

**IN THE MATTER OF a Proceeding under the  
*Certified General Accountants of Ontario Act, 1983 and By-Law Four***

**IN THE MATTER OF Alan Hogan, a member of the Certified General Accountants of  
Ontario**

**B E T W E E N:**

The Discipline Committee of the Certified General Accountants of Ontario

- and -

Alan Hogan

**DECISION AND REASONS FOR DECISION OF THE PROFESSIONAL  
CONDUCT TRIBUNAL**

Members of the Professional Conduct Tribunal Panel:

Ramesh Ramotar, CGA, Chair

Jack Cayne, CGA

David Handley, Public Representative

Appearances:

Karen E. Jolley, Counsel for the Discipline Committee

John Rowinski, Counsel for Alan Hogan

Lisa S. Braverman, Registrar and Independent Legal Counsel to the Professional Conduct  
Tribunal

Hearing Dates:

October 16, 2009

November 18, 2009

December 10, 2009

## **OVERVIEW**

A panel of the Professional Conduct Tribunal of the Certified General Accountants of Ontario heard this matter in Toronto on:

October 16, 2009

November 18, 2009

December 10, 2009

At the conclusion of the hearing, the panel reserved its decision.

## **PRELIMINARY MATTERS**

### **The Motion held on October 16, 2009**

#### Request for Adjournment

As background, Ms. Jolley indicated that the "Request to Admit Facts and Documents" was sent to Mr. Hogan on or about September 9, 2009 with the requirement that Mr. Hogan respond with the form "Response to Request to Admit" within 20 days of being served with the "Request to Admit Facts and Documents", if he intended to dispute any facts contained in said document. Otherwise, it would be deemed that Mr. Hogan admits, for the purposes of the proceeding only, the truth of the facts and the authenticity of the documents set out in said document. Mr. Hogan did not respond to the "Request to Admit Facts and Documents".

Mr. Rowinski, counsel for Alan Hogan, requested an adjournment of the hearing. Mr. Rowinski also indicated that he intends to bring a Motion to request leave to withdraw the deemed admissions in the "Request to Admit Facts and Documents".

The Motion for an adjournment brought forward by Mr. Rowinski is based on:

1. Mr. Rowinski recently being retained.
2. Intent to submit reasons to withdraw the deemed admissions in the "Request to Admit Facts and Documents".

Ms. Jolley consented to the Motion if certain terms are imposed on the adjournment.

#### **Decision:**

The Tribunal granted the adjournment at Mr. Rowinski's request, consented to by Ms. Jolley, based on compassionate grounds and on 3 conditions:

1. The Hearing shall be adjourned to the first date available to the panel after the Motion relating to the Request to Admit is heard.
2. The adjournment is preemptory on Mr. Hogan.
3. Mr. Hogan shall pay \$500.00 as the Discipline Committee's costs, to be paid ten (10) days prior to the hearing of the Motion (November 8, 2009).

The panel gave some directions on the process relating to Mr. Rowinski's next Motion. The panel directed that Mr. Rowinski's Motion was set to be heard November 18, 2009 at 10:00 am. Mr. Rowinski shall submit a Notice of Motion and affidavit on or before November 2, 2009. Ms. Jolley shall respond on or before November 10, 2009. Mr. Rowinski has until November 12, 2009 at 12 noon to respond. All submissions are to be sent to Ms. Braverman and Ms. Braverman will then submit the submissions to the Tribunal in the afternoon on

November 12, 2009, based on the agreement by Ms. Jolley and Mr. Rowinski that the panel can see the submissions prior to the hearing of the Motion.

### **The Motion held on November 18, 2009**

Mr. Rowinski brought a Motion for:

1. An order granting leave to withdraw deemed admissions with respect to Alan Hogan's failure to respond to a Request to Admit delivered by the solicitors for the Discipline Committee of the Certified General Accountants of Ontario.
2. An order granting leave to Alan Hogan for an extension of time to file his response to the Request to Admit.

Ms. Jolley opposed the Motion.

