

NOTICE TO THE PROFESSION: CONFLICTS OF INTEREST - ACTING AS A POWER OF ATTORNEY OR ESTATE EXECUTOR

About the FP Canada Standards Council™ and Conduct Review Panel:

A division of FP Canada™, the FP Canada Standards Council (the “Standards Council”) establishes and enforces financial planning standards, sets the certification requirements for professional financial planners and develops and delivers certification examinations. The Standards Council ensures FP Canada Certificants (CFP® professionals and QAFP™ professionals) meet appropriate standards of competence and professionalism through rigorous requirements of education, examination, experience and ethics.

An independent panel of the Standards Council, the Conduct Review Panel (the “CRP”), is composed of CFP professionals, a licensed financial planner from the province of Québec and a public member. The CRP’s purpose is to support the fulfilment of the Standards Council’s professional-oversight mandate by reviewing staff reports and determining the appropriate disposition of complaints, in the public interest.

Notice to FP Canada Certificants:

The purpose of this notice is to: remind all FP Canada Certificants of their obligations when acting as a financial planner and a Power of Attorney (“POA”) or Estate Executor (“Executor”) concurrently; and provide guidance on how to identify and address conflicts of interest.

What is a Conflict of Interest?

A conflict of interest exists where the duties a Certificant owes to their clients (including the Duty of Loyalty set out in the Code of Ethics) are in conflict or impacted by the duties or loyalties owed by the Certificant either to a third party or with the Certificant’s own interests [See the Guidance for [Rules 7 and 8](#)].

The Certificant must place their client's interest first at all times. In situations where a conflict of interest exists, the Certificant's relationship with the client may interfere with the Certificant's ability to provide objective advice to the client and/or put the client's interests first, and ahead of the Certificant's own interests. For example, a conflict of interest may exist where the client is a friend, spouse, family member, business partner, debtor or investor. In such circumstances, the personal or financial interest impacts the Certificant's ability to provide objective advice to the client and/or put the client's interests first. When this arises, as a matter of best practice, Certificants should decline to enter into a professional relationship with a client where there is an existing conflict of interest or where a conflict of interest is likely to materialize that cannot be resolved in the client's favour [\[See Guidance for Rule 7\]](#).

What is a Conflict of Interest?

Acting as a financial planner and a POA or Executor, at the same time, puts you in a conflict of interest position because the duties or loyalties owed by you to the client/estate may be in conflict (or in a perceived conflict) with your own interests. In particular, when you take on these roles, you are in a position whereby you have the power, authority and discretion to prefer your own interests over the interests of the client/estate. You would have the ability to make decisions to invest the client's or estate's money in a manner which benefits you, but which might not be in their best interest. For example, an Executor has the authority to manage the estate, including the allocation of estate property to beneficiaries and to third parties with financial claims against the estate. The power to challenge and pay expenses claimed against the estate creates a conflict of interest for the financial planner who may be seeking compensation for services provided to the client while also determining which expenses are paid by the estate.

How to Deal with a Conflict of Interest

Where there is an existing conflict of interest, a Certificant is prohibited from providing services to a client, **unless**, after full written disclosure of the existing conflict of interest, the client makes the informed decision to engage the Certificant notwithstanding the conflict [\[See Rule 8a\]](#). If a conflict of interest arises during the course of the planner/client relationship, the Certificant must immediately advise the client, in writing, of the conflict of interest and cease providing services, unless and until the client makes the informed decision to continue with the engagement [\[See Rule 8b\]](#). In both circumstances, consent by the client must be in writing and include a description of the conflict and confirmation of the client's decision to proceed. For example, this situation might arise where the Certificant enters into a business relationship with an existing client. In this case, the Certificant is required to advise the client, in writing, of the conflict of interest and stop providing services

to the client, unless and until the client makes the informed decision to continue with the engagement.

An “informed decision” is a decision based on full disclosure of all information known to the Certificant that the client requires in order to make the decision whether or not to engage (or continue to engage) the Certificant. A general or generic statement that there may be a conflict is not sufficient to satisfy the disclosure/notice obligation. A Certificant must advise the client, in writing, of the conflict and explain the conflict and its potential impact on the professional relationship. [See Guidance for [Rule 8](#)] For example, simply telling the client “there is a conflict of interest” is not sufficient. The specific conflict of interest must be disclosed in addition to the impact (or potential impact) on the planner/client relationship. It is this level of transparency and detail that allows a client to make an informed decision to continue in the engagement.

