GUIDE ON CONFLICTS OF INTEREST FOR ACTUARIES

Prepared by:
Fasken, the CIA's legal counsel firm

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Introduction to the CIA *Guide on Conflicts of Interest for Actuaries*

Conflicts of interest can be complex and require professional judgement. This guide is intended to help members exercise that judgment and foster their best understanding of their responsibilities in this respect.

Ensuring that conflicts of interest are (a) understood; (b) identified; and (c) reconciled or eliminated are keys to meeting the requirements of the Canadian Institute of Actuaries' (the "Institute's") Rules of Professional Conduct. Members must ensure that their professional judgement is not compromised, or perceived as compromised, by bias, conflicts of interest, or the undue influence of others.

All members, regardless of their role or seniority, must be able to identify conflicts of interest and take appropriate action in such situations. This responsibility also applies to actuarial students, junior members, and those working as part of a multidisciplinary team. Actuarial employers equally share this responsibility, *inter alia,* by providing their employees a review process to identify situations that may involve a conflict of interest.

This guide imposes no new obligations on members and their employers, and in no way does it alter or replace other guidelines on conflicts of interest currently in effect at the Institute (e.g., Volunteer Code of Conduct). Rather, we hope to offer it as a useful tool to help members better assess whether conflict exists and determine how to handle it appropriately.

This guide does not constitute legal advice and any use of its content would not constitute a means of defense against allegations of misconduct. While care has been taken to ensure that it is accurate, up to date, and useful, the Institute will not accept any legal liability in relation to its contents.

Enjoy the reading!

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IMPORTANT INFORMATION

To simplify the reading of this guide, “he” includes “she”.

Also, the use of the expression “firm” in this guide has been used for the sake of clarity and uniformity, but the reader should understand it as referring to any principal or employer hiring the services of an actuary. If the guide refers to a specific kind of employer, such precision will be made to the reader.

This guide cannot change the nature and content of Rule 5 of the *Rules of Professional Conduct* of the Canadian Institute of Actuaries (“**CIA**”). It cannot bind the Committee on Professional Conduct (“**CPC**”) of the CIA or any court or tribunal. It is solely intended to provide guidelines to actuaries. In case of any conflict between this guide and the *Rules of Professional Conduct*, the *Rules* shall prevail.

Moreover, each case remains a unique case. Consequently, the statements made in this guide are subject to qualification based on the circumstances of each situation.

Finally, unless mentioned otherwise, a reference to the Bylaws or Rules refers to the CIA’s *Bylaws* and *Rules of Professional conduct*.

EXECUTIVE SUMMARY

Legal and Ethical Context of Rule 5

1. The CIA is a self-regulated professional entity whose primary goal is to promote the advancement of the actuarial profession as well as to regulate the conduct of its members, each in the overall perspective of the protection of the public through various means.

2. The CIA needs to maintain a high level of public confidence in the profession by notably preserving the actuary's independence, judgment, and integrity.

3. Rule 5 must be interpreted in such a way as to require the actuary to avoid being, even in good faith, in a situation where there is a risk that a reasonably informed person perceives that the actuary may need to choose between his own personal, professional, or pecuniary interest and that of his client.

4. Such conflicts are highly dependent on their facts, and the way actuaries will handle them will vary according to the reality of their own field of practice.

Identifying Conflicts of Interest

5. The CIA addresses the independence and impartiality expected of the actuary by referring to the concept of "fairness" in Rule 5 of the *Rules of Professional Conduct*. It requires the actuary to ensure that the ability to act fairly in the performance of professional services is unimpaired when confronted by an actual or potential conflict of interest.

6. Involvement in a conflict of interest is not the result of and does not necessarily equate to a fault or mistake on the actuary's part.

7. Professional misconduct will arise if the actuary does not take sufficient and reasonable measures to identify the conflict of interest, or does not attempt to inform the client and reconcile the conflict, or decides to carry on the actuarial work regardless of the occurrence of a conflict of interest.

8. There are three (3) kinds of interests that may conflict or may be perceived to conflict with those of a client: *professional interests, pecuniary interests,* and *personal interests*.

Applicable Law

9. Rule 5 integrates two (2) distinct legal principles:

    (a) The first one is a prohibition against performing professional actuarial services for a client if doing so would involve a current or eventual conflict of interest;

(b) The second is an exception to this prohibition which requires the actuary to comply with a process of full and timely disclosure of such conflict to be released from the prohibition. However, there are circumstances where no exception can apply and the actuary must refrain from acting.

10. The three criteria triggering the application of the exception to a conflict of interest are: (a) the member's ability to act fairly is unimpaired, (b) there has been full and timely disclosure of the conflict to all known present and prospective direct users, and (c) all known present and prospective direct users have expressly agreed, in writing[1], to the performance of the services by the member.

11. The actuary is required by Rule 5 to disclose all material facts concerning a conflict of interest. Such disclosure must be sufficient for the client to be aware of a potential conflict, but without disclosing detailed information as to reveal confidential information.

12. The standard according to which the reasonable apprehension of bias must be evaluated is that of whether a fair-minded person having reasonable knowledge of the background of a situation would perceive the existence of a conflict of interest.

Appropriate Management Measures to Prevent or Reconcile Conflicts of Interest

13. A conflict-check procedure must be put in place and undertaken *before* taking on new engagements. A three-part verification system would protect the actuary and his clients from conflicts of interest. It requires (1) a policy, (2) a supervising individual (or group of individuals), and (3) mandatory compliance with the policy.

14. It could be more difficult for the actuary in a smaller firm or in a solo practice to put efficient measures to protect themselves from conflicts of interest. It is nonetheless crucial to implement resources to facilitate the management of conflicts of interest.

Conflicts of Interest in the Public Sector

15. The protection of the public interest does not necessarily include whistle-blowing because there is no duty imposed by the CIA or the actuarial profession to protect the public from the larger political and social decisions made by a government institution which employs actuaries.

16. The duty of an actuary is to report to the employer that a given decision does not uphold the public interest. The employer will then take into consideration this opinion which must be reasonably supported by evidence and will subsequently take the appropriate decision.

[1] Any form of written documentation should be acceptable: a formal letter, an email, etc. However, it is prudent to ensure means of communication that will somehow allow for confirmation of receipt.

PART 1 OBJECTIVES OF THIS GUIDE

The *Rules of Professional Conduct* establish a code of ethics to be followed by the actuaries. Rule 1 relates to "Professional Integrity": A member shall act, *inter alia*, with integrity and competence, and in a manner to fulfil the profession's responsibility to the public and to uphold the reputation of the actuarial profession. Rule 5 deals with "Conflict of Interest". In fact, avoiding conflicts of interest is part of the actuary's duty to maintain the integrity and competence of his practice, as set out in Rule 1.

The general objective of Rule 5 on "Conflicts of Interest" aims to ensure that actuaries provide objective advice, with total independence from external considerations. This is easy to state, less easy to apply in a day-to-day environment: conflicts of interest are highly dependent on their factual context and may vary from one field of practice to another.

The objective of this guide is to try, by using examples, to give practical guidelines to actuaries, acknowledging that circumstances may vary, and so will the application of Rule 5.

The actual text of Rule 5, and its annotations, read as follows:

> *Conflict of Interest*
>
> *Rule 5*
>
> *A member shall not perform professional services involving an actual or potential conflict of interest unless:*
>
> > *(a) the member's ability to act fairly is unimpaired,*
> >
> > *(b) there has been full and timely disclosure of the conflict to all known present and prospective direct users[2], and*
> >
> > *(c) all known present and prospective direct users have expressly agreed to the performance of the services by the member.*
>
> *Annotation 5-1*
>
> *"Full and timely disclosure" means disclosure of all material facts concerning the conflict (including the nature of the influence or relationship and the nature and extent of the interest) that may be relevant to a direct user's decision, and in sufficient time for the direct user to make an informed and independent decision. Such disclosure should be made in writing.*

[2] "Direct user" and "Professional services" are defined in the section entitled "**Definitions**" at the beginning of the Rules.

PART 2 LEGAL AND ETHICAL CONTEXT OF RULE 5: AN INTRODUCTION

The principle underlying Rule 5 was established before its current formulation adopted in 1992 (albeit slightly amended since then).[3] Before that, the rule was formulated as follows:

> *A member shall not perform professional services where there is a conflict of interest, unless there has been full disclosure of the conflict and the parties involved have expressly agreed to the performance of the services by the member.*

At the root of this rule lies the concern that clients' interests are not impaired by opposing, discordant, or incompatible duties that the actuary may hold toward another client, his employer, himself, or any other interested third parties. The goal is to avoid such contradicting duties adversely affecting the performance of professional services by the actuary, or reasonably perceived as such.

It seeks to preserve the actuary's independence, judgment and integrity, so that he can continue to diligently serve his client's interests. Confidentiality and impartiality are therefore highly interwoven with the notion of conflict of interest. Rule 5 has been historically interpreted to avoid having the professional putting himself, even in good faith, in a situation where there is a risk that he may be perceived by a reasonably informed person that he may have to choose between two competing interests.[4] Rule 5 therefore protects the actuary's client by ensuring the integrity of the actuary's services.

(2.1) The precedents on Rule 5

There are not many precedents on the interpretation and application of Rule 5.

Firstly, in the precedents of the Disciplinary Tribunal, there is one case where Rule 5 (Rule 6 at the time) was at issue and discussed: *The Committee on Discipline of the Canadian Institute of Actuaries v. Eugène Boudreault.*[5] This case raised a straightforward issue (pp. 36-37):

> *As an actuary, the Respondent had a very clear function: to examine the tenders made by the insurance companies, to gauge their value and benefit for the members of the Teamsters Pension Plan and to recommend to the Board of Trustees of that Pension plan to choose one tender over another. The interest of the Board was without a doubt to obtain the best rate of return possible on the investments of the plan.*
>
> *On the other hand, the interest of each of the insurance companies was to take the commission paid to the Respondent into account in the calculation of the amounts to be paid by the fund. This circumstance clearly had as a possible if not probable*

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3 Consult appendix A for the complete formulation of Rule 5.

