

**CANADIAN INSTITUTE OF ACTUARIES
DISCIPLINARY TRIBUNAL**

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

Panel

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

Appearances

Tina Hobday
for the Committee on Professional Conduct

Ashley B. Crozier,
Did not appear, and was not represented by counsel

Heard: October 24 and 25, 2011

REASONS FOR DECISION

Ashley B. Crozier has been a Fellow of the Canadian Institute of Actuaries ("CIA") since 1991. He faces two charges which result from complaints made against him in relation to actuarial and administration work which he performed in respect of two pension plans. Each charge contains four counts.

Each charge contains specific factual allegations which, the Committee on Professional Conduct ("CPC") contends, amount to contraventions of certain Rules of Professional Conduct and the provisions of Bylaw 20.03(5)(a), (b) and (d). We will set out the charges, in full, later in these reasons.

The factual allegations made in both charges are similar. They are that Mr. Crozier did not perform certain of his professional services with skill and care; that he did not cooperate with others in the client's interest, including the actuary and consultant retained by the client to replace him; and that he failed to cooperate with the Investigation Team and the CPC in their investigations of the complaints made against him.

We intend to deal with each charge and with the evidence which relates to each charge separately. There is one issue of fact which is relevant to both charges. Some of the evidence given in relation to each charge bears upon that issue of fact. The issue of fact is whether communications sent to Mr. Crozier at his office by mail, courier, fax, telephone and by email between May 2009 and January 2011 would likely have been received by him or would likely have come to his attention. That issue of fact is relevant to the allegations that he failed to cooperate with the CIA investigations into the complaints. Before dealing with that issue, we will give a brief overview of the circumstances and describe the process of the charges from filing to the hearing.

OVERVIEW

Prior to April 16, 2009, Mr. Crozier had been the actuary for the Pension Plan for employees of Sun Pac Foods Limited ("Sun Pac Pension Plan"). Sun Pac Foods Limited ("Sun Pac") decided to change the provider of actuarial services for the Sun Pac Pension Plan to Robertson Eadie & Associates Ltd. ("Robertson Eadie") and notified Mr. Crozier of its decision in a letter dated April 16, 2009. In 2010 an employee of Robertson Eadie filed a formal complaint with the CIA charging that Mr. Crozier had failed to cooperate in the handing over of relevant documents and data held by Mr. Crozier with respect to the Sun Pac Pension Plan. The complaint led to an investigation, the outcome of which was one of the charges against Mr. Crozier.

For some years prior to April 7, 2010, Mr. Crozier had been the actuary for the Pension Plan for Group "A" Employees of G.E.W. Management Incorporated ("GEW Pension Plan"). G.E.W. Management Incorporated ("GEW") decided to change the provider of actuarial, consulting and administration services for the GEW Pension Plan to Corporate Benefit Analysts Inc. ("Corporate Benefit") and notified Mr. Crozier of its decision by copy of a letter dated April 7, 2010. Later in 2010 an employee of Corporate Benefit filed a formal complaint with the CIA that Mr. Crozier had failed to cooperate in the handing over of relevant documents and data held by Mr. Crozier in respect of the GEW Pension Plan. The complaint led to an investigation the outcome of which was the other charge against Mr. Crozier.

FILING AND PROCESSING OF CHARGES

On November 3, 2010 the CPC filed the two charges against Mr. Crozier. On December 23, 2010 the Chairperson of the Tribunal Panel appointed the present Disciplinary Tribunal to hear the two charges. Both charges were amended by the CPC on January 21, 2011 to add references to the Bylaws of the CIA. There was no change made to factual allegations.

On February 15, 2011 the CPC brought a motion before the Disciplinary Tribunal seeking an order suspending Mr. Crozier pending the hearing of the charges. On March 4, 2011 the Disciplinary Tribunal fixed March 21, 2011 for the hearing of the motion. It advised both parties of the place, date and time when it would hear the motion. On March 21, 2011 both parties appeared on the return of the motion. After hearing representations, the Disciplinary Tribunal, in the presence of both parties, adjourned the hearing of the motion until April 4, 2011.

On April 4, 2011 the Disciplinary Tribunal heard the motion and reserved its decision. Both parties appeared and participated in that hearing. On April 11, 2011 the Disciplinary Tribunal released its decision dismissing the motion brought by the CPC for an interim suspension and delivered its reasons for so doing.

At the conclusion of the hearing held on April 4, 2011 the Disciplinary Tribunal, with the agreement of the parties, pursuant to section 3 of the Rules of Practice and Procedure of a Disciplinary Tribunal, convened a pre-hearing conference in respect of the two charges, to be held by telephone conference call on May 11, 2011 at 10:00 a.m. It confirmed that appointment in writing to the parties and sent them the telephone conference call dial-in instructions.

The pre-hearing conference began on May 11, 2011. Both parties participated. It was then agreed that the pre-hearing conference should be adjourned because of certain discussions which were taking place at the time between Mr. Crozier and the members of the Investigation Team. Accordingly, the conference was adjourned, on consent, to July 11, 2011 at 9:30 a.m. The Disciplinary Tribunal confirmed the adjournment to the parties in writing. It also provided the dial-in instructions.

On July 11, 2011 the pre-hearing conference took place as scheduled. However, this time Mr. Crozier did not participate. When he did not come on the line at the scheduled starting time of 9:30 a.m., the Chair asked counsel for the CPC to telephone him. She reported that she placed the call and got Mr. Crozier's voicemail and left a message that the conference would not begin for another ten minutes to allow him time to join. At 9:43 a.m. Mr. Crozier had not joined the conference so it proceeded. During the conference the Disciplinary Tribunal fixed the time, date and place of the hearing:

Date: October 24, 25, 26, 31 and November 1, 2011

Time: On the first day, the hearing will commence at 10:00 a.m.

