

THE PROFESSIONAL CONDUCT TRIBUNAL OF  
THE CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION OF ONTARIO

IN THE MATTER OF a hearing conducted under 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 -

John Page

MEMBERS OF THE TRIBUNAL:

Janice Charko, CGA, Chair  
Don Page, FCGA  
John MacDonald, CGA

HEARING DATES:

October 29, 2001 and  
February 20, 2002

COUNSEL:

Larry Banack, for the Discipline Committee  
Connie Reeve, for John Page

ADDITIONAL PERSONS IN ATTENDANCE:

Ralph Palumbo, on behalf of the Association  
Everett Colby CGA, on behalf of the Association

This case involves various complaints against John Page, which the Discipline Committee of the Certified General Accountants Association of Ontario (the Association) referred to the Professional Conduct Tribunal for a hearing.

John Page and the Discipline Committee were sent two Notice of Hearings. The first Notice of Hearing dated May 11, 2001, was in regards to a complaint made by Scott Wilson CA, on behalf of his client, the Canadian Automatic Merchandising Association (CAMA). The Discipline Committee alleges that Mr Page violated Rules 101, 505, 515, 516, 517, 601, 610 and 611 of the CGAAO's Code of Ethics and Rules of Professional Conduct. The second Notice of Hearing dated September 27, 2001, was in regards to two complaints. One made by John M. Lowndes, on behalf of the 48<sup>th</sup> Highlanders Old Comrades Association and the other by Christine de Vera. The Discipline Committee alleges that Mr. Page violated Rules 101, 515, 516, 517, 601, 610 and 611 of the CGAAO's Code of Ethics and Rules of Professional Conduct.

A hearing was held in this matter on October 29, 2001 and February 20, 2002. Mr. Page was represented by counsel and had a full opportunity to present evidence and make submissions.

An agreed Statement of Facts dated October 29, 2001 was submitted to this Tribunal on that date and signed by both parties. The following summarizes this document.

#### **Canadian Automatic Merchandising Association (CAMA)**

Mr. Page was retained by the CAMA in early 1998 to complete a compilation engagement for CAMA's fiscal year ending December 31, 1997. Mr. Page prepared unaudited financial statements for CAMA dated April 1, 1998. He continued to provide accounting support to CAMA throughout 1998. In 1999, CAMA retained legal counsel because of Mr. Page's refusal to return its accounting records. Various attempts were made by CAMA to get their records back. Some records were later returned. Specific information was also requested by Scott Wilson CA, CAMA's new accountant. Mr. Page failed to respond to the many attempts made by Mr. Wilson for information. Mr. Wilson filed a complaint with the Association on February 2, 2000, with respect to Mr. Page's failure to respond. Ralph Palumbo, Director of Government Relations and Legislative Affairs for the Association attempted to resolve the matter. Mr. Page failed to respond to each deadline made by Mr. Palumbo.

#### **Public Practice**

John Page was registered in public practice in 1997, 1998 and 1999. He was subject to a mandatory practice review in 1999. Don Kitchen, CGA, senior practice reviewer for the Association was instructed to conduct a practice review. Mr. Page informed Mr. Kitchen that he was employed three days a week and self-employed for the other two days providing controllership services. He advised Mr. Kitchen that he did not believe that a practice review was needed because he did not prepare financial statements as of December 3, 1999. He also did not register for public practice for the 2000/01 year. In fact, he was in public practice in 2000, as he continued to do 15-20 personal tax returns in 2000, as well as preparing interim financial statements which were not reviewed by any other external accountant.

#### **48<sup>th</sup> Highlanders Old Comrades Association (OCA)**

John Page was the accountant for the OCA for approximately 10 years. He was responsible for preparing the financial statements of the OCA, the annual T4s for its employees, GST returns and other financial statements for the membership. In or about January 2001, OCA requested its records returned from Mr. Page and required him to prepare the T4s and Records of Employment for terminated employees. This was not done. In a letter dated June 4, 2001, John Lowndes, QC wrote to Mr. Page requesting the immediate return of OCA's records. Mr. Lowndes did not get action from Mr. Page. OCA filed a complaint with the Association on July 27, 2001. The Association made various attempts to get the records back from John Page and received no response.

