



# ETHICS

## Presented by Caryn Maitland

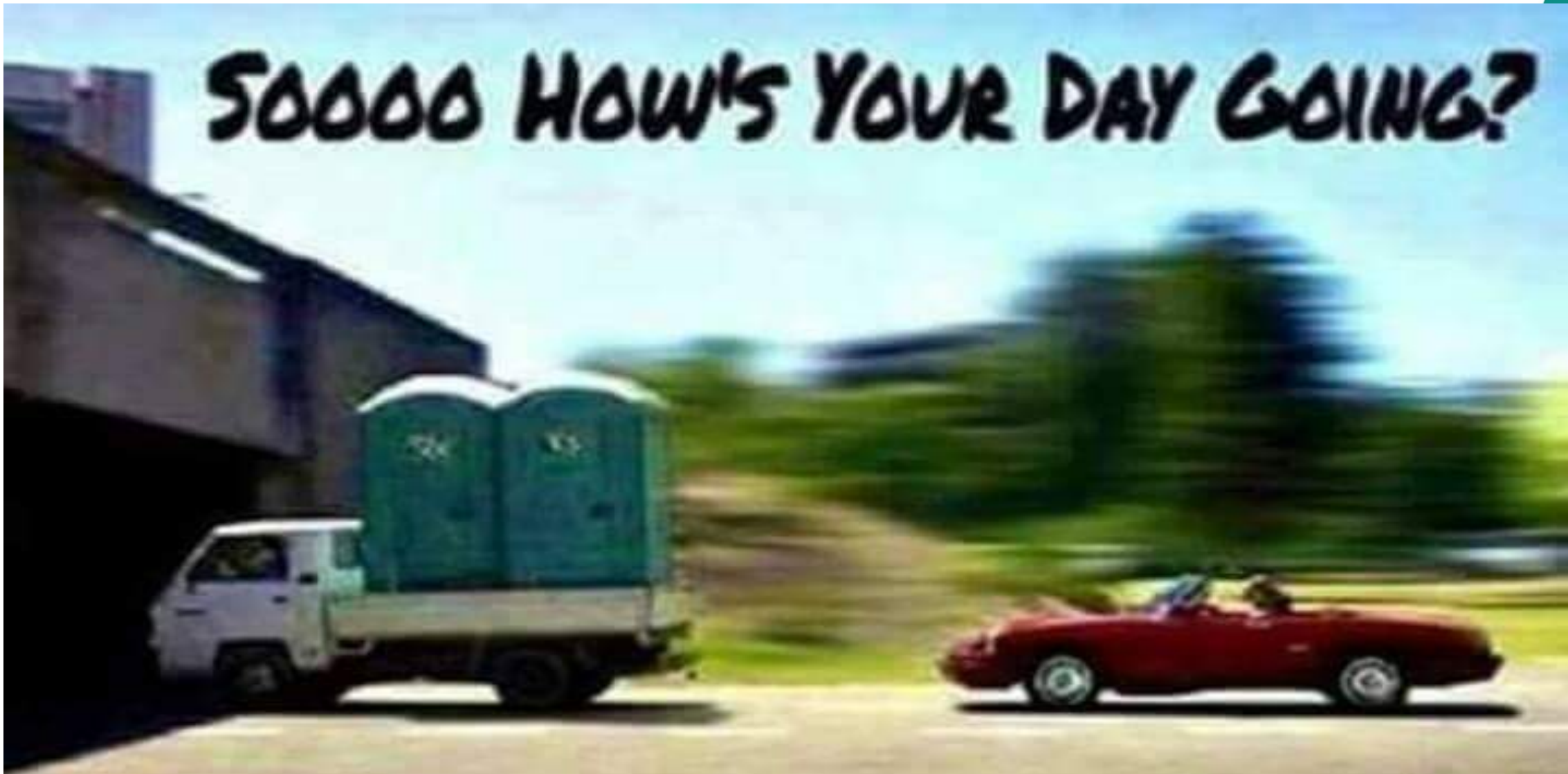
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# **Ethics, Independence and NOCLAR**

# SOOOO HOW'S YOUR DAY GOING?



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How important are ethics in today's society?



# Mark Twain

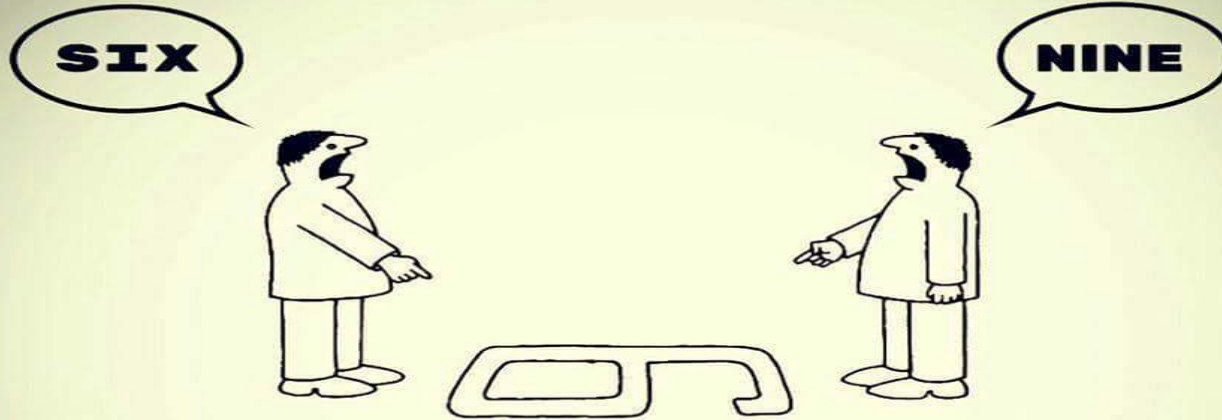
*Always do what is right. It will gratify half of mankind and astound the other.*





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Just because you are right,  
does not mean, I am wrong.  
You just haven't seen life  
from my side.

# General Ethics



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## GENERAL ETHICS

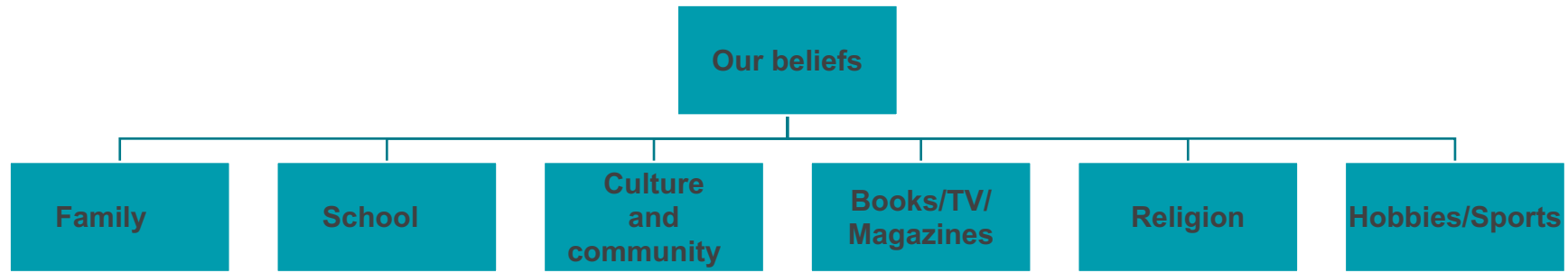


# Our ethical beliefs

- "It is not the things themselves which trouble us, but the opinions that we have about these things."
- Opinions and values (often uncritically held) handed down from generation to generation
- Developed to the point where their validity isn't questioned.

# Values and belief systems

- Values are the building blocks of our belief systems and are developed over time.
- Help us to judge situations quickly without the need for time-consuming consideration of alternative views and actions.



- Learn about the world in terms of what situations and actions produce physical pleasure (good) or pain (bad).
- Become socialised through commonly-held socially prescribed value sets



# Impact on behavior

- Belief systems affect our behaviour.
- Can lead to anxiety, fear and conflict
- Can turn into 'automatic' thinking that can cause us to act impulsively, as if operating unconsciously.
- Emotional and reactive
- Automatic thoughts believed as ultimate truth.
- Don't consider other frames of reference

# Changing behavior

- We aren't walking impulses
- Can rise above the impulsive thoughts and automatic urges and think our lives through.
- Need to question - become aware of other perspectives
- "Don't believe everything you think"!!

