

IN THE MATTER OF a proceeding under the  
Certified General Accountants Association of Ontario Act, 1983;

IN THE MATTER OF a complaint against Thomas Richards;

BETWEEN

The Discipline Committee of the  
Certified General Accountants Association of Ontario

and

Thomas Richards

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**Decision of the Professional Conduct Tribunal**

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Panel: Don Page, chairperson  
Maureen Green  
David Handley

Hearing date: April 7, 2006 (Toronto)

Appearances: Karen Jolley, counsel for the Discipline Committee  
Cynthia Petersen, counsel for the Tribunal

## A. COMMENCEMENT OF PROCEEDING

1. Pursuant to a Notice of Hearing dated January 23, 2006, Thomas Richards was advised that he was charged by the Association's Discipline Committee with violating the following principles and rules of the Association's *Code of Ethical Principles and Rules of Conduct*:

### **Rule 610 – Requirement to Reply in Writing**

A member shall reply in writing to any request from the Association in which a written reply is specifically required.

### **Rule 611 – Assistance to the Board**

A member shall, when required, comply with the request of the board or its committees in the exercise of their duties in the matters of the appropriate CGA Act, the By-Law or the *Code of Ethical Principles and Rules of Conduct*, and when required, produce any documents in the member's possession, custody or control, subject to Rules R201, R104.2 and R104.3.

### **Rule 614 – Use of CGA Reference by Students**

Students shall not make any reference to the Certified General Accountants of Ontario, its name or its designation, on stationery, business cards, business announcements, business directories, office signs or advertising.

2. Mr. Richards is a student in the Association's program of professional studies. In the Notice of Hearing, the particulars of the charges against him were as follows:

While a student in CGA Ontario's program of professional studies you referred to the CGA designation in a Notice to Reader dated December 21, 2004 when in fact you are not a member of CGA Ontario and are therefore not permitted to make any reference to the designation on stationery.

The *Certified General Accountants Association of Ontario Act, 1983* provides that every member of CGA Ontario may use the designation "Certified General Accountant" or may use after his name the initials "CGA" indicating that he is a Certified General Accountant. The Act further provides that:

9(2) Any person in Ontario who, not being a registered member of the Association, takes or uses the designation "Certified General Accountant" or "CGA" alone or in combination with any other word, name, title, initial or description, or implies, suggests or hold out that he is a Certified General Accountant is guilty of an offence.

You failed to respond to letters from the Association dated April 15, 2005, April 28, 2005, June 2, 2005, June 28, 2005 and July 27, 2005 in connection with complaints filed by Consilio Pace and Saadi Kadhum.

As a result of your conduct, and your failure to respond to any correspondence from the Association, CGA Ontario was required to commence a court application and obtain an order in the Ontario Superior Court of Justice for an injunction restraining you from taking or using the designation "Certified General Accountant", or "CGA" or implying, suggesting or holding out that you are a Certified General Accountant. Further, the Hon. Justice Day ordered that you pay to CGA Ontario costs in the amount of \$2000.

## **B. NON-ATTENDANCE AT HEARING**

3. The hearing was originally scheduled for March 9, 2006, but an adjournment was granted on consent of the parties, and the matter was rescheduled for April 7, 2006.

4. Mr. Richards did not attend the hearing on April 7. In the Notice of Hearing, he was advised that he had a right to call evidence at the hearing and to be represented by counsel or an agent at the hearing. He was also advised that, if the Tribunal found him guilty of a contravention of the *Code of Ethical Principles and Rules of Conduct*, it could impose penalties on him pursuant to the Association's by-law. The Notice of Hearing contained the following warning: "if you fail to appear at the time and place aforesaid in answer to this Notice, the hearing may be conducted in your absence." The Notice also advised Mr. Richards that an adjournment of the hearing could be obtained if proper cause were shown.

