

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

**IN THE MATTER OF Eddy Kwok-Key Wong, a former member of
The Certified General Accountants Association of Ontario**

B E T W E E N:

The Discipline Committee of The Certified General Accountants Association of Ontario

- and -

Eddy Kwok-Key Wong

DECISION AND REASONS FOR DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL

Members of the Professional Conduct Tribunal Panel:

D. Alan Jones, CGA, Chair
Doug White, CGA
Daniel Iggers, Public Representative

Appearances:

Karen E. Jolley, Counsel for the Discipline Committee
Brian D. Kwan, Counsel for the Member, Eddy Kwok-Key Wong
Eddy Kwok-Key Wong, Member
Lisa S. Braverman, Independent Legal Counsel to the Professional Conduct Tribunal

Hearing Dates:

Toronto, Ontario, on the following dates:

June 26, 2012
September 4, 2012

OVERVIEW

A Panel of the Professional Conduct Tribunal of The Certified General Accountants Association of Ontario heard this matter on June 26, and September 4, 2012, at Toronto. At the conclusion of the hearing, the Panel reserved its decision.

PRELIMINARY MATTERS

Request

On May 29, 2012, the request by Mr. Wong for an adjournment so that Mr. Wong could obtain counsel to assist him in his defence was heard. The opposing party, the Discipline Committee, opposed the request.

The Panel of the Professional Conduct Tribunal considered Mr. Wong's request for an adjournment, and the submissions by both parties. The Panel decided to grant the adjournment, peremptory to Mr. Wong, for a period of approximately 30 days, with costs of \$1,000 to be paid by Mr. Wong as a condition of the adjournment.

The Chair of the Panel adjourned the hearing to June 26, 2012 at 10:00 am.

ALLEGATIONS

Counsel for the Discipline Committee entered into evidence the Notice of Hearing dated April 2, 2012, Exhibit 1, and the Affidavit of Service, Exhibit 2, relating to the Notice of Hearing.

The allegations against Mr. Wong are that he breached the following provisions of the Code of Ethical Principles and Rules of Conduct (the "Code") as stated in the Notice of Hearing:

Rule 102 Unlawful Activity

A member shall not permit the member's firm name or the member's name to be used with, participate in, or provide services to, any activity that the member knows, or which a reasonable and informed third party would believe, to be unlawful.

Rule 509(a) Advertising and Other Forms of Solicitation

A member shall not seek to obtain clients by advertising or other form of solicitation, which is false or deceptive.

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 516 Professional Liability Insurance

A member engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time shall maintain professional liability insurance as specified, and provide evidence as required, by the Association.

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 Mr. Wong as stated in the Notice of Hearing are as follows:

Particulars:

1. Eddy Kwok-Key Wong (“Wong”) became a member of CGA Ontario (the “Association”) in 1987.
2. While Wong was registered with the Association in professional practice for a period of time, he deregistered his practice with the Association on or about 25 August 2004.
3. Wong’s professional liability insurance expired on or about 31 July 2005.
4. Upon deregistration Wong was advised by the Association that he was required to discontinue the use of any firm letterhead, business cards or other stationery, cancel any advertising or business listing and remove any signs advertising his firm.
5. In each of 2004 through to 2010, despite his deregistration, Wong continued to carry on a public practice or professional practice or provide professional services as it was variously described from time to time in the Code for the years in question.
6. The Code concerning registration of a practice with the Association for the period 2003 up to and including 2006, provided that:

[Rule 515 in 2003 and 2004; Rule 514 in 2005 and 2006]

"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."

"Public Practice" was further defined as:

"offering to perform or performing for a client (a) one or more types of professional services involving the use of accounting or auditing skills; (b) one or more types of management advisory or consulting services, or (c) the furnishing of advice on tax matters, or (d) any such other service as may, from time to time, be recognized by the Association."

"Professional Services" was defined as:

"Any services performed or offered to be performed by a member for a client or employer, in which the member asserts membership in the Association. In addition, 'professional services' refers to those activities, including the provision of goods, whether the public or the member's associates are entitled to rely on the member's membership in the Association as giving particular competence."

