

**CANADIAN INSTITUTE OF ACTUARIES
DISCIPLINARY TRIBUNAL**

**IN THE MATTER OF CHARGES FILED AGAINST
ASHLEY B. CROZIER IN CASE 2010-3 AND CASE 2010-5**

Panel

**P. T. Galligan, Chair
Nancy Yake, Member
David Short, Member**

Appearances

**Tina Hobday
for the Committee on Professional Conduct**

**Ashley B. Crozier,
Did not appear, and was not represented by counsel**

Heard: December 2, 2011

DECISION RESPECTING PENALTY

On November 14, 2011 this Disciplinary Tribunal found Ashley B. Crozier guilty of violations of certain of the Rules of Professional Conduct and guilty of breaches of the provisions of Bylaw 20.03(5)(a), (b) and (d). In our decision we fixed Friday, December 2, 2011 for the hearing on penalty which is mandated by Bylaw 20.07(6). We directed that, at the same hearing, we would hear the parties' submissions respecting costs.

On November 14, 2011 the Disciplinary Tribunal sent copies of its decision to the parties as required by Bylaw 20.07(5). The letter transmitting them contained the following:

Please note that the Disciplinary Tribunal has fixed Friday, the 2nd day of December 2011 for the penalty hearing mandated by Bylaw 20.07(6).

Please also be advised that, at the same time, the Disciplinary Tribunal will hear the parties' submissions as to how it should exercise the discretion conferred upon it by Bylaw 20.07(7) with respect to costs.

Mr. Crozier is entitled to be present personally and/or by counsel at that hearing. In the event of his non-appearance the Disciplinary Tribunal is entitled to proceed in his absence.

Mr. Crozier did not appear at the hearing either in person or by counsel. The Disciplinary Tribunal was not provided with any explanation as to why he did not appear. The hearing proceeded in his absence, as permitted by Bylaw 20.06(7).

PENALTY

It is not necessary to review, in any detail, the charges against Mr. Crozier, the evidence in support of them or the decisions which we made. Those matters are all set out in the reasons for our decision. In order to understand what follows, we will briefly describe the charges and our findings.

There were two charges. Each charge was made up of three factual allegations. The factual allegations in each charge were very similar. They were that Mr. Crozier failed to cooperate with others in the interests of two clients, including the actuaries who succeeded him as the actuaries for two pension plans; that he failed to perform certain professional services with skill and care; and that he did not cooperate with the CIA's investigation into complaints about his conduct.

We were satisfied that each factual allegation in each charge was established by compelling evidence. Mr. Crozier's conduct amounted to violations of Rule 1, Annotation 1-1 to Rule 1, Rule 8 and Rule 12 of the Rules of Professional Conduct and violations of Bylaw 20.03(5)(a), (b) and (d).

We do not overlook, or minimize, the findings of lack of skill and care in the performance of professional duties, but what is of overriding concern are the findings of lack of cooperation with successor actuaries and the refusal of Mr. Crozier to cooperate with the CIA's investigations.

Rule 8 of the Rules of Professional Conduct requires that an actuary cooperate with others in the client's interest. In each case the client had retained another actuary to replace Mr. Crozier. In each case the successor actuary asked Mr. Crozier to provide documents, data and information which he would have obtained in the course of the work which he had done previously for the client. Mr. Crozier failed even to respond to the requests which were made on behalf of one of the clients. The actuary acting for the other client did receive some material, but what he did not receive impaired his ability to efficiently perform professional services for the client. In each case the absence of material which should have been readily available from Mr. Crozier resulted in considerable extra work having to be done for the client. It involved additional cost and inconvenience to the client.

The reason why Rule 8 mandates that a member cooperate with others, in the client's interest, is to avoid causing unnecessary problems for the client. Failing to cooperate, in such circumstances, not only is prejudicial to the client, it demonstrates a lack of professional respect and courtesy. We are convinced that Mr. Crozier's lack of cooperation with successor actuaries demonstrates a serious lack of professionalism.

