

Notice of Suspension In the Matter of Charges Laid Against Anthony F. Cooper

Overview

1. Mr. Anthony F. Cooper has been found guilty of charges of professional misconduct by a Disciplinary Tribunal of the Institute for work he performed in both the insurance and pension fields. Mr. Cooper mainly practises in the pension consulting area in Toronto, Ontario, at 40 University Avenue, Suite 730.
2. Following investigations by two Investigation Teams, the Committee on Professional Conduct ("CPC") filed four Charges against Mr. Cooper in two areas of practice: insurance and pensions. In 2004, a Disciplinary Tribunal ("DT") was appointed to hear all of these Charges. The members of the DT were the Honourable Patrick T. Galligan, formerly a justice of the Court of Appeal for Ontario, Mr. Owen O'Neil, FCIA, and Mr. Nicholas Bauer, FCIA. Following the hearing on the merits of the Charges, the DT rendered its decision on April 12, 2005.
3. The DT found that the factual allegations in all Charges (except 3(d) and 4(c) – see Charges reproduced below) were established, resulting in breaches of numerous Rules of Professional Conduct. The key findings of the DT were:
 - Mr. Cooper did not have the knowledge, skill and competence required to be an Appointed Actuary.
 - Mr. Cooper did not remain current with standards of practice regarding insurance, not having fulfilled the CIA's Continuing Professional Development ("CPD") Requirements.
 - Mr. Cooper did not comply with the Institute's

Standards of Practice and with generally accepted actuarial practice in three main areas (in both insurance and pensions): (1) in his selection of fundamental methods and assumptions; (2) in his disclosure of those methods and assumptions in his valuation reports; and (3) in maintaining documentation and work files.

4. Following a separate hearing, the DT rendered its decision on penalty and costs on May 18, 2005. The DT decided to suspend Mr. Cooper from the Institute for a period of three years. In addition, before he is reinstated, Mr. Cooper will have to prove that he complies with the then existing CPD Requirements of the Institute. Mr. Cooper has also been ordered to pay \$100,000.00 in costs.

Insurance

5. In 2002 and 2003, three complaints were laid against Mr. Cooper in connection with his work as the Appointed Actuary ("AA") for two fraternal benefit societies - the Canadian Slovak League ("League") and the Canadian Slovak Benefit Society ("Society"). These complaints were investigated by an Investigation Team composed of FCIAs, who completed their work in 2003 and 2004.
6. The CPC then filed three Charges (which are reproduced below) against Mr. Cooper with respect to the actuarial valuations he performed of the policy liabilities of the League (2000 and 2001) and the Society (2001).
7. At the hearing, the prosecution presented various witnesses, and filed numerous documents. Mr. Cooper did

not attend the hearing or file any evidence, as was his right. Based on the evidence presented, the DT concluded that Mr. Cooper:

