

Chester Lupinski: Summary, as Published in *CheckMark*

Chester Lupinski, of Thornhill, was found guilty by the discipline committee of three charges of professional misconduct, laid by the professional conduct committee, namely

- one charge, under Rule of Professional Conduct 202, of failing to perform his professional services with integrity;
- two charges, under Rule of Professional Conduct 205, of associating himself with representations which he knew were false.

The committee ordered that Mr. Lupinski

- be reprimanded in writing by the chair of the hearing;
- be fined \$2,500, to be paid within a specified time;
- be suspended from membership in the Institute for a period of six months; and
- surrender his certificate of membership in the Institute to the registrar, for the period of suspension.

Mr. Lupinski returned to MEMBERSHIP IN GOOD STANDING on September 9th, 1992.

CHARGE(S) LAID re Chester Lupinski

The professional conduct committee hereby makes the following charges against Chester Lupinski, CA, a member of the Institute:

1. THAT, the said Chester Lupinski, on or about the 20th day of February 1990, made a statement or representation to Lionel Robidoux an appeals officer with Revenue Canada, Excise Appeals Directorate, to the effect that a Notice of Objection to Notice of Determination #ER 90438 dated October 18, 1989 had been prepared along with a covering letter within the deadline period, knowing that no such letter had been prepared, contrary to Rule 205 of the rules of professional conduct.
2. THAT, the said Chester Lupinski, on or about the 20th day of February 1990, 10 knowing that a Notice of Objection was required to be filed with Revenue Canada, Excise Appeals Directorate within 90 days of the date of the Notice of Determination #ER 90438 dated October 18, 1989, caused to be prepared a Notice of Objection and a covering letter to Revenue Canada Excise Appeals Directorate both dated December 1, 1989, with the intention that they be relied upon as having been prepared on the date shown on their face, contrary to Rule 205 of the rules of professional conduct.
3. THAT, the said Chester Lupinski, on or about the 25th day of February, 1990, failed to perform his professional services with integrity in that he caused to be prepared a letter addressed to Lionel Robidoux an appeals officer with Revenue Canada, Excise Appeals Directorate, which referred to "...enclosed copies of our cover letter and Notice of Objection dated December 1, 1989..." knowing that the cover letter and notice of Objection had not been prepared on December 1, 1989 and had never been sent to Revenue Canada, with the intention that Revenue Canada would believe that the Notice of Objection and cover letter had been prepared within the applicable deadline when it had not been, contrary to Rule 202 of the rules of professional conduct .
4. ~~THAT, THE SAID Chester Lupinski, on or about the 21st day of November 1990, made a statement or representation which he knew was false or misleading in that he told representatives of clients of his firm that a letter dated December 1, 1989 and addressed to Revenue Canada, Excise Appeals Directorate and signed by Wayne C. Matheson, CA, had been prepared and sent to Revenue Canada Excise on December 1, 1989 when he knew that it had neither been sent nor prepared on that date and in fact had not been prepared or sent until on or about the 25th day of February 1990, contrary to Rule 205 of the rules of professional conduct. (WITHDRAWN BY THE PCC BWS)~~
5. ~~THAT, the said Chester Lupinski, in or about the period February 19, 1990 through to December 7, 1990, failed to conduct himself in a manner that would maintain the good reputation of the profession and it's ability to serve the public interest in that, having failed to meet a deadline required to be met by Revenue Canada, Excise Appeals Directorate for the filing of a Notice of Objection to a Notice of Determination #ER 90438 dated October 18, 1989, on behalf of the firm's client General Motors of Canada Ltd., he participated in a scheme to conceal his failure to file on time from the client and from Revenue Canada which scheme included the preparation of false and misleading information, all of which is contrary to Rule 201.1 of the rules of professional conduct. (WITHDRAWN BY THE PCC BWS)~~

DATED at Toronto this 25th day of May 1991.

