

Herbert Gordon Cunningham: Summary, as Published in *CheckMark*

Herbert Gordon Cunningham, of Concord, was found guilty of two charges of professional misconduct, under Rules 201 and 206, relating to his conduct of an audit. He caused confirmation requests to be sent out on the letterhead of a certified general accounting firm referring to that firm as the auditor when no member of the firm was licensed to carry on the practice of public accounting, and he himself engaged in the practice of public accounting when not a licensed public accountant. In addition, he failed to obtain required audit evidence, perform sufficient audit tests and document important audit evidence. He was fined \$2,000, and ordered to attend two professional development courses and be reinvestigated by the professional conduct committee.

CHARGE(S) LAID re Herbert Gordon Cunningham

The Professional Conduct Committee hereby makes the following charge against Herbert G. Cunningham, CA, a member of the Institute:

1. THAT, the said Herbert G. Cunningham, during the period July 1, 1989 through to March 1990, failed to maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201 of the Rules of Professional Conduct, in that:
 - (a) ~~while suspended from membership in the Institute for the non-payment of professional fees, he held himself out as a Chartered Accountant by attaching a review engagement report dated January 2, 1990 to the financial statements of 437782 Ontario Limited (O/A Travel Trend Tours) as at August 31, 1989 and signing his name as "Gordon Cunningham Chartered Accountant";~~ **(WITHDRAWN BY THE PCC BWS)**
 - (b) ~~he associated himself with a review engagement report dated January 2, 1990 attached to the financial statements of 437782 Ontario Limited (O/A Travel Trend Tours) as at aAugust 31, 1989 which was prepared on the letterhead of Evancic perrault Robertson a firm of certified general accountants;~~ **(WITHDRAWN BY THE PCC BWS)**
 - (c) while conducting the audit of the financial statements of Modern Power Conversion Inc. as at July 31, 1989, he caused to be sent numerous confirmation requests that suggested that the Certified General Accounting firm of Evancic Perrault Robertson were the auditors for the corporation;
 - (d) he engaged in the practice of public accounting when not licensed as a public accountant.
2. THAT, the said Gordon Cunningham, in or about the period July 1, 1989 through to September 26, 1989, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, contrary to Rule 206 of the Rules of Professional Conduct, in that, being engaged to provide an audit opinion on the financial statements of Modern Power Conversion Inc. as at July 31, 1989, and having attached an unqualified audit report dated September 26, 1989 to those financial statements;
 - a) he failed to document important items of evidence to support his opinion;
 - b) he failed to obtain written representations from management with respect to claims or possible claims against the company;)
 - c) he failed to obtain sufficient appropriate audit evidence to support the balance sheet item "Demand note payable (note 5) 50,000";
 - d) he failed to obtain sufficient appropriate audit evidence to support the balance sheet item "Advances from shareholders (note 6) 452,065";

- e) he failed to perform sufficient substantive audit tests to verify revenues and expenses;
 - f) he failed to disclose future obligations under a lease;
3. ~~THAT, the said Gordon Cunningham, in or about the period December 1, 1989 through to January 2, 1990, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, contrary to Rule 206 of the Rules of Professional Conduct, in that, being engaged to review the financial statements of 437782 Ontario limited (O/A Travel Trend Tours) as at August 31, 1989, and having attached a Review Engagement Report dated January 2, 1990 to those financial statements;~~ **(WITHDRAWN BY THE PCC BWS)**
- a) ~~he failed to carry out sufficient enquiry, analysis and discussion to properly ascertain whether the financial statements were plausible;~~ **(WITHDRAWN BY THE PCC BWS)**
 - b) ~~he failed to obtain an understanding with the client as to the nature of the engagement;~~ **(WITHDRAWN BY THE PCC BWS)**
 - c) ~~he failed to document those items important to support the content of his report;~~ **(WITHDRAWN BY THE PCC BWS)**
 - d) ~~he failed to disclose future obligations under operating leases;~~ **(WITHDRAWN BY THE PCC BWS)**
 - e) ~~he failed to prepare the financial statements on a comparative basis showing the figures for the corresponding proceeding period when it was meaningful to do so;~~ **(WITHDRAWN BY THE PCC BWS)**
 - f) ~~he failed to ensure that the financial statements included a statement of changes in financial position when it was meaningful to do so;~~ **(WITHDRAWN BY THE PCC BWS)**
 - g) ~~he failed to disclose the basis upon which revenue was recognized in the accounts.~~ **(WITHDRAWN BY THE PCC BWS)**

DATED at Toronto this 23rd day of June 1992.

J.L.M. BADALI, FCA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Herbert Gordon Cunningham

DECISION AND ORDER IN THE MATTER OF: Charges against HERBERT GORDON CUNNINGHAM, CA, a member of the Institute, under Rules 201 and 206 of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE NOVEMBER, 6, 1992

DECISION

THAT, having seen, heard and considered the evidence, particulars (a) and (b) of charge No. 1 and charge No. 3 having been withdrawn, and having heard the plea of guilty to particular (e) of charge No. 2, and having made findings of not guilty in respect of particulars (a), (c), (d) and (f) of charge No. 2, THE DISCIPLINE COMMITTEE FINDS Herbert Gordon Cunningham guilty of charges Nos. 1 and 2.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Cunningham be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Cunningham be and he is hereby fined the sum of \$2,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mx. Cunningham be and he is hereby required to complete, by attending in their entirety, in January 1993, the following professional development courses made available through the Institute:
 1. Accounting Refresher; and
 2. Audit Refresher,

or, in the event a course listed above becomes unavailable, the successor course which takes its place.

