

Discipline Report

This is the nineteenth periodic report to Members, Associates and Affiliates prepared in accordance with Bylaw 20.12(8). Its primary purpose is to educate and inform all Members, Associates and Affiliates about the disciplinary process and current disciplinary activities. Please send any comments on or suggestions for improvements in these reports to me at my *Yearbook* address. Information in this report regarding specific cases represents the status thereof at September 30, 2004.

1. Meetings

The Committee on Professional Conduct held formal meetings on June 29, 2004 and September 17, 2004. The committee also held two telephone conference calls. Future meetings of the committee have been scheduled for October 8 (conference call), October 29 (conference call) and December 3, 2004 (Montréal), as well as March 4 (Toronto) and June 10, 2005 (Toronto).

2. Disciplinary Costs (\$000) to July 31, 2004

	FY 04-05		FY 03-04	
	Actual	Budget	Actual	Budget
Legal costs	86	–	187	–
Incremental costs	6	–	29	–
	92	250	216	300
	Actual		Actual	
Costs recovered	–		40	
No. of cases reviewed	15		18	

3. Cases

(a) Charges laid and cases completed

Charges were filed against a member in connection with work performed in the wind-up of a pension plan. The member

has pleaded guilty to the charges and has accepted a recommendation of sanction (often called the “fast-track”). The formal announcement of the disciplinary action taken in this case accompanies this *Discipline Bulletin*.

(b) Charges laid

Charges were previously filed against a member in connection with various pension plan valuations.

Charges were previously filed against a member in connection with two valuations of the policy liabilities of an insurance organization. An additional charge has recently been filed against the same member in connection with the valuation of the policy liabilities of another insurance organization.

Charges have recently been filed against a member in connection with two valuations of a pension plan.

Disciplinary Tribunals have been appointed by the Chairperson of the Tribunal Panel, in accordance with Bylaw 20.06(1), and arrangements are being made to hear these charges.

Please note that pursuant to the Bylaws, the Executive Director will publish a Notice to the public and the membership approximately 15 days prior to any hearing before a Disciplinary Tribunal. This Notice will include the date, time and place of the hearing and a summary of the charge, but will not disclose the name of the Member, Associate or Affiliate charged.

Anyone who wishes to request more information about the disciplinary process may obtain that information from the Executive Director.

(c) Complaints and information

Apart from the cases mentioned in (a) and (b), in the period since the April 2004 report, the committee has considered 8 complaints or other information which might lead to complaints, against 11 Members, Associates or Affiliates.

Two new cases have been received for the committee’s consideration. In one of these, the committee is obtaining further information before deciding how to proceed. In the other, the

committee decided to refer the complaint to an Investigation Team.

In three earlier cases, after further consideration, the committee decided not to proceed.

In another earlier case, upon reviewing the Investigation Team report and the responses provided by the individuals, the committee decided to dismiss the matter.

The committee had previously referred the remaining two cases to two Investigation Teams, whose investigations are continuing.

(e) Summary by Practice Area

The 15 cases set out above may be summarized by practice area as follows:

Life	3
Pension	11
P&C	0
Workers' Compensation	0
Actuarial Evidence	1

4. Rectification – Does it avoid a disciplinary penalty?

For some actuaries who have not read their Rules of Professional Conduct recently, rectification may sound like some sort of painful surgical procedure. Actually, it is a key component of Rule 13 (a Rule which most working members should read at least once a year), and deals with the repair of substandard actuarial work, and the damage it may have caused to users of that work. This article will discuss the issue of rectification and where it fits into the disciplinary environment within the Institute.

Rule 13 requires a member (the “potential complainant or informant”) who becomes aware of an apparent material non-compliance by another member (the “alleged offender”) with the Rules of Professional Conduct or with standards of practice to comply with the procedures set out in Annotation 13-1, unless one of the exemptions set out in paragraph 4 of the Annotation applies to the situation. (Members concerned with issues surrounding these exemptions should refer to the wording of Annotation 13-1 for guidance, or contact the Chairperson of the Committee on Rules of Professional Conduct (Paul Della Penna) at his Yearbook address for guidance, as they are not discussed further in this article.)