4 *The Committee on Discipline of the Canadian Institute of Actuaries v. Eugène Boudreault*, Disciplinary Tribunal, District of Montréal, May 19, 1998, p. 36.

5 Disciplinary Tribunal, District of Montréal, May 19, 1998.

> *result to reduce the rate of return for the members of the plan. Furthermore, even if the evidence does not set out the quantum of the commissions proposed by each company which tendered a bid, there was at least a strong possibility that the Respondent was inclined to give priority to the one which offered him the highest commission.*

Hence, the conclusion of the DT (p. 36) was to adopt the test developed for lawyers by the Supreme Court of Canada in *MacDonald Estate v. Martin*[6]:

> *In MacDonald Estate v. Martin, [1990] 3 S.C.R. 1235 the Supreme Court of Canada conducted an exhaustive analysis of the jurisprudence regarding the content and extent of the expression "conflict of interest". Distinguishing between the aspect of "probability" and the more restrictive aspect of simple "possibility", Mr. Justice Sopinka writes (page 1258):*
>
> > *"Nevertheless, it is evident from this review of authorities that the clear trend is in favour of a stricter test. This trend is the product of a strong policy in favour of ensuring not only that there be no actual conflict but that there be no appearance of conflict."*
>
> *In concluding on this subject, he states the following (page 1259):*
>
> > *"What then should be the correct approach? Is the "probability of mischief" standard sufficiently high to satisfy the public requirement that there be an appearance of justice? In my opinion, it is not."*
>
> *Even if, in the case cited above, the litigation involved a member of another profession than that of an actuary, the Tribunal is of the opinion that the principle which is stipulated therein applies to the present case. Therefore, the Tribunal considers that the simple possibility of a conflict of interest is sufficient.*

An actuary must present to his client the economic proposal which best serves the latter's interests and to reveal all favourable or unfavourable elements and aspects of such proposal.[7] If conflicting interests interfere with this ability, or are perceived to do so, and the actuary does not fully disclose any potential conflicts to the client, then the actuary will have failed to perform proper professional services. He will have not only compromised his independence but will also have impaired the relationship of trust that must exist between a professional and his client.[8]

The Supreme Court of Canada has established that a "reasonable apprehension of bias" was sufficient to infer that a professional could be in a situation of conflict of interest.[9] Further, the Disciplinary Tribunal of the CIA has stated that the standard according to which this

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6 [1990] 3 S.C.R. 1235, p. 1238.

7 *The Committee on Discipline of the Canadian Institute of Actuaries v. Eugène Boudreault*, Disciplinary Tribunal, October 26, 1998.

8 *Ibid.*

9 *MacDonald Estate v. Martin*, [1990] 3 SCR 1235.

apprehension of bias must be evaluated is whether a fair-minded person having reasonable knowledge of the background of this complaint would infer the existence of a conflict of interest.[10]

This means that the evaluation is based on the perception of a conflict of interest, where a breach of Rule 5 would occur if the actuary is reasonably perceived to be involved in an actual or potential conflict. In this matter, perception is reality.

Such a test to identify any conflicts of interest would include the review of factors relating to the existence of current and prior relationships between the clients involved and the actuary. Such a test would evaluate whether there is sufficient connection between the new mandate and these current and prior relationships.

> **Example 1:** An actuary delivers professional advice to a company seeking to sell assets within an asset-liability matching strategy, while this actuary also serves a potential buyer of these assets in other companies' risk management activities. There is at least a potential conflict of interest in this situation because the actuary may be reasonably perceived as using the information he has obtained about the seller to orient the strategy of the buyer, in a form of "insider" knowledge.

(2.2) Precedents from other Actuarial Associations

Other actuarial associations have examined the *Rules* on conflicts of interest. It is interesting to note the following excerpt from the International Actuarial Association:

> ***Independent advice***
>
> *30. An important aspect of professionalism and ethical behaviour is the ability of the actuary, whether employed or not, to express an independent opinion or provide unbiased independent advice, where the circumstances require this. The Groupe Consultatif, now Actuarial Association of Europe (AAE), produced a discussion paper in 2010 on the topic of operational independence in the context of the actuarial function under Solvency II. This made a number of important points about independence.*
>
> *… independence … might be described as the ability to analyse and to make relevant decisions … without being unduly or inappropriately controlled, constrained or influenced …*
>
> *… independence is compromised if there is any form of pressure on the persons carrying out the actuarial function to make a particular decision on the data, methods, assumptions or results of their work.*
>
> *… independence is a question of thought and process and does not necessarily prejudge location of the role, employment status or reporting structures.*

[10] *CHI Canada Inc. v. Société en commandite Sodexfor*, 20058 CanLII 49952 (C.S.).

> *Independence is strengthened by the governance structures, including the facility to report directly to the Board (or Boards) and an obligation to 'blow the whistle' or 'report' to the regulator in circumstances in which … independence is threatened.*
>
> *… independence is also enhanced through transparency and disclosure of summarised data and results, including reporting on the methodologies adopted, the assumptions used and the thought processes by which they were arrived at.*
>
> *… independence involves the person in question taking personal responsibility and should be demonstrated by personally signing a report which certified what has been done …*[11]

As well, Principle 3, of the *Institute and Faculty of Actuaries' Code* reads as follows:

> *"3.* ***Impartiality****: Members will not allow bias, conflicts of interest, or the undue influence of others to override their professional judgement."*

In 2012, the Institute and Faculty of Actuaries published a document entitled *Conflicts of Interest: A Guide for Actuaries.*[12] At page 3, we can read the following:

> *"1. What is required of an actuary?*
>
> *You are required to "act honestly and with the highest standards of integrity.*[2]
>
> *You must "not allow bias, conflict of interest, or the undue influence of others to override [your] professional judgement".*[3]
>
> *Furthermore, you are required to "respect confidentiality unless disclosure is permitted by law and justified in the public interest […].*[4]*"*

To deal with conflicts of interest, the Institute and Faculty of Actuaries uses Principle 3 of the *Institute and Faculty of Actuaries' Code* as a starting point. The Principle was revised in 2019 and reads as follows:

> *"* ***Impartiality***
>
> ***3.*** *Members must ensure that their professional judgement is not compromised, and cannot reasonably be seen to be compromised, by bias, conflict of interest, or the undue influence of others.*
>
> *3.1 Members must take reasonable steps to ensure that they are aware of any relevant interests that might create a conflict.*
>
> *3.2 Members must not act where there is an unreconciled conflict of interest."* [13]

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11 *The Principles of Professionalism*, January 2012, p. 6.

12 Professional Regulation Executive Committee, November 2012. The IFoA has also published a guide for employees: *Conflicts of Interest, A Guide for Employees of Actuaries*, October 2013.

(Footnotes omitted)

(2.3) Principles developed for the legal profession

Although there is a difference between the protection granted by the law to the solicitor-client privilege (this is recognized as a constitutional right[14]) in comparison to the duty of confidentiality imposed on actuaries, some principles developed for the legal profession may provide guidance in understanding when conflicts of interest exist for actuaries.

First, one should consider the situation involving actual and active clients of an actuary or his firm:

(a) Unless clearly authorized by law[15] or by the clients, no actuary or firm can act simultaneously for two different clients that have or may have opposite interests in the same mandate or file, or in related matters;

(b) No actuary or his firm can act for two clients in two separate mandates if the questions are related and may put the actuary or his firm in a situation where they could give different opinions. This puts pressure on the objectivity of the actuaries and the firm involved, and may also raise concerns as to the professionals having to make an opinion on the issues at hand;

(c) An actuary and his firm should be prudent before accepting to act in distinct non-related matters for two different clients that are known to have opposite interests. The principle of loyalty[16] to a client may prevent an actuary from acting. However, this may allow for the application of the exceptions under Rule 5, i.e., through a formal express consent by both clients involved.

Second, some situations may involve ex-clients:

(d) The principle of loyalty to a client does not prevent an actuary or his firm from accepting a mandate because this mandate may raise opposing interests to those of an ex-client. However, this is a situation where the actuary and his firm will need to protect the confidentiality of the information provided to the firm by the ex-client by using ethical walls[17] and making sure that the professionals working on the actual file will not get access to the confidential information of the ex-client.

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13 Institute and Faculty of Actuaries, *The Actuaries' Code*, v.3.0, May 2019, p. 3.

14 *Lavallee, Rackell & Heinz v. Canada (P.G)*, [2002] 3 S.C.R. 209.

15 For example, when a statute allows for one common expert report to be filed in Court.

16 The CIA is of the opinion that a professional, such as an actuary, owes a duty of loyalty to its clients. The rationale supporting the duty of loyalty resembles the one underlying the rule against conflicts of interest: an actuary may not be entirely devoted to his client's interests if he is torn between his client's interests and his own, third parties', or current or other (actual or past) clients' interests [see "*Defining your duty"* by Imran Benson in *The Actuary*, April 12, 2018 and *Ault v. Canada (Attorney General)*, 2011 ONCA 147, para. 77, 86, and 88].

