

CANADIAN INSTITUTE OF ACTUARIES DISCIPLINARY TRIBUNAL
IN THE MATTER OF CHARGES FILED AGAINST GENE DZIADYK File: 2017-5

Discipline Tribunal Panel

Hon. Colin L. Campbell Q.C. (Chair)

Stephen P. Bonnar, FSA, FCIA

William Weiland, FCAS, FCIA

Appearances

Karl Delwaide, Fasken Martineau DuMoulin,
for the Professional Conduct Board

Gene Dziadyk

Did not appear and was not represented by Counsel

Heard

June 8, 9, 10, 2020

DECISION

Overview

1. By Notice dated May 29, 2019, Mr. Gene Dziadyk (“Dziadyk”) was notified of the charge filed by the Committee on Professional Conduct, now the Professional Conduct Board, (hereinafter both referred to as the “PCB”) of the Canadian Institute of Actuaries (“CIA”) alleging various breaches by Dziadyk of the Rules of Professional Conduct (“RPC”) of the CIA. The charge is attached as Appendix A to this decision.
2. Pursuant to s. 20.04(3.1) of the Bylaws of the CIA the undersigned have been appointed the Discipline Tribunal to hear the said charges against Dziadyk which are particularized in the Notice referred to in Appendix A to this decision.

3. The charge against Dziadyk refers among other things to his behaviour as an actuary and member of the CIA relating to releasing to the public emails, videos and various materials commenting on the behaviour of another member, Mr. Paul Ngai (“Ngai”) against whom Dziadyk had made a complaint to the CIA of professional misconduct. In addition, a similar complaint was made by the PCB and Ngai was reprimanded.
4. The charge Notice asserts that various of the communications may be perceived as threatening to Ngai and adds that following a request to cease releasing such material, Dziadyk persisted in doing so.
5. The charges particularized in the Notice may be summarized as failing to act honestly, with integrity pursuant to the duties of a CIA member in Rule 1 of the RPC of the CIA and avoiding unjustified or improper criticism of another member pursuant to Rule 8.
6. Prior to the reference of the charge to this Discipline Tribunal an Investigative Team (“IT”) appointed by the PCB completed a report which formed the basis of the referral and which was filed at the hearing before this Discipline Tribunal. (Hearing Exhibit 4)
7. The IT was appointed by the PCB pursuant to Bylaw 20.03 of the CIA and following communication to Dziadyk of the complaint against him and in his response to the PCB by email dated July 19, 2018, Dziadyk reiterated a number of the phrases and comments which were the subject of the complaint.
8. As the evidence before us at the hearing from members of the IT revealed, the IT was unable to agree on a date with Dziadyk for an in-person meeting and was left to rely in the completion of its report on the written response by Dziadyk to its questions. (Exhibits 33 and 34).

Pre-hearing Process

9. Throughout the pre-hearing process Dziadyk, who has been self-represented (apparently with assistance from other actuaries) has complained about the conduct of the prosecution (PCB) and sought by email dated May 26, 2020, as part of his position for non-attendance at the hearing of this matter, a dismissal of the charges against him on the basis of bad faith conduct on the part of the PCB. The Motion of Dziadyk for dismissal based on bad faith was adjourned by the Discipline Tribunal to the hearing itself.
10. Should the charge not be summarily dismissed, Dziadyk sought a rescheduling of the hearing to a date when he could attend a hearing to be held in public, in person.
11. Given the serious nature of the alleged misconduct on the part of the PCB and the ruling by this Discipline Tribunal at the commencement of the hearing dismissing the motion of Dziadyk, it is appropriate to outline the pre-hearing process.
12. Throughout the process Dziadyk has not been prepared to recognize the flexibility and discretion granted to the Discipline Tribunal under both the Bylaws and Rules of Practice and Procedure of a Disciplinary Tribunal ("RPPDT") of the CIA . In particular, on a number of occasions Dziadyk has ignored Rule 1.02 which reads:

1.02 The purpose of timeframes in these Rules of Practice is to encourage a timely and cost-efficient completion of the discipline process for both parties while maintaining an equitable process. Upon request by a party or on its own initiative, the chair of the Tribunal Panel or a Disciplinary Tribunal may abridge or extend the time stipulated in these rules for doing any act as it may consider appropriate in the circumstances, including the prorogation of time that has expired.

