

**IN THE MATTER OF a Proceeding under
the *Certified General Accountants Act, 2010* and the Bylaws**

**IN THE MATTER OF Fred Hilditch, a member of
The Certified General Accountants Association of Ontario**

B E T W E E N:

The Discipline Committee of The Certified General Accountants Association of Ontario

- and -

Fred Hilditch, CGA

DECISION AND REASONS FOR DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL

Members of the Professional Conduct Tribunal Panel:

David Handley, Public Representative, Chair
Jane Rivers, CGA
Irwin Pinsky, CGA

Appearances:

Karen Jolley, Counsel for the Discipline Committee
William B. Kerr, Counsel for the Member, Mr. Fred Hilditch
Lisa Braverman, Registrar and Independent Legal Counsel to the Professional Conduct Tribunal

Hearing Date:

October 28, 2011, Toronto

OVERVIEW

A panel of the Professional Conduct Tribunal of The Certified General Accountants Association of Ontario heard this matter on October 28, 2011, at Toronto. At the conclusion of the hearing, the panel reserved its decision.

ALLEGATIONS

Counsel for the Discipline Committee entered into evidence the Notice of Hearing dated September 7, 2011, Exhibit #2, and the Affidavit of Service, Exhibit #3, relating to the Notice of Hearing.

The allegations against the member are that he breached the following provisions of the Code of Ethical Principles and Rules of Conduct as stated in the Notice of Hearing:

Rule 101 Discredit

A member shall not 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 participate in, or provide services to, any activity that the member knows, or which a reasonable and informed third party would believe, to be unlawful.

Principle 400 Deceptive Information

Members shall not be associated with any financial information that the member knows, or ought to know, to be false or misleading, whether by statement or omission.

Rule 601 Compliance

A member shall comply with the Bylaws and the *Code of Ethical Principles and Rules of Conduct* of the Association as amended from time to time, and with any order or resolution of the board of directors or its committees under the Bylaws.

Rule 606(a) Detrimental Actions

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

The particulars of the allegations against the member as stated in the Notice of Hearing are as follows:

Particulars:

1. Fred Hilditch ("Hilditch") became a member of CGA Ontario in 1970.
2. His CGA Ontario certificate number is 1026.
3. In 2010 Larry Braid ("Braid") ran for election as Mayor of the Township of Georgian Bay and on 25 October 2010 was elected.

4. By virtue of the *Municipal Elections Act, 1996*, S.O. 1996, a candidate whose campaign contributions received and total expenses incurred in the election campaign exceeds \$10,000 must appoint an auditor and file a financial statement and an auditor's report.
5. The *Municipal Elections Act, 1996* further provides that the required auditor's report shall be prepared by an auditor licensed under the *Public Accounting Act, 2004*.
6. In connection with his candidacy Braid was required to file a financial statement and the auditor's report by 25 March 2011.
7. On 16 March 2011 Braid emailed Hilditch to inquire whether he could prepare the auditor's report. Braid specifically set out for Hilditch the qualifications required of an auditor under the *Municipal Elections Act*, including the fact that only persons licensed under the *Public Accounting Act* could be appointed to the position of auditor.
8. Further, the Form 4 attached in the email from Braid to Hilditch was entitled Financial Statement – Auditor's Report. It stated, in part, as follows:

Auditor's Report

Municipal Elections Act, 1996 (Section 78)

A candidate who has received contributions or incurred expenses in excess of \$10,000 must attach an auditor's report. The report must be done in accordance with generally accepted auditing standards and must:

- *set out the scope of the examination*
- *provide an opinion as to the completeness and accuracy of the financial statement and whether it is free of material misstatement.*

Further the form asks for the Professional Designation of Auditor and "Licence No." (*emphasis added*)

9. Hilditch did not hold a licence to practise public accounting under the *Public Accounting Act*.
10. Hilditch did not advise Braid that he was not licensed under the *Public Accounting Act* and was therefore not qualified to act as auditor under the *Municipal Elections Act* or complete the auditor's report Braid requested.
11. Instead Hilditch advised Braid by return email on 16 March 2011 "I will be at the cottage Thursday nite only. Call me. We can fill it out."
12. On 18 March 2011 Hilditch prepared a Report as follows:

Fred Hilditch CGA

To Whom it may concern

I have reviewed the transactions with respect to Larry Braid's 2010 Election expenses for the position of Mayor in the Township of Georgian Bay and I find that the financial statement submitted to be a true reflection of all donations received, all invoices submitted and all

stock before and after the election. The financial statement meets the statutory requirements.

