

## **Assessing the Ontario Chartered Accountant Association's Disciplinary Process: Can Self-Governance, Public Interest and Capitalism ever Coexist?**

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### **Abstract**

Like other self-regulating professions, accounting is in a constant quest to balance its responsibility as a protector of the public interest and as a steward of its membership. Disciplinary measures are in place to ensure public trust when transgressors commit misdeeds. A review of the former Chartered Accountants' (CA) member offences brought forward 72 cases of financial fraud out of a total 417 cases of misconduct over a 25+ year range. Upon examination, there was an inconsistency in the treatment of those 72 cases as over half of the convicted individuals were involved in financial fraud over \$40 000 and the charges related to accountants stealing funds held in trust, from industry employers, from clients, as well as from CA firm employers. Findings provide specific numbers and examples associated with the severity of disciplinary punishments. Additionally, the study raises a few key questions on the seemingly low volume of violation detection and the fact that minor misdemeanors are "lumped together" in a general category with high profile criminal cases.

**Keywords:** Accounting profession, financial fraud, ethical behavior, business ethics, self-governance, disciplinary process, penalties, academic dishonesty.

### **1.0 Introduction**

In recent years, the importance of ethical issues and responsibility has grown worldwide (Devlin & Cheng, 2010; Shamir, 2008), and expectations regarding sound business practices have increased throughout society. Since top business managers make crucial decisions in companies, act as role models and have a significant impact on the quality of organizational culture, the greatest responsibility for these expectations rests with them (Egbon, 2015; Low, Davey & Hooper, 2008; Paine, 1997). However, the critical role of accountants in this ethical environment must also be examined as they are entrusted with examining the financial statements of public companies and signing the audit reports which are relied upon by investors, bankers and creditors. In every accounting scandal or banking failure, one wonders what happened to the independent auditor (Gendron, Suddaby & Ram, (2006). They too must be subject to the same scrutiny as the top business managers for the public to have faith and trust in the audit process and the resulting financial statements (Azim, & Azam, 2016; Cohen & Pant,

1991; Rezaee, 2004). Ethical standards, transparency and accountability have hardly been more vital to the survival and reputation of professional accountants.

The three former accounting associations in Ontario, now unified under the Chartered Professional Accountants of Ontario (CPAO), each had a responsibility to protect the public interest by ensuring that all members, students and firms observed high professional and ethical standards. This level of internal stewardship is also found among select professions such as law and medicine (Hilary & Lennox, 2005). A key element of an association of members being viewed as “professionals” is based on the claim that the higher status and pay for services is worthwhile because its members make a professional commitment (grounded in their independence from their clients) and an independence commitment (grounded in the character of individual accountants) to subordinate self-interests to those of the public (Gendron et al., 2006). In return for this subordination of self-interest, the professions are allowed to regulate themselves with minimal outside interference (Canning, O’Dwyer, 2001; Devlin & Cheng, 2010). It should be noted there is a significant difference in the influence of ethics among the legal and medical professions versus the accounting profession. Lawyers’ and doctors’ first obligation is to their client but accountants hold an additional obligation to the third parties who rely on their reports (Flory, Phillips, Reidenback & Robin, 1992).

Each of the former accounting associations, Chartered Accountants (CAs), Certified Management Accountants (CMAs) and Certified General Accountants (CGAs) had a system to self-regulate their respective members. At times, professional accountants can be faced with conflicting mandates and challenging dilemmas. On one side of the scale there lies public interest and on the other side rests the self-interest of members and advancement of the accounting designations. In a perfect world, the scale would always be in balance, but certain factors can create a situation in which a professional accountant steps out of line and commits an offence. This is when the role of their association is to intervene and reprimand its members through various disciplinary processes including formal charges, fines, completion of further training, suspension or permanently removing their professional accounting designation and expelling them from membership. These steps are taken in an attempt to restore public trust and bring the scales back in balance. In maintaining this balance, the self-regulation process of each association had strict ethical guidelines and regulations that allowed them to sanction members and even publicly post the names of those who had been convicted of offences on the respective accounting association’s website, publish names in newspapers, as well as informing membership via internal means of communication (newsletters, bulletins).

The system of checks and balances does work in theory but it is hard to keep both sides of the scale balanced; an increase in societal interests can come at the expense of lowered self-interests (Finn, Chonko & Hunt, 1988; Hilary & Lennox, 2005; Trevino, Weaver, Gibson & Toffler, 1999). This conflict of interest could create issues within the self-regulation process. For example, if the accounting association seeks to properly report the transgressions of its members and to provide the necessary transparency in the self-regulation process then, these actions could possibly cause the public eye to

cast doubts on the profession.

In examining the disciplinary process of the former Ontario Chartered Accountants, a study conducted by Leonard, Bélanger and Wardley (2016) looked at the rules governing the profession with respect to maintaining the good reputation of the profession, including Rule 201.1 which applies to maintaining the good reputation of the profession and its ability to serve the public interest. This may sound like a general rule but in fact this rule covers a wide variety of offences including what some would consider moderate (failing to complete client engagements, false advertising, failing to remain objective while providing client services, and accepting commissions) to more extreme charges (conviction of fraud, misappropriation of funds, theft, falsification of documents, engaging in public accounting without a license, submitting false financial statements to the bank, forging clients' signatures, altering client cheques, and committing personal tax evasion). Since this study focuses on financial fraud, the 4 percent of convictions related to illegal possession of firearms, money laundering, extortion, child pornography/molestation and sexual assault will not be tracked; however, the point has to be made that these criminal offences were also included under the "general" rule 201.1 although the gravity of these offenders' character failure is not in doubt.

The more serious charges are the ones that would most certainly damage the image of the profession in the eyes of the public. For example, financial fraud which can be defined as a wrongful or criminal deception intended to result in financial or personal gain (Oxford Dictionary) and theft or misappropriation of funds either placed in one's trust or belonging to one's employer has the potential to harm the public. Consumers of financial services must have faith in their auditors and accountants as they themselves do not possess the skills needed to review the resulting reports of these professionals. Thus, it is important to know that the disciplinary process ensures that if two (or more) accountants are convicted of similar "crimes", they are receiving similar penalties and similar fines relative to the degree of severity of the charge.

