

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **JOANNE LILLIAN ENGLAND**, a suspended member of the Institute, under **Rules 201.1, 203.2(b), and 209.1** of the Rules of Professional Conduct, as amended.

TO: Ms. Joanne L. England

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision made September 28, 2010, and Order made January 12, 2011)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on September 20, 21, 22, 27, and 28, December 6, 2010, and January 12, 2011, to hear charges of professional misconduct brought by the Professional Conduct Committee (PCC) against Joanne England, a suspended member of the Institute.

2. Mr. Brian Bellmore appeared on behalf of the Professional Conduct Committee. Ms. England attended the hearing and was represented by Mr. James Lane from the commencement of the hearing until after September 28, 2010. Mr. Frederick Caplan represented Ms. England on December 6, 2010, and January 12, 2011. Mr. Glenn Stuart acted as counsel for the Discipline Committee.

3. The decision of the panel was made known on September 28, after having heard the evidence and submissions of both parties, and the written Decision sent to the parties on December 16, 2010.

4. The normal procedure in discipline hearings is to hear submissions regarding sanction immediately following the decision, and give the order of the panel at the conclusion of the hearing. The written decision, order, and reasons would be sent to the parties in one document. However, due to the lateness of the day on September 28, 2010, the hearing was adjourned, on consent, to December 6, 2010 to hear submissions for sanction. The sanction part of the hearing was further adjourned to January 12, 2011 upon hearing a motion for a further adjournment by Mr. Frederick Caplan, Ms. England's new counsel. The ruling on this motion was made known to the parties on December 6, 2010, and the written reasons for the ruling were sent to the parties on January 7, 2011. The written decision of the panel on the charges of professional misconduct was released prior to the submissions on sanction to assist new counsel assuming carriage of the matter.

5. The hearing resumed on January 12, 2011 to hear evidence and submissions for sanction. No evidence was led at the hearing, and both Mr. Bellmore and Mr. Caplan made submissions on sanction. The order of the Discipline Committee was made known to the parties at the conclusion of the hearing, and the order was sent to the parties on January 14,

2011. These reasons, given pursuant to Bylaw 574, contain the charges, the decision, the order, and the reasons of the panel for its decision and order. In the charges that were laid by the Professional Conduct Committee, clients of Ms. England were identified by their first name and first letter of their last name, or by the first letter of their last name. No objection was taken to proceeding in this way. The panel considers this the least intrusive method of protecting the clients given that intimate financial matters relating to these clients are discussed. This convention has been used throughout this document.

CHARGES

6. The following charges were laid against Ms. England by the Professional Conduct Committee on December 3, 2009:

1. THAT, the said Joanne England, in or about the period October 13, 2006 through August 27, 2007, while engaged as the accountant for Candence H., failed to act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that, she borrowed from her client Candence H. approximately \$45,000, without advising her client of the risk involved and without taking adequate steps to protect her client from loss, contrary to Rule 201.1 of the Rules of Professional Conduct.
2. THAT, the said Joanne England, in or about the period October 13, 2006 through August 27, 2007, while engaged as the accountant for Candence H., borrowed from her client, Candence H., approximately \$45,000, in circumstances which did not fall within the provisions of Rule 209 (a) or (b), contrary to Rule 209.1 of the Rules of Professional Conduct.
3. THAT, the said Joanne England, in or about the period March 12, 1993 through July 2, 1996, while engaged as the accountant for Sandra G., failed to act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that, she borrowed from her client Sandra G. approximately \$125,000, without advising her client of the risk involved and without taking adequate steps to protect her client from loss, contrary to Rule 201.1 of the Rules of Professional Conduct.
4. THAT, the said Joanne England, in or about the period March 12, 1993 through July 2, 1996, while engaged as the accountant for Sandra G., failed to act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that, she borrowed from her client Sandra G. approximately \$115,000 and agreed to pay interest on the amounts owing but provided promissory notes showing no interest payable in order to assist her client in avoiding the payment of tax properly payable on the interest income, contrary to Rule 201.1 of the Rules of Professional Conduct.
5. THAT, the said Joanne England, in or about the period September 12, 2005 through June 24, 2007, while engaged as the accountant for Dr. A., failed to act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in

that, she collected from Dr. A. approximately \$44,500 for the purpose of making income tax remittances on his behalf and did not remit approximately \$32,000, contrary to Rule 201.1 of the Rules of Professional Conduct.

6. THAT, the said Joanne England, in or about the period September 12, 2005 through June 24, 2007, while engaged as the accountant for Mrs. C., failed to act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that, she collected from Mrs. C. approximately \$17,500 for the purpose of making income tax remittances on her behalf and did not remit approximately \$11,500, contrary to Rule 201.1 of the Rules of Professional Conduct.
7. THAT, the said Joanne England, in or about the period December 17, 2004 through September 7, 2005, while engaged as the accountant for Marius V., failed to act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that, she borrowed from her client Marius V. approximately \$66,000, without advising her client of the risk involved and without taking adequate steps to protect her client from loss, contrary to Rule 201.1 of the Rules of Professional Conduct.
8. THAT, the said Joanne England, on or about September 21, 2007, while engaged as the accountant for Harold R., failed to act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that, she borrowed from her client Harold R. approximately \$23,500, without advising her client of the risk involved and without taking adequate steps to protect her client from loss, contrary to Rule 201.1 of the Rules of Professional Conduct.
9. THAT, the said Joanne England, in or about the period January 1, 2005 through December 3, 2009, while engaged in the practice of public accounting, failed to act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that she failed to complete engagements and respond to the needs of her clients in a timely fashion contrary to Rule 201.1 of the Rules of Professional Conduct.
10. THAT, the said Joanne England, in or about the period April 1, 2009 to December 3, 2009, failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct an investigation on behalf of the professional conduct committee, contrary to Rule 203.2(b) of the Rules of Professional Conduct.

