



Professional Conduct Committee – 18 February 2021

Conflict of interest – Member B

At a meeting of the Professional Conduct Committee (PCC) of Chartered Accountants Australia and New Zealand held in private on 18 February 2021 by videoconference in respect of Member B, the PCC decided that the Disciplinary Tribunal would be likely to find that the Member's conduct did not comply with:

- By-Law 40(2.1)(h).

The PCC considered that this matter is sufficiently serious to warrant referral to the Disciplinary Tribunal.

However, the PCC decided to propose that an agreement be made with the Member which shall be entered on the Member's record, on terms that:

1. The Member receive a reprimand;
2. The Member must, at the Member's own expense, complete professional development provided by an external provider on managing, assessing and dealing with risks within six months and provide evidence to the PCC on completion of the professional development;
3. The Member and his Practice Entity must have a quality review pursuant to the CA ANZ Regulations, at the Member's cost, with the results of such review to be made available to the PCC;
4. The Member pay to CA ANZ the sum of \$1,698 by way of contribution towards the costs of investigating and dealing with the matters the subject of the complaint and the Case Conference; and
5. The PCC will publish:
 - a) details of these sanctions on the website of CA ANZ; and
 - b) a notice in the digital and print magazine "Acuity",
without disclosing the Member's name and locality, with a link to the published decision.

The PCC considers that it is in the public interest for this sanction to be published in the terms set out in the proposed Consent Agreement but that there are no special circumstances which warrant disclosing the name of the Member.

Background

The Complainant was in a relationship with his partner at the time of engaging the services of the Member. The Member was engaged by the Complainant and his partner to handle their business finances and personal financial matters which included creating a company for the Complainant and his partner in an attempt to reduce child support payments. The relationship broke down completely some time afterwards.

Reasons

The Member indicated that at the start of the engagement he was asked to do the accounting and tax work for the Complainant and his partner. They spoke about reducing child support and were concerned about the amount of debt that the Complainant had at the time. The Member explained that, while it was difficult to get around child support, they may be able to control the amount of money going through the Complainant's business entity by setting up a second entity. On this basis, the Complainant and his partner instructed the Member to create a second entity which was controlled by the Complainant's

partner. The Complainant was an employee of that entity while the original entity retained the assets and liabilities of the business.

The Member said that he did not see a need for any safeguards as the Complainant and his partner were a couple at the time and there was no indication of a conflict of interest. The Member thought that in a family law situation the court would look at the assets and liabilities of both entities in any division of property.

The Member said the entire arrangement was put in place well before he first became aware of the dispute between the Complainant and his partner.

The PCC considers that the Member has failed to turn his mind to the potential for a conflict of interest to arise in the circumstances of this engagement where relationships can and do break down and to advise his clients accordingly and implement appropriate safeguards. The PCC does not consider it is an appropriate safeguard for the Complainant to look to the Family Court for a resolution of any dispute in this regard where the risks and potential safeguards were not considered or discussed by the Member at the outset. There are possible safeguards that could have been implemented but these do not appear to have been considered. The PCC notes that if the Member had provided an engagement letter in relation to the instructions to implement the new business structure, then it would have been appropriate for this potential for a conflict of interest to be raised in such a letter.

In these circumstances, the PCC considers that the Member has breached By-Law 40(2.1)(h) as he has failed to comply with the fundamental principle of objectivity as set out in section 120.1 of APES 110 or to implement appropriate safeguards and otherwise act in accordance with sections 220.5 and 220.11 of APES 110.

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

18 February 2021