



CPA Code of Professional Conduct (Ontario), 2016 edition

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### Introduction

1. CPA Code of Professional Conduct (Ontario), Guidance to Rule 210 #26 (emphasis added)

When assessing a conflict of interest, members or firms should consider the following questions...

- What will be the impact on the party's ability to obtain professional services should the member or firm choose to decline the engagement? In smaller communities, where there may be less access to professional services, there may be more occasions when it is necessary to manage conflicts of interest.
- Will the member's or firm's decision to avoid the conflict by terminating the provision of the professional service be a commercially satisfactory solution for the party or parties in conflict? In many cases, the solution to avoid the conflict by terminating the provision of the professional services to each of the parties will not be commercially satisfactory.

2. CPA Code of Professional Conduct (Ontario), Rule 202.2

*A member or firm shall not allow his or her professional or business judgment to be compromised by bias, conflict of interest or the undue influence of others.*

3. CPA Code of Professional Conduct (Ontario), Rule 210.1

*A member or firm shall determine, in relation to a particular matter, and before agreeing to undertake or continuing to provide any professional service, whether a conflict of interest may exist as contemplated by Rule 210.2*

4. CPA Code of Professional Conduct (Ontario), Guidance to Rules 204.1 to 204.3 #30

Independence is potentially affected by self-interest, self-review, advocacy, familiarity and intimidation threats. The mere existence of such threats does not per se mean that the performance of a prospective engagement is precluded. The undertaking or continuation of an engagement is only precluded where safeguards are not available to eliminate or reduce the threats to an acceptable level or where Rule 204.4 provides a specific prohibition.

5. Rabbi Moshe Isserles (16<sup>th</sup> century Poland), Code of Jewish Law, Choshen Mishpat 290:8

י"א כמו שהאפוטרופס יכול ליתנם לאחרים, כך יכול לקבל המעות לעצמו, ובלבד שיעשה בבית דין, משום לזות שפתים.

Some say that just as a guardian may invest with others, so he may accept it for his own ventures – so long as the rabbinical court oversees it, due to concern for gossip.

6. Talmud, Ketuvot 105a

"ושוחד לא תקח" מה ת"ל? אם ללמד שלא לזכות את החייב ושלא לחייב את הזכאי, הרי כבר נאמר: "לא תטה משפט!" אלא אפי' לזכות את הזכאי ולחייב את החייב, אמרה תורה: "ושוחד לא תקח".

"And you shall not accept a bribe" – What does this teach? If this is to teach that he should not find the guilty innocent or the innocent guilty, the text already says, "You shall not warp the judgment"! Rather, even if [the payment] is encouragement to find the innocent innocent and the guilty guilty, the Torah says, "And you shall not accept a bribe."

7. Talmud, Bava Batra 8b

ורשאין בני העיר להתנות על המדות ועל השערים, ועל שכר פועלים, ולהסיע על קיצתן...

Townspople may make rules for measures and prices and wages, and may fine those who violate the norms...

### Why are we worried?

8. CPA Code of Professional Conduct (Ontario), Preamble

*Chartered Professional Accountants conduct themselves at all times in a manner which will maintain the good reputation of the profession and serve the public interest.* In doing so, members and firms are expected to avoid any action that would discredit the profession...

*Chartered Professional Accountants do not allow their professional or business judgment to be compromised by bias, conflict of interest or the undue influence of others.* Clients, employers and the public generally expect that members and

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

9. Midrash, Sifra, Kedoshim 2

אל תאמר לו מכור את שדך, וקח לך חמור, ואת עוקף עליו ונוטלה ממנו

Do not tell him, "Sell your field and buy a donkey," while trying to get his field from him.

10. Rabbi Joseph Caro (16<sup>th</sup> century Israel), Code of Jewish Law, Choshen Mishpat 33:1

כל הפסולים לדון פסולים להעיד, חוץ מאוהב ושונא שכשרים להעיד...

All who are disqualified to judge are disqualified to testify, other than a friend or enemy...

11. Rabbi Joseph Caro (16<sup>th</sup> century Israel), Code of Jewish Law, Choshen Mishpat 7:7

אסור לאדם לדון למי שהוא אוהבו, אף על פי שאינו שושבינו ולא ריעו אשר כנפשו; ולא למי ששונאו, אף על פי שאינו אויב לו ולא מבקש רעתו, אלא צריך שיהיו השני בעלי דינים שוים בעיני הדיינים ובלבם

One may not judge a friend, even where he is not a *shushvin* or his closest friend, or one he hates, even where he is not an enemy and he does not seek to harm him. The litigants must be equal in the eyes and hearts of the judges.

12. Rabbi Joshua Falk (17<sup>th</sup> century Poland), Sefer Meirat Einayim, Choshen Mishpat 33:1

דבעדות, המעשה כאשר היה לפניו הוא מעיד, ולא חשדינן ליה שישנה בכיוון בשביל אהבתו או שנאתו. משא"כ בדין שתולה בסברא, והמחשבה משתנה מחמת אהבתו או שנאתו אפילו בלא כונת רשע

In testimony, one testifies about what he saw, and we do not suspect that he would intentionally alter it for love or hatred. This is not so in judgment, which depends on logic; one's mind changes due to love or hatred, even without evil intent.

