

**NOTICE OF DECISION AND ORDER OF THE  
PROFESSIONAL CONDUCT COMMITTEE**

At a meeting of the Professional Conduct Committee of the New Zealand Institute of Chartered Accountants held in private in Wellington, New Zealand on 21 September 2015, in respect of Member A (name and locality withheld), the Committee found that the following matters would otherwise warrant being referred to the Disciplinary Tribunal:

In his role as a Chartered Accountant in public practice, the Member:

- (1) Did not put in place appropriate safeguards to manage perceived and/or actual conflicts of interest and/or threats to his objectivity which arose by virtue of the different accounting and/or trustee services he undertook for members of and/or entities associated with the X family, whose interests were in conflict, including:
  - i. Acting as trustee of the Estate of Y (“the Estate”); and/or
  - ii. Acting as accountant for the Estate; and/or
  - iii. Acting as accountant for Z (Y’s late wife); and/or
  - iv. Acting as accountant for A (Y’s son) and/or Trustee of his associated trusts,

in that the Member did not:

- a. disclose the circumstances of his conflicts of interest in writing to the affected parties; and/or
- b. disclose the safeguards he proposed to manage the conflicts of interest in writing to the affected parties; and/or
- c. offer the affected parties the opportunity to obtain independent advice; and/or
- d. obtain informed consent from the affected parties to continue acting; and/or
- e. review the circumstances of the conflicts of interest and/or whether it remained appropriate to continue acting for all parties once disputes were raised about the accounting and/or execution of the Deed of Family Arrangement (“the Deed”),

in breach of the Fundamental Principle of Objectivity and Independence and/or Rule 3 *Objectivity* and/or Rule 5 *Disclosure of Conflicts of Interest* and/or paragraphs 66 and/or 68 and/or 69 and/or 70 and/or 71 of the Code of Ethics (2003).

The Committee was concerned by the matters raised in the complaint particularly as to the Member’s failure to appropriately manage the conflicts of interest that arose in this matter.

The Committee considered that particular (1) was established. While the Committee noted that the Member had made some attempts to discuss the need for impartiality at the meeting they had with the family on 19 October 2006 and had asked the family members to acknowledge this, the Committee did not consider the disclosure or nature of the documentation met the minimum requirements of the Code of Ethics.



The Committee was of the view that the Member's various roles gave rise to clear potential conflicts of interest, in particular the on-going professional relationship with A and his trust. While the Committee did not consider there was evidence that the Member had favoured A's interests over Z or the Complainant's, notwithstanding the accounting mistakes, it noted that members must manage both the perception as well as actual conflicts of interest.

In this case, the Committee considered that at the time the DOFA was being agreed, the Member ought to have:

- (1) provided written disclosure to the parties advising of the circumstances of the conflict (being all the various roles the Member would be undertaking for family members, including their role as executor of X's estate);
- (2) provided written disclosure of the safeguards the Member intended to put in place to manage the potential conflicts (for example having another partner in his firm manage the accounting engagements with Z and/or A or ensuring there was clear written agreement about what work the Member would continue to perform if a dispute arose);
- (3) informing the parties in writing of the right to obtain independent advice (being accounting advice);
- (4) obtain written informed consent from everyone confirming the Member's instructions to continue acting.

The Committee also considered that it was incumbent on the Member to continue to review the situation from time to time, post signing the DOFA, particularly once it became apparent there was contention amongst the parties.

The Committee then turned to consider sanction. The Committee considered the Member's failings in respect of particular (1) were serious enough to warrant referral to the Disciplinary Tribunal, however there were mitigating factors which led it to determine that a reprimand by consent would be an appropriate outcome in the circumstances. The factors in mitigation included that:

- the Member had acknowledged his shortcoming and breach of the ethics;
- At the relevant time, the Member had endeavoured to provide disclosure to the parties of the need for objectivity, albeit this was inadequate in terms of the standards, the Committee considered that it showed the Member was not completely ignorant or disregarding of ethical requirements;
- From the outset, all family members were aware that the Member acted for more than one family member and each family member had their own legal representation;
- It was the Member's first complaint.

Accordingly the Committee resolved to offer a consent order to the Member with terms that he be reprimanded and pay costs to NZICA of \$2,850. The Committee also determined that it was in the public interest and in the interests of the profession that the Committee's decision and orders made by published in *Acuity* and on the website, but without mention of the Member's name and location. In determining not to publish the Member's name, the Committee considered that the matter appeared to be isolated and there was no evidence before it to suggest that the Member represented a risk to the public or clients generally.

Robert Pascoe FCA  
**Chairman**  
**Professional Conduct Committee**