

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

**IN THE MATTER OF Jamie Welsford, a member of
The Certified General Accountants Association of Ontario**

B E T W E E N:

The Discipline Committee of The Certified General Accountants Association of Ontario

- and -

Jamie Welsford

DECISION AND REASONS FOR DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL

Members of the Professional Conduct Tribunal Panel:

Daniel Coghlan, CGA, Chair
Dave Laventure, CGA
Victoria Corbett, Public Representative

Appearances:

Karen Jolley, Counsel for the Discipline Committee
Ted Wigdor, Staff of the Certified General Accountants Association of Ontario

Jamie Welsford, Member
Ian Stauffer, Counsel for Jamie Welsford
Cale Harrison, Counsel for Jamie Welsford

Lisa Braverman, Registrar and Independent Legal Counsel to the Professional Conduct Tribunal

Hearing Date:

September 23, 2011, Toronto

OVERVIEW

A panel of the Professional Conduct Tribunal of The Certified General Accountants Association of Ontario heard this matter on September 23, 2011, at Toronto. At the conclusion of the hearing, the panel reserved its decision.

PRELIMINARY MATTERS

The Professional Conduct Tribunal began the hearing at 1000 hours, the designated time established in the Notice of Hearing.

The Chair introduced himself and the other two members of the Professional Conduct Tribunal, Mr. Dave Laventure, CGA and Ms. Victoria Corbett, the non CGA on the Tribunal. Ms. Corbett would be the Tribunal member to swear/affirm witnesses.

The Chair of the Tribunal stated that in July 2011, when he became aware of the particulars of this Tribunal he self-identified to Ms. Braverman, that he was employed in the same industry as Mr. Welsford and that the industry as a community is a small one. As such it is not unreasonable for his and Mr. Welsford's paths to have crossed at events that were of specific interest to them both. The Chair disclosed that he spoke at some of these events and may have from time to time interacted with Mr. Welsford in a passing fashion, but in no way did he have any professional or personal relationship with Mr. Welsford or any prior knowledge of any of the allegations made against Mr. Welsford. The Chair further disclosed that he had a working relationship with the CEO of the organization that filed the complaint to CGAO concerning Mr. Welsford.

Given the Chair's disclosure, Ms. Braverman contacted the legal counsel for Mr. Welsford and the Certified General Accountants Association of Ontario to ascertain if either party had any concerns about the Chair's involvement in this Tribunal. Mr. Harrison, representing Mr. Welsford and Ms. Jolley, representing the Discipline Committee responded to Ms. Braverman that neither of them had an objection to Mr. Coghlan continuing on as Chair of this Professional Conduct Tribunal panel. The other members of the Tribunal, Mr. Laventure and Ms. Corbett did not object to his continued involvement as Chair of the Tribunal given his disclosure.

The Chair asked if there were any other preliminary matters to be brought before the Tribunal at this time. In response, Mr. Stauffer, acting as counsel for Mr. Welsford stated that he was waiting for a statement from an individual who is a character witness for Mr. Welsford. He was not sure if the statement would be received in sufficient time for today's hearing. Ms. Jolley stated she would raise her concern about the document when or if the statement was received.

Ms. Jolley stated the Discipline Committee's request that the name of the complainant or the name of the organization that employed Mr. Welsford not be mentioned in the decision and instead be substituted with the word complainant or employer. The Tribunal agreed to the request made by the Discipline Committee.

The Chair stated that it is the standard procedure of this Tribunal to conduct one hearing, where evidence and submissions on whether there is a breach of the Code of Ethical Principles and Rules of Conduct and penalty are heard together at the same hearing. Ms. Jolley and Mr. Stauffer each consented to the one hearing procedure.

There were no other motions heard prior to the hearing.

NOTICE OF HEARING

Counsel for the Discipline Committee entered into evidence the Notice of Hearing dated July 28, 2011, as **Exhibit #1**, and the Affidavit of Service, as **Exhibit #2**.

ALLEGATIONS

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

Rule 101 Discredit

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

Rule 108 Conduct Unbecoming

It shall be unethical for a member, while acting in a professional capacity or otherwise, to engage in misconduct of a reprehensible or serious nature which reflects on the member's or student's honesty, integrity, or trustworthiness or, is relevant to the person's suitability as a member of 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.

Rule 606 (a) Detrimental Actions

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

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

Particulars:

1. Jamie Welsford ("Welsford") became a member of CGA Ontario (the "Association") in 1999.
2. From 1998 to 2002 and again from 2004 to 2010 Welsford worked at the Hospital as Chief Financial Officer/Assistant Executive Director of Finance.
3. In that capacity, Welsford was the hospital's senior financial executive and reported to the Chief Executive Officer.
4. Welsford was responsible for, among other things, the hospital's financial analysis and reporting and for the strategic leadership and management for the departments of finance, information technology, medical records and decision support and patient registration.

5. Welsford was accountable for the overall financial health of the hospital and was in charge of the operating budget processes, responsible for regular financial analysis and internal financial statement preparation.
6. Welsford held a position of trust with the hospital.
7. Commencing in July 2010 Welsford wrote a series of cheques on the hospital's bank account at Royal Bank of Canada ("RBC"). He made the cheques payable to himself personally or to his son's hockey team. Welsford was not authorized to write the cheques as he did.
8. Welsford wrote the following cheques without authorization (together with the Bank of Montreal cheque referenced in paragraph 13 below, hereinafter referred to as the "Unauthorized Cheques") totalling \$6,547.00:
 - (1) RBC cheque dated 1 July 2010 payable to himself - \$1,500.00;
 - (2) RBC cheque dated 6 August 2010 payable to himself - \$360.00;
 - (3) RBC cheque dated 10 August 2010 payable to his son's hockey team, the Ottawa Senators Major Bantam AAA - \$1,277.00;
 - (4) RBC cheque dated 6 September 2010 payable to himself - \$2,300.00;
 - (5) RBC cheque dated 10 September 2010 payable to himself - \$580.00;
 - (6) RBC cheque dated 14 September 2010 payable to himself - \$180.00; and
 - (7) RBC cheque dated 20 September 2010 payable to himself - \$350.00.
9. The cheque dated 1 July 2010 in the amount of \$1,500 was to be an advance for expenses Welsford would incur for a work related conference.
10. Between September 12-14, 2010, Welsford incurred expenses of \$776.94 relating to the conference and therefore should have repaid the sum of \$723.06, being the excess of the advance he received, to his employer.
11. Welsford did not repay those funds to the hospital until after he was confronted by his employer on 30 November 2010 and terminated for cause.
12. In each instance where there was a second signature on the Unauthorized Cheques, Welsford created that signature and added it along with his signature. He was not authorized to add a second signature.
13. Welsford then wrote a cheque dated 8 October 2010 on the hospital's Bank of Montreal account for \$5,500 payable to the Hospital c/o himself. Welsford used a hospital cheque with a computer generated signature of the hospital's Chief Executive Officer on that Bank of Montreal cheque.

14. Welsford deposited that Bank of Montreal cheque into the hospital's Royal Bank account to replenish in part the funds he had taken from the RBC account.
15. Welsford was not authorized to write the Bank of Montreal cheque or to use a cheque with the Chief Executive Officer's signature on the cheque.
16. When he was first confronted with the Unauthorized Cheques, Welsford advised the hospital that he had mixed the hospital cheques up with his son's hockey team cheques which he held as team treasurer.
17. With respect to the Bank of Montreal cheque, when Welsford was confronted, the hospital advised that he stated that this transfer of funds to RBC had been authorized by the complainant's predecessor, which was false.
18. When Welsford was asked to produce the hockey team cheque book, he then advised that he had, in fact, taken the hospital funds and that it was not a mix up with the cheque books as he had stated.
19. Once he was confronted and his employment terminated for cause on 30 November 2010, Welsford repaid the \$6,547.00 (net \$5,770.06, accounting for \$776.94 being that portion of the July advance that was actually spent on the September conference) that he had taken from the hospital.
20. Welsford's conduct amounted to professional misconduct and conduct unbecoming a certified general accountant.

MEMBER'S PLEA

The Chair asked, "Mr. Jamie Welsford, have you reviewed the Notice of Hearing?"

Mr. Welsford replied he did.

The Chair asked Mr. Welsford to disclose to the Tribunal what his position was as it relates to the allegations contained in the Notice of Hearing, specifically as to whether he admits or denies the allegations in the Notice of Hearing.

Mr. Welsford admitted to the allegations set out in the Notice of Hearing.

The Chair addressed Mr. Welsford directly, given the fact that he admitted to the allegations in the Notice of Hearing. Before the Tribunal accepted Mr. Welsford's admission, the Chair asked Mr. Welsford questions to ensure that his admission was voluntary, informed and unequivocal.

