CANADIAN INSTITUTE OF ACTUARIES
DISCIPLINARY TRIBUNAL

IN THE MATTER OF CHARGES FILED AGAINST
ASHLEY CROZIER IN CASE 2010-3 AND CASE 2010-5

Panel

P. T. Galligan, Chair
Nancy Yake, Member
David Short, Member

Appearances

Tina Hobday and David Drouin-Le
for the Committee on Professional Conduct

Ashley C. Crozier
appearing in person

Heard: March 21 and April 4, 2011

REASONS FOR DECISION

The Committee on Professional Conduct ("CPC") moves for an order pursuant to Bylaw 20.06(12) suspending Ashley Crozier ("the Respondent") from the Canadian Institute of Actuaries ("the Institute") until the completion of the disciplinary proceedings which have been taken against him in cases 2010-3 and 2010-5. The basis for the request is that the Respondent failed to cooperate with the Investigation Team ("IT") and the CPC in respect to their investigations of two complaints made about his professional conduct.

BACKGROUND

The complaints have resulted in two separate charges against the Respondent. For reasons which will be made apparent later in the decision, the focus of this motion is not upon the substance of the charges. Thus, the background will be very brief and only sufficient to show the context in which the motion must be considered.

The charges arising out of the two complaints are very similar. In each one it is said that the Respondent did not cooperate with an actuary who was replacing him as the client's actuary. It is also said that he was deficient in complying with certain filing requirements of the Financial Services Commission of Ontario ("FSCO") and that there were unexplained irregularities and material differences between reports that the Respondent had prepared. Finally, it is said that he failed to cooperate with the IT and CPC during the investigation of the complaints.

Each charge contains four counts. One charge relates to each complaint. The counts in each charge are similar. Counts 1, 2 and 3 relate to his conduct in respect to his replacement as actuary and in relation to his FSCO filings and his report irregularities. Count 4 of each charge reads as follows:

> Mr. Crozier
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> 4. failed to respond promptly and fully to requests for information by, and failed to cooperate fully with, the Investigation Team and the Committee on Professional Conduct, contrary to Rule 12 of the current Rules of Professional Conduct and Bylaw 20.03(5)(a), (b) and (d).

The CPC only seeks the Respondent's interim suspension based upon the circumstances supporting Count 4 in each charge. It does not contend that the circumstances supporting Counts 1, 2, or 3 would call for an interim suspension.

APPLICABLE PRINCIPLES

Bylaw 20.06(12) authorizes the Disciplinary Tribunal to order an interim suspension during the disciplinary process and before the merits of a charge have been adjudicated upon at a hearing. The Bylaw does not, however, define the principles which must guide a Disciplinary Tribunal when it decides whether or not to order a suspension. This is the first time that the CPC has brought a motion for an interim suspension. Thus, there is no Disciplinary Tribunal jurisprudence which can act as a guide to us.

We start by recognizing that the CIA disciplinary process contemplates the resolution of a charge by a determination, on its merits, at a hearing provided for by Bylaws 20.06 and 20.07 before sanctions, including suspension, can be imposed upon a member. The concept is similar to that in litigation in the courts where the merits of a case are usually resolved, at a trial, before the rights of a defendant are judicially interfered with. Thus, in the ordinary course of events, in this case, the charges against the Respondent would be resolved, on their merits, at a hearing, before such a serious sanction, as a suspension, could be imposed upon him. Because the CPC has asked this Disciplinary Tribunal to suspend the Respondent before he has had his trial, it is asking us to do something significantly out of the ordinary. It seems to us, therefore, that the CPC must show some special reason, which takes this case out of the ordinary, before we should impose an important sanction upon him before he has had his trial.

In some circumstances, the courts do make interim orders affecting defendants' rights before the merits of the case have been determined at trial. They do so for a number of reasons, most of which are not relevant to the CIA disciplinary process. One of the reasons which is relevant to the process is to prevent a significant risk of harm to others.