7. In 2007 and thereafter, the registration provision of the Code was reworded to provide as follows:

Rule 514 - "a member shall, if engaged in a professional practice or the practice of public accounting part-time or full-time, register in accordance with the requirements prescribed by the Association."

It further defined a "professional practice" as the offering of professional services.

"Professional services" were defined 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."

8. Throughout the period 2004 – 2010 Wong operated a professional practice and was required to register that practice with the Association.
9. From August 2004 to November 2010, Wong did not register his public accounting practice (2004-2006) or his professional practice (2007-2010) with the Association.
10. Wong was not permitted by the Association to offer the professional services he continued to offer to the public.
11. Wong knowingly continued to carry on a professional practice or a public accounting practice, as applicable, in violation of the deregistration of that practice and the Code.
12. Wong engaged in a full time practice and earned income from carrying on that practice from August 2004 to November 2010 in violation of the registration requirements of the Code.

13. Members who prepare personal income tax returns are also required to register with the Association.
14. Wong did not register with the Association to prepare personal income tax returns.
15. As Wong was not registered for the preparation of personal income tax returns, he was not permitted to prepare such returns for the years 2004 to 2010.
16. From August 2004 to November 2010, Wong continued to prepare income tax returns for clients in violation of the registration requirements of the Code.
17. Rule 515 of the Code (and equivalent sections for 2004 and following) requires a member engaged in a professional practice to adhere to the practice inspection requirements of the Association.
18. Wong did not undergo a practice inspection with the Association at any point from August 2004 through to 2010 as he was not registered to carry on the practice that he was operating.
19. Throughout the applicable period, Wong was required to subscribe to the CICA Handbook (the "Handbook") and the CGA Public Practice Manual (the "PPM").
20. Throughout the applicable period, Wong did not subscribe to the Handbook or to the PPM.
21. The total cost of the PPM and applicable renewals, inclusive of applicable taxes, for the years 2004 to 2010, was \$1,372.55.
22. The total cost of the Handbook and applicable renewals, inclusive of applicable taxes, for the years 2004 to 2010 was \$3,167.60.
23. Throughout the period 2004 to 2010, Rule 516, or its equivalent, of the Code required Wong to maintain professional liability insurance for a full time practice.
24. Wong did not maintain professional liability insurance for his practice during the applicable period.
25. The total cost of professional liability insurance, inclusive of applicable taxes, for the years 2004 to 2010, was \$8,556.72.
26. On or about 23 November 2010 Wong resigned his membership with CGA Ontario.
27. Pursuant to the *Certified General Accountants Act, 2010*, S.O. 2010, c.6, Sch. A (the "Act") the Association continues to have jurisdiction over Wong for the purposes of any investigation or disciplinary proceedings for a period of two years after he ceased to be a member.
28. On or about 24 October 2011 the Association commenced its investigation into Wong's practice and his use of the designation "CGA" and "Certified General Accountant".

29. After his resignation from the Association Wong was no longer permitted to use the CGA designation or hold himself out as a Certified General Accountant.
30. The *Act* provides that “no individual, other than a member of the Association, shall ...
 - (a) take or use the designation Certified General Accountant or the initials “CGA” alone or in combination with other words or abbreviations;
 - (b) take or use any term, title, initials, designation or description implying that the individual is a Certified General Accountant;
 - (c) practise as a Certified General Accountant; or
 - (d) otherwise hold himself out as a Certified General Accountant, regardless of whether he provides services as a Certified General Accountant to any individual or entity.
31. After his resignation from the Association, Wong was not entitled to use the CGA designation or hold himself out as a Certified General Accountant.
32. After his resignation, Wong continued to use the CGA designation and represent to the public that he was a Certified General Accountant.
33. Rule 102 of the Code prohibits members from participating in any activity that a reasonable and informed third party would believe to be unlawful.
34. In using the designation Certified General Accountant and in using the initials C.G.A. after his resignation in November 2010, Wong violated section 26(1) of the *Act* and therefore in breach of Rule 102 – Unlawful Activity.
35. Had Wong been charged and convicted under the *Act* of the offence of using the CGA designation, he would have been liable to a fine of not more than \$10,000.
36. Rule 509(a) of the Code prohibits members from seeking to obtain clients by false or deceptive advertising or other form of solicitation.
37. In representing to the public from August 2004 to November 2011 that he was entitled to offer professional services as a Certified General Accountant and, after November 2010 in continuing to represent that he was a Certified General Accountant, Wong breached Rule 509(a).
38. Rule 606(a) prohibits members from participating in action detrimental to the Association or the profession.
39. By (a) not advising his clients in August 2004 that he was no longer able to carry on public accounting or operate a professional practice, as defined; (b) continuing to carry on the practice of public accounting and to operate a professional practice without registering that practice, without undergoing a practice inspection, without subscribing to the PPM or the Handbook and without maintaining professional liability insurance; and (c) representing to the public that he