Recent Decision and Guidance

In February 2018, an FP Canada Hearing Panel noted that CFP professionals “occupy a position of trust with their clients, particularly in relation to financial matters. Taking advantage of your position as executor... is not allowed.” In addition to imposing costs, the Hearing Panel permanently banned the Certificant from seeking renewal or reinstatement of his CFP certification and from using the CFP trademarks. The Hearing Panel’s decision was upheld on appeal.

In another matter, the CRP provided Guidance and Advice to a CFP professional who, in his capacity as a POA: 1) authorized the changing of the beneficiary on his mother’s registered retirement income fund (RRIF) account from the estate to himself and 2) opened a joint account with his mother wherein the proceeds from the redemption of her individual non-registered account were deposited. The Certificant was provided guidance that a POA is prohibited from making any testamentary changes, and that by opening a joint account and receiving redemptions, this could be construed as preferring his interests over the interests of others. The CRP was of the view that this conduct raised concerns about the Integrity and Professionalism and may reflect poorly on the financial planning profession. Given the mitigating factors in this particular matter, including the fact that there was no misappropriation, the CRP decided not to refer this matter to a Hearing Panel.

Standards of Professional Responsibility

There are several Principles of the Code of Ethics and Rules of Conduct in the *FP Canada Standards Council Standards of Professional Responsibility* (the “Standards of Professional Responsibility”) which must be considered when taking on a role as a POA or Executor:

- [Principle 1: Duty of Loyalty to the Client](#): The Duty of Loyalty encompasses:

- The duty to act in the client's interest by placing the client's interests first. Placing the client's interests first requires the Certificant place the client's interests ahead of their own and all other interests;
 - The obligation to disclose conflicts of interest and to mitigate conflicts in the client's favour; and
 - The duty to act with the care, skill and diligence of a prudent professional.
- [Principle 2: Integrity](#): A Certificant shall always act with integrity. Integrity means rigorous adherence to the moral rules and duties imposed by honesty and justice. Integrity requires the Certificant to observe both the letter and the spirit of the Code of Ethics.
 - [Principle 8: Professionalism](#): A Certificant shall act in a manner reflecting positively upon the profession. Professionalism refers to conduct that inspires confidence and respect from clients and the community, and embodies all of the other principles within the Code of Ethics.
 - [Rule 2](#): A Certificant shall not engage in any conduct that reflects adversely on their integrity or fitness as a Certificant, the certification marks or the profession.
 - [Rule 6](#): This Rule addresses the responsibilities a Certificant has when they hold funds and/or property of a client, including when they act as a POA, Executor or Estate Trustee.
 - [Rule 7](#): This Rule sets out the Certificant's disclosure requirements and includes the duty to disclose potential conflicts of interest.
 - [Rule 8](#): This Rule specifically addresses the Certificant's obligations when a conflict of interest exists or arises. As noted above, the Certificant must not provide (or cease providing) services to a client, **unless**, after full written disclosure of the conflict, the client makes the informed decision to engage (or continue the engagement) of the Certificant.

Example and Guidance

As financial planning professionals you have developed relationships of trust with your clients. You are also an expert in your client's financial affairs. It is, therefore, understandable and possible that a client may approach you with a request to act as their POA or Executor; particularly on a short-term basis as they decide who they will ultimately appoint. In these circumstances, you must disclose that continuing to act as their financial planner, while also acting as a POA or Executor, creates a conflict of interest. The client can waive this conflict, but you should consider recommending that the client either appoint an alternate POA or Executor or refer the client to another financial planner if you accept the request. Separating these roles will protect you and it will also protect your client.

The CRP would like to remind members of the profession to review their obligations under the *Standards of Professional Responsibility* for guidance on disclosure and conflicts of interest.

We hope that this notice will help guide you in advancing your professional financial planning practice.

Yours truly,

A handwritten signature in black ink that reads "D Ammeter". The signature is fluid and cursive, with the first letter 'D' being large and stylized.

Debbie Ammeter, LL.B., CFP
Chair, Conduct Review Pane