

CANADIAN INSTITUTE OF ACTUARIES DISCIPLINARY TRIBUNAL
IN THE MATTER OF CHARGES FILED AGAINST GENE DZIADYK File: 2017-5

Discipline Tribunal Panel

Hon. Colin L. Campbell Q.C. (Chair)

Stephen P. Bonnar, FSA, FCIA

William Weiland, FCAS, FCIA

Written Submissions to the Discipline Tribunal Panel by:

Antoine Alywin, Fasken Martineau DuMoulin,
for the Professional Conduct Board

Gene Dziadyk, Respondent, self-represented

PENALTY DECISION

1. Written submissions have been received from the Professional Conduct Board (“PCB”) and from the Respondent, Gene Dziadyk (“Dziadyk”) on the issue of penalty following the Decision of the Discipline Tribunal dated August 27, 2020 in which Dziadyk was found guilty of professional misconduct under the Rules of Professional Conduct of the Canadian Institute of Actuaries (“CIA”).
2. As set out in the Decision, Dziadyk was found guilty on six counts of professional misconduct relating to his behavior as an actuary and member of the CIA in releasing to the public emails, videos and various materials commenting on the behavior of another CIA member, Mr. Paul Ngai.
3. The charges may be summarized as failing to act honestly and with integrity pursuant to the duties of a CIA member in Rule 1 of the Rules of Professional Conduct of the CIA and avoiding unjustified or improper criticism of another member, pursuant to Rule 8.
4. The PCB seeks by way of penalty pursuant to CIA Bylaws 20.02 (8) and 20.08, the following:

- i. a 36-month suspension on each of the six counts on which the Respondent was found guilty, to be served concurrently following any reinstatement, since the Respondent ceased to be a member of the CIA from October 1, 2019;
 - ii. a fine of \$25,000.00 payable within six months from the date of this penalty decision; and,
 - iii. reimbursement of part of the PCB's legal costs in the amount of \$269,793.12, incurred since the beginning of the process.
5. The Respondent, in his written submissions, without in any way acknowledging the correctness of the decision of the Discipline Tribunal and dealing only with the issue of penalty, submits that suspension from the CIA or any other actuarial organization for a period of 12 months from the date of reinstatement, if any, would be a more appropriate penalty, in line with previous tribunal decisions of the CIA .
6. As to the matter of a fine, the Respondent urges that a fine in addition to suspension would be vindictive, particularly given the current financial situation of the Respondent.
7. The comment on costs by the Respondent repeats submissions made during the hearing process that, in his view, it was inappropriate that the matter was sent to the Discipline Tribunal in the first place. The Respondent further submits that the PCB failed to consider alternative measures to a formal discipline hearing, making the matter of costs the responsibility of the PCB as the award requested by the PCB would result in twice the previously highest cost award of discipline tribunals of the CIA.
8. In support of the submission that costs should be \$0, the Respondent, who decided not to participate in the actual hearing, seeks to bolster his position of innocence on the charges by reference to what he asserts were independent actuarial opinions from other CIA members that were not part of the evidence before the PCB at the hearing.

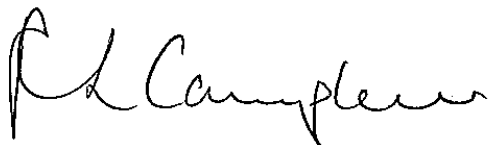
9. At no time did the Respondent admit guilt on any of the charges on which he was found guilty nor did he exhibit any remorse for the injury he caused.
10. The closest to recognition that his actions might be inappropriate is the statement by the Respondent that his language may be regarded as “discourteous” while at the same time asserting that it was truthful.
11. The language set out in Appendix B to the Decision of the Discipline Tribunal to support the finding of professional misconduct extends far beyond “discourteous”.
12. The submission of the PCB and the cases referred to therein set out the purpose of penalty being principally protection of the public and to provide both a specific and general deterrent against repeated conduct by the Respondent or other CIA members.
13. The secondary purpose of penalty set out in the case of *Canadian Institute of Actuaries v. A. David MacFarlane* (2009-03-23) is “to uphold and underline the professional integrity and high standards of both the Institute and its individual members.”
14. Based on the above principles, the following factors should be considered in imposing penalty:
 - i. the nature and gravity of the offence;
 - ii. the age and experience of the actuary;
 - iii. the attitude of the actuary through the investigation and prosecution;
 - iv. the number of offences and whether this was a first time offender;
 - v. if there was an admission of guilt proffered in a timely manner or was there willful defiance; and,
 - vi. was the act deliberate, premeditated, or malicious.
15. We previously concluded that we regard the offences as serious, with little or no cooperation from the Respondent, with deliberate conduct on his part, particularly having been warned by the PCB that his deliberate conduct was inappropriate. Not only has there been no

admission of guilt or responsibility but further the Respondent continues to maintain the validity of his actions.

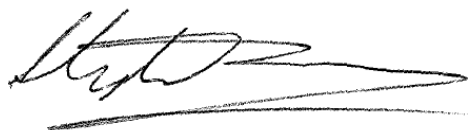
16. We are satisfied that the numerous and repeated derogatory comments following the warning by the PCB of the inappropriate nature of the Respondent's conduct left little choice but for the PCB to proceed in the manner that it has on behalf of the CIA and the profession.
17. We are satisfied that there is ample evidence to conclude that the penalty sought by the PCB of a 36-month suspension and fine of \$25,000.00 is reasonable, in light of the above principles and the facts of this case.
18. However, given the age of the Respondent and the fact that he has not practised since October 1, 2019, we would modify the penalty as follows, should the Respondent seek reinstatement:
 - i. that the Respondent complete any professional practice requirements of the CIA for reinstatement;
 - ii. that the Respondent pay in full the fine of \$25,000.00; and,
 - iii. following reinstatement, that membership be suspended for a further period of 24 months.
19. On the issue of costs, we have no hesitation in concluding that much of the time and cost of the process incurred by the PCB was due to the lack of cooperation by the Respondent in the proceeding and the choices he made leading to a cost incurred by the PCB of \$270,000.00.
20. The Discipline Tribunal has discretion in awarding costs. While we recognize that the PCB was appropriate in proceeding with this prosecution as important for the profession, some reduction of full cost recovery is warranted when applied to the Respondent. Applying this discretion, we reduce the cost award as part of the penalty to \$200,000.00.

21. In summary, should the Respondent seek and obtain reinstatement to membership in the CIA and pay the fine of \$25,000.00 and costs of \$200,000.00 such reinstatement will further be suspended for a further period of 24 months.

Dated at Toronto, this 9th day of November, 2020.



The Honourable Colin L. Campbell, Q.C.
Chair



Stephen P. Bonnar, FSA, FCIA



William Weiland, FCAS, FCIA