“ Between stimulus and response there is a space. **In that space is our power to choose our response.** In our response lies our growth and our freedom.

Victor Frankl

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# Why bother?

- Good for a cohesive productive society
- Concern for something/someone other than ourselves and our own desires and self interests
- Concerned with other people, interests of society, God's interests, with ultimate goods and so on
- Personal benefits:
  - Happier life
  - Successful
  - Sleep at night
- INTEGRITY
- It's the right thing to do

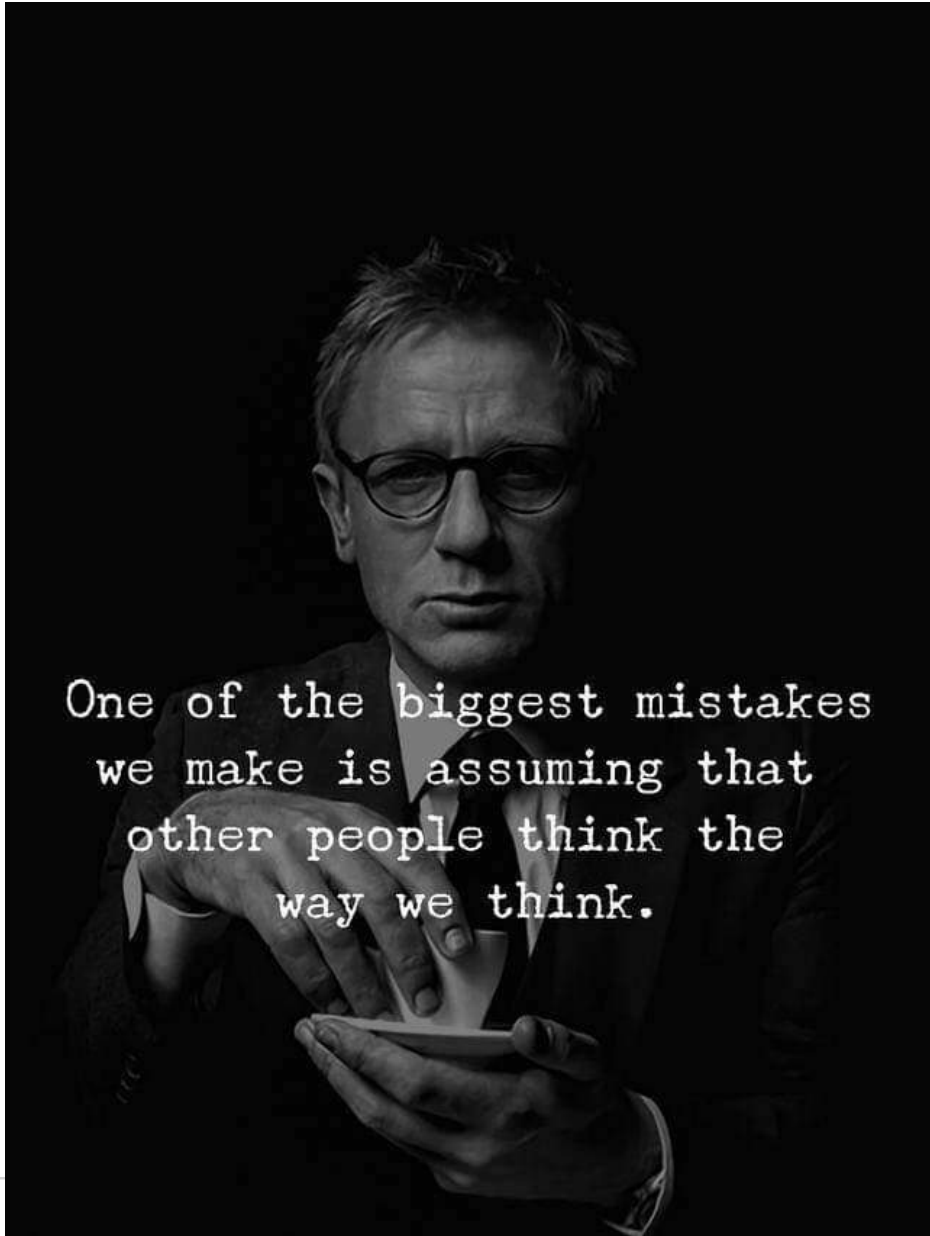
# Challenges of the modern world

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One of the biggest mistakes  
we make is assuming that  
other people think the  
way we think.



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"It's a problem when words like Turnt, Fleek or Bae are more understandable than actual words like Ethics, Morals Respect and Integrity." - Will Smith

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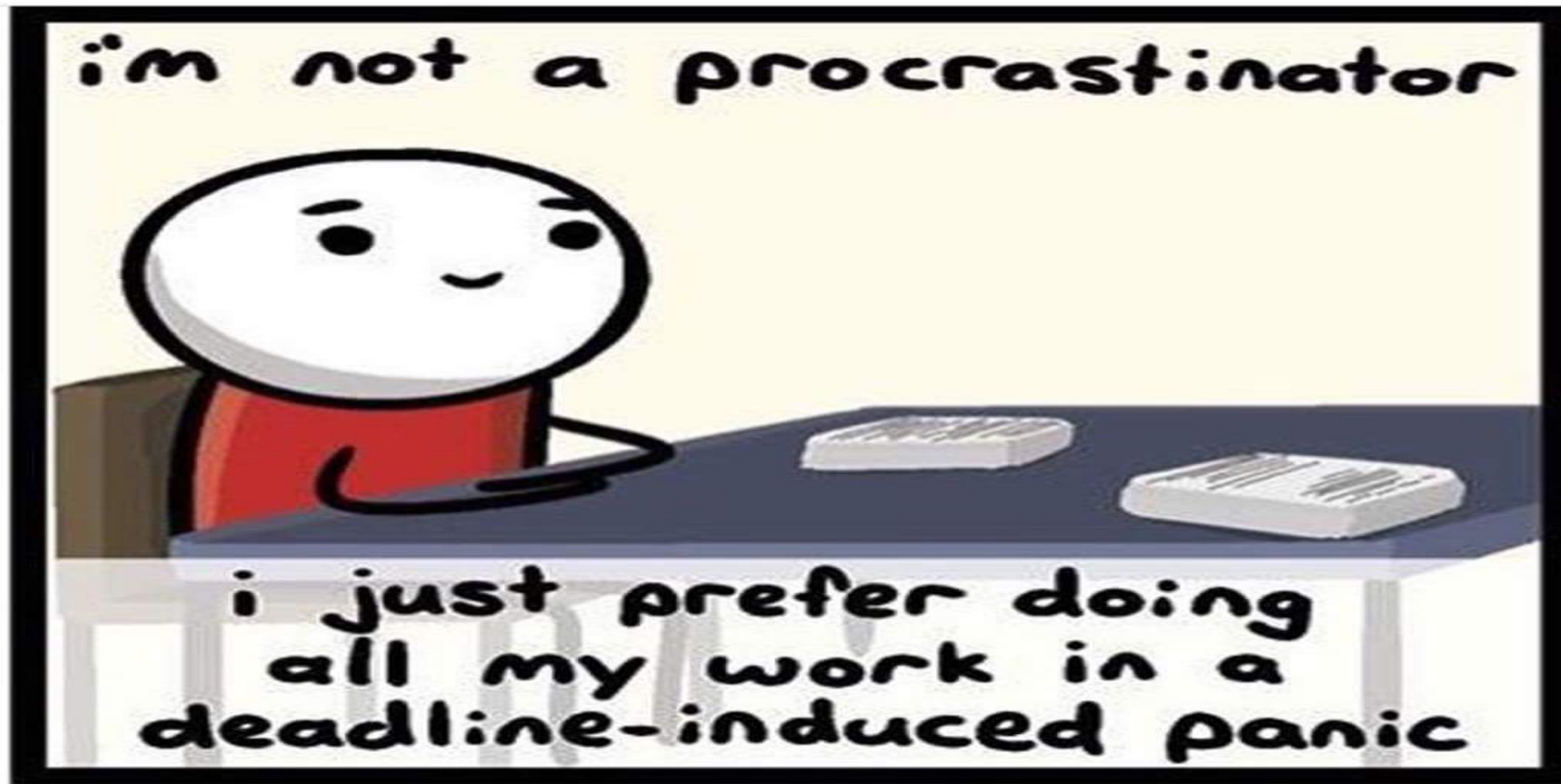
**And you think you're overworked...**

