

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

IN THE MATTER OF a complaint  
against William Winslow

BETWEEN:

The Discipline Committee of the  
Certified General Accountants of Ontario

and

William Winslow

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## Decision of the Professional Conduct Tribunal

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Panel: D. Alan Jones, FCGA, chairperson  
Irwin Pinsky, CGA  
Helena Hughes

Hearing date: April 27, 2006 (Toronto)

Appearances: Karen Jolley, counsel for the Discipline Committee  
William Winslow, representing himself  
Cynthia Petersen, counsel for the Tribunal

1. By Notice of Hearing dated January 20, 2006, William Winslow was advised that the Discipline Committee of the Certified General Accountants of Ontario (CGAO) had referred certain charges against him to the Professional Conduct Tribunal for a hearing. Specifically, Mr. Winslow was charged with violating the following principles and Rules of the CGAO's *Code of Ethical Principles and Rules of Conduct*:

**Trust and Duties**

*Members shall act in the interest of their clients, employers, and interested third parties, and shall be prepared to sacrifice their self-interest to do so. Members shall honour the trust bestowed upon them by others, and shall not use their privileged position without their principal's knowledge and consent. Members shall avoid conflicts of interest.*

**Due Care and Professional Judgment**

*Members shall strive to continually upgrade and develop their technical knowledge and skills in the areas in which they practice as professionals. This technical expertise shall be employed with due professional care and judgment.*

**Rule 201 Confidentiality**

*A member shall not disclose or use any confidential information acquired as a result of professional or business relationships without proper and specific authority or except as described in Rules R201.1 and R201.2.*

**R201.1 Mandatory Disclosure**

*A member shall disclose the information:*

- (a) *where disclosure is compelled by a process of law or by statute; or*
- (b) *where such information is required to be disclosed by the board of governors of the Association or any of its committees, appointed thereby in the proper exercise of its duties.*

**Rule 201.2 Discretionary Disclosure**

*A member is not forbidden from disclosing the information:*

- (a) *where properly acting in the course of the duties incumbent on a member;  
or*
- (b) *where a member becomes aware of an apparent or suspected criminal activity. Before making such a disclosure, a member should obtain advice from a member of the appropriate provincial or territorial law society as*

*to the member's duties and obligations as a citizen in the context of the member's professional activities. A member so doing shall not be in violation of this rule regarding confidentiality, by reason only of the seeking or following of such legal advice or reporting.*

**Rule 301 Competence**

*A member shall sustain professional competence by keeping informed of, and complying with, developments in the acknowledged standards of the profession in all areas in which the member practices or is relied upon because of the member's profession.*

**Rule 304 Adherence to Acknowledged Principles and Standards**

*Members shall adhere to acknowledged principles and standards of professional practice. The phrase "acknowledged principles and standards" expresses a wide meaning; namely, that body of principles and practices that have been generally adopted by the profession and that are applied in the preparation of financial statements, taken together with the requirements of any governing statutes, subject to (1) below. That is, a member shall adhere to:*

- (a) generally accepted accounting principles (GAAP) in financial reporting unless departure from these principles is fully disclosed;*
- (b) standards for assurance engagements, generally accepted auditing standards, review engagements and related services;*
- (c) accounting and auditing practices recommended by the Association, including those found in:
  - (i) the course of studies;*
  - (ii) seminars offered by the Association;*
  - (iii) CGA Canada's Public Practice Manual; and*
  - (iv) CICA Handbook.**
- (d) accounting and auditing practices that differ from those recommended by the Association, provided there is substantial authoritative support for alternative treatment and the departure from the Association's recommendations is disclosed;*
- (e) accounting and auditing practices not specifically dealt with by the Association, but that are otherwise generally accepted; and*

- (f) *requirements of any governing act or regulation, providing, however, in the event that there is a conflict between the accounting and auditing standards of the profession and a specific statutory or regulatory requirement, the member shall make appropriate qualification in the report.*

**Rule 514 Registration**

*A member shall, if engaged in the practice of public accounting 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.*

2. Particulars of the charges against Mr. Winslow were set out in the Notice of Hearing and will be reviewed below.

3. At the hearing, the Discipline Committee relied on facts admitted by Mr. Winslow pursuant to a *Request to Admit* that was served upon him on February 3, 2006. The Discipline Committee also relied on the testimony and report of Robert Forsyth, an investigator retained by the Discipline Committee in connection with the charges against Mr. Winslow. Mr. Winslow testified on his own behalf, relied on his response to the *Request to Admit* (dated February 7, 2006) and also provided the Tribunal with a letter dated April 25, 2006. Rather than summarize all of the evidence introduced at the hearing at this point in our decision, we will refer to relevant evidence throughout our reasons below.

4. The allegations against Mr. Winslow can be grouped into five categories, namely (1) that he engaged in the practice of public accounting without registering in accordance with the CGAO's requirements, (2) that he did not exercise due care and did not adhere to acknowledged professional standards, in connection with work that he performed for his client Re/Max Horizons Inc., (3) that he failed to sustain professional competence, (4) that he violated client confidentiality, and (5) that he failed to honour his clients' trust. Our decision will address each of these charges in turn.

