

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

**IN THE MATTER OF Bonnie McCourt, a member of
The Certified General Accountants Association of Ontario**

B E T W E E N:

The Discipline Committee of The Certified General Accountants Association of Ontario

- and -

Bonnie McCourt

DECISION AND REASONS FOR DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL

Members of the Professional Conduct Tribunal Panel:

Peter J. Vaillancourt, CGA, Chair
Dave Laventure, CGA
Catherine Kenwell, Public Representative

Appearances:

Karen Jolley, Counsel for the Discipline Committee
Bonnie McCourt, Member
Lisa Braverman, Independent Legal Counsel to the Professional Conduct Tribunal

Hearing Date:

March 27, 2014, Toronto

OVERVIEW

A panel of the Professional Conduct Tribunal of The Certified General Accountants Association of Ontario heard this matter on March 27, 2014, at Toronto. At the conclusion of the hearing, the panel reserved its decision.

ALLEGATIONS

Counsel for the Discipline Committee entered into evidence the Notice of Hearing dated January 22, 2014, Exhibit #1, and the Affidavit of Service, Exhibit #2, relating to the Notice of Hearing.

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

Rule 101 – Discredit

(March 2008 to June 2011 language)

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

(June 2011 to present language)

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

Rule 102 – Unlawful Activity

(March 2008 to June 2011 language)

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

(June 2011 to present language)

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

Rule 108 - Conduct Unbecoming

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

Rule 607 - Evidence of Professional Misconduct, Unlawful Activity or Conduct

Unbecoming (May 2013 to present)

A member who has been charged or served with an action of any nature which may cast doubt as to that member's honesty, integrity or professional competence, shall promptly inform the Association of the matter, whether or not there has been a conviction or finding, as the case may be, and shall keep the Association reasonably apprised of the status, including the outcome. The Association may conduct its own investigation into the allegations as it deems appropriate.

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

Particulars:

1. On or about 17 July 2013 at the Town of Walkerton in the Municipality of Brockton, you were convicted of the following criminal offence:

That between the 30th day of April 2008 and the 20th day of July 2012 at the Municipality of Arran-Elderslie you did by deceit, falsehood or other fraudulent means defraud Calhoun Super Structures Ltd. of money of a value exceeding \$5000 contrary to Section 380(1)(a) of the Criminal Code.

2. As a result of the conviction, on or about 9 October 2013 were you given a conditional sentence order requiring you to serve a sentence of nine months' imprisonment in the community, to perform 80 hours of community service work and upon the expiry of the nine months' sentence, be subject to two years' probation.

MEMBER'S PLEA

The member admitted the allegations set out in the Notice of Hearing.

FACTS AND EVIDENCE

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

Exhibit #1 – Notice of Hearing

Exhibit #2 – Affidavit of Service

Exhibit #3 – Letter from Karen Jolley to Bonnie McCourt, dated January 28, 2014

Exhibit #4 – Affidavit of Service (Discipline Brief and Sentencing Brief)

Exhibit #5 – Discipline Brief

Exhibit #6 – Transcript Brief

Exhibit #7 – Affidavit of Service (Transcript of Proceedings of July 17, 2013, Before The Honourable Justice G. J. Brophy)

Exhibit #8 – Affidavit of Service (Transcript of Proceedings of October 9, 2013, At Sentencing Hearing Before The Honourable Justice G. J. Brophy)

The member entered into evidence the following documents:

Exhibit #9 – Submissions Package for Bonnie McCourt

Based on the admissions by the member and the documents entered as exhibits at this hearing, the panel of the Professional Conduct Tribunal makes the following findings of facts from the particulars in the Notice of Hearing:

1. On or about 17 July 2013 at the Town of Walkerton in the Municipality of Brockton, Ms. McCourt was convicted of the following criminal offence:

That between the 30th day of April 2008 and the 20th day of July 2012 at the Municipality of Arran-Elderslie you did by deceit, falsehood or other fraudulent means defraud Calhoun Super Structures Ltd. of money of a value exceeding \$5000 contrary to Section 380(1)(a) of the Criminal Code.

2. As a result of the conviction, on or about 9 October 2013 Ms. McCourt was given a conditional sentence order requiring Ms. McCourt to serve a sentence of nine months' imprisonment in the community, to perform 80 hours of community service work and upon the expiry of the nine months' sentence, be subject to two years' probation.

DECISION

The Discipline Committee has the onus of proving the allegations in the Notice of Hearing in accordance with the civil standard of proof. The standard of proof applied by the panel of the Professional Conduct Tribunal was a balance of probabilities based on clear, convincing and cogent evidence.

