

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

**IN THE MATTER OF Tina McLeod, 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 -

Tina McLeod

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**DECISION AND REASONS FOR DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL**

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Members of the Professional Conduct Tribunal Panel:

Peter J. Vaillancourt, CGA, Chair  
Doug White, CGA  
Daniel Iggers, Public Representative

Appearances:

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

Hearing Date:

July 18<sup>th</sup>, 2014, Toronto

## **OVERVIEW**

A panel of the Professional Conduct Tribunal of The Certified General Accountants Association of Ontario heard this matter on July 18<sup>th</sup>, 2014, at Toronto.

## **ALLEGATIONS**

Counsel for the Discipline Committee entered into evidence the Notice of Hearing dated April 30<sup>th</sup>, 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**

**(November 2009 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.

### **Rule 102 – Unlawful Activity**

**(November 2009 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.

### **Rule 108 - Conduct Unbecoming**

**(November 2009 to present)**

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.

**Code Principle - Trust and Duties**

Members shall act in the interest of their clients, employers, and interested third parties, and shall be prepared to sacrifice their self-interest to do so. Members shall honour the trust bestowed on them by others, and shall not use their privileged position without their principal's knowledge and consent. Members shall strive to be independent of mind and in appearance.

**Rule 607 - Reporting of Court or Administrative Proceedings that Raise Issues of Professional Misconduct, Unlawful Activity or Conduct Unbecoming (November 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 22 November 2013 at the City of Welland, Ontario you were convicted of the following criminal offence:  
  
That between the 2<sup>nd</sup> day of November 2009 and the 5<sup>th</sup> day of November 2010 at Welland, you unlawfully did commit fraud of money exceeding five thousand dollars contrary to the Criminal Code of Canada.
2. As a result of the conviction, on or about 22 November 2013 were you given a suspended sentence and ordered subject to one year's probation.
3. Your conduct amounted to professional misconduct.

**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 – Discipline Brief

Exhibit #4 – Letter from Karen Jolley to Tina McLeod, dated May 8<sup>th</sup>, 2014

Exhibit #5 – Affidavit of Service

No evidence was submitted by Tina McLeod.

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 22 November 2013 at the City of Welland, Ontario Ms. McLeod was convicted of the following criminal offence:

That between the 2<sup>nd</sup> day of November 2009 and the 5<sup>th</sup> day of November 2010 at Welland, you unlawfully did commit fraud of money exceeding five thousand dollars contrary to the Criminal Code of Canada.

2. As a result of the conviction, on or about 22 November 2013 Ms. McLeod was given a suspended sentence and ordered subject to one year's 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**

**(November 2009 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.

**Rule 102 – Unlawful Activity**

**(November 2009 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.

**Rule 108 - Conduct Unbecoming**

**(November 2009 to present)**

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.

**Code Principle - Trust and Duties**

Members shall act in the interest of their clients, employers, and interested third parties, and shall be prepared to sacrifice their self-interest to do so. Members shall honour the trust bestowed on them by others, and shall not use their privileged position without their principal's knowledge and consent. Members shall strive to be independent of mind and in appearance.

**Rule 607 - Reporting of Court or Administrative Proceedings that Raise Issues of Professional Misconduct, Unlawful Activity or Conduct Unbecoming (November 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 the member guilty of professional misconduct.

## **REASONS FOR DECISION**

### **Rule 101 - Discredit**

**(November 2009 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.

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 facts in the Transcript of Proceedings At Guilty Plea (Reasons for Sentence) before the Honourable Justice J.A.T. Colvin on November 22, 2013 at Welland, Ontario.

### **Rule 102 – Unlawful Activity**

**(November 2009 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.

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 facts in the Transcript of Proceedings At Guilty Plea (Reasons for Sentence) before the Honourable Justice J.A.T. Colvin on November 22, 2013 at Welland, Ontario.

### **Rule 108 - Conduct Unbecoming**

**(November 2009 to present)**

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 At Guilty Plea (Reasons for Sentence) before the Honourable Justice J.A.T. Colvin on November 22, 2013 at Welland, Ontario. Specifically, the panel in making this finding relied on the Certificate of Conviction and Transcript which demonstrated the following:

1. On or about 22 November 2013 at the City of Welland, Ontario Ms. McLeod was convicted of the following criminal offence:

That between the 2<sup>nd</sup> day of November 2009 and the 5<sup>th</sup> day of November 2010 at Welland, you unlawfully did commit fraud of money exceeding five thousand dollars contrary to the Criminal Code of Canada.

2. As a result of the conviction, on or about 22 November 2013 Ms. McLeod was given a suspended sentence and ordered subject to one year's probation.

#### **Code Principle - Trust and Duties**

Members shall act in the interest of their clients, employers, and interested third parties, and shall be prepared to sacrifice their self-interest to do so. Members shall honour the trust bestowed on them by others, and shall not use their privileged position without their principal's knowledge and consent. Members shall strive to be independent of mind and in appearance.

The panel made a finding of a breach of Code Principle – Trust and Duties based on the evidence presented at the hearing, the member's admission to violation of the Code Principle as presented, the member's guilty plea and facts in the Transcript of Proceedings At Guilty Plea (Reasons for Sentence) before the Honourable Justice J.A.T. Colvin on November 22, 2013 at Welland, Ontario. Specifically, the panel in making this finding relied on the Certificate of Conviction and Transcript which demonstrated the following:

1. On or about 22 November 2013 at the City of Welland, Ontario Ms. McLeod was convicted of the following criminal offence:

That between the 2<sup>nd</sup> day of November 2009 and the 5<sup>th</sup> day of November 2010 at Welland, you unlawfully did commit fraud of money exceeding five thousand dollars contrary to the Criminal Code of Canada.