H.W. HOBBS, FCA - DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Chester Lupinski

DECISION AND ORDER IN THE MATTER OF: Charges against CHESTER LUPINSKI, CA, a member of the Institute, under Rules **201.1, 202 and 205** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE OCTOBER 16, 1991

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1, 2 and 3, charges Nos. 4 and 5 having been withdrawn, THE DISCIPLINE COMMITTEE FINDS Chester Lupinski guilty of charges Nos. 1, 2 and 3.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Lupinski be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Lupinski be and he is hereby fined the sum of \$2,500, to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Lupinski be suspended from the rights and privileges of membership in the Institute for a period of six (6) months from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Lupinski's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants.
5. THAT Mr. Lupinski surrender his certificate of membership in the Institute to the registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held by the registrar during the period of suspension and thereafter returned to Mr. Lupinski.
6. THAT in the event Mr. Lupinski fails to comply with any of the requirements of this Order within the time periods specified, he shall thereupon be suspended from the rights and privileges of membership in the Institute, and notice of his suspension, disclosing his name, shall be given in the manner specified in paragraph 4 hereof.
7. THAT in the event Mr. Lupinski is suspended pursuant to paragraph 6 hereof, the suspension shall terminate upon compliance with the term of the Order in respect of

which he was suspended, provided that he complies within thirty (30) days from the date of his suspension.

8. THAT in the event Mr. Lupinski fails to terminate suspension within thirty (30) days, 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 23RD DAY OF OCTOBER, 1991
BY ORDER OF THE DISCIPLINE COMMITTEE

B.W. STEPHENSON, BA, LLB
SECRETARY - THE DISCIPLINE COMMITTEE

DISCIPLINE COMMITTEE re Chester Lupinski

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against CHESTER LUPINSHI, CA, a member of the Institute, under Rules 201.1, 202 and 205 of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE OCTOBER 16, 1991

These proceedings before a panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on October 16, 1991.

Mr. Paul Farley attended on behalf of the professional conduct committee. Mr. Lupinski attended with his counsel, Mr. Robert McComb.

The professional conduct committee had laid one charge under each of Rules of Professional Conduct 201.1 and 202, and three charges under Rule of Professional Conduct 205. At the outset of the hearing, counsel for the professional conduct committee withdrew charge No. 4, under Rule 205, and charge No. 5, under Rule 201.1. Mr. Lupinski then pleaded guilty to charge No. 1, under Rule 205, charge No. 2, under Rule 205, and charge No. 3, under Rule 202. The member confirmed that he understood that upon a plea of guilty, and upon that basis alone, he could be found guilty by the discipline committee.

An agreed statement of facts, signed by Mr. Lupinski and counsel for the professional conduct committee, was filed as an exhibit, as was an accompanying document brief. Based upon the evidence presented in these exhibits, and the member's pleas of guilty, the discipline committee, upon deliberation, found Mr. Lupinski guilty of charges Nos. 1, 2 and 3.

The reasons for the committee's findings on these charges are as set out below.

THE CHARGES

1. *THAT, the said Chester Lupinski, on or about the 20th day of February 1990, made a statement or representation to Lionel Robidoux an appeals officer with Revenue Canada, Excise Appeals Directorate, to the effect that a Notice of Objection to Notice of Determination #ER 90438 dated October 18, 1989 had been prepared along with a covering letter within the deadline period, knowing that no such letter had been prepared, contrary to Rule 205 of the rules of professional conduct.*
2. *THAT, the said Chester Lupinski, on or about the 20th day of February 1990, knowing that a Notice of Objection was required to be filed with Revenue Canada, Excise Appeals Directorate within 90 days of the date of the Notice of Determination #ER 90438 dated October 18, 1989, caused to be prepared a Notice of Objection and a covering letter to Revenue Canada Excise Appeals Directorate both dated December 1, 1989, with the intention that they be relied upon as having been prepared on the date shown on their face, contrary to Rule 205 of the rules of professional conduct.*
3. *THAT, the said Chester Lupinski, on or about the 25th day of February 1990, failed to perform his professional services with integrity in that he caused to be prepared a letter*

addressed to Lionel Robidoux an appeals officer with Revenue Canada Excise Appeals Directorate, which referred to "...enclosed copies of our cover letter and Notice of Objection dated December 1, 1989..." knowing that the cover letter and Notice of Objection had not been prepared on December 1, 1989 and had never been sent to Revenue Canada with the intention that Revenue Canada would believe that the Notice of Objection and cover letter had been prepared within the applicable deadline when it had not been, contrary to Rule 202 of the rules of professional conduct.

