

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

**IN THE MATTER OF STEPHAN RICHMOND, a member of  
The Certified General Accountants Association of Ontario  
(Chartered Professional Accountants of Ontario)**

BETWEEN:

Stephan Richmond

- and -

The Discipline Committee of The Certified General Accountants Association of Ontario (Chartered  
Professional Accountants of Ontario)

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**DECISION AND REASONS FOR DECISION OF THE APPEAL TRIBUNAL**

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Members of the Appeal Tribunal Panel:

Daniel Coghlan, CPA, CGA, Chair  
Peter Vaillancourt, CPA, CGA  
Daniel Iggers, Public Representative

Appearances:

Karen E. Jolley, Counsel for the Discipline Committee  
Gordon S. Campbell, Counsel for the Member  
Lisa Braverman, Independent Legal Counsel to the Appeal Tribunal

Appeal Hearing Date:

August 12, 2015, Toronto

## **OVERVIEW**

A panel of the Appeal Tribunal of The Certified General Accountants Association of Ontario (Chartered Professional Accountants of Ontario) heard this appeal on August 12, 2015, at Toronto. At the conclusion of the appeal hearing, the panel reserved its decision.

The appeal by the member, Stephan Richmond, arises from decisions of a panel of the Professional Conduct Tribunal of The Certified General Accountants Association of Ontario (Chartered Professional Accountants of Ontario) dated November 4, 2014, and February 10, 2015.

## **APPEAL**

The following documents were entered into evidence:

1. Notice of Appeal dated March 10, 2014, exhibit 1.
2. Affidavit of Service, exhibit 2, relating to service of the Notice of Appeal and notice of the date of the appeal hearing.
3. Appeal Book, volumes 1 to 4, exhibit 3.
4. Transcripts of the evidence of:
  - Tom Tittle, June 23, 2014, exhibit 4,
  - Ronald Nanan, June 23, 2014, exhibit 5,
  - Julie Phillips, June 24, 2014, exhibit 6,
  - Tracy Valko, June 24, 2014, exhibit 7,
  - Dave Joseph Marcella, June 25, 2014, exhibit 8,
  - Eric Campbell, June 25, 2014, exhibit 9,
  - Stephan Richmond, June 26, 2014, exhibit 10,
  - Stephan Richmond, June 27, 2014, exhibit 11.

5. Transcript of the Submissions at the Discipline Hearing before the Professional Conduct Tribunal on July 28, 2014, exhibit 12.

6. Transcript of the Submissions at the Penalty Hearing before the Professional Conduct Tribunal on November 20, 2014, exhibit 13.

#### **ALLEGATIONS BEFORE THE PROFESSIONAL CONDUCT TRIBUNAL**

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

##### **Rule 301 Competence**

A member shall provide to employers and/or clients only those professional services for which he or she has the necessary capabilities, competencies and current skills. 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 practises or is relied upon because of the member's profession.

##### **Rule 303 Adherence to Acknowledged Principles and Standards**

Members shall adhere to acknowledged principles and standards of professional practice. In addition, all licensees shall be required to establish, maintain and uphold policies and procedures to ensure that all public accounting services are performed in accordance with generally accepted standards of practice of public accounting. 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 and any tax related matter, taken together with the requirements of any governing statutes, subject to (e) below. That is, a member shall adhere to:

- (a) Generally accepted accounting principles within financial reporting standards unless departure from these principles is fully disclosed;
- (b) Generally accepted auditing standards or general review standards in an assurance engagement;
- (c) Accounting and auditing practices that differ from those recommended by the Association, provided that there is substantial authoritative support for the alternative treatment and the departure from the Association's recommendations is disclosed;
- (d) Accounting and auditing practices not specifically dealt with by the Association, but which are otherwise generally accepted;
- (e) 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; and
- (f) Accounting, auditing practices, and standards recommended by the Association, including those found in:
  - i. the *CICA Handbook*; wherein references to the Rules of Conduct/Code of Ethics of the provincial institutes/order appear, this should be read as the *CGA Code of Ethical Principles and Rules of Conduct*;
  - ii. the *CGA Independence Standard*; and
  - iii. *CGA Canada's Public Practice Manual*.

#### **Rule 304 Terms of Engagement**

It is recommended that a member clearly state in writing to a client the nature and scope of services to be rendered under the terms of his or her engagement. A letter of engagement is mandatory when a member is providing compilation or assurance engagements and encouraged for all other professional

engagements.

#### **Rule 402 Association with Financial Information**

A member shall not be associated with any letter, report, statement, representation, financial statement or tax filing, whether written or oral, which the member knows, or ought to know, is false or misleading, regardless of any disclaimer of responsibility. It is recognized that compliance with this Rule may place a member in a difficult position vis-à-vis the member's employer or client. Nevertheless, the member has an obligation to comply with this Rule.

#### **Rule 606 Detrimental Actions**

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

(b) A member shall, subject to Rules R105 and R201 report to the Association any situation of which the member has sufficient personal knowledge and that the member thinks may be detrimental to the Association or the profession.

#### **Code Principle - 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 on them by others, and shall not use their privileged position without their principal's knowledge and consent. Members shall strive to be independent of mind and in appearance.

#### **Code Principle - Due Care and Professional Judgment**

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

professional care and judgment.

**Code Principle - Deceptive Information**

Members shall not be associated with any information that the member knows, or ought to know, to be false or misleading, whether by statement or omission.

**Code Principle - Practice of the Profession**

Members shall act openly and fairly towards others in the practice of their profession.

**Code Principle - Responsibilities to the Profession**

Members shall always act in accordance with the duties and responsibilities associated with being members of the profession and shall carry on work in a manner that will enhance the image of the profession and the Association. A member shall comply with the *Association Bylaws* and the *Code of Ethical Principles and Rules of Conduct* of the Association as amended from time to time, and with any order or resolution of the board of directors or its committees, under the *Association Bylaws*.

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

1. Stephan Richmond (“Richmond”) became a member of CGA Ontario (the “Association”) in 2005.
2. Richmond’s CGA Ontario certificate number is 18976 and his CGA Canada certificate number is 335352.

**(a) Canadian Landscaping & Stonework Inc.**

3. Canadian Landscaping & Stonework Inc. ("Canadian Landscaping") retained Richmond to prepare and file its GST/HST Returns for each quarter of 2010 and for the first three quarters of 2011 (the "Canadian Landscaping Returns").
4. Canadian Landscaping paid Richmond to prepare and file the Returns.
5. Richmond neglected to file the Returns.
6. Richmond advised that his bookkeeper, for whom he was responsible to supervise, prepared the four 2010 Canadian Landscaping Returns but failed to file them.
7. The four Canadian Landscaping Returns were not filed with Canada Revenue Agency ("CRA") until or on about 17 May 2012.
8. As a result of the late filing of the four Canadian Landscaping Returns, CRA assessed Canadian Landscaping interest and penalties.
9. At no time did Richmond advise Canadian Landscaping that the Canadian Landscaping Returns had not been filed, that he needed any additional information to file any of the Canadian Landscaping Returns or that he had not, in fact, prepared or filed the Canadian Landscaping Returns.
10. In October 2011 Canadian Landscaping ended its retainer with Richmond.
11. Richmond refused to return the files of Canadian Landscaping to the client unless he was paid \$1,000.
12. Richmond advised that the \$1,000 fee was comprised of some additional charges along with the charge back of a discount that he had given the Canadian Landscaping earlier.
13. Canadian Landscaping was never provided with an invoice for any additional charges nor advised there were additional charges until it tried to obtain the return of its accounting records.
14. Richmond's office was the address on file for Canadian Landscaping with CRA and WSIB.

