

Court File No. 23861

**IN THE SUPREME COURT OF CANADA**

(Appeal from the Appeal Division of the  
Supreme Court of Prince Edward Island)

**BETWEEN:**

**THOMAS P. WALKER and JOHN M. ROBERTSON**

**APPELLANTS  
(PLAINTIFFS)**

**AND:**

**THE GOVERNMENT OF PRINCE EDWARD ISLAND**

**RESPONDENT  
(DEFENDANT)**

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**REPLY FACTUM OF THE APPELLANTS**

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Appellants  
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- and -

THE GOVERNMENT OF PRINCE EDWARD ISLAND

Respondent  
(Defendant)

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(Plaintiffs)

- and -

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THE GOVERNMENT OF PRINCE EDWARD ISLAND

Respondent  
(Defendant)

PROPOSED REPLY FACTUM OF THE APPELLANTS

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PART I - THE FACTS

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1. This reply factum addresses certain statements of fact made in conjunction with arguments advanced in the memoranda of fact and law of the Respondent Government of Prince Edward Island ("Government") and the intervener Institute of Chartered Accountants of Prince Edward Island ("ICAPEI").

Statements Concerning the Appellants

(Government, para. 17, p. 8;  
ICAPEI, para. 22, p. 12)

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2. The Appellants did not, as here alleged, leave the CA training program "after a lack of success with examinations." Mr. Walker testified that he was required for family reasons to resign his employment with Doane Raymond, a chartered accounting firm, and seek more remunerative employment. As a result of that resignation he could not stay with the CA training program. (He thus would not have availed himself of available opportunities to finish courses or resit examinations.) Mr. Robertson testified that he left Doane

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Raymond, through which he was participating in the CA training program, as a matter of principle because the firm began to pay inexperienced accounting students with university degrees over twice what they paid him, as a senior accounting student with no university degree. His alternative, and more remunerative employment, was not accepted as a site for CA training.

Walker Direct Examination, pp. 37-38  
Proposed additional Volume of Supplementary Case on Appeal  
(Proposed Volume), 2942-43 (now Volume XIII)

Robertson Direct Examination, pp. 216-217  
Proposed Volume, 2930-31 (now Volume XIII)

**Evidence Concerning Tony Hanson**  
*Government, para. 35, p. 15)*

3. The Government relies on the evidence of Tony Hanson for a "practitioner" view of the difference in qualifications", because of his former membership in the CGA Association and current membership in the Institute. Neither in its written argument nor the evidence included in its Supplementary Case on Appeal does the Government disclose that under cross-examination Mr. Hanson was forced to admit that he had failed two CGA courses while a student. This, it is submitted, substantially undermined the weight of his testimony impugning the rigour of the CGA educational program. Mr. Hanson's testimony was not referred to by the trial judge in his reasons, and not tendered by any party before Court of Appeal.

Cross-examination of Hanson, pp. 265-270  
Proposed Volume, pp. 2924-2929 (now Volume XIII)

Exhibits 98-101  
Proposed Volume, pp. 2954-2959 (now Volume XIII)

Completion of CA Program by Ontario CGA Members  
(Government, para. 18, p. 8)

4. Mr. Wilson admitted on cross-examination that the statistics cited here were prepared by the Institute of Chartered Accountants of Ontario without having gone through the computations that would have set them in the context of all of the CA students who dropped out of the program or been asked to leave. He also agreed that students in the program might leave it for "all kinds of good and positive reasons ... which isn't just an expression of failure." He further admitted that he could not tell the court the reasons why 179 people in his statistics on CGA's did not complete the program requirements. He also agreed that the 188 CGA's listed as withdrawing after failing the first second or third uniform Final Examination attempt would still have had other opportunities to retry the examination. Nor could he offer a breakdown as to what proportion of the 188 withdrew after the first, second, or third attempt. He "absolutely" agreed that it was a reasonable possibility that some of those people might have passed the UFE if they had written it again.

Cross-examination of Wilson, pp. 173-176  
Proposed Volume, pp. 2947-2950 (now Volume XIII)

"Equivalency" of CGA standard and CA standard  
(Government, paras. 25-26, p. 10-11  
ICAPEI, para. 4, p. 3)

5. The Appellants do not agree that in order to succeed in this case they are bound to demonstrate that the CGA standard is "equivalent" to the CA standard. They have elsewhere submitted that the appropriate test is whether the CGA standard is adequate to protect the public, and answering that question does not require that the Court or any government adopt the CA standard as the true measure of what will protect the public. As found by the trial judge, it is possible for the CGA standard to protect the public without being equivalent or identical to the CA standard.

