PROFESSIONAL DISCIPLINE OF ACTUARIES: RECENT EXPERIENCE IN CANADA

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1. Introduction

In the early 1970's, the bylaws of the Canadian Institute of Actuaries first included provisions for dealing with allegations about professional misconduct. The rules of conduct and professional practice consisted of a few pages of "Guides" (dealing with conduct) and "Opinions" dealing with practice. The by-laws provided for a Committee on Disciplinary Procedures, to whom any complaints or questions about breaches of the Guides and Opinions were referred. The Committee investigated each case and was authorized to dismiss the complaint, admonish the member privately, or lay charges to be heard by a Tribunal. On a finding of guilt by a Tribunal, the penalty could be a public reprimand, suspension of membership for a specified term or expulsion from the Institute. In cases where a complaint was dismissed or where the member was privately admonished, the complainant was informed only that "the matter has been dealt with by the Institute in accordance with its by-laws."

In the first few years after these arrangements were put into place, there were relatively few cases. Many of them dealt with disputes between actuaries about competitive practices and virtually all complaints were either dismissed or dealt with by private admonishment. In the period up to March, 1991 when the discipline by-laws were extensively revised, charges were laid and hearings held by a tribunal in only two cases. One of these resulted in a one-year suspension and the other in a "public" reprimand (the tribunal ordered that the member's name not be mentioned in the Institute's announcement of the reprimand).

2. Organization of the Profession in Canada

The Canadian Institute of Actuaries was established in 1965 by Act of the Canadian Parliament. Almost at once, the federal and provincial laws regulating the insurance business and employment pension plans recognized the authority of the Institute by defining "actuary" as a Fellow of the Canadian Institute of Actuaries (FCIA). Only an FCIA could sign the actuarial certificate on an insurance company's annual return to the insurance regulators. Pension plan valuation reports must be prepared by an FCIA.

This does not mean that only FCIA's can call themselves actuaries in Canada but the lack of that credential seriously limits the scope of actuarial practice for a non-FCIA. The result has been that virtually 100% of actuarial work in Canada is performed by or under the direction of an FCIA. It follows that the public, and in particular the insurance and pensions regulators, have looked to the Institute as the source of standards of practice and rules of conduct for actuaries in Canada. Starting in the mid-1980's, the Institute has developed very extensive and increasingly specific written standards of practice in all areas of actuarial endeavor, including such specialties as workers' compensation and expert testimony in courts of law. In order to maintain our status as a self-governing profession, it became increasingly necessary to put in place a more public and visible discipline process to counter public concerns about the excessive secrecy of the process described above. The result was an almost complete rewriting of the discipline bylaws, which became effective in March, 1991. These new bylaws are described in the next section of this paper.

3. Revised Discipline Procedures

The process begins when someone brings information to the Institute. The "someone" may be an aggrieved member of the public or an insurance or pension regulator or a member of the Institute. The "information" can range from circumstantial evidence of a possible breach of the code of conduct or the standards of practice to a very specific complaint about specific actions of a member or a specific piece or pieces of actuarial work.

In all these cases, the matter is presented to the Committee on Discipline. The Committee consists of fifteen senior actuaries, representing each of the major practise areas and geographically distributed across the country. If the matter comes to the Committee as information only and the Committee believes that an offense may have occurred, the Committee itself will lay a complaint. When a complaint is laid, either by the Committee or by the person who brought the matter to the Institute, the Committee sends the complaint to the member or student who is its subject, and may ask him or her for a written response to the complaint. The Committee then determines whether the complaint may be justified on its face. If not, the matter is dismissed and the member or student and the complainant (if there was one) are so informed.

If the Committee believes that the complaint may be justified, it appoints an Investigation Team to make a complete investigation of the matter and so informs the member or student. The Investigation Team usually consists of three persons, one of whom is a member of the Committee on Discipline, who is usually the chairperson of the Team. The Investigation Team has wide latitude in carrying out its work. It may, (but need not) interview the member or student, the complainant or any other person. When its work is complete, it submits its report to the Committee on Discipline with its recommendation

either that the complaint be dismissed or that charges be laid against the member or student.

