THE CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION OF ONTARIO PROFESSIONAL CONDUCT TRIBUNAL

In the matter of Wallace Maxwell Raymond Dove

Tribunal: Don Page, FCSI, FCGA, Chair
Janice Charko, CGA, CFP
Maureen Green, CGA

Parties: Karen Jolley, counsel for the Discipline Committee
Wallace Dove, representing himself

Hearing: September 23, 2003 and October 31, 2003

Introduction

Mr. Dove was charged with violating Rules 2, 3, 6, 101, 102, 301, and 515 of the *Code of Ethical Principles and Rules of Conduct* of the Certified General Accountants Association of Ontario ("CGAO"). The charges stemmed from a complaint made by Richard Warman on May 27, 2002. After investigating the complaint, the Discipline Committee of the CGAO referred the charges to this Tribunal for a hearing.

The allegations against Mr. Dove are essentially as follows: that he participated in or permitted his name to be used in connection with a practice, pronouncement or act that discredits the profession; that he participated in or permitted his name to be used in connection with an activity that he knew or ought reasonably to have known to be unlawful; that he failed to act in the interest of his clients and/or interested third parties; that he failed to exercise the due care and judgment expected of a professional; that he failed to sustain professional competence; and that he failed to act in accordance with the duties and responsibilities associated with being a member of the profession and failed to fulfill his obligation to carry on work in a manner that enhances the image of the profession and the CGAO. Mr. Dove is also accused of failing to register for public practice.

The particulars of the charges, as set out in a Notice of Hearing dated May 6, 2003, are as follows:

1. That Mr. Dove advised the public in emails and in submissions before the Ontario Court of Justice that income tax and the federal Income Tax Act are unlawful'

2. That Mr. Dove advised that he does not file an income tax return because the *Income Tax Act* is an unlawful act.

3. That Mr. Dove counseled Ormell Sand and Gravel Ltd. and its director Melville Graham not to provide Canada Customs and Revenue Agency ("CCRA") with books and records of Ormell Sand and Gravel Ltd. in compliance with its notice to do so until CCRA responded to a questionnaire delivered to it by Mr. Dove. As a result of denying CCRA access to the books and records, Ormell Sand and Gravel Ltd. and Mr. Graham were charged pursuant to sections 231.2(1)(b), 2348(1) and 242 of the Income Tax Act and convicted;

4. That Mr. Dove acted as an accountant for Ormell Sand and Gravel Ltd. when he was not registered with the CGAO as a public practitioner.

Preliminary Issues

The Chair called the hearing to order at 10:00 a.m. on September 23, 2003. At that time, there was an outstanding request by Mr. Dove for the issuance of subpoenas, to summons certain people to attend the hearing as witnesses. The Discipline Committee objected to the issuance of the subpoenas. The Tribunal heard oral submissions from the parties regarding this dispute and decided to deny the request for subpoenas. The Tribunal's decision was delivered orally at the hearing and detailed written reasons for our decision were subsequently delivered to the parties in writing in an interim award dated October 7, 2003.

After the subpoena issue was decided, the hearing proceeded, with the Discipline Committee calling its case. During the hearing, Ms. Jolley (the lawyer for the Discipline Committee) sought to rely on a transcript of a proceeding in another matter, *R. v. Ormell*, which included testimony given by Mr. Dove. Mr. Dove objected to the admission of the transcript into evidence. The hearing was then adjourned to provide the parties with an opportunity to make written submissions to the Tribunal on the admissibility of the transcript and to permit the Tribunal to seek the advice of its counsel. A letter of advice, written by the Tribunal's counsel, was provided to both parties, who were invited to comment upon it in their submissions.

Both parties made lengthy written submissions to the Tribunal. In his submissions, Mr. Dove raised a number of objections. In addition to objecting to the transcript, he objected to the admissibility of documents that were attached to Mr. Warman's letter of complaint and to the admissibility of correspondence between him and Mr. Palumbo, the Director of Government and Legislative Affairs for the CGAO.