13. Rabbi Avraham Yeshayah Karelitz (20<sup>th</sup> century Israel), Emunah uBitachon 3:30

והנה אין הזהרת השוחד מכלל המשפטים אלא מכלל החקים, שהרי לא אסרה התורה הוראה לעצמו ואדם רואה טריפה לעצמו, אף אם הוא דל וכל חייו תלויים בו.

The warning against bribes is not rational law, but engraved statute, for the Torah did not prohibit ruling for one's self, and one may examine the kashrut of his own slaughter, even if he is indigent and his entire life depends on it.

14. CPA Code of Professional Conduct (Ontario), Preamble

Chartered Professional Accountants conduct themselves at all times in a manner which will maintain the good reputation of the profession and serve the public interest.

15. CPA Code of Professional Conduct (Ontario), Guidance to Rules 204.1 to 204.3 #2

The confidence that professional judgment has been exercised depends on the unbiased and objective state of mind of the reporting accountant, both in fact and appearance.

16. Jerusalem Talmud, Shekalim 3:2

רבי שמואל בר נחמן בשם רבי יונתן: בתורה ובנביאים ובכתובים מצאנו שאדם צריך לצאת ידי הבריות כדרך שהוא צריך לצאת ידי המקום. בתורה מנין דכתיב [במדבר לב כב] "והייתם נקיים מד' ומישראל", בנביאים מנין דכתיב [יהושע כב כב] "קל אלקים ד' וגו' וישראל הוא ידע", בכתובים מנין דכתיב [משלי ג ד] "ומצא חן ושכל טוב בעיני אלקים ואדם."

Rabbi Shemuel bar Nachman cited Rabbi Yonatan: We find in Torah, Prophets and Writings that one must satisfy others as one must satisfy Gd. Bamidbar 32:22 says, "And you shall be innocent from Gd and from Israel." Yehoshua 22:22 says, "Kel Elokim Hashem... and Israel will know." Mishlei 3:4 says, "And find favour and [a reputation for] good insight in the eyes of Gd and Man."

Q1: A sister-in-law in Customer Relations?

17. CPA Code of Professional Conduct (Ontario), Rule 204.4 (emphasis added)

(14) A member or student shall not participate on the engagement team for an assurance client if the member's or student's immediate family member is an officer or director of the client or a related entity or is in a position to exert significant influence over the subject matter of the engagement, or was in such a position during the period covered by the assurance report or the engagement period.

*(15) A member or student shall not participate on the engagement team for an audit client that is a reporting issuer or listed entity if the member's or student's immediate or close family member has an accounting role or a financial reporting oversight role, or had such a position during the period covered by the financial statements subject to audit by the member or firm or the engagement period.*

18. CPA Code of Professional Conduct (Ontario), Guidance to Rules 204.4(14), and (15) #3

A person has a financial reporting oversight role when the person is in a position to or does exercise influence over the financial statements that are subject to audit or review by the member or firm or over anyone who prepares such accounting records or financial statements.

An individual holding one of the following titles will generally be considered to be in a financial reporting oversight role: a member of the board of directors or similar management or governing body, president, chief executive officer, chief operating officer, chief financial officer, controller, director of internal audit, director of financial reporting, treasurer, and, depending upon the particular facts and circumstances, the general counsel.

19. CPA Code of Professional Conduct (Ontario), Guidance to Rules 204.1 to 204.3 #31

A self-interest threat occurs when a firm or a person on the engagement team could benefit from a financial interest in, or other self-interest conflict with, an assurance client. Examples of circumstances that may create a self-interest threat include, but are not limited to:

- a direct financial interest or material indirect financial interest in an assurance client;
- a loan or guarantee to or from an assurance client or any of its directors or officers;
- dependence by a firm, office or member on total fees from an assurance client;
- undue concern about the possibility of losing the engagement;
- evaluating performance or providing compensation for selling non-audit services to an assurance client;
- having a close business relationship with an assurance client; and
- potential employment with an assurance client.

20. CPA Code of Professional Conduct (Ontario), Guidance to Rules 204.1 to 204.3 #34

A familiarity threat occurs when, by virtue of a close relationship with an assurance client, its directors, officers or employees, a firm or a person on the engagement team becomes too sympathetic to the client's interests. Examples of circumstances that may create a familiarity threat include, but are not limited to:

- a person on the engagement team having an immediate or close family member who is an officer or director of the assurance client; ...

21. CPA Code of Professional Conduct (Ontario), Rule 204.4(4)

*A member who is a partner of a firm and who holds, or whose immediate family member holds, a direct financial interest or a material indirect financial interest in an audit or review client shall not practise in the same office as the lead engagement partner for the client...*

22. CPA Code of Professional Conduct (Ontario), Rule 204 Definitions

*"immediate family member" means a spouse (or equivalent) or dependant.*

23. CPA Code of Professional Conduct (Ontario), Guidance to Rules 204.4(1) to 204.4(6) #6

When a person on an engagement team knows that a close family member has a direct financial interest or a material indirect financial interest in the assurance client, or a related entity, a self-interest threat may exist. In evaluating the significance of any such threat, consideration should be given to the nature of the relationship between the person on the engagement team and the close family member and the materiality of the financial interest. Once the significance of the threat has been evaluated, safeguards should be applied...