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

Rule 101 – Discredit

(March 2008 to June 2011 language)

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

(June 2011 to present language)

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

Rule 102 – Unlawful Activity

{March 2008 to June 2011 language}

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

{June 2011 to present language}

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

Rule 108 - Conduct Unbecoming

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

Rule 607 - Evidence of Professional Misconduct, Unlawful Activity or Conduct Unbecoming (May 2013 to present)

A member who has been charged or served with an action of any nature which may cast doubt as to that member's honesty, integrity or professional competence, shall promptly inform the Association of the matter, whether or not there has been a conviction or finding, as the case may be, and shall keep the Association reasonably apprised of the status, including the outcome. The Association may conduct its own investigation into the allegations as it deems appropriate.

The panel of the Professional Conduct Tribunal also finds Bonnie McCourt guilty of professional misconduct.

REASONS FOR DECISION

Rule 101 – Discredit

(March 2008 to June 2011 language)

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

(June 2011 to present language)

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

The panel made a finding of a breach of Rule 101 – Discredit based on the evidence presented at the hearing, the member's admission to violation of the Rule as presented, the member's guilty plea and facts in the Transcript of Proceedings before the Honourable Justice G.J. Brophy on July 17, 2013 at Walkerton, Ontario as well as the evidence and findings presented in the Transcript of Proceedings at Sentencing Hearing before the Honourable Justice G.J. Brophy on October 9, 2013 at Walkerton, Ontario. Specifically, the panel in making this finding relied on the Certificate of Conviction and Transcripts which demonstrated the following:

1. On or about 17 July 2013 at the Town of Walkerton in the Municipality of Brockton, Ms. McCourt was convicted of the following criminal offence:

That between the 30th day of April 2008 and the 20th day of July 2012 at the Municipality of Arran-Elderslie you did by deceit, falsehood or other fraudulent means defraud Calhoun Super Structures Ltd. of money of a value exceeding \$5000 contrary to Section 380(1)(a) of the Criminal Code.

2. As a result of the conviction, on or about 9 October 2013 Ms. McCourt was given a conditional sentence order requiring Ms. McCourt to serve a sentence of nine months' imprisonment in the

community, to perform 80 hours of community service work and upon the expiry of the nine months' sentence, be subject to two years' probation.

Rule 102 – Unlawful Activity

{March 2008 to June 2011 language}

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

{June 2011 to present language}

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

The panel made a finding of a breach of Rule 102 - Unlawful Activity based on the evidence presented at the hearing, the member's admission to violation of the Rule as presented, the member's guilty plea and facts in the Transcript of Proceedings before the Honourable Justice G.J. Brophy on July 17, 2013 at Walkerton, Ontario as well as the evidence and findings presented in the Transcript of Proceedings at Sentencing Hearing before the Honourable Justice G.J. Brophy on October 9, 2013 at Walkerton, Ontario. Specifically, the panel in making this finding relied on the Certificate of Conviction and Transcripts which demonstrated the following:

1. On or about 17 July 2013 at the Town of Walkerton in the Municipality of Brockton, Ms. McCourt was convicted of the following criminal offence:

That between the 30th day of April 2008 and the 20th day of July 2012 at the Municipality of Arran-Elderslie you did by deceit, falsehood or other fraudulent means defraud Calhoun Super Structures Ltd. of money of a value exceeding \$5000 contrary to Section 380(1)(a) of the Criminal Code.

2. As a result of the conviction, on or about 9 October 2013 Ms. McCourt was given a conditional sentence order requiring Ms. McCourt to serve a sentence of nine months' imprisonment in the community, to perform 80 hours of community service work and upon the expiry of the nine months' sentence, be subject to two years' probation.

Rule 108 - Conduct Unbecoming

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

The panel made a finding of a breach of Rule 108 – Conduct Unbecoming based on the evidence presented at the hearing, the member's admission to violation of the Rule as presented, the member's guilty plea and facts in the Transcript of Proceedings before the Honourable Justice G.J. Brophy on July 17, 2013 at Walkerton, Ontario as well as the evidence and findings presented in the Transcript of Proceedings at Sentencing Hearing before the Honourable Justice G.J. Brophy on October 9, 2013 at Walkerton, Ontario. Specifically, the panel in making this finding relied on the Certificate of Conviction and Transcripts which demonstrated the following:

1. On or about 17 July 2013 at the Town of Walkerton in the Municipality of Brockton, Ms. McCourt was convicted of the following criminal offence:

That between the 30th day of April 2008 and the 20th day of July 2012 at the Municipality of Arran-Elderslie you did by deceit, falsehood or other fraudulent means defraud Calhoun Super Structures Ltd. of money of a value exceeding \$5000 contrary to Section 380(1)(a) of the Criminal Code.

2. As a result of the conviction, on or about 9 October 2013 Ms. McCourt was given a conditional sentence order requiring Ms. McCourt to serve a sentence of nine months' imprisonment in the community, to perform 80 hours of community service work and upon the expiry of the nine months' sentence, be subject to two years' probation.