## **2.0 The Focus of This Study**

Based on the Leonard et al. (2016) study, it was not clearly conclusive that the game was being played as "fair ball". A review of the disciplinary process and the outcomes made it seem apparent that a closer examination of the system could result in better ways and methods. Therefore, further study of the disciplinary cases with a specific look at the cases involving financial fraud could result in recommendations for improving the overall reporting and transparency of the newly unified CPAO's disciplinary system.

This research paper will continue the 2016 study and examine the past 25 years of the CA disciplinary process to determine: 1) the volume of offences that specifically dealt with financial fraud, and 2) if these offences procured a sufficient penalty (public disclosure, sanctions and monetary fines).

### **3.0 Review of the Literature**

#### *3.1 The need for transparency in the accounting world*

One of the most popular “buzz” words in the business world today is transparency. We hear about the need for companies to be transparent in their reporting to the public, the need for management to be transparent in leading the corporations and the need for accounting to be transparent during the preparation of the financial statements. While the request for more transparency, accountability and ethical behavior is heard in the news, the CA profession finds itself at the heart of the conversation. As a self-regulating profession, Chartered Accountants have had to be careful and vigilant in their actions. It is therefore essential the public recognize that the accounting association is being rigorous when regulating its members.

In Canada, the new CPA accounting profession has maintained its status as a self-regulated occupation. The accounting industry is completely regulated by professional organisations, as delegated by provincial governments (Gorman, 2014). According to Richardson (2009, p. 573), “the ability of a regulatory body to act effectively will depend on the network of cognate organizations to which it is linked. This is based on an understanding that “as societies grant professional communities freedom from external regulation, they expect that these professional communities will in turn be committed in regulating their members’ conduct. Consequently, professions would cultivate distinctive ethical norms, socialize new practitioners, and engage in social control of deviant behavior” (Gorman, 2014, p. 491). Over the years, the Canadian public and government have allowed the accounting profession to succeed in retaining its self-regulating existence based on an appeal to professional responsibility (Baker, Bédard, & Prat dit Hauret, 2014). This assumes that auditors in particular will make it a moral issue to maintain an objective position in the performance of an engagement so as to protect their independence on the basis of their codes of ethics and moral character (Gendron et al., 2006).

Taking a closer look at this professional responsibility, we see that the accounting industry has been able to remain self-regulating for two reasons. First, being able to determine any wrong-doing of its members would require a very specific skill set and in-depth knowledge of accounting. Second, the most cost effective way to regulate the profession would be using a system that employs accountants who already possess the needed skills and capabilities rather than one where the learning curve would be too steep for non-accountants (Lahey, 2012). However, Self-Regulating Organizations (SRO) are not very common, especially when dealing with professions whose members can be criminally manipulated and become entwined with the millions of dollars belonging to an individual’s or businesses’ economic prosperity. Lahey (2012) believes that SROs need to be carefully controlled because public policy has determined that the public can be harmed in unacceptable ways if accountants fail to provide services in ways that meet regulated standards.

#### *3.2 Oversight of the profession: How is transparency assured?*

To help the profession portray their accountability to the public, Ontario’s Chartered Accountants have been under the guidance of three bodies. First, the former Institute of

Chartered Accountants of Ontario (ICAO) has been the governing body of this self-regulating entity, with its Disciplinary Committee having charge over its members (CPAO website, 2014). The former Ontario Chartered Accountant (CA) profession has had and continues to have, under the new CPA Ontario (CPAO) association a long and proud history dedicated to commitment. Chartered Accountants have been under scrutiny to conduct their activities effectively and with integrity.

Second, the Canadian Public Accountability Board (CPAB) was created in 2003 by the Canadian Securities Administrators, the Office of the Superintendent of Financial Institutions (Canada) and the Canadian Institute of Chartered Accountants. This was part of a restructuring program designed to improve investors' self-assurance that the investment world was working at its optimum. CPAB is aimed at "enhancing the transparency of the accounting profession's activities through the provision of external scrutiny and oversight" (Mescall, Phillips, & Schmidt, 2016, p.1). CPAB's goal is effective regulation which entails proactively identifying current and emerging risks related to the integrity of financial reporting in Canada, assessing how auditors effectively respond to those risks, and engaging those charged with governance, regulation, and standard setting to develop sustainable solutions (CPAB, 2012). Auditors issuing reports are required to be members in good standing with the CPAB (Ben-Ishai, 2006).

According to Gorman (2014), CPAB is a private, independent organization funded by the accounting firms under its regulation. Pritchard and Puri (2006) suggest that "statutory authorization for CPAB could enhance its efficiency and effectiveness, without sacrificing the advantages of self-regulation" (Pritchard & Puri, 2006, p. 2). They argue that because the accounting industry has had too much influence on the governance of CPAB, the voting rights of Industry Members should be removed and the number of accountants on the Board of Directors reduced (Pritchard & Puri, 2006). Although these proposed reforms would not eliminate valuable input from the accounting industry, the suggested reforms would help alleviate concerns that self-regulation was being administered in the interests of the accounting industry, at the expense of investors' interests (Pritchard & Puri, 2006). Even though CPAB is not a governmental agency, research has proven that since its establishment, the "severity of discipline sanctions against individual members of the accounting profession increased after 2003. By focusing on sanctions that provide both general and specific deterrence to the membership of the ICAO, it was proven that punishment severity has increased across both public and private interest code violations" (Mescall et al., 2016, p. 2).

Finally, the Public Accountants Council for the Province of Ontario (PAC) was established under the Public Accounting Act, 2004 (the Act). This new organization was created with a mandate of ensuring that the practice of public accounting in Ontario was done in accordance with internationally respected public accounting standards. This would help to ensure the highest level of public accounting services provided by Ontario's accountants and satisfy the objectives of the general public. In Ontario, regulatory codes of conduct compel certain behavioural standards, which speak to the transparency of the profession. For example, "members are required to maintain

objectivity and integrity, to avoid conflicts of interest and not knowingly misrepresent facts or subordinate one's judgment. Members are prohibited from taking part in any illegal activities. The code requires members to inform the Institute [ICAO] if they are convicted of a criminal offense, or have been suspended from membership in the Institute" (Jakubowski, Chao, Huh & Maheshwari, 2002, p. 117).

