

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
(THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO)
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: An Allegation against **ROB ROY McGREGOR**, a suspended Member under **Rule 201.1** the Rules of Professional Conduct, as amended.

TO: Mr. Rob R. McGregor

AND TO: The Professional Conduct Committee

REASONS
(Decision and Order made August 6, 2014)

1. This tribunal of the Discipline Committee met on August 6, 2014 to hear an allegation of professional misconduct brought by the Professional Conduct Committee against Rob Roy McGregor, a suspended Member.

2. Mr. Paul Farley appeared on behalf of the Professional Conduct Committee (PCC). Mr. McGregor attended without counsel. He confirmed that he knew that he had the right to attend with counsel and waived that right. Mr. Robert Peck attended the hearing as counsel to the Discipline Committee.

3. The decision of the tribunal was made known at the conclusion of the hearing on August 6, 2014, and the written Decision and Order sent to the parties on August 11, 2014. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegation, the decision, the order, and the reasons of the tribunal for its decision and order.

Allegation

4. The following allegation was made against Mr. McGregor by the Professional Conduct Committee on June 4, 2013:

THAT the said Rob R. McGregor, on or about the 15th day of March, 2013 was convicted of offenses pursuant to Section 239(1)(d) of the *Income Tax Act*, R.S.C. 1985 of willfully evading or attempting to willfully evade the payment of taxes imposed by the *Income Tax Act* for the taxation years 2000, 2001 and 2002 as set out in Schedule "A" attached to this allegation and did thereby fail to act in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the Rules of Professional Conduct.

Plea

5. Mr. McGregor entered a plea of not guilty to the allegation.

Background and the proceedings

6. Mr. McGregor has been under suspension since July 24, 2013, by order of the Discipline Committee pending the final disposition of the allegation. At the motion hearing for a preliminary suspension, held on July 24, 2013, before a differently constituted tribunal of the Discipline Committee, Exhibits 1 through 4 were filed.

7. On August 6, 2014, the case for the PCC was made by filing documents. Mr. McGregor testified, filed a number of documents and was cross-examined by Mr. Farley who introduced other exhibits. Mr. McGregor also answered questions from members of the tribunal. Both Mr. Farley and Mr. McGregor made submissions, both with respect to guilt or innocence and later after the decision of guilty was made known, with respect to sanction.

The case for the PCC

8. Mr. Farley made an opening statement. He filed a Document Brief (Exhibit 5) which included: a certified copy of the transcript of proceedings in the Ontario Court of Justice in *Regina v. Robert McGregor* before Justice Rabley on March 15, 2013, at London Ontario; and a certified copy of the transcript of the proceedings before *Justice Rabley* in the same matter, *Regina v. Robert McGregor*, on October 4, 2013 at London Ontario; excerpts from the Rules of Practice and Procedure of CPA Ontario; excerpts from the Criminal Code of Canada; excerpts from the *Income Tax Act* and excerpts from the Rules of Professional Conduct. He also filed a certified copy of the criminal charges and conviction of Mr. McGregor for evasion or attempted evasion of the payment of income tax (Exhibit 6).

9. Mr. Farley referred to Section 18.06 of the Rules of Practice and Procedure which provides that in the absence of evidence to the contrary, a document certifying that a person has committed an offence, is proof of the conviction. He also referred to Rule 18.07 of the Rules of Practice and Procedure which provides that specific findings of fact contained in a certified copy of the reasons for the conviction, in the absence of evidence to the contrary, are considered to be proof of the facts if the person was a party to the proceedings.

10. With specific reference to the transcripts and the certificate of conviction, Mr. Farley reviewed the relevant facts which, in the absence of evidence to the contrary, are set out below.

- a) Mr. McGregor was charged with six counts of willfully evading or attempting to evade payments of taxes imposed by the *Income Tax Act 1985*.
- b) Mr. McGregor appeared before the Ontario Court of Justice on March 15, 2013, in London, Ontario and pleaded guilty to counts four, five and six of willfully evading or attempting to evade payments of taxes imposed by the *Income Tax Act 1985* (the other three counts were withdrawn).
- c) On count four, for the year 2000, Mr. McGregor had understated his total income by \$125,250, thereby understating the federal income tax payable by \$37,378.
- d) On count five, for the year 2001, Mr. McGregor had understated his total income by \$247,000, thereby understating the federal income tax payable by \$69,683.
- e) On count six, for the year 2002, Mr. McGregor had understated his total income by \$103,001, thereby understating the federal income tax payable by \$29,870.
- f) Mr. McGregor was represented during his court appearances by legal counsel.
- g) Mr. McGregor confirmed for the court that the summary of the facts presented by the Crown attorney was substantially true.
- h) Mr. McGregor was identified by the Crown counsel as a Chartered Accountant.

