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Awareness of discipline process keeps actuaries out of trouble

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You're sitting in the head office in Toronto, working on a project for the U.S. operations of your multinational company. You think some U.S. standards for actuarial work are different, but you're in Canada, so you don't think much about it and just proceed as you usually would, using Canadian standards. Right? Wrong. The disciplinary bodies in the United States and Canada define practice in the actuarial profession not by your physical location, but by the intended destination of your work.

"In the context of standards of practice and the code of conduct, you're working in the United States even when you're physically at a desk in Canada," said Mo Chambers, chair of the Canadian Institute of Actuaries (CIA) Committee on Discipline and a member of the Society of Actuaries Board of Governors. "The same situation applies to a U.S. actuary working in Walla Walla or New York, if the work has to do with a Canadian branch of a U.S. company."

In 1994, the Council of Presidents (COP), consisting at that time of six actuarial organizations in the United States and Canada, established a reciprocal agreement where an actuary practicing in Canada is required to follow standards set by the Canadian Institute of Actuaries and a Canadian practicing in the United States is held to the U.S. code of conduct and standards. The COP is working on including a seventh actuarial organization, the Colegio Nacional de Actuarios in Mexico, in the agreement, through implementation of NAFTA.

Evolution of the CIA discipline process

When a complaint is made about a U.S. resident's work in Canada, the

CIA is the investigatory body, even if the actuary is not a member of the CIA. "The CIA discipline proceedings are significantly different from those in the United States," Chambers said, "due to the history of the organization and the cultural and legal environment in Canada."

Chambers said the CIA was formed in 1965 by an act of the federal Parliament. Actuaries are the only profession in Canada organized on a national, rather than provincial, level. For the first 25 years, the discipline process was kept very confidential. Twenty-nine complaints were received; 11 were found to be cases of misconduct; nine were admonishments, which are private reprimands with the nature of the misconduct and name not made public.

"On one hand, actuaries were reassured that the profession was meeting its responsibilities well, because there were few serious discipline situations," Chambers said. "On the other hand, rumors were flying about that some actuaries were not following standards of practice and not being professional. Some thought actuaries were being protected and would not discipline their own members who got out of line. Evidence was rare that any discipline had taken place. Some were concerned that admonishment was overused and was too mild an action."

In 1990, at the request of the CIA Council, a subcommittee of the Committee on Discipline began an overhaul of the process. One of the first recommendations adopted was to eliminate the private reprimand to overcome the public perception that actuaries were protecting members' inappropriate behavior. In the early 1990s, the CIA bylaws were changed to make the discipline process open to

the public and to make any guilty findings and penalties public. Also, Rule 13 was added to the CIA Rules of Professional Conduct. This "snitch rule" required a CIA member who believes another member may be breaching the rules of professional conduct or the standards of practice to either review the situation with the member or to bring the matter to the attention of the CIA. This rule allows a member to avoid having to personally make a formal complaint.

Current CIA process

If a complaint is made to the CIA Committee on Discipline by another actuary or a member of the public, the committee examines the complaint. If it deems it frivolous or vindictive, it may refuse to consider it and dismiss it. If it decides some justification may exist, the individual in question is notified and asked to respond. If the actuary cannot explain the situation satisfactorily, an investigative team of up to three people (usually CIA members) thoroughly examines documents and interviews the complainant, the respondent, and others who may have some knowledge of the situation. The team prepares a report for the committee, and the committee has several options:

- Dismiss the complaint.
- In a less serious case, file a charge, and ask the respondent to admit guilt and accept a public reprimand.
- In a more serious case or if the respondent does not respond or accept guilt, file a charge and refer it to a Disciplinary Tribunal, consisting of two former CIA Council members and a retired judge, to conduct a public hearing.

If found guilty by the Tribunal, the member is notified and informed of one or more of the following penalties:

A reprimand — If the unprofessional conduct is of a relatively minor nature and has done no serious damage, the CIA would publish a public reprimand through a notice to members that the actuary violated the rules of professional conduct.

