

**NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS
NOTICE OF DECISION AND ORDER OF THE PROFESSIONAL CONDUCT COMMITTEE**

At a meeting of the Professional Conduct Committee (“the Committee”) of the New Zealand Institute of Chartered Accountants (“NZICA”) held in private on 8 July 2020 in respect of a Chartered Accountant (“the Member”), the Committee considered the following matters arising in respect of a complaint received from NZICA:

- (1) The statutory assurance engagements the Member accepted and performed for Client A¹ when they were not a qualified auditor under the Financial Reporting Act (2013) as required by s 42C of the Charities Act 2005, did not hold a Certificate of Public Practice, and ought to have been aware that such audits must only be performed by a qualified auditor.

[Fundamental Principles of Professional Competence and Due Care and Professional Behaviour, sections 130 and 150 of the Code of Ethics (2017)²].

- (2) The information and/or documentation the Member submitted to NZICA regarding their performance of assurance engagements and whether this was misleading and/or furnished recklessly and/or omitted or obscured relevant information. In particular:
 - a. The online mandatory notification they submitted on 28 July 2017 in which they confirmed they had not signed any assurance report in the period 1 July 2016 to 30 June 2017;
 - b. The online mandatory notification they submitted on 10 July 2018 in which they confirmed they had not signed any assurance report in the period 1 July 2017 to 30 June 2018; and
 - c. The workpapers they provided in respect of their audits of Client A in relation to the years ending 30 June 2017 and 30 June 2018 which they created and/or modified after they were notified of their selection for practice review without informing Practice Review they had done so.

[Fundamental Principles of Integrity, Professional Competence and Due Care and Professional Behaviour, sections 110, 130, and 150 of the Code of Ethics (2017)³ / ISA (NZ) 230].

- (3) Whether the Member adequately identified (and took appropriate action to eliminate or reduce to an acceptable level) any perceived, potential and/or actual threats to their independence arising in respect of their audits of Client A for the years ending 30 June 2017 and 30 June 2018 by virtue of:
 - a. The close nature of the relationship between Client A and their employer, which used the same registered address and contact phone number, was a sponsor and funding partner of Client A, and co-opted staff onto Client A’s executive team;
 - b. Their involvement in the preparation of Client A’s financial statements; and

¹ In respect of the financial years ending 30 June 2016, 30 June 2017 and 30 June 2018.

² And, as applicable, the equivalent provisions of the Code of Ethics (2014) and PES 1 (Revised).

³ And, as applicable, the equivalent provisions of the Code of Ethics (2014), the Code of Ethics (2019) and PES 1 (Revised).

- c. Any role they had in the relation to the approval of Client A's invoices.

[Fundamental Principles of Objectivity and Professional Competence and Due Care, sections 120, 130, 280.2 of the Code of Ethics (2017)⁴ / sections 120, 130, 280.2, 290.7, 290.168 and 290.171 of PES 1 (Revised) / ISA (NZ) 220].

- (4) Whether the Member had in place an appropriate system of quality control compliant with PS-1 and PES 3 (Amended) given the assurance engagements they were undertaking.

[Fundamental principle of Professional Competence and Due Care, section 130 of the Code of Ethics (2017)⁵].

- (5) Whether the Member performed their compilation and/or audit work in respect of Client A for the years ending 30 June 2017 and 30 June 2018 with professional competence, due care and diligence, and in accordance with the relevant technical and professional standards (namely XRB A1 / Tier 3 PBE SFR-A (NFP) paragraph A8, A17 / ISA (NZ) 210, 230, 240, 250, 300, 330, 315, 320, 500, 520, 530, 550, 560, 570, 580, 700, 705).

[Fundamental Principle of Professional Competence and Due Care, section 130 of the Code of Ethics (2017)⁶].

- (6) The Member's responsibility to maintain their professional competence and ensure they remained up to date with all current technical and professional standards applicable to the work they were undertaking.

[Fundamental Principle of Professional Competence and Due Care, section 130 of the Code of Ethics (2017)⁷].

