

# Discipline Report

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This is the forty-first periodic report to Fellows, Associates, and Affiliates prepared in accordance with Bylaw 20.12(8). Its primary purpose is to educate and inform all Fellows, Associates, and Affiliates about the disciplinary process and current disciplinary activities. Please send any comments or suggestions for improvements in these reports to me at my Online Directory address.

### Meetings

Since the last Discipline Report of June 2015, the Committee on Professional Conduct (CPC) held two conference calls and one meeting. The next meeting of the CPC is scheduled for April 15, 2016 in Montréal.

### Disciplinary Costs (\$000) to October 31, 2015

	As at 10/31/15		As at 10/31/14	
	Budget	Actual	Budget	Actual
Legal costs – operations	\$103,000	\$30,090	\$85,000	\$29,554
Legal costs – reserve	\$0	\$87,330		\$13,797
Other costs – reserve	\$0	\$41,019	\$85,000	\$10,650
	\$0	\$128,349	\$85,000	\$24,447
	\$103,000	\$158,439	\$170,000	\$54,001
Costs recovered	\$0		\$0	

### Cases

#### (a) Charges filed and cases completed

There have been no new cases heard and completed by a Disciplinary Tribunal since the last report.

#### (b) Cases outstanding where charges have been filed

There were charges filed in one case in the last fiscal year which is currently being heard by a Disciplinary Tribunal.

Anyone who wishes to request more information about the disciplinary process may obtain that information from the Executive Director.

### Other complaints and information

The CPC discussed 12 cases against 18 Fellows, Associates, or Affiliates including the one mentioned above.

Four new complaints and/or information were received for the CPC's consideration. In two of the new cases, the CPC decided to subsequently dismiss the matter and in the other two cases, the CPC is obtaining more information before deciding how to proceed.

Two previous cases being reviewed were dismissed. In two earlier cases, the CPC is still obtaining further information before deciding how to proceed.

One earlier case has now been referred to an Investigation Team.

The CPC had previously referred one case to an Investigation Team which is still on-going.

#### (c) Summary by practice area

The 12 cases set out above may be summarized by practice area as follows:

	Cases	Individuals
Life	1	1 member
Pension	7	13 members
P&C	0	0 members
Workers' Compensation	0	0 members
Actuarial Evidence	1	1 member
Other	3	3 members

#### (d) Summary of CPC cases since 1992

In response to an interest that was expressed to the CPC, this Discipline Report includes additional statistics on past CPC cases:

- Since 1992, the CPC has completed 188 cases.
- Of these 188 cases, 110 cases were dismissed, three cases resulted in a private admonishment without going to an Investigation Team, and 75 cases were referred to Investigation Teams.

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- Of the 75 cases that were referred to Investigation Teams, 35 cases resulted in no charges being filed, and 40 cases resulted in charges being filed.
- Of the 40 cases that resulted in charges being filed, eight cases resulted in private admonishments, nine cases resulted in an admission of guilt and sanctions, and 23 resulted in public Disciplinary Tribunals.
- Of the 23 Disciplinary Tribunal hearings, 21 resulted in either a guilty plea by the Respondent or a finding of guilt by the Disciplinary Tribunal on some or all of the charges. In the other two cases, the respondents were found not guilty by the Disciplinary Tribunal.

Doug Brooks  
Chair, Committee on Professional Conduct

## The CIA's Appeal Process

On September 11, 2015, an Appeal Tribunal rendered a decision on the interpretation of the applicable test to grant a leave to appeal of a decision of a Disciplinary Tribunal, further to a motion filed by the Committee on Professional Conduct (CPC).

First, it is important to understand when a leave to appeal is needed. Sections 20.09 (4) and (5) of the Bylaws are relevant on this issue:

(4) An appeal can be made to an Appeal Tribunal in respect of

(a) a decision of a Disciplinary Tribunal ordering a temporary suspension of a Fellow, Associate or Affiliate, allowing or dismissing a charge, imposing a penalty or awarding costs; or

(b) any other decision of a Disciplinary Tribunal, with leave of the Appeal Tribunal.

(5) The Committee on Professional Conduct shall make an appeal to an Appeal Tribunal pursuant to Bylaw 20.09(4) only on a question of law or jurisdiction.

Therefore, all final decisions of a Disciplinary Tribunal on a charge and its consequences may be appealed to an Appeal Tribunal without a leave to appeal, either by the CPC or the Respondent. One must note that an appeal without merit could be costly to a party who may be ordered to reimburse the other party's fees and expenses of legal counsel (see 20.11(5) of the Bylaws).

Only the decisions that are not final require leave to appeal. For example, in the case before the Appeal Tribunal, the CPC made an objection before the hearing on some of the evidence that the Respondent wanted to adduce before the Disciplinary Tribunal. The Disciplinary Tribunal rejected the objection.

This objection was based on a question of law and jurisdiction. The CPC requested a leave to appeal before an Appeal Tribunal of the Disciplinary Tribunal's decision.

To the knowledge of the CPC, this is the first time that a leave to appeal was sought under the Bylaws. All of the other appeals were filed without a need to obtain a leave.

This decision on the leave to appeal sets the first precedent on the applicable test for an Appeal Tribunal when deciding a leave to appeal. The Appeal Tribunal in this case was very conscious that it would set a precedent and it took the opportunity to develop an appropriate test.

The Appeal Tribunal decided that a leave to appeal application from the CPC or a respondent should meet at least one of the following criteria:

1. The correctness of the decision on a question of law or jurisdiction is open to serious debate and the decision could create a significant precedent in future disciplinary proceedings;
2. Failure to grant leave would force a party to take part in proceedings before a panel, the composition of which is contested for prima facie serious reasons; and
3. The correctness of the decision on a question of law or jurisdiction is open to serious debate and to permit an appeal only after the final decision is rendered could cause an irreparable harm to the respondent, the CPC, the Institute, or the disciplinary process.

The Appeal Tribunal mentioned that leave to appeal should be granted sparingly, taking into account that an appeal would necessarily delay the process before the Disciplinary Tribunal.

In the application of this test, the Appeal Tribunal decided that the CPC's request met the first condition and the leave was granted.

Since a respondent is not limited to seek an appeal on a question of law or jurisdiction, we may think that the test could be different, but the Appeal Tribunal did not have to address that issue in this case.