was a Certified General Accountant when he was not, Wong participated in actions detrimental to the Association and the profession.

40. Wong's conduct amounted to professional misconduct.

Counsel for the Discipline Committee withdrew the allegation against Mr. Wong that he breached the following provision of the Code of Ethical Principles and Rules of Conduct:

Rule 102 Unlawful Activity

A member shall not permit the member's firm name or the member's name to be used with, participate in, or provide services to, any activity that the member knows, or which a reasonable and informed third party would believe, to be unlawful.

MEMBER'S PLEA

Mr. Wong, through his counsel, denied the allegations set out in the Notice of Hearing.

FACTS AND EVIDENCE

Counsel for the Discipline Committee entered into evidence the following documents, listed by exhibit number:

1. Notice of Hearing dated April 2, 2012
2. Affidavit of Service dated April 4, 2012
3. Letter to Mr. Wong dated April 2, 2012, notifying him of the Professional Conduct Tribunal hearing
4. Discipline Brief
5. Letter to Mr. Wong from Wires Jolley LLP dated April 16, 2012.
6. Request to Admit Facts and Documents
7. Notice under the Evidence Act (Business Records)
8. Letter to Mr. Wong from Mr. Wigdor of CGA Ontario dated October 24, 2011 hand delivered to Mr. Wong
9. Series of e-mails between Mr. Wong and Mr. Sarosh Contractor of CGA Ontario dated August 24 and 25, 2004
10. Series of e-mails between Ms. Tantan Yeung (Patricia) and Ms. Lana Tom concerning Patricia's inquiry with CGA Ontario dated September 1, 13 and 22 and October 2 and 4, 2011
11. Series of e-mails between Ms. Tantan Yeung (Patricia) and Ms. Lana Tom dated September 6 and 7, 2011

Counsel for Mr. Wong entered into evidence the following documents listed by exhibit number:

12. Letter from Norman A. Rothberg, CA, dated May 24, 2012, concerning financial statements for Can Express Inc. and Can Express International Ltd.
13. Copy of letterhead for Eddy Wong Accounting
14. Copy of business card for Eddy Wong Accounting
15. Copy of page from the 2006 Scarborough Yellow Pages showing the phone number for Eddy Wong

Witnesses

Messrs. Ted Wigdor and James Yakimovich testified on behalf of the CGA Ontario Discipline Committee on June 26, 2012.

Mr. Ted Wigdor is the Vice President of Government, Regulatory and Corporate Affairs for CGA Ontario. He has a team of 7 members, who register all CGA members in public practice and make sure they are properly registered. He is staff support to the Discipline Committee. He provided information on the Code requirements and how he and his staff monitor the adherence to the Code, depending on the type of registration members have. He also outlined in detail the communications between his staff and Mr. Wong, as in the documents provided.

Mr. James Yakimovich, CGA, CFE (Certified Fraud Examiner) has been providing regulatory services to regulatory bodies for 10 years. Prior to that, he ran the investigation area for the Law Society of Upper Canada. On September 20, 2011, he went to Mr. Wong's office in Scarborough, but there was no one there. Mr. Yakimovich took photographs, provided in the documents that showed that Mr. Wong's signs included Certified General Accountant and/or CGA. Mr. Yakimovich met with Mr. Wong at Mr. Wong's office on October 31, 2011. It was after that meeting Mr. Wong wrote to Mr. Yakimovich indicating that he changed his signage to exclude the CGA designation. Mr. Wong's letter also indicated that he stopped using the CGA designation on his business cards since the beginning of 2011.