- i) Mr. McGregor had been paid a bonus by his employer prior to 2000, dependent on the company's performance. There was a disagreement between Mr. McGregor and his employer but despite this Mr. McGregor paid himself the bonuses as he had done in the past. As a result, Mr. McGregor was no longer employed with the company, there was a civil action, and criminal charges were laid.
- j) Mr. McGregor did not claim the bonuses on his tax returns, resulting in the evasion of nearly \$137,000 in income tax; and
- k) It was agreed by the Crown and Mr. McGregor's counsel, after discussions with Canada Revenue Agency (CRA), that the fine would be in the region of 75% of the tax evaded. At the sentencing hearing in October 2013, Mr. McGregor was fined \$80,000.

11. Mr. Farley pointed out that under Rule 201.2, when a certificate of conviction is filed with the Discipline Committee with respect to an offence set out in Rule 102.1, there is a rebuttable presumption that the member failed to maintain the good reputation of the profession and its ability to serve the public interest, i.e. breached Rule 201.1.

12. Mr. Farley summed up the case for the PCC, submitting that on the evidence filed Mr. McGregor is presumed to have had breached Rule 201.1, and the onus was on Mr. McGregor to prove otherwise. Mr. Farley submitted that evasion of tax is stealing, which brings disrepute to the reputation of the profession. Chartered Professional Accountants and the CRA depend on each other and trust in each other's integrity.

The Case for Mr. McGregor

13. Mr. McGregor advised the tribunal that he would be referring to a letter he wrote to the tribunal (Exhibit 7), a web search on CRA convictions (Exhibit 8), documents from the Government of Canada website (Exhibit 9), results of a web search for Rob Roy McGregor (Exhibit 10) and documents from the CPA Ontario website (Exhibit 11).

14. Mr. McGregor testified that the offences referenced in the court proceedings were not committed over a period of time but on one occasion as the income tax returns for 2000, 2001 and 2002 were all signed and submitted on the same day, November 21, 2005. Due to the ongoing litigation with his former employer and the possibility he might lose the bonuses, Mr. McGregor said he did not want to pay the tax on the bonuses and then have to try to recover it from CRA.

15. Mr. McGregor stated that the criminal tax process involves lawyers appearing at court on certain days and the entire procedure goes on for years. Through his lawyer, a letter had been sent to CRA to avoid the cost of prosecution, with a promise that Mr. McGregor would plead guilty. The amount of the fine is contingent on the amount of tax evaded and could range from 50 to 200 percent, with jail time if convicted.

16. Mr. McGregor submitted that he acknowledged early on what he had done. He had no contact with CRA until he pleaded guilty in court as everything was done through the lawyers. During the court hearing, the Crown had described what he understood the facts to be in the case. Mr. McGregor stated that he did not totally agree with the amount of \$80,000 but accepted the ruling.

17. Mr. McGregor said that there had not been much publicity about his conduct and the court proceedings. He said web searches for his court case and his name and designation turned up very little. His web search for publicity about his court case turned up a reference,

after sentencing, on a CRA newswire service. There was also one publication in the London area which linked to the CRA website. The results of his search on the web for his name and designation, only turned up the notice of a hearing before CPA Ontario and a link to one newswire publication.

18. Mr. McGregor referred to a 2011 taxpayer attitudinal segmentation research found on the Government of Canada CRA website. Mr. McGregor stated that this survey involving over 3800 interviews sets out the attitude of tax payers, including the low risk factors, of cheating on income taxes. Mr. McGregor referred to the CPA Canada website section on Protecting the Public Interest which outlines Members' perceptions. Mr. McGregor submitted that according to the survey, the collapse of Enron and Arthur Andersen and other major business failures have had a major impact on increased regulation and damage to the CA image. He stated that day to day concerns of Members involve public trust, self-regulation and licensing standards.

19. Mr. McGregor submitted that the documents in Exhibits 8, 9, 10 and 11 are examples of the public and the profession's view on tax evasion. He stated that major scandals are of concern to Members and the public, and there has been little publicity on tax evasion. He stated that there is a lack of publicity concerning Members who have been involved in tax evasion issues. Mr. McGregor stated that despite the publication in the local London newspaper, he remains employed, deals with CPAs and the tax evasion matter has never been an issue.