PRELIMINARY MATTERS

7. It was noted by the Chair at the outset of the hearing that, in Charge 2, the reference to Rule 209 (a) or (b) appeared to properly be to Rule 209.1(a) or (b). Mr. Bellmore requested that the particular be amended to refer to Rule 209.1 (a) or (b). Mr. Lane consented to this change,

noting that there had been no confusion caused by this oversight.

PLEA

8. Ms. England pleaded guilty to Charges 1,2,3,4,5,6,7 and 8, and not guilty to Charges 9 and 10. Ms. England acknowledged that she understood that on the basis of the guilty pleas to Charges 1 to 8, and on that basis alone, she could be found guilty of those charges.

9. Mr. Bellmore noted that Charge 2 appeared to be a duplicate of Charge 1 and would seek instructions regarding the charge.

ISSUES

10. There were four issues regarding these charges of alleged professional misconduct. First, Charges 1 to 4, and 7 and 8 allege that Ms. England borrowed money from her clients. Second, Charges 5 and 6 allege that Ms. England collected monies from clients that were intended to pay income tax remittances and did not make those remittances. Third, Charge 9 alleges that Ms. England failed to complete client engagements and respond to clients' needs on a timely basis. Fourth, Charge 10 alleges that Ms. England failed to co-operate with the Institute's officers, servants or agents regarding an investigation.

EVIDENCE

11. The Professional Conduct Committee called Candence H., Sandra G., Marius V., Harold R., and Brian C. as witnesses. Agreed statements of facts for Dr. A., Mrs. C., and Mr. Ken Kapt, C.A., the successor accountant for Dr. A. and Ms. C. were entered as evidence. In addition, Ms. Karen Ho James, CA-IFA, the Institute's investigator, gave evidence regarding all of the charges. A number of exhibits were entered as evidence.

12. Ms. England testified on her own behalf and provided explanations leading up to the charges. Mr. Lane entered a number of exhibits as evidence.

13. Mr. Lane called Ms. Linda Klassen, a former employee of Ms. England, and Dr. Gary A. Chaimowitz, an Associate Professor of Psychiatry at McMaster University, and Head of Forensic Services at St. Joseph's Healthcare, Hamilton, West 5th Campus, as witnesses. At the request of her counsel, Ms. England was not present for Dr. Chaimowitz's testimony.

CHARGES 1 TO 4, 7 AND 8

14. The facts of Charges 1 to 4, and 7 and 8 are similar in many respects and are not substantially in dispute. Candence H., Sandra G., Marius V., and Harold R., testified that they were long standing clients of Ms. England during the relevant periods stated in the charges. They were very satisfied with the services performed for them by Ms. England. Ms. England approached each of them for loans that were granted. The loans were made on a short-term basis. The individuals were not in the business of making loans, but made the loans on the basis of their relationship with Ms. England. In all cases, despite attempts by the lenders to have the loans repaid, the loans were never fully repaid. The clients were not advised to seek independent advice regarding security, terms of repayment, or interest rates.

15. In the case of Candence H., there was a series of loans and repayments beginning in October 2006. The total amount borrowed was \$45,000. Some of the loans were without

interest and others were at 10% interest. Promissory notes prepared and signed by Ms. England were given to Candence H. As of April 30, 2008, the total owing by Ms. England, excluding late charges and compound interest for late payments, was \$30,700. (Exhibit 1, pp.0001 – 0017). Candence H. testified that funds for one loan, for \$10,000, were obtained from her line of credit. She also testified that Ms. England never gave her an accounting of the amounts of loan advances, repayments and interest accruing.

16. In the case of Sandra G., she testified that she was first approached by Ms. England for a loan in 1993. She loaned Ms. England \$40,000, and this was evidenced by a Promissory Note signed by both Ms. England and Sandra G. dated March 12, 1993. The stated purpose of the loan was to renovate Ms. England's property in St. Catharines. No interest was to be charged on the loan. The note is silent with respect to terms of repayment and security, except that Ms. England undertook not to further encumber her property in excess of \$175,000 (Exhibit 1, p.0018).

17. There were other Promissory Notes in favour of Sandra G. signed by Ms. England – one for \$20,000 dated October 13, 1995, with 12% interest, one for \$20,000 dated July 2, 1996, with interest at 10%, and one for \$10,368.69, with an unstated interest charge (Exhibit 1, pp. 0021, 0022, and 0025).

18. Two other Promissory Notes prepared by Ms. England in favour of Sandra G. are of particular interest. There were two versions of the same two notes. One of the notes dated February 1, 2000, in the amount of \$45,000, states that no interest is to be paid. The other version states that the note bears interest at 10% (Exhibit 1, pp. 0023, 0024).

