

David Austin Davies: Summary, as Published in *CheckMark*

David Austin Davies, of Callander, was found guilty of two charges of professional misconduct, under Rules 201.1 and 205. He presented false financial information for a client company on monthly reports which he prepared for the company's bank, knowing that the bank would rely on the reports for the purpose of advancing working capital loans to the company. Mr. Davies would determine the amount of inventory and accounts receivable necessary for the company to meet the margin requirements set by the bank, and then artificially adjust the general ledger accounts for accounts receivable and inventory to ensure that the level of financing required by the company and advanced by the bank fell within those margin requirements. He overstated accounts payable, accounts receivable, sales and inventory in material amounts in the company's books and records.

He was fined \$4,000, and expelled from membership.

CHARGE(S) LAID re David A. Davies

The Professional Conduct Committee hereby makes the following charges against David A. Davies, a suspended member of the Institute:

1. THAT, the said David A. Davies, in or about the period April 1991 through July 1993, while employed as controller for 204995 Ontario Limited, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the Rules of Professional Conduct, in that:
 - (a) he presented false financial information on monthly reports prepared by him, including financial statements, margin calculation sheets and accounts receivable listings, which he presented to the company's bank knowing that the bank relied on these reports for the purpose of advancing working capital loans to the company;
 - (b) commencing with the start of his employment in April, 1991 and continuing each month until May 1993 he determined the amount of inventory and accounts receivable necessary for the company to meet the margin requirements sets by the bank and then artificially adjusted the general ledger accounts for accounts receivable and inventory to ensure the level of financing required by the company and advanced by the bank fell within those margin requirements;
 - (c) for each of the years ending February 29, 1992, and February 28, 1993 he prepared the books and records of the company which he provided to the company's accountants which overstated accounts payable, accounts receivable, sales and inventory in material amounts.
2. THAT, that said David A. Davies, in or about the period April 1991 through to July 1993, while employed as controller for 204995 Ontario Limited, prepared monthly financial statements and reports on behalf of the company for release to the company's bank knowing that the statements were false and misleading in a material respect in that they overstated accounts payable and/or accounts receivable and/or sales and/or inventory in an effort to ensure that the level of financing required by the company and advanced by the bank fell within margin requirements set by the bank, contrary to Rule 205 of the Rules of Professional Conduct.

Dated at Belleville this 11th day of October 1994.

JENNIFER FISHER, CA – CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re David Austin Davies

DECISION AND ORDER IN THE MATTER OF: Charges against **DAVID AUSTIN DAVIES**, a suspended member of the Institute, under **Rules 201.1 and 205** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE DECEMBER 13, 1994

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1 and 2, THE DISCIPLINE COMMITTEE FINDS David Austin Davies guilty of charges Nos. 1 and 2.

ORDER

IT IS ORDERED in respect of the charges:

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 \$4,000, 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. Davies be and he is hereby expelled from membership in the Institute.
4. 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;
 - (c) to the Canadian Institute of Chartered Accountants; and
 - (d) to the Institute of Chartered Accountants in England and Wales.
5. THAT Mr. Davies surrender his certificate of membership in the Institute to the registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the bylaws.

DATED AT TORONTO THIS 15TH DAY OF DECEMBER, 1994
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re David Austin Davies

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **DAVID AUSTIN DAVIES**, a suspended member of the Institute, under **Rules 201.1 and 205** of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE DECEMBER 13, 1994

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were held on December 13, 1994. Ms. Deborah McPhadden attended on behalf of the professional conduct committee, and Mr. Davies attended with his counsel, Mr. Geoffrey R. Larmer.