17 See appendix B which summarizes the concepts of ethical walls and separation of teams.

(e) This situation may prevent a sole practitioner from acting in such a matter, without obtaining consent from both clients;

Third, there are other circumstances where a conflict of interest may arise:

(f) An actuary being asked to give an opinion on a situation related to a corporation which include shareholders who are members of the actuary's firm;

(g) An actuary receiving any form of compensation or remuneration (other than the professional fees) from an organization on which he has to give a professional opinion. At page 19 of its publication entitled *Conflicts of Interest: A Guide for Actuaries*, November 2012, the Institute and Faculty of Actuaries recommends the following:

> ***Remuneration***
>
> *Organisations should not incentivise employees in a way that might be seen to encourage them to provide anything other than the most suitable and appropriate advice for the client.*

What should one conclude from these precedents? Although the provisions reviewed are not the same as Rule 5, they all convey the same principles: impartiality, independence and transparency are required from the actuary, all of this in the public interest.

PART 3 ANALYSIS OF RULE 5

Rule 5 can be summarized as follows:

a) First, the introductory paragraph makes it clear that a conflict of interest applies to professional services;

b) And the principle is that an actuary shall not perform professional services involving an actual or potential conflict of interest;[18]

c) There are exceptions to this principle ("unless…"). However, it is generally recognized that exceptions cannot pre-empt the principle. Accordingly, exceptions should be interpreted as such: they are exceptions;

d) Paragraphs (a), (b), and (c) of Rule 5 are cumulative ("and"), not disjunctive ("or"). The three criteria must be met to trigger the application of the exceptions; and

e) "Full and timely disclosure" is defined in the annotation 5-1. Other terms or expressions, such as "professional services" and "direct users" are defined in the section of the *Rules* entitled "Definitions".

(3.1) Impartiality and Independence: The Core Aspects of the Actuarial Practice

Rule 5 prevents an actuary from performing professional services involving actual or potential conflicts of interest, unless certain circumstances are met. The core aspects of Rule 5 are impartiality and independence of the professional services: the actuary performing professional services cannot be reasonably perceived as having favoured one client's interest (or his own interests) over another client's interest.

An actual or potential conflict of interest is undesirable because it threatens the actuary's ability to provide impartial and independent advice to a client. This affects the core nature of actuarial work, which is to perform objective evaluations and provide recommendations to a client based on these evaluations.

An important aspect of the ethical behaviour required of an actuary is to express independent opinions and provide unbiased independent advice. Such independence is understood to refer to the ability "to analyse and to make relevant decisions […] without being unduly or inappropriately controlled, constrained or influenced […]".[19]

Clearly, the wording of Rule 5 supposes that there are situations which *per se* constitute a conflict of interest and which cannot be "saved" by the exceptions ("unless").

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[18] Generally, courts and tribunals have defined "potential" conflict of interest as an appearance of conflict for a reasonably informed third party.

[19] IAA, *Principles of Professionalism*, "Independent Advice", section 30.

The first element of the exceptions states "(a) the member's ability to act fairly is unimpaired". This cannot be a subjective test left to the sole discretion of the actuary (or his employer). This must allude to an objective test based on the determination of the "perception of the situation by a reasonably informed third party".

And the key word of this first paragraph of the exceptions is "fairly".

In Canada, the CIA addresses the independence and impartiality required of the actuary by referring to the concept of "<u>fairness</u>" in Rule 5 of the *Rules of Professional Conduct*. It requires the actuary to ensure that his ability to act *fairly* in the performance of professional services is unimpaired when confronted by actual or potential conflicts of interest.

The Canadian case law on the matter has interpreted the notion of fairness to mean the ability "to favour his client's interests instead of those of the third party with whom he has the relationship which has created the situation of conflict of interest".[20]

This is a question of degree on a balancing process. A lack of independence or impartiality, considering the nature of the work and its importance for a client, will impact the actuary's ability to act fairly. The actuary should refrain from taking/performing the services when this balance does not show that fairness can be achieved and maintained.[21] If by objectively considering the situation, a balance can be achieved, the actuary must nonetheless disclose the conflict of interest to his clients and secure an informed consent, in writing.[22]

For instance, the following situation demonstrates how an actuary's independence may be influenced:

> **Example 2**: A pension fund was created with financial contributions by the government, the employer, and the union. The actuary in this case is asked to represent all three of these parties. The employer's and the government's instructions are to make the minimum contributions possible to the fund. The union's interest is to get a valuation policy that will seek as much contribution from the government and the employer as possible. The actuary is hence placed in a situation of conflict of interest.

In such circumstances, the actuary's objectivity in providing advice to the government or the employer may be influenced, or be perceived to be influenced, by the need to ensure that the workers obtain as much money as possible, while the contributors wish to keep inputs low. Thus, there is a conflict of interest because the advice to be provided to one party may adversely affect the interests of the other. Such a situation jeopardizes the actuary's actual or perceived impartiality.

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[20] Allan C. Hutchinson, *Legal Ethics and Professional Responsibility* (Toronto: Irwin Law, 2006).

[21] *The Canadian Institute of Actuaries and Lord Ellement and John A. Turnbull*, April 28, 1995, p. 5 (although this combination of qualifications occurred in the context of evidence assessment during a disciplinary hearing).

[22] This is related to the aspect of transparency in the management of situations which may involve a conflict of interest.

> **Example 3**: A firm has to be hired by a pension fund committee to prepare tender offers to administer the pension fund to various companies. The actuary in charge of providing actuarial valuations and recommendations suggests three companies. However, the actuary does not disclose to the pension fund committee that between 1.5% to 2% commissions would be paid to him based on the amounts transferred to these insurance companies. This actuary has placed himself in a situation of conflict of interest.[23]

In this situation, while the pension fund committee may have understood that the actuary is working on their behalf with third parties, they are not necessarily aware that the actuary's monetary interest is simultaneously involved with theirs. This situation raises questions about whether the winning insurance company's choice by the actuary was dependent on the size of commissions to the actuary. The conflict of interest is therefore obvious.

It must also be noted that the actuary's involvement in a conflict of interest is not necessarily the result of and does not equate to a fault or mistake on his part. Often, evolving circumstances of one's practice, new clients, transactions in which clients are involved, mergers and acquisitions of firms, and new facts in a file are the kind of events, among many others, from which conflicts of interest may emerge.

Professional misconduct will arise if, for instance, the actuary did not take sufficient and reasonable measures to identify any conflict of interest and to inform the client and reconcile the conflict, or decided to carry on his actuarial work regardless of the occurrence of a conflict of interest.

In sum, **to identify a conflict of interest, the actuary must evaluate whether personal or professional interests interfere with the interests of one or more clients so as to make it more difficult for the actuary to perform actuarial services in an impartial, unbiased and independent manner.**[24] This includes a perception of such by a reasonably informed person.

(3.2) Identify and Recognize the Context in which Impartiality is Affected

Three broad categories of interests relating to the actuary potentially come into conflict with those of the actuary's clients or organizations for which the actuary is acting: professional, pecuniary, or personal.

Professional Interests: This category comprises the practice of the actuary, the business of his firm or partnership, and the interests of one of his clients. Conflicts arise when one of these interests is affected in a way that is intimate and distinct in the manner in which all other or a group of similar interests would be affected.[25]

> **Example 4**: An actuary and his firm are hired by two potential buyers to evaluate an insurance company that has been put up for sale. While carrying out this mandate, the actuary discovers material information that will affect the purchase price ultimately

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[23] *The Committee on Discipline of the Canadian Institute of Actuaries v. Eugène Boudreault*, Disciplinary Tribunal, District of Montréal, May 19, 1998, p. 36.

[24] Institute and Faculty of Actuaries, *Conflict of Interest: A Guide for Actuaries,* p. 5.

[25] CIA, *Conflict of Interest Guidelines for Members of the Board*.

offered by one of the two buyers. Should the actuary use this information in his assessment? And if so, to which of the buyers should the actuary disclose this information, if at all? In this situation, the actuary would not be in conflict if the information is used in the objective assessment of the value of the company, if it is used in both evaluations, and if it is disclosed to both parties.

Example 5: A conflict of interest may arise if one actuary in a firm provides actuarial evidence expertise to one party in a litigation, while another actuary from the same firm provides a contradicting expertise to the second party. Here, the firm could be in conflict of interest between the two parties. Generally, the clients' interests must extend beyond one's book of business to include all clients of the organization for which the actuary works.[26]

These examples underline that a firm has an obligation to adopt clear policies on conflicts of interest and how to manage them. Most large Canadian law firms have appointed a "conflict partner" to handle the management of the multiple competing interests of the various members of the firm.

As well, the firm must make known to its members its conflict policies and ensure that they are truly applied.

Pecuniary Interests: This category refers to any material interests of the actuary, his family, and/or his firm or partnership in any significant ownership interests in privately held or publicly traded companies involved in the actuary's work or any material interest in an entity having a commercial interest in an activity or matter in which the actuary is involved[27].

Example 6: An actuary is asked to advise a mutual fund in which he or a member of his family invests. Doing so would create a conflict of interest. A reasonably informed third party may perceive that the actuary's advice is tailored to best suit his family's interests instead of the fund itself in its global perspective.[28]

Example 7: The advice an actuary is providing to a company may affect whether this company will issue dividends or not. However, if the actuary is also a stockholder of this company, then his decision as a professional may directly influence his own financial situation. In this situation, his pecuniary interest may interfere with the proper financial management of the company if he favours the issuance dividends (to his own advantage) rather than advising the company to increase its capital. Such a situation would create a conflict of interest.[29]

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[26] Barreau du Québec, *Guide 2012 sur les conflits d'intérêts*, « *Le devoir de loyauté* », p. 213. However, Rules of Procedure of courts now adopt the approach of retaining one single expert to the Court, unless ordered otherwise. Nonetheless, the expert retained must declare (and act accordingly) to act fairly, in an impartial and independent fashion. Moreover, certain types of clients, such as "institutional" clients like government institutions or insurance companies, cannot expect that accepting one mandate in one situation automatically prevents a firm from acting in other circumstances for another client. Pragmatism must also be taken into account when such clients are involved.