Place of Hearing: At the premises of ADR Chambers, 112 Adelaide Street West, Suite 200, Toronto, Ontario M5C 1K9.

Manner of hearing: The hearing will be an oral hearing which will take place in the presence of an official reporter who will be retained by ADR Chambers.

The Disciplinary Tribunal sent a copy of the Minutes of the Pre-Hearing Conference to Mr. Crozier by email and by regular mail. On the same date the Chair wrote to Mr. Crozier advising him of the date, time and place of the hearing. That letter contained this closing sentence:

This will also advise you that if you do not attend at the hearing, the Disciplinary Tribunal is entitled to proceed with the hearing in your absence.

On October 17, 2011 the CPC advised the Disciplinary Tribunal, on notice to Mr. Crozier, that it would seek a postponement of the hearing which was scheduled to begin on October 24, 2011.

On October 24, 2011 the Disciplinary Tribunal opened the hearing. Mr. Crozier did not appear either in person or by counsel. He did not send any message to explain

his absence. The Disciplinary Tribunal proceeded to hear the request by the CPC for a postponement. The Disciplinary Tribunal ruled that the public interest in the expeditious disposition of charges pending before it militated against the long delay which the requested postponement would have caused. It directed that the case proceed but postponed the commencement of hearing evidence until 1:30 p.m. that day. The Chair then sent an email to Mr. Crozier advising him that the request for a postponement had been refused, and that the Disciplinary Tribunal would begin hearing evidence at 1:30 that afternoon. At 1:30 p.m. Mr. Crozier did not appear.

The Disciplinary Tribunal heard the evidence and argument during the balance of October 24 and on October 25, 2011. At the conclusion of the evidence and argument it reserved its decision.

ONUS OF PROOF

The onus of proving the charges against Mr. Crozier rests upon the CPC. That onus of proof has been described by the Ontario Divisional Court as requiring clear and convincing proof based upon cogent evidence. See *Bernstein v. The College of Physicians and Surgeons* (1977), 76 D.L.R. 38 at p. 76. In our analysis of the charges and the evidence, we have kept in mind that the onus rests upon the CPC to establish its case by clear and convincing proof based upon cogent evidence.

Mr. Crozier exercised his right to decline to appear at the hearing. He was entitled to do so. However, his absence deprived us of potential evidence, submissions and argument which might have shown us that we should give little or no weight to some of the testimony which was placed before us. In the result, there was no challenge to the documentary and testimonial evidence which was placed into the record.

Most of the oral evidence was given by persons who were well qualified and experienced professionals. The documentary evidence had all been disclosed to and provided to Mr. Crozier long before the hearing. All of that evidence remained uncontradicted and unchallenged. We are unable to discern any reason why that evidence should not be given full credence and afforded appropriate weight.

RECEIPT OF COMMUNICATIONS AND KNOWLEDGE OF THEIR CONTENTS

The evidence shows that for some years Mr. Crozier carried on his actuarial practice as Crozier Consultants Inc. His office address was Suite 4200, 181 Bay St., Toronto. His business phone number was 416-361-0695. His calls were answered by a receptionist who forwarded them to his voicemail when Mr. Crozier was not available. His business email address was ashley@crozierfinancial.ca.

Implicit in the CPC's onus of proving that Mr. Crozier failed to cooperate with the CIA's investigations is its obligation to prove that he knew or ought to have known that the investigations were taking place. If he did not know that they were taking place it could not be said that he failed to cooperate with them. The communications sent to Mr. Crozier, which could cause him to know of the investigations, were directed to the address, phone number and email address set out above. The issue is whether there is evidence which would justify a finding that he received them and should have known their contents.

In order for people to carry out their ordinary affairs of life, whether it be personal or business, there is an expectation that, if one sends a communication by normal means to a person at a place where he/she is usually expected to be found, the person will receive it. That expectation can be rebutted if the communication is returned to the sender or if it is shown that the person is no longer at the location to which the communication has been sent. That reasonable expectation has led to an evidentiary

presumption that if, for example, a letter is posted to a person at a particular address and is not returned after a reasonable time, a court or tribunal is entitled to infer that the addressee received it. A similar presumption can be applied to communications sent by courier, email or telephone calls to voicemail. The presumption can be rebutted by evidence that the address was wrong or that the addressee was not at the place to which the communication was sent.

That evidentiary presumption may not be a very strong one where only one communication is sent. However, it can become very strong, indeed, if many communications are sent by various methods and there is no evidence to suggest that they were not being received.

There was oral testimony and there is documentary evidence that a great many communications were sent to Mr. Crozier over the period extending from May 27, 2009 until late January 2011. They were letters, faxes, emails and phone calls. None of them were ever returned nor has there ever been any evidence that any one of them had not been received by Mr. Crozier to whom they were all addressed. Most of the letters were sent to Mr. Crozier by the CPC. The others were sent by the following persons: Jerry Zanatta who was the actuary at Robertson Eadie who was in charge of the Sun Pac file; Marian McKillop who was the plan administrator at Corporate Benefit in charge of the GEW file; and Alan Exley who was the chair of the Investigation Team. In addition, Ms. McKillop, Mr. Zanatta and Mr. Exley called, faxed and sent emails to Mr. Crozier.

