

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

**IN THE MATTER OF a Complaint against  
Luther Samuel**

BETWEEN

The Discipline Committee of the CGAO

- and -

Luther Samuel

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**Decision of the Professional Conduct Tribunal**

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Members of the Tribunal: Donald H. Page, Chair  
Helena Hughes  
Gillian Andersen

Counsel: Karen Jolley, for the Discipline Committee  
Ryan Persad, for Luther Samuel  
Cynthia Petersen, for the Tribunal  
Karen Dickson & Vanita Goela, for the Department of  
Justice

Hearing Dates: January 18, March 17 and August 23, 2005

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Pursuant to a notice of hearing dated January 18, 2005, Luther Samuel was charged by the CGAO Discipline Committee with violating the following principles and rules of the CGAO's *Code of Ethical Principles and Rules of Conduct*:

***Responsibilities to Society*** – Members have a fundamental responsibility to safeguard and advance the interest of society. This implies acting with trustworthiness, integrity and objectivity. This responsibility extends beyond a member's own behaviour to the behaviour of colleagues and to the standards of the Association and the profession.

***Responsibility 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.

**Rule 101 – Discredit** – 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 an nature to discredit the profession.

**Rule 102 – Unlawful Activity** - 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 reasonably prudent person would believe, to be unlawful.

**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 606 – Detrimental Actions** - A member shall not participate in any action that is detrimental to the Association or the profession.

Particulars of the charges against Mr. Samuel, as outlined in the Notice of Hearing, are as follows:

*Mr. Samuel failed to comply with requests for information from the Association. In particular, the Association requested in writing, and on several occasions, information pertaining to the Ottawa School of Business and Mr. Samuel's relationship and dealings with that organization. The letters in question are dated September 10, 2003; October 28, 2003; December 19, 2003; January 6, 2004; January 22, 2004; March 15, 2004; and April 26, 2004.*

*Mr. Samuel was aware that persons who were not Canadian citizens or permanent residents of Canada, required a study permit to study in Canada. He held the position of Director of the Ottawa Business College (the "College") from 1996 through to June 2001.*

*Without reviewing any form of application or supporting documentation, Mr. Samuel wrote letters of acceptance for foreign students to facilitate the entry of the students into Canada or maintain their status as students*

*in Canada. With regard to male applicants from Pakistan and India, Mr. Samuel was aware that individuals accepted to the College would not attend any classes or receive any instruction from the institution in Canada and he engaged in these activities for financial gain.*

The charges were referred by the Discipline Committee to the Professional Conduct Tribunal for a hearing, which commenced on January 18, 2005. At that time, the Discipline Committee submitted a brief of documents upon which it intended to rely. The brief included a Statutory Declaration signed by Mr. Samuel on July 3, 2003. Mr. Samuel did not object to the admission of the documents into evidence.

Mr. Samuel was, at that time, unrepresented by counsel. He requested an adjournment due to the recent illness and death of his mother, which had rendered him incapable of preparing a proper defence to the charges against him. The adjournment was granted and the hearing eventually resumed on March 17, 2005 (after a further adjournment), at which point Mr. Samuel was represented by Mr. Persad.

#### ***Summary of Parties' Opening Remarks***

Ms. Jolley submitted that Mr. Samuel, as the Director of the Ottawa Business College, had participated in an immigration scam in which he sold false enrolment papers to foreign individuals who wanted to enter (or remain) in Canada under the pretence of being students -- even though he knew they would not attend any classes. Indeed, there were no classes for them to attend, as the school had ceased operations. Mr. Samuel falsely portrayed the school as operating after June 2001, when it was not operating. Ms. Jolley further submitted that Mr. Samuel admitted his participation in this illegal activity in a Statutory Declaration that he signed for Citizenship and Immigration Canada on July 3, 2003.

Ms. Jolley further submitted that Mr. Samuel failed to reply to the Association's written requests for information regarding the operations of the Ottawa Business College. The CGAO was required to hire its own investigator to obtain a copy of the Statutory Declaration because Mr. Samuel refused to produce it.

Mr. Persad denied that Mr. Samuel was involved in an immigration scheme. He submitted that the students admitted by Mr. Samuel to the Ottawa Business College were properly admitted according to criteria established by the school's rules and regulations. The school charged international students a non-refundable fee of \$500, which is customary for Ontario's post-secondary schools. The students did, in fact, attend the school, although some attended only sporadically. Mr. Samuel issued letters of acceptance to them for the genuine purpose of study and not for any other or improper purpose.

Mr. Persad submitted that Mr. Samuel signed the July 3 Statutory Declaration under duress. He further submitted that Mr. Samuel signed the declaration during the course of an interview which he understood to be part of an RCMP investigation into the

whereabouts of a teacher and some students who were suspected of being terrorists. Mr. Samuel was not aware that he was also the subject of an investigation. Mr. Samuel was not given the opportunity to retain or instruct counsel at the time of the interview. Mr. Persad indicated that he would be seeking to have the Statutory Declaration excluded from the evidence on the basis that it was not obtained voluntarily from Mr. Samuel and was taken in violation of Mr. Samuel's *Charter* rights.

Mr. Persad acknowledged that Mr. Samuel did not respond to the Association's written requests as he was obligated to do by the *Rules of Professional Conduct*, but he asserted that Mr. Samuel had a reasonable explanation for his failure to respond.

### ***Summary of the Evidence***

The evidence was called in a somewhat unusual fashion, with the Discipline Committee relying exclusively on documentary evidence in its case in chief. Mr. Persad called Mr. Samuel as the sole defence witness, after which the Discipline Committee called an Immigration Officer (Andrew Jenkins) as a reply witness. Mr. Persad subsequently recalled Mr. Samuel and called Mr. Samuel's administrative assistant (Wilda West) as a sur-reply witness. Neither party objected to this manner of proceeding. The evidence is summarized below without regard for the order in which it was called.

