

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **ROY DAVIES, CA**, a member of the Institute, under **Rule 206** of the Rules of Professional Conduct, as amended.

TO: Mr. Roy Davies, CA
Box 1123
1024 Main Street
Geraldton, ON P0T 1M0

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision And Order Made June 1, 2006)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on June 1, 2006, to hear charges of professional misconduct against Roy Davies, a member of the Institute.
2. Mr. Paul Farley appeared for the Professional Conduct Committee and was accompanied by Mr. Paul Gibel, CA, the investigator appointed by the Professional Conduct Committee. Mr. Davies attended and was assisted by Mr. Mark E. Dawber, FCA.
3. The decision of the panel was made known to the parties at the conclusion of the hearing on June 1, 2006, and the written Decision and Order was sent to them on June 6, 2006. These reasons, given pursuant to Bylaw 574, include the charges, the decision, the order, and the reasons of the panel for its decision and order.

CHARGES

4. The following charges were laid against Mr. Davies on December 19, 2005:
 1. THAT, the said Roy Davies, in or about the period March 31, 2004 through July 1, 2004, while engaged to perform an audit of the financial statements of a not for profit organization, " T F Centre", as at March 31, 2004, 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;
 - (a) he failed to ensure that capital assets with a limited life were amortized as required by section 4430.16 of the *CICA Handbook*;
 - (b) he failed to adequately assess the components of audit risk at the planning stage of the engagement as required by the section 5130.30 of the *CICA Handbook*;

- (c) he failed to adequately communicate with those having oversight responsibility prior to completion of the audit as required by section 5751.15 of the *CICA Handbook*;
 - (d) he failed to adequately communicate with those having oversight responsibility on matters arising from the financial statement audit as required by section 5751.24 of the *CICA Handbook*;
 - (e) he failed to provide a clear and concise description of the not-for-profit organization's purpose, its intended community of service, its status under income tax legislation and its legal form as required by section 4400.04 of the *CICA Handbook*;
 - (f) he failed to ensure that the financial statements included a statement of income for the organization as a whole as required by section 4400.33 of the *CICA Handbook*;
 - (g) he failed to properly document matters that are important in providing evidence to support the conclusion expressed in his report.
2. THAT, the said Roy Davies, in or about the period August 31, 2004 through December 1, 2004, while engaged to perform a review of the financial statements of "GT Ltd. as at August 31, 2004, 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;
- (a) he failed to ensure that contracts included in the balance sheet item "*Contracts & Licences (Note #3) 117,414*" were amortized over their useful life as required by section 3062.10 of the *CICA Handbook*;
 - (b) he failed to ensure disclosure of the concentration of credit risk as required by section 3860.67 of the *CICA Handbook*, since approximately fifty percent of the company's business is with local school boards;
 - (c) he failed to ensure disclosure with respect to the fair value of financial instruments as required by section 3860.78 of the *CICA Handbook*;
 - (d) he released the financial statements when the cash flow statement disclosed opening and closing cash balances as negative numbers and he failed to ensure that the change in the opening and closing balances was disclosed as a financing activity;
 - (e) he failed to ensure the disclosure of the amount of interest and income taxes paid on a cash basis;
 - (f) he failed to properly document matters that are important in providing evidence to support the conclusion expressed in his report.

3. THAT, the said Roy Davies, in or about the period December 31, 2004 through June 1, 2005, while engaged to perform an audit of the financial statements of "K Non-Profit Housing Corporation as at December 31, 2004, 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;

(a) he released the financial statements when the balance sheet disclosed as a liability the "Replacement Reserve \$99,806" when it should have been disclosed
(b) with the corporation's net assets;

(c) he failed to adequately assess the components of audit risk at the planning stage of the engagement as required by the section 5130.30 of the *CICA Handbook*;

(d) he failed to adequately communicate with those having oversight responsibility prior to completion of the audit as required by section 5751.15 of the *CICA Handbook*;

(e) he failed to adequately communicate with those having oversight responsibility on matters arising from the financial statement audit as required by section 5751.24 of the *CICA Handbook*;

(f) he failed to properly document matters that are important in providing evidence to support the conclusion expressed in his report.

