

**CANADIAN INSTITUTE OF ACTUARIES
DISCIPLINARY TRIBUNAL**

IN THE MATTER OF CHARGES FILED AGAINST
HARRY COHEN IN CASE 2011-3

PANEL

The Hon. Harvey Spiegel, Q.C., Chair

Neville Henderson, FCIA, Member

APPEARANCES

Antoine Aylwin

For the Committee on Professional Conduct (CPC)

Maurice Benzaquen

For Harry Cohen (the Respondent)

Decision on Plea of Guilty and Penalty

Background

1. The Respondent was a fellow of the Canadian Institute of Actuaries (“CIA”) from March 14, 1973 until his resignation on December 1, 2013. Until 1988 he worked for Confederation

Life Insurance Company. Thereafter and until his resignation he practiced under the name of Miral Consulting Inc. situated in Thornhill, Ontario.

2. In 2009, the Respondent testified as an expert actuarial witness for the plaintiff at a trial in the Ontario Superior Court of Justice, in an action styled as *Jeffrey and Rudd v London Life Insurance* ("the Jeffrey case").
3. On October 1, 2010, Justice Morissette delivered her reasons for judgment in which, she criticized the evidence of the Respondent, finding it contained many errors and omissions.
4. On October 5, 2010, the Committee on Professional Conduct (the "CPC") of the CIA received a copy of Justice Morissette's reasons from its legal counsel, Tina Hobday.
5. At its meeting of March 8, 2011, the CPC appointed a subgroup to carry out an initial fact-finding to decide if it appeared that a breach of the Rules 1, 2 and 3 of the CIA Rules of Professional Conduct ("RPC") may have been committed by the Respondent's conduct in the Jeffrey case.
6. The subgroup initially consisted of Steven Eadie and Bob Howard. Micheline Dionne later replaced Bob Howard and subsequently she was replaced by Ian Karp. Doug Brooks assisted Steven Eadie and Ian Karp in the performance of their duties
7. On April 4, 2013, after receiving a report from the subgroup, the CPC decided to lay two complaints against the Respondent: first, that he may have breached Rules 1, 2 and 3 in giving his evidence in the Jeffrey case, and second, that he may have breached Rule 1, 2 and Bylaw 20.03(5)(a), (b) and (d), by failing to respond and cooperate promptly and fully to any request for information by the CPC in the course of its fact finding into the Respondent's alleged breach of Rules 1, 2 and 3. At the same time the CPC appointed an investigation team ("IT") to carry out an investigation of the two complaints. The IT consisted of David Gershuni as chairperson and Dale Matthews, both fellows of the CIA.
8. On December 9, 2013, the IT issued its report on the second complaint and on January 16, 2014 it issued its report on the first complaint.

9. On June 20, 2014, the CPC filed a charge against the Respondent that he:

“...failed to respond and cooperate promptly and fully to any request for information by the Committee on professional conduct regarding any disciplinary matters, contrary to Rule 12 of the current Rules of Professional Conduct and Bylaw 20.03(5) (a), (b) and (d).”

10. No charge was laid against the Respondent for a breach of Rules 1, 2 and 3.

11. Pursuant to Bylaw 20.06 and 20.07 a disciplinary tribunal (“DT”) was appointed to hear the charge filed against the Respondent.

12. At a Pre-Hearing Conference, held April 14, 2015 the Respondent stated that he intended to allege that certain conduct of Mr. Brooks and Mr. Howard constituted a reasonable apprehension of bias that was a relevant issue to the trial of the charge. The CPC submitted that the allegations of impropriety at the investigative stage of the CPC’s administrative process are irrelevant and should not be considered by the DT on the hearing of the charge. The parties requested a determination by the DT of this issue

13. On June 4, 2015 we delivered our decision on this issue. The appeal of the CPC from our decision was dismissed by the Appeal Tribunal on December 14, 2015.

14. At a Pre-Hearing Conference, held on January 11, 2016 the trial of the charge was set for April 7, 8 and 11, 2016.

Guilty Plea and Joint submission as to Penalty

15. On March 24, 2016 we were informed by counsel for the CPC that an agreement had been reached whereby the Respondent would be entering a plea of guilty and a joint submission as to penalty would be made by the parties. At counsel’s request we ordered the scheduled trial dates vacated.

16. On April 7, 2016, counsel for the CPC delivered a joint submission as to penalty signed by the parties a copy of which is attached an appendix to this decision. We accepted counsel’s

submission that we hear the guilty plea and submissions as to penalty by way of a telephone conference call to be held on April 11, 2016.

17. On April 11, 2016, a hearing by way of a telephone conference call was convened. In attendance were the Respondent, Mr. Steven Eadie vice -chair of the CPC. and counsel for the parties. We also received a copy of the plea of guilty signed by the Respondent delivered pursuant S. 20.06(3) of the Bylaws. The Respondent having admitted the truth of the "Statement of Facts Which Underlie the Charge" submitted by the CPC on October 14, 2014, we accepted the Respondent's plea and entered a finding of guilt on the charge and heard the submissions of counsel as to penalty.

Penalty

18. Counsel submit that the joint submission was the result of extensive negotiations between the parties and reflects a reasonable compromise with respect to penalty that should be accepted by us.

