

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. Urmesh Ghai,  
a member of The Certified General Accountants Association of Ontario

**BETWEEN:**

THE DISCIPLINE COMMITTEE OF THE CERTIFIED GENERAL  
ACCOUNTANTS ASSOCIATION OF ONTARIO

-and-

URMESH GHAI

HEARING: December 14, 2003

MEMBERS OF THE TRIBUNAL;

Mr. John M Parker FCGA, Chair  
Mr. Alan Jones, FCGA  
Mr. David Handley

COUNSEL:

Ms. Karen Jolley, for the Discipline Committee  
Mr. Sherwin H. Shapiro, for the Defendant

**CHARGES**

Pursuant to a notice of hearing dated October 14<sup>th</sup> 2004 and admitted as Exhibit 1, Mr. Ghai was charged with violating the following rules of the *Code of Ethical Principals and Rules of Conduct*:

**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 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) A member shall not participate in any action detrimental to the Association or 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 a 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 security's 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**

Mr. Ghai is employed as an audit manager by the Alcohol and Gaming Commission. He was charged with tax evasion for failing to declare secondary income that he earned by providing accounting services. On January 29, 2004, at the City of Newmarket, he was convicted of the following offence:

“That between the 31<sup>st</sup> day of December 1999 and the 1<sup>st</sup> day of May 2002, both days inclusive, at the City of Vaughan, in the Central East Region, and elsewhere in the Province of Ontario, you unlawfully did willfully evade the payment of federal taxes in the amount of \$20,575.74

imposed by the *Income Tax Act*, upon your failing to report income in the amount of \$72,242.00 for the taxation years 2000 and 2001, thereby committing an offence pursuant to Section 239(1)(d) of the said Act.”

Mr. Ghai did not dispute that, as a result of this conviction, he had violated the above-noted Rules of professional conduct. Thus the only issue in dispute was the appropriate penalty to be imposed.

### **SUMMARY OF EVIDENCE AND ARGUMENT**

Ms. Jolley, counsel for the Discipline Committee, presented her case by way of written documentation, which was admitted as evidence with the consent of the Defendant's counsel. The documentation included a Statement of Facts dated January 14, 2004, which had been submitted to court in the proceeding involving the above-noted tax evasion charge. In the Statement, Mr. Ghai admitted that he had provided accounting services as a secondary source of income and that the professional fees he received had not been declared for taxation purposes. These professional fees had been discovered as a result of a third party audit by Canada Customs and Revenue Agency (CCRA). Mr. Ghai pleaded guilty to the above-noted charge, for which he was convicted on January 29, 2004.

At the hearing, Mr. Shapiro (counsel for the Defendant) argued that, notwithstanding that Mr. Ghai had pleaded guilty in court, he had not committed the offence but rather “took the fall” for his wife, Alka, with whom he shared a joint bank account. He asserted that the unreported income belonged to Mrs. Ghai, who ran a bookkeeping business.

Both Mr. and Mrs. Ghai testified before the Tribunal (Mrs. Ghai asserted the protection of the *Evidence Act* prior to giving her testimony). According to their testimony, since all the income earned from all sources by both of them, and all expenses and other payments made by them, came out of the same bank account, considerable confusion existed as to their finances. Mrs. Ghai stated that she provided bookkeeping services to an unnamed individual -- referred to at the hearing only as “A” -- which required her to perform financial transactions that she completed through the couple's joint bank account. When cheques were deposited by his wife, Mr Ghai stated that he never inquired as to what they represented. The confusion in their finances was aggravated by the fact that Mr. Ghai was being loaned money from “A” for investment in the stock market, which arrangement was kept from Mrs. Ghai, who he knew would not have approved of his investment activities. The loan cheques from “A” to Mr. Ghai were sometimes given to Mrs. Ghai for her to deposit into the couple's joint account. When Mrs. Ghai inquired as to the purpose of these cheques, Mr. Ghai told her not to worry about them, that they had no tax implications, and just to deposit them. She testified that, because she believed that cheques made out to her husband from “A” had no tax implications, she requested that “A” pay her for her bookkeeping services by making cheques payable to her husband. These cheques were the monies that became the subject of the tax evasion charge against Mr. Ghai.

