

**THE CERTIFIED GENERAL ACCOUNTANTS
ASSOCIATION OF ONTARIO**

PROFESSIONAL CONDUCT TRIBUNAL

**IN THE MATTER OF By-Law Four of the Certified
General Accountants Association of Ontario;**

**AND IN THE MATTER OF
a 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 -

Members of the Tribunal

Donn G. Martinson, CGA, Chair
Janice M. Charko, CGA, CFP
Ramesh Ramotar, CGA

Appearances

Karen Jolley for the Discipline Committee
Joseph Irving on behalf of

DECISION

This case involves a complaint against _____, which the Discipline Committee of the Certified General Accountants Association of Ontario has referred to a Professional Conduct Tribunal.

Mr. _____ was duly served with a notice of hearing dated September 8, 2000. The notice of hearing sets out that Mr. _____ is charged with violating the following provisions of the *Code of Ethics and Rules of Professional Conduct* and the *Code of Ethical Principles and Rules of Conduct*.

1995-1996 and 1996-1997 Code of Ethics and Rules of Professional Conduct

Rule 201 - Conduct

A member shall always be mindful of his/her duties and responsibilities as a member of the accounting profession, and shall carry on his/her work with fidelity to clients or employers, fairness to employees, and loyalty to the Association, in a manner worthy of a professional accountant.

Rule 215 - Unlawful Activity

A member shall not lend his/her name, himself/herself or his/her services to any activity which he/she knows, or which a reasonably prudent person would believe to be, unlawful, or contrary to this Code of Ethics and Rules of Professional Conduct.

Rule 216 - Discredit

A member shall not lend his/her name, himself/herself or his/her services knowingly to any practice, pronouncement or act which would discredit the profession.

1997-1998 and 1998-1999 Code of Ethics and Rules of Professional Conduct

Rule 607 - Evidence of Professional Misconduct

A member who has been found guilty or granted an absolute or conditional discharge of any criminal or similar offence which may cast doubt as to that member's honesty, integrity, or professional competency, shall promptly inform the Association of the conviction, finding of guilt or discharge, as the case may be, when the right of appeal has been exhausted or expired. In such cases, the member may be charged with professional misconduct by the member's Provincial Ethics Committee. A certificate of conviction by any competent court shall be sufficient evidence of the conviction and the perpetration of the offence.

Rule 607.1 - Criminal or Similar Offences

Criminal or similar offences include, but are not limited to, the following offences:

- (c) fraud, theft, forgery or income tax evasion;
- (d) violation of the provisions of any securities legislation; or
- (e) any criminal or similar offence for conduct in, or related to, the member's professional capacity, or for conduct in circumstances where there was reliance on their membership in, or in association with, the Association.

The notice of hearing alleges that Mr. [redacted] was convicted of the following criminal offences on November 16, 1998:

- (i) On or about the 6th day of October, 1996, at the City of Toronto: Mr. [redacted] stole monies, the property of Ontario Tourism Education Corporation, of a value exceeding five thousand dollars, contrary to the Criminal Code;
- (ii) On or about the 6th day of October, 1996, at the City of Toronto: Mr. [redacted] did, by deceit, falsehood or other fraudulent means defraud Ontario Tourism Education Corporation of a sum of money of a value which exceeded five thousand dollars, contrary to the Criminal Code.

The hearing was held in this matter on Tuesday, December 12, 2000. Mr. [redacted] did not attend the hearing but was represented by Joseph Irving.

Ms. Jolley presented a book of documents which was entered as Exhibit 1. These documents and the facts agreed upon by the parties indicated that Mr. _____ :

- had forged 58 of his employer's cheques for personal purchases and services totaling \$22,032.99
- had altered his employer's 1997 T4 slips by increasing the amount of tax deducted on his T4 slip by \$10,000 and reducing the amount of tax deducted on other employees' T4 slips by amounts totaling \$10,000
- pleaded guilty to, and was convicted of, the alleged charges described above as well as receiving a restitution order from the Court for \$22,032.99 on November 16, 1998.

These facts were not in dispute.

The tribunal was requested by Ms. Jolley to impose the following penalties on Mr. _____ :

- expel him from the Association;
- fine him \$1000;
- require him to pay costs of the hearing in the amount of \$1500; and
- publish his expulsion in Statements and a local newspaper. With respect to the latter penalty, Ms. Jolley stated that publication in a newspaper was not as critical as the publication of the event and member's name in Statements.