As set out in the Annotation, the potential complainant or informant is required to discuss the situation with the alleged offender promptly and, if necessary, to reach agreement on actions to be taken by the alleged offender to ensure that the non-compliance is rectified. Provided that the potential complainant or informant is satisfied that the alleged offender has agreed that there has been a non-compliance and is unlikely to repeat the violation, and that rectification begins immediately and includes immediate notification to all users of the actuarial work, and that the rectification is carried out by the alleged offender (or an acceptable delegate, if the alleged offender is unable to do the work), then the potential complainant or informant is not required to report the non-compliance to the Committee on Professional Conduct (CPC).

On the other hand, if the potential complainant or inform-

ant has knowledge that the foregoing conditions have not been met, or is unable to ascertain that the conditions have been met, then the potential complainant or informant is required to bring the apparent material non-compliance to the attention of the CPC. Also, where rectification is not possible (as may happen when material events have taken place after the work in question was done, but prior to the discovery of the non-compliance), or where the non-compliance involves issues such as professional integrity, honesty, conflict of interest or professional courtesy (where the actions are not easily rectified), it may not be practical for the potential complainant or informant to consider pursuing rectification.

There are several reasons for the requirement that a member seek rectification of a non-compliance before reporting the matter to the CPC. Firstly, this will often ensure that the public is protected and that the quality of actuarial services provided to the public remains high, and that shortcomings in actuarial work are repaired as soon as possible. Secondly, Rule 13 recognizes that there may be many factors concerning an issue which are not apparent to the potential complainant or informant and which, when explained by the alleged offender, may justify the actions taken or the results obtained by the alleged offender. Thirdly, the requirement avoids the CPC having to get involved in many minor disputes between actuaries, or complaints which are intended for the primary purpose of gaining a competitive advantage or to create a nuisance for a competitor.

The requirements of Rule 13 will likely mean that some substandard work done by actuaries will go unreported to the CPC, as long as the omissions or errors are admitted by the alleged offender, corrected by the alleged offender (or a delegate in special situations, such as when there has been a job change by the alleged offender) and appropriate corrected information is disclosed to all users of the actuarial work. However, serious cases of non-compliance are likely to be reported, even if rectified, and will be handled by the CPC. It appears, from both inquiries concerning its application and anecdotal information, that Rule 13 has been used often to resolve disputes between actuaries. The CPC views this as a positive development in a maturing profession.

However, if the non-compliance with Rules or standards of practice is discovered by a non-member of the Institute such as a regulator, client or member of the public, it is normally reported directly to the CPC, even if a relatively minor offence is involved. In some cases, the non-member complainant or informant may have discussed the alleged non-compliance with the member, but in other cases this will not have occurred. If, on the basis of the information that is submitted with the complaint, the CPC is able to reach a conclusion that an offence *may* have been committed, the complaint will be accepted by the CPC or the information received will be the basis of a complaint by the CPC. The matter will then be assigned to an Investigation Team and the alleged offender will be advised of the complaint.

If the CPC concludes, based on an initial review of the complaint or information provided by the non-member, that there are no grounds to determine that an offence may have been committed and no additional information which will change this conclusion, it will dismiss the complaint and will

advise both the potential complainant/informant (if a confidentiality agreement has been signed) and the alleged offender.

On the other hand, if the CPC requires information from the alleged offender before deciding whether an offence *may* have been committed, the CPC will contact the alleged offender to obtain this information before deciding whether to accept the complaint or to lay a complaint itself.

Some members have suggested that there is an imbalance between a situation where a member's substandard work or behaviour is discovered by another member and a situation where the substandard work or behaviour is discovered by a non-member of the profession, such as a client or a regulator. These differences are there, just as there are often differences in how companies or families or sporting teams deal with adverse situations which have become public, compared to those which remain internal to the group concerned.

Should a member who is contacted by the CPC, either before or after an Investigation Team has been appointed, attempt to rectify the contravention of Rules or standards which is the cause of the complaint? The short answer is "It can't hurt to do so", bearing in mind the desire to protect the public and ensure proper advice is given. In some cases, rectification will not be possible, as discussed above, but in others the actions of the member may be considered by the CPC in assessing whether a charge should be laid, or the severity of the sanction that might be applied if the member pleads or is found guilty.

