

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

**IN THE MATTER OF a Complaint against Donald Bennett**

B E T W E E N :

The Discipline Committee of the CGAO

- and -

Donald Bennett

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**Decision of the Professional Conduct Tribunal**

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Members of the Tribunal: D. Alan Jones  
Dan Coghlan  
David Handley

Appearances: Karen Jolley, counsel for the Discipline Committee  
Cynthia Petersen, counsel for the Tribunal

Hearing Date: December 3, 2007

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**Introduction**

1. This matter concerns certain disciplinary charges against Donald Bennett, a member of the Certified General Accountants Association of Ontario.
2. Pursuant to a Notice of Hearing dated November 16, 2005, Mr. Bennett was advised by the Registrar of the Professional Conduct Tribunal that the Discipline Committee of the Certified General Accountants Association of Ontario was bringing charges

against him under the Association's *Code of Ethical Principles and Rules of Conduct*. The charges included allegations that Mr. Bennett had engaged in criminal conduct involving fraud, forgery, breach of trust, theft and fraudulent impersonation.

3. At that time, a hearing before the Professional Conduct Tribunal was scheduled for December 19, 2005. There were, however, outstanding criminal charges against Mr. Bennett and the Discipline Committee sought an adjournment of the discipline hearing pending the outcome of Mr. Bennett's criminal trial. Mr. Bennett did not object to the adjournment and it was granted by the Tribunal.
4. Mr. Bennett was tried on the criminal charges against him. He was acquitted of some of the charges and was convicted of a number of offences (outlined in more detail below). He was sentenced to a period of 3 years incarceration and was ordered to pay restitution to his victims.
5. A revised Notice of Hearing was subsequently issued to the parties on November 1, 2007, advising that the discipline hearing before the Professional Conduct Tribunal would proceed on December 3, 2007. The Notice was delivered to Mr. Bennett by registered mail at Millhaven Penitentiary, where he was imprisoned. The Notice advised Mr. Bennett, among other things, that if he failed to appear at the time and place scheduled for the hearing, the hearing could be conducted in his absence.
6. Mr. Bennett did not attend the hearing on the appointed date. He did not contact the Registrar of the Professional Conduct Tribunal or Counsel for the Discipline Committee to request a subpoena or otherwise make arrangements for release from

the penitentiary in order to attend the hearing. Nor did he seek an adjournment of the proceeding. Satisfied that Mr. Bennett had received adequate notice of the hearing, the Tribunal proceeded with the hearing on December 3, 2007 in his absence.

### **Particulars of the Charges Against Mr. Bennett**

7. Mr. Bennett is alleged to have violated the following Rules of the Association's *Code of Ethical Principles and Rules of Conduct*:

#### Rule 101 – Discredit

A member shall not permit the member's firm name or the member's name to be used with, participate in, or knowingly provide services, to any practice, pronouncement, or act that would be of a nature to discredit the profession.

#### Rule 102 – Unlawful Activity

A member shall not permit the member's firm name or the member's name to be used with, participate in, or provide services to, any activity that the member knows, or which a reasonably prudent person would believe, to be unlawful.

#### Rule 606 – Detrimental Actions

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

#### 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 and Similar Offences

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

- a. fraud, theft, forgery or income tax evasion
- b. violation of the provisions of any securities legislation;
- c. or 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 association with, the Association.

### The Evidence

8. At the hearing, counsel for the Discipline Committee submitted into evidence a certificate of conviction demonstrating that, on June 26, 2007, Mr. Bennett was convicted of a number of criminal offences, namely:
  - a. multiple counts of defrauding George Congdon and Accurate Millwork Inc. of monies of a value not exceeding \$5,000, contrary to Section 380(1)(b) of the *Criminal Code*;
  - b. multiple counts of defrauding George Congdon and Accurate Millwork Inc. of monies of a value exceeding \$5,000, contrary to Section 380(1)(a) of the *Criminal Code*;
  - c. using forged documents, to wit Accurate Inc. company cheques, as if they were genuine, contrary to Section 368(1)(a) of the *Criminal Code*;
  - d. multiple counts of theft of monies of a value not exceeding \$5,000 from Deborah McNevin, contrary to Section 334(b) of the *Criminal Code*;
  - e. theft of monies of a value exceeding \$5,000 from Deborah McNevin, contrary to Section 334(a) of the *Criminal Code*; and
  - f. multiple counts of fraudulently impersonating George Congdon with intent to obtain certain property, to wit monies, contrary to Section 403(b) of the *Criminal Code*.