***Public Practice Without Registration***

5. The particulars of the charges against Mr. Winslow are as follows:

*You failed to register in public practice with the Association even though*

- (a) *you issued a set of financial statements, complete with communication (Notice to Reader) signed by you;*
- (b) *you advertised in the Yellow Pages in Brampton under the category of "Accountants, Certified General";*

(c) *your business card and letterhead identified you as a Certified General Accountant, as did a plaque mounted on the outside of your home.*

6. According to the CGAO's *Public Practice Entrance Standards*, all members who are engaged in the practice of public accounting are required to register annually with the CGAO. Public accounting includes the preparation of personal and corporate tax returns and financial statements for a fee.

7. If a member provides only personal income tax preparation services, "limited registration" with the CGAO is sufficient. If a member prepares financial statements, then "full registration" with the CGAO is required.

8. According to the CGAO's rules, full registration entails: (a) purchasing professional liability insurance, (b) subscribing to the CGAO's *Public Practice Manual*, (c) reporting annually a minimum of 10 continuing professional development credits in the field of taxation, (d) having at least two years of professional accounting experience, (e) subscribing to the *CICA Accounting and Assurance Handbooks*, (f) completing the CGAO's 3 part *Orientation to Public Practice Program*, (g) completing a case study and multiple assignments from the CGAO's program of professional studies in courses on taxation and auditing, and (h) being subjected to a practice inspection every three years. Limited registration, on the other hand, only requires (a) to (c) above.

9. According to the facts admitted by Mr. Winslow, he became a member of the CGAO in 1993. In September 1993, he registered with the CGAO to prepare financial statements and tax returns ("full registration"). In May 1995, he renewed his registration with the CGAO, but limited to consulting and tax preparation services. He remained registered for consulting and tax preparation services only ("limited registration") until mid 2005, when he attempted to resign from the CGAO. His resignation was not immediately effective, since there was an outstanding complaint against him from one of his former clients, Charles Sandor. Article 3 of the CGAO's By Law Four states that a member's resignation shall not take effect until all outstanding disciplinary complaints against the member have been resolved.

10. In his testimony at the hearing and in his letter to the Tribunal dated April 25, 2006, Mr. Winslow asserted that he renewed his registration annually, always paid his public practice dues in a timely fashion, completed his annual public practice survey, maintained professional liability insurance, completed the requisite professional development courses, and reported his hours annually. These assertions were not disputed by the CGAO. There is no allegation that Mr. Winslow failed to comply with the limited registration requirements. Rather, the allegation is that Mr. Winslow, while registered only for the limited purpose of preparing tax returns, engaged in a broader practice of public accounting, which requires full registration (and entails additional responsibilities, as outlined above).

11. According to the evidence submitted at the hearing, Mr. Winslow was retained by Charles Sandor and Ray McDonald, shareholders of Re/Max Horizons Inc., to file corporate tax

returns for Re/Max in 1998. Mr. Winslow sent a transmittal letter dated December 1, 1999 to Mr. McDonald, enclosing two sets of corporate tax returns and other supporting documentation that he had prepared. The transmittal letter identified Mr. Winslow as a CGA. Mr. Winslow also compiled financial statements for Re/Max, which were accompanied by a *Notice to Reader* that he signed on April 19, 2000, using his CGA designation.

12. The Tribunal heard evidence that, at the relevant time period, Mr. Winslow was listed in the Yellow Pages under "Accountants, Certified General", that his business card identified him as a CGA, and that a plaque outside his home referenced him as a CGA. This latter evidence is not, in our view, probative of any facts related to the particular charge against him, since Mr. Winslow was registered for limited public practice with the CGAO (from 1995 to 2005) and was a member in good standing at that time. He was therefore entitled to hold himself out publicly as a CGA and to advertise his tax preparation services. There is no evidence that he advertised any public accounting services other than tax preparation services.

13. Regardless of what he advertised, however, Mr. Winslow was not permitted to prepare financial statements for Re/Max in 1999 and/or 2000, since he was not fully registered for public practice at that time. In his testimony at the hearing and in his letter to the Tribunal dated April 25, 2006, he asserted that his "only duty" to Re/Max was "to prepare tax returns". This is obviously false, since he compiled financial statements, with a *Notice to Reader*, for Re/Max in April 2000, a copy of which was presented as evidence at the hearing.

14. At the hearing, Mr. Winslow told the Tribunal that he was not aware that he was required to be fully registered for public practice in order to compile a financial statement. He admitted to an "error of judgement" in that regard, but he said it was "an isolated case". The Discipline Committee led no evidence to show that Mr. Winslow had prepared financial statements for any other clients, or indeed for Re/Max at any other time. Mr. Forsyth, who examined some of Mr. Winslow's current client files as part of his investigation for the CGAO, did not produce any evidence to show that Mr. Winslow was preparing financial statements for other clients. The fact that Mr. Winslow advertised his services as a CGA does not, in our view, prove that he was advertising or generally engaging in the practice of public accounting.

