

Henry Archibald Cuke: Summary, as Published in *CheckMark*

Henry Archibald Cuke, of Mississauga, was found guilty of one charge under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest, and one charge under Rule 205 of signing or associating himself with a Notice to Reader communication attached to financial statements which he knew was false and misleading. While engaged as the accountant for a client and the client's company, Mr. Cuke understated the net income of the company on its financial statements, and participated in an arrangement to avoid the payment of tax properly owing by his client. Mr. Cuke was fined \$3,000, ordered to take three professional development courses, and suspended for six months.

CHARGE(S) LAID re: Henry Archibald Cuke, CA

The Professional Conduct Committee hereby makes the following charges against Henry Archibald Cuke, CA, a member of the Institute:

1. THAT, the said, Henry Archibald Cuke, CA on or about February 26, 1997, while engaged as the accountant for Big Sho Foods Ltd. **and Gerry Lawlor**, signed or associated himself with a Notice to Reader communication attached to financial statements ~~of the company~~ **Big Sho Foods** as at December 31, 1996, which he knew ~~was~~ **were** false and misleading, in that the statement of income showed "Net income (loss) for the year \$30,772" which was understated by approximately \$80,487, contrary to Rule 205 of the Rules of Professional Conduct.
2. THAT, the said Henry Archibald Cuke, CA, in or about the period February 1, 1997 through June 1, 1999, while engaged as the accountant for Big Sho Foods Ltd. and Gerry Lawlor, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that he ~~participated in a scheme to evade~~ **participated in an arrangement to avoid** the payment of tax properly owing by his client Gerry Lawlor, contrary to Rule 201.1 of the Rules of Professional Conduct.

Dated at Ottawa this 21st day of September 2000.

MICHAEL CONNOLLY, FCA - DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Henry Archibald Cuke, CA

DECISION AND ORDER IN THE MATTER OF: The charges against **HENRY ARCHIBALD CUKE**, a member of the Institute, under **Rules 201.1 and 205** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE MARCH 26, 2001

DECISION

THAT, having seen and considered the evidence, and having heard the plea of guilty to charges Nos. 1 and 2, as amended, the Discipline Committee finds Henry Archibald Cuke guilty of charges Nos. 1 and 2, as amended.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Cuke be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Cuke be and he is hereby fined the sum of \$3,000, to be remitted to the Institute within eighteen (18) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Cuke be and he is hereby 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 is made.
4. THAT Mr. Cuke be and he is hereby required to complete, by paying for and attending in their entirety, within eighteen (18) months from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute:
 1. Staying Out of Trouble
 2. Basic but Essential Income Tax Issues
 3. Income Tax Refresher – Personal,or, in the event a course listed above becomes unavailable, the successor course which takes its place.
5. THAT notice of this Decision and Order, disclosing Mr. Cuke's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
6. THAT Mr. Cuke surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order is made, to be held during the period of suspension and thereafter returned to Mr. Cuke.
7. THAT in the event Mr. Cuke fails to comply with the requirements of this Order, 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 above, and in *The Globe and Mail* newspaper.

DATED AT TORONTO THIS 29TH DAY OF MARCH, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Henry Archibald Cuke, CA

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: The charges against **HENRY ARCHIBALD CUKE**, a member of the Institute, under **Rules 201.1 and 205** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE MARCH 26, 2001

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on March 26, 2001 to hear evidence concerning charges brought by the professional conduct committee against Mr. Henry Archibald Cuke, a member of the Institute.

The professional conduct committee was represented by Mr. Paul Farley. Mr. Cuke was present at the hearing, and was represented by his counsel Mr. Larry Banack.

The hearing concluded on March 26 and the decision and order was issued on March 29, 2001. These reasons, issued in writing pursuant to Bylaw 574, contain the decision and order, the charges laid by the professional conduct committee, and the reasons of the panel.

THE CHARGES AND THE PLEA

After the hearing had been called to order, and the notice of assignment hearing, notice of hearing and charges had been filed as exhibits, the professional conduct committee filed an application pursuant to Bylaw 564(1) to amend the charges. Mr. Banack said that his client consented to the amendments.

