

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 **BARTON THOMAS BURRON**, a former member, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Barton T. Burron

AND TO: The Professional Conduct Committee

REASONS

(Decision and Order made August 8, 2016)

1. This tribunal of the Discipline Committee met on August 8, 2016 to hear an Allegation of professional misconduct brought by the Professional Conduct Committee against Barton Thomas Burron, a former Member.

2. Ms. Alexandra Hersak appeared on behalf of the Professional Conduct Committee (PCC), accompanied by Mr. Scott Porter, the investigator for the PCC. Mr. Burron was not represented by counsel and did not attend. Mr. Robert Peck attended the hearing as counsel to the Discipline Committee.

Proceeding in Mr. Burron's absence

3. Ms. Hersak filed the Affidavit of Matthew Kelly, sworn July 28, 2015, (Exhibit 1) that deposed that the Allegation had been personally served on Mr. Burron by Mr. Kelly, a process server, on July 28, 2015.

4. Ms. Hersak also filed the Affidavit of Service of Michael C. Atkinson, sworn June 13, 2016, (Exhibit 2) that deposed that the Notice of Hearing to attend before the Discipline Committee had been personally served on Mr. Burron by Mr. Atkinson, a process server, on June 12, 2016.

5. Ms. Hersak also advised the tribunal that in May and July 2016 she had corresponded with a lawyer, Mr. Tom Curran, who at one time had made representations on behalf of Mr. Burron. Mr. Curran confirmed to Ms. Hersak by email that Mr. Burron did not require his attendance and that Mr. Burron would not be attending the hearing (Exhibit 3).

6. The tribunal determined on the basis of this evidence that Mr. Burron had received proper notice of the hearing and decided to proceed in his absence.

7. The decision of the tribunal was made known at the conclusion of the hearing on August 8, 2016, and the written Decision and Order was sent to the parties on August 11, 2016. 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

8. The following Allegation was made against Mr. Burron by the Professional Conduct Committee on July 21, 2015:

THAT the said Barton T. Burron, in or about the period June 1, 2009 through November 30, 2013, while acting as Treasurer of "SLLC," abused the trust of SLLC by misappropriating approximately \$607,000 of SLLC's monies and did thereby fail to conduct himself in a manner which would 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

9. A plea of not guilty to the Allegation was entered on Mr. Burron's behalf.

Background and Submissions of the PCC

10. Ms. Hersak advised the tribunal that Mr. Burron had resigned his membership in CPA Ontario in or around March 2014, prior to the investigation by the PCC, but under the *Chartered Accountants Act, 2010* he is subject to continuing jurisdiction of CPA Ontario for his conduct while a member.

11. Ms. Hersak filed a Document Brief (Exhibit 4) and advised that she would be calling the pastor of the church (the SLLC referred to in the Allegation), and the investigator for the PCC as witnesses. Ms. Hersak submitted that this is an abuse of trust case whereby Mr. Burron invested the church's funds in a real estate development project that was solely for his benefit.

12. The pastor of SLLC was sworn as a witness and provided background information on Mr. Burron's involvement with the church. Mr. Burron had been a friend, a member of the church, a speaker and its treasurer for over 30 years. Mr. Burron was trusted, highly respected as a CA who had worked for the Auditor General's office and was thought by the pastor and church congregation to be well qualified to take on the role as treasurer. The church has a council of elected officers, including a treasurer. The pastor stated that Mr. Burron was well aware of the church's Constitution which sets out the duties and responsibilities of the treasurer concerning record keeping of financial transactions, including retention and reporting of receipts and disbursements of church funds.

13. The pastor stated that through investments, sale of school property and gifts received, the church was in good shape financially with a legacy fund of about \$600,000, with investments managed through Scotia Bank. The bank's financial advisor had handled the church's investments until the past year or two. Mr. Burron did have signing authority to act in a fiduciary capacity on behalf of the church by way of a document prepared by him and signed by an officer of the church.

