

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

IN THE MATTER OF a Complaint against Chaman Doma

BETWEEN:

The Discipline Committee of the CGAO

- and -

Chaman Doma

Decision of the Professional Conduct Tribunal

Members of the Tribunal panel:

Ramesh Ramotar, CGA, chair
Doug White, CGA
Daniel Iggers (public representative)

Counsel:

Karen Jolley, for the Discipline Committee
Cynthia Petersen, for the Tribunal

Chaman Doma appeared unrepresented by counsel

Hearing date:

July 3, 2008

A. INTRODUCTION

1. By Notice of Hearing dated February 11, 2008, 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. Doma under the CGAO's *Code of Ethical Principles and Rules of Conduct*.
2. Specifically, Mr. Doma 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 R201.

3. After a couple of adjournments (discussed below), the hearing of the charges against Mr. Doma proceeded on July 3, 2008.

B. EVIDENCE AND FACTS

4. The documentary evidence and *viva voce* evidence lead during the hearing established the following facts.
5. Mr. Doma became a member of CGA Ontario in 1995. His CGA Ontario membership certificate number is 10526 and his CGA Canada membership certificate number 332689.
6. Mr. Doma is not registered in public practice with CGA Ontario. He has never been registered.

7. The CGAO received a complaint about Mr. Doma on March 20, 2006. (The precise nature of that complaint is not relevant for our purposes as there are no charges against Mr. Doma arising from the allegations in that complaint.) The complainant indicated, among other things, that Mr. Doma was her accountant and the accountant for a company (hereafter "the company").
8. By letter to Mr. Doma dated March 27, 2006, the CGAO noted that he was not registered in public practice and asked him to provide particulars of the extent and nature of his client work performed for each of the years 2002-2006, along with evidence that he carried professional liability insurance.
9. Mr. Doma responded to the CGAO in writing (in an undated letter), indicating that he had "been in public practice since December 1989 under the guidance and supervision of Mr. Earl C. Gedir CA." He also stated:

My work consists of doing working paper files and tax returns for individuals and corporations. I don't understand why you do not have me listed in public practice because I am pretty sure that I am listed in the member's directory as being in public practice. ... It is my understanding that because I am working with and under the guidance of Mr. Gedir, Chartered Accountant I do not have to get professional liability insurance.
10. In a further letter to the CGAO dated April 16, 2006, Mr. Doma indicated (among other things) that he had "been preparing doing (sic) file work and tax returns since 1979 in Canada".
11. By letter dated May 12, 2006, the CGAO wrote to Mr. Doma, stating that he had failed to provide the information requested in its earlier letter. The CGAO requested "more comprehensive information" about the extent of Mr. Doma's professional services. It inquired, among other things, about whether Mr. Doma performed any services for the company separate from any relationship that the company has with Mr. Gedir (and the extent of those services, if any), the extent

of Mr. Doma's personal professional relationship with the complainant (and whether any services provided to her were performed separate from Mr. Doma's working relationship with Mr. Gedir), and any other client work performed by Mr. Doma apart from those services that he provides under the supervision of Mr. Gedir.

12. Mr. Doma responded by letter dated May 23, 2006. He explained that he has been a full time college teacher since 2000. He provided information about the work he had done for the company and the complainant, under Mr. Gedir's professional corporation. With respect to other professional services, he advised the CCGAO that he has been doing personal tax returns under his own name since 1979. He stated, "I do not use the CGA title." He also stated: "The returns I do are for family, cousins, friends, in-laws ECT (sic) and any others if I have the time to do them." He stated that he has "very little time" to do tax returns because of his work for Mr. Gedir and the college. He advised that his total billings from doing tax returns were \$3,000 to \$4,000.
13. By letter dated October 17, 2006, the CGAO advised Mr. Doma that its records indicated that he had not registered his income tax return preparation practice, nor had he purchased professional liability insurance. The CGAO asked for more particulars about the scope of his practice. Specifically, he was asked for each of the calendar years 2004, 2005 and 2006 to provide a schedule incorporating the following information: (a) name and address of client; (b) whether or not he prepared an income tax return for the client; (c) the nature of any other services provided to the client including compilations of financial information to complete a Statement of Business Activities Form T2124 or other similar statements on behalf of the client; (d) fees received with respect to the client for the year; and (e) whether or not the client was related or non-related to him and specifying the relationship. A response was requested by November 3, 2006.