#### **a) The Discipline Committee's Evidence**

The Discipline Committee called Andrew Jenkins as its only witness. The following is a summary of his testimony:

Mr. Jenkins is an Enforcement Officer employed by Immigration Canada. His primary responsibility is to investigate infractions of the *Immigration and Refugee Protection Act*. In October 2002, he received information from the Canadian Embassy in Mexico that an individual had applied for a visa to come to Canada as a student to attend the Ottawa Business College. There were suspicions about the validity of the application, which prompted an investigation.

As part of the investigation, Officer Jenkins attended at the address of the Ottawa Business College that was listed on the immigration application (1825 Markham Road in Scarborough). The school was not located at that address and Officer Jenkins was advised by building staff that the persons using the name Ottawa Business College had been evicted. He examined the premises and concluded that the space formerly occupied by the College would not have been sufficient to conduct the activities of a school. This led him to be further concerned about the validity of the College as a functioning educational institute.

He began a more extensive investigation. He referenced the Immigration database to determine how many people were in Canada on the basis of receiving study permits to attend the Ottawa Business College. Ultimately, his investigation focused on

approximately 30 individuals who were international students in Canada with study permits to attend the College.

His investigation led him to believe that the College was renting space at 1071 Midland Avenue, Unit 202; therefore, he conducted investigational activities at that address to determine if people were physically attending the school. He concluded that the College was not actually functioning as a school at that location.

He was concerned that Immigration Canada could not account for many of the persons who were in Canada with study permits to attend the College, so he took the investigation to the next level. He and other officers attended the College's premises to seize documents pursuant to a search warrant obtained by the RCMP. The search was conducted on June 19, 2003. Mr. Jenkins met Mr. Samuel that day. Mr. Samuel was polite and cooperative during the search. Also present was Wilda West, an employee of the College who assisted in locating items. The only space occupied by the College was an office space approximately 18 by 12 feet in size. Ms. West advised him that there had been no classes offered by the College since June 2001, but that some students were still calling to pick up their diplomas.

The officers seized nine boxes of documents from the College's premises. Upon review of the seized documents, Officer Jenkins found attendance records, but they were all blank. In general, each student's file contained an acceptance letter confirming that international fees had been paid in the range of several thousand dollars, but the only receipts from the school were in amounts of \$400 or \$500. No financial records were located during the search (no bank statements or other means of tracing the payment of funds to the College). There were numerous fax transmissions from an immigration consultant who was requesting acceptance letters for specified named individuals residing overseas. There were receipts in the amount of \$100 for the issuance of acceptance letters to students. There were numerous handwritten notes from Ms. West to Mr. Samuel stating that a person had called the office and wanted a diploma, or a letter of acceptance, and there would be a handwritten response from Mr. Samuel saying "tell him to come in tomorrow with \$350" or the like. No list of teachers or of courses was found. No schedule or timetable of courses was found. The only evidence of any student projects were several identical copies of a project that had been submitted to Mr. Samuel, in which students had simply cut-and-pasted information off a website. There was correspondence on the College's letterhead dated in 2002 and 2003, including letters of employment and letters confirming students' acceptance into courses purportedly being offered at that time.

Upon Mr. Persad's request, sample copies of the documents seized were produced by Mr. Jenkins and were entered into evidence as exhibits in the proceeding.

Officer Jenkins concluded, based on his review of the documents seized, that the College was an operation that was solely in place to provide individuals with documents for a fee, and those documents were to be used to circumvent the immigration process.

To further the investigation into the location of the students who had been issued study permits, Mr. Samuel and Ms. West were invited to an interview on July 3, 2003. Both of them attended voluntarily. Officer Jenkins was one of the officers who met with them (separately) on that date.

Two officers, one RCMP and one Immigration, were present throughout Mr. Samuel's interview; other officers may have walked in and out of the room as it was an open door environment. Mr. Samuel was free to leave at any time, though he was not specifically told that. The interview was not recorded. Mr. Samuel was shown photographs of individuals who were registered at the school and who were in Canada on study permits. He was also shown a poem found at the school which raised national security concerns (it praised the September 11 terrorist attacks). The officers wanted to know who had written the poem. Mr. Samuel was advised that the primary focus of the investigation was to locate individuals who were registered at the school and were in Canada on study permits, but were not attending the school. The word "terrorist" may have been used during the interview. It is possible that Mr. Samuel was told that this was a "serious" matter. Mr. Samuel was asked whether he knew a particular individual named M.A. and was questioned about that individual's location.

The interview was approximately 1 hour long. Mr. Samuel was calm, collected, polite and cooperative. He told the officers that June 2001 was the date when basically the full operation of the school had ceased. He admitted that he drafted letters of acceptance and of employment after that date in an attempt to portray the school as operational. He further admitted that he issued these false documents to foreign students for financial gain. He acknowledged that no international fees of \$10,000 to \$17,000 were received by the College, as portrayed in letters found in the College's files. Rather the only fees received were nominal fees in the amount of \$400 or \$500.

Based on the information provided by Mr. Samuel, Officer Jenkins prepared a Statutory Declaration. He advised Mr. Samuel that the content of the declaration was intended to serve as evidence to pursue misrepresentation allegations against the individuals who had entered Canada on study permits to attend the College. Officer Jenkins left the interview room for approximately 15-20 minutes, typed up the document, and brought it back to Mr. Samuel to review. Officer Jenkins read the declaration out loud to Mr. Samuel and Mr. Samuel also read it himself. Mr. Samuel did not request any changes to the wording of the document. He could have requested changes, though he was not specifically told that. He gave no indication that he had any concerns with the content. He signed the document voluntarily. At no point was he coerced or forced to sign the document. No physical or psychological threats were made to induce him to sign. No advantages were offered to him if he signed.