This is a critical juncture in the whole process. Up to the point where the Committee on Discipline reviews the report of the Investigation Team, the entire matter is treated as confidential. If the Committee decides to dismiss the complaint, it informs the member or student and the complainant, if any, but otherwise the matter remains confidential. On the other hand, if the Committee decides to lay a charge or charges against the member or student, it informs him or her and the complainant, if any, as to what the charges are, and that the matter will be heard before a Disciplinary Tribunal. At this point, the matter becomes public, to the extent that the hearing of the Tribunal is itself normally open to the public, and any person who inquires will be informed as to the charge or charges laid against the member or student and the time and place of the Tribunal hearing.

The Tribunal consists of three persons. The Chairperson is a retired judge and the other two members are past Councillors of the Institute. They are appointed by the President, the President-Elect and the Immediate Past President of the Institute. The hearing of the Tribunal is normally public but the Tribunal itself can decide that all or part of the hearing will be in camera. The hearing is similar to a trial, with the Investigation Team acting as prosecutor of the charge or charges. Both the Team and the member or student are assisted or represented by legal counsel. A court reporter makes a complete transcript of all the proceedings and evidence at the hearing.

The Discipline Tribunal makes a determination of whether or not the member or student is guilty of an offense and if guilty, the penalty to be applied. The penalties can be one or more of a public reprimand, suspension of membership for a specified period, expulsion from the Institute, or a fine. The option of a private admonishment is no longer available. The Tribunal can also make an order that the prosecution or the respondent must pay the costs of the proceedings or that they be shared between them. It can also specify how its decision is to be published. If the member or student is found guilty and suspended or expelled, that information must, in every case, be communicated to all members and students, together with the nature and date of the offense and the details of the Tribunal decision.

The bylaws include provision for an appeal by either side from any aspect of a decision by a Discipline Tribunal. The appeal is heard before an Appeal Tribunal, consisting of three members of the Council of the Institute. The procedures are generally similar to those of a Discipline Tribunal and the powers of the Appeal Tribunal are also comparable.

4. Experience With the New Process

The first hearings of Discipline Tribunals under the process described above were held in October and November, 1993. In the second case, the hearing was completed in half a day. The member and student charged were found guilty and reprimanded, under a plea agreement. The member was also fined $5,000.

In the first case, after a five day hearing, the member was found guilty of three charges and suspended for three years. Two other charges were found technically invalid and the member was found not guilty on a sixth charge. The Tribunal also ordered the member to pay costs of some $150,000. Both the member and the prosecution appealed these findings to an Appeal Tribunal. After a further four days of hearings, the Appeal Tribunal confirmed the Discipline Tribunal's guilty finding on two of the three charges, found him not guilty of the third one but reversed the technical invalidity of two other charges and found him guilty on one and not guilty on the other. The period of suspension was reduced from three years to one year and the order of the Discipline Tribunal as to costs was reduced by approximately 50%. The member has now (June, 1994) initiated proceedings in the courts for a judicial review of the entire case.

Charges have been laid in three other cases. They were withdrawn in one case because of imperfections in the investigation process. The other two cases are awaiting appointment of Discipline Tribunals.

In a further nine cases, Investigation Teams have been appointed but have not yet completed their reports. Five other cases are in earlier stages of the process. All of these cases involve allegations about breaches of the rules of conduct or of the standards of practice or both. In contrast to the picture a few years ago, none of them involves disputes between actuaries competing for clients. In several cases, there are lawsuits proceeding through the courts concurrently with the professional discipline process. Four cases involve pension plan valuations referred to the Institute by pension regulators.

In the twelve-month period ending in June, 1994, the Committee on Discipline considered the activities of 29 members and students, including four where the Committee dismissed the complaint. The practice areas of these members' activities were as follows.

Expert witness work	3
Life insurance	2
Pensions	18
Property & casualty insurance	1
Various others	5
	29

There has been considerable debate within the Committee on Discipline and the Council as to what degree of publicity is appropriate during the period from the laying of a charge or charges and the decision of a Discipline Tribunal. After looking at the practice in some other professions, it was decided that for the time being, at least, the Institute should not undertake any general publicity during this period, but that the Chairperson of the Committee on Discipline should respond to inquiries about a case from any member or other person by disclosing the name of the member or student, the charge or charges against him or her, the date and place of the Discipline Tribunal hearing and the members of the Tribunal. As with other facets of our new process, we will be reviewing this practice as we develop more experience with actual cases.

One fairly significant change in the process was introduced in June, 1994 as a result of our experience with this first batch of cases. This change is designed to deal with relatively less serious charges and to avoid the expense and time involved in a Tribunal hearing. The Committee on Discipline now has the option of proposing an alternative procedure to a member facing a charge or charges, under which the member can plead guilty and agree to a specified public penalty and, if specified, to undertake re-training. If the member agrees, no Tribunal is necessary. If he does not agree, the Tribunal hearing proceeds in the usual way.