Mr. Eddy Kwok-Key Wong testified on his own behalf on September 4, 2012. He outlined his professional life, coming to Canada and becoming a CGA, and then starting his own accounting business. He stated that he had not received the letter of September 14, 2004 signed by Mr. Sarosh Contractor on behalf of CGA Ontario, outlining the CGA Ontario requirements regarding deregistration from public practice (Tab 2 of Exhibit 4). He also stated that he had not received the e-mail of November 23, 2010 from Esther Manalaysay asking that he return his Ontario and national membership certificates when he had resigned as a member (Tab 7 of Exhibit 4).

The witnesses, Ted Wigdor and James Yakimovich, were entirely straightforward and credible. The Panel did not find any particular aspects of their testimony not to be credible. Their testimony was backed up by the documentation. Their testimony was consistent with the documentary evidence introduced as exhibits at the hearing. Their testimony was not materially challenged by Mr. Wong's lawyer.

In terms of Mr. Wong, the evidence presented by the Association, in the case of the letter dated September 14, 2004 and the email dated November 23, 2010, it is clear that the letter and the email were sent. Mr. Wong, in his testimony, claimed that he did not receive the letter and he did not see the email, which may have gone to his junk folder. The Panel finds it improbable that Mr. Wong would not have received either of these communications and do not find his testimony on this credible. Regardless, whether he received these communications or not, this does not change his professional obligations as a member/former member of the Association.

Based on the oral evidence heard and the documents entered as exhibits at this hearing, the Panel of the Professional Conduct Tribunal makes the following findings of facts from the Particulars in the Notice of Hearing:

1. Eddy Kwok-Key Wong (“Wong”) became a member of CGA Ontario (the “Association”) in 1987.
2. While Wong was registered with the Association in professional practice for a period of time, he deregistered his practice with the Association on or about 25 August 2004.
3. Wong’s professional liability insurance expired on or about 31 July 2004.
4. Upon deregistration Wong was advised by the Association that he was required to discontinue the use of any firm letterhead, business cards or other stationery, cancel any advertising or business listing and remove any signs advertising his firm.
5. In each of 2004 through to 2010, despite his deregistration, Wong continued to carry on a public practice or professional practice or provide professional services as it was variously described from time to time in the Code for the years in question.
6. The Code concerning registration of a practice with the Association for the period 2003 up to and including 2006, provided that:

(Rule 515 in 2003 and 2004; Rule 514 in 2005 and 2006)

“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.”

“Public Practice” was further defined as:

“offering to perform or performing for a client (a) one or more types of professional services involving the use of accounting or auditing skills; (b) one or more types of management advisory or consulting services, or (c) the furnishing of advice on tax matters, or (d) any such other service as may, from time to time, be recognized by the Association.”

“Professional Services” was defined as:

“Any services performed or offered to be performed by a member for a client or employer, in which the member asserts membership in the Association. In addition, ‘professional services’ refers to those activities, including the provision of goods, whether the public or the member’s associates are entitled to rely on the member’s membership in the Association as giving particular competence.”

7. In 2007 and thereafter, the registration provision of the Code was reworded to provide as follows:

Rule 514 – “a member shall, if engaged in a professional practice or the practice of public accounting part-time or full-time, register in accordance with the requirements prescribed by the Association.”

It further defined a "professional practice" as the offering of professional services.

"Professional services" were defined 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."