15. According to Rule 514 and the CGAO's *Public Practice Entrance Standards*, a member must register with the CGAO in order to engage in the practice of public accounting part-time or full-time. Where a member's practice includes the preparation of financial statements (part-time or full-time), then full registration with the CGAO is required. Based on the evidence summarized above, we find that Mr. Winslow was engaging in part-time public practice, including the preparation of financial statements for a fee. Preparing financial statements for one client is sufficient, in our view, to constitute "part-time" public practice. Mr. Winslow therefore breached Rule 514 by engaging in part-time public practice without full registration with the CGAO. However, since the Discipline Committee failed to prove that Mr. Winslow prepared financial statements for any other clients, we view this as a minor and relatively technical breach of the Rule.

***Failure to Exercise Due Care and Adhere to Acknowledged Standards***

16. With respect to the allegation that Mr. Winslow failed to exercise due care and adhere to acknowledged professional standards, the particulars of the relevant charges are as follows:

*In relation to your client Re/Max Horizons Inc. and in relation to litigation between the two partners of Re/Max Horizons Inc. you:*

- (a) failed to maintain proper working papers and other records for an adequate period of time;*
- (b) failed to prepare analysis of data relating to Re/Max Horizons even though you knew that your financial statements were to be used by valuers to create a report for the purposes of litigation between Mr. Charles Sandor and his former partner in Re/Max Horizons;*
- (c) prepared financial statements that contained potential discrepancies / unexplained adjustments of more than \$260,000, which, based on the intended use of the statements by, and the requirements of, Charles Sandor, one of the owners of Re/Max Horizons and a party to the litigation, would have rendered the statements "false or misleading";*
- (d) made a very apparent error on the 1998 column of the 1999 financial statements which indicated that the overall review had not been properly performed such that the financial statements and related schedules are arithmetically incorrect;*
- (e) incorrectly and inappropriately used the phrase "in my capacity as Management Accountant..." in a Non Standard Notice to Reader;*
- (f) failed to obtain an audit waiver;*
- (g) failed to prepare and/or produce standard file components such as the representation letter, an engagement letter, a takeover letter, and the appropriateness of a compilation engagement; and*
- (h) failed to maintain and back-up computer back-up systems to ensure that copies of working papers were available even though you "had a serious virus in your computer".*

*You failed to maintain client records and files by requesting that your spouse and mother-in-law shred archived files even though the Income Tax Act requires that such records must be maintained for a minimum of six years from the end of the last tax year to which they relate.*

17. At the hearing, Robert Forsyth testified that, in his opinion, the Re/Max financial statements prepared by Mr. Winslow showed a lack of due care and judgment. He also testified that, in his opinion, Mr. Winslow failed to adhere to the CGAO's acknowledged standards of professional practice.

18. The Tribunal accepts that Mr. Forsyth has the necessary expertise to be qualified to give opinion evidence on the proper preparation of financial statements and professional standards of practice. The Tribunal is not, however, required to accept Mr. Forsyth's opinions regarding Mr. Winslow's work. Rather, we must consider all of the evidence before us and reach our own conclusions about whether Mr. Winslow exercised due care and judgement in the work he performed for Re/Max, and whether he adhered to acknowledged standards of professional practice.

19. Mr. Forsyth explained that there are three different kinds of financial statements prepared by accountants: audited statements, reviewed statements, and compiled statements. Audited statements involve the most amount of work and are generally given the highest credence. Compiled statements involve the least amount of work and are given the least amount of credence. Reviewed statements fall in between audited and compiled statements.

20. According to the CGAO's *Pubic Practice Manual*, in measuring an accountant's professional involvement in the preparation of financial statements, different standards are used for the different types of statements. In an audited statement, the accountant must be "satisfied that the information is presented fairly", such that the statement may be considered reliable. In a reviewed statement, the accountant must be "satisfied that the information is plausible". In a compilation, the accountant must not "knowingly associate with incomplete, false or misleading information."

21. In his testimony, Mr. Forsyth stated that the "test" for determining whether a CGA has adhered to acknowledged professional standards in the preparation of a compilation is whether the statement, looked at in context, is likely to lead someone to a false conclusion. Put another way, he said the CGA must be satisfied that the information contained in the statement is not false or misleading. This is incorrect. The test, as set out in the CGAO's *Public Practice Manual*, is whether the CGA knowingly associated with incomplete, false or misleading information.