15. Richmond received mail for Canadian Landscaping from CRA and WSIB. Richmond filed the mail in the client's file.
16. Richmond did not open the mail until Canadian Landscaping filed its complaint with CGA Ontario in April 2012.
17. Canadian Landscaping did not receive the CRA or WSIB correspondence nor was it advised at the time that such correspondence had arrived and was simply being filed in the file at Richmond's office.
18. By (a) failing to file the four 2010 Returns on time, (b) failing to advise Canadian Landscaping that the four 2010 Returns had not been filed on time, (c) failing to advise the Canadian Landscaping that he had not filed the three 2011 Returns, (d) failing to advise Canadian Landscaping that he required additional information to complete the three 2011 Returns, (e) failing to supervise his staff to whom he gave responsibility for filing the Returns, (f) failing to open client mail from CRA/WSIB that was delivered to his office and (g) by purporting to charge Canadian Landscaping a fee of \$1,000 when he was requested to give his client its accounting records when he had not advised the client that there were any outstanding invoices or work to be charged, Richmond breached the provision of the Association's Code of Ethical Principles and Rules of Conduct (the "Code") Principle related to Trust and Duties.
19. Richmond's conduct amounted to professional misconduct.

**(b) Dave Marcella**

20. Dave Marcella ("Marcella") retained Richmond to prepare his 2011 income tax returns for his company Nail-It Creations ("Nail-It").

21. A company called Informative Tax had prepared Nail-It's returns since 2005. In 2009 Richmond bought Informative Tax. In 2009 Richmond prepared the Nail-It 2009 return at a cost of \$800.
22. In 2010 Richmond prepared the Nail-It 2010 return at a cost of \$875.
23. Nail-It had no major changes in its business sales or expenses during the period 2009 to 2011, inclusive.
24. In 2011 Richmond charged Nail-It \$1,400 for its returns. Once Nail-It paid that amount, Marcella sought confirmation that the 2011 return had been filed. Richmond then advised that Nail-It owed an additional \$2,600.
25. Richmond advised that he would not file the 2011 return until the further \$2,600 was paid.
26. Richmond indicated on 15 June 2012, the T1 filing deadline date, that it was his policy not to file returns until he was paid in full, including the additional \$2,600.
27. Richmond never advised Marcella that he filed his return.
28. It was not until after the filing deadline had passed that Richmond finally advised that he had, in fact, paper-filed Marcella's return on 15 June 2012. At and after the deadline, Richmond left Marcella with the impression that the filing remained outstanding.
29. In the meantime, Marcella retained a new accountant to file his 2011 T1 return.
30. After CRA received Richmond's paper T1 file for Marcella, it issued a re-assessment based on the filing.
31. Marcella was required to file T1 adjustments to correct the incorrect return filed by Richmond.
32. On 24 August 2012 Marcella requested return of all his business and personal records from Richmond.
33. Richmond refused to return Marcella's source documents to him until he was paid \$2,600.

34. When Marcella retained counsel to obtain the return of his documents, Richmond advised that he would now charge an additional fee for his time to remove any non-source documents or note from Marcella's file before returning it.
35. When Richmond did make the materials available for pick up at his office on or about 29 October 2012, he advised Marcella by follow up email on 31 October 2012 that included in the boxes of source documents was a small claims court action that he had commenced against Marcella and that he was treating the pick up of materials as service.
36. Further, Richmond advised Marcella that he had filed the 2010 and 2011 HST returns for Nail-It when, in fact, he did not file the returns.
37. Richmond never advised Marcella that the 2010 and 2011 HST returns were not filed.
38. By (a) leading Marcella to believe that his 2011 T1 return was not filed when, in fact, he had filed the return; (b) filing an inaccurate 2011 T1 return which needed adjustments to correct; (c) not filing Nail-It's 2010 HST return; (d) not filing Nail-It's 2012 HST return; (e) purporting to not file client's returns and not return his client's documents until an invoice more than four times the previous years; invoices was paid; (f) not returning Marcella's client documents; (g) compelling Marcella to retain counsel to obtain his documents and (h) attempting to serve him with legal proceedings by including a statement of claim in a box of returned client files, Richmond breached the Code Principles related to Trust and Duties, Due Care and Professional Judgment, Deceptive Information, Professional Practice and Responsibilities to the Profession.
39. Further, Richmond's actions as outlined above, amounted to a breach of the Code Rules 301 (Competence), 303 (Adherence to Acknowledged Principles and Standards), 402 (Association with Financial Information) and 606 (Detrimental Action).

**(c) Tracy Valko**

40. In or about August 2010 Valko retained Richmond to prepare her personal and business income tax returns.
41. At the end of 2010 Valko and Richmond agreed that he would file her then outstanding 2009 T1 income tax return and also her 2010 T1 income tax return.
42. It was later agreed that Richmond would prepare and file Valko's T1 and T2 income tax returns for 2011 and 2012.
43. In October 2012 Valko contacted CRA who advised her that there were no personal or corporate income tax returns filed for her for 2009, 2010 or 2011.
44. Richmond advised Valko that, contrary to what she was advised by CRA, he had filed her 2010 and 2011 income tax returns.
45. To substantiate his position, in or about October 2012, Richmond provided Valko with what he said was a copy of her 2011 T1 income tax return that he said he had filed in July 2012.
46. Richmond did not file T1 or T2 returns for Valko for any of 2009, 2010 or 2011 or 2012.
47. In 2013, Valko retained a new accountant who filed Valko's 2010, 2011 and 2012 income tax returns.
48. Commencing in June 2012 Richmond rented an office from Valko. It was agreed that Richmond would pay Valko rent of \$750.00 per month, a split of office utilities, hydro and water and payment for any hours of time Richmond used Valko's staff.
49. Richmond paid rent for June, July and August 2012. He did not pay anything toward utilities.
50. Richmond neglected to pay Valko rent or his share of utilities for September, October or November 2012.
51. In or about November 2012, Valko asked Richmond for her files back.

52. When the files were not returned by November 29, Valko reported the matter to the police who attended at Richmond's home to advise him to return Valko's files to her.
53. After the police visit, Richmond returned to Valko what he said were all of her files in his possession.
54. By (a) failing to file T1s for Valko for 2009, 2010, 2011 or 2012 and failing to file T2s for Valko's business for 2011 and 2012; (b) representing to Valko that he had filed her 2010 and 2011 T1 returns when he had not done so; (c) delivering to Valko a copy of the 2011 T1 return to lead her to believe he had filed the return; (d) failing to honour his financial commitments to Valko; (e) failing to return Valko's documents to her when requested, Richmond breached the Code Principles related to Trust and Duties, Due Care and Professional Judgment, Deceptive Information, Professional Practice and Responsibilities to the Profession.
55. Further, Richmond's actions as outlined above, amounted to a breach of the Code Rules 301 (Competence), 303 (Adherence to Acknowledged Principles and Standards) and 606 (Detrimental Action).

**(d) Julie Phillips**

56. Julie Phillips is a certified general accountant and operates an accounting practice as Julie Phillips Professional Corporation Certified General Accountant ("Phillips").
57. In or about September 2012 Richmond approached Phillips about starting a limited liability partnership with her and another colleague.
58. In the course of those discussions, Richmond made representations to Phillips concerning his professional income.
59. It or about early October 2012 Richmond and Phillips agreed to enter into a partnership.

60. They further agreed that the cost of the leasing of space and the partnership set up costs, including lawyer's fees, signage, advertising, telephone and internet expenses, would be shared equally between Richmond and Phillips.
61. On or about 16 October 2012 Richmond and Phillips signed a five year lease for office space for their proposed partnership.
62. On or about 29 October 2012, when the first lease payment was due, Richmond advised Phillips that he did not have funds to pay his share of the lease.
63. It was not until 29 October 2012 that Richmond advised Phillips that he had significant financial difficulties as a result of a divorce, difficulty collecting payables from clients and ongoing litigation to collect those fees from clients.
64. It was not until late November 2012 that Richmond disclosed to Phillips that a complaint had been filed against him with the Certified General Accountants Association of Ontario ("CGA Ontario") that he represented could result in the loss of his right to practise as a certified general accountant.
65. In late November 2012 Richmond notified the landlord that he could not pay his portion of the lease obligations.
66. Richmond did not advise Phillips that he had not paid Valko rent for September, October or November 2012.
67. Phillips would not have entered into a partnership with Richmond had he disclosed his true financial position and what he later alleged to be the risk to his ability to operate as a certified general accountant.
68. Phillips would not have signed a lease with Richmond had he disclosed his true financial position and what he later alleged to be the risk to his ability to operate as a certified general accountant.

