

## **Raymond Eng: Summary, as Published in *CheckMark***

**Raymond Eng**, of Richmond Hill, was found guilty of a charge under Rule 104 of failing to promptly reply in writing to correspondence from the Institute in respect of a matter of professional conduct. The charge arose out of Mr. Eng's failure to respond to a standards enforcement enquiry in respect of a complaint received from a member of the public. After being charged, but prior to the hearing, he provided his response. Mr. Eng was fined \$1,000.

## **CHARGE(S) LAID re Raymond Eng**

The Professional Conduct Committee hereby makes the following charge against Raymond Eng, CA, a member of the Institute:

1. THAT, the said Raymond Eng, in or about the period August 10 to September 28, 1999, failed to promptly reply in writing to a letter dated August 10, 1999 from the director of standards enforcement of the Institute in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.

Dated at Toronto this 28<sup>th</sup> day of September, 1999.

UWE MANSKI, FCA – DEPUTY CHAIR  
PROFESSIONAL CONDUCT COMMITTEE

## **DISCIPLINE COMMITTEE re Raymond Eng**

**DECISION AND ORDER IN THE MATTER OF:** A charge against **RAYMOND ENG, CA**, a member of the Institute, under **Rule 104** of the Rules of Professional Conduct, as amended.

### **DECISION AND ORDER MADE JANUARY 17, 2000**

#### **DECISION**

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Raymond Eng guilty of the charge.

#### **ORDER**

IT IS ORDERED in respect of the charge:

1. THAT Mr. Eng be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Eng be and he is hereby fined the sum of \$1,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. Eng's name, be given after this Decision and Order becomes final under the bylaws:
  - to the Public Accountants Council for the Province of Ontario;
  - to the Canadian Institute of Chartered Accountants; and
  - by publication in *CheckMark*.
4. THAT in the event Mr. Eng fails to comply with paragraph 2 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 this three (3) month period, 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 by publication in *The Globe and Mail*.

DATED AT TORONTO THIS 24TH DAY OF JANUARY 2000  
BY ORDER OF THE DISCIPLINE COMMITTEE

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

## **DISCIPLINE COMMITTEE re Raymond Eng**

**REASONS FOR DECISION AND ORDER IN THE MATTER OF:** A charge against **RAYMOND ENG, CA**, a member of the Institute, under **Rule 104** of the Rules of Professional Conduct, as amended.

### **REASONS FOR THE DECISION AND ORDER MADE JANUARY 17, 2000**

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on January 17, 2000 to hear evidence concerning a charge brought by the professional conduct committee against Raymond Eng, CA. The professional conduct committee was represented by Ms. Deborah McPhadden, who was accompanied by her witness Ms. Joanna Maund, the Institute's director of standards enforcement. Mr. Eng was present at the hearing, and was represented by Ms. Christine O'Donohue.

The hearing concluded on January 17, and the panel's decision and order was issued on January 24, 2000. These reasons, issued in writing pursuant to Bylaw 574, contain the panel's decision and order, and the charge laid by the professional conduct committee, as well as the reasons of the panel.

### **DECISION ON THE CHARGE**

The charge laid by the professional conduct committee against Mr. Eng read as follows:

1. THAT, the said Raymond Eng, in or about the period August 10 to September 28, 1999, failed to promptly reply in writing to a letter dated August 10, 1999 from the director of standards enforcement of the Institute in which a written reply was specifically required, contrary to Rule 104 of the rules of professional conduct.

Mr. Eng pleaded not guilty to the charge.

Ms. Maund testified on behalf of the professional conduct committee, and in her testimony made reference to documents contained in a document brief filed as an exhibit. Mr. Eng testified on his own behalf.

There were few, if any, disputes between the parties with respect to the facts of the case, which makes it relatively easy to set out the relevant facts in a summary fashion:

June 30, 1999	A complaint was received by the Institute from a couple who had been clients of Mr. Eng.
July 6, 1999	A letter was sent by Ms. Maund to Mr. Eng, enclosing the complaint letter, and requesting Mr. Eng's response by July 26, 1999. The letter advised Mr. Eng that as a self-regulating body, the Institute had a duty to investigate complaints and allegations of professional misconduct.
July, 1999	Mr. Eng met with one of the two clients during the month of July 1999, and returned the couple's personal income tax records. The records of

the clients' bankrupt corporation were not returned.

- August 10, 1999 Ms. Maund sent another letter to Mr. Eng, requesting that he reply by August 30, 1999, and advising that failure to do so would result in the referral of the matter to the professional conduct committee, which in turn could result in the laying of a charge or charges of professional misconduct.
- September 1, 1999 Mr. Eng called Ms. Maund and asked for a ten day extension to file his response to her August 10 letter. The extension was granted. Both Ms. Maund and Mr. Eng in their testimony before the panel described their telephone conversation as pleasant and "between professionals". They did not discuss the nature of the complaint, the return by Mr. Eng of his clients' records in July 1999, or the consequences to Mr. Eng of not responding in writing to Ms. Maund's letter within the ten day extension period.
- September 28, 1999 The charge under Rule 104 was laid against Mr. Eng by the professional conduct committee.
- November 16, 1999 Mr. Eng faxed a letter to Ms. Maund advising that all of the clients' personal tax information had been returned to them in July 1999. Upon questioning by the panel, Mr. Eng acknowledged that he was still in possession of certain corporate records of the clients.
- November 23, 1999 The professional conduct committee met, and decided not to withdraw the charge against Mr. Eng.
- December 15, 1999 Assignment hearing of the discipline committee at which this hearing date was set.
- January, 2000 Ms. Maund forwarded Mr. Eng's response letter of November 16, 1999 to Mr. Eng's clients (the response had not been sent to the clients in November 1999 due to an administrative oversight). As at the date of the hearing, the investigation into the complaint had not been concluded.