Fred Hilditch, CGA

13. In completing the auditor's report when he was not licensed to do so, Hilditch violated the provisions of the *Municipal Elections Act*.
14. After a complaint was made to the Association about Hilditch's qualifications to prepare the Audit Report, Braid questioned Hilditch about his qualifications. In response Hilditch delivered to him a copy of his CGA Ontario membership certificate as his express or implied representation to Braid that Hilditch was qualified.
15. Hilditch knew or ought to have known that the CGA Ontario membership card was not a licence under the *Public Accounting Act* and did not entitle him to complete the audit that Braid required.
16. To deal with the consequences of the non-compliant Audit Report that Hilditch prepared, Braid commenced a court application seeking an order affirming his election as Mayor. In the course of that decision, the court stated:

I am satisfied first that [Braid] acted throughout in good faith. His immediate actions to rectify the situation and the fact that the first and second reports were identical demonstrate this. Secondly I am satisfied that his choice of Mr. Hilditch was an inadvertent mistake occasioned solely because Mr. Hilditch failed to read or appreciate the significance of the qualifications [Braid] had sent to him."

17. By (a) providing Braid with an Auditor's Report that he was prohibited from preparing under the provisions of the *Municipal Elections Act*, (b) expressly or by implication representing to Braid that he had a licence under the *Public Accounting Act*, (c) not advising Braid that he was not licensed to prepare the Audit Report, even when Braid brought to his attention the qualifications that were needed, and (d) jeopardizing Braid's election as Mayor and causing Braid to commence a court application to affirm his election despite the improper Audit Report Hilditch provided, Hilditch acted in a manner that brought discredit to the profession in violation of Rule 101 of the *Code*.
18. By providing an Auditor's Report pursuant to the *Municipal Elections Act* without a licence under the *Public Accounting Act*, Hilditch did not comply with the provisions of the *Municipal Elections Act* contrary to Rule 102 of the *Code*.
19. In providing Braid with his CGA Ontario certificate or membership card when Braid asked if Hilditch was licensed, and inferring by that that he was licensed, and in not advising Braid that he did not hold a licence to practise public accounting, Hilditch was associated with information that he knew, or ought to have known, to be false or misleading contrary to Principle 400 of the *Code* – Deceptive Information.
20. By (a) providing Braid with an Auditor's Report that he was prohibited from preparing under the provisions of the *Municipal Elections Act*, (b) expressly or by implication representing to Braid that he had a licence under the *Public Accounting Act*, (c) not advising Braid that he was not licensed to prepare such an Audit Report, even when Braid brought to his attention the qualifications that were needed, (d) implying to Braid that he was licensed by providing him with a copy of this CGA Ontario membership card in response to a direct question about his licence status, and (e) jeopardizing Braid's election as

Mayor and causing Braid to commence a court application to affirm his election despite the improper Audit Report Hilditch provided, Hilditch did not comply with Rule 601 of the Code.

21. By (a) preparing the Audit Report when he was not licensed to do so, (b) failing to review the qualifications required, even when they were presented to him, (c) tendering to Braid his CGA Ontario membership or certificate card when Braid asked him if he was licensed under the *Public Accounting Act*, and (d) violating or being wilfully blind of the statutory requirements of his own profession, Hilditch participated in actions detrimental to the Association and the profession contrary to Rule 606(a) of the Code.
22. Hilditch's conduct amounted to professional misconduct.

Counsel for the Discipline Committee withdrew the allegation against the member that he breached the following provision of the Code of Ethical Principles and Rules of Conduct:

Principle 400 Deceptive Information

Members shall not be associated with any financial information that the member knows, or ought to know, to be false or misleading, whether by statement or omission.

MEMBER'S PLEA

The member, through his counsel, admitted the allegations set out in the Notice of Hearing, other than the allegation that was withdrawn by Counsel for the Discipline Committee.