19. With the second note, dated May 10, 2002, in the amount of \$32,000, one version states that the note bears interest at the rate of 8% and the other version states no interest is payable. Adhesive notes were stuck to each version of the note. On the "no interest" version of the note, the adhesive note states, "This is the one used for Government Purposes only". On the "interest" version of the note, the adhesive note states "This for our files only. Do not use this for Income to Gov't. Other form to use attached." (Exhibit 1, pp. 0026-0029). Sandra G. testified that Ms. England prepared the promissory notes. She also testified that Ms. England gave her the information for her (Sandra G.) to write on the adhesive notes attached to the promissory notes.

20. Ms. Ho James testified that during a meeting with Ms. England, she questioned Ms. England as to why there were two promissory notes, one with interest and one without. Ms. England told her that the loans were for renovations to her house and she could not write off the interest for business. She said she paid principal and interest payments in cash so Sandra G. did not have to declare the interest as income to Canada Revenue Agency ("CRA").

21. Marius V., through his company, was both a supplier and a client of Ms. England. He supplied computers and computer services to Ms. England. Ms. England became his accountant in 2000. Marius V. testified that neither he nor his company were in the business of lending money. In 2003, Ms. England approached him for a loan, which he gave her. This non interest-bearing loan was repaid within two or three months. She then asked to borrow more money, which he loaned her. This was about 90% repaid, when she asked for additional loans. Several loans and some repayments were made over a period from December 17, 2004 to October 18, 2006 (Exhibit 2, p. 1172). A schedule prepared by the ICAO investigator from Ms. England's records shows that as of October 18, 2006, loans made to Ms. England totalled \$66,070, with a net amount owing to Marius V. of \$39,216 (Exhibit 2 p. 1172). Marius V.'s

records indicate that as of June 18, 2007, the loans made to Ms. England, plus the amounts owed to Mr. V for services rendered and interest charged on his line of credit, were \$83,890.47, with a net amount owing of \$56,290.47 (Exhibit 1, pp. 0052-0054). The difference in the recorded amounts reflected amounts other than the loan principal; the records of both Ms. England and Mr. V. showed the same amount of loans during the relevant period. The panel found that there were loans made to Ms. England by Marius V., or his company, during the period December 17, 2004 to October 18, 2006, the period set out in the charge, totalling \$66,070. The loan balance as of October 18, 2006 amounted to \$39,218.

22. Marius V. testified that Ms. England had a machine that she used for healing. This machine used battery power, and Ms. England wished to have the machine changed to use household electricity. He further testified that, being familiar with electronics, he took the machine, with her consent, to see if he could convert the power source. He was not sure of the value of the machine, nor did he concern himself with its value. He testified that he did not take it as collateral for his loans. He still has the machine. Ms. England's office closed, and he did not know how to get hold of her. He has since been advised not to make contact with Ms. England.

23. Ms. England testified that Marius V. took the machine in 2006 as security for the loans and would not give it back, in spite of her efforts over a two-year period to get it. She said the machine was worth \$35,000, and, as far as she is concerned, she doesn't owe Marius V. anything. In cross-examination, Ms. England acknowledged asking Marius V. to take the machine to put in the converter and then he kept it. Given Ms. England's concession, the panel accepted that the machine was voluntarily given to Marius V. by Ms. England so he could attempt to convert the power supply. Even if the machine had been provided as a partial repayment of the loans, this did not impact on the fact, as found by the panel, that loans were made to Ms. England contrary to the Rule of Professional Conduct prohibiting loans from clients.

24. Mr. Harold R. testified that he engaged Ms. England to do his and his company's income tax returns beginning in 2001. In May of 2003, he was approached by Ms. England for a \$5,000 loan, which he granted. The loan was undocumented – no promissory note, no interest, and no security. Ms. England did not discuss these matters with him. The loan was repaid within a few weeks. Later, she approached him for a loan of \$26,000. The term was supposed to be for three months. No other terms of the loan, such as interest rates or security, were discussed, and Ms. England did not advise him to seek independent counsel. There was nothing in writing to document the loan. It took him eight months to have all but \$4,250 of the principal repaid. This amount of \$4,250 is still unpaid.

25. In mid-September, 2007, Ms. England approached him for a further loan of \$27,000. As he did not have the cash to lend her, he borrowed \$23,500 on his credit card, the maximum credit limit. This loan was to be repaid in two weeks. He put the loan on his credit card because it was easy to do, and he believed he was going to be repaid in two weeks. He testified that Ms. England knew the money was borrowed on his credit card, since she processed the charge to his card through her business (Exhibit 1, p. 0059). As with previous loans, this loan is not documented. The loan remains unpaid.

26. In her testimony, Ms. England admitted borrowing money from clients. She testified that, with respect to loans from Sandra G., she thought she could borrow money from clients as long as she did not have the ability to have a financial impact on, or control the work of, a client, and therefore, since Sandra G. was an income tax preparation client she could borrow money from

her. With respect to Candence H., she testified that she knew she should not borrow money from a client, but thought it was within the rules for the same reason she thought it was for Sandra G. Ms. England said she became aware of Rule 209 [of Professional Conduct] in 2008. Regarding Marius V., she testified she knew it was not proper to borrow from him, but they had a barter arrangement between them generally, and he could take equipment as security.

