

# **Ethics, Independence and NOCLAR**

Presenter: Caryn Maitland CA(SA)

**A reflection on your practice**

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# Presenter

## Caryn Maitland

Caryn is a qualified CA(SA and RA, who has lectured extensively at UKZN (and other institutes) where she lectured Advanced Financial Accounting up until 2011 as well as co-ordinating the module on the Pietermaritzburg campus and was appointed Section Head of Financial Accounting and Deputy Head of the School of Accounting (managing the Pietermaritzburg campus) prior to leaving UKZN.

She has conducted independent workshops and seminars for professional accountants since 2006 on various topics and has consulted on a number of technical issues. Since January 2011, she has focused on her own business as technical freelance consultant and trainer to those working within the accounting profession. Caryn is a technical advisor to the SAICA Eastern Region Midlands District, Northern District and Southern District Associations, as well as the Small Practice Interest Group in Durban – specialising in financial reporting (IFRS, IFRS for SME's and general accounting), assurance, legislation and ethics. Caryn has a passion for Corporate Governance, which together with her Companies Act specialism and Financial Management for Non Financial Management lecturing background, has served her well in consulting and advising various Boards of Directors in recent years.

Caryn is also a platform presenter for various institutes as well as many small to medium accounting practices across the country and into Southern Africa. Maitland was appointed as a visiting Associate Professor to the University of Limpopo tasked with mentoring their Financial Accounting staff (Aug 2011 to Dec 2013).

Maitland's passion is IFRS and IFRS for SME's and was delighted at the opportunity granted in 2013 to serve on the APC subcommittee constituted to investigate the need for Micro GAAP and the role of IFRS for SME's for small and medium sized practitioners. Caryn, also serves on the Joint Accountants, Auditors and Attorneys Committee of SAICA, and is part of the School Governing Body project initiated by SAICA in KwaZulu-Natal, and has been appointed as an alternative member to the APC in June 2020

Caryn was elected as the first woman Chairperson for the Midlands District Association for SAICA in 2018 and also serves on the Eastern Region SMP Committee as well as the Local Subvention Committee for SAICA. In 2019 Caryn was appointed to the SAICA Eastern Region Council. As someone who is committed to environmental affairs, Caryn serves as a non-executive director for the Institute of Natural Resources, a Non Profit Company focusing on research. Since 2018 Caryn has worked extensively with commerce and industry, assisting analysts, directors and other users of financials to interpret, prepare, analyse and forecast based on the results of financial statements.

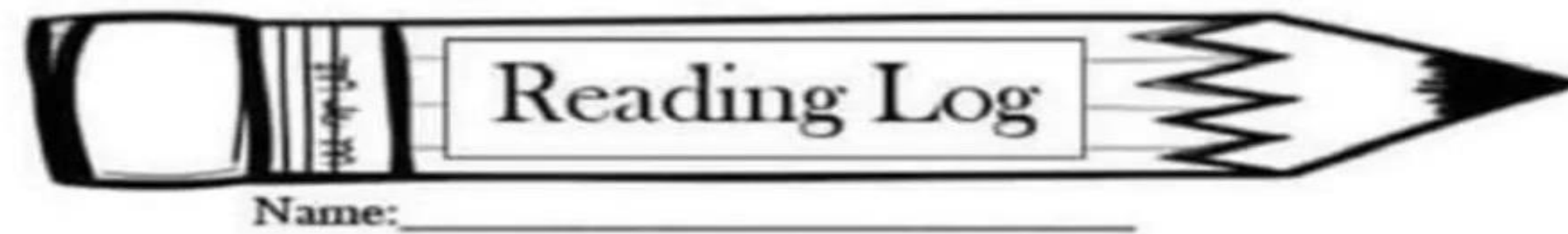


# 2021 Check in

Where are we at???