19. In determining an appropriate penalty this Tribunal is not bound to accept the joint submission of counsel. However we adopt the following dicta of Griffiths J.A. of the Ontario Court of Appeal in *R. v. Bosklopper, 1995 O.J. No. 4125*:

In our respectful view the trial judge should not depart from a joint submission unless the sentence proposed is so disproportionate to the offence that it would be contrary to the public interest and bring the administration of justice into disrepute.

20. The charge to which the Respondent has pleaded guilty is a very serious one. As Justice Galligan has observed in the penalty decision in the case of *CPC v Ashley Crozier*, December 16, 2011. case 2010-3 and 2010-5

An essential part of every profession's obligation to the public is its duty to regulate its members. It performs that duty by investigating complaints which are made against its members. At the heart of the investigation is the response which the member makes to the complaint. If a member fails to cooperate with the investigation, the profession is unable to fulfill its obligation to the public to regulate its members. Lack of cooperation with one of its investigations is always considered very seriously by all self-governing organizations.

21. The penalty in the joint submission of a suspension from the Institute for a period of one year, would, on its face, appear to be disproportionately lenient to the seriousness of the offence. However, we find there are mitigating factors which militate in favour of its acceptance. In particular, we take into account the following:

- a) the Respondent has resigned from the Institute and has undertaken not to seek reinstatement,
- b) by entering a plea of guilty and admitting the material facts underlying the charge, the Respondent is considered to have expressed remorse and has also saved the considerable time and expense involved in a trial that was scheduled for 3 days.
- c) the age and previous good record of the Respondent,
- d) the offence did not involve the Respondent's interacting as an actuary with members of the public.

22. We therefore order as follows:

- 1) The Respondent is hereby suspended from the Institute for a period of one year with no monetary fine;
- 2) The parties shall bear their own costs and expenses of legal counsel.

23. As requested in the joint submission, we acknowledge that the CPC has undertaken to stay all further investigation against Mr. Cohen, unless he seeks reinstatement.

24. We wish to thank counsel for their capable oral and written submissions and their efforts in bringing these proceedings to a satisfactory conclusion

Dated at Toronto this 12th day of April 2016

Harvey Spiegel

Harvey Spiegel, Q.C. Chair

Neville Henderson

Neville Henderson, FCIA, Member

Appendix A
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JOINT SUBMISSION ON PENALTY

WHEREAS the Respondent has resigned from the Institute and undertakes not to seek reinstatement.;

WHEREAS the Committee on Professional Conduct undertakes as a counterpart to close its investigation against the Respondent and not open any new investigation against him in the future if no reinstatement is sought, as the public protection is adequately served by the order of suspension with the undertaking not to seek reinstatement;

The Respondent plead guilty to the Charge, namely that he:

failed to respond and cooperate promptly and fully to any request for information by the Committee on professional conduct regarding any disciplinary matters, contrary to Rule 12 of the current Rules of Professional Conduct and Bylaw 20.03(5)(a)(b) and (d)

The Respondent admits the facts alleged in the Statement of the facts which underlie the charge filed by the Committee on Professional Conduct on October 14, 2014 and the documents in support thereof.

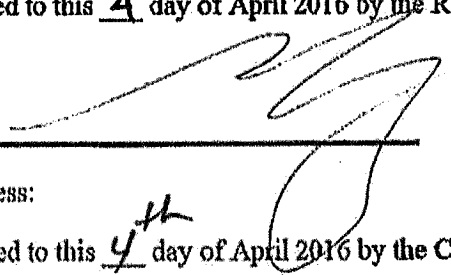
The parties jointly submit that the following penalty under section 20.08 and costs under section 20.07 of the Bylaws of the Institute is the appropriate order in all the circumstances of this case:

1. The Disciplinary Tribunal orders the suspension of Mr. Cohen from the Institute for a period of one year;
2. The Disciplinary Tribunal orders that Mr. Cohen cannot seek reinstatement unless he fully cooperates with the CPC;
3. The Disciplinary Tribunal acknowledges Mr. Cohen's undertaking not to seek reinstatement;
4. The Disciplinary Tribunal acknowledges the Committee on Professional Conduct's undertaking to stay all investigation against Mr. Cohen, unless he seeks reinstatement;
5. The Disciplinary Tribunal orders that no fine should be imposed on Mr. Cohen;
6. The Disciplinary Tribunal orders that all parties bear their own fees and expenses of legal counsel.

The parties also agreed on the wording of a draft notice of suspension that is annexed to the present document.

The Respondent acknowledges that he has obtained legal advice before signing this document.

Agreed to this 4 day of April 2016 by the Respondent:

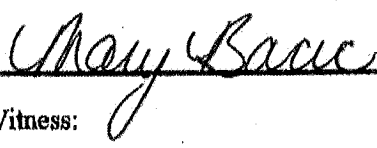


Witness:

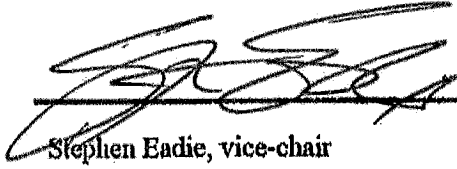


Harry Hy Cohen

Agreed to this 4th day of April 2016 by the Committee on Professional Conduct :



Witness:



Stephen Eadie, vice-chair