CHARGES 5 AND 6

27. Charges 5 and 6 are similar in that during the period from September 12, 2005, to June 24, 2007, Dr. A. and Ms. C., husband and wife, and clients of Ms. England, authorized Ms. England to charge their credit cards with income tax instalment amounts on a monthly basis and remit the instalment payments to CRA on their behalf. The agreed statements of facts for both Dr. A. and Ms. C., and the testimony of the ICAO investigator, affirm the facts. The arrangement was facilitated by the fact that Ms. England was able to process credit card charges through her credit card merchant agreement. Funds charged to the credit cards were deposited in Ms. England's business bank account. In Dr. A.'s case, from September 2005, to July 2007, \$44,530 was charged and \$12,500 was paid to CRA, leaving \$32,030 not remitted (Exhibit 2 p. 1170). In Ms. C.'s case, during the same period, \$17,500 was charged and \$6,000 remitted to CRA, leaving \$11,500 not remitted (Exhibit 2, p. 1171). At no time did Dr. A or Ms. C. give Ms. England consent to use the funds for any purpose other than to remit the funds to CRA on their behalf (Exhibits 6 and 7).

28. Ms Ho James prepared a similar schedule for credit card charges to Mrs. C. for the period September 12, 2005 to March 6, 2007, at Exhibit 2, p. 1171. This schedule shows a total amount of \$17,500 charged to Mrs. C's credit card and a total amount remitted to CRA of \$6,000 leaving \$11,500 unremitted. Ms. England admitted that these schedules were accurate, and that funds charged to the credit cards of Dr. A and Ms. C were not remitted to CRA. Ms. England explained that the reason the funds were not remitted is that Julia, one of Ms. England's employees, stopped payment on the remittances. There was no documentary evidence produced to confirm this, and Julia was not called to testify. In these circumstances, and given that it does not change the fact that Ms. England did not meet the obligation to remit these monies, the panel gave no weight to this explanation.

CHARGE 9

29. Charge 9 alleges that Ms. England failed to complete client engagements and respond to the needs of her clients on a timely basis. Marius V. testified that, as part of her engagement, Ms. England undertook to prepare and file the corporate income tax returns of his company on a timely basis. From 2003 to 2006, this was not done. He first found out that the returns were not filed when he was contacted by CRA by telephone. He contacted Ms. England, and she advised him not to worry and that she would take care of it. His wife confronted Ms. England about the matter and was told not to worry about it, and that the confusion was at the other end (meaning CRA). As of June 6, 2007, CRA did not have the 2003 – 2006 Corporation Income Tax Returns (Exhibit 1, p. 0056).

30. Regarding Harold R., correspondence directly from CRA to the Institute of Chartered Accountants of Ontario, dated July 29, 2009, reported that tax returns had not been filed for three companies of which Harold R. was a director. Tax returns for the first company had not been filed for the years 2004 to 2008; tax returns for the second company had not been filed for the years 2003 to 2008; and, tax returns for the third company had not been filed since the date of incorporation, October 17, 2002 (Exhibit 1, p. 0062). The Institute's investigator requested

proof of filing of these returns from Ms. England, but no proof was produced (Exhibit 18). Harold R. testified that he had engaged Ms. England in 2001 to do income tax returns for himself and his company.

31. Brian C. testified that he had engaged Ms. England in 1992 to do tax returns for himself, his family and his company. The engagement ceased in 2007 or 2008. He was not certain of the date. In a letter from the Ontario Ministry of Finance dated May 27, 2009, he was advised that corporate income tax returns had not been filed for the years ended July 31, 2005 to 2008 (Exhibit 1 p. 0065). When he contacted her, Ms. England insisted she had filed the returns. He then requested the return of all of his documents and records in Ms. England's possession (Exhibit 1, p.0081). It took two or three months to get back all his documents (Exhibit 13). His new accountant prepared and filed the tax returns for 2005-2008.

32. Mr. Shaun Power, CA., a partner in Deloitte & Touche, testified that he was engaged by Dr. G. and his wife in 2007 to do corporate and individual tax filings. He wrote the normal courtesy letter to Ms. England inquiring about circumstances he should take into consideration in accepting the engagement. He made several attempts to contact her to obtain information regarding the financial affairs of Dr. and Mrs. G. He learned from CRA and the Ontario Ministry of Finance that Dr. G.'s company and his wife's company were delinquent in filing income tax returns for 2006. He testified that he never did receive any information from Ms. England. He identified the document at Exhibit 1, page 66, as a photocopy of his administrative assistant's calendar for December 2007. That calendar notes six appointments that Ms. England either cancelled or did not attend at Deloitte's office. On August 20, 2009, three boxes of clients' records belonging to three physicians, who were former clients of Ms. England, were delivered to Deloitte's office. Among the records were some belonging to Dr. G.; however, there were no copies of income tax returns among the records. Ms. England did not contest Mr. Power's testimony.

33. The agreed statements of facts for both Dr. A. and Ms. C., (Exhibits 6 and 7), state that Ms. England was engaged to prepare the 2006 and 2007 income tax returns for both of their respective companies. The agreed statement of facts of Mr. Ken Kapy, CA, the successor accountant for both Dr. A. and Ms. C. (Exhibit 8) states that in May, 2008, Mr. Kapy confirmed with CRA that the 2006 and 2007 corporate returns of their respective companies had not been filed.

34. Paragraph 7 of Exhibit 8 details Mr. Kapy's many attempts to contact Ms. England from March 28, 2008 to October 8, 2009, to obtain information and records of Dr. A's and Ms. C.'s companies. A number of documents were received from Ms. England on September 1, 2010 (Exhibit 7, paragraph 9).

35. Ms. England testified that she was engaged to file the 2006 tax returns of Dr. A.'s and Ms. C.'s companies. She was sure the 2006 returns were filed. The 2007 returns were not filed since the engagement was terminated.