#### Test for Withdrawal of Deemed Admissions

Mr. Rowinski argued that where a party is requesting leave to withdraw a deemed admission, they must pass three (3) tests by establishing:

1. that the proposed admission raises a triable issue;
2. that the admission was inadvertent or resulted from wrong instructions; and
3. that the withdrawal will not result in any prejudice that cannot be compensated for in costs.

On the other hand, Ms. Jolley argued that where a party is requesting leave to withdraw a deemed admission, they must pass three (3) tests by establishing:

1. that the proposed admission raises a triable issue;
2. that a reasonable explanation for the change of position has been provided; and
3. that the withdrawal will not result in any prejudice that cannot be compensated for in costs.

The panel determined that the rules around withdrawing deemed admissions for failure to respond to a Request to Admit within the required time period are quite clear. The member must prove that all 3 parts to the test for withdrawal of deemed admissions are met.

#### **Decision:**

The Tribunal denied Mr. Rowinski's Motion for leave to withdraw deemed admissions as stated in the "Request to Admit Facts and Documents". Further, the Tribunal denied Mr. Rowinski's Motion for leave for an extension of time for filing a response to the Request to Admit.

The Tribunal ordered that Mr. Hogan pay \$1,000.00 costs for this Motion. Mr. Hogan's hearing was set for December 10, 2009.

The Tribunal found that Mr. Rowinski was not successful in his argument on this Motion. In terms of the 3 part test, the Tribunal found that:

1. There was no triable issue; at the time of the allegations by Mr. Simpson it is reasonable to suggest that there was a client relationship.

2. No reasonable explanation was put forward as to why the member did not respond as required within the time prescribed; other than inadvertence. As stated by Ms. Jolley, the second part of the test had been reformulated and inadvertence in isolation is no longer part of the test.
3. Prejudice cannot be compensated with costs.

### **ALLEGATIONS**

Counsel for the Discipline Committee entered into evidence the Notice of Hearing dated September 1, 2009, contained in the Discipline Brief as Exhibit 1, the Discipline Brief as Exhibit 2 and the Affidavit of Service as Exhibit 3.

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:

#### **Code of Ethical Principles – Trust and Duties**

Members shall act in the interests of their clients, employers, and interested third parties, and shall be prepared to sacrifice their self-interest to do so. Members shall honour the trust bestowed on them by others, and shall not use their privileged position without their principal's knowledge and consent. Members shall strive to be independent of mind and in appearance.

#### **Code of Ethical Principles – Responsibilities to the Profession**

Members shall always act in accordance with the duties and responsibilities associated with being members of the profession, and shall carry on work in a manner that will enhance the image of the profession and the Association.

#### **Particulars:**

As set out in the Notice of Hearing, the Discipline Committee makes the following particulars of the allegations against Mr. Hogan:

1. Rory Simpson retained you commencing in 2005 to prepare his income tax returns and you prepared his returns up to and including his 2007 income tax return.
2. In July 2008 Mr. Simpson contacted you concerning notification that Canada Revenue Agency ("CRA") was auditing his 2005 and 2006 returns. You advised Simpson that you were out of the office for the balance of the week but asked him to drop off the letter he had received from CRA, which he did.
3. Simpson followed up with you a number of times in July as to how to proceed and requesting a meeting with you to prepare the response. You did not return his calls or emails. When he did not hear back from you and the deadline for a response was at hand, he prepared the response to CRA on his own.
4. Simpson contacted you again in August 2008 for assistance as CRA had rejected the form in which he had prepared his materials.

5. You met with Simpson on 15 August 2008 and, at your request, he left all of the 2005 and 2006 receipts with you along with his original invoices and licences so that you could prepare a reply to CRA.
6. Simpson followed up with you by email and telephone calls from August to November 2008 as to the status of your dealings with CRA on his behalf. You did not respond to him.
7. As he had not responded to CRA, in November 2008 Simpson was told that he owed \$20,000 to be paid immediately. He contacted you in November 2008 noting that you had not returned his calls or emails attempting to reach you, had not done the work requested and he requested a time to pick up his receipts and business information so he could take them to another accountant. You did not return his documents.
8. By your action and inaction you left Simpson with the impression that you would carry out the work he had requested of you.
9. You never requested that Simpson pick up his documents nor did you advise him that you were not going to assist him in preparing the response to CRA.
10. You never told Simpson that you required a written retainer or any additional documentation or information before you would prepare a response to CRA on his behalf.