All of those communications relate to the allegations of non-cooperation with either the successor actuary/consultant or the investigation process. We will refer to the contents of some of communications when we address those allegations. Their relevance now is to show that a large number of communications were sent by letter, phone, fax and email, by different persons, to Mr. Crozier at a place where he was

reasonably expected to be and that there was not one instance where any evidence suggested that the communications had not reached him.

We now set out a summary of the communications:

(a) Letters

- (i) Mr. Zanatta wrote 3 letters to Mr. Crozier between May 27, 2009 and March 2, 2010.
- (ii) Ms. McKillop wrote to him on April 30, 2010 and on May 12, 2010.
- (iii) Mr. Exley wrote 3 letters to him between May 25, 2010 and August 4, 2010.
- (iv) The CPC wrote 11 letters to him between March 22, 2010 and January 21, 2011.

(b) Phone Calls

(i) Mr. Zanatta

- In the summer of 2009 Mr. Zanatta called Mr. Crozier's office. The receptionist forwarded him to Mr. Crozier's voicemail. The outgoing message identified Crozier Consultants and asked the caller to leave a message. He did.
- In the autumn of 2009 Mr. Zanatta again called Mr. Crozier. This time he reached his actuarial student, Grace Charlton, who advised him that at the moment Mr. Crozier was in Europe. He left a message.
- In late January or early February 2010, Mr. Zanatta called Mr. Crozier again. This time, perhaps surprisingly, he got him on the phone. As a result of the call he got an email from Mr. Crozier which shows that the email address was still current.

(ii) Ms. McKillop

- On May 3, 2010 Ms. McKillop called Mr. Crozier. The receptionist answered her call and transferred it to Mr. Crozier's voicemail. Ms. McKillop left a message on the voicemail.
- The next day, May 4, 2010, she called him again. Again the receptionist answered and forwarded her to Mr. Crozier's voicemail. Again Ms. McKillop left a message.

- (iii) Mr. Exley
- On May 17, 2010 he phoned Mr. Crozier 3 times and left messages.
 - On May 18, 2010 he phoned Mr. Crozier 4 times and left a message. He spoke to Mr. Crozier's assistant who confirmed that Mr. Crozier was in the office and that she would remind him to return the call.
 - On May 19, 2010 he phoned Mr. Crozier 3 times and left messages on his voicemail.
 - On May 21, 2010 Mr. Exley tried again.
 - On July 30, 2010 Mr. Exley phoned Mr. Crozier and left a message.
 - On August 4, 2010 Mr. Exley phoned Mr. Crozier and left a message.

(c) Faxes

- On April 30, 2010 Ms. McKillop faxed a letter to Mr. Crozier and received no reply.
- On May 12, 2010 Ms. McKillop faxed another letter to Mr. Crozier and received no reply.

(d) Emails

- (i) Ms. McKillop
Ms. McKillop sent emails to Mr. Crozier on April 30, 2010 and on May 12, 2010. She did not receive a reply to either of them.
- (ii) Mr. Exley
Between May 17, 2010 and August 4, 2010 Mr. Exley sent Mr. Crozier at least 7 emails. He did not receive a reply to any of them.

The evidence establishes that Mr. Crozier shared a receptionist with another occupant of Suite 4200 at 181 Bay St., Toronto. It is quite beyond belief that if Mr. Crozier was never there, to receive all of those communications, that the receptionist would not have said at least once to one of the originators that the communications were being sent to the wrong place. That never happened.

The inference to be drawn, from all of those circumstances, is irresistible. It is that Mr. Crozier must have received or been aware of those communications. There is

other evidence which directly supports the inference that Mr. Crozier was at Suite 4200, 181 Bay St., Toronto until well into January 2011.

Robert Young has been an acquaintance of Mr. Crozier for about five years. They discussed, in some detail, the possibility of going into business together. Eventually they agreed to abandon these discussions. During the time of their negotiations Mr. Young was at the office at 181 Bay St., Suite 4200 several times and met with Mr. Crozier in its boardroom. The main occupant of the office suite was an insurance services firm, The Hull Group. It appeared to Mr. Young that Mr. Crozier acted as a consultant to that group. The negotiations between the two men ended in 2009.

Mr. Young testified that one day, in late August or early September 2010, he was visiting a law office on the 42nd floor of 181 Bay St. While Mr. Young was at the law office, Mr. Crozier came out of Suite 4200 and went to the elevator. The two men saw one another but did not converse.

Mr. Crozier is placed at Suite 4200, 181 Bay St., in late 2010 and in the early part of 2011 by two compelling pieces of evidence. Firstly, on December 23, 2010 the Chairperson of the CIA's Discipline Tribunal Panel wrote to Mr. Crozier to advise him of the composition of the Disciplinary Tribunal which had been appointed to hear the charges which had been brought against him. That letter was sent to Mr. Crozier by FedEx Courier. The CIA has obtained a tracking update from FedEx, which is Exhibit #4, Tab 30. It shows that the letter was delivered on December 24, 2010 at 8:17 a.m. The "Recipient Information" is as follows:

Ashley B. Crozier, Crozier Consultants, 181 Bay St., BCE Pl., Ste. 4200
Toronto

Secondly, on January 21, 2011 the CPC sent a package containing two letters to Mr. Crozier advising him of the amendments to the two charges which had been brought against him. That package was sent to Mr. Crozier by FedEx Courier. The CIA has obtained a tracking update from FedEx. It is Exhibit #11. It shows that the package was delivered on January 24, 2011 at 8:04 a.m., with the same "Recipient Information" as for the previous delivery.