5. Prior to the pleas being taken, the Professional Conduct Committee withdrew particular (c) of charge No. 1 and particulars (c) and (d) of charge No. 3.

PLEA

6. Mr. Davies entered a plea of guilty to each of the charges as they remained. He acknowledged that he understood that, on the basis of the plea of guilty and on that basis alone, he could be found guilty of the charges.

EVIDENCE

7. The evidence in this matter was presented by way of an Agreed Statement of Facts (Exhibit 4) and an accompanying Document Brief (Exhibit 5). Neither party called any further evidence.

8. The panel finds the evidence as contained in the Exhibits is clear, cogent and compelling and supports the allegations of misconduct as contained in the charges and the pleas of guilty entered by the member. In particular, the panel finds that Mr. Davies was responsible for each of the engagements, signing the reports attached to the financial statements and releasing those reports, and that Mr. Davies did not perform his professional services in accordance with generally accepted standards of practice of the profession.

DECISION

9. On the basis of the evidence, the panel is satisfied that the charges have been made out, and that the breach of the standards of the profession is significant enough to constitute professional misconduct. The panel rendered the following decision:

THAT, having seen, and considered the evidence, including the agreed statement of facts, filed, charges No. 1, particular (c), and No. 3, particulars (c) and (d) having been withdrawn by the Professional Conduct Committee, and having heard the plea of guilty to charge Nos. 1, 2, and 3, the Discipline Committee finds Mr. Roy Davies guilty of charge Nos. 1, 2, and 3.

SANCTION

10. Counsel for the Professional Conduct Committee submitted that a sanction of: a written reprimand; a fine in the amount of \$5,000, three specified courses of professional development; publication in the usual course; and costs in the amount of \$8,000 would satisfy the requirements of both specific and general deterrence. Mr. Farley also noted that this submission was made jointly with Mr. Davies.

11. Mr. Farley submitted that this is not a matter of moral turpitude or dishonesty, but one of failing to meet the standards of the profession. The issues with respect to the financial statements were those of disclosure and presentation rather than substance. The concern is that Mr. Davies has not kept up-to-date with the requirements for performing assurance engagements. Mr. Farley further submitted that specific deterrence is not of paramount consideration, as Mr. Davies has begun to wind down his practice, and has provided an undertaking (Exhibit 6) not to accept any further assurance engagements. Thus the paramount consideration must be general deterrence, the message to other practitioners about the importance of remaining current in public accounting.

12. With respect to Mr. Davies, Mr. Farley pointed out a number of factors in mitigation: he is approaching retirement and has had no previous disciplinary matters; he has provided an undertaking not to accept assurance engagements; he understood the deficiencies when they were pointed out to him; he accepted responsibility and demonstrated remorse by entering a plea of guilty and signing an agreed statement of facts; he was fully cooperative with the investigation; and, as the deficiencies were of disclosure and presentation, there was little risk to the public. In aggravation, however, he noted that Mr. Davies was subject to three separate practice inspections prior to the matter being referred to the Professional Conduct Committee. On balance, he submitted that the mitigating factors are sufficient to satisfy the panel that the usual sanction of a suspension is not required in these particular circumstances.

13. On behalf of Mr. Davies, Mr. Dawber submitted that Mr. Davies has served a small community well since 1979 (he is the only CA in Geraldton), and he is in the process of winding up his practice. The sanction sought will impose a significant financial hardship on a small practitioner and he referred the panel to three cases of a similar nature (*McGinnis (2002)*, *Miller (2005)*, and *Wedgebury (2005)*) in which a lesser fine or costs was ordered.

14. In reply, Mr. Farley pointed out that, in each of the cases referred to by Mr. Dawber, the member involved was required to have his practice supervised and to submit to a re-investigation, with the additional costs to the member of each of those requirements.

15. In surreply, Mr. Dawber noted that Mr. Davies' undertaking made either supervision or re-investigation unnecessary, a point with which the Professional Conduct Committee took no issue.

