

**IN THE MATTER OF a Proceeding under
the *Certified General Accountants Act, 2010* and By-Law Four**

**IN THE MATTER OF BALI SINGH, a member of
The Certified General Accountants Association of Ontario**

BETWEEN:

The Discipline Committee of The Certified General Accountants Association of Ontario

- and -

Mr. Bali Singh

DECISION AND REASONS FOR DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL

Members of the Professional Conduct Tribunal Panel:

Peter Vaillancourt, CGA, Chair
Jane Rivers, CGA
Victoria Corbett, Public Representative

Appearances:

Karen Jolley, Counsel for the Discipline Committee
George Callahan, Counsel for the Member, Bali Singh
Bali Singh, Member
Lisa Braverman, Registrar and Independent Legal Counsel to the Professional Conduct Tribunal

Hearing Date:

Wednesday November 17th, 2010, Toronto

OVERVIEW

A panel of the Professional Conduct Tribunal of The Certified General Accountants Association of Ontario heard this matter on Wednesday November 17th, 2010 at Toronto.

PRELIMINARY MATTERS

Two motions were made by Mr. Bali Singh and considered by the Panel.

Motion (1): On Thursday September 16th, 2010, Mr. Bali Singh requested an adjournment of the hearing scheduled for this date as he was not able to obtain legal representation, citing several items including:

- scheduling conflicts with the legal counsel Mr. Bali Singh wished to obtain
- In the absence of legal counsel and a legal background, Mr. Bali Singh felt he could not adequately represent himself for the scheduled hearing

Ms. Karen Jolley opposed the motion for adjournment citing that Mr. Bali Singh was served with a Notice of Hearing on July 22nd, 2010, well in advance of the September 16th hearing date and had not demonstrated proper cause to warrant an adjournment. Further to this objection, Ms. Karen Jolley requested that costs in the amount of \$500 be imposed as a condition of any adjournment.

Decision re: Motion (1): In terms of Mr. Singh's motion for an adjournment of this hearing, the Professional Conduct Tribunal considered the submissions of Mr. Bali Singh and Ms. Karen Jolley and has decided to grant an adjournment of this hearing for 60 days peremptory to Mr. Bali Singh. This means that the hearing will proceed on a date to be set today, at least, 60 days from today's date, no matter what, regardless of whether or not Mr. Bali Singh has legal counsel.

In terms of Ms. Karen Jolley's request for \$500 in costs as a condition of the adjournment, having considered the submissions of Mr. Bali Singh and Ms. Karen Jolley, the majority of the Professional Conduct Tribunal has decided to order Mr. Bali Singh to pay \$500 costs as a condition of the adjournment of this hearing. Victoria Corbett was noted to dissent with this decision. The Chair of the Panel set the date for the hearing on November 17th, 2010 at 10 a.m.

Motion (2): On Thursday September 16th, 2010, Mr. Bali Singh also requested the Certified General Accountants Association of Ontario pay for his legal representation. As support for this request, Mr. Bali Singh referred to financial difficulties citing the limited size of Mr. Singh's practice, educational cost being incurred as Mr. Bali Singh was in pursuit of obtaining a Master of Business Administration degree and the fact that he was the sole income earner in his family with no liquid assets.

Ms. Karen Jolley opposed the motion citing that there was neither precedent nor jurisdiction/authority for the Panel to order the Association to pay for Mr. Bali Singh's legal counsel.

Decision re: Motion (2): In terms of Mr. Singh's motion for an order that the Association pay for his legal counsel, the Professional Conduct Tribunal has considered the submissions of Mr. Bali Singh and Ms. Karen Jolley and has decided to deny the motion. This means that the Panel will not order the Association to pay for Mr. Bali Singh's legal counsel.

One issue was raised and addressed prior to the start of the hearing.

Issue (1):

Prior to the start of the hearing scheduled for Wednesday November 17th, an issue was raised via a letter dated Tuesday September 21st, 2010 by Ms. Karen Jolley in regards to the possibility of conflict of

interest/bias issue. The letter was sent to Ms. Lisa Braverman and Mr. Bali Singh. The particulars of the issue were as follows:

- In 2007, the Association's Discipline Committee was composed of 9 members.
- Peter Vaillancourt and Jane Rivers, both professional panel members of the Professional Conduct Tribunal hearing the Singh matter, were members of the Discipline Committee in 2007.
- In the fall of 2007, 8 out of 9 members of the Discipline Committee, which included Mr. Vaillancourt and Ms. Rivers, held a meeting. At this meeting, the Discipline Committee was given a list of 8 practitioners, who were registered in public practice but had not completed the public practice requirements such as successfully passing the TX2 examination. This list included Mr. Singh as one of the 8 practitioners.
- At this meeting, the Discipline Committee, which included Mr. Vaillancourt and Ms. Rivers, as part of the Committee's screening function, unanimously determined that rather than pursue these 8 practitioners on a disciplinary basis, they would and did refer these 8 practitioners in bulk to the Association's Professional Standards and Competence Committee.
- In particular, on or about October 5, 2007, Mr. Singh received a letter from the Discipline Committee advising him that they did not view the matter as disciplinary and that the matter was being referred to the Professional Standards and Competence Committee.
- Subsequently, the Professional Standards and Competence Committee de-registered Mr. Singh from public practice as a result of Mr. Singh not successfully passing the TX2 examination prior to December 2007. The deregistration took effect as of January 2008. Mr. Vaillancourt and Ms. Rivers were not members of the Professional Standards and Competence Committee and did not take part in this decision.
- Later on, the current Discipline Committee, which did not include Mr. Vaillancourt or Ms. Rivers as they were no longer members of the Discipline Committee, received and considered a complaint regarding Mr. Singh's conduct and, in 2010, referred allegations of breaches of the Code of Ethical Principles and Rules of Conduct to the Professional Conduct Tribunal as set out in a Notice of Hearing dated July 21, 2010. The allegations alleged, among other things, that

even though Mr. Singh was not registered in public practice, in 2008, he prepared compiled financial statements or corporate tax returns for seven existing clients and prepared compiled financial statements or corporate tax returns for six new clients in 2008 and he did not undergo a practice inspection.

- A panel of the Professional Conduct Tribunal was assembled to hold a hearing into the allegations that Mr. Singh breached certain provisions of the Code of Ethical Principles and Rules of Conduct. During the screening process for assembling a panel, Mr. Vallancourt and Ms. Rivers, both advised Ms. Braverman that they did not know Mr. Singh personally or professionally.

The Professional Conduct Tribunal Panel held a teleconference on Wednesday November 10th, to consider the possible conflict of interest/bias issue raised in a letter presented by Ms. Jolley dated Tuesday September 21st, 2010.

Decision re: Issue (1): The panel of the Professional Conduct Tribunal has reviewed Ms. Jolley's letter dated September 21, 2010, the September 21, 2010 email exchange between Ms. Braverman and Ms. Jolley, the October 20, 2010 letter by Ms. Braverman and the October 25, 2010 email by Ms. Jolley. The member or the member's lawyer did not provide any submissions. The panel decided that there was no reasonable apprehension of bias in this case and that the current panel will proceed with the hearing on November 17, 2010.