There is a final point to be raised regarding this issue. Although he was advised of the date and place of the hearing, Mr. Crozier chose not to appear at the hearing. He chose not to testify before us. Mr. Crozier is well aware that an important issue in the case is whether he knew that the investigations were taking place. In fact in his written Response to the motion seeking an interim suspension, he stated as follows:

Cooperation with the Disciplinary Process

3. Mr. Crozier does not deny that various attempts were made by several parties to contact him. Unfortunately, all attempts to a business were made to contacts that are no longer current for him. Accordingly, Mr. Crozier was not aware of such attempts, which is the reason for not responding.
4. Mr. Crozier would have responded accordingly had he been aware.

That fact of his being unaware that investigations into his conduct were taking place is something which was uniquely within his knowledge. In circumstances where some fact is uniquely within the knowledge of a party to a proceeding and that party chooses not to testify and subject himself/herself to cross-examination, a court is entitled to draw the inference that the reason why the party did not testify is because the party's testimony would not have helped his/her case. We have no hesitation in inferring, in this case, that had Mr. Crozier testified his evidence could not have supported his claimed absence of knowledge.

For reasons set out above, we have reached the conclusion that there can be no doubt that Mr. Crozier received each and every communication which was directed to him and that he was fully aware of their contents. This finding of fact applies to each of the charges against him. We will now proceed to consider each charge separately.

THE CHARGE RESPECTING THE SUN PAC PENSION PLAN

The charge against Mr. Crozier respecting the Sun Pac Pension Plan reads as follows:

ASHLEY B. CROZIER, F.C.I.A.

Amended Charge brought under Bylaw 20.04 by the Committee on Professional Conduct of the Canadian Institute of Actuaries

The following charge against Mr. Ashley B. Crozier arises in connection with actuarial and administrative work he performed with respect to the **Pension Plan for Employees of Sun Pac Foods Limited** (the "Plan").

Mr. Crozier had initially been engaged to perform actuarial and administrative services for the Plan. Early in 2009, another actuary was engaged to perform those actuarial and administrative services instead of Mr. Crozier.

The new actuary asked Mr. Crozier for certain information to allow him to properly provide the actuarial and administrative services to the client. Although Mr. Crozier was asked several times by the new actuary and by the client, he did not provide the information requested.

In addition, some material differences were observed between the valuation report, signed on September 27, 2007 and provided to the client but not filed with FSCO, and the valuation report, signed on September 28, 2007 and filed with FSCO but not provided to the client. These differences remain unexplained.

Furthermore, Mr. Crozier does not appear to have filed the valuation report with FSCO until approximately 15 months after the effective date of the valuation and six months after the filing deadline prescribed by law.

Finally, during the investigation, the investigation Team made numerous attempts to contact Mr. Crozier to give him an opportunity to comment on the complaint, but he did not respond to the Investigation Team's requests. During the disciplinary process to date, the Committee on Professional Conduct also communicated with Mr. Crozier, but received no response.

By such conduct, Mr. Crozier

1. failed to act in a manner to fulfil the profession's responsibility to the public and to uphold the reputation of the actuarial profession, contrary to **Rule 1** of the current Rules of Professional Conduct;
2. failed to perform professional services with skill and care, contrary to **Annotation 1-1 to Rule 1** of the current Rules of Professional Conduct;
3. failed to cooperate with others in the client's interest, contrary to **Rule 8** of the current Rules of Professional Conduct; and
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 charge relates to three separate, although interrelated, factual allegations. The first allegation is that Mr. Crozier failed to cooperate with others in the client's interest, including the actuary who succeeded him as the pension plan's actuary. The second allegation is that certain professional services, which Mr. Crozier performed for his client, were not performed with skill and care. The third allegation is that Mr. Crozier did not cooperate with CIA investigations into the complaint made against him.

We will examine each allegation to see if the CPC has proved any one or more of them. While we will examine each factual allegation we will do so in an order different from that set out in the charge. Once we have made our findings of fact we will decide

whether or not they demonstrate violations of any Rules of Professional Conduct, or the provision of the Bylaw, set out in the charge.

1. **Deficient Provision of Services**

Witnesses described a number of deficiencies which they say they found in work which Mr. Crozier performed for the pension plan. The charge, however, specifies only two deficiencies. We are restricted by the charge to an examination of the factual allegations made in it. We are not permitted, by law, to engage in a wide-ranging inquiry into the general proficiency of the services which Mr. Crozier rendered to his client.

The two factual allegations are very specific. We address first the allegation that a materially different valuation report was filed with the Financial Services Commission of Ontario ("FSCO") than was given to the client.

Mr. Crozier prepared two valuation reports as at January 1, 2007. He filed one, signed September 28, 2007, with FSCO. He delivered another one, signed September 27, 2007, to his client. They were different in a number of material respects. We will only refer to one of the differences. On page 2 of the valuation report filed with FSCO, the Statement of Going Concern Financial Position shows an actuarial surplus of \$7,141,600. At page 2 of the valuation report delivered to the client, the Statement of Going Concern Financial Position shows an actuarial surplus of \$5,485,200. While, in his written Response to the motion seeking an interim suspension, Mr. Crozier made the suggestion that the discrepancy was due to a decision by Sun Pac not to proceed with a certain planned benefit improvement, there is no evidence to support that suggestion. We are left, therefore, with no proven explanation for the discrepancy.

The second allegation is that Mr. Crozier was late filing the valuation report with FSCO. Mr. Crozier filed the valuation report, as at January 1, 2007, with FSCO on March 26, 2008. The report should have been filed within nine months of January 1, 2007. Once again there is no evidence to support a suggestion made by Mr. Crozier in his Response to the motion, which might explain the delay.