2. As a result of the conviction, on or about 22 November 2013 Ms. McLeod was given a suspended sentence and ordered subject to one year's probation.

**Rule 607 - Reporting of Court or Administrative Proceedings that Raise Issues of Professional Misconduct, Unlawful Activity or Conduct Unbecoming (November 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 Tina McLeod breached certain provisions of the Code of Ethical Principles and Rules of Conduct, specifically: Rule 101 – Discredit, Rule 102 – Unlawful Activity, Code Principle - Trust and Duties, Rule 108 - Conduct Unbecoming and Rule 607 - Reporting of Court or Administrative Proceedings that Raise Issues of Professional Misconduct, Unlawful Activity or Conduct Unbecoming, the panel of the Professional Conduct Tribunal found that Tina McLeod's conduct constituted actions of professional misconduct and therefore Tina McLeod is guilty of professional misconduct.

Tina McLeod was hired in 2009 by La Boite A Soleil Coop. Inc., a non-for-profit charity, as a certified general accountant. Between the dates of November 2nd, 2009 and April 13th, 2012, and while in a position of trust, Tina McLeod diverted funds to pay off her own credit card accounts. In total, Tina McLeod misappropriated a total of \$32,500 from La Boite A Soleil Coop. Inc. As Tina McLeod was acting in a professional capacity as a certified general accountant, the theft was not a one-time occurrence and took place over a period of 2 ½ years, and held a position of trust when this conduct occurred, the panel finds Tina McLeod 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 (21699) and CGA Canada (364970) membership certificates
3. a fine of \$5,000 (representing a fine of \$1,000 for each of the five 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 a local newspaper, online, and an industry publication chosen by CGA Ontario

In support of the penalty sought, Ms. Jolley spoke to the facts in the Ontario Court of Justice Transcript of Proceedings At Guilty Plea (Reasons for Sentence) before the Honourable Justice J.A.T. Colvin on November 22, 2013 as well as the evidence presented highlighting:

- the significance of the theft, evidence of \$32,500
- the theft was not a one-time occurrence, evidence taking place over a 2 1/2 year period
- victim/employer was a non-for-profit charity
- 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, CGAO and Thuy Nguyen, and CGAO and Bonnie McCourt.

In speaking to the submissions on the penalty order, Tina McLeod commented that she has no excuse for what she has done and lives with the guilt of her actions on a daily basis. Tina McLeod asked the Professional Conduct Tribunal panel for leniency in its penalty decision.

## **PENALTY DECISION**

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

- Ms. McLeod is reprimanded for breaching Rules 101, 102, 108, and 607 and Code Principle – Trust and Duties of the Code of Ethical Principles and Rules of Conduct.
- Ms. McLeod’s membership in the Association is revoked.
- Ms. McLeod pays a total fine of \$5,000, representing a \$1,000 fine for each of the 5 breaches of the Association’s Code of Ethical Principles and Rules of Conduct.
- Ms. McLeod must return her CGA Ontario (21699) and CGA Canada (364970) membership certificates to the Association.
- Publication in a local newspaper, online, and industry publication chosen by CGA Ontario.
- Ms. McLeod pays costs of \$2,000 as a contribution towards the Association’s costs of the hearing.

### **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 proceeding, 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, CGAO and Thuy Nguyen, and CGAO and Bonnie McCourt
- b) evidence entered in the proceeding, specifically Exhibit #3, containing the facts in the Ontario Court of Justice Transcript of Proceedings At Guilty Plea (Reasons for Sentence) before the Honourable Justice J.A.T. Colvin on November 22, 2013
- c) Tina McLeod’s admission to violation of Rules of the Code of Ethical Principles and Rules of Conduct, specifically: Rules 101, 102, 108, and 607 and Code Principle – Trust and Duties of the Code of Ethical Principles and Rules of Conduct

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 significance of the theft, evidence of \$32,500
- the theft was not a one-time occurrence, evidence taking place over a 2 1/2 year period
- victim/employer was a non-for-profit charity
- abuse of a position of trust as it took place while acting as a certified general accountant

- Tina McLeod's admission to the breach of Rules 101, 102, 108, and 607 and Code Principle – Trust and Duties of the Code of Ethical Principles and Rules of Conduct

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 Tina McLeod will no longer be a member in the Association that her certificates be returned. The Professional Conduct Tribunal concurred with the Association on this penalty.

On ordering a fine of \$5,000 representing a fine of \$1,000 for each of the five 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 Tina McLeod 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 in a local newspaper, online, and industry publication chosen by CGA Ontario, the Professional Conduct Tribunal took into consideration the serious nature of the conduct which was overwhelming in this matter, specifically:

- the significance of the theft, evidence of \$32,500
- the theft was not a one-time occurrence, evidence taking place over a 2 1/2 year period
- victim/employer was a non-for-profit charity

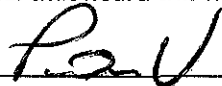
- abuse of a position of trust as it took place while acting as a certified general accountant
- Tina McLeod's admission to the breach of Rules 101, 102, 108, and 607 and Code Principle – Trust and Duties of the Code of Ethical Principles and Rules of Conduct

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.

The Professional Conduct Tribunal also determined that due to the serious nature of Tina McLeod's conduct, a reprimand was warranted.

Dated this 29<sup>th</sup> day of August, 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.



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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 (Chartered Professional 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 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.**