6. More particularly, the Appellants submit that the comparison cited in Government paragraphs 25 and 26 and ICAPEI paragraph 4 by the Government's expert



witness, Dr. Boritz, suffers from numerous shortcomings and deserves little weight, which on all the evidence, was the approach to it of the learned trial judge. They therefore specifically challenge the assertion of the ICAPEI that the evidence of Dr. Boritz on the points set out in paragraph 4 of the ICAPEI memorandum "was not challenged".

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7. For example, with reference to the statements in Government, paragraph 25(1)(2) and ICAPEI, paragraph 4 concerning university preparation of CA students, the Appellants note:

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1. In his cross-examination, Dr. Boritz acknowledged that 36 of the 155 members of the ICAPEI have no university degrees, including a former national president of the CICA and Mr. Shea, a principal witness for the ICAPEI in these proceedings. He further acknowledged that there would be some people throughout the provinces still qualified under previous regimes (and thus not possessing baccalaureate degrees) and that he had never seen any discussion of these people posing any special problems of professional judgment of competence.

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Cross-examination of Boritz, pp. 173-174  
Proposed Volume, pp. 2888-2889 (now Volume XIII)

Examination in chief of Shea, pp. 381-383  
Proposed Volume, pp. 2932-2934 (now Volume XIII)

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2. Mr. Shea testified in chief that the CA program will accept mature (aged 25) applicants without university degrees, on the basis that "while the university degree requirement is a very good requirement, and it's well established in many professions, I think there's also the requirement to, to open and make sure that individuals who can go through and meet, meet the other requirements of the course get that opportunity, if they wish to pursue it."

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Examination in chief of Shea, pp. 399, 403-404  
Proposed Volume, pp. 2935-2937 (now Volume XIII)

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8. With respect to the movement toward the five-year degree requirement in United States referred to in Government 25(3), Dr. Boritz admitted on cross-examination this was controversial.

Cross-examination of Boritz, pp. 181-183, 216-217  
Proposed Volume, pp. 2890-2892; 2896-2897

5 9. With reference to the statements in Government paragraph 25(4), the  
Appellants note:

- 10 1. On cross-examination, Dr. Boritz acknowledged that in preparing his report for this litigation, he had not reviewed the 1987 report of W.A. McIntosh for the Councils of the Provincial Institutes of Chartered Accountants in Canada setting out the advantages and disadvantages of the correspondence method used to teach the CA course in former years.

Cross-examination of Boritz, p. 219  
Proposed volume, p. 2898 (now Volume XIII)

- 15 2. Dr. Boritz also acknowledged on cross-examination that he had himself developed a distance education course on computer control and audit, but didn't know whether it was working, although it was still being offered.

Cross-examination of Boritz, pp. 220-21  
Proposed Volume, pp. 2899-2900 (now Volume XIII)

- 20 3. On cross-examination, Dr. Boritz gave his view that "the question is a question of balance, not a question of whether any distance education is defensible, whether an entire program of study can deliver the types of skills and capability that ... [are] important in the development of skills of a professional", a test which, it is submitted, is met by the CGA program.

Cross-examination of Boritz, p. 222  
Proposed Volume, p. 2901 (now Volume XIII)

- 25 4. While offering of distance education the criticism that one must be very precise in guiding and instructing students in what to do, and therefore "the opportunity to work in an unstructured context with ambiguity" is often missing, Dr. Boritz admitted on cross-examination that he had never seen a of the "practice sets" (larger case-oriented problems) included in the CGA education program. When asked if he could tell the court whether such practice sets go any way to answering the difficulty about providing student with the opportunity to deal with a difficult or ambiguous problem, he rep:

only in general terms based on his familiarity with practice sets in university accounting courses.

Cross-examination of Boritz, pp. 222-223  
Proposed volume, pp. 2901-2902 (now Volume XIII)

5 10. With reference to practical experience, Government paragraph 25(6) and ICAPEI paragraph 4 omit reference to the CGA-PEI Public Practice Guidelines which require that all members of the CGA Association who wish to offer professional services to the public must be authorized by the Association to do so, and part of the usual required authorization is the completion of the public practice option of the CGA Canada strategy program and a minimum of two years past experience in offering professional services to the public.