20. In response to questions raised by Mr. Farley on cross-examination, Mr. McGregor confirmed that he had not filed his 2000, 2001 and 2002 income tax returns until 2005.

21. Mr. McGregor had indicated that he had been told by his lawyer that the civil case was stopped the day he was charged criminally. Mr. Farley asked Mr. McGregor to confirm that he had understood the criminal charges and had pleaded guilty before the judge to willfully evading payment of income taxes. Mr. McGregor replied that he does not accept that he willfully evaded paying taxes and he disputed the amount of the taxes owing. Mr. McGregor affirmed that the facts contained in the transcript of the court proceedings were substantially correct.

22. Mr. McGregor confirmed that he entered a plea of guilty to charges of income tax evasion and accepted a fine of \$80,000. Mr. McGregor confirmed to Mr. Farley that he had evaded income taxes, stating that he had made a bad choice_and had not intended to be dishonest.

23. In response to Mr. Farley's query about his current employment situation, Mr. McGregor stated that his employer is not aware of his criminal conviction or of his discipline hearing.

24. Mr. Farley referred to his web searches of Mr. McGregor's name and filed a Brown PC Tax Practice Group article (Exhibit 12) identifying Mr. McGregor as a chartered accountant convicted of tax evasion. He also filed a copy of The Legal News and Crime Stories Archive (Exhibit 13) which contains an article about Mr. McGregor's conviction, identifying him as a chartered accountant. Mr. Farley also filed a Metroland London newspaper article (Exhibit 14) concerning Mr. McGregor's failure to report taxable income and conviction for income tax evasion, referring to him as a chartered accountant. Mr. Farley indicated that it had not been difficult to find numerous references to Mr. McGregor's conviction by doing a web search.

25. In response to questions from a tribunal member, Mr. McGregor stated that the fine levied by the court had been paid but the income taxes have not been paid. Mr. McGregor stated that he has filed a notice of objection to the amount of income tax assessed but has not

yet heard back from CRA. Mr. McGregor stated that he had been instructed by CRA not to file subsequent tax returns and confirmed that he has not filed income tax returns for 2005 to 2009.

26. In response to a request for clarification from a tribunal member that Mr. McGregor felt the lack of publicity on the internet indicated he had not brought disrepute to the profession, Mr. McGregor responded that no one had ever said to him that he had brought disrepute on the profession. When asked if his employer was aware that he is a suspended CPA, CA, Mr. McGregor stated that he has not told his employer as a designation is not a requirement of his job.

Submissions

27. Mr. Farley submitted that the facts in this case show that Mr. McGregor committed the cardinal sin as a CA of evading or attempting to evade the payment of income tax. Mr. Farley stated that evading tax is stealing and this is a case of moral turpitude. The CRA relies on CPA, CAs to be honest and have integrity.

28. Mr. Farley submitted that Mr. McGregor's defence is not that he did not commit the offence but that nobody knows about it and therefore he has not damaged the reputation of the profession. Mr. Farley stated that the Crown Attorney and Judge know about the offence, and there has been newspaper and website publicity.

29. Mr. Farley submitted that the facts in this case are clear, cogent and convincing, and must result in a finding of guilty.

30. Mr. McGregor submitted that at the time, he made the wrong decision which resulted in tax evasion but has a different outlook now. Mr. McGregor did not want to have to deal with CRA in order to get his money back. Mr. McGregor stated that he works as a tax recovery specialist and all work done is reviewed by CAs, CPAs and CGAs. Mr. McGregor stated that he left public practice in 1984 and since then has worked in industry.

31. Mr. McGregor stated that he felt he should deal with the allegation before the committee and then make the decision of how to tell his employer. He said that after the hearing today, he would decide how to deal with this matter.

32. Mr. McGregor stated that although there was lingering evidence on the web concerning his actions, there had been no repercussions from the publicity in the London newspaper and he did not feel that the minimal publicity had brought disrepute on the profession.

33. In response to questions posed by the tribunal, Mr. McGregor stated that the fine assessed by the courts had been paid but the taxes had not been paid. He had filed a notice of objection with CRA but had not heard back as yet. Mr. McGregor stated that he had been advised not to file subsequent tax returns until this matter with CRA was settled.

Decision

34. The tribunal found, on the evidence which was clear, cogent and convincing that the allegation had been proven. After deliberating, the tribunal announced the following decision:

THAT having seen, heard and considered the evidence, the Discipline Committee finds Rob Roy McGregor guilty of the Allegation.