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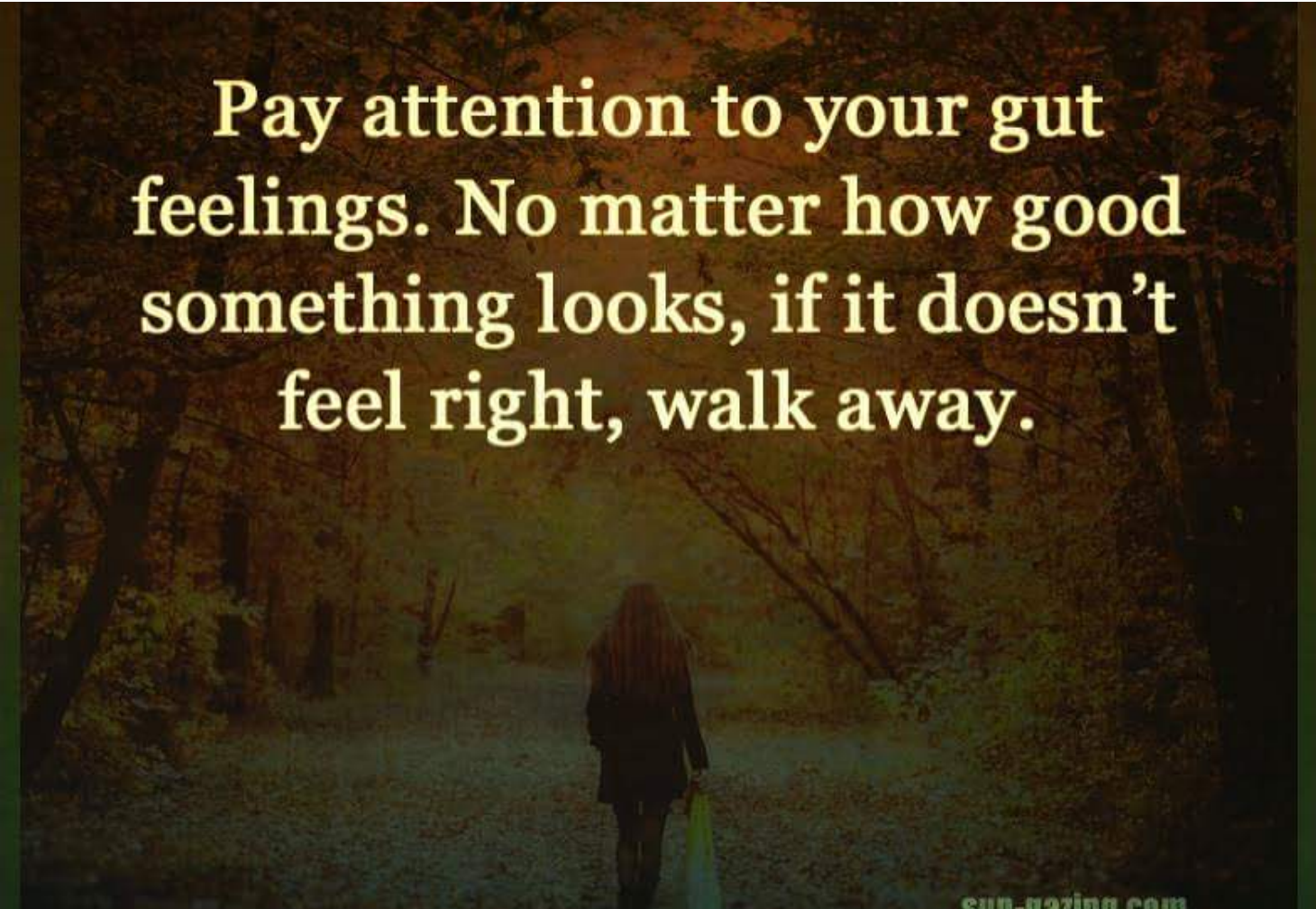




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A person with long hair, wearing a dark jacket, is walking away from the camera down a path in a forest. The trees are mostly bare, suggesting autumn or winter. The lighting is dim, creating a somewhat somber or reflective mood. The text is overlaid in a yellow, serif font.

Pay attention to your gut feelings. No matter how good something looks, if it doesn't feel right, walk away.

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Truth Inside Of You

We need leaders not in love with  
**money** but in love with **justice**.  
Not in love with **publicity** but  
in love with **humanity**.  
~ Martin Luther King

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# Role models and leadership

*"One of the hallmarks of effective leadership is empathy. It means the ability to understand something from someone else's point of view. I am advocating more empathy, more servant leadership where the leader is a facilitator rather than the only driver of progress."*

*Daryl D Black*

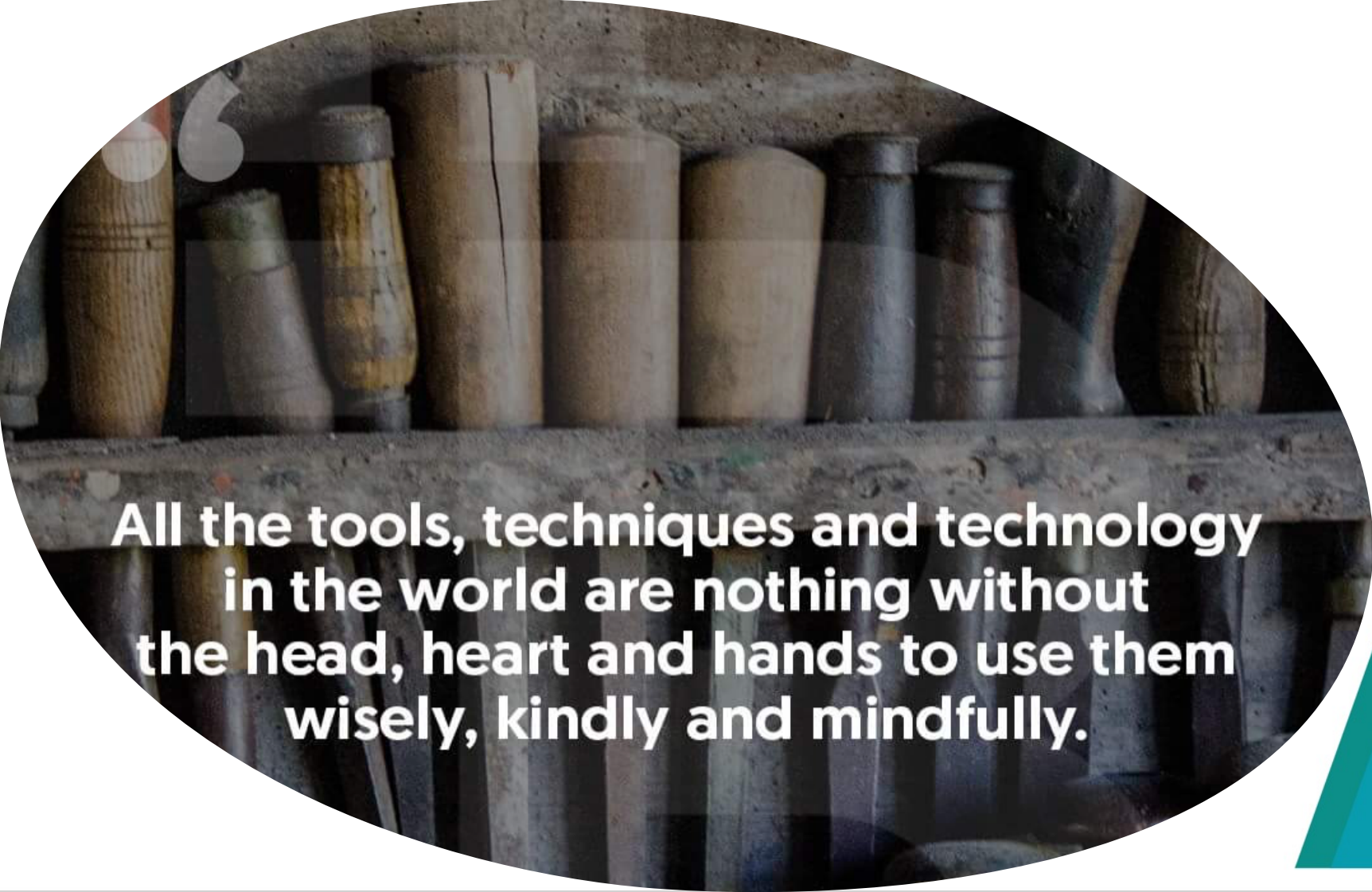


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**All the tools, techniques and technology  
in the world are nothing without  
the head, heart and hands to use them  
wisely, kindly and mindfully.**