FACTS AND EVIDENCE

Counsel for the Discipline Committee presented an Affidavit of Service, Exhibit #6, establishing that the member had been served on September 6 2011, with a Request to Admit Facts and Documents, Exhibit #5. Counsel for the Discipline Committee presented another Affidavit of Service, Exhibit #10, establishing that the member had been served on September 15 with a Notice under the Evidence Act (Business Records), Exhibit #8. The member was advised that he had 20 days to respond to the Request to Admit Facts and Documents, and that if he failed to respond, he would be deemed to admit the truth of the facts and the authenticity of the documents, for the purposes of this proceeding. The member did not respond to the Request to Admit Facts and Documents. Counsel for the Discipline Committee advised the panel that an agreement had been reached and introduced a Settlement Agreement, Exhibit #11, which would supersede the Request to Admit Facts and Documents for the purpose of this case. The agreed facts part of the Settlement Agreement provides as follows:

Personal Facts, Relationship and Status with CGA Ontario

1. Fred Hilditch ("Hilditch") became a member of CGA Ontario in 1970.
2. His CGA Ontario certificate number is 1026.
3. In 2010 Larry Braid ("Braid") ran for election as Mayor of the Township of Georgian Bay and on 25 October 2010 was elected.
4. In connection with his candidacy Braid was required to file financial disclosure documentation by 25 March 2011.
5. The *Municipal Elections Act, 1996*, section 78 requires that, as part of the required financial disclosure,

an auditor's report must be prepared by an auditor licensed under the *Public Accounting Act, 2004*.

6. On 16 March 2011 Braid emailed Hilditch as follows:

Hi Fred, Are you coming up this weekend?? I may be coming to the Sportsman show tomorrow and could slide by your place or come down another day. I have to have the form done and an Auditor's report in to our office by 2:00 pm March 25th. The rules for an auditor to look at my expenses for the election are pasted below. I'm hoping you qualify?

I have had quite a time trying to figure out some of this and I still don't know whether I have to report the value of campaign goods as the price I paid for them or a depreciated value as they are now used. That reporting is on schedule 4. See the attached form I am working with. Nowhere can I find any instructions nor does our Clerk have any. Let me know what you think. Thanks.

Appointment of Auditor

A candidate whose campaign contributions or expenses exceeded \$10,000 must appoint an auditor. Only persons licensed under the Public Accounting Act 2004 may be appointed to the position of auditor. The auditor is required to make an examination and to report whether the financial statement presents fairly the information contained in the accounting records on which the financial statement is based.

7. The Form 4 referenced as attached is entitled Financial Statement -Auditor's Report. It states, in part, as follows:

*Auditor's Report
Municipal Elections Act, 1996 (Section 78)*

A candidate who has received contributions or incurred expenses in excess of \$10,000 must attach an auditor's report. The report must be done in accordance with generally accepted auditing standards and must:

- i set out the scope of the examination*
- ii provide an opinion as to the completeness and accuracy of the financial statement and whether it is Free of material misstatement.*

Further the form asks for the Professional Designation of Auditor and "Licence No." (*emphasis added*)

- 8. Hilditch is not licensed under the *Public Accounting Act*.
- 9. Hilditch did not advise Braid that he was not licensed under the *Public Accounting Act* and was therefore not qualified to act as auditor.
- 10. Instead Hilditch advised Braid by return email on 16 March 2011 "I will be at the cottage Thursday nite only. Call me. We can fill it out."
- 11. On 18 March 2011 Hilditch prepared a Report as follows:

Fred Hilditch CGA

To Whom it may concern

I have reviewed the transactions with respect to Larry Braid's 2010 Election expenses for the position of Mayor in the Township of Georgian Bay and I find that the financial statement submitted to be a true reflection of all donations received, all invoices submitted and all stock before and after the election. The financial statement meets the statutory requirements.

Fred Hilditch, CGA

12. After a complaint was made to the Association about Hilditch's qualifications to prepare the Audit Report, Braid questioned Hilditch about his qualifications. In response, Hilditch delivered to Braid a copy of Hilditch's CGA Ontario membership certificate.
13. Hilditch knew or ought to have known that the CGA Ontario membership certificate was not a licence under the *Public Accounting Act, 2004* and did not entitle him to complete the audit that Braid required.
14. In providing the Auditor's Report and in failing to understand or being wilfully blind to the fact that he was not licensed to prepare such a report, Hilditch put at risk Braid's election as Mayor.
15. To deal with the consequences of the non-compliant Audit Report Hilditch prepared, Braid commenced a court application seeking an order affirming his election as Mayor. In the course of that decision, the court stated:

I am satisfied first that [Braid] acted throughout in good faith. His immediate actions to rectify the situation and the fact that the first and second reports were identical demonstrate this. Secondly I am satisfied that his choice of Mr. Hilditch was an inadvertent mistake occasioned solely because Mr. Hilditch failed to read or appreciate the significance of the qualifications [Braid] had sent to him. "

16. Rule 101 of the Code of Ethical Principles and Rules of Conduct (the "Code") Discredit -provides as follows:

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.