### *3.3 Ethical standards within the profession: How are standards set?*

A review of the literature reveals that most studies of the Canadian accounting profession occurred before the unification of the accounting associations, some of which focused on comparing the regulatory systems across provincial boundaries. According to Ben-Ishai (2006), the Provincial Institutes of Chartered Accountants Rules of Professional Conduct (Rules) forms the professional obligations of CAs that perform audits. The Rules are substantively equivalent across all provinces. Most importantly, Rule 213 of the Rules of Professional Conduct, explicitly states a member, student or firm shall not knowingly associate with any unlawful activity (Ben-Ishai, 2006). There are other rules which state that "a member, student or firm shall act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest . . . shall perform professional services with integrity and due care . . . shall not sign or make false or misleading documents and oral representations" (Ben-Ishai, 2006, p. 460).

Although rules of professional conduct preclude illegal activities and mandate accountants to perform with integrity and objectivity, the education system may not provide the needed emphasis on learning how to avoid engaging in illicit/immoral activities and behaviour. This shortfall was revealed by a study which examined Canadian and U.S. financial accounting and auditing textbooks for ethics/governance content. The study found that while there is some coverage of this topic (including discussions of recent accounting scandals) as indicated by the textbooks' tables of contents and indexes; the average coverage is not extensive, especially when compared to the number of pages in these volumes (Gordon, 2011). However, "the number of pages covering scandals/governance and troubled corporations, increased significantly in all updated editions of the textbooks. In contrast, other topics such as ethics, professional judgment, corporate social responsibility, and fraud, did not significantly increase in coverage over time" (Gordon, 2011, p. 41). A 2003 study conducted by PricewaterhouseCoopers on accounting curricula in a sample of American universities found that ethics teaching was not a consistent and integrated part of accounting students' education (Low et al., 2006). These findings are corroborated by Gorman (2014) who mentions that "the extent and quality of accounting ethics instruction is inconsistent across courses and institutions, and that socialization practices do not seem to produce effective moral development" (p. 502). Notwithstanding, Gorman (2014) did state there is evidence that having courses dedicated to topics such as ethics and professionalism would have a positive influence on moral development, although it does not guarantee ethical behavior. In recent years, the Association to Advance Collegiate Schools of Business (AACSB) has bolstered its ethical expectations and standards for its members.

There is a considerable lack of academic literature addressing the issue of transparency in the accounting profession. Part of this may be due to the fact that academic accountants and the public or 'users', differ in their definition of transparency (Stein et al., 2015). Users most often associate transparency with the desire for greater accountability, as well as financial and accounting reform. Meanwhile, academic accountants use a limited definition of transparency that is quite different from users, and they develop their 'solutions' to the problem of increasing transparency that, from the very beginning, appear to be designed to achieve no substantive change (Stein et al., 2015). According to Lahey (2012), regulators come to identify more with the interests of those they regulate rather than the interests of those they are responsible for protecting. Similar findings were reported by Chandler, Edwards and Anderson (2008) who conducted a retrospective study on the records of the Institute of Chartered Accountants in England and Wales; their observation was that professional bodies were more leading towards the protection of their own members than that of the public interest.

Ultimately, self-regulation could not have persisted without the public's consent, whether informed or implied. "The 'privilege' of self-regulation rests ultimately on public support for self-regulation, or at least on the absence of strong public demand for a different regulatory model" (Lahey, 2012, p. 1). However, unification could present a beneficial opportunity which allows for a more comprehensive, integrated, cohesive and consistent form of regulation (Lahey, 2012).

#### *3.4 After unification: The need for accountability and increased transparency.*

CPA Canada is a national organization which was established in January 2013 when the Chartered Accountants (CAs), Society of Management Accountants of Canada (CMA), and Certified General Accountants of Canada (CGAs) unified (CPA Canada, n.d.). CPA Canada is governed by a Board of Directors (reflecting regional representation), with bylaws which provide for a minimum of 16 and a maximum of 22 directors (CPA Canada, n.d.). CPA Canada consists of more than 190,000 members, who are now governed through various by-laws approved in December, 2013. These members are subject to a termination of membership for any reason which the Board in its sole discretion deems to be in the interests of the Corporation, including violation of any provisions of the Articles, By-laws, or any policies/practices of the Corporation in effect from time to time (Governance of Chartered Professional Accountants of Canada (CPA Canada), n.d., p. 6 of By-law One - Revised).

The previously mentioned study by Leonard et al. (2016) reviewed the disciplinary process of Ontario's former Chartered Accountants over a 25-year period and found 1040 disciplinary charges laid, of which defendants pleaded guilty 61.2% (636 charges) of the time. The study looked at the powers of the (former) ICAO's Disciplinary Committee to evaluate how they exercised their rights to determine the penalties. The disciplinary actions taken included: being allowed to continue practicing but only under supervision; requirements to take professional development courses and/or examinations to upgrade skills; suspension of public accounting license; or outright expulsion from the CA profession for the remainder of the accountant's career. The

study found that often, the Committee imposed several sanctions at the same time. The Disciplinary Committee then set the monetary fine and costs to be reimbursed by the member.

As evidenced by the recent accounting scandals, we inhabit a world which is now ruled by market pressure and capitalism, which put accountants in the position of aggressively competing for business, making them accountable for their contribution to the financial performance of their employing firm (Canning & O'Dwyer, 2001; Garmilis & Stokes, 2007). As McPhail (2003) observed, accounting serves capitalism first. In this climate, digging deeper to proactively judge the quality of its members' work instead of taking a reactive approach could bring forward more cases of neglect, fraud or poor performance. On the surface this could be viewed as improving the standards of the accounting association. However, if more cases of professional misconduct are uncovered, members of the general public may begin to diminish the value of a professional accounting designation.

In other professional associations there are external evaluations. For example, "if law societies appear to be excessively protectionist of their own interests at the expense of public interest, the courts will intervene" (Devlin & Cheng, 2010, p. 252). There is no oversight for accounting associations. The disciplinary process is not proactive; an investigation may commence based on complaints filed by a client, another accountant or a member of the general public, but once the complaint is filed the accounting association takes over. The offence is dealt with by the Disciplinary Committee and it is within their power to withhold public disclosure of a member's name, determine how the conviction of offences will be reported and how the monetary amount of fines is determined. In some situations a formal complaint may be filed whereby members are accused but formal charges are not laid. The reasons charges can be dropped may be due to mutual agreement between the institution and member, and no public notification or disclosure is made. The internal handling of these particular cases could impact the public's perception of transparency and accountability.