- did not have the knowledge and skill to perform the role of Appointed Actuary, since he had not performed appropriate or sufficient continuing professional development activities, and did not demonstrate that he had gained appropriate and sufficient knowledge from other activities;
 - did not select appropriate assumptions and methods, in particular the investment and expense assumptions, and the use of the Canadian Asset Liability Method (“CALM”) for the 2001 valuations; and
 - did not adequately disclose the actuarial methods and assumptions employed.
8. The DT concluded that Mr. Cooper did not have the **knowledge and skill** to perform the role of AA, based in part on the following:
- Although Mr. Cooper was unaware of the existence of the CPD Requirements, they must be met as a necessary condition to be qualified to practice in Canada, and are a minimum and not necessarily sufficient condition for meeting Rule 3. The evidence showed that Mr. Cooper had no hours of relevant formal development activity in the two-year period preceding the work to which the allegations refer, and had not attended any Appointed Actuary Seminars, nor any other CIA meetings since at least 1996. In addition, he kept no record of his professional development activity. As far as informal development is concerned, Mr. Cooper asserted that he read the Office of the Superintendent of Financial Institutions (OSFI) memo to Appointed Actuaries each year and read material he received in his spare time.
 - In addition, three experienced actuaries in the area of AA work testified that after their discussions with Mr. Cooper, and after their reviews of his work, “each had serious doubts about Mr. Cooper’s skill, knowledge and competence to be an Appointed Actuary”. Further evidence led by the prosecution supported those doubts.
9. The DT concluded that Mr. Cooper did not select or disclose appropriate **methods**, based in part on the following:
- Mr. Cooper did not have any working papers to support the 2000 League valuation, other than a membership file and a computer program that performed the valuation.
 - The 2000 League AA Report states that the Policy Premium Method (“PPM”) was used. However, that assertion is not supported by any working papers. Mr. Cooper did produce a “code list” showing certain formulae using commutation functions, and a few other documents. The Investigation Team was unable to determine whether PPM was used,
- and if so whether it was used correctly.
- With respect to the League and the Society 2001 Reports, CIA standards required the use of CALM. The method followed by Mr. Cooper in the initial Reports was not CALM. The policy liabilities in the final Reports were those calculated by Mr. Senensky, who had been engaged at OSFI’s request to peer review Mr. Cooper’s work for the 2001 Reports. Since Mr. Senensky redid the valuations, the appropriate numbers in accordance with CALM were included in the Reports. However, there was no evidence that Mr. Cooper independently performed those calculations. Based on the evidence, the DT inferred that Mr. Cooper would not have been capable of performing the calculations.
10. The DT concluded that Mr. Cooper did not select appropriate expense and interest **assumptions**, based in part on the following:
- The standards applicable to the work covered by all three Charges state that the actuary should for each assumption: (a) determine the best estimate of future expectation; and then (b) add a Margin for Adverse Deviation (“MfAD”) that covers the possible misestimation of the best estimate or its possible future deterioration. In addition, OSFI instructions are clear that each Provision for Adverse Deviation (“PfAD”) must be disclosed. Both CIA standards and OSFI instructions require that the actuary disclose how the best estimate assumptions and MfADs were determined.
 - None of the AA Reports covered by the Charges indicated the best estimate assumptions, the magnitude of any MfADs, or the resulting PfADs.
 - The DT stated that it was impossible to escape the conclusion that Mr. Cooper did not follow standards in setting his expense assumption for 2000, in that he did not base the assumption on an analysis of the experience of the League and did not set expected future expense assumptions in consequence. Had he done so, the financial position of the League would have been revealed to be much worse than was actually disclosed.
 - The 2000 League Report discloses that the interest assumption (i.e., the assumed future return on assets) used in the valuation was 6%. The standard that applied at that time was VTP 3, which prescribed an ultimate rate of interest not higher than 5%. As a result, the interest assumption used was not in compliance with standards.
 - With respect to the 2001 Reports, Mr. Cooper asserted that the interest assumption was “checked against CALM”, but Mr. Cooper had no working papers to support that assertion. In fact, it is clear from the evidence that Mr. Cooper’s assumption neither complied with CALM nor was appropriate under the circumstances.

11. The DT concluded that Mr. Cooper did not **disclose** the methods and assumptions employed, based in part on the following:
 - It is accepted actuarial practice to prepare and maintain sufficient documentation to be able to support, justify and defend professional work. Mr. Cooper produced virtually no working papers or other documentation to support his assumptions to prove that he used the methods that he asserted he had used.
 - None of the Reports identifies any of the best estimate assumptions, MfADs or PfADs.
 - The 2000 League Report fails to disclose the expense assumption altogether.
 - Mr. Cooper's disclosures in the "Compliance checklist" required by OSFI were wholly inadequate for 2000. In addition, with respect to the 2001 Reports Mr. Cooper used the wrong checklists entirely, because OSFI had changed the forms in response to the revision of the standards by the CIA.
12. Finally, the DT held that technically there is evidence in support of the allegation, but due to mitigating circumstances, the DT decided to give Mr. Cooper the benefit of the doubt and concluded that the allegation in Charge 3(d) was not established to the requisite degree of proof.