17. By (a) providing Braid with an Auditor's Report that Hilditch was prohibited from preparing under the provisions of the *Municipal Elections Act*, (b) expressly or by implication representing to Braid that he had a licence under the *Public Accounting Act*, (c) not advising Braid that he was not licensed to prepare such an Audit Report, even when Braid brought to Hilditch's attention the qualifications that were needed, and (d) jeopardizing Braid's election as Mayor and causing Braid to commence a court application to affirm his election despite the improper Audit Report Hilditch provided, Hilditch acted in a manner that brought discredit to the profession.

18. Rule 102 of the Code - Unlawful Activity - provides as follows:

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 reasonable and informed third party would believe, to be unlawful.

19. By providing an Auditor's Report pursuant to the *Municipal Elections Act* without a licence under the *Public Accounting Act*, Hilditch did not comply with the provisions of the *Municipal Elections Act*.

20. Rule 601 - Compliance -states as follows:

A member shall comply with the bylaws and the Code of Ethical Principles and Rules of Conduct of the Association as amended from time to time, and with any order or resolution of the board of directors or tis committees under the Bylaws.

21. Rule 606(a) of the Code -Detrimental Actions -states as follows:

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

22. By (a) preparing the Auditor's Report when Hilditch was not qualified to do so; (b) failing to review the qualifications required, even when they were presented to him; and (c) tendering to Braid his CGA Ontario membership when Braid asked if Hilditch was licensed under the *Public Accounting Act*, either in an attempt to mislead Braid or being willfully blind of the statutory requirements of Hilditch's own profession, Hilditch did not comply with the Association's bylaws or Code and participated in actions detrimental to the Association and the profession.

23. In preparing the Auditor's Report in breach of the *Municipal Elections Act* and the *Public Accounting Act*, in failing to advise Braid that he did not have a licence under the *Public Accounting Act*, and in not advising Braid after a complaint was made about him having prepared the Auditor's Report that his CGA Ontario membership card was not a licence under the *Public Accounting Act* that permitted him to prepare the Auditor's Report, Hilditch was guilty of conduct that amounted to professional misconduct.

24. Hilditch recognizes that it was contrary to the Code for him to provide an Auditor's Report when he was not licensed under the *Public Accounting Act*.

25. Hilditch acknowledges that he agreed to provide Braid with an Auditor's Report even after Braid advised Hilditch that the report had to be prepared by someone who was licensed under the *Public Accounting Act*.

26. Hilditch agrees that he provided Braid with an Auditor's Report that he was not licensed to provide.

27. Hilditch agrees that he did not provide Braid with accurate information about his status when he failed to advise Braid that he was not permitted to prepare the Auditor's Report as he was not licensed.

28. Hilditch agrees that in providing such a report and in failing to understand or being wilfully blind to the

fact that he was not licensed to prepare such an Auditor's report, he put at risk Braid's election as Mayor.

29. Hilditch agrees that in providing Braid with Hilditch's CGA Ontario membership certificate when Braid asked Hilditch if he was licensed under the *Public Accounting Act*, Hilditch unwittingly continued to mislead Braid to believe that he was licensed.

30. Hilditch agrees that his conduct amounted to a violation of Rules 101,102 and 606(a) of the Code.

The panel accepted as true the agreed facts in the Settlement Agreement.

DECISION

Having considered the admissions made by the member through his counsel, the agreed facts in the Settlement Agreement, and the submissions of the parties, the panel finds that the member breached the following provisions of the Code of Ethical Principles and Rules of Conduct:

Rule 101 Discredit

A member shall not 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 participate in, or provide services to, any activity that the member knows, or which a reasonable and informed third party would believe, to be unlawful.

