

## **Robert Thomas Davies: Summary, as Published in *CheckMark***

**Robert Thomas Davies**, of Oakville, was found guilty of one charge under Rule 201 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 associating himself with reports, statements or representations which he knew were false or misleading. While employed as controller for a company, Mr. Davies failed to take steps to disassociate himself from improper activities of the company which he knew were taking place, including misappropriation of investor funds by an officer of the company, and the creation and circulation to shareholders and salespeople of quarterly account statements which misrepresented the value of shareholder investments and were based on financial data that did not exist. On two occasions Mr. Davies corresponded with investors setting out corrections to quarterly account statements previously sent to them when he knew the statements misrepresented the value of the investments. Although Mr. Davies brought the matters to the attention of senior management, he did not seek assistance or guidance from either the Institute or the Ontario Securities Commission for a period of time. Mr. Davies was fined \$3,000, suspended from membership in the Institute for a period of three months, and ordered to take professional development courses.

## **CHARGE(S) LAID re Robert T. Davies**

The Professional Conduct Committee hereby makes the following charges against Robert T. Davies, CA, a member of the Institute:

1. THAT, the said Robert T. Davies, in or about the period October 1, 1996 through December 31, 1997, while employed as Controller for Saxton Investments Ltd. ("Saxton"), failed to conduct himself in a manner which will 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 he failed to take steps to disassociate himself with improper activities of the company which he knew were taking place, including;
  - a) the misappropriation of investor funds by an officer of the company;
  - b) the creation and circulation to shareholders and Saxon salespeople of quarterly account statements for the periods ended December 1996, March 1997, June 1997, September 1997 and December 1997 which misrepresented the value of shareholder investments and were based on financial data that did not exist.
2. THAT, the said Robert T. Davies, in or about the period October 1, 1996 through December 31, 1997, while employed as Controller for Saxton Investments Ltd., associated himself with reports, statements or representations which he knew were false or misleading, contrary to Rule 205 of the rules of professional conduct, in that;
  - a) on two occasions he corresponded with investors setting out corrections to quarterly account statements previously sent to them when he knew the statements misrepresented the value of the investments;

Dated at London, this 15th day of March, 2004.

GERRY MILLS, FCA, CHAIR  
PROFESSIONAL CONDUCT COMMITTEE

## **DISCIPLINE COMMITTEE re Robert Davies**

**DECISION AND ORDER IN THE MATTER OF:** Charges against **ROBERT THOMAS DAVIES, CA**, a member of the Institute, under **Rules 201 and 205** of the Rules of Professional Conduct, as amended.

**DECISION AND ORDER MADE MAY 31, 2004**

### **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 Robert Thomas 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 \$3,000, 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 suspended from the rights and privileges of membership in the Institute for a period of three (3) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Davies be and he is hereby required to successfully complete fifteen (15) hours of continuing education courses of the Institute concerning fraud awareness and related topics on or before July 21, 2005.
5. THAT notice of this Decision and Order, disclosing Mr. Davies' name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
  - (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 in the event Mr. Davies fails to comply with any of 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 a newspaper distributed in the geographic area of Mr. Davies' current or former practice, employment and/or residence.

DATED AT TORONTO THIS 8TH DAY OF JUNE, 2004  
BY ORDER OF THE DISCIPLINE COMMITTEE

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

## **DISCIPLINE COMMITTEE re Robert T. Davies**

**REASONS FOR THE DECISION AND ORDER IN THE MATTER OF:** Charges against **ROBERT THOMAS DAVIES, CA**, a member of the Institute, under **Rules 201 and 205** of the Rules of Professional Conduct, as amended.

### **REASONS FOR THE DECISION AND ORDER MADE MAY 31, 2004**

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on May 31, 2004 to hear charges brought by the professional conduct committee against Robert Thomas Davies, a member of the Institute.
2. The professional conduct committee was represented by Mr. Paul Farley. Mr. Davies was present and was represented by his counsel, Mr. Thomas Sutton of the law firm of McCarthy Tétrault LLP.
3. The decision and the order of the discipline committee were made known at the hearing on May 31, 2004. The formal decision and order made on May 31, 2004 was signed by the secretary on June 8, 2004 and sent to the parties that day. These reasons, given pursuant to Bylaw 574, include the charges, the decision and the order as well as the reasons of this panel of the discipline committee.