1. "Do you understand the nature of the allegations that have been made against you?" Mr. Welsford replied, "Yes".
2. "Do you understand that by admitting the allegations, you are waiving the right to require the Association to prove the case against you and the right to have a hearing?" Mr. Welsford replied, "Yes".
3. "Do you voluntarily decide to admit the allegations against you?" Mr. Welsford replied, "Yes".
4. "Do you understand that if there is any agreement between counsel for the Association, Ms. Jolley, and you or your counsel with respect to the penalty proposed, it does not bind the Panel?" Mr. Welsford replied, "Yes".

OPENING STATEMENT

Karen Jolley was invited to make her opening statement.

Ms. Jolley stated that a complaint against Mr. Welsford was lodged with the Certified General Accountants Association of Ontario on February 15, 2011 by his former employer. The complaint stated that between July 2010 and September 2010, Mr. Welsford is alleged to have taken funds, to benefit his own interest, in excess of \$5,700 by using six unauthorized cheques and one advance payment.

Mr. Welsford is alleged to have created a second signing officer to co-sign cheques along with his signature to facilitate making payments to him or his son's hockey team. Mr. Welsford is alleged to have written a cheque from the employer's Bank of Montreal bank account for deposit to the employer's Royal Bank account with the intent to replenish in part the funds he took. This was done allegedly to cover activity of making withdrawals without authorization.

In November 2010, these alleged actions were uncovered and when Mr. Welsford was confronted with the allegations he denied the allegations, allegedly fabricating stories each time he was confronted. Ultimately when presented with the evidence, Mr. Welsford admitted to these misappropriations and his employment was terminated for cause. Ms. Jolley concluded her opening comments.

Mr. Stauffer deferred his opening comments to later in the Hearing when he would make submissions on behalf of Mr. Welsford.

FACTS AND EVIDENCE

Counsel for the Discipline Committee entered into evidence the following documents:

Exhibit #3, Ms. Jolley's letter to Mr. Cale Harrison, as counsel for Mr. Welsford,

Exhibit #4, the Discipline Brief,

Exhibit #5, Notice under the Evidence Act (Business Records),

Exhibit #6, Request to Admit Facts and Documents, dated July 29, 2011,

Exhibit #7, Affidavit of Service,

Exhibit #8, Notice of Appointment of Representative, and

Exhibit #9, Mr. Welsford's Response to Request to Admit prepared by his counsel.

Counsel for the Discipline Committee referred to the Affidavit of Service, **Exhibit #7**, establishing that the member's counsel had been served on August 2, 2011, with the Request to Admit Facts and Documents, **Exhibit #6**, as well as the Notice under the Evidence Act (Business Records), **Exhibit #5**. The member was advised that he had 20 days to respond to the Request to Admit Facts and Documents, and that if he failed to respond, he would be deemed to admit the truth of the facts and the authenticity of the documents, for the purposes of this proceeding. The member did respond to the Request to Admit Facts and Documents. In particular, in the member's Response to Request to Admit, **Exhibit #9**, the member admitted the truth of facts numbered 1 to 32 and admitted the authenticity of documents numbered 1 to 18. Based on the facts and documents admitted by the member at this hearing, the Panel makes the following findings of fact:

- 1 Mr. Welsford became a member of CGA Ontario in 1999.
- 2 Mr. Welsford's CGA Ontario certificate number is 13654 and his CGA Canada certificate number is 340215.
- 3 From 1998 to 2002 and again from 2004 to 2010 Mr. Welsford worked for the Hospital (hereinafter the "hospital" or "employer") as Chief Financial Officer/Assistant Executive Director of Finance.
- 4 In that capacity, Mr. Welsford was the hospital's senior financial executive and reported to the Chief Executive Officer.

- 5 Mr. Welsford was responsible for, among other things, the employer's financial analysis and reporting and for the strategic leadership and management for the departments of finance, information technology, medical records and decision support and patient registration.
- 6 Mr. Welsford was accountable for the overall financial health of the employer and was in charge of the operating budget processes, responsible for regular financial analysis and internal financial statement preparation.
7. Mr. Welsford held a position of trust with the employer.
8. Commencing in July 2010 Mr. Welsford wrote a series of cheques on the employer's bank account at Royal Bank of Canada ("RBC"). He made the cheques payable to himself personally or to his son's hockey team. He was not authorized to write the cheques he did.
9. Mr. Welsford wrote the following cheques, all other than the first cheque without authorization (together with the Bank of Montreal cheque referenced in paragraph 11 below, hereinafter referred to as the "Unauthorized Cheques") totaling \$6,547.00:
- (1) RBC cheque dated 1 July 2010 payable to him - \$1,500.00;
 - (2) RBC cheque dated 6 August 2010 payable to him - \$360.00;
 - (3) RBC cheque dated 10 August 2010 payable to his son's hockey team, the Ottawa Senators Major Bantam AAA - \$1,277.00;
 - (4) RBC cheque dated 6 September 2010 payable to him - \$2,300.00;
 - (5) RBC cheque dated 10 September 2010 payable to him - \$580.00;
 - (6) RBC cheque dated 14 September 2010 payable to him - \$180.00; and
 - (7) RBC cheque dated 20 September 2010 payable to him - \$350.00.
10. The cheque dated 1 July 2010 in the amount of \$1,500 was to be an advance for expenses he would incur in a work related conference.
11. Between September 12 and 14, 2010, Mr. Welsford incurred expenses of \$776.94 relating to the conference and therefore should have repaid the sum of \$723.06 to his employer, being the excess of the advance he received.
12. Mr. Welsford did not repay those funds to his employer until after he was confronted by his employer on 30 November 2010 and terminated for cause.
13. In each instance where there was a second signature on the Unauthorized Cheques, he created that signature and added it along with his signature. He was not authorized to add a second signature.

14. He then wrote a cheque dated 8 October 2010 on the employer's Bank of Montreal account for \$5,500 payable to his employer c/o himself. He used an employer cheque with a computer generated signature of the hospital's Chief Executive Officer on that Bank of Montreal cheque.
15. Mr. Welsford deposited that Bank of Montreal cheque into the employer's Royal Bank account to replenish in part the funds he had taken from the RBC account.
16. Mr. Welsford was not authorized to write the Bank of Montreal cheque or to use a cheque with the Chief Executive Officer's signature on the cheque.
17. When Mr. Welsford was first confronted with the Unauthorized Cheques, he advised the hospital that he had mixed the hospital cheques up with his son's hockey team cheques which he held as team treasurer.
18. With respect to the Bank of Montreal cheque, when Mr. Welsford was confronted he stated that this transfer of funds to RBC had been authorized by the complainant's predecessor, which was false.
19. When Mr. Welsford was asked to produce the hockey team cheque book, he then advised that he had, in fact, taken the employer's funds and that it was not a mix up with the cheque books as he had stated.
20. Once Mr. Welsford was confronted and his employment terminated for cause, he repaid the \$6,547.00 (net \$5,770.06, accounting for \$776.94 being that portion of the advance that was actually spent on the conference) that he had taken from the hospital.
21. Rule 101 of The Association's Code of Ethical Principles and Rules of Conduct (the "Code") - Discredit -states:

A member shall not participate in, or knowingly provide services to, any practice, pronouncement or act that would be of a nature to discredit the profession.
22. In misappropriating funds from his employer, forging the Chief Executive Officer's name on certain of the Unauthorized Cheques, using cheques with the signature of the Chief Executive Officer without authorization, transferring funds between his employer's bank accounts to attempt to cover up the funds he had taken and in lying to his employer when he was confronted with the Unauthorized Cheques, he participated in a practice or act that was of a nature to discredit the profession.
23. Rule 102 of the Code -Unlawful Activity -states:

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

24. In misappropriating funds from his employer, forging the Chief Executive Officer's name on certain of the Unauthorized Cheques, using cheques with the signature of the Chief Executive Officer without authorization, transferring funds between his employer's bank accounts to attempt to cover up the funds he had taken and in lying to his employer when he was confronted with the Unauthorized Cheques, Mr. Welsford participated in an activity that he knew and which a reasonable and informed third party would believe to be unlawful.
25. Rule 108 of the Association's Code -Conduct Unbecoming -states:
- It shall be unethical for a member, while acting in a professional capacity or otherwise, to engage in misconduct of a reprehensible or serious nature which reflects on the member's or student's honesty, integrity, or trustworthiness or, is relevant to the person's suitability as a member of the profession.
26. In misappropriating funds from his employer, forging the Chief Executive Officer's name on certain of the Unauthorized Cheques, using cheques with the signature of the Chief Executive Officer without authorization, transferring funds between his employer's bank accounts to attempt to cover up the funds he had taken and in lying to his employer when he was confronted with the Unauthorized Cheques, he engaged in conduct of a reprehensible and serious nature which reflected on his honesty, integrity and trustworthiness and is relevant to his suitability as a member of the profession.
27. The Association's Code states under the 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.
28. By misappropriating funds from his employer, forging the Chief Executive Officer's name on certain of the Unauthorized Cheques, using cheques with the signature of the Chief Executive Officer without authorization, transferring funds between his employer's bank accounts to attempt to cover up the funds he had taken and in lying to his employer when he was confronted with the Unauthorized Cheques, he did not act in the interest of his employer. Nor did he honour the trust his employer had bestowed upon him by using his trusted position to misappropriate funds from his employer.