Rule 601 Compliance

A member shall comply with the Bylaws and the *Code of Ethical Principles and Rules of Conduct* of the Association as amended from time to time, and with any order or resolution of the board of directors or its committees under the Bylaws.

Rule 606(a) Detrimental Actions

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

The panel also finds the member guilty of professional misconduct.

REASONS FOR DECISION

This is a case where a member of the public had to go to considerable lengths to correct an error made by the CGA Ontario member, Mr. Hilditch. The panel concluded that Mr. Hilditch exhibited a lack of understanding of his Association's Rules and Bylaws in this matter. Although the panel saw no malice in Mr. Hilditch's actions, his lack of understanding of his professional responsibilities and the extent of his jurisdiction in which he may perform his accounting duties has caused a member of the public, Mr. Braid, to expend considerable time, money and effort to take additional actions through the courts to affirm that he had been duly elected as the Mayor for the Township of Georgian Bay.

The panel was very concerned with this case, as a CGA Ontario member since 1970 should have known the rules requiring a licence under the *Public Accounting Act, 2004* to complete and sign an Auditor's Report.

The panel gave serious consideration and respect to the fact that the parties in this matter had submitted a Settlement Agreement Exhibit #11. Ms. Karen Jolley, Counsel for the Discipline Committee, reached this agreement with Mr. William B. Kerr, Counsel for the Member, Mr. Fred Hilditch.

After hearing submissions from both counsel and reviewing the Settlement Agreement, the panel accepted as true the agreed facts found in the Settlement Agreement, and as such, the decisions reached by this panel were determined using the agreed upon facts found in the Settlement Agreement.

In reviewing the agreed upon facts, including the admissions of Mr. Hilditch, as laid out in the Settlement Agreement Exhibit #11, the panel was satisfied that the relevant provisions under the Code of Ethical Principles and Rules of Conduct were violated.

Rule 101 Discredit

A member shall not participate in, or knowingly provide services to, any practice, pronouncement or act that would be of a nature to discredit the profession.

In the Settlement Agreement, paragraph 17, Mr. Hilditch admitted to violating **Rule 101 Discredit** by:

- providing Braid with an Auditor's Report that he was prohibited from preparing under the provisions of the *Municipal Elections Act*;
- expressly or by implication representing to Braid that he had a licence under the *Public Accounting Act*;
- not advising Braid that he was not licensed to prepare such an Audit Report, even when Braid brought to his attention the qualifications that were needed;
- jeopardizing Braid's election as Mayor and causing Braid to commence a court application to affirm his election despite the improper Audit Report he provided.

The panel therefore concludes that Mr. Hilditch acted in a manner that brought discredit to the profession.

Rule 102 Unlawful Activity

A member shall not participate in, or provide services to, any activity that the member knows, or which a reasonable and informed third party would believe, to be unlawful.

In the Settlement Agreement, paragraph 19, Mr. Hilditch admitted to violating **Rule 102 Unlawful Activity** by:

- providing an Auditor's Report pursuant to the *Municipal Elections Act* without a licence under the *Public Accounting Act*.

The panel therefore concludes that Mr. Hilditch did not comply with the provisions of the *Municipal Elections Act* and thus acted unlawfully.

Rule 601 Compliance

A member shall comply with the Bylaws and the Code of Ethical Principles and Rules of Conduct of the Association as amended from time to time, and with any order or resolution of the board of directors or its committees under the Bylaws.

In the Settlement Agreement, paragraph 22, Mr. Hilditch admitted to violating **Rule 601 Compliance** by:

- preparing the Auditor's Report when he was not qualified to do so;
- failing to review the qualifications required, even when they were presented to him;
- tendering to Braid his CGA Ontario membership when Braid asked if he was licensed under the *Public Accounting Act*, whether this was done with the attempt to mislead Braid or being willfully blind of the statutory requirements of his own profession.

The panel therefore concludes that Mr. Hilditch's actions were not in compliance with the Bylaws and the Code of Ethical Principles and Rules of Conduct of the Association.

Rule 606(a) Detrimental Actions

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

In the Settlement Agreement, paragraph 22, Mr. Hilditch admitted to violating **Rule 606(a) Detrimental Actions** by:

- preparing the Auditor's Report when he was not qualified to do so;
- failing to review the qualifications required, even when they were presented to him;
- tendering to Braid his CGA Ontario membership when Braid asked if he was licensed under the *Public Accounting Act*, whether this was done with the attempt to mislead Braid or being willfully blind of the statutory requirements of his own profession.

