

## FOREWORD RULES OF PROFESSIONAL CONDUCT

The rules of professional conduct, comprehensive in their scope, practical in application and addressed to high moral 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 mark of a profession that there is a voluntary assumption, by those who comprise it -- the professional community -- 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 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; and
- 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.

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### Principles Governing the Conduct of Members, Student and Firms

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, its social usefulness.

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The rules of professional conduct centre about a number of principles -- fundamental statements of accepted conduct whose soundness is, for the most part, self-evident.

These principles are:

- *A member, student or firm shall act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest.*
- *A member, student or firm shall perform professional services with integrity and care and accept an obligation to sustain professional competence by keeping himself or herself informed of, and complying with, developments in professional standards.*
- *A member that is engaged in an attest function such as an audit or review of financial statements shall hold himself or herself 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.*

- *A member, student or firm has a duty of confidence in respect of the affairs of any client and shall not disclose, without proper cause, any information obtained in the course of the member's, student's or firm's duties, nor shall he or she in any way exploit such information to the member's, student's or firm's advantage.*
- *The development of a member's practice shall be founded upon a reputation for professional excellence. The use of methods of advertising which do not uphold professional good taste, is not in keeping with this principle.*
- *A member shall act in relation to any other member with the courtesy and consideration due between professional colleagues and which, in turn, the member would wish to be accorded by the other member.*

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A number of the principles need not be expounded upon -- those which concern: upholding the honour and good reputation of the profession; the performance of professional services with integrity and care; the duty of confidence; and the duty to act with courtesy and consideration toward professional colleagues.

Some aspects of the principles and of the rules of professional conduct derived from them do, however, warrant discussion:

- the sustaining of professional competence;
- the duty to avoid conflicts of interest in respect of a client's affairs; and
- the development of a practice upon a reputation for professional excellence.

It is apparent that the more sophisticated and complex society becomes, the greater the demands it makes of its institutions, including its professions. Society's expectations of the accounting profession -- particularly in its financial reporting roles and its business advisory services -- will, therefore, continue to rise. This underscores the need, expressed in the statement of principles, for sustaining individual professional competence by keeping abreast of and complying with developments in professional standards in all functions where the member practices, claims to specialize or is relied upon because of the member's calling.

It makes imperative, too, the duty that the chartered accountant has to bring, and be seen to bring, the qualities of objectivity and integrity to the professional services provided. It thus becomes a cardinal position of a member of the profession that the member will not subordinate professional judgment to the will of others, and that the member expresses honest and impartial conclusions.

In this respect, clearly, chartered accountants cannot practise their profession and participate in the affairs of their community without being exposed to circumstances that may place pressures upon their objectivity and integrity, and it would be impractical to impose detailed proscriptions intended to cover all conceivable situations. To do so on a rigid basis would be to inhibit the rendering of useful services even when the likelihood of impairment of the chartered accountant's objectivity is relatively remote.

It may be difficult for a chartered accountant always to appear completely free of any disabling influence, interest or relationship in respect of a client's affairs.

Pressures, however, upon a chartered accountant's objectivity or integrity are subject to powerful countervailing forces and restraints. These forces include liability in law, responsibility to the profession for one's professional actions and, most importantly, the inbred resistance of a disciplined professional person to any infringement upon that person's basic impartiality and integrity in the rendering of services.

The public must be assured of the chartered accountant's freedom from any conflict of interest. The profession tests the existence of this freedom against the criterion of whether a reasonable observer would conclude that a specified relationship between a chartered accountant and a client posed an unacceptable threat to the chartered accountant's independence of judgment. Only thus can public confidence in the objectivity and integrity of the chartered accountant 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 chartered accountant knew or ought to have known, and applies judgment objectively with integrity and due care.

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 of professional conduct 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.

Turning to the matter of building a practice -- strictures against publicly claiming skills or attributes superior to those possessed by colleagues with equal qualifications, and against unprofessional methods of business development are readily understood by a member of a profession.

The profession can validly assert that such strictures as exist provide a result which is in the public interest. It would not be in the public interest that a practitioner could, publicly, claim for himself or herself professional skills exceeding those of similarly qualified practitioners, in a purely subjective fashion and without hindrance or reasonable constraint; nor that quality of service in the important realm of rights and property, in which chartered accountants function, should become secondary to price -- for example, a public accounting engagement being

tailored to a bid price rather than to the needs of the engagement, in the professional judgment of the chartered accountant.

It is not an exaggeration to suggest that these rules of professional conduct are basic to a profession, and serve the public interest in the quality of services provided by chartered accountants. The removal of all constraints would lead to downgrading the quality of service and the profession's reputation for competence and integrity. The public interest might not be served by an elimination of all constraints upon practitioners.

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#### Personal Character and Ethical Conduct

The rules which follow are based on the principles expressed in this Foreword. The principles themselves 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 honorable 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, cannot by their nature state the most that is expected of members, or students, but simply the least. The rules of professional conduct 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**

- A member 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 only to the practice of public accounting or there is a specific exemption made in a particular rule.
- The term "professional services" also applies to members who are not engaged in the practice of public accounting. In this context, it includes those of the member's activities where the public or the member's 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.
- A member is responsible to the Institute for compliance with these rules by others associated with him or her in the public practice of the functions covered by the rules, who are either under the member's supervision or share with the member proprietary interest in the practice, and must not permit others to carry out on the member's behalf, acts which, if the member carried out by the member, would place the member in violation of the rules.
- A member who is resident outside Saskatchewan is expected to abide by the rules of the organized accounting profession in the jurisdiction in which the member resides and to ensure that the member's actions do not bring disrepute upon the Institute.

#### **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.