36. Ms. England testified that she became aware of the problem of filed income tax returns not being accepted by CRA in the fall of 2007 when she began to receive notices of default from them. Later she began to receive default notices from CRA for returns filed for 2005. She did not understand why returns, which had been delivered to CRA's office, were not being accepted. Sometime in 2007, she learned that in 2005 the company producing the income tax software had been bought out and that the version of the software being used by Ms. England was not to be used for returns filed after October 15, 2005. Upon discovery of the problem, she

contacted all her clients to advise them of the problem. She testified that she made everyone aware of this problem.

37. Mr. Lane called Ms. Linda Klassen as a witness. Ms. Klassen was an employee of Ms. England from August 2002 to September 2008 (when Ms. England's office closed down). She identified Exhibit 14 as a copy of a schedule that she started when default notices from CRA started to come in to the office. The first entry shows the recorded date of the default notice as September, 2008 for a December 31, 2004 year end. She completed the schedule up to the entry of August 2006, but does not know who entered subsequent information, where the format of the schedule changed. The schedule lists a total of 47 returns that were rejected by the income tax authorities. She identified a number of returns that she remembers delivering to CRA's office. She stated that she personally delivered 90% to 95% of the returns prepared by Ms. England to CRA's office and got the front page of a copy of the tax return date stamped by the receptionist at CRA who received the return. A copy of this stamped page was filed in a 3 ring binder, which was kept at her desk.

38. Ms. England testified that among her client files, she was able to find photocopies of the first page of clients' tax returns with the CRA or Ministry of Finance receipt stamp for companies of Dr. A., Ms. C., Marius V., and Brian C. These were submitted as evidence. Exhibit 12A shows the first pages of the federal and provincial returns of Dr. A.'s company for 2004, 2005, and 2006, and first pages of the federal returns for Ms. C.'s company for 2003, 2004, and 2005, as well as for the provincial tax returns for 2003 and 2004. Exhibit 12B shows the first pages of the federal and provincial returns for Marius V.'s company for 2004 and 2005. Exhibit 12C shows the first pages of the federal and provincial returns of Brian C.'s company for 2003, 2004, 2005, and 2006.

39. Ms. Ho James testified that it was necessary for her to have a copy of the page with the original tax office receipt stamp because CRA required this original stamped copy to confirm that the return had been delivered to their office.

40. The panel accepted the evidence of Ms. England and Ms. Klassen that tax returns were delivered to the tax offices of CRA and Ministry of Finance. Ms. Ho James required the original stamped document from the tax office to establish delivery. This requirement might be required by the tax authorities to establish proof of delivery, but this panel was satisfied that photocopies of the stamped document provided sufficient proof of delivery. The panel concluded that there is a difference between returns being delivered to the tax authorities and being considered filed. Based on all of the evidence, the panel concluded that, on the balance of probabilities, tax returns of the corporations which were the subject of Charge 9 were delivered to CRA and the Ministry of Finance. The panel accepted the evidence of Ms. England and Ms. Klassen on this point. The panel concluded that the returns that were delivered to CRA and the Ministry of Finance were prepared using outdated software and were not accepted as filed returns by CRA and the Ministry of Finance, hence the tax authorities considered the returns not to have been filed.

CHARGE 10

41. Charge 10 alleges Ms. England failed to cooperate with Institute officials or agents during the period April 1, 2009 to December 3, 2009 in connection with an investigation on behalf of the Professional Conduct Committee. Ms. Ho James, the Institute's investigator, provided testimony respecting this charge. Exhibit 2, comprising 173 pages, contains handwritten notes, transcripts of interview notes, correspondence with Ms. England and

schedules of information obtained from Ms. England and schedules of information requested and not provided to Ms. Ho James.

42. The evidence shows a number of instances where documents were requested, promised to Ms. Ho James by Ms. England, and not delivered. For example, among other things requested of Ms. England, Ms. Ho James requested proof of filing income tax returns for clients in her letter dated April 28, 2009. The letter states that Ms. Ho James first asked Ms. England for proof of filings on March 19, 2009. At a meeting with Ms. Ho James on March 24, 2009, Ms. England still had not produced the proof of filings requested. Ms. England undertook to provide the proof on April 7, 2009, but failed to do so. On April 15, 2009, Ms. Ho James provided Ms. England with an updated list. Ms. Ho James spoke with Ms. England on April 20, 2009. Ms. England said she would send the proof of filings by April 27. As of April 28, 2009, Ms. Ho James had not received the proof of filings. Ms. Ho James also advised Ms. England of Rule of Professional Conduct 203.2; "You are reminded that members are required by Rule 203.2 to cooperate with investigators appointed by the PCC. A continued failure to provide information will be reported to the PCC." (Exhibit 2, pp. 1125, 1126).

43. In her testimony, Ms. Ho James reviewed her attempts to obtain information from Ms. England, and to have Ms. England return client information to the appropriate client. To this end, Ms. Ho James prepared a schedule showing the chronology of her attempts to obtain information from Ms. England for the period April 7 to November 10, 2009 (Exhibit 2, pages 1162 to 1165). During this period, Ms. England failed to meet deadlines, or extended deadlines, for the production of information eight times, failed to meet her commitment to return client information two times, and cancelled or did not attend appointments four times.