In essence, Mr. Eng's defence to the charge was that his conduct did not amount to professional misconduct because:

- he had responded to Ms. Maund's letter of July 6, 1999 in spirit, by meeting with his clients in July and dealing with the substance of their complaint;
- his failure to respond to the letter of July 6, and to the letter of August 10, 1999, as requested, were technical or administrative oversights, much like the failure of the Institute's standards enforcement area to send a copy of his November 16, 1999 letter to his clients;
- Mr. Eng had not fully understood the consequences of failing to reply to letters from the director of standards enforcement in respect of a complaint received against him, and that this lack of understanding was

not clarified during his telephone discussion with Ms. Maund in which she granted him the extension to respond; and

- during the summer of 1999 he was very busy in his professional practice of providing the accounting services to his wife's law firm, which at the time was experiencing serious staff problems.

There are difficulties with this defence. Mr. Eng's failure to respond was a failure over many weeks, not just during a brief, hectic time. The letter of August 10 from the director of standards enforcement was very clear with respect to the consequences of a failure to respond. The member's meeting with one of the clients may well have been an appropriate thing to do, though it is not clear beyond doubt that the clients' concerns have been resolved. In any event, Mr. Eng's attempt to remedy matters directly with his clients cannot absolve him of his obligations to his governing body. Responding to the Institute when a response is specifically required under the rules is not an administrative or technical matter, and must not be treated lightly, or ignored altogether.

Mr. Eng had met with his client prior to his asking for an extension of the time to respond to the standards enforcement letter. There can be no doubt that he knew he was required to respond to that letter. He initiated the phone call to ask for the extension, and then, after receiving it, still failed to respond.

Mr. Eng was found guilty of the charge. The decision read:

### **DECISION**

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Raymond Eng guilty of the charge.

### **ORDER AS TO SANCTION**

After hearing submissions from the parties on the issue of sanction, the panel deliberated, and made the following order:

### **ORDER**

IT IS ORDERED in respect of the charge:

1. THAT Mr. Eng be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Eng be and he is hereby fined the sum of \$1,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. Eng's name, be given after this Decision and Order becomes final under the bylaws:
  - to the Public Accountants Council for the Province of Ontario;
  - to the Canadian Institute of Chartered Accountants; and
  - by publication in *CheckMark*.
4. THAT in the event Mr. Eng fails to comply with paragraph 2 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 this three (3)

month period, 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 by publication in *The Globe and Mail*.

In considering the appropriate sanction, the panel considered the three general principles of sentencing, namely rehabilitation, general deterrence and specific deterrence. The panel concluded that this experience with the discipline process will itself specifically deter Mr. Eng from similar conduct in the future. It appeared that he had already been at least partially rehabilitated, as he did reply to Ms. Maund's letter of November 16, 1999, after the charge was laid. Mr. Eng should realize that similar conduct on a future occasion will result in a sanction more serious than the one imposed in this case. In fashioning the order, the panel was primarily concerned with general deterrence.

### **Reprimand**

The panel believes that a reprimand in writing from the chair of the hearing stresses to Mr. Eng the unacceptability of his conduct as a chartered accountant.

### **Fine**

The professional conduct committee submitted that a fine should be levied against Mr. Eng in the amount of \$2,000. The panel agreed that a fine was appropriate in this case, both as a general deterrent to like-minded members, and as a demonstration to the public of the profession's intolerance of the type of behaviour exhibited by Mr. Eng. His failure to respond to the Institute about the complaint against him lodged with the Institute was inappropriate and unacceptable. However, as he ultimately responded to the letter from Ms. Maund prior to the commencement of the hearing, the panel determined that a lower fine of \$1,000 was a sufficient deterrent in this case.

### **Notice**

The giving of notice of the discipline committee's decision and order, disclosing Mr. Eng's name, is, in the opinion of the panel, a general deterrent. It is the discipline committee's responsibility to ensure that members of the profession and the public are made aware that failure on the part of members to cooperate with the regulatory processes of the Institute will result in the imposition of serious sanctions.

### **Expulsion for Failure to Comply**

An order without consequences for failure to comply with its terms could well be meaningless. Accordingly, it was ordered that in the event Mr. Eng fails to comply with the order, he will be expelled from the Institute, and notice of his expulsion will be published in *The Globe and Mail* newspaper, pursuant to Bylaw 575(3).

DATED AT TORONTO THIS            DAY OF MARCH, 2000  
BY ORDER OF THE DISCIPLINE COMMITTEE

M. BRIDGE, CA – DEPUTY CHAIR  
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

H.B. BERNSTEIN, CA  
J.M. MULHALL, CA  
S.W. SALTER, CA  
R.D. WHEELER, FCA  
J.T. ANDERS (Public representative)