However, while the CPC generally encourages rectification where it is possible, it will not request that a member consider doing so, nor will it either advise how the rectification should proceed or suggest that rectification will eliminate

further action by the CPC. For the CPC to get involved in the rectification process would leave it in the position of receiving complaints and then attempting to make them 'go away'. This action would significantly reduce the CPC's credibility, both inside and outside the profession, and would represent a conflict of interest.

The effectiveness and credibility of the discipline processes within the UK actuarial profession have recently been called into question, and these processes will likely undergo some changes in the near future. The CIA has revised its disciplinary system twice within the past fifteen years, with some of the changes made in 1998 resulting in a 'friendlier' system, but the system still contains serious penalties (and applies them) for those members who commit serious contraventions of our Rules and standards of practice. On the basis of discussions which are held regularly with regulators, our disciplinary system is respected and used by the regulators where they believe it is appropriate to do so. The CIA disciplinary system has also been used by other actuarial bodies as a model.

So while it may appear that there are some differences in the treatment of alleged offences discovered by members, as opposed to those discovered by non-members, there are practical reasons for the differences. Any member having questions concerning the application of rectification principles to a particular general situation may discuss them with the Chairperson of the Committee on Rules of Professional Conduct (currently Paul Della Penna), or the Chairperson of the Committee on Professional Conduct (currently Peter Morse).

Peter Morse
Chairperson, Committee on Professional Conduct

Notice of Reprimand

Allan R. Tough Accepts Sanction

From the Committee on Professional Conduct

In accordance with the Bylaws of the Canadian Institute of Actuaries,

1. On December 5, 2003, the Committee on Professional Conduct laid a Charge against a member of the Institute, Mr. Allan R. Tough, residing in Calgary, Alberta, following an investigation commenced in November 2002. Mr. Tough is a retired member whose general practice area was pension consulting.

2. The Charge reads as follows:

The following Charge against Mr. Allan R. Tough arises in connection with actuarial work performed with respect to the winding up of the Ocelot Energy Inc. Pension Plan, specifically the Preliminary Report on the Actuarial Valuation for Plan Wind-up Purposes as at December 31, 1998 and dated September 1999, and the Revised Preliminary Report on the Actuarial Valuation for Plan Wind-up Purposes as at December 31, 1998 and dated October 2000.

- (a) Mr. Tough did not perform suitable check procedures on asset and membership data, or ensure that such check procedures were performed. In addition, Mr. Tough failed to conduct sufficient analysis to ensure himself that the wind-up valuation results were accurate. As a result,

- (i) in-transit benefits were missed;
- (ii) Additional Voluntary Contributions were missed; and
- (iii) a deferred pensioner was missed, resulting in the possibility of the pensioner not receiving his full pension entitlement.

Each of these errors contributed to an overstatement of the plan's surplus.

- (b) Mr. Tough did not adequately disclose the data source and checks.

In so doing, Mr. Tough

1. did not perform professional services with skill and care, contrary to Rule 2 of the Rules of Professional Conduct, as this rule existed at the relevant time; and
 2. did not ensure that professional services performed by him or under his direction met applicable standards of practice (namely, the *Standard of Practice for Valuation of Pension Plans*, effective May 1, 1994), contrary to Rule 4 of the Rules of Professional Conduct, as this rule existed at the relevant time.
3. In arriving at an appropriate sanction, the Committee noted that all plan members ultimately received their full pension entitlements. The Committee also noted that Mr. Tough signed both reports as an FCIA, that he was the lead actuary on the Preliminary Report, but that he acted as the peer reviewer on the Revised Preliminary Report.

4. Therefore, pursuant to Bylaw 20.05,

- (a) the Committee on Professional Conduct filed the Charge reproduced above against Mr. Allan R. Tough;

- (b) given the relative gravity of the matter and given the interest of the public and of the Institute, the Committee on Professional Conduct decided not to refer the matter to a Disciplinary Tribunal, but rather to offer Mr. Allan R. Tough what is commonly referred to as "the fast-track". Under this process, the Committee on Professional Conduct made the following recommendation of sanction, that Mr. Allan R. Tough:

- (i) admit guilt for the acts and omissions that form the basis of the Charge; and
- (ii) accept a public reprimand.

5. Mr. Allan R. Tough pleaded guilty to the Charge reproduced above, and accepted the recommendation of sanction of the Committee on Professional Conduct described above.