22. The original complaint against Mr. Winslow, which came from Charles Sandor, alleged that the balance sheet compiled by Mr. Winslow misrepresented the true financial position of Re/Max as of December 1998. The balance sheet is apparently being used by Mr. McDonald in litigation against Mr. Sandor. Mr. Sandor stated in his complaint that he did not know whether Mr. Winslow had deliberately misrepresented financial information or whether he had been "duped" by Mr. McDonald. It was this complaint which prompted the CGAO to engage the investigative services of Mr. Forsyth. After completing its investigation, the CGAO did not charge Mr. Winslow with any misconduct that involves dishonesty or fraud. There is no allegation that he deliberately produced misleading financial statements.

23. Although the Tribunal heard evidence of discrepancies in the financial statements (which are discussed in more detail below), the Discipline Committee led no evidence to prove Mr. Sandor's allegation that the financial statements misrepresent the true situation of Re/Max as at December 1998. There is no evidence that the statements contain any false or misleading information. Moreover, as noted above, even if the statements are incomplete, false or misleading, there is no evidence that Mr. Winslow knowingly engaged in any misrepresentation of financial information. We therefore conclude that the Discipline Committee did not prove that Mr. Winslow failed to adhere to the standard required by the CGAO *Public Practice Manual* for compilation engagements; there was no proof presented to establish that he knowingly associated with incomplete, false or misleading information.

24. There remains a question, however, as to whether Mr. Winslow exercised due care in the preparation of the financial statements. In assessing what amount of care was "due" in the circumstances of this case, it is necessary to take into consideration the fact that Mr. Winslow was preparing a compilation, not a reviewed or audited financial statement. The amount of care required for compilations is less than that required for reviews or audits.

25. At the hearing, Mr. Winslow asserted that he was not required to carry out any analysis of the data provided to him by Mr. MacDonald, since he was retained to prepare only a compiled statement. He stated that he simply transferred the data from his client's trial balance onto the financial statements and he asserted that this was appropriate. According to his response to the *Request to Admit*, his understanding of a compilation is that it requires "no analysis to determine the completeness or accuracy of data." Ms. Jolley argued, based on Mr. Forsyth's evidence, that Mr. Winslow's understanding of his obligations is incorrect

26. In the CGAO *Public Practice Manual*, the guideline re: compilation engagements includes the following:

*1.2 The objective in a compilation engagement is to arrange financial information obtained from the client in the form of financial statements. Information presented must be arithmetically correct; however, the CGA is not required to verify the accuracy or completeness of the information....*

*1.4 Readers may attach some credibility to the information solely because of the CGA's association with it. So that readers are not misled, a caution, or warning, is attached to the information. This caution, called a "Notice to Reader", warns the reader that the CGA has made no attempt to verify the accuracy or completeness of the information attached....*

*1.5 Since the objectives of a compilation engagement do not include providing assurance, and since readers are warned to be cautious about their reliance on the information, the CGA is not required to examine or review the information supplied by the client. However, there are professional standards for the performance of compilation engagements. These [include]...that the work be completed with due professional care.*

27. Mr. Winslow is therefore correct in his understanding that he was not required to analyze the data provided by Mr. MacDonald, apart from checking that the numbers were arithmetically correct. Mr. Forsyth testified and the Discipline Committee argued that he should have done some analysis of the data provided by his client because of the prospect that the information might be used in litigation. We disagree. The *Public Practice Manual* clearly states that, in a compilation engagement, there is no obligation to examine or review the information supplied by the client.

28. There is, however, an obligation to determine whether a compilation engagement is appropriate whenever a GCA is retained to compile financial statements. This obligation is found in the *Compilation Checklist* contained in the *Public Practice Manual*. Mr. Winslow stated at the hearing that, had he known the statements were going to be relied upon in litigation, he would not have agreed to compile them. He noted that it would have been more appropriate for the client to obtain an audited statement. We agree that a CGA ought not to accept a compilation engagement in circumstances where there is pending litigation and the financial statements might be used in the litigation.

29. The relevant question is, then, whether Mr. Winslow was aware that the statements were going to be used by a third party to complete a valuation of Re/Max shares, which in turn would be used in litigation. Mr. Winslow's response to the Discipline Committee's *Request to Admit* states that he was not aware that the balance sheet and income statement that he prepared were to be used for valuation purposes. In his response to the *Request to Admit* and at the hearing, he denied knowing that there was litigation pending between Mr. Sandor and Mr. McDonald at the time that he prepared the financial statements. Counsel for the Discipline Committee did not cross-examine him or challenge these assertions, except in argument. She argued that he was contradicting an earlier admission that he made in a letter to the CGAO dated April 11, 2005, in which he stated: "I do know that the [Re/Max] partners were accusing one another of improprieties at that time, and legal actions between the two of them had been initiated." This is not a clear admission that Mr. Winslow knew, at the time that he prepared the financial statements, that litigation was pending. Rather, it is a statement that, by April 2005, Mr. Winslow was aware that there had been allegations between the partners dating back to the time that he prepared the financial statements. We therefore find that there is insufficient evidence to conclude that Mr. Winslow knew about the pending litigation when he prepared the financial statements. Subject to our finding above, that Mr. Winslow should not have prepared the compilation without registering for full public practice in the CGAO, we conclude that it was not inappropriate for him to accept a compilation engagement. In doing so, he did not fail to adhere to acknowledged standards of professional practice.