Because there is no Disciplinary Tribunal jurisprudence dealing with interim suspensions, counsel for the CPC has referred us to jurisprudence emanating from the Discipline Committees of other self-regulating professions. We have seen certain decisions delivered by hearing panels of the Law Society of Upper Canada. We do not intend to review them all because they are based upon their own unique factual circumstances. There are two cases, however, to which we do wish to refer. While the factual circumstances in those two cases are markedly different from the facts in the case before us, there are statements of principle which we think give us very clear guidance to our exercise of our disciplinary powers.

The first decision is *Law Society of Upper Canada v. Sullivan*, 2008 ONLSHP 83. That was an application for the interim suspension of a lawyer based upon his failure to co-operate with an investigation into his professional conduct. In that case the investigation disclosed a very substantial shortage in the lawyer's trust account and also that he was, at the very time, proceeding with substantial transactions which placed clients at real risk. Moreover, while he had agreed not to, he was continuing to practise law, and had failed to live up to certain commitments which he had given to the Law Society. Members of the public, clients and others, were clearly at risk.

We cite two paragraphs from the decision.

> [31] The issue for the Hearing Panel is whether there are reasonable grounds to believe that there is a significant risk of harm to members of the public, or to the public interest in the administration of justice, if an order is not made suspending the lawyer's licence and that making the order is likely to reduce the risk of harm.
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> [39] On this motion, there will be no determination of whether the Lawyer engaged in professional misconduct. The question is only whether there is a significant risk of harm to the public or the public interest in the administration of justice that can be reduced through the Order sought. Protection of the public interest is paramount,

even if the allegations of misconduct are later found to be unsubstantiated.

The other decision to which we refer is *Law Society of Upper Canada v. Townley-Smith*, 2010 ONLSHP 0077. In that case the evidence showed that the lawyer was really out of control and was ungovernable. We cite several passages from the decision.

> [33] The extensive documentary evidence before the Hearing Panel (consisting of transcripts, judgments, motion materials, and letters) establishes reasonable grounds to believe the Lawyer poses a significant risk of harm to the public. While the Lawyer's apparent misconduct has revolved around her representation of one client, her serious and unwarranted accusations against participants in the administration of justice began more than four years ago. Since that time her allegations have only become more serious and far-reaching. She has repeatedly demonstrated behaviour that has caused harm to almost everyone involved in the Baryluk litigation.
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> [34] The Lawyer's public and persistent assertion that there is widespread corruption in the Superior Courts and other institutions and individuals in Ontario and Manitoba, combined with her repetitive and abusive conduct of litigation poses a risk to the public interest in the administration of justice. The administration of justice must be protected from becoming a platform and venue in which unfounded allegations of corruption and criminal conduct can be made against judicial officers and others, and a series of baseless and abusive proceedings can be initiated and then manipulated by a lawyer, who appears to be driven not by her client but her own conspiracy theories.
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> [35] The Lawyer has shown an unwillingness to be governed by the Law Society. While she has sporadically and incidentally responded to the Law Society, more recently she has refused to co-operate and challenged the Law Society's authority to conduct an investigation into the matter.
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> [36] *The Hearing Panel therefore concluded that the serious nature of the allegations, the Lawyer's apparent ungovernability, and the*

ongoing and increasing scope of her unfounded allegations and threats clearly demonstrates that she poses a significant risk of harm to members of the public and to the public administration of justice.

[37] An order suspending the Lawyer on an interlocutory basis will ensure that she does not engage in similar misconduct on behalf of any existing or new clients.

[38] An interlocutory suspension may not stop the Lawyer from publicly making unfounded allegations of widespread corruption within the administration of justice. It will, however, prevent the Lawyer from using her status as a Lawyer to engage in conduct that weakens respect for the administration of justice and harms the reputation of the Law Society and its ability to regulate in the public interest.