Rule 607 - Evidence of Professional Misconduct, Unlawful Activity or Conduct Unbecoming (May 2013 to present)

A member who has been charged or served with an action of any nature which may cast doubt as to that member's honesty, integrity or professional competence, shall promptly inform the Association of the matter, whether or not there has been a conviction or finding, as the case may be, and shall keep the Association reasonably apprised of the status, including the outcome. The Association may conduct its own investigation into the allegations as it deems appropriate.

The panel made a finding of a breach of Rule 607 based on the member's admission to violation of the Rule as presented and the fact that a complaint was filed with the Association by the member's former employer, advising the Association about the theft of funds from the former employer by the member. The member did not inform the Association that she had been charged with fraud of her former employer, which was contrary to Rule 607.

In finding that Bonnie McCourt breached certain Rules of the Code of Ethical Principles and Rules of Conduct, specifically: Rule 101 – Discredit, Rule 102 – Unlawful Activity, Rule 108 - Conduct Unbecoming and Rule 607 - Evidence of Professional Misconduct, Unlawful Activity or Conduct Unbecoming, the panel of the Professional Conduct Tribunal found that Bonnie McCourt's conduct constituted actions of professional misconduct and therefore Bonnie McCourt is guilty of professional misconduct.

Ms. McCourt was hired in January 2008 by Calhoun Super Structures LTD. as a certified general accountant for a three month period and then in April 2008 was hired full time as a certified general accountant or a similar type position. Ms. McCourt was convicted of fraud because she wrote unauthorized cheques, forged signatures and misappropriated approximately \$133,000 from Calhoun Super Structures LTD., while working as a certified general accountant. Since she was acting in a

professional capacity as a certified general accountant when this conduct occurred, this was relied on by the panel to find her guilty of professional misconduct.

PENALTY SUBMISSIONS

In terms of penalty, counsel for the Discipline Committee submitted that the panel should make the following penalty order:

1. revocation of membership in the Association
2. return of CGA Ontario and CGA Canada membership certificates
3. a fine of \$4,000 (representing a fine of \$1,000 for each of the four breaches of the Association's Code of Ethical Principles and Rules of Conduct)
4. costs of \$2,000 as a contribution towards the Association's costs of the hearing
5. publication in Statements and a local newspaper

In support of the penalty sought, Ms. Jolley spoke to the facts presented at the Ontario Court of Justice Proceedings on July 17, 2013 as well as the evidence presented and findings made at the Sentencing Hearing on October 9, 2013, in Exhibit #6, highlighting:

- the significance of the amount of the theft, evidence of \$133,253.17
- the theft was not a one-time occurrence, evidence of 66 fraudulent cheques over a 4 year period
- forgery of Mr. Calhoun's signature on the cheques
- significant impact to victim/employer
- abuse of a position of trust as it took place while acting as a certified general accountant

In further support of the penalty that the Discipline Committee was seeking, Ms. Jolley referred the Panel to decisions made by previous Professional Conduct Tribunals including: CGAO and Peter Chiu, CGAO and Albert Fitchett, CGAO and Jamie Welsford, CGAO and Robert Willman, and CGAO and Gerald Found.

In contrast, Bonnie McCourt made the following submissions on the penalty order:

1. revocation of membership in the Association
2. return of CGA Ontario and CGA Canada membership certificates
3. no fine
4. no contribution towards the Association's costs of the hearing
5. no publication

In support of the penalty sought, Bonnie McCourt countered:

A. Publication was not in the public interest and was unduly unfair to the member as:

- she is no longer in 'public practice' and not working in the accounting field
- publication could impact current employment status which may (i) result in long commutes to find suitable employment (Bonnie McCourt currently resides in a small community), and that such commutes would take time away from being able to care for family members with diagnosed medical conditions and (ii) impact Bonnie McCourt's ability to continue to pay restitution

B. Fine and Costs would:

- place further strain on Bonnie McCourt's limited financial resources
- impact Bonnie McCourt's ability to continue to pay restitution

PENALTY DECISION

The panel deliberated and considered both the Discipline Committee's submissions in terms of penalty and the member's submissions in terms of penalty. Accordingly, the panel orders the following penalty:

1. Ms. McCourt's membership in the Association is revoked
2. Ms. McCourt must return her CGA Ontario (14751) and CGA Canada (347026) membership certificates to the Association

3. Ms. McCourt pays a fine of \$4,000 representing a fine of \$1,000 for each of the four breaches of the Association's Code of Ethical Principles and Rules of Conduct
4. Ms. McCourt pays costs of \$2,000 as a contribution towards the Association's costs of the hearing
5. publication on the Association's website, in Statements and a local newspaper