9. According to the Information (court document) outlining the criminal charges for which Mr. Bennett was convicted, the offences occurred on various occasions between March 1998 and September 2002.
10. As a result of the convictions, Mr. Bennett was sentenced to three years penitentiary incarceration and was ordered to make restitution to Deborah McNevin in the amount of \$16,500 and to make restitution to George Congdon in the amount of \$48,931.65.
11. Counsel for the Discipline Committee also submitted into evidence a copy of the court Judgement from Mr. Bennett's criminal trial, as well as the Reasons for Sentence issued by the criminal court. Based on the Court's findings, the Tribunal accepts the following facts.
12. George Congdon was the sole proprietor of Accurate Millwork Inc., a company that installs millwork in large commercial projects, such as hospitals. He befriended Mr. Bennett in 1983 and eventually retained him to do accounting work. Mr. Bennett provided accounting services with respect to the completion and filing of Mr. Congdon's personal income tax returns. He also did part-time accounting work for the company.
13. Over time, Mr. Congdon became increasingly dependent on Mr. Bennett to manage the day-to-day financial affairs of the company. Mr. Bennett looked after Accurate Millwork Inc's payroll, government remittances, union remittances, taxes and GST. He became an employee of the company in 1998 and effectively assumed the

responsibilities of the comptroller of the company. Mr. Congdon was frequently absent and Mr. Bennett was therefore able to work without supervision or scrutiny.

14. By 1998, Mr. Bennett's personal relationship with Mr. Congdon was such that Mr. Congdon named him as the Executor of his Estate and his Attorney for property.

15. Mr. Bennett abused the friendship that he had developed with Mr. Congdon, as well as the position of trust that he held in the company, to defraud George Congdon and Accurate Millwork Inc. of substantial sums of money. He surreptitiously removed funds from the company's account on the basis of a non-existent shareholder's loan; he made unauthorized use of a company credit card for personal gain; he impersonated George Congdon in telephone transactions with a bank in order to collapse RRSP's in Mr. Congdon's name; and he used company cheques that were payable to him, with the knowledge that they had been forged.

16. Similarly, Mr. Bennett befriended Deborah McNevin and was eventually retained by her to prepare her annual income tax returns. Over time, they became such good friends that Ms. McNevin appointed him as her daughter's guardian and as Executor of her Estate.

17. Ms. McNevin was living out of the country and she asked Mr. Bennett to look after her finances in London, Ontario, where she had investments and owned several residences. She had opened a joint bank account with Mr. Bennett in 1997/98 for the purpose of enabling Mr. Bennett to manage her financial affairs while she was out of

the country. From this account, Mr. Bennett would withdraw funds to pay incidental bills on Ms. McNevin's behalf.

18. All of the funds in the joint account belonged to Ms. McNevin and she did not give Mr. Bennett authorization to withdraw any funds for personal use. In 2001 and 2002, while Ms. McNevin was living in Mexico, Mr. Bennett made several unauthorized withdrawals from the account. He claimed that the funds had been used for investment purposes (on Ms. McNevin's behalf) and to reimburse him for his services, but there was no agreement to compensate Mr. Bennett and no investments were made in Ms. McNevin's name. On four separate occasions, money was transferred out of the joint account without Ms. McNevin's authorization and was wrongfully converted to Mr. Bennett's own personal use.
19. The total quantifiable loss to Mr. Congdon, Accurate Millwork Inc., and Deborah McNevin was in excess of \$150,000.

### **Findings**

20. Based on the evidence presented, the Tribunal finds that Mr. Bennett violated Rule 101 (knowingly participating in a practice that discredits the profession), Rule 102 (engaging in activity that the member knows to be unlawful) and Rule 606 (participating in an action that is detrimental to the Association and the profession) of the Association's *Code of Ethical Principles and Rules of Conduct*.

