

FOREWORD

The Foreword to the rules of professional conduct (or, rules) sets out the philosophy that underlies the rules governing the chartered accountant's responsibilities to those to whom professional services are provided, to the public and to colleagues, in respect of

- characteristics of a profession;
- fundamental principles governing conduct;
- ethical conflict resolution;
- fiduciary duty;
- personal character and ethical conduct;
- application of the rules; and
- interpretation of the rules.

The rules of professional conduct, comprehensive in their scope, practical in application and addressing high ethical standards, serve not only as a guide to the profession itself but as a source of assurance of the profession's concern for the public it serves. It is a hallmark of a profession that there is a voluntary assumption, by those who comprise it -- the members -- of ethical principles which are aimed, first and foremost, at protection of the public and, second, at achieving orderly and courteous conduct within the profession. It is to these purposes that the Institute's rules are directed.

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Characteristics of a profession

The rules of professional conduct presume the existence of a profession. Since the word "profession" has lost some of its earlier precision, through widespread application, it is worthwhile reviewing the characteristics which mark a calling as professional in the traditional sense. Much has been written on the subject and court cases have revolved around it. The weight of the authorities, however, identifies the following distinguishing elements:

- there is mastery by the practitioners of a particular intellectual skill, acquired by lengthy training and education;
- the traditional foundation of the calling rests in public practice -- the application of the acquired skill to the affairs of others for a fee;
- the calling centres on the provision of personal services rather than entrepreneurial dealing in goods;
- there is an outlook, in the practice of the calling, which is essentially objective;
- there is acceptance by the practitioners of a responsibility to subordinate personal interests to those of the public good;
- there exists a developed and independent society or institute, comprising the members of the calling, which sets and maintains standards of qualification, attests to the competence of the individual practitioner and safeguards and develops the skills and standards of the calling;
- there is a specialized code of ethical conduct, laid down and enforced by that society or institute, designed principally for the protection of the public;
- there is a belief, on the part of those engaged in the calling, in the virtue of interchange of views, and in a duty to contribute to the development of their calling, adding to its knowledge and sharing advances in knowledge and technique with their fellow members.

By these criteria chartered accountancy is a profession. It is essential to recognize that a profession does not cease to be a profession because a proportion of its members enter salaried private employment. These members continue to belong to the profession and to be subject to the rules of professional conduct. It should also be recognized that some members of the profession might acquire the required skills outside of public practice.

Fundamental principles governing conduct

The rules of professional conduct, as a whole, flow from the special obligations embraced by the chartered accountant. The reliance of the public, generally, and the business community, in particular, on sound and fair financial reporting and competent advice on business affairs - and the economic importance of that reporting and advice - impose these special obligations on the profession. They also establish, firmly, the profession's social usefulness.

To protect the public and to maintain the reputation of the profession, the rules apply, as appropriate, to members of the profession and its students.

The rules of professional conduct are derived from five fundamental principles of ethics - statements of accepted conduct whose soundness is, for the most part, self-evident and are as follows:

Professional Behaviour

Members conduct themselves at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest.

In doing so, members are expected to avoid any action that would discredit the profession, including the use of methods of advertising or other communication which do not uphold professional good taste.

While there are business considerations involved in the creation and development of a professional practice, a member's practice should be based primarily upon a reputation for professional excellence. A member is expected to act in relation to other professional colleagues with the courtesy and consideration he or she would expect to be accorded by them.

Integrity and Due Care

Members perform professional services with integrity and due care.

Members are expected to be straightforward, honest and fair dealing in all professional relationships. They are also expected to act diligently and in accordance with applicable technical and professional standards when providing professional services. Diligence includes the responsibility to act, in respect of an engagement, carefully, thoroughly, and on a timely basis. Members are required to ensure that those performing professional services under their authority have adequate training and supervision.

Professional Competence

Members maintain their professional skills and competence by keeping informed of, and complying with, developments in their professional standards.

The public expects the accounting profession to maintain a high level of competence. This underscores the need for maintaining individual professional skill and competence by keeping abreast of and complying with developments in the professional standards and pertinent legislation in all functions where a member practices, or is relied upon because of his or her calling.

Confidentiality

Members have a duty of confidentiality in respect of information acquired as a result of professional, employment and business relationships and they will not disclose to any third party, without proper and specific authority, any such information, nor will they exploit such information to their personal advantage or the advantage of a third party.

The principle of confidentiality includes the need to maintain the confidentiality of information within a member's firm or employing organization.