69. From November 2012 to date, in order to avoid a default under the lease, Phillips has paid the lease payments including rent and common area expenses on the space, although she is not operating from the space.
70. Phillips also paid for the cost of logo development, legal fees and related partnership set up expenses.
71. In (a) actively misrepresenting his financial position to Phillips before she and he signed a five year lease obligation and incurred various start up expenses, (b) failing to disclose negative aspects of his financial position to Phillips before she and he signed a five year lease obligation and incurred various start up expenses, (c) failing to disclose to Phillips the complaint made against him to CGA Ontario and the impact that might have on his ability to practise as a certified general accountant before he and Phillips signed a five year lease obligation and incurred various start up expenses, Richmond breached the Code Principles related to Deceptive Information, Professional Practice and Responsibilities to the Profession.

**(e) Eric Campbell**

72. Informative Tax carried out accounting work for Eric Campbell and his business 2008438 Ontario Limited, operating as Marquis Automotive (“Campbell”).
73. In 2009 Richmond bought Informative Tax and assumed the accounting work for Campbell.
74. Richmond was responsible for the bookkeeping for Campbell.
75. There were numerous errors in the bookkeeping performed by Richmond or those for whom he was responsible for supervising.

76. CRA conducted a PST audit and determined that more than \$10,000 in PST was incorrectly recorded or omitted from the bookkeeping records which Richmond had either prepared or was responsible for preparing.
77. As a result CRA imposed and Campbell incurred penalties and late filing charges.
78. Campbell requested the return of his source documents which ultimately resulted in the intervention of police.
79. Richmond returned what he said were all the Campbell files in his possession approximately one month after the police visit.
80. Campbell spent time reconstructing what he says were documents given to Richmond which Richmond did not return, including but not limited to historic bank statements.
81. In (a) either making substantial errors in Campbell's bookkeeping records or in failing to adequately supervise his staff who carried out the bookkeeping work for Campbell and (b) refusing or neglecting to return Campbell's client files within a reasonable time of being asked, Richmond breached the Code Principles related to Trust and Duties, Due Care and Professional Judgment and Responsibilities to the Profession.

**(f) Tom Tittle**

82. In or about September 2011 Tittle retained Richmond to file the T2 income tax return for the year ended 31 June 2011 for his business 2115896 Ontario Inc. operating as Magnet Signs.
83. Although Tittle paid Richmond to prepare the T2 return, Richmond never told Tittle that the company owed income tax, never filed the return and never told Tittle that he did not file the return.

84. Tittle did not find out until he retained a new accountant to prepare his 2012 T2 income tax return that the 2011 T2 return had not been filed. Tittle had the new accountant also prepare the 2011 T2 return.
85. As a result Tittle ended up paying two accountants to prepare his 2011 T2 income tax return.
86. CRA charged and Tittle paid a penalty and interest arrears as a result of Richmond's failure to file the 2011 T2 return.
87. Richmond did not have a letter of engagement for the financial statements and notice to reader that he prepared for Magnet Signs for the year ended 30 June 2011.
88. On the financial statements that Richmond did prepare for the company for the year ended 30 June 2011, he showed assets on the liability side of the balance sheet.
89. Further there are items on the statement of income Richmond prepared that should have warranted further investigation. Richmond asked no questions of Tittle concerning, specifically, the increased interest expenses when the company indebtedness did not change, the zero entry for rent and maintenance when Tittle continued to rent space, the zero entry for travel when Tittle continued to travel and the significant reduction in general expenses when Tittle continued to incur the same general range of expenses.
90. In (a) failing to file the 2011 T2 income tax return on time or at all; (b) failing to advise Tittle that Richmond did file the T2 return; (c) failing to advise Tittle that he owed income tax and the amount of tax owing; (d) failing to have a letter of engagement for the compilation work done for Magnet Signs for the year ended 30 June 2011; (e) preparing financial statements with either obvious errors or areas that required some investigation; and (f) in not asking Tittle any questions concerning those areas that warranted some investigation on the financial statements, Richmond breached the Code Principles related to Trust and Duties,

Due Care and Professional Judgment, Professional Practice and Responsibilities to the Profession.

91. Further, Richmond's actions as outlined above, amounted to a breach of the Code Rules 301 (Competence), 303 (Adherence to Acknowledged Principles and Standards), 304 (Terms of Engagement), 402 (Association with Financial Information) and 606 (Detrimental Action).
92. Richmond's conduct as outlined above amounted to professional misconduct.

Counsel for the Discipline Committee withdrew the following particular against the member:

87. Richmond did not have a letter of engagement for the financial statements and notice to reader that he prepared for Magnet Signs for the year ended 30 June 2011.

#### **DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL**

The decision of the Professional Conduct Tribunal was as follows:

#### **DECISION**

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

Having considered the admissions made by the member, the evidence and the submissions of the parties and the onus and standard of proof, the panel of the Professional Conduct Tribunal finds that Mr. Richmond breached the following provisions of the Code of Ethical Principles and Rules of Conduct:

#### **Rule 301 Competence**

A member shall provide to employers and/or clients only those professional services for which he or she has the necessary capabilities, competencies and current skills. 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 practises or is relied upon because of the member's profession.

### **Rule 303 Adherence to Acknowledged Principles and Standards**

Members shall adhere to acknowledged principles and standards of professional practice. In addition, all licensees shall be required to establish, maintain and uphold policies and procedures to ensure that all public accounting services are performed in accordance with generally accepted standards of practice of public accounting. 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 and any tax related matter, taken together with the requirements of any governing statutes, subject to (e) below. That is, a member shall adhere to:

- (a) Generally accepted accounting principles within financial reporting standards unless departure from these principles is fully disclosed;
- (b) Generally accepted auditing standards or general review standards in an assurance engagement;
- (c) Accounting and auditing practices that differ from those recommended by the Association, provided that there is substantial authoritative support for the alternative treatment and the departure from the Association's recommendations is disclosed;
- (d) Accounting and auditing practices not specifically dealt with by the Association, but which are otherwise generally accepted;

(e) 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; and

(f) Accounting, auditing practices, and standards recommended by the Association, including those found in:

i. the *CICA Handbook*; wherein references to the Rules of Conduct/Code of Ethics of the provincial institutes/order appear, this should be read as the *CGA Code of Ethical Principles and Rules of Conduct*;

ii. the *CGA Independence Standard*; and

iii. *CGA Canada's Public Practice Manual*.

#### **Rule 402 Association with Financial Information**

A member shall not be associated with any letter, report, statement, representation, financial statement or tax filing, whether written or oral, which the member knows, or ought to know, is false or misleading, regardless of any disclaimer of responsibility. It is recognized that compliance with this Rule may place a member in a difficult position vis-à-vis the member's employer or client. Nevertheless, the member has an obligation to comply with this Rule.

#### **Rule 606 Detrimental Actions**

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

(b) A member shall, subject to Rules R105 and R201 report to the Association any situation of which the member has sufficient personal knowledge and that the member thinks may be detrimental to the Association or the profession.

**Code Principle - 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 on them by others, and shall not use their privileged position without their principal's knowledge and consent. Members shall strive to be independent of mind and in appearance.

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Members shall not be associated with any information that the member knows, or ought to know, to be false or misleading, whether by statement or omission.

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order or resolution of the board of directors or its committees, under the *Association Bylaws*.