Mr. Irving submitted some medical documents that were entered as Exhibit 2. These documents described Mr. _____'s depression and alcohol dependency among other issues. Mr. Irving also indicated that Mr. _____ was having financial troubles, that Mr. _____'s wife was very ill and unable to work and that Mr. _____ had found employment in a non-financial clerical position.

In response to the requested penalties, Mr. Irving:

- did not contest the expulsion;

- asked that the fine and costs be minimized because of Mr. [redacted]'s lack of financial resources;
- asked that there be no publication of the expulsion since there was a chance Mr. [redacted] may lose his current job if his new employer finds out about the expulsion, and this could create additional hardship since he is the sole income-earner of the family.

The Tribunal finds that Mr. [redacted]'s behaviour violated all of the Rules listed above. After carefully considering all of the submissions, there is no doubt that Mr. [redacted] engaged in unlawful activities and committed a significant breach of trust. Impacted by this breach of trust are his former employer and the Certified General Accountants Association of Ontario.

A professional accountant must always act professionally. When a member engages in improper conduct, as was the case with Mr. [redacted] his honesty and integrity will be in question. Also, his professional designation, the Certified General Accountants Association of Ontario, and the profession are tarnished.

We recognize and have taken into account the fact that Mr. [redacted] has no previous criminal record, has attended alcohol rehabilitation, has made full restitution to his former employer and that he is in difficult personal circumstances. However, the Certified General Accountants Association of Ontario must exercise its self-regulation and self-discipline obligation in a serious, fair and responsible manner, and must be seen by the membership and the public to do so as well. Because of the severity of Mr. [redacted]'s inappropriate professional behaviour and breach of trust, his behaviour cannot be condoned by the Certified General Accountants Association of Ontario, and he should not remain a member of the Association or the profession.

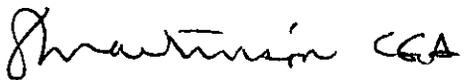
Therefore, we direct that:

- a) Mr. [redacted] be expelled from the CGAAO;

- b) Mr. pay a fine of \$1,000;
- c) Mr. pay costs of the hearing in the amount of \$1500;
- d) this decision and event be published in the CGAAO Statements but not include Mr. 's name.

In our view, the publication of our decision in CGAAO Statements alone, and without Mr. 's name, is a sufficient deterrent to illegal activity in this case where it is coupled with the penalty of expulsion.

DATED at Toronto, this ¹² day of January, 2001



Donn Martinson, CGA, Chair

On behalf of the Tribunal

APPEAL NOTICE

The decision of a Professional Conduct Tribunal may be appealed to an Appeal Tribunal within sixty days of the date of the written decision of the Professional Conduct Tribunal. The notice of appeal must be in writing, addressed to the Executive Director, Certified General Accountants Association of Ontario, 240 Eglinton Avenue East, Toronto, Ontario, M4P 1K8. The notice must contain the grounds for the Appeal.

The Certified General Accountants Association of Ontario

Appeal Tribunal

IN THE MATTER OF the Certified General Accountants Association of Ontario Act

AND IN THE MATTER OF an appeal to the Certified General Accountants Association of Ontario Appeal Tribunal

AND IN THE MATTER OF Mr

CGA

June 25, 2001

Present :-

Members of the Tribunal:- John M Parker, FCGA, Chair
Doug White, CGA
Louise McNeely, CGA

Counsel: Ms. Karen E Jolley, Lawyer for the Discipline Committee
Mr. Joseph Irving, Lawyer for the Defendant Mr. . . .
Ms. Cynthia Petersen, Lawyer for the Appeal Tribunal

Appellant: The Certified General Accountants Association of Ontario

Court Reporter: Networking Court Reporting Ltd.

For the Discipline Committee: Ralph Palumbo, Director, Government Relations and Legislative Affairs, CGAAO

Particulars:

In accordance with Clause 12 of Article 9 of By-Law Four of the Certified General Accountants Association of Ontario, the Discipline Committee of the Certified General Accountants Association of Ontario, has appealed the decision of the Professional Conduct Tribunal dated January 12, 2001.

More specifically the Discipline Committee believes that the penalty imposed by the Tribunal is deficient. That penalty being:-

1. expulsion from the Association;
2. a fine of \$1,000;
3. payment of costs in the amount of \$1,500;
4. publication of the decision in Statements, such publication not to include Mr. . . .
's name.