29. Rule 606(a) of the Association's Code -Detrimental Action -states:

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

30. By misappropriating funds from his employer, forging the Chief Executive Officer's name on certain of the Unauthorized Cheques, using cheques with the signature of the Chief Executive Officer without authorization, transferring funds between his employer's bank accounts to attempt to cover up the funds he had taken and in lying to his employer when he was confronted with the Unauthorized Cheques, he participated in actions that were detrimental to the Association and the profession.

31. Mr. Welsford conduct amounted to professional misconduct.

32. The applicable provisions of the Code are as set out in the discipline brief in this matter.

SUBMISSIONS BY MS. JOLLEY ON THE FACTS

Counsel for the Discipline Committee, began her statements by noting that Mr. Welsford is charged under the Code of Ethical Principles and Rules of Conduct of breaching:

Rule 101 Discredit

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

Rule 108 Conduct Unbecoming

It shall be unethical for a member, while acting in a professional capacity or otherwise, to engage in misconduct of a reprehensible or serious nature which reflects on the member's or student's honesty, integrity, or trustworthiness or, is relevant to the person's suitability as a member of 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.

Rule 606 (a) Detrimental Actions

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

Ms. Jolley noted the CGAO treats these breaches as very serious and that Mr. Welsford breached the Code not once, but on seven different occasions over a period of three months with no indication of coming clean when he was first suspected, and correcting his wrong doing, instead he continued his actions until the evidence was placed before him.

Mr. Stauffer interjected that his client, Mr. Welsford does not deny any of the allegations made against him.

In reference to **Exhibit #9**, Ms. Jolley stated that the balance of her arguments will be on the basis of the admitted facts and documents.

Ms. Jolley referred to **Exhibit #4**, Tab 3.1.A, the letter of termination for cause dated November 30, 2010. The letter describes an investigation that was undertaken revealing that Mr. Welsford was alleged to have been engaged in misconduct relating to breaches of fiduciary duty, dishonesty, misappropriation and misuse of the employer's funds, including the cheques listed below which were drawn on the employer's corporate Royal Bank of Canada business account:

- Cheque dated July 21, 2010 payable to Jamie Welsford – \$1,500.00
- Cheque dated August 6, 2010 payable to Jamie Welsford - \$360.00
- Cheque dated August 10, 2010 payable to the Ottawa Senators Major Bantam AAA - \$1,277.00
- Cheque dated September 6, 2010 payable to Jamie Welsford - \$2,300.00
- Cheque dated September 10, 2010 payable to Jamie Welsford - \$580.00
- Cheque dated September 14, 2010 payable to Jamie Welsford - \$180.00

- Cheque dated September 20, 2010 payable to Jamie Welsford - \$350.00

On October 8, 2010 a cheque was issued from the employer's Bank of Montreal account payable to the employer c/o Jamie Welsford using the signature of the CEO even though she was not yet employed by the organization as at that date. The cheque was deposited into the Royal Bank account referenced above.

The termination letter states that Mr. Welsford's alleged actions constitute a serious and fundamental breach of trust by a Certified General Accountant occupying the position of Assistant Executive Director of Finance.

The termination letter concluded that the amount of funds that Mr. Welsford is alleged to have personally obtained from his employer's accounts without authorization total \$6,547.00. He was required to reimburse this amount in full plus any other amounts subsequently identified as having been misappropriated by no later than December 15, 2010.

Ms. Jolley noted that Mr. Welsford repaid the required amount, less his bona fide expenses, from his final pay and vacation payment.

Ms. Jolley referred to **Exhibit #6**, the Request to Admit Facts and Documents, highlighting for the Tribunal's attention the admissions made by the member.

Ms. Jolley referred the members of the Tribunal to **Exhibit #4**, Tab F for Mr. Welsford's response to the allegations made against him. She highlighted that Mr. Welsford admits that he wrote cheques payable to him as he was acting as the Assistant Executive Director of Finance, but in no way did he consider obtaining the money as theft; he was fully intending to pay back the funds before year-end. Ms. Jolley emphasized that Mr. Welsford did not acknowledge his actions as theft. She noted that while Mr. Welsford states his intent was to pay back the funds, there was no repayment plan established, instead evidence of him taking more money and going deeper into his wrongdoings.

With reference to **Exhibit #6**, Ms. Jolley focused on fact number 22 as providing the fundamental facts that form the basis for the charges brought before Mr. Welsford: (1) he misappropriated funds from his

employer, (2) he forged the Chief Executive Officer's name on the unauthorized cheques, (3) he used cheques with the signature of the CEO without authorization, (4) he transferred funds between the employer's bank accounts to attempt to cover up the funds Mr. Welsford had taken, and (5) he lied to his employer when he was confronted with the unauthorized cheques.

Ms. Jolley summarized, stating that she has led evidence of Mr. Welsford's violation of:

- Rule 101 Discredit
- Rule 102 Unlawful Activity
- Rule 108 Conduct Unbecoming
- Rule 606 (a) Detrimental Actions
- Code Principle – Trust and Duties.

Ms. Jolley concluded her statements.

The Chair asked the Professional Conduct Tribunal Members if they had any questions for Ms. Jolley. They did not have any questions on Ms. Jolley's submissions on the facts.

The Chair called for a brief recess of 15 minutes before asking Mr. Stauffer to present his arguments on behalf of the member.

The Chair reconvened the Tribunal at 11:40.

SUBMISSIONS BY MR. STAUFFER ON THE FACTS

Mr. Stauffer was asked to proceed with his opening statement.

Mr. Stauffer stated that Mr. Welsford is a man who is filled with remorse. He has admitted to all the allegations made against him and has made full restitution to the offended party. He is not debating the statements made by Ms. Jolley but would like the opportunity to speak to the issue of penalty later.

EVIDENCE ON PENALTY

Mr. Stauffer called Mr. Welsford to take the witness stand.

The Chair asked Ms. Corbett to swear-in the witness, Mr. Welsford.

Mr. Stauffer asked Mr. Welsford questions to provide an overview of who he is. Mr. Welsford stated he was 48 years old living in Ottawa and has three children aged, 20, 16 and 13. His 20 year old is attending Carleton University, now in her 3rd year. He has been with his common-law wife since 1990.

Mr. Stauffer referred to **Exhibit #4**, Tab 3.1.F and asked Mr. Welsford to provide an overview of a letter he provided as background and his curriculum vitae for the benefit of the Tribunal members. Mr. Welsford confirmed he wrote the letter in the spring of 2011 before he contacted a lawyer to represent him. He highlighted his work experience with his employers and the positive working relationship he had with those in positions of authority prior to the new CEO arriving. He stated that he began to experience personal life and professional life issues in 2007. Matters continued to worsen and that in 2009 while supporting his daughter in university and providing financial support for his two boys in upper tier hockey programs, he also began to financially support his sister and her two children who separated from an abusive relationship. His financial situation declined at a faster pace; the household savings had dwindled and credit increased extremely quickly. His spouse left to live with her parents and as result they have separated in late 2010. Mr. Welsford stated that he was not a great financial planner and that he was always trying to meet everyone's needs, without saying "no" to anyone. During this time he ran-up credit card debts of \$60,000 to \$70,000. He went for debt consolidation advice and tried to make payments of \$1,000 every two weeks. The tremendous personal struggles caused a short-term illness and it became extremely difficult to balance his personal life and professional career.

Mr. Welsford stated that his middle son played competitive hockey and that he did not have funds to cover the hockey fees and that is when he wrote the cheque of \$1,277 in August 2010. When he wrote the cheque of \$1,500 in July 2010, he stated that was done out of desperation given his situation.

The final cheque he wrote from the Bank of Montreal to the Royal Bank was done to replenish the funds he had taken over the months. His plan was to repay the amount by March 31, 2011 and start with a "clean slate". He was working two jobs to pay back the money. He would do his best for his employer during the day time and then get up in the middle of the night at 1:30 to deliver 300 newspapers until approximately 6:30. This was done for several months.

Mr. Welsford stated that at a meeting that occurred on November 30th, 2010 he was called into the new CEO's office for a meeting with the CEO and the audit partner. He was confronted with allegations of wrongdoing and he admits he made untruthful statements at that time in response to the allegations made against him. He then met immediately with the audit partner by himself in his office and at that time he confessed to the allegations.

Mr. Stauffer referred the panel to **Exhibit #4**, Tab 3.1.D, a copy of the notes made on November 30th, 2010 by Mr. Ben McNeely, the audit partner during the discussion with Mr. Welsford.

After his confession to the auditor, Mr. Welsford and Mr. McNeely went back into the CEO's office where he admitted to his wrong doing. Following that discussion, Mr. Welsford was dismissed for cause.