Reasons for Decision

35. The evidence is clear: the member is guilty of income tax evasion, a crime that is obviously a breach of Rule 201.1, and further the tribunal concluded that Mr. McGregor failed to refute the presumption contained in Rule 201.2 that said conviction brought disrepute to the profession and by so doing, impaired its ability to serve the public.

36. The tribunal consequently found that Mr. McGregor's actions have brought disrepute to the profession and that he is guilty of misconduct under Rule 201.1 of the Professional Rules of Conduct.

Sanction

37. Mr. Farley and Mr. McGregor did not call any additional evidence with respect to sanction. Both made submissions.

38. Mr. Farley, on behalf of the PCC, submitted that an appropriate sanction in this matter would be: a written reprimand; revocation of membership, a fine in the amount of \$20,000; and full publicity including publication in the local newspaper, the *London Free Press*. Mr. Farley stated that newspaper publicity would protect the public, noting that Mr. McGregor's employer is not currently aware of this matter. Publication should be made in a newspaper in the geographic area of the Member's employment and/or residence and costs of publication should be borne by Mr. McGregor.

39. Mr. Farley filed a Costs Outline (Exhibit 15) showing that the actual costs were approximately \$7,300, and stated that the PCC was seeking an order for approximately half the costs. These costs would be in addition to the costs of \$3,500 ordered by the Discipline Committee at a motion hearing on July 24, 2013.

40. Mr. Farley submitted that the sanctions proposed by the PCC appropriately deal with the principles of general and specific deterrence, which are paramount in a case of moral turpitude. Tax evasion by Members, who are in the unique position of knowing ways to avoid payment of taxes, is egregious misconduct as it involves dishonesty with the CRA and reflects negatively on the public's perception of the profession. Mr. Farley stated that the penalty must be commensurate with the nature of the misconduct. In this case, the amount taken by Mr. McGregor was in excess of \$130,000, and the fine and revocation, with publicity, proposed would be appropriate.

41. Mr. Farley stated that the aggravating factors include the amount of income tax involved, the criminal conviction and that Mr. McGregor has not paid the taxes to CRA.

42. Mr. Farley stated that the mitigating factors were that Mr. McGregor did plead guilty in the criminal court case and has paid the fine of \$80,000.

43. Mr. Farley referred to the case brief containing *Slavens*, *Marcus*, *McConomy* and *Stebner*, noting that the precedents contained a common theme involving tax evasion. Mr. Farley submitted that tax evasion is no different from misappropriation or theft, pointing out that in the *Marcus* case, he had an illness but expulsion was still required for protection of the public.

44. Mr. McGregor referred to the *White* case, referenced in the *McConomy* case, in his submissions on sanction. Mr. McGregor stated that while he understood the seriousness of what he had done, he wanted to maintain his membership, noting that the *White* case resulted in a suspension, rather than revocation. Mr. McGregor stated that most of the Authorities Brief cases distributed by Mr. Farley involved third parties.

45. Mr. McGregor submitted that he wrongfully assumed he could work out matters with CRA at a later time. Mr. McGregor felt he was not being dishonest, as his actions did not involve other people unlike the precedent cases.

46. Mr. McGregor stated that having contemplated his actions he now has a greater understanding of the need to comply with legislation and regulations. Mr. McGregor also submitted that he did not scheme or scam to take money from the government and he is making an effort to get his life back on the right path. He felt that a two-year suspension would be more appropriate than revocation of his membership with CPA Ontario.

47. Mr. McGregor submitted that the past 13 years have been a financial strain. He has paid the \$80,000 fine to the court but his income tax situation is still in abeyance. Mr. McGregor stated that he is employed now with a decent income but he does not have any significant assets to draw on. Mr. McGregor requested that the tribunal consider a smaller fine and a reasonable length of time of two years to pay it. Mr. McGregor stated that he understands he would have to bear a portion of the total costs and publication.

48. Mr. Farley responded that despite Mr. McGregor's desire to be given another chance, general deterrence and public protection must be paramount, and revocation would be the appropriate sanction. Mr. Farley noted that there are provisions for former Members to reapply for membership. Mr. Farley submitted that the *White* case is more than 20 years old, has distinguishing circumstances and does not reflect more recent decisions.

49. In respect of costs and fines, Mr. Farley stated that the PCC has suggested giving Mr. McGregor until the end of December to pay, assuming that the taxes should have been paid to CRA by that time.