The disclosure of confidential information by a member may be required or appropriate where such disclosure is:

- Permitted or authorized by the client or employer;
- Required by law; or
- Permitted or required by a professional right or duty, when not prohibited by law.

Objectivity

Members do not allow their professional or business judgment to be compromised by bias, conflict of interest or the undue influence of others.

The public expects that members will bring objectivity and sound professional judgment to their professional services. It thus becomes essential that a member will not subordinate professional judgment to external influences or the will of others.

The public interest in the objectivity of a member engaged to perform an assurance engagement or a specified auditing procedure, requires that the member be, and be seen to be, free of influences which would impair the member's objectivity. Accordingly, the rules specifically require a member who engages to perform an assurance or specified auditing procedures engagement to be independent. The ethical standard of independence requires the member to be and remain free of any influence, interest or relationship, in respect of the client's affairs, which impairs the member's professional judgment or

objectivity or which, in the view of a reasonable observer, would impair the member's professional judgment or objectivity.

As well, the rules specifically require that a member, before accepting or continuing an engagement, determine whether there is any restriction, influence, interest or relationship which, in respect of the proposed engagement, would cause a reasonable observer to conclude that there is or will be a conflict of interest. If there were to be such a conflict, the member is required to decline or discontinue the particular engagement unless there are accepted conflict management techniques which, with the informed consent of the affected client or clients, permit the member to accept or continue the engagement.

With respect to both independence and conflicts of interest, the profession employs the criterion of whether a reasonable observer would conclude that a specified situation or circumstance posed an unacceptable threat to a member's objectivity and professional judgment. Only then can public confidence in the objectivity and integrity of the member be sustained, and it is upon this public confidence that the reputation and usefulness of the profession rest. The reasonable observer should be regarded as a hypothetical individual who has knowledge of the facts which the member knew or ought to have known, and applies judgment objectively with integrity and due care.

Ethical conflict resolution

Circumstances may arise where a member encounters and is required to resolve a conflict in the application of the fundamental principles or compliance with the rules derived therefrom.

When initiating a process for the resolution of an ethical conflict, a member should consider, either individually or together with others, as part of the resolution process, the following:

- Relevant facts;
- Ethical issues involved;
- Fundamental principles and rules applicable to the matter in question;
- Established internal procedures; and
- Alternative courses of action.

Having considered these issues, the member should determine the appropriate course of action that is consistent with the fundamental principles and rules identified as being pertinent. The member should also weigh the consequences of each possible course of action. If the matter remains unresolved, the member should consult with other appropriate persons within the firm or employing organization for help in obtaining resolution.

Where a matter involves a conflict with, or within, an organization, a member should also consider consulting with those charged with governance of the organization, such as the board of directors or the audit committee.

It would be in the best interests of the member to document the substance of the issue and details of any discussions held or decisions taken, concerning that issue.

If a significant conflict cannot be resolved, a member may wish to obtain guidance on ethical issues without breaching confidentiality from the Institute or legal advisors. For example, a member may have encountered a fraud, the reporting of which could breach the member's responsibility to respect confidentiality. The member is advised to consider obtaining legal advice to determine whether there is a requirement to report.

If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, the member should, where ethically possible, refuse to remain associated with the matter creating the conflict. The member may determine that, in the circumstances, it is appropriate to withdraw from the particular engagement team or assignment, or to resign altogether from the engagement, the firm or the employing organization in a manner consistent with the rules of professional conduct.

Fiduciary duty

Members have duties to their clients that arise from the nature of the relationships with the clients. Members have a professional duty to act with integrity and due care and a contractual duty to provide services as defined by the terms of the engagement. In certain cases, the relationship between a member and a client could also be one that the courts describe as a fiduciary relationship that gives rise to fiduciary duties.

The concepts of fiduciary relationship and fiduciary duty are derived from the law of trusts. The obligations of a fiduciary can be onerous and the implications of being in breach of a fiduciary duty can be significant.

In determining whether a fiduciary relationship does exist, a court will look at all of the factors but, in a professional engagement situation, will particularly focus on the purpose and nature of the service being provided; the extent of the reliance which the client places on the member; any lack of sophistication of the client; the vulnerability of the client to the influence of the member; and, the discretionary authority, if any, granted by the client to the member. The court will also consider the extent of the disclosure to the client of the member's interest in the matter and whether the member has put himself or herself in a position of conflict or has an opportunity to receive a benefit unknown to the client.

