

New Zealand Institute of Forestry Ethics Module



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Some theoretical foundations.

- ***Role Differentiated Obligation:***
 - *What it is and why it matters.*
- ***Codes of Ethics:***
 - *How they work.*
- ***Client/Professional Relationships:***
 - *What they're like and why it matters.*
- ***Who are professional ethics aimed at?***
 - *Not crooks ...*

Role-differentiated obligation.

- Many (perhaps all?) of our most important obligations/permissions/etc., attach to us *indirectly*.
- They **constitute** social roles (lawyer, valuer, father, manager, friend etc.,) and attach to us when we take on those roles.
- Often (though not always) we can choose the roles we take on, but not about the obligations/permissions that constitute those roles.

Role Obligations: The four-Step Derivation

Justify the institution or practice to which the role belongs “by demonstrating its moral value”.

Show that the role (e.g., lawyer, property adviser, valuer) is required if the good of the institution at Step 1 is to be achieved.

Show that a role obligation (eg., maintaining confidentiality) is essential to the role shown to be required at Step 2.

Show that a role-act (e.g., maintaining confidentiality on a particular occasion) is required by the role obligation shown to be essential at Step 3.

So what?

1. Since our roles are ***constituted*** by particular sets of rights and duties and permissions, at some point, if you're not taking those rights/duties/permissions seriously you're not acting in the role at all.
2. We can ***identify*** and ***understand*** the rights, duties, permissions which constitute a role by thinking about the point of that role - about why it matters.
3. The rights, duties, permissions – e.g., the things in the Code – should not be random, or window dressing. They should be ***derived*** from and ***justified*** by the point of the role and its moral value.

So questions....

1. Why do the forestry professions matter?

For example., what does the *valuation* profession do that makes it important? (e.g., allow developers, lenders, purchasers, vendors, to make good decisions; purchasers to be confident.)

2. To what obligations must forestry professionals be subject if they are to carry out the role?

e.g., *Competence; Independence.*

What about other obligations we find in the code of ethics? e.g., 1.1 “integrity, honour, courtesy”?

3. What do those obligations require in some particular case?

e.g., *What do the safety and sustainability clauses (1.4 and 1.5) require?*

Clauses 1.4 and 1.5 NZIF code?

- 1.4** Every member must take all reasonable steps to uphold and promote the health and safety of people in forests and to uphold and promote health and safety practices in work places associated with forests and forestry operations.
- 1.5** Every member shall recognise and respect the need for sustainable management of the environment and endeavour to minimise adverse environmental impacts from their forestry activities for both present and future generations.

Task 1: A Challenge for NZIF (or for me)?

- The derivative model works best when there is a more or less univocal practice or profession.
 - Easy enough to manage different *roles* derived from common foundation: e.g., Judges. Legislators).
- Are the forestry professions like law?
- Is there an institution or practice which can be the focus of the justification at Step 1?
 - “Justify the institution or practice to which the role belongs “by demonstrating its moral value”.

Codes, rules, laws ... 2 accounts.

1. Might try to get us to do things by giving us reasons which compete with and **outweigh** conflicting desires / preferences / temptations.
e.g., I'm tempted to speed and I think about the chances of getting caught, the ticket, and the fine.
2. Might rely on most of the people, most of the time accepting the demands made by codes, rules, laws, etc.

Compare:

“You shouldn't do that. It's against the rules and you're likely to get caught and punished.”

“You shouldn't do that because it's against the rules.”

Why it matters that the second view predominates

- Detection is expensive and unreliable.
- Weighing model depends on weighting given to options by those subject to the rules.
- Conceptually unpalatable: I have an obligation to pay tax even if I can get away with avoiding doing so.
- Protects those who *rely* upon others following laws, codes, rules.
- Reminds us of the importance of the justification for things like Codes of Ethics (and it's the justification does much of the work).

The Nature of Client/Prof. Relationships: 4 features

1. Imbalance of power/expertise.

- Professionals can do things clients cannot. Sometimes *de facto*, sometimes *de jure*.

