

**CANADIAN INSTITUTE OF
ACTUARIES DISCIPLINARY
TRIBUNAL**

**IN THE MATTER OF CHARGES FILED AGAINST ROBERT D. J.
SCHEIRING IN CASE 2010-6**

PANEL

The Hon. Harvey Spiegel, Q.C. Chair
Brian FitzGerald, FCIA, Member
Neville Henderson, FCIA, Member

Appearances

Tina Hobday
For the Committee on Professional Conduct

Robert D. J. Scheiring
Did not appear, and was not represented by counsel

Heard: December 3, 2012

RECTIFIED DECISION RESPECTING PENALTY

Factual and Procedural Background

On or about May 6, 2009, Robert Scheiring was arrested by federal agents in Fargo North Dakota, U.S.A on a charge of possession of child pornography. At the time of his arrest Mr. Scheiring was a member of the American Association of Actuaries (AAA), the Society of Actuaries (SOA) and a fellow of the Canadian Institute of Actuaries (CIA). He was a Canadian citizen who was employed as an assistant vice president of actuarial services by Blue Cross Blue Shield in Fargo, North Dakota.

On June 4, 2010 Mr. Scheiring pleaded guilty in the U.S. District Court, District of North Dakota, to one count of possession of materials involving the sexual exploitation of minors and one count of distribution of such materials. He was sentenced to a period of imprisonment on the first count of 10 years and on the second count of 14 years to run concurrently. The court also ordered that upon his release from prison that he be on lifetime supervised release which requires him to comply with numerous conditions. He is presently serving his sentence in the Federal Correctional Institute in Fort Dix, New Jersey

On or about August 11, 2011, the disciplinary committee of the AAA upon the recommendation of the Actuarial Board for Counseling and Discipline (ABCD) voted to expel Mr. Scheiring from the AAA for materially failing to comply with Precept 1 of the Code of Professional Conduct which in part requires an actuary to act in a manner to fulfill the profession's responsibility to the public and to uphold the reputation of the actuarial profession. It also requires an actuary not to commit any act that reflects adversely on the actuarial profession. The appeal period having expired, the expulsion became final on 18 October 2011.

On December 13, 2011, the SOA convened a discipline committee and determined that Mr. Scheiring should be expelled from the SOA for a material violation of Precept 1 of the Code of professional conduct which is in similar terms to precept one of the AAA.

On or about February 24, 2012, the AAA delivered to the CIA copies of documentation relating to the charges and the determination of Mr. Scheiring's guilt by the AAA. This documentation was introduced at the hearing before us and marked as exhibit 1.

On or about March 22, 2012, the Committee on Professional Conduct (CPC) of the CIA brought a charge against Mr. Scheiring under Bylaw 20.04 and Bylaw 20.17(6) of the CIA. The charge recites his arrest and conviction aforesaid and that news articles were published in the United

States and Canada, as well as on U.S. and Canadian news websites, reporting the allegations and the charges against Mr. Scheiring and reporting that his job position was in actuarial services. The charge further alleges that:

By such conduct, Mr. Scheiring

1. failed to act in a manner to fulfill the profession's responsibility to the public and to uphold the reputation of the actuarial profession, contrary to Rule one of the rules of professional conduct that existed at the relevant time; and
2. committed acts that reflect adversely on the actuarial profession, contrary to annotation 1– 3 to Rule 1 of the Rules of Professional Conduct that existed at the relevant time.

The charge further recites the fact that Mr. Scheiring was expelled by the AAA and that, on the basis of the Cross-Border Discipline Agreement (CBDA) between the CIA and the U.S.-based actuarial organizations, the matter comes to CPC

Pursuant to a request by the CPC, the Chairperson of the Tribunal Panel of the CIA appointed this Disciplinary Tribunal to hear the charges against Mr. Scheiring.

He was duly notified of the charges, the appointment of the Disciplinary Tribunal and the date of the hearing.