4. THAT Mr. Cunningham be reinvestigated by the professional conduct committee, or by a person retained by the professional conduct committee, on one occasion approximately twelve (12) months from the date this Decision and Order becomes final under the bylaws, the costs of the reinvestigation, to a maximum of \$2,000, to be paid by Mr. Cunningham.
5. THAT notice of this Decision and Order, disclosing Mr. Cunningham'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.

6. THAT in the event Mr. Cunningham 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 5 hereof.
7. THAT in the event Mr. Cunningham 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 nine (9) months from the date of his suspension.
8. THAT in the event Mr. Cunningham fails to terminate a suspension imposed pursuant to paragraph 6 hereof within the nine (9) month period provided in paragraph 7 hereof, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner speed in paragraph 5 hereof.

DATED AT TORONTO, THIS 12TH DAY OF NOVEMBER, 1992
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Herbert Gordon Cunningham

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against HERBERT GORDON CUNNINGHAM, CA, a member of the Institute, under Rules 201 and 206 of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE NOVEMBER 6 1992

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on November 5 and 6, 1992.

Mr. Paul Farley attended on behalf of the professional conduct committee. Mr. Cunningham attended with his counsel, Mr. Richard Sutton. At the outset of the hearing, counsel for the professional conduct committee withdrew charge No. 3, which had been laid under Rule 206, and particulars (a) and (b) of charge No. 1, which had been laid under Rule 201.

Mr. Cunningham pleaded guilty to particular (e) of charge No. 2, and not guilty to the remaining particulars under the two charges. The member confirmed that he understood that upon a plea of guilty to the one particular in charge No. 2, and upon that basis alone, he could be found guilty of charge No. 2 by the discipline committee.

After hearing all the evidence presented, and deliberating on it, the committee concluded that the evidence supported a finding of guilty on both charges. The reasons for the committee's findings are set out below.

The first charge, under Rule 201, related to an audit that the member conducted, in which he caused numerous confirmations to be sent out suggesting that a firm of certified general accountants were the auditors. In addition, the member was charged with engaging in public accounting when not licensed as a public accountant. The member had pleaded guilty to the latter particular. The evidence, which was not refuted by the member, indicated that he had caused confirmations to be sent out on the letterhead of a certified general accounting firm, which referred to that firm as "the auditors named above", and that he had engaged in the practice of public accounting during a period of time (September 1986 to March 1990) when he was not licensed as a public accountant.

Charge No. 2, laid under Rule 206, related to the member's failure to perform his professional services in accordance with generally accepted standards of the profession in connection with the audit opinion on the financial statements for the same engagement as noted in the first charge. The committee reviewed the evidence and concluded that two of the six particulars of charge No. 2, namely particulars (b) and (e), had been proven. One particular related to the member's failure to obtain written representations from management with respect to claims or possible claims against the company, and the other related to his failure to perform sufficient substantive audit tests to verify revenues and expenses. The member had pleaded guilty to the latter particular. The committee decided that although the remaining four particulars were not proven, the two that were proven were serious enough to establish the member's guilt on the overall charge under Rule 206.

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

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Cunningham be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Cunningham be and he is hereby fined the sum of \$2,000, 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. Cunningham be and he is hereby required to complete, by attending in their entirety, in January 1993, the following professional development courses made available through the Institute:

1. Accounting Refresher; and
2. Audit Refresher,

or, in the event a course listed above becomes unavailable, the successor course which takes its place.

4. THAT Mr. Cunningham be reinvestigated by the professional conduct committee, or by a person retained by the professional conduct committee, on one occasion approximately twelve (12) months from the date this Decision and Order becomes final under the bylaws, the costs of the reinvestigation, to a maximum of \$2,000, to be paid by Mr. Cunningham
5. THAT notice of this Decision and Order, disclosing Mr. Cunningham'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.
6. THAT in the event Mr. Cunningham 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 5 hereof.
7. THAT in the event Mr. Cunningham 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 nine (9) months from the date of his suspension.
8. THAT in the event Mr. Cunningham fails to terminate a suspension imposed pursuant to paragraph 6 hereof within the nine (9) month period provided in paragraph 7 hereof, 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 5 hereof.

Briefly, the reasons for the committee's Order are set out below.

The committee is 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.

The committee determined that a specific deterrent to the member and general deterrent to the membership was needed in this case, and that a fine of \$2,000 was an appropriate such deterrent.

The committee was of the view that, in this case, the principle of rehabilitation was important. It was felt that the member would benefit from taking professional development courses, which might help him to avoid future deficiencies in the performance of audits. To provide a measure of assurance that the member does benefit from the courses, and has taken advantage of the opportunity to rehabilitate himself, his reinvestigation by the professional conduct committee was ordered.

The committee discussed suspension but felt that it was not appropriate in the circumstances of this case.

The committee ordered notice of its decision and order in the manner specified, including disclosure of the member's name, as a specific and general deterrent. The committee considered such notification 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.

As is the normal practice of the committee, it ordered that failure to comply with any of the requirements of the Order will result in suspension and, ultimately, expulsion of the member, so as to demonstrate to this member and all members the seriousness of failing to comply with Orders of the discipline committee.

DATED AT TORONTO, THIS 4th, DAY OF January, 1993
BY ORDER OF THE DISCIPLINE COMMITTEE

P.A. CAMPOL, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

K.V. CHERNICK, FCA
L.R. FLEMMING, CA
H.R. KLEIN, CA
L.L. WORTHINGTON, FCA
V.G. STAFL (Public representative)