The Discipline Committee is of the view that the penalty imposed on Mr. [redacted] should have included an order for publication of the Tribunal's decision, together with Mr. [redacted]'s name, in CGAAO Statements as well as a local newspaper, however publication in a local newspaper was not pressed in oral argument.

Hearing:-June 25, 2001 @ 2.00pm at the Network Court Reporting Office, Toronto.

Ms Jolley reviewed the findings of the Tribunal. Mr. [redacted] had engaged in unlawful activity and had committed a significant breach of trust. His conduct tarnished both his designation and the profession. The CGAAO must exercise its self-regulation and self discipline obligations in a serious, fair and responsible manner and must be seen by the public to do so, his behavior can not be condoned.

Mr. [redacted] had been found guilty in a criminal court on Nov 16 1998, of forging 58 cheques totalling \$22,032.99; and of altering 1997 T4 slips by \$10,000 to his own benefit and to the disadvantage of the other employees.

Ms. Jolley reviewed three similar cases where the accused had their names published. In one case, both the counsel for the Professional Conduct Committee and the defence counsel asked that the name not be published., however the discipline committee (CICA), ruled that the name should be published and quoted an Institute position on the publication of names that states ; ".....the publishing of names of members found guilty of professional misconduct is, in the majority of cases, the single most significant penalty that can be administered that addresses both the individual issues of specific deterrence and rehabilitation and the wider needs of general deterrence and education of the membership and large. Only in the most exceptional of circumstances does this committee consider it appropriate that it be asked to dispense with the publishing of the name of the guilty member.", further, "..... only in rare and unusual circumstances will the name of a member found guilty of professional misconduct be withheld from publication"...

Ms Jolley argued that this is not a rare or unusual circumstance.

Mr. Irving reviewed three letters written by Dr. Robert Weinstein of the Department of Psychiatry at North York General Hospital, in the period May through September 1998. Mr. [redacted] was under extreme emotional stress and was being treated for a major depressive disorder and alcohol dependence. Mr. [redacted] had also attempted suicide.

Mr. Irving argued that publication in CGAAO statements without including [redacted]'s name is a sufficient deterrent to illegal activity when it is coupled with the penalty of expulsion.

Mr. Irving drew attention to the section of the criminal court proceedings where the Justice Merenda explained that if it were not for counsel (Irving) doing an excellent job in representing Mr. [redacted] and in getting a joint submission with the crown, concerning the sentencing of Mr. [redacted], that he would be looking at a lengthy period of incarceration. Mr. Irving implied that the joint submission (not included in the transcript) equated to the fact that this case was a " rare

and exceptional circumstance”, and that had been recognized as such by Mr Justice Merenda. Irwin further stated that punishment should not be designed to “ crush and destroy ” and that he did not dispute Ms. Jolley’s submission that withholding a member’s name from publication should only be done in rare and exceptional circumstances, but argued that Mr. [redacted] had a serious depressive illness and his rehabilitation might be jeopardized by publication of his name. This was not a dangerous precedent and that publication or non publication of Mr. [redacted]’s name meant nothing to the public.

Findings

The Appeals Tribunal also gave much consideration as to whether [redacted]’s situation in regard to his medical problems and his on-going rehabilitation program constituted a “rare and exceptional circumstance”. It was noted that the three medical letters concerning Mr. [redacted]’s condition were all dated in the months of May through September 1998, and no additional reports on his medical condition since that time had been submitted into evidence to suggest that the publication of Mr. [redacted]’s name would adversely affect his treatment..

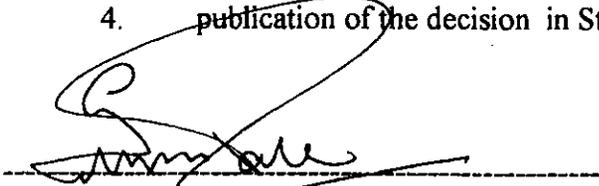
The Tribunal unanimously agreed on the necessity of a general deterrence, that of publicizing the name of a member and the need for openness in the discipline process, and that the only exception to this dictate would be a “ rare and exceptional circumstance”. It is recognized that there is no precedent as to what situation would fall into this classification.