Mr. Welsford contacted the CEO following his termination to apologize. He told her that he let her down, let his work colleagues down and several others who depended on his leadership. He stated he was willing to make a formal public apology, work in community-service type of work or any other suitable form of retribution. Arrangements were made for the repayment of money taken by Mr. Welsford.

Mr. Welsford admitted to the theft but never committed any prior thefts.

Mr. Welsford then described his thoughts as he left his employer that day and drove 50 km to his home where he would have to tell his wife about what happened. She had no prior knowledge of his misappropriations. He anticipated his wife was going to leave him. He felt that his punishment of not having his wife, no money, no job and two sons at home with no way to feed them was the worst punishment he could ever experience.

Mr. Welsford stated he is now back with his wife and with the payout of his pension funds from his former employer, he was able to settle some of his debts. He also spoke to his in-laws about his situation.

Mr. Welsford described his new job where he is the executive director for a family health team, and he does not have any signing authority in his current job. He stated that he does not handle any money either.

Mr. Stauffer asked if Mr. Welsford has advised his current employer of this proceeding or the matters that have given rise to this Tribunal. Mr. Welsford responded that his current employer is not aware of this or the matters. He said that if the owners found out, they would likely "fire" him. He did not want to address this matter with them, but he recognizes that he may have to disclose the outcome.

Mr. Welsford stated that in regards to publication of this matter, the statement of facts are already posted on the internet when you Google his name. If the outcome of this Tribunal is placed in the Ottawa Citizen or Sun he thinks he will lose his current job. Mr. Welsford stated he has already lost friends as more people have found out and he is worried about losing his job.

Mr. Stauffer concluded his questioning of Mr. Welsford.

Ms. Jolley was asked if she had any questions for Mr. Welsford.

Ms. Jolley addressed the following questions to Mr. Welsford:

Q. Between July 21, 2010 and August 6, 2010 did you repay any amount? R. No.

Q. When you reported to the interim CEO, did you speak to him about the money taken? R. No.

Q. In August 2010, did you repay any monies? R. No.

Q. Until November 30, 2010, did you repay any monies? R. No.

There was no evidence that following his meeting with debt counsellors Mr. Welsford made any plans to repay the money. When he met with Doyle Salewski in the fall of 2010 while still employed, Mr. Welsford did not make any plan of repayment of the money taken from his employer.

Q. On November 30, 2010 how much money did you owe to creditors? R. \$79,000. Mr. Welsford stated that he received \$200,000 when his pension payout came but out of that he had to make a provision for taxes.

Mr. Welsford's plan to repay the money taken from his employer involved borrowing money from his in-laws, however there was no discussion in July or August 2010 about this and they did not provide the money to him.

Q. With respect to your new employer, are all the physicians signing officers? R. Any 2 of the 8 must sign. The accounts of the office are sent to a book-keeper off-site. Cheques are produced out of the software system Simply Accounting. Cheques for signature go through the medical courier service unsigned.

Q. When did you commence your employment with the organization? R. July 18, 2011. Mr. Welsford stated that his place of employment is only 2.5 KMs. from home. The only reference from his previous employer was from a physician and he could have used references from the interim CEO and the previous CEO. Mr. Welsford stated that he assumes the physician who provided the reference knew of his thefts because he sat on the Medical Advisory Committee of the hospital.

Ms. Jolley clarified from Mr. Welsford that his background letter in **Exhibit #4**, Tab 3.1.F states he separated from his wife in early 2010. Mr. Welsford corrected the statement, that the separation occurred in late 2010 until early 2011.

Ms. Jolley concluded her cross-examination of the witness.

Mr. Stauffer was asked if he had any re-examination confined to new points raised during the cross-examination. He did not.

There were no questions from the Members of the Tribunal.

The Tribunal found Mr. Welsford's testimony to be credible. His testimony was consistent with the documented evidence provided to the Tribunal. He appeared sincere and honest in his testimony. He appeared open and responsive to all questions asked of him. In as much as he responded to all questions, he appeared to feel the weight and significance of the testimony he was providing at the hearing. During the hearing Mr. Welsford appeared genuinely remorseful for his actions.

A recess was called at 12:45 pm.

The Chair reconvened the Tribunal at 1:37 pm.

Mr. Stauffer introduced **Exhibit #10**, the Document Brief of Jamie Welsford.

PENALTY SUBMISSIONS BY MS. JOLLEY

Ms. Jolley was asked to proceed with her final argument on the allegations and the penalty.

Ms. Jolley provided a Sentencing Brief to the Members of the Tribunal and counsel for Mr. Welsford.

Referring to **Exhibit #3**, Ms. Jolley stated that the Association was seeking from the Professional Conduct Tribunal, a penalty order that consisted of:

1. Reprimand
2. Expulsion – now it is called revocation
3. Return of CGA Ontario and CGA Canada membership certificates
4. \$5,000 Fine (\$1,000/breach)
5. \$5,000 Costs
6. Publication in Statements
7. Publication in a newspaper i.e., Ottawa Citizen

In support of the penalty that the Association is seeking, Ms. Jolley referred the Tribunal to a Sentencing Brief that contained decisions made by Professional Conduct Tribunals that had to do with misappropriations and where expulsions were ordered. In the Sentencing Brief, it contained decisions made by the Certified General Accounts Association's Professional Conduct Tribunals as well as decisions made by the Law Society of Upper Canada and the ICAO Tribunals. Ms. Jolley drew similarities in the facts from these decisions in her presentation to demonstrate that the penalty that she was seeking was consistent with the cases.

Ms. Jolley stated that penalties are intended as specific deterrents, general deterrents and a matter of public protection.

Table (A) summarizes the decisions referred to in the Sentencing Brief.

Table A

Parties	Length of time over which misappropriation	Date	Amount of misappropriation	Expulsion	Fine	Costs	Publication in CGA Ontario Statements	Publication in Local Newspaper	Crim. Conv.
CGA Ontario v. Jacques	1 day	Aug 12, 1997 Mar 11, 1998	\$3,290	Yes	No	Yes - not disclosed, changed on appeal	Yes	Yes – was changed on appeal	No
Ms. Jolley's comments: This was a case of theft of bearer bonds from the City. The money was returned. Was only one instance of fraud.									
CGA Ontario v. Fitchett		May 19, 2005	\$541,500	Yes	\$2,000	\$2,000			Yes
Ms. Jolley's comments: Similar Code violations, Rules 101, 102 and 606. Convicted of fraud in amounts of \$500,000, was incarcerated. Penalties were specific deterrents, general deterrents and public protection.									
CGA Ontario v. Brodie	34 months	Nov 20, 2000	\$47,953	Yes	\$1,000	\$1,500	Yes	Yes	Yes
Ms. Jolley's comments: Over a period of 34 months the member stole \$48,000. Plead guilty. Made full restitution. Was fined and paid costs									
CGA Ontario v. Conway	2 years	Oct 30, 1998 Apr 22, 1999	\$72,727	Yes			Yes	Yes	Yes
Ms. Jolley's comments: Misappropriated \$72,000 from local baseball association. The theft occurred when the member was acting outside of his role as a CGA. Had a gambling addiction. The member was expelled. The member sought professional help for his addiction.									
CGA Ontario v. Dressing	6 months	Mar 1, 2000	\$56,100	Yes		\$5,000	Yes		
Ms. Jolley's comments: Redeemed mutual funds of \$56,100 from client. The member's mental health issues were noted. The member was ordered expelled.									
CGA Ontario v. Joseph	1 month	Mar 12, 2001 Nov 22, 2001	\$212,421	Yes	\$1,000	\$1,500	Yes	Yes	Yes
Ms. Jolley's comments: The member was charged and convicted. Made restitution of \$176,000. There was an appeal of the penalty of publication of the member's name in the local newspaper as it was claimed that publication would harm his livelihood and embarrass his family. The appeal gave significant consideration of the argument not to publish. The decision to publish was upheld to promote general deterrence of other members, protect public interest and to maintain public confidence in the accounting profession.									
CGA Ontario v. Stanleigh		May 24, 2005		Yes	\$2,500	\$2,500	Yes	Yes	No
Ms. Jolley's comments: Member was expelled, fined, paid restitution and publication.									
CGA Ontario v. Chan	2 years	Mar 8, 2006	>\$400,000	Yes	\$2,000	\$5,000			Yes
Ms. Jolley's comments: The member took the client's cheques and deposited the money for his own benefit. The member had similar Code violations: Rules 101, 102, and 606. She highlighted, given the seriousness of Mr. Chan's misconduct, the Tribunal concludes that expulsion is an appropriate penalty. As a self-regulated profession, the CGAO must maintain the public's confidence in the profession.									
CGA Ontario v. Samad		Jun 23, 2010	\$45,000	Yes	\$2,500	\$10,000	Yes	Yes	No
Ms. Jolley's comments: \$45,000 was taken from 7 clients. Ms. Jolley noted, protection of the public and deterrence were foremost in the minds of the panel members when considering and deciding on the appropriate penalty. The findings of fact describe a member who took advantage of unsuspecting people to support his own lifestyle through misleading or omitted information and use of his status as a registered professional. The panel wished to note that the facts as admitted by the member are not isolated to a single act or even one individual; rather there were a number of individuals affected by and the conduct was a string of actions occurring over an extended period of time. Anything short of expulsion along with the return of his certificates and publication of the expulsion decision would allow him the opportunity to continue the offensive conduct.									
CGA Ontario v. Chiu	10 years	Mar 20, 2006 Apr 26, 2006	\$2,568,433	Yes		\$750	Yes	Yes	Yes
Ms. Jolley's comments: The member stole \$2.5M from his employer and was incarcerated. Of particular note was that publication was ordered and that such publication is a requirement of the Bylaws (now S. 41(a)) unless the member, persuades the Tribunal of two things, namely (1) that publication is not in the public interest in the circumstances of this case and (2) that publication would be unduly unfair to Mr. Chiu in the circumstances of this case. It is important to note that neither of these two criteria alone is sufficient. The Bylaws clearly requires that both criteria be met before the Tribunal can order an exception to the general rule of									