30. Although Mr. Winslow was entitled to accept a compilation engagement and was not required to analyze the data provided by his client in compiling the financial statements, he was nevertheless required to exercise "due professional care" in preparing the statements. The *Compilation Checklist* contained in the *Public Practice Manual* provides the guideline for assessing the applicable standard of professional care in preparing a compilation. The checklist requires, among other things, that the CGA obtain an engagement letter and representation letter

from the client, enquire whether an audit has been waived, scan books of original entry for unusual or significant items, compare opening balances to prior year's closing balances to ensure agreement, ensure that the information presented is arithmetically correct, ensure that the Notice to Reader is appropriately worded, and retain appropriate working papers to support compliance with professional standards.

31. With respect to working papers, the *Public Practice Manual's* guideline for compilation engagements states:

6.1 *Working paper files supporting a compilation engagement should include:*

- *a copy of the issued financial statements,*
- *an engagement letter signed by the client,*
- *a representation letter signed by the client,*
- *a completed engagement checklist,*
- *notes of all concerns about possibly incomplete, false or misleading information and how they were resolved,*
- *a note to support the determination that a compilation was appropriate in the circumstances and a note to explain the reduced level of engagement if such was the case,*
- *schedules, if any, supporting account balances, prepared by the CGA,*
- *schedules, if any, supporting account balances prepared by the client (marked "prepared by the client"),*
- *other schedules connecting the account balances on the issued statements to the client's accounting records (trial balance, adjusting journal entries),*
- *support for other services performed with the compilation, such as income tax returns, and*
- *support for financial statement note disclosure, if any, and explanations for significant departures from normal Canadian GAAP presentation (for example, an indication that comparative prior year information was omitted because it would not be useful).*

32. Mr. Forsyth testified that, in his opinion, when compiling financial statements, a CGA must at the very least check every entry on the statement and match it up to the client's trial balance. If the numbers do not match, then the CGA must produce working papers to explain the discrepancy. Based on the checklist and guidelines contained in the *Public Practice Manual*, we accept this evidence as an accurate description of the "due care" required for compilations.

33. Mr. Forsyth further testified that, when he compared the financial statements produced by Mr. Winslow with the client's trial balance, there were numerous entries on the statements that could not be traced back to the trial balance. Mr. Forsyth concluded that the information had not simply been transferred from the client's trial balance to the financial statements, as asserted by

Mr. Winslow. There was a total of \$260,000 in adjustments or potential discrepancies between the two documents. When Mr. Forsyth asked to see Mr. Winslow's working papers so that he could resolve these discrepancies, he was advised by Mr. Winslow that the electronic files relating to the Re/Max financial statements had been destroyed by a computer virus and the paper file had been shredded.

34. During cross-examination by Mr. Winslow, Mr. Forsyth admitted that he could not say with any certainty whether the trial balance provided to him by Mr. Sandor was the same as the original trial balance provided to Mr. Winslow. He admitted that it was possible that the data provided to Mr. Winslow in 1999 was different from the data provided to him during the course of his investigation in 2005, and that there might not have been any discrepancies in the financial statements relative to the original trial balance. (Mr. Winslow implied that Mr. Sandor might have altered the information in the trial balance in order to advance his own interests in the ongoing litigation against Mr. McDonald.) Since we were not provided with any evidence to confirm that the trial balance provided to Mr. Forsyth was the same as the original trial balance presented to Mr. Winslow (eg. Mr. Sandor could have been called to testify about the source of the trial balance prepared for Mr. Forsyth), we are not prepared to accept Mr. Forsyth's findings that there are significant discrepancies in Mr. Winslow's work.

35. During his testimony, Mr. Forsyth pointed out that there was at least one obvious error in the Re/Max financial statements prepared by Mr. Winslow, namely the total amount of accounts payable and accrued expenses for 1998 appears on the balance sheet under the heading of "Current Liabilities" as \$251,360, but the notes to the financial statements provide a breakdown of accounts payable and accrued expenses that add up to \$252,992. Mr. Winslow did not deny this error and provided no explanation for it. This is evidence of some carelessness of Mr. Winslow's part.

36. Mr. Forsyth also pointed out that, Mr. Winslow's transmittal letter to Mr. MacDonald dated December 1, 1999 contains some typographical errors that suggest carelessness. Although Ms. Jolley submitted at the hearing that the Discipline Committee was not trying to hold Mr. Winslow to a "standard of perfection", we find that some of Mr. Forsyth's criticisms of Mr. Winslow's work – in particular this emphasis on minor typographical errors – involve a level of minutia that is unreasonable. We note that Mr. Forsyth's own investigation report, which was submitted as evidence during the hearing, contains a number of typographical errors. Such minor errors are not, in our view, indicative of incompetence or lack of professional care.