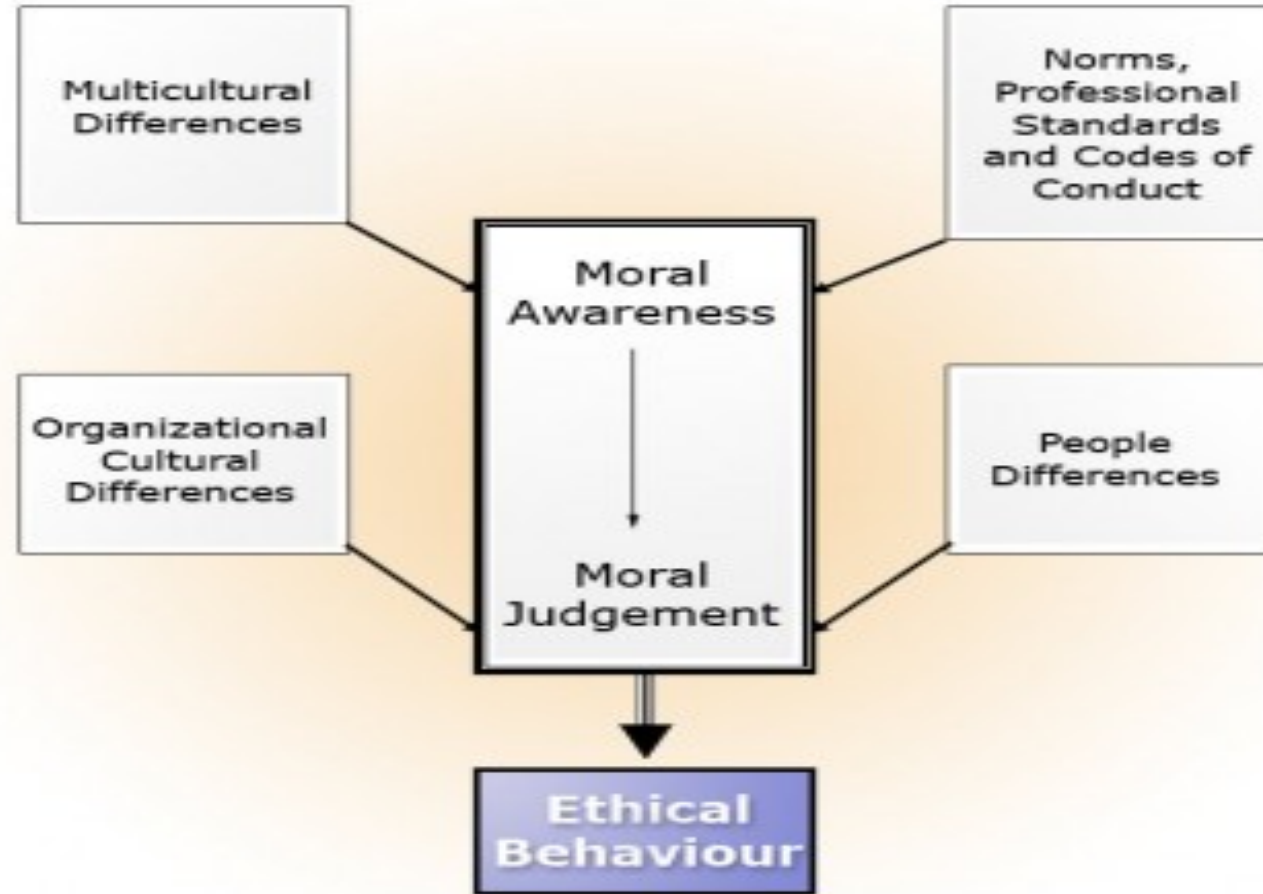
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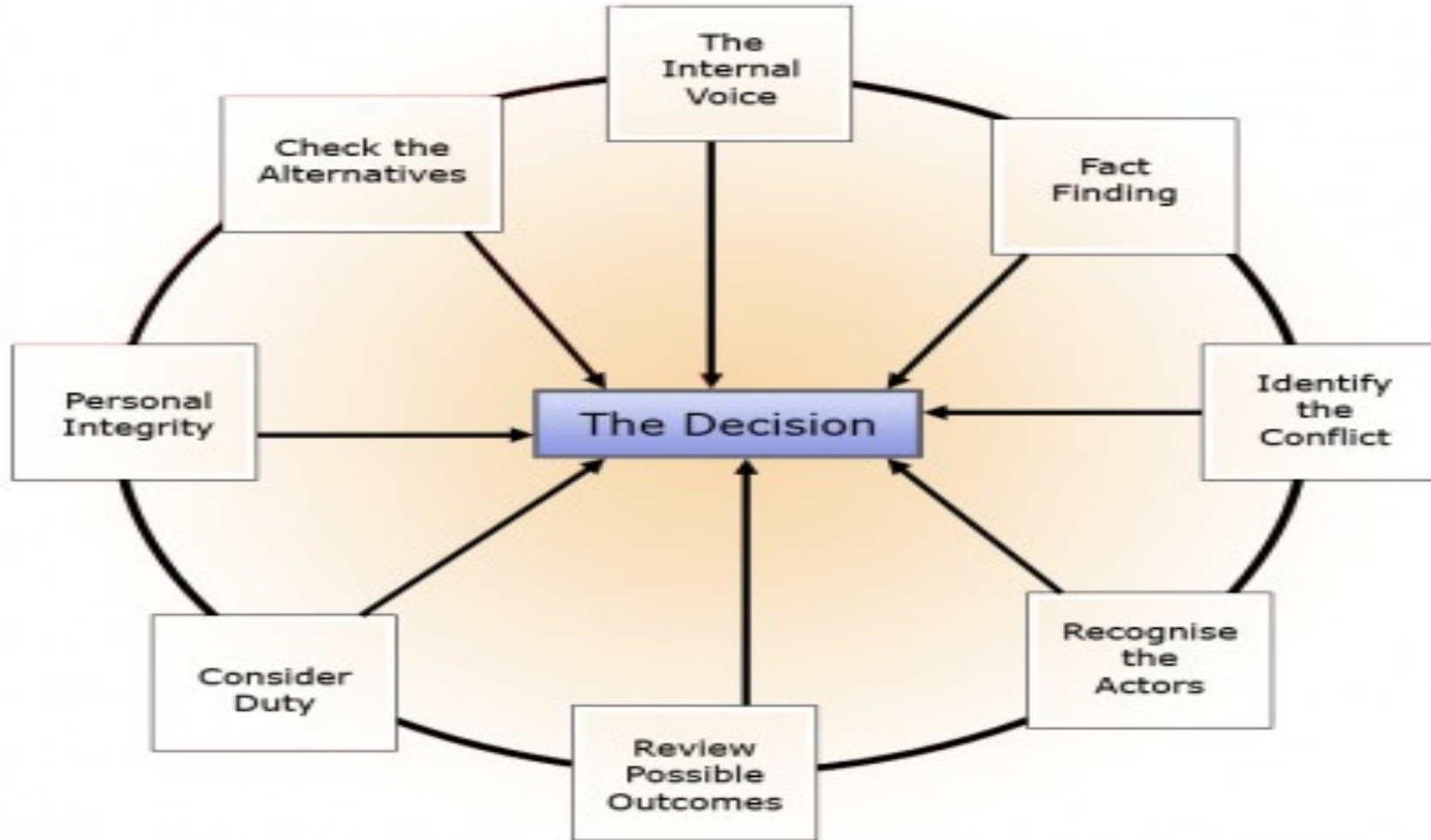
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# Business and Professional Ethics