13. Dziadyk also ignores the provisions of the Bylaws s. 20.06(7)(8), which provide for public notice of hearing and grants discretion to a Discipline Tribunal as to whether a hearing is open to the public or held in camera.
14. Shortly after the Discipline Tribunal was engaged in this matter, Dziadyk raised concerns regarding the process. In doing so, when it suited him, Dziadyk read Rules in a manner that turned out to be a very confrontational manner.
15. Commencing with an email of October 3, 2019 Dziadyk took the position that:

“I will be making my response to the charge within 60 days of receiving the documents referred to in Rule 2.01”
16. As the Discipline Tribunal is now aware, Dziadyk was aware as of October 3, 2019, of all but two documents produced by the prosecution. Dziadyk already had these in an attachment to the IT report (Hearing Exhibit 4) when he complained about lack of documentation.
17. In December 2019, Dziadyk sought direction from the Discipline Tribunal that the PCB or CIA be ordered to provide him with access to legal counsel or alternatively with access to assistance from other CIA members.
18. A pre-hearing conference call was held on January 20, 2020. Dziadyk was advised by counsel for the prosecution, who opposed any underwriting of fees for counsel for Dziadyk, that Bylaw 20.06 (5) which refers to a member being entitled to be represented by legal counsel for assistance does not refer to representation by any other person.
19. At a pre-hearing conference call on February 6, 2020, issues of further complaints against the prosecution regarding documents produced were made by Dziadyk. In addition, he sought the production of documents that passed between the PCB and Paul

Ngai regarding the process of the complaint by Dziadyk against Ngai. By email dated July 27, 2016, Dziadyk made a formal complaint to the CIA alleging professional misconduct on the part of his fellow actuary, Paul Ngai. In addition, Dziadyk sought any internal documents within the possession of the PCB regarding the application and interpretation of Rule 8 in the charge against Gene Dziadyk.

20. The Discipline Tribunal ruled in Procedural Order #2 following the pre-hearing conference calls of February 13 and 26, 2020, that internal documents of the PCB were not relevant to the task of the Discipline Tribunal with the proviso that rulings and decisions by previous Discipline Tribunals of the CIA, in other cases, may well be helpful precedents and could be referred to at the hearing.
21. Dziadyk was granted until April 29, 2020, for any further production of documents or his response. At that time, a hearing with dates of June 8, 9 and 10, 2020 was set in Toronto, taking into account the return of Dziadyk from Thailand at the end of May.
22. A formal in person video conference was held March 23, 2020, to deal with all remaining procedural matters. Given the absence of Dziadyk in Thailand and the COVID-19 pandemic, the conference proceeded virtually, where again, Dziadyk expressed concern regarding document production and the rulings made by the Discipline Tribunal on previous occasions.
23. Matters were put over to allow a) the formal response by Dziadyk and his list of witnesses; and, b) a hoped for consensus between the parties on at least some of the procedural matters referred that were not resolved, which were to otherwise be revisited following the April 29, 2020 formal response on the part of Dziadyk.

24. Dziadyk's remaining objections were put over as matters to be addressed at the hearing itself as being matters of substance and not merely procedure.
25. A further conference call was held on May 6, 2020. Dziadyk sought rescheduling of the June hearing date since he wanted an in-person public hearing and further that he was unable to travel to Canada before June 7, 2020.
26. Dziadyk was advised that the hearing would be held virtually and would allow for attendance by members of the public should they sign up for viewing.
27. On the May 6th call the prosecutor advised withdrawal by the PCB of Count 4 of the charges whereupon Dziadyk requested to be able to publicly disclose such fact immediately. The Discipline Tribunal ruled that notice would be given with the Public Notice of the hearing itself, pursuant to Bylaw 26.06(6). In addition, on that call directions were given for witness statements for both parties.
28. Once again by email on May 16, 2020, Dziadyk reiterated concerns "about the material deviations in the actual process being applied for this disciplinary hearing, relative to what is explicitly required under the rules".
29. Dziadyk again sought immediate rescheduling of the hearing in strict adherence to the Rules and proper disclosure of documents and a public hearing with physical presence.
30. Dziadyk was once again advised by email of May 20, 2020 of the decision of the Discipline Tribunal to proceed with the virtual hearing commencing June 8, 2020 and further that the public notice would provide for a link to allow attendance of anyone seeking access. Dziadyk was also given the opportunity for video training for himself and any witnesses he intended to present. Dziadyk did not respond to this offer.