50. In response to questions from the tribunal concerning the delay in filing three years of income tax returns until 2005, Mr. McGregor stated that in 2002 his employment was terminated and he was unemployed for two years. During this time he sued for wrongful dismissal, there was a counter-suit, allegations were made to the police that he had stolen money and his former employer sent information to CRA causing them to investigate him for income tax evasion. Mr. McGregor said that his lawyer advised him not to file his tax returns until the matter was resolved and he also said this was confirmed by a representative of CRA.

Order

51. After deliberating, the tribunal made the following order:

IT IS ORDERED in respect of the allegation:

1. THAT Mr. McGregor be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. McGregor's membership in CPA Ontario be and is hereby revoked.
3. THAT Mr. McGregor be and he is hereby fined the sum of \$15,000 to be remitted to CPA Ontario by December 31, 2015.
4. THAT notice of this Decision and Order, disclosing Mr. McGregor's name, be given in the form and manner determined by the Discipline Committee:
 - (a) to all members of CPA Ontario
 - (b) to all provincial bodies;

and shall be made available to the public.

5. THAT notice of the revocation of membership, disclosing Mr. McGregor's name, be given by publication on the CPA Ontario website and in *The London Free Press*. All costs associated with the publication shall be borne by Mr. McGregor and shall be in addition to any other costs ordered by the committee.
6. THAT Mr. McGregor surrender all certificates issued by CPA Ontario or its predecessor, including any membership certificate and certificate granting the Chartered Accountant (CA) and Chartered Professional Accountant (CPA) designation, to the Discipline Committee Secretary within ten (10) days from the date this Decision and Order is made.

IT IS FURTHER ORDERED:

7. THAT Mr. McGregor be and he is hereby charged costs fixed at \$3,500 to be remitted to CPA Ontario by June 30, 2015. The costs in the amount of \$3,500 ordered on July 24, 2013 are also to be remitted by June 30, 2015.

Reasons for Sanction

52. It was clear to the tribunal from the evidence that Mr. McGregor had full knowledge that his personal income tax returns he filed for the years 2000, 2001 and 2002 were false; after all, he was the one who paid himself the bonuses that he excluded from those returns. It was also clear that the resulting income tax could have been paid, as the bonuses were cash bonuses. Mr. McGregor's motivation for his crime was less clear as were some of his explanations. The tribunal could only find self-enrichment as a possible motive. Such wilful disregard of the ethics of our profession must be dealt with in the most severe terms available to the tribunal, and consequently revocation was ordered.

53. In addition to revocation, an appropriate fine must be levied against Mr. McGregor in order to satisfy the deterrent goal of sanctioning. Both are required so that the public sees the profession has taken appropriate action to discourage its members from such actions and thus protect our reputation. Based on submissions, the tribunal determined that the appropriate fine is \$15,000.

54. Mr. McGregor has asked for time to settle this debt and the tribunal has obliged by setting generous terms for payment of the fine (and also for the costs assessed below).

55. Publication is an essential element of the complete sanction. The public must see that the profession takes appropriate action against its members who transgress the professional conduct rules and bring disrepute on the profession. The cost of such publication is the responsibility of the sanctioned member and the appropriate publication is in the area where the transgression happened, reaching the public who may have been directly impacted by the Member's actions or that may have previously been made aware of those actions. It is not intended that the cost or the possible humiliation of such public reporting worsen the sanction otherwise ordered, but is done in order to achieve the goals stated above. Consequently the tribunal determined by majority to order publication, as requested by the PCC, in the *London Free Press*.

56. One tribunal member, Mr. Duschek, dissented and argued that publication of the findings and sanctions of the Discipline Committee in this matter required broader publication than just a local newspaper for the community where the Member resided. This tribunal member felt that

the relevant principle related to this sanction in this case was denunciation of the Member's actions as provided in the Regulations and indicated that he believed this principle would be better met through publication of the matter in a national newspaper, such as the *Globe and Mail*.

57. It was Mr. McGregor's professional misconduct that culminated in this hearing and rather than CPA Ontario's membership bearing all of the costs, he should bear a portion of them. The tribunal agreed with the PCC's submission that approximately one-half of the estimated costs of the hearing are appropriate. It was determined that June 30, 2015 was a reasonable amount of time in which to pay the costs, along with the costs ordered at the motion hearing. This assessment of costs is within the range of cost awarded in similar cases heard by other Discipline Committee tribunals.

DATED AT TORONTO THIS 15TH DAY OF DECEMBER, 2014
BY ORDER OF THE DISCIPLINE COMMITTEE



R.J. ADAMKOWSKI, CPA, CA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

J.H. FRIDAY, FCPA, FCA

R.S. DUSCHEK, CPA, CA

G. HINTON (PUBLIC REPRESENTATIVE)