Pensions

13. In 2002 and 2003, two complaints were laid against Mr. Cooper regarding his work in connection with the 1998 (original and revised) and 2001 actuarial valuations for the Plumbers Local 463 Pension Plan. These complaints were investigated by an Investigation Team composed of FCIAAs, who completed their work in 2004.
14. The CPC then filed one Charge (which is reproduced below) against Mr. Cooper with respect to the actuarial valuations he performed for the Plumbers Local 463 Pension Plan (original 1998, revised 1998 and 2001).
15. At the hearing, the prosecution presented various witnesses, and filed numerous documents. Mr. Cooper did not attend the hearing or file any evidence, as was his right. Based on the evidence presented, the DT concluded that Mr. Cooper:
 - did not maintain sufficient documentation and work-files with respect to any check procedures that may have been established, and did not establish suitable check procedures to test the sufficiency and reliability of the data, in particular, with respect to the interest credit rate used and the data reconciliation;
 - did not provide sufficient and/or correct information to permit another actuary to make an appraisal of his valuations. In particular, the initial 1998 valuation report contained numerous inaccuracies and generally lacked clarity; and
 - having reduced members' interest credits to reflect an asset impairment, and hence having reduced the liabilities for the Plan's defined contribution provision, did not make a similar adjustment in the asset value used, resulting in an overstatement of the surplus disclosed in the original and revised 1998 reports.
16. The DT concluded that Mr. Cooper did not maintain sufficient **documentation and work-files** and did not establish suitable **check procedures**, based in part on the following:
 - Mr. Cooper had done data check procedures, but the related work papers were thrown out since, as Mr. Cooper explained "only I would understand them". The DT found this "very difficult to accept".
 - Mr. Cooper was unable to produce any working papers backing his calculations, or reproduce his calculations with regard to the rates of return to be used in the accumulation of members' account balances.
 - Mr. Cooper was unable to provide the Financial Services Commission of Ontario (FSCO) with a data reconciliation.
 - Mr. Cooper's lack of documentation regarding the calculations of the rates of return on the defined contribution portion of the Plan is "particularly troublesome", since there is no record that these members have been treated in a fair and equitable manner.
17. The DT concluded that Mr. Cooper did not provide **sufficient and/or correct information** to permit another actuary to make an appraisal of his valuations, based in part on the following:
 - The initial 1998 Report contained many errors. For example, the Report stated that Mr. Cooper had not undertaken the prior valuation, when in fact he had; and a variety of contribution requirements are mentioned and none of them appear to be correct.
 - Most of the errors in the report could be described as "sloppy". "However, there are enough of them that one is led to the inference that Mr. Cooper never, in fact, read the report before signing it."
 - The Plan provides both indexed and non-indexed pensions, but the member data summary aggregates these two, leaving a reader unable to assess the reasonableness of the results. Since the liability for pensions represents 97% of the total defined benefit liability, it is vital that sufficient detail be provided to allow another actuary to determine the reasonableness of the results.
18. The DT concluded that Mr. Cooper did not make an appropriate adjustment in the asset value used, resulting in an **overstatement of the surplus**, based in part on the following:
 - The CIA standards stipulate that the valuation of

assets and the valuation of actuarial liabilities are interdependent and one must not be considered in isolation of the other.

- Mr. Cooper included a contingency reserve in his rate of return calculations to allow for a probable write-down in the value of a real estate holding in the Plan. However, the assets were shown in the reports at the original level, before the probable write-down. Having written down the liabilities, Mr. Cooper then compared these liabilities to assets which are overstated by \$1.5 million, and produced a surplus which is overstated by the same \$1.5 million.
 - “This error is so basic that one is led to believe that Mr. Cooper could not have been involved in the valuation other than signing the report at the end. The only consolation is that the funding of the Plan was not affected, and that the client did not “spend” the surplus that did not, in fact, exist.”
19. Finally, the DT held that based on the evidence, it is left in doubt about whether Mr. Cooper failed to provide appropriate responses to FSCO queries, and therefore concluded that the allegations in Charge 4(c) were not proved.