37. Mr. Forsyth testified that the *Notice to Reader* signed by Mr. Winslow as "Management Accountant" is not the standard form used for compilation statements. He testified that the expression "management accountant" is used in reviews and has never been used in compilations. Although Mr. Winslow testified that he had been trained to use the expression "management accountant", we find that he must have been confused about the training provided to him, because the *Public Practice Manual* makes it clear that the use of "management accountant" in a *Notice to Reader* is a deviation from standard practice. Mr. Forsyth testified that he is not aware of any CGAO documentation that endorses the use of the phrase "management accountant" in connection with a compilation and Mr. Winslow did not produce

any such documentation. We therefore conclude that Mr. Winslow issued a non-standard *Notice to Reader*.

38. Of greater concern to the Tribunal, however, is Mr. Forsyth's testimony that, when he met with Mr. Winslow, Mr. Winslow was not familiar with the *Public Practice Manual's* guidelines, nor with the concept of using a checklist. When he asked Mr. Winslow if he could examine one of Mr. Winslow's current client files, Mr. Winslow produced a file that contained an income tax return, with no other documentation, no working papers, and no checklist. Mr. Winslow did not deny these allegations against him. Moreover, when questioned by the Tribunal about representation letters, Mr. Winslow appeared not to understand the difference between an engagement letter and a representation letter. He also appeared not to understand the difference between limited registration and full registration with the CGAO. In this regard, he generally demonstrated a lack of familiarity with acknowledged standards and principles within the CGAO accounting profession.

39. With respect to the specific Re/Max financial statements compiled by Mr. Winslow in 2000, Mr. Winslow admitted at the hearing that he did not obtain a representation letter from the client, nor did he inquire whether the client had an audit waiver. He stated that there would have been an engagement letter in the original file, but he also stated that "I was doing 400-500 tax returns every year ... I'm not about to get an engagement letter for each."

40. It is impossible to know precisely what the original Re/Max file contained, because Mr. Winslow was unable to produce either a hard copy or an electronic copy of the file. As noted above, he told Mr. Forsyth during the investigation, and subsequently repeated at the hearing, that his computer was infected with a devastating virus in 2001 which wiped out all of his files, including his backup files. He stated that the virus caused him to lose his spreadsheets, letters, worksheets and invoices relating to the Re/Max file and other client files. There was no evidence to contradict this assertion and we therefore accept that the electronic files were lost due to no fault of his own. While it would have been preferable for him to maintain a secure backup (eg. on disk), we do not believe that a failure to do so constituted carelessness or unprofessional conduct, provided that the paper files were maintained as a backup. In these circumstances, we have serious concerns about Mr. Winslow's failure to maintain his paper files.

41. It was agreed by the parties at the hearing that, under the *Income Tax Act*, CGAs are required to maintain their files for at least six years, because of the possibility of a CCRA audit. Mr. Forsyth testified that files should be maintained longer if there is ongoing litigation that surpasses the six years required by the CCRA. We agree. Although Mr. Winslow may not have known in 2000 that the financial statements he was preparing were to be used in litigation, he admitted that the litigation did come to his attention thereafter and he therefore should have ensured that he maintained his file until the conclusion of the litigation.

42. Mr. Forsyth's investigation report states that Mr. Sandor told him that when he (Mr. Sandor) asked Mr. Winslow for the original materials, Mr. Winslow said he had returned them to Mr. MacDonald. This is hearsay evidence and its reliability is questionable, given the ongoing

litigation between Mr. Sandor and Mr. McDonald. Since Mr. Sandor was not called as a witness at the hearing, we place no weight on this statement in Mr. Forsyth's report.

43. Mr. Forsyth testified that, when he asked Mr. Winslow to produce his working papers, he was told by Mr. Winslow that the Re/Max file had been shredded. This is confirmed by an undated letter written by Mr. Winslow to Mr. Forsyth in or about May 2005, in which Mr. Winslow wrote [to explain why he could produce the Re/Max file]:

*...two years ago, we had our home up for sale, as I was going to retire and move to Alliston. My wife asked me about the many boxes of files that were stored in my basement. Since CCRA would only go back three years for audits, I had my wife and mother-in-law shred all files in those archive boxes up to and including year 2000.*

44. Despite this earlier statement, in his response to the Discipline Committee's *Request to Admit*, which is dated February 7, 2006, Mr. Winslow refused to admit that he "failed to maintain client records and files for six years as required by the *Income Tax Act*." He wrote:

*I maintained all computer records for six years prior to disposing of them. My paper records were routinely shredded after the expiry of six years. We were considering a move to another residence in 2005, so I had my wife and my mother-in-law shred all files dated earlier than 2000, unless a customer specifically requested that I not do (sic) so.*

45. This statement clearly contradicts Mr. Winslow's earlier statement that he shredded files in 2003, after only three years, because he believed that CCRA would not conduct an audit after three years.

