

George Arthur William Cutbush: Summary, as Published in *CheckMark*

George Arthur William Cutbush, of Owen Sound, 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 Mr. Cutbush's Criminal Code conviction for defrauding the congregation of Knox United Church in Owen Sound of money in excess of \$5,000. Mr. Cutbush removed over \$40,000 from the Church bank account, and no restitution had been made at the date of the hearing. He was fined \$15,000 and expelled from the Institute.

CHARGE(S) LAID re George Arthur William Cutbush

The Professional Conduct Committee hereby makes the following charge against G.A. William Cutbush, CA, a member of the Institute:

1. THAT, the said G.A. William Cutbush failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that, on or about the 14th day of May, 1998, at the City of Owen Sound, in the Province of Ontario, he was convicted of an offence under the Criminal Code, namely that, during the period between 1990 and October 1997 at the City of Owen Sound, Ontario he did by deceit, falsehood or other fraudulent means, defraud the congregation of Knox United Church, in Owen Sound, Ontario of money in excess of \$5,000 by removing same from the church bank account contrary to section 380 (1)(a) of the Criminal Code of Canada, all of which is contrary to Rule 201.1 of the rules of professional conduct.

DATED at Toronto this day of 1998.

DOUGLAS BOUFFORD, CA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re George Arthur William Cutbush

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

DECISION AND ORDER MADE SEPTEMBER 4, 1998

DECISION

THAT, having seen and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Cutbush, pursuant to Institute Bylaw 560, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to the charge, the Discipline Committee finds George Arthur William Cutbush guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Cutbush be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Cutbush be and he is hereby fined the sum of \$15,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Cutbush be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Cutbush's name, be given after this Decision and Order becomes final under the bylaws:
 - to the Public Accountants Council for the Province of Ontario;
 - to the Canadian Institute of Chartered Accountants;
 - by publication in *CheckMark*; and
 - by publication in the *Owen Sound Sun Times*.
5. THAT Mr. Cutbush surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

DATED AT TORONTO THIS 14TH DAY OF SEPTEMBER 1998
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re George Arthur William Cutbush

REASONS FOR DECISION AND ORDER IN THE MATTER OF: A charge against **GEORGE ARTHUR WILLIAM CUTBUSH, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE SEPTEMBER 4, 1998

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario convened on September 4, 1998 to hear a charge of professional misconduct laid against George Arthur William Cutbush.

The professional conduct committee was represented by Mr. Paul Farley. Mr. Cutbush was not present and was not represented by counsel.

The professional conduct committee had laid the following charge against Mr. Cutbush:

THAT, the said G.A. William Cutbush failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that, on or about the 14th day of May, 1998, at the City of Owen Sound, in the Province of Ontario, he was convicted of an offence under the Criminal Code, namely that, during the period between 1990 and October 1997 at the City of Owen Sound, Ontario he did by deceit, falsehood or other fraudulent means, defraud the congregation of Knox United Church, in Owen Sound, Ontario of money in excess of \$5,000 by removing same from the church bank account contrary to section 380(1)(a) of the Criminal Code of Canada, all of which is contrary to Rule 201.1 of the rules of professional conduct.

The discipline committee reviewed the service of the Notice of Assignment Hearing and the Notice of Hearing, and was satisfied that it could proceed in the absence of the member pursuant to Bylaw 560. As Mr. Cutbush was not present at the hearing, a plea of not guilty to the charge was entered into the record on his behalf.

DECISION ON THE CHARGE

In presenting its case, the prosecution filed as an exhibit a document brief which contained copies of the criminal charge laid against Mr. Cutbush, and the transcript of the criminal trial proceedings. Mr. Cutbush was sentenced to one year in jail, and was ordered to pay compensation in the amount of \$43,059.18 to Knox United Church.

Based on the evidence filed, the discipline committee found Mr. Cutbush guilty of the charge.

ORDER AS TO SANCTION

Mr. Farley then made submissions on behalf of the professional conduct committee on the issue of appropriate sanction, and also filed a copy of a letter he had received from Douglas A. Grace, Barrister and Solicitor, to which was attached a letter from Mrs. Cutbush.

It was apparent from the transcript of the proceedings before the criminal court, as well as from the letter sent by Mr. Grace, that Mr. Cutbush expected to be expelled from the Institute. It was also clear that Mr. Cutbush does not have the resources to repay the \$43,059.18 he stole from his fellow members of Knox United Church in Owen Sound over a period of eight years while he was the treasurer of the church.

The three principles of sentencing which guide the discipline committee when imposing a sanction - rehabilitation, general deterrence and specific deterrence - are well known. It is also well known that when a member of the Institute abuses the trust placed in him and steals money, the principle which is of paramount importance is general deterrence.

Counsel for the professional conduct committee submitted that a reprimand, a fine, expulsion, and notice of the expulsion including publication in a newspaper in the area where Mr. Cutbush lives, would be the appropriate sanction in this case to achieve the purpose of general deterrence. The discipline committee concluded that the cumulative effect of the order should be to specifically deter Mr. Cutbush, and to generally deter like-minded members from engaging in similar conduct.

During its deliberations, the committee had some difficulty with the quantum of the fine being suggested. It therefore asked Mr. Farley to reattend and make further submissions with respect to the issue. He did so, and reviewed the fines which had been imposed in similar cases over the last several years. With the benefit of the additional submissions, the discipline committee deliberated further, and made the following order:

ORDER

IT IS ORDERED in respect of the charge:

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2. THAT Mr. Cutbush be and he is hereby fined the sum of \$15,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Cutbush be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Cutbush's name, be given after this Decision and Order becomes final under the bylaws:
 - to the Public Accountants Council for the Province of Ontario;
 - to the Canadian Institute of Chartered Accountants;
 - by publication in *CheckMark*; and
 - by publication in the *Owen Sound Sun Times*.
5. THAT Mr. Cutbush surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

The reasons for the discipline committee's order are briefly set out below.

Reprimand

The committee was of the view that a reprimand is necessary as a specific deterrent to the member, and to stress to him the unacceptability of his conduct as a chartered accountant.

Fine

The professional conduct committee requested a fine of \$10,000. The discipline committee concluded that that was not enough, and that a fine of \$15,000 was the appropriate amount in this case, both as a general deterrent to like-minded members, and as a demonstration to the public of the profession's intolerance of the type of behaviour demonstrated by Mr. Cutbush. The committee determined that a higher fine than requested was warranted since Mr. Cutbush had defrauded a non-profit organization over an extended period of time.

Expulsion

As the principle of general deterrence is of utmost importance in this case, the committee felt that the expulsion of Mr. Cutbush was required as he had committed a crime of moral turpitude. The profession cannot tolerate members who, being placed in positions of trust, breach that trust for personal gain.

Notice

Publication of the decision and order, including Mr. Cutbush's name, is, in the opinion of the discipline committee, a general deterrent. Communication of the fact that the profession treats breaches of its bylaws and rules of professional conduct seriously is an important factor in the governance of the profession. Such notification is also necessary to demonstrate to the public that the profession is regulating itself, so as to retain public confidence in the profession's ability to self-govern.

Surrender of Certificate

As is usual in cases of expulsion, the member was ordered to surrender his certificate of membership in the Institute.

DATED AT TORONTO, THIS DAY OF DECEMBER, 1998
BY ORDER OF THE DISCIPLINE COMMITTEE

M. BRIDGE, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R.I. COWAN, CA
J.M. MULHALL, CA
S.W. SALTER, CA
J. T. ANDERS (Public representative)