14. The pastor stated that an internal financial review of the custodial funds had not been done in several years and no audit had taken place. The pastor said Mr. Burron told the church council that this was not his responsibility. Mr. Burron, as the financial officer, was responsible for managing the church's financial activities and was the sole signatory for the chequing and investment accounts.

15. Safe investments were to be made with little risk to the church's funds, the majority of which had come from the sale of the school that was previously part of the church's property. In 2009, Mr. Burron started moving funds from the church's investment accounts to numbered companies. Mr. Burron had never mentioned to the council that funds of the church had been

invested in real estate. In accordance with the church's investment funds policy, capital was only to be used for other than day to day operations with the approval of the voters. Any use of large amounts of the funds was to be discussed by council and required approval.

16. The pastor stated that there was no documentation in the church's records that money had been used by Mr. Burron for investment in a condominium project. From 2009 to 2013, Mr. Burron had been moving money from the church's chequing, savings and investment accounts to his own personal account.

17. The pastor stated that in 2013 a meeting was held with Mr. Burron and the board, without the pastor's attendance. Subsequent to that meeting, the pastor was told that his pay would be adjusted. As there was money in the bank, the pastor could not understand why his salary was being set at a lower level. He told the board of his concerns and asked to see the investment records. Mr. Burron had the financial records at his home and brought them to the church board. Shortly after, the pastor learned that Mr. Burron had resigned from his position as treasurer.

18. The newly appointed treasurer went through the boxes of records and found cheques made out to numbered companies. A computer search of the numbered companies linked Mr. Burron with Omar Jabara, a contractor doing work on a proposed development. A civil action against Mr. Burron resulted in a partial recovery of funds, and a police fraud unit has recently filed charges against Mr. Burron.

19. The pastor stated that it was a complete shock to him and the congregation that Mr. Burron, a trusted friend and treasurer for many years, had used the church's funds for his own investments. Mr. Burron's actions were very costly in time, money and emotional impact on the congregation. The church's investment income was greatly impacted, resulting in the sale of the manse, where the pastor had resided, in order to recoup the more than \$600,000 lost due to the fraud.

20. In respect of the civil litigation, Ms. Hersak asked the pastor if Mr. Burron had ever notified the council members that funds were being used for his own benefit or if they had seen the subscription agreement investing the church's money into a development property for residential units. The pastor stated that no agreement was shown to the church members and the document was not seen until after the fraud was revealed.

21. Mr. Burron's actions have left the church members in shock that this could have been done by someone who had been trusted by the members of the church for decades. In addition to the lost investments and embarrassment in the community, there was a division in the congregation with many members expressing anger and leaving the church. Many changes occurred at the church, including a number of people leaving the council who had not been in agreement with the pastor asking for the financial records.

22. In response to questions of the tribunal, the pastor confirmed that no external audit had been done over the years. The new accountant would not sign off on the statements and had said the matter should be taken to the police.

23. Mr. Porter, the investigator for the PCC, was affirmed as a witness and provided background information on this matter, referring to the Document Brief and further documents filed by Ms. Hersak: the Timeline of Events (Exhibit 5), the Judgment between the church and Mr. Burron (Exhibit 6) and the interview transcript with Mr. Burron (Exhibit 7).

24. Mr. Porter stated that the new church treasurer had made the complaint on behalf of the

church. In Mr. Burron's written response to the complaint, he stated that he did not believe that CPA Ontario was appropriately involved in this matter since he was not an employee of the church, was not hired in a professional capacity and did not represent that he was acting in his capacity as a chartered accountant.

25. During the interview with Mr. Porter, Mr. Burron had indicated a vacancy came up on the board in 1984 and he was asked to become treasurer of the church because of his accounting background.

26. In 2006, Mr. Burron purchased a property to be developed as a multi-unit condominium, using \$150,000 of his own resources and borrowing about \$600,000 from the bank. Mr. Burron had no experience in property development. He incorporated a numbered company to be the developer of the property. Mr. Burron had consulted with outside parties and believed the project would be profitable. In 2009, Mr. Burron entered into an agreement with Omar Jabara an interior designer who would sell, consult, market, inspect and interior design the project. Mr. Jabara was not licensed to sell property.