On November 16, 2012 in an email to Ms. Leona Campbell, Coordinator, Education and Professional Conduct of the CIA, Mr. Scheiring advised that that he would not be retaining counsel and would not be providing written submissions beyond what he had already made it to the AAA and SOA.

We were advised by counsel for the CPC that this is the first time that a charge has been brought against a member of the CIA based on conduct which occurred in the jurisdiction of another party to the CBDA. Therefore counsel felt it necessary in her submissions to set out in some detail the relevant terms of the CBDA and the bylaws of the CIA that implement that agreement.

The CBDA and Relevant Bylaws of the CIA

In November 2005, the CIA entered into the CBDA with the AAA, the American Society of Pension Professionals and Actuaries, the Casualty Actuarial Society, the Conference of Consulting Actuaries, and the SOA (collectively "the U.S.- based organizations").

The stated purpose of the agreement was to reduce the risk that members of these organizations will be subjected to multiple disciplinary investigations arising out of a single complaint, inquiry or incident involving an alleged breach of the professional standards of the CIA and/or the U.S.-based organizations.

The relevant provisions of the CBDA are as follows:

- 5.....A determination by one or more of the U.S.-based organizations that a member of the CIA breached the applicable rules of the U.S.-based organization(s) when practicing in the United States will be made solely by the U.S.-based organizations pursuant to findings and recommendations of the ABCD, and will be deemed final by all the parties to this agreement as to each U.S.-based organization when the appeal process of that U.S.-based organization has been exhausted.
- 6... ..The CIA will retain sole authority to determine the penalty to be imposed by the CIA upon one of its members based on a finding by one or more of the US-based organizations that a CIA member breached applicable rules when practicing in the United States.

7.Each of the US-based organizations agrees to communicate to the CIA any public finding that a member of that US-based organization who is also a member of the CIA breached applicable rules when practicing in the U.S., and to provide a copy of the ABCD's findings and conclusions and a summary of the U.S.-based organization's conclusions as well as other documents not subject to the attorney-client or attorney work product privileges, upon request from the CIA.

8. The CIA and each of the US-based organizations will not recommend to each other that any specific penalty be imposed upon a member based upon a finding that a member breached applicable rules of conduct, qualification or practice, but they will recommend that public disciplinary action be considered against a member if that member has been found to have breached applicable rules of conduct, qualification for practice.

10. The parties will take any necessary steps to amend their rules and bylaws to implement this agreement.

The relevant by laws of the CIA are as follows:

- 20.02** (1) A complaint may be laid or information may be provided by any person or organization, including a bilateral organization, regarding the practice of a Member, Associate or Affiliate or regarding the practice in Canada of a member of a bilateral organization, in accordance with Bylaws 20.13 to 20.17. Every complaint or information shall be received by the Secretary of the Committee on Professional Conduct.

20.04 (1) After reviewing the report of an Investigation Team and the response provided by the Respondent, if any, the Committee on Professional Conduct shall

- (a) dismiss the complaint;
- (b) file a charge and proceed with private admonishment proceedings, pursuant to Bylaw 20.04.1;
- (c) file a charge and make a recommendation of sanction to the Respondent, subject to an admission of guilt by the Respondent, pursuant to Bylaw 20.05; or
- (d) file a charge and refer it to a Disciplinary Tribunal, pursuant to Bylaw 20.06.

20.13 The Institute may enter into bilateral agreements with actuarial organizations based in a foreign jurisdiction for the purpose of dealing with disciplinary matters arising either from Members, Associates or Affiliates practising in those foreign jurisdictions or members of those foreign actuarial organizations practising in Canada.

20.14 (1) For the purposes of this part regarding International Reciprocal Agreements and of Section 21, a "bilateral organization" refers to the actuarial organization responsible for profession-wide counseling and discipline in a foreign jurisdiction with which the Institute has entered into a bilateral agreement, including, for the United States of America, the Actuarial Board for Counseling and Discipline, the American Academy of Actuaries, the American Society of Pension Actuaries, the Casualty Actuarial Society, the Conference of Consulting Actuaries and the Society of Actuaries.