The charges laid against the member on September 21, 2000, as amended, read as follows:

1. THAT, the said, Henry Archibald Cuke, CA on or about February 26, 1997, while engaged as the accountant for Big Sho Foods and Gerry Lawlor signed or associated himself with a Notice to Reader communication attached to financial statements of Big Sho Foods as at December 31, 1996, which he knew were false and misleading, in that the statement of income showed "Net income (loss) for the year \$30,772" which was understated by approximately \$80,487, contrary to Rule 205 of the Rules of Professional Conduct.
2. THAT, the said Henry Archibald Cuke, CA, in or about the period February 1, 1997 through June 1, 1999, while engaged as the accountant for Big Sho Foods and Gerry Lawlor, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that he participated in an arrangement to avoid the payment of tax properly owing by his client Gerry Lawlor, contrary to Rule 201.1 of the Rules of Professional Conduct.
3. Mr. Cuke entered a plea of guilty to each of the two charges, and confirmed for the record that he understood that on the basis of his plea, and on that basis along, he could be found guilty of professional misconduct.

DECISION ON THE CHARGES

Counsel for the professional conduct committee filed an agreed statement of facts dated March 20, 2001, signed by himself on behalf of the professional conduct committee and by Mr. Cuke on his own behalf. He also filed a document brief which set out the relevant documents referred to in the agreed statement of facts.

Mr. Farley outlined the professional conduct committee's case, and the panel took time to review the agreed statement of facts and document brief. Mr. Banack did not make representations with respect to the charges.

The agreed statement of facts and document brief set out the member's misconduct. He prepared two sets of financial statements for one of his clients for the year ended December 31, 1996. The first set of financial statements were accurate and were given to the client's bank. The second set of financial statements, which were filed with the client's tax return, were inaccurate in that the client's income for the year was falsely and wrongly reduced to an amount which the member knew meant his client would not have to pay income tax for that year. Mr. Cuke prepared his client's income tax return based on the false statements, to which he attached a Notice to Reader communication.

After considering the evidence and the submissions of counsel, the panel deliberated and found Mr. Cuke guilty of the two charges. The decision, which was read into the record at the hearing, reads as follows:

DECISION

THAT, having seen and considered the evidence, and having heard the plea of guilty to charges Nos. 1 and 2, as amended, the Discipline Committee finds Henry Archibald Cuke guilty of charges Nos. 1 and 2, as amended.

SANCTION

The hearing then proceeded to deal with the issue of sanction.

Mr. Farley did not call evidence with respect to the issue of sanction, but outlined the joint submission of the member and the professional conduct committee as to the appropriate sanction, namely a reprimand, a suspension of nine months, a fine of \$5,000, a stipulation that Mr. Cuke attend three professional development courses, and notice to be given to the Public Accountants Council and the Canadian Institute of Chartered Accountants, and by way of publication in *CheckMark*.

Mr. Farley said that the aggravating circumstances in this case included the length of time of the misconduct, as it involved two separate tax years, and the fact that Mr. Cuke did not correct the misinformation before his client engaged another chartered accountant. He also submitted that, as in the case relating to Mr. Thomas Haar, Mr. Cuke had been acting in his capacity as a chartered accountant on behalf of a client, and that by generating false and misleading financial statements and preparing false income tax returns on behalf of the client, his conduct involved moral turpitude of a kind which had resulted in Mr. Haar's expulsion. Mr. Farley pointed out that Mr. George White, whose appeal was dealt with at the same time as Mr. Haar's, had been treated differently, in large part, because his improprieties with respect to income tax were personal rather than for a client.

Mr. Farley also pointed out the mitigating circumstances of this case, including and in particular the fact that Mr. Cuke did not try to hide the income. It was Mr. Cuke's intention, when his client had the money to pay the income tax, to take the appropriate amount of money back into income so that the tax would be paid.

Mr. Banack did not call evidence, but he did file a book of documents which included letters of recommendation from two chartered accountants who are professional acquaintances of Mr. Cuke, and two clients, one of whom is a CA. There were also statements from a friend of the family, from Mr. Cuke's mother and father, from a former minister, from Mr. Cuke's family doctor, and from his present wife.

Much of the information provided by Mr. Cuke's counsel dealt with his personal circumstances during the period 1993-1998. The agreed statement of facts does not touch upon these circumstances, but counsel for the professional conduct committee did not take issue with the information provided to the panel, either as to its veracity or its relevance.

According to the information provided, Mr. Cuke's first wife, the mother of his three children, was an alcoholic. He struggled during the relevant period to deal with his wife's problems, and ultimately their separation. At the relevant time he was the primary caregiver to the three children, and subsequent to the separation, Mr. Cuke was the parent who had custody. The submission was that during a period of extreme stress he made the serious mistake of attempting to assist a client, who had also become a friend, rather than walk away from the client.

Mr. Banack stressed that at no time did Mr. Cuke try to hide the income, but rather intended in effect "to put the income back" when his client could afford it. Mr. Cuke fully informed the successor accountant of the problem, and acknowledged his wrongdoing at the first opportunity when dealing with the professional conduct committee.