# Business and Professional Ethics



# This is why I have trust issues



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# Code of Professional Conduct

5 Principles vs 5 Threats

Independence



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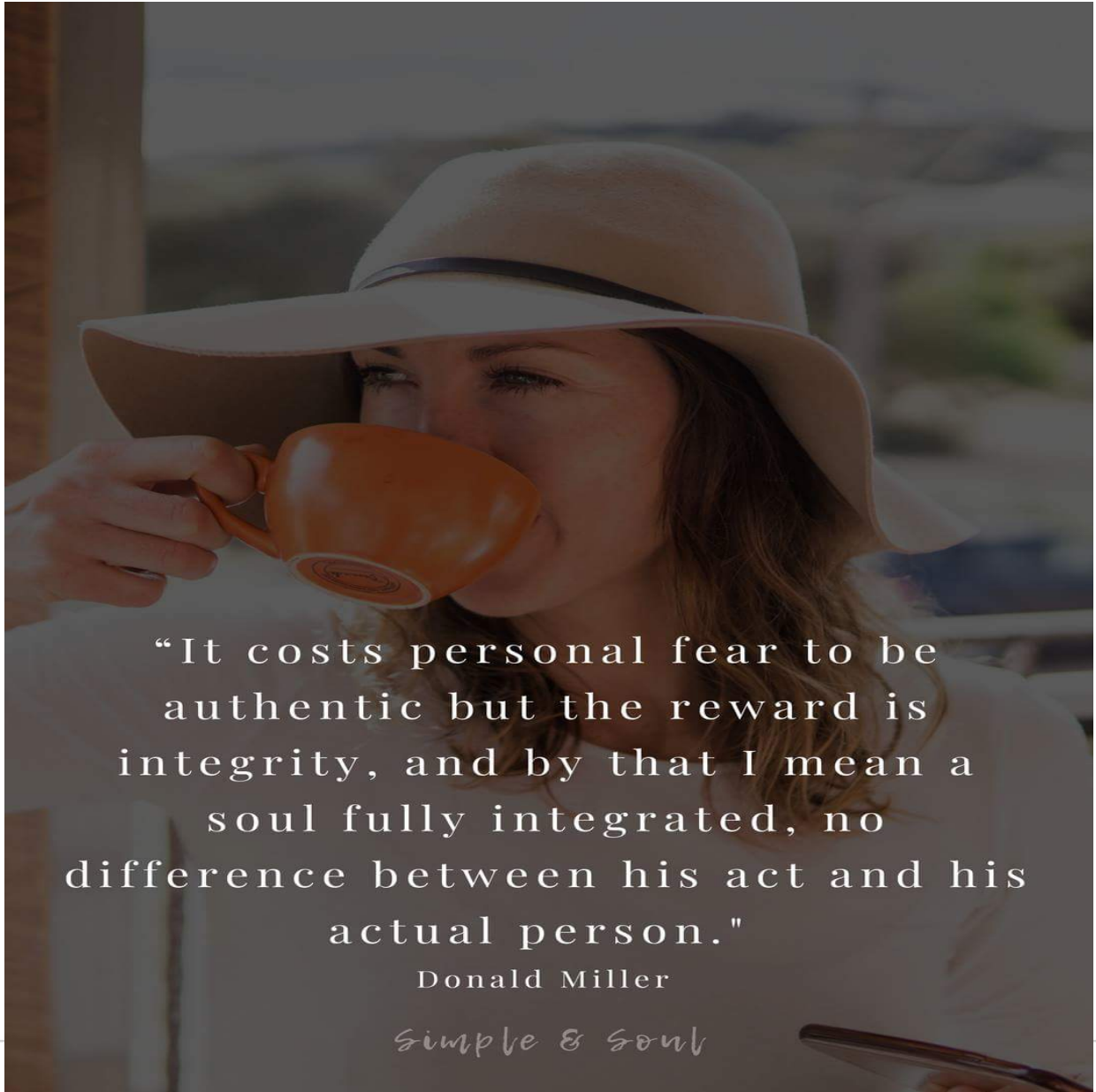
# Code of Professional Conduct

- Updated in March 2018 IFAC
- SAIT's Code of Conduct
  
- Professional Scepticism
- Holding out



# Objective of the Profession

- A distinguishing characteristic of the accounting profession is the acceptance of the responsibility to act in the public interest
- Public Interest
  - Client
  - Self



“It costs personal fear to be authentic but the reward is integrity, and by that I mean a soul fully integrated, no difference between his act and his actual person.”

Donald Miller

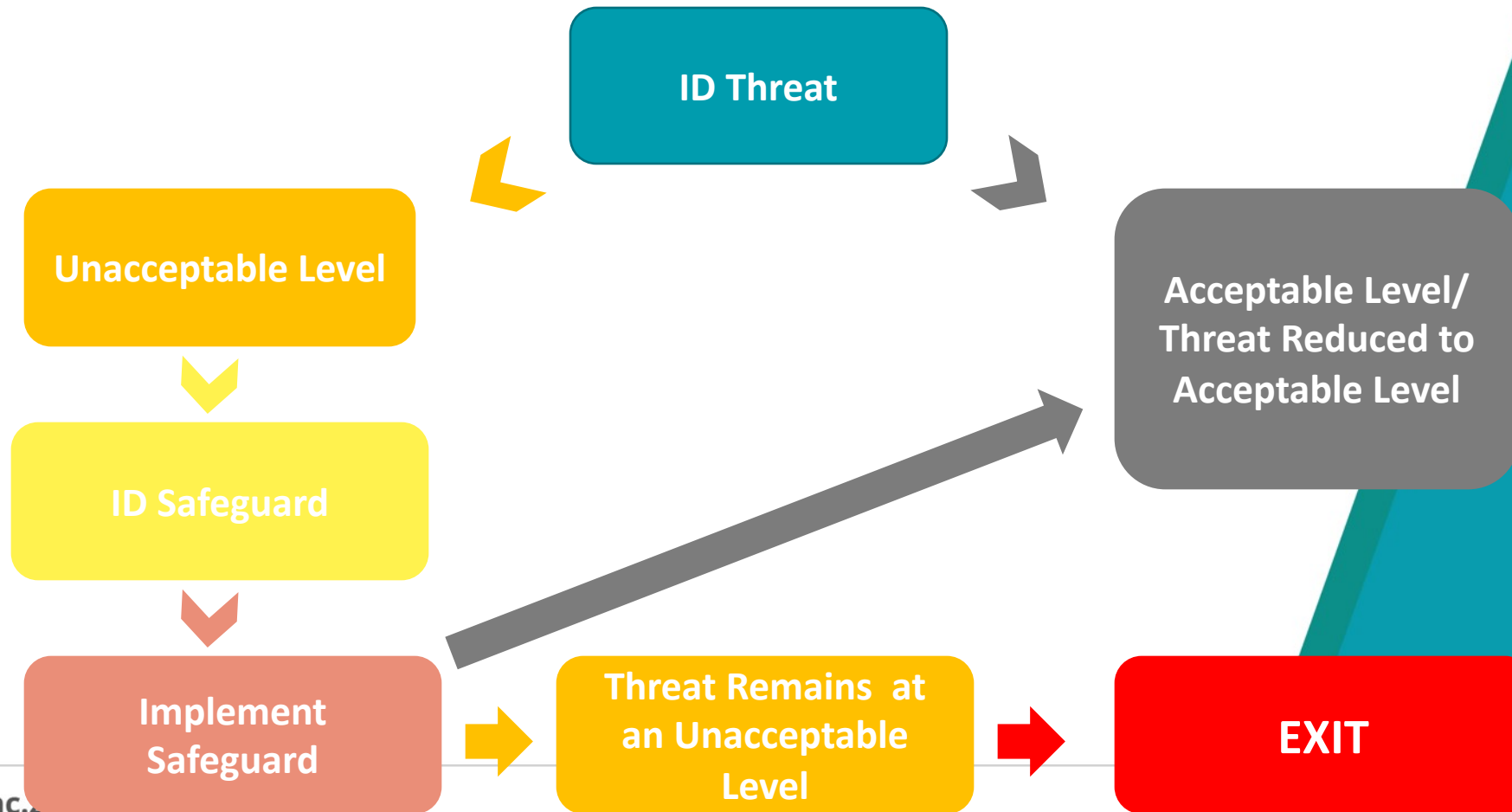
*Simple & Soul*

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# Threats and Safeguard Decision Flow Chart