8. Throughout the period 2004 – 2010 Wong operated a professional practice and was required to register that practice with the Association.
9. From August 2004 to November 2010, Wong did not register his public accounting practice (2004-2006) or his professional practice (2007-2010) with the Association.
10. Wong was not permitted by the Association to offer the professional services he continued to offer to the public.
11. Wong knowingly continued to carry on a professional practice or a public accounting practice, as applicable, in violation of the deregistration of that practice and the Code.
12. Wong engaged in a full time practice and earned income from carrying on that practice from August 2004 to November 2010 in violation of the registration requirements of the Code.
13. Members who prepare personal income tax returns are also required to register with the Association.
14. Wong did not register with the Association to prepare personal income tax returns.
15. As Wong was not registered for the preparation of personal income tax returns, he was not permitted to prepare such returns for the years 2004 to 2010.
16. From August 2004 to November 2010, Wong continued to prepare income tax returns for clients in violation of the registration requirements of the Code.
17. Rule 515 of the Code (and equivalent sections for 2004 and following) requires a member engaged in a professional practice to adhere to the practice inspection requirements of the Association.
18. Wong did not undergo a practice inspection with the Association at any point from August 2004 through to 2010 as he was not registered to carry on the practice that he was operating.
19. Throughout the applicable period, Wong was required to subscribe to the CICA Handbook (the "Handbook") and the CGA Public Practice Manual (the "PPM").
20. Throughout the applicable period, Wong did not subscribe to the Handbook or to the PPM.

21. The total cost of the PPM and applicable renewals, inclusive of applicable taxes, for the years 2004 to 2010, was \$1,372.55.
22. The total cost of the Handbook and applicable renewals, inclusive of applicable taxes, for the years 2004 to 2010, was \$3,167.60.
23. Throughout the period 2004 to 2010, Rule 516, or its equivalent, of the Code required Wong to maintain professional liability insurance for a full time practice.
24. Wong did not maintain professional liability insurance for his practice during the applicable period.
25. The total cost of professional liability insurance, inclusive of applicable taxes, for the years 2004 to 2010, was \$8,556.72.
26. On or about 23 November 2010 Wong resigned his membership with CGA Ontario.
27. Pursuant to the *Certified General Accountants Act, 2010*, S.O. 2010, c.6, Sch. A (the "Act") the Association continues to have jurisdiction over Wong for the purposes of any investigation or disciplinary proceedings for a period of two years after he ceased to be a member.
28. On or about 24 October 2011 the Association commenced its investigation into Wong's practice and his use of the designation "CGA" and "Certified General Accountant".

Particulars 29 to 35 will be dealt with in a following section.

36. Rule 509(a) of the Code prohibits members from seeking to obtain clients by false or deceptive advertising or other form of solicitation.
37. In representing to the public from August 2004 to November 2010 that he was entitled to offer professional services as a Certified General Accountant, Wong breached Rule 509(a).
38. Rule 606(a) prohibits members from participating in action detrimental to the Association or the profession.

Particular 39 will be dealt with in a following section.

In addition, the majority of the Panel of the Professional Conduct Tribunal makes the following additional findings of facts from the particulars in the Notice of Hearing:

39. By (a) not advising his clients in August 2004 that he was no longer able to carry on public accounting or operate a professional practice, as defined; (b) continuing to carry on the practice of public accounting and to operate a professional practice without registering that practice, without undergoing a practice inspection, without subscribing to the PPM or the Handbook and without maintaining professional liability insurance; and (c) representing to the public that he was a Certified General Accountant when he was not, Wong participated in actions detrimental to the Association and the profession.

The Panel of the Professional Conduct Tribunal did not make a decision on the particulars in paragraphs 29 to 35 as they related to the allegation that was withdrawn by counsel for the Discipline Committee.

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 of the Professional Conduct Tribunal 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 of the Professional Conduct Tribunal finds that Mr. Wong breached the following provisions of the Code of Ethical Principles and Rules of Conduct:

Rule 509(a) Advertising and Other Forms of Solicitation

A member shall not seek to obtain clients by advertising or other form of solicitation, which is false or deceptive.

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 516 Professional Liability Insurance

A member engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time shall maintain professional liability insurance as specified, and provide evidence as required, by the Association.

In addition, the majority of the Panel of the Professional Conduct Tribunal also finds that Mr. Wong breached the following additional provisions of the Code of Ethical Principles and Rules of Conduct:

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 606(a) Detrimental Actions

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

The Panel of the Professional Conduct Tribunal also finds Mr. Wong guilty of professional misconduct.

REASONS FOR DECISION

Rule 509(a) Advertising and Other Forms of Solicitation

A member shall not seek to obtain clients by advertising or other form of solicitation, which is false or deceptive.

