

**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 23 November 2020 in respect of a Chartered Accountant (**Member X**), the Committee found the following matters for discussion would otherwise warrant being referred to the Disciplinary Tribunal:

The Committee discussed the following issues for discussion arising out of the Member X's role as a Chartered Accountant in public practice:

1. Whether he appropriately identified, evaluated and managed any potential, perceived and/or actual conflicts of interest and threats to his objectivity and independence, arising in relation to:
 - a. Member X's provision of accounting services to Company A, during which time the directors, Party A and Party B, were undergoing a relationship separation and Party B was looking to sell their shares in the business;
 - b. Member X's preparation and provision of the valuation for Company A solely to Party B, despite Party A being a co-director of Company A;
 - c. Member X's acting exclusively on the instructions of Party B in relation to the treatment of the \$150,000.00 loan in the financial statements of Company A.

(Fundamental Principle of Objectivity and/or sections R112.1 and/or 112.2 and/or R120 and/or 120.9 and/or R120.10 and/or R200.5 and/or 310 of the Code of Ethics (2019)¹).

The Committee was concerned with the matters raised in the complaint relating to Member X's identification and management of actual, potential and perceived conflicts of interest arising out of their engagement with Party A and his ex-partner, Party B. The Committee was also concerned that in undertaking the valuation engagement, Member X did not have the appropriate experience to complete the work with sufficient competence and due care.

The Committee noted that Member X was informed of the separation by Party B in September 2019, after learning that in April 2019 Party A and Party B had ceased living together. Despite this, Member X appeared to continue corresponding with Party B in respect of the valuations and the accounting work for Company A as she had been Member X's point of contact within the company.

The Code of Ethics outlines that a member shall not allow a conflict of interest to compromise their professional or business judgement. Circumstances in which these conflicts may arise include preparing valuations for two parties who are in an adversarial position with respect to assets of a company, or when acting for both parties who are in the dissolution of a partnership. Members in these circumstances are required to identify, evaluate and mitigate any conflicts of interest or threats to objectivity to an acceptable level. If the member is unable to mitigate the threat, they must end or decline to perform the professional services. Members must also remain alert to the changes over time in the nature of their professional services and relationships that might create a conflict of interest while performing an engagement.

¹ And, as applicable the relevant provisions of the Code of Ethics (2017).

The Committee considered that when acting for parties undergoing marital or relationship separation, members must be vigilant so that the member is not acting in a conflict of interest situation or at the least, be seen to be taking the side of one party over the other. Upon becoming aware that the parties were undergoing separation and Party B was looking to sell their shareholding in Company A, Member X did not appear to have put any safeguards in place to mitigate the conflict of interests and threats to their objectivity that had arisen. In this instance, the Committee considered it would have been appropriate to ensure that all communications were distributed to both Party B and Party A, rather than relying on Party B to forward company information onto the Party A. The Committee also considered that Member X should have obtained consent from both parties before continuing to act, outlining the services Member X would provide, and highlighting the potential conflict to the parties.

The Committee noted that not only had Member X appeared to have not provided information to Party A, such as the two valuations Member X had prepared for Company A, but had also acted on the sole instructions of Party B in relation to the treatment of a \$150,000 loan within the financial statements of Company A. The Committee considered that in not corresponding with Party A, a director of the company, Member X had not demonstrated an awareness of the conflict of interest and did not manage the threats to their objectivity appropriately. While the Committee acknowledged Member X's comments that Party A had signed off on Company A's financial statements and had therefore accepted the treatment, it appeared that Member X had acted on the information provided by Party B and had not engaged in any discussions with Party A. It held the view that Member X should have taken additional steps to address the treatment of the \$150,000 loan by firstly; discussing the changes made to the financial statements with Party A and secondly, notifying Party A of the changes that occurred within the financial statements.

Regarding the valuation of Company A that Member X had completed, the Committee was concerned that Member X may not have had the relevant experience or technical knowledge to undertake the engagement. When questioned, Member X did not appear to be aware of the advisory engagement standard (AES-2) relating to independent business valuation engagements, which is the relevant standard for members providing a business valuation in the role of an independent business valuer. The Committee acknowledged Member X's comments that the valuation itself was brief and a draft version, however, it considered that in the absence of an engagement letter explaining the scope of the engagement, the parties may have reasonably assumed they were getting a full valuation of their company. In undertaking the valuation, the Committee considered that Member X did not take reasonable steps to plan and investigate the details of the Company A before providing the valuation to Party B, given the undetailed valuation report provided to the Committee.

In the Committee's view, by acting on the sole instructions of Party B, by failing to identify, evaluate and take reasonable steps to mitigate the conflicts of interest and threats to his objectivity while the parties were undergoing a relationship separation, and by not performing the valuations of Company A with professional competence and due care, Member X's conduct fell significantly short of the standards expected of Chartered Accountants.

PENALTY

Having regard to the information before it, the Committee considered that 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 consent order with the terms that Member X be severely reprimanded, that Member X pay costs to NZICA in the sum of \$2450, and that Member X provide an undertaking to NZICA that they will upskill themselves



in conflict of interest management in the next 12 months, and valuation engagements before undertaking further work in that area.

In determining to offer the consent order, the Committee noted that it did not appear Member X had set out to intentionally disadvantage one party over the other, but rather the shortcomings identified in Member X's conduct stemmed from a lack of knowledge of conflict of interest management and valuation engagements. While the Committee noted that conflict of interest management is not a de minimis issue, it considered that the risk to the wider public was minimal and a severe reprimand was in all circumstances a proportionate response. It noted that it is appropriate for members to pay a contribution towards the Committee's costs, as otherwise such costs are borne by the wider membership.

PUBLICATION

The Committee also determined to publish a notice of its decision and orders made in CA ANZ's *Acuity* magazine and on its website without mention of Member X's name or location. It considered that it would be of benefit to the wider membership and the public to understand the types of conduct dealt with in this complaint.

The Committee did not consider there to be any special circumstances that would warrant publication of Member X's name which, in its view, would be a disproportionate penalty.

MEMBER'S OPPORTUNITY TO CONSIDER THE ORDER

The terms of the consent order were provided to Member X in writing on 27 January 2021 and the Member was given 15 days within which to consider the terms of the order and take legal advice. In the event that Member X did not accept the order, the complaint would be referred directly to the Disciplinary Tribunal.

Rob Pascoe FCA
Chairman
Professional Conduct Committee

