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DESIGNATED ROLES FOR ACTUARIES IN CANADA

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** The opinions presented in this article are those of the author solely and should not be interpreted as the opinions of the author's employer or the Society of Actuaries.*

In June 1989, the Centennial of the North American actuarial profession was celebrated at a special convention in Washington, D.C. The keynote speaker of the convention was the Honorable Willard Estey, a former justice of the Supreme Court of Canada. His address, "The Challenge of Professionalism," highlighted that what sets a profession apart from a trade association or guild is its commitment to put the interests of the community ahead of personal interests, i.e., its commitment to serve the public good. While I have no proof thereof, I believe that his address provided the necessary impetus to the adoption in the early '90s of the essentially uniform actuarial Code of Conduct in the United States and Canada. A key element of that code is Precept 1, which states,

> "An actuary {in Canada, "A member"} shall act honestly, with integrity and confidence, and in a manner to fulfill the profession's responsibility to the public and to uphold the reputation of the actuarial profession."

It is no accident that "the profession's responsibility to the public" is placed before "the reputation of the actuarial profession" in this precept.

ROLE AND RESPONSIBILITIES OF THE INSURANCE COMPANY APPOINTED ACTUARY INSURANCE COMPANIES ACT 1992:

In 1992, the Canadian and British Insurance Companies Act and the Foreign Insurance Companies Act were replaced by the Insurance Companies Act (the Act) which combined the legislation for both life and property/casualty insurance companies. (Note that in Canada a single company cannot sell both life and property/casualty insurance.) The new legislation created the role of "appointed actuary" and gave new important responsibilities to the individual so designated in a federally registered insurer.

The legislation addressed the role of the appointed actuary in several distinct areas as follows,

- Formal designation,
- Financial statements,
- Board reporting,
- Management reporting,
- Protection,
- Access to information, and
- Participating policy and adjustable policy fairness.

FORMAL DESIGNATION

The Act requires that at the company's initial board of directors meeting, the board must first appoint an "actuary of the company" [§49.(1)] and shall forthwith inform the Superintendent of Financial Institutions of the appointment [§357]. For purposes of the Act, "actuary" is defined as a Fellow of the Canadian Institute of Actuaries [§2.(1)].

If the actuary of the company is removed, the directors must inform the Superintendent in writing [§360]. Where the actuary resigns or is replaced, the actuary must submit a written statement, to the board and the Superintendent, of the circumstances of, and

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reasons for, his/her departure [§363]. Where a vacancy occurs in the position of actuary, the directors must inform the Superintendent and fill the vacancy [§362]. Upon departure of the actuary, the potential replacement actuary may not accept the appointment until first requesting and receiving from the former actuary a copy of the written statement submitted under §363 [§364].

FINANCIAL STATEMENTS

Financial statements of insurance companies in Canada are to be prepared in accordance with generally accepted accounting principles (GAAP) as set out in the CICA Handbook, except as otherwise specified by the Superintendent [§331.(4)]. The valuation of policy liabilities is to be in accordance with accepted actuarial practice, except as may be directed by the Superintendent [§365.(2)]. The company's annual statement presented at every annual meeting must present the company's financial position and must include the report of the actuary of the company [§331.(1)(c)] and a description of the role of the actuary [§331.(1)(d)]. The associated regulations also require that the annual submission to the uperintendent of the company's financial statement include an extensive report by the actuary regarding the valuation of the policy liabilities as well as the actuary's opinion with respect to the company's minimum continuing capital and surplus requirements (MCCSR).

BOARD REPORTING

At least once each financial year the actuary must meet with the directors or, if they choose, with the audit committee of the company, in order to report, in accordance with accepted actuarial practice, on the company's financial *position* and on its expected future financial *condition* [§368].

MANAGEMENT REPORTING

In addition, the actuary has a continuing responsibility to report in writing to the CFO and the CEO, any matters that have come to the attention of the actuary in the course of carrying out his/her duties that, in the actuary's opinion, have material adverse effects on the financial condition of the company and require rectification. The actuary who makes such a report must forthwith provide a copy of it to the directors. Where, in the actuary's opinion, suitable action is not being taken to rectify matters reported to the CFO/CEO, the actuary must send a copy of the report to the Superintendent and inform the directors that such has been done [§369].

PROTECTION

In preparing the draft legislation in 1991, the government recognized that the new legislation would be placing significant responsibility on the actuary and that, without a measure of protection being granted to the appointed actuary, there was some danger of management using coercion and/or threats if the actuary's opinion was not to their liking. In light of that possibility, the initial draft legislation included a clause [§370] providing that any oral or written statement made by the appointed actuary under the Act would have "qualified privilege".

After some consultation with lawyers, the Canadian Institute of Actuaries learned that such language, provided simply that the actuary could not be sued by anyone who feels that he or she has been defamed by a statement made by the actuary in a report, i.e., if the actuary reported that management had taken some action that was "stupid", the actuary could not be sued for having used such language. With this information in hand, the CIA pointed out to the government that the protection that was being provided was inadequate to meet its intent. Consequently, when adopted, the legislation provided, in an additional paragraph that the actuary who, in good faith, makes a written or oral statement in connection with the responsibilities under §363 (report on leaving the position of actuary) or §369 (report on adverse effects) is not liable in any civil action seeking indemnification because of the statements so made by the actuary. [§370].