Mr. Hilditch's actions noted above were found by the panel to be detrimental to the Association and the profession.

PENALTY SUBMISSIONS

Counsel for the Discipline Committee advised the panel that an agreement had been reached on the penalty.

The agreed penalty part of the Settlement Agreement provides as follows:

- Hilditch accepts a reprimand from the Association as a result of his breaches of the Code.
- Hilditch accepts a suspension of his membership in the Association for a period of nine months, effective from the date of ratification of this agreement by the Professional Conduct Tribunal.
- Upon the ratification of this agreement by the Professional Conduct Tribunal, Hilditch will deliver to the Association his CGA Ontario membership certificate and his CGA Canada membership certificate. The certificates will be returned to him upon the conclusion of the nine month suspension and upon meeting the Association's reinstatement requirements.
- Hilditch agrees to pay a fine of \$5,000 plus costs and disbursements of \$1,678.92 on or before 15 January 2012 for his breaches of the Code and his breach of statutes, namely the *Municipal Elections Act* and *Public Accounting Act*.
- Hilditch understands that, as required by the bylaws, upon ratification, the decision will be published in Statements and in a local newspaper.

Ms. Jolley submitted 4 cases to assist the Panel in determining that the penalty that was agreed to by the parties was appropriate in this case, The Discipline Committee of the CGA Association of Ontario versus Al-Noor Vellani, Pushap Jindal, Manny Gaspar, and A. E. Goldhawk.

In October 2010, a Professional Conduct Tribunal heard the case against Mr. Al-Noor Vellani. He was found to have breached Rules 102, 514, 515, 516, 601 and 606 (a) of the Code of Ethical Principles and Rules of Conduct as a result of him actively performing corporate income taxes and compiled financial statements over a number of years. The infractions were of a more serious nature than that of Mr. Hilditch, causing him to be expelled from the Association with a \$10,000 fine. This fine was a reduced amount from the submission of \$25,000.

In September 2009, a Tribunal was asked to ratify a Statement of Facts and Resolution that was reached between The Discipline Committee of the CGA Association of Ontario and Mr. Pushap Jindal who was found to have breached Rules 102, 605.1, 606 (a), 606 (b) of the Code of Ethical Principles and Rules of Conduct as a result of him issuing eight engagement reports without a public accounting license, not having the appropriate CICA Handbook and performed deceptive practices in not reporting the issuing of eight engagement reports to the Association. He was fined \$5,000 and was given a reprimand.

In December 2010, a Tribunal was asked to ratify a Statement of Facts and Resolution that was reached between The Discipline Committee of the CGA Association of Ontario and Mr. Gaspar who was found to have breached Rules 102, 606 (a) and 606 (b) of the Code of Ethical Principles and Rules of Conduct as a result of him issuing twelve engagement reports without a public accounting license and performed deceptive practices in not reporting the issuing of twelve engagement reports to the Association. He was fined \$5,000 and was given a reprimand.

In January 2011, a Tribunal was asked to ratify a Statement of Facts and Resolution that was reached between The Discipline Committee of the CGA Association of Ontario and Mr. Goldhawk who was found to have breached Rules 102, 514, 515, 516, 509.1, 601 and 606 (a) of the Code of Ethical Principles and Rules of Conduct as a result of him issuing two engagement reports without a public accounting license, providing professional services without registration, did not comply with the Association's practice inspection requirements, had no liability insurance, advertising these services to the public, all of these actions did not comply with the Association's Code and were detrimental to the Association. He was reprimanded, suspended from the Association for 3 months, fined \$17,000 and paid a number of costs totaling nearly \$10,000.

PENALTY DECISION

As a result, the panel after deliberation accepted the agreed penalty in the Settlement Agreement and accordingly orders the following penalty:

- Mr. Hilditch is reprimanded by the Association as a result of his breaches of Rules 101, 102, 601 and 606(a) of the Code.
- Mr. Hilditch's membership in the Association is suspended for a period of nine months, effective from the date of ratification of this agreement by the Professional Conduct Tribunal.
- Mr. Hilditch must deliver to the Association his CGA Ontario membership certificate and his CGA Canada membership certificate. The certificates will be returned to him upon the conclusion of the nine month suspension and upon meeting the Association's reinstatement requirements.
- Mr. Hilditch must pay a fine of \$5,000 plus costs and disbursements of \$1,678.92 on or before 15 January 2012 for his breaches of the Code and his breach of statutes, namely the *Municipal Elections Act* and *Public Accounting Act*.
- As required by the Bylaws, the decision of this panel will be published in Statements and in a local

newspaper.