44. In cross-examination, Ms. Ho James testified that Ms. England never refused to answer questions or refused to provide documents requested. She said that Ms. England provided substantial documents, but not all that were requested. When the investigation had begun, Ms. England told her that she had been evicted, her records had been haphazardly thrown in storage sheds and she did not have access to the records. When she got access to the records in 2009, Ms. England found them in a big mess. She had to spend time organizing them. Ms. Ho James accepted the explanation. She testified that Ms. England provided some evidence of tax filings, but not all that were requested. She also said that Ms. England offered photocopies of the proof of filings, but that she wanted original copies of the documents and that Ms. England had trouble obtaining originals.

45. Ms. England testified that she could not dispute the chronology. She acknowledged receiving correspondence from Ms. Ho James, which set out the information Ms. Ho James required to conduct her investigation. She testified that the reasons she was unable to meet the deadlines and commitments were that she was involved in two court cases and was preparing for trial. She was getting information for her counsel and reviewing it with him. She also spent time in the storage units sorting out client records and enlisted friends to help her. During this period, she also did client work to support herself.

46. Dr. Gary A. Chaimowitz, a psychiatrist, testified on Ms. England's behalf. Ms. England's counsel chose to have Dr. Chaimowitz testify before a finding in order to speak to a possible connection between alleged misconduct and her mental state. The written report prepared by Dr. Chaimowitz was entered in evidence (Exhibit 9). Dr. Chaimowitz testified that he obtained his information for his report from Mr. Lane and his three interviews with Ms. England. His report contains a copy of the PCC charges against Ms. England, background information, social, family, medical, and past psychiatric history, medical status examination, and his

impression of Ms. England. His report states that Ms. England understood the purpose of the assessment and that there was no doctor-patient relationship.

47. Dr. Chaimowitz reviewed his report. He testified that Ms. England had had a very difficult adulthood from a medical, family, social, and business career point of view. Dr. Chaimowitz's impression of Ms. England is that she "is a very determined, dramatic and somewhat disorganized individual who managed a series of professional relationships with 'tough' clients." (Page 9). He goes on to report, "[w]ith her various physical illnesses and injuries, combined with the ongoing stress of regular Revenue Canada audits, her ability to manage the disparate group of clients deteriorated." (Page 9). "It is likely that when she got into some difficulties with some of her clients, she reached a point where she was not able to manage the deteriorating situation and she began to manifest some significant emotional/psychological distress." (Page 9).

48. Dr. Chaimowitz's report states, "In my opinion, Ms. England does not suffer from a major psychiatric disorder. She may have some characterological difficulties that tend towards the overconfident and dramatic. These character traits likely amplified under the stress that I have described, and may well have driven some of her poor decision-making leading to the charges against her." (Page 9). He goes on to state that he believes she would benefit from regular therapy to manage and control her emotions, professional, and personal obligations and tasks, and her job. He states she may also benefit from medication to control her mood and focus on her tasks and smaller client base. "This type of intervention is possible and could contribute to this professional enjoying appropriate and cautious work in her chosen field." (Page 10). He concludes by saying "I think the likelihood of her reoffending, if she were to continue with a regular psychotherapeutic monitoring and support of once per week or once every two weeks, would be low. In addition she might need some guidance in regulating her practice." (Page 10).

49. In her testimony, Ms. England set out the chronology of her practice and financial downfall. The panel had no doubt that her personal, family, practice, and financial problems were the cause of her difficulties. There were medical and family problems, non-paying clients, difficult clients from which she resigned without receiving compensation for work done, and renovation costs to her home/office building (she lived and worked in the same property) over several years, culminating in her home/office building being seized in mid-September 2008 because she defaulted on her mortgage payments.

50. She was evicted from her home/office. For a short time after her eviction she was given limited access to her office and records. Finally, her office and client records were removed by a bailiff, taken to unheated storage units and haphazardly thrown in these units. She was unable to find out the location of her records until late December 2008. Records were moved to another storage facility, and she then began to sort out the records. This was an enormous task. She testified that this upheaval was the cause of her inability to return client records and provide necessary information to the successor accountants on a timely basis. Evidence was presented showing photographs of the records in disarray at the storage facility.

51. Ms. England admitted that she began defaulting on her mortgage payments in May of 2008, and continued into the summer. Even up to the day the property was seized in September, she was hopeful that refinancing would occur and that the property would be redeemed.

FINDING

52. After considering the evidence, and submissions made by counsel, the panel made the following decision:

THAT, having heard the plea of guilty to Charge Nos. 1, 2, 3, 4, 5, 6, 7 and 8, Charge No. 2 having been amended at the commencement of the hearing on consent of the parties, and having seen, heard and considered the evidence, the Discipline Committee finds Joanne Lillian England guilty of Charge Nos. 1, 3, 4, 5, 6, 7, 8, 9 and 10.

The Discipline Committee dismisses Charge No. 2.

REASONS FOR FINDING

53. Before reaching its decision, the panel carefully considered all of the evidence before it in determining whether, on the balance of probabilities, Ms. England was guilty of the charges of professional misconduct. The evidence was clear, cogent and compelling. Based on the facts as determined by the panel, as well as the guilty pleas to Charges 1 to 8, the panel found Ms. England guilty of all of the charges, except for Charge No. 2, which was dismissed.

54. Charge No. 2 was dismissed since the panel found that it was a duplicate of Charge No. 1 and arose from the same facts.

55. Regarding Charges 1, 3, 4, 7 and 8, the panel found the evidence overwhelming in proving the charges. The evidence of witnesses, Ms. England's admission of guilt to the charges, and her admission that she borrowed money from her clients proved the charges beyond the necessary standard of a balance of probabilities.