The experience described above prompts several comments. First, the significant increase in the number of complaints coming to the Committee appears to be largely due to the changes in the process and our strengthened Rules and Standards, rather than to a deterioration in the quality of actuarial work and professional behavior. The adoption of a "snitch" rule requiring a member to inform the Institute about apparent breaches by another member of the Rules or Standards is responsible for many of the cases dealt with recently by the Committee. In addition, several cases resulted from high-profile litigation and public hearings of regulatory bodies. There has also been more willingness by regulators to refer cases to a process which is more open and credible in their eyes than it has been in the past.

Secondly, the great increase in the activity of the Committee has placed a considerable strain on the resources of the Institute, both in the volunteer time of members of the Committee, the Investigation Teams and the Tribunals and also the costs of legal advice and other disbursements related to the discipline process. The successful management of the process is a major challenge.

In several of the cases where charges have been laid, we have met with vigorous opposition and legal defences employing highly skilled counsel. These cases have been a probing test of the validity and fairness of the process and in the end, should provide assurance to all concerned that the system is both just and fair in its operation.

5. International Considerations

Most Canadian actuaries belong both to the Canadian Institute of Actuaries (CIA) and one or more of the other five Canadian-U.S. actuarial organizations (Society of Actuaries, Casualty Actuarial Society, American Academy of Actuaries, Conference of Consulting Actuaries, American Society of Pension Actuaries). Under an agreement among these six organizations, the investigation and hearing of discipline cases involving actuaries who are members of one or more of the organizations will be conducted by the Actuarial Board for Counseling and Discipline (ABCD) with respect to professional activity in the U.S.A. and by the CIA with respect to professional activity in Canada. Under the agreement, each of the organizations to which an actuary belongs will not duplicate this part of the process. The CIA will accept the recommendations of the ABCD as to a member's guilt or otherwise but will determine its own penalties where a member is guilty. At this point in time, it is not entirely clear whether the other five organizations will deal in this manner with findings of guilt or otherwise by the CIA with respect to one of their members. My information is that at least some of them will.

Apart from this reciprocal arrangement, the CIA bylaws include provisions dealing with U.S. activities of CIA members, whether or not they are members of one of the other five organizations. These provisions require the CIA to accept recommendations of the ABCD with respect to such members and to implement and publish disciplinary penalties based on these recommendations. The CIA is also empowered to undertake its discipline procedures with respect to an actuary practising in Canada who is not a member of the Institute but who is a member of one of the other five organizations. In that case, the results of the Canadian discipline process are forwarded to the other organizations of which the actuary is a member. These provisions reflect the status of actuaries under the Canada-U.S. free trade agreement, under which actuaries in one country can practice in the other. It is expected that this arrangement will be extended to Mexican actuaries and practice in Mexico by Canadian and U.S. actuaries under the North American Free Trade Agreement (NAFTA).

Because of these developments and those which have taken place in Europe in recent years, there has been considerable talk about "globalization" of the actuarial profession, based on agreed minimum standards in each country with respect to education and training of actuaries, codification of rules and conduct and standards of practice and the existence of a meaningful discipline process in each country.

My information is that there has been considerable progress in international discussions about educational standards and codification of rules of conduct. I believe the discipline area will be much more difficult to "internationalize". I think it will have to be based on a requirement that for an actuary who is qualified in country A to practice in country B, he or she will have to meet the local qualification standards in country B and actually become a member of the professional body (or one of them, if there is more than one) for

actuaries in country B. This is because the only meaningful sanction which the organization in country B can impose as a penalty for serious misconduct is suspension or expulsion from membership. It seems highly unlikely to me that an actuarial organization in country A will automatically suspend or expel one of its members solely on the basis of the discipline process in country B. This is not simply for reasons of national autonomy. The degree of variation between countries in their disciplinary processes is much more significant than the variation in their educational standards and their rules of conduct and standards of practice. The disciplinary process in Canada as described in this paper is, so far as I know, farther "advanced" in the direction of the processes of more mature professions like law and accounting than is the case in most other countries. I do not suggest that the Canadian system should be a model for other countries, but if the actuarial profession is to survive and merit public recognition around the world, it will be necessary to have in place disciplinary procedures which can be seen to protect the public interest.