[27] SOA, *The Society of Actuaries Conflict of Interest Policy*.

[28] Institute and Faculty of Actuaries, *Conflict of Interest: A Guide for Actuaries*, p. 6.

[29] Institute and Faculty of Actuaries, *Conflict of Interest: A Guide for Actuaries*, p. 6.

Personal Interests: Personal interests include situations where an actuary, who is involved in any manner in the proceedings, is closely linked to the following: (1) the actuary against whom allegations of professional misconduct have been made; (2) the attorney who represents the actuary in (1); or (3) any member of the actuary's immediate family or firm involved in a disciplinary matter under consideration.[30]

> **Example 8**: The actuary sits on a disciplinary committee and must review whether another actuary, who is his nephew, applied the correct standards of practice. He would be in conflict of interest.[31]

> **Example 9**: In actuarial evidence work, an actuary provides expertise to a party in a dispute against another party. A person involved on one side of the dispute happens to also be a member of the actuary's family. The actuary would be in conflict of interest if he provides advice in this case.

In addition to the above categories, the intrinsic interests of an individual such as personal values, personal faith, ethical principles, or philosophies may come into conflict with what a client or an employer may require the actuary to perform. The same evaluation applies to these interests as it would for other interests.[32]

While an actuary may perform duties for many clients, these duties must not be performed if these clients' interests are involved in simultaneous or concurrent matters. This is so because otherwise it becomes difficult, if not impossible, for the actuary to deliver advice to a given entity without being influenced by considerations important to another party. Incidentally, doing so would also affect the credibility of the actuary.

> **Example 10**: An actuary is hired by a union on behalf of all participants of a pension fund to provide some advice on its valuation, while he is also hired by the employer for advice on other aspects of the employer's business or management**.** The actuary is not in conflict of interest and is not in breach of Rule 5 of the *Rules of Professional Conduct*. In the CIA's opinion, the actuary should disclose his involvement to all parties (Rule 1 and Rule 4). However, if the employer then also asks for advice on the valuation of the pension fund, or any questions related to this pension fund, the actuary would be in conflict of interest under Rule 5 if he accepts the additional assignment. In this case, assumptions made by the actuary to provide recommendations on the valuation of the fund to the union may also be in conflict with the advice he provides about the management of the business if the assumptions used for the valuation may affect the employer's business development or objectives.

There is therefore a need to clearly identify and understand who is the actuary's principal client. This client is the central point around which the analysis of conflict of interest should revolve. This principal client may be actual, potential, or past. The determination of the principal client should extend to other members of the entire firm or business which employs the actuary.

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30 SOA, *Conflict of Interest Guidelines for Members of the Board.*

31 Institute and Faculty of Actuaries, *Conflict of Interest: A Guide for Actuaries,* p. 6.

32 Institute and Faculty of Actuaries, *Conflict of Interest: A Guide for Actuaries,* p. 6.

With respect to previous clients, it is important to distinguish between work done for previous clients and experience acquired while working for a client. The former refers to the information that an actuary was exposed to in the conduct of mandates for a client. These can be confidential documents, business strategies shared or created with the actuary, business development objectives, etc. The use of this information in mandates for other clients would put the actuary into a conflict of interest if the information contributes to favouring the interests of one client over the other. The latter refers to the skills and knowledge that are accumulated by an actuary throughout his years of practice. The use of this knowledge would not put the actuary into a conflict of interest because these skills do not depend on the direct use of previous clients' information.

For the sake of clarity, we should not be mistaken by a conflict of interest and an actuary's experience and expertise. An actuary will develop his experience and expertise by working on many different files, often for clients that may have competing business interests. This may raise a business conflict, which is for the firm or the actuary to resolve: for example, can an actuary work for a beverage company and have another beverage company as a client as well? The former may impose its conditions which would include not representing another beverage company, and the actuary is free to accept them (or not). This is not related to a conflict of interest (as long as the actuary is not involved in the same file and that he does not disclose confidential information from one client to another).

Furthermore, it is possible for an actuary or a firm to have many clients from the same industry who may be in competition with one another. Such situations do not necessarily create a conflict of interest. The actuary will be in conflict of interest if the interests of two or more clients come into conflict, even if these interests do not clash within the same work assignment.[33] Interests can be in conflict with one another even if they emerge from different work assignments in the actuary's firm. This is often the case in large firms, and a challenge **to be resolved by appointing an actuary in charge of making (tough) decisions on conflicts of interest, and by keeping strict records of such decisions**.

> **Example 11**: Alpha is an actuary at Bravo, Charlie & Associates. He tries to recruit a new client, an insurance company. After sending a "conflict check" email, Delta, another actuary at the firm, tells him that he already works as an expert in a pending class action case against this same insurance company launched eight years ago. Since Alpha would provide advice on other aspects of this insurance company's activities, there would be *prima facie* a conflict of interest. However, this is the type of situation which may allow the application of the exceptions to Rule 5. If so, an "ethical wall" should be put in place.

When the issue of conflict of interest is raised in a court case or with the CPC, the person/firm bringing the claim against the actuary must substantiate his allegation with persuasive evidence of the reasonable existence of bias. Then the actuary will have to prove that he has fulfilled all the conditions which allowed him to claim either (1) that there was no conflict of interest, (2) that he is not impaired in his ability to act fairly, or (3) that the conflict was fully disclosed on a timely basis to the client and that the client consented to retain his services nonetheless.[34]

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[33] *R v. Neil*, [2002] 3 S.C.R. 631.

[34] *The Committee on Discipline of the Canadian Institute of Actuaries v. Eugène Boudreault*, Disciplinary Tribunal, District of Montréal, May 19, 1998, p. 36.

(3.3) Qualification of the Prohibition Against Conflicts of Interest: The Exceptions

The second part of Rule 5 is the qualification of the prohibition which requires the respect by the actuary of three criteria for the disclosure of the conflict of interest. If followed by the consent of the client and the direct users, it will allow the actuary to perform professional services despite such conflict.

The three criteria of the exceptions are formulated as follows:

> (a) The member's ability to act fairly is unimpaired.
>
> (b) There has been full and timely disclosure of the conflict to all known present and prospective *direct users*.
>
> (c) All known present and prospective *direct users* have expressly agreed to the performance of the services by the member.

Criterion (a)

The first criterion relates to the actuary's duty to act with independence and in all fairness when providing professional services. This aspect of the actuary's practice has been commented on at length in this document. It only needs a reminder that when conducting a conflict check, this assessment should be done as objectively as possible, and should preferably not lie within the sole scope of the actuary's own judgment.

A compliance officer, an external advisor, or a legal counsel would be in a better position to assess whether the actuary's ability to act fairly is impaired. Besides, there is also an evidentiary counterpart to this first criterion. The more objective the assessment of the ability to act fairly and independently is, and the more documented it is, the more credible the defence against contrary allegations will be.

Criterion (b)

When the actuary has determined that his ability to act fairly will be unimpaired despite the presence of an actual or potential conflict of interest, then he is required, as per the second criterion, to disclose this conflict to all present and prospective direct users. Direct users are defined by the *Rules of Professional of Conduct* to generally refer to a client or employer or any other person retaining the actuary's service or that is able to send or communicate with the actuary about qualifications, work, and recommendations.[35]

To these direct users, the actuary must disclose all material facts concerning the conflict, which include the nature of the interfering influence or relationship, and the nature and extent of the interest.[36] All facts and material elements that may be directly or indirectly relevant to the user's

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35 CIA, *Rules of Professional Conduct*, Definitions "Direct users".

36 CIA, *Rules of Professional Conduct*, Rule 5, Annotation 5-1.

decision on whether to consent (or not) to retaining the actuary's services despite the conflict of interest must be disclosed.[37]

The disclosure must be done in such a way to demonstrate a reasonable effort to compile all conflicting interests emerging from a newly created relationship with a client. However, the actuary is not required to disclose every interest held by his colleagues, business partners, family members, and friends, if he does not have knowledge of these interests and if they have not been revealed during the objective assessment made as per criterion (a).[38] **Wilful blindness is not an excuse: a firm must implement a procedure to reasonably identify the potential conflicts within the firm. (See Part 5 below.)**

Finally, the Annotation 5-1 further specifies that the disclosure required of the actuary *must be made in writing*. Once disclosure has been made to the direct users, it becomes up to them to determine how comfortable they are to proceed within a context of (potential) conflict of interest.

The actuary always has the option to decline to act for a client in a particular mandate if he feels that the consequences of an actual or potential conflict of interest are too great for himself.

Criterion (c)

Once the user is made aware of all the relevant information, it is believed that the actuary has put his client in a position from which he can take an informed decision about whether he wishes to go forward with this actuary. The goal of the disclosure is to provide the actual or prospective user with the opportunity to give an informed consent about this situation.

If the user can tolerate the risks associated with a conflict of interest, this ability to consent allows the user to minimize the trouble caused by the need to switch from one trusted advisor to another because of a conflict of interest that may not necessarily have a great impact on his activities. The user can therefore evaluate the threat that a conflict of interest poses to his interests, in regard to business planning, confidential information, need for independent actuarial advice, and his own involvement in a conflict of interest.

Please note that the client may wish to seek external advice to assess the material presented by the actuary during his disclosure process. The actuary should not make any representation to the client that could be interpreted as preventing or discouraging the client from seeking external advice. This way the client can take a truly informed and independent decision.