Mr. Ghai claimed not to be aware that his wife had earned such significant income from her bookkeeping business, that she had failed to declare the income for taxation purposes, and that she had evaded taxation by having cheques made payable to his name. He claimed to have discovered all of this later, when CCRA made inquiries about the cheques in question.

Mr. Ghai testified that he had done accounting work for "A", but claimed that he received no compensation for that work (although he did receive the above-mentioned interest free loans from "A", which he invested in the stock market). When asked who "A" was, Mr. Ghai stated that "A" was "a friend".

Mr. Ghai testified that, when CCRA first inquired about the cheques in question, he initially advised them that he thought the money must be from his wife's bookkeeping business. This turned out to be correct. However, Mr. Ghai decided to claim the income as his own. He did this, he explained, because his wife was in an emotionally fragile state, caring for her terminally ill father, and because he felt partially responsible for having concealed the purpose of the loans that he was receiving from "A" and having simply told his wife that cheques from "A" had no tax implications. He believed, based on information he obtained from acquaintances who worked for CCRA, that he would simply have to pay the taxes owing and a fine, and the matter would be closed. He did not realize that he would face a serious charge in court. By the time the matter got to court, he felt that he could not change his story, so he pleaded guilty to the charge, even though (he claimed at the hearing) he did not commit the offence.

Mr. Ghai submitted copies of his 2000 and 2001 Tax Assessment forms and Assessment forms for the years 1999 and 2000 into evidence. It was unclear what inferences Mr. Ghai wanted the Tribunal to draw from these forms. When questioned by Ms. Jolley, Mrs. Ghai stated that a friend, who was not an accountant, had prepared both of their tax returns. Mrs. Ghai stated that she was not willing to provide the name of this friend.

In closing arguments, Ms. Jolley stated that the Tribunal should be concerned that Mr. Ghai had given a very different story at this hearing than that given at his trial. She asked the Tribunal to prefer the version presented in the Statement of Facts. However, even if his story given to the Tribunal was truthful, then he had misled the Crown, which is itself a serious act of misconduct. Ms. Jolley reminded the Tribunal that the amount of money involved was significant and argued that Mr. Ghai's actions had showed a total lack of integrity. Ms. Jolley reviewed similar cases where members of different professions had been found guilty of professional misconduct and asked, on behalf of the Discipline Committee, that Mr. Ghai be expelled from the Association; be fined \$2,000; and assessed costs of \$2,500.

Mr. Shapiro reminded the Tribunal that the setting of the penalty is within the Tribunal's discretion. In the cases cited by Ms. Jolley, where expulsion from a professional association was ordered, it was the act of the individual that got them into trouble, whereas in Mr. Ghai's case it was the act of another (his wife). While Mr. Ghai's

conduct was foolish, he was trying to protect his wife. Mr. Shapiro suggested that a suspension of 6 months with no fine and no costs would be appropriate.

### **DECISION OF THE TRIBUNAL**

Having reviewed the facts of the case presented to the Tribunal, the Tribunal is deeply concerned that Mr. Ghai pleaded guilty in court and agreed to a Statement of Facts that he now says is not true. The Tribunal agrees with Ms. Jolley's submission that the facts presented to the court are to be accepted, rather than the very different version presented in Mr. Ghai's testimony before the Tribunal.

The Tribunal found the explanation of the transactions flowing in and out of the joint bank account and the confusion regarding the couple's finances to be incredulous. Mr. Ghai is a professional accountant and is employed as an audit manager specialist; he therefore would certainly be aware of the necessity of keeping his own accounting in some reasonable order, particularly considering the nuances surrounding the transactions.

The Tribunal was particularly troubled by the fact that the unnamed individual "A" was not called to testify and no evidence was provided from "A's" company to confirm that Mrs. Ghai was employed by "A" and that the money in question was Mrs. Ghai's income. No explanation was provided for why "A" was not called as a corroborating witness.

Moreover, if Mr. Ghai were in fact innocent of the tax evasion charge, there was no reasonable explanation provided for why he decided to change his story only now, before the Professional Conduct Tribunal, and not earlier, when he was before the court (particularly since he testified that, when initially questioned by CCRA, he advised them that he believed the money was likely his wife's bookkeeping income).

The Tribunal concludes that the testimony of Mr. and Mrs. Ghai at the hearing was not credible. Mr. Ghai's evidence before the court in the tax evasion proceeding (as outlined in the above-mentioned Statement of Facts, which was admitted into evidence before the Tribunal) is a more reliable account of the facts in this case.