31. By email dated May 28, 2020, Dziadyk advised that if the hearing were to proceed starting June 8, 2020 that his email of May 26, 2020 should be considered a motion to adjourn for the reasons stated therein which are reiterated above and further that he would not be attending the hearing.
32. In reply to an email from counsel for the prosecution dated June 1, 2020, (Exhibit 49 at the hearing) in opposing an adjournment of the hearing, a complete timeline of interaction with Dziadyk was provided in support of the position of the PCB that the hearing should proceed.
33. Finally, by email dated June 6, 2020, Dziadyk reiterated his position that the hearing should be adjourned and that if it proceeded, he would not be attending. Dziadyk sought in addition to rescheduling, an outright dismissal of the charges against him based, for the first time, on an allegation of bad faith on the part of the PCB in the way the charges had been handled throughout the process.
34. Dziadyk repeated many of the arguments previously made in earlier submissions, now characterized as bad faith, with the position that they could be used at the hearing he would not be attending.
35. All of the above is background to the decision of the Discipline Tribunal a) that the hearing would proceed virtually, and b) would not be rescheduled as requested by Dziadyk.
36. We did not accept the grounds put forward by Dziadyk for rescheduling of the hearing. Dziadyk was in our view fully aware of the case he had to meet having possession of all of the documents relevant both for the prosecution and to his defence well in advance of the hearing date.

37. Dziadyk was aware of the hearing dates set as early as February 26, 2020 and had the opportunity to make whatever travel plan he chose.
38. When it became apparent that travel might be difficult and a virtual hearing would be appropriate to replace in-person attendance, Dziadyk was made aware that this would be a hearing open to public attendance by responding to the CIA Notice and clicking on the link provided. In the actual event there were some 12 “public” attendees, including “advisers” to Dziadyk.
39. Dziadyk was made aware that during the present COVID-19 pandemic, Courts and Tribunals across Canada had confirmed that the open court principle could, for at least the period of the pandemic, be met with virtual hearings as long as members of the public are given notice and the ability to attend.
40. Even with this information, one of the grounds of Dziadyk’s refusal to attend was lack of an in-person attendance. We are satisfied that in the circumstances of continuing uncertainty, a virtual hearing was indeed appropriate and within the authority of the Discipline Tribunal to so order, particularly given the flexibility provided by Bylaw 20.06 (8).

Motion to Dismiss

41. Dziadyk’s motion to dismiss the charges against him, based on the exercise of bad faith by the PCB, were first set out in his email of May 26, 2020 (Exhibit 49) and amplified in his email of June 2, 2020. Essentially advanced as bad faith, was the alleged failure of the PCB to agree to dismiss all of the charges as a preliminary matter, since in Dziadyk’s stated view the various charges were deficient for among the following:

1. going beyond the matters considered by the IT, which were not specifically referred to the PCB by the IT;
 2. failing to consider alternative methods to a formal disciplinary charge;
 3. failing to accept Ngai's decision not to continue a complaint as the basis to terminate the complaint;
 4. asserting that a number of pre-hearing minor items, such as failing to provide the name of the possible witness from KPMG, and failing to provide to Dziadyk draft of pre-hearing minutes before sending to the Discipline Tribunal and providing documents later than provided for in the Rules;
 5. failing to advise the Discipline Tribunal that the matters in the complaint could result in dismissal, pursuant to Rule 3.04, rather than being adjourned to the hearing, and;
 6. failing to advise, on the part of the PCB, why the charges against him were deemed to be valid.
42. It was Dziadyk's position that the above and numerous other matters, all justified a preliminary dismissal of the complaint and the failure of the PCB to recognize this constituted bad faith on its part.
43. On behalf of the PCB, Mr. Delwaide ("Delwaide") provided a written summary of argumentation in response to Dziadyk's assertion of outright dismissal which was added to in his oral submissions.
44. The Discipline Tribunal has been guided from the beginning of this matter with the recognition that the charges against Dziadyk are serious. The words used are not part of normal civil discourse and it is important that the context of their use be considered

carefully. A full reference to the dates of utterances and the words used is found in Appendix B to this decision.