The Statutory Declaration was entered as an exhibit. It includes the following statements:

*... I wrote letters of acceptance for foreign students without reviewing any form of application or supporting documentation. The purpose of the*

*letters was to facilitate the entry of the students into Canada or maintain their status as students in Canada.*

*The Ottawa Business College charge individuals a processing fee which was generally \$400 to \$500 for the issuance of acceptance letters. I acknowledge (sic) that the acceptance letters purported that the students had paid several thousand dollars in international student fees to the Ottawa Business College. I acknowledge that no such international fees were paid to the Ottawa Business College.*

*I acknowledge that, specifically with regard to male applicants from Pakistan and India, I was aware that the individuals accepted to the Ottawa Business College would not attend any classes or receive any instruction from the institution in Canada.*

*... I acknowledge that, following the closure of the Ottawa Business College in June 2001, I drafted letters of acceptance, extension and employment in an attempt to portray the school as operational. The purpose of these letters was to enable students to come to, or remain in Canada.*

*I wish it to be noted that I engaged in the above activities for financial gain.*

Officer Jenkins also interviewed Ms. West on July 3, 2003. She corroborated the statements made by Mr. Samuel. She also signed a Statutory Declaration admitting that people were issued false acceptance letters after the school no longer existed. In her statement, she stipulated that she engaged in these activities under the direction of Mr. Samuel.

Six days after the initial interviews were conducted (July 9, 2003), Officer Jenkins met with Mr. Samuel at 1071 Midland Avenue. Mr. Samuel did not raise any concerns at that time about the declaration that he had signed. Officer Jenkins had a further meeting with Mr. Samuel at his home on July 25, 2003. Mr. Samuel did not raise any concerns at that time about the declaration that he had signed. At no time did Mr. Samuel ever convey to Officer Jenkins that the declaration he had signed was false, nor did he ever try to resile from any portion of the declaration.

Ultimately, the July 3 Statutory Declarations signed by Mr. Samuel and Ms. West were used by Immigration Canada in proceedings against the individuals under investigation. The majority of the 30 individuals investigated were issued removal orders to be deported from Canada.

In addition to the July 3 Statutory Declarations and the documents produced by Officer Jenkins, the Discipline Committee submitted and relied on various articles published in the *Globe and Mail* in early September 2003. The articles reported, among other things, that 21 men had been arrested by a "federal antiterrorism task force", 9 of whom were students registered at the Ottawa Business College. The College was

described as “a defunct vocational school at the centre of a major terrorism and immigration probe”. The newspaper reported that the “College provided fraudulent letters to foreigners so they could enter and stay in Canada on student visas even though they did not attend classes”. Mr. Samuel’s Statutory Declaration was quoted in some of the articles, which referred to him as a “certified general accountant”. (It should be noted that Mr. Persad also submitted and relied on an undated newspaper article which referenced a “multi-jurisdictional investigation ... into a possible Al Qaeda sleeper cell in the Toronto area. But what started out as a sensational terrorism case has devolved into one of simple immigration fraud, with officials now backing away from their initial claim that the men posed a threat to national security.”)

The Discipline Committee also submitted and relied on correspondence between the Association and Mr. Samuel (or his counsel), between September 2003 and April 2004. The correspondence began with a letter from the Association which referenced the *Globe and Mail* newspaper articles and requested information and particulars regarding the College and his association with it. Mr. Samuel’s counsel (then Dhaman Kissoon) provided responses to some of the Association’s questions, but refused to disclose further information or produce requested documentation unless the Association gave an assurance that the information would not be released to anyone. This condition was imposed on the basis that Mr. Samuel was under a directive from the RCMP not to discuss the matter with anyone. The Association asked for independent confirmation of the alleged RCMP directive (either a letter from the RCMP or the contact information of the relevant RCMP officer), but none was forthcoming. The Association indicated that Mr. Samuel’s position was unacceptable and reiterated its request for information and documents. There were several letters from the Association that went unanswered.

#### **b) The Defendant’s Evidence**

The following is a summary of Mr. Samuel’s testimony.

Mr. Samuel was the Director of the Ottawa Business College. He coordinated the activities of the teachers and administrative staff. He authorized major decisions affecting student enrolment and was involved in setting fees. The College was licensed by the Ministry of Education to offer courses in computer programming, business administration, accounting, and administrative support. At various points in time, the College employed about 10 teachers, each on a part-time basis.

The College operated as a school from 1997 until about the end of 2001. It was not permitted to register any OSAP funded students after September 2001, but it could register foreign students until the end of 2001. The College was required by the Ministry to complete contracts for foreign students that enrolled prior to December 2001, so the school continued to operate for foreign students up till June 2002. The College did not cease its activities in June 2001. On the contrary, the College aggressively recruited and registered new students in July and August 2001.

Mr. Samuel produced a letter from the Ministry of Education and Training dated March 7, 1997, confirming the registration of the College as a private vocational school for the calendar year 1997. He also produced a letter from the Ministry of Training, Colleges and Universities, dated August 13, 2001, confirming that the College was registered as a private vocational school, along with the College's 2001 Certificate of Registration. He stated that these and other documents had been left behind by the Immigration and RCMP officers who conducted the search at the College's premises in June 2003. After the search, Ms. West had put the documents into bags and boxes, which he then stored in his garage. He forgot about them until a few months prior to the hearing, when he was going through belongings for his mother who was gravely ill. At that time, he stumbled upon the bags and found the documents. Earlier, when the CGAO had been requesting documentation from him, he had not been aware that he was in possession of these documents. He had not intended to withhold them from the CGAO.