The Committee noted the Member's candour and openness in responding to the complaint, including the courteous manner in which the Member had dealt with NZICA staff throughout the complaints process.

Notwithstanding this, it was concerned by the matters raised in the complaint. In particular, the Member's performance of statutory audits for Client A when the Member was not a qualified auditor; that the Member had not disclosed them in their mandatory notifications submitted to NZICA; their failure to identify and eliminate or mitigate a number of independence threats to their independence arising in relation to the audits for Client A; and the Member's failure to perform their audit work competently and in accordance with the relevant technical and professional standards.

Issue (1)

While the Committee had some sympathy for the position the Member found themselves in, given that it appeared as though they had come to be Client A's auditor at the request of their employer and that the work was an add on to their core role for which they were not separately remunerated for, it did not consider it an acceptable excuse for the Member to say that they were unaware of the relevant legislative requirements or misunderstood them.

⁴ And, as applicable, the equivalent provisions of the Code of Ethics (2014) and PES 1 (Revised).

⁵ And, as applicable, the equivalent provisions of the Code of Ethics (2014) and PES 1 (Revised).

⁶ And, as applicable, the equivalent provisions of the Code of Ethics (2019) and PES 1 (Revised).

⁷ And, as applicable, the equivalent provisions of the Code of Ethics (2014) and/or the Code of Ethics (2019).

In accordance with the Fundamental Principle of Professional Behaviour and ISA (NZ) standards, the onus of ensuring compliance with all applicable legislative and regulatory requirements regarding statutory assurance engagements rests on members. If they are unsure or have any doubts they should seek appropriate professional advice.

Recently, in one of its decisions involving a member undertaking statutory audits without being qualified, NZICA's Disciplinary Tribunal recorded that members who do so after 31 March 2019 may find their conduct attracts more serious consequences than for those unqualified members who have come before the Tribunal prior to this day. This is because they would have had the benefit of access to a number of public decisions of the Tribunal denouncing this behaviour.

The Committee was pleased that in this instance, the Member's audit reports were signed prior to this date. Notwithstanding this, it considered their performance of the engagements when not qualified to be a serious matter. In its view, the Member's conduct fell below the standards of competence and due care, and professional behaviour, expected of a Chartered Accountant.

Issue (2)

In respect of issue (2), the Committee noted that members are under an ethical obligation to be upfront, transparent and forthcoming in all dealings with NZICA and its regulatory teams. This is particularly important as NZICA's practice review process ensures the maintenance of high quality standards across the profession as a whole. NZICA's Practice Review relies on the information it receives from members prior to and during the review process as it assists to inform the scope of a review. Intentional failure to be upfront, transparent and forthcoming will attract serious consequences.

In relation to issues 2(a) and (b) concerning the Member's mandatory notifications, the Committee was satisfied after hearing from the Member that they had not set out to intentionally mislead NZICA by failing to declare the two audits for Client A. While it considered that the Member's conduct fell short in terms of meeting the standard of care and attention to detail expected of a Chartered Accountant, it did not consider them to have breached the Fundamental Principle of Integrity.

In respect of issue 2(c) regarding the workpapers the Member had tidied before submitting for review, the Committee noted that ISA (NZ) 230 requires audit documentation to be assembled in an audit file on a timely basis after the date of the audit report. Where documents are added after the expiry of the file assembly period, members must document the specific reasons for the change, as well as when and by whom the changes were made and reviewed.

While the Committee was disappointed the Member did not have sufficient understanding of the ISA (NZ) 230 standard, on balance, after hearing from the Member and the Complainant, it was satisfied they had not intentionally set out to mislead Practice Review by including more formalised workpapers and checklists. In reaching its view, the Committee had regard to the fact that the Member had been openly transparent with their Practice Reviewer when queried.

The Committee wished to remind the Member that should they be unsure about how to respond to any of the questions contained in a Practice Information Questionnaire, Mandatory Notification, or any request for information received from Practice Review, they should seek appropriate professional advice and consult with NZICA before responding.

Issue (3)

The Committee was troubled that in respect of the audits for Client A, the Member had failed to identify and evaluate the threats to independence and objectivity arising by virtue of the close nature of the relationship between their employer and Client A and the Member's involvement in the preparation of Client A's financial statements.