45. Indeed Rule 3.01(1) of the RPPDT anticipates that objections or motions to a charge may be reserved until all of the evidence has been heard.
46. The Rule is consistent with the direction from the Supreme Court of Canada that barring special circumstances for administrative tribunals (of which the CIA is one) “it is preferable to have all issues in the case whether going to procedural regularity or propriety or to the merits be decided at the same time”. *Nova Scotia Board of Censors v McNeil* [1976] 2 S.C.R. 265 at 267.
47. This principle has been applied by Discipline Tribunal’s of the CIA. [See *CIA v Michael Cohen* page 2, para. 25.]
48. We were not aware of any special circumstances that would warrant departing from the general rule. Adjourning Dziadyk’s request for dismissal to full hearing and completion of evidence has allowed the motion to be considered in light of all of the evidence.
49. Having heard all of the evidence we are satisfied that Dziadyk understood that others including Ngai, the IT and the PCB all considered the words used by Dziadyk to be offensive and intemperate, at the very least.
50. Dziadyk’s response to all who would not accept what he regards as accepted fact rather than at best, unproven allegations, is to question the motivation of those who will not accept his version of events.
51. The allegation of bad faith as a ground for dismissal of the charges he faced was confirmation of Dziadyk’s unwillingness to accept any view but his own.

52. Having heard the evidence and submissions on behalf of the PCB we confirm our decision that it was not appropriate to consider dismissal of the charges before the hearing of the evidence and with the benefit of full submission, we are satisfied that Dziadyk's motion to dismiss on the basis of bad faith be dismissed.
53. We noted that Rule 3.04 of the RPPDT specifically authorizes the Discipline Tribunal to "reserve its judgment (on any objection) until the evidence is submitted at the hearing."
54. That position has been accepted by previous Discipline Tribunals of the CIA where procedural issues have been decided as part of the merits.
55. As noted above, we are satisfied that Dziadyk has been fully aware of the charges he faced. He has in no way denied using the words attributed to him. The defence is essentially that they are words of truth. [see *Canadian Institute of Actuaries v Harry Hy Cohen* (2015-12-13) at paras. 78-80, below:]

"[78] In the pre-hearing phase of the Disciplinary Tribunal process and before us, counsel for Mr. Cohen has raised a third argument: the CPC was acting throughout in bad faith, including when it decided to lay a charge against his client for refusal to cooperate, (sic) According to him, this amounts to an abuse of the process and calls for a remedy by the Disciplinary Tribunal. Thus he should be entitled to adduce evidence to demonstrate it.

[79] The Disciplinary Tribunal decided that it should not prevent Mr. Cohen to attempt to prove that. It added that the "right to a full and fair trial must always prevail over efficiency".

[80] Though we agree with the latter principle, it should be said that the decision of the Disciplinary Tribunal to authorize a charged member to attempt to prove an alleged abuse of the disciplinary process by members of the CPC must rest on the factual conclusion that there is an air of reality to the allegation."

56. We are satisfied that there are no relevant documents that the PCB failed to provide to Dziadyk well in advance of his formal response to the charges on April 29, 2020.
57. The allegations of bad faith against the Discipline Tribunal amount to a failure to give rulings in advance of the hearing that would favour Dziadyk's position, among them, that it was relevant for the Discipline Tribunal to hear evidence with respect to the cause(s) of the collapse of CLICO to rule in advance that its so called expert evidence would be relevant to the interpretation of Rule 8 of the RPC.
58. We are satisfied that the position taken by the PCB in opposing the request by Dziadyk for advanced rulings cannot be regarded as bad faith on the part of the PCB.
59. Likewise, the decision by the PCB to withdraw Count 4 does not fall into the category of bad faith for the following reasons:

1. The decision does fall into the category of prosecutorial discretion.
2. Legal precedents confirm the wide latitude granted to a professional standards prosecution to exercise that discretion.
3. While it is neither necessary nor appropriate for a Discipline Tribunal to inquire into the reasons for exercise of prosecutorial discretion, we are satisfied that the efficiency of proceedings enabled by the elimination of inquiry into the cause(s) of CLICO's collapse is more than sufficient confirmation of appropriate exercise of prosecutorial discretion.

See *Law Society of Upper Canada v Brooks*, 2015 ONLSTH 194 para.12

"[12] Similarly, the decision to amend the Notice of Application before the hearing, in order to withdraw particulars of alleged professional misconduct, is a matter of prosecutorial discretion. This may be done for any number of reasons, which the hearing panel does not and should not

know. When this occurs, it plays no role in the hearing panel's decision-making, aside from reducing the number of issues it must decide.