It is only once the three criteria are met that the actuary is considered to be released from the prohibition stipulated in Rule 5. Note that the actuary must proceed to the disclosure of new information that makes the conflict of interest evolve so as to renew the consent of the user in light of new events. If the conflict disappears, then the users should be notified. Further, the consent given to one set of circumstances where a conflict of interest arises is not valid to any other sets of circumstances, and as such, the disclosure process should be followed by the actuary and a new consent obtained for each new conflict.

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[37] *Ibid.*

[38] Society of Actuaries, *The Society of Actuaries Conflict of Interest Policy*.

PART 4 RULE 5 AND ITS INTERACTION WITH OTHER RULES

(4.1) Rule 7

The management of a conflict of interest would be simpler if the pertinent *Rules* and duties were limited to those found in Rule 5 of the *Rules of Professional Conduct*. However, a much wider array of considerations is involved. Chief among these is the duty of confidentiality which is provided for in Rule 7. It reads as follows:

> *A member shall not disclose to another party any* confidential information *obtained through a professional assignment performed for a client or employer unless expressly or implicitly authorized to do so by the client or employer, or required to do so under Rule 13, or required to do so by the Committee on Professional Conduct, an Investigation Team, a Disciplinary Tribunal or an Appeal Tribunal regarding any disciplinary matter arising under Section 20 of the Bylaws, or required to do so by law.*[39]

Some helpful guidance can be brought in from the legal profession. The duty of confidentiality as well as the solicitor-client privilege require lawyers to uphold the confidentiality of clients' information above all other duties (except when life and security of a person is at stake, or when authorized by law or by the client). It is believed that a lawyer is in a better position to serve the interest of his client if the client makes him aware of all relevant information relevant to his case. In return, the client benefits from the strong protection of the information shared in such disclosure.

The same rationale underlies the duty of confidentiality stated in Rule 7. While there is no doubt that the actuary is bound to protect the confidentiality of all information obtained from clients that comes to his knowledge, difficulties may arise when the actuary is asked to disclose some aspects of his practice which involve such confidential information. One reason why he would have to do so is, of course, the need to disclose actual or potential conflicts of interest.

The actuary is required by Rule 5 to disclose all material facts to his clients concerning a conflict of interest, including the nature of the influence or relationship and the nature and extent of the interests at stake.[40] A follow-up question then is how far the actuary must go in providing sufficient information to allow the client to make an informed decision as to whether or not to consent to have the actuary perform actuarial services while in the presence of an actual or potential conflict of interest.

> **Example 12**: An actuary provided actuarial calculations to his client (an ex-husband) pertaining to the sharing of a pension fund in a divorce proceeding. Shortly after the acceptance of the divorce settlement, the actuary is hired by the ex-wife to advise in the investment of the pension assets obtained through the divorce settlement. The two domains of practice of the services of the actuary are not related. There is no apparent

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39 CIA, *Rules of Professional Conduct*, Rule 7.

40 CIA, *Rules of Professional Conduct*, Rule 5, Annotation 5-1.

conflict of interest here since the ex-wife knows that the actuary has worked for her ex-husband.[41] But to prevent any issues, the actuary in this situation should consider whether there is anything else to be disclosed to the ex-wife. In doubt, where professional secrecy is involved, the actuary should seek consent before disclosing confidential information.

Example 13: An actuary and his firm have been providing services to an insurance company, to an insurance broker, and to a marketing company. The marketing company was a client of the broker for many years, and eventually got insurance products from the insurance company. The actuary and his firm were also clients of the broker for many years, and through him were recommended to the other two parties to provide actuarial advice.[42] Apart from disclosing to all parties that the actuary is acting for all three at times, and not always simultaneously or concurrently, this actuary should consider if anything else must be disclosed to the parties, knowing that they are in a business relationship together.

It can be understood from the above examples that the disclosure of relationships and interests that may come into conflict must be sufficient for the client to be aware of a potential conflict, without disclosing confidential information. Awareness of the presence of a conflict of interest is sufficient.

Disclosing the identity of the parties in a conflict of interest situation to a potential or current client, and the general nature of the work performed, is sufficient to fulfil the obligation to disclose under Rule 5. Identity of the clients and information so disclosed can be protected by the signing of a confidentiality agreement by the new and current client, and can be included, or not, in an engagement letter or other kind of retainer agreement.

If such disclosure is not possible without revealing confidential information, this is a sign that the exceptions of Rule 5 cannot be applied.

(4.2) Rule 4

Another rule that is related to conflicts of interest pertains to the disclosure of compensation as provided for in Rule 4. The rule relates to the financial independence of the actuary. An actuary who is not financially and organizationally independent may not have the required impartiality to render valid professional services.

Rule 4 states the following:

> *A member shall make full and timely disclosure to a client or employer of the sources of all direct and* indirect compensation *that the member or the member's firm has received or may receive in relation to an assignment for which the member provides* professional services *to that client or employer.*
>
> *Annotation 4-1: "Full and timely disclosure" means disclosure of all material facts concerning direct or* indirect compensation *that may be relevant to a client's*

[41] Complaint filed, but was dismissed by the Committee on Professional Conduct of the CIA (14/08/2007).

[42] Complaint filed, but was dismissed by the Committee on Professional Conduct of the CIA (10/07/2008).

> *or employer's decision, and in sufficient time for the client or employer to make an informed and independent decision. Such disclosure should be made in writing.*
>
> *Annotation 4-2: A member who is not financially and organizationally independent concerning any matter related to the performance of* professional services *should disclose to the client or employer any pertinent relationship which is not apparent in a full and timely manner.*
>
> *Annotation 4-3: A member employed by a firm which operates in multiple sites is subject to the requirement of full and timely disclosure of sources of compensation which the member's firm has received or may receive in relation to* professional services *with respect to a specific assignment for that client, regardless of the location in which such compensation is received.*

Rule 4 requires the actuary to disclose all material facts concerning his own source of compensation for all services performed during the course of his assignment.[43] If his firm or employer receives any other sort of compensation because of this assignment, it must also be disclosed to the client.[44]

Again, the client should be in a position to evaluate if his potential or current actuary has a sufficient level of impartiality to serve his needs. This disclosure should be made in writing.

> **Example 14**: If an actuary provides a recommendation for the use of a new insurance company, he must disclose to his client whether the chosen insurer will pay him a commission in addition to the fees the actuary will charge to the client.[45]

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43 CIA, *Rules of Professional Conduct*, Rule 4, Annotation 4-1.

44 *Ibid.*

45 Generally on remuneration: Institute and Faculty of Actuaries, *Conflict of Interest: A Guide for Actuaries*, pp. 10 and 29.

PART 5 APPROPRIATE MANAGEMENT TO PREVENT OR RECONCILE CONFLICTS OF INTEREST

While the process and requirements for proper disclosure have already been explained, a word of caution is nonetheless necessary. The fact that an actuary is allowed to perform work with the consent of his client despite the presence of an actual or potential conflict demonstrates a certain tolerance toward such a situation.

Consent from the client can waive this prohibition only in certain specific circumstances. Actuaries can rely on proper disclosure as a sufficient and appropriate measure to allow them to do work in the presence of a conflict of interest. However, this assumes that, with the necessary information, clients are able to make a valid and sound decision about their tolerance to conflicts of interest.[46]

A conflict-check procedure must be put in place and undertaken *before* taking on new engagements. A three-part verification system would best protect the actuary and his clients from conflicts of interest. It requires (1) a policy, (2) a supervising individual (or group of individuals), and (3) mandatory compliance with the policy.

(5.1) Policy

This is a document that sets out the firm's conflict of interest policy. This would notably include the nature of the conflicts of interest that the firm wishes to avoid (for the benefit of the protection of the public), the proper assessment channel to follow before taking on new clients, and the accepted measures to be taken for disclosure and conflict reconciliation. This would serve as a reference to the actuary and would supplement the duties set out by the CIA, notably in its *Rules of Professional Conduct*.

(5.2) Supervising individual (or group of individuals)

The supervising individual is the key player in the application of an efficient conflict of interest management policy. This person can be an individual, a committee, or an entire department, depending on the needs of the actuary's employer.[47]

The role of this supervising individual is to be empowered with the necessary moral and functional authority to conduct conflict checks on behalf of the actuaries. This person will evaluate if the actuary's ability to act fairly is unimpaired. If not, then he will be in charge of proposing to the actuary the appropriate measures to handle this conflict according to the specific circumstances of each case.

Most importantly, this individual is in charge, in collaboration with the appropriate administrative bodies, of establishing and updating a register or database of clients with

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[46] The Actuary, "*Conflicts of Interest*", URL: http://www.theactuary.com/archive/old-articles/part-1/conflicts-of-interest/.

[47] For the purpose of the present text, the Guide will be referring to an "individual".

information pertaining to the mandates which are being performed by the firm. Through this register, the supervising individual will be able to conduct the proper verification in regard to professional interests. Conflicts with pecuniary and personal interests that may affect the professional abilities of the actuary will still rely on disclosure by the actuary himself.

Also, the fact that conflict checks are done internally also ensures a better protection of clients' confidential information.

(5.3) Mandatory compliance with the policy

For the policy and the supervising individual to be credible and useful, the actuary must have an obligation to comply with the provisions set out in the policy and with the authority of the supervising individual. This is so because too many professional or personal interests can affect the objective assessment of the actuary's own impartiality. Advancement objectives and remuneration are the two chief factors that may drive an actuary to consider his abilities unaffected in order to keep his clients.

Mandatory compliance therefore ensures that conflict checks are conducted in a supervised, objective, and thorough manner. Additionally, mandatory compliance means that no actuary can avoid the scrutiny of the supervising individual, so that the business conducted by each practitioner is legitimate in regard to the employer's policy. In short, the actuary must abide not only by the process set out in the policy, but also by the conclusions of the supervising individual.