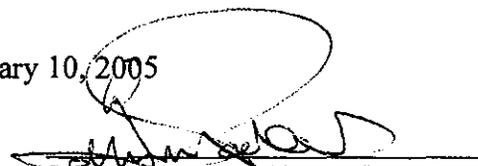
### **PENALTY**

After carefully reviewing the evidence and submissions presented by both parties, the Tribunal finds Mr. Ghai guilty of violating Rules 101, 102, 606, 607 and 607.1 of the *Code of Ethical Principles and Rules of Conduct* and orders that Mr. Ghai be expelled from the Association. A conviction for tax evasion constitutes one of the most serious breaches of professional conduct that a CGA can commit and therefore warrants expulsion from the Association.

The Tribunal feels that since Mr. Ghai has already been fined \$10,000 by the Crown as the result of his conviction, a further fine is not appropriate. Consequently, the Discipline Committee's request for the imposition of a fine is denied.

The Tribunal orders Mr. Ghai to pay costs to the Discipline Committee in the amount of \$1,500. In our view, the amount of \$2,500 requested by the Discipline Committee was high, given that Mr. Ghai's cooperation permitted the Discipline Committee to present its case without calling any witnesses, which considerably shortened the hearing.

Dated January 10, 2005



John M. Parker, 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.*

*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 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 (3 copies) and for the Respondent (1 copy). According to s.21(1) of 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.***

The Certified General Accountants Association of Ontario  
Appeal Tribunal

**IN THE MATTER OF** *The Certified General Accountants  
Association of Ontario Act, 1983*

**AND IN THE MATTER OF** an appeal by Umesh Ghai  
from a decision of the Professional Conduct Tribunal

**B E T W E E N**

UMESH GHAI

(the "Appellant")

- and -

THE DISCIPLINE COMMITTEE OF THE  
CERTIFIED GENERAL ACCOUNTANTS OF ONTARIO

(the "Respondent")

HEARING: May 30, 2005

MEMBERS OF THE TRIBUNAL:

Mr. Donald H. Page, FCGA, FCSI, Chair

Ms. Louise McNeely, CGA

Mr. Thomas Dastous, LL.B., D.D.N., N.C.A.

COUNSEL:

Ms. Karen Jolley, for the Respondent Discipline Committee

Mr. Sherwin H. Shapiro, for the Appellant Umesh Ghai

**DECISION**

**Introduction**

This case is an appeal from the decision of a Professional Conduct Tribunal (PCT) dated January 10, 2005, which found Umesh Ghai guilty of violating Rules 101, 102, 606, 607 and 607.1 of the CGAO's *Code of Ethical Principles and Rules of Conduct*. The PCT ordered that Mr. Ghai be expelled from the Association. It also ordered him to pay a portion of the Discipline Committee's legal costs.

Mr. Ghai was convicted of tax evasion in a court proceeding at which he pleaded guilty. In the subsequent hearing before the PCT, he testified that it was actually his wife who was guilty of tax evasion and that he had taken responsibility for her actions because she was in a fragile emotional state, due to the terminal illness of her father. Both he and his

wife testified before the PCT and gave an account of facts that was very different from the agreed statement of facts that had been presented to the court in the tax proceeding. The PCT found their testimony to be not credible and concluded that Mr. Ghai was guilty of tax evasion and concluded on page 5, that Mr. Ghai “be expelled from the Association. A conviction for tax evasion constitutes one of the most serious breaches of professional conduct that a CGA can commit and therefore warrants expulsion from the Association.”

Mr. Ghai appealed the decision, requesting that the PCT’s judgment be varied by reducing the expulsion to a 6 month suspension and by ordering that there be no costs awarded.

### **SUMMARY OF ARGUMENTS**

Mr. Shapiro, counsel for the appellant, submitted that the PCT failed to give sufficient weight to the evidence of Mr. and Mrs. Ghai, particularly the evidence of the familial stresses upon Mr. Ghai, which caused him to make an out-of-character decision to “take the fall” for his wife. Mr. Shapiro further argued that the PCT failed to distinguish prior discipline cases in which the expelled member was an active and direct participant in misconduct (in contrast to Mr. Ghai, who he asserted was only involved in a “cover up” by “taking the fall” for his wife).