#### **Christine de Vera**

In or about July 2000, Christine de Vera retained Mr. Page to file her income tax return for the year 1999 and provided him with tax-related forms. Ms. de Vera called Mr. Page on various occasions but still has not received her tax information or prepared returns back. Ms. de Vera filed a complaint with the Association on May 31, 2001.

#### **The Hearing**

In light of the agreed Statement of Facts, the hearing proceeded to submissions with respect to sentencing.

On the first day of hearing, after counsel for the Discipline Committee outlined its position, Connie Reeve, Mr. Page's counsel requested that the hearing be adjourned so that the defence could file a medical report. She stated that Mr. Page was suffering from profound depression resulting in a pathological indifference, impairing his decision-making ability. The Discipline Committee consented to the adjournment.

The Tribunal had a concern with regards to the records that were still outstanding. The former clients of Mr. Page are entitled to receive their documents back.

The Tribunal therefore granted the adjournment under the condition that within ten days, access to clients' documents would be granted to the Association, so the Association could ensure that the clients received their records back, failing which, it would be factored into account when the Tribunal reconvened.

The Tribunal hearing reconvened on February 20, 2002. At that time, Mr. Banack, for the Discipline Committee, advised that access to clients' documents had not been granted as ordered. However, Mr. Page produced boxes of records at the beginning of the hearing on February 20, 2002. Upon a brief review of the documents, it was determined that some of the missing documents were in these boxes but that there was much more still not accounted for.

The prior hearing had been adjourned for the purpose of giving Mr. Page an opportunity to produce medical evidence. The defence submitted a letter from Dr. Ross E. G. Upshur, Director of Primary Care Research Unit, Sunnybrook and Women's College Health Sciences Centre. This letter stated that Mr. Page suffered from a major affective disorder, namely, severe depression, for some time. The doctor stated that this mental disorder resulted in his patient being virtually incapacitated and unable to make decisions.

The defence admitted that Mr. Page has breached the Rules of Professional Conduct cited in the Notices of Hearing, but requested that the Tribunal consider imposing an indefinite suspension until medical evidence is provided to the Association establishing that Mr. Page is well enough to re-enter the profession.

The Discipline Committee recommended that the following penalties be imposed:

- That Mr. Page be expelled from the Certified General Accountants Association of Ontario
- That Mr. Page be given a fine of \$1,500
- That Mr. Page contribute to the costs of these proceedings in the amount of \$500
- That the Tribunal's decision be published in the CGAAO Statements and the Toronto Star

Ms. Reeve, for the Defendant, submitted that expulsion was unduly harsh and requested that the Tribunal consider imposing an indefinite suspension, with specific conditions for reinstatement. She indicated that Mr. Page agreed to the fine and costs, but did not think it was appropriate to publish the Tribunal findings in the Toronto Star.

Mr. Banack, for the Discipline Committee, reminded the Tribunal that this is not the first time Mr. Page had been before the panel. Mr. Page was found liable for breaches of Rule 203, 207 and 218 of the Code of Conduct, at which time a fine of \$1500, costs of \$500, clients records to be returned and compensatory payment to them of \$6500, and publication in Statements was imposed. Mr. Banack argued that newspaper publication was appropriate because not only members of the Association, but also members of the public should be informed of our decision.

The Discipline Committee still had concerns about Mr. Page's continued failure to produce client documents. The cost of recreating these documents will be onerous to these clients.

Following the submissions of both parties, it was agreed that Mr. Page would meet with Mr. Everett Colby at 5:00 p.m. on February 21, 2002 at Mr. Page's apartment. The purpose of this meeting was to enable Mr. Page to provide to Mr. Colby all client records in his possession. It was also agreed that Mr. Colby would meet with Mr. Page again at 9:00 a.m. on February 22, 2002 in order to accompany Mr. Page to his medical appointment and thereafter to a locker storage facility where additional client documents were stored.