Mr. Crozier not only failed to cooperate with successor actuaries, he failed to cooperate with the CIA's investigations into complaints about his conduct. Based upon the evidence before us, we concluded that his conduct was "tantamount to nothing less than a total refusal to cooperate with the investigation". That, in our opinion, is grave misconduct.

In our Reasons for Decision, we cited the judgment of the Ontario Divisional Court in *Artinian v. College of Physicians and Surgeons of Ontario*, [1990] O.J. No. 1116. We think that an excerpt from that case is worth repeating.

It is suggested by Mr. Laskin that there was no duty on his client to co-operate in the investigation against him by the College. We disagree. Fundamentally, every professional has an obligation to co-operate with his self-governing body.

[Emphasis added.]

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. We think it useful to set out the view expressed by a

Disciplinary Hearing Panel of the Investment Dealers Association in *IDA v. Derivative Services Inc.*, [2000] I.D.A.C.D. No. 26 at page 12:

The District Council views a refusal to comply with a request for information pursuant to an Association investigation as a serious matter. Membership in the Association and employment by a member firm carry with them obligations to comply with the Association's By-laws, Regulations and other rules, including paragraph 19.5 of the By-laws, which is a key element of the Association's investigation powers. Full cooperation with a request under it is necessary if the Association is to be able to fulfill its self-regulatory supervisory functions with respect to its members and their approved persons. Failure to provide information requested in an investigation undermines the integrity of the self-regulatory system and the effectiveness of its operations.

[Emphasis added.]

Clearly, failure to cooperate with its investigations has a pernicious effect upon the integrity of the CIA's self-regulatory system. In our decision we described, at length, the efforts made by the Investigation Team to interview Mr. Crozier. His total disregard of the many messages sent to him amounts to willful disobedience of his legal obligation to cooperate. That kind of disobedience simply cannot be tolerated.

Mr. Crozier's failure to cooperate with his successor actuaries and with the CIA's investigations demonstrates that he has rejected two fundamental responsibilities which are essential parts of a person's membership in the CIA.

As noted, the purpose of a profession's regulation of its members is the protection of the public interest. The purpose of sanctions is to enable a profession to ensure that the public is protected from acts of professional misconduct. While there is an aspect of punishment involved in a sanction, that is not the purpose of its sanction. The purpose of a sanction is to deter the particular offender from a repetition of the

misconduct, and, especially important, it is to deter other members of the profession from engaging in similar professional misconduct.

When choosing an appropriate penalty in this case it is our responsibility to impose a penalty which will deter Mr. Crozier from again refusing to cooperate with a CIA investigation but also, and more important, to impress upon all members of the profession that non-cooperation with an investigation must be treated very seriously. The factors which should be considered in arriving at an appropriate penalty are found in James T. Casey, *The Regulations of Professions in Canada*, 2011-Release 3 (Toronto: Carswell, 2011), Volume 2 at p. 14-6:

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 a 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.

A penalty which might serve as an appropriate general deterrence must, nevertheless, be considered in the light of any circumstances of the particular offender which might properly mitigate the severity of it. Factors which mitigate a penalty are acknowledgment of one's error, an attempt to remedy it, the age and inexperience of the offender, an unblemished disciplinary record, compassionate grounds and the like. In this case no mitigating circumstances are apparent. There is nothing which would appear to justify the imposition of a penalty which was not primarily based on general deterrence.

Indeed, this is not Mr. Crozier's first disciplinary matter. In 2008 he pleaded guilty, in a fast track procedure under Bylaw 20.05, to two charges. They are different than the charges in this case. Nevertheless, one of them had an aspect of lack of cooperation to it. The important thing is that Mr. Crozier is not a first offender.

Without intending to minimize the seriousness of Mr. Crozier's failure to use skill and care in the provision of professional services to his clients or his failure to cooperate with successor actuaries, what makes this case an extremely serious one was his refusal to cooperate with the CIA's investigations into his conduct. As we noted earlier, such a refusal strikes at the heart of the CIA's ability to regulate its members in the public interest.

