



Professionalism Committee Paper on Considerations in the Design of a Discipline Process

The International Actuarial Association (IAA) established a number of criteria for accreditation of an actuarial association as a Full Member Association. These criteria were updated in 2007 and include a formal discipline process whereby:

- a. There is a complaint process accessible to both anyone affected by a member's work and the member's professional peers;
- b. There is due process of defense available to the member complained against, and the member's rights are fully respected;
- c. There is an objective formal appeal process independent of the body that has ruled at the prior level;
- d. There are available sanctions appropriate to the level of the offences committed, including termination of membership in the association; and
- e. The process shall enable the association to give appropriate publicity to results of the complaint process where any penalty is imposed, including the right to provide information to other actuarial associations. Any publicity shall be consistent with the discipline process.

Each new actuarial association admitted as a Full Member Association already has such a process in place or is committed to do so within a number of months following its accreditation.

At its October 2002 meeting, the IAA Professionalism committee thought it might be useful to provide associations with information on various disciplinary processes that currently exist. The information may be useful to actuarial associations interested in applying for Full Member status at the IAA in the future. It may be useful to existing Full Members also. Whereas the latter have instituted formal discipline processes of various degrees of complexity to suit their particular circumstances, they may be interested in this sort of information were the need to arise to amend their processes as the circumstances evolve in the future.

The Process in Stages

Intuitively, the discipline process can be viewed as a series of succeeding stages, each with its specific task and players, namely:

- a. The initiation stage.
- b. The investigation stage
- c. The tribunal stage
- d. The appeal stage

There may be conciliatory proceedings as well at some time during the whole process.

There may be measures in the discipline process to reach speedy conclusions in less serious cases.

The expression *subject actuary* used in this document is meant to refer to the actuary who is the subject of a discipline accusation or complaint.

The expression *acting body* used in this document is meant to refer to the person or group of persons who are tasked to perform a specific function under a particular stage.

The text below outlines a number of issues that arise in considering a disciplinary process. While each one should be considered, it does not follow that each issue must be specifically addressed in the final process adopted, nor that every association will adopt the same answer for each issue. The outcome will be influenced by the particular circumstances of each association, as long as the disciplinary process it adopts meets the criteria set by the International Actuarial Association, as mentioned above.

Certain issues are likely to be common to many stages, although the same issue may have different treatment under different stages, namely:

- a. Who has the powers to appoint the acting body and its members?
- b. What are the powers and the roles of the Board of Directors of the profession, or its equivalent, in the management of the various processes? How much independence from the Board of Directors does the acting body enjoy
- c. Composition of the acting body for each stage. Who: actuaries, non-actuaries, legal people and accountants. Board members or not. Could people be involved in other stages of the same case or not. Could people be selected from a pre-determined pool in order to assure the involvement of experienced individuals trained in discipline matters
- d. Quorum
- e. Term of membership
- f. Conflict of interest of members serving on the acting body
- g. Can subject actuary request the removal of a person on the acting body on account of conflict of interest
- h. Rights of the subject actuary to know the identity of the members of the acting body and his rights in case of conflict of interest
- i. Are informants and complainants bound by confidentiality
- j. Confidentiality of proceedings during that stage. Are proceedings private or open to the public?
- k. Rights of the subject actuary to participate in the proceedings of that stage
- l. Right of subject actuary to get help from another actuary or a legal advisor
- m. Right of the subject actuary to provide counter-evidence
- n. Right of the subject actuary to examine and cross-examine witnesses
- o. Right of acting body to get help from a legal advisor
- p. Right of acting body to information known to the actuarial association with respect to prior discipline cases involving the same subject actuary
- q. Identifications of issues, facts, documents, affidavits 1) agreed upon and 2) disagreed upon by the subject actuary and the acting body
- r. Time limits for response, submission of evidence and supporting documentation
- s. Powers of acting body to enforce the production of information from actuaries
- t. Powers of acting body to interview appropriate persons
- u. Rights of the subject actuary to be informed of the conclusions of the acting body

- v. Identification of all possible conclusions which the acting body can reached
- w. Remuneration of participants on acting body
- x. Replacement of a member of an acting body who can no longer serve
- y. Which rules on evidence and procedures apply? Per local criminal code standard of proof? Or per local civil code? Or code determined by the acting body or some other code?
- z. Is the subject actuary guilty until determined innocent? Or innocent until determined guilty?
- aa. Status of the subject actuary until the outcome of a stage is finalized; could the subject actuary be suspended? If so, under which circumstances?
- bb. What to do in case the subject actuary refuses to cooperate or fail to show up
- cc. Minimum majority needed for a decision
- dd. Does the chair of the *acting body* have a casting vote

The Initiation Stage

The *acting body* is tasked with the mandate to receive information or complaint and to either dismiss it or forward it to the next stage.

Issues to address are:

- a. Are the conducts subject to discipline well defined and communicated to all interested parties
- b. Can the subject actuary be someone who is not a fellow yet; for example, students
- c. Should the subject actuary be informed of the situation
- d. Should the subject actuary be given an opportunity to comment on the relevant information received by the acting body
- e. Rights of informant or complainant to remain anonymous
- f. Rights of informant or complainant to be informed of developments, of conclusions
- g. Can an actuary ask guidance to the acting body on professional matters
- h. If so, can a complaint result from knowledge obtained by the acting body as a result of this request for guidance
- i. Right of acting body to issue a complaint based on information received or gathered
- j. Is there prima facie evidence which justifies a move to the Investigation Stage
- k. Can the subject actuary require an investigation

The Investigation Stage

The *acting body* is tasked with the mandate to investigate the matter and report on its findings.

Issues to address are:

- a. To inform the subject actuary of the nature of the complaint
- b. To share with the subject actuary information collected at the Process Initiation Stage
- c. As a result of its findings in the case, can the acting body investigate on other matters not related to the original reason for the investigation

- d. In the case where the subject actuary is a member of more than one actuarial organization, is there a mutual discipline agreement between actuarial organizations that would permit a single investigation?
- e. If the report makes recommendations, which *acting body* receives the report for action

The Tribunal Stage

The *acting body* is tasked with the mandate to judge the merits of the prosecution and the defense and to reach a decision on guilt and appropriate sentence.

Issues to address are:

- a. What to do if there is a court case going on at the same time as the discipline process
- b. Who sends what information to whom and when
- c. Right to admit fresh evidence
- d. Under which circumstances can the tribunal decision be appealed
- e. Does the decision by tribunal need to be confirmed by the association membership or some other person(s)
- f. Publicity of decision: what information to publicize

The Appeal Stage

The *acting body* is tasked with the mandate to judge the merits of the prosecution and the defense and to reach a decision on guilt and appropriate sentence.

Issues to address are:

- a. Grounds of appeal
- b. What should the appellant do, when and how
- c. Right to admit fresh evidence
- d. Is decision final? If not, what is the possible next step

Michael Alan Pomery, Chairperson
July 2008