The process of self-regulation could be considered ineffective should the respective self-regulatory body act in the best interests of their constituents over and above the interests of the general public. There is a fine line between respecting the confidentiality of a member and promoting the best interests of the public. Based on the existing disciplinary structure one could be left to speculate that a possible reason why some complaints are handled internally, with no appeal process provided to the complainants and victims, is to protect the professional status of accountants and their association. The press reports that professional accountants are serving the public's interest, and ensuring transparency and accountability— but is this reality?

#### **4.0 Methodology and Approach**

With the recent unification of the CA, CMA and CGA professions, there is a need to explore the question of whether or not increased accountability and transparency is needed. When evaluating the self-regulating nature of the accounting profession,

researchers should attempt to objectively assess the disciplinary measures, determine the impact of fraudulent incidents, assess whether the punishments served are applied consistently, and observe if the severity of punishment is sufficient to deter further occurrences of the offending behaviour. Before asking if any changes need to be made to the disciplinary process because of merging cultures it is important to determine what processes took place within the accounting bodies prior to the unification. Did the accounting associations do a good job in evaluating the disciplinary cases and determining adequate punishment to its members? It is important to make these observations while the prior rulings are still publicly available.

When comparing the three former accounting associations, the ICAO has the longest history of governance over its members with 25 years of court proceedings currently available to the public. In addition, each disciplinary notice filed by the ICAO contains information for the respective member, including their name, city, gender, category of employment, year of violation, rule violations, number of charges and penalties. As a result, it was concluded that the ICAO database was a logical starting point for a closer examination of the disciplinary process to determine if the system of self-regulation was functioning as well as it could.

This study was based on the publicly available data posted by the former Institute of Chartered Accountants of Ontario (ICAO) (now the CPAO website). Parameters were set to reduce the 417 disciplinary cases to what the general public may consider to be the most “serious” cases. As a result, this study will only examine those cases in which fraud was involved. A common meaning of fraud is “wrongful or criminal deception intended to result in financial or personal gain” (Oxford Dictionary). The focus will be financial fraud (as defined below) and will compare these particular cases to determine if there was consistent treatment in terms of penalties and fines.

Various types of fraud are possible in the accounting field; they include financial fraud (money is stolen or borrowed without a client’s permission and not repaid), accounting fraud (manipulating the financial records to increase profits), tax fraud (submitting false information to Canada Revenue Agency), and deceit (submitting a false degree to gain admittance to the profession). Too often, a business owner finds out too late that even the most loyal employee may commit financial fraud and steal from the company if the opportunity arises and the temptation becomes too great – or if the employee finds him or herself caught up in a serious personal financial dilemma and needs fast cash. The four basic types of financial fraud are: embezzlement (illegal use of funds by a person who controls those funds), internal theft (stealing of company assets by employees), payoffs and kickbacks (employees accept cash or other benefits in exchange for access to the company’s business – a form of bribery), and skimming (employees take money from receipts and don’t record the revenue on the books ([www.dummies.com/business](http://www.dummies.com/business))).

## 5.0 Results

A review of 417 disciplinary cases of the former Ontario Chartered Accountants was conducted, with only financial fraud cases selected and evaluated. The clear majority of financial fraud cases involved men (n=71), with only one woman (included twice in the database as she committed offences on two separate occasions) being charged with violations of the rules of professional conduct.

On one hand, this reflects a gender imbalance. On the other hand, in spite of a few studies concluding that ethical judgment is gender blind (McNichols & Zimmerer, 1985; Stanga & Turpen, 1991; Tsalikis & Ortiz-Buonafina, 1990), most studies have revealed that females are found to be more ethical than males (Beltramini, Peterson & Kozmetsky, 1994; Cohen, Pant & Sharp, 2001; Eweje & Brunton, 2010) in the accounting profession in general (over the last 25 years, the average gender distribution was about 24% females and 76% males) and specifically in the external audit arena (O'Fallon & Butterfield, 2005; St. Pierre, Nelson & Gabbin, 1990). Interestingly, the research revealed that "the provincial accounting institutes determine the content of accounting ethics codes, and that, professional culture is dominated and arguably distorted by a small number of powerful firms" (Gorman, 2014, p. 502).

A closer review of the database of CA member offences compiled by Leonard et al. (2016), revealed an inconsistency with respect to some of the rulings. Examination of the 72 cases of financial fraud (out of a total of 417 cases) is found in Table 1. Some cases of financial fraud were not publicly disclosed by newspapers/media (n=24); court costs were not reimbursed by the member (n=27); no fines were given (n = 67) and/or the member was not expelled (n= 10) from the membership. These counts are significant as over half of those convicted of financial fraud (n=40) involved fraud over \$40,000. The amount of \$40,000 was chosen because it is higher than the average Canadian yearly personal income (Statistics Canada, 2016) and would be considered material by the average wage earner.

The 40 cases of financial fraud involving amounts over \$40,000 included situations of accountants stealing from funds held in trust (n=19), from industry employers (n=24), from clients (n=21), and from CA firm employers (n=8) (Graph 1). Intuitive logic would dictate that the general public expects all cases of financial fraud to result in a member being expelled but there are always exceptions to the rules. On closer examination of the 10 cases of members not being expelled for financial fraud, the ICAO took into consideration situational factors such as: manipulation by a superior; situations of some charges being dropped for insufficient evidence while other charges held; theft occurred as a result of a contravention of the partnership agreement and resulted from disputes among partners (2 cases); return of funds with a confession; and in one case theft was committed to support a cocaine addiction with the member now in rehabilitation.