[39] *The Hearing Panel therefore concluded that the granting of an interlocutory suspension was likely to reduce the risk to the public and the public interest in the administration of justice.*

[Emphasis added.]

What we draw from those decisions is that, upon a motion for an interim suspension, the focus must be upon whether there is a significant risk of harm to the public if the member of the profession is not suspended until the merits of the charge can be determined at a full hearing. We think that at least two principles can be drawn from those cases which are appropriate to be applied when a request is made for an interim suspension.

1. The question of whether there was professional misconduct is not to be decided, but, rather, the Disciplinary Tribunal should determine whether there are reasonable grounds to believe that there is a significant risk of harm to the public or to the public interest in the administration of justice unless the Respondent is suspended until the hearing provided for by Bylaws 20.06 and 20.07 takes place.

2. If there is a significant risk of harm, would an interim suspension be likely to reduce that risk of harm.

It is obvious that the second principle would not become applicable unless the Disciplinary Tribunal determined that there was the significant risk of harm.

We do not suggest that the risk of harm must be to the degree evidenced in the Law Society cases, but we do think that, before an interim suspension is ordered, it should be shown that there exists a significant risk of harm if a suspension is not ordered.

ANALYSIS

The evidence which is before us relates entirely to Mr. Crozier's alleged failure to co-operate with the Institute's investigation of the complaints made against him. The CPC maintains that the failure to co-operate was serious and flagrant. Mr. Crozier's defence is that he was unaware of the investigation and that, thus, he cannot be said to have failed to co-operate with it. It is not for the Disciplinary Tribunal, at this time, to attempt to decide who is right. That decision must be made at the hearing on the merits of the charges.

There is no evidence before us that any ongoing conduct by Mr. Crozier contains reasonable grounds for us to think that his continuing right to practise could constitute a significant risk of harm to the public.

There is no doubt that investigation of complaints is a vitally important part of a self-governing profession's obligation to the public. There is no doubt about the obligations of members of a profession to co-operate with investigations into their professional conduct. It is also clear that the failure to co-operate can have a deleterious effect upon the disciplinary process which could follow an investigation. It was argued, on behalf of the CPC, that the failure to co-operate damages the public's

interest in the effective investigation and prosecution of complaints, and unless a suspension is ordered where lack of co-operation occurs, discipline will become ineffective.

It will be necessary, if Mr. Crozier is found guilty of failure to co-operate, to decide whether a suspension is an appropriate remedy in his case. A suspension is a very serious sanction to impose upon a professional person. Such a sanction, imposed after a hearing, would have the necessary deterrent effect upon others who may contemplate declining to co-operate. It would also serve to enhance confidence in the investigative and disciplinary processes of the CIA.

While she declined to accept that it was her position, it seemed to us that Ms. Hobday's position amounted to a contention that failure to co-operate in a meaningful way is so serious that it should inexorably lead to an interim suspension. We cannot accept that contention, because failure to co-operate in the past does not necessarily show that Mr. Crozier constitutes an ongoing risk of harm to the public. We expect that one could, by conjecture, imagine a set of circumstances where the very fact of non-cooperation could lead to a reasonable concern that there is a risk of harm. This is not such a case. During his argument, Mr. Crozier asked rhetorically: What is it that I am doing which exposes anyone to a risk of harm unless I am now suspended? The answer is simply that there is no evidence to tell this Disciplinary Tribunal what that risk is.

We are very sympathetic to the CPC's insistence that members of the CIA co-operate with its investigation. However, as a matter of principle, it is our opinion that before a Disciplinary Tribunal exercises its powers to suspend under Bylaw 20.06(12), it should be convinced that there are reasonable grounds to believe that there is a significant risk of harm to the public if the Respondent is allowed to continue as an

active member of the CIA. On all of the material before us, we are unable to have that conviction.

DISPOSITION

It follows that the motion must be and is dismissed.

Dated at Toronto, this 8th day of April 2011.

P. T. Galligan, Chair

Nancy Yake, Member

David Short, Member