Courts have held that, absent other circumstances, an auditor is not a fiduciary in the typical financial statement audit engagement (in keeping with the standard statutory purpose). However, when a member of the audit firm provides non-audit advisory services to the audit client and when the criteria for a fiduciary relationship exist, the audit firm may be found to be a fiduciary. A service provider is more likely to be found to be a fiduciary in professional engagements such as forensic or investigative accounting and investment advisory services.

Members must also note that a member who is an employee may, depending on the particular facts and circumstances, have a fiduciary relationship with his or her employer.

If there is any question as to whether a fiduciary relationship exists, legal advice should be obtained.

The specific duties that a court might find applicable to a fiduciary will vary depending on the particular facts and circumstances. In general, a fiduciary relationship requires the fiduciary to act in the utmost good faith on behalf of the client. As such, a fiduciary must not place himself or herself in a position where his or her interests conflict with that of the client; nor can a fiduciary profit from his or her position at the expense of the client. A fiduciary must use information obtained in confidence from a client only for the benefit of the client and must not use it for personal advantage or the benefit of another person. A fiduciary cannot act at the same time both for and against the same client and must make available to a client all of the information that is relevant to the client's affairs, unless these requirements are modified with the client's agreement. Other duties may be found to pertain but are less likely to apply to public accountants.

It is important for members to recognize that not all fiduciary relationships give rise to all fiduciary duties. The terms of the engagement, including explicit provisions for the disclosure of potential conflicts and/or the use of institutional mechanisms to maintain confidentiality are fundamentally important to the nature of the relationship and the duties that a court will find to apply in a particular case.

The responsibilities owed to an existing client are more comprehensive than the responsibilities owed to a former client. The responsibility owed to a former client is generally limited to the duty of confidentiality.

Some, but not all, fiduciary duties are also professional obligations under the rules of professional conduct. The existence of professional obligations that are similar to fiduciary duties is not in and of itself determinative as to whether a fiduciary relationship exists between a member and his or her client. The rules require that members maintain confidentiality, refrain from taking undisclosed profits and avoid conflicts of interest in all client relationships. While the law recognizes that only certain professional engagements give rise to fiduciary duties, members must be aware that they are subject to the rules of professional conduct in all engagements.

Personal character and ethical conduct

The rules of professional conduct which follow are based on the principles expressed above in this Foreword. These principles have emerged out of the collective experience of the profession as it has sought, down the years, to demonstrate its sense of responsibility to the public it serves. By their commitment to honourable conduct, members of the Institute, throughout its history, have given particular meaning and worth to the designation "chartered accountant". They have done so by recognizing that rules of professional conduct, which are enforceable by sanctions, do not by their nature state the most that is expected of members, but simply the least -- the rules thus define a minimum level of acceptable conduct. Ethical conduct in its highest sense, however, is a product of personal character -- an acknowledgement by the individual that the standard to be observed goes beyond that of simply conforming to the letter of a list of prohibitions.

Application of the rules of professional conduct

- The rules of professional conduct apply to all members irrespective of the type of professional services being provided. Some rules have particular relevance to members engaged in the practice of public accounting. The rules and the guidance in this Foreword also apply, as appropriate, to students.
- Members and students not engaged in the practice of public accounting must observe these rules except where the wording of any rule makes it clear that it relates specifically to the practice of public accounting or there is a specific exception made in a particular rule.
- The term “professional services” also applies to members and students who are not engaged in the practice of public accounting. In this context, it includes those of a member’s activities where the public or his or her associates are entitled to rely on membership in the Institute as giving the member particular competence and requiring due care, integrity and an objective state of mind.
- Members are responsible to the Institute for compliance with these rules by others who are either under their supervision or share with them proprietary interest in a firm or other enterprise. In this regard, a member must not permit others to carry out on his or her behalf acts which if carried out by the member would place him or her in violation of the rules.
- Members and students who reside outside Manitoba continue to be subject to the rules of professional conduct in the province or provinces of membership. They may also be subject to the rules of the organized accounting profession in the jurisdiction in which they reside. Should the rules in two or more jurisdictions conflict, a member will, where possible, observe the higher or stronger of the conflicting rules and, where that is not possible, he or she will consider the ethical conflict guidance set out above.

Interpretation of the rules of professional conduct

In interpreting the rules, they are to be read in light of the Foreword to the rules and the definitions in and provisions of the bylaws of the Institute.