

**THE CERTIFIED GENERAL ACCOUNTANTS
ASSOCIATION OF ONTARIO**

PROFESSIONAL CONDUCT TRIBUNAL

IN THE MATTER OF the Certified General Accountants Association of Ontario Act, 1983;

AND IN THE MATTER OF a complaint concerning Mr. Khemlall Latchminarine, a member of the Certified General Accountants Association of Ontario;

BETWEEN:

**THE DISCIPLINE COMMITTEE OF THE CERTIFIED GENERAL ACCOUNTANTS
ASSOCIATION OF ONTARIO**

- and -

MR. KHEMLALL LATCHMINARINE

Members of the Tribunal: Ramesh Ramotar, CGA
June Oliver, CGA
John Yu, CGA

Defendant Counsel: Larry Banack, for the Discipline Committee

Defendant: Mr. Khemlall Latchminarine, CGA
AKA Randy Latchminarine (Randy)

Court Reporter: Networking Court Reporting Ltd.
Toni Bevilacqua

Pursuant to the amended notice of hearing dated October 14, 1998, Mr. Khemlall Latchminarine is charged with the following violations of the Code of Ethics and Rules of Professional Conduct:

Code of Ethics and Rule of Professional Conduct – 1991/1992

Rule 403 – Unlawful Conduct: A member shall not lend his name, himself, or his services to any activity which he knows or which a reasonably prudent person would believe to be, unlawful.

Rule 404 - Discredit: A member shall not lend himself knowingly to any practice, pronouncement or act, which would be of a nature to discredit the profession.

Code of Ethics and Rule of Professional Conduct – 1992/1993

Rule 403 – Unlawful Activity: A member shall not lend his name, himself, or his services to any activity which he knows or which a reasonably prudent person would believe to be, unlawful.

Rule 404 - Discredit: A member shall not lend himself knowingly to any practice, pronouncement or act, which would be of a nature to discredit the profession.

Code of Ethics and Rule of Professional Conduct – 1993 to and including 1995

Rule 215 – Unlawful Activity: A member shall not lend his/her name, himself/herself, or his/her services to any activity which he/she knows or which a reasonably prudent person would believe to be, unlawful, or contrary to this Code of Ethics and Rule of Professional Conduct.

Rule 216 - Discredit: A member shall not lend his/her name, himself/herself knowingly to any practice, pronouncement or act, which would discredit the profession.

Code of Ethical Principles and Rule of Conduct – July 1997

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 service to, any practice, pronouncement or act which would be of a nature to discredit the profession.

Rule 102 - 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 service to, any activity which the member knows, or which a reasonably prudent person would believe, to be unlawful.

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 a 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 case, the member's Provincial Ethics Committee may charge the member with professional misconduct. 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 not limited to, the following offences:

- a. fraud, theft, 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.

Particulars:

1. You were found guilty of committing an offence of willfully evading payment of Federal Taxes.
2. You were found guilty of committing an offence of willfully evading payment of net Goods and Services Tax.
3. You were found guilty of committing an offence of willfully obtaining or attempting to obtain rebates or refunds to which you were not entitled by filing Goods and Services Tax Returns.

These particulars were detailed in the amended notice of hearing dated October 14, 1998

The particulars alleged against Mr. Khemlall Latchminarine were agreed as the statement of fact, along with a number of other documents. (Exhibit #5).

Counsel for the discipline committee made comments, advising the panel of the complaints noted above, and reaffirming the violation of and the sections of the Code of Ethics and Rules of Professional Conduct (exhibit #1).

Mr. Latchminarine was afforded the opportunity to respond to all of the charges. He began a detailed explanation of his circumstances from the time he arrived in Canada in 1977 and all of the problems he encountered with the immigration department. At this point of the proceedings, he became very emotional, but after a break, testimony continued. His evidence appeared to refute the charge of not reporting a criminal record, as he claimed that he did not know of a criminal record as the illegal immigrant case against him had been dismissed.

Mr. Latchminarine continued his testimony and supplied Exhibits 7 to 13 to support his arguments against the severity of the charges. He indicated that he initiated the reassessment of his income tax return, by supplying

additional information to Revenue Canada, and that a problem had arisen between Mr. Latchminarine and Mr. Godding of revenue Canada. An apology was sent to Mr. Latchminarine (exhibit #8).

According to Mr. Latchminarine his problems escalated when, his employer hired Mr. Godding who was fired by Revenue Canada and some time during his employment, Mr. Godding made sexual advances to Mr. Latchminarine's daughter. This angered Mr. Latchminarine who promptly fired Mr. Godding. At this point Mr. Latchminarine said that Mr. Godding threatened him saying that he would pay dearly for this.