See *Law Society of Upper Canada v Swartz*, [2003] L.S.D.D. No. 48 para. 8

"8 This is an adversarial process. It is a process that depends in large measure on prosecutorial discretion. That discretion is exercised not only in accordance with, we hope, sound judgment but often budgetary restrictions, issues of what is a priority. There are issues of what needs to be brought forward. There are issues of economy of time, scale and impact in terms of the public interest which one would hope the Law Society would keep foremost in its mind in making these decisions."

60. Finally, on the issue of dismissal we are satisfied that not only has the Respondent been apprised well in advance of all relevant documents, Dziadyk himself did not take the opportunity to meet in person with the IT and has not at any time identified (with the exception of the internal CIA documents dealing with Rule 8) any documents that might be pertinent to his defence.

[See *Bryan E. Salte, The Law of Professional Regulation*, LexusNexis Canada Inc., 2015, p. 144.]

61. In conclusion, on this issue, we are satisfied that the Respondent has not discharged the burden on him to establish the basis for a complaint of bad faith and as such there is no evidence to warrant dismissal of the charges on that basis.

The Charge - Merits

62. The charges faced by Dziadyk allege professional misconduct in respect of language used by Dziadyk in writing and in video about the conduct of fellow actuary Ngai. (see Appendix A)

63. The words used include “actuarial fraud”, “Master of deception”, “worse than the wretched on the cross”, “scum, thief, criminal” among others. Details of words used are in Appendix B.
64. Before considering the words used by one actuary describing a fellow professional actuary, it is appropriate to consider the use of such words in law apart from the professional conduct context.
65. Expression which tends to lower a person’s reputation in the estimation of the ordinary, reasonable members of society generally or to expose a person to hatred, contempt, or ridicule, is defamatory. [*Canadian Libel and Slander Actions*, Roger D. McConchie and David A Potts, Irwin Law 2004 at page 289]
66. Indeed a person who publishes defamatory expression may be subject to increased penalty if it is established that the person is actuated by express malice which includes (i) knowing the words are false; or (ii) with reckless indifference as to whether it is true or false, or; (iii) for the dominant purpose of injuring the plaintiff because of spite or animosity. [See McConchie et al. *supra*. page 299]
67. A claim for defamation maybe successfully defended if the words spoken are in fact true, which in law is known as justification. For such defence to succeed, the defendant has the burden to prove the truth of such words. [*supra* page 497-8]
68. There was no evidence before this Discipline Tribunal of any formal criminal or civil charge or proceeding involving any of the individuals including Ngai who may be said to have been involved in the collapse of CLICO. Dziadyk, former officer and with his family shareholders in Colonial Life Insurance Company (Trinidad) Limited claims that the actions of Ngai and others caused irreparable loss to himself and his family.

69. In the various submissions of Dziadyk, he did not identify anything that would validate any of the claims or misconduct made against Ngai or indeed anyone else.
70. The case before us as a Discipline Tribunal is not based on defamation but rather an alleged professional misconduct. The test for professional misconduct is whether or not the statements made are to be considered reasonable in the context of being made by a member of a profession. [See *The Law of Libel in Canada*, Peter A. Downard, LexisNexis Canada Inc, 2018, sections 1.10, 9.6, 9.91, 9.92 and 9.99 and *Histed v. Law Society of Manitoba*, [2007] M.J. No. 460, paras. 72, 79.
71. The PCB at para .51 of their written submissions urges as follows:
- “The use of discourteous and disrespectful language that is associated with the status of the professional constitutes unprofessional conduct that harms the profession and is not in the public interest. We can conclude that such behaviour reflects adversely on the actuarial profession. Professionals are expected to act professionally and must express restraint and appropriateness in their comments, whether written or spoken, or they compromise the interests of society at large. It goes to the heart of professionalism and is essential to maintain the reputation and integrity of the profession. Improper criticism of another member of the CIA or of another organization (including other professionals) constitutes professional misconduct.
- *McLaughlin (Re)*, 2020 ABCPA 2019065, paras. 74-77, 90
 - *Law Society of British Columbia v. Greene*, [2003] L.S.D.D. No. 67, paras. 33, 35 and 46”
72. We accept the submission of the PCB with respect to the use of discourteous language. We are, in other words, balancing the fundamental importance of open, and even forceful, criticism of our public institutions with the need to ensure civility in the profession. Disciplinary bodies must therefore demonstrate that they have given due regard to the importance of the expressive rights at issue, both in light of an individual

actuary's right to expression and the public's interest in open discussion. As with all disciplinary decisions, this balancing is a fact-dependent and discretionary exercise.