2. Importance of the matters at issue.

- cf. the *non-vocational* sense of profession, in the sense we do something for pay.

3. Opacity of diligence and expertise.

- I can work out pretty quickly whether the person who fixed my coffee maker did a good job; not so with professionals.

4. Lack of personal knowledge.

- Typically, I will not know much about my professional *as a person*.
cf. the friend to whom I make myself vulnerable

Consequently ...

... the clients of professionals obliged to rely upon relative strangers for things that matter when they can't assess the expertise or diligence with which their interests have been pursued.

Why the nature of the relationship matters.

Reinforces role differentiation:

- Clients relate to professionals *as role occupants*.
- Client need *only* know the professional is a role-occupant, and what values the professional role requires the professional to adopt, to know what values should govern the professional.
 - (Note: this ground most plausible when people do know about the profession: do they know about the professions governed by the NZIF?)

Why the nature of the relationship matters cont.,

It explains why professions are often ***self regulated***.

- Often it will take an expert to know whether a member of a profession has acted with appropriate care and diligence and expertise.
- Can't be determined by *outcomes*.

Why the nature of the relationship matters, cont

It explains why many professions obligations are ***fiduciary*** (e.g., NZIF Code 2.1):

“Every member shall act towards that member’s clients in all professional matters strictly in a fiduciary manner.”

- **Fiduciary relationships** = those in which one party, the fiduciary, has dominance or ascendancy over another who must nevertheless repose confidence or trust in the fiduciary.
- In such circumstances, the fiduciary legally obliged to act in the best interest of the other.

Final general point ...

- Straightforward professional crooks are fairly rare ...
- Most professionals who breach their codes of ethics are guilty of ***errors of judgement***.
 - They fail to notice threats to independence, conflicts, that a disclosure will breach confidentiality, etc.
 - They are unclear about just who their clients are, or what they are providing to them.
 - Their clients are unclear about the professional's role.
 - They place themselves under time pressure.
 - They act beyond or at the limits of their competence or experience.
 - Etc.,

Questions ...

- How closely does this description of client/professional relationships describe your relationships with your clients?
- In which ways is it accurate/inaccurate?
- What is the significance of the differences, if there are any?

Some Detailed Issues



Competence and Experience

Principle 2.4:

A member should not undertake any work for which the member is not qualified or where the member is in any doubt or ought to be in any doubt as to the adequacy of the member's professional competency and or experience to undertake the work unless such work is completed under the supervision of a person of adequate competence.

Justifications?

Derivative route

- Professionals will *only* deliver the benefits which make their work important if they can in fact do the work.

Client Professional Relationship

- Typically, Clients can't assess professional competence: likely to think a professional is a professional.
- So ***up to professionals*** to ensure they act within their competence and experience.
 - One reason can't leave professional services to the market.

Note that the wrong occurs when you hold yourself out as having competence you lack:

- It's not ok provided everything works out ok

Conflict of Interest

- Regulated by almost every profession.
- Why?
 - *Because clients can't easily check that professionals are acting appropriately, professions regulate the conditions which provide an incentive for professionals to act contrary to client interests.*
- Two approaches:
 - Ban completely.
 - Allow to act with the consent of those whose interests are threatened by the conflict.

Conflict of Interest

Clause 2.2

- A member must not accept or carry out any instruction where there is, or may reasonably be construed to be, a conflict of interest and must withdraw from any instruction if such a conflict of interest arises or becomes known after the instruction has been accepted, unless such conflict of interest is fully disclosed in writing to all relevant parties and all such parties agree that the instruction may be accepted or continued by the member.

Conflict of Interest

- Note the bar for whether there is an actual or potential conflict of interest is:
 - a) Pretty low – : “where there *may* reasonably be construed be ...”.
 - b) Objective: there is a conflict if a situation “may reasonably be construed to be a conflict of interest”
 - c) So not simply up to the professional.
- Could clause 2.2 give more guidance for when ‘there may reasonably be construed to be, a conflict of interest’?
 - If not, why not?
 - If so, what might such guidance look like?