ALLEGATIONS

Counsel for the Discipline Committee entered into evidence the Notice of Hearing dated Wednesday July 21st, 2010, contained in the Discipline Brief, Exhibit #2, and the Affidavit of Service, Exhibit #1, relating to the Notice of Hearing.

The allegations against the member are that Mr. Bali Singh breached the following provisions of the Code of Ethical Principles and Rules of Conduct as stated in the Notice of Hearing:

Rule 514 Registration

A member shall, if engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time, register in accordance with the requirements prescribed by the Association. This rule also shall apply to members who own, operate or control a professional corporation engaged in the practice of public accounting or the preparation of compilation engagements or tax returns.

Rule 515 Practice Inspection Requirements

A member shall comply with, and adhere to, the practice inspection requirements of the Association and the standards contained therein.

Rule 601 Compliance

A member shall comply with By-Law Four and the *Code of Ethical Principles and Rules of Conduct* of the Association as amended from time to time, and with any order or resolution of the board of governors or its committees under the By-Law.

Rule 606(a) Detrimental Actions

A member shall not participate in any action that is detrimental to the Association or the profession.

The particulars of the allegations against the member as stated in the Notice of Hearing are as follows:

Particulars:

1. Commencing in the fall of 2007 Bali Singh ("Singh") registered with CGA Ontario (the "Association") for full public practice.
2. Effective January 2008, Singh was deregistered from full public practice. As such after that date, he was not permitted to prepare compiled financial statements or corporate tax returns or to be associated with corporate financial statements as an independent accountant.

3. Even though Singh was not registered in public practice, in 2008 he prepared compiled financial statements or corporate tax returns for seven existing clients and prepared compiled financial statements or corporate tax returns for six new clients in 2008.
4. Rule 514 of the *Code* requires a member engaged in a professional practice to register with the Association.
5. The *Code* defines a "professional practice" as "a proprietorship, partnership, limited liability partnership or professional corporation that provides professional services."
6. The *Code* further defines "professional services" as "any accounting, assurance, taxation services, management advisory or consulting services or other related services as may from time to time be recognized by the Association that is performed or offered to be performed by a member for a client or employer, whether or not the member asserts membership in the Association."
7. By providing professional services, including the preparation of compiled financial statements and corporate tax returns for the public, Singh was operating a professional practice, as defined by the *Code*.
8. Singh was not permitted by the Association to offer the professional services that he provided to the public.
9. Singh earned income from carrying on a public practice operated in violation of the *Code*.
10. Rule 515 of the *Code* requires a member engaged in a professional practice to adhere to the practice inspection requirements of the Association.
11. Singh did not undergo a practice inspection with the Association as he was not registered to carry on the public practice work he was doing.
12. Rule 516 of the *Code* requires a member engaged in a professional practice to maintain professional liability insurance.
13. Rule 601 of the *Code* requires members to comply with the Association's By-Law Four and the *Code*.
14. By carrying on a public practice without being registered to do so, Singh did not comply with the Association's *Code* and therefore also did not comply with Rule 601.

15. Rule 606(a) of the *Code* prohibits members from participating in any action that is detrimental to the Association or the profession.
16. By preparing compiled financial statements and corporate tax returns or being associated with corporate financial statements as an independent contractor for clients when he was not registered in public practice, Singh participated in actions detrimental to the Association and the profession.

MEMBER'S PLEA

The member, through his counsel, admitted the allegations set out in the Notice of Hearing. The Chair of the panel then said:

Mr. Bali Singh, given the fact that you admitted the allegations in the Notice of Hearing, before the Tribunal accepts your admission, I would like to ask you some questions to ensure that your admission is voluntary, informed and unequivocal.

The following questions were asked:

1. Do you understand the nature of the allegations that have been made against you?
2. Do you understand that by admitting the allegations, you are waiving the right to require the Association to prove the case against you and the right to have a hearing?
3. Do you voluntarily decide to admit the allegations against you?
4. Do you understand that any agreement between counsel for the Association, Ms. Jolley, and your counsel with respect to the penalty proposed does not bind the panel?

Mr. Bali Singh answered yes to each of these 4 questions.

FACTS AND EVIDENCE

The hearing proceeded without any testimony from witnesses. Counsel for the Discipline Committee presented an Affidavit of Service, Exhibit #3, establishing that the member had been served on July 29th, 2010 with a Request to Admit Facts and Documents, Exhibit #4, as well as a Notice under the Evidence Act (Business Records). The member was advised that he had 20 days to respond to the Request to

Admit Facts and Documents, and that if he failed to respond, he would be deemed to admit the truth of the facts and the authenticity of the documents, for the purposes of this proceeding. The member did not respond to the Request to Admit Facts and Documents. Based on the facts and documents deemed to be admitted by the member at this hearing, the panel makes the following findings of fact:

Personal Facts, Relationship and Status with CGA Ontario

1. Mr. Bali Singh's address on the CGA Ontario register is 202- 16 Rutherford Road South, Brampton, Ontario, L6W 3J 1.
2. Mr. Bali Singh became a member of CGA Ontario (the "Association") in 2001. Mr. Bali Singh's CGA Ontario certificate number is 15722. Mr. Bali Singh's CGA Canada certificate number is 348934.
3. By letter dated 8 December 2006 the Association advised Mr. Bali Singh that he had to fulfill certain entry and continuing requirements in order to maintain his public practice registration.
4. Mr. Bali Singh did not complete the requirements.
5. In October 2007 the Association advised Mr. Bali Singh again that he was required to write and pass the TX2 examination in order to maintain his registration in public practice.
6. Mr. Bali Singh did not write and pass the TX2 examination, as required.
7. By email dated 2 January 2008 to the Association entitled "De-registering" Mr. Bali Singh requested that the Association de-register Mr. Bali Singh from public practice effective 4 January 2008.
8. By email dated 2 January 2008 the Association confirmed that it was deregistering Mr. Bali Singh from compilations and corporate tax returns.
9. As of 4 January 2008 Mr. Bali Singh was not permitted to prepare compiled financial statements or corporate tax returns or to be associated with corporate financial statements as an independent accountant.

10. Prior to January 2008 Mr. Bali Singh had prepared compiled financial statements, corporate tax returns or were associated with corporate financial statements as an independent accountant for some of Mr. Bali Singh's clients.
11. After January 2008, Mr. Bali Singh did not advise the clients for whom he had done such work that Mr. Bali Singh was no longer permitted to provide those services to them.
12. Further, Mr. Bali Singh continued to prepare compiled financial statements or corporate tax returns for seven of Mr. Bali Singh's existing public practice clients after he was deregistered in January 2008.
13. In addition, after January 2008, Mr. Bali Singh accepted retainers for public practice work from six new clients and prepared compiled financial statements or corporate tax returns for those clients.
14. Since January 2008, Mr. Bali Singh has prepared compiled financial statements or corporate tax returns or been associated with corporate financial statements as an independent accountant when Mr. Bali Singh was not registered to do so.
15. Mr. Bali Singh knew or ought to have known that he was not permitted to carry on such a practice.
16. Mr. Bali Singh then arranged to have a CGA who was registered in public practice sign Notices to Reader on the letterhead of "Bali Singh & Associates".
17. Neither Mr. Bali Singh nor his firm is or was permitted to issue financial statements on Mr. Bali Singh's firm's letterhead as he was not registered in public practice.
18. The Code of Ethical Principles and Rules of Conduct (the "Code") defines a "professional practice" as "a proprietorship, partnership, limited liability partnership or professional corporation that provides professional services."
19. The Code further defines "professional services" as "any accounting, assurance, taxation services, management advisory or consulting services or other related services as may from time to time be recognized by the Association that is performed or offered to be performed by a member for a client or employer, whether or not the member asserts membership in the Association."