73. Even assuming that the Respondent, Dziadyk, believes in the correctness of his position regarding the collapse of CLICO, he is, as a professional actuary, not excused from expressing that position in a discourteous and disrespectful use of language. [See *Law Society of British Columbia v. Laarakker*, [2011] L.S.D.D. No. 175, paras. 44 to 47, as noted below.]

44. We accept that the Respondent may have been upset by the legal position and the allegations set out in the Ontario lawyer's Demand Letter. However, those feelings do not justify the correspondence and blog posting drafted by the Respondent.

45. As noted above, the Respondent takes the position that he was allowed, perhaps even compelled, to do what he did in the face of a "rogue lawyer". Even if the Ontario Lawyer can be considered to be a "rogue", it is not the Respondent's place to pursue some form of vigilante justice against that lawyer by posting intemperate personal remarks or by writing letters that do not promote any possibility of resolution of the client's legal dispute.

46. Clearly, the appropriate avenue for the Respondent to take would have been to file a complaint either with the Law Society of Upper Canada or the Law Society of British Columbia. Obviously, the Respondent did not take those steps. Thus, by taking actions that he felt were protecting the integrity of the profession, he was achieving the opposite result.

47. The Respondent's actions were a marked departure from the conduct the Law Society expects of its members. The Respondent's belief in the correctness of his position does not relieve him of culpability.

74. What makes some of the language used by Dziadyk even more egregious is that it was uttered even after Dziadyk attempted unsuccessfully to negotiate with Ngai in return for Dziadyk withdrawing his disciplinary complaint against Ngai and after the PCB accepted the plea of guilty from Ngai and imposed a penalty which Dziadyk considered insufficient.

75. Dziadyk's defence to the charge of failing to act with integrity contrary to Rule 1 is that he alleges that he was in fact acting with integrity in that he was being honest, had strong moral principles, and was acting in a manner to uphold the reputation of the profession, given the truth of his assertions in effect acting as a whistleblower.
76. Appendix B summarizes correspondence from Dziadyk and, in particular, highlights comments that he made regarding fellow actuary Paul Ngai. In addition, the appendix contains an extract from a letter dated March 9, 2017 from the PCB to Dziadyk that warns him to use "more courteous and professional language in the future." Of note, 27 of the 29 entries in the table are dated after the warning of March 9, 2017.
77. The example statements regarding Ngai in Appendix B are not a complete catalogue of objectionable statements, but are meant to provide a summary. Specific objectionable statements are the following:
- "Ngai was indispensable in a fraudulent 1-2 punch teamed up with KPMG's "going-concern" ..."
- "I suffered because of you and you didn't care. So here's the deal. (sic) You report back that I want to be paid contractually plus 10% interest and I will go away, won't even bother with the defamation suit. I'll tell CIA I dropped charges."
- "... I loathe each and every one of you despicable cowards; may you rot in hell as you clutch your booty."
- "... you colluded in an inside job back-stabbing policyholders ..."
78. In most of the correspondence, Dziadyk identifies himself as an actuary, generally as a Canadian actuary or Fellow Canadian Institute of Actuaries.

79. In his formal response of April 29, 2020, Dziadyk submits that the “tone” of the message is in effect an irrelevant consideration and that he has fulfilled his professional duty by speaking out against what he considers malfeasance resulting in injustice.
80. We do not accept the position put forward by Dziadyk. Even if the words used could somehow be regarded as accepted fact (for which no creditable evidence was put before us other than his own assertions) the professional conduct of an actuary contemplated in Rule 1, envisions reasoned language and civil discourse.
81. While there may be a legitimate difference of opinion about the appropriate actuarial methods and assumptions, the statements that Dziadyk makes are inflammatory and reflect poorly on the Canadian actuarial profession. That is in spite of Dziadyk being previously warned about the tone of his language.
82. The most egregious instance of his correspondence is the memo dated March 31, 2018, Good Friday. In that memo, sent to Ngai, the company, the auditor, the Central Bank and government of Trinidad and Tobago, and the media in Trinidad and Tobago, Dziadyk makes recurrent references to Jesus nailed to the cross, and the criminals executed beside him. He compares the addressees to those criminals.
83. Not only in the March 31, 2018 memo, but in many others, Dziadyk makes inflammatory comments about the auditor, the company, the Central Bank, and the government of Trinidad and Tobago.
84. In many other comments, in addition to that contained in Exhibit 23, Dziadyk went beyond what might be regarded as free speech in condemnation of CLICO, its auditors and the Central Bank and government of Trinidad and Tobago. The “tone” of the language comes nowhere near meeting a test of reasonableness.