If an actuary is permitted to do work despite the existence of an actual or potential conflict of interest, appropriate measures to protect the client's interests and confidentiality should be taken at the onset of the work. This avoids the risk of disengagement if a conflict arises while the mandate is being carried out. Such measures include ethical walls and separation of teams that work for conflicting clients.[48]

Finally, it may be useful to the actuary working under an actual or potential conflict of interest to submit his advice to a peer review process, either internally or externally, to make sure that it is unbiased and objective.[49] This process must not involve reviewers that would be in conflict with the reviewed actuary or with the information reviewed.

(5.4) Smaller firms and sole practitioners

Smaller firms may encounter some organizational difficulties while putting in place the supervision of the application of a mandatory policy on conflicts of interest. However, the protection of the public requires that it be implemented and applied in all actuarial firms, including for sole practitioners.

Fortunately, and unfortunately as well, smaller firms and sole practitioners typically have a greater knowledge of each of the files they have to handle. This means that it facilitates the

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[48] See appendix B for a summary description of these measures.

[49] Institute and Faculty of Actuaries, *Conflict of Interest: A Guide for Actuaries*, p. 22.

assessment of conflicts of interest. However, this also means that it could be more difficult for the actuary in a smaller firm or in a solo practice to put efficient measures to protect themselves from conflicts of interest. They must take into consideration their particular situation in that regard. Confidential information can too easily be shared, and as such, the impartiality of the practitioner may be jeopardized from the get-go. Thus, it can often be impossible to implement true separation of teams or ethical walls, given the shared knowledge of the files.

It is nonetheless crucial to implement resources to facilitate the management of conflicts of interest. For instance, smaller firms should appoint an actuary who will be specifically trained to help his other colleagues handle conflicts of interest. Sole practitioners should get into some type of relationship with another actuary to have the latter advise if the former is in a situation of conflict, or simply avoid it by refusing to act.

PART 6 CONFLICTS OF INTEREST IN THE PUBLIC SECTOR

Other duties may be involved when dealing with a conflict of interest, notably the one of public servants which requires them to act in the best interest of the public.

> **Example 15**: An actuary works for a federal government agency and regularly provides actuarial advice to various ministers and deputy ministers. He was asked to provide advice on whether there was proper capitalization of a fund that supports provinces in their retail sales of agricultural products. The actuary recommended an additional contribution from the government to this fund to ensure that it would cover the risks of provincial deficits. Otherwise, the federal government would be vulnerable to unforeseen compensation for these deficits. The minister in charge of this fund decided at first not to increase capitalization. The actuary is of the opinion that this decision is against the public interest, which he owes a duty to uphold.

In the above example, is there a conflict of interest between the duty of confidentiality of the information to which the actuary had access and an alleged duty to publicly disclose a governmental decision that could have adversely affected the public interest? Can an actuary become a whistle-blower, and if so, in what circumstances?

The CIA *Rules of Professional Conduct* do not provide exhaustive guidance on this topic. The objective of the *Rules* is to protect the public. As such, the protection of the public interest does not necessarily include whistle-blowing because there is no duty to protect the whistle-blowing from the larger political and social decisions made by government institutions in which actuaries may be involved.

In Example 15, if the actuary has properly informed the minister of the relevant risks related to the decision to make, and that no law or regulation is contravened, the minister (i.e., the client) remains free to follow the actuary's advice. The actuary's role remains to make his recommendations based on his experience and expertise, and the applicable standards of practice, not to transform himself into the rule-maker.

The situation related to whistle-blowing may not correspond to the typical situation of conflict of interest where an actuary may be in a position to prefer one client over another. The whistle-blowing relates more to a situation where what is requested from an actuary may put him in a situation; for example, to prefer his employer's interest over the public interest.

The International Actuarial Association (IAA) published a document proposing guidelines on how to deal with public disclosure. What they call "disclosure to a third party" encompasses disclosure by actuaries to oversight organizations or other competent organizations about actual or future infringement of laws or rules, or anticipation of such behaviour.[50] The IAA recommends the actuaries ensure that their suspicions of an actual or potential infringement of a professional duty, rule, or law, are reasonable.[51] Reasonable suspicion should therefore be based on sufficient and

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[50] IAA, *Position Paper on Whistle-blowing Requirements*, April 2009.

[51] *Ibid.*

objective proof. It is mentioned that minimal proof should trigger the inquiry process of the competent organizations which received the information. It is important to note that these guidelines refer to an actual or future infringement of (existing) laws or rules. This is quite different from the situation where an actuary would recommend the adoption of an actuarial position with which the "regulator" disagrees in the choice of the norm to be adopted.

The same comments may be transposed to the situation of an actuary making a recommendation to a company. The actuary should not be considered as being in a position of conflict of interest if the company he is advising chooses a lawful path of action without following the actuary's recommendations.

PART 7 CONFLICTS OF INTEREST IN ACTIVITIES OUTSIDE ACTUARIAL SERVICES

The practice of an actuary may bring him to use his expertise far beyond the mere provision of professional services. His experience, skills, and judgment can be highly valued by a variety of other organizations, including professional committees and associations and boards of non-profit organizations. Part 7 reviews the principles applicable to such contexts.

The Standard

Many actuaries get involved, on a volunteer basis, in a committee of the CIA or of a charitable association, or as a Board member of a non-profit organization. The activities in which they are involved in such circumstances, or the decisions they are asked to take, may impact some of their clients' interests. In this case, the principles discussed in Parts 1 to 6 will apply.

The American Academy of Actuaries' Code of Professional Conduct has a similar provision to Rule 5 to deal with conflicts of interest.[52] In application to conflicts of interest in the context of volunteer work, the Academy states the following:

> Precept 7, although it did not specifically consider volunteer work when it was created, can be interpreted to mean that when a volunteer performs work for the Academy, the Academy may be considered the Principal whose interests could be affected by any conflict of interest.[53]

The CIA's Rule 5 states that it applies to the performance of "actuarial services". Its application should also extend to volunteer work, since the Rule does not specifically exclude such kind of work, just like its American counterpart. The CIA proposes that Rule 5 applies in contexts where another party relies on the actuary's judgment and objectivity, as an actuarial practitioner, for the proper conduct of its own activities.

As we have seen, the ability to act fairly must be preserved. As such, any bias or reasonable apprehension of bias in the execution of a mandate that is given to the actuary threatens this fairness. The actuary must evaluate whether he has any biases by examining his ability to remain objective and impartial when he will be asked to provide opinions and input. The interests at stake must therefore be material enough to actually or potentially affect the actuary's judgment.[54]

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[52] American Academy of Actuaries, *Code of Professional Conduct*, p. 3: "An Actuary shall not knowingly perform Actuarial Services involving an actual or potential conflict of interest unless:

a. the Actuary's ability to act fairly is unimpaired;
b. there has been disclosure of the conflict to all present and known prospective Principals whose interests would be affected by the conflict; and
c. all such Principals have expressly agreed to the performance of the Actuarial Services by the Actuary."

[53] https://www.actuary.org/sites/default/files/files/publications/COI_Paper_012811.pdf

[54] Society of Actuaries, *The Society of Actuaries Conflict of Interest Policy.*

Such evaluation will in turn protect the integrity and reputation of the organization or committee for which the actuary is involved.[55]

That being said, administrators of the organization towards which an actuary may be in conflict can agree on a certain degree of tolerance to this situation. Since they seek participants who have a certain level of expertise and experience, they must also expect that their professional practice may conflict with their activities. Refusing to adopt such tolerance, when possible, risks preventing the recruitment of the desired candidates: few actuaries would agree to compromise their clientele for volunteer work.

As Applied to CIA Committees

Given that CIA committees owe duties towards the general population, reliance on the input of its volunteers is crucial to achieve their mission of providing information and analysis to actors in public policy. If a volunteer is involved in a conflict of interest that prevents the achievement of this mission, the existence of any biases, even potential, requires him to disclose it to the appropriate members of the committee.[56]

An actuary sitting on a disciplinary committee is required to have the utmost objectivity and independence. The existence of mere extended family ties to an actuary under the committee's scrutiny is sufficient for the impartiality of this member to be doubted. A disciplinary committee requires a higher level of impartiality than a committee in charge of organizing a conference or training.

Here are some examples of situations where the actuary could be required to disclose a conflict:

> **Example 16**: An actuary is a member of a CIA committee that determines standards of practice. He is also an employee of a firm that has established some of its own sets of assumptions and practices. This firm also set out the views on standards, norms, and practices that its employees must abide by. As a result, the actuary who volunteers on the CIA committee may feel constrained to support only new standards that align with those of his firm. More generally, the actuary involved in a process of revision or adoption of standards may be biased by the desire to uphold practices that are to the advantage of his clients, and thus advocate against those that may be detrimental to them.
>
> **Example 17**: An actuary is a member of a CIA committee that determines standards of practice. In his practice, the actuary develops a new standard for a particular set of circumstances or interprets a standard in a new way. To be allowed to apply this new standard or new interpretation, he needs the CIA to recognize it. As a member of the CIA committee, the actuary would have a bias during the examination of this new standard/interpretation because it would directly benefit the actuary's practice if it is recognized. He does not have the required impartiality to objectively assess the merit of the proposed standard/interpretation.

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55 CIA, *Conflict of Interest Guidelines for Councils, Committees and Task Forces*, document 206021.

56 American Academy of Actuaries, *Conflicts When Doing Volunteer Work*, 2011, p. 2.

Example 18: An actuary is involved in the CIA International Affairs Council. Part of his mandate is to provide visibility to the Institute abroad. One way to do so is to support the nomination of Canadian members for awards granted by other actuarial organizations. This actuary is also involved in the Nominations Committee of the International Actuarial Association. As such, he participates in the process of nominations of candidates from around the world for IAA prizes. Thus, his volunteering mandate at the CIA conflicts with his duties at the IAA, because there is an obvious potential bias in favour of accepting the nomination of Canadian candidates for IAA awards.