The Panel found that Mr. Wong deregistered his professional practice on or about 25 August 2004 and therefore was not entitled to use "CGA" or Certified General Accountant on his stationary, cards and signage. However, the evidence provided showed that he continued to use these forms of solicitation. For example, the photographs taken by Mr. Yakimovich showed that Mr. Wong's signs included Certified General Accountant and/or CGA. In using these terms in spite of deregistration, Mr. Wong breached rule 509(a)."

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.

The Panel agreed that even though he had deregistered, it was proven that in each of the years 2004 to 2010, Mr. Wong continued to carry on a public practice or professional practice or provide professional services as it was variously described from time to time in the Code for the years in question and therefor Mr. Wong breached rule 514.

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.

The majority of the Panel agrees with the Discipline Committee and the evidence showed that since Mr. Wong was not registered to carry on the practice, he did not undergo a practice inspection and therefor he did not adhere to the practice inspection requirements from August 2004 through 2010, in breach of rule 515.

Rule 516 Professional Liability Insurance

A member engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time shall maintain professional liability insurance as specified, and provide evidence as required, by the Association.

The Panel agreed that it was proven that Mr. Wong's professional liability insurance expired on or about 31 July 2004, and that he did not renew it. Mr. Wong breached rule 516 as he did not maintain professional liability insurance for his practice throughout the years 2004 to 2010.

Rule 606(a) Detrimental Actions

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

The majority of the Panel agrees with the Discipline Committee and it was proven that by not advising his clients in August 2004 that he was no longer able to carry on public accounting or operate a professional practice, by continuing to carry on the practice of public accounting and to operate a professional practice without registering that practice, without undergoing a practice inspection, without subscribing to the PPM or the Handbook, without maintaining professional liability insurance and by representing to the public up to November 2010 that he was a Certified General Accountant, Mr. Wong participated in actions detrimental to the Association and the profession.

PENALTY SUBMISSIONS

In terms of the penalty, counsel for the Discipline Committee submitted that the Panel should make the following penalty order:

1. Mr. Wong should pay a fine of \$5,000, \$1,000 for each rule breached
2. Mr. Wong should pay \$13,096.87 as the costs of the insurance, Handbook, and PPM
3. Mr. Wong should pay \$3,500 in costs
4. Publication in a local newspaper.

On behalf of his client, Mr. Kwan indicated that the cases in the Sentencing Brief were not exactly similar to Mr. Wong's case. Mr. Kwan also indicated that Mr. Wong should be required to pay a lower amount for insurance, the Handbook, and the PPM.

PENALTY DECISION

The Panel deliberated and considered the Discipline Committee's submissions in terms of penalty and Mr. Wong's submissions in terms of penalty. Accordingly, the Panel orders the following penalty:

1. Mr. Wong pays a fine of \$5,000
2. Mr. Wong pays \$13,096.87 as the costs of the insurance, Handbook, and PPM
3. Mr. Wong pays \$3,500 in costs
4. Publication in Statements and a local newspaper.

REASONS FOR PENALTY DECISION

The Panel, in making its penalty determination, considered the cases presented by counsel for the Discipline Committee, namely Aslam, Joshi, Mansoor, and Vellani.

The Discipline Committee provided ample evidence that Mr. Wong had not complied with the requirements of the Code. He advertised himself as a CGA on signage and compilations, even though he had deregistered. He did not register in accordance with the requirements prescribed by the

Association, and he did not obtain professional liability insurance nor the Handbook and PPM. He did not undergo the required public practice inspection, nor did he advise his clients of the fact that he was not entitled to carry on a public practice.

The Panel was almost entirely in agreement with the penalty requested by counsel for the Discipline Committee. The Panel found Mr. Wong had not complied with three rules: 509(a), 514, and 516. The majority of the Panel also found that Mr. Wong had not complied with two additional rules: 515 and 606(a). Noncompliance with these important rules not only negatively affects his community and his clients; it negatively affects the Association and the certified general accounting profession.

The Panel determined that the penalty ordered meets the purposes of protecting the public and general deterrence, which is a message to the Certified General Accounting profession to deter other members of the profession from engaging in similar misconduct.