46. At the hearing, Mr. Winslow adamantly denied ever stating that he (or his wife or mother-in-law) had shredded the Re/Max file. He also claimed that the files that were shredded by his wife and mother-in-law were all at least six years old. We find that his evidence in that regard is not credible, given the earlier written admission that the Re/Max file and other files dating up to 2000 were shredded, upon his instructions, in 2003. Mr. Winslow changed his evidence in a self-serving fashion once he realized that he had failed to comply with the requirements of the *Income Tax Act*. We conclude, based on the totality of the evidence, that the Re/Max paper file was shredded in or about 2003, pursuant to his instructions, despite the fact that he had lost the electronic file due to a computer virus in 2001.

47. Although the Discipline Committee failed to prove a number of the allegations against Mr. Winslow, based on all of the above, we find that there is sufficient evidence to conclude, on a balance of probabilities, that Mr. Winslow breached Rule 304 and failed to comply with the requirement to exercise due professional care and judgement in his work. Specifically, his lack of familiarity with the content of the CGAO's *Public Practice Manual* (and such basic concepts as a checklist and representation letter) and his failure to maintain his client files for a minimum

of 6 years (as required by law), constitute serious shortcomings. Mr. Winslow did not adhere to acknowledged principles and standards in his practice.

**Failure to Sustain Professional Competence**

48. The particulars of this allegation are as follows:

*You accepted an engagement with Re/Max Horizons knowing that you might not be able to perform it adequately in that you were aware that the company's bookkeeper utilized software about which you were not familiar. In these circumstances you could not properly check books of original entry for arithmetic accuracy and agree on the opening trial balances as per the working trial balance.*

49. Mr. Winslow admitted that Re/Max used computer software with which he was not familiar. This would not, however, preclude him from satisfying his professional obligations in compiling a financial statement, since it would have been possible for him to scan books of original entry etc. manually. Accepting an engagement in these circumstances does not constitute incompetence and does not violate Rule 301 of the CGAO's *Code of Ethical Principles and Rules of Conduct*.

50. There was, however, some evidence that Mr. Winslow had failed to keep informed of, and comply with, developments in the acknowledged standards of the profession. For example, his lack of familiarity with checklists, with the requirement to obtain a representation letter, and with the obligation to maintain files for at least six years, are indicative of a failure to sustain professional competence. He therefore violated Rule 301.

**Breach of Client Confidentiality**

51. The particulars of the charge against Mr. Winslow are as follows:

*You failed to maintain client confidentiality by giving a computer to your granddaughter that may have contained corporate tax returns for Re/Max Horizons for 1998 and 1999. Further, you failed to ensure that no information pertaining to clients was on the computer before giving it to your granddaughter.*

52. This charge arises out of the aforementioned undated letter from Mr. Winslow to Mr. Forsyth in or about May 2005, in which Mr. Winslow wrote:

*I gave a computer to my granddaughter some time ago, and it may have the corporate tax returns for Re/Max Horizons for 1998 & 1999 stored in them. I will check that out this week.*

53. In his letter to the Tribunal dated April 25, 2006, Mr. Winslow wrote:

*At no time did I violate anyone's confidentiality. My old computer was stored at my daughter's home and all components were disconnected. At no time while it was there was the computer hooked up to any power source or any peripheral device. The computer was safer there than at some professional backup centre. If my grandchildren wanted me to hook the computer up, it was my intention to remove the hard drive and replace it with another or format the drive to delete any data. Nobody in my daughter's home was capable of hooking the machine components up.*

54. Ms. Jolley argued that this was yet another example of Mr. Winslow "conveniently" changing his story. We agree. The letter written by Mr. Winslow in or about May 2005 does not suggest that the computer was merely being "stored" in his daughter's basement. Rather, he wrote that he "gave" the computer to his "granddaughter", which clearly implies that it was for his granddaughter's use. We find that Mr. Winslow's testimony at the hearing was not credible and conclude that he did, in fact, give a computer to his granddaughter, which may have contained client files.

55. This does not, however, constitute a breach of Rule 201. The Discipline Committee did not prove that Mr. Winslow actually disclosed any confidential client information to anyone. Indeed, it remains unclear whether the computer in question even contained any client information. Mr. Winslow's actions -- in giving the computer to his granddaughter without first assuring himself that it did not contain confidential client information -- is evidence of further carelessness on his part. His actions suggest a lack of professionalism, which supports our earlier finding of a breach of Rule 304, but they do not constitute a breach of Rule 201.

### ***Breach of Trust***

56. There were no particulars in the Notice of Hearing regarding Mr. Winslow's alleged failure to honour his client's trust.

57. There was no evidence at the hearing to support the charges that Mr. Winslow failed to act in his clients' interest, or used his position without his principal's knowledge and consent, or acted in a conflict of interest. We therefore dismiss these charges against him.