5. Karen Jolley, counsel for the Discipline Committee, advised the Tribunal at the hearing that she had communicated with Mr. Richards the day before and that he had advised her that he was not going to attend the hearing. She informed the Tribunal that he gave her three reasons why he would not attend: (1) because he felt there was "no point" in attending, (2) because he was recovering from an episode of food poisoning, and (3) because his mother had fallen ill. He did not ask Ms. Jolley to consent to an adjournment of the hearing and he did not contact the Tribunal to request an

adjournment. The Tribunal consequently decided to proceed with the hearing in his absence.

6. Mr. Richards did provide Ms. Jolley with an email message containing written submissions that she agreed to submit to the Tribunal. Mr. Richards' email message was entered as an exhibit at the hearing and was considered by the Tribunal in its deliberations in this matter. However, the Tribunal has given limited weight to the evidence asserted in the letter, since Mr. Richards did not attend the hearing personally to testify and make his assertions under oath, and he was therefore not subject to cross-examination with respect to the assertions.

### C. FACTS

7. Most of the evidence at the hearing consisted of documents and statements that were deemed to have been admitted by Mr. Richards pursuant to a Request to Admit, served upon him by the Discipline Committee. The facts, as established by that evidence, may be briefly summarized as follows.

8. Mr. Richards is a student of the Association's program of professional studies. As such, he is not a member of the Association. He is, however, subject to the requirements of the Association's *Code of Ethical Principles and Rules of Conduct*.

9. In March 2005, the Association received a complaint from a member of the public, Consilio Pace, who advised that he had retained Mr. Richards for accounting work. The complainant made certain allegations against Mr. Richards and noted that, when he retained Mr. Richards, he believed Mr. Richards to be a C.G.A.

10. The complaint included a copy of a financial statement dated December 21, 2004, which Mr. Richards had prepared for 1533389 Ontario Limited, a division of Pace Renovations. In connection with those financial statements, Mr. Richards signed a Notice to Reader as follows:

The Thomas Richards Group Inc.  
Accounting & Tax Specialists  
Certified General Accountant & Chartered Accountant

11. The Thomas Richards Group Inc. is not registered with the Association as a professional corporation and there is no CGA working for the Thomas Richards Group Inc.

12. By letter dated April 15, 2005, Ralph Palumbo, on behalf of the Association, wrote to Mr. Richards, advising him that the Discipline Committee had received a complaint regarding his conduct, providing him with a copy of the complaint, and requesting his written response to the complaint within 21 calendar days.

13. On April 28, 2005, the Association received another complaint about Mr. Richards from a member of the public, Saadi Kadhum, who had retained Mr. Richards for accounting services. The complaint made certain allegations about Mr. Richards's conduct.

14. On April 28, 2005, Mr. Palumbo forwarded the second complaint to Mr. Richards and requested his written response to the complaint within 21 calendar days.

15. No written response to either of these two letters was ever received by the Association.

16. On May 26, 2005, the Discipline Committee met and reviewed the two complaints. On June 2, 2005, the Committee wrote to Mr. Richards and advised that it had concluded that the complaints disclose apparent infractions of the *Code of Ethical Principles and Rules of Conduct*, including (among other things) using a CGA designation while a student, failing to respond to letters from the Association, and failing to provide assistance to the Board. The Committee proposed a resolution to the

complaints and requested that Mr. Richards indicate, by June 17, 2005, whether he accepted the proposed resolution.

17. Mr. Richards did not respond to the Committee's letter by June 17, 2005.

18. On or about June 27, 2005, Mr. Richards contacted Mr. Palumbo by telephone and left a voicemail message stating that he had not received the Association's earlier correspondence because he was not living at the address to which the correspondence had been sent.

19. The correspondence in question had been forwarded the residential address in the Association's records and Mr. Richards had never advised the Association of a change of address.

20. By letter dated June 28, 2005, Mr. Palumbo resent the original complaints to Mr. Richards at his business address and requested that he respond to the allegations against him by July 14, 2005.