85. At the heart of many of the issues in this matter are questions of courtesy and professional respect in the expression of a member's views, the discussion of those views with other members of the profession and the impact such discourse may have on the public and the public's perception of the profession. We begin our conclusions with Rule 8.

Rule 8

86. **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."
87. **Annotation 8-1** "Differences of opinion among members may arise particularly in choices of assumptions and methods. Discussions of such differences, whether directly between members or in observations made to a client by one member on the work of another, should be conducted with courtesy and respect."
88. The Charge in connection with Rule 8 is that Dziadyk failed:
- To avoid unjustifiable or improper criticism of other members, contrary to Rule 8 of the current Rules,
 - To conduct himself objectively and with courtesy and respect when expressing differences of opinion among members and in discussion of such differences, contrary to Annotation 8-1 of the current Rules.
89. The position of Dziadyk urges that the charge for breach of Rule 8 be dismissed since he did not at any of the times that he uttered the statements or words attributed to him do so in performance of "Professional Services" rather he was speaking out as a private individual on behalf of himself, his family and other shareholders of CLICO.

90. The position of the PCB is as set out in paragraphs 39 to 42 of their written submissions to the effect that Dziadyk held himself out as the fellow of the CIA.
91. Compliance with the Rules and Standards of Practice of the CIA is a safe harbour for actuaries in performance of their work. Annotation 8-1 of Rule 8 is designed to require between members constructive discussion of actuarial matters. Discussion of differences between members regarding matters, such as actuarial methods and assumptions, that are conducted according to the Rules with courtesy and professional respect will serve the public interest.
92. It is clear to the Discipline Tribunal that Dziadyk's comments and statements were intended to be perceived as coming from an actuary, a member of the CIA, and that in expressing his views about Ngai and in his discussions with Ngai, he provided opinions based on actuarial considerations which is consistent with definition of professional services under the Rules.
93. Dziadyk's comments and statements were directed toward another member of the CIA and were made available through YouTube to any member of the public who could access the internet.
94. The language used by Dziadyk in his written correspondence with another member of the CIA, Mr. Ngai, and in his YouTube videos was discourteous and disrespectful. He could have chosen to express his views courteously and respectfully, but he chose otherwise. Furthermore, Dziadyk engaged in unjustifiable and improper criticism of another member in that there was no creditable evidence put before us to support Dziadyk's assertions made using language attacking Ngai's character rather than expressing himself through a reasoned and civil discussion of actuarial methods and assumptions . By using phrases such as "fraudulent" "useful idiot" and "master of

deception” the words used went to Ngai’s character far beyond difference in actuarial methods and assumptions. The Discipline Tribunal finds the conduct of Dziadyk is in breach of Rule 8 and Annotation 8-1.

95. This conclusion is supported by decisions of the CIA and indeed by the Supreme Court of Canada [see *Canadian Institute of Actuaries v. Michael Cohen* (1997-05-21), page 31 and *Dore v Barreau du Quebec*, 2012 SCC 12.

Rule 1

96. **Rule 1** “A member shall act honestly, with integrity and competence, and in a manner to fulfill the profession’s responsibility to the public and to uphold the reputation of the actuarial profession.”
97. **Annotation 1-3** “A member shall not engage in any professional conduct involving, dishonesty, fraud, deceit or misrepresentation or commit any act that reflects adversely on the actuarial profession”.
98. The Charge in connection with Rule 1 is that Dziadyk failed:
- To act with integrity, contrary to Rule 1 of the current Rules,
 - To act in a manner to fulfill the profession’s responsibilities to the public, contrary to Rule 1 of the current Rules,
 - To uphold the reputation of the actuarial profession, contrary to Rule 1 of the current Rules, and
 - Not to commit any act that reflects adversely on the actuarial profession, contrary to Annotation1-3 of the current Rules.
99. To act with integrity means to act honestly; with moral uprightness. Dziadyk’s differences of opinion with Ngai were expressed using unreasonable language that attacked Ngai’s character rather than being expressed as a reasoned and civil discussion of actuarial methods and assumptions as is envisaged by Rule 1. Further, Dziadyk made untruthful

statements, such as when he said of KPMG, a public accounting and auditing firm, that in connection with the auditing of the financial statements of insurer CLICO it “... covered over by fraudulent IFRS accounting consented by KPMG” and when Dziadyk described Ngai as an “...indisputably fraudulent actuary” and “... a suicide bomber hiding in an empty statutory fund...”. The Discipline Tribunal finds that Dziadyk did not act with integrity and is in breach of Rule 1.