### ***Submissions re: Penalty***

58. The Discipline Committee requested that the following penalties be imposed on Mr. Winslow:

- (a) that he be reprimanded by the Tribunal for having engaged in the practice of public accounting without proper registration;
- (b) that he be fined \$2,000;

- (c) an order that, in the event he returns to public practice, he be required to first successfully complete the CGAO's ethics course, Ethics and Trust, and be required to register in public practice (which requires completion of other courses); and
- (d) an order compelling him to return both his CGA Ontario and CGA Canada certificates, which are in his possession.

59. The latter penalty was sought out of concern that Mr. Winslow might be displaying the certificates in his office, where clients could be misled into thinking that he remains a member of the CGAO.

60. The Discipline Committee also asked that we order Mr. Winslow to pay costs of this proceeding in the amount of \$5,000. This amount does not represent the full costs of the Discipline Committee in connection with this hearing, but it does include some of the costs of the investigation conducted by Mr. Forsyth.

61. Mr. Winslow, having denied any wrongdoing, did not make any submissions with respect to the appropriate penalty in the event that we determined that he had engaged in some misconduct. Indeed, he left the hearing before it was concluded and before the Discipline Committee's counsel presented the Discipline Committee's position with respect to penalty. He had, however, been advised in writing of the penalties sought by the Discipline Committee, in a letter from Karen Jolley dated March 30, 2006. Moreover, he was cautioned by the Tribunal's counsel, before he left the hearing, that it was not in his interest to leave, that he could request an adjournment if he had a compelling reason why he could not stay, and that in the absence of an adjournment request, the proceeding would continue in his absence. He acknowledged understanding this caution and left without requesting an adjournment. He departed saying "go ahead". We therefore proceeded to conclude the hearing in this absence.

### Conclusions re: Penalty

62. For the reasons that follow, we have decided to impose the following penalties:

- (a) Mr. Winslow is hereby reprimanded for having engaged in part-time public practice without being registered in accordance with the requirements prescribed by the CGAO.
- (b) Mr. Winslow is ordered to pay a fine in the amount of \$2,000.
- (c) Mr. Winslow is ordered to return his CGA certificates to the CGAO immediately.

63. We accept the Discipline Committee's submission that a reprimand is appropriate in this case. Although Mr. Winslow's breach of Rule 514 was relatively minor, any breach of the

Rules, however minor, is a serious matter for the CGAO, which is obligated to regulate the profession in a manner that protects the public interest. The requirement for full registration exists to ensure that CGA members who prepare financial statements for clients have the requisite knowledge and experience to do so in accordance with accepted standards of professional competence. That Mr. Winslow only did such work for one client does not absolve him of the responsibility to register. Had he been doing the work for more clients without registration, a more serious penalty than a reprimand might have been appropriate. In the circumstances of this case, a reprimand is warranted, since a breach of the Rules cannot go unpunished.

64. We have concluded that a fine in the amount of \$2,000 is also warranted. In this case, the fine serves two important purposes. First, it will operate as a general deterrent to other members of the CGAO, to discourage them from similar conduct. Second, the fine sends an important message to Mr. Winslow that his actions reflect poorly on the CGAO and on the profession. The CGAO maintains professional standards, not only to protect the public interest, but also to promote the reputation of CGAs. Mr. Winslow's failure to adhere to acknowledged principles and standards in his work is harmful to the CGAO's reputation.

65. We decline the Discipline Committee's request for an order that, should Mr. Winslow return to public practice, he be required to first successfully complete the CGAO's ethics course and to register in public practice. There was no evidence to suggest that Mr. Winslow acted in an unethical fashion. The allegations with respect to "Trust and Duties" were not proven. There is therefore no basis to require him to take an ethics course. The other component of the requested order is redundant. Mr. Winslow has resigned from the CGAO. Now that the disciplinary complaint against him is concluded, his resignation is effective. Should he ever attempt to renew his membership, he will be required to comply with all of the CGAO's rules, including the requirement to register if he decides to engage in public practice. An order from the Tribunal to that effect is not required.

66. We agree that Mr. Winslow should be compelled to return his CGA certificates to the CGAO and we order him to do so immediately. This is very important, given his testimony that he is still meeting with clients. It is imperative that clients not be misled into believing that he is still a CGA.

67. Finally, we reject the Discipline Committee's request for an order that Mr. Winslow pay \$5,000 in legal costs. Although the Discipline Committee did establish that Mr. Winslow violated some Rules of the CGAO's *Code of Ethical Principles and Rules of Conduct*, the Discipline Committee did not prove all of its allegations against Mr. Winslow, did not establish all of the breaches of the Rules with which he was charged, and did not persuade us that all of the remedies requested are appropriate.

68. Moreover, as noted above, much of Mr. Forsyth's evidence was unhelpful to the Tribunal, and we are therefore not inclined to order Mr. Winslow to reimburse any costs associated with his investigation. Rather, we think that this is an appropriate case in which to order that the parties shall each bear their own costs of the proceeding.

Dated this 25 day of May, 2006,



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D. Alan Jones, FCGA, chairperson  
for the Tribunal

#### NOTICE

According to section 21(1) of Article 9 of By Law Four, 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.

An 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). 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.