During cross-examination, Mr. Samuel confirmed the newspaper reports that the Ministry had revoked the College's Certificate of Registration in September 2001, but stated that was only with respect to the government-funded OSAP program. He stated that the school was still permitted to register foreign students after September 1, 2001. It was not permitted to register OSAP students after that date. Typically, about 90-95% of the student body at the College were receiving OSAP. There were only about 12 foreign students registered in the school.

The College had an admissions process for international students, which included two elements. The first was to determine whether the student had some level of educational attainment that would enable him to appreciate the course he was taking. This required documentation showing something approaching grade 12. The second was to ascertain whether the student had the ability to pay for his tuition fees.

Generally, Mr. Samuel made the admissions decisions, but he had set down guidelines for other administrative staff to follow in dealing with applications. Two other people were authorized to make admissions decisions, M.A. (a teacher at the school) and Ms. West. M.A. was the individual who later turned out to be a link in the RCMP investigation into possible terrorist activities.

No students were ever admitted to the College without first having met the College's educational requirements. Mr. Samuel produced copies of various student transcripts from the University of Punjab, the Karachi Board of Intermediate and Secondary Education, the University of Karachi, and the Sargodha Board of Intermediate and Secondary Education. He identified these as the type of documents that either Ms. West or M.A. would have examined and shown to him before he issued letters of acceptance to students. There was no process for determining the authenticity of such documents; they were accepted if they looked regular on their face, primarily because most students who applied to the College were already in Canada as a result of some prior visa application that had been approved by other schools.

All foreign students had to pay a non-refundable registration fee in the amount of \$400 or \$500. This is a standard fee charged by most private vocational schools. Mr.

Samuel produced copies of brochures from Centennial College, George Brown College, the Toronto Business College, and Georgian College, showing non-refundable administrative fees ranging from \$200 to \$500.

In addition, international students paid tuition fees to the College. Generally, the fee structure was between \$7,000 and \$12,000 for foreign students. They could either send an affidavit showing their ability to pay the tuition and make a deposit, or they could pay the fees upfront and be refunded in the event that their visa application was denied. During cross-examination, Mr. Samuel was asked questions about documents relating to a foreign student who was issued a letter of acceptance after paying \$500 cash, even though he had not paid his tuition fees nor provided proof of his ability to pay them (he had given the school a cheque in the amount of \$10,500, but had insufficient funds to cover the cheque). Mr. Samuel admitted that the guidelines for admitting students had not been followed in this particular student's case.

When international students were admitted to the school, Mr. Samuel expected them to attend classes. He was not aware of any ulterior motive for their applications, other than to study at the College. After they registered, however, he was aware that some students were not attending regularly. Some would attend once or twice in a month. He gave them projects to do, which were used for grading them. Sometimes, the program had to be extended because of their absences.

Mr. Samuel testified that the College was not a sham operation. He was not running an immigration scheme for financial gain. At no time did he knowingly facilitate the illegal activity of any student.

On the day of the RCMP search in June 2003, Mr. Samuel consulted a lawyer by telephone, who advised him to cooperate. The officers who conducted the search were professional. They informed him that they were investigating some of the students at the school who were suspected of criminal activity. Mr. Samuel was not fazed or unnerved at that time because the emphasis was on the students.

Subsequently, he was advised by Ms. West that the immigration officers wanted them to attend at the Immigration offices for an interview. Although he was not subpoenaed, he felt he had no choice but to attend. The interview took place on July 3, 2003. He was questioned by three or four officers (including Officer Jenkins) about the school, its activities, and whether he was familiar with a number of foreign students. He was shown photographs and told names. He recognized some of them.

During the interview, Mr. Samuel was shown a poem that extolled the virtues of 9/11, which left him shaken. The poem had been typed on the College's computer. The officers asked Mr. Samuel who had access to it. He responded that Ms. West and M.A. were the only two persons who had access. Mr. Samuel then became worried, because he had supported M.A.'s application for a work permit to remain in Canada. M.A. had been a student at the school and Mr. Samuel hired him as a teacher, I.T. administrator and recruiter after graduation. Mr. Samuel had also entered into an agreement with M.A. for the purchase of shares in the company, in order to provide financing for the school.

Ultimately, M.A.'s visa application had been denied and Mr. Samuel was aware that he had left the country "under a cloud" and gone to California. The officers showed Mr. Samuel a copy of the deportation order for M.A., so the officers were aware of M.A.'s immigration status. They asked him about his connection with M.A. They spent a lot of time questioning him about the 9/11 poem and told him it was a serious matter. He thought perhaps M.A. had written the poem. He became defensive. He was very worried because he was linked up with a suspected terrorist.

The interview lasted more than 3 hours. Mr. Samuel did not feel that he could have left, although no one told him that he was required to stay. When he went to the washroom, he was required to be escorted by an officer. (Officer Jenkins testified that it is standard practice for all guests to be escorted when they go to the washroom, for their own safety, since there may be people under arrest in the restrooms.) The interview became increasingly aggressive and intrusive, but there was no impropriety on the part of the officers. He was not threatened and was not offered any advantage to induce him to sign the Statutory Declaration. No one advised him that he could consult a lawyer either during the interview or before he signed the declaration.

Mr. Samuel was asked about the discrepancies between his testimony at the hearing the contents of the July 3 Statutory Declaration. He testified that the statements contained in the declaration were not accurate. At the time that he signed the declaration, he was "paralyzed with fear" and preoccupied with the notion that he might be a suspect in a terrorist investigation. He was in a "state of mental sleep". Although he might have had the façade of normalcy, he was not really hearing what the officers were saying and could not focus. He was "wrestling with a number of images of horror" in his mind. He wanted to get out of there as quickly as possible because he was traumatized by fear. He thought he might be charged and sent to jail. He could not recall Officer Jenkins leaving the room to prepare the declaration. He could not recall Officer Jenkins reading the declaration to him. He could not recall whether he personally read the declaration before signing it. In any event, he did not appreciate what he was signing.