It is possible that some explanations could be forthcoming for the discrepancies between the two valuation reports and for the late filing. Those explanations, if they exist, would be uniquely within Mr. Crozier's knowledge. He has chosen not to testify before us and prove them. Because of his silence we draw the inference that his testimony would not have supported reasonable explanations for the discrepancy and the late filing.

The Rules of Professional Conduct contain the following provisions:

PROFESSIONAL INTEGRITY

Rule 1 A member shall act honestly, with integrity and competence, and in a manner to fulfil the profession's responsibility to the public and to uphold the reputation of the actuarial profession.

Annotation 1-1 A member shall perform *professional services* with skill and care.

In our view, the unexplained discrepancies between the two valuation reports and the late filing demonstrate both a failure to act with competence within the meaning of Rule 1 and a failure to perform professional services with skill and care within the meaning of Annotation 1-1.

We hold, therefore, that the CPC has proven the violations alleged in Counts 1 and 2 of the charge.

2. Failure to Cooperate with Others in the Client's Interest

On April 16, 2009 Sun Pac wrote to Mr. Crozier and advised him that it had retained Robertson Eadie, effectively immediately, to provide actuarial services for the Sun Pac Pension Plan. Sun Pac requested Mr. Crozier to forward information, including membership data and documents, to its new actuary. On May 27, 2009 Jerry Zanatta wrote to Mr. Crozier requesting that he provide to Robertson Eadie the database which he had used in the preparation of the actuarial valuation as at January 1, 2007 and other material, information and data which Mr. Crozier should have had in his client's file. The information requested was, in our opinion, reasonable. No answer was received. On June 23, 2009 Mr. Zanatta wrote a follow-up letter. He received no reply.

Mr. Zanatta testified that he called Mr. Crozier repeatedly and sent email follow-ups. He did manage to speak to Mr. Crozier on the telephone and was promised that the requested data and information would be forthcoming. He did get one email from Mr. Crozier, on February 2, 2010, Exhibit #13, with some information. However, he received only a fraction of the data which was necessary for him to effectively value and administer the pension plan. The absence of the required material impaired the ability of Robertson Eadie to provide appropriate actuarial administrative and consulting services to the client.

In order to get the data and information, which was necessary for his work, Mr. Zanatta had to go to other sources including FSCO. That entailed additional work which resulted in the client incurring additional expense. That additional work would not have been necessary had the information, which should have been in Mr. Crozier's possession, been provided to Robertson Eadie.

The evidence can lead us to no conclusion other than that Mr. Crozier deliberately declined to cooperate with Robertson Eadie in the client's interest.

Rule 8 of the Rules of Professional Conduct provides as follows:

COURTESY AND COOPERATION

Rule 8 A member shall perform *professional services* with courtesy and professional respect, shall avoid unjustifiable or improper criticism of other members, and shall cooperate with others in the client's or employer's interest.

There is good reason why the rule mandates that Fellows of the CIA cooperate with others in the client's interest. Failure to cooperate means that a client will almost certainly be faced with additional expense. Moreover, failure to cooperate will probably result in delay and confusion for the client and for the members of the plan. Failure to cooperate with another actuary in the client's interest is the mark of a serious lack of professionalism.

We hold, therefore, that the CPC has proven the violations alleged in Count 3 of the charge.

3. Failure to Cooperate with a CIA Investigation

As a result of Mr. Crozier's failure to cooperate, Mr. Zanatta complained to the CIA. It suggested to him that he notify Mr. Crozier that he proposed filing a formal complaint with the CIA against him if he did not cooperate. On March 2, 2010, in accordance with that suggestion, Mr. Zanatta notified Mr. Crozier that he proposed to file a formal complaint. Because the notification did not bring about cooperation, Mr. Zanatta filed his complaint with the CIA on March 5, 2010. On March 22, 2010 the CPC wrote to Mr. Crozier, advised him of the complaint and provided him with a copy of it. It also gave him an opportunity to respond and told him that the complaint might be referred to an Investigation Team. Mr. Crozier did not respond.

On April 30, 2010, the CPC advised Mr. Crozier, in writing, that it had decided to refer the complaint to an Investigation Team. On May 3, 2010 it wrote to him advising of the names of the members of the Investigation Team which would be carrying out its investigation of the complaint. In its letter it said:

... The Investigation Team has broad powers under Bylaws 20.03(3), 20.03(4) and 20.03(5) and expects the full cooperation of all parties. It also expects all parties to bring to its attention any facts which they believe may be relevant to the investigation. The Investigation Team will be contacting you in the course of its inquiries.

...

We look forward to your full cooperation with the Investigation Team and its inquiries. ...

Alan Exley was the appointed chair of the Investigation Team. He began attempting to meet with Mr. Crozier on May 17, 2010. He phoned him and sent him emails. The first email reads:

Sent: Monday, May 17, 2010 5:37 PM
Subject: Meeting

Hi Ashley:

I am following up to the phone message I left for you. I am attempting to set up a time for the Investigation Team to meet with you regarding the complaint filed against you. Hopefully you will agree to meet with us and present us with your position on the complaint. I must advise you that failure to agree to a meeting will just end up with the Committee on Professional Conduct filing additional charges. We would like to meet with you next week – Monday, Tuesday or Wednesday and hopefully your schedule will allow for one of these days? Please email me or call me – 519-747-1943 regarding the date for this meeting

Thanks Ashley!