#### **MEMBER'S PLEA**

The member denied the allegations set out in the Notice of Hearing. The Chair specifically asked the member his position on the allegations and the member responded that he denied the allegations.

#### **FACTS AND EVIDENCE**

Counsel for the Discipline Committee presented an Affidavit of Service (Exhibit 4), establishing that the member had been served on September 9, 2009 with a Request to Admit Facts and Documents (Exhibit 7), as well as a Notice under the Evidence Act (Business Records) (Exhibit 5).

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. Based on the facts and documents deemed to be admitted by the member at this hearing, the panel makes the following findings of fact:

#### **Personal Facts, Relationship and Status with Certified General Accountants of Ontario (CGA Ontario)**

1. Mr. Hogan's address on the CGA Ontario register is 60 Sturgess Crescent, Brooklin, Ontario L1M 1J7 (Home and Delivery) and 62 Winchester Road East, Brooklin, Ontario L1M1B4 (Business).
2. Mr. Hogan became a member of CGA Ontario in 1993.
3. Commencing in 2005, Mr. Hogan was retained by Rory Simpson ("Simpson") to prepare his income tax returns.
4. Mr. Hogan prepared Mr. Simpson's income tax returns up to and including his 2007 income tax return.
5. On Wednesday 8 July 2008 Mr. Simpson emailed Mr. Hogan advising that he had received notification from Canada Revenue Agency ("CRA") that it was auditing his 2005 and 2006 returns.
6. Mr. Hogan advised Mr. Simpson that he was out of the office for the balance of that week but asked Mr Simpson to drop off the CRA letter to Mr. Hogan, which he did.
7. Mr. Simpson followed up with an email to Mr. Hogan on 18 July 2008 for advice on how to proceed. When Mr. Hogan did not respond, he called and left a message.
8. Mr. Simpson emailed Mr. Hogan again on 24 July 2008 and advised Mr. Hogan that he was running out of time and asked Mr. Hogan to schedule a time to meet him. Mr. Hogan did not respond to this email or to his call made at or around the same date.
9. Mr. Simpson emailed Mr. Hogan again on 28 July 2008 and stated that he only had until Friday to get the form completed for CRA. His email stated:

"If you do not have time, could you advice [sic] me to whom I should speak to for direction. I have all the receipts ready and itemized on an excel spread sheet. I have over the 19 thousand + showing for the first year in expenses, and well over the 2 thousand plus in expenses showing for the second year. Please let me know how to proceed."
10. Mr. Hogan did not respond to Mr. Simpson's email or to his follow up call on or around the same date.
11. Mr. Simpson emailed Mr. Hogan on 14 August 2008 and advised that he filed his own paperwork, but that CRA had called him to advise it had not been done properly and advised that he was to have his accountant do it properly. He stated:

“I received everything back today, and I need to get this done for them. Could you please advise me when I can drop off my 2005 and 2006 receipts for you to do please.”

12. In response to this email, on 14 August 2008, Mr. Hogan advised Mr. Simpson by return email that “I went out of town for a while and have been tied up on some other issues” and proposed he bring in his paperwork the next day.
13. On or about 15 August 2008 Mr. Hogan met with Mr. Simpson. Mr. Simpson brought Mr. Hogan all his original receipts, invoices and licences. He provided Mr. Hogan with this information and asked Mr. Hogan to handle the issue with CRA and work toward a timely resolution.
14. On 26 August 2008 Mr. Simpson emailed Mr. Hogan asking if matters had been resolved and requesting that Mr. Hogan let him know when everything was complete. Mr. Hogan did not respond to his email or to his voice mail left around the same time.
15. Mr. Simpson emailed Mr. Hogan again on 8 September 2008 sending Mr. Hogan a letter he had received from CRA and asking if there was anything else Mr. Hogan needed from him to get this resolved as soon as possible. Mr. Hogan did not respond to his email or to his voice mail left around the same time.
16. Mr. Simpson called Mr. Hogan and left messages on Mr. Hogan’s answering machine in August and September looking for a status report from Mr. Hogan. Mr. Hogan did not return his phone calls.
17. Mr. Simpson emailed Mr. Hogan again on 17 November 2008 and stated:

“I have tried numerous times to get a hold of you (by phone, left message), but have had no response back on this issue. The government is saying that I owe them \$20,000.00 NOW. I do not feel it is fare [sic], that you said you would handle/correct everything, and nothing has been done (per the government). I have NO job now (since July 2008), and this added pressure of this issue not being resolved, is not helping my health. Could you please let me know a time, that I can pick up all my tax receipts, and business information, so I can bring it to another accountant, to get this mess straightened out quickly.”
18. Mr. Simpson followed up with a telephone call and left a message.
19. Mr. Hogan did not respond to Mr. Simpson’s email or voice mail and Mr. Hogan did not return his documents to him as he had requested.

20. At no time during the contact made by Mr. Simpson by email or telephone did Mr. Hogan clearly advise him that Mr. Hogan would not do the work requested.
21. By Mr. Hogan's action and inaction Mr. Hogan left Simpson with the impression that Mr. Hogan would carry out the work requested of Mr. Hogan.
22. In July 2008 when Mr. Simpson asked Mr. Hogan to refer him to someone else if Mr. Hogan did not have the time to help him, Mr. Hogan did not refer him to someone else nor did Mr. Hogan make it clear to him the limited scope of the services that Mr. Hogan were prepared to offer him.
23. By advising Mr. Simpson to provide Mr. Hogan with a copy of his letter from CRA and his receipts in August 2008 and receiving those documents from him, in meeting with him to discuss the documents and in not returning them to Mr. Simpson, Mr. Hogan left Mr. Simpson with the impression that Mr. Hogan were going to prepare the information he needed to send to CRA, as he had requested Mr. Hogan to do.
24. At no time from August 2008 when Mr. Hogan asked Mr. Simpson for his documents and he gave them to Mr. Hogan, until after receipt of his complaint to the Association in December 2008, did Mr. Hogan contact Mr. Simpson to discuss his matter, provide him with an update, carry out the work discussed or advise him that Mr. Hogan would not do the work requested.
25. Mr. Simpson felt let down by Mr. Hogan's failure to respond to him, Mr. Hogan's failure to assist him with his tax situation with CRA and Mr. Hogan's failure to return his documents to him, when he requested them.
26. Mr. Hogan could have avoided the situation by either advising Mr. Simpson that Mr. Hogan were not prepared to assist him either at all or to the level he expected or by entering into a retainer with him and doing the work.
27. Mr. Hogan did not advise Mr. Simpson that Mr. Hogan needed to enter into a retainer with him to do the work requested and Mr. Hogan did not request Mr. Simpson to sign a retainer. Mr. Hogan did not tell Mr. Simpson that, without a retainer, Mr. Hogan could not or would not do the work he thought Mr. Hogan was going to do for him.
28. Mr. Hogan never advised Mr. Simpson that Mr. Hogan did not view him as a client.
29. The Principle on Trust and Duties in the Association's Code of Ethical Principles and Rules of Conduct (the "Code") provides that members shall

act in the interest of their clients and interested third parties.

30. The Code's further Principle on Responsibilities to the Profession provides that members shall always act in accordance with the duties and responsibilities associated with being members of the profession and shall carry on work in a manner that will enhance the image of the profession and the Association.
31. In asking Mr. Simpson for his documents, receiving his original documents and meeting with him, Mr. Hogan left him with the impression that he was a client and that Mr. Hogan would act for him.