- 20.** By providing professional services, including the preparation of compiled financial statements and corporate tax returns for the public, Mr. Bali Singh was operating a professional practice, as defined by the Code.
- 21.** Rule 514 of the Code requires a member engaged in a professional practice to register with the Association.
- 22.** As Mr. Bali Singh was not registered in professional practice with the Association after January 2008, Mr. Bali Singh was not permitted by the Association to offer the professional services that Mr. Bali Singh continued to provide to the public.
- 23.** Mr. Bali Singh knowingly continued to carry on a professional practice in violation of the de-registration of that practice.
- 24.** Mr. Bali Singh earned income from carrying on a public practice that he was operating in violation of the Association's Code of Ethical Principles and Rules of Conduct.
- 25.** Rule 515 of the Code requires a member engaged in a professional practice to adhere to the practice inspection requirements of the Association.
- 26.** Mr. Bali Singh did not undergo a practice inspection with the Association as Mr. Bali Singh was not registered to carry on the public practice work Mr. Bali Singh was doing.
- 27.** Rule 601 of the Code requires members to comply with the Association's By-Law Four and the Code.
- 28.** By carrying on a public practice after Mr. Bali Singh was deregistered, Mr. Bali Singh did not comply with the Association's Code and therefore also did not comply with Rule 601.
- 29.** Rule 606(a) of the Code prohibits members from participating in any action that is detrimental to the Association or the profession.
- 30.** By:
 - a)** not advising Mr. Bali Singh's clients that he was no longer able to prepare compiled financial statements and corporate tax returns or be associated with corporate financial

statements as an independent accountant and leaving those clients with the impression that Mr. Bali Singh was qualified to carry on a public practice,

- b) continuing to prepare compiled financial statements and corporate tax returns or be associated with corporate financial statements as an independent contractor for those clients after Mr. Bali Singh was deregistered; and
- c) accepting new clients for whom Mr. Bali Singh prepared compiled financial statements and corporate tax returns or were associated with corporate financial statements as an independent accountant,

Mr. Bali Singh participated in actions detrimental to the Association and the profession.

DECISION

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

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

Rule 514 Registration

A member shall, if engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time, register in accordance with the requirements prescribed by the Association. This rule also shall apply to members who own, operate or control a professional corporation engaged in the practice of public accounting or the preparation of compilation engagements or tax returns.

Rule 515 Practice Inspection Requirements

A member shall comply with, and adhere to, the practice inspection requirements of the Association and the standards contained therein.

Rule 601 Compliance

A member shall comply with By-Law Four and the *Code of Ethical Principles and Rules of Conduct* of the Association as amended from time to time, and with any order or resolution of the board of governors or its committees under the By-Law.

Rule 606(a) Detrimental Actions

A member shall not participate in any action that is detrimental to the Association or the profession.

REASONS FOR DECISION

In coming to a decision, the Panel relied heavily upon evidence that was provided in the form of deemed admissions arising from the Request to Admit Facts and Documents, Exhibit #4. The Panel made findings of fact based on these deemed admissions.

Rule 514 Registration

One of the requirements prescribed by the Association to maintain registration in public practice is the successful completion of the advanced taxation course TX2. Failing to write and pass the TX2 examination in order to maintain his registration in public practice, Mr. Bali Singh requested deregistration and he was deregistered by the Association from compilations and corporate tax returns. As of 4 January 2008 Mr. Bali Singh was not permitted to prepare compiled financial statements or corporate tax returns or to be associated with corporate financial statements as an independent accountant. Evidence presented at the hearing demonstrated that Mr. Bali Singh knowingly continued to carry on a professional practice in violation of the deregistration of that practice. Mr. Bali Singh continued to prepare compiled financial statements or corporate tax returns for seven of Mr. Bali Singh's existing public practice clients. In addition, Mr. Bali Singh accepted retainers for public practice

work from six new clients and prepared compiled financial statements or corporate tax returns for those clients.

Rule 515 Practice Inspection Requirements

Evidence presented to the Panel demonstrated that not only did Mr. Bali Singh knowingly continue to carry on a professional practice in violation of his deregistration, Mr. Bali Singh did not comply with, and adhere to, the practice inspection requirements of the Association and the standards contained therein since he did not undergo a practice inspection with the Association during this period.

Rule 601 Compliance

The Panel also concluded that by carrying on a public practice after Mr. Bali Singh was deregistered, Mr. Bali Singh did not comply with the Association's Code and therefore also did not comply with Rule 601.

Rule 606(a) Detrimental Actions

The Panel also found that Mr. Bali Singh participated in actions detrimental to the Association and the profession by:

- a) not advising Mr. Bali Singh's clients that he was no longer able to prepare compiled financial statements and corporate tax returns or be associated with corporate financial statements as an independent accountant and leaving those clients with the impression that Mr. Bali Singh was qualified to carry on a public practice,
- b) continuing to prepare compiled financial statements and corporate tax returns or be associated with corporate financial statements as an independent contractor for those clients after Mr. Bali Singh was deregistered, and
- c) accepting new clients for whom Mr. Bali Singh prepared compiled financial statements and corporate tax returns or were associated with corporate financial statements as an independent accountant.

PENALTY SUBMISSIONS

Counsel for the Discipline Committee advised the panel that a joint submission on penalty had been consented to by the parties. The Consent Joint Submission provides as follows:

Consent Joint Submission

- 1) Reprimand
- 2) Suspension to February 17th 2011
- 3) Return certificates immediately
- 4) \$10,000 fine
- 5) \$500 costs
- 6) a) Payment over 12 months
b) Equal Installments (12), of \$1,750 each
c) 12 post dated cheques provided to start first date of month after decision released
d) If payment NSF or stopped, Mr. Bali Singh is to be suspended until payment made
- 7) Publication in Statements
- 8) Panel's decision on newspaper publication S 21(1)(B)
 - i) Committee takes no position
 - ii) Mr. Bali Singh opposes

Both Ms. Jolley and Mr. Callahan signed the Consent Joint Submission.

In reference to the Consent Joint Submission, Ms. Jolley indicated that the submission was fair and the Discipline Committee supports the submission. In speaking to the fairness of the submission, Ms. Jolley referenced the following precedents citing similarities in each, relating to penalty to this case:

- a) The Discipline Committee of the Certified General Accountants Association of Ontario and Waseem Aslam, which was heard on July 29th, 2010. In this case the member was found in violation of Rules 514, 515, 516, 601 and 606(a).
- b) The Discipline Committee of the Certified General Accountants Association of Ontario and Vijay Joshi, dated July 6th, 2010. In this case the member was found in violation of Rules 514, 515, 516, 601 and 606(a).
- c) The Discipline Committee of the Certified General Accountants Association of Ontario and Tanveer Mansoor, dated July 30th, 2009. In this case the member was found in violation of Rules 509, 514, 515 and 516.