21. Mr. Richards telephoned Mr. Palumbo on June 28, 2005 and left a voicemail message in which he stated that he had been separated from his wife in March and April and therefore had not received the earlier copies of the complaints sent to his residence. He stated that he wanted to address the complaints and resolve them. He also stated that he would turn the matter over to his lawyer to defend him and that he was "going to go after these two clients in question too". With respect to the charge that he was failing to respond to the Association in writing, he said it was "a little difficult" since he had not received the Association's correspondence. With respect to the charge that he failed to Assist the Board, he said "I'm willing to do that now that we have contact". With respect to the charge that he used the CGA designation while a student, he said "yep, guilty". He ended his message by saying, "I want to get my designation in

good standing so let's see what we can do to resolve this matter" and left a phone number where he could be reached the next day.

22. Mr. Palumbo attempted to reach Mr. Richards at the appointed time the next day at the phone number provided by Mr. Richards, but was not able to contact him. He left messages for Mr. Richards.

23. By letter dated July 7, 2005, Mr. Palumbo wrote to Mr. Richards again, reminding him that he was required to respond to the allegations in the Pace and Kadhum complaints by July 14, 2005. Mr. Richards did not respond by July 14. Mr. Palumbo wrote to him again on July 27, 2005, indicating that he had missed the July 14 deadline and requesting an immediate response to the complaints. Mr. Richards never responded.

24. In light of Mr. Richards' admission in his voicemail message that he had used the CGA designation while a student of the Association, the Association prepared a Notice of Application for an interlocutory and permanent injunction restraining Mr. Richards from using the CGA designation. Mr. Palumbo sent the Notice of Application to Mr. Richards on July 13, 2005 and requested that he sign an enclosed Consent to Judgement with respect to the application. Mr. Richards consented to the judgement against him on September 6, 2005.

25. At no time did the Association ever receive a response from Mr. Richards to the particular allegations contained in the Pace and Kadhum complaints.

26. In his letter to the Tribunal, dated April 6, 2006, Mr. Richards accepts responsibility for the incorrect usage of the CGA designation and apologizes for same. He provides an assurance that he will not use the designation again. He also provides an explanation for his "lack of contact" with the Association by stating that his practice and personal life were in complete turmoil. He mentions that he and his wife separated

in March 2005, that he spent time assisting her with respect to an alcohol addiction, that his business was involved in a legal dispute with its landlord, and that he had developed health complications relating to diabetes, which rendered him unable to carry his workload. He also explains that he was experiencing staff shortages in his office. He summarizes by stated "I was completely preoccupied with surviving and ignored several facets and issues during the months of April, May, June and July. I apologize for any inconvenience as it was not deliberate." As noted above, the Tribunal has given limited weight to these mitigating circumstances since Mr. Richards did not attend the hearing or present proper evidence to establish the mitigating facts upon which he asks us to rely. Had he attended the hearing and presented the evidence through testimony, counsel for the Discipline Committee would have had an opportunity to challenge his evidence through cross-examination. He cannot, in fairness to the Discipline Committee, have his evidence taken at face value by the Tribunal after failing to appear at the hearing and thereby avoiding cross-examination.

#### **D. FINDINGS**

27. Based on all of the above evidence and facts, we found at the hearing that Mr. Richards violated Rules 610, 611 and 614 of the Association's *Code of Ethical Principals and Rules of Conduct*.

#### **E. SUBMISSIONS WITH RESPECT TO PENALTY**

28. The Discipline Committee requested that the following penalties be imposed as a result of Mr. Richard's misconduct:

- a. that he be expelled from the Association's program of professional studies;
- b. that he be fined \$5,000;
- c. that he be ordered to pay \$2,000 in costs associated with the proceeding.

29. The Discipline Committee advised the Tribunal that Mr. Richards had been ordered to pay costs in connection with the civil injunction proceeding against him and that he paid those costs. Those costs were not, however, related to the costs of the discipline proceeding before us.

30. In his letter to the Tribunal dated April 6, 2006, Mr. Richards contested the requested expulsion. He stated that he would like to resume his studies and eventually earn the right to use the CGA designation. He argued that he should only be subjected to a "minimum fine," given that he had already paid costs in connection with the court proceeding.

