



Professional Conduct Committee – 16 May 2019

Conflict of interest – Mr Peter Hayes FCA

At a meeting of the Professional Conduct Committee of Chartered Accountants Australia and New Zealand held in private on 16 May 2019 in Sydney Australia in respect of Mr Peter Hayes FCA of South Australia the Committee decided that the Member failed to observe a proper standard of professional care, skill or competence in relation to the matters set out below in breach of By-Law 40(2.1)(a).

The Member provided accounting services to the Complainants and their extended family for a number of years. The six individual members of the family formed a 6-way business partnership from July 2002 to June 2015, following which two parties retired and the partnership was dissolved. The second generation members then formed a 4-way partnership from April 2014 to September 2015, when that partnership was also dissolved.

The Member was engaged to facilitate the various restructures of ownership and operations, for all parties while also acting for them individually. He terminated his engagement in relation to the partnership dissolution in August 2015.

The Committee considered that the Member did not adequately comply with the objectivity and conflict of interest provisions in APES 110. For this reason, the Committee considers that the Disciplinary Tribunal is likely to find that the Member breached By-Law 40(2.1)(a).

In particular, the Committee noted that by no later than the outset of embarking on the dissolution of the 6-way partnership, the Member should have identified that he had a conflict of interest. The Committee acknowledges the Member's evidence that at this time he identified "a threat of conflict". However, as part of this identification, APES 110 required the Member to consider whether this conflict created a threat to any of the fundamental principles and, if so, whether any safeguards should be applied.

In the Committee's view, the Member should have expressly disclosed to each of the members of the partnership that he had a conflict of interest in acting for each of them in relation to their own affairs as well as the partnership dissolution. The Committee noted that the appropriate safeguards should have included at least the receipt of explicit consent to the Member continuing to act, as well as the advisability of each party obtaining independent accounting advice. The Committee also considers that because of this conflict of interest the Member could not obtain confidential information from one partner without disclosing to the other partners.

The evidence before the Committee was that the Member's standard terms of engagement state that, "We do not believe that there are any conflict problems in providing services to you. It is nevertheless possible that now or in the future such a conflict will become apparent in which event we shall notify you immediately." There was no commentary in the accompanying engagement letter to vary that position, and the Complainants' evidence is that no formal disclosures were made by the Member, nor was the parties' consent to proceed regardless sought.

In addition, at the Case Conference the Member conceded that it was not until a telephone call with the Complainants on 6 May 2015 that he advised the Complainants of the possibility of getting independent advice.

Finally, the Committee also considers that as at March 2015, when the Member became aware that two parties to the partnership were not speaking, the Member should have again disclosed the issue of conflict of interest with the partners and explicitly sought their consent to continuing to act for them in the circumstances.

With the written consent of the Member, the Committee made the following determinations:

1. that the Member receive a reprimand;
2. that the Member and his practice entity be required to submit, at the Member's cost, to a quality review, with the results of the quality review to be provided to the PCC;
3. that the Member pay to CA ANZ the sum of \$5,160 towards the cost of investigating and dealing with the matters the subject of the complaint and the case conference; and
4. that the decision be published on CA ANZ's website disclosing the Member's name and location, and a notice published in CA ANZ's digital and print magazine "Acuity", also disclosing the Member's name and location, with a link to the published decision.

The Committee considered that it was in the public interest for this decision to be published, because the standards around the management of conflict of interest go to the core of accounting practice. In a regional community it is particularly important that Members be alive to these issues.

The Committee also decided that there are special circumstances that warrant publishing the Member's name because of the Member's lack of insight about the issues arising from the clear conflict of interest in which the Member was operating and the Member's failure to implement adequate safeguards to deal with that conflict.

**Professional Conduct Committee
Chartered Accountants Australia and New Zealand**

16 May 2019