Sentence

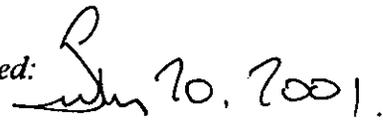
The Appeals Tribunal finds, in a two to one verdict, that the Professional Conduct Tribunal erred in its sentence with regard to the non publication of Mr. [redacted]’s name in Statements. The two members of the majority opinion are of the view that , although potential interference with a member’s rehabilitation from a serious illness might constitute exceptional circumstances warranting withholding a member’s name from publication in rare cases, there was insufficient evidence of that risk in this case. The Tribunal (Mr. Parker dissenting) therefore orders that Mr. [redacted]’s name be published in the CGAAO Statements. The Tribunal unanimously agrees that the objective of general deterrence would thereby be met and that publication in the local newspaper was unnecessary.

The sentence is ;

1. expulsion from the Association;
2. a fine of \$1,000;
3. payment of costs in the amount of \$1,500;
4. publication of the decision in Statements together with Mr. [redacted]’s name.



John M Parker, FCCGA
Chairman, Appeals Tribunal

Dated: 

Re: v. Certified General Accountants

Coram: Archie Campbell, McNeely & Ellen Macdonald JJ.

For Appellant: Joseph W. Irvine
For Respondent: Karen E. Jolley

Heard: September 26, 2002
Decided: October 17, 2002

ENDORSEMENT

- [1] It is unnecessary to repeat the facts set out in the factums.
- [2] This is an unusual case. Four of the appellant's professional peers, including the chair of the appeal tribunal, made a principled decision not to publish his name, and two of his peers disagreed. The two prevailed over the four.
- [3] Professional bodies such as this enjoy great appellate deference in this court, particularly in matters of penalty. The stark difference of professional opinion in this case reduces somewhat the degree of insulation from appellate review ordinarily enjoyed by this body. In this case we cannot avoid the wide powers imposed upon us by s. 8 (6) of the *Certified General Accountants Act*, including the duty to Consider whether we should exercise any of the powers of the tribunal, whether we should reconsider any finding of fact they made, and whether we should substitute our opinion for theirs.
- [4] Administrative tribunals need not give elaborate reasons for their decisions and the same standard is not required that one would require of a court. But in a close case like this there is some obligation on an appellate tribunal to give some explicit reason for overturning a principled decision of a body of peers such as the discipline committee.
- [5] It seems to have been common ground with both tribunals that potential interference with a member's rehabilitation from a serious illness might constitute exceptional circumstances so as to justify non-publication. Both the discipline panel and the appeal tribunal agreed on that. And both tribunals agreed that there was some evidence that publication might interfere with the member's rehabilitation.
- [6] The only expressed difference is that the appeal tribunal said "there was insufficient evidence of that risk in this case". Although it referred to the earlier

1998 psychiatric reports, it did not suggest how the discipline tribunal erred in respect of the earlier psychiatric evidence and in respect of matters such as the suicide attempt and the rehabilitation efforts.

[7] Both panels agreed on the tremendous importance of deterrence in this and similar cases. The case turned entirely, at each level, on whether or not publication of the appellant's name was required in order to satisfy the principle of deterrence.

[8] On this crucial issue, which controlled the result, the discipline panel said this:

In our view, the publication of our decision in CGAAO Statements alone, and without Mr. name, is sufficient deterrent to illegal activity in this case where it is coupled with the penalty of expulsion.

[9] On this crucial issue, which controlled the result, the appellate panel said nothing. Nor did the appellate panel give any reasons for coming to a different result from the discipline panel in respect of this controlling issue.

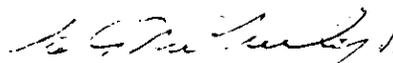
[10] On the unusual facts of this case there is nothing in the decision of the appellate tribunal to suggest error on the part of the discipline panel in respect of the controlling question, whether publication without the name was sufficient deterrence in this case when coupled with the penalty of expulsion.

[11] Because there is no demonstrated basis to interfere with the finding of the discipline panel, that publication without the appellant's name is sufficient deterrent to illegal activity in this case where it is coupled with the penalty of expulsion, we see no reason why that original decision, which is in accord with our opinion of this case, should not stand.

[12] The appeal is therefore allowed, the decision of the appeal tribunal is set aside, and the decision of the discipline committee is restored.

[13] If counsel wish to make submissions on costs they may do so in writing within 10 days.


Archie Corbett



Ellen Macdonald