In further support of the submission it was noted by Ms. Jolley that the penalty is significant in that it would act as a deterrent to Mr. Bali Singh of any such conduct in the future and the penalty would stand as a deterrent to practising members.

Mr. George Callahan supported the Consent Joint Submission indicating that the \$10,000 fine was in line with the precedents and would significantly deter Mr. Bali Singh of any similar future conduct.

In reference to paragraph (8) of the Consent Joint Submission, Ms. Jolley indicated that the Discipline Committee takes no position. Mr. Callahan argued that there should be no publication in a newspaper. Mr. Callahan indicated that publication in a newspaper should be reserved for conduct that is egregious, offensive to the public. Mr. Callahan indicated that rehabilitation and guidance to the member can be accomplished without the need for newspaper publication. He indicated that there is no need to warn the public. He said that if you publish in a newspaper, there is the risk that clients of Mr. Singh will move, it causes people to panic. He also said that if you publish in a newspaper, this would embarrass Mr. Singh in front of his community.

PENALTY DECISION

The panel of the Professional Conduct Tribunal deliberated and accepted the Consent Joint Submission and accordingly orders the penalty as set out in paragraphs numbered 1 to 7 of the Consent Joint Submission:

- 1) Bali Singh is reprimanded for breaching Rules 514, 515, 601 and 606(a) of the Code.
- 2) Bali Singh is suspended from membership in the Association to February 17th 2011.
- 3) Bali Singh shall return his CGA Ontario membership certificate and his CGA Canada membership certificate immediately.
- 4) Bali Singh pays a fine of \$10,000.
- 5) Bali Singh pays \$500 in costs.
- 6) The following payment schedule to pay the \$10,500 for the fine and the costs is imposed:
 - a) Payment over 12 months.
 - b) Equal installments (12), of \$875 each.
 - c) 12 post dated cheques provided to start first date of month after decision released.
 - d) If payment NSF or stopped, Mr. Bali Singh is to be suspended until payment made.
- 7) Publication in Statements.

On the one issue where there was no agreement by the parties, the panel of the Professional Conduct Tribunal also orders publication, on one occasion, in one local Brampton newspaper. The name of the local newspaper is to be selected at the discretion of the Certified General Accountants Association of Ontario.

The panel in announcing its oral decision relating to penalty on November 17, 2010 made a mathematical error when it indicated that it orders the penalty as set out in paragraphs numbered 1-7 of the Consent Joint Submission. Paragraph 6 of the Consent Joint Submission contained a mathematical error when it referred to Equal installments (12) of \$1750 each. Paragraph 6 of the Consent Joint Submission should have referred to Equal installments (12) of \$875 each. The panel relies on section 21.1 of the *Statutory Powers Procedure Act* which states: A tribunal may at any time correct a typographical error, error of calculation or similar error made in its decision or order. The panel relies on this section to correct this mathematical error in its oral decision relating to penalty made on November 17, 2010.

The panel also wants to clarify that the \$500 costs identified in paragraph 5 of the Consent Joint Submission was in reference to the condition of the adjournment of the hearing from the motion heard on September 16th, 2010.

REASONS FOR PENALTY DECISION

Having been satisfied that Rules 514, 515, 601 and 606(a) have been violated, the panel then considered the penalty.

In coming to its penalty decision, the Professional Conduct Tribunal took into consideration the following in acceptance of the penalty as set out in paragraphs numbered 1 – 7 of the Consent Joint Submission:

- A Consent Joint Submission was submitted to the Professional Conduct Tribunal with a clear agreement from both Ms. Karen Jolley and Mr. George Callahan. Both counsel agreed that the penalty was reflective of the nature and gravity of the proven allegations.

The Panel accepted the Consent Joint Submission because the Panel felt that the penalty would act as a deterrent to Mr. Bali Singh of any similar conduct in the future and would stand as a deterrent to practising members.

In regards to the decision on newspaper publication, section 21(b) of By-Law Four, the Professional Conduct Tribunal took into account the following:

- In coming to its decision, the Panel placed high regard on its responsibilities as set out in section 21(b) of By-Law Four and more generally in the Code of Ethical Principles and Rules of Conduct.
- As the onus of proving that notice of suspension should not be published in a newspaper is on the member, the Professional Conduct Tribunal asked Mr. George Callahan to respond to the conditions as set out in section 21(b), specifically, he was asked to address how the circumstances of this case are of a nature that notice in a newspaper is not in the public interest and would be unduly unfair to the member. As a result of questioning from the Panel, it was the Panel's opinion that Mr. George Callahan was not able to satisfy the condition as set out in section 21(b) that notice in a newspaper is not in the public interest. In regards to the second condition, although some impact to the member was presented by Mr. George Callahan, the Panel was not able to determine from the submissions that were made that publication in a newspaper was unduly unfair to the member. Since Mr. George Callahan failed to provide evidence to support the 2 conditions as set out in section 21(b), the Panel's decision was unanimous to order publication in a newspaper. The Panel paid high regard for the need to maintain the public's confidence in the integrity of the profession.

In its decision to publish "on one occasion", in one local Brampton newspaper, the Professional Conduct Tribunal did take into account the following:

- The parties agreed to a Consent Joint Submission which included agreement to publish in Statements.
- No prior complaints or convictions were on record for Mr. Bali Singh.
- Mr. Bali Singh has satisfied the requirements of the practice inspection program as identified through Exhibit #8, the "Practice Inspection of the firm – October 19, 2010".
- Efforts were taken by Mr. Bali Singh to comply with the requirements, i.e. TX2.

Dated this 3rd, day of February, 2011

I, Peter Vaillancourt, sign this Decision and Reasons for Decision as Chair of the panel of the Professional Conduct Tribunal on behalf of the members of the panel that heard this matter.

Peter J Vaillancourt

NOTICE

This decision of the Professional Conduct Tribunal may be appealed to an Appeal Tribunal within thirty (30) days of the date of this decision.

The Notice of Appeal must be in writing, addressed to the Secretary of the Association (Certified General Accountants of Ontario, 240 Eglinton Avenue East, Toronto, Ontario, M4P 1K8) and must contain the grounds for the appeal.

TAKE NOTE THAT, in an appeal, the Appellant bears the onus of obtaining copies of the transcript of the hearing before the Professional Conduct Tribunal for the Appeal Tribunal (4 copies) and for the Respondent (1 copy).

According to Article 9, 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 void.

**IN THE MATTER OF a Proceeding under
the *Certified General Accountants Act, 2010* and the Bylaws**

**IN THE MATTER OF Mr. Bali Singh, a member of
The Certified General Accountants Association of Ontario**

B E T W E E N:

Bali Singh

- and -

The Discipline Committee of The Certified General Accountants Association of Ontario

DECISION AND REASONS FOR DECISION OF THE APPEAL TRIBUNAL

Members of the Appeal Tribunal Panel:

David Handley, Public Representative, Chair
Irwin Pinsky, CGA
Ramesh Ramotar, CGA

Appearances:

Karen Jolley, Counsel for the Discipline Committee
Lisa Braverman, Registrar and Independent Legal Counsel to the Appeal Tribunal

Appeal Hearing Date:

Friday May 13, 2011, Toronto

OVERVIEW

A panel of the Appeal Tribunal of The Certified General Accountants Association of Ontario heard this appeal on Friday May 13, 2011 at Toronto. At the conclusion of the appeal hearing, the panel reserved its decision.