Conclusion as to Guilt

20. The DT found that the factual allegations in all Charges (except 3(d) and 4(c)) were established. The findings in relation to allegation (a), in each of Charges 1, 2, and 3, demonstrate breaches of Rule 3. The findings in relation to allegation (b), in each of Charges 1, 2 and 3, demonstrate breaches of Rules 2 and 4. The findings in relation to allegation (c), in each of Charges 1, 2 and 3, demonstrate breaches of Rule 15. The findings in relation to Charge 4(a), demonstrate breaches of Rules 2 and 4. The findings in relation to Charge 4(b), demonstrate a breach of Rule 2. The findings in relation to Charge 4(d), demonstrate a breach of Rule 2.
21. In addition, the DT believes that when his conduct is looked at collectively, it demonstrates a “very marked failure by Mr. Cooper to act in a manner “to uphold the reputation of the actuarial profession and to fulfil the profession’s responsibility to the public””, which amounts to a clear breach of Rule 1.
22. However, as a result of the rule against multiple convictions as determined by the Supreme Court of Canada, the DT decided to find Mr. Cooper guilty of breaching only the most important Rule of Professional Conduct under each Charge. It concluded that “a breach of Rule 1 must be the most serious breach of the Rules of Professional Conduct.” Therefore, the DT decided to find Mr. Cooper only guilty of breaching Rule 1 in respect to each of the four Charges.

Penalty and Costs Imposed

23. A separate hearing was held to make arguments as to the appropriate penalty to be imposed. Mr. Cooper did

not attend this hearing, although various members and spouses of the Plumbers Local 463 Pension Plan did. On May 18, 2005 the DT rendered its decision on penalty. With respect to all Charges combined, the DT decided that the following penalty was appropriate in the circumstances:

- a three-year suspension from the Institute (to begin to run on the date Mr. Cooper makes himself eligible for reinstatement by paying the dues which he owes to the Institute, after having been administratively suspended in September 2004 for non-payment of dues); and
 - before his reinstatement at the end of his disciplinary suspension, Mr. Cooper must demonstrate professional competence, by proving to the Eligibility and Education Council that he complies with the then existing Continuing Professional Development Requirements of the Institute.
24. The DT also ordered Mr. Cooper to pay \$100,000.00 to the Institute, representing just less than one-half of the fees and expenses of legal counsel to the Committee on Professional Conduct incurred with respect to all cases.
25. The DT took the following into account in determining that this is an appropriate penalty in this case:
- This case is about Mr. Cooper’s competence to act as an actuary and about the manner in which he performed his professional responsibilities with respect to three clients. Mr. Cooper’s honesty was not in question.
 - Mr. Cooper was in multiple breach of numerous Rules of Professional Conduct.
 - Mr. Cooper showed “a serious lack of competence” to perform some of the work he did, and showed “grave failures to comply with professional standards in the manner in which he performed his work”.
 - In his work as an Appointed Actuary, Mr. Cooper could have and possibly did cause significant financial losses to his clients and their policyholders.
 - In his work doing pension valuations, he overstated a surplus by \$1.5 million which constituted a very substantial percentage of the total surplus. It was fortuitous that his client did not spend the surplus that did not exist.
 - The DT was particularly disturbed by the fact that Mr. Cooper was not a first-time offender. In fact in 1998, Mr. Cooper pleaded guilty to two charges in connection with work he performed as a pension actuary. As a result of the 1998 charges, Mr. Cooper was reprimanded, subjected to peer review for two years, fined and ordered to pay costs. The DT noted that some of those 1998 charges bear a striking similarity to the Charges in this case, and others included conduct which was not dissimilar to the conduct in this case.
 - The fact that Mr. Cooper breached several Rules

of Professional Conduct and “failed to benefit from lenient treatment for his past transgressions”, led the DT to conclude that “it must impose a severe sanction for these serious offences”.

