

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

**IN THE MATTER OF a Complaint against Eric Nichols**

B E T W E E N:

The Discipline Committee of the CGAO

- and -

Eric Nichols

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**DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL**

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Members of the Tribunal Panel:

D. Alan Jones, chair  
John Biancucci  
Andria Spindel, public representative

Pursuant to section 9, Article 9 of By-Law Four, the Professional Conduct Tribunal has reviewed the Statement of Facts and the Resolution proposed by the parties in this matter (signed by the Chair of the Discipline Committee on November 25, 2008 and by Mr. Nichols on December 7, 2008). The Tribunal accepts the proposal as set out by the parties. The proposal is hereby ratified.

Dated this 20 day of January, 2009

  
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D. Alan Jones  
(for the Tribunal)

## STATEMENT OF FACTS AND RESOLUTION

### A. AGREED UPON STATEMENT OF FACTS

1. From 1994 to 2005, Eric Nichols ("Nichols") was retained as executive director of Ontario Municipal Insurance Exchange ("OMEX") pursuant to a consulting agreement.
2. Pursuant to that agreement Nichols was paid \$125,000 annually (the "fee") "monthly in a manner agreeable to him and OMEX". Although the agreement had expired in 2004, the parties continued to operate under its terms.
3. The fee was "exclusive of any and all expenses incurred by Nichols in the performance of his duties [under the consulting agreement]. Such expenses shall include but not limited to travel, parking, promotion, attendance at conferences and seminars, and other expenses Nichols and OMEX deem appropriate."
4. In April 2005 OMEX terminated Nichols' services and took the position that he had received payments directly or indirectly in the sum of \$605,000 in excess of the fee, which payments were not approved and for which there was no business explanation (the "disputed amount").
5. Nichols provided explanations for all but \$38,151.07 of the disputed amount.
6. As part of the explanation of the disputed amount, Nichols admitted that \$50,000 of that amount represented payments made to him to which he was not entitled. Nichols advised that the payments were as a result of his inadvertent personal use of OMEX credit cards and other funds.
7. In 2005, Nichols repaid OMEX the \$50,000 to which he admitted he was not entitled.
8. Nichols took the position that he had given supporting documentation to OMEX that would have demonstrated that the \$38,151.07 represented reimbursement of valid expenses.
9. OMEX failed to produce the supporting documentation that Nichols had provided.
10. OMEX had no formal written policies or procedures in place regarding expenses incurred by Nichols from 1994 to 2005.

11. At no time prior to December 2004 did OMEX, its advisory board or Deloitte & Touche, its auditors, identify any procedural issues with respect to the documentation provided by Nichols to support expenditures incurred or take issue with the actual expenses claimed.
12. Nichols failed to prepare or submit expense reports or to keep his own copies of documentary support for the expenses he did claim.
13. OMEX took the position that it could not provide Nichols with a complete set of his submitted receipts as he did not keep or provide them in any organized fashion.
14. As part of his explanation for the disputed amount, Nichols maintained that he was entitled to separate direct payment from the Rural Ontario Municipal Association ("ROMA") for administering its underwriting group.
15. Nichols received a fee of \$25,000 for his role in overseeing and implementing the administration of ROMA's business during 2003 and 2004. Part of the funds were paid directly from ROMA to Nichols and part were paid by OMEX to Nichols (by way of OMEX cheque signed by Nichols) for which ROMA then reimbursed OMEX.
16. It was OMEX's position that the ROMA payments to Nichols were not authorized. Only the board could authorize additional payments to Nichols and it did not do so.
17. Nichols did not advise the OMEX board that he had taken this payment for himself directly from ROMA.
18. Nichols admitted that he should have made full disclosure to the OMEX board that he had initiated payment to himself for the ROMA work.
19. Nichols gave the OMEX board evidence that would have led the board to believe that there was no additional payment to Nichols in respect of the ROMA work.
20. As part of his explanation for the disputed amount, Nichols maintained that he was entitled to payments of \$10,000 made to his RRSP in lieu of pension plan payments received by OMEX's employees.
21. It was OMEX's position that Nichols was not entitled to the payments to his RRSP in lieu of a pension plan payment that OMEX employees received as he was not an employee and the board did not authorize the payments.
22. The amount of \$10,000 represented 8% of the fee, the same percentage basis that was used to calculate the pension payments to OMEX staff.

