

Notice of Suspension In the Matter of Charges Laid Against Michael Rosenfelder, FCIA

In accordance with the Bylaws of the Canadian Institute of Actuaries (CIA)¹:

1. The Committee on Professional Conduct laid charges against a member of the Institute, Michael Rosenfelder, domiciled in Toronto, Ontario. Mr. Rosenfelder no longer practices as an actuary.
2. These charges arose in connection with his appointment as the Valuation Actuary and the Appointed Actuary, under the *Insurance Companies Act* at Confederation Life Insurance Company from 1982 to 1994. The Superintendent of Financial Institutions took control of the company in August 1994. The then Committee on Discipline filed a complaint against Mr. Rosenfelder on November 10, 1994 and an Investigation Team was appointed.
3. The Investigation Team completed its lengthy investigation in September 2000 and the report was referred to Mr. Rosenfelder for his review and comment.
4. Subsequent to considering Mr. Rosenfelder's reply to the Investigation Team's report, the Committee on Professional Conduct (CPC) of the CIA laid charges against Mr. Rosenfelder on December 4, 2001. A Disciplinary Tribunal was appointed to hear the charges. The members of the Disciplinary Tribunal were the Honourable Patrick T. Galligan, formerly a justice of the Court of Appeal for Ontario; Messrs. Richard Bisson, FCIA, and René Trudeau, FCIA.
5. The charges read as follows:
 1. *Mr. Rosenfelder, in his reports to Confederation Life's Audit Committee in 1992 and/or 1993, failed to comply with the Standard of Practice on Dynamic Solvency Testing for Life Insurance Companies then in force and, in doing so:*
 - a. *Mr. Rosenfelder contravened Bylaw 67, as this Bylaw existed after March 4, 1992 (amended to become existing Bylaw 21.01 on November 20, 1996); and/or*
 - b. *Mr. Rosenfelder failed to act in a manner to fulfil the profession's responsibility to the public, thereby violating Rule 1 of the present Rules of Professional Conduct, as these rules have existed since June 7, 1992; and/or*
 - c. *Mr. Rosenfelder failed to perform professional services with integrity, skill and care, thereby violating Rule 2 of the present Rules of Professional Conduct, as these rules have existed since June 7, 1992; and/or*
 - d. *Mr. Rosenfelder failed to ensure that the professional services he performed or that were performed under his direction met the applicable standards of practice, thereby violating Rule 4 of the present Rules of Professional Conduct, as these rules have existed since June 7, 1992.*

¹ All references to the Rules of Professional Conduct are as the Rules existed prior to July 1, 2003.