The hearing was adjourned, under the condition that the parties would get back to the Tribunal within one week, in regards to the success or failure of getting the client records into the hands of the Association.

The Tribunal received written submissions from Mr. Banack on March 4, 2002 indicating that Mr. Page had cooperated with the Association and, as a result, a majority of the records of the 48<sup>th</sup> Highlanders had been obtained from Mr. Page, but no records in respect of Ms. de Vera or the CAMA were located. No further written submissions were received from Ms. Reeve, so the Tribunal began its deliberations.

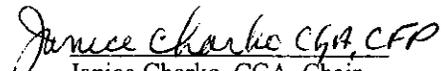
### Decision

In considering the appropriate disciplinary penalty in this case, we have taken into account the Defendant's medical condition. We have decided that publication of this decision in the Toronto Star will not be ordered because of the evidence of his mental illness. However, in light of the fact that Mr. Page has been before this Tribunal before and has previously been found guilty of a breach of the Rules of Conduct, we have concluded that a suspension is not a sufficient penalty.

Therefore, it is the decision of this Tribunal that the following penalties be directed:

- That Mr. Page be expelled from the Certified General Accountants Association of Ontario
- That Mr. Page be given a fine of \$1500
- That Mr. Page contribute to the costs of these proceedings in the amount of \$500
- That the Tribunal's decision be published in the CGAAO Statements.

DATED at Toronto, this 2nd day of April, 2002

  
Janice Charko, CGA, Chair  
On behalf of the Tribunal

### APPEAL NOTICE

The decision of a Professional Conduct Tribunal may be appealed to an Appeal Tribunal within sixty days of the date of the written decision of the Professional Conduct Tribunal. The notice of appeal must be in writing, addressed to the Executive Director, Certified General Accountants Association of Ontario, 240 Eglinton Avenue East, Toronto, Ontario, M4P 1K8. The notice must contain the grounds for the Appeal.

**CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION OF ONTARIO  
APPEAL TRIBUNAL**

IN THE MATTER OF an appeal from a decision of the  
Professional Conduct Tribunal dated April 2, 2002,  
regarding John Page;

BETWEEN:

**JOHN PAGE**

Appellant

and

**DISCIPLINE COMMITTEE OF THE  
CERTIFIED GENERAL ACCOUNTANTS  
ASSOCIATION OF ONTARIO**

Respondent

Members of the Tribunal:   Donn G. Martinson, CGA, Chair  
                                  Ramesh Ramotar, CGA  
                                  Beverley Wozniuk, CGA

Counsel:                     Larry Banack, for the Discipline Committee  
                                  Connie Reeve, for John Page

In Attendance:             John Page  
                                  Cynthia Petersen, counsel to the Appeal Tribunal

This case is an appeal from the decision of a Professional Conduct Tribunal (PCT) dated April 2, 2002, which found that John Page had violated Rules 101, 505, 515, 516, 517, 601, 610 and 611 of the CGAAO's *Code of Ethics and Rules of Professional Conduct*. The PCT decided that Mr. Page should be expelled from the Association and ordered him to contribute \$500 to the Discipline Committee's costs and to pay a \$1500 fine. The PCT also ordered that its decision be published in the CGAAO Statements.

Mr. Page is appealing the penalty of expulsion only. He appeals on the grounds that the PCT erred in not giving appropriate weight to his depression and to the medical evidence provided. His position is that expulsion was too severe a penalty. In the original notice of intent to appeal, Mr. Page's counsel indicated that she would also argue that the penalty imposed by the PCT failed to accommodate Mr. Page's disability and was therefore contrary to the Ontario *Human Rights Code*. At the hearing, however, Ms. Reeve withdrew that ground for appeal.