14. Mr. Doma did not respond to the CGAO's letter. On April 2, 2007, the CGAO wrote to Mr. Doma again, advising him that an investigator had been appointed to investigate the complaint against him. It also requested a response to the earlier correspondence of October 17, 2006 and noted that Rules 610 and 611 of the *Code of Ethical Principles and Rules of Conduct* required him to respond. He was given until May 11, 2007 to respond.
15. By letter dated May 10, 2007, Mr. Doma wrote to the CGAO, stating: "I do not believe that I am in violation of any of the Association rules and Regulations because I was not practicing or offering services to the public as a CGA." He explained:

You have requested this information based on the fact that I am a practicing CGA, **which I am not.**

I have said to you that I have prepared tax returns since 1979 as Chaman Doma private citizen as allowed under the Constitution of Canada, not as Chaman Doma CGA.

All of the returns are prepared in my home in the evenings and weekends by my son Sacha Doma CMA.

I do not advertise my services as a CGA.

I do not have an Office where the public can enter and request my services as a CGA.

I do not have a business, telephone number registered as a CGA.

16. In his letter, Mr. Doma also stated: "The request to provide names and addresses of clients some of whom I no longer do their tax returns and with whom I have no legal authority to release their confidential information without their permission is not viable at this time."

17. James Yakimovich is the investigator appointed by the CGAO Discipline Committee in connection with this matter. During the hearing, he testified that, during a telephone conversation with Mr. Doma on August 24, 2007, Mr. Doma advised him that, in the years 2001-2002, he had prepared approximately 70-75 tax returns for both relatives and non-relatives. (Mr. Doma did not contest this testimony.)
18. Mr. Yakimovich also testified that, during their telephone conversation, he advised Mr. Doma that he was seeking information regarding Mr. Doma's practice and that he would prepare a schedule to assist Mr. Doma in providing the necessary information. (Mr. Doma did not contest this testimony.)
19. By letter dated September 17, 2007, Mr. Yakimovich provided Mr. Doma with a set of schedules to be completed to provide information about the tax returns he prepared from 2004 to 2007 and any other professional services provided outside of his relationship with Mr. Gedir. Mr. Doma was asked to complete the schedules by October 5, 2007.
20. Mr. Doma did not complete the schedules or provide the information requested in them. He wrote to Mr. Yakimovich on October 8, 2007, stating:

The income tax returns done under the business of "Chaman Doma" for the period requested are prepared by my son Sacha Doma CMA and under the direct supervision of Mr. Nick Salpietro.

Please note carefully that these are not done as "Chaman Doma, CGA".

If the returns were done by "Chama Doma, CGA" I can understand your request for the information as outlined in the schedules you provided. Since they were not no further information is provided herewith.

21. By letter dated October 23, 2007, Mr. Yakimovich asked Mr. Doma a series of questions concerning the tax returns done under his name, his use of the CGA designation and related information (including a question about Mr. Salpietro's professional qualifications and the extent of any review or supervision provided by him). The letter advised Mr. Doma that his continuing failure to provide particulars pertaining to his tax preparation business placed him in non-compliance with *R611, Assistance to the Board*. The letter further advised that, if Mr. Doma continued to fail to comply with the requests for information, the matter would be referred to the Discipline Committee for its deliberation.

22. By letter dated November 13, 2007, Mr. Doma advised Mr. Yakimovich that:

I personally am not performing or offering to perform any professional services to anyone and therefore not engaged in a professional practice.

These are the facts.

I do not advertise that I am an accountant, I do not have an accounting or income tax office where anyone can enter, I do not have a dedicated telephone number in the yellow pages or other telephone companies, and I do not have a website indicating or advertising that I am an accountant. There was no indication on the returns that I was a CGA. I do not use the CGA title on any correspondence or letterheads. The returns were prepared by another professional accountant....

Are you saying or asserting that a member of another Accounting Association is not capable of preparing Income Tax returns? Mr. Sacha Doma is certified as a member of the CMA and has a degree from the University of Waterloo and is quite capable of preparing income tax returns without my assistance and guidance. He works independently. You have been provided with a letter to confirm that he prepares the returns. I do not understand why you would question this. Many taxpayers in this country who are not accountants file their own returns. Income tax preparation can be done by anyone especially with the many tax software available at

very low prices. As long as you can fill in a form it can be done.
As of today's date there is no law that says you have to be an accountant.