20.17

.....

(3) A determination by a bilateral organization that a Member, Associate or Affiliate breached the rules of professional conduct, standards of practice or eligibility requirements of that organization when practising in that jurisdiction, regardless of whether the Member, Associate or Affiliate is also a member of that bilateral organization,

shall be made solely by that organization. The bilateral organization's determination will be deemed final by the Institute when the appeal process of that organization has been exhausted.

(5) If a bilateral organization makes a determination that a Member, Associate or Affiliate breached the rules of professional conduct, the standards of practice or the eligibility requirements of the bilateral organization when practising in its jurisdiction, the Institute shall not act upon a recommendation from the decision-making body of that organization to the effect that a specific penalty be imposed by the Institute against the Member, Associate or Affiliate. The Institute shall receive a recommendation from that organization that the Institute consider imposing public sanctions against the Member, Associate or Affiliate, and shall determine an appropriate sanction for it to impose against a Fellow. Associate or Affiliate in accordance with the Bylaws.

(6) More specifically, the determination of guilt by a bilateral organization in respect of a Member, Associate or Affiliate practicing in that jurisdiction shall be received by the Secretary of the Committee on Professional Conduct and considered as a complaint indicating that an Offence has been committed, pursuant to Bylaw 20.02. All Bylaws contained in Section 20 shall be followed to the extent that they are applicable, except that:

(a) an Investigation Team shall not investigate the complaint or prepare a report for the Committee's consideration;

(b) the Committee's powers provided in Bylaw 20.04 shall be limited to filing a charge and issuing a private admonishment, as guilt has already been determined by the bilateral organization, filing a charge and making only a recommendation of sanction to the Respondent, as guilt has already been determined by the bilateral organization, or filing a charge and referring it to a Disciplinary Tribunal only to decide upon an appropriate penalty, as guilt has already been determined by the bilateral organization; and

(c) the Disciplinary Tribunal shall hold a hearing with respect to the penalty within 30 days after the appointment of the Disciplinary Tribunal, based on the documents provided by the bilateral organization.

(Emphasis added)

Counsel for the CPC submits that it has been established before us that Mr. Scheiring has been found guilty by the AAA of a breach of its Rules of Professional Conduct and that all procedural requirements of the CBDA and the relevant Bylaws of the CIA have been complied with. She submits therefore that pursuant to Bylaw 20.17(6) (b) our sole function is to decide upon an appropriate penalty.

We agree with this submission.

Penalty

Bylaw 28.08 of the CIA provides as follows:

20.08 (1) A discipline Tribunal shall impose on a Fellow, Associate or Affiliate found guilty of an Offence one of the following penalties in respect of one or more of the counts:

- (a) a reprimand
- (b) a suspension from the Institute
- (c) an expulsion from the Institute

.....

(3) a Disciplinary Tribunal may fix the terms and conditions of the penalties it imposes

The CPC takes the position that the appropriate penalty should be expulsion from the CIA. Reliance is placed on the serious nature of the criminal charges of which Mr. Scheiring was convicted and the adverse publicity about the charges in the Canadian news media. Exhibit 1 contains two printouts from two online Canadian news organizations dated May 12, 2009 which relate the details about Mr. Scheiring's arrest, the nature of the charges and the fact that he was a Canadian citizen employed by Blue

Cross Blue Shield in Fargo, North Dakota as an assistant vice- president of actuarial services.

Since Mr. Scheiring did not appear at the hearing and was not represented by counsel, we do not have the benefit of any oral submissions as to penalty on his behalf. However Exhibit 1 contains a letter from Mr. Scheiring dated July 10, 2011, addressed to counsel for the AAA setting out his submissions to the discipline committee of the AAA for their consideration. Counsel has agreed that it is proper to treat that letter as constituting Mr. Scheiring's written submissions to this tribunal.