PARTIAL DISSENT

Mr. Daniel Iggers does not agree with the majority of the Panel with regard to two of the allegations, namely Rule 515, Practice Inspection Requirements, and Rule 606(a) Detrimental Actions. His reasons are set out below.

Mr. Iggers wishes to emphasize that he is otherwise in complete agreement with the other Panel members' decision, and he also joins them in the decision with regard to the penalty and costs. While he does not agree with the majority with regard to whether findings should be made on the basis of those two particular allegations, he does not believe that this changes the substance of our findings of professional misconduct.

Rule 515 Practice Inspection Requirements

Mr. Iggers does not agree with his fellow Panel members that the Member failed to comply with the practice inspection requirements.

Rule 515 provides that "(a) member shall comply with, and adhere to, the practice inspection requirements of the Association and the standards contained therein."

The Member should have registered, but did not do so. The Association conducts practice inspections of members who are registered. If the Member had registered, it is likely that his practice would have been inspected in the normal course. The fact that the Member's practice was not inspected is a direct result of his failure to register, in that the Association was not prompted to initiate an inspection of his practice.

The Rule articulates a positive duty to "comply with, and adhere to, the practice inspection requirements." In Mr. Iggers' view, that means that the Member had an obligation to do whatever the practice inspection requirements indicated that he was required to do. Mr. Iggers does not read the Rule as imposing a particular duty to ensure that a practice inspection was done. Mr. Wong failed to register when he should have, and as the panel has found, his failure to register amounted to professional misconduct. The fact that as a result of Mr. Wong not registering, the Association was not

prompted to send out the practice inspector during the relevant period, does not amount to a failure to comply with, and adhere to, any particular practice inspection requirements.

If the Rules were to articulate a specific duty on members to take steps to ensure that their practice is inspected, in circumstances where they should have registered but have not done so, then the facts of this case would support a finding of misconduct on that basis. Likewise, if the Rules provided that failure to prompt the Association to undertake a practice inspection would be grounds for a finding of misconduct, that would support a finding of misconduct.

The Member's obligation with regard to practice inspection differs from the obligations to obtain insurance and to subscribe to the practice manual and the Handbook. Those are positive obligations that the Member is required to take active steps to comply with.

Mr. Iggers adds as a final comment on this subject that he is not sure that it makes any real difference whether a finding is made in this case that the fact that the Member was not subject to practice inspection affords a basis for a separate additional finding of professional misconduct. The substance of the professional misconduct was that Mr. Wong engaged in public practice and held himself out to the public as a CGA when he was not registered or insured. The fact that the Member's practice was not inspected is one of the consequences of his misconduct, and is one of the facts that the panel has taken into consideration.

Rule 606(a) Detrimental Actions

Mr. Iggers does not agree with his colleagues' finding that the Member's conduct contravened Rule 606(a).

Rule 606(a) provides that "(a) member shall not participate in any action that is detrimental to the Association or the profession."

The evidence establishes that the Member continued to engage in public practice when he was not entitled to do so, as he was not registered, and that he did not comply with his obligations to have insurance and maintain subscriptions to the practice manual and Handbook.

In Mr. Iggers' opinion, it is not appropriate to apply Rule 606(a) in these circumstances where other specific rules apply.

In a very broad sense, any failure to abide by rules of the Association can be said to be detrimental to the Association or the profession. Casual non-compliance with these requirements is detrimental to the Association, the profession and the public that relies on the professionalism of CGAs.

However, in Mr. Iggers' view, it is not appropriate to apply Rule 606(a) as a basis for an additional finding of misconduct in circumstances where the misconduct is clearly captured by a particular Rule. In his opinion, the Rule against participating in any action detrimental to the Association or the profession should apply in circumstances where conduct that is not necessarily captured by the other Rules is unbecoming, brings the Association or the profession into disrepute or is some other way detrimental.

Dated this _____ day of _____, 2012

I, D. Alan Jones, 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.

D. Alan Jones

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 vice-president responsible for regulatory affairs 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 and delivering copies of the transcript of the hearing before the Professional Conduct Tribunal for the Appeal Tribunal (4 copies) and for the Respondent (1 copy).

According to Article 9 of the Bylaws, 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.