**Table 1: Types of sanctions assigned to fraud cases (N=72)**

		No fine	No court cost	External publication in newspapers	Internal publication Checkmark/Institute	Not expelled	Fine amounts **	Fraud over 40k
N	Counts	5	45	48	69	10	65	40
	Missing	67	27	24	3	62 *	7	32
Minimum							1,000	
Maximum							50,000	
Sum		72	72	72	72	72	72	72

\*for two cases no information regarding expulsion verdicts was offered

\*\* total fines were \$885,800

**Graph 1: From whom were they stealing?**

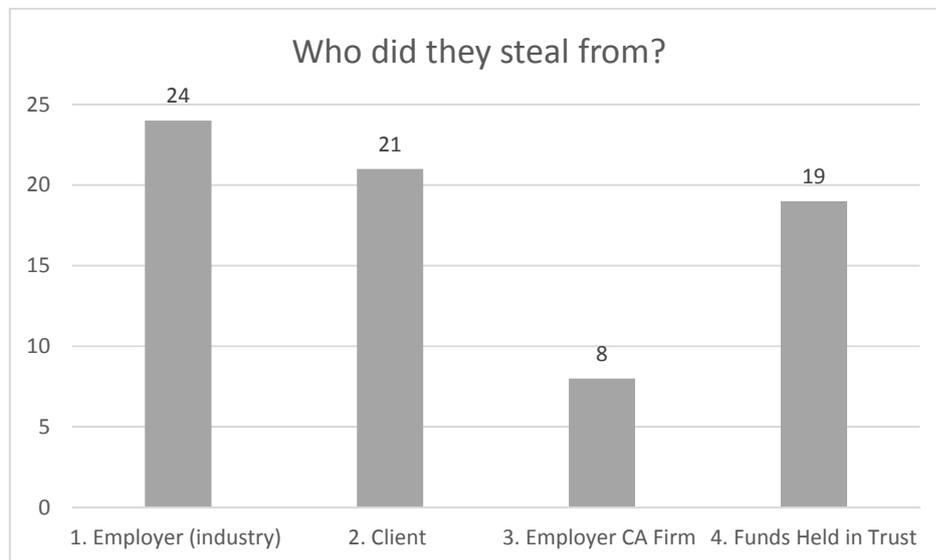


Table 2 indicates the number of individuals having committed fraud and whose conduct and membership status were publicly exposed through external media (n=48) and those whose names became known mainly to the community of accountants via their internal professional communication bulletin (n=24). It should be noted that the general public could gain knowledge of these 24 cases if they were aware of Check Mark, the internal bulletin/newsletter on the ICAO website. However, it would be unlikely members of the public would be cognizant of the existence of Check Mark and know these cases could be discovered this way.

Table 3 shows from whom these individuals stole money and whether or not they were expelled from membership. Among the 24 individuals having committed financial fraud and not having been exposed to external media, eight stole from their clients, seven from the funds in trust, six from the industry (company) employing them, and three from their own accounting firm. Ten of them were not expelled, and it can be assumed that they are still practicing.

**Table 2: Conduct and membership publicized (or not) based on from whom they were stealing.**

			Who did they steal from 1=employer (industry), 2=client, 3=employer (CA firm), 4=funds in trust				Total
			1	2	3	4	
Public paper	Main Media	Count	18	13	5	12	48
		% within Public paper	37.5%	27.1%	10.4%	25.0%	100.0%
		% of Total	25.0%	18.1%	6.9%	16.7%	66.7%
	No main media	Count	6	8	3	7	24
		% within Public paper	25.0%	33.3%	12.5%	29.2%	100.0%
		% of Total	8.3%	11.1%	4.2%	9.7%	33.3%
Total		Count	24	21	8	19	72
		% within Public paper	33.3%	29.2%	11.1%	26.4%	100.0%
		% of Total	33.3%	29.2%	11.1%	26.4%	100.0%

**Table 3: Expulsions (or not) based on from whom they were stealing**

			Who did they steal from 1=employer (industry), 2=client, 3=employer (CA firm), 4=funds in trust				
			1	2	3	4	Total
Membership Status	Expelled	Count	20	17	7	16	60
		% within membership status	33.3%	28.3%	11.7%	26.7%	100.0%
		% of Total	27.8%	23.6%	9.7%	22.2%	83.3%
	Not Expelled	Count	3	4	1	2	10
		% within membership status	30.0%	40.0%	10.0%	20.0%	100.0%
		% of Total	4.2%	5.6%	1.4%	2.8%	13.9%
	Unknown	Count	1	0	0	1	2
		% within membership status	50.0%	0.0%	0.0%	50.0%	100.0%
		% of Total	1.4%	0.0%	0.0%	1.4%	2.8%
Total		Count	24	21	8	19	72
		% within membership status	33.3%	29.2%	11.1%	26.4%	100.0%
		% of Total	33.3%	29.2%	11.1%	26.4%	100.0%

Table 4 presents a list of the 72 individuals found guilty of financial fraud indicating which rule of professional conduct was violated; whom they committed the crime against, and the various sanctions they received. Eighty-two percent (82%) of these individuals were charged with violations against rule number 201.1 which as previously noted applies with those members “failing to maintain the good reputation of the profession”.

**Table 4: List of the 72 individuals having committed financial fraud, with rule violations and sanctions**

Number	Rule Violated	Who did they steal from 1=employer (industry), 2=client, 3=employer (CA firm), 4=funds in trust	\$\$\$ how much money was involved	No fine	No court cost	Fixed cost amounts	Made public newspapers	Made public Checkmark/institute	Expelled	Not expelled	Fine amounts	Fraud over 40K
2	201.1	2	95,930		1			1	1		5,000	1
4	201	2	5 counts of >1,000	1	1			1	1			
9	201.1, 205	4	2,500,000		1		1	1	1		7,000	1
17	201.1	1	44,620		1			1		1	7,500	1
18	201.1	4	165,000			9,000	1	1	1		20,000	1
20*	201.1	2	138,900		1		1	1	1		7,500	1
20*	201.1	2	138,900		1			1		1	1,500	
21	201	2	> 1,000			750		1	1		7,500	
27	201.1	3	282,381		1		1	1	1		25,000	1
34	201.1	1	48,039			20,000	1	1	1		20,000	1
38	201.1	1	4,996		1			1		1	1,000	
39	201.1	3	1,110,000		1		1	1	1		25,000	1
44	201.1	2	1,057,095		1		1	1	1		20,000	1
55	201.1, 205	4	1,000,000		1		1	1	1		7,000	1
63	201.1	4	55,000	1		1,000	1	1	1			1
65	201.1	3	18,010		1		1	1	1		10,000	