Example 19: An actuary sitting on the Committee on Professional Conduct is required to have the utmost objectivity and independence. Even the existence of mere extended family ties to an actuary under the committee's scrutiny is sufficient for the impartiality of this member to be questioned. The CPC requires a higher level of impartiality than other CIA committees.

Example 20: A CIA committee seeks to present recommendations on proposed legislation about mandatory contributions to pension funds. An actuary sitting on this group has extensive expertise on capitalization of pension funds, which also means that many of his clients—employers contributing to pension funds—would be affected by an amended legislation, positively or not. In this case, disclosure of the conflict is necessary and then consent of the committee must be obtained for the actuary to continue his work on the project.[57]

As Applied to Non-profit Organizations

Similar to the applicable rule in the case of CIA committees, volunteer work for non-profit organizations and the practice of the actuary must not conflict in a way that would either prevent the achievement of the organization's mission and duties towards its beneficiaries, or the duties owed by the actuary towards his clients or firm. Again, the actuary should use the standard of the reasonable apprehension of bias to determine whether he must disclose any conflict. The same test will also assist the organization in determining its tolerance to the existence of such conflict while the actuary performs his work, and ultimately, the measures that should be adopted to minimize the effects of the conflict on their mission.

Here are some examples of situations where the actuary would be required to disclose his conflict:

Example 21: An actuary is a member of the Board of a charitable organization. At some point, the executive members of the organization present service offers received from many actuarial firms, one of which is from the actuary's firm. There is a reasonable apprehension that the actuary will have a favourable bias toward his own firm and/or an unfavourable bias against other firms. There is therefore an obligation on the part of the actuary to disclose his relationship with the other firms to the other members of the Board. To reconcile the conflict, the actuary could be asked to recuse from participating and voting on this decision or to restrict his input to factual information.

[57] American Academy of Actuaries, *Conflicts of Interest When Doing Volunteer Work*, 2011, p. 2.

Example 22: An actuary sitting on the Board of a charitable organization becomes aware of the investment strategy of the funds collected. He learns that the organization will pull out its considerable number of shares from the main investment fund it was investing into. This fund also happens to be a client of the firm for which the actuary works. The actuary could be tempted to use this information to alert his client of the possible retrieval by the charitable organization. There is a conflict of interest here because of the information presented to the actuary, which may alter the fairness of his support to the organization's decision to pull out its shares from the fund.

Measures of Reconciliation

After disclosure by the volunteer of a potential conflict of interest and a decision by the administrator in charge that there is such conflict to remedy, possible measures of reconciliation include:[58]

- **Obligation to disclose to the immediate participants to the decision**:
    - Disclosure to the members of the committee with whom the actuary works. They can then consent to the actuary's continued input and critically evaluate it in the appropriate context.
- **Obligation to disclose to the audience targeted by the decision**:
    - Public disclosure of the bias, written or oral, to the people likely interested in the work of the committee or the organization.
- **Recusal, partial or complete**:
    - Partial recusal of the actuary from participating in a particular project, like voting on an issue. He can still assist in the debate and provide factual information.
    - Complete recusal: the actuary must recuse himself from participating in the meetings in which his interests conflict with those of the committee or the organization.
- **Replacement of the individual**:
    - The actuary must step down from his role within the committee or the organization.

To decide on the severity of the measure to adopt, here are some factors to consider:

- Sensitivity of the information accessed by the volunteer;
- Officiality of the work of the volunteer (publicly transmitted or published?);

[58] Society of Actuaries, *The Society of Actuaries Conflict of Interest Policy.*

- Position of leadership of the volunteer; and
- Internal rules and precedents of the organization.

PART 8 FINAL WORDS

Failure to respect Rule 5 can lead the CIA to initiate a formal disciplinary procedure against the actuary. This process can ultimately lead to sanctions such as a reprimand, a suspension, or an expulsion from the Institute. A fine may also be imposed.[59]

Given that each conflict is unique and rests on its specific set of facts, additional guidance may be necessary to assist the actuary in the management of his conflicts. A list of resources to consult is found in appendix D.

The present document has emphasized some key elements related to the definition and management of conflicts of interest. As a conclusion, it is appropriate to summarize them:

(a) As per the provisions found in the rules on conflicts of interest of other actuarial associations, the CIA's Rule 5 conveys the same principles: impartiality, independence, and transparency are required from the actuary, all of this in the public interest;

(b) Clearly, the wording of Rule 5 supposes that there are situations which *per se* constitute a conflict of interest and which cannot be "saved" by the exceptions ("unless");

(c) In Canada, the CIA addresses the independence and impartiality required of the actuary by referring to the concept of "fairness" in Rule 5 of the *Rules of Professional Conduct*. It requires the actuary to ensure that his ability to act *fairly* in the performance of professional services is unimpaired when confronted by actual or potential conflicts of interest;

(d) In sum, to identify a conflict of interest, the actuary must evaluate whether personal or professional interests interfere with the interests of one or more clients so as to make it more difficult for the actuary to perform actuarial services with impartiality, without bias, and with independence.[60] This includes a perception of such by a reasonably informed person;

(e) Finally, in order to fall under the exceptions under Rule 5, the annotation 5-1 further specifies that the disclosure required of the actuary *should be made in writing*. Once disclosure has been made to the direct users, it becomes up to them to determine how comfortable they are to proceed within a context of (potential) conflict of interest;

(f) A conflict-check procedure must be put in place and undertaken *before* taking on new engagements. A three-part verification system would protect the actuary and his clients from conflicts of interest. It requires (1) a policy, (2) a supervising

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59 CIA, *By-Laws*, section 20.08.

60 Institute and Faculty of Actuaries, *Conflict of Interest: A Guide for Actuaries*, p. 5.

individual (or group of individuals), and (3) mandatory compliance with the policy;

(g) A compliance officer, an external advisor, or a legal counsel would be in a better position to assess whether the actuary's ability to act fairly is impaired. Besides, there is also an evidentiary counterpart to this first criterion. The more objective the assessment of the ability to act fairly and independently is, and the more documented it is, the more credible the defence against contrary allegations will be;

(h) Wilful blindness is not an excuse: A firm must implement a conflict-check procedure to reasonably identify the potential conflicts within the firm. (See Part 5 above.)

APPENDIX A: RULE 5

Conflict of Interest

Rule 5

A member shall not perform *professional services* involving an actual or potential conflict of interest unless:

(a) the member's ability to act fairly is unimpaired,

(b) there has been full and timely disclosure of the conflict to all known present and prospective *direct users*, and

(c) all known present and prospective *direct users* have expressly agreed to the performance of the services by the member.

Annotation 5-1

"Full and timely disclosure" means disclosure of all material facts concerning the conflict (including the nature of the influence or relationship and the nature and extent of the interest) that may be relevant to a *direct user*'s decision, and in sufficient time for the *direct user* to make an informed and independent decision. Such disclosure should be made in writing.

APPENDIX B: Ethical Walls and Separation of Teams

Objective

The objective for the implementation of an ethical wall is to ensure the complete confidentiality of a mandate by means of separation, including the use of computerized separation.

The professional responsible for the file will limit the number of people who have access to the file, including computerized records, in order to maintain confidentiality of the mandate.

The ethical wall creates a separation:

- Within the document management software, access to the computerized documents relating to the mandate will be restricted ; and

- Within the accountancy software, the professional will be prevented from posting his time in the file under ethical walls.

As such, in addition to prohibiting discussions with the conflicted members of the firm on a particular matter, the practical effect of these ethical walls is that a search launched in the document management software of the firm will produce no result for the professional or administrative staff who has not been granted access.

Though the ethical walls will isolate the professional, it will however not extend to some members of the administrative staff. For instance, the accounting department can issue invoices pertaining to the mandate. In addition, to ensure in-house compliance, the department of conflicts and file opening may have access to data and documents relating to the mandate.

In-house procedure for file opening

The establishment of an ethical wall is carried out when the file is opened or immediately after, as the case may be:

- The timekeeper responsible for the mandate provides a list of names of persons intended to access the computerized records to the department responsible for opening files;

- When a file is open, the department responsible for opening files confirms by means of an email sent to the responsible timekeeper and his assistant as well as all persons and their assistants having access to the mandate;

- An ethical wall may be required on an already open mandate; the same procedure applies with the necessary adjustments.

Management of the mandate

All addition or removal of persons within the ethical wall will be carried out after the approval of the professional responsible for the mandate. An email is sent to him requesting his written consent.

The Institute and Faculty of Actuaries describes the separation of teams on pages 16–17 of its publication *Conflicts of Interest: A Guide for Actuaries*, November 2012:

> *"**Separation of teams**. Where an organisation has engagements with two clients with competing interests, it may be possible to reconcile a conflict by ensuring that the parties are advised by different client teams within the organisation. In some cases, the more mechanical work might still be undertaken for both clients by a common team (this is what is sometimes referred to as the "Y model").*
>
> *In pensions work, it will be important to consider whether the role of those in the common team means that any or all of them are subject to the specific restrictions and requirements set out in sections 5 and 6 of APS P1. In particular, it would normally be appropriate for members of a common team to be included within a conflicts management plan, and in the case of advice on behalf of one firm to both the trustees and employer this is an explicit requirement of 5.6 of APS P1. In general, the "Y model" must be used with care, and it may not be an appropriate means of managing a conflict."*

APPENDIX C: List of Examples by Fields of Practice

One of the main difficulties in providing guidelines to manage conflicts of interest is the variety of contexts in which they may arise. Such conflicts are highly dependent on their facts, and the way actuaries will handle them will vary according to the reality of their own field of practice. To acknowledge the polymorphism of conflicts of interest, the authors will refer in this guide to examples taken from a variety of fields of expertise. We hope that by doing so, this guide will highlight that regardless of the domain of practice, assistance is available to handle most situations where a conflict of interest may arise.