He received no response. He sent another email on May 18, 2010:

Sent: Tuesday, May 18, 2010 6:00 PM
Subject: Meeting

Ashley:

I have called many time in the past 24 hours, left messages and followed up with emails. I talked to your assistant twice today so I am aware that you were in the office today. Your assistant said she would remind you to call me. So far, I have not heard from you. I am not about to waste my time attempting to contact you if you are not going to cooperate and have the professional courtesy to call me or email me back. If I don't hear from you by the end of this week, Friday May 21st, I will be filing my report indicating that you would not cooperate with the Investigation Team which will result in another charge for violating Rule 12.

Alan Exley
Chairman,
Investigation Team

On May 19, 2010 and May 20, 2010, he sent further emails seeking meetings. Finally, on May 25, 2010, he wrote this letter:

Dear Mr. Crozier:

As you are aware, I am the Chairman of the Investigation Team established by the CIA Committee on Professional Conduct to investigate the complaint laid against you be [sic] Mr. Jerry Zanatta. I have attempted to contact you to arrange for a meeting between you and the Investigation Team to discuss the complaint. The following is a summary of my attempts to contact you:

- | | | |
|---------|---|---|
| 17/5/10 | - | Phoned you three times and left messages |
| | - | Followed up phone calls with an email |
| 18/5/10 | - | Phoned four times and left messages and also talked to your assistant who confirmed that you were in fact in the office and that she would remind you to call me. |
| | - | followed up with an email |

- 19/5/10 - Phoned three times and left messages
- sent an email following up on my phone messages
- 20/5/10 - sent an email following up on my phone messages
- 21/5/10 - phoned once and followed up by email

Copies of all emails are included with this letter.

Despite all of the attempts to contact you or to have you return my messages, you have not returned my phone calls or emails. I have even asked you to confirm that you were not interested in meeting with the Investigation Team if that was the case.

We are hereby formally again seeking your cooperation to schedule a meeting with the Investigation Team. You can phone me at 519-747-1943 or email me at afe.act@rogers.com if you are willing to meet with the Investigation Team.

We remind you that you are required to cooperate with an Investigation Team of the Canadian Institute of Actuaries pursuant to its Bylaws and Rules of Professional Conduct. Furthermore, the Investigation Team will proceed to draft its report to the Committee on Professional Conduct without your input should you not cooperate.

Please be advised that if, by June 2nd 2010, you fail to contact us with your availability for a meeting, we will consider that as a refusal to cooperate. We will then draft our report to the Committee on Professional Conduct without your input and we will inform the Committee of your lack of cooperation, required by the Bylaws and the Rules of Professional Conduct.

Mr. Exley did not receive a reply to any of those communications. Nevertheless, he tried again. On July 13, 2010 he called Mr. Crozier and left a message for him on his voicemail, and sent him an email, asking for a meeting to discuss the discrepancies between the two versions of the valuation report as at January 1, 2007. He followed up with a letter on July 14, 2010 with the same request. Mr. Crozier did not reply.

Mr. Crozier's failure to reply to the repeated requests of the Investigation Team to meet with it is tantamount to nothing less than a total refusal to cooperate with the investigation which it was conducting.

We digress to mention something which has been disclosed to us but which cannot play any part in our consideration of the two charges before us. Long after the charges were filed, and while they were being processed before this Disciplinary Tribunal, Mr. Crozier did meet once with the Investigation Team. That was on May 9, 2011. We cannot use what happened at and after that meeting as any evidence in respect to this charge or the other charge because that meeting was long after the time frame implicit in the two charges. In coming to a conclusion about the charges which are before us, we must, and do, disregard the evidence relating to that meeting.

Quite apart from the CIA's Rules of Professional Conduct and its Bylaws, the law imposes a very clear and serious obligation upon every professional to cooperate with investigations sponsored by the governing body of the organization of which the professional is a member. That obligation is recognized by the courts in Canada. One of the important decisions is that of the Ontario Divisional Court in *Artinian v. College of Physicians and Surgeons*, [1990] O.J. No. 1116 where the following appears at page 4:

It is suggested by Mr. Laskin that there was no duty on his client to cooperate in the investigation against him by the College. We disagree. Fundamentally, every professional has an obligation to co-operate with his self-governing body.

[Emphasis added.]

Apart from that general duty, the CIA has specifically imposed a duty upon its members to cooperate with its investigation. Rule 12 provides:

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.

The evidence establishes beyond doubt that Mr. Crozier failed to cooperate with the Investigation Team when he did not respond to its repeated requests for a meeting.

Bylaw 20.03 contains the following provisions which are relevant to this case:

The Investigation Team

20.03

- (5) It shall be an Offence for a Member, Associate or Affiliate to
 - (a) hinder in any way the work of an Investigation Team or any one of its members in the performance of its duties as carried out according to the Bylaws;
 - (b) fail to respond within 30 days to an inquiry from an Investigation Team;
 - (d) refuse to produce any information or document relating to an inquiry;

In our view, Mr. Crozier's failure to respond to repeated requests to meet with the Investigation Team amounts to a breach of each of those provisions in Bylaw 20.03.

We hold, therefore, that the CPC has proven the violations alleged in Count 4 of the charge.

Disposition

Having found that the CPC has proven each of the allegations set out in the four counts, we find that Mr. Crozier is guilty of the offence specified in the charge filed in respect to the Sun Pac Pension Plan.

THE CHARGE RESPECTING THE GEW PENSION PLAN

The charge against Mr. Crozier respecting the GEW Pension Plan reads as follows:

ASHLEY B. CROZIER, F.C.I.A.

Amended Charge brought under Bylaw 20.04 by the Committee on Professional Conduct of the Canadian Institute of Actuaries
The following charge against Mr. Ashley B. Crozier arises in connection with actuarial and administrative work he performed with respect to the **Pension Plan for Group A Employees of G.E.W. Management Incorporated** (the "Plan").