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Number	Rule Violated	Who did they steal from 1=employer (industry), 2=client, 3=employer (CA firm), 4=funds in trust	\$\$\$ how much money was involved	No fine	No court cost	Fixed cost amounts	Made public newspapers	Made public Checkmark/institute	Expelled	Not expelled	Fine amounts	Fraud over 40K
68	201, 212	4	38,333		1			1		1	5,000	1
99	201.1	4	43,059									
106	201.1, 205	3	6,465		1		1	1		1	5,000	
107	201.1	2	188,000 (Bermuda)		1		1	1	1		10,000	1
114	201.1	2	465,000			15,000	1	1	1		20,000	1
117	201.1	4	1,000,000		1			1	1		25,000	
121	201.1, 205	1	6,903		1			1	1		1,000	
124	201.1, 202	1	3,700									
130	201.1	2	> 2,000,000		1		1	1	1		25,000	1
131	201	4	> 200	1		650		1	1			
132	104, 201	4	> 1,000	1	1		1	1	1			
147	201.1	2	93,000		1			1		1	2,000	1
148	201.1	1	243,000		1		1	1	1		5,000	1
150	201.1, 203.2	1	180,000		1		1	1	1		25,000	1
151	201.1, 204.1, 212.1	2	50,000		1			1		1	5,000	1
154	104.1, 201.1	4	37,000			20,000	1	1	1		20,000	
165	201	4	5,450			1,500	1	1	1		2,500	
176	201.1, 205	2	232,024		1		1	1	1		30,000	1
180	201.1	1	22,600			1,500	1	1	1		3,500	

Accountancy Business and the Public Interest 2018

Number	Rule Violated	Who did they steal from 1=employer (industry), 2=client, 3=employer (CA firm), 4=funds in trust	\$\$\$ how much money was involved	No fine	No court cost	Fixed cost amounts	Made public newspapers	Made public Checkmark/institute	Expelled	Not expelled	Fine amounts	Fraud over 40K
184	201	1	71,895			5,000	1	1	1		5,000	1
201	201, 205	3	64,018			1,000		1	1		13,800	
223	201.1	4	> 1,000		1			1	1		3,000	
224	201.1, 204.1	2	318,500			10,000	1	1	1		25,000	1
226	203	2	9,735		1			1	1		1,000	
234	201.1	1	10,900		1		1	1	1		4,000	
235	201	3	> 1,000		1			1	1		3,000	
250	201.1, 205	4	48,600		1		1	1	1		3,000	1
253	201.1	1	204,110			2,500	1	1	1		5,000	1
258	201.1	1	43,000		1		1	1	1		5,000	1
260	201.1	2	313,000			20,000	1	1	1		20,000	1
272	201.1, 202, 205, 218	2	134,000		1		1	1	1		30,000	1
278	201.1	1	4,700,000		1		1	1	1		10,000	1
281	201	1	1,800,000				1	1	1		25,000	1
282	201, 205	4	unknown		1			1		1	7,500	
298	201.1	1	26,300		1		1	1	1		5,000	
301	201.1, 212.1	2	5,175		1			1		1	5,000	
308	104.1, 201.1, 205, 212	4	30,000,			10,000	1	1	1		10,000	
311	201.1	1	19,900			5,000	1	1	1		5,000	
315	201.1	1	207,500		1		1	1	1		10,000	1

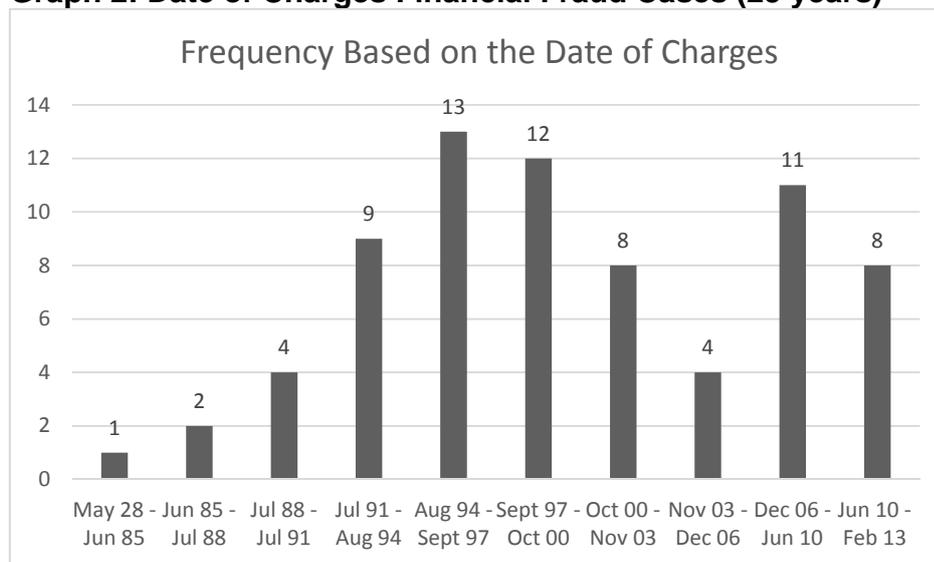
Accountancy Business and the Public Interest 2018

Number	Rule Violated	Who did they steal from 1=employer (industry), 2=client, 3=employer (CA firm), 4=funds in trust	\$\$\$ how much money was involved	No fine	No court cost	Fixed cost amounts	Made public newspapers	Made public Checkmark/institute	Expelled	Not expelled	Fine amounts	Fraud over 40K
320	201.1, 205	4	11,770		1			1	1		3,000	
321	201.1	1	988,271			3,500	1	1	1		50,000	
338	201.1, 204	2	498,000			10,000	1	1	1		25,000	1
342	201.1. 205. 212.1	4	100,000		1		1	1	1		25,000	1
345	201.1	2	465,000			15,000	1	1	1		25,000	1
355	201.1	4	unknown		1		1	1	1		15,000	
365	201	1	10,294	1	1			1		1		
373	201.1	3	543,247		1		1	1	1		25,000	1
374	201.1	1	> 1,000		1			1	1		7,500	
378	201.1, 203.2	1	8,000,000			15,000	1	1	1		50,000	1
383	201.1	1	71,000		1		1	1	1		10,000	1
395	201	3	136,000		1				1		15,000	1
401	201.1	1	13,000		1		1	1	1		2,000	
409	201.1	4	12,000,000			3,000	1	1	1		20,000	1
411	201.1	1	239,000			3,700	1	1	1		20,000	
424	201.1	2	539,076			3,000	1	1	1		25,000	1
425	201.1	2	179,633			20,000	1	1	1		25,000	1
			40,856,329	5	45	196,100	48	69	6 0	10	885,800	40

\*included in the database twice as this female was charged twice for financial fraud

Closer examination of the 72 charges of financial fraud demonstrates that over half (n=48) of the offences were identified prior to 2003 (Graph 2). However, as reported by Mescall et al. (2016), the severity of disciplinary sanctions against individual members of the accounting profession did increase after 2003. By focusing on only the cases with a date of decision and order after 2003 (n=24) we see more public disclosure of the rulings posted in public papers (n=23), only two cases did not receive court costs, and 23 of the 24 cases were expelled. So it does appear that there is a substantial change in punishment severity after this timeframe but there does not appear to be a significant increase in cases identified and brought forward to the ICAO's Disciplinary Committee.