Parties	Length of time over which misappropriation	Date	Amount of misappropriation	Expulsion	Fine	Costs	Publication In CGA Ontario Statements	Publication In Local Newspaper	Crim. Conv.
<p>publication.</p> <p>In Mr. Chiu's case, the public interest is difficult to assess, since the "public" consists of many different people and they have divergent interests. In our view, the public includes the Chiu family, as well as Mr. Chiu's former and current employers.</p> <p>The evidence reveals that Mr. Chiu's employer is not aware of his conviction and has granted him a leave of absence from work for personal circumstances. We believe that it is in his employer's interest to know the true reason for Mr. Chiu's absence from work.</p>									
CGA Ontario v. Willman	2 years	Dec 14, 2010	\$38,000	Yes	\$2,500	\$5,000			No
<p>Ms. Jolley's comments: The member used various methods to misappropriate funds from his employer during a time that he was experiencing significant difficulties at home. He made full restitution. It was noted that in violation of Rule 101, the member held a senior financial officer role in his company and that while in that role and holding a CGA designation the misappropriations occurred. That there were multiple occasions of misappropriations and effort was made to cover them up. Mr. Willman's actions are in direct contradiction to how a CGA must act. There must be no doubt as to the high professional standards that CGA's are called upon through our Code of Ethical Principles and Rules of Conduct. The misappropriations that occurred and the steps taken to cover up the misappropriations grieve the good name of the Association and discredit the profession.</p> <p>Ms. Jolley further noted that in violation of Rule 108, the member, had access to financial assets of the company and he used that authority entrusted to him to commit the misappropriations of approximately \$38,000. And that the member breached the trust placed in him as a senior financial officer and as a CGA.</p>									
Law Society of Upper Canada v. Kopyto		Oct 1993		Yes					
<p>Ms. Jolley's comments: In rendering the judgement on penalty in this case it was noted that despite the otherwise commendable behaviour of the individual, no amount of good deeds can displace the absolute mandatory requirements of integrity in the practice of law. The end can never be used to justify dishonesty in the practice of law. Honesty and integrity are the imperative upon which the whole fiduciary cornerstone of the legal profession is founded. It is for this reason that the Solicitor must be disbarred. If for no other reason it is because he has been found to be a persistently dishonest person.</p>									
ICAO v. Silverman		Jun 1991	\$100,000	Yes	\$25,000				
ICAO v. Lapedus	2 years	Jun 1991		Yes	\$1,000				
ICAO v. Kwiatkoski		Oct 1997		Yes	\$3,000				Yes
ICAO v. Adair		May 1992		Yes			Yes in CheckMark		Yes
<p>Ms. Jolley's comments: Mr. Adair's actions were blatant and conscious acts of moral turpitude for which he was criminally convicted of fraud. Mr. Adair held a senior position of trust with his employer and he abused that trust. Mr. Adair also abused the public's trust in the chartered accountancy profession as a whole. Conduct of this nature strikes at the very heart of the integrity of the profession and is conduct that cannot be tolerated in a member of the Institute. Mr. Adair, recognized the importance of the principle of general deterrence, but that he was very concerned about the negative impact that further disclosure of his name would have on his family. He asked that his name be withheld from disclosure. The committee accepted the argument, that it is inevitable and unavoidable that some adverse effects will be suffered by the families of members whose names are publicized for having been found guilty of professional misconduct. The realization by members, that public disclosure of their names for misconduct can adversely affect not only them but their families as well, is one aspect of general deterrence that the committee trusts will help dissuade members in future from embarking upon courses of conduct similar to the one engaged in by Mr. Adair.</p>									
ICAO v. Stinchcombe	3 months	Oct 1992	\$10,294				Yes in CheckMark		

Ms. Jolley referred to **Exhibit #4**, Tab 5, that the specific onus is on the member to prove why publication should not occur. Ms. Jolley provided to the panel a previous decision of the Professional Conduct Tribunal with certain details redacted to protect the name of the member. This is a case that demonstrates the proof necessary to argue for non-publication of the penalty. The member in this case is referred to as X.

Ms. Jolley proceeded to describe the case: X was a controller of a company and committed thefts in aggregate of \$14,332. X attempted to hide the fraudulent activity that was admitted to. X agreed to

make full restitution for the misappropriations. X was in an abusive relationship and was pressured by X's partner to provide a lifestyle beyond X's means. X was harassed until X borrowed funds beyond X's ability to repay, ruining X's credit rating and ultimately led to these thefts. In the course of X's abusive relationship and during the time of these thefts X was diagnosed by a physician with depression and placed on anti-depression medication. X deeply regrets the actions and their effect on the Association. X claimed the conduct was entirely out of character and except for the abusive situation X would not have contemplated such dishonest behaviour. X left the abusive relationship. X's employer determined not to publicize the situation and not to press criminal charges. X advised the current employer of the misappropriation from the former employer and they continue to support X. X is not in a position of having access to any funds.

X received a 12 month suspension which is very rare and the decision was not published, as X was able provide sufficient evidence to support these decisions.

Ms. Jolley noted that X had made all the people that need to know, aware of all the facts and that they provided evidence of their support for the member. X also agreed to undergo an assessment at X's expense, by an independent qualified psychologist acceptable to CGA Ontario and that the CGA Ontario may receive the psychologist's assessment and based on that assessment it is, the Association's sole and unfettered discretion as to whether it finds the expert medical opinion to be satisfactory for the purpose of lifting X's suspension and that the committee's review of that decision is not open to challenge.

Ms. Jolley stated that Mr. Welsford's case is not rare and the circumstances of his case cannot be used as an excuse to misappropriate funds from his employer. He could have gone to his family, pension or look for other sources of funds. But as seen from the cases presented, the issue of pressure of debt is not rare.

Ms. Jolley summarized that specific deterrence is warranted in this case as Mr. Welsford's original position was that no thefts occurred and it was only after further inquiry, he came clean about the number of misappropriations committed. Mr. Welsford committed multiple acts of misappropriations over several months.

Ms. Jolley referred to Mr. Welsford's testimony where he stated that he would repay the amounts taken from his employer, however she noted that he was in debt of \$60,000 and did not have a plan in place to repay the amounts taken.

And while he has disclosed all of his misappropriations to his employer at the time, he has failed to disclose his past activity to his current employer.

Ms. Jolley stated that public protection requires Mr. Welsford's expulsion from the Association and the publication of this decision. CGA Ontario has the right to govern in the public interest and if a CGA has misappropriated the money from the public as they provide money through their taxes for the operation of a public institution, they have a right to know. Having said that, the employer requested that their name not be published but replaced with the term "employer".

Ms. Jolley stated that Mr. Welsford was hired as a CGA and that his employer recognized a trust that was placed in him as a CGA holding a position as the Assistant Executive Director of Finance. People trusted him as he held the most senior financial position in that organization.

When faced with severe financial challenges, it is not an option to steal money from one's employer to resolve debt issues. There were other means available to Mr. Welsford to resolve his issues.

Ms. Jolley concluded her argument.

One of the Tribunal members asked Ms. Jolley if the question of publication in a newspaper predates the requirement in the Bylaws to post decisions on the website. Ms. Jolley indicated probably. Ms. Jolley noted that the Association generally always asks for publication in a newspaper and that the Bylaws speak to both publication in a newspaper and on the website.

PENALTY SUBMISSIONS BY MR. STAUFFER

The Chair asked Mr. Stauffer to present his final argument.

Mr. Stauffer sought and obtained confirmation from Mr. Welsford that he did not have access to his pension funds until after he left his employment.

