Canadian Institute of Actuaries

Discipline Bulletin

Volume 9 No. 1 July 2002

Discipline Report

This is the fourteenth periodic report to Members and Associates prepared in accordance with Bylaw 20.12(8) (formerly Bylaw 65.8). Its primary purpose is to educate and inform all Members and Associates about the disciplinary process and current disciplinary activities. Please send any comments on, or suggestions for improvements in, these reports to Brian FitzGerald or myself at our *Yearbook* addresses. Information in this report regarding specific cases represents the status thereof at May 31, 2002.

1. Meetings

The Committee on Professional Conduct held a meeting on March 11 and June 10, 2002, as well as two telephone conference calls. Future meetings of the committee have been scheduled for September 6 and December 9, 2002.

2. Disciplinary Costs ($000)

	FY 02-03		FY 01-02	
	Actual	**Budget**	**Actual**	**Budget**
Legal costs	5	–	144	–
Incremental costs	1	–	14	–
	6	**180**	**158**	**200**
	Actual		**Actual**	
Costs recovered	–		–	
No. of cases reviewed	5		7	

3. Cases

(a) Charges laid and cases completed

There are no cases with respect to which tribunals have been completed since the last periodic report in December 2001.

There are two cases with respect to which charges have been laid. 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 or associate charged.

Once the Notice has been published, any member who wishes to request more information about the charges which have been laid or the tribunal proceedings may obtain that information from the executive director.

(b) Complaints and information

Apart from the cases mentioned in (a), in the period since the December 2001 report, the committee has considered 11 complaints, or other information which might lead to complaints, against 13 Members or Associates.

Seven new cases have been received for the committee's consideration. In two of these cases, the committee decided to proceed and to refer these complaints to two Investigation Teams. In the five other cases, the committee is obtaining further information before deciding how to proceed.

In one earlier case, upon reviewing the Investigation Team report, the committee decided to dismiss the matter. In another earlier case, the committee decided to lay a complaint based on information received and to refer the complaint to an Investigation Team.

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

(c) Summary by Practice Area

The 13 cases set out above may be summarized by practice area as follows:

Life	3
Pension	9
P&C and Workers' Compensation	0
Actuarial Evidence	1

4. Questions and Answers Concerning the CIA Disciplinary Process

The following interview with the Chairperson of the Committee on Professional Conduct, Brian A.P. FitzGerald, touches on a number of topics concerning the Disciplinary Process within the Institute, including the effect of the 1998 changes to the process.

Question: Recent Discipline Bulletins have indicated that the Committee on Professional Conduct (the "Committee") has a much smaller number of complaints to deal with in recent years than was the case in the past. Is this the result of the changes to the disciplinary system that were made in 1998?

Chairperson Brian A.P. FitzGerald: No, the changes to the disciplinary system in 1998 were primarily procedural and affected how complaints were handled by the Committee, how the complaints were investigated, and, if charges were ultimately laid, how the Disciplinary Tribunal was selected, the range of possible sanctions and how the process was communicated to the respondent, the complainant, the membership and the public. In effect, the system became a little less adversarial, particularly where the transgressions were less serious. But there were no changes made as to what actions constituted deviations from the Rules of Professional Conduct and Standards of Practice.

So the optimistic view is that the smaller number of cases appears to indicate that compliance with our Rules and Standards of Practice is at a higher level than in the late 80's and early 90's, when the defining actions in many of our prior cases took place. I also believe that the publication of tribunal and "fast track" decisions has made members conscious of the need to follow our Rules and Standards of Practice. Similarly, the unacceptable practices as reported in the Discipline Bulletin have probably helped educate our members.

A more pessimistic view is that all possible cases are not being reported, but our regular discussions with regulators indicate that this is not the case. Also, there have been a number of inquiries from members concerning their Rule 13 obligations, which seems to indicate members are still aware that they cannot condone inappropriate actions by their colleagues by looking the other way.

Question: You mentioned a change to the range of possible sanctions. Can you explain this further, please?