After considering the written submissions of the parties, the Tribunal issued an interim award dated October 23, 2003, ruling that all of the disputed evidence was admissible.

The hearing then continued on October 31, 2003, with the Discipline Committee relying on the transcript as evidence in its case.

At that time of our interim award, we issued our decision without detailed reasons, but undertook to provide the parties with supplemental reasons at a later date. Before turning to the merits of the charges against Mr. Dove, therefore, we will provide our reasons for deciding to admit the transcript and other disputed evidence.

Attachments to the Letter of Complaint

At the first day of hearing, Ralph Palumbo testified on behalf of the Discipline Committee and identified the letter of complaint that the CGAO received from Richard Warman, which included a number of attachments, some of which were purportedly written by Mr. Dove. Mr. Palumbo was cross-examined by Mr. Dove regarding the source of the attached documents and it become clear that Mr. Palumbo could not identify their authors or confirm their authenticity. Ms. Jolley explained that the Discipline Committee was relying on these documents simply to provide the Tribunal with a complete record of what the CGAO had received by way of complaint against Mr. Dove. On the second day of the hearing, however, it became clear that the Discipline Committee was attempting to rely on the content of at least some of the documents to prove allegations in the Notice of Hearing.

In his written submissions, Mr. Dove raised an objection to the admissibility of this evidence on the basis that it constitutes hearsay. While we agreed that the evidence is hearsay, we found that it is nevertheless admissible. These proceedings are governed by the *Statutory Powers Procedure Act*, under which we have discretion to admit any relevant evidence, provided that it is not privileged and is not rendered inadmissible by the terms of another statute (such as the Ontario *Evidence Act*). Section 15(1) of the *SPPA* makes it clear that we can admit evidence *even if it not admissible in a court of law*. We are therefore not governed by the common law rules of evidence and we can admit hearsay evidence if it is relevant.

The attachments to Mr. Warman's complaint are relevant to these proceedings and we therefore decided to admit them. However, after hearing all of the evidence in the case, we concluded that the Discipline Committee had still not established the authenticity of all of the documents in question and we therefore decided to give no weight to some of them. In particular, in determining whether Mr. Dove is guilty of the charges against him, we have disregarded:

> (1) the document at Tab 2A of Exhibit 2, which purports to be a website extract written by Mr. Dove, but which Mr. Dove denied ever seeing before and no witness was able to prove was authored by him;
>
> (2) the document at Tab 2C of Exhibit 2, which is a notice from the *Financial Post*, the relevance of which escapes us;

(3) the article at Tab 2E of Exhibit 2, entitled "Odd allies", apparently reprinted from *Now Magazine*, because the accuracy of the information contained therein has not been established; and

(4) the web article at Tab 2F of Exhibit 2, entitled "Try paying your taxes in pesos!", because the accuracy of the information contained therein, including supposed quotes of Mr. Dove, have not been established.

We have, however, given some weight to the email messages at Tab 2B and 2D of Exhibit 2, because we are satisfied that they were authored by Mr. Dove. In his email message to Ralph Palumbo dated July 25, 2002 (Tab 3C of Exhibit 2), Mr. Dove acknowledged writing the email message to W5 at Tab 2D. It's authenticity has, therefore, been established. Furthermore, the email address from which the message at Tab 2B was sent is the same address used by Mr. Dove to communicate with the CGAO, Tribunal and Discipline Committee throughout these proceedings. Since Mr. Dove did not deny writing this email message when he gave his testimony, we have concluded that he authored it.

Correspondence with Mr. Palumbo

During his testimony, Mr. Palumbo identified a number of letters and emails between him and Mr. Dove, relating to the complaint that had been filed by Mr. Warman. This exchange of correspondence was marked as Tabs 3A to 3J of Exhibit 2. Mr. Dove objected to the admissibility of one of these documents (Tab 3C), namely his email message to Mr. Palumbo dated July 25, 2002, in which he responded to certain questions that Mr. Palumbo had put to him in a letter dated June 17, 2002 (Tab 3A).