31. At the conclusion of the hearing, the Tribunal decided that it wanted to receive further submissions from the parties regarding the possibility of a remedy involving a conditional suspension. The Tribunal directed the Discipline Committee to make written submissions by April 21, 2006, with respect to the length of suspension that might be appropriate if the Tribunal decided not to expel Mr. Richards, and with respect to any conditions for reinstatement that might be imposed, as well as the timeframe for meeting such conditions. The Tribunal decided that Mr. Richards would be given until April 28, 2006 to reply to the Committee's submissions with respect to these issues. Mr. Richards was advised of this directive by registered letter from the Tribunal dated April 7, 2006.

32. The Tribunal received Ms. Jolley's submissions on April 19, 2006. In her submissions, she indicated the Discipline Committee's position that, should a suspension rather than expulsion be ordered, the following conditions ought to be imposed:

- a. Mr. Richards be suspended for a period of two years;
- b. Mr. Richards be admitted after that time only if he has paid the fine imposed and the costs ordered (\$5,000 and \$2,000 respectively);

- c. Mr. Richards be admitted after that time only if the Association is in receipt of letters from the two complainants confirming to the Association that Mr. Richards has responded to them and they are satisfied with the information they have been given.

33. The Committee also requested, in its submissions, that a publication order be included if there is a reprimand or some other penalty imposed which does not automatically result in publication under the Association's by-law.

34. Mr. Richards did not provide the Tribunal with any written submissions on penalty, nor did he request an extension of time for doing so.

#### **F. CONCLUSIONS WITH RESPECT TO PENALTY**

35. After carefully considering the option of a conditional suspension, we have concluded that expulsion is the more appropriate penalty in the circumstances of this case. Although Mr. Richards did not engage in the most serious type of misconduct, such as fraud, he violated several rules of the *Code of Ethical Principals and Rules of Conduct* and did so repeatedly. In doing so, he demonstrated complete disregard for the Association and its responsibilities as a professional regulator.

36. While Mr. Richards may not have received the original correspondence from the Association because he was separated from his wife at the time, it was his responsibility to advise the Association of his change of residence. Moreover, once the correspondence and complaints were re-sent to him at his business address and he indicated, via voicemail, a desire to resolve them, he nevertheless completely failed to respond to the substance of the complaints. He was given several opportunities to do so. If he was unable to meet the Association's deadlines due to the staff shortages, health problems, and personal issues outlined in his April 2006 letter, he could have requested an extension of time. Instead, he simply ignored the Association. As a result of his failure to provide any assistance to the Association, the Association was required to commence a court action to obtain an injunction restraining him from using the CGA

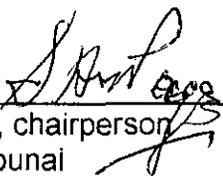
designation. Furthermore, the Association was unable to respond appropriately to the members of the public who initiated the complaints, because of his failure to cooperate with the Association's investigation and disciplinary process.

37. Mr. Richards' failure to attend the hearing and to provide written submissions with respect to penalty reveal an ongoing contempt for the Association and its processes. Once again, if Mr. Richards was unable to attend the hearing or was unable to meet the Tribunal's deadline for his submissions, he could have requested an adjournment and/or extension of time. He did not do so. He has not conducted himself in a manner consistent with the responsibilities of a professional and is, in our view, not deserving of continued membership in the Association's student program.

38. Based on the foregoing reasons, we have concluded that expulsion is warranted in the circumstances of this case. We do not agree with the Discipline Committee, however, that a \$5,000 fine should also be imposed. Given the conduct in question, expulsion is sufficient to protect the public interest and to serve the goal of general deterrence.

39. We order Mr. Richards to pay \$2,000 toward the Committee's costs relating to this proceeding. The entire proceeding might have been avoided if only he had responded to the Association in a timely fashion. Since the Committee succeeded in proving the breaches alleged, it is entitled to recover some of its costs.

Dated this 10<sup>th</sup> day of May, 2006

  
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Don Page, chairperson  
for the Tribunal