100. The Rules identify the professional and ethical standards with which a member must comply and thereby serve the public interest. Compliance by a member of the CIA with the Rules is necessary to serving the public interest. Dziadyk failed to comply with the Rules and therefore failed to serve the public interest. In particular, Dziadyk’s untruthful remarks about a firm of professional accountants and auditors consenting to “... fraudulent IFRS accounting...” did not serve the best interest of the public and harmed the integrity of the actuarial profession. The Discipline Tribunal finds that Dziadyk did not act in a manner to fulfill the profession’s responsibilities to the public and is in breach of Rule 1.

101. We accept and adopt the submission on behalf of the PCB:

“[51] The use of discourteous and disrespectful language that is associated with the status of the professional constitutes unprofessional conduct that harms the profession and is not in the public interest. We can conclude that such behaviour reflects adversely on the actuarial profession. Professionals are expected to act professionally and must express restraint and appropriateness in their comments, whether written or spoken, or they compromise the interests of society at large. It goes to the heart of professionalism and is essential to maintain the reputation and integrity of the profession. Improper criticism of another member of the CIA or of another organization (including other professionals) constitutes professional misconduct.

- *McLaughlin (Re)*, 2020 ABCPA 2019065, paras. 74-77, 90

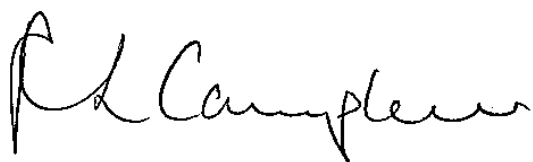
- *Law Society of British Columbia v. Greene*, [2003] L.S.D.D. No. 67, paras. 33, 35 and 46
 - *Law Society of Alberta v. Pozniak*, [2002] L.S.D.D. No. 55, para. 17”
102. The language used by Dziadyk in his correspondence with Mr. Ngai and in his YouTube videos was discourteous and disrespectful. He could have chosen to express his views courteously and respectfully, but he chose otherwise. It is clear to the Discipline Tribunal that Dziadyk’s comments and statements were intended to be perceived as coming from an actuary, a member of the CIA, that they were directed toward another member of the CIA, Mr. Ngai, and Dziadyk’s discourteous and disrespectful expression of his point of view was made available through YouTube to any member of the public who could access the internet.
103. As indicated in the case of *McLaughlin (Re)*, 2020 ABCPA 2019065, paras. 74 to 77, a high standard of civility and conduct applies to someone holding themselves out as a member of a profession with experience and knowledge. In the case of *McLaughlin* discourteous and disrespectful language was found to represent conduct that did not maintain the good reputation of the profession and it constituted unprofessional conduct. The Discipline Tribunal finds the conduct of Mr. Dziadyk did not uphold the reputation of the actuarial profession, his conduct reflects adversely on the actuarial profession and Dziadyk is in breach of Rule 1 and Annotation 1-3.

Conclusion

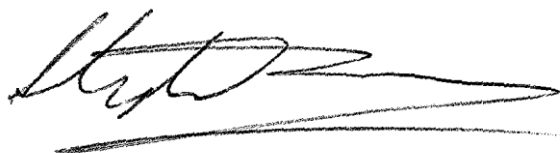
104. The Disciplinary Tribunal finds that Mr. Gene Dziadyk is guilty of breaching Rule 1, Annotation 1-3, Rule 8 and Annotation 8-1 of the Rules of Professional Conduct (“Rules”) of the Canadian Institute of Actuaries.

105. Pursuant to s. 20.07 (6) of the CIA Bylaws the Discipline Tribunal will hold a hearing within the next 30 days with respect to penalty and fees. An email will follow shortly to settle on a convenient penalty hearing date.

Dated at Toronto, this 27th day of August, 2020.



The Honourable Colin L. Campbell, Q.C.
Chair



Stephen P. Bonnar, FSA, FCIA



William Weiland, FCAS, FCIA