They have been classified here by fields of practice, but they are used indistinctively of such field throughout the guide:

Pension Funds

Example 2: A pension fund was created with financial contributions by the government, the employer, and the union. The actuary in this case is asked to represent all three of these parties. The employer's and the government's instructions are to make the minimum contributions possible to the fund. The union's interest is to get a valuation policy that will seek as much contribution from the government and the employer as possible. The actuary is hence placed in a situation of conflict of interest.

Example 3: A firm has to be hired by a pension fund committee to prepare tender offers to administer the pension fund to various companies. The actuary in charge of providing actuarial valuations and recommendations suggests three companies. However, the actuary does not disclose to the pension fund committee that between 1.5% to 2% commissions would be paid to him based on the amounts transferred to these insurance companies. This actuary has placed himself in a situation of conflict of interest.

Example 10: An actuary is hired by a union on behalf of all participants of a pension fund to provide some advice on its valuation, while he is also hired by the employer for advice on other aspects of the employer's business or management. The actuary is not in conflict of interest and is not in breach of Rule 5 of the Rules of Professional Conduct. In the CIA's opinion, the actuary should disclose his involvement to all parties (Rule 1 and Rule 4). However, if the employer then also asks for advice on the valuation of the pension fund, or any questions related to this pension fund, the actuary would be in conflict of interest under Rule 5 if he accepts the additional assignment. In this case, assumptions made by the actuary to provide recommendations on the valuation of the fund to the union may also be in conflict with the advice he provides about the management of the business if the assumptions used for the valuation may affect the employer's business development or objectives.

Actuarial Evidence

Example 5: A conflict of interest may arise if one actuary in a firm provides actuarial evidence expertise to one party in a litigation, while another actuary from the same firm provides a contradicting expertise to the second party. Here, the firm could be in conflict of interest between

the two parties. Generally, the clients' interests must extend beyond one's book of business to include all clients of the organization for which the actuary works.

Example 9: In actuarial evidence work, an actuary provides expertise to a party in a dispute against another party. A person involved on one side of the dispute happens to also be a member of the actuary's family. The actuary would be in conflict of interest if he provides advice in this case.

Example 11: Alpha is an actuary at Bravo, Charlie & Associates. He tries to recruit a new client, an insurance company. After sending a "conflict check" email, Delta, another actuary at the firm, tells him that he already works as an expert in a pending class action case against this same insurance company launched eight years ago. Since Alpha would provide advice on other aspects of this insurance company's activities, there would be *prima facie* a conflict of interest. However, this is the type of situation which may allow the application of the exceptions to Rule 5. If so, an "ethical wall" should be put in place.

Insurance and Reinsurance

Example 4: An actuary and his firm are hired by two potential buyers to evaluate an insurance company that has been put up for sale. While carrying out this mandate, the actuary discovers material information that will affect the purchase price ultimately offered by one of the two buyers. Should the actuary use this information in his assessment? And if so, to which of the buyers should the actuary disclose this information, if at all? In this situation, the actuary would not be in conflict if the information is used in the objective assessment of the value of the company, if it is used in both evaluations, and if it is disclosed to both parties.

Example 13: An actuary and his firm have been providing services to an insurance company, to an insurance broker, and to a marketing company. The marketing company was a client of the broker for many years, and eventually got insurance products from the insurance company. The actuary and his firm were also clients of the broker for many years, and through him were recommended to the other two parties to provide actuarial advice. Apart from disclosing to all parties that the actuary is acting for all three at times, and not always simultaneously or concurrently, this actuary should consider if anything else must be disclosed to the parties, knowing that they are in a business relationship together.

Example 14: If an actuary provides a recommendation for the use of a new insurance company, he must disclose to his client whether the chosen insurer will pay him a commission in addition to the fees the actuary will charge to the client.

Investment Management

Example 1: An actuary delivers professional advice to a company seeking to sell assets within an asset-liability matching strategy, while this actuary also serves a potential buyer of these assets in other companies' risk management activities. There is at least a potential conflict of interest in this situation because the actuary may be reasonably perceived as using the information he has obtained about the seller to orient the strategy of the buyer, in a form of "insider" knowledge.

Example 6: An actuary is asked to advise a mutual fund in which he or a member of his family invests. Doing so would create a conflict of interest. A reasonably informed third party may perceive that the actuary's advice is tailored to best suit his family's interests instead of the fund itself in its global perspective.

Example 7: The advice an actuary is providing to a company may affect whether this company will issue dividends or not. However, if the actuary is also a stockholder of this company, then his decision as a professional may directly influence his own financial situation. In this situation, his pecuniary interest may interfere with the proper financial management of the company if he favours the issuance dividends (to his own advantage) rather than advising the company to increase its capital. Such a situation would create a conflict of interest.

Example 12: An actuary provided actuarial calculations to his client (an ex-husband) pertaining to the sharing of a pension fund in a divorce proceeding. Shortly after the acceptance of the divorce settlement, the actuary is hired by the ex-wife to advise in the investment of the pension assets obtained through the divorce settlement. The two domains of practice of the services of the actuary are not related. There is no apparent conflict of interest here since the ex-wife knows that the actuary has worked for her ex-husband. But to prevent any issues, the actuary in this situation should consider whether there is anything else to be disclosed to the ex-wife. In doubt, where professional secrecy is involved, the actuary should seek consent before disclosing confidential information.

Example 16: An actuary is a member of a CIA committee that determines standards of practice. He is also an employee of a firm that has established some of its own sets of assumptions and practices. This firm also set out the views on standards, norms, and practices that its employees must abide by. As a result, the actuary who volunteers on the CIA committee may feel constrained to support only new standards that align with those of his firm. More generally, the actuary involved in a process of revision or adoption of standards may be biased by the desire to uphold practices that are to the advantage of his clients, and thus advocate against those that may be detrimental to them.

Public Service

Example 8: The actuary sits on a disciplinary committee and must review whether another actuary, who is his nephew, applied the correct standards of practice. He would be in conflict of interest.

Example 15: An actuary works for a federal government agency and regularly provides actuarial advice to various ministers and deputy ministers. He was asked to provide advice on whether there was proper capitalization of a fund that supports provinces in their retail sales of agricultural products. The actuary recommended an additional contribution from the government to this fund to ensure that it would cover the risks of provincial deficits. Otherwise, the federal government would be vulnerable to unforeseen compensation for these deficits. The minister in charge of this fund decided at first not to increase capitalization. The actuary is of the opinion that this decision is against the public interest, which he owes a duty to uphold.

Volunteer Work

Example 17: An actuary is a member of a CIA committee that determines standards of practice. In his practice, the actuary develops a new standard for a particular set of circumstances or interprets a standard in a new way. To be allowed to apply this new standard or new interpretation, he needs the CIA to recognize it. As a member of the CIA committee, the actuary would have a bias during the examination of this new standard/interpretation because it would directly benefit the actuary's practice if it is recognized. He does not have the required impartiality to objectively assess the merit of the proposed standard/interpretation.

Example 18: An actuary is involved in the CIA International Affairs Council. Part of his mandate is to provide visibility to the Institute abroad. One way to do so is to support the nomination of Canadian members for awards granted by other actuarial organizations. This actuary is also involved in the Nominations Committee of the International Actuarial Association. As such, he participates in the process of nominations of candidates from around the world for IAA prizes. Thus, his volunteering mandate at the CIA conflicts with his duties at the IAA, because there is an obvious potential bias in favour of accepting the nomination of Canadian candidates for IAA awards.

Example 19: An actuary sitting on the Committee on Professional Conduct is required to have the utmost objectivity and independence. Even the existence of mere extended family ties to an actuary under the committee's scrutiny is sufficient for the impartiality of this member to be questioned. The CPC requires a higher level of impartiality than other CIA committees.

Example 20: A CIA committee seeks to present recommendations on proposed legislation about mandatory contributions to pension funds. An actuary sitting on this group has extensive expertise on capitalization of pension funds, which also means that many of his clients—employers contributing to pension funds—would be affected by an amended legislation, positively or not. In this case, disclosure of the conflict is necessary and then consent of the committee must be obtained for the actuary to continue his work on the project.

Example 21: An actuary is a member of the Board of a charitable organization. At some point, the executive members of the organization present service offers received from many actuarial firms, one of which is from the actuary's firm. There is a reasonable apprehension that the actuary will have a favourable bias toward his own firm and/or an unfavourable bias against other firms. There is therefore an obligation on the part of the actuary to disclose his relationship with the other firms to the other members of the Board. To reconcile the conflict, the actuary could be asked to recuse from participating and voting on this decision or to restrict his input to factual information.

Example 22: An actuary sitting on the Board of a charitable organization becomes aware of the investment strategy of the funds collected. He learns that the organization will pull out its considerable number of shares from the main investment fund it was investing into. This fund also happens to be a client of the firm for which the actuary works. The actuary could be tempted to use this information to alert his client of the possible retrieval by the charitable organization. There is a conflict of interest here because of the information presented to the actuary, which may alter the fairness of his support to the organization's decision to pull out its shares from the fund.

APPENDIX D: List of Resources to Consult for Further Assistance

Michel Simard
CIA Head Office
Canadian Institute of Actuaries
360 Albert Street, Suite 1740
Ottawa, Ontario K1R 7X7
Tel.: 613-236-8196 ext. 108
Fax: 613-233-4552
E-mail: **michel.simard@cia-ica.ca**