Mr. Crozier had initially been engaged to perform actuarial and administrative services for the Plan. In 2010, another firm was engaged to perform those actuarial and administrative services instead of Mr. Crozier.

The new consultant asked Mr. Crozier for certain information to allow her to properly provide the actuarial and administrative services to the client. Although Mr. Crozier was asked several times by the new consultant and by the client, he did not provide the information requested.

In addition, no actuarial valuation reports have been filed with FSCO since the valuation report as of October 31, 2001, and a number of other compliance filings have either not been filed or were filed late with FSCO and/or Canada Revenue Agency (CRA).

Finally, during the investigation, the Investigation Team made numerous attempts to contact Mr. Crozier to give him an opportunity to comment on the complaint, but he did not respond to the Investigation Team's requests. During the disciplinary process to date, the Committee on

Professional Conduct also communicated with Mr. Crozier, but received no response.

By such conduct, Mr. Crozier

1. failed to act in a manner to fulfil the profession's responsibility to the public and to uphold the reputation of the actuarial profession, contrary to **Rule 1** of the current Rules of Professional Conduct;
2. failed to perform professional services with skill and care, contrary to **Annotation 1-1 to Rule 1** of the current Rules of Professional Conduct;
3. failed to cooperate with others in the client's interest, contrary to **Rule 8** of the current Rules of Professional Conduct; and
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)**.

Like the charge respecting the Sun Pac Pension Plan, this charge relates to three factual allegations. The first allegation is that Mr. Crozier failed to cooperate with others in the client's interest, including the consultant who succeeded him as the pension plan's provider of actuarial and administration services. The second allegation is that he did not perform certain professional services with skill and care. The third allegation is that Mr. Crozier did not cooperate with the CIA's investigation into the complaint which was made against him.

We will examine each of those factual allegations to see whether the CPC has proved any one or more of them. While we will examine each factual allegation we will do so in an order different from that set out in the charge. Once we have made our findings of fact we will decide whether or not they demonstrate violations of any Rules of Professional Conduct, or the provision of the Bylaw, set out in the charge.

1. **Deficient Provision of Services**

Witnesses described a number of deficiencies which they say they found in work which Mr. Crozier performed for the pension plan. The charge has one specific allegation and one broad general one. We will examine the specific allegation but we think it is not necessary to make a detailed examination of the general one, which relates to the absence of filings or late filings with regulators and only say that there is uncontradicted evidence that there were many deficient compliance filings.

The specific allegation is that, as of the date of the filing of the charge, the last actuarial valuation report filed with FSCO was a valuation as of October 31, 2001. By a letter to FSCO dated September 11, 2006, Mr. Crozier acknowledged that the next valuation report, which should have been effective on or before October 31, 2004, was overdue. He said that, "We ... intend to file it by the end of the year." [Emphasis added.]

In Ontario it is the legal responsibility of the administrator for a pension plan to file valuation reports for the plan within 9 months of the valuation date. However, by the part of the letter which we have quoted, and emphasized, it is clear to us that Mr. Crozier had undertaken to FSCO, and presumably to his client, to attend to the filing on behalf of the plan administrator. The evidence shows that the valuation report as at October 31, 2004 had not been filed by the end of 2006. Indeed, the evidence shows that by the time Corporate Benefit was retained by GEW, in April 2010, neither it, nor the one which came due no later than October 31, 2007, had been filed with FSCO.

It is possible that there could be some explanation for the failure to file the two valuation reports. If there are explanations they would be uniquely within Mr. Crozier's knowledge. He has chosen not to testify and provide them. Because of his silence we

draw the inference that his testimony would not have supported any reasonable explanations for the failure to make those filings.

When we discussed the deficiencies in professional services respecting the Sun Pac Pension Plan, we quoted the provisions of Rule 1 and Annotation 1-1 of the Rules of Professional Conduct. We do not think it necessary to set out those provisions again.

It is our opinion that the unexplained failure to file the valuation reports to be effective no later than October 31, 2004 and October 31, 2007 constitutes both a failure to act with competence within the meaning of Rule 1 and a failure to perform professional services with skill and care within the meaning of Annotation 1-1.

We hold, therefore, that the CPC has proven the violations alleged in Counts 1 and 2 of the charge.

2. Failure to Cooperate with Others in the Client's Interest

On April 7, 2010, with a copy of the relevant letter to Mr. Crozier, GEW retained Corporate Benefit, effective immediately, to provide actuarial, consulting and administration services to the GEW Pension Pension Plan. On April 30, 2010, Marian McKillop on behalf of Corporate Benefit, wrote to Mr. Crozier. Because of previous regulatory filing deficiencies with respect to the GEW Pension Plan, there was considerable urgency in getting matters attended to. The following is the text of her letter:

Dear Mr. Crozier:

...

Enclosed is a copy of a letter dated April 7, 2010 from Garland Williamson appointing CBA to take over the actuarial, consulting and administration services for this pension plan.

In order for our firm to provide these services, we request that you send us all files and data associated with this pension plan. This would include all copies of:

- Plan documents, plan amendments, associated government filing forms and correspondence,
- Actuarial reports, AIS filing forms, and all associated government correspondence,
- Funding/trust documents/agreements and associated correspondence,
- Annual information returns,
- Investment information summary forms (Form 8's),
- Annual member statements,
- FSCO Form 7's (summary of contributions),
- Pension fund statements,
- All historical data used to administer the plan, and
- All reported pension adjustments.

As there are a number of compliance items being requested by the Financial Services Commission of Ontario with specified due dates, we request that you send the information via courier no later than Wednesday May 12, 2010.