Further, the member admits to the authenticity to all correspondence as noted in the Discipline Brief between:

1. Mr. Hogan and Mr. Simpson which details email discussions regarding the completion of the work Mr. Simpson requested Mr. Hogan to complete on behalf of Simpson (as noted under tabs a through m in the Discipline Brief).
2. Mr. Hogan/Mr. Simpson and the Association regarding the complaint received by the Association from Mr. Simpson (as noted under tabs 4 through 8 in the Discipline Brief).

Mr. Hogan appeared as a witness for himself and Exhibits 8-10 were entered into evidence during his testimony.

Through questioning by Mr. Rowinski, Mr. Hogan confirmed that Mr. Simpson retained him in 2005 and was a client of his practice from 2005 to 2007.

The Tribunal found that Mr. Hogan's testimony was not credible for the following reasons:

1. In regards to the emails under tabs 3 (a through m), Mr. Hogan confirmed in his testimony that he had received emails from Mr. Simpson except he did not recall receiving (e, f, and g). However his testimony is inconsistent with the deemed admissions in the Request to Admit which indicate that Mr. Simpson sent Mr. Hogan those emails.
2. Further, the Tribunal found the responses provided by Mr. Hogan as to how Mr. Hogan had received emails from Mr. Simpson (i.e., a, c, h, l) but not recalling receiving emails (e through g) as improbable as he had received other emails.
3. Further, in Mr. Hogan's testimony he stated that Mr. Simpson did not bring his receipts. This is contrary to the deemed admissions in the Request to Admit where it states that:

13. On or about 15 August 2008 Mr. Hogan met with Mr. Simpson. Mr. Simpson brought Mr. Hogan all his original receipts, invoices and licences.

He provided Mr. Hogan with this information and asked Mr. Hogan to handle the issue with CRA and work toward a timely resolution.

23. By advising Mr. Simpson to provide Mr. Hogan with a copy of his letter from CRA and his receipts in August 2008 and receiving those documents from him, in meeting with him to discuss the documents and in not returning them to Mr. Simpson, Mr. Hogan left Mr. Simpson with the impression that Mr. Hogan were going to prepare the information he needed to send to CRA, as he had requested Mr. Hogan to do.

4. Mr. Rowinski asked Mr. Hogan whether there was any time Mr. Simpson said to Mr. Hogan – I need you to do work. Mr. Hogan responded no. Again the Tribunal found this contrary to the deemed admissions in the Request to Admit where it states that:

6. Mr. Hogan advised Mr. Simpson that he was out of the office for the balance of that week but asked Mr Simpson to drop off the CRA letter to Mr. Hogan, which he did.

11. Mr. Simpson emailed Mr. Hogan on 14 August 2008 and advised that he filed his own paperwork, but that CRA had called him to advise it had not been done properly and advised that he was to have his accountant do it properly. He stated:

“I received everything back today, and I need to get this done for them. Could you please advise me when I can drop off my 2005 and 2006 receipts for you to do please.”

12. In response to this email, on 14 August 2008, Mr. Hogan advised Mr. Simpson by return email that “I went out of town for a while and have been tied up on some other issues” and proposed he bring in his paperwork the next day.

13. On or about 15 August 2008 Mr. Hogan met with Mr. Simpson. Mr. Simpson brought Mr. Hogan all his original receipts, invoices and licences. He provided Mr. Hogan with this information and asked Mr. Hogan to handle the issue with CRA and work toward a timely resolution.

22. In July 2008 when Mr. Simpson asked Mr. Hogan to refer him to someone else if Mr. Hogan did not have the time to help him, Mr. Hogan did not refer him to someone else nor did Mr. Hogan make it clear to him the limited scope of the services that Mr. Hogan were prepared to offer him.

23. By advising Mr. Simpson to provide Mr. Hogan with a copy of his letter from CRA and his receipts in August 2008 and receiving those documents from him, in meeting with him to discuss the documents and in not returning them to Mr. Simpson, Mr. Hogan left Mr. Simpson with the impression that

Mr. Hogan were going to prepare the information he needed to send to CRA, as he had requested Mr. Hogan to do.