The basis of Mr. Dove's objection was that he was not told by Mr. Palumbo that he was under investigation by the CGAO, that he had the right to remain silent, and that anything he said to Mr. Palumbo could later be used against him in a disciplinary hearing. He claimed that the admission of his email into evidence, under these circumstances, would violate his right against self-incrimination, as protected by s.11(c) of the *Charter of Rights and Freedoms*. In his written submissions on this issue, he cited and relied upon a number of criminal cases.

On cross-examination by Mr. Dove, Mr. Palumbo acknowledged that he did not explicitly advise Mr. Dove that he was "under investigation" by the CGAO Discipline Committee at the time that the letters and emails were written. However, Mr. Palumbo testified that he believed it was implicit, since he did advise Mr. Dove that a complaint had been made against him, and he was clearly seeking information from Mr. Dove in respect of that complaint, which Mr. Dove must have realized was an investigative inquiry.

We find that Mr. Dove had reasonable notice that he was under investigation by the CGAO. We have concluded that, based on an objective view of the evidence, a reasonable person in Mr. Dove's situation, who received Mr. Palumbo's letter of June 17,

2002, would be aware that he was under investigation by the CGAO. The following facts influenced our decision: Mr. Palumbo's letter was written on CGAO letterhead; it advised Mr. Dove that a complaint had been made against him and enclosed a copy of the complaint from Mr. Warman; it asked Mr. Dove a series of questions about the documents attached to Mr. Warman's complaint and requested that Mr. Dove forward certain information to the CGAO; it specifically directed Mr. Dove to provide his comments "to the attention of the Discipline Committee"; and it advised Mr. Dove to "refer to By-Law Four, Article 9, for information on the Association's discipline process and the potential consequences for the member." Clearly, a reasonable person in receipt of this letter would conclude that he was being investigated, in connection with a complaint, by the Discipline Committee of the CGAO. We therefore find that Mr. Dove knew, or ought reasonably to have known, that he was under investigation when he wrote to Mr. Palumbo on July 25, 2002.

In any event, we find that the *Charter* right against self-incrimination cannot be invoked by Mr. Dove in this proceeding. As Ms. Jolley argued in her written submissions, the right against self-incrimination in s.11(c) of the *Charter* applies only where a person has been charged with an "offence". The Supreme Court of Canada has ruled that an "offence" within the meaning of s.11 involves a matter that has "true penal consequences". In *R. v. Wigglesworth* (1987) 45 D.L.R. (4th) 234, the Supreme Court defined a "true penal consequence" as "imprisonment or a fine which by its magnitude would appear to be imposed for the purpose of redressing the wrong done to society at large rather than to the maintenance of internal discipline." Mr. Dove could not be subject to imprisonment for the charges against him in this proceeding and the fine sought by the Discipline Committee, namely $5,000, is not of such a magnitude as to constitute a penal consequence.

The Transcript in *R. v. Ormell*

Mr. Dove objected to the admissibility of the transcript of the proceedings in *R. v. Ormell*, a tax proceeding in which he testified as a witness. He argued that the transcript was not relevant and relied on three additional grounds to object to its admissibility, namely: (i) s.15(2)(b) of the *Statutory Powers Procedure Act ("SPPA")* and s.30(10)(c) of the *Canada Evidence Act*; (ii) s.715 of the *Criminal Code of Canada*; and (iii) s.13 of the *Charter of Rights and Freedoms*.

We find that the transcript is relevant to the charges against Mr. Dove. His submissions were to the effect that the transcript has no probative value. That argument goes to the weight to be accorded to the evidence and has no bearing on its admissibility. The probative value of the transcript has nothing to do with its relevance.

We find that s.715 of the *Criminal Code* has no application in this proceeding, since this is not a criminal proceeding and there are no criminal charges under consideration.