Both Mr. Farley and Mr. Banack referred to a number of prior cases, particularly those of Messrs. Haar and White previously referred to, and Messrs. J.P. Greenspan and F.S. Bendall.

DETERMINATION OF THE SANCTION

When imposing a sanction, the discipline committee considers three general principles, namely general deterrence, specific deterrence and rehabilitation. We concluded in this case that the principles of general deterrence and rehabilitation were the most important.

Members of the Institute must be deterred from engaging in conduct similar to Mr. Cuke's. Preparing two different financial statements for the same year and giving one to the bank and one to Revenue Canada, as it then was, offends fundamental principles of the profession. Even in times of personal crisis, members ought to know that such conduct will not be tolerated.

These discipline proceedings, the publication of notice, and the difficulty Mr. Cuke has had personally and professionally as a result of trying to accommodate his client, appear to have had a significant impact on him. In our view, he recognizes the gravity of his misconduct and is making the appropriate efforts to rehabilitate himself.

The panel concluded that Mr. Cuke did not need a strong specific deterrent. We also concluded that the suggested sanction was too onerous given Mr. Cuke's circumstances, and would unduly hinder his rehabilitation.

The submission with respect to sanction was a joint submission which is not to be lightly rejected. Further, the evidence with respect to the intentions of Mr. Cuke, and the underlying causes of his misconduct, came from Mr. Cuke, his family and friends, and such evidence must be viewed with some skepticism, as neither his former wife nor his client were present at the hearing to testify.

Mr. Cuke is having some difficulty providing for his family, which is being maintained, for the most part, with the income his present wife earns. This income was disclosed in the tax returns filed at the hearing.

The misconduct as we understood it, and the precedents, particularly given Mr. Cuke's modest income, required us to fine-tune the joint submission, which we did by imposing a fine of \$3,000 and a suspension of six months.

Mr. Cuke's conduct wrongly minimized the amount of tax the client had to pay. This is misconduct for any chartered accountant. Cheating Revenue Canada is no less reprehensible than cheating anyone else. However, Mr. Cuke did not prepare false statements and a false income tax return to put money in his own pocket, which distinguishes this case from a number of other cases where the discipline committee has dealt with misconduct involving moral turpitude.

The panel's formal order reads as follows:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Cuke be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Cuke be and he is hereby fined the sum of \$3,000, to be remitted to the Institute within eighteen (18) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Cuke be and he is hereby 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 is made.
4. THAT Mr. Cuke be and he is hereby required to complete, by paying for and attending in their entirety, within eighteen (18) months from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute:
 1. Staying Out of Trouble
 2. Basic but Essential Income Tax Issues
 3. Income Tax Refresher – Personal,or, in the event a course listed above becomes unavailable, the successor course which takes its place.
5. THAT notice of this Decision and Order, disclosing Mr. Cuke's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (d) by publication in *CheckMark*.

6. THAT Mr. Cuke surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order is made, to be held during the period of suspension and thereafter returned to Mr. Cuke.
7. THAT in the event Mr. Cuke fails to comply with the requirements of this Order, 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 above, and in *The Globe and Mail* newspaper.

Reprimand

The panel concluded that a letter of reprimand to Mr. Cuke was necessary to stress to him the unacceptability of his conduct as a chartered accountant, and to underline the fact that a chartered accountant has a duty to uphold the good reputation of the profession.

Fine and Suspension

The fine and suspension will be a specific deterrent to Mr. Cuke, but were imposed primarily as a general deterrent. The quantum of the fine may seem modest as a general deterrent, but it is not modest given Mr. Cuke's financial position. A suspension of six months will have a serious impact on Mr. Cuke, who is a sole practitioner.

Mr. Banack represented on the record that Mr. Cuke would not appeal, and asked that the suspension take effect immediately rather than thirty days after receipt of the written reasons. Concluding that this would assist Mr. Cuke's rehabilitation, the panel ordered that the suspension take effect as of the day of the hearing.

Notice

The giving of notice, including publication, of the discipline committee's decision and order, disclosing Mr. Cuke's name, is, in the opinion of the panel, a general deterrent. The discipline committee has a responsibility to ensure that members of the profession and the general public are made aware that the Institute does not take breaches of its bylaws and rules of professional conduct lightly.

Surrender of Certificate

Members who have been suspended should not hold themselves out as chartered accountants. It follows they should not have their certificate during the period of suspension.

DATED AT TORONTO THIS 30TH DAY OF APRIL, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE

L. P. BOOKMAN, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

P.A. GOGGINS, CA
B.L. HAYES, CA

B. A. TANNENBAUM, FCA
N.C. AGARWAL (Public representative)