In accordance with PES 1 (Revised) and the Code of Ethics, members undertaking assurance engagements are required to identify and evaluate circumstances and relationships that create threats to independence, and to apply safeguards where available, to reduce them to an acceptable level. Where no safeguards are able to be applied, the only options are to eliminate the activities or interests creating the threats, or to refuse to accept or continue the engagement. The Committee could see no evidence the Member had done so in this instance.

Regarding issue 3(a), the Committee was of the view that the close nature of the relationship between Client A and the Member's employer created a threat to independence that was so significant the Member ought to have declined the engagement. Client A and the Member's employer shared the same address and phone number. The employer was mentioned in Client A's rules as an organisation that could co-opt members onto Client A's executive and this had occurred. The Member's employer was listed on Client A's website as a sponsor and funding partner. The Member was also shown in Client A's annual reports as being its treasurer. Having regard to this information, the Committee did not consider there to be any safeguards available that could have reduced the independence threat to an acceptable level.

In terms of issue 3(b) concerning the Member's assistance given to Client A in its preparation of its financial statements, the Committee noted that providing assurance clients with accounting and bookkeeping services, such as preparing accounting records or financial statements, creates a self-review threat when the practitioner or their firm subsequently audits those financial statements. This is expressly recorded in PES 1 (Revised)⁸.

While provision of routine or mechanical services related to the preparation of accounting records and financial statements to an assurance client (which is not a public interest entity) is permissible in some circumstances, in accordance with PES 1 (Revised)⁹ and the Code of Ethics members must still consider whether any threats to their independence arise. If so, they must apply safeguards to reduce them to an acceptable level. The ISA (NZ) standards (ISA (NZ) 220 and ISA (NZ) 700) also contain additional mandatory independence requirements that must be met by members performing assurance engagements. These are to be read in conjunction with the Code of Ethics and PES 1 (Revised)¹⁰.

Regarding issue 3(c), the Committee was satisfied after hearing from the Member that they had not actually approved any invoices for Client A, and that their use of the word "approved" related to their review of the invoices when performing their audit work.

Having regard to all of the information before it, the Committee was of the view that the Member's shortcomings in respect of independence stemmed from a complete lack of understanding, as opposed to a conscious disregard of the relevant standards.

Notwithstanding this, the Committee noted that independence requirements for assurance engagements are basic fundamental tenets that have been in force a long time. In its view, a

⁸ Now PES 1 effective 15 June 2019

⁹ Now PES 1 effective 15 June 2019

¹⁰ Now PES 1 effective 15 June 2019

reasonable Chartered Accountant exercising objectivity, competence and due care, and diligence, would have identified, evaluated and eliminated (or mitigated to an acceptable level through the use of safeguards where appropriate) the threats to independence arising in respect of the audits of Client A. It considered the Member to have fallen short in this area by a significant distance.

Issue (4)

Regarding issue (4), the Committee noted that the underlying reason for establishment and application of effective quality control policies and procedures is to promote public confidence in audit and assurance work, and to ensure it is of a suitable quality and completed in a timely manner.

PS-1 and PES 3 (Amended) are mandatory standards which require members undertaking audits, reviews, and other assurance work to establish quality control procedures and implement them at both a firm level and on individual engagements. This is to provide reasonable assurance that the firm and its personnel comply with the standards issued by the External Reporting Board, the New Zealand Auditing and Assurance Standards Board, and any other technical and professional standards. Quality control policies and procedures must be in place in all times. Small firms or sole practitioners are not exempt from these standards.

They also require members and firms to establish policies and procedures dealing with the acceptance and continuance of client relationships and specific engagements. Members must only accept and continue engagements when they are competent to perform them and can ensure compliance with the relevant technical and professional standards, as well as any applicable legislation. In this instance, the Committee considered this to be particularly relevant to the Member's situation. It was of the view that the lack of quality control likely contributed to some of the shortcomings identified regarding the Member's conduct.