- Suspension from the CIA
- Expulsion from the CIA
- Imposition of a fine and/or costs
- Undergoing training, which could involve writing and passing an examination

For suspension or expulsion, a notice revealing the guilty party's offense is communicated to CIA members, published in a newspaper located where the member practices, and sent to other North American actuarial organizations of which the guilty actuary is a member. The member charged has the right to legal counsel all through the process and has the right to appeal a guilty determination.

Differences in Canadian and U.S. discipline process

One of the ways the U.S. discipline process differs from Canada's is that the investigation of U.S. complaints is delegated to an independent body of nine volunteer actuaries representing all five U.S.-based actuarial organizations. Since 1992, the Actuarial Board for Counseling and Discipline (ABCD) has been responsible for investigating U.S. allegations of misconduct.

Norman Crowder, chairperson of the ABCD, thinks it may have been a mistake to include "discipline" in this board's name. "Contrary to most people's opinion, the ABCD cannot discipline. We can only recommend; it's up to the actuary's member organizations whether to publicly discipline or not. Private counseling is ABCD's only remedial action."

Another difference between the countries is that all phases of the ABCD investigation are confidential. The ABCD holds a hearing at which the actuary may appear. After completing its investigations, the ABCD has two alternatives: to deal with the situation privately with the actuary or to recommend public discipline. Private actions include:

- Dismissal of complaint
- Counseling, when remediation is more appropriate than public discipline.

If the ABCD believes an actuary has committed a serious breach of standards, it contacts the organizations of which the actuary is a member and recommends one of three actions:

- 1) Public reprimand, where the member is rebuked through publications of the organizations of which the actuary is a member
- 2) Suspension from membership for a period of time or until specified conditions are met
- 3) Expulsion, which deprives the actuary of membership

The membership organizations then decide whether to accept and implement the ABCD's recommendations for public discipline.

"This is the first time the SOA Committee on Discipline will hear about the case," said Chair Dick Robertson. "The ABCD recommendation comes with a transcript of the hearing and any other supporting documentation. Our 10-member committee, chaired by a past-president of the SOA, has a meeting and gives the actuary an opportunity to appear. Based on the ABCD report and our own judgement, we decide whether to discipline and if so, whether to reprimand, suspend, or expel. If the decision is to discipline, the actuary has the right to appeal to a tribunal of the SOA Board of Governors, which may or may not uphold the committee's decision."

ABCD increase in requests for guidance

One of the growing areas of ABCD activity is the counseling part of its function. "We have an increasing number of requests for guidance," Crowder said. "This is a positive, proactive approach, with actuaries asking for guidance before anything happens; before remedial counseling is needed. About one-third of our activity is requests for guidance."

Most of these requests are handled promptly by phone through the American Academy of Actuaries, where the ABCD and Actuarial Standards

Board are supported by staff and general counsel. Sometimes written material is sent out, with several ABCD board members writing a response.

"Many questions have to do with client relations and business activities: actuaries fighting with competitors, clients complaining about fees, and other business relationships," Crowder said. "We're beginning to see questions about level of reserves as valuation actuaries become more prominent in financial reporting and as health, life, and property/casualty company requirements become more detailed. These actuaries have to be prepared for more scrutiny than ever before."

Avoiding being subject to discipline

Both Canadian and U.S. investigative bodies recommend actuaries become more educated about standards of practice in whichever country their work product will be used.

"It's necessary for actuaries to be aware that actuaries practicing in Canada are subject to CIA rules of professional conduct, standards of practice, and discipline procedures," Chambers said. "No one should presume that the rules are the same in another country as in one's country of residence."

"The Code of Professional Conduct has precepts that all actuaries should be familiar with, even before they reach Association," Crowder said. "They apply to work they are doing now, and they should be aware how the standards of practice affect their specific projects. Very experienced practitioners at times are amazingly uninformed about what a standard of practice actually says. They learned how to do something 20 years ago and never open the cover of the standards again."

Both the CIA and the ABCD note an increase in their work load, which could be a positive indication that actuaries are becoming more aware of keeping the good reputation of their profession intact. Perhaps they are becoming more open to asking for guidance first, instead of apologizing later, or worse, having to appear at an ABCD or CIA investigation.