After the evidence was entered, the discipline committee was concerned that that evidence supported not only charges Nos. 1, 2 and 3, but also charges Nos. 4 and 5, which had been withdrawn. In this case there were two distinct series of actions by Mr. Lupinski. The first series of actions related to his deceiving Revenue Canada, which was the basis of charges Nos. 1, 2 and 3. The second series of actions dealt with his making false or misleading statements to his clients, which formed the basis of the withdrawn charges Nos. 4 and 5.

The committee asked both counsel to advise it as to whether or not the withdrawal of the two charges would have any impact on their later submissions as to sanction. Both confirmed that the withdrawal of the charges would not affect their submissions as to sanction, and that it should not affect the committee's ultimate disposition as to sanction. The committee was satisfied with this insofar as the issue of sanction was concerned. Nevertheless, the committee remained concerned that, even though two distinct groups had been affected by the misconduct of this member, only his misconduct in respect of one of those groups was now before the committee.

The agreed statement of facts outlined the evidence as follows:

1. Mr. Lupinski obtained his CA designation in 1989. Mr. Wayne C. Matheson, CA, was Mr. Lupinski's immediate superior and the national director of commodity tax for Deloitte Haskins & Sells. As a result of the matters contained within the charges, Messrs. Matheson and Lupinski resigned from Deloitte & Touche as of January 31, 1991.
2. At all material times, Mr. Matheson was a partner with the firm Deloitte & Touche, or its predecessor firm, Deloitte Haskins & Sells, and was responsible for the preparation of the federal sales tax claims on behalf of the firm's client. At all material times, Mr. Lupinski was a manager with the firm and operated under the direction of Mr. Matheson.
3. Mr. Lupinski was responsible for filing a notice of objection to an adverse notice of determination from Revenue Canada within the ninety-day time period allowed. He failed to do so. He advised his superior, Mr. Matheson, of his error and submitted his resignation, which was not accepted.
4. Both Mr. Lupinski and Mr. Matheson were aware that the Deloitte firm would be embarrassed by Mr. Lupinski's failure to file the notice of objection within the prescribed time. Mr. Matheson counselled Mr. Lupinski to tell Revenue Canada, Excise Appeals Directorate, that the notice of objection had been prepared prior to the expiration of the ninety days.
5. Mr. Lupinski prepared the notice of objection, dated December 1, 1989, on or about February 25, 1990. The scheme also involved backdating correspondence in order to make it appear that the filing deadline had been met. A letter implying that the notice of objection was sent to Revenue Canada on or about December 1, 1989, was prepared and signed on February 25, 1990 and backdated to December 1, 1989. The file copy of

the letter, also prepared and signed on February 25, 1990, was initialled by both Mr. Lupinski and Mr. Matheson as having been prepared and approved by them, respectively, on December 1, 1989.

6. Mr. Lupinski, with the concurrence of Mr. Matheson, arranged to have their client sign the notice of objection dated December 1, 1989. At all times, the client was informed by Mr. Lupinski that the notice of objection had been prepared on December 1, 1989, when in fact this was not the case.