Mr. Latchminarine commented that he believed that Mr. Godding used his influence on his friends at Revenue Canada to press charges against him. However he did mention that an auditor from GST grilled his daughter for half an hour and this upset Mr. Latchminarine, he went to the GST office and told off the auditor and a heated verbal altercation ensued, which resulted in Mr. Latchminarine being escorted out of the building by security.

A few days after, twelve RCMP officers searched his residence and asked for all of his documents, he thought that they meant immigration documents, but they left after fifteen minutes with records of tax returns for family and friends. Again Mr. Latchminarine reiterated that he believes that friends of Mr. Godding set him up.

Mr. Latchminarine commented that although the tax situation was brought to the attention of Revenue Canada, he believes that he was treated worse than a rapist or a murderer in being labeled a criminal.

In his summation, he said that he is a hard working person who is highly regarded by his employer, that he volunteered the information, and that his rights under the Charter of Rights were violated. He believes that he is a victim of circumstances and under any other circumstances his tax situation would have been settled very differently. The judge in his immigration case was sympathetic and dismissed his case. He subsequently learned that a family member reported him to the immigration. He is proud to be a CGA and a hard worker; he knows the severity of the offense and might lose the position he currently holds with his employer. He cannot survive without his CGA and has asked that we consider that he did not steal nor did he misappropriate from his employer or any associates.

He has asked that we consider a probationary period and any fines and cost payable, that he not be suspended.

Larry Banack asked various questions with respect to whether he was aware of the newspaper article in the Ottawa Citizen. The answer was no and that he had heard about it from Ralph Palumbo.

Mr. Banack on behalf of the Discipline Committee made a submission that Mr. Latchminarine was guilty of misconduct and breach of the following code of ethics - Rules 101, 102, 215, 216, 403, 404, 607 & 607.1. These rules have changed through the period 1991 to July 1997 and are referred to in the amended notice of hearing. According to Mr. Banack the appropriate penalty for the violations was expulsion, however the tribunal could also consider the imposition of alternative penalty as allowed by, Bylaw #4.

Mr. Banack submitted that the tribunal should consider the following range of disciplinary action:

- - Reprimanded.
- - Suspension - Definitely.
- Indefinitely.
- - Expulsion.
- - Fine plus all cost to the Association.
- - Subjected to review and completion of PD.
- - He has forfeited his right to be a member of the Association.

A recommendation was made to the Tribunal to expel Mr. Latchminarine from membership with a fine and costs to the Association. Although he is remorseful, Mr. Banack asked us to remember, that we have to protect the public by enforcing the Rules of Professional Conduct, that The Association is self-Governing and self-Regulating with the trust bestowed to the Association.

DECISION

The Tribunal deliberated and decided that the following be imposed on Mr. Latchminarine.

1. Suspension for three years.
2. Payment of total court costs to the Association.

3. Condition for re-entry: (a) Allowed applying for re-entry after three years.
(b) Membership dues must be paid retroactive to date of suspension.
(c) Successful PEER review must be conducted prior to re-entry.
4. Outcome of the hearing to be published in CGA Ontario Statements.
(a) To Participate in a course in Ethics and Conduct.

REASONS FOR THE TRIBUNAL'S DECISION

Mr. Latchminarine has admitted to conduct which we fined contravenes.

Rule 101, 216 & 404 - Discredit.

Rule 102, 215 & 403 – Unlawful act.

Rule 607 – Evidence of Professional Misconduct.

Rule 607.1 – Criminal and Similar Offence.

Although Mr. Latchminarine contravened the above Rules, we do not feel expulsion is an appropriate penalty. There were a number of mitigating factors present that indicate that this is not a case for the most severe penalty available. On the other hand, the conduct involved is still quite severe, especially for an accountant. On balance, and taking into account both Mr. Latchminarine's individual circumstances, the public interest and our duty as a self regulating profession, we find that the appropriate penalty is that set out above.



Ramesh Ramotar, CGA

Chairman, Professional Conduct Tribunal

Date: December 3, 1998

NOTICE:

The decision of the Professional Conduct Tribunal may be appealed to an Appeal Tribunal within 60 days of the date of the written decision of the Professional Conduct Tribunal. The notice of appeal must be in writing, addressed to the Executive Director, Certified General Accountants Association of Ontario, 240 Eglinton Avenue East, Toronto, Ontario M4P 1K8. The notice must contain the grounds for appeal.