee is correct that the deadline for filing an appeal is not discretionary. Article 9, s.22(1) of By Law Four states:

The discipline committee or the person who was the subject of the hearing may notify the secretary of the Association in writing within 30 days of the sending of the decision and reasons referred to in Paragraph 16 of this Article, that they wish to appeal the decision of the professional conduct tribunal to the appeal tribunal. A notice that fails to contain the grounds for the appeal, together with the evidence that demonstrates that a transcript of the hearing giving rise to the appeal has been ordered, shall be invalid.

There are no provisions in the by-law for an extension of the appeal deadline. The by-law provides that matters will be heard in accordance with the provisions of the *Statutory Powers Procedure Act*, but there is no provision for an extension of time limits in that legislation either.

Notwithstanding the absence of an explicit statutory or by-law authority to extend the appeal deadline, I conclude that the principles of natural justice and fairness require the Appeal Tribunal to consider Mr. Chiu's request. It seems unfair to preclude consideration of the request, since that could clearly lead to an injustice. There are circumstances in which an extension of the appeal deadline would be warranted and the Appeal Tribunal should therefore exercise its discretion in determining whether this is such a case.

Since the by-law does not provide a process for the consideration of Mr. Chiu's request, I turn to s.4.2(1) of the SPPA, which provides:

A procedural or interlocutory matter in a proceeding may be heard and determined by a panel consisting of one or more members of the tribunal, as assigned by the chair of the tribunal.

I therefore conclude that I have the authority to consider and decide Mr. Chiu's request as a single-member panel of the Appeal Tribunal.

In my view, given the mandatory nature of the 30 day deadline in the by-law, an extension of time should only be granted if there is a reasonable explanation for the delay and where the extension would not cause prejudice to the other party.

In the circumstances of this case, I conclude that Mr. Chiu has not provided a reasonable explanation for the delay. Although he is incarcerated, he has an agent and he is clearly able to communicate with her and provide her with instructions. Even if there is some delay in written communications between them, as asserted by Mr. Chiu, that would not preclude the filing of a Notice of Appeal within the requisite 30 day deadline.

Ms. Chiu received a hard copy of the written decision in a timely fashion and was immediately notified of the deadline and process for filing an appeal. Within a couple of days of receiving the decision, she indicated that she was considering filing an appeal. She was again advised of the

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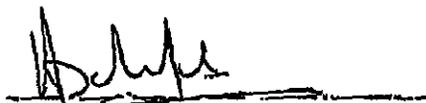
procedure and deadline for doing so on March 27, 2006. There is no explanation for why she failed to file an appeal within the requisite time frame.

That Ms. Chiu elected not to communicate the Tribunal's decision to Mr. Chiu immediately, for fear that it would upset him, is not a reason to extend the deadline for filing an appeal. She is his agent. As such, she is responsible for looking after his interests. There is no reason why she could not have complied with the appeal deadline.

If her departure from the city for a period of time was going to interfere with her ability to fulfill her responsibilities as Mr. Chiu's agent, Mr. Chiu could have appointed a different agent. In any event, Mr. Chiu's letter states that she was returning April 14, which would have provided her with five days to meet the appeal deadline upon her return.

Accordingly, the request for an extension of time to file an appeal is denied.

DATED THIS 26th Day of April, 2006.



Alexis Perera, C.G.A.