# 5 Principles vs 5 Threats

	Integrity	Objectivity	Due Care	Confidentiality	Professional Behaviour
Self Review					
Personal Interest					
Intimidation					
Advocacy					
Familiarity					

# Safeguards

Safeguards by the profession, legislation/regulation:

- Educational, Training and experience required to enter profession
- CPD
- Corporate governance, legislation and regulations
- Professional Standards
- Professional monitoring and disciplinary procedures
- External review of work done by RA



# Code believes that

- Need safeguards to increase likelihood of identifying and deterring unethical behaviour
  - Effective and well published compliant system
  - Explicitly stated duty to report breaches in unethical behaviour
- Need to manage conflicts in interest
- DISENGAGE.....

# Communication

- With those charged with governance
- Make relevant persons aware of limitations inherent in professional services where appropriate

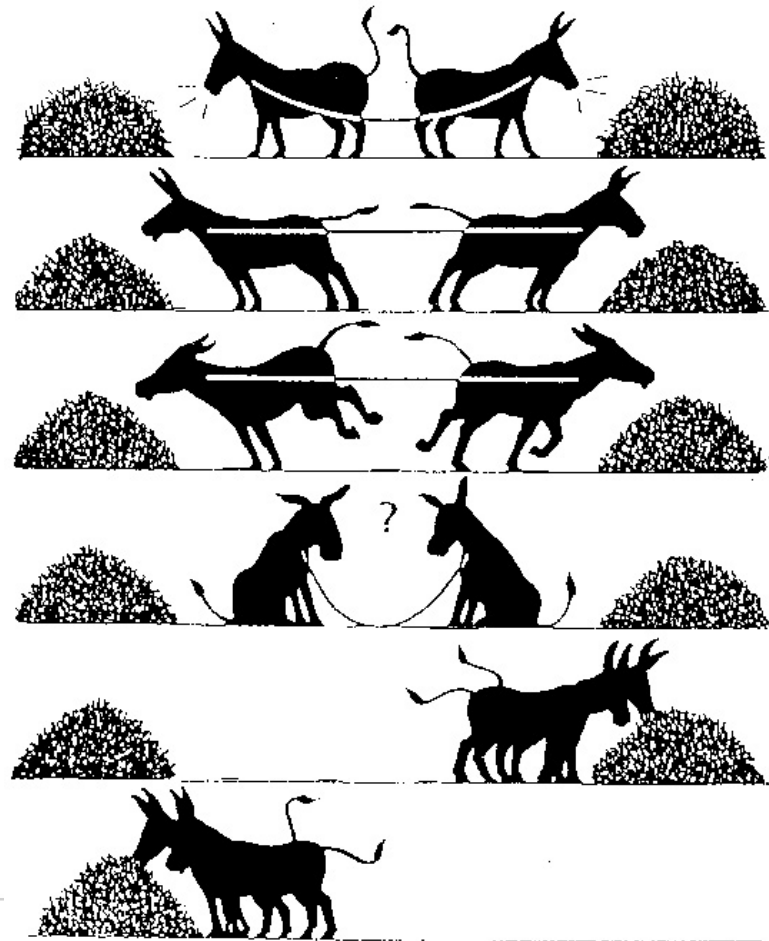
# Confidentiality

- Highlight that this includes social environment
- Do we have legal privilege as practitioners??
- NOCLAR
- Disclaimers on email??
  - Appropriate recipient?

# Professional behaviour

- Must not adversely affect the good reputation of the profession
- Consider marketing and promoting of work
  - No exaggerated claims (services, qualifications or experience)
  - Don't disparage work of others (references or comparisons)

# Ethical Conflict Resolution



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# Objective of Safeguards

## Steps to be taken

- Identify the threat
- Evaluate Significance
- Take qualitative and quantitative action
- **Objective must be**
- Threats have been eliminated
- Threats have been reduced to an acceptable level (judgment)
- **Objective not achieved**
- Declined
- Discontinued
- Resign

# Safeguards

- Leadership
- Policies and procedures
- Documentation
- Different partners and peer review
- Communication
- Training, mentoring counselling
- Consulting with independent technical consultants
- Disclosing ethical issues with TGWG

# Professional Appointment

- **Client acceptance and continuance**
  - Pre-engagement
  - Make sure you have the skills and resources
  - Timeframes?
- Changes in professional appointment
  - Additional work to existing practitioner?
  - Client refuses to give permission to contact exiting PA, should decline appointment unless exceptional circumstances

# Conflicts of interests

- Creates a threat to objectivity
- Assess client base and independence
- Need to identify
  - Nature of relevant interests and relationship between the parties involved, and
  - Nature of the service and implication for relevant parties
- Circumstances can change over time

# NOCLAR

- Will get back to...



# Second Opinions

- Approach with care

# Fees and other Remuneration

- May quote whatever fee that is deemed appropriate
- Must not sacrifice quality of engagement
- Safeguard - communicate with client and assigning appropriate resources
- Contingent fees for non assurance engagements?
- Referral fees and commissions?

# Gifts and Hospitality

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# INDEPENDENCE

- Independence
  - of mind
  - in appearance
- Related entities
- Those charged with governance
- Documentation

# Tax evasion vs Tax efficiency

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# Money Laundering

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# Members in business

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# Tax compliance

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- Ethics and the law



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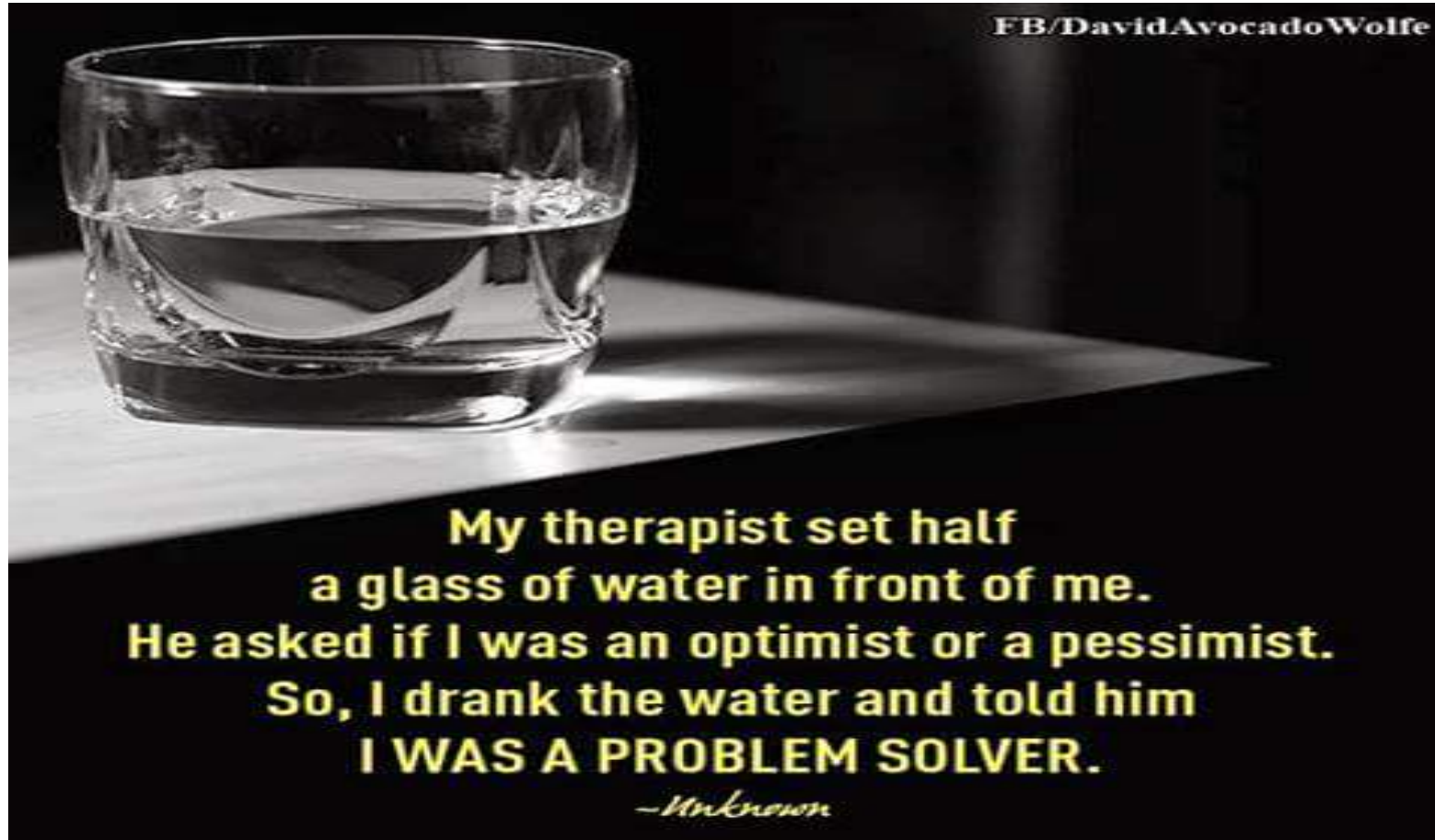
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## Non-Compliance with Laws and Regulations