Mr. Stauffer referred to the Sentencing Brief, Tab 12, the case of Mr. Robert Willman with specific reference to the instruction provided by the Independent Legal Counsel to the Professional Conduct Tribunal for that case. He noted that the CGA Association of Ontario is not a zero tolerance Association. If it were, then everyone would be expelled, but it is not a zero tolerance Association. Referring to page 19 of that decision and the factors when making a decision Mr. Stauffer stated:

- that Mr. Welsford admits to the seriousness of the conduct he committed
- he is 48 years old, and has practised as a CGA for 12 years
- his character prior to this situation is not questioned
- the number of times the conduct occurred was 7 times over a period 3 months
- he could not admit to his guilt, when first confronted by his employer, but with-in an hour of being confronted he admitted to his misappropriations
- he lost his job on the spot, after 10 years of service and he lost his source of income
- the impact of the incident upon his personal life was significant and traumatic
- the Tribunal heard no evidence of any other loss of funds withdrawn from the employer's bank account and not that Mr. Stauffer is trying to minimize what happened but there were no other victims other than Mr. Welsford
- the evidence given clearly indicates that Mr. Welsford was desperate, and one wonders how someone making over \$100,000 annually can be desperate, but the Tribunal has seen how this is not rare
- there is no evidence that Mr. Welsford took the money to profit himself, but to help his sister and while this is not justification it does provide context for the actions
- when considering the need to promote specific and general deterrence one must consider:
 - has Mr. Welsford straightened his life out?
 - If you think he is likely to reoffend, then impose a more harsh penalty

Mr. Stauffer stated it is serious business that we are part of, a self-governing body. The need to maintain the public's confidence is without question. Mr. Welsford has accepted his conduct falls outside the realm of accepted behaviour. Ms. Jolley showed the cases that offer other examples, in this case we must consider that \$5,770.06 is the amount of money and how it was taken.

Mr. Stauffer referred to the case of X stating that the case is the same except Mr. Welsford's case is for less money and over less time. If we compare the two cases, would they not appear the same?

Mr. Stauffer referred to **Exhibit #10**, the Document Brief of Mr. Welsford and also referred to the Sentencing Brief provided by Ms. Jolley:

Table (B)

Parties	Length of time over which misappropriation	Date	Amount of misappropriation	Expulsion	Fine	Costs	Internal Publication	Publication in Local Newspaper	Crim. Conv.
ICAO v. Armstrong	5 months	Aug 1995	\$9,620	No	\$7,500		Yes in CheckMark		
Mr. Stauffer's comments: This was a theft that occurred during the course of employment. There was no further publication other than the internal publication of the Institute.									
ICAO v. Baker	13 months	June 1997	\$429,000	No	\$3,000		Yes in CheckMark		
Mr. Stauffer's comments: That while Mr. Baker was not a primary wrong doer, he still did wrong and paid a fine and was suspended.									
CGA Ontario v. Jacques	1 day	Aug 12, 1997 Mar 11, 1998	\$3,290	Yes	No	Yes - not disclosed, was changed on appeal	Yes	Yes – changed on appeal	No
Mr. Stauffer's comments: On appeal Mr. Jacques did not have to pay costs or have the decision published in the newspaper, instead publication was restricted to the Association's internal newsletter.									
CGA Ontario v. Fitchett		May 19, 2005	\$541,500	Yes	\$2,000	\$2,000			Yes
Mr. Stauffer's comments: In this case the theft was in excess of \$500,000 and the fine and costs were limited to \$2,000 for each.									
CGA Ontario v. Brodie	34 months	Nov 20, 2000	\$47,953	Yes	\$1,000	\$1,500	Yes	Yes	Yes
Mr. Stauffer's comments: The theft of \$48,000 took place over a period of approximately 3 years.									
CGA Ontario v. Conway	2 years	Oct 30, 1998 Apr 22, 1999	\$72,727	Yes			Yes	Yes	Yes
Mr. Stauffer's comments: The Appeal Tribunal noted how the public could not be protected as there was no assurance that Mr. Conway would not reoffend – There is no evidence that Mr. Welsford will reoffend.									
CGA Ontario v. Dressing	6 months	Mar 1, 2000	\$56,100	Yes		\$5,000	Yes		
Mr. Stauffer's comments: Noted that the order to publish was restricted to the internal CGAO Statements. There was nothing mentioned in the decision of it being published in the newspaper									
CGA Ontario v. Joseph	1 month	Mar 12, 2001 Nov 22, 2001	\$212,421	Yes	\$1,000	\$1,500	Yes	Yes	Yes
Mr. Stauffer's comments: The Appeal Tribunal agreed that although publication of the name in the newspaper is not always warranted, it is appropriate where the offence is of a serious nature and where expulsion has been ordered.									
CGA Ontario v. Chan	2 years	Mar 8, 2006	>\$400,000	Yes	\$2,000	\$5,000			Yes
Mr. Stauffer's comments: The amount of money taken in this case far exceeds the amount of money involved for Mr. Welsford's case so this case is not comparable.									

Parties	Length of time over which misappropriation	Date	Amount of misappropriation	Expulsion	Fine	Costs	Internal Publication	Publication in Local Newspaper	Crim. Conv.
Law Society of Upper Canada v. Kopyto		Oct 1993		Yes					
Mr. Stauffer's comments: In rendering the judgement on penalty in this case it was noted that if for no other reason it is because he has been found to be a persistently dishonest person. Mr. Stauffer stated the Mr. Welsford in not a consistently dishonest person.									

Mr. Stauffer noted that Mr. Welsford could have taken the chance and risks of telling his current employer but after two months it is indeed difficult to take that action.

Mr. Stauffer asked why the CEO at the time of becoming aware of Mr. Welsford's actions did not go to the police? Referring to **Exhibit #4**, Tab 3.1, when the CEO registered the complaint with CGA Ontario she did not ask for Mr. Welsford to be expelled. Mr. Stauffer noted that Mr. Welsford telephoned the CEO on December 3, 2010, to apologize to the CEO and to express severe remorse for his actions. Mr. Stauffer offered that it may be unfair to Mr. Welsford to have his professional certified general accounting designation revoked.

Mr. Stauffer stated that the decision of the Tribunal impacts on Mr. Welsford's long-term future employment and while he does not require his designation now, it could be required in the future so please give this significant consideration on the issue of an expulsion. This is a man who found work, trying to support his family. Mr. Welsford's guess is that he will lose his job and be set back if the decision is published.

Mr. Stauffer proposed that Mr. Welsford be suspended from the Association for a time to be determined by the panel. He also suggested that he be monitored and provide some letter that provides evidence that he is carrying on without question to his professional or moral character. What we want to know is whether he will reoffend and that can be accomplished in this manner.

Mr. Stauffer stated that Mr. Welsford is prepared to take his lumps regarding the issue of costs and fine although he thinks the amounts of \$5,000 are too high. He thinks that since Mr. Welsford has demonstrated a sincere remorseful response to the CEO and has cooperated fully, that should be taken into consideration in the decision on penalty.

In summary Mr. Stauffer proposed the following by way of penalty:

1. Public admission/apology
2. Suspension
3. Monitoring after suspension completed i.e., a letter from his employer confirming he is a trustworthy employee
4. Fine – less than \$5,000
5. Costs – less than \$5,000
6. Publication in Statements
7. No publication in a newspaper – however, if the Tribunal orders publication in a newspaper, order publication in the local newspaper to his former employer.

Mr. Stauffer concluded his comments.

REPLY PENALTY SUBMISSIONS BY MS. JOLLEY

The Chair asked Ms. Jolley if she had a reply.

Ms. Jolley stated that the example provided in **Exhibit #10**, Tab 6, is a decision that is dated back to 1995. In a case that refers to Allen Berenbaum and in a decision made July 1996, the bylaw provision of the Institute required that the public is to be notified of the expulsion of members and therefore publication took place in The Toronto Star and the Globe and Mail.

Ms. Jolley noted that the CGA Ontario Bylaws require that when there is a finding of professional misconduct, publication is required.

The CEO that submitted the complaint stated that she wanted professional discipline consistent with that imposed by the Discipline Committee of the Certified General Accountants Association for other ethical breaches involving theft of public funds. She wanted whatever is appropriate in the circumstances.

The case of X is very different as there was evidence of medical and psychological issues and X came clean to her new employer before she was employed by them. Ms. Jolley stated that if you want to be

the executive director you should disclose to the employer all the facts preceding your engagement. In the case of X, she will likely have an indefinite suspension. If there is any similarity of the case of X to Mr. Welsford it is likely the time period over which the misappropriations occurred.

In the case of Jacques v. CGA Ontario, the theft occurred over a period of one day and occurred in 1997 so long before this case.

On the issue of the witness statements, Ms. Jolley stated that she does not give much weight to them. The letter from Mr. Chatelain does not state that he is aware of the misappropriations carried out by Mr. Welsford.

Ms. Jolley stated there is no evidence that Mr. Welsford will lose his job. The notice of this Tribunal is already posted on the website for several months and there has been no action taken.

This issue of penalty is not just about preventing the risks of reoffending but it is an issue of discipline. For Mr. Stauffer to suggest there be a letter and only to impose suspension is “putting the cart before the horse”.