In his letter Mr. Scheiring apologizes for his actions and acknowledged that while his conduct did not directly involve his professional duties, that the bad local press caused embarrassment to some members.

He asks that the following matters be considered by the discipline committee before coming to a decision.

He has been a hard-working member of the profession for 24 years and has participated in various professional activities including membership on the grading committee for several years and has represented the profession as a speaker at various industry seminars and at international work assignments in Hong Kong, Japan, Mexico and Brazil.

He submitted that there was no evidence of any material damage being done to the reputation of the actuarial profession. No company or individual has come forth and stated that "due to this man's actions that we will no longer use actuarial services". No student has said "I was considering the actuarial profession as a career but due to this man's crime I've decided against it"

He submits that he has already been and will continue to be severely punished for his crime. He has not only lost his freedom but also his family, job, and all his assets and possessions. While he candidly acknowledges that these consequences have been self-inflicted, he submits that this should be taken into account in considering the extent of any further punishment by the profession.

He states that since his arrest he has cooperated with and assisted the authorities, voluntarily sought out and completed a professional treatment program; renewed and strengthened his faith through Bible studies, regular church attendance and volunteering. He further submits that he has remained supportive and involved with his three children; continued to improve his skills and knowledge through many courses, programs and self study; and voluntarily taught algebra and business math to inmates.

He submits that the disciplinary committee should look at actions taken by larger professional bodies, such as accounting, medical or legal professions and determine what disciplinary measures they implemented for members who committed crimes unrelated to their professional services.

He concludes by submitting that, if it is felt that additional discipline beyond that which is already been imposed by the justice system and society is justified, that it consist of a temporary suspension to run concurrent with his sentence.

Counsel for the CPC acknowledges that is the the first time that a charge against a member of the CIA has been based on conduct totally unconnected with the member's professional duties. There are therefore no precedents from other disciplinary proceedings of the CIA to assist us.

The only case from other professional disciplinary bodies to which Counsel was able to refer us was *Re Cwinn and the Law Society of Upper Canada*.¹ In that case a solicitor hired a number of young girls to assist as grooms in the training, riding and showing of horses at shows in Canada and the United States. The solicitor seduced these girls after having established a relationship of dependence, trust and confidence with them. In one of these instances he was convicted in the United States, of the offence of transporting a female across state lines for immoral purposes and sentence to 2 years imprisonment.

The discipline committee of the law society found that he engaged in a systematic course of seduction of girls between the ages of 14 and 17 in his employ over a number of years and that he exploited their trust in him as a

¹ [1980] O.R. (2nd) 61 (Div. Ct. Ont.)

professional man. It concluded that a solicitor, who has so grossly breached the trust which he had assumed with these girls, could not be trusted to maintain the many other trusts which a solicitor is expected to maintain. He was disbarred for conduct unbecoming a barrister and solicitor. On his appeal he argued that while conduct and may have been reprehensible it should not form the basis of discipline since it was not connected with the practice of law, The appeal court rejected that argument and dismissed his appeal, holding that disbarment was an appropriate penalty because his conduct "was not only reprehensible but that it does seriously reflect upon and shatter his professional integrity to the point where the protection of the public is Involved".

Counsel for the CPC acknowledged that the facts of the *Cwinn* case are much different than the facts of the case before us, and candidly admitted that it was the only case that she was able to find in which conduct unrelated to professional duties, supported the penalty sought by the CPC in this case.

The overriding principle to be applied in arriving at an appropriate penalty is the protection of the public.

In the *Regulation of Professions in Canada*, 2011, release 3 (Toronto: Carswell, volume 2, at page 14 – 6 there is the following statement:

A number of factors are taken into account in determining how the public might best be protected, including: specific deterrence of the member from engaging in further misconduct, general deterrence of other members of the profession, rehabilitation of the offender, punishment of the offender, isolation of the offender, the denunciation by society of the conduct, the need to maintain the public's confidence in the integrity of the profession's ability to properly supervise the conduct of its members, and ensuring that the penalty imposed is not disparate with penalties imposed in other cases.