Having considered the admissions made by the member, the evidence and the submissions of the parties and the onus and standard of proof, the panel of the Professional Conduct Tribunal finds that Mr. Richmond did not breach the following provision of the Code of Ethical Principles and Rules of Conduct:

**Rule 304 Terms of Engagement**

It is recommended that a member clearly state in writing to a client the nature and scope of services to be rendered under the terms of his or her engagement. A letter of engagement is mandatory when a member is providing compilation or assurance engagements and encouraged for all other professional engagements.

The panel of the Professional Conduct Tribunal finds the member guilty of professional misconduct.

**PENALTY DECISION AND ORDER OF THE PROFESSIONAL CONDUCT TRIBUNAL**

The penalty decision and order of the Professional Conduct Tribunal was as follows:

**PENALTY DECISION AND ORDER**

The panel deliberated and considered the Discipline Committee’s submissions in terms of penalty and the member’s submissions in terms of penalty. Accordingly, the panel made the following penalty order:

1. Mr. Richmond is reprimanded for his breaches of Rule 301, Rule 303, Rule 402, Rule 606, Code Principle – Trust and Duties, Code Principle – Due Care and Professional Judgment, Code Principle – Deceptive Information, Code Principle – Practice of the Profession, Code Principle – Responsibilities to the Profession, of the Code of Ethical Principles and Rules of Conduct.
2. Mr. Richmond’s membership in the Association is revoked.

3. Mr. Richmond pays a fine of \$9,000, consisting of a \$1,000 fine for each provision of the Code of Ethical Principles and Rules of Conduct that was breached.
4. Mr. Richmond pays costs of \$5,000/day for a 7 day hearing of \$35,000 plus HST of \$4,550 plus disbursements of \$6,392.38 for a total amount of costs of \$45,942.38 to the Association.
5. Publication in the industry magazine, the CPA magazine; online on the CPA website and on the CGA website to the extent it is maintained; and in a local Kitchener-Waterloo newspaper.

### **RELIEF SOUGHT ON APPEAL**

In his Notice of Appeal, Mr. Gordon S. Campbell, sought the following relief:

- i. That the Decision and Reasons for Decision of the Professional Conduct Tribunal dated 4 November 2014 and the Penalty Decision, Order and Reasons of the Professional Conduct Tribunal dated 10 February 2015 be set aside, and that the Appeal Tribunal make appropriate findings of fact and law concerning the allegations, sanctions, and costs in accordance with the hearing evidence and applicable legal principles.
- ii. In the alternative, that the Appeal Tribunal remit the matter back to the Professional Conduct Tribunal for a rehearing (in whole or part) with differently constituted members of the panel concerning the allegations, sanctions and costs.

### **GROUND OF APPEAL**

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

#### *Substantive Allegations*

1. That the Professional Conduct Tribunal erred in law in making findings of professional misconduct based on regulatory provisions which did not sufficiently define the standard of conduct required of members.
2. That the Professional Conduct Tribunal erred in law in coming to conclusions of professional misconduct on alleged counts which were duplicitous of other alleged counts.
3. That the Professional Conduct Tribunal erred in law or mixed fact and law in misapprehending the evidence before it, and in making findings of fact and coming to legal conclusions inconsistent with the evidence.
4. That the Professional Conduct Tribunal erred in law or mixed fact and law by choosing to prefer all of the evidence presented by CGA Ontario over the evidence presented by the Appellant in every respect, even where competing versions of facts were equally reasonable.
5. That the Professional Conduct Tribunal erred in law in unreasonably and without due consideration rejecting all of the detailed *viva voce* and documentary evidence presented by the Appellant in his defence.
6. That the Professional Conduct Tribunal erred in law or mixed fact and law in unreservedly finding, in an identical manner based on identical indicators, that all witnesses presented by CGA Ontario were credible, and that the testimony of the Appellant was incredible, without any weighing of the evidence on particular points.

7. That the Professional Conduct Tribunal erred in law or mixed fact and law by failing to take into account the findings and recommendations of the CGA Ontario investigator – particularly those concerning whether allegations could be substantiated and the reasonableness of explanations offered by the Appellant during the investigation – as set out in his exhaustive investigative report.

8. That the Professional Conduct Tribunal erred in jurisdiction by considering and making findings concerning private business dealings conducted by the Appellant with another non-client accountant.

9. That the Professional Conduct Tribunal erred in law or mixed fact and law in not applying the standard of clear, convincing and cogent evidence on a balance of probabilities to each of the contraventions alleged against the Appellant.

#### *Sanction and Costs*

10. That the Professional Conduct Tribunal erred in law in failing to apply the correct legal principles of sanctioning in professional discipline cases, including failing to give proper consideration to the imposition of lesser sanctions than revocation for a member without prior discipline history who is not accused of criminal misconduct.

11. That the Professional Conduct Tribunal erred in law in imposing penalties on the Appellant that were harsh, excessive and grossly disproportionate to the gravity of the allegations which it found to be substantiated.

12. That the Professional Conduct Tribunal erred in law in coming to the conclusion that revocation was the “only” sanction available to it, when it had been presented with a range of other potentially appropriate sanctions to which it failed to give reasonable consideration.

13. That the Professional Conduct Tribunal erred in law in refusing to take the existence or lack of ungovernability of the Appellant into account in coming to its conclusions on a revocation sanction against the Appellant.

14. That the Professional Conduct Tribunal erred in law in coming to the conclusion that “the member is not suited to membership in the Certified General Accountant Association of Ontario” when “suitability” was not an appropriate standard by which to assess the appropriate sanction for the allegations the Tribunal had found to be substantiated.

15. That the Professional Conduct Tribunal erred in law in imposing a manifestly unreasonable costs award on the Appellant, particularly given that the Appellant had made many factual and documentary admissions prior to the commencement of proceedings.

16. That the Professional Conduct Tribunal erred in law by failing to provide the Appellant with sufficient time to pay the fine and costs imposed, notwithstanding uncontradicted evidence before it of the Appellant’s dire financial circumstances.

In his Factum, counsel for the member indicated that the issues can be summarized into the following seven grounds of appeal:

i. That the Professional Conduct Tribunal erred in law in making findings of professional misconduct based on misinterpretations of regulatory provisions which did not sufficiently define the standard of conduct required of members, or which were inapplicable to the acts alleged to have been committed by the Appellant.

ii. That the Professional Conduct Tribunal erred in law or mixed fact and law in misapprehending the evidence before it, and in making findings of fact and coming to legal conclusions inconsistent with the evidence, including not applying the standard of clear, convincing and cogent evidence on a balance of probabilities to each of the contraventions alleged against the Appellant.

iii. That the Professional Conduct Tribunal erred in law or mixed fact and law by choosing to prefer all of the evidence presented by CGA Ontario over the evidence presented by the Appellant in every respect, even where competing versions of facts were equally reasonable.

iv. That the Professional Conduct Tribunal erred in jurisdiction or in law by considering and making findings concerning private business dealings conducted by the Appellant with another non-client accountant, when no CGAO rules of conduct were applicable to such dealings.

v. That the Professional Conduct Tribunal erred in law in failing to apply the correct legal principles of sanctioning in professional discipline cases, including imposing penalties on the Appellant that were harsh, excessive and grossly disproportionate to the gravity of the allegations which it found to be substantiated, and failing to give proper consideration to the imposition of lesser sanctions than revocation.

vi. That the Professional Conduct Tribunal erred in law in imposing a manifestly unreasonable costs award on the Appellant, particularly given that the Appellant had made many factual and documentary admissions prior to the commencement of proceedings.

vii. That the Professional Conduct Tribunal erred in law by failing to provide the Appellant with sufficient time to pay the fine and costs imposed, notwithstanding uncontradicted evidence before it of the Appellant's dire financial circumstances.

## **SUBMISSIONS OF THE PARTIES**

### **Submissions of the Appellant/Member:**

Counsel for the member requested that the appeal be allowed. Mr. Campbell summarized the issues of the appeal into seven grounds of appeal.