**Graph 2: Date of Charges Financial Fraud Cases (25 years)**



This last point is noteworthy as the period after 2003 signifies a timeframe where more attention was being placed on accountants and their performance yet we do not see a corresponding and expected increase in members being identified and charged. The dollar figures of the amounts embezzled by accountants increased (Table 4) between 2003 and 2013 with fines low in comparison and inconsistently allotted. For example, in case #409 embezzlement of \$12,000,000 resulted in a fine of only \$20,000 which was the same amount of fine levied for embezzlement of \$37,000 (in case #154) and lower than the \$25,000 fine for theft of \$179,633 (in case #425) and inconsistent with the fine of \$7,500 for financial fraud involving under \$1,000 (in case #374).

## 6.0 Analysis and Discussion of the Results

The examples given above correspond with research findings which state, “increased public scrutiny of the Canadian accounting profession, marked by the establishment of the Canadian Public Accountability Board in 2003, is positively associated with the severity of punitive sanctions administered by the profession’s disciplinary committees” (Mescall et al., 2016, p. 1). Mescall et al. (2016) also mention that since 2003, the severity of disciplinary punishments has been greater, and the dollar amount of fines

increased from an average of \$6,021 to \$9,559 (statistically significant at a 5% level) (Mescall et al., 2016, p. 10).

After analyzing the information contained in the 417 disciplinary cases over 25 years, the 72 cases of financial fraud were determined to be a frequent offence (17%). Most would agree that such serious charges should result in severe penalties and some form of punishment. In the financial world, the public relies on the accounting profession and any situation of fraud would be of interest because of the trust issue. The public would expect such behaviour to be dealt with in a very harsh manner.

It should be noted that many cases of financial fraud also involve some form of accounting fraud or way of “covering up” or “adjusting” the financial records to hide the misappropriated funds. A publicized example of “accounting fraud” is the Livent scandal case. Livent was a high flying theatre company in the 1990s, bringing popular shows like “Phantom of the Opera” and “Joseph and the Amazing Technicolor Dreamcoat” to stages across North America. Behind the curtain, however, the company was ultimately revealed to be a massive accounting fraud. Co-founders Garth Drabinsky and Myron Gottlieb manipulated the books to increase profits and were accused of directing accounting staff to improperly record expenditures in an effort to boost the company's financial health. The accounting system was fraudulent and was discovered through the regular annual audit. This case took 11 years to reach the final verdict and to find the founding partners guilty (Financial Post, April 6, 2014). Accounting fraud does not necessarily result in an immediate monetary gain...it is often more a way of gaining benefit by owning shares whose market value may rise after the fact. Several of the CAs working for Livent were found guilty of their charges and expelled from membership.

Our study found 72 cases of financial fraud (Table 4). Wyatt and Gaa (2005) have asked the question as to whether such deviations from core ethical values among accountants could be due to “simple greed”. We are presenting below a few cases that are representative of the five factors that Low et al. (2008) have identified as contributors to accounting failures to live up to ethical standards. Each of the following cases explains how the CA carried out the fraud, how they were caught and what charges or penalties were received. The information was extracted from the website of the former ICAO and due to the seriousness of the crimes, and the possibility that some of the accused may have moved on with their lives, actual identities have not been provided in this text. Each of the cases is unrelated and is in chronological order.

*Prevalence of a legalistic culture:* In 1985, Mr. I-G was found guilty of 46 charges under Rules 201 and 205 of obtaining a benefit of a total amount of \$64,018 by filing false expense reports with his firm of which he was then a partner. Mr. I-G was fined \$13,800 and expelled from the Institute. Arguments were presented that such transactions between Mr. I-G and his firm did not involve a monetary loss by any member of the general public and therefore the charges should be made under a different ruling. The defendant was trying to barter code rules against ethics and character. The Committee however ruled that the charges laid under Rule 201 were proper and could constitute

professional misconduct as it was not necessary that a member of the public be directly involved.

*Corporate values and behavior:* In 1992 Mr. N was found guilty of four charges of professional misconduct, under Rules 201 and 205. While involved in a partnership dispute, the member contravened his partnership agreement (while involved in a bitter partnership dispute), collecting fees on his own behalf for work performed for firm clients, knowingly presented false and misleading financial information to his partners. The dollar amount of his misappropriation is not stated in his case. He was fined \$7,500 and after complying with his order, remained a member in good standing. The CA involved in this case committed fraud against his firm and yet was not expelled.

*Issues of corporate transparency:* In 2000, Mr. A was found guilty of associating himself with financial statements which he knew were false or misleading. Mr. A was fined \$7,000 and expelled from the Institute. Mr. A carried on a practice of public accounting with his brother and he had an unblemished record since being admitted as a member in 1972, when he had won the (Canadian) gold medal (on his Uniform Final Examination). Mr. A misappropriated monies entrusted to his care in the approximate amount of \$2,500,000. He solicited funds from clients for the stated purpose of making relative secure investments and instead used the money for his own speculative purposes. He then filed the investors' financial statements which he knew were false and misleading. He was then expelled from the Institute.

*Money culture:* In 2008, Mr. S, while engaged as the accountant for client, failed to act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that he borrowed from his client funds in the approximate amount of \$465,000 and used those funds for his own personal use. Mr. S was fined \$25,000 and expelled from the Institute. Mr. S's client had been found to be incompetent and Mr. S was managing his affairs through the authority of the power of attorney.

*Vices of a capitalistic society:* In 2012, Mr. A was convicted of the offence of fraud and did thereby fail to act in a manner which will maintain the good reputation of the profession. The total amount of monies misappropriated was approximately \$12,000,000 but some individuals did not wish to be identified or participate as defendants. Mr. A was the CFO of a management company which was a commodity pool operator. He and his non-CA partner devised and participated in a scheme to defraud investors. Mr. A is currently serving an eight-year sentence in a US penitentiary and it seemed obvious to the tribunal that he has not had the ability to pay his fine or costs in the near term. He was expelled from the Institute.