- The overriding principle to be applied in the determination of a penalty is the protection of the public. The DT held that the public interest can only be served by a suspension.
- The DT decided that the suspension in this case must be for a lengthy period in order to act, not only as a specific deterrent to Mr. Cooper, but also to deter other members who provide services to the public from doing so when they are not competent to do the work, and to deter them from performing work in a fashion which does not comply with the standards of the profession. A lengthy suspension should also act as a warning to other members that incompetence and failure to conform to the standards of the profession must be taken very seriously.

The charges filed by the Committee on Professional Conduct against Mr. Cooper read as follows:

Charge 1

The following Charge against Mr. Anthony F. Cooper arises in connection with actuarial work performed with respect to the Canadian Slovak League, in particular the valuation of the Canadian Slovak League’s policy liabilities as of year-end 2000 (the “Valuation”):

Mr. Cooper:

- (a) did not have the knowledge and skill required to perform the role of Appointed Actuary for the Valuation, since he had not performed appropriate or sufficient continuing professional development activities, and did not demonstrate that he had gained appropriate and sufficient knowledge from other activities;
- (b) did not select appropriate assumptions and methods, in particular the investment and expense assumptions; and
- (c) did not adequately disclose the actuarial methods and assumptions employed.

In so doing, Mr. Cooper

1. failed to act in a manner to uphold the reputation of the actuarial profession and to fulfil the profession’s responsibility to the public, contrary to Rule 1 of the then Rules of Professional Conduct, as this rule existed at the relevant time;
2. did not perform professional services with skill and care, contrary to Rule 2 of the then Rules of Professional Conduct, as this rule existed at the relevant time;
3. performed professional services without being qualified to do so and without meeting applicable qualification standards, contrary to Rule 3 of the then Rules of Professional Conduct, as this rule existed at the relevant time;
4. did not ensure that professional services performed by him or under his direction met applicable standards of practice, contrary to Rule 4 of the then Rules of Profes-

sional Conduct, as this rule existed at the relevant time; and

5. did not include, where appropriate, in the Valuation a statement or reference describing or identifying the data and the actuarial methods and assumptions employed, contrary to Rule 15 of the then Rules of Professional Conduct, as this rule existed at the relevant time.

Charge 2

The following Charge against Mr. Anthony F. Cooper arises in connection with actuarial work performed with respect to the Canadian Slovak League, in particular the valuation of the Canadian Slovak League’s policy liabilities as of year-end 2001 (the “Valuation”):

Mr. Cooper:

- (a) did not have the knowledge and skill required to perform the role of Appointed Actuary for the Valuation, since he had not performed appropriate or sufficient continuing professional development activities, and did not demonstrate that he had gained appropriate and sufficient knowledge from other activities; and
- (b) did not select appropriate assumptions and methods, in particular the investment and expense assumptions and the use of the Canadian Asset Liability Method; and
- (c) did not adequately disclose the actuarial methods and assumptions employed.

In so doing, Mr. Cooper

1. failed to act in a manner to uphold the reputation of the actuarial profession and to fulfil the profession’s responsibility to the public, contrary to Rule 1 of the then Rules of Professional Conduct, as this rule existed at the relevant time;
2. did not perform professional services with skill and care, contrary to Rule 2 of the then Rules of Professional Conduct, as this rule existed at the relevant time;
3. performed professional services without being qualified to do so and without meeting applicable qualification standards, contrary to Rule 3 of the then Rules of Professional Conduct, as this rule existed at the relevant time;
4. did not ensure that professional services performed by him or under his direction met applicable standards of practice, contrary to Rule 4 of the then Rules of Professional Conduct, as this rule existed at the relevant time; and
5. did not include, where appropriate, in the Valuation a statement or reference describing or identifying the data and the actuarial methods and assumptions employed, contrary to Rule 15 of the then Rules of Professional Conduct, as this rule existed at the relevant time.