Mr. Campbell, counsel for the member, stated that this is not a case of disputing the facts that were admitted by the member but it is more about a situation of professional relationships that broke down because of communication difficulties. He said the appeal is based on the principle that the Appeal Tribunal is an expert tribunal. The Appeal Tribunal has very broad powers to remedy errors of law and fact and the standard of review to be applied by the Appeal Tribunal is correctness when evaluating the decisions of the Professional Conduct Tribunal.

Mr. Campbell stated that:

- 1) There were no allegations of criminal misconduct; it is instead about professional misconduct, not criminal misconduct.

- 2) There was no allegation or evidence of ungovernability for Mr. Richmond. Ungovernability occurs when complaints are made about the member and he/she does not respond to emails and/or phone calls. Mr. Campbell noted that Mr. Richmond fully co-operated with the Association during its investigation. Mr. Campbell submitted that ungovernability is an important concept when coming to a decision on sanctions to be placed on a member of the Association.
- 3) There is no prior discipline history of Mr. Richmond.
- 4) Mr. Campbell asked the Appeal Tribunal to analyze each allegation to see whether there is evidence to support each allegation. Mr. Campbell suggested that the Appeal Tribunal needed to decide whether the decision of the Professional Conduct Tribunal was reasonable or not. Mr. Campbell indicated that an unreasonable verdict is one that is not supported by evidence. Mr. Campbell asked that the Appeal Tribunal read the entire transcript and examine the totality of the Appeal Book to truly understand the foundation for the decisions of the Professional Conduct Tribunal. Mr. Campbell suggested that if there is no evidence or weak/inconclusive evidence on a point, then it is an unreasonable verdict which amounts to an error of law.
- 5) The appeal is not about errors of fact, but rather errors of law or errors of mixed fact and law.
- 6) There is no debate that errors were made by Mr. Richmond and people under his supervision. Mr. Campbell asked the Appeal Tribunal to consider whether those errors amounted to professional misconduct.
- 7) Mr. Campbell acknowledged that the complainants had reason to be upset.

Mr. Campbell summarized Mr. Richmond's previous education, business experience and volunteer experience including his role as the Chapter Chair for the Cambridge/Kitchener/Waterloo chapter of CGA Ontario. He explained how Mr. Richmond entered into public practice as a career choice and that

he sought to expand his client base. Mr. Campbell indicated that Mr. Richmond encountered issues with his private practice including his staff and assumed several outstanding matters concerning his new clients that had begun prior to his acquiring the book of business. Mr. Campbell admitted that Mr. Richmond had issues of poor communication and his inability to establish/maintain professional relationships. Mr. Campbell also admitted that Mr. Richmond demonstrated poor financial management and poor business management.

Mr. Campbell asked the Appeal Tribunal to conduct a probing examination of each allegation to consider if the evidence that was presented to the Professional Conduct Tribunal really supported the allegations made against Mr. Richmond. Mr. Campbell suggested that the decision of the Professional Conduct Tribunal lacked the support of an analysis that the Professional Conduct Tribunal ought to have conducted in rendering their decision.

Mr. Campbell stated that Mr. Richmond was somewhat overwhelmed by a wall of different allegations for multiple complainants and noted that the Professional Conduct Tribunal had found that 32 allegations had been substantiated.

Mr. Campbell indicated that the appeal does not directly question which facts were or were not proven, but, rather which facts were probative of which allegations. He noted this is a matter of the Certified General Accountants Association of Ontario (Chartered Professional Accountants of Ontario) having to provide clear and convincing proof based on cogent evidence. He admitted that there was no question in this case that errors occurred and that those errors might have led to civil liability for Mr. Richmond, but, not every error merits a finding of professional misconduct. Mr. Campbell submitted that the Professional Conduct Tribunal should have carefully assessed each allegation in respect of each client to

find the allegation had been made out before making a finding of professional misconduct on that allegation. He submitted that there must be sufficiency of reasons to link evidence to each of the allegations. Mr. Campbell stated that in some cases there was no evidence to support the allegations, in other cases there was minimal evidence to support the allegations. Mr. Campbell noted there was a lack of rationale for the decisions made by the Professional Conduct Tribunal. Mr. Campbell also indicated that the Professional Conduct Tribunal did not apply proper sanctioning principles in coming to the conclusion that revocation was the only option open to it.

Mr. Campbell referred to the Appellant's Factum, the Appellant's Book of Authorities and the exhibits that were presented into evidence. He provided the Appeal Tribunal in his Factum with a summary of the various witnesses' testimonies and the allegations made through their respective testimonies. He took the Appeal Tribunal through the law. He referenced the Rules and Code Principles that Mr. Richmond was found to have breached and pointed out where there was no evidence.

Mr. Campbell referenced exhibit 3, volume 1, pg. 129, Summary of Hearing Charges, noting the extent to which Mr. Richmond had been accused of violating the Code of Ethical Principles and Rules of Conduct for the Certified General Accountants Association of Ontario (Chartered Professional Accountants of Ontario) as it relates to the complainants.

Mr. Campbell submitted that the Rules and Code Principles are there for a reason and each one of them stands on its own. He pointed out that for each allegation that a Rule or Code Principle has been breached, there must be sufficient evidence to support that each Rule or Code Principle was breached. He said there was not sufficient evidence to support a breach for some of the Rules and Code Principles. He noted that the Professional Conduct Tribunal in their decision had a duty to explain how each Rule or

Code Principle was breached. Mr. Campbell submitted that if the Appeal Tribunal finds there was error made by the Professional Conduct Tribunal, the Appeal Tribunal has the authority to substitute their findings for that of the Professional Conduct Tribunal. Mr. Campbell asked the Appeal Tribunal to conduct a probing examination of the hearing record to see if it supports the findings of the Professional Conduct Tribunal.

Mr. Campbell challenged the decision of the Professional Conduct Tribunal related to the penalties that were imposed upon Mr. Richmond. He stated that case law clearly indicated that revocation applies only in the most serious cases. He also said that case law supports a penalty of something less than revocation as being appropriate when there is no evidence of criminal misconduct, ungovernability, or a prior discipline history of a serious nature. He submitted that we have no criminal misconduct, no ungovernability and no prior discipline history here.

Mr. Campbell noted that he suggested the following penalty to the Professional Conduct Tribunal and he is making the same suggestion to the Appeal Tribunal if the Appeal Tribunal finds that all the allegations have been proven:

- 1) A lengthy suspension of 12 to 18 months, even up to 24 months. Protection of the public is relevant but that can be accomplished through a suspension and this case does not warrant revocation.
- 2) A fine is appropriate.
- 3) A practice restriction of time-limited period or indefinite period, and that he practise under the supervision of another accountant until there is lifting of the restriction by the Association or the practice restriction be for 24 months. Mr. Richmond should be allowed to serve the public while he respects the restriction placed upon him.

- 4) Costs are appropriate. Generally, full costs are only awarded in circumstances when there is an abuse of process. The cost award should not be punitive. Costs in a range of \$15,000 to \$30,000 would be more appropriate. Mr. Richmond should be given time to pay these costs.
- 5) The ability to pay the fine and costs is not the only factor that needs to be taken into consideration but also the time over which to pay the fine and costs should be considered, given the uncontradicted evidence of Mr. Richmond before the Professional Conduct Tribunal of Mr. Richmond's dire financial circumstances.
- 6) A reprimand is appropriate.

