

David John McConomy: Summary, as Published in *CheckMark*

David John McConomy, of Ottawa, was found guilty of a charge under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest. The charge arose from his conviction under the Income Tax Act of tax evasion. Mistakenly believing that no taxes were owing by him personally or by his personal services company over a five year period, he failed to file tax returns declaring his income for those years. Mr. McConomy was fined \$7,000 and suspended from membership for two years.

Mr. McConomy returned to MEMBERSHIP IN GOOD STANDING on September 3, 1999.

CHARGE(S) LAID re David John McConomy

The Professional Conduct Committee hereby makes the following charges against David J. McConomy, CA, a member of the Institute:

1. THAT, the said David J. McConomy, failed to conduct himself in a manner which will maintain the good reputation of the professional and its ability to serve the public interest in that, on or about the 20th day of January, 1995 he was convicted of a criminal offence, namely, that between the 30th day of September 1987 and the 31st day of March, 1993 at the City of Ottawa he willfully evaded the payment of federal taxes by failing to file or make a return as and when required under the Income Tax Act thereby failing to declare income in the amount of \$351,438 for the taxation years 1988 through 1992 inclusive, thereby evading payment of federal taxes in the amount of \$44,086 and did thereby commit an offence under paragraph 239(1)(d) of the Income Tax Act, R.S.C., all of which is contrary to Rule 201.1 of the Rules of Professional Conduct.

Dated at Toronto this 16th day of January, 1996.

JENNIFER L. FISHER, CA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re David John McConomy

DECISION AND ORDER IN THE MATTER OF: A charge against **DAVID JOHN McCONOMY, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE APRIL 22, 1997

DECISION

THAT, having seen, heard and considered the evidence, the Discipline Committee finds David John McConomy guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. McConomy be reprimanded in writing by the chair of the hearing.
2. THAT Mr. McConomy be and he is hereby fined the sum of \$7,000, to be remitted to the Institute within two (2) years from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. McConomy be and he is hereby suspended from membership in the Institute for a period of two (2) years from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. McConomy's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in CheckMark.
5. THAT in the event Mr. McConomy fails to comply with the requirement of paragraph 2 of this Order, his suspension pursuant to paragraph 3 shall continue for a further period of sixty (60) days, and in the event he does not comply with the requirement of paragraph 2 within the additional sixty (60) day period, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified in paragraph 4 hereof.

DATED AT TORONTO THIS 4TH DAY OF JUNE, 1997
BY ORDER OF THE DISCIPLINE COMMITTEE

BRYAN W. STEPHENSON, BA, LLB
SECRETARY - DISCIPLINE COMMITTEE

DISCIPLINE COMMITTEE re David John McConomy

WRITTEN REASONS FOR THE DECISION AND ORDER MADE APRIL 22, 1997

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on March 21 and April 22, 1997 to hear a charge of failure to 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. The charge was brought by the professional conduct committee against Mr. David J. McConomy, CA, who had been found guilty of wilfully evading the payment of federal income taxes by failing to file returns as required by the Income Tax Act. Mr. McConomy pleaded not guilty to the charge before the discipline committee.

The professional conduct committee was represented by Mr. Paul Farley. Mr. McConomy represented himself, and confirmed for the record that he was aware of his right to be represented by counsel.

The determination and sanctions imposed were made known at the hearing. These are the written reasons for the decision and order that has already been sent to the parties.

DECISION ON THE CHARGE

Facts

Counsel for the professional conduct committee filed a document brief that contained a certified copy of the information against David J. McConomy and McConomy & Company Ltd., and a transcript of the guilty plea of Mr. McConomy and McConomy & Company Ltd. before the Ontario Court of Justice (Provincial Division).

The documents indicated that Mr. McConomy was found guilty, based on a submission agreed to by him and the Crown, of evasion of income taxes, both his own and those of McConomy and Company Ltd., during the taxation years 1988, 1989, 1990, 1991 and 1992.

Mr. McConomy's Submission

Mr. McConomy agreed that he had been found guilty by a judge of the Ontario Court of Justice. He stated, however, and filed a document brief in support of his statements, that:

The plea of guilty and subsequent fine were the result of a plea bargain with Revenue Canada, entered into by him in order to:

- shield his wife from the possibility of being subjected to a trial, because she had experienced considerable personal turmoil in the period immediately preceding the investigation by Revenue Canada;
- minimize the financial impact that a lengthy trial of the matter would inflict on him, in view of his financial position at the time; and
- enable him to get on with his life.

He was the victim of an unduly harsh position taken by Revenue Canada, possibly because of the chief of the Special Investigations Section of the Ottawa District Office of Revenue Canada, who was subsequently charged with soliciting and accepting bribes.

He had been subjected to coercion to agree to the plea bargain, evidenced, in his opinion, by the indication from Revenue Canada that his wife would also be charged in addition to him if he did not enter into the bargain.

