

**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 David
Conway, a member of the Certified General Accountants
Association of Ontario;

BETWEEN:

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

- and -

DAVID CONWAY

MEMBERS OF THE TRIBUNAL:

**Donn Martinson, CGA, Chair
Dan Coghlan, CGA
Janice Paul, BA, CFP, CGA**

COUNSEL:

**Karen Jolley, for the Discipline Committee
David Conway, representing himself**

DECISION

This case involves a complaint against David Conway, which the Discipline Committee of the Certified General Accountants Association has referred to a Professional Conduct Tribunal.

Mr. Conway was duly served with a notice of hearing and an amended notice of hearing in this matter, both dated July 27, 1998. Affidavits of service for both notices in this regard were filed at the hearing. The notices of hearing set out that Mr. Conway was charged with violating the following provisions of the *Code of Ethics and Rules of Professional Conduct* and the *Code of Ethical Principles and Rules of Conduct*.

Rule 201 (formerly 401) Conduct

A member shall always be mindful of his/her duties and responsibilities as a member of the accounting profession, and shall carry on his/her work with fidelity to clients or employers, fairness to employees, and loyalty to the Association, in a manner worthy of a professional accountant.

Rule 216 (formerly 404, now 101) Discredit

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

Rule 215 (formerly 403, now 102) 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 Rules of Professional Conduct*.

Rule 607 Evidence of Professional Conduct

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.

Mr. Conway was aware of his right to counsel in these proceedings, but chose to represent himself.

TRIBUNAL DECISION

The tribunal's unanimous decision is that Mr. Conway is guilty of violating Rules 201, 401, 216, 404, 215, 403 and 607 of the *Code of Ethics and Rules of Professional Conduct* and the *Code of Ethics and Principles and Rules of Conduct*.

We direct that:

1. Mr. Conway be expelled from CGAAO membership.
2. That his expulsion be published in CGAAO Statements and in a local Oshawa newspaper.

Facts

At the hearing, Mr. Conway and Ms. Jolley made submissions to the tribunal. Mr. Conway received his CGA designation and membership in 1962. For virtually all of his working career, he has been employed in public accounting. He has also been extensively active in local politics and community volunteer organizations.

In February 1998, Mr. Conway pleaded guilty to the charge that he did unlawfully by deceit, falsehood or other fraudulent means defraud the Shamrock Athletic Association of a sum of money of a value exceeding \$1000, contrary to section 381 of the *Criminal Code*. The Shamrock Athletic Association is a children's softball association and there is no dispute that Mr. Conway misappropriated \$72,727.68 from it over a two year period.

Mr. Conway stated that he agreed with the facts and documents set out in the Discipline Brief presented by Ms. Jolley, including a transcript of his guilty plea and the certificate of his conviction. He did take exception to some of the information contained in the Sentencing Brief submitted by Ms. Jolley. Mr. Conway also disputed the penalties sought by the Discipline Committee, including expulsion, and proposed instead a one year suspension.

In his submission, among other things, Mr. Conway stated that his offenses were not related to the accounting profession, that no clients were deceived or cheated, nor had there been any complaints to the Association by any of his clients. It was in his non-professional capacity as a volunteer in the community that he committed these offenses. He also drew the tribunal's attention to the fact that he had a gambling addiction which had led to these offenses, and referred us to a psychological assessment prepared by Dr. John Chiarot, which was filed in evidence.

The tribunal carefully reviewed the evidence and submissions provided by both parties.

Rationale

Although Mr. Conway is getting professional assistance for his gambling addiction and is apologetic for his criminal actions, he did commit a very significant breach of public trust over a 26 month period. The breach of trust involved a volunteer organization which trusted him with prudent use of its fund-raising monies. Impacted by this breach of trust are youth, parents, sponsors, other volunteers and the volunteer organization itself.

A professional accountant must act professionally whether he/she is being paid for services or volunteering in the community. The Rules alleged to be violated in this case are not limited to activities involving fee-paying clients. When improper actions are taken by a member, as was the case with Mr. Conway, his honesty and integrity will be in question, and his professional designation, the Certified General Accountants Association, and the profession are tarnished.

To conclude, the Certified General Accountants Association must exercise its self-regulation and self-discipline obligation in a serious, fair and responsible manner, and must be seen by the membership and the public to do so as well. Because of the severity of Mr. Conway's inappropriate professional behaviour and breach of trust, his

behaviour cannot be condoned by the Certified General Accountants Association of Ontario, and he should not remain a member of the Association or the profession.

DATED at Toronto, this 30th day of October, 1998.