Mr. Campbell submitted that the Appeal Tribunal has a very broad remedial jurisdiction in this case. He led the Appeal Tribunal through an extensive review of his factum. This included a discussion of the seven grounds of appeal: Professional Conduct Tribunal misinterpreted Rules/Code Principles or Rules/Code Principles were inapplicable, Professional Conduct Tribunal did not apply the evidence standard to each of the contraventions and misapprehended the evidence, Professional Conduct Tribunal preferred all of the evidence by CGA Ontario over the evidence presented by Mr. Richmond, Professional Conduct Tribunal made findings concerning private business dealings, Professional Conduct Tribunal imposed penalties that were harsh, excessive and disproportionate, Professional Conduct Tribunal imposed an unreasonable costs award, and Professional Conduct Tribunal failed to give Mr. Richmond time to pay the fine and costs.

Mr. Campbell also discussed the Rules and Code Principles of the Code of Ethical Principles and Rules of Conduct that Mr. Richmond was found to have breached and he analyzed each of them by looking at the case brought forward through the testimony of the witnesses. Mr. Campbell suggested that the Professional Conduct Tribunal failed to correctly interpret and apply the Rules and Code Principles in this

case and there was a lack of evidence presented to the Professional Conduct Tribunal to varying degrees for each of the allegations made. In his submission, the Discipline Committee failed to prove its case on a balance of probabilities for each allegation in this case.

Mr. Campbell submitted that the sanctions imposed by the Professional Conduct Tribunal were unreasonable. Mr. Campbell pointed out that Mr. Richmond did not have any prior discipline history, there was no criminal misconduct, there was no ungovernability and Mr. Richmond accepted responsibility for making errors. Mr. Campbell also pointed out that Mr. Richmond did comply with all directives and requests for information from the Association, Mr. Richmond's conduct was somewhat short-lived, and the impact of Mr. Richmond's conduct on others was unfortunate but not devastating. Mr. Campbell further pointed out that Mr. Richmond admitted the majority of the alleged facts but because of the multifarious nature of the breach allegations, he was not in a position to admit all of the allegations, there were limited extenuating circumstances, and the misconduct is unlikely to recur. On this basis, he submitted that the penalty of revocation was too harsh. Mr. Campbell reinforced his argument by referring to cases. He submitted that the Professional Conduct Tribunal erred in not applying progressive discipline rather than the ultimate penalty of revocation for Mr. Richmond.

Mr. Campbell stated that the Professional Conduct Tribunal erred in imposing an unreasonable costs award against Mr. Richmond and further erred by failing to provide Mr. Richmond with sufficient time to pay the fine and costs that were imposed by the Professional Conduct Tribunal. He pointed out that there was ample evidence before the Professional Conduct Tribunal that Mr. Richmond was in dire financial circumstances at the time of the sanction hearing, and had a very limited ability to pay.

In summary, Mr. Campbell asked that the Decision and Reasons for Decision of the Professional Conduct Tribunal dated November 4, 2014 and the Penalty Decision, Order and Reasons of the Professional Conduct Tribunal dated February 10, 2015 be set aside, and that the Appeal Tribunal make appropriate findings of fact and law concerning the allegations, sanctions, and the costs in accordance with the hearing evidence and applicable legal principles. Mr. Campbell asked, alternatively, that the Appeal Tribunal remit the matter back to the Professional Conduct Tribunal for a fresh hearing concerning the allegations, sanctions and costs with a differently constituted panel.

**Submissions of the Respondent/Discipline Committee:**

Karen E. Jolley, counsel for the Discipline Committee, was asked to commence her presentation to the Appeal Tribunal.

Counsel for the Discipline Committee requested that the appeal be dismissed.

Ms. Jolley pointed out that Mr. Richmond was found guilty of 32 instances and 9 breaches of the Code of Ethical Principles and Rules of Conduct:

- 1) Competence (Rule 301) – breached with respect to three separate clients;
- 2) Adherence to acknowledged principles and standards (Rule 303) - breached with respect to three separate clients;
- 3) Association with financial information (Rule 402) – breached with respect to two separate clients;
- 4) Detrimental action (Rule 606) – breached with respect to three separate clients;
- 5) Trust and Duties (Code Principle) – breached with respect to five separate clients;

- 6) Due Care and Professional Judgment (Code Principle) – breached with respect to four separate clients;
- 7) Deceptive Information (Code Principle) – breached with respect to two separate clients and one professional colleague;
- 8) Practice of the Profession (Code Principle) – breached with respect to three separate clients and one professional colleague;
- 9) Responsibilities to the Profession (Code Principle) – breached with respect to four separate clients and one professional colleague.

Ms. Jolley indicated that the complaints came from five separate clients and one professional colleague of Mr. Richmond. Ms. Jolley noted there were 33 allegations of breaches of the Code, with 32 instances of breaches of the Code proven and one withdrawn. She noted that these were very serious and very significant allegations.

Ms. Jolley noted that the Professional Conduct Tribunal identified six categories of allegations against Mr. Richmond:

- 1) Failing to do the work that he had been retained by clients to do;
- 2) Representing to clients that he had done the work when he had not;
- 3) Charging clients for amounts they had not agreed to pay;
- 4) Refusing to return client files to clients, which resulted in clients involving either the Association or the police to have their property returned;
- 5) Withholding material information from a professional colleague and from a client with whom Mr. Richmond entered into business transactions, to the financial detriment of each of the colleague and the client; and

- 6) Causing clients and a professional colleague significant financial harm through financial penalties and interest charged as a result of the filings not made for clients by Mr. Richmond and through defaulting on his financial obligations to a client and a professional colleague.

Ms. Jolley noted that the Professional Conduct Tribunal had analyzed the evidence that was heard over six days, including testimony from seven witnesses and material from 48 exhibits. She indicated that the Professional Conduct Tribunal made findings of credibility concerning the witnesses they heard and delivered their decision. She also indicated that a separate day of submissions on penalty followed and a separate decision was released by the Professional Conduct Tribunal.

Ms. Jolley submitted that both of the decisions of the Professional Conduct Tribunal were well-reasoned. She pointed to many findings of fact in the decision by the Professional Conduct Tribunal, and to the evidence that supported the findings of the Professional Conduct Tribunal. She referred specifically to the findings of the Professional Conduct Tribunal regarding Competence (Rule 301), Adherence to Acknowledged Principles and Standards (Rule 303), Association with Financial Information (Rule 402), Detrimental Actions (Rule 606), Trust and Duties (Code Principle), Due Care and Professional Judgment (Code Principle), Deceptive Information (Code Principle), Practice of the Profession (Code Principle), and Responsibilities to the Profession (Code Principle). In each instance, Ms. Jolley referenced the clients or colleague that were affected by the breaches of the Code of Ethical Principles and Rules of Conduct.

Ms. Jolley reviewed the Professional Conduct Tribunal's decision on penalty:

- 1) Reprimand for breaches of nine Code and Rule provisions;
- 2) Revocation of membership;

- 3) A fine of \$9,000, being \$1,000 for each of the nine Code and Rule violations;
- 4) Costs of \$45,924.38; and
- 5) Publication in CPA Magazine, online on the CPA website and the CGA Ontario website to the extent it is maintained and in a local Kitchener-Waterloo newspaper.

Ms. Jolley stated that the standard of review of the Professional Conduct Tribunal's decision on penalty is reasonableness. She said this standard gives deference to the findings of the Professional Conduct Tribunal. She indicated that on an appeal, the standard is not whether it would have imposed the same or a different penalty, but whether the decision on penalty is reasonable in light of the outcome and the reasons. Ms. Jolley submitted that the Professional Conduct Tribunal's decision on penalty was not only reasonable but was correct, as it correctly and reasonably considered and applied the relevant factors to determine the appropriate penalty.

Ms. Jolley emphasized that the conduct of Mr. Richmond was serious in nature and the impact of his conduct on his clients was significant. Ms. Jolley referred to Mr. Richmond's clients facing interest and penalties from CRA, Mr. Richmond's clients were not able to get their own documents returned, and had to involve police or had the police called on them when they wanted their own source documents back or had to retain lawyers to get their documents back. Ms. Jolley also noted that the Association was contacted for help and in one instance a peace bond was obtained to ensure Mr. Richmond stayed away from the client.