REASONS FOR PENALTY DECISION

The panel was further advised by Ms. Braverman, Independent Legal Counsel to the Professional Conduct Tribunal, that in matters where there is a joint submission on penalty, the panel is entitled to accept or reject it. The panel can even vary it. The panel must of course, give serious consideration and respect to a joint submission. In order to reject or vary a joint submission on penalty, the test set out by the courts needs to be met. But, before rejecting or varying a joint submission on penalty, as part of the panel's duty of fairness, the panel should express its concerns with the joint submission to counsel and give them an opportunity to make further submissions and/or call evidence. The panel has to keep in mind when evaluating a joint submission, it was developed through negotiation with 2 competent and experienced counsel and that they may be aware of facts that the panel is unaware of. The joint submission should be accepted if it is within the appropriate range (i.e. within the range of reasonable penalties), even though the panel may have preferred to impose a penalty falling somewhere else within that range. The test for rejecting or varying agreed facts or joint submission on penalty comes from the criminal law and has been applied in professional regulatory or discipline cases. In criminal cases, the Ontario Court of Appeal and the Supreme Court of Canada have repeatedly held that trial judges should not reject or vary joint submissions unless the joint submission is contrary to the public interest **and** it would bring the administration of justice into disrepute. This is a high threshold to be met intended to foster confidence in an accused who has given up his/her right to a trial that the joint submission he/she obtained in return for a plea of guilty will be respected by the trial judge. Therefore, the panel can only reject or vary the agreed facts or joint submission on penalty in this case if it is contrary to the public interest **and** it would bring the administration of justice into disrepute. For example, in order for the test to have been met in relation to the joint submission on penalty, the ultimate penalty imposed will necessarily end up being drastically different than the joint submission. If the ultimate penalty is just slightly higher or slightly lower than that originally imposed, then it demonstrates that the test was not met.

With this advice, the panel accepted the agreed penalty.

The panel reviewed the Sentencing Brief, which provided guidance to the panel that the Penalty Submissions were in line with previous cases of a similar nature. The cases provided, although similar in nature, were all for conduct more severe than the case before this panel, in fact all 4 cases were for members that held themselves out to the public and were actively engaged in public accounting. With that said, the results of Mr. Hiditch's actions certainly contravened the Rules as noted above.

The panel considered that although the cases in the Sentencing Brief had a greater degree of seriousness to them it is important that the members of the Association be fully aware of their actions and the implications of those actions. If members hold themselves out as a CGA they must know the Rules that govern such credentials and understand that there are implications to not abiding by those Rules, whether or not they use their CGA Ontario designation in their day to day activities.

A member that does not work in the certified general accounting field on a daily basis, yet is a member of the CGA Ontario has no lesser requirement to follow and must be held accountable against the Rules of the Association, as a member that is actively in the certified general accounting field.

Although after the second Auditor's Report was prepared, there was the same result by a person licensed in public accounting, the actions of Mr. Hilditch could have jeopardized one of society's fundamental principles of electing a person to office, in this case the Mayor for the Township of Georgian Bay. Mr. Hilditch, trying to assist a friend, Mr. Braid, is still required to follow the CGA Ontario's Rules and Bylaws.

The Panel concluded that the penalty agreed upon by the parties meets the purpose of demonstrating to the public that CGA Ontario takes any infractions to their Rules and Bylaws seriously, and gives notice and provide a general deterrence to CGA Ontario members that Rules and Bylaws must be known and adhered to.

Dated this 13th day of DECEMBER, 2011

I, David Handley, sign this Decision and Reasons for Decision as Chair of the panel of the Professional Conduct Tribunal on behalf of the members of the panel that heard this matter.



David Handley

NOTICE

This decision of the Professional Conduct Tribunal may be appealed to an Appeal Tribunal within thirty (30) days of the date of this decision.

The Notice of Appeal must be in writing, addressed to the Secretary of the Association (Certified General Accountants 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 and delivering 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 the Bylaws, 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 void.