We accept Mr. Dove's submission that we are precluded by s.15(2)(b) of the *SPPA* from admitting into evidence anything that "is inadmissible by any statute." However, we reject his argument that the transcript cannot be admitted because it is inadmissible under s.30 of the *Canada Evidence Act*. On this point, we accept Ms. Jolley's submission that the *Canada Evidence Act* has no application to this proceeding. Section 2 of the *Canada Evidence Act* stipulates that it "applies to all criminal proceedings and to all civil proceedings and other matters whatever respecting which Parliament has jurisdiction." (emphasis added) This Tribunal is created pursuant to a ByLaw adopted under an Act of the Provincial Legislation. Our proceeding does not constitute a matter within the federal Parliament's jurisdiction and therefore is not governed by the terms of the *Canada Evidence Act*.

If the Ontario *Evidence Act* rendered the transcript inadmissible, then we would find that it could not be admitted into evidence because of s.15(2)(b) of the *SPPA*. We note that s.9 of the Ontario *Evidence Act* states that, if a witness in a legal proceeding objects to answering a question on the ground that the answer may tend to incriminate the witness, the witness may be compelled to answer the question, but their answer cannot later be used as evidence against them in any subsequent proceeding. Mr. Dove did not object to giving evidence in *R. v. Ormell*, so he cannot now claim the protection of this section of the *Evidence Act* in order to exclude the transcript of the testimony that he gave in *R. v. Ormell*.

We considered the fact that s.14 of the *SPPA* provides an exception to the rule that the protection of the *Evidence Act* only extends to witnesses who specifically invoke it at the time of their testimony. Section 14 provides that a witness at a hearing "shall be deemed to have objected to answer any question" asked of them on the ground that the answer may tend to incriminate them and that "no answer given by a witness" at a hearing shall be used as evidence against the witness in any subsequent proceeding against them. This section only applies, however, to witnesses who give evidence at hearings conducted under the *SPPA*. Section 3 of the *SPPA* specifies that the *SPPA* does not apply to Ontario Court (Provincial Division) proceedings. Since *R. v. Ormell* was a Provincial Court proceeding, we cannot rely on s.14 of the *SPPA* to exclude the transcript of the evidence that Mr. Dove gave in *R. v. Ormell*.

Finally, we found that Mr. Dove cannot rely on s.13 of the *Charter* in this proceeding in order to have the transcript excluded from evidence. Section 13 states that "[a] witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence." Unlike the *Evidence Act*, the protection of s.13 of the *Charter* applies without the witness having to specifically invoke it. However, as Ms. Jolley noted in her submissions, s.13 only applies to legal proceedings that have "penal consequences". The question for us to determine, therefore, was whether our proceeding is one with "penal consequences".

Ms. Jolley cited three cases in support of her submission that s.13 of the *Charter* does not apply to our proceeding. One case was *Knutson v. Society of Registered Nurses Association*, [1990] S.J. No.603, in which the Saskatchewan Court of Appeal held that the transcript of a criminal trial against a nurse could be used as evidence against her in a disciplinary hearing before the College of Nurses. The Court in *Knutson* characterized professional disciplinary matters as private and regulatory, distinguishing them from criminal or quasi-criminal proceedings, or other "penal" proceedings that attract the application of s.13 of the *Charter*. The Court specifically held that the nurse's expulsion from the provincial nursing association did not constitute a "penal consequence", even though it meant that she could no longer work as a nurse in Saskatchewan. We accept and adopt the reasoning in the *Knudson* case and conclude that the possible expulsion of Mr. Dove from the CGAO does not constitute a "penal consequence" which would enable him to invoke the protection of s.13 of the *Charter*.

In reaching this conclusion, we have considered the cases of *Re Donald* (1983), 2 D.L.R. (4th) 385 and *Re Johnstone* (1987), 40 D.L.R. (4th) 550, in which the British Columbia Court of Appeal reached a different conclusion in the context of Law Society disciplinary proceedings. In those two cases, the Court found that the defending lawyers could rely on s.13 of the *Charter* to exclude from evidence in disciplinary proceedings a transcript of evidence they had given in earlier proceedings. Ms. Jolley argued in her submissions on behalf of the Discipline Committee that those two B.C. cases predated the Supreme Court of Canada decision in *Wigglesworth* and were effectively overruled by it. We accept her argument, particularly in light of the more recent *Mussani* case, on which she also relied.