2. *Mr. Rosenfelder, in his Report of the Actuary contained in the financial statements of Confederation Life for the year ended December 31, 1993, failed to adequately qualify his opinion concerning the company's financial position and/or failed to comply with the Standard of Practice for The Appointed Actuary's Report for Insurance Company Published Financial Statements then in force and, in doing so:*
 - a. *Mr. Rosenfelder contravened Bylaw 67, as this Bylaw existed after March 4, 1992 (amended to become existing Bylaw 21.01 on November 20, 1996); and/or*
 - b. *Mr. Rosenfelder failed to act in a manner to fulfil the profession's responsibility to the public, thereby violating Rule 1 of the present Rules of Professional Conduct, as these rules have existed since June 7, 1992; and/or*
 - c. *Mr. Rosenfelder failed to perform professional services with integrity, skill and care, thereby violating Rule 2 of the present Rules of Professional Conduct, as these rules have existed since June 7, 1992; and/or*
 - d. *Mr. Rosenfelder failed to ensure that the professional services he performed or that were performed under his direction met the applicable standards of practice, thereby violating Rule 4 of the present Rules of Professional Conduct, as these rules have existed since June 7, 1992; and/or*
 - e. *Mr. Rosenfelder, in performing services for the purpose of making a report required by law with respect to an insurance company, failed to perform the services without regard to any influence, interest or relationship in respect of the affairs of his employer that might impair his professional judgment or objectivity, thereby violating Rule 20 of the present Rules of Professional Conduct, as these rules have existed since June 7, 1992.*
3. *Mr. Rosenfelder, in 1994, failed to follow the procedure set out at Section 369 of the Insurance Companies Act, when he knew or ought to have known that there were matters having material adverse effects on the financial condition of Confederation Life which required rectification and failing rectification, required a report to the Superintendent of Financial Institutions. In doing so:*
 - a. *Mr. Rosenfelder contravened Bylaw 67, as this Bylaw existed after March 4, 1992 (amended to become existing Bylaw 21.01 on November 20, 1996); and/or*
 - b. *Mr. Rosenfelder failed to act in a manner to fulfil the profession's responsibility to the public, thereby violating Rule 1 of the present Rules of Professional Conduct, as these rules have existed since June 7, 1992; and/or*
 - c. *Mr. Rosenfelder failed to perform professional services with integrity, skill and care, thereby violating Rule 2 of the present Rules of Professional Conduct, as these rules have existed since June 7, 1992; and/or*
 - d. *Mr. Rosenfelder failed to ensure that the professional services he performed or that were performed under his direction met the applicable standards of practice, thereby violating Rule 4 of the present Rules of Professional Conduct, as these rules have existed since June 7, 1992; and/or*
 - e. *Mr. Rosenfelder, in performing services for the purpose of making a report required by law with respect to an insurance company, failed to perform the services without regard to any influence, interest or relationship in respect of the affairs of his employer that might impair his professional judgment or objectivity, thereby violating Rule 20 of the present Rules of Professional Conduct, as these rules have existed since June 7, 1992.*
4. *Mr. Rosenfelder, in his actuarial reports for the years ended 1991, 1992 and/or 1993, failed to comply with the Recommendations for Life Insurance Company Financial Reporting and, in particular, Valuation Technique Paper #1: The Valuation of Lapse Supported Products. In doing so:*
 - a. *Mr. Rosenfelder contravened Bylaw 66, as this Bylaw existed up to March 4, 1992, and Bylaw 67, as this Bylaw existed after March 4, 1992 (amended to become existing Bylaw 21.01 on November 20, 1996); and/or*
 - b. *Mr. Rosenfelder failed to perform professional services with integrity, skill and care, thereby violating Rule 3 of the then existing Rules of Professional Conduct, as these rules existed up to June 7, 1992, and Rule 2 of the present Rules of Professional Conduct, as these rules have existed since June 7, 1992; and/or*
 - c. *Mr. Rosenfelder failed to ensure that the professional services he performed or that were performed under his direction met the applicable standards of practice, thereby violating Rule 4 of the present Rules of Professional Conduct, as these rules have existed since June 7, 1992.*
5. *Mr. Rosenfelder, in his actuarial reports for the years ended 1991, 1992 and/or 1993, failed to comply with the Recommendations for Life Insurance Company Financial Reporting and, in particular, Valuation Technique Paper #3: Future Cash Flow Investment Assumption. In doing so:*
 - a. *Mr. Rosenfelder contravened Bylaw 66, as this Bylaw existed up to March 4, 1992, and Bylaw 67, as this Bylaw existed after March 4, 1992 (amended to become existing Bylaw 21.01 on November 20, 1996); and/or*
 - b. *Mr. Rosenfelder failed to perform professional services with integrity, skill and care, thereby violating Rule 3 of the then existing Rules of Professional Conduct, as these rules existed up to June 7, 1992, and Rule 2 of the present Rules*

of Professional Conduct, as these rules have existed since June 7, 1992; and/or

- c. *Mr. Rosenfelder failed to ensure that the professional services he performed or that were performed under his direction met the applicable standards of practice, thereby violating Rule 4 of the present Rules of Professional Conduct, as these rules have existed since June 7, 1992.*
6. In August 2002, Mr. Rosenfelder brought a motion before the Disciplinary Tribunal for a stay of proceedings on the grounds that pre-charge delay unduly impaired his ability to answer the charges. The Disciplinary Tribunal heard the motion on November 20, 2002 and subsequently in its decision of December 3, 2002 dismissed the motion.
7. On June 3, 2003 the parties attended before the Disciplinary Tribunal and a hearing on the merits proceeded on the basis of a Guilty Plea, an Agreed Statement of Facts and a Joint Submission on Penalty. Mr. Rosenfelder pleaded guilty to charges numbered 1, 4, and 5; charges 2 and 3 were withdrawn. The parties agreed to a penalty of a suspension for a period of one year, a fine of \$5,000 and the payment of \$35,000 towards the costs incurred by the CIA.
8. The Disciplinary Tribunal found Mr. Rosenfelder guilty of the offences set out in charges numbered 1, 4, and 5 and agreed with the withdrawing of charges 2 and 3.
9. The Disciplinary Tribunal imposed the following penalty:
 - a) A suspension from the CIA for a period of 12 months, commencing June 3, 2003;
 - b) A fine of \$5,000; and
 - c) Payment of \$35,000 towards the cost incurred by the CIA in this matter.
10. The "Guilty Plea and Agreed Statement of Facts" reads as follows:

GUILTY PLEA AND AGREED STATEMENT OF FACTS

Mr. Michael Rosenfelder, FCIA, was the Valuation Actuary, and later the Appointed Actuary, under the Insurance Companies Act then in force, at Confederation Life Insurance Company ("Confederation Life") from 1982 to 1994, when the Superintendent of Financial Institutions took control of the company. On December 4, 2001, the Committee on Professional Conduct ("CPC") of the Canadian Institute of Actuaries ("CIA") laid charges against Mr. Rosenfelder, a copy of which is attached as Exhibit "1".

Charge 1

Mr. Rosenfelder pleads guilty to contravention of by-law 67, as the by-law existed after March 4, 1992 (amended to become existing by-law 21.01 on November 20, 1996), of the CIA with respect to his professional services while employed by Confederation Life as the Valuation Actuary and Appointed Actuary in that he failed to comply with

the Standards of Practice on Dynamic Solvency Testing in 1992 and 1993.