Ms. Jolley stated that the penalty imposed by the Professional Conduct Tribunal is consistent with the Association's statutory obligation to promote and protect the public interest by governing and regulating its members including regulating their practice, competence and professional conduct.

Ms. Jolley described further how the actions of Mr. Richmond that were considered by the Professional Conduct Tribunal warranted the penalty decision reached. She referred to information from her Factum, the Factum of the Respondent.

On the issue of the Appeal Tribunal's role in this appeal, Ms. Jolley noted that the decisions of the Professional Conduct Tribunal are entitled to deference from the Appeal Tribunal. She submitted that the decisions of the Professional Conduct Tribunal can only be set aside if the Appeal Tribunal finds the Professional Conduct Tribunal has made an obvious error of fact or law or in the application of relevant accounting principles or assurance standards. She indicated that absent such error, the decisions of the Professional Conduct Tribunal should stand. Ms. Jolley submitted that not only was there no such error, the decisions of the Professional Conduct Tribunal were unequivocally correct.

Ms. Jolley submitted in her Factum that the Appeal Tribunal should not retry the matter before it or substitute its own judgment and determinations for those of the Professional Conduct Tribunal. She submitted that the Appeal Tribunal should only substitute its opinion for that of the Professional Conduct Tribunal if the Professional Conduct Tribunal's decision contravenes law or policy. Instead, she indicated, the Appeal Tribunal is required to consider the record before it and determine whether the Professional Conduct Tribunal committed any obvious errors of fact or law in its consideration of the evidence. Ms. Jolley indicated that deference is owed to the Professional Conduct Tribunal in its consideration of the evidence, of sanctions and costs.

Ms. Jolley requested that this appeal be dismissed with costs.

**Reply Submissions of the Appellant/Member:**

Mr. Campbell made brief submissions in reply. Mr. Campbell noted that the sanctions imposed by the Professional Conduct Tribunal were outside the range of reasonableness.

**Costs Submissions of the Appellant/Member:**

Mr. Campbell, on behalf of the Appellant, acknowledged that the total amount claimed by the Discipline Committee for costs of the appeal, namely \$12,372.29, was not unreasonable, and accepted the statement of the Respondent that “Actual costs were more than double that amount.” Mr. Campbell suggested that should the Appeal Tribunal decide to award any costs against the Appellant in this matter, the amount should be rounded down to \$10,000 all inclusive, as is often the practice of appellate courts in fixing costs with round numbers.

Mr. Campbell submitted that no costs should be ordered against the Appellant, regardless of the outcome of the appeal. He outlined the following factors favouring no costs being awarded in this appeal:

1. The importance of the appeal issues, including novel issues that required confirmation from the Appeal Tribunal;
2. The already very substantial costs award to which the Appellant is subject from the first instance hearing;
3. The Appellant’s ability to pay.

Concerning the importance of the issues, Mr. Campbell pointed out that the Respondent had confirmed in her costs outline that the appeal raised important issues such as the test on appeal. Mr. Campbell pointed out that, in his opinion, numerous legal questions were left unanswered by the decision of the

Professional Conduct Tribunal, such that he felt that an appeal was required to clarify those legal issues. He noted that there was not a great deal of decided appellate case law concerning Professional Conduct Tribunal proceedings (as compared to other criminal and civil proceedings), and thus the Appellant's grounds of appeal could all at least be said to be arguable grounds. Mr. Campbell submitted that none of the grounds of appeal could be said to be frivolous or completely devoid of merit, regardless of the Appeal Tribunal's ultimate findings on the appeal grounds.

Mr. Campbell submitted that the already substantial costs award to which the Appellant is subject from the first instance hearing also favoured no awarding of costs in this appeal. Mr. Campbell submitted that even if the Appeal Tribunal rejected the ground of appeal relating to the hearing costs award being excessive, it was still open to the Appeal Tribunal to consider whether costs of the appeal should be imposed in light of the already very substantial award in the original hearing. Mr. Campbell noted that the totality of hearing and appeal costs awards is an important consideration. He submitted that maintaining first instance hearing costs at the level they were imposed, and heaping more appeal costs on top of those costs, would in totality result in an overall unreasonable costs award against the Appellant in these circumstances.

Mr. Campbell pointed out that the Appellant is experiencing significant challenges in meeting his financial obligations. Mr. Campbell noted that these challenges have been exacerbated by the substantial costs award already made against him at the first instance hearing for which he was not provided with any time to pay. Mr. Campbell conceded that the ability to pay is not the sole determinant in a costs award, however, as the administrative tribunal realm involves a more flexible approach to issues including costs issues and involves special rules (like the inability to seek costs against the Discipline Committee), Mr. Campbell submitted that ability to pay is a factor that needed to be

considered. He noted that a small costs award against someone with little ability to pay could have a much greater impact than a large costs award against someone with a large ability to pay.

**Costs Submissions of the Respondent/Discipline Committee:**

Counsel for the Discipline Committee requested that Stephan Richmond be ordered to pay costs of the appeal in the amount of \$10,000 for fees, HST of \$1,300 and disbursements of \$1,072.29 for a total costs contribution of \$12,372.29. Counsel for the Discipline Committee in her written submission indicated that the actual fees incurred were \$24,584.28 with HST, before disbursements. Ms. Jolley noted that even on a partial indemnity rate, such as is used by the courts, the fees were \$18,814.50 with HST. She submitted that an order in the amount requested would cover less than half of the actual costs incurred.

Ms. Jolley submitted that the appeal record was substantial, involving four volumes of exhibits from the original hearing as well as 9 volumes of transcripts from the evidence of 6 witnesses and two days of argument.

Ms. Jolley noted that while she was familiar with the evidence, as she had been counsel at the hearing as well, in light of the position taken by the Appellant that there were insufficient links between the facts found and the breaches found by the Professional Conduct Tribunal, she was still required to review in some depth the evidence from the hearing to demonstrate that there was support for each breach found.

In addition, Ms. Jolley pointed out that research was required on the standard of appeal, given the Appellant's position that the Appeal Tribunal could intervene unless the decision of the original hearing

tribunal was correct. Ms. Jolley submitted that it was the position of the Discipline Committee, and case law was presented in support, that the Appeal Tribunal could only intervene if the decision of the original tribunal was unreasonable. She submitted that if the decision was within the range of reasonable outcomes, the decision of the original tribunal was entitled to deference or respect.

Ms. Jolley added that the test on appeal was in issue, and therefore, significant legal research was required to demonstrate that the test on appeal is one of reasonableness and not correctness. Ms. Jolley identified some of the important issues involved in the appeal: public protection, significant breaches, involvement of civil litigation, police and criminal court system over member conduct. Ms. Jolley noted that the appeal was important to uphold the penalty of revocation.

## **DECISION**

Having considered the documentation provided and the submissions of the parties, the panel finds that the Appellant has not satisfied this Appeal Tribunal panel that there is an obvious error of fact, law or the application of relevant accounting principles or assurance standards. The panel orders that Mr. Stephan Richmond's appeal of the decisions of the Professional Conduct Tribunal dated November 4, 2014, and February 10, 2015 be dismissed.

The panel orders that Stephan Richmond pay costs in the amount of \$12,372.29, representing \$10,000 for fees, HST of \$1,300, and disbursements of \$1,072.29 to The Certified General Accountants Association of Ontario (Chartered Professional Accountants of Ontario).

## **REASONS FOR DECISION**

Having considered the documentation provided and the submissions of the parties, the Appeal Tribunal is not persuaded that there is an obvious error of fact, law or the application of relevant accounting principles or assurance standards. The reasons for our decision as it applies to the seven grounds on which the Appellant based his appeal are set out below.

Ground of Appeal (i)

That the Professional Conduct Tribunal erred in law in making findings of professional misconduct based on misinterpretations of regulatory provisions which did not sufficiently define the standard of conduct required of members, or which were inapplicable to the acts alleged to have been committed by the Appellant.