Mussani v. College of Physicians and Surgeons, (2003), 226 D.L.R. (4th) 511 is a decision of the Ontario Superior Court of Justice, which is binding upon us. In *Mussani*, the College of Physicians and Surgeons revoked a doctor's licence for five years, because he was found to have sexually abused one of his patients. The five year revocation was a minimum mandatory penalty under the applicable professional code of conduct. The doctor claimed that the mandatory revocation constituted cruel and unusual punishment, contrary to s.12 of the *Charter*. Section 12, like s.13, only applies to proceedings with "penal consequences", so the Court was required to determine whether the disciplinary proceeding was one with "penal consequences". The Court held that s.12 of the *Charter* did not apply because "professional disciplinary proceedings are civil matters of a regulatory nature, not criminal or quasi-criminal matters." The Court relied on the *Wigglesworth* case and concluded that "the consequences of a loss of a job or a professional licence" are not "true penal consequences" attracting the protection of s.12 of the *Charter*.

On the issue of the imposition of fines, the Court in *Mussani* again followed *Wigglesworth*, where the Supreme Court said that a fine does not constitute a penal consequence unless it is "imposed for the purpose of redressing the wrong done to society at large rather than to the maintenance of internal discipline". According to the *Wigglesworth* decision, the purpose of a fine should be assessed by considering both its magnitude and the manner

in which the disciplinary body disposes of it. The Courts in both *Wigglesworth* and *Mussani* held that a fine is likely to be "purely an internal or private matter of discipline if the fine is to be used for the benefit of the professional group."

Ms. Jolley emphasized in her written submissions the ruling in *Mussani* that the possible imposition of a fine of up to $35,000 under the *Health Professions Procedural Code* was "not of the magnitude to pass" the *Wigglesworth* test of what constitutes a penal consequence. In the case before us, the Discipline Committee is seeking a fine of only $5,000, which is relatively insignificant compared to the $35,000 fine considered in *Mussani*. Ms. Jolley also noted in her submissions that fines imposed by the Professional Conduct Tribunal are received by the Association and form part of its general coffers, used for the benefit of the members of the Association. In light of the relatively small size of the fine sought in this case and the manner in which fines are disposed of by the CGAO, we find that the fine to which Mr. Dove might be subjected does not constitute a penal consequence such as to invoke the application of s.13 of the *Charter*.

In summary, we have concluded that the proceeding before us is a regulatory proceeding intended to maintain discipline, professional integrity and professional standards within the CGAO. It is not a proceeding with penal consequences that would attract the application of s.13 of the *Charter*. Consequently, the Discipline Committee is entitled to rely on the transcript of the evidence given by Mr. Dove in *R. v. Ormell*.

Summary of the Evidence and Findings of Fact

The Discipline Committee's evidence consisted of the testimony of Mr. Palumbo, a few emails written by Mr. Dove, and the transcript in *R. v. Ormell*, in which Mr. Dove acted as an agent for the defendants and also testified as a witness. Mr. Dove's evidence consisted of his own testimony, a lengthy affidavit sworn by him with multiple attachments, and a copy of his campaign literature relating to the recent Ontario Provincial election, in which he ran as a candidate for the Freedom Party of Ontario. Based on a review of all of this evidence, we make the following findings of fact.

Mr. Dove has advised the public that the federal *Income Tax Act* is unconstitutional. His campaign literature, which he testified was copied and distributed to the voting public, states this explicitly. His email dated April 23, 2001 to undisclosed recipients and his email dated April 25, 2002 to W5 also make this statement. As Ms. Jolley noted in her closing argument, in each of these written statements, Mr. Dove identifies as a Certified General Accountant. We accept Ms. Jolley's submission that Mr. Dove uses the "C.G.A." designation and his membership in the CGAO in order to lend credibility to his assertion that the *Income Tax Act* is unlawful.