27. The financial documents of the church show that from 2009 to 2012, cheques were drawn on the church's chequing and savings accounts payable to numbered companies. From June 2009 to April 2012, \$289,000 was paid to Mr. Burron's numbered company and used for his own personal purposes. From September 2012 to November 2013, \$318,725 was used by Mr. Burron to pay into a numbered company incorporated by Mr. Jabara to finance the project through a mortgage company.

28. Mr. Porter stated that Mr. Burron had never told anyone at the church that the funds were being directed to Mr. Burron, his numbered company and/or the Jabara company. Mr. Burron needed an investor for his condominium project and thought this would be a good opportunity for the church. If Mr. Burron had any credibility concerns about Mr. Jabara, they were not pursued. In 2011, the condominium project switched to an embassy development as proposed by Mr. Jabara.

29. Mr. Porter stated that in 2013, Mr. Burron continued to advance funds to Mr. Jabara even though the project seemed to be at risk, and Mr. Burron had been advised in 2012 that Jabara's company had a bad reputation on land deals. In September 2012, Mr. Burron was advised that mortgage payments on the property were in arrears and the business associate (Jabara) had failed to make payments. Mr. Burron was advised that if payment was not received, Power of Sale action would be taken. The property was sold through the mortgage company in September 2012. Subsequent to the sale of the property, monies from the church were still given to Mr. Jabara by Mr. Burron.

30. In the fall of 2013, Mr. Burron sent a number of emails to Mr. Jabara concerning the urgent need for the deal to close. The church's cash flow and investment situation was being questioned by the pastor, due to funds needed for church repairs

31. Mr. Porter stated that the agreements in support of advances of church funds from March 2010 to March 2013 appear to have been prepared at a later date, after the fact. There was no accrued interest for 2010 and 2011, as it would have been too late at the time the agreements were prepared to make an adjustment to the profit and loss section. The general ledgers were kept in Mr. Burron's home. Mr. Porter stated that Mr. Burron had revised the balance sheets in 2013 for the years 2009, 2010, 2011 and 2012.

32. Mr. Porter stated that Scotiabank had been handling the church's investments prior to the

time when Mr. Burron started making withdrawals of money to finance his property development. Mr. Burron had not told the Scotiabank the money was for his personal investments but that it was needed for renovations.

33. Ms. Hersak submitted that the testimony provided by the pastor and Mr. Porter, and the documents filed, were clear, cogent and compelling evidence to prove the Allegation that Mr. Burron abused the trust of the church by misappropriating money, contrary to Rule 201.1, and that he should be found guilty of the Allegation of professional misconduct.

34. Ms. Hersak submitted that despite Mr. Burron's assertions that he had the authority to invest the church's funds as he wished, there was no evidence of such authorization and he had told no one on the church council of his investing activities in his personal condominium project. When Mr. Burron was no longer able to fund his investment from his own personal money, he started using the church's funds in a speculative venture and continued to do so even after the property was sold through Power of Sale proceedings. As a trusted church member and its treasurer, the church expected and deserved better from Mr. Burron.

The Decision

35. The tribunal found, on the uncontested evidence, that the Allegation had been proven. After deliberating, the tribunal announced the following decision:

THAT having determined to proceed with the hearing in the absence of Mr. Burron, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to the Allegation, and having seen, heard and considered the evidence, the Discipline Committee finds Barton Thomas Burron guilty of the Allegation of professional misconduct.

Reasons for Decision

36. The tribunal determined on the evidence it heard that Mr. Burron had misappropriated approximately \$607,000 from the church when he was the Treasurer. Mr. Burron was in a position of trust as the Treasurer of the church for over 30 years yet he took advantage of this position and misappropriated the church's funds.

37. Mr. Burron did not attend the hearing. At one time he had suggested to the investigator that he thought the use to which he put the money would be a good investment for the church and that he had the authority to invest the money as he did. The tribunal rejected this explanation as untenable. He never advised anyone at the church of the investment, in fact he provided false information to the church which effectively hid what he was doing. He misappropriated the entire Legacy fund of the church, approximately \$600,000, and he recklessly continued to spend funds on the project after it had been sold under power of sale. The tribunal does not accept that his conduct could possibly be construed, even by Mr. Burron, as in the best interest of the church.