Confidentiality:

Clause 2.1

Any information of a confidential nature given to the member by a client shall be kept confidential and not disclosed to any other party without the consent of the client.

Confidentiality: Two justifications:

1. The derivative route:

- Many professionals can only provide the benefits of the professional role if clients tell them all the relevant information.
- Confidentiality creates the conditions under which clients should feel confident to disclose relevant information.

Confidentiality: Two justifications:

2. The 'property' route:

- Professionals often obtain access to valuable information which is the property of the client.
- The professional holds that information 'on trust' and can only deal with it only as the client permits.

Confidentiality, Public Knowledge, and the Public Good

- Do you ever obtain information from a client which:
 - *should* be in the public domain (e.g., to help the market function fairly, or to help you fulfill your legitimate professional role)?
- But which the obligation of confidentiality does or should stop you disclosing?

Integrity, honour, etc

Clause 1.1

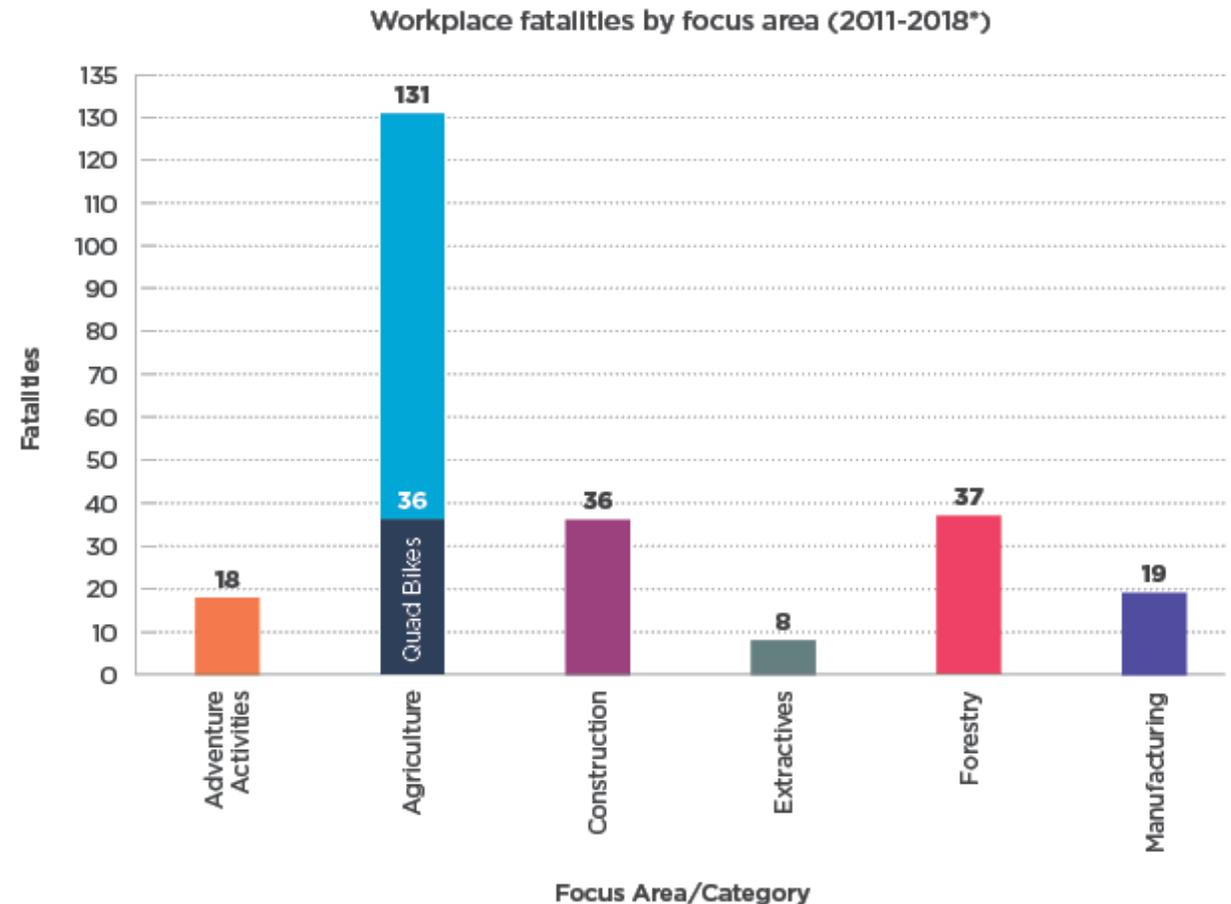
The first duty of each and every member is to render service to the member's client or the member's employer with absolute fidelity, and to practise their profession with devotion to high ideals of integrity, honour and courtesy, loyalty to the Institute, and in the spirit of fairness and goodwill to fellow members, employees and subordinates.