Mr. Dove has advised the public that Canadians "need never file a tax return again." He admitted making this statement in his email to Mr. Palumbo dated July 25, 2002. He also

advised Mr. Palumbo in that email that he does not file tax returns because he believes that the *Income Tax Act* is unlawful.

Mr. Dove was the accountant for Ormell Sand and Gravel Ltd., the company that was charged and convicted of an offence under the *Income Tax Act* in *R. v. Ormell.* Mr. Dove asserted in his email to Mr. Palumbo on July 25, 2002 that he was a Director of the company, but the transcript of the proceeding (p.139) in *R. v. Ormell* makes it clear that he only became a Director of the Company after the charges had been laid against the company and one of its other Directors. Ms. Jolley suggested that Mr. Dove became a Director so that he could represent the Company in its defence against charges under the *Income Tax Act*; that suggestion was never proved, but the reason why Mr. Dove became a Director is irrelevant in any event. The relevant fact is that he was not a Director of the Company at the time that the charges were laid against the Company. He was, at that time, the Company's accountant. In his email dated April 23, 2001, he described the company as his "client" and stated that he was "the accountant for the company."

In his testimony in *R. v. Ormell*, Mr. Dove stated that he had the sole responsibility for making decisions concerning the company and specifically, concerning whether the company should comply with CCRA's request for disclosure of the company's books and records (p.142). It was upon his advice that the company refused to comply with CCRA's request until such time as CCRA responded to a questionnaire delivered to it by Mr. Dove. As a result of denying CCRA access to the books and records, Ormell Sand and Gravel Ltd. and its Director, Mr. Graham, were charged pursuant to sections 231.2(1)(b), 2348(1) and 242 of the *Income Tax Act* and convicted. Mr. Dove, who was not a Director of the company at the time, was not charged.

According to Mr. Palumbo's uncontradicted testimony, Mr. Dove was not registered as a practitioner with CGA Ontario at the time that he acted as Ormell Sand and Gravel's accountant and gave that company advice on tax matters. We are satisfied that the advice given by Mr. Dove to the company qualifies as "public practice" within the definition of that expression in the CGAO Bylaws (marked as Exhibit 5 in the proceeding).

Summary of the Parties' Submissions on the Merits of the Charges

Mr. Dove's submissions focused primarily on his assertion that the *Income Tax Act* is unconstitutional. In short, he argued that the federal government does not have the constitutional authority to levy direct taxes and that only the provincial government can do so. He also argued that the federal government violated its "money creation powers" under s.91(14) and 91(15) of the *Constitution Act, 1867* by passing the *Bank Act* in 1913 and essentially transferring the government's "money creating power" to the Chartered Banks. He relied on the Minutes of a meeting of the Standing Committee on Banking and Commerce held in March 1939 to support his contention that the Chartered Banks create and issue "all the money in Canada". He cited and relied upon the 1951 decision of the

Supreme Court of Canada in the *Lord Nelson* case (*Nova Scotia v. Canada*, [1951] S.C.R. 31), arguing that the case stands for the proposition that the federal government has "no power of delegation" with respect to its constitutional powers. He argued, therefore, that the federal government was contravening this decision of the Supreme Court by giving away a power that it received via the *Constitution Act, 1867*, namely the power to "create money".

Mr. Dove argued that all Canadians suffer as a result of this unlawful activity (i.e., income tax) by the federal government. He asserted that "every bankruptcy is by design of the system", and all interest, all fines imposed by the government, all taxes levied are "designed to extract money from you and give it back to its maker," the Chartered Banks. He asserted that the government was perpetrating a "fraud" upon the public and that the "bankers of this world control, own and are stealing this nation through money".

Mr. Dove finalized his presentation by stating that "I don't particularly care about my CGA designation. I believe in teaching and preaching the truth."