It is agreed that,

- a) *Dynamic Solvency Testing ("DST") for life insurance companies came into effect on January 1, 1992 based upon an insurance company's results as at December 31, 1991. On November 19, 1992, and October 21, 1993, Mr. Rosenfelder reported to the Audit Committee of Confederation Life's Board on the results of his solvency testing (the "DST Reports") (attached as Exhibits "2" and "3").*
- b) *Mr. Rosenfelder's annual investigation of Confederation Life's solvency as reflected by the DST Reports failed to comply with the Standard of Practice on DST for Life Insurance Companies (attached as Exhibit "4"). The DST tests were static rather than dynamic in that they measured the impact on the current balance sheet of various changes in valuation assumptions corresponding to the adverse scenarios suggested by the DST Standard, and in particular:*
 - (i) *the impact, if any, of future insurance sales is excluded;*
 - (ii) *the impact, if any, of expected regulatory, accounting and valuation changes is excluded;*
 - (iii) *each scenario is treated as an immediate event rather than an emerging trend;*
 - (iv) *adverse scenarios are treated as technical valuation issues, independent of management actions; and*
 - (v) *the DST Reports used a projection period of zero years, rather than the 5-year projection period recommended by the Standard, without explanation or justification.*

Charge 4

Michael Rosenfelder pleads guilty to contravention of by-law 66, as this by-law existed up to March 4, 1992, and by-law 67, as the by-law existed after March 4, 1992 (amended to become existing by-law 21.01 on November 20, 1996), of the CIA with respect to his professional services while employed by Confederation Life as the Valuation Actuary and Appointed Actuary in that he failed to comply with the Recommendations for Life Insurance Company Financial Reporting and, in particular, Valuation Technique Paper #1: The Valuation of Lapse Support Products.

It is agreed that,

- a) *Mr. Rosenfelder was the Appointed Actuary of Confederation Life for the purposes of the 1991, 1992 and 1993 year-end valuations (relevant excerpts of which attached as Exhibits "5", "6", and "7");*
- b) *In his actuarial reports for the years ended 1991, 1992 and 1993, Mr. Rosenfelder failed to comply with the Recommendations for Life Insurance Company Financial Reporting and in particular, Valua-*

tion Technique Paper #1: The Valuation of Lapse Supported Products (“VTP #1”) (attached as Exhibit “8”), in that:

- (i) VTP #1 requires a lapse assumption of zero for a Term-to-100 policy or variant, in the policy years prior to reaching a cash value ‘cliff’;
 - (ii) Mr. Rosenfelder assumed lapse rates of 0.5% of “Lifetime Term” plans (Confederation Life’s Term-to-100 plans) for the three years prior to the 20th year cliff; and
 - (iii) In the Compliance Questionnaires for 1992 and 1993 (relevant excerpts of which are attached as Exhibit “9”), Mr. Rosenfelder indicated that he had complied with VTP# 1, when he had not.
- c) Because of the passage of time and lack of access to detailed policy records, no accurate determination could be made of the dollar impact on the policy liabilities resulting from the use of the 0.5% lapse rate.

Charge 5

Michael Rosenfelder pleads guilty to contravention of by-law 66, as this by-law existed up to March 4, 1992, and by-law 67, as the by-law existed after March 4, 1992 (amended to become existing by-law 21.01 on November 20, 1996), of the CIA with respect to his professional services while employed by Confederation Life as the Valuation Actuary and Appointed Actuary in that he failed to comply with the Recommendations for Life Insurance Company Financial Reporting and, in particular, Valuation

Technique Paper #3: Future Cash Flow Investment Assumption.

It is agreed that,

1. Mr. Rosenfelder was the Appointed Actuary of Confederation Life for the purposes of the 1991, 1992 and 1993 year-end valuations;
2. Mr. Rosenfelder, in his actuarial reports for the years ended 1991, 1992 and 1993, failed to comply with the Recommendations for Life Insurance Company Financial Reporting and in particular, Valuation Technique Paper #3: Future Cash Flow Investment Assumption (“VTP #3”) (attached as Exhibit “10”), in that:
 - (i) VTP #3 establishes a maximum Ultimate Reinvestment Rate of 5% per annum to be assumed for cash-flows to be invested or reinvested 20 years or more after the valuation date;
 - (ii) Mr. Rosenfelder assumed an Ultimate Reinvestment Rate of 5.5% per annum in the 1991, 1992 and 1993 year-end valuations; and
 - (iii) In the Compliance Questionnaires for 1992 and 1993, Mr. Rosenfelder indicated that he had complied with VTP #3, when he had not.
3. Because of the passage of time and lack of access to detailed policy records, no accurate determination could be made of the dollar impact on the policy liabilities resulting from the use of the 5.5% Ultimate Reinvestment Rate.