The appeal by Mr. Bali Singh arises from a decision of a panel of the Professional Conduct Tribunal of The Certified General Accountants Association of Ontario dated on February 3, 2011.

PRELIMINARY MATTERS

Preliminary Matter 1

Taping of the Hearing

- Present at this appeal hearing was Ms. Parvinie Singh. At the commencement of the hearing on May 13, 2011, Ms. Singh requested that she be permitted to tape the hearing using a hand held taping device.
- Ms. Jolley objected to this stating that the court reporter from Network Reporting and Mediation has the sole responsibility to make the official record of these proceedings and that there should be only one record of these proceedings.

Decision regarding Preliminary Matter 1

- The panel of the Appeal Tribunal considered the submissions of both Ms. Singh and Ms. Jolley and decided to deny Ms. Singh's request to tape the proceedings.
- There should be only one official record of this appeal hearing and the court reporter from Network Reporting and Mediation organization is responsible for this requirement. A transcript of this hearing is available to anyone upon request.

Preliminary Matter 2

- Ms. Singh presented the Appeal Tribunal with a document from Mr. Singh that was made Exhibit 1. This document put forward two motions by Mr. Singh:
 - Notice of Appointment of Representative
 - Notice of Motion for an Adjournment

Notice of Appointment of Representative

- The Notice of Appointment of Representative motion was put forward on May 13, 2011 requesting that Ms. Singh be allowed to act on behalf of Mr. Singh in these proceedings.
- Ms. Jolley objected to this motion, noting that section 4.1 of the CGA Ontario Procedural Rules for Hearings states that:

"In any proceeding before the Tribunal, a party may appear on his or her own behalf or may be represented by a representative".
- Ms. Jolley indicated that the definition of a "Representative" is found in the Definitions section of the CGA Ontario Procedural Rules for Hearings defining it as a person authorized under the *Law Society Act* to represent a party in proceedings before a tribunal.
- Ms. Jolley questioned whether Ms. Singh satisfied this definition.
- The Appeal Tribunal asked Ms. Singh if she satisfied the definition of Representative.
- Ms. Singh indicated that she was neither a lawyer nor paralegal.

Decision regarding Notice of Appointment of Representative

- The panel of the Appeal Tribunal considered the submissions of both Ms. Singh and Ms. Jolley and concluded that Ms. Singh had no standing to represent Mr. Singh at this hearing. Allowing Ms. Singh to

represent Mr. Singh at this hearing would be in contravention of the *Statutory Powers Procedure Act* and would continue to be in violation of that Act were she permitted to act on Mr. Singh's behalf.

Notice of Motion for an Adjournment

- The Notice of Motion requesting an adjournment of the Appeal Tribunal hearing was put forward on May 13, 2011. Mr. Singh cited a number of reasons why he could not attend this appeal hearing on May 13, 2011 including:
 - He is attending MBA classes out of the country
 - Legal counsel required time to review copies of the Professional Conduct Tribunal transcript
 - There was not sufficient time to prepare for the appeal due to work constraints
 - He required time to raise funds for legal representation

- Ms. Jolley objected to this motion noting that:
 - Mr. Singh had ample time for either himself or legal counsel to prepare an appeal given the amount of time since he registered his intention to appeal.
 - The hearing on November 17, 2010, provided Mr. Singh with the verbal decision of The Professional Conduct Tribunal in this matter.
 - Mr. Singh gave notice to the CGA Ontario that he was going to appeal The Professional Conduct Tribunal's decision on November 21, 2010. This provided him with over 5 months in which to arrange his affairs including the option to hire legal counsel to prepare his appeal.
 - The written decision was dated February 3, 2011.
 - Mr. Singh submitted his written notice to appeal on March 7, 2011 giving Mr. Singh 10 weeks to prepare his appeal or to hire legal counsel to prepare his appeal.
 - At the first hearing, on September 16, 2010, Mr. Singh requested an adjournment to find legal representation. This adjournment was granted, he is now requesting an adjournment for the same reason.
 - Mr. Singh stated that he needs time to raise funds for his appeal, yet no evidence was put forward to suggest that he is unable to pay for legal representation.
 - Any suggestion that he had no time to prepare his appeal due to his need to attend courses is not relevant, as he could have hired legal counsel to represent him.

Decision regarding Notice of Motion for an Adjournment

- After reviewing Mr. Singh's request for an adjournment of his appeal hearing, as set out in the Notice of Motion and his Exhibits, and after considering the submissions of Ms. Jolley, the Tribunal has decided to deny Mr. Singh's adjournment request. The Appeal Tribunal has decided to proceed with the appeal hearing. The Appeal Tribunal will take Exhibits 2, 3, 4, 5 from the adjournment motion and treat them as Exhibits in the appeal.

APPEAL

The following documents were entered into evidence:

1. Appeal Book as Exhibit 2, containing the Notice of Appeal dated March 7, 2011.
2. Affidavits of Service as Exhibits 3 and 4, relating to service of the Notice of Appeal and notice of the date of the appeal hearing.
3. Transcripts dated November 17, 2010 as Exhibit 5 and dated September 16, 2010 as Exhibit 6.

ALLEGATIONS BEFORE THE PROFESSIONAL CONDUCT TRIBUNAL

The allegations against the member were that he breached the following provisions of the Code of Ethical Principles and Rules of Conduct as stated in the Notice of Hearing:

Rule 514 Registration

A member shall, if engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time, register in accordance with the requirements prescribed by the Association. This rule also shall apply to members who own, operate or control a professional corporation engaged in the practice of public accounting or the preparation of compilation engagements or tax returns.

Rule 515 Practice Inspection Requirements

A member shall comply with, and adhere to, the practice inspection requirements of the Association and the standards contained therein.

Rule 601 Compliance

A member shall comply with By-Law Four and the *Code of Ethical Principles and Rules of Conduct* of the Association as amended from time to time, and with any order or resolution of the board of governors or its committees under the By-Law.

Rule 606(a) Detrimental Actions

A member shall not participate in any action that is detrimental to the Association or the profession.

The particulars of the allegations against the member as stated in the Notice of Hearing were as follows:

Particulars

1. Commencing in the fall of 2007 Bali Singh ("Singh") registered with CGA Ontario (the "Association") for full public practice.
2. Effective January 2008, Singh was deregistered from full public practice. As such after that date, he was not permitted to prepare compiled financial statements or corporate tax returns or to be associated with corporate financial statements as an independent accountant.
3. Even though Singh was not registered in public practice, in 2008 he prepared compiled financial statements or corporate tax returns for seven existing clients and prepared compiled financial statements or corporate tax returns for six new clients in 2008.
4. Rule 514 of the *Code* requires a member engaged in a professional practice to register with the Association.
5. The *Code* defines a "professional practice" as "a proprietorship, partnership, limited liability partnership or professional corporation that provides professional services."
6. The *Code* further defines "professional services" as "any accounting, assurance, taxation services, management advisory or consulting services or other related services as may from time to time be recognized by the Association that is performed or offered to be performed by a member for a client or employer, whether or not the member asserts membership in the Association."
7. By providing professional services, including the preparation of compiled financial statements and corporate tax returns for the public, Singh was operating a professional practice, as defined by the *Code*.