Ms. Jolley replied to Mr. Dove's submissions by relying on numerous Court cases that have found the *Income Tax Act* to be within Parliament's jurisdiction: *Winterhaven Stables v. Canada*, [1988] A.J. No.924 (Alta.C.A.), aff'g [1986] A.J. No.460 (Q.B.); *Kennedy v. Canada Customs and Revenue Agency*, [2000] O.J. No.3313 (Superior Court of Justice); *Bruno v. Government of Canada*, [2002] B.C.C.A. 047, aff'g [2000] B.C.S.C. 0191; *R. v. Bruno*, [2001] B.C.S.C. 1828; *R. v. Bruno*, [2002] B.C.C.A. 348; and *R. v. Dick*, [2003] B.C.J. No.187 (Prov.Ct.) She argued that it is settled law in Canada that the *Income Tax Act* is *intra vires* Parliament's jurisdiction. She also argued that the cases cited by Mr. Dove did not stand for the propositions stated by him.

Ms. Jolley also argued that Mr. Dove's conduct constituted a discredit to the profession, particularly his repeated use of the C.G.A. designation in connection with public statements that the *Income Tax Act* is unlawful, that Canadians need not file tax returns, that "paper money" is not real, and that the banking system in Canada is a fraud. She further argued that the advice he gave to Ormell Sand and Gravel was not in his client's best interest, but rather had placed his client in jeopardy of prosecution.

Based on all of the above, Ms. Jolley indicated that the Discipline Committee was seeking the following orders from the Tribunal:

1. that Mr. Dove be expelled from the Certified General Accountants of Ontario;
2. that Mr. Dove pay a fine of $5,000;
3. that Mr. Dove pay costs of $5,000;
4. that the decision of the Tribunal Panel be published in CGAO Statements, and that the Panel's decision be published in the newspapers in the area in which he campaigned in the provincial election.

Ms. Jolley indicated in her submissions that the Discipline Committee's actual legal costs in connection with this matter were over $30,000.

Mr. Dove asked that the charges against him be dismissed and that the Discipline Committee be ordered to pay his costs.

Decision

We have reviewed the cases relied upon by Ms. Jolley and Mr. Dove. It is clear that numerous challenges to the *Income Tax Act,* on the basis that it is outside federal jurisdiction because it constitutes direct taxation to raise money for provincial purposes, have consistently failed. The federal government's power under s.91(13) of the *Constitution Act, 1867* to raise money "by any mode or system of taxation" is a wide and general power that has repeatedly been interpreted by Courts to allow the federal government to levy income taxes. In the *Winterhaven* case, for example, the Court noted that the fact that monies received under the *Income Tax Act* get mixed with other monies and that some of those funds are transferred to the provinces and are then used for provincial purposes does not mean that the main object of the *Income Tax Act* is to raise money by direct taxation for provincial purposes.

A review of the cases also discloses that Mr. Dove's argument, based on the *Lord Nelson* case, has been considered and rejected by the Courts. In particular, in *Bruno v. Canada*, the British Columbia Court of Appeal ruled that

> The *Lord Nelson* case dealt with whether the Parliament of Canada has the power to delegate constitutional jurisdiction to a province. There is nothing to be found in the decision that assists ... in the argument ... as to the constitutional invalidity of the federal *Income Tax Act*.

We find that Mr. Dove's submissions on the unconstitutional validity of the *Income Tax Act* have no legal merit. We accept Ms. Jolley's submission that it is settled law in Canada that the *Income Tax Act* is within Parliament's jurisdiction. Moreover, we are bound by the decision of the Ontario Superior Court of Justice in the *Kennedy* case, which held that the *Income Tax Act* is constitutionally valid.

Our ruling on the validity of the *Income Tax Act* is relevant because one of the charges against Mr. Dove is that he violated Rule 102, which states that a member shall not permit his or her name to be used with or participate in any practice, pronouncement or act that the member knows to be, or which a reasonably prudent person would believe to be unlawful. Although Mr. Dove sincerely <u>believes</u> that the *Income Tax Act* is unconstitutional, we have concluded that a reasonably prudent person would know that the *Income Tax Act* is valid and that it is therefore unlawful not to file income tax returns and to refuse to comply with requests from CCRA in connection with income taxes. We find that Mr. Dove

has repeatedly permitted his name to be used with and has participated in pronouncements and activities that a reasonably prudent person would believe to be unlawful and he has thereby violated of Rule 102.