Based upon the evidence presented, and the member's pleas of guilty, the committee found Mr. Lupinski guilty of charges Nos. 1, 2 and 3. The committee then heard submissions from both parties with respect to appropriate sanctions and, after deliberation, made the following Order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Lupinski be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Lupinski be and he is hereby fined the sum of \$2,500, to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Lupinski be suspended from the rights and privileges of membership in the Institute for a period of six (6) months from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Lupinski's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants.
5. THAT Mr. Lupinski surrender his certificate of membership in the Institute to the registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held by the registrar during the period of suspension and thereafter returned to Mr. Lupinski.
6. THAT in the event Mr. Lupinski fails to comply with any of the requirements of this Order within the time periods specified, he shall thereupon be suspended from the rights and privileges of membership in the Institute, and notice of his suspension, disclosing his name, shall be given in the manner specified in paragraph 4 hereof.
7. THAT in the event Mr. Lupinski is suspended pursuant to paragraph 6 hereof, the suspension shall terminate upon compliance with the term of the Order in respect of which he was suspended, provided that he complies within thirty (30) days from the date of his suspension.
8. THAT in the event Mr. Lupinski fails to terminate suspension within thirty (30) days, he shall thereupon be expelled from membership in the Institute, and notice of his

expulsion, 46 disclosing his name, shall be given in the manner specified in paragraph 4 hereof.

The three prime considerations in any sanction are specific deterrence, general deterrence and rehabilitation. In this case, the principle of general deterrence must take precedence over the other two.

Both counsel submitted that a fine of \$2,500 and a suspension of three months were appropriate in this case. The committee, however, was concerned that these sanctions were insufficient, given the nature of the offence, and asked both counsel to readdress this issue in light of the concern. The two precedents presented on the issue were the Davidson and Hardcastle decisions of the discipline committee, neither of which provided much guidance to this panel. The Davidson case involved a stockbroker who knowingly provided to his client schedules of the client's investments showing inflated values. Mr. Davidson had been disciplined by the Toronto Stock Exchange prior to coming before the discipline committee. The panel did not view this case as a major precedent.

In Hardcastle, both the professional conduct committee and the member submitted that a three-month suspension was appropriate. The discipline committee agreed that this term was appropriate but did not annunciate as to why it came to this conclusion.

The public expects a chartered accountant to demonstrate high levels of integrity and trustworthiness. Any action by a member which betrays the public's trust tarnishes the image of the profession as a whole. The Mission Statement recently adopted by the Institute states:

The Institute ensures that chartered accountants are the recognized professionals who add credibility to information.

Any professional misconduct that hinders the efforts of members of the Institute to be recognized as the professionals who add credibility to information must be dealt with in a serious manner. The principle of general deterrence is the overriding consideration in cases such as this.

Mr. Lupinski was found guilty, under Rule 202, of not performing his professional services with integrity, and under Rule 205, of making false or misleading documents and oral representations. These breaches of professional conduct are in direct conflict with what our profession stands for. Normally such misconduct would require that a very lengthy suspension or even an expulsion be meted out by the discipline committee. In this case the committee ordered only a six-month suspension and a fine of \$2,500, after taking into account the following mitigating circumstances:

1. Mr. Lupinski, a manager, was operating under the supervision of Mr. Matheson who was a partner and the national director of commodity tax for Deloitte Haskins & Sells. The evidence is that Mr. Lupinski was led into his course of conduct by his boss, a high profile partner in a respected firm of chartered accountants.
2. Mr. Lupinski was a recent graduate and did not yet have the experience necessary to deal with the situation.
3. Mr. Lupinski did initially offer to submit his resignation.

4. Mr. Lupinski eventually resigned from the firm as a result of this incident. He has suffered financially and professionally. A promising career has been shattered as a result of these events.
5. Mr. Lupinski received no direct monetary benefit.
6. The committee believes that Mr. Lupinski has learned from his experience and is not likely to find himself again in a similar position. In other words, the committee thinks that Mr. Lupinski can be rehabilitated, and that he should be given the opportunity to try.

A reprimand in writing by the chair of the hearing was ordered as a specific deterrent to Mr. Lupinski in order to reinforce the committee's view as to the unacceptability of his actions.

The committee also made its standard order as to notice, including disclosure of Mr. Lupinski's name.

DATED AT TORONTO, THIS 5th DAY OF FEBRUARY, 1992
BY ORDER OF THE DISCIPLINE COMMITTEE

R.C.H. ANDREWS, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

G.W. CLARKSON, FCA
F.J. DUNN, CA
P. RAYSON, CA
L.L. WORTHINGTON, FCA
B.W. BOWDEN, PhD (Public representative)