Donn Martinson, CGA, Chair
On Behalf of the Tribunal

APPEAL NOTICE

The decision of a Professional Conduct Tribunal may be appealed to an Appeal Tribunal within sixty 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 the appeal.

CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION OF ONTARIO

APPEAL TRIBUNAL

IN THE MATTER OF David Conway;

AND IN THE MATTER OF an appeal from a decision of
the Professional Conduct Tribunal dated October 30,
1998;

DAVID CONWAY

Appellant

- and -

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

Respondent

MEMBERS OF THE TRIBUNAL:

John Parker, F.C.G.A., Chair
Donald Page, F.C.G.A.
Alexis Perera, C.G.A.

APPEARANCES:

Karen Jolley, LLB and Ralph Palumbo, LLB, for the Discipline Committee

David Conway, for himself

DECISION

This case is an appeal from the decision of a Professional Conduct Tribunal dated October 30, 1998, which found, in an unanimous decision, that David Conway was guilty of violating Rules 201, 401, 216, 404, 215, 403, and 607 of the *Code of Ethics and Rules of Professional Conduct* and the *Code of Ethics*

and Principles and Rules of Conduct of the Certified General Accountants Association of Ontario.

In its decision dated October 30, 1998, the Tribunal directed that:

1. Mr. Conway be expelled from CGAAO membership;
2. That his expulsion be published in CGAAO Statements and in a local Oshawa newspaper.

Grounds for Appeal

Mr. Conway's appeal was based on three reasons:

- a) that a transcript of the sentencing proceedings before Mr. Justice Stong with respect to the criminal charges against Mr. Conway was now available, which Mr. Conway felt should receive serious consideration;
- b) that the Professional Conduct Tribunal had not given sufficient consideration to the fact that Mr. Conway was a pathological gambler during the time of the offenses, and that pathological gambling has been diagnosed and recognized as an illness;
- c) that the decision (expulsion from the CGAAO) was too severe, and would not be seen by the membership or the public to be fair in relation to the offenses committed and considering the nature of his illness.

Findings of the Appeal Tribunal

The Appeal Tribunal received and reviewed all the material pertaining to the proceedings before the Professional Conduct Tribunal in this matter, as well as the transcripts of Mr. Conway's criminal sentencing hearing and a written statement by him. In addition, both Mr. Conway and counsel for the Discipline Committee made submissions to us.

Turning first to the sentencing proceedings before Mr. Justice Stong, it is apparent from the transcripts provided that Mr. Justice Stong's deliberations focussed largely on whether or not the community was better served by Mr. Conway being incarcerated or serving time at home with appropriate community service. This is a different issue than that before us, and while there may be some overlapping considerations, there are different ones as well. Among other

things, an Appeal Tribunal is charged with the self-regulation of the Certified General Accountants profession and the issue before us is Mr. Conway's expulsion from professional membership, a different task than that before Mr. Justice Stong. While we have carefully considered the transcripts submitted by Mr. Conway and his comments in this regard, we do not find that they persuade us that the penalty imposed by Professional Conduct Tribunal was inappropriate.

Secondly, the fact that Mr. Conway was a pathological gambler during the time the offenses were committed and that pathological gambling has been diagnosed as illness does not necessarily relieve him of the accountability for the acts committed by him against the Shamrock Athletic Association, nor does it reassure us that the public interest will be protected if he continues in the profession of accountancy in the future. While we have empathy for the situation in which Mr. Conway now finds himself and we commend his efforts to straighten out his life, nevertheless, he must take full responsibility for the actions precipitated by him which ultimately resulted in the fraud charge for which he was found guilty in an Ontario Court.

Thirdly, we are not convinced that other members or the public would perceive the penalty of expulsion to be unfair considering the nature of his illness. Mr. Conway engaged in very significant professional misconduct involving a large sum of money. Any action involving a breach of trust of this scale is extremely serious. In our view, the penalty of expulsion is consistent with both the gravity of the acts involved, and with the decisions of Tribunals involving cases of similar misconduct. We think it is unlikely that other members or the public would perceive it as unfair, but in any event, we must weigh such a consideration with other factors, such as the protection of both the public interest and the integrity of the accounting profession.

In conclusion, we are in unanimous agreement with the rationale set out in the decision of the Professional Conduct Tribunal of October 30, 1998 and with the penalty imposed. As a result, we confirm that Mr. Conway will be expelled from CGAAO membership and that his expulsion will be published in CGAAO Statements and a local Oshawa newspaper.

Dated this 22nd day of April, 1999.


John Parker, FCGA, Chair

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NOTICE

The decision of an Appeal Tribunal may be appealed to the Ontario Court of Justice (General Division) in accordance with the rules of the Court.