Mr. Dove gave a client, Ormell Sand and Gravel Ltd., and one of its Directors, advice which resulted in charges being laid against the client for non-compliance with the *Income Tax Act*. He thereby violated Rule 2, which requires members to act in the interest of their clients and third parties. Rule 2 states that members must be prepared to sacrifice their self-interest in order to promote the interests of their clients. Mr. Dove did not do so. He jeopardized his client's interest, which resulted in the client being convicted and fined for non-compliance with the law.

We find that Mr. Dove also violated Rule 301, which requires members to sustain professional competence by keeping informed of, and complying with, developments in the acknowledged standards of the profession in all areas in which the member is relied upon because of the member's profession. All of the court cases involving a challenge to the *Income Tax Act* have ruled that the *Income Tax Act* is constitutional. Mr. Dove should keep himself informed of these decisions and must comply with them. Instead, he has given advice to clients and has made public statements advocating non-compliance with the *Income Tax Act*. We find that this violates Rule 301, as well as Rule 3, which requires members to employ their expertise with due professional care and judgment.

Rule 515 requires that a member who is engaged in public practice must register in accordance with the requirements prescribed by the CGAO. In the evidence, Mr. Dove has made reference to serving his clients. The evidence discloses that he has engaged in public practice with respect to at least one client (Ormell Sand and Gravel). He was not registered with the CGAO at the relevant times when he gave advice to that client. Thus we find that he breached Rule 515.

Rule 6 requires members to carry on work in a manner that enhances the image of the profession and of the Association. Rule 101 prohibits members from permitting their name to be used with, or participating in, any practice, pronouncement or act that would be of a nature to discredit the profession. Mr. Dove violated both of these rules by consistently using his C.G.A. designation in connection with pronouncements that the *Income Tax Act* is unconstitutional, that Canadians need not file income tax returns, etc. These pronouncements discredit and tarnish the image to the accounting profession and of the CGAO in particular.

Based on all of the above, we have concluded that the following penalties should be imposed upon Mr. Dove. We order that:

1. Mr. Dove be expelled from membership in the Certified General Accountants Association of Ontario;

2. Mr. Dove pay a fine of $2,000 to the CGAO;

3. Mr. Dove pay the Discipline Committee's costs in the amount of $8,000;

4. This decision be published in CGAO Statements and in the newspaper publications of the *Toronto Star* and any other local publications in the community of his campaign area.

Dated at Toronto, Ontario this 14th day of November, 2003.

Donald H. Page, Chair
On Behalf of the Tribunal

NOTICE

The decision of a Professional Conduct Tribunal may be appealed to an Appeal Tribunal within sixty (60) days of the written decision of the Professional Conduct Tribunal. The notice of appeal must be in writing, addressed to the Executive Director, Certified General Accountants Association of Ontario, 240 Eglinton Avenue East, Toronto, Ontario, M4P 1K8. The notice must contain the grounds for appeal.

Sack
Goldblatt
Mitchell

Barristers
& Solicitors

November 24, 2003

DIRECT LINE: 416-979-6440
OUR FILE NO. 03-627
www.sgmlaw.com

VIA FAX AND REGULAR MAIL

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Dear Sirs/Mesdames:

Re: Complaint Under the Code of Ethical Principles and Rules of Conduct - Wallace Dove

The Tribunal has asked me to advise the parties of a correction to be made to its decision dated November 17, 2003. The Tribunal intended to order publication of the decision in newspapers in Mr. Dove's area of residence. This had been requested by the Discipline Committee and the Tribunal had decided to make the order of publication, but inadvertently neglected to make reference to this order in its decision. This was simply an oversight on

the part of the Tribunal and, when it was brought to the Tribunal's attention by Ms. Jolley that the issue had not been addressed, the Tribunal instructed me to advise the parties to correct the omission.

Sincerely,

Cynthia Petersen
Counsel for the Tribunal
CP:jh
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