

NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS

NOTICE OF DECISION AND ORDER OF THE PROFESSIONAL CONDUCT COMMITTEE

At meetings of the Professional Conduct Committee (“the Committee”) of the New Zealand Institute of Chartered Accountants (“NZICA”) held in private on 18 June 2024 and 15 October 2024, the Committee considered a complaint in respect of **Member Y**, a Chartered Accountant. The complaint concerned the Member’s management of a potential, actual or perceived conflict of interest situation. Member Y was engaged to undertake an independent business review at the request of the client’s bank. Their fellow director in a firm, **Member X**, had done some work for the same client. In brief, the Members agreed that Member X would not be involved with the client while Member Y was undertaking their review.

COMMITTEE’S DECISION

The Committee noted that the 2019 Code of Ethics applied at the time of these events. The Code has had several iterations since then but members’ obligations to identify, evaluate and manage conflicts of interest had remained constant.

Member Y’s engagement was one that required independence, described in the 2019 Code as comprising independence of mind and independence of appearance. On the information before it, the Committee was satisfied that Member Y had conducted his review with an independent mind. There being no suggestion that the conclusions in their review had been affected by influences that compromised their professional judgment. Member Y stated that he did not review any work undertaken by their firm for the client, and they did not have any input from Member X. The client had not complained that Member Y’s independence was compromised.

Member Y’s review also had to be independent in appearance or put another way, any potential or perceived conflict threats, not just actual, had to be identified and managed so as to be at an acceptable level.

Member Y had failed to conduct a formal conflict check. The Committee considered this fell short of best practice but it was not significant in this situation as Member Y obviously knew that there was a connection between Member X and the client and had contacted Member X to discuss this. Member Y said that Member X had said that they had done some one-off work for the client. Further, they had started onboarding the client’s companies but the process was not completed and they were preparing some accounts. Member X also said they were considering becoming a member of the client’s advisory board.

Both Members said they agreed that Member X would be put “on hold”. The Committee was concerned that the meaning of being “on-hold” was not sufficiently clear, particularly in the context where Member X was also keeping the client “warm” and having contact with him. Clear parameters needed to be set in terms of what Member X’s involvement with the client would be while Member Y undertook their review. The most straightforward approach in reducing the risk of any perceived, potential or actual conflict of interest would have been to agree that Member X would have no contact with the client during the review. Whatever safeguard that had been agreed to by the Members needed to be communicated both to the bank and to the client, and this communication documented.



The bank was the other party that was potentially affected by a conflict of interest threat as they had requested the independent review. The Committee noted that Member Y emailed the bank and said they had spoken to Member X. Member Y provided a brief outline of what work Member X had done and their proposed future involvement. As noted above, the Committee considered that Member Y's email to the bank should also have set out what safeguard(s) had been implemented.

The Committee had expressed concern in a previous minute that there were shortcomings in the letter of engagement issued by Member Y in that it was silent on the potential conflict of interest and the safeguards they and Member X had agreed on to protect Member Y's independence. It would have been prudent to explain in writing what putting Member X 'on-hold' meant and have obtained the client's informed written consent to this.

The Committee was pleased that Member Y had acknowledged that their engagement letter should have included reference to their independence and disclosed the potential conflict both with Member X and also with the bank. The Committee was of the view, however, that the proposed "independence" paragraph that Member Y had suggested they should use did not go far enough. Again the letter should have explained what being "on hold" meant for Member X's involvement with the client while Member Y was engaged. It confirmed that the client's written informed consent should have been obtained.

The client accepted that Member Y was conducting an independent review but the central issue in his complaint was that he was adamant that he did not understand that by engaging Member Y, he would lose access to Member X's assistance. The lack of documentation about any conflict threat including file notes of any discussion with the client on this point and failure to attain his written informed consent, made it difficult for Member Y to refute this allegation.

Member Y could not be blamed for the fact that Member X did not fully disclose the extent of their involvement with the client at the time Member Y was engaged and in particular only telling Member Y after the event that they attended a board meeting of the client's business. The Code requires that members remain alert throughout an engagement to any new information or changes that might require a fresh evaluation of any conflict threat. The Committee was of the view that a reasonable and informed person would see Member X's attendance at a board meeting as crossing a boundary and creating a potential conflict threat, particularly when the solvency of the client's business and Member Y's review were discussed at the meeting. The Committee considered when Member Y learnt about the board meeting that they needed to do more than simply tell Member X that they needed to cease their involvement with the client. Member Y needed to consider whether the bank needed to be notified and communicate with the client about the basis of their continued involvement.

The Committee considered that Member X was the more culpable in the situation in that their actions had potentially undermined the perception of Member Y's independence. Nevertheless, as business partners the Members bore responsibility for the situation. As it was their engagement, Member Y was responsible for managing any potential, perceived conflict threats including establishing safeguards such as setting clear parameters around Member X's involvement with the client during their engagement, documenting this and obtaining the client's informed written consent.



PENALTY

The Committee considered the complaint met the threshold to warrant referral to the Disciplinary Tribunal, however, it could be appropriately dealt with by way of a consent order. With Member Y's consent, the Committee ordered that Member Y be reprimanded in accordance with Rule 13.15(d)(iv)¹, and that they pay costs to NZICA in the sum of \$2,697.33.

PUBLICATION

The Committee also determined that it would be of benefit to the wider membership and the public to be aware of the issues raised in this complaint. Accordingly, the Committee determined to publish its decision on the Chartered Accountants Australia and New Zealand website and in the *Acuity* magazine.

The Committee did not consider there to be any special circumstances that would warrant the publication of Member Y's name or location.

MEMBER'S OPPORTUNITY TO CONSIDER ORDER

The terms of the order were provided to Member Y and they were given 15 days within which to consider the terms of the order and take legal advice. In the event the Member did not accept the order, the complaint would be referred to the Disciplinary Tribunal. Member Y exercised their right to consider the proposed terms of the order and confirmed their agreement in writing.

RESOLUTION

It was resolved that:

- 1) The Member shall be reprimanded, in accordance with Rule 13.15(d)(iv)
- 2) The Member shall pay costs to NZICA of \$ 2,697.33 in accordance with Rule 13.15(d)(vii);
- 3) The Committee's decision shall be published on the Chartered Accountants Australia and New Zealand website and in the *Acuity* magazine, without the Member's name or location, in accordance with Rule 13.19(a).

Todd Stevens CA

**Chairman
Professional Conduct Committee
18 December 2024**

¹ NZICA's Rules effective 11 May 2020.