8. Singh was not permitted by the Association to offer the professional services that he provided to the public.
9. Singh earned income from carrying on a public practice operated in violation of the *Code*.
10. Rule 515 of the *Code* requires a member engaged in a professional practice to adhere to the practice inspection requirements of the Association.
11. Singh did not undergo a practice inspection with the Association as he was not registered to carry on the public practice work he was doing.
12. Rule 516 of the *Code* requires a member engaged in a professional practice to maintain professional liability insurance.
13. Rule 601 of the *Code* requires members to comply with the Association's By-Law Four and the *Code*.
14. By carrying on a public practice without being registered to do so, Singh did not comply with the Association's *Code* and therefore also did not comply with Rule 601.
15. Rule 606(a) of the *Code* prohibits members from participating in any action that is detrimental to the Association or the profession.
16. By preparing compiled financial statements and corporate tax returns or being associated with corporate financial statements as an independent contractor for clients when he was not registered in public practice, Singh participated in actions detrimental to the Association and the profession.

PRELIMINARY DECISIONS OF THE PROFESSIONAL CONDUCT TRIBUNAL

The preliminary decisions of the Professional Conduct Tribunal, made on September 16, 2010, were as follows:

Decision re: Motion (1): In terms of Mr. Singh's motion for an adjournment of this hearing, the Professional Conduct Tribunal considered the submissions of Mr. Bali Singh and Ms. Karen Jolley and has decided to grant an adjournment of this hearing for 60 days peremptory to Mr. Bali Singh. This means that the hearing will proceed on a date to be set today, at least, 60 days from today's date, no matter what, regardless of whether or not Mr. Bali Singh has legal counsel.

In terms of Ms. Karen Jolley's request for \$500 in costs as a condition of the adjournment, having considered the submissions of Mr. Bali Singh and Ms. Karen Jolley, the majority of the Professional Conduct Tribunal has decided to order Mr. Bali Singh to pay \$500 costs as a condition of the adjournment of this hearing. Victoria Corbett was noted to dissent with this decision. The Chair of the Panel set the date for the hearing on November 17th, 2010 at 10 a.m.

Decision re: Motion (2): In terms of Mr. Singh's motion for an order that the Association pay for his legal counsel, the Professional Conduct Tribunal has considered the submissions of Mr. Bali Singh and Ms. Karen Jolley and has decided to deny the motion. This means that the Panel will not order the Association to pay for Mr. Bali Singh's legal counsel.

The preliminary decision of the Professional Conduct Tribunal, made on November 10, 2010, was as follows:

Decision re: Issue (1): The panel of the Professional Conduct Tribunal has reviewed Ms. Jolley's letter dated September 21, 2010, the September 21, 2010 email exchange between Ms. Braverman and Ms. Jolley, the October 20, 2010 letter by Ms. Braverman and the October 25, 2010 email by Ms. Jolley. The member or the member's lawyer did not provide any submissions. The panel decided that there was no reasonable apprehension of bias in this case and that the current panel will proceed with the hearing on November 17, 2010.

DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL

The decision of the Professional Conduct Tribunal, made on November 17, 2010, was as follows:

DECISION

The Discipline Committee has the onus of proving the allegations in the Notice of Hearing in accordance with the civil standard of proof. The standard of proof applied by the panel was a balance of probabilities based on clear, convincing and cogent evidence. Having considered the evidence and the submissions and the onus and standard of proof, the panel finds that the member breached the following provisions of the Code of Ethical Principles and Rules of Conduct:

Rule 514 Registration

A member shall, if engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time, register in accordance with the requirements prescribed by the Association. This rule also shall apply to members who own, operate or control a professional corporation engaged in the practice of public accounting or the preparation of compilation engagements or tax returns.

Rule 515 Practice Inspection Requirements

A member shall comply with, and adhere to, the practice inspection requirements of the Association and the standards contained therein.

Rule 601 Compliance

A member shall comply with By-Law Four and the *Code of Ethical Principles and Rules of Conduct* of the Association as amended from time to time, and with any order or resolution of the board of governors or its committees under the By-Law.

Rule 606(a) Detrimental Actions

A member shall not participate in any action that is detrimental to the Association or the profession.

PENALTY DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL

The penalty decision of the Professional Conduct Tribunal, made on November 17, 2010, was as follows:

PENALTY DECISION

The panel of the Professional Conduct Tribunal deliberated and accepted the Consent Joint Submission and accordingly orders the penalty as set out in paragraphs numbered 1 to 7 of the Consent Joint Submission:

- 1) Bali Singh is reprimanded for breaching Rules 514, 515, 601 and 606(a) of the Code.
- 2) Bali Singh is suspended from membership in the Association to February 17th 2011.
- 3) Bali Singh shall return his CGA Ontario membership certificate and his CGA Canada membership certificate immediately.
- 4) Bali Singh pays a fine of \$10,000.
- 5) Bali Singh pays \$500 in costs.
- 6) The following payment schedule to pay the \$10,500 for the fine and the costs is imposed:
 - a. Payment over 12 months.
 - b. Equal installments (12), of \$875 each.
 - c. 12 post dated cheques provided to start first date of month after decision released.
 - d. If payment NSF or stopped, Mr. Bali Singh is to be suspended until payment made.
- 7) Publication in Statements.

On the one issue where there was no agreement by the parties, the panel of the Professional Conduct Tribunal also orders publication, on one occasion, in one local Brampton newspaper. The name of the local newspaper is to be selected at the discretion of the Certified General Accountants Association of Ontario.

The panel in announcing its oral decision relating to penalty on November 17, 2010 made a mathematical error when it indicated that it orders the penalty as set out in paragraphs numbered 1-7 of the Consent Joint Submission. Paragraph 6 of the Consent Joint Submission contained a mathematical error when it referred to Equal installments (12) of \$1750 each. Paragraph 6 of the Consent Joint Submission should have referred to Equal installments (12) of \$875 each. The panel relies on section 21.1 of the *Statutory Powers Procedure Act* which states: A tribunal may at any time correct a typographical error, error of calculation or similar error made in its decision or order. The panel relies on this section to correct this mathematical error in its oral decision relating to penalty made on November 17, 2010.

The panel also wants to clarify that the \$500 costs identified in paragraph 5 of the Consent Joint Submission was in reference to the condition of the adjournment of the hearing from the motion heard on September 16th, 2010.

GROUND OF APPEAL

In his Notice of Appeal, Mr. Singh sets out the following grounds for his appeal:

1. Conflict of Interest Part A

Ms. Shirley Tom, CGA, in her capacity as the Chair of The CGA Association's Discipline Committee, acted with a conflict of interest.

2. Conflict of Interest Part B

Mr. Bernie Keim, CGA, Vice-President Member Services and Regulatory Affairs and Mr. Sarosh Contractor, CGA, Manager of Professional Services, acted with a conflict of interest and breached their duty of confidentiality as set out in section 60 of the *Certified General Accountants Act, 2010*, when they used emails and other material at the Professional Conduct Tribunal hearing that Mr. Singh provided to the CGA Association representatives.