### NOCLAR





FB/DavidAvocadoWolfe

**My therapist set half  
a glass of water in front of me.  
He asked if I was an optimist or a pessimist.  
So, I drank the water and told him  
I WAS A PROBLEM SOLVER.**

*-Unknown*

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**Integrity is  
choosing your  
thoughts and  
actions based on  
values rather than  
personal gain.**

*— Chris Karcher*



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INTEGRITY IS CHOOSING COURAGE  
OVER COMFORT. IT'S CHOOSING  
WHAT IS RIGHT OVER WHAT IS FUN,  
FAST, OR EASY. IT'S CHOOSING TO  
PRACTICE YOUR VALUES RATHER  
THAN SIMPLY PROFESSING THEM.

-Brené Brown

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# Why NOCLAR? – Pope Francis 2014

- In addressing professional accountants who attended the 2014 World Congress of Accountants in Rome, Pope Francis noted that difficult economic times increase the risk of moral hazard by saying:

*“There is a stronger temptation to defend one’s interest without concern for the common good, without paying much heed to justice and legality. For this reason everyone, especially those who practice a profession which deals with the proper functioning of a country’s economic life, is asked to play a positive, constructive role in performing their daily work.”*

# Specific public concerns that the IESBA responded to

- Duty of confidentiality in the Code acting as a barrier
- Professional Accountants simply resigning before NOCLAR issues appropriately addressed
- A lack of guidance to help PAs



# Some of the positive outcomes that are expected

- Provides a means to appropriately respond to NOCLAR
- Increases awareness and understanding of PAs of their legal and regulatory responsibilities
- Emphasises the role of management and those charged with governance (TCWG)
- Earlier response / response to deter actions serves to mitigate adverse consequences and lower the incidence of NOCLAR
- Timelier interventions by public authorities in the interest of stakeholders and the general public
- Reconfirms the profession's role in contributing to trustworthy organisations and a healthy global financial system

# A response framework

# NOCLAR - definition

- Acts of omission or commission,
- intentional or unintentional,
- committed by
  - a client or
  - the PA's employing organisation, or
  - by TCWG, by management or by other individuals working for or under the direction of a client or employing organisation
- which are contrary to the prevailing laws or regulations

# Who does it affect?

Professional Accountants (PAs) in public practice

- In providing a professional service to a client
- May encounter or be made aware of NOCLAR

Professional Accountants (PAs) in business

- In carrying out professional activities for his/her employing organisation
- May encounter or be made aware of NOCLAR

# Reasonable expectations of a Professional Accountant

- To recognise NOCLAR, having regard to what should be within the scope of his/her training and experience
- No additional responsibilities to detect NOCLAR
- No increase in the range of laws and regulations (L&Rs) the PA is required to have knowledge of for purposes of
  - performing a given engagement; or
  - the PA's role within the employing organisation
- Not trained lawyers
  - L&Rs that generally relate to a PA's professional training and expertise
  - L&Rs linked to a PA's knowledge in a particular field
  - Not required to have specialised legal knowledge and skills

# Per standards – Reasonably expected to know

- Laws and regulations generally recognised to have
  - a direct effect on the determination
  - of material amounts and disclosures
  - in the financial statements
- Other laws and regulations with
  - no direct effect but compliance with which
  - may be fundamental to the entity's business and operations, or
  - to avoid material penalties



# Examples of Laws and Regulations

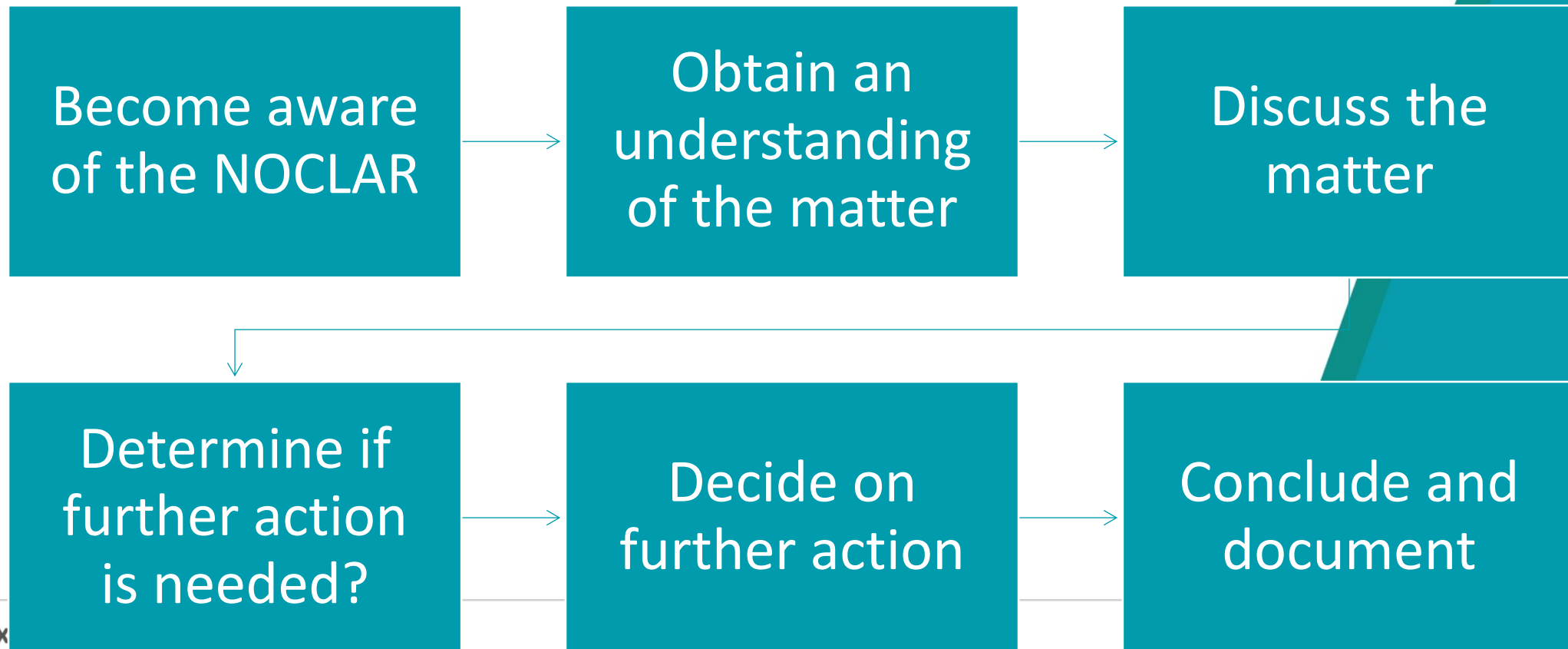
- Fraud, corruption and bribery
- Money laundering, terrorist financing and proceeds of crime
- Securities markets and trading
- Banking and other financial products and services
- Data protection
- Tax and pension liabilities and payments
- Environmental protection
- Public health and safety

# EXCLUDED

- Matters that are clearly inconsequential
- Personal misconduct unrelated to the business activities of the client or the employing organisation
- NOCLAR other than by the client or the employing organisation, or TCWG, management or other individuals working for or under the direction of the client or the employing organisation

# NOCLAR Process/Framework

Exit points??