(Same as NZIV Code: cf PINZ version: It is the duty of Members to render service to their clients and employers with fidelity, to practise their vocation with integrity, honour and professionalism, to act impartially and objectively when providing independent advice, and to respect the public interest.

Really? The *first* duty? ...

- Higher priority than 1.4 ?

Every member must take all reasonable steps to uphold and promote the health and safety of people in forests and to uphold and promote health and safety practices in work places associated with forests and forestry operations



What do the terms in 1.1 mean?

- ***Fidelity = faithfulness.***

- Absence of conflict of interest; motivated by the interests of the client.

- ***Integrity = more complicated.***

- Often used as a synonym for 'good'
- But perhaps better to think of in terms of its use to describe things which 'hold' or 'fit' together properly.
 - A person who has integrity has coherence: there's no – or little – conflict between their words and their conduct, between the different parts of their lives.

An account of integrity ...

- The integrated-self view understands integrity as “the integration of ‘parts’ of oneself – desires, evaluations, commitments – into a whole.”
- The person of integrity is “undivided...”; he “keeps his self intact”.

Different levels of Desire

1. Suppose I have strong (first-order) desires to lie a-bed in the morning.
2. But I also have strong (second-order) desires to be the kind of person who leaps out of bed and works for an hour before breakfast and a five-mile run.
3. And I might have (third-order) desires not to have the (second-order) desires not to have my (first-order) desires.
4. And ...

Integrity as Integration

- To be a person of integrity (on the integration account) is to bring these different levels of desires, into harmony, abandoning desires that cannot be brought within the integrated hierarchy, and to wholeheartedly endorse the remainder.
- The person who has achieved self-integration:
 - ... no longer holds himself at all apart from the desire to which he has committed himself. It is no longer unsettled or uncertain whether the object of that desire – that is, what he wants – is what he really wants....
 - Harry G. Frankfurt, 'Identification and Wholeheartedness' (1988)

Integrity again - Clause 1.9

A member must maintain the strictest integrity in the performance of the member's professional duties. To this end no member shall:

1.9.1 Adopt the role of advocate to the exclusion of that integrity;

1.9.2 Allow the performance of that member's professional duties to be improperly influenced by the preferences of clients or others as to the result of their professional work;

1.9.3 Rely improperly upon information supplied by clients or others in the performance of their professional duties; or

1.9.4 Act in any other way inconsistent with the duties of integrity.

Cf NZIV Code: Independence

- 1.3 Members shall not accept an assignment that is contingent upon or influenced by any condition or requirement for predetermined results where the exercise of objective judgment is required. In undertaking their professional duties no Member shall:
- a. adopt the role of advocate in a case where their duty is to exercise independence and impartiality;
 - b. allow the performance of their professional duties to be improperly influenced by the needs or preferences of a client or other party;
 - c. rely upon critical information supplied by a client without appropriate qualification or confirmation from other sources;
 - d. act as an advocate or in any other capacity when that Member has received instructions and performed or provided advice on those instructions as a Registered Valuer.