Ms. Reeve relied on correspondence that was submitted as evidence during the original disciplinary hearing, including a November 1, 2001 letter from Dr. Ross E. G. Upshur, Director of Primary Care Research Unit at Sunnybrook and Women's College Health Science Centre. That letter was referred to by the PCT in its decision. It states that Mr. Page has been suffering severe depression for at least a year (from the date of the letter) and that he has been incapacitated by the effects of the illness, which have impacted his ability to make decisions. Dr. Upshur expressed the opinion that Mr. Page's "present difficulties are a direct result of his medical illness." Ms. Reeve also relied on a letter from one of Mr. Page's clients, which stated that he had done an excellent job for a number of years prior to the onset of his illness. Based on this evidence, Ms. Reeve argued that Mr. Page's unprofessional conduct was uncharacteristic and was attributable to his disabling illness. She acknowledged that Mr. Page had previously been sanctioned in another proceeding before the PCT in 1996, but suggested that too much weight had been placed on his disciplinary record, and insufficient weight and consideration were given to the medical evidence in reaching the conclusion that expulsion was warranted in this case.

Ms. Reeve suggested that an indefinite suspension from the CGAAO, rather than expulsion, would be a more appropriate penalty and that reentry into the CGAAO could be made conditional upon certification by a qualified medical practitioner that Mr. Page is medically capable of performing the required activities of a professional accountant. She emphasized that an indefinite suspension with conditional reinstatement would adequately protect the interests of the public and CGAAO members.

Finally, Ms. Reeve argued that it is unnecessary for us to find an error of law or error of fact in order

to overturn the PCT's decision, but rather that it is open for us to simply substitute a different penalty if we arrive at a different conclusion based on the evidence. Mr. Banack disagreed with this submission and took the position that, although we have the discretion to substitute a different sanction than that imposed by the PCT, we should not do so unless we find an error in the decision of the PCT. On this point, we agree with Mr. Banack's position, which is supported by a recent decision of the Ontario Divisional Court in *McCabe v. CGAAO*, dated October 17, 2002 (paragraph 10).

Mr. Banack argued that Mr. Page's conduct should not be viewed in isolation, but rather should be considered together with the earlier finding of misconduct by a PCT in 1996. He also noted that some of Mr. Page's actions involved deception, not simply a failure to serve his clients' interests. With respect to the expert medical evidence, Mr. Banack argued that the letter from Dr. Upshur was deficient, in that it did not provide an explanation to account for all of Mr. Page's actions. The letter indicates that Mr. Page has suffered from a serious depressive illness "for some time", at least one year prior to November 2001, "perhaps longer". Mr. Banack noted that some of the misconduct at issue in this case dates back to 1999 and it therefore cannot be entirely explained by the evidence relating to Mr. Page's depression. Moreover, Mr. Banack noted, the misconduct was a repetition of the type of conduct for which Mr. Page was disciplined in 1996. Mr. Banack argued that progressive discipline for a second offence is appropriate and that, given the number of clients adversely affected, the expulsion imposed by the PCT was not unreasonable. He submitted that the principles of specific and general deterrence should be considered, in addition to the need to protect the public interest, and that deterrence would be achieved through expulsion.

After careful considerations of the submissions of Ms. Reeve and Mr. Banack, this Tribunal finds no error in the decision of the PCT and we have therefore decided to uphold the expulsion. Although we sympathize with Mr. Page's serious medical condition, his unprofessional behaviour of (among other things) repeatedly not returning client records when requested predates the illness time frame mentioned in Dr. Upshur's letter and follows a previous appearance before the PCT for similar rule violations in 1996. We find that the penalty of expulsion is not too harsh in light of all the

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circumstances of this case.

The appeal is therefore denied. As there was no request for costs by either party, we make no order in respect of costs.

Dated this 31st day of January, 2003,

Donn G Martinson, CGA  
Ramesh Ramotar, CGA  
Beverley Wozniuk, CGA