In determining an appropriate penalty we must also take into account the circumstances of the particular offender which may serve to mitigate

the severity of the penalty. Such factors as the acknowledgment by the offender of his error of his ways, rehabilitation efforts, genuine remorse, an unblemished disciplinary record, compassionate grounds including the severity of the adverse consequences to the offender resulting from his conduct, are all factors which mitigate the severity of the penalty.

We find that all of these mitigating factors are applicable to Mr. Scheiring.

While we find that the conduct which was the basis for his criminal convictions was particularly reprehensible, we note that the prison sentence imposed by the U.S. court far exceeded that which would have been imposed had these offences been committed in Canada.

We also take into account that there was no evidence of any contact or communication of any kind between Mr. Scheiring and the minors depicted in the materials which were found to be in his possession and that Mr. Scheiring received no financial benefit from the distribution of these materials of these materials.

We are of the opinion that expulsion from the CIA would deprive Mr. Scheiring of any hope of re-establishing his connection with a profession to which he has devoted a large part of his life and would be too harsh a penalty to impose in light of the mitigating factors referred to.

We note that, according to the Policy on Reinstatement of Membership in the Canadian Institute of Actuaries (the Reinstatement Policy) when a person's membership is cancelled for any reason – including expulsion – the individual is no longer considered to be enrolled in the Institute and therefore loses all rights and privileges associated with such enrollment such as use of the FCIA or ACIA designation, the right to vote, attend Institute meetings and the right to receive Institute communications.

When a person's membership is suspended the individual loses the same rights as on expulsion except the right to attend meetings and receive Institute communications. The individual is still obliged to comply with the Bylaws and Rules of Professional Conduct.

The policy also states that a member who has been expelled or suspended may be reinstated after completing the period of suspension or expulsion and meeting the requirements for reinstatement as we determine.

In addition, if more than 5 years has passed since the expulsion or suspension, the individual is required to provide evidence of a minimum of 12 months of recent Canadian experience. An application for reinstatement would be subject to review and approval by the Eligibility and Education Committee (the EEC).

In Mr. Scheiring's case, he would have to serve out his prison sentence, and then find an employer who would enable him to obtain the required 12 months of Canadian experience and also complete and file a CPD Compliance Statement.

Taking into account all of the circumstances we have concluded that the appropriate penalty to impose upon Mr. Scheiring is a suspension of from the CIA. In the exercise of our authority under bylaw 20.08(3) we direct that the period of suspension shall last until he is released from prison and that, that before his reinstatement he must provide evidence to the EEC that he has met the requirements of the Reinstatement Policy and met any other conditions as required by the EEC.

Costs

The CPC has requested an order pursuant to Bylaw 20.07 (7) for an order directing Mr. Scheiring to pay part of the costs of the disciplinary proceedings in the amount \$25,000. Counsel for the CPC has produced an estimate of her legal costs which approximates \$25,000. We find this estimate to be reasonable and we therefore order Mr. Scheiring to pay costs to the CIA in the amount of \$25,000 which costs must be paid prior to his reinstatement.

Conclusions

For the reasons set out above the Disciplinary Tribunal makes the following orders:

1. Robert D. J. Scheiring is suspended from membership in the CIA until his release from imprisonment on the charges of which he was convicted .The suspension is subject to the terms and conditions imposed pursuant to Bylaw 20.8 (3) which are set out in the body of this decision.

2. Robert D. J. Scheiring is ordered to pay the amount of \$25,000 to the CIA on account of its costs, which must be paid prior to his reinstatement.

Dated this 17th day of December 2012.

RECTIFIED this 4th day of January 2013

“Harvey Spiegel”

Harvey Spiegel, Q.C. Chair

“Brian FitzGerald”

Brian FitzGerald, FCIA, Member

“Neville Henderson”

Neville Henderson, FCIA, Member