15 Exhibit J-2A  
Proposed Volume, pp. 2951-2953 (now Volume XIII)

20 11. The ICAPEI in paragraph 4 stresses the importance of a "capstone" program or examination at the conclusion of a professional program. Professor Dan Simunic, tendered as an expert by the Appellants, notes in his evidence that one purpose of the capstone examination is to standardize testing for students from a large variety of backgrounds (like CA students with their different university and accounting school backgrounds), and that function is not necessary with the CGA program, which all students take. In reference to the "complex case type questions" which feature on the UFE, he warned of the indiscriminating nature of the testing thereby accomplished, since such a question format often results in the student simply dumping information into the answer around the edges of the problem, and marking may not take sufficient account of analysis and sequencing of ideas.

30 Evidence in chief of Simunic, pp. 45-48  
Proposed Volume, pp. 2939-2941 (now Volume XIII)

12. Dr. Boritz himself did not actually carry out a comprehensive comparison evaluation of the CGA and CA education programs, as stated in Government paragraph 2: but rather relied heavily on Exhibit J-42, the Course Review for the Public Accountants Board of the Province of Nova Scotia ("the A.S.C.A. report"). In his cross-examination, acknowledged that he had reviewed the CGA "Program 90" syllabus and its Ontario version but had not reviewed in detail the courses that are listed in the Syllabus. He said "I didn't do anything other than read those documents ["Program 90" and Ontario version] ... [a]t read the A.S.C.A. review of courses."

Cross-examination of Boritz, pp. 200-202  
Proposed Volume, pp. 2893-2895 (now Volume XIII)

13. Dr. Boritz also acknowledged on cross-examination that to prepare his comments on the individual course offerings, i.e., the level at which the material is presented and the way in which it is presented, the term work required and the examination process used, he had used the A.S.C.A. report.

Cross-examination of Boritz, p. 227  
Proposed Volume, p. 2903 (now Volume XIII)

14. On cross-examination about this report, Dr. Boritz admitted

- a. that the A.S.C.A. report examined only six out of the total of 20 courses listed in Program 90 (p. 228, p. 2904)
- b. that the A.S.C.A. report deals with Program '80 courses, not Program '90 courses, and he did not look at any functional equivalent of the A.S.C.A. report which deals with Program '80 courses (p. 247, p. 2932)
- c. that the stated sole purpose of the report was to help the Public Accountants Board of Nova Scotia and that it bore a warning that it should not be quoted from, published or distributed without the express written consent of its authors, but he did not have a letter which states that he can refer to the report (p. 235, p. 2911)

- d. that he was unaware of the identity of any person or persons beyond Dan Trainor who might have been involved in co-ordinating the preparation of the report, its conclusions and recommendations on behalf of the Atlantic School of Chartered Accountancy (pp. 228-233, pp. 2904-2909) or for any one on the Board or in the senior administration of the School (p.234, p. 2910)
- e. that he "assumes" the report was "the collective opinion of the Atlantic School of Chartered Accountancy, as expressed in this report by people who, at the school, who are authorized to speak on its behalf" but, except for Dan Trainor, could not say who these people were (p.232, p. 2908)
- f. that the final recommendations of the report overruled the opinions of course reviewers retained to perform detailed analysis of particular courses, in the case of two CGA courses which the reviewers had found to be equivalent to CA requirements (p. 237, p. 2913; pp. 243-244, pp. 2919-2920)
- g. that he was unaware of the deliberative process that the overall co-ordinator went through in order to determine whether the initial reviews should be accepted or not (p. 224, p. 2920)
- h. that while he had reviewed and found satisfactory the credentials of all the course reviewers (including the two whose reports were overruled), he could not say what were the credentials of anyone apart from Mr. Trainor who might have been involved in overruling these recommendations (pp. 238-239; pp. 2914-2915)
- i. that in those cases where there was a discrepancy between what the initial reviewer said or recommended and the final conclusion of the school, he did not perform any analysis of his own (p. 245, p. 2921)

Cross-examination of Boritz, p. 227-247  
Proposed Volume, pp. 2903-2923 (now Volume XIII)

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Ottawa this 12th day of May, 1995.

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Mary Eberts

"Wendy Matheson"  
Wendy Matheson