Ms. Jolley stated that on the issue of the amount of the fine, the amount of the penalty is based on the number of breaches committed. Some cases in the past were based on \$500 per breach. The amount is now \$1,000 per breach.

Ms. Jolley stated while Mr. Welsford admitted to his misappropriations and saved the CGA Ontario from calling witnesses, the costs of \$5,000 is only a partial amount of the costs incurred by the CGA Ontario for this case and he is being asked to contribute to only part of the costs.

Mr. Stauffer asked for clarification, if publishing in the newspaper meant publishing in the local newspaper where the former employer was located or if it meant publishing in a local newspaper such as the Ottawa Citizen. He stated his opposition to publication of the decision in an external newspaper and in particular a large newspaper such as the Ottawa Citizen. The Chair replied that would be determined by the panel as part of rendering a decision.

QUESTIONS FROM THE TRIBUNAL

The Chair asked the members of the panel if they have any questions of either Ms. Jolley or Mr. Stauffer to better understand the position of the parties. There were no questions.

ADVICE FROM INDEPENDENT LEGAL COUNSEL

Ms. Braverman was asked if she had any advice on the legal issues that the Tribunal should consider.

Ms. Braverman stated that the burden of proof is on the Association or the Discipline Committee. She stated that the standard of proof in these types of cases is a balance of probabilities, that it is more likely the event occurred than that of the event not occurring. She went on to state that based on *F.H. v. McDougall* from the Supreme Court of Canada 2008 decision that there is only one civil standard of proof and that is proof on a balance of probabilities and evidence must always be sufficiently clear, convincing and cogent.

The actual allegations are that Mr. Welsford breached five provisions of the Code of Ethical Principles and Rules of Conduct:

- Rule 101 Discredit
- Rule 102 Unlawful Activity
- Rule 108 Conduct Unbecoming
- Rule 606 (a) Detrimental Actions
- Code Principle – Trust and Duties.

Mr. Welsford has admitted to the violations of these provisions. Each party still made their submissions. The Tribunal only needs to consider what they have heard or received in documentation. Mr. Welsford's arguments and the evidence led by Mr. Stauffer was in relationship to the subject of penalty only and that was his intent today.

Ms. Braverman stated that in regards to Mr. Welsford as a witness the Tribunal may consider:

1. His ability to recall; does the witness have a good recall?

2. Does he have the appearance to be an honest person?
3. What was his ability to observe?
4. What is his motivation as a witness?
5. What is the probability of his testimony being believable?
6. Is there external consistency?
7. Is there internal consistency?

Ms. Braverman reminded the Tribunal that they must only consider what has been provided to them today and that the Tribunal must find that Mr. Welsford breached one or more of the five provisions of the Code of Ethical Principles and Rules of Conduct and his conduct amounted to professional misconduct before considering what penalty to impose.

In relation to the penalty, Ms. Braverman indicated that section 36(6) of the Act and section 33 of the Bylaws state that the Tribunal may decide on a penalty of:

- 1) Revocation
- 2) Suspension
- 3) Impose restrictions/conditions
- 4) Require practice under active supervision
- 5) Require practice inspection
- 6) Require completion of professional development courses/examinations
- 7) Order further investigation
- 8) Reprimand
- 9) Impose a fine
- 10) Impose costs
- 11) Order compensation.

Ms. Braverman indicated that, in this circumstance, Ms. Jolley is seeking a reprimand, expulsion, fine, costs, publication of the decision in a local newspaper and in Statements and return of the certificates. Mr. Welsford is asking for leniency on the issues of expulsion, and publication in the local newspaper. There is no objection to the issues of fine and costs except the amount of each should be considered given his admitting to the allegations and cooperation with the actions of the CGA Ontario. The Tribunal may wish to give consideration to those affected by the decision as such:

- The public is a party to this and as such the penalty order decided upon must be adequate to protect the public.
- The profession is affected by the decision and the Tribunal needs to determine whether the decision made by the Tribunal carries with it a general deterrent to other members.
- The decision obviously impacts on the member and the Tribunal needs to determine whether the decision is sufficient to deter the member from engaging in similar activity and to allow for him to be rehabilitated.

Ms. Braverman reminded the Tribunal that it is not bound to follow the previous decisions but that the Tribunals usually do so that there is consistency for penalty based on the misconduct of the member.

Ms. Braverman suggested the Tribunal can consider the following factors when making our decision:

- the nature and gravity of the proven allegations
- the age and experience of the practitioner
- the previous character of the practitioner and in particular the presence or absence of any prior complaints or convictions
- the number of times the offence was proven to have occurred
- the role of the practitioner in acknowledging what had occurred
- whether the practitioner had already suffered other serious financial or other penalties as a result of the allegations having been made
- the impact of the incident
- the presence or absence of any mitigating circumstances
- the need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of the profession
- the need to maintain the public's confidence in the integrity of the profession
- the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct
- the range of sentence in other similar cases

Ms. Braverman referred to the Association's Bylaws, section 33 (e), noting that when there are compelling reasons to do so, the Professional Conduct Tribunal may order the substitution of the name of a witness or complainant by any appropriate reference it determines suitable.

Ms. Braverman referred to section 41.(a) of the Bylaws noting that the Bylaws required that the Association shall promptly release to the public and to the members, all hearing tribunal decisions and reasons with respect to a member where there has been a finding of professional misconduct or conduct unbecoming. Where the tribunal determines that disclosure of the name of the member is not required in the public interest and its disclosure would be unfair to the member, the tribunal's orders, decisions and reasons shall be posted on the Association's website without identification of the name in a manner accessible to the public.

Further, in section 41.(c) the onus of proving to the hearing tribunal that a notice of expulsion/revocation should not be released to the public is on the member. The Tribunal must assess if Mr. Welsford's arguments contained sufficient evidence to convince the members of the Tribunal that he met the standard of proving to the Tribunal his position that the Tribunal should withhold releasing the decision to the public.

Ms. Braverman stated the Tribunal must consider their duty to protect the public, deter the profession and to consider the issue of specific deterrents in rendering the final decision.

Ms. Braverman concluded with reminding the Tribunal that the decision made should be based only on the facts and evidence presented today.

The Chair asked Ms. Jolley if she had any questions of what Ms. Braverman stated. She did not.

The Chair asked Mr. Stauffer if he had any questions of what Ms. Braverman stated. He did not question Ms. Braverman's instructions but he questioned respectfully how the Tribunal members may be influenced by the fact of their membership dues paying for the costs of this hearing and how that could place the panel in a conflict. Ms. Jolley responded that it is expected that a certain portion of members' dues go towards governance of the Association and that includes the roles necessary to self-govern itself and its members on the issues of misconduct. The Chair added that not all the members of the panel were members of the Association, and that one member of today's Tribunal, Ms. Corbett, is a lay member to ensure a measure of impartiality. Mr. Stauffer appeared satisfied with the response and thanked the Tribunal for their indulgence of the question.

The Chair asked the members of the Tribunal if they had any questions of Ms. Braverman. They did not.

The Chair called for a recess at 5:12 pm.

The Chair reconvened the hearing at 5:28 pm and advised those in attendance that the Tribunal was reserving their decision for today and will release their written decision with reasons within 120 days of the hearing date. The Chair thanked Mr. Welsford, Mr. Stauffer, Mr. Harrison and Ms. Jolley for their attendance at the Tribunal.

The Chair adjourned the hearing at approximately 5:35 pm.

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 is a balance of probabilities based on clear, convincing and cogent evidence. In this case the Tribunal also gave significant weight to the fact that Mr. Welsford admitted to the violations of the Code.

Having considered the evidence, submissions, the onus and standard of proof, the Professional Conduct Tribunal Panel finds that the member breached the following provisions of the Code of Ethical Principles and Rules of Conduct:

Rule 101 Discredit

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

Rule 108 Conduct Unbecoming

It shall be unethical for a member, while acting in a professional capacity or otherwise, to engage in misconduct of a reprehensible or serious nature which reflects on the member's or student's honesty, integrity, or trustworthiness or, is relevant to the person's suitability as a member of 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.

Rule 606 (a) Detrimental Actions

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

The Panel also finds the member guilty of professional misconduct.

REASONS FOR DECISION**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.

Mr. Welsford violated the Code Principle – Trust and Duties by misappropriating funds from his employer, forging the Chief Executive Officer's name on certain unauthorized cheques, using cheques with the signature of the Chief Executive Officer without authorization, transferring funds between his employer's bank accounts to attempt to cover up the funds he had taken and in lying to his employer when he was confronted with the unauthorized cheques. He did not act in the interest of his employer. Nor did he honour the trust his employer had bestowed upon him by using his trusted position to misappropriate funds from his employer.

Rule 101 Discredit

A member shall not participate in, or knowingly provide services to, any practice, pronouncement or act that would be of a nature to discredit the profession.

