

THE ALBERTA TEACHERS' ASSOCIATION  
REPORT OF THE HEARING COMMITTEE  
OF THE PROFESSIONAL CONDUCT COMMITTEE

IN THE MATTER OF CHARGES OF UNPROFESSIONAL  
CONDUCT AGAINST MARIANELLA GARCELLANO

The hearing committee of the Professional Conduct Committee of the Alberta Teachers' Association reports that charges of unprofessional conduct laid against Marianella Garcellano of [Location Redacted] were duly investigated in accordance with the *Teaching Profession Act*. The hearing was held in Barnett House, 11010 142 Street NW, Edmonton, Alberta, Canada on Tuesday, August 27, 2013 at 0900.

Professional Conduct Committee members present as the hearing committee were [REDACTED] presented the case against the investigated member. The investigated member, Marianella Garcellano, was not present and was not represented.

CONSTITUTION/JURISDICTION

There were no objections to either the composition or jurisdiction of the hearing committee.

CHARGES AND PLEA

The following charges were read by the secretary to the hearing committee:

1. Marianella Garcellano is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that she, while a member of the Alberta Teachers' Association, on or about 2001 12 01 and 2010 05 30, both dates inclusive, engaged in conduct for which she, on 20 11 12 06, was convicted of an indictable offence, to wit: Between the 1st day of December 2001 and the 30th day of May 2010, both dates inclusive, at or near [Location Redacted] did by deceit, falsehood or other fraudulent means, unlawfully defraud the Government of Canada of Old Age Security Benefits of a value exceeding \$5,000.00 to wit: \$108,523.61, contrary to section 380(1)(a) of the *Criminal Code*.
2. Marianella Garcellano is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that she, while a member of the Alberta Teachers' Association, on or about 2001 12 01 and 2010 05 30, both dates inclusive, engaged in conduct for which she, on 2011 12 06, was convicted of an indictable offence, to wit: Between the 1st day of December 2001 and the 30th day of May 2010, both dates inclusive, at or near [Location Redacted] , did by deceit, falsehood or other fraudulent means, unlawfully defraud the

Government of Canada of Goods and Services Tax rebates of a value not exceeding \$5,000.00, to wit: \$2,364.45, contrary to section 380(1)(b) of the *Criminal Code*.

3. Marianella Garcellano is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that she, while a member of the Alberta Teachers' Association, on or about 2001 12 01 and 2010 05 30, both dates inclusive, engaged in conduct for which she, on 2011 12 06, was convicted of an indictable offence, to wit: Between the 1st day of December 2001 and the 30th day of May 2010, both dates inclusive, at or near [Location Redacted], did by deceit, falsehood or other fraudulent means, unlawfully defraud the Government of Canada of Alberta Seniors Benefits of a value exceeding \$5,000.00 to wit: \$23,890.55, contrary to section 380(1)(a) of the *Criminal Code*.

The investigated member entered a plea of guilty to each of the charges, by written submission.

#### WITNESSES

There were no witnesses called. Evidence was entered through an agreed statement of facts.

#### EXHIBITS FILED

- Exhibit 1—Notice of hearing dated July 12, 2013
- Exhibit 2—Canada Post confirmation of delivery of notice on July 23, 2013
- Exhibit 3—Statutory declaration of awareness of rights, signed by Garcellano, dated August 14, 2013
- Exhibit 4—Proof of Garcellano's membership in the Alberta Teachers' Association
- Exhibit 5—Submission on plea, signed by Garcellano, dated August 14, 2013
- Exhibit 6—Agreed statement of facts, signed by Garcellano and [REDACTED], dated August 14, 2013
- Exhibit 7—Joint submission on penalty, signed by Garcellano and [REDACTED], dated August 14, 2013

#### EVIDENCE ADDUCED AND EXHIBITS FILED INDICATED THAT:

1. Garcellano was a member of the Association from September 1, 1997 to July 31, 2000 and from November 1, 2007 to October 31, 2012 (Exhibit 4).
2. Garcellano's aunt, [Name Redacted], died [Date Redacted][Location Redacted] (Exhibit 6).
3. Garcellano attended [Name Redacted] funeral [Location Redacted] (Exhibit 6).