Issues (5) and (6)

In respect of issue (5), the Committee noted that the ethical obligation to act with competence and due care is a fundamental professional requirement under the Code of Ethics and PES 1 (Revised). In respect of the Member's audits of Client A for the financial years ending 30 June 2017 and 30 June 2018, it appeared as though the Member had made not just one isolated mistake, but that there were a number of instances where their conduct fell below the standards expected of a Chartered Accountant undertaking such work.

The Committee considered some of the more fundamental shortcomings to include the Member's failure to modify their audit reports when Client A's financial statements did not comply with the applicable PBE standard (tier 3 unless it opted to adopt higher); satisfy their self that sufficient appropriate audit evidence had been obtained; document and be able to demonstrate they had considered and applied all relevant ISA (NZ) standards; and report their audit opinion in the correct terms and in accordance with the applicable reporting framework.

It was troubled that the Member's audits did not appear to be supported by appropriate testing and evidence. In its view, the Member appeared to have a significant deficit of knowledge, understanding and experience in audit.

In relation to issue (6), having regard to the shortcomings identified in the Member's practice review report regarding their audits, the Committee considered it evident they had failed to maintain their professional competence and level of knowledge of the relevant audit standards to an acceptable level, as was required by the Code of Ethics and PES 1 (Revised).

PENALTY

Having regard to the information before it, the Committee considered that the matters raised in the complaint met the threshold to warrant referral to the Disciplinary Tribunal. However, determined that in this instance, it would be appropriate to deal with the complaint by way of a consent order under Rule 13.15(d) with following terms:

- (1) that the Member be reprimanded in accordance with Rule 13.15(d)(iv);
- (2) that the Member pay costs to NZICA of \$2,450 in contribution towards the Committee's investigation and case conference hearing in accordance with Rule 13.15(d)(vii); and
- (3) that the Member complete, at their own expense, a course of general ethics training approved by the Professional Conduct Committee Secretariat within 12 months of the date of the order with verification of completion to be provided to the Secretariat, in accordance with Rule 13.15(vii).

In determining to offer the consent order, the Committee had regard to the following factors: the Member's full acceptance of the issues; their candour, openness, and complete cooperation throughout their practice review and the investigation of the complaint; the insight they had demonstrated regarding their shortcomings; the prompt remedial steps they had taken on becoming aware they were not qualified to perform the audits for Client A; that they had come to be Client A's auditor at the request of their employer; and that they had not made any pecuniary gain from performing the audits.

The Committee was satisfied that the Member's failure to comply with the relevant standards was due to their lack of understanding, as opposed to conscious disregard. There was also nothing calling into question the Member's honesty or integrity, which would in its view elevate the seriousness of the matters before it.

It considered the consent order to be a proportionate response to the breaches of the Code of Ethics and PES 1 (Revised) identified. Regarding costs, the Committee noted it was appropriate for members to pay a contribution towards the Committee's costs, as otherwise such costs are borne by wider membership.

PUBLICATION

The Committee determined that it was in the public interest that notice of its decision and orders made be published in CA ANZ's official publication *Acuity* and on its website without mention of the Member's name and location. It considered it would be of benefit to the public and wider membership to understand the types of shortcomings identified in respect of the Member's conduct, particularly in relation to performance of statutory assurance engagements without being qualified and independence.

The Committee did not consider there to be any public interest in or special circumstances to warrant naming the Member. The Member's integrity was not in issue, their conduct was isolated to one entity, they received no personal financial gain from their performance of the audits, the shortcomings identified were at the lower end of the spectrum of seriousness regarding cases of a similar nature, and there was no evidence the Member posed a risk to other clients or the public going forward. In the Committee's view, publishing the Member's name would be a disproportionate consequence regarding the breaches identified.

MEMBER'S OPPORTUNITY TO CONSIDER THE ORDER

The terms of the consent order were provided to the Member in writing on 9 July 2020 and they were given 15 days to consider them and take legal advice. The Member exercised their right to consider the proposed terms of the order and take legal advice. They confirmed their agreement to the Committee's order the following day.

Rob Pascoe FCA

**Chairman
Professional Conduct Committee**