

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

George Arthur William Cutbush, of Owen Sound, was found guilty by the discipline committee of a charge of professional misconduct, laid by the professional conduct committee, under Rule of Professional Conduct 104, of failing to promptly reply in writing to a letter from the Institute, in respect of a matter of professional conduct, in which a written reply was specifically required.

The committee ordered that Mr. Cutbush

- be reprimanded in writing by the chair of the hearing; and
- be fined \$1,000, to be paid within a specified time; and

Mr. Cutbush provided his required response to the Institute's correspondence prior to the hearing.

CHARGE(S) LIAD 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 promptly reply in writing to a letter from the Institute, in respect of a matter of professional conduct, signed by an associate director of standards enforcement and dated and sent March 28, 1991, in which a reply was specifically requested, contrary to Rule 104 of the rules of professional conduct.

DATED at Toronto this 9th day of May, 1991.

R.G. LONG, FCA - 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 104 of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE SEPTEMBER 4, 1991

DECISION

THAT, having seen and considered the evidence, and having heard the plea of 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 \$1,000, to be remitted to the Institute in payments of \$100 per month, commencing on the first day of the sixth month following the date this Decision and Order becomes final under the bylaws, such payments to continue thereafter on the first day of every month until the fine has been paid in full.
3. THAT notice of this Decision and Order, disclosing Mr. Cutbush'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.
4. THAT in the event Mr. Cutbush fails to comply with the requirement of paragraph 2 of this Order within the time period 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 3 hereof.
5. THAT in the event Mr. Cutbush is suspended pursuant to paragraph 4 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.
6. THAT in the event Mr. Cutbush 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 3 hereof.

DATED AT TORONTO, THIS 13TH DAY OF SEPTEMBER, 1991
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re George Arthur William Cutbush

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: A charge against GEORGE ARTHUR WILLIAM CUTBUSH, CA, a member of the Institute, under Rule 104 of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE SEPTEMBER 4, 1991

These proceedings before a panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on September 4, 1991.

Mr. Paul Farley attended on behalf of the professional conduct committee and Mr. Cutbush attended without legal counsel. In response to an enquiry put by the chair, Mr. Cutbush confirmed that he knew that he was entitled to be advised by legal counsel, and to have counsel appear with him, but that he wished to proceed without counsel.

The charge against Mr. Cutbush was that he failed to reply in writing to a letter from the Institute in respect of a matter of professional conduct, signed by an associate director of standards enforcement, dated March 28, 1991, to which a reply was specifically requested, contrary to Rule 104 of the Rules of Professional Conduct.

Mr. Cutbush pleaded guilty to the charge, and confirmed that he understood that, upon his plea of guilty, and upon that basis alone, he could be found guilty by the discipline committee.

On behalf of the professional conduct committee, Mr. Farley filed a document brief which included

- a letter dated November 21, 1990, to Mr. Cutbush from Mr. Grant Dickson, FCA, director of practice inspection, requesting information in order to perform a practice inspection;
- a follow-up letter dated January 4, 1991, from Mr. Dickson, requesting the forwarding of files to the director of practice inspection by January 25, 1991;
- a second follow-up letter from Mr. Dickson, dated February 11, 1991; and
- a letter dated March 28, 1991, to Mr. Cutbush, from Jo-Anne Olafson, CA, associate director of standards enforcement, requiring a written response, in accordance with Rule 104, on or before April 17, 1991.

Affidavit evidence was filed by the professional conduct committee to establish that

- the letter from the associate director of standards enforcement, dated March 28, 1991, had been sent to Mr. Cutbush at his last known address, by both registered and ordinary mail; neither letter had been returned by the post office;

- the post office had returned the pink Acknowledgement of Receipt card for the registered letter, showing that that letter had been delivered on April 11, 1991; and
- no response from Mr. Cutbush had been received by the standards enforcement area.

After reviewing the evidence and the member's plea of guilty, the discipline committee found Mr. Cutbush guilty of the charge.

The committee then heard submissions as to sanction and, after deliberation, made the following order:

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 \$1,000, to be remitted to the Institute in payments of \$100 per month, commencing on the first day of the sixth month following the date this Decision and Order becomes final under the bylaws, such payments to continue thereafter on the first day of every month until the fine has been paid in full.
3. THAT notice of this Decision and Order, disclosing Mr. Cutbush'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
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6. THAT in the event Mr. Cutbush 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 3 hereof.

The professional conduct committee laid the Rule 104 charge against Mr. Cutbush as a result of his failure to reply to the letter of March 28, 1991 from the associate director of standards enforcement. The reason the professional conduct committee was corresponding with Mr. Cutbush was because it had been advised by the director of practice inspection that the member had failed to respond to various letters from him relating to inspection of the member's practice.

The committee learned during submissions with respect to sanction that Mr. Cutbush finally did reply to the director of practice inspection in the early part of April 1991. A copy of that reply was not put in evidence before the committee. Had Mr. Cutbush sent to the associate director of standards enforcement a copy of his letter to the director of practice inspection, it may be that the professional conduct committee would not have proceeded to consider whether or not Mr. Cutbush should be charged and, ultimately, to have charged him. Had practice inspection sent a copy of Mr. Cutbush's letter to standards enforcement the same result might have followed. This notwithstanding, it was clear from the evidence that Mr. Cutbush's responses to the Institute were not prompt, as required by Rule 104. Accordingly, the discipline committee was satisfied that Mr. Cutbush was guilty of the charge.

In his submissions as to sanction, Mr. Cutbush expressed concern about his ability to pay a fine if one was ordered. He filed a statement of his monthly cash flow that clearly showed that he would have considerable difficulty paying a fine. While the committee was also concerned about Mr. Cutbush's ability to pay a fine, it was equally concerned that the principle of general deterrence be served in the sanctioning of this member. It is important that the membership of the Institute not perceive a breach of Rule 104 to be a minor infraction. With respect to the amount of the fine, in the Kirkconnell decision, the discipline committee expressed the view that "if a fine is to be an effective general deterrent to other members of the Institute it should not, generally speaking, be less than \$1,000, subject always, of course, to special circumstances existing in individual cases". Applying this reasoning, Mr. Cutbush has been given the absolute minimum fine. In addition, however, he has been allowed a lengthy period of time to pay the fine because this committee does not want the natural and predictable result of its order to be Mr. Cutbush's expulsion.

The committee ordered that Mr. Cutbush be reprimanded by the chair of the hearing. This is necessary in order to emphasize to the member the importance of Rule 104 and the requirement to reply promptly to Institute correspondence.

The committee made its normal order as to notification and publication, including disclosure of the member's name. As expressed in various cases by the disciplinary tribunals of this Institute, most recently, and, perhaps, most clearly and forcefully, by the appeal committee in the case of Granatstein, only in rare and unusual circumstances will the name of a member found guilty of professional misconduct be withheld from publication under Bylaw 83(4). It is thought that publication of the member's name will be a significant deterrent, not just to the particular member, but to all other members, that will dissuade them from engaging in the type of conduct which led to the determination of professional misconduct against the individual member. Mr. Cutbush made no objection to this term of the order.

As usual, there is a provision in the order that the member's failure to comply with the order will result in his suspension, and, ultimately, his expulsion. Unless orders were to provide for such consequences upon non-compliance, the terms of the orders would be unenforceable, and, hence, meaningless.

DATED AT TORONTO, THIS 6TH DAY OF JANUARY, 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

R.G. HARRISON, FCA

L.W. RICH, CA

S.F. ANDRUNYK (Public representative)