4. At the time of her death, [Name Redacted] was receiving an Old Age Security (OAS) pension and Alberta Seniors Benefit (Exhibit 6).
5. No government agency was notified of [Name Redacted]'s death (Exhibit 6).
6. In 1999, Garcellano submitted an application to renew [Name Redacted]'s Guaranteed Income Supplement payments, signing the application as niece and trustee and providing her home address as [Name Redacted]'s (Exhibit 6).
7. From 1997 to 2010, Garcellano filed annual income tax returns for [Name Redacted] which made [Name Redacted] eligible for the Goods and Services Tax (GST) rebate (Exhibit 6).
8. The GST rebate, the OAS pension and the Alberta Seniors Benefit were all either paid by cheques payable to [Name Redacted] and were deposited by Garcellano into a joint account bearing the names of Garcellano and [Name Redacted], or were directly deposited into this account (Exhibit 6).
9. These funds were then appropriated to Garcellano's own benefit (Exhibit 6).
10. Garcellano, over a 13-year period, received \$108,523.61 from OAS, \$2,364.45 in GST rebate, and \$23,890.55 in Alberta Seniors Benefit for a total of \$134,778.61 (Exhibit 6).
11. On December 6, 2011, Garcellano was convicted of three indictable counts of fraud. She continued to teach until the end of the 2011/12 school year; reported her conviction to the Association on June 12, 2012; was imprisoned from June 27, 2012 to August 31, 2012; and resigned effective October 31, 2012 (Exhibit 6).
12. As part of an ongoing probation order, Garcellano was ordered to make restitution, in the amount of \$86,205.80, to Service Canada and in the amount of \$18,572.81, to the Alberta Seniors Benefit program (Exhibit 7).

DECISION OF THE HEARING COMMITTEE

Charge 1 Guilty  
Charge 2 Guilty  
Charge 3 Guilty

REASONS FOR DECISION

1. The *Teaching Profession Act* 23(2)(a) states
  - (2) If a member has been convicted of an indictable offence
    - (a) the conduct of the member on which the conviction is based is deemed to be unprofessional conduct, ...
2. The *Teaching Profession Act* 41(2)(a) states
  - (2) Where the investigated member has been convicted of an indictable offence, a hearing committee ... has no authority
    - (a) to find that the conduct of the member on which the conviction is based does not constitute unprofessional conduct ...
3. Garcellano was convicted of three indictable offences and the hearing committee therefore finds her guilty of unprofessional conduct.

PENALTY

The hearing committee imposes the following penalty to address the three charges:

- a. A letter of severe reprimand
- b. Garcellano is ineligible for membership in the Association for 18 months.
- c. A recommendation will be made to the minister of education to suspend Garcellano's teaching certificate for 18 months.

REASONS FOR PENALTY

1. In the joint submission on penalty, the presenting officer recommended a penalty of a letter of severe reprimand, a six-month suspension of membership and a recommendation to the minister to suspend the teaching certificate for six months.
2. Garcellano defrauded the governments of Canada and Alberta of \$134,778.61 over a period of at least 13 years. This is a significantly greater amount of money and the actions occurred over a significantly longer time period than any precedential case presented.
3. Garcellano actively and purposely submitted tax returns in the name of her deceased aunt in order to receive the GST rebate and the pensions that would have been due to her aunt if she were still alive.

4. A longer suspension than that requested by the presenting officer is required in order to provide sufficient general deterrence to others considering engaging in such conduct.
5. Society values and expects that teachers will conduct themselves, in all matters, with honesty and integrity.
6. Teachers are expected to be positive role models and are held to a higher standard than the general public. The Code of Professional Conduct applies to teachers at all times.
7. Garcellano is making court-ordered restitution, she has a criminal record and she resigned her position.
8. Garcellano cooperated with both the RCMP and the Association in their investigations.
9. The hearing committee was not presented with any evidence that Garcellano's behaviour harmed students or her school nor that Garcellano's conviction was widely reported, thus bringing the profession into disrepute in the larger community.

Dated at the City of Edmonton in the Province of Alberta, Tuesday, August 27, 2013.

HEARING COMMITTEE OF THE  
PROFESSIONAL CONDUCT COMMITTEE  
OF THE ALBERTA TEACHERS' ASSOCIATION