23. While the consulting agreement provided that it could not be amended, modified or supplanted in any respect, except by subsequent written agreement signed by Nichols and the chair of OMEX, there was some support for Nichols' explanation that he believed the RRSP payments were authorized pursuant to a verbal discussion with the chair.
24. As part of his explanation for the disputed amount, Nichols maintained that he was entitled to reimbursement of his car payments and automobile expenses.
25. OMEX takes the position that Nichols was not entitled to lease a vehicle or pay the lease payments for that vehicle through OMEX.
26. As it was common knowledge that Nichols drove a car with the name "OMEX" on the licence plate, there is some support for Nichols' treatment of the vehicle as an "OMEX" vehicle and for his understanding that he could charge the lease payments and related automobile expenses to OMEX.

#### **B. AGREED UPON RESOLUTION**

1. Nichols accepts that in not disclosing the additional payments to him by ROMA directly and by OMEX which were then reimbursed or should have been reimbursed by ROMA, in relation to the ROMA work, he did not act in the best interests of either OMEX or ROMA.
2. By making a fee payment to himself, without the written approval of the ROMA board or the OMEX board, with respect to the work performed by OMEX for ROMA, Nichols did not act in the best interests of OMEX or ROMA.
3. Nichols admits that OMEX paid \$50,000 to Nichols for personal expenses for which Nichols was not entitled to be reimbursed. While Nichols indicates that those funds were received through inadvertence and as a result of poor record keeping on his part, those organizational failures amounted to a breach of his duties to OMEX.
4. Nichols accepts that his actions as admitted above violated the Association's *Rules of Conduct*, in particular, its Rule on Trust and Duties which requires members to act in the interests of their clients, employers and interested third parties and to honour the trust bestowed upon them by others.
5. Nichols accepts a reprimand from the Tribunal as a result of his violation of the *Code of Ethical Principles and Rules of Conduct*.
6. Nichols agrees to pay a fine of \$1,000 within 30 days of his acceptance of this resolution. He understands that the committee is not seeking any costs payable

from him. However, he understands that if he does not accept this resolution, the committee will be seeking costs, including the costs of a hearing before the Professional Conduct Tribunal.

- 7. Nichols understands that, as this will be a reprimand from the Tribunal, it will be published as required by Article 9, section 21 of By-Law Four.
- 8. Nichols understands that, after a ten day waiting period from the date of acceptance of this proposed resolution, the Committee will present this proposed agreed resolution of this complaint to the Professional Conduct Tribunal. The Tribunal may accept or reject the resolution. If it accepts the resolution of the complaint, this ratification shall be the final disposition of the complaint. Where the Tribunal refuses to accept the proposed resolution, it may grant this committee an opportunity to return before it within 10 days or such other reasonable time as shall be stipulated by the Tribunal, with an amended proposed agreed resolution. Where the Tribunal refuses to ratify a proposed resolution and does not grant the committee an opportunity to return before it with an amended proposed agreed resolution, a Professional Conduct Tribunal panel of three members shall be appointed to conduct a formal hearing pursuant to sections 9 and 12 of Article 9 of By-Law Four.
- 9. Nichols further understands that if the committee and he are unable to resolve this complaint through an agreed upon resolution process, the matter will be referred to the Professional Conduct Tribunal for a hearing.

I hereby agree to this above statement of facts and resolution.

Date of Offer:

Name:

25 November 2008

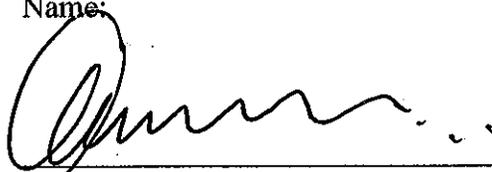


Chair, Discipline Committee

Date of Acceptance:

Name:

December 7/08.



Eric Nichols, CGA