

Discipline Report

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This is the thirty-ninth periodic report to Fellows, Associates, and Affiliates prepared in accordance with Bylaw 20.12(8). Its primary purpose is to educate and inform all Fellows, Associates, and Affiliates about the disciplinary process and current disciplinary activities. Please send any comments or suggestions for improvements in these reports to me at my Online Directory address.

Meetings

Since the last Discipline Report of June 2014, the Committee on Professional Conduct (CPC) held one meeting on October 15, 2014, in Montréal, along with one conference call.

Disciplinary Costs (\$000) to March 31, 2014

	FY 14-15		FY 13-14	
	Actual	Budget	Actual	Budget
Legal costs	35	85	122	205
Other costs	11	85	17	85
Total costs	46	170	139	290
	Actual		Actual	
Costs recovered	0		0	
Cases reviewed	11		12	

Cases

(a) Charges filed and cases completed

There are no cases with respect to which tribunals have been completed since the last periodic report in June 2014.

(b) Cases outstanding where charges have been filed

A charge was filed against a Fellow of the Institute who failed to cooperate and respond to requests for information from the Committee of Professional Conduct contrary to Rule 12 of the Rules of Professional Practice.

Notice of the charge and referral of the charge to a Disciplinary Tribunal was published on August 1, 2014, in accordance with Bylaw 20.04(3.1).

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

(c) Other complaints and information

The CPC has considered 11 complaints or other information that might lead to complaints against 14 Fellows, Associates, or Affiliates.

In four earlier cases, the CPC is still obtaining further information before deciding how to proceed, and three were dismissed.

The CPC had previously referred four cases to three Investigation Teams. One was referred to a Disciplinary Tribunal as noted in (b) above. One of the cases is ongoing and two were dismissed.

(d) Summary by practice area

The 11 cases set out above may be summarized by practice area as follows:

	Cases	Individuals
Life	3	3 members
Pension	6	10 members
P&C	0	0 members
Workers' Compensation	0	0 members
Actuarial Evidence	1	1 member
Other	1	1 member

(e) Summary of CPC cases since 1992

In response to an interest that was expressed to the CPC, this Discipline Report includes additional statistics on past CPC cases.

- Since 1992, the CPC has completed 182 cases.
- Of these 182 cases, 104 cases were dismissed, three cases resulted in a private admonishment without going to an Investigation Team, and 75 cases were referred to Investigation Teams.
- Of the 75 cases that were referred to Investigation Teams, 35 cases resulted in no charges being filed, and 40 cases resulted in charges being filed.
- Of the 40 cases that resulted in charges being filed, nine cases resulted in private admonishments, eight cases resulted in an admission of guilt and sanctions, and 23 resulted in public Disciplinary Tribunals.
- Of the 23 Disciplinary Tribunal hearings, 21 resulted in either a guilty plea by the Respondent or a finding of guilt by the Disciplinary Tribunal on some or all of the charges. In the other two cases, the respondents were found not guilty by the Disciplinary Tribunal.

Liam McFarlane
Chair, Committee on Professional Conduct

Rule 7 & 12 and the Committee on Professional Conduct

The Committee on Professional Conduct (CPC) has a mandate to investigate any evidence of wrongdoing by a member of the Canadian Institute of Actuaries (CIA). Evidence can come through a complaint laid by another member or a member of the public, information made public by the news media, court reports, or some other relevant form. The CPC is obligated to pursue these matters on behalf of the Institute as part of the CIA's mission to protect the public.

Wrongdoing normally involves a member breaking one or more of the CIA's Rules of Professional Conduct. It is important that all members be aware of and comply with all of the Rules.

Rules 7 and 12 in particular often influence CPC investigations and some members have argued that the two Rules conflict with each other. However, they are not in conflict and have, in fact, been written to complement each other. They are provided below for your information:

- **Rule 7:** A member shall not disclose to another party any confidential information obtained through a professional assignment performed for a client or employer unless expressly or implicitly authorized to do so by the client or employer, or required to do so under Rule 13, or required to do so by the Committee on Professional Conduct, an Investigation Team, a Disciplinary Tribunal or an Appeal Tribunal regarding any disciplinary matter arising under Section 20 of the Bylaws, or required to do so by law.
- **Rule 12:** A member shall respond promptly, truthfully and fully to any request for information by, and shall cooperate fully with, the Committee on Professional Conduct, an Investigation Team, a Disciplinary Tribunal, an Appeal Tribunal, or any member of such bodies regarding any disciplinary matter arising under Section 20 of the Bylaws.

Rule 7 requires members to keep information confidential but with some exceptions, as outlined. Most of these exceptions relate to the disciplinary process and they apply when information is requested by the CPC, an investigation team (IT), a disciplinary tribunal (DT), or an appeal tribunal (AT).

Rule 12 requires that members fully cooperate with the CPC and provide any requested information. Members must answer requests from the CPC, IT, DT, and AT fully, truthfully, and without undue delay.

Rule 7 was established in essentially its current form more than 10 years ago. Since it has been in place,

most members have taken steps to ensure that they are able to comply with it. As an example, most members now include wording in client agreements to avoid potential conflicts between confidentiality of information and complying with CPC requests for information.

In principle, an agreement between the actuary and the client should not prevent the CPC from fulfilling its mission, and should allow the committee to obtain otherwise confidential information. Facing a request from the CPC (or other disciplinary bodies), the actuary should inform his or her client in a timely fashion that:

- a) Such a request has been made by the disciplinary body concerned;
- b) The actuary must provide the requested information under the Rules;
- c) The disciplinary body will use the information for its purposes only and will keep it in the strictest confidence; and
- d) It is the client's responsibility to petition a court to obtain a court order if the client wishes to avoid disclosure of the confidential information.

If the client does not do so, or if no court order is issued, the information must be provided to the disciplinary body, which must keep the information confidential (unless a decision is made to the contrary by an authorized body in accordance with the CIA's Bylaws). In the history of the CPC, confidential information obtained by the committee in its investigations has only been released once, and then with the support of all involved.

The CIA's disciplinary process has been recognized and supported by the courts. It supports the Institute's mission to protect the public and will therefore likely continue to receive favourable support from the courts.

But what if the confidential information is granted a protective court order or is already protected by such an order? Certainly the CPC would comply with the order. However, it is up to the member to provide the committee with evidence of the order; it is not sufficient to say that any requested information is protected. Also, if a court order has been issued and the CPC believes that the requested information is important to its investigation, it could approach the court to try to obtain the information. Since the committee keeps any information confidential and only uses it as part of an investigation, it is entirely possible that a court would release the information

Rule 7 & 12 and the Committee on Professional Conduct

to the CPC. The committee would also expect the member to fully cooperate with the CPC to resolve any confidentiality issue. It should be noted that the committee has not yet petitioned a court to obtain protected information.

This bulletin cannot cover all possible situations governed by law, and is not intended to do so. In doubt, do not hesitate to consult your legal adviser, discuss the situation with your client, and contact

the CPC or its representatives. In principle, a refusal to cooperate is a serious violation of the Rules, one that goes to the core of the CIA's ability to perform its mission.

The Rules are not new and have not changed materially for many years. Nor has the role of the CPC. You should ensure that you are always able to comply with the Rules and are in a position to cooperate with the committee should it become necessary.