We have decided that, in this case, the penalty must be primarily one that will act as a general deterrent. The only penalty which will adequately serve as a general deterrent is a lengthy suspension of membership in the CIA. We have decided that the penalty should be a suspension of three years. That penalty will subsume the penalties which we would otherwise have imposed for his failure to use skill and care in the provision of professional services and for his failure to cooperate with successor actuaries.

We have decided that the length of the suspension militates against the imposition of a fine. A fine in addition to the suspension will not be ordered.

Conditions of Penalty

Bylaw 20.08(3) provides:

A Disciplinary Tribunal may fix the terms and conditions of the penalties it imposes.

In the exercise of that jurisdiction, we intend to fix two conditions to the suspension.

(a) Condition resulting from administrative suspension

Mr. Crozier was administratively suspended, effective September 30, 2011, for failure to pay his dues. There is no evidence that he has since paid his dues and it is inferred that he is still under administrative suspension. Because of the provisions of Bylaw 20.02(8), Mr. Crozier's administrative suspension does not affect the jurisdiction of this Hearing Panel to deal with charges arising out of work performed by him while he was a Member in good standing. The personal deterrent to Mr. Crozier would be illusory if he were able to serve his penalty suspension while he was under administrative suspension for neglecting to pay his dues. Therefore, in the exercise of our power under Bylaw 20.08(3), we direct that the suspension of three years shall begin to run on the date when Mr. Crozier makes himself eligible for administrative reinstatement by paying the dues then owed by him to the CIA.

(b) Condition resulting from finding of lack of professionalism

Mr. Crozier's lack of cooperation with successor actuaries and with the CIA's investigations demonstrates a serious lack of professionalism. Therefore, in the exercise of our power under Bylaws 20.08(2) and 20.08(3), we direct that the period of suspension shall not end until Mr. Crozier successfully completes the Professionalism Workshop that is currently required as a condition for enrolment in the CIA, or successfully completes such other professionalism requirement for enrolment in the CIA that may replace the Professionalism Workshop.

COSTS

Bylaw 20.07(7) provides as follows:

A Disciplinary Tribunal shall have the power to order any of the parties to pay all or part of the fees and expenses of legal counsel of the other party incurred to commence and complete the proceedings.

The usual rule in litigation is that costs follow the event. That means that, generally, the successful party is entitled to recover its costs against the unsuccessful party. Nothing in the record in this case demonstrates any reason to make an exception to the general rule. The CIA is, therefore, entitled to recover its costs against Mr. Crozier.

We are satisfied that the CIA has incurred, up to this date, fees and expenses of legal counsel, inclusive of taxes of \$165,000. However, included in that amount is the sum of \$55,000 which was incurred in the presentation and argument of the CIA's motion to have Mr. Crozier suspended pending the hearing of the case. The CIA was not successful upon that motion. It would be unfair to allow it to recover its costs of its unsuccessful motion. Thus, we deduct \$55,000 from the CIA's total costs with the result that the CIA is entitled to recover \$110,000 from Mr. Crozier on account of its fees and expenses of legal counsel.


CONCLUSION

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

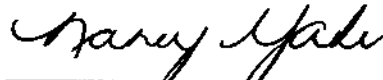
1. That Ashley B. Crozier is suspended from membership in the CIA for a period of three years.
 - a. The period of suspension will begin to run on the date that Mr. Crozier makes himself eligible for administrative reinstatement by paying the dues which he then owes to the CIA.

- b. The period of suspension will not end until Mr. Crozier successfully completes the Professionalism Workshop that is currently required as a condition for enrolment in the CIA, or successfully completes such other professionalism requirement for enrolment in the CIA that may replace the Professionalism Workshop.
2. Ashley B. Crozier is directed to pay \$110,000 to the CIA on account of its costs.

Dated at Toronto, this 16th day of December 2011.



P. T. Galligan, Chair



Nancy Yake, Member



David Short, Member