21. We have not found a breach of Rule 607, since there was no evidence presented at the hearing to prove that Mr. Bennett failed to inform the Association of his criminal convictions.

### **Penalties**

22. The Discipline Committee submitted that Mr. Bennett should be expelled from the Association as a result of his professional misconduct. The Committee also asked that we order Mr. Bennett to pay a \$2,000 fine and costs in the amount of \$2,000.

23. In our view, expulsion is warranted in these circumstances. There are many aggravating factors in this case that militate in favour of the most serious of penalties: the amount of monies involved, the type of monies involved (i.e., personal savings, RRSPs, and private monies saved by individuals for their future financial security), the length of time over which the offences were perpetrated, the high number of dishonest transactions, the fact that Mr. Bennett was caught and did not voluntarily terminate his own activities, the breach of trust involved in the transactions, the degree of planning and premeditation involved in the crimes, and the fact that the dishonest activities were directly related to Mr. Bennett's profession as an accountant.

24. We are also of the view that a fine is appropriate in the circumstances of this case, as it serves the purposes of both specific and general deterrence.

25. In her submissions, counsel for the Discipline Committee relied on a number of precedents, specifically cases in which members were expelled from the Association and fined for fraudulent conduct similar to Mr. Bennett's activities.



26. We agree with the following passage from *CGAO v. Conway* (decision of the Appeal Tribunal dated April 22, 1999) and find that it is applicable to this case:

When improper actions are taken by a member... his honesty and integrity will be in question, and his professional designation, the Certified General Accountants Association, and the profession are tarnished. ... [The] Association 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. Conway'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.

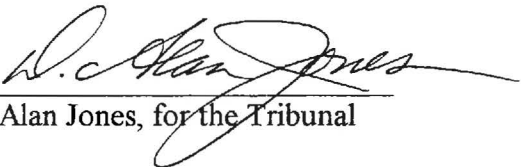
27. We also adopt the following reasoning of the Tribunal from *CGAO v. Fitchett* (decision of the professional Conduct Tribunal dated May 19, 2005):

It is our conclusion that an expulsion order is necessary in order to actively protect the public interest and be seen to be protecting the public interest. The Association, in discharging its obligations as a self-regulating profession, must punish this misconduct in a manner that not only ensures that Mr. Fitchett appreciates the significance of his improper actions, but also ensures that other members of the Association will be deterred from any kind of like conduct. The public must be assured that, should members of the Association act inappropriately, such behaviour will not be condoned or accepted from any member of the Association.

28. In the circumstances of this case, we unanimously agree that the penalties sought by the Discipline Committee are appropriate. We therefore order that Mr. Bennett be expelled from the Association and pay a fine to the Association in the amount of \$2,000. (We would have also ordered compensation to his victims, but for the fact that a restitution order has already been made by the court.)

29. We find that this is an appropriate case for an order of costs. Although Mr. Bennett did not appear at the hearing to defend himself, he took no steps to cooperate with the Discipline Committee in order to shorten the proceedings (eg. by stipulating to certain facts). The Committee was required to incur costs in order to prepare and present its case. Mr. Bennett is therefore ordered to pay the Association \$2,000 toward legal fees incurred in connection with the disciplinary proceeding.

Dated this 10<sup>th</sup> day of December 2007,

  
D. Alan Jones, for the Tribunal

#### NOTICE

This decision of the Professional Conduct Tribunal may be appealed to an Appeal Tribunal within thirty (30) days of the sending of this decision. The Notice of Appeal must be in writing, addressed to the Secretary of the Association (Certified General Accountants Association of Ontario, 240 Eglinton Avenue East, Toronto, Ontario, M4P 1K8) and must contain the grounds for the appeal.

**TAKE NOTE THAT, in an appeal, the Appellant bears the onus of obtaining copies of the transcript of the hearing before the Professional Conduct Tribunal for the Appeal Tribunal (4 copies) and for the Respondent (1 copy). According to Article 9 of By-Law Four, a Notice of Appeal that fails to contain the grounds for the appeal, together with evidence that demonstrates that a transcript of the hearing giving rise to the appeal has been ordered, shall be invalid.**