This Ground of Appeal is dismissed. In our view, the evidence supports the findings of the Professional Conduct Tribunal that Mr. Richmond breached nine provisions of the Code of Ethical Principles and Rules of Conduct and engaged in professional misconduct. The Professional Conduct Tribunal decision sets out sufficient detailed descriptions of the content of each provision in the Code of Ethical Principles and Rules of Conduct that Mr. Richmond was found to have breached, and describes how Mr. Richmond violated each provision. The Appeal Tribunal found no error in the Professional Conduct Tribunal's descriptions of each provision or in the Professional Conduct Tribunal's application of each provision to Mr. Richmond's conduct. The Professional Conduct Tribunal found that the evidence presented supported the findings that they made and that was a reasonable conclusion.

Ground of Appeal (ii)

That the Professional Conduct Tribunal erred in law or mixed fact and law in misapprehending the evidence before it, and in making findings of fact and coming to legal conclusions

inconsistent with the evidence, including not applying the standard of clear, convincing and cogent evidence on a balance of probabilities to each of the contraventions alleged against the Appellant.

This Ground of Appeal is dismissed. We are not persuaded that the Professional Conduct Tribunal made any obvious errors of fact or law, nor that it applied an incorrect standard of proof in coming to the findings that it made on the breaches and on professional misconduct. In addition, the findings made by the Professional Conduct Tribunal on the facts, the breaches and on professional misconduct were consistent with and supported by the evidence.

Ground of Appeal (iii)

That the Professional Conduct Tribunal erred in law or mixed fact and law by choosing to prefer all of the evidence presented by CGA Ontario over the evidence presented by the Appellant in every respect, even where competing versions of facts were equally reasonable.

This Ground of Appeal is dismissed. We are not persuaded that the Professional Conduct Tribunal erred in preferring the evidence presented by the Discipline Committee. The Professional Conduct Tribunal heard the evidence of many witnesses, observed these witnesses during their testimony and made findings concerning their credibility. It is not the proper function of the Appeal Tribunal to review and re-assess the testimony presented by the parties to this hearing, and to come to our own conclusions regarding credibility, unless we believe the Professional Conduct Tribunal made unreasonable findings of credibility. The Appeal Tribunal is required to provide deference, and we do defer, to the findings of credibility made by the Professional Conduct Tribunal.

#### Ground of Appeal (iv)

That the Professional Conduct Tribunal erred in jurisdiction or in law by considering and making findings concerning private business dealings conducted by the Appellant with another non-client accountant, when no CGAO rules of conduct were applicable to such dealings.

This Ground of Appeal is dismissed. We are not persuaded that the Professional Conduct Tribunal committed any obvious error in finding that Mr. Richmond's conduct in his dealings with another certified general accountant, who was not a client, amounted to a breach of the Code of Ethical Principles and Rules of Conduct and professional misconduct. In her advice to the panel, Ms. Braverman indicated that disciplinary tribunals have found a member guilty of professional misconduct for misleading a colleague such as *Regular v. Law Society of Newfoundland and Labrador*, where a finding of professional misconduct was made against a lawyer for misleading another lawyer colleague. This caselaw provides justification for the Professional Conduct Tribunal to have found Mr. Richmond guilty of breaching the Code and engaging in professional misconduct for misleading his colleague, Ms. Phillips.

#### Ground of Appeal (v)

That the Professional Conduct Tribunal erred in law in failing to apply the correct legal principles of sanctioning in professional discipline cases, including imposing penalties on the Appellant that were harsh, excessive and grossly disproportionate to the gravity of the allegations which it found to be substantiated, and failing to give proper consideration to the imposition of lesser sanctions than revocation.

This Ground of Appeal is dismissed. We are not persuaded that the Professional Conduct Tribunal's decision regarding the penalties to be imposed was based on any failure to apply correct legal principles, nor that it was harsh, excessive or grossly disproportionate in relation to Mr. Richmond's conduct. The Professional Conduct Tribunal was in the best position to assess the totality of the evidence having heard the witnesses testify, and to make a determination regarding the penalties that are appropriate based on the findings that it made on the breaches and on professional misconduct. In exercising its authority, the Professional Conduct Tribunal has a responsibility to protect the Association and the public and to ensure that members of CGA Ontario serve the public in a responsible manner. We have not been persuaded that the penalties in this case are a result of obvious error or are in any way unreasonable. The Appeal Tribunal is required to provide deference, and we do defer, to the sanctions imposed by the Professional Conduct Tribunal. The Appeal Tribunal has determined that the penalties imposed by the Professional Conduct Tribunal were reasonable.

Ground of Appeal (vi)

That the Professional Conduct Tribunal erred in law in imposing a manifestly unreasonable costs award on the Appellant, particularly given that the Appellant had made many factual and documentary admissions prior to the commencement of proceedings.

This Ground of Appeal is dismissed. We are not persuaded that the Professional Conduct Tribunal's decision on costs contained an obvious error of law. The Appeal Tribunal has determined that the costs imposed by the Professional Conduct Tribunal were reasonable. The quantum of the costs award as well as the daily rate were reasonable and supported by other decisions of the Professional Conduct Tribunal such as *Certified General Accountants Association of Ontario v. Korobok*.

Ground of Appeal (vii)

That the Professional Conduct Tribunal erred in law by failing to provide the Appellant with sufficient time to pay the fine and costs imposed, notwithstanding uncontradicted evidence before it of the Appellant's dire financial circumstances.

This Ground of Appeal is dismissed. We are not persuaded that the Professional Conduct Tribunal made an obvious error of law, in failing to provide Mr. Richmond with time to pay the fine and costs imposed. It is clear, given that this is referred to in the penalty decision, that the Professional Conduct Tribunal considered Mr. Richmond's financial circumstances, in the course of coming to its penalty decision and in declining to provide that the fine and costs could be paid over time (i.e., within 2-3 years).

**Costs**

The Appeal Tribunal has considered the brief written submissions regarding the costs of the appeal that were provided at our request by both counsel.

The Appeal Tribunal has the authority under the legislation to order a member who is an Appellant to pay costs to the Discipline Committee. The legislation only permits costs to be awarded to the Discipline Committee, not against the Discipline Committee.

The Appellant has asked that no costs be awarded against the Appellant, but, if the Appeal Tribunal decides to award costs of this appeal, then the amount of costs ordered should be rounded down from the \$12,372.29 requested by the Discipline Committee, to \$10,000 all inclusive.

The Appellant acknowledged that the total amount of costs asked for by the Discipline Committee was not unreasonable, and accepted the Discipline Committee's statement that the amount requested was less than half of the actual costs that were incurred by the Discipline Committee in preparing for and arguing the appeal.

The factors which the Appellant asked the Appeal Tribunal to consider in deciding whether or not costs should be awarded in this appeal are: serious and important issues were raised in the appeal and the appeal was not frivolous, the Appellant is already subject to a substantial costs award from the Professional Conduct Tribunal decision, and, finally, the Appellant is in strained financial circumstances.

The legislation clearly contemplates that costs of an appeal may be awarded in order to require a member, in appropriate circumstances, to pay some of the costs incurred by the Association arising from that appeal.

While the issues raised by the Appellant were not frivolous, the Appeal Tribunal did not believe that this appeal raised significant public interest issues or that the issues raised and argued on the appeal were so compelling as to make it inappropriate to call on the Appellant to make a contribution to the costs incurred by the Discipline Committee.

The Appeal Tribunal also does not believe that a costs order in this case is unreasonable or threatens to deter members from bringing legitimate appeals.

In the circumstances, the Appeal Tribunal considers that the amount of \$12,372.29, which was requested by the Discipline Committee, is an appropriate and reasonable amount. Accordingly, the Appeal Tribunal has ordered that the Appellant pay costs in that amount.

Dated this 9th day of November, 2015

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

  
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Daniel Coghlan