We thank you for your cooperation in meeting the May 12, 2010 deadline. Should you have any questions, please contact me.

Sincerely,

Ms. McKillop received no reply. She wrote to him again on May 12, 2010. That letter describes the efforts which she made to get a response from him. The following is the text of the letter.

Dear Mr. Crozier:

...
On April 30, 2010 I sent you a letter indicating that our firm was appointed to provide actuarial, consulting and administration services for this pension plan. I followed up via two phone calls on May 3, 2010 and May 4, 2010. In addition, I sent you an email on May 5, 2010. To date I have not received a response.

From information that Garland Williamson has sent us, he has been trying to resolve with you a number of non-compliance issues relating to his pension plan since September of 2006. Numerous times he has called or faxed you and has not received a response.

Pursuant to Rule 8 of the Rules of Professional Conduct, in order for our firm to provide the services mentioned above, we request that you send us all files and data associated with this pension plan via courier no later than Wednesday May 19, 2010.

If we do not receive a reply from you by phone or email by noon on Friday May 14, 2010 confirming you will comply with our request, we will have no other option but to file a complaint with the Canadian Institute of Actuaries in accordance with the Rules of Professional Conduct.

Sincerely,

Ms. McKillop did not receive any reply, nor, more importantly, did she ever receive from him any of the information which she requested from him so that she could bring the pension plan into compliance.

Ms. McKillop testified that the failure to receive the required information from Mr. Crozier led to substantial additional work resulting in unnecessary additional cost for the client. The additional work entailed inquiries of FSCO and the Canada Revenue Agency together with an extensive examination and review of files and documentation held in the client's offices.

The evidence leaves us with no option but to conclude that Mr. Crozier deliberately declined to cooperate with Corporate Benefit in the client's interest.

We have previously quoted Rule 8 of the Rules of Professional Conduct. It is not necessary to do so again. Cooperation is in the client's interest because a failure to

cooperate results in additional costs for the client, inconvenience, delay and confusion. The failure to act in the client's interest is the mark of a serious lack of professionalism.

Accordingly, we hold that the CPC has proven the violation specified in Count 3 of the charge.

3. Failure to Cooperate with a CIA Investigation

When Mr. Crozier did not respond to her requests for information, Ms. McKillop filed a formal complaint with the CIA. On May 27, 2010 the CPC wrote to Mr. Crozier advising him of the complaint and provided him with a copy of it. The CPC gave Mr. Crozier an opportunity to respond and told him that the complaint might be forwarded to an Investigation Team. Mr. Crozier did not respond.

On July 19, 2010 the CPC advised Mr. Crozier that it had decided to refer Ms. McKillop's complaint to an Investigation Team and advised him of the names of the members of the Investigation Team. As with the letter respecting the Sun Pac investigation, the CPC told Mr. Crozier that it expected his cooperation with the Investigation Team.

Alan Exley was again appointed chair of the Investigation Team. On July 30, 2010 Mr. Exley called Mr. Crozier at his office and left a message on his voicemail advising him that he was the chair of the Investigation Team and that he wanted to arrange a meeting with him. He followed up that call with an email. He received no response. On August 4, 2010 he called again and again left the same message on Mr. Crozier's voicemail. He followed up that call with an email. He then wrote a letter to Mr. Crozier. That letter is similar in terms to that which he wrote to Mr. Crozier on May 25, 2010 with respect to the complaint in the Sun Pac matter, a copy of which is included on

page 20. It is not necessary to quote the letter in respect of the GEW Pension Plan. Mr. Crozier did not respond to the voicemails, the emails or the letter.

Mr. Crozier's failure to reply to or respond to the repeated requests of the Investigation Team to meet with it can amount to nothing less than a total refusal to cooperate with the investigation. We have previously quoted from a decision of the Divisional Court in *Artinian v. The College of Physicians and Surgeons*. We have also previously quoted Rule 12 of the Rules of Professional Conduct and the relevant provisions of By-law 20.03(5). We need not repeat them.

It is our opinion that Mr. Crozier's persistent failure to meet with the Investigation Team, when requested to do so, amounts to a breach both of Rule 12 and of the relevant provisions of By-law 20.03(5).

We hold, therefore, that the CPC has proven the violation alleged in Count 4 of the charge.

Disposition

Having found that the CPC has proven each of the allegations set out in the four counts of the charge, we find that Mr. Crozier is guilty of the offence specified in the charge respecting the GEW Pension Plan.

COSTS

Bylaw 20.07(7) provides as follows:

A Disciplinary Tribunal shall have the power to order any of the parties to pay all or part of the fees and expenses of legal counsel of the other party incurred to commence and complete the proceedings.

We have decided that we will reserve our decision about the exercise of the jurisdiction conferred therein until the parties have had an opportunity to make representations to us. We will hear those representations at the same time as we conduct the penalty hearing which is mandated by Bylaw 20.07(6).

PENALTY AND COSTS HEARING

We fix a hearing to determine the questions of penalty and costs to be heard as follows:

Date: Friday, December 2, 2011

Time: 10:00 a.m.

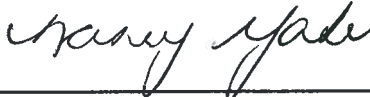
Place of Hearing: ADR Chambers, 112 Adelaide Street East
Second Floor, Toronto, Ontario M5C 1K9

Manner of Hearing: An oral hearing in the presence of an official reporter.

Dated at Toronto, this 14th day of November 2011.



P. T. Galligan, Chair



Nancy Yake, Member



David Short, Member