ACCESS TO INFORMATION

If the actuary so requests, the company must, to the extent it is reasonably able to do so, allow

access to all records held by the company and provide such information and explanation as, in the opinion of the actuary, is necessary for the actuary to perform his/her duties. Further, any person who provides information to the actuary under this section is not liable under any civil action arising from having provided such information [§366].

PARTICIPATING BUSINESS

Under the Act, participating business must be held and managed in accounts separate from accounts maintained for other business [§456]. Investment income is to be allocated to the participating accounts by a method that, in the written opinion of the actuary, is fair and equitable to the participating policyholders and, thereafter, is approved by the directors and not disallowed by the Superintendent [§457]. Expenses are to be allocated to the participating accounts by a method that is subject to the same constraints [§458]. The actuary must annually, in a written report to the directors, affirm the fairness and equity of the application of these methods of allocation to the participating policies [§460].

The proportion of participating account profits that can be paid to the shareholders is limited on a decreasing scale (from 10 percent to 2.5 percent) as the size of the par accounts grows [§461.(a)], but such transfers can actually be made only if, in the opinion of the actuary, such transfers out of the par accounts would not materially affect the company's ability to continue to comply with its documented dividend policy or to maintain the rates of dividends to par policyholders [§461.(c)]. Before declaring a dividend or bonus for participating policies, the directors must consider a written report of the actuary on whether, in his/her opinion, such payment is in accordance with the dividend policy of the company [§464.(2)].

In 2006, the Act was amended to expand the consideration of fairness in respect of participating policies and additional responsibilities in that regard were placed upon the actuary of the company. However, the changes in the Act were not to be implemented until associated regulations had been established and implemented by the Superintendent. Those regulations were finally adopted in June 2011 and were effective for financial reporting for 2011. With the bringing into force of the 2006 changes to the Act, the actuary of the company that administers participating policies has assumed new responsibilities with respect to the management of those policies.

Since its inception, the Act has required the directors to establish a policy for determining the dividends and bonuses to be paid to participating policies [§165.(2)(e)]. The directors may then pay such dividends or bonuses in accordance with that policy [§464.(1)]. However, before actually declaring a dividend or bonus the directors must consider a written report by the actuary on whether, in the actuary's opinion, such dividend is in accordance with the company's dividend policy [§464.(2)]. The 2006 changes to the Act require, also, that the actuary report in writing to the directors on the fairness to the participating policyholders of this policy and to report at least annually on its continuing fairness [§165.(3.1)].

Under the revised Act, the directors must also establish a policy for managing each participating account [§165.(2)(e.1)]. The actuary is required to report in writing to the directors on the fairness to the participating policyholders of this policy for managing each participating account and to report, at least annually, on its continuing fairness [§165.(3.2)].

Nonparticipating Adjustable Policies

The 2006 changes to the Act require the directors to establish criteria for changes made to the premium or charge for insurance, amount of insurance or surrender value in respect of its nonparticipating adjustable policies [§165.(2)(e.2)]. The actuary must report in writing to the directors on the fairness to the adjustable policyholders of these criteria and, at least once

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Under the revised Act, the directors must also establish a policy for managing each participating account. …

each financial year, on their continuing fairness [§165.(3.3)].

ROLE IN RESPECT OF PRIVATE PENSIONS IN CANADA

For pension plans that are registered federally, the federal Pension Benefits Standards Act (PBSA) requires the preparation of a number of "actuarial" reports. For that purpose, the PBSA defines "actuary" as a Fellow of the Canadian Institute of Actuaries [§2.(1)]. In addition, it requires that such actuarial reports be prepared "in accordance with the standards of practice adopted by the Canadian Institute of Actuaries, except as otherwise specified by the Superintendent" [§9.(2)(b)].

For pension plans that are registered provincially, the various provinces have implemented legislation that largely parallels the federal law, including the responsibilities assigned to actuaries and the Canadian Institute of Actuaries.

ROLE IN RESPECT OF FEDERAL USURY CONSTRAINTS

The Criminal Code of Canada, in §347, identifies that it is a federal criminal act to charge an "effective annual rate of interest" in excess of 60 percent per annum. In that context, "interest" is defined as the aggregate of all charges and expenses payable for advancing credit in a financial transaction.

§347.(4) of the Criminal Code states,

> "In any proceedings under this section, a certificate of a Fellow of the Canadian Institute of Actuaries stating that he has calculated the effective annual rate of interest on any credit advanced under an agreement or arrangement and setting out the calculations and the information on which they are based is, in the absence of evidence to the contrary, proof of the effective annual rate without proof of the signature or official character of the person appearing to have signed the certificate.

CONCLUSION

It is apparent that the CIA's commitment to emphasize the profession's responsibility to the public has engendered, in the various Canadian legislatures, a willingness to depend upon that commitment by bestowing very significant roles and responsibilities upon the members of the profession. In the ensuing past two decades, the CIA has demonstrated that it has been worthy of that trust.