Paragraphs 6, 11, 12, 13, 22 and 23 provided a clear understanding that, if not explicitly stated, Mr. Simpson had every reason to believe that Mr. Hogan's intent was to handle this CRA matter on Mr. Simpson's behalf as requested by Mr. Simpson.

The Tribunal felt it was quite reasonable for Mr. Simpson to have been left with the impression that it was Mr. Hogan's intention to not only assist but act on Mr. Simpson's behalf in this matter.

Mr. Hogan, simply did not fulfill his duties as set out in the Code of Ethical Principles in this matter.

### **DECISION**

The Discipline Committee has the onus of proving the allegations in the Notice of Hearing in accordance with the civil standard of proof. The standard of proof applied by the panel was a balance of probabilities based on clear, convincing and cogent evidence.

Having considered the evidence and submissions of the parties and the onus and standard of proof, the panel finds that the member breached the following provisions of the Code of Ethical Principles and Rules of Conduct:

#### **Code of Ethical Principles – Trust and Duties**

Members shall act in the interests of their clients, employers, and interested third parties, and shall be prepared to sacrifice their self-interest to do so. Members shall honour the trust bestowed on them by others, and shall not use their privileged position without their principal's knowledge and consent. Members shall strive to be independent of mind and in appearance.

#### **Code of Ethical Principles – Responsibilities to the Profession**

Members shall always act in accordance with the duties and responsibilities associated with being members of the profession, and shall carry on work in a manner that will enhance the image of the profession and the Association.

### **REASONS FOR DECISION**

After considering all of the evidence provided at the hearing and submissions of both parties, the Tribunal concluded that the Discipline Committee of CGA Ontario met its onus of demonstrating that Mr. Hogan had breached both provisions of the Code of Ethical Principles based on the following:

First, the Tribunal found that Mr. Hogan violated The Code of Ethical Principles - Trust and Duties which requires members to act in the interests of their clients and shall be prepared to sacrifice their self-interest to do so. In not providing timely assistance to Mr. Simpson and not clearly communicating to Mr. Simpson the level of involvement he was prepared to provide in remedying the situation between Simpson and the CRA, the Tribunal found Mr. Hogan did not act in the interest of the client Mr. Simpson.

The Tribunal also found that Mr. Hogan violated The Code of Ethical Principles – Responsibilities to the Profession which requires members to always act in accordance with the duties and responsibilities associated with being members of the profession, and shall carry on work in a manner that will enhance the image of the profession and the Association.

A cornerstone of an ethical practice is clear communication. In the limited communication Mr. Hogan had with Mr. Simpson, Mr. Hogan provided no other understanding to Mr. Simpson other than his intention to assist Mr. Simpson in the CRA issue. Mr. Simpson clearly believed that he had a client relationship with Mr. Hogan, and Mr. Simpson understood that Mr. Hogan was going to assist in the CRA audit. However, no effort was actually made by Mr. Hogan to assist Mr. Simpson in resolving the CRA issues.

Mr. Hogan held a responsibility to either complete the work requested or make it clear that he will not assist Mr. Simpson but, provide assistance in locating someone to assist Mr. Simpson in this matter.

This lack of professionalism and inappropriate behaviour only tarnishes the image of the Association.

For a member of the general public, it can be most worrisome when they receive an auditing letter from the CRA. This concern can be clearly seen in the volume and tone of the emails sent from Mr. Simpson to Mr. Hogan. The Tribunal found it difficult to believe that Mr. Hogan did not understand the gravity or the concern conveyed by Mr Simpson in the emails and phone messages sent by Mr. Simpson.

#### **PENALTY SUBMISSIONS**

In terms of penalty, counsel for the Discipline Committee submitted that the panel should make the following penalty order:

1. An order reprimanding Alan Hogan for his breaches of the Association's Code of Ethical Principles and Rules of Conduct;
2. Publication of the decision in Statements and on the Association's website;
3. An order that Alan Hogan pay a fine of \$1,000; and
4. An order that Alan Hogan contribute towards the cost of the hearing in the amount of \$3,000.