Chairperson FitzGerald: Under the previous system, following consideration of an Investigation Team report, if the Committee felt that charges should be filed against a member because of one or more contraventions of the Institute's Rules and Standards of Practice, the case was referred to a Disciplinary Tribunal (DT). If the member was found guilty, the sanctions available to the DT ranged from a public reprimand to a suspension to expulsion. (There was also a "fast track" process available in less serious cases that required the member to admit guilt and pay a fine and certain expenses). But in all cases, whether settled by "fast track" or DT, there was a public announcement concerning the specifics and outcome of the case.

As a result of the 1998 changes, an additional sanction of a 'private admonishment' was introduced, primarily for less serious, but clearly established, contraventions of the Rules and Standards of Practice. This sanction, which is confidential, and which is removed from the member's disciplinary record after five years if there are no repeat offenses, has enabled the Committee to settle a recent case without reference to a Tribunal. There will still be Tribunals, as indicated in the statistical report above, but probably not as frequently as prior to 1998.

A further option available to the Committee following the 1998 changes could be implemented when the Committee is of the opinion that a member's actions, while not contravening Rules or Standards, are very 'close to the line'. This is a confidential 'letter of advice' that is intended as guidance for the member involved. It might be used for instance where the standards are not sufficiently clear as to enable charges to be filed, or where a member's behaviour or ethics in a situation were questionable, but not clearly 'offside'.

Question: Does this mean that the Committee on Professional Conduct, and the Institute as a whole, is somewhat 'softer' on contraventions of our Rules and Standards than it was prior to 1998?

Chairperson FitzGerald: Not at all. We do have a wider range of sanctions, which perhaps enables 'the punishment to better fit the crime' for less serious transgressions, but the Committee is every bit as diligent as in the past in reviewing complaints received from both within and outside the profession. Serious contraventions of Rules and Standards will be treated just as firmly as in the past. Actuaries have a significant responsibility and a privileged status, each of which has been created by federal and provincial laws, and the Institute must deal with situations where our Rules and Standards are being overlooked or circumvented, whether intentionally or not.

Fortunately, the reduced caseload, and the fact that a large backlog was cleaned up in the late 90's, has enabled the Committee to reduce from four full two-day meetings each year, to three or four one day meetings and the occasional conference call each year. Another benefit to Institute members has been a significantly reduced expenditure on discipline related matters. Discipline related costs in the last three fiscal years (ending in 2002) amounted to roughly 25% of the total net costs in the fiscal years ending in 1996, 1997 and 1998.

Question: Without disclosing confidential case information, can you comment on the types of complaints that the Committee has considered in the last few years?

Chairperson FitzGerald: It is difficult to generalize, as some comments may be incorrectly attributed to cases that are still within the disciplinary system. But, some themes might provide worthwhile guidance to members.

One situation that can be problematic occurs when a member does work in a practice area or specialization where he or she has little recent experience, without becoming completely familiar with the applicable standards of practice, or without seeking guidance from a member more experienced in that field, or without having his or her work peer reviewed. While we all can append the letters F.C.I.A. to our names, this does not make us all immediately competent in all types of actuarial work.

Another such situation occurs when the actuary identifies too closely with the client or employer's objectives, and possibly loses his or her independence. This can occur in a number of fields of actuarial practice, and may start with the client asking whether the assumptions or methods for a particular exercise can be 'stretched' or the contingency margins reduced, without appropriate disclosure in the report, so that a particular objective of the client can be met.

A problem can also arise when the actuary is asked to shorten his or her report (for cost or other reasons), or to structure the report differently than required by Institute standards. The actuary should be careful to ensure that there are no significant omissions from the report, and that other primary or secondary users of the actuary's report will not be misled by these changes.

As a general comment, a number of the cases that have come before the Committee on Professional Conduct over the years may not have arisen if the actuary involved, before issuing his or her report, had considered whether he or she would have been troubled by the approach being taken if that actuary had been reviewing the work on behalf of a party with a different interest to that of his or her client or employer (such as a regulator, shareholder, policyholder, pension plan member or opposing legal counsel).

Peter Morse
Editor, Committee on Professional Conduct