When he was leaving the interview on July 3, 2003, an officer came up to Mr. Samuel and told him not to talk to anybody because it could compromise the integrity of the RCMP investigation. During his testimony, Mr. Samuel apologized for not responding to the CGAO's requests for information, but he explained that he felt compelled to follow the RCMP directive not to talk about anything with anyone. He felt "muzzled by a sense of concern for national security". When asked why he did not provide the CGAO with means to confirm the directive, he stated that he could not recall which officer had given the directive.

Mr. Samuel could not recall meeting with Officer Jenkins on July 9, 2003, but he recalled Officer Jenkins coming to his home with another officer on July 25, 2003. Although he had questioned in his own mind why he signed the false declaration on July 3, he did not say anything to the officers about it at that time. When he read in the *Globe and Mail*, in September 2003, that his declaration was being used as evidence in immigration proceedings, he did not contact Officer Jenkins, the Immigration Review Board, any of the detainees' lawyers, or the media to advise that the contents of the

declaration were untrue. He did not contact anyone because the RCMP had directed him not to discuss the matter and also because he thought he would be called to the Immigration Review Board and could explain at that time. In retrospect, he regretted not having contacted anyone.

Mr. Samuels gave the above testimony on the second day of hearing in March 2005. On the final day of hearing, in August 2005, he took the stand again and produced a Statutory Declaration which he had signed on July 8, 2003 (five days after he signed the first declaration in the Immigration offices). The second declaration, which was admitted into evidence as an exhibit, explicitly denies all of the contents of the original declaration. When asked why he did not mention this second declaration during his previous testimony, he stated that he "simply forgot". He only recalled having signed the second declaration after he gave his testimony on the previous day of hearing. It was apparent that even his counsel, Mr. Persad, had not been aware of the existence of the second declaration.

During his testimony in August 2005, Mr. Samuel made a number of statements that directly contradicted his earlier testimony in March 2005. In March, he stated that he could not recall Officer Jenkins leaving the interview room to prepare the Statutory Declaration on July 3, whereas at the last day of hearing, he stated that when Officer Jenkins left the room, he was not sure "whether he was going to come back with shackles or chains." Mr. Samuels testified in March that he could not recall meeting Officer Jenkins on July 9 (the day after he signed the second declaration). He also stated that he never told Officer Jenkins that he had any concerns about the contents of the declaration he had signed on July 3. On the final day of the hearing, however, he testified that when he met with Officer Jenkins on July 9, he mentioned that the previous declaration was not true, although he did not show Officer Jenkins the new declaration that he had just signed. He testified that the only person who saw the second declaration was the lawyer who commissioned it for him (not Mr. Persad). He had expected to be called before the courts and thought he would use the second declaration to defend himself at that time.

Wilda West also testified at the last day of hearing. The following is a summary of her evidence.

Ms. West was the Administrator for the Ottawa Business College. She typed Mr. Samuel's correspondence and did word processing, set up classrooms with necessary materials, and completed other odd jobs, such as cleaning chalk boards.

The school ran from about 1987<sup>1</sup> until 2001, after which it operated in a small office as an accounting firm only. During its operations, the school offered 8 or 9 classes in accounting, business administration, and computers. There was a classroom atmosphere until they moved to a "cubby hole" that did not have space for teaching anymore.

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<sup>1</sup> In light of Mr. Samuel's testimony and the documentary evidence which shows that the school was first registered in 1997, the Tribunal concludes that Ms. West must have mis-spoken when she said 1987.

The school did not close in June 2001, but it started winding down. The school finished up with students who had been promised courses. They received the instruction that they paid for. After December 2001, however, there was no more school. She did not give any more letters of acceptance to students after that date. If there were letters of acceptance after that date in the College's files, then she must have been "slipping". (Officer Jenkins produced copies of such letters from 2002, which were seized from the College's premises in June 2003.)

Ms. West stated that she never wrote acceptance letters for foreign students just to let them come to Canada. They had to prove their educational background before they were admitted to the school. She reviewed their applications, but anything she ever did was under Mr. Samuel's direction. She always reported to him.

Close to the end of the school's operation, enrolment dropped and the students' attitudes changed. Foreign students started coming from other schools in other provinces. She wondered where they were coming from. They were "coming out of the woodwork all of a sudden." She was kind of worried. They had no background, no history in their files. The College started getting students who really were not there for an education. She developed "funny feelings about them". She saw a pattern developing. She raised it with Mr. Samuel but he did not share her "uncomfortable feeling" and she followed his opinion because he was her boss. She had no reason to question him. She had worked with him for over 30 years and he was the best friend she ever had. Sometimes she felt she should have been more forceful, because students were trying to get into the school by just presenting money and they would not attend classes, which is not in accordance with the Ministry rules.

On the day of the search in June 2003, she was in the office. The officers who arrived scared her. They had guns, which she feared. They stated who they were and explained what they were looking for. They were very nice to her.

A few weeks later, she went to the Immigration offices with Mr. Samuel. They arrived together but were separated. Initially, Ms. West stated that she was there for half a day, but later in her testimony she said she was there for 8 hours. She met with some officers who asked her to look at photographs and try to identify individuals that they thought were involved in terrorism. She "drew a blank". The officers were polite and quiet, but she was traumatized by the experience. They told her she could go to jail for 14 years for helping terrorists. They said it was a very serious charge. She was terribly shook up. She wanted to go home, but she did not think that she could get up and walk out. She was afraid. She did not know what her rights were. No one told her that she could call a lawyer.

She recognized one of the individuals in the photographs shown to her, named F.K. She told the officers that he was a student who registered at the school but never attended classes. He was rude to her. He claimed that he could reproduce school documents. He used to watch her work and he made her feel threatened. He used to bring other students into the school. She handed them over to Mr. Samuel to process their applications because she had "funny feelings" about them.