16. The panel had some concerns with the nature and effect of the undertaking. Mr. Davies provided further information to the panel indicating that he had begun to wind down his practice in July 2005 by giving notices to his clients that he would only be able to maintain the engagement if they were notice to readers clients, as opposed to assurance clients. Mr. Farley also indicated to the panel that the practice inspector had observed signs of the practice being wound down in September, 2005, and that, given that fact, Mr. Davies' integrity and the fact that a breach of the undertaking would be a very serious matter, further follow up was not required.

ORDER

17. After deliberating, the panel made the following 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 \$5,000, to be remitted to the Institute as follows:
 - (a) \$1,500 within six (6) months from the date this Decision and Order becomes final under the bylaws; and
 - (b) a further \$3,500 within eighteen (18) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Davies be and he is hereby charged costs fixed at \$8,000 to be remitted to the Institute as follows:
 - (a) \$2,500 within six (6) months from the date this Decision and Order becomes final under the bylaws; and
 - (b) a further \$5,500 within eighteen (18) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Davies be and he is hereby required to pay for and complete, in their entirety, within one (1) year from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute, or, in the event a course listed below becomes unavailable, the successor course which takes its place:
 - (a) *Review and Compilation Engagements;*
 - (b) *What General Practitioners Need to Know; and*
 - (c) *Income Tax Update for CA's in Public Practice.*
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 suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within the three (3) month period, he shall thereupon be expelled from the 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' employment and/or residence.

REASONS FOR THE ORDER

Reprimand

18. The panel orders that Mr. Davies be reprimanded to ensure it is made clear to him that his failure to maintain the necessary standards of practice is unacceptable in the profession.

Fine

19. The panel appreciates that the fine imposed will cause significant financial hardship to Mr. Davies. That hardship is ameliorated by the length of time to pay which has been granted. The imposition of a fine in these circumstances is required to send a clear message not only to Mr. Davies but to all members that maintaining current knowledge is crucial in public accounting, and that a failure to do so, even when no harm results to the public, is a serious matter.

Costs

20. The panel likewise apprehends the difficulties Mr. Davies will have in paying the costs assessed. However, Mr. Davies was subject to three practice inspections prior to being charged by the Professional Conduct Committee, and each inspection revealed deficiencies. This hearing was necessitated solely by his failure to remain up-to-date in his chosen field, and it is appropriate that part of the cost of that hearing be borne by Mr. Davies rather than the membership as a whole. The costs awarded will not fully indemnify the Professional Conduct Committee for those it has incurred. Further, it should be noted that, were it not for Mr. Davies' financial circumstances and the mitigating factors presented in this matter, both the fine and the costs might well have been much greater.

Professional Development

21. Despite the fact Mr. Davies is approaching the end of his career, there is a need for him to stay knowledgeable so long as he is in practice. Mr. Davies acknowledges this, and the courses are intended to assist with his rehabilitation. In consideration of his geographical location, it may be possible, with the consent of this Institute, to satisfy this term by taking equivalent courses through the Institute of Chartered Accountants of Manitoba. Any such request should be made to the Secretary to the Discipline Committee.

Notice

22. Publishing the names of members found guilty of professional misconduct is often the single

most significant sanction that may be administered for general deterrence, education of the membership at large, and protection of the public. It is only in the most exceptional circumstances that such important principles will be over-balanced by privacy considerations. No such circumstances were urged on the panel in this matter, and so there is no reason that publication should not be made.

Failure to Comply

23. To encourage compliance with discipline orders in cases in which members are not expelled outright, orders of a panel generally specify suspension, followed by, should the member still fail to comply, expulsion with newspaper notification to the public as an ultimate consequence for non-compliance. The panel so orders in this proceeding.

DATED AT TORONTO THIS 29TH DAY OF JUNE, 2006
BY ORDER OF THE DISCIPLINE COMMITTEE

H.B. BERNSTEIN, CA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

J.B. BARRACLOUGH, CA
A. HANSON, CA
S.R. LOWE, CA
G.R. PEALL, CA
P. McBURNEY (Public Representative)