38. Therefore, having seen, heard and considered the evidence provided on behalf of the PCC, the tribunal concluded that the evidence was clear, cogent and compelling and was sufficient to prove the allegation on a balance of probabilities.

Sanction

39. Ms. Hersak filed no additional evidence on sanction. Ms. Hersak, on behalf of the PCC, submitted that an appropriate sanction in this matter would be: a written reprimand from the chair of the tribunal; a fine in the amount of \$25,000; an order that Mr. Burron not be eligible to apply for readmission or reinstatement of membership for a period of five years, and full publicity including publication in *The Ottawa Citizen*. The PCC also sought an order for costs fixed at \$63,900, being

approximately two-thirds of the costs incurred in the investigation and prosecution of this Allegation. Ms. Hersak stated that the PCC had no objection to a reasonable period of time of up to 24 months to pay the fine and costs.

40. Ms. Hersak submitted that the nature of Mr. Burron's misconduct has devalued the profession as a whole. He took on the role of Treasurer due to his skill and knowledge as a CA for over 30 years, 20 years of which were with the Auditor General's office. Mr. Burron was in a position of trust but chose to misappropriate the church's money to fund his own investments, although he had no background in real estate development. Ms. Hersak stated that misappropriation of funds is theft.

41. Ms. Hersak submitted that the sanctions proposed by the PCC appropriately dealt with the principles of general and specific deterrence, which are paramount in a case of moral turpitude. Ms. Hersak submitted that the fine and restriction on readmission proposed, which is equivalent to revocation, with publicity, would be appropriate deterrents to others. The newspaper publicity will let the membership and the public know about the behavior of Mr. Burron, who is no longer a member of CPA Ontario, and that such matters before the Discipline tribunal are taken seriously.

42. Ms. Hersak stated that the aggravating factors included the following: Mr. Burron was in a position of trust with the church which he abused; he betrayed the council and the congregation; he showed an absence of integrity; he risked the church's funds although he had no experience in real estate investments; and he told no one at the church what he was doing with the funds over a period of four years. Ms. Hersak submitted that Mr. Burron had many opportunities to cease his activities but failed to do so. Mr. Burron showed a lack of remorse and accountability by stating that he was acting as a volunteer on the church board and was not retained as a CA.

43. Ms. Hersak stated that the mitigating factors were that Mr. Burron cooperated to an extent with the investigation, and he has no history before the Discipline Committee. Mr. Burron has lost his reputation in the community, has left the area where he lived and has become a bankrupt.

44. Ms. Hersak filed a Costs Outline (Exhibit 8) showing the costs of the investigation and prosecution to be approximately \$98,850, of which the PCC was seeking two-thirds in the amount of \$63,900. Ms. Hersak noted that the Costs Outline was prepared on the basis of a two-day hearing and an adjustment could be made as the hearing took one day. Ms. Hersak submitted that costs are an indemnification and the membership at large is expected to bear a portion of the amount with the balance being paid by the member who is the subject of the hearing.

45. Ms. Hersak referred to the case brief containing *Cutbush, Shilson, McWilliams, Sitter, Quick, Bertrand* and *Daniel*, noting that the precedents contained a common theme involving misappropriation of funds which resulted in revocation of membership or restriction on applying for readmission.

Order

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

IT IS ORDERED in respect of the Allegation:

1. THAT Mr. Burron be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Burron be and he is hereby fined the sum of \$30,000, to be remitted to the Chartered Professional Accountants of Ontario (registered business name of The Institute of Chartered Accountants of Ontario) ("CPA Ontario") within twelve

(12) months from the date this Decision and Order is made.