Mr. Welsford violated Rule 101 by misappropriating funds from his employer, forging the Chief Executive Officer's name on unauthorized cheques, using cheques with the signature of the Chief Executive Officer without authorization, transferring funds between his employer's bank accounts to attempt to cover up the funds he had taken and in lying to his employer when he was confronted with the unauthorized cheques. He participated in a practice or act that was of a nature to discredit the profession.

Rule 102 Unlawful Activity

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

Mr. Welsford violated Rule 102 by misappropriating funds from his employer, forging the Chief Executive Officer's name on unauthorized cheques, using cheques with the signature of the Chief Executive Officer without authorization, transferring funds between his employer's bank accounts to attempt to cover up the funds he had taken and in lying to his employer when he was confronted with the unauthorized cheques. Mr. Welsford participated in an activity that he knew and which a reasonable and informed third party would believe to be unlawful.

Rule 108 Conduct Unbecoming

It shall be unethical for a member, while acting in a professional capacity or otherwise, to engage in misconduct of a reprehensible or serious nature which reflects on the member's or student's honesty, integrity, or trustworthiness or, is relevant to the person's suitability as a member of the profession.

Mr. Welsford violated Rule 108 by misappropriating funds from his employer, forging the Chief Executive Officer's name on unauthorized cheques, using cheques with the signature of the Chief Executive Officer without authorization, transferring funds between his employer's bank accounts to attempt to cover up the funds he had taken and in lying to his employer when he was confronted with the unauthorized cheques. He engaged in conduct of a reprehensible and serious nature which

reflected on his honesty, integrity and trustworthiness and is relevant to his suitability as a member of the profession.

Rule 606(a) Detrimental Actions

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

Mr. Welsford violated Rule 606 (a) by misappropriating funds from his employer, forging the Chief Executive Officer's name on unauthorized cheques, using cheques with the signature of the Chief Executive Officer without authorization, transferring funds between his employer's bank accounts to attempt to cover up the funds he had taken and in lying to his employer when he was confronted with the unauthorized cheques. He participated in actions that were detrimental to the Association and the profession.

PENALTY DECISION

The panel deliberated and decided to accept the Discipline Committee's submission in terms of penalty. Accordingly, the panel orders the following penalty:

1. Mr. Welsford's membership in the Association is revoked
2. Mr. Welsford shall return his CGA Ontario and CGA Canada membership certificates to the Association
3. Mr. Welsford shall pay a \$5,000 Fine (\$1,000/breach) to the Association
4. Mr. Welsford shall pay \$5,000 Costs to the Association
5. Mr. Welsford is reprimanded for breaching Rules 101, 102, 108 and 606(a) and Code Principle – Trust and Duties of the Code of Ethical Principles and Rules of Conduct
6. Publication in Statements
7. Publication in a newspaper, Ottawa Citizen

REASONS FOR PENALTY DECISION

The panel reviewed the previous decisions made and referenced to by the Association and counsel for Mr. Welsford. The summaries of the decisions referred to the panel have been included on previous pages of this decision and are identified as Tables A and B.

The panel gave significant weight to the testimony of Mr. Welsford. The Tribunal has no doubt of the sincerity of Mr. Welsford's statements and testimony. His financial issues and personal life experiences weighed heavy on him and it is not lost on the panel that he felt he was pressed to the point of desperation. That said, there are no excuses for the misappropriations of money from an employer. In this case, Mr. Welsford committed acts of misappropriations not just once, but seven occasions and then another occasion of trying to conceal his actions with interbank transfers of cash. Counsel for the Discipline Committee suggested that there were alternatives to misappropriations of money from the employer. The panel tended to agree with Ms. Jolley on this point. However, it is not for the panel to second guess how alternative courses of actions available to Mr. Welsford would have worked out had he pursued them. It is the role of the panel to address the issue of penalty for the actions that Mr. Welsford committed.

The panel also gave significant weight to the previous decisions made by the Association as there is a greater understanding of the Bylaws and Code for the Association. The same cannot be said for previous decisions of the Institute or the Law Society, none-the-less careful consideration was given to the parts of those decisions that the panel was referred to by the respective counsel. The panel also gave significant weight to Mr. Welsford's admission of his violations of the Code of Ethical Principles and Rules of Conduct.

In ordering the penalty of revocation the Panel considered there can be no other conduct more unprofessional than a Certified General Accountant that misappropriates money from their employer for any reason. The violation of trust that occurs is significant and in particular when a member is the most senior financial officer of an organization that is relying on the trust, integrity and experience of that professional certified general accountant to guide the organization and safe guard its assets. As a self-regulated body we must hold to a high standard of professional conduct that is unwavering and can be relied on by the public. Hence the order of revocation as Mr. Welsford has committed acts of professional misconduct. The panel concurred with the Association on this penalty.

In ordering the return of CGA Ontario and CGA Canada membership certificates, it stands to reason that as Mr. Welsford is no longer a member of the Association that the certificates be returned. The panel concurred with the Association on this penalty.

In ordering a fine of \$5,000, (\$1,000 for each breach of the Code), the panel considered the application of specific and general deterrents. While the value attached to a professional certified general accounting designation far exceeds a monetary value of \$5,000 and the loss of the use of that designation through revocation of membership is significant, it is still important to determine an appropriate financial penalty that is consistent with previous decisions. A financial penalty of this size serves as both a general deterrent and that of a specific deterrent for the acts of misappropriations and Code violations. The panel concurred with the Association on this penalty.

In ordering a payment of \$5,000 as contribution towards the costs of this hearing, this is consistent with previous decisions presented to the panel. The panel recognizes Mr. Welsford's cooperation with the Association in his admitting to the violations of the Code and how the costs for this Tribunal could have been significantly more had additional witnesses been called. That said, the amount of \$5,000 is only a part of the total costs of this Tribunal and the panel concurs with the Association on this penalty.

Ordering a reprimand will establish a formal notice of record of Mr. Welsford's breaches. The panel concurred with the Association on this penalty.

In ordering publication in CGA Ontario Statements the panel believes it is important for the purpose of general deterrence that the members of the Association are aware of the outcome of this Tribunal and the penalty that is related to violations of the Code of Ethical Principles and Rules of Conduct. The panel concurred with the Association on this penalty.

In ordering publication in a local newspaper, the panel agrees that it is appropriate and important to post notice of this decision in the Ottawa Citizen. In deliberating on this, the panel referred to the **Exhibit #10**, the statement provided by Ms. Patty Mancini, Mr. Welsford's common-law wife. Ms. Mancini makes a compelling argument about how Mr. Welsford's actions caused her and the family difficulty and further publication would be very embarrassing to the entire family. In her statement, she explains how the family has just begun to put their lives together and publication would affect their ability to move on from the situation. The panel is not immune to the plea made by Ms. Mancini and her statements caused significant consideration of the points raised. This is balanced against the need and duty to protect the public in this case. Mr. Welsford has not come clean with his current employer about his past. He has taken on the role of an Executive Director in a Family Health Team, the most

senior management position of that organization. In such a role it is imperative the person display integrity and character befitting the responsibilities and trust placed in him. Unfortunately it appears that Mr. Welsford has declined to be forthright with his new employer and that gives all the more reason that publication in the interest of public protection is required. The Panel therefore determined that the member failed to meet the requirements in section 41 of the Bylaws for no publication of the decision in a local newspaper. The Panel refers to the previous decisions referred to it. In the case of CGA Ontario v. Chiu, a similar argument is presented and there was the need to ensure that the public is aware that the CGA Ontario as a self-regulated professional certified general accounting body takes the issues of professional misconduct very seriously. When a member violates this trust and the Code of the Association, the Association must step forward to protect the public, especially when the member does not, by raising the awareness of the violations so the public may at the very least be informed. The Tribunal also refers to the case of ICAO v. Adair where the decision stated that public disclosure affects more than the member but also their families. This decision also noted that the realization by a member that public disclosure can affect not only the member but also their families, is one aspect of general deterrence that the committee is cognizant of and trusts will serve to dissuade members from committing a similar act of misconduct. The panel concurred with the Association on this penalty.

Dated this 6th day of February, 2012

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



Daniel Coghlan, CGA

NOTICE

This decision of the Professional Conduct Tribunal may be appealed to an Appeal Tribunal within thirty (30) days of the date of this decision.

The Notice of Appeal must be in writing, addressed to the Secretary of the Association (Certified General Accountants of Ontario, 240 Eglinton Avenue East, Toronto, Ontario, M4P 1K8) and must contain the grounds for the appeal.

TAKE NOTE THAT, in an appeal, the Appellant bears the onus of obtaining and delivering copies of the transcript of the hearing before the Professional Conduct Tribunal for the Appeal Tribunal (4 copies) and for the Respondent (1 copy).

According to Article 9 of Bylaws, a Notice of Appeal that fails to contain the grounds for the appeal, together with evidence that demonstrates that a transcript of the hearing giving rise to the appeal has been ordered, shall be void.