Mr. Davies pleaded guilty to the following charges, and confirmed that he understood that upon a plea of guilty, and upon that basis alone, he could be found guilty of the charges:

1. *THAT, the said David A. Davies, in or about the period April 1991 through to July 1993, while employed as controller for 204995 Ontario Limited, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the Rules of Professional Conduct, in that:*
 - (a) *he presented false financial information on monthly reports prepared by him, including financial statements, margin calculation sheets and accounts receivable listings, which he presented to the company's bank knowing that the bank relied on these reports for the purpose of advancing working capital loans to the company;*
 - (b) *commencing with the start of his employment in April, 1991 and continuing each month until May 1993 he determined the amount of inventory and accounts receivable necessary for the company to meet the margin requirements set by the bank and then artificially adjusted the general ledger accounts for accounts receivable and inventory to ensure the level of financing required by the company and advanced by the bank fell within those margin requirements;*
 - (c) *for each of the years ending February 29, 1992, and February 28, 1993 he prepared the books and records of the company which he provided to the company's accountants which overstated accounts payable, accounts receivable, sales and inventory in material amounts.*
2. *THAT, the said David A. Davies, in or about the period April 1991 through to July 1993, while employed as controller for 204995 Ontario Limited, prepared monthly financial statements and reports on behalf of the company for release to the company's bank knowing that the statements were false and misleading in a material respect in that they overstated accounts payable and/or accounts receivable and/or sales and/or inventory in an effort to ensure that the level of financing required by the company and advanced by the bank fell within margin*

requirements set by the bank, contrary to Rule 205 of the Rules of Professional Conduct.

Counsel for the professional conduct committee called Rodney Fraser, CA, investigator for the committee as a witness. In giving evidence, Mr. Fraser highlighted for the discipline committee certain items in the agreed statement of facts and document brief, which were filed as Exhibits 3 and 4, respectively. The committee concluded that Mr. Davies was a party to the alteration of the records of his employer so as to deceive his employer's bank over an extended period of time. We also concluded that Mr. Davies, in fact, made false entries in the records of the company knowing that balances of accounts were to be used for bank financing and preparation of financial statements.

Counsel for the member called no evidence with respect to the issue of innocence or guilt and agreed that the facts as presented by the professional conduct committee were correct.

After reviewing the evidence presented, the discipline committee found Mr. Davies guilty of the two charges.

The committee then heard testimony from Mr. Davies upon the issue of sanction, and received a document brief filed on his behalf as Exhibit 5. Following this testimony, both counsel made their submissions as to appropriate sanctions. Counsel for Mr. Davies submitted that his client accepted all of the sanctions requested by the professional conduct committee except for the fine.

After hearing submissions of counsel, and upon deliberation, the committee made the following order:

ORDER

IT IS ORDERED in respect of the charges:

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 \$4,000, 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. Davies be and he is hereby expelled from membership in the Institute.
4. 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;
 - (c) to the Canadian Institute of Chartered Accountants; and
 - (d) to the Institute of Chartered Accountants in England and Wales.
5. THAT Mr. Davies surrender his certificate of membership in the Institute to the registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the bylaws.

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

Reprimand

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

Fine

The professional conduct committee asked for a fine of \$5,000 against the member. Counsel for Mr. Davies outlined reasons why a fine should not be levied, the main one being the excessive financial strain that a fine would put on the member and his family.

The committee feels that a fine is important as both a general and a specific deterrent. In setting the quantum of the fine at \$4,000, we weighed the financial position of the member against the fact that a fine should act as a general deterrent to the entire membership. The amount of \$4,000 was felt to strike the balance between the two considerations.

Expulsion

The principle of general deterrence is of utmost importance in this case. The charges of which Mr. Davies was found guilty involved moral turpitude. His conduct took place over an extended period of time and was not isolated to one incident. Counsel for the professional conduct committee asked for the expulsion of Mr. Davies as the appropriate specific and general deterrent. Mr. Davies agreed with the appropriateness of his expulsion in the circumstances of this case.

Notice

The disciplinary process of a professional body must be viewed by its members and the public as an open process. Not having been advised of any rare or unusual circumstances to persuade it to withhold the member's name from publication when giving notice of this case, the committee made the usual order as to the giving of notice, and added to it that notice be given to the Institute of Chartered Accountants in England and Wales, of which Mr. Davies was a member.

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 _____, 1995
BY ORDER OF THE DISCIPLINE COMMITTEE

D.P. SETTERINGTON, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

P.B.A. CLARKSON, CA
H.R. KLEIN, CA
P. RAYSON, CA

B.W. BOWDEN, PhD (Public representative)