56. With respect to Charges 5 and 6, the panel found that Ms. England had taken money from Dr. A. and Ms. C. for her own purposes. The evidence clearly demonstrated that many charges to the credit cards of Dr. A. and Ms. C. were deposited to Ms. England's business bank account and were never paid to CRA in accordance with the arrangements made with these two clients. Ms. England did not disagree with the amounts compiled by the Institute's Investigator (Exhibit 2, pp. 1170, 1171). Because client funds were deposited to Ms. England's business bank account, they were available to the bank to satisfy her bank loan and overdraft obligations.

57. With respect to Charge 9, the panel found that Ms. England undertook to file income tax returns of clients. The income tax authorities did not accept, as filed, returns she prepared and delivered to the tax authorities because she used income tax preparation computer software that was out of date. Income tax authorities refused to acknowledge receipt of these income tax returns and sent tax filing default notices. Ms. England failed to investigate the cause of these default notices on a timely basis to determine the reason (or reasons) for the notices. She did not communicate with the tax authorities to determine the reason for the rejections. She assumed both the Provincial and Federal tax authorities were mistaken. It is the view of the panel that Ms. England should have investigated and rectified the cause of the plethora of "failure to file" notices, especially since she was certain she or her staff had delivered the returns to the tax offices.

58. As part of her investigation, Ms. Ho James requested original copies of the first page of the income tax return with the CRA date stamp as proof that the income tax return had been

filed. Ms. England produced photocopies of these documents rather than the document with the actual CRA stamp, and this was not satisfactory to Ms. Ho James. The panel concluded that photocopies of these date stamps were sufficient proof that the stamp was genuine. However, in the panel's view, Ms. England's failure to investigate the cause of the rejected returns on a timely basis resulted in her failing to complete these engagements and, consequently, constituted professional misconduct.

59. Another aspect of Charge 9 involved a failure to respond to clients' needs for the orderly transfer of clients' records and information to successor accountants. The evidence, as outlined above, indicated that in two cases it took about one and one half years for these clients to have their records returned. In addition, Ms. England did not reply to courtesy letters within an appropriate time frame. Undertakings to provide information were not fulfilled as promised. The panel felt that her lack of communication and failure to adhere to commitments to provide information was, in itself, sufficient to find her guilty of the charge.

60. Ms. England contended, in effect, that the removal of her belongings from her office and their subsequent disarray justified her failure to cooperate. While this explains why it happened, it did not justify that failure. The panel found that this situation arose because Ms. England did not take sufficient care to ensure the safeguarding of client property. She began defaulting on mortgage payments in the spring of 2008. This default continued into the summer, and she knew she might lose her property. It should not have come as a surprise. During this time, she could have made storage arrangements and moved client records out in an orderly fashion or returned them to their owners. These events were the cause of her problems, but the consequences could have been avoided had she recognized her dire financial predicament sooner.

61. Ms. Ho James testimony regarding Charge 10 included a review of correspondence sent to Ms. England requesting information and documents. The receipt of this correspondence during the relevant period was not disputed by Ms. England. Ms. England undertook to provide information by specified dates and did not meet these deadlines, nor did she meet extended deadlines. In addition, she undertook to provide the PCC with information by a specified deadline and this was missed. New deadlines for providing documents and information were agreed to, and these were missed. Ms. Ho James warned her of the consequences of failing to provide information on a timely basis. The time frame for the charge of failure to cooperate began about six months after Ms. England was evicted and continued for an eight-month period after that, ending on the day charges were laid. Throughout this time, Ms. England failed to give the investigation sufficient priority to be considered the level of cooperation expected of a chartered accountant with her governing body.

SANCTION

62. Neither the Professional Conduct Committee nor Ms. England provided additional evidence with respect to sanction.

63. The Professional Conduct Committee sought a sanction of: a written reprimand; a fine in the amount of \$10,000; expulsion; and full publicity in accordance with the Institute's bylaws. It also sought 50% of the costs of the investigation and hearing, and filed a Costs Outline (Exhibit 19) detailing a total of just over \$40,000, of which \$20,000 was the amount requested.

64. In his submission, Mr. Bellmore characterized the offences as ones of integrity and governability. He reviewed the charges and evidence leading to a guilty finding on nine of the

ten charges. He characterized Ms. England's actions as those that served herself at the expense of her clients. She took advantage of her clients by knowing their financial situation and did not take steps to protect their interests. She misappropriated money from clients, and she falsified documents. She failed to protect her clients' property, did not complete clients' work in a timely fashion and failed to cooperate with the PCC investigation. He pointed out that the borrowing from clients were not isolated incidents, but occurred over a ten-year period. Ms. England is not an inexperienced practitioner; she is an experienced chartered accountant. He stated that Dr. Chaimowitz's evidence should be of no significance, since he accepted Ms. England's information without attempting to verify it. He did no psychiatric testing of Ms. England. Mr. Bellmore emphasized the importance of specific and general deterrence in the expulsion and fine sanction being sought. He also stated Ms. England would have the right to apply for readmission to membership once she has taken steps to rehabilitate herself. He said that the costs being sought reflect the time taken in preparing for a full hearing.