### **THE CHARGES AND THE PLEA**

4. The charges made by the professional conduct committee on March 15, 2004 read as follows:
  1. THAT, the said Robert T. Davies, in or about the period October 1, 1996 through December 31, 1997, while employed as Controller for Saxton Investments Ltd. ("Saxton"), failed to conduct himself in a manner which will 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 he failed to take steps to disassociate himself with improper activities of the company which he knew were taking place, including;
    - a) the misappropriation of investor funds by an officer of the company;
    - b) the creation and circulation to shareholders and Saxon salespeople of quarterly account statements for the periods ended December 1996, March 1997, June 1997, September 1997 and December 1997 which misrepresented the value of shareholder investments and were based on financial data that did not exist.
  2. THAT, the said Robert T. Davies, in or about the period October 1, 1996 through December 31, 1997, while employed as Controller for Saxton Investments Ltd., associated himself with reports, statements or representations which he knew were false or misleading, contrary to Rule 205 of the rules of professional conduct, in that;
    - a) on two occasions he corresponded with investors setting out corrections to quarterly account statements previously sent to them when he knew the

statements misrepresented the value of the investments;

5. Mr. Davies entered a plea of guilty to each charge. He confirmed that he understood that upon the basis of his plea of guilty, and on that basis alone, he could be found guilty of the charge.

#### **THE CASE FOR THE PROFESSIONAL CONDUCT COMMITTEE**

6. Mr. Farley filed an agreed statement of facts (Exhibit No. 4) and a document brief (Exhibit No. 5) which constituted the evidence of the professional conduct committee.

7. Mr. Davis became a member of the Institute in 1994. After receiving his designation, he worked for an accounting firm in the Mississauga area and then was employed by an insurance company in the internal audit department until 1996, when he was recruited by Mr. Allan Eizenga, the President of Saxton Investment Securities Ltd.

8. Mr. Davies worked as the controller of Saxton until December 1997. Saxton established a number of offering corporations. Sales people employed by Saxton and promotional materials used by them represented to the public that they were investing in businesses in Cuba, the Caribbean and the Ukraine. Members of the public invested in one of two products, a "Fixed Dividend Account" and an "Equity Dividend Account". Approximately \$37.0 million was raised from investors who were sent quarterly statements by Saxton. The quarterly statements were false.

9. Mr. Davies did not produce the four quarterly statements which were sent to investors during his tenure at Saxton. As controller he attempted to reconcile the increase in value, the interest and dividends of the quarterly account statements but never had enough information to do so.

10. During the summer of 1997, Davies, who knew by that time that the quarterly statements were false, learned that Mr. Eizenga had misappropriated investor funds and that another officer of Saxton had taken significant investor funds for unknown purposes. Mr. Davies brought this to senior management's attention, but nothing concrete was done and Mr. Davies did not seek assistance or guidance from either the Institute or the Ontario Securities Commission.

11. Mr. Davies did not know that the Saxton sales people, in an effort to enhance the credibility of their sales efforts, represented as a fact that a chartered accountant was employed by the organization. But he should have known this was the case. While Mr. Davies did not prepare and send out the quarterly statements, on two occasions he did prepare and sign covering letters enclosing amended quarterly statements which he knew were false.

12. In July 2003, Mr. Davies entered into a Settlement Agreement with the Ontario Securities Commission. He agreed that he would not be an officer or director of an issuing company for ten years, that he would not trade in securities at all for three years and would only trade thereafter for seven years through a registered dealer, securities in his own account for retirement savings. He was publicly reprimanded and ordered to pay costs of \$2,000.00.

13. After Mr. Davies left Saxton in 1997 he voluntarily co-operated with the Ontario

Securities Commission staff's investigator respecting Saxton and its principals and sales people, voluntarily assisted KPMG after it was appointed by the court to investigate Saxton's operation, voluntarily assisted the lawyer who was acting for the investors, voluntarily assisted the Ontario Provincial Police with their investigation of Saxton and Eizenga and voluntarily assisted the Canada Revenue Agency in their investigation of Mr. Eizenga.

14. Mr. Farley made submissions on the issue of guilt but Mr. Sutton did not. After deliberating, the panel concluded that the charges had been proven and that Mr. Davies was guilty of both charges. When the hearing reconvened, the chair read the following decision into the record:

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 Robert Thomas Davies guilty of charges Nos. 1 and 2.

## **SANCTION**

15. No evidence was called with respect to the issue of Sanction by either the professional conduct committee or the member. Mr. Farley made submissions on behalf of the professional conduct committee and Mr. Sutton made submissions on behalf of the member.

16. On behalf of the professional conduct committee, Mr. Farley requested an order which included the following terms: a reprimand in writing; a fine of between \$3,000.00 and \$5,000.00; a suspension of three to six months; a requirement that Mr. Davies take specified professional development courses; and the usual provision with respect to notice, including publication of the notice in *CheckMark* disclosing Mr. Davies' name. Mr. Farley explained that the professional conduct committee was not asking for expulsion because it thought that the sanction which should be given priority in this particular case was rehabilitation rather than general deterrence.

