

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 1956**

DISCIPLINE COMMITTEE

IN THE MATTER OF: **Charges against BRUCE DONALD DAVIES, CA, a member of the Institute, under Rules 201.1, 202 and 205 of the Rules of Professional Conduct, as amended.**

TO: **Bruce Donald Davies
15 Poplar Plains Road
TORONTO, Ontario
M4V 2M7**

WRITTEN REASONS FOR THE DECISION AND ORDER MADE AUGUST 16, 1995

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were held on August 16, 1995. Mr. Paul Farley attended on behalf of the professional conduct committee, and Mr. Davies attended with his counsel, Mr. Richard Shekter.

Mr. Davies pleaded guilty to a charge under Rule 201.1 of the rules of professional conduct of failing to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest, and a charge under Rule 202 of failing to carry out his professional services with due care. The chair of the discipline panel verified that Mr. Davies understood that he could, solely on the basis of his plea of guilty to the charges, be found guilty of the charges by the discipline committee. Two other charges were withdrawn by the professional conduct committee.

An agreed statement of facts was filed jointly by the parties. In addition, they each filed their own document briefs. The evidence filed indicated the following:

- During the period August 1992 through February 1993, Mr. Davies billed \$30,384 in fees to his client, Barbara Jean Tiffin, and her company, Jean Tiffin Realty Enterprises Limited (Tiffin Realty). The billings were based on 373 hours of work, when, in fact, a reasonable estimate of the time necessary to carry out the professional services required during that period was 145 hours, and the value of the services performed was approximately \$12,500.
- The invoices in question inaccurately described the professional services rendered, and/or inappropriately prebilled for Mr. Davies' services.
- Mr. Davies exceeded the scope of his authority, and engaged in work on behalf of Ms. Tiffin and Tiffin Realty without instructions.
- Although Mr. Davies was authorized and required to look after the day-to-day affairs of Ms. Tiffin, who was unable to attend to her affairs personally following a stroke, and Tiffin Realty, he was negligent in doing so, resulting, on occasion, in overdue invoices.

After reviewing the evidence, the discipline committee found Bruce Davies guilty of the charges.

Before deliberating on the issue of sanctions, the discipline committee heard submissions from both counsel, who submitted a joint statement as to what they considered to be the appropriate sanctions in this case. Mr. Davies' counsel also filed a number of character reference letters.

The committee made the following order:

ORDER

IT IS ORDERED in respect of charges Nos. 1 and 4:

1. THAT Mr. Davies be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Davies be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Davies be suspended from the rights and privileges of membership in the Institute for a period of twelve (12) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Davies be and he is hereby required to complete, by attending in its entirety, within twelve (12) months from the date this Decision and Order becomes final under the bylaws, the professional development course entitled *Practice Advisory Workshop*, made available through the Institute, or, in the event that course becomes unavailable, the successor course which takes its place.
5. THAT notice of this Decision and Order, disclosing Mr. Davies' 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 Mr. Davies 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, to be held by the secretary during the period of suspension and thereafter returned to Mr. Davies.
7. THAT in the event Mr. Davies fails to comply with any of the requirements of this Order, or of his undertaking to make restitution dated August 16, 1995 filed at the hearing, within the time periods specified, his suspension pursuant to paragraph 3 hereof shall continue for a further term of up to six (6) months, and notice of this suspension, disclosing Mr. Davies' name, shall be given in the manner specified in paragraph 5 hereof.
8. THAT in the event Mr. Davies is or remains suspended pursuant to paragraph 7 hereof, the suspension shall terminate upon his compliance with the term(s) of the Order and/or the undertaking in respect of which his suspension was continued, provided that he complies within six (6) months from the date of the continuation of his suspension.

9. THAT in the event Mr. Davies fails to terminate a suspension imposed pursuant to paragraph 7 hereof within the time period specified in paragraph 8, 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.

The reasoning behind the discipline committee's order is set out below. In reaching its conclusions, the committee considered the sentencing principles of general deterrence, specific deterrence and rehabilitation.

Reprimand

In the opinion of the committee, a reprimand in writing from the chair of the hearing is a specific deterrent, and one appropriate in this case. Such a letter stresses to Mr. Davies the unacceptability of his conduct as a chartered accountant, and serves as a reminder to him that he has failed to comply with the standards of the profession.

Fine

The committee considered the principles of specific and general deterrence in its deliberation on the levying of a fine. Wishing to make the point, both to Mr. Davies and to other members of the profession who might read of the sanction, that failure to uphold the good reputation of the profession, and carelessness in carrying out one's professional duties, are costly lapses, the committee ordered Mr. Davies to pay a fine of \$5,000 within twelve months from the date of the decision and order becoming final under the bylaws.

Suspension

The committee was convinced by the evidence that this was a case of moral turpitude. Mr. Davies was in a position of trust, providing professional services to an incapacitated woman, and he abused that position by choosing to put his own interests ahead of his client's. That the attorneys under Ms. Tiffin's Power of Attorney may have provided Mr. Davies with little or no supervision or control, that the scope of Mr. Davies' services may have been unclear, and that some of his unauthorized actions may have been taken with the intention of bettering Ms. Tiffin's financial position, are circumstances to be considered in mitigation of sanction. Such circumstances, however, in no way excuse Mr. Davies' misconduct.

Accordingly, the committee ordered that Mr. Davies be suspended from the rights and privileges of membership in the Institute for a period of twelve months. Mr. Davies' suspension will continue for a further six months if he fails to pay the fine ordered by the discipline committee, or if he fails to make restitution of \$18,000 to Ms. Tiffin, pursuant to his undertaking to do so which he filed at the hearing.

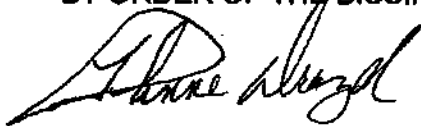
Professional Development Courses

In ordering Mr. Davies to take the "Practice Advisory Workshop" offered by the Institute, the committee was considering the principle of rehabilitation. The committee agreed with both counsel that, in pleading guilty, co-operating with the professional conduct committee, and undertaking to make restitution to Ms. Tiffin, Mr. Davies has taken the first steps towards his rehabilitation. However, the committee was also concerned that Mr. Davies' actions showed an ignorance of good practice management habits, and felt that a professional development course, such as the one ordered, would be of assistance to him.

Notice

Publication of the decision and order including Mr. Davies' name is, in the opinion of the committee, an important general deterrent. As well, communication of the fact that the Institute views breaches of its bylaws and rules of professional conduct seriously is an important contributor to the proper governance of the profession. In the absence of any rare and unusual circumstances to persuade it to do otherwise, the committee determined that the order as to notice made in this case was appropriate.

DATED AT TORONTO, THIS 21ST DAY OF DECEMBER, 1995
BY ORDER OF THE DISCIPLINE COMMITTEE



F.A. DROZD, FCA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

P.B.A. CLARKSON, CA
F.J. DUNN, CA
B.L. STEPHENS, CA
B.W. BOWDEN, PhD (Public representative)