3. Practice Inspection

The CGA Association failed to conduct practice inspections both on December 16, 2007 and January 9, 2008.

4. Policy Change

The CGA Association acted unfairly in changing the policy for the completion and submission of TX2 and AU2 assignments to a shorter timeline, from a two year period to a three month period; and requiring these assignments to be completed online, which are required at the inception of registration for public practice.

5. Competence in TX2 and AU2

On November 30, 2007 Mr. Sarosh Contractor, CGA, Manager of Professional Services failed to assess Mr. Singh's equivalent experience in both Advanced Taxation and Advanced Auditing and failed to grant Mr. Singh an exemption from the TX2 and AU2 courses.

6. Balance of Justice

The CGA Association's Professional Conduct Tribunal erred in denying the request by Mr. Singh to have the CGA Association pay for Mr. Singh's legal representation. This is discriminatory and is a breach of Mr. Singh's rights under the *Certified General Accountants Act, 2010*, section 3 and section 4.

7. For the Good of the CGA Designation

The CGA Association's Professional Conduct Tribunal erred in accepting Mr. Singh's admissions to the allegations that Mr. Singh participated in actions detrimental to the Association.

8. Legal Representation

Mr. Singh's lawyer, Mr. Callahan, provided inadequate legal representation before the Professional Conduct Tribunal and that any admission to facts and any agreement to the settlement reached was made under duress placed on him by Mr. Callahan.

9. Penalty and Publication

The penalty and publication imposed by the Professional Conduct Tribunal is unfair and harsh. This would put severe hardship on Mr. Singh, his family and his business.

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant:

The Appellant was not in attendance at the appeal hearing and therefore he did not make oral submissions.

Submissions of the Respondent/Discipline Committee:

Counsel for the Discipline Committee requested that Mr. Singh's appeal be dismissed on the basis that:

- For an appeal to be successful, the Professional Conduct Tribunal, in coming to their decision, must have made an obvious error of fact, law or the application of relevant accounting principles or assurance standards. There were no such errors made.
- At the Professional Conduct Tribunal hearing, on November 17, 2010, in the transcript marked as Exhibit #5, Pages 8-9, Mr. Singh stated that he understood the nature of the allegations and he voluntarily admitted the allegations against him.
- There are deemed admissions from the Request to Admit Facts and Documents.
- As this is an appeal hearing, no new evidence is permitted. In any event, no new evidence has been put forward in this case.
- Ms. Jolley made the following submissions upon reviewing the grounds of appeal presented by Mr. Singh:
 - 1) Conflict of Interest Part A - This information has no bearing to this appeal hearing, as this information was not raised in the November 17 hearing and therefore cannot be considered.
 - 2) Conflict of Interest Part B - No evidence was provided at the November 17 hearing of this allegation.
 - 3) Practice Inspection - This does not apply to this appeal hearing, as this information was not raised in the November 17 hearing and therefore cannot be considered.
 - 4) Policy Change - This information is not relevant. Mr. Singh, at the time of the Professional Conduct Tribunal hearing, admitted to the facts laid out in the Request to Admit Facts and Documents.
 - 5) Competence in TX2 and AU2 - This information is not relevant.

- 6) Balance of Justice – A lawyer of his choosing represented Mr. Singh, Mr. Callahan. Mr. Singh, at the time of the Professional Conduct Tribunal hearing, admitted to the facts laid out in the Request to Admit Facts and Documents and agreed to the penalties in the Consent Joint Submission as negotiated by his legal counsel with Ms. Jolley. Further, the penalty that was negotiated by Mr. Callahan with Ms. Jolley was in line with previous cases brought before other Tribunals.
- 7) For the Good of the CGA Designation – The information noted under this ground was considered in the November 17, 2010 hearing, but has no relevance to this appeal.
- 8) Legal Representation - Ms. Jolley referred to Mr. Singh's allegation that his legal counsel was not competent. Ms. Jolley indicated that Mr. Singh has not provided any affidavit supporting that allegation. Even if this had been put forward, Mr. Singh must show that this caused prejudice.

Ms. Jolley referenced R. v. M.B. where it stated the following:

This court has adopted a three-stage approach to the scrutiny of **ineffective representation** claims. Under this approach, in order to succeed in a claim of ineffective assistance of counsel at trial, an appellant must establish: (i) the facts on which the claim of incompetence is based; (ii) the representation provided by trial counsel was incompetent (the performance component of the test); and (iii) the incompetent representation resulted in a miscarriage of justice (the prejudice component of the test).

No evidence to prove this has been put forward. Mr. Singh was not prejudiced.

- 9) Penalty and Publication - Mr. Singh, at the time of the Professional Conduct Tribunal hearing, agreed to the penalties in the Consent Joint Submission as negotiated by his legal counsel, Mr. Callahan, with Ms. Jolley.

There has been no evidence put forward of hardship as a result of the penalty. In fact Mr. Singh subsequently went out and enrolled in an MBA course.

There has been no evidence put forward at this appeal to suggest that the publication would be harsh on Mr. Singh.

- Mr. Singh has put no evidence or affidavits forward supporting any of the 9 grounds of his appeal.

Ms. Jolley further requested that Mr. Singh be ordered to pay costs in the amount of \$2,500 as a result of this appeal.

DECISION

Having considered the documentation provided and the submissions, the panel finds that the Appellant has not satisfied this Appeal Tribunal panel that there is an obvious error of fact, law or the application of relevant accounting principles or assurance standards. The panel orders that Mr. Singh's appeal of the decision of the Professional Conduct Tribunal dated February 3, 2011 be dismissed.

The panel orders that Mr. Singh pay costs in the amount of \$2,500 to the Certified General Accountants Association of Ontario.

REASONS FOR DECISION

As required in an appeal hearing, this Tribunal, in coming to its decision, reviewed each of the grounds of appeal as set out in Mr. Singh's document entitled "Appeal to the Decision and Reason of Decision of the Professional Conduct Tribunal" and measured it solely against whether there is an obvious error of fact, law or the application of relevant accounting principles or assurance standards.

The panel of the Appeal Tribunal came to the following conclusions relating to Mr. Singh's grounds for appeal:

- 1) Conflict of Interest Part A – Ms. Shirley Tom, CGA, in her capacity as the Chair of The CGA Association's Discipline Committee, acted with a conflict of interest.

The panel of the Appeal Tribunal agreed with Ms. Jolley's submission that the information provided by Mr. Singh had no bearing on this appeal hearing as this information was not part of either the hearing transcripts from September 16 or November 17 or other documentation from the Professional Conduct Tribunal hearing provided to the panel of the Appeal Tribunal and therefore should not be considered when dealing with this appeal.

- 2) Conflict of Interest Part B - Mr. Bernie Keim, CGA, Vice-President Member Services and Regulatory Affairs and Mr. Sarosh Contractor, CGA, Manager of Professional Services, acted with a conflict of interest and breached their duty of confidentiality as set out in section 60 of the *Certified General Accountants Act, 2010*, when they used emails and other material at the Professional Conduct Tribunal hearing that Mr. Singh provided to the CGA Association representatives.