## **7.0 Implications**

Currently, there is limited academic literature specifically discussing crime and punishment practices in the Canadian accounting profession. By studying past disciplinary cases made publicly available by the ICAO, it seems like the severity of

punishment has increased over time, thanks to public and media pressure. These findings are similar to those of Mescall et al. (2016), who had hand collected records of all the disciplinary cases published by the ICAO from 1984 to August 2014. Four obvious implications are discussed in the following paragraphs.

First, the reasons why there are relatively few fraud cases reported in Canada offer little comfort. As explained by Rosen and Rosen (2013), Provincial Institutes of Chartered Accountant Rules of Professional Conduct form the professional obligations of CAs performing audits. Under Canadian laws, audits test financial statements of publicly listed companies against International Financial Reporting Standards, which provides substantial leeway in choosing the policies underlying the reporting in financial statements. Moreover, provincial securities commissions are portrayed to be lukewarm in pursuing violation detection due to their preference to let American bodies do the heavy lifting. Finally, auditing rules are interpreted in such a way that auditors do not feel responsible to unravel what management may not want to reveal. Perhaps this indicates a level of complacency that should be re-visited.

Second, one has to question why rule 201.1 – Failing to maintain the good reputation of the profession – was not designed to separate minor cases of misconduct from the most serious cases of fraud, misappropriation of funds, and forgery, let alone other criminal activities not necessarily connected to accounting, including sexual assault and child pornography. A review of the disciplinary cases shows that, all of the minor misdemeanors are “lumped together” with the hard core criminal activities in the same fairly general category. This makes it more difficult to identify those who committed serious offences and “got caught with their hand in the cookie jar”.

Third, it is not clear why some names of convicted offenders are published in popular press and others are only posted on the association website; why some are not expelled; why some are charged fines and others are not. Different outcomes from applying the same rules and metrics do not seem fair. However, given that fraud is a major crime, “the fair ball” approach about rules and metrics does not appear to be totally transparent in the interest of society.

Finally, although it appears there was a substantial change in the severity of the punishment severity after 2003, there does not appear to be a significant increase in financial fraud cases identified and investigated by the ICAO (Graph 2). This point is noteworthy as 2003 and afterwards signifies a time period where more attention was being placed on accountants and their performance but there is no corresponding and expected increase in the number of members being identified and charged. The dollar amounts embezzled by accountants (Table 4) increased between 2003 and 2013 so perhaps one could assume that some accountants may be willing to take the risk of being caught since the payout (amount embezzled) was high compared to resulting fines that were so low and not everyone was expelled.

This begs the question: Is every “guilty” accountant being caught or are some slipping through the net? Since the number of disciplinary cases is still quite low, is it possible that some companies/entities/individuals are not coming forward with “real” cases of

financial fraud because they want to avoid being criticized for not guarding their financial assets?

The Chartered Professional Accountants of Ontario has not disclosed to the public whether the former Institute of Chartered Accountants Ontario's (ICAO) disciplinary rulings will be transitioned to the new CPA system or if prior disciplinary cases will be publicly available indefinitely once the former Chartered Accountant (CA) website is no longer active. Therefore, in the near future it may not be possible to explore any inconsistencies in the rulings if they can no longer be accessed.

## **8.0 Concluding Remarks**

This research paper was a continuation of the 2016 study carried out by Leonard et al., which explored the general ethics and trustworthiness of the former Chartered Accountants. The new study was an attempt to compare the sanctions and fines relative to the rule violations of former CAs and determine if consistency has been applied. After compiling a database of CA member offences, it became obvious there was inconsistency with respect to some of the rulings, raising concerns as to whether or not this self-regulating profession was doing the best it could to protect the public's interest.

Most outsiders consider any type of fraud arising from the behaviour of those who are entrusted with protecting the public's interest as unacceptable. The results of the current study highlighted 72 cases (17%) of financial fraud out of a total of 417 disciplinary cases over a period of 25+ years. Financial fraud is quite disturbing since the general public needs to trust the accounting profession in its role as a 'gatekeeper' in the financial world. This illustrates that even though the CPAO has established Rules of Professional Conduct and provided the Disciplinary Committee with powers to enforce those rules, the profession's image is not blemish free and its long and proud history has been disturbed by some dishonest accountants.

This begs the question as to whether or not the CPA profession is doing everything in its power to prevent fraud and discourage professional accountants from even thinking about acting in such an unethical manner. The results revealed that the Disciplinary Committee has been inconsistent in its treatment of charges, especially with respect to not publicly disclosing members who have been charged with financial fraud. Public media disclosure is a key method of ensuring that the general public become aware of the wrongdoing and in particular, warning future employers of a member's past history. Other inconsistencies that were uncovered included several cases where a member did not have to contribute to their court costs, cases where low fines were given in high dollar crimes and a few cases in which a member was not expelled. Being expelled from one's profession is the most serious charge which can occur and should in itself be a major deterrent from attempting fraudulent activities.

The overall disciplinary system could be improved if the CPAO would consider developing a more careful and proactive process for examination of the conduct of its

members. For example, they could publish information and guidelines for the general public, informing them as to how they can report members who may be in violation of the Rules of Professional Conduct. The CPAO could develop more stringent guidelines to be followed when handing out charges to ensure that 1) all cases of resulting in disciplinary charges be communicated using external public media; 2) all members convicted of fraud be expelled; 3) if an exception has been made, that the reason be disclosed; and finally 4) higher crimes receive higher penalties.

One of the limitations of this study involves disciplinary cases with incomplete data. With missing information, the study may not have captured all data related to monetary fines, total costs and other charges. Another limitation is the fact of not having access to charges which were brought forth but dropped due to settlements reached between the parties. Full disclosure may have altered the reported results in this research paper.

Future research should be focussed on exploring why some of the cases were not handled in a consistent manner. With the recent unification of the accounting profession, there is a need to know if similar or other inconsistencies have occurred within the disciplinary systems of the CMA's and CGA's. There is a need to compare and contrast the disciplinary approaches of all three accounting organizations to ensure that a very solid surveillance and detection system be in place to provide the assurance needed by the general public to continue their acceptance of the accounting profession being a self-regulating industry in Canada.

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