3. THAT Mr. Burron shall not be eligible for reinstatement or readmission to membership in CPA Ontario other than by an application to the Discipline Committee pursuant to Rule 21 of the Rules of Practice and Procedure, and he is precluded from applying for readmission for a period of five (5) years from the date this Decision and Order is made, and must satisfy all of the requirements of Rule 21.03 of the Rules of Practice and Procedure before being readmitted.
4. THAT notice of this Decision and Order, disclosing Mr. Burron's name, be given in the form and manner determined by the Discipline Committee:
 - (a) to all members of CPA Ontario; and
 - (b) to all provincial bodies;and shall be made available to the public.
5. THAT notice of the Decision and Order, disclosing Mr. Burron's name and the fact that he previously resigned his membership, be given by publication on the CPA Ontario website and in *The Ottawa Citizen*. All costs associated with the publication shall be borne by Mr. Burron and shall be in addition to any other costs ordered by the committee.

IT IS FURTHER ORDERED:

6. THAT Mr. Burron be and he is hereby charged costs fixed at \$61,000, to be remitted to CPA Ontario within twelve (12) months from the date this Decision and Order is made.

Reasons for Sanctions

47. In its deliberations, the tribunal took into consideration the trusted position of Mr. Burron in the church for which he had been Treasurer for over 30 years, his position with the Auditor General's office which engendered a position of trust, the personal use of the church's funds for Mr. Burron's real estate development, the utilization of the church's legacy fund of \$600,000 for his personal benefit, the manipulation of the church's financial statements to hide his misappropriation and the period of time of four years over which Mr. Burron conducted the misappropriation. As a trusted CPA, CA, Mr. Burron knew how to carry out the misappropriation. The tribunal concluded that the proposed sanctions of a written reprimand, a fine, ineligibility to apply for reinstatement for five years, and publication were appropriate.

48. Mr. Burron's actions amounted to moral turpitude as he was in a position of trust and abused the trust over a period of four years. The sanctions imposed on Mr. Burron need to send a clear message to Mr. Burron, to the profession and to the public that the profession will not tolerate conduct such as that of Mr. Burron.

49. The reprimand in writing from the Chair serves as a specific deterrent to Mr. Burron to emphasize the seriousness of his misconduct and to reinforce the high standard of conduct expected by a member.

50. The tribunal determined that a fine was appropriate for Mr. Burron's conduct. The tribunal considered the range of fines that were set out in the cases in the PCC's Brief of Authorities. The tribunal concluded that a fine of \$30,000 was appropriate given the significant abuse of trust by Mr. Burron notwithstanding that PCC sought a fine of \$25,000. A further factor was the total depletion of the church reserve funds by Mr. Burron. The tribunal determined that up to 12

months was an appropriate period of time for payment of the fine.

51. Given the gravity of the misconduct by Mr. Burron, the tribunal concluded that Mr. Burron should not be allowed to apply for readmission to CPA Ontario for a period of five years pursuant to Rule 21 as set out in the sanctions above.

52. Full publicity including notice of Mr. Burron's resignation from membership disclosing Mr. Burron's name, by publication on the CPA Ontario website and in *The Ottawa Citizen*, is appropriate to protect the interest of the public. There were no rare and unusual circumstances that would support non-publication. The publications also serve as a notice to members and the public that CPA Ontario is vigilant in maintaining its reputation of integrity and the notice is also in keeping with the transparency process of CPA Ontario.

53. The tribunal concluded that the sanctions imposed on Mr. Burron are within the range of sanctions that have been previously imposed in similar cases.

Costs

54. The costs of the investigation and the prosecution were approximately \$98,000. It was Mr. Burron's conduct that necessitated the investigation and the disciplinary hearing. The tribunal agreed that costs of \$61,000 sought by the PCC, on a two thirds indemnity basis, to be reasonable and appropriate. As with the time to pay the fine, the tribunal determined that a period of up to 12 months was appropriate for payment of the costs.

DATED AT TORONTO THIS *24TH* DAY OF OCTOBER, 2016
BY ORDER OF THE DISCIPLINE COMMITTEE



S.M. DOUGLAS, FCPA, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

R.S. DUSCHEK, CPA, CA
R. HUANG LL.B. (Public Representative)
S.R. LOWE, CPA, CA
N.J. RIVERS, CPA, CGA