In contrast, counsel for the member submitted that, if Mr. Simpson's complaint is upheld, the panel should make the following penalty order:

1. An order reprimanding Alan Hogan for his breaches of the Association's Code of Ethical Principles and Rules of Conduct.

#### **PENALTY DECISION**

The panel deliberated and accepted the Discipline Committee's submissions in terms of penalty and accordingly orders the following penalty:

1. Alan Hogan is reprimanded for breaching Code of Ethical Principles – Trust and Duties and Code of Ethical Principles – Responsibilities to the Profession, of the Association’s Code of Ethical Principles and Rules of Conduct;
2. Publication of the decision in Statements and on the Association’s website;
3. Alan Hogan pay a fine of \$1,000; and
4. Alan Hogan pay costs to the Certified General Accountants of Ontario in the amount of \$3,000.

### **REASONS FOR PENALTY DECISION**

In Mr. Rowinski’s closing statement he recommended that due to the particulars in this case, in that this situation arose from a simple communication error, Mr. Hogan should receive only a reprimand with no publication requirement.

Although we derived no malice or intention on Mr. Hogan to purposely cause harm to Mr. Simpson the Tribunal certainly took the issues of this case seriously. A member of the public was led to believe his accountant, a member of the Certified General Accountants of Ontario would assist him in his time of need, he did not and by not acting in the interest of the client first and foremost sullied the reputation of the Association.

Ms. Jolley reviewed a similar case between the Discipline Committee and Bruce Hutton. Hutton was found that he contravened the Responsibilities to the Profession Ethical Principle and Rule 105 - Professional Courtesy. The Tribunal reprimanded Hutton, ordered him to pay a fine of \$1,000, publication and ordered he contribute to costs. This case provided reasonableness in requiring a reprimand in the Hogan case.

Further, Ms Jolley reviewed the case between the Discipline Committee and Trudy Grealis Sturton; in this case Sturton had omitted to filing returns and providing documentation to the client on a timely basis. Sturton contravened the Association’s Trust and Duties Ethical Principle. Sturton was reprimanded and required to reimburse the customer their losses. This case provided reasonableness in requiring a reprimand in the Hogan case.

For these reasons we believe that it is appropriate to provide a reprimand, which is meant to serve as a deterrent to the member.

As to not publishing the decision, The Tribunal felt that By-Law Four is quite clear in its requirements, under Article 9, section 21(a) it states that “The Association shall promptly release to the public and to members all professional conduct tribunal and appeal tribunal orders...” unless where the member persuades the Tribunal that it would not be required in the public interest and would be unfair on the member. Tribunal heard no argument that would cause them to believe an exception from publication should be made in this case.

The Tribunal agreed with Ms. Jolley in that the requirement for publication is to act as a “general deterrent” by sending a message to other members in the certified general accountancy profession deterring them from engaging in similar acts of misconduct. It provides public awareness that the CGA Ontario will not tolerate misconduct of this type and strengthens the public’s understanding that the CGA Ontario as a “self regulating organization” is client focused at all times. Publication also acts as a deterrent to the

member.

Based on the seriousness of the infraction, the Tribunal agreed that a fine was warranted and is necessary in order to serve as a deterrent to the member and felt that the fine requested by the Discipline Committee was appropriate.

The Discipline Committee requested an order of costs in the amount of \$3,000. Ms. Jolley commented that this would be only a partial representation of the actual amount of costs for the 3 dates the Tribunal sat.

The Tribunal agreed, it is unreasonable for the membership dues to cover expenses of hearings, especially where the Discipline Committee was successful in the matter and therefore the Tribunal agreed to award the costs requested. This was also meant to serve as a deterrent to the member.

DATED at TORONTO, this 5<sup>th</sup>, day of APRIL, 2010.

I, Ramesh Ramotar, 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.

  
Ramesh Ramotar, CGA, Chair

#### **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 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.