REASONS FOR PENALTY DECISION

In coming to a decision on penalty, the Professional Conduct Tribunal took into consideration admissions, Tribunal decisions and evidence entered in the proceedings, specifically:

- a) decisions made and penalties by previous Professional Conduct Tribunals including: CGAO and Peter Chiu, CGAO and Albert Fitchett, CGAO and Jamie Welsford, CGAO and Robert Willman, and CGAO and Gerald Found
- b) evidence entered in the proceedings, specifically Exhibit #6, containing the facts presented at the Ontario Court of Justice Proceedings on July 17, 2013 as well as the evidence presented and findings made at the Sentencing Hearing on October 9, 2013
- c) Bonnie McCourt's admission to violation of Rules of the Code of Ethical Principles and Rules of Conduct, specifically: Rule 101 – Discredit, Rule 102 – Unlawful Activity, Rule 108 - Conduct Unbecoming and Rule 607 - Evidence of Professional Misconduct, Unlawful Activity or Conduct Unbecoming

The Professional Conduct Tribunal also gave strong consideration to the penalty sought by Bonnie McCourt as well as the evidence presented in support of this position, Exhibit #9.

On ordering the penalty of revocation from membership in the Association, the Professional Conduct Tribunal agreed that revocation was warranted due to the serious nature of the conduct, specifically:

- the size of the misappropriation, evidence of \$133,253.17,

- the nature of the occurrences, evidence of 66 fraudulent cheques,
- the duration, evidence it took place over a 4 year period,
- the impact of the misappropriation on the victim as interpreted in Exhibit #6 by The Honourable Justice G. J. Brophy from the 'victim impact statement', evidence entered into the Ontario Court of Justice Proceedings on October 9, 2013

Bonnie McCourt agreed to the penalty of revocation. Ms. McCourt stated that she is "not in public practice" and does not intend to do so in the future. The Professional Conduct Tribunal concurred with the Association on this penalty.

On ordering the return of CGA Ontario and CGA Canada membership certificates, it stands to reason that since Bonnie McCourt will no longer be a member in the Association that her certificates be returned. Both Bonnie McCourt and the Professional Conduct Tribunal concurred with the Association on this penalty.

On ordering a fine of \$4,000 representing a fine of \$1,000 for each of the four breaches of the Association's Code of Ethical Principles and Rules of Conduct, the Professional Conduct Tribunal agreed that given the serious nature of the actions taken by Bonnie McCourt that the fine sought by counsel for the Discipline Committee:

- was both appropriate and in keeping with decisions made in the past by previous Professional Conduct Tribunals for matters of a similar nature, and
- the fine along with revocation would act as both a general deterrence to the membership and serve to protect the public and ensure the safe and proper practice of the profession

In ordering the fine, the need to maintain the public's confidence in the integrity of the profession was of high consideration to the Professional Conduct Tribunal panel. The Professional Conduct Tribunal concurred with the Association on this penalty.

On ordering costs of \$2,000 as a contribution towards the Association's costs of the hearing, the Professional Conduct Tribunal found the penalty was both appropriate and in keeping with decisions made in the past by previous Professional Conduct Tribunals for matters of a similar nature where the member was both cooperative and witnesses were not called to testify. The Professional Conduct Tribunal recognizes that the contribution sought is only a part of the total costs of the proceeding and concurred with the Association on this penalty.

On ordering publication on the Association's website, in Statements and a local newspaper the Professional Conduct Tribunal took into consideration the arguments raised by Bonnie McCourt but the serious nature of the conduct were overwhelming in this matter, specifically:

- the size of the misappropriation, evidence of \$133,253.17,
- the nature of the occurrences, evidence of 66 fraudulent cheques,
- the duration, evidence it took place over a 4 year period,
- the impact of the misappropriation on the victim as interpreted in Exhibit #6 by The Honourable Justice G. J. Brophy from the 'victim impact statement', evidence entered into the Ontario Court of Justice Proceedings on October 9, 2013,
- the abuse of trust perpetrated upon the victim

The Professional Conduct Tribunal noted that pursuant to the Bylaws, Subsection 41(b), requires publication of revocation orders except where the member can demonstrate that such publication

would not be in the public interest and would be unduly unfair to the member. The arguments raised by Bonnie McCourt did not convince the Professional Conduct Tribunal that publication was not in the public interest and unduly unfair to the member. Of specific concern to the panel was the need to maintain the public's confidence in the integrity of the profession given the serious nature of the conduct as well as act as a general deterrence to the membership and serve to protect the public and ensure the safe and proper practice of the profession.

Dated this _____ day of _____, 2014

I, Peter J. Vaillancourt, sign this Decision and Reasons for Decision as Chair of the panel of the Professional Conduct Tribunal on behalf of the members of the panel that heard this matter.

Peter J. Vaillancourt

NOTICE

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

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

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

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