24. Talmud, Ketuvot 105b

היכי דמי שוחד דברים?

- כי הא דשמואל הוה עבר במברא, אתא ההוא גברא יהיב ליה ידיה, אמר ליה: מאי עבידתיך? אמר ליה: דינא אית לי, א"ל: פסילנא לך לדינא.
- אממר הוה יתיב וקא דאין דינא, פרח גדפא ארישיה, אתא ההוא גברא שקליה, א"ל: מאי עבידתיך? א"ל: דינא אית לי, אמר ליה: פסילנא לך לדינא.
- מר עוקבא הוה שדי רוקא קמיה, אתא ההוא גברא כסייה, א"ל: מאי עבידתיך? א"ל: דינא אית לי, א"ל: פסילנא לך לדינא.

What is a verbal bribe?

- Like when Shemuel crossed a river, and someone extended his hand to him. Shemuel asked, "Why are you here?" He replied, "I have litigation." Shemuel said, "I am disqualified to judge for you."
- Ameimar was judging, when a feather landed on his head. Someone removed it. Ameimar asked, "Why are you here?" He replied, "I have litigation." Ameimar said, "I am disqualified to judge for you."
- Mar Ukva spat before himself, and someone covered it. Mar Ukva asked, "Why are you here?" He replied, "I have litigation." Mar Ukva said, "I am disqualified to judge for you."

#### Q2: Consent in lieu of Conflict Management?

25. CPA Code of Professional Conduct (Ontario), Rule 210.3(b)

*Where the agreement to provide any professional service would result in a conflict of interest under Rule 210.2 or where a previously unidentified conflict of interest under Rule 210.2 arises or is discovered in the course of providing any professional service, the member or firm must decline to provide the professional service or withdraw from providing all of the affected professional services unless:...*

*(b) the affected parties have knowledge of the conflict of interest and their agreement for the member or firm to accept or continue the professional services engagement is implied by their conduct, in keeping with commonly accepted practice.*

26. Rabbi Joseph Caro (16<sup>th</sup> century Israel), Code of Jewish Law, Choshen Mishpat 22:1

מי שקבל עליו קרוב או פסול, בין להיותו דין בין להיותו עד עליו... אם קנו מידו על זה, אינו יכול לחזור בו.

One who accepts a relative or disqualified party as judge or witness... if there was a *kinyan*, he cannot recant.

27. Rabbi Joseph Caro (16<sup>th</sup> century Israel), Code of Jewish Law, Choshen Mishpat 227:21

האומר לחבירו "על מנת שאין לך עלי אונאה," יש לו עליו אונאה. בד"א, בסתם, שאינו יודע כמה אונאה יש בו כדי שימחול... אבל במפרש, אין לו אונאה. כיצד? מוכר שאמר ללוקח, "חפץ זה שאני נותן לך בק"ק יודע אני שאינו שוה אלא מאה, על מנת שאין לך עלי אונאה אני מוכר לך," אין לו עליו אונאה...

If one party says to another, "On condition that you cannot claim *ona'ah*," he can still claim *ona'ah*. This is true where he did not specify, for the other does not know how much *ona'ah* is present, to forgive it... But where he specifies, there is no claim of *ona'ah*. For example: Where a merchant tells a customer, "I am giving you this item for 200. I know it is only worth 100, but I am selling it to you on condition that you cannot claim *ona'ah* from me," one cannot claim *ona'ah*.

#### Q3: Do business and personal relationships lapse?

28. Talmud, Bava Batra 42b-43a

ומעידין [השותפין] זה לזה. אמאי? נוגעין בעדותן הן! הכא במאי עסקינן - דכתב ליה: דין ודברים אין לי על שדה זו...

"And [partners] may testify for each other." Why? They have an interest in their testimony! This is where they first write, "We have no claim in this [formerly jointly owned] field."

29. Tosafot (12<sup>th</sup>-14<sup>th</sup> century Western Europe) to Bava Batra 43a וליסלקו

וא"ת, והא בעינן תחילתו וסופו בכשרות והכא הוי תחילה בפסול והוי כמו קרוב ונתרחק! ואור"י דלא שייך תחילתו בפסלות הכא כיון שאין פסלות תלוי בגוף אלא בממון.

But don't we require that they be acceptable from beginning to end, and here the witnesses began in disqualification? They are like someone who was a relative, and is no longer related! R"i explained that the concern for having been disqualified at the outset is irrelevant here, for the disqualification is a function of money, not their person.

#### Q4: Boundaries

30. Two useful articles

<https://www.wsba.org/for-legal-professionals/member-support/wellness/boundaries>

<https://www.lawtimesnews.com/archive/the-lawyer-therapist-healthy-boundaries-make-for-healthy-lawyers/260980>