23. Mr. Doma did not complete the schedules and did not respond to the questions set out in Mr. Yakimovich's letter dated October 23, 2007.
24. The Discipline Committee decided to lay the above-note charges against Mr. Doma and referred the matter to the Tribunal for a hearing.
25. The hearing was originally scheduled for March 19, 2008. In early March, Mr. Doma requested that the hearing be adjourned to a date in May. He advised the Discipline Committee's counsel (Ms. Jolley) that he would provide the requested information by April 11, 2008. Ms. Jolley confirmed with Mr. Doma's then lawyer that the information in question was that listed in Mr. Yakimovich's letters to Mr. Doma dated September 17, 2007 and October 23, 2007. On the understanding that the information would be provided, the Discipline Committee consented to the adjournment request and the Tribunal rescheduled the hearing to May 9, 2008.
26. In late April, Mr. Doma requested a further adjournment of the hearing. He had not yet provided the Discipline Committee with the requested information and asked for an extension to May 15, 2008 to do so. The Committee consented to the adjournment request on the understanding that the information would be provided and on condition that the adjournment be peremptory to Mr. Doma. The Tribunal granted the adjournment on those terms on April 23, 2008 and the hearing was rescheduled to July 3, 2008.
27. By letter dated May 13, 2008, Mr. Doma wrote to Mr. Yakimovich, stating: "Here are the answers to your questions and my objections to your conclusion that I carry on a professional practice." In response to some of Mr. Yakimovich's

questions, he stated (among other things) that his son helps him for free and is not an employee; that "all returns are prepared from information supplied by the taxpayer"; that Mr. Salpietro is semi-retired and "his review is very minimal with no direct supervision"; that he (Mr. Doma) reviews the returns before they are e-filed. He also wrote:

In 1979, when I prepared tax returns as Chaman Doma, Was I an accountant? In 1980 when I prepared tax returns as Chaman Doma, Was I an accountant? In 1981, when I prepared tax returns as Chaman Doma, Was I an accountant? The point here is that I have been preparing returns for my relative and friends since 1979 long before I became a member of the CGA. Since I was not an accountant in 1979, I could not and therefore did not advertise nor provide services as an accountant nor did I tell anyone that I was an accountant. I have not and do not prepare any tax return as an accountant but as an ordinary citizen the same as I did back in 1979 ... I believe that I have that right to do so and that it is not necessary that a tax preparer be an accountant.

.... Doesn't this mean that any CGA that does any tax return must be registered for your purposes? Do you require all CGAs who prepare any return even a single return to register?

... Why is it necessary to get the names and addresses of **income taxpayers without their permission or authorization to release their names and addresses, a permission which I have said before I do not have?** Who would take responsibility for releasing taxpayers' names and addresses without their permission if something were to go wrong?

Why is it that H&R Block can prepare Income Tax returns in Canada without any restrictions and I cannot do the same?

Does the membership in the CGA means that they own me and I cannot do anything without their blessing?

I do not register with the CGA because it was my understanding that I was not required to register as long as I did not put my name on Financial Statements. Income tax returns can be done by anyone in this country and is not be limited to nor is the domain of

accountants. ... Until there is a change in the laws regarding income tax preparation services in Canada I believe I have the right to prepare Income Tax returns regardless of the fact that I am a member of the CGA especially because I do not provide these services to the public at large and more importantly I have been preparing income tax returns for a number of years before I became a member of the CGA.

... I started preparing income tax returns almost 29 years ago. The facts of my particular situation do not fit the CGAs definition of professional practice. I deal only with relatives and friends. I do not have any "clients" nor do I hold myself as neither being in "business" nor owning a business but more of a "hobby". I make my living from the two jobs that I have, not from preparing income tax returns.