17. Mr. Farley acknowledged the importance of general deterrence in cases which involve false and misleading statements and misappropriation of investors' money. He acknowledged that often in such cases general deterrence is the principle of sanction given priority. He said that among the factors which persuaded the professional conduct committee to recommend a fine and suspension rather than expulsion were: Mr. Davies' relative youth and inexperience at the time of the misconduct; the fact that this was his first position outside of the controlled environment of an accounting firm or internal audit department; that the OSC had dealt with Mr. Davies and imposed a penalty; and Mr. Davies' had assisted the regulatory and police agencies in their investigation of Saxton and Mr. Eizenga.

18. Mr. Sutton also made submissions, pointing out that Mr. Davies, who was a very junior employee, did attempt to correct the financial information and brought the misappropriation to the attention of senior management. Mr. Sutton also emphasized that Mr. Davies was not caught, but rather reported the misconduct. Thereafter he assisted the regulatory and police authorities. In Mr. Sutton's view, a sanction which included a suspension would be disproportionately harsh on Mr. Davies, who had a young family and whose wife was expecting their third child.

19. After deliberating, the hearing was reconvened and the chair set out the essential terms of the sanction on the record. The formal order of the discipline committee, which was sent to the parties on June 8, 2004 includes the order which reads as follows:

### **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 \$3,000, 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 suspended from the rights and privileges of membership in the Institute for a period of three (3) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Davies be and he is hereby required to successfully complete fifteen (15) hours of continuing education courses of the Institute concerning fraud awareness and related topics on or before July 21, 2005.
5. THAT notice of this Decision and Order, disclosing Mr. Davies' name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
  - (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 in the event Mr. Davies fails to comply with any of 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 a newspaper distributed in the geographic area of Mr. Davies' current or former practice, employment and/or residence.

### **REPRIMAND**

20. The panel was of the view that reprimand is necessary as a specific deterrent to the member, to stress to him the importance of maintaining the standards of the profession, and the unacceptability of his conduct as a Chartered Accountant. The discipline committee agreed with counsel for the professional conduct committee that these were serious charges and that the member did not do enough when he became aware of the false information.

### **SUSPENSION AND FINE**

21. We have set out above in paragraphs 17 and 18 the submissions which Mr. Farley and Mr. Sutton made concerning Mr. Davies' misconduct. It was those facts which persuaded us that the most important principle to be considered when imposing sanction was rehabilitation.

22. Ultimately, Mr. Davies “blew the whistle” and he co-operated with the regulatory authorities and the police. In doing so, he made it clear that he had begun to rehabilitate himself. We were persuaded that he deserves the opportunity to remain a member of this profession.

23. But general deterrence is also important in this case. Mr. Davies waited too long before he blew the whistle. Even newly minted chartered accountants must not associate themselves with financial information which they know is false and misleading and being used to misappropriate funds from the public. There must be no question about what a chartered accountant must do in such circumstances, and there must be no question that serious consequences will follow if he or she does not do what is required. Accordingly, while it may seem harsh to Mr. Davies, we concluded general deterrence required there be a suspension and a fine. In the circumstances we concluded that a fine of \$3,000.00 and a suspension of three months were appropriate. Were Mr. Davies’ financial circumstances different, the amount of the fine would be different.

### **PROFESSIONAL DEVELOPMENT COURSES**

24. The discipline committee was satisfied that requiring Mr. Davies to successfully complete 15 hours of continuing education courses of the Institute concerning fraud awareness and related topics was both consistent with the OSC settlement agreement and appropriate in the circumstances.

### **NOTICE**

25. We concluded that notice in Checkmark was required as a matter of general deterrence. The notice is intended to make it clear to members of the Institute that if they are found guilty of professional misconduct, their peers will read about their misconduct and the sanction imposed in *CheckMark*.

### **FAILURE TO COMPLY WITH ORDER: OUTRIGHT EXPULSION**

26. An order of the discipline committee which does not have consequences for failing to comply with the terms of the order would be meaningless. Accordingly the order provides that if Mr. Davies does not comply with the terms of the order, he will be expelled.

DATED AT TORONTO THIS 24TH DAY OF MARCH, 2005  
BY ORDER OF THE DISCIPLINE COMMITTEE

B.A. TANNENBAUM, FCA – DEPUTY CHAIR  
THE DISCIPLINE COMMITTEE

### **MEMBERS OF THE PANEL:**

N.A. MACDONALD-EXEL, CA  
M.L. MACKAY BREHM, FCA  
D.O. STIER, CA  
R.A. VICKERS, FCA  
N.C. AGARWAL (Public representative)