Mr. McConomy submitted that, although the charge to which he pleaded guilty indicated that he had wilfully evaded income taxes, this was not so. He stated that he honestly believed that the taxes payable for the years in question were Anil for both himself and his company, although he acknowledged that he had not done any calculations to support this belief during the period in question. His belief was supported by a quote from a conversation between the Dean of the Faculty of Administration at the University of Ottawa, where Mr. McConomy was an associate professor at the time, and the chief of the Special Investigations Section of the Ottawa District Office of Revenue Canada, during which the chief allegedly said about Mr. McConomy's conduct that Ait might have been negligence but probably not fraud nor bad faith.

Mr. McConomy asked the panel to examine the substance of the particulars that brought him before the discipline committee, and to come to a different conclusion than was apparent from the document brief filed by counsel for the professional conduct committee.

Conclusion

The panel concluded that Mr. McConomy was asking it to ignore his conviction by the Ontario Court of Justice (Provincial Division), his plea of guilty before that court, and the facts presented to that court. Despite Mr. McConomy's eloquent and passionate presentation, the panel determined that there was no satisfactory evidence before it of fraud or collusion on the part of Revenue Canada that could lead it to ignore the criminal conviction.

On the basis of the evidence before it, the panel concluded that Mr. McConomy had, in fact, been found guilty of wilful evasion of income tax. Even if the failure to file the income tax returns in question was a result of negligence, a mistaken belief, or the fact that Mr. McConomy had given a low priority to doing so because of other financial and personal turmoil in his life, the fact that he did not meet the requirements of the Income Tax Act was inappropriate behaviour for a chartered accountant. Mr. McConomy failed, in any meaningful way, to refute the presumption contained in Rule 201.2 that his conviction brought a measure of dispute to the profession and, by so doing, impaired its ability to serve the public. The panel therefore found Mr. McConomy guilty of the charge.

SANCTIONS ORDER

In reaching its conclusions, the panel considered the principles of general deterrence, specific deterrence and rehabilitation.

Mr. Farley submitted that the sanctions requested by the professional conduct committee were primarily aimed at the issues of general deterrence and rehabilitation. He referred to the extent of the character evidence filed by Mr. McConomy as reasonable evidence of the member's generally good moral character, and noted that this was Mr. McConomy's first offence. For these reasons, the professional conduct committee had concluded that it was not necessary to request a sanction intended primarily as a specific deterrent. Mr. Farley therefore requested:

- a reprimand;
- a fine of between \$7,000 and \$10,000;
- a suspension of 2 years; and
- publication of the discipline committee's decision and order.

Mr. Farley also stated that the precedent set by the decision of the discipline committee on June 5, 1991, in the case of George Donald White, was considered by the professional conduct committee to be very relevant. He noted that the facts in the White case were similar to the facts in this case, except that Mr. White had filed false and misleading tax returns, whereas Mr. McConomy had failed to file any returns.

Mr. McConomy submitted that:

He believed that the substance of his actions should be of greater importance to the panel than their appearance.

Although he was sorry that he had not filed tax returns during the period in question, he did not regret his action in reaching what he termed a bargained plea position with Revenue Canada, since this allowed his family to escape further action by Revenue Canada, and he considered his family to be of greater importance in his life than his professional designation. He indicated his intention to resign from the Institute at his earliest possible opportunity.

The discipline committee's finding of guilt gives him more pain than any sanction the panel may impose on him.

Mr. McConomy requested that any suspension that may be imposed be considered to have begun on May 9, 1996, when he offered to the professional conduct committee to refrain from holding himself out as a chartered accountant until a decision had been reached.

Conclusion

The panel decided that a letter of reprimand to Mr. McConomy would serve the dual purpose of specific deterrence and rehabilitation, and ordered that such a letter be prepared by the chair of the panel and sent to Mr. McConomy.

Although Mr. Farley had not requested Mr. McConomy's expulsion from the profession, the panel determined that Mr. McConomy's actions and words raised the question of whether he was ungovernable, particularly in view of his:

- absence of remorse for the actions that had brought him before the discipline committee;
- apparent absence of belief in the integrity of the professional disciplinary process; and
- apparent unwillingness to be governed by the rules of the profession.

The panel ultimately concluded that, on balance, Mr. McConomy had not shown himself to be ungovernable, as evidenced by his attendance at and participation in this hearing, and decided that a two year suspension would allow Mr. McConomy to reflect on the actions that had brought him before the discipline committee, thereby serving a rehabilitative purpose.

With regard to Mr. McConomy's contention that, by agreeing not to hold himself out as a chartered accountant in March, 1996, a year of *de facto* suspension had already passed, the panel noted that it was not the professional conduct committee that sought to delay this hearing from its originally assigned date of May 17, 1996. Mr. McConomy requested the delays because he expected that documents relevant to this hearing would be forthcoming from Revenue Canada or the Department of Justice. The panel concluded that he should not now benefit from his requested delays.

The principle of general deterrence is served by publication of the panel's decision and order. The panel appreciates Mr. McConomy's decision to place the welfare of his family before that of his profession, but nevertheless is obligated to inform other chartered accountants and the public that such a decision attracts consequences that must be considered when the decision is made. The panel therefore ordered publication of the discipline committee's Decision and Order, including Mr. McConomy's name.