28. Mr. Doma's letter also stated: "Whatever I did wrong it was not intentional nor was it done with any malice or intent to harm anyone. If I made a mistake it was because I did not know any better and now its (sic) too late to correct it. The only thing I can say is that I am sorry for any mistake I made."
29. Mr. Doma did not provide Mr. Yakomovich with the information requested concerning his clients and the precise nature and extent of the services rendered to them.
30. Mr. Yakimovich wrote to Mr. Doma on June 11, 2008, stating:

I have concluded that you have failed to provide a substantive response to the penultimate paragraph of my letter dated October 23, 2007. That paragraph stated, "The Association, again, requests your full disclosure of information pertaining to the income tax return clients of your business and requests the completion of the schedules provided to you in the correspondence dated September 17, 2007."

We continue to await receipt of this information.

31. Mr. Doma did not complete the schedules or provide the information requested therein.
32. In response to questions by the Tribunal during the hearing, Mr. Doma acknowledged that he has a tax preparation practice, that he has clients and that he bills them for tax preparation work. He stated that he is registered for GST.
33. At the hearing, Mr. Doma also provided documentary evidence of the fact that he now has professional liability insurance. The document in question established insurance coverage for "bookkeeping service" and "payroll". Mr. Doma stated that it was his belief that the insurance also covered tax preparation (though there was no documentary proof to support that belief). He acknowledged that the insurance had not been in place since 1995, but rather that this (2008) was the first year that he had insurance.

C. SUBMISSIONS

34. In her submissions to the Tribunal, Ms. Jolley pointed out that there are numerous inconsistencies in Mr. Doma's various communications with the CGAO and its investigator. She noted that Mr. Doma's initial response to the CGAO was that he thought he was registered in public practice. He later argued that he was not required to register because, although he prepares tax returns, his clients are mostly relatives and friends, he has been preparing tax returns for them since before he became a CGA, and he does not use his CGA designation when he does their returns. He then later stated that his son prepared the returns for him, under the supervision of Mr. Salpietro, but then he subsequently stated that Mr. Salpietro's supervision was minimal.
35. Ms. Jolley emphasized that Mr. Doma did not simply prepare a single tax return. She noted that he has admitted to a high volume of tax preparation work over the years, notwithstanding that he also has two jobs that keep him very busy. She

stated the CGAO's position that, with his volume of work, Mr. Doma needs to be registered. However, the CGAO needs to know the precise nature and scope of the services that Mr. Doma is providing to his clients, in order to determine what kind of registration is required. Moreover, as a professional regulator responsible for protecting the public interest, the CGAO is entitled to know exactly what is going on in Mr. Doma's practice, how many clients are being served, precisely what services are being provided, by whom and to whom, etc.

36. In his submissions to the Tribunal, Mr. Doma stated that he is a full time college teacher and that the tax preparation work he does is a minor part of his life. He argued that, in his letter dated May 13, 2008, he answered all of Mr. Yakomovich's questions, with the exception of the request to disclose client information. He stated that he is concerned about giving his clients' names and addresses etc. to the CGAO because he has no authority to release that information, which he considers private.
37. Mr. Doma stated that he had no problem registering in public practice with the CGAO if that was required, but he did not believe that he had to register, given the nature of his practice. He stated that the tax returns he does are for his family and friends and that he has done their returns since 1979, long before he became an accountant. He asked why he cannot simply continue to complete their taxes without registering with the CGAO.
38. Ms. Jolley replied that Mr. Doma's May 13, 2008 letter did not substantively respond to all of Mr. Yakimovich's questions, that many of the responses were in the nature of refusals to respond. In particular, she stressed that Mr. Doma has never provided the CGAO or Mr. Yakimovich with the information requested regarding his clients and the precise nature of the services provided to them.

39. Furthermore, Ms. Jolley argued that, since Mr. Doma obtained two adjournments of the hearing on the express understanding and agreement that he would provide the information requested, it was not now open to him to argue that the information was "private" and did not have to be disclosed. She further argued that there is no privacy protection to refuse to respond to a professional regulator. She stated that, as a member of the CGAO, Mr. Doma is bound by the Rules in the *Code*, which require that he respond to the CGAO's requests for information.
40. Ms. Jolley argued that Mr. Doma has violated Rules 610 and 611 of the *Code*. She stated that his letters to the CGAO and to Mr. Yakimovich were "aggressively non-responsive" and that he appeared to be "close to ungovernable". She stated, however, that the CGAO was "not in the business of expelling members" and that it would prefer to keep Mr. Doma as a member, provided that he complies with his professional obligations and demonstrates that he is governable.
41. She requested that the Tribunal order the following sanctions for Mr. Doma'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. Doma fully respond to Mr. Yakimovich's 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;