Charge 3

The following Charge against Mr. Anthony F. Cooper arises in connection with actuarial work performed with respect to the Canadian Slovak Benefit Society, in particular the valuation of the Canadian Slovak Benefit Society’s (the “Society”) policy liabilities as of year-end 2001 (the “Valuation”):

Mr. Cooper:

- (a) did not have the knowledge and skill required to perform the role of Appointed Actuary for the Valuation, since he had not performed appropriate or sufficient continuing professional development activities, and did not demonstrate that he had gained appropriate and sufficient knowledge from other activities;
- (b) did not select appropriate assumptions and methods, in particular the investment assumptions and the use of the Canadian Asset Liability Method;
- (c) did not adequately disclose the actuarial methods and assumptions employed; and
- (d) did not fulfill his professional and legal obligations as Appointed Actuary of the Society. In particular he did not revoke his original AA opinion once the peer review was completed nor did he fulfill the legal requirements of terminating his position as the Appointed Actuary.

In so doing, Mr. Cooper

1. failed to act in a manner to uphold the reputation of the actuarial profession and to fulfil the profession's responsibility to the public, contrary to Rule 1 of the then Rules of Professional Conduct, as this rule existed at the relevant time;
2. did not perform professional services with skill and care, contrary to Rule 2 of the then Rules of Professional Conduct, as this rule existed at the relevant time;
3. performed professional services without being qualified to do so and without meeting applicable qualification standards, contrary to Rule 3 of the then Rules of Professional Conduct, as this rule existed at the relevant time;
4. did not ensure that professional services performed by him or under his direction met applicable standards of practice, contrary to Rule 4 of the then Rules of Professional Conduct, as this rule existed at the relevant time; and
5. did not include, where appropriate, in the Valuation a statement or reference describing or identifying the data and the actuarial methods and assumptions employed, contrary to Rule 15 of the then Rules of Professional Conduct, as this rule existed at the relevant time.

Charge 4

The following Charge against Mr. Anthony F. Cooper arises in connection with actuarial work performed with re-

spect to the Plumbers Local 463 Pension Plan (the "Plan"), in particular the Report on the Actuarial Valuation as at December 31, 1998 and dated July 15, 1999 (the "July 1999 Report"), the Report on the Actuarial Valuation as at December 31, 1998 and dated November 27, 2001 (the "November 2001 Report") and the Report on the Actuarial Valuation as at December 31, 2001 and dated September 18, 2002 (the "September 2002 Report").

Mr. Cooper:

- (a) did not maintain sufficient documentation and work-files with respect to any check procedures that may have been established and did not establish suitable check procedures to test the sufficiency and reliability of the data, in particular with respect to the interest credit rate used and the data reconciliation;
- (b) did not provide sufficient and/or correct information to permit another actuary to make an appraisal of the valuation. In particular the July 1999 Report contained numerous inaccuracies and generally lacked clarity;
- (c) failed to provide appropriate responses to FSCO queries; and
- (d) having reduced members' interest credits to reflect an asset impairment, and hence having reduced the liabilities for the Plan's defined contribution provision, did not make a similar adjustment in the asset value used, resulting in an overstatement of the surplus disclosed in the Plan's July 1999 and November 2001 Reports.

In so doing, Mr. Cooper

1. failed to act in a manner to uphold the reputation of the actuarial profession and to fulfil the profession's responsibility to the public, contrary to Rule 1 of the Rules of Professional Conduct, as this rule existed at the relevant time;
2. 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;
3. 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; and
4. did not cooperate with others in the client's interest, contrary to Rule 9 of the Rules of Professional Conduct, as this rule existed at the relevant time.