65. Mr. Caplan, Ms. England's counsel, submitted that the allegations were serious. He spoke of her contrition by pleading guilty to eight of the ten charges at the beginning of the hearing. This admission is an acknowledgement of her wrong-doing. Her medical problems were documented by Dr. Chaimowitz. He stated that Dr. Chaimowitz was under no obligation to verify the statements given to him by Ms. England. He was a psychiatrist, and not a lawyer. His report was prepared on the basis of information given to him by Ms. England. The difficulties Ms. England encountered were not insignificant. Mr. Caplan emphasized that an appropriate suspension of Ms. England's membership would enable Ms. England to rehabilitate herself. He stated the possibility of redemption should be looked at. He submitted that Ms. England's problems occurred over a 10 to 15 year period. Her current difficulties could be handled with therapy and, possibly, medication. He submitted that a sanction of suspension with an order requiring her to seek psychiatric help to deal with her stress and requiring periodic progress reports of her psychiatric therapy would be appropriate in this situation. He stated that something less than "execution", but significant nonetheless, should be considered by the panel. He suggested that she needs help with her organizational skills, and that Ms. England was not in a position to help herself through her crisis. Regarding the deterrence factor, he submitted that Ms. England had already incurred a loss of her reputation, and that there is a question as to whether she would be capable of carrying on practice in the future as a result.

ORDER

66. After ensuring all submissions had been heard, and after deliberating, the panel made the following order:

IT IS ORDERED in respect of the charges:

1. THAT Ms. England be and she is hereby fined the sum of \$10,000 to be remitted to the Institute within twenty-four (24) months of the date this Decision and Order becomes final under the bylaws.
2. THAT Ms. England's membership in the Institute be and it is hereby revoked.
3. THAT notice of this Decision and Order, disclosing Ms. England's 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 all members of the Institute;

- (b) to all provincial institutes/Ordre, and shall be made available to the public.
4. THAT notice of the membership revocation, disclosing Ms. England's name, be given by publication on the Institute's website, and in a newspaper distributed in the geographical area of Ms. England's employment and/or residence. All costs associated with the publication shall be borne by Ms. England and shall be in addition to any other costs ordered by the committee.
5. THAT Ms. England surrender her 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.

AND IT IS FURTHER ORDERED:

6. THAT Ms England be and she is hereby charged costs fixed at \$20,000 to be remitted to the Institute within twenty-four (24) months from the date this Decision and Order becomes final under the bylaws.

REASONS

67. The panel did not order a written reprimand since revocation of membership is the severest form of censure that can be imposed on a member, and the written reprimand would not add significantly to the sanction imposed.

68. The fine of \$10,000 is significant and was imposed as both a specific and general deterrent. Its significance reflects the seriousness of the transgressions Ms. England is guilty of. Given Ms. England's circumstances, it may be difficult for her to pay it, which is why she was given twenty-four months to pay

69. As noted above, Mr. Caplan, in his submissions, acknowledged the seriousness of Ms. England's transgressions and emphasized that an appropriate membership suspension would enable Ms. England to rehabilitate herself. He said that the possibility of redemption should be looked at. He also suggested that a requirement of psychiatric and/or drug therapy might also be appropriate. The panel considered this submission carefully and rejected suspension as not being appropriate to reflect the seriousness of the offences committed.

70. Ms England borrowed significant sums of money from four clients over a ten-year period. She did this without giving them any advice or suggesting they get independent advice regarding the suitability or terms and conditions of the loans. She ought to have known the Institute's Rules of Professional Conduct prohibit such loans. Even after becoming aware of the infractions, she did not take steps to remedy the wrongdoing. In approaching clients for loans, she took unfair advantage of them since she knew their financial position. They trusted her and relied on her integrity as a chartered accountant. The loans have not been fully repaid causing loss to these clients. She misappropriated money from her clients. In doing so, she breached the trust her clients placed in her as a chartered accountant and put her own interests ahead of her clients. She prepared documents for the purpose of misleading income tax authorities. These are all very serious offences and show a lack of integrity. In addition to these offences, her lack of professional conduct in failing to provide services she had undertaken to perform and her lack of cooperation with the PCC investigation show that she is not capable of being

governed by a professional body. The panel concluded that the offences summarized in this paragraph were of such a serious nature that Ms. England's membership in the Institute must be revoked to adequately address the need for general deterrence and the protection of the reputation of the profession in the eyes of the public.

71. The publication of Ms. England's name serves to inform the membership and the public that Ms. England is no longer a member of the Institute. For the membership of the Institute, it serves as a deterrent. Publication in a local newspaper serves to protect the public by informing her community that she is no longer a chartered accountant.

72. The certificate of membership is the property of the Institute and is provided to the member as proof of her membership. Since Ms. England will no longer be a member, it is inappropriate for Ms. England to retain a document stating that she is. Therefore, the certificate is to be returned to the Institute.

73. The panel is aware that costs are not imposed as a sanction, but as a partial indemnity for the costs of the investigation and prosecution. In this case, costs of the investigation and prosecution have been substantial. The PCC submitted that Ms. England should be assessed one-half of the costs. Mr. Caplan did not address the issue of costs in his sanction submission. The panel accepted the submission of the PCC and, anticipating her financial position, gave Ms. England 24 months to pay.

DATED AT TORONTO THIS 19TH DAY OF APRIL, 2011
BY ORDER OF THE DISCIPLINE COMMITTEE



A.D. NICHOLS, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

J.B. BARRACLOUGH, FCA
R.H. CARRINGTON (PUBLIC REPRESENTATIVE)
C. DANCHUK, CA
S.J. HOLTUM, CA