Mr. Shapiro reviewed the testimony of the witnesses before the PCT (a copy of the transcript of the hearing was admitted into evidence in the appeal). He argued that the testimony given by Mr. and Mrs. Ghai was believable. He asserted that Mr. Ghai took the fall for his wife because she was not in good health and he argued that this constituted a reasonable explanation for why Mr. Ghai did not disclose the truth to the court in the tax proceeding and to the Crown at his trial.. He submitted that Mr. Ghai was caught up in a personal dilemma that impaired his judgment and resulted in a foolish decision to plead guilty to an offence that he had not committed. He asserted that Mr. Ghai is not an inherently amoral person lacking in integrity, but rather an ordinary person whose judgment became clouded by difficult personal circumstances. He asked the Appeal Tribunal to show compassion for the appellant and to exercise its discretion by reversing the expulsion and substituting a suspension instead.

Mr. Shapiro reviewed the cases relied upon by the Discipline Committee at the PCT hearing, each of which involved the expulsion of a professional from his or her professional association. He distinguished the cases by arguing that, in those cases, the individuals in question were personally responsible for breaches of trust or other acts of misconduct (such as fraud, theft, etc.), whereas in this case, Mr. Ghai did not directly engage in any misconduct, but rather simply took the fall for his wife. He argued that Mr. Ghai should therefore not be expelled from the Certified General Accountants Association of Ontario.

Ms. Jolley, on behalf of the Discipline Committee, argued that Mr. Ghai should not be permitted to resile from his guilty plea to tax evasion. He admitted to tax evasion before the court and was convicted based on his admission. She argued that he cannot now

challenge the court's conviction by arguing before this Tribunal that he is in fact not guilty of the offence. Ms. Jolley presented a number of other alternative arguments in response to Mr. Ghai's appeal. We find unnecessary to summarize her additional arguments, because we accept her primary submission, namely that it is not open to Mr. Ghai to assert before this Tribunal that he is not guilty of tax evasion.

Ms. Jolley provided us with authorities to support this submission, including an excerpt from Sara Blake, *Administrative Law In Canada* (third edition), which states:

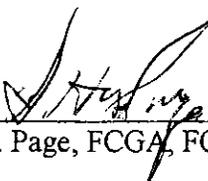
A certificate of conviction, if relevant, is admissible as *prima facie* evidence that a person did the acts for which the conviction was entered. A certificate of conviction may be put forward as evidence of professional misconduct. At the disciplinary hearing, the professional may call evidence in mitigation or by way of excuse for the offence but may not call evidence to prove that the crime was not committed. This would be an impermissible collateral attack on the conviction.

In support of this proposition, Ms. Jolley also relied on the decisions of the Ontario Court of Appeal in *Demeter v. British Pacific Life Insurance Company* (1984), 48 O.R. (2d) 266 and *Re Del Core and Ontario College of Pharmacists* (1985), 51 O.R. (2d) 1. These cases stand for the principle that a professional who has been convicted of an offence and who is subsequently charged with misconduct before a disciplinary tribunal, may call evidence in mitigation or by way of excuse for the offence, but cannot have the substance of his misconduct retried. Any attempt by the professional to lead evidence that he is not guilty of the offence for which he has already been convicted would constitute an impermissible collateral attack on the final decision of a court of competent jurisdiction.

We accept that these court decisions are binding on us and are a correct statement of the law. The purpose of an appellate hearing is to determine whether the Tribunal at first instance made an error in its decision and, if so, whether the decision should be reversed. Thus Mr. Ghai is precluded to argue that he is innocent of tax evasion and he failed to show that the PCT committed an error in the appreciation of the facts and/or of the law. There is therefore no basis to interfere with the Tribunal's findings that Mr. Ghai committed tax evasion.

After carefully reviewing the submissions presented by both parties, we are in unanimous agreement with the penalty imposed by the Professional Conduct Tribunal. We find no error in the Tribunal's reasoning and no basis to interfere with its decision to expel Mr. Ghai from the Association and order him to pay a portion of the Discipline Committee's costs. As for the costs of the appeal hearing, neither party sought an order from this Tribunal, so we order that each party shall be responsible for its own costs.

Dated this 20<sup>th</sup> day of June, 2005

  
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 Donald H. Page, FCGA, FCSI, Chair