Section 60 of the *Certified General Accountants Act, 2010* refers to preserving secrecy respecting information or material that comes to a person's knowledge or possession. Further in section 60, it refers to the exceptions to this rule, specifically, one of the exceptions under section 60(1)(e) is: as may be required in connection with the administration of this Act and the by-laws or with any proceeding under this Act.

The panel of the Appeal Tribunal found no justification that Mr. Bernie Keim, CGA, Vice-President Member Services and Regulatory Affairs and Mr. Sarosh Contractor, CGA, Manager of Professional Services, acted with a conflict of interest or breached their duty of confidentiality under section 60 of the *Certified General Accountants Act, 2010* in requesting and using the information provided by Mr. Singh at the Professional Conduct Tribunal hearing.

- 3) Practice Inspection - The CGA Association failed to conduct practice inspections both on December 16, 2007 and January 9, 2008.

The panel of the Appeal Tribunal agreed with Ms. Jolley's submission that the information provided by Mr. Singh had no bearing on this appeal hearing as this information was not part of either the hearing transcripts from September 16 or November 17 or other documentation from the Professional Conduct Tribunal hearing provided to the panel of the Appeal Tribunal and therefore should not be considered when dealing with this appeal.

- 4) Policy Change - The CGA Association acted unfairly in changing the policy for the completion and submission of TX2 and AU2 assignments to a shorter timeline, from a two year period to a three month period; and requiring these assignments to be completed online, which are required at the inception of registration for public practice.

The panel of the Appeal Tribunal agreed with Ms. Jolley's submission that the information

provided by Mr. Singh had no bearing on this appeal hearing as this information was not part of either the hearing transcripts from September 16 or November 17 or other documentation from the Professional Conduct Tribunal hearing after provided to the panel of the Appeal Tribunal and therefore should not be considered when dealing with this appeal.

- 5) Competence in TX2 and AU2 - On November 30, 2007 Mr. Sarosh Contractor, CGA, Manager of Professional Services failed to assess Mr. Singh's equivalent experience in both Advanced Taxation and Advanced Auditing and failed to grant Mr. Singh an exemption from the TX2 and AU2 courses.

Mr. Singh referred to sections 3 and 4 of the *Certified General Accountants Act, 2010*. The Appeal Tribunal found no relevance to his appeal in section 3.

The CGA Ontario acted appropriately in taking action in this matter as required under section 4 of the *Certified General Accountants Act, 2010*.

The panel of the Appeal Tribunal agreed with Ms. Jolley's submission that the information provided by Mr. Singh had no bearing on this appeal hearing as this information was not part of either the hearing transcripts from September 16 or November 17 or other documentation from the Professional Conduct Tribunal hearing provided to the panel of the Appeal Tribunal and therefore should not be considered when dealing with this appeal.

- 6) Balance of Justice - The CGA Association's Professional Conduct Tribunal erred in denying the request by Mr. Singh to have the CGA Association pay for Mr. Singh's legal representation. This is discriminatory and is a breach of Mr. Singh's rights under the *Certified General Accountants Act, 2010*, section 3 and section 4.

The panel of the Appeal Tribunal agreed with Ms. Jolley's submission. Mr. Singh was provided an adjournment to gain legal representation. Mr. Singh hired a lawyer of his choosing, Mr. Callahan.

As for Mr. Singh's assertion that the Association had breached his rights under sections 3 and 4 of the *Certified General Accountants Act, 2010*, section 3 has no relevance to Mr. Singh's appeal and CGA Ontario acted appropriately in taking action in this matter as required under section 4.

The decision by the Professional Conduct Tribunal to deny Mr. Singh's request to have the CGA Ontario pay for his legal representation is neither discriminatory nor inappropriate. We found that the CGA Ontario Professional Conduct Tribunal did not err in denying Mr. Singh's request to have the CGA Ontario pay for Mr. Singh's legal representation.

- 7) For the Good of the CGA Designation - The CGA Association's Professional Conduct Tribunal erred in accepting Mr. Singh's admissions to the allegations that Mr. Singh participated in actions detrimental to the Association.

The panel of the Appeal Tribunal concluded that the information in paragraph 1) a) - j) in the Notice of Appeal is not a valid ground for consideration and is irrelevant to this appeal.

In terms of Mr. Singh's admissions, at the Professional Conduct Tribunal hearing on November 17th, 2010, Mr. Singh stated that he understood the nature of the allegations and he voluntarily admitted the allegation against him.

- 8) Legal Representation - Mr. Singh's lawyer, Mr. Callahan, provided inadequate legal representation before the Professional Conduct Tribunal and that any admission to facts and any agreement to the settlement reached was made under duress placed on him by Mr. Callahan.

The panel of the Appeal Tribunal agreed with Ms. Jolley's submission. Mr. Singh has the right to choose his own legal counsel; his counsel acts on his behalf. There are no facts, evidence that have been presented to this Tribunal that would suggest that Mr. Callahan was incompetent or that Mr. Singh's case was prejudiced by his legal representation.

- 9) Penalty and Publication - The penalty and publication imposed by the Professional Conduct Tribunal is unfair and harsh. This would put severe hardship on Mr. Singh, his family and his business.

Mr. Singh, at the time of the Professional Conduct Tribunal hearing, agreed to the penalties in the Consent Joint Submission as negotiated by his legal counsel, Mr. Callahan, with Ms. Jolley.

Mr. Singh did not agree with publication in a local newspaper and his counsel argued that publication was not in the public's interest and was unduly unfair to the member. However, the Professional Conduct Tribunal felt that the argument did not adequately address the requirements for non-publication as set out in section 21(b) of By-Law Four. The Appeal Tribunal agrees with the Professional Conduct Tribunal.

Costs

For an appeal to be successful, the panel of the Appeal Tribunal must review the decision of the Professional Conduct Tribunal and conclude that an obvious error of fact, law or the application of relevant accounting principles or assurance standards was made. Mr. Singh's appeal was unsuccessful.

As noted throughout this decision, Mr. Singh at the time of the Professional Conduct Tribunal hearing on November 17, 2010, admitted to the facts laid out in the Request to Admit Facts and Documents and agreed to the penalties in the Consent Joint Submission as negotiated by his legal counsel, Mr. Callahan, with Ms. Jolley.

The submission of an appeal is a use of time and resources. With Mr. Singh requesting an adjournment on the day of the hearing of the appeal, combined with the fact that Mr. Singh neither attended nor provided legal counsel at this hearing, this appeal was a waste of the Tribunal's time.

The appeal mechanism should be used to question valid concerns and to review points in a case that may have caused an obvious error of fact, law or the application of relevant accounting principles or assurance standards.

An appeal is not a mechanism to retry the case because one did not like the first result.

Therefore the panel of the Appeal Tribunal deliberated and agreed with Ms. Jolley's request that Mr. Singh make a payment towards the costs of the Appeal Tribunal hearing of \$2,500.

Dated this day _____ of _____, 2011.

I, David Handley, sign this Decision and Reasons for Decision as Chair of the panel of the Appeal Tribunal on behalf of the members of the panel that heard this matter.

David Handley

NOTICE

This decision of the Appeal Tribunal may be appealed to the Divisional Court within thirty (30) days of the date of this decision.