- (v) An order that he return his CGA certificates for the duration of his suspension;
 - (vi) An order that he pay a fine in the amount of \$5,000; and
 - (vii) An order that he contribute to the CGAO's costs of the proceeding, in the amount of \$5,000.
42. Ms. Jolley referred to the Tribunal's decision in the Nagy case, in which a member was found to have violated Rules 610 and 611. In that 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.
43. We note that the Discipline Committee in the Nagy case had requested a fine in the amount of \$5,000, but the Tribunal held that "A fine of that magnitude is best reserved for cases involving more serious misconduct, such as fraud, misrepresentation, etc."
44. 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.
45. Mr. Doma did not make submissions with respect to the Committee's proposed sanctions, except to say that the entire process was overwhelming for him, that he did not understand what he had done wrong, and that he was sorry for any

unintentional wrongdoing. He stated, "if I made a mistake, it's because I didn't know any better".

46. Ms. Jolley replied that Mr. Doma knew full well what was required of him and why he was before the Tribunal. He was asked repeatedly to provide certain information to the CGAO and he consistently refused to do so.
47. In response to questions from the Tribunal, Mr. Doma suggested that, because he was not registered in public practice, he was not required to respond to the CGAO's requests for information. It was explained to him by the Tribunal that the Rules in the *Code* apply to all members of the Association, regardless of whether or not they are registered in public practice.

D. RULING

48. Based on the evidence submitted at the hearing, we have concluded that Mr. Doma violated Rule 610 of the *Code*, which requires members to reply in writing to written requests from the Association.
49. Although Mr. Doma replied to the CGAO's correspondence, his replies were non-responsive. They did not provide substantive responses to many of the questions posed and did not supply the specific information requested, particularly with respect to his clients and the nature of the services provided to them.
50. Mr. Doma's communications with the CGAO were, in that regard, unsatisfactory and did not comply with his obligations under Rule 610. He was put on notice by the CGAO (and its investigator) that his responses were inadequate and was given numerous opportunities to furnish the necessary information. He was even provided with schedules to assist him in providing the information. He

consistently refused to complete the schedules or provide the requested information.

51. His arguments – namely, that he withheld the client information out of privacy concerns, and that he was not required to disclose the information because he was not in public practice -- are not acceptable justifications for his failure to comply with his professional obligations. He may have honestly believed that he had a good reason for refusing to disclose the information, but he was wrong, and neither his good faith nor his ignorance are a valid defence to the charge against him. He violated Rule 610, as charged.
52. We find that Mr. Doma did not, however, breach of Rule 611, which requires members to produce documents within their possession and control. The evidence did not establish that the CGAO ever requested Mr. Doma to produce any documents; rather he was asked to furnish information related to his practice. His failure to provide that information is a breach of Rule 610, as noted above, but does not constitute a breach of Rule 611.
53. In the circumstances of this case, we agree with the Discipline Committee that immediate expulsion of Mr. Doma from the CGAO would not be appropriate. He should be provided with an opportunity to comply with his obligations and return to good standing in the Association.
54. 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.

55. 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.

E. ORDERS

56. We order that Mr. Doma be immediately suspended from membership in the CGAO for 30 days (commencing the date of this decision).

57. We order Mr. Doma to comply with the CGAO's request for information by completing the schedules attached to Mr. Yakimovich's letter dated September 17, 2007.

58. If Mr. Doma does not complete and return the schedules within 30 days, his suspension will continue for another 30 days.

59. If Mr. Doma does not complete and return the schedules within 60 days (of the date of this decision), he shall be expelled from the CGAO.

60. We remain seized of this matter in the event that the parties have a dispute about whether or not Mr. Doma 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.

61. We direct Mr. Doma to immediately surrender his membership certificates (CGAO certificate number 10526 and CGA Canada certificate number 332689); they shall be returned to him upon the expiry of his suspension.

62. We order Mr. Doma 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 case and agree

with the Tribunal in that case that a \$5,000 fine (as requested by the Association) would be excessive.

63. Finally, we order Mr. Doma to pay costs to the CGAO Discipline Committee in the amount of \$5,000.

Dated this 27th day of August, 2008,



Ramesh Ramotar, Chair
(for the Tribunal)

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.