Ms. West signed a Statutory Declaration on the day that she attended the Immigration offices for her interview. The officers asked her to read it, but she couldn't fathom what the words meant because she was in such a state of anxiety. She did not realize what she was signing. The officers were gentle with her. They said that she had the option not to sign the declaration, but she thought she had to sign because she wanted to get out of there. She thought she could not leave until she signed. She worried that she might go to jail. She ultimately signed the declaration (which contains statements similar to those in Mr. Samuel's July 3 declaration). She stated that the contents of the declaration were not true. In particular, she specified that the College did not close in June 2001, but rather in December 2001.

She signed a second Statutory Declaration on August 6, 2003. It was written in her own handwriting. It states that F.K. was registered with the College but never attended classes. It also states that he did not pay the international fees indicated in the College's letter of acceptance. She stated that she signed the second declaration to "make up for" the first declaration and that it was the "real truth".

During cross examination, she was asked about a note seized by the RCMP during the search of the College's premises. It was dated December 2001. She identified it as a note in her handwriting to Mr. Samuel. It referred to a student who had been enrolled at Seneca College but had never attended. The note stated that he was coming in the next morning at 5 a.m. with \$1,000 cash to pick up a letter of acceptance and transcripts. Ms. West testified that this was the kind of thing that F.K. had wanted her to do and he must have really got to her, because she did it.

### *Summary of the Parties' Closing Arguments*

Ms. Jolley, on behalf of the Discipline Committee, argued that Mr. Samuel had brought discredit to the CGA profession. The media coverage surrounding his immigration scam had specifically identified him as a CGA. Any reasonable person would have known that his activities were illegal. He admitted his participation in immigration fraud and should not now be permitted to resile from facts that he swore to be true in a Statutory Declaration on July 3, 2003.

With respect to Mr. Samuel's claim that he was under duress when he signed the declaration, Ms. Jolley submitted that feeling pressured is not the same thing as being under duress. He signed it voluntarily. He was calm and cooperative throughout the interview. No threats were made and no advantage was offered to induce him to sign the declaration. He was given an opportunity to review it before he signed it. Moreover, on July 9, when he met with Officer Jenkins again, he did not resile from the July 3 declaration even though he had signed an opposite declaration the previous day. He never mentioned a word of the second declaration to Officer Jenkins or to anyone until the last day of the hearing. Ms. Jolley questioned Mr. Samuel's credibility.

Ms. Jolley relied on *R. v. Ruzic*, a decision of the Supreme Court of Canada from 2000, which sets out two elements to a defence of duress: (1) that there be clear and imminent danger, such as a threat to an individual's personal integrity and (2) there must be no legal alternatives. In order to make out a defence of duress, an individual must show that he was faced with such perilous circumstances that he was deprived of any realistic choice as to whether to break the law. Ms. Jolley submitted that neither of these elements was present in Mr. Samuel's case.

Ms. Jolley noted that Ms. West was adamant in her testimony that the school stopped operating in December 2001, yet there were documents in the College's files portraying the school as operational after that date. There was a letter of employment signed by Mr. Samuel in January 2003, fees' receipts for students to attend courses in February 2002 and April 2002, and a letter of acceptance signed by Wilda West in February 2002 indicating that classes would begin on April 29, 2002 and continue through 2003. Ms. West always acted under Mr. Samuel's direction. Based on all the evidence, Officer Jenkins correctly concluded that the school was in place solely for the purpose of providing individuals with documents for a fee, to circumvent immigration requirements.

When the CGAO wrote to Mr. Samuel requesting information and documentation in September 2003 and thereafter, he claimed to be under an RCMP directive not to disclose any information. But he refused to provide any independent verification of that supposed directive. Ms. Jolley suggested that there was no directive.

Ms. Jolley urged the Tribunal to find that, based on all the evidence, Mr. Samuel violated the *Rules of Professional Conduct* and is guilty of the charges set out in the Notice of Hearing. Ms. Jolley relied on a number of prior decisions of the Professional Conduct Tribunal to support her position that expulsion was warranted in this case. She argued that a member's inappropriate or unlawful conduct need not be connected to their accounting activities in order to reflect badly on the Association.

Ms. Jolley requested orders that Mr. Samuel be expelled from the Association, and that he return his certificates to the CGAO. She also requested a costs award in the amount of \$10,000. She presented a Bill of Costs showing that the Discipline Committee's actual costs were over \$20,000. She argued that the costs were unusually high because of how Mr. Samuel had chosen to defend himself. The CGAO was required to retain an investigator because Mr. Samuel would not cooperate with their investigation. They were required to subpoena Mr. Jenkins, because Mr. Samuel resiled from his Statutory Declaration. They were required to subpoena and serve Ms. West, because Mr. Samuel did not arrange for her attendance at the hearing. She argued that a \$10,000 costs award was, therefore, justifiable.

In response, Mr. Persad noted that Mr. Samuel had accepted fault and full responsibility for not responding to the CGAO's written inquiries. He disputed, however, that the Discipline Committee had proven that Mr. Samuel was involved in an immigration scheme. He referred to the Ministry's Certificate of Registration from August 2001, which proved that the school was registered at that time, beyond the June

2001 date mentioned in the Statutory Declarations signed by Mr. Samuel and Ms. West on July 3, 2003. Ms. West confirmed in her testimony that the school operated beyond June 2001, honouring contracts with students who were already registered. She testified that there were classrooms and teachers and courses. The documents showing a payment of a \$500 registration fees in 2002 could have been in respect of students who were registered previously. There was no proof that Mr. Samuel had operated a documents-for-a-fee immigration scam, as alleged by the Discipline Committee.

Mr. Persad stressed that, of the 20 or so individuals who were ordered deported from Canada, there was no evidence that any of them were linked to the Ottawa Business College. Furthermore, if they had links to the College, there was no evidence that Mr. Samuel had produced false documents for them. It is possible that they could have produced false College documents themselves. Mr. Samuel was never charged with any offence under the *Immigration and Refugee Protection Act*. Under the *Act*, it is an offence to deal in false documents. Mr. Samuel was never charged with that offence. There was no evidence to prove that Mr. Samuel was responsible for the presence of illegal immigrants in Canada.

Mr. Persad argued that we should exclude the July 3 Statutory Declaration because it was signed by Mr. Samuel under duress. Mr. Samuel was panic-stricken at the time. The investigation had taken a turn. He may have initially attended the interview voluntarily, but after he was shown the 9/11 poem, he realized that he might be implicated in terrorist activities. The officers asked about the whereabouts of M.A., a person with whom he had business and personal connections, and who now appeared to be engaged in terrorism. He became unnerved. He did not feel that he could leave the room. Ms. West testified that she similarly felt that she could not leave. The officers were rotating and interrogating Mr. Samuel. They mentioned the possibility of 14 years of jail to Ms. West. Mr. Persad noted that the wording of the two Statutory Declarations signed by Mr. Samuel and Ms. West were almost identical. He further noted that they were only one page long, yet were intended to summarize interviews that lasted 3 or more hours. He suggested that the Tribunal "ask serious questions about what happened in there."

Furthermore, Mr. Persad argued that Mr. Samuel was entitled to be advised of his right to counsel before he made statements that could incriminate him. Mr. Persad relied on *R. v. Calder*, a decision of the Supreme Court of Canada from 1996, in which a statement was excluded from the evidence because the accused was not advised of his *Charter* right to counsel before he made the statement. Mr. Persad argued that the July 3 Statutory Declaration signed by Mr. Samuel should similarly be excluded from the evidence in this proceeding because the officers failed to give Mr. Samuel his right to counsel.

When Mr. Samuel met with the officers after July 3, he failed to mention his subsequent Statutory Declaration, in which he denied the statements contained in the first declaration. He was acting on an RCMP directive. It may not have been smart for him to not contact the media in September 2003, when the first declaration was quoted in the

newspapers, but once again he was acting on an RCMP directive, which was a reasonable thing for him to do in all of the circumstances.

Mr. Persad therefore asked the Tribunal to find that Mr. Samuel was only guilty of a failure to respond to the Association's inquiries, and he asserted that any disciplinary penalty imposed for that breach should be mitigated by the fact that Mr. Samuel was under an RCMP directive not to say anything.

With respect to costs, Mr. Persad argued that the Discipline Committee had not incurred any extraordinary costs. It had the onus of proving its case, which sometimes requires subpoenaing witnesses. Mr. Samuel is entitled to defend himself. The January hearing date had been adjourned for legitimate reasons. The \$10,000 costs award sought by the Discipline Committee is exorbitant and should not be ordered by the Tribunal.

Finally, Mr. Persad submitted that, if the Tribunal finds Mr. Samuel guilty of all the charges against him, expulsion is too severe a penalty. A suspension and small fine would be a more appropriate penalty, particularly since Mr. Samuel's name has already been dragged through the mud. Mr. Samuel has already suffered great personal, emotional and mental trauma over this ordeal. The Tribunal should be sympathetic to his situation and impose a more lenient punishment than expulsion.

In reply, Ms. Jolley argued that an adverse inference should be drawn from the fact that Mr. Persad never called any witnesses to testify that the school was operational in 2002-2003. Ms. West clearly testified that it closed in December 2001. No teachers were called and no Ministry witnesses were called to corroborate Mr. Samuel's assertion that instruction continued in 2002. There are letters with Mr. Samuel's signature portraying the school as operational as late as 2003, but no evidence to support that.

With respect to Mr. Persad's request to have the July 3 Statutory Declaration excluded from the evidence, Ms. Jolley noted that the *Calder* case is decided based on s.10 of the *Charter of Rights and Freedoms*, which only guarantees individuals the right to counsel upon arrest or detention. Since Mr. Samuel was never arrested or detained – indeed was never even a suspect in the investigation – his *Charter* rights were not violated. He was a mere witness in an investigation against students of College and the right to counsel does not extend to witnesses.

Finally, in reply to Mr. Persad's argument that there was no link between Mr. Samuel and the illegal immigrants who were ultimately ordered deported from Canada, Ms. Jolley argued that the July 3 Statutory Declaration constituted the necessary link. Mr. Samuel admitted to participating in an immigration scam and should not now be permitted to resile from that admission.

### ***Tribunal's Decision***

Upon review of the transcripts of the hearing and all the exhibits, the Tribunal concludes that Mr. Samuel was involved in an immigration scam, in which he effectively

sold false papers to foreign students, which they then used either to enter or to remain in Canada. Although the school may have been legitimate at some time in the past, it was not operating as an educational institution after December 2001. Mr. Samuel continued to issue letters of employment and letters of acceptance after that date, and instructed Ms. West to do the same, in an effort to portray the school as operational. He was aware that the students who registered would not attend classes or obtain instruction from the College because the College was no longer functioning after December 2001. He accepted payment from the students in amounts ranging from \$100 to \$1000 for issuing false letters of acceptance.

Officer Jenkins's testimony about the premises occupied by the College and Ms. West's testimony establish that the school was not operational in 2002 and 2003, yet the documents seized by the RCMP in June 2003 show that Mr. Samuel was representing the school as operational, accepting money from foreign students, and issuing letters of acceptance for them to use to apply for student visas.

We accept Officer Jenkins's testimony that Mr. Samuel admitted his involvement in this immigration scam to the officers on July 3, 2003. He confirmed his admission in writing when he signed the July 3 Statutory Declaration. We are not prepared to exclude the Statutory Declaration from our consideration. We accept Ms. Jolley's submission that the *Charter* right to counsel does not apply in the circumstances of this case, since Mr. Samuel was neither detained nor under arrest when he was interviewed and when he signed the declaration.

We do not find it necessary to determine whether the strict elements of duress, as outlined in *R. v. Ruzic*, were met in this case. Mr. Persad did not argue that Mr. Samuel engaged in immigration fraud under duress. He was not raising duress as a defence to the charges in this proceeding. Rather he used the word "duress" in connection with the signing of the July 3 Statutory Declaration, to suggest that Mr. Samuel did not sign it voluntarily and that it should therefore either be excluded from the evidence or given no weight. The issue before us is not whether the defence of duress has been established, but rather whether Mr. Samuel signed the declaration voluntarily and with an appreciation of what it contained.

We have concluded that he signed the declaration voluntarily. He was free to leave; he was free to make changes to the document; he was not threatened or bribed; and he was given an opportunity to review the document before he signed it. We did not find Mr. Samuel to be credible when he testified that he did not understand what he was signing. Even if he did fear, at that time, that he had become a suspect in a terrorist investigation, that would not explain why he would sign a document full of false statements that incriminate him. We accept the statements in the July 3 declaration to be true and we reject Mr. Samuel's subsequent retraction of those statements in the July 8 declaration. The totality of the evidence supports the veracity of the statements in the July 3 declaration.

Mr. Samuel contradicted himself numerous times during his testimony. He was also contradicted by Ms. West and Officer Jenkins. Where their evidence was

inconsistent, we prefer that of Ms. West and Mr. Jenkins, who testified in a forthright manner.

Some of Ms. West's testimony was not credible and appeared to be given in a self-interested manner. When confronted with documents that implicated her in improper or unlawful activities, she claimed that she must have been "slipping". To resile from the admissions she made in her July 3 Statutory Declaration, she claimed to have been in such a state of anxiety that she did not understand what she was signing. However, her testimony was that the "cute" officers were "gentle" with her and very nice to her during the interview. There was absolutely no suggestion of any improper or threatening conduct on the part of the officers that would induce the degree of anxiety that she claimed to have suffered. Still, throughout much of her testimony, she was forthright. She testified that at least one foreign student (F.K.) did not pay tuition fees as represented in his letter of acceptance and did not actually attend any classes. She also testified that she had become uncomfortable about the foreign students who were coming to the school toward the end of its operations, seeking to register for a fee without attending any classes and without providing any educational background information. She raised her concerns with Mr. Samuel, but he discounted them.

Based on all of the evidence, we conclude that Mr. Samuel was aware that there were foreign students who had no intention of attending the school, but rather were simply seeking documentation for a fee in order to remain in Canada. Mr. Samuel provided them with the requested documentation and instructed Ms. West to do so as well. A reasonable person would have known that it was unlawful to supply fraudulent letters of acceptance in these circumstances. Mr. Samuel engaged in these illegal activities for financial gain. He was not, as he suggested, an innocent victim of the students' manipulation. Rather he knowingly participated in an immigration scam. That he was never charged with an offence under the *Immigration and Refugee Protection Act* is irrelevant. On the evidence presented to us, we find, on a balance of probabilities, that he engaged in activities which he knew, or ought reasonably to have known, were unlawful.

We therefore find that Mr. Samuel violated his responsibilities to society and to the profession, as stipulated in the *CGAO Rules of Professional Conduct*. His actions demonstrated a lack of integrity and brought the profession into disrepute. The widespread media attention that was brought to bear on this situation resulted in the publication of Mr. Samuel's name, along with his CGA designation, in national newspapers that reported his involvement in the immigration scam. He violated Rule 101 by participating in a fraudulent practice that was a discredit to the profession. He violated Rule 202 by engaging in illegal activity. He also violated Rule 606 by engaging in activities that are detrimental to the profession.

By his own admission, Mr. Samuel violated Rules 610 and 611 when he failed to reply in writing to requests from the Association and failed to produce documents in his possession. We do not accept his explanation that he was under an RCMP directive not to discuss the matter with anyone. The CGAO provided him with several opportunities to furnish independent verification of this supposed directive and he did not do so. When

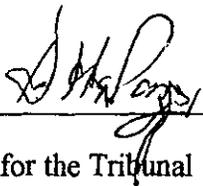
the CGAO hired its own investigator, it was able to obtain a copy of the July 3 Statutory Declaration without difficulty, which suggests that there was no secrecy surrounding the ongoing immigration investigation. There is no evidence of an RCMP directive constraining Mr. Samuel's ability to cooperate with the CGAO other than Mr. Samuel's testimony, which was self-serving and not credible.

### ***Penalty***

Given the seriousness of Mr. Samuel's misconduct, we conclude that expulsion is an appropriate penalty. Mr. Samuel's activities were highly unacceptable. As a self-regulated profession, the CGAO must maintain the public's confidence in the profession. Mr. Samuel engaged in unlawful conduct that brought the profession into disrepute. He demonstrated a lack of integrity that is inconsistent with the ethical and professional standards of the profession. It matters not that his actions were not connected with accounting activities; they nevertheless reflect badly on the profession. We therefore order Mr. Samuel expelled from the Association and order him to return his Certificates to the CGAO.

We also order Mr. Samuel to pay the Discipline Committee's costs in the amount of \$10,000. This was not a simple case. There were three days of hearing, each of which required considerable preparation by counsel. There were several witnesses and an abundance of documentary evidence. The \$10,000 order represents only 50% of the Committee's actual costs, which is not unreasonable.

Dated October 14, 2005

  
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Don Page, for the Tribunal

### **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 Association 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.