# Give consideration to

- Laws and regulations that address the consideration, disclosure or non-disclosure of NOCLAR, or otherwise deal with the disclosure of information
  - Although certain requirements under the Code may be affected, there may be other requirements that still need to be complied with
- A firm's quality control policies and procedures, or an employing organisation's internal protocols and procedures
- For a given engagement, PAs in practice, must comply with relevant engagement standards and pronouncements

# What about when you are prohibited to disclose?

- **Legal privilege**

- Right to prevent disclosure; applies to communications between an appropriately qualified legal advisor and Client
- Must be claimed (and other requirements must be met)
- Specific information is privileged; not general knowledge about an event or incident >>> Assess what is privileged
- Disclosure of privileged information would be precluded
- Also consider that the appropriate people at Client are already taking steps to seek to address the matter ...

- **Examples of L&Rs that prohibit disclosure**

- Protection of Information Act 84 of 1982
- And others ... (depends on the nature of the information and the specific circumstances of a possible disclosure)

## • **Contractual confidentiality**

- Freedom to contract, but not contrary to L&Rs
- Only arises when PA decides to disclose information despite the absence of a legal obligation to do so
- Higher order considerations in Code related to public interest
- Contract could allow for disclosure into the NOCLAR provisions
  - Such clause protects the client or employer and the PA
- In limited circumstances, the “contrary to public policy “ principle could override a confidentiality clause
  - Determined on a case by case basis ... [remember, PA may decide to consult at any stage]
  - Reporting to prevent manifest and substantial harm



# Examples of Statute – General Protection

## Protected Disclosures Act 26 of 2000

- Applicable to employees (subject to the requirements of the Act)
- Protection is against ‘occupational detriment’
- The disclosure must be made internally to certain persons, including complying substantially with any internal procedure
- The disclosure must be made in good faith
- Must relate to any conduct of the employer or any employee of the employer where the information shows or tends to show ...
- Can be repeated to an appropriate external party, if
  - The disclosure was 1st made internally; and
  - The internal party failed to take action

## Companies Act, section 159

- Protection is immunity from any civil, criminal or administrative liability
- Applies to employees and is also linked to the PDA
- Also applies to other parties – section 159(4). For example
  - Shareholders, directors, prescribed officers, company secretary, suppliers of goods or services
- Applies to disclosures made to ... – section 159(3). For example
  - CIPC, Tribunal, Panel, a regulatory authority, the board, a committee of the company, auditor
- Must relate to information that shows or tends to show that a company or external company, or a director or prescribed officer of a company acting in that capacity, had ...
  - section 159(3)(b)

# Actions?

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# PA's consider internal processes

## **PA's in business**

- Shall consider internal protocols and procedures in determining how to respond to NOCLAR or suspected NOCLAR
- Would not preclude responsibilities in terms of section 360 (this is also linked to contractual obligations discussed earlier)
- May often facilitate an appropriate response

## **PA's in public practice**

- Should consider firm policies and methodologies, but these cannot be less stringent than the Code
- It may be useful to address certain elements of the NOCLAR provisions in the firm's manual [refer to IESBA FAQs (in public practice), Q7]

# Disclose to appropriate authority??

- Disclosure would be precluded if doing so would be contrary to law or regulation
- Disclosure only becomes a consideration if substantial harm is indicated in the circumstances
- Disclosure also depends on certain external factors
  - Whether there is an appropriate authority
  - Whether there exists robust and credible protection from civil, criminal or professional liability
  - Whether there are actual or potential threats to physical safety

If the PA decides that disclosure is an appropriate course of action

- It will not be considered a breach of the duty of confidentiality under Code
- PA must act in good faith and exercise caution when making statements and assertions
- [For PAIPPs] Consider whether it is appropriate to inform the client of the PA's intentions before disclosing the matter



# IN ADDITION, CONSIDER THE FOLLOWING ...

- A PA in public practice (e.g. the auditor or a tax practitioner) providing services to an entity informs the Senior PAIB about NOCLAR at the entity?
- A Senior PAIB informs the PA in public practice who is providing services to the entity about NOCLAR at the entity?

# IN ADDITION, CONSIDER THE FOLLOWING ...

- The PAIB's immediate superior disagrees regarding the evidence concerning the matter. Can the PAIB exit the process at this point?
  
- What if both the PAIB's superior and TCWG are unwilling to address the identified or suspected NOCLAR? Can the PAIB exit the process at this point?

# DISCLOSURE TO THE ENTITY'S EXTERNAL AUDITOR

Determine whether disclosure to the entity's external auditor is needed. This is in addition to responding to the matter in terms of the Code

## **Purpose**

To provide all information necessary to enable the auditor to perform the audit

## **Relevant factors to consider**

- Whether it would be precluded by law or regulation
- Whether there are any restrictions imposed by a regulatory agency or prosecutor
- Whether the external auditor has already been informed
- The likely materiality of the matter to the entity's financial statements

# ACTUAL OR POTENTIAL SUBSTANTIAL HARM

Is an act that results in serious adverse consequences to the entity or to investors, creditors, employees or the general public, in financial or non-financial terms

Examples include

- Fraud resulting in significant financial losses
- A breach that endangers the health and safety of ...

More examples

- Bribery for purposes of securing large contracts
- A matter that threatens the entity's license to operate
- An act that poses a systemic risk to the financial markets
- Products that are harmful to public health or safety
- Promoting a scheme to evade taxes

# Reasonable and informed 3rd party test

Take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the PA at the time, would be likely to conclude that the professional accountant has acted appropriately in the public interest

Further context

- The PA is required to exercise professional judgment
- It is not a hindsight test
- It brings an essential elements of objectivity to the PA's evaluation of the matter in the circumstances
- Remember, the PA's overall objectives in terms of the Code

# Consider: Nature, cause, circumstances and extent of matter

- Legal and regulatory framework
- The appropriateness and timeliness of the response of management and, where applicable, TCWG
- Urgency of the matter
- The involvement or management or TCWG in the matter
- The likelihood of substantial harm to the interests of the client, investors, creditors, employees or the general public



# DOCUMENTATION

In relation to an identified or suspected act of NOCLAR, the PA is encouraged to document

- The matter
- The results of discussions with ...
- How management and, where applicable TCWG, have responded
- Courses of action considered, judgments made and the decisions that were taken
- How the PA is satisfied that he/she has appropriately considered whether further action is needed in the public interest

# Exceptional Circumstances (OVERRIDE)

- “In exceptional circumstances,
- the professional accountant may become aware of actual or intended conduct
- that the professional accountant has reason to believe would constitute an imminent breach of a law or regulation
- that would cause substantial harm to investors, creditors, employees or the general public.
- Having considered whether it would be appropriate to discuss the matter with management or those charged with governance of the entity,
- the professional accountant shall exercise professional judgment and may immediately disclose the matter to an appropriate authority
- in order to prevent or mitigate the consequences of such imminent breach of law or regulation.
- Such disclosure will not be considered a breach of the duty of confidentiality under Section 140 of this Code.”

# Running a business

- Earning fees
  - What are you worth vs what your client can afford
- Competition
  - Other players in the market
- Recruiting and managing staff
- Attracting and retaining clients
- Doing the best job possible
- Keeping up with technical changes
- Applying professional judgement
- Clients right to legal privilege
- Constraints
  - Time
  - Resources
  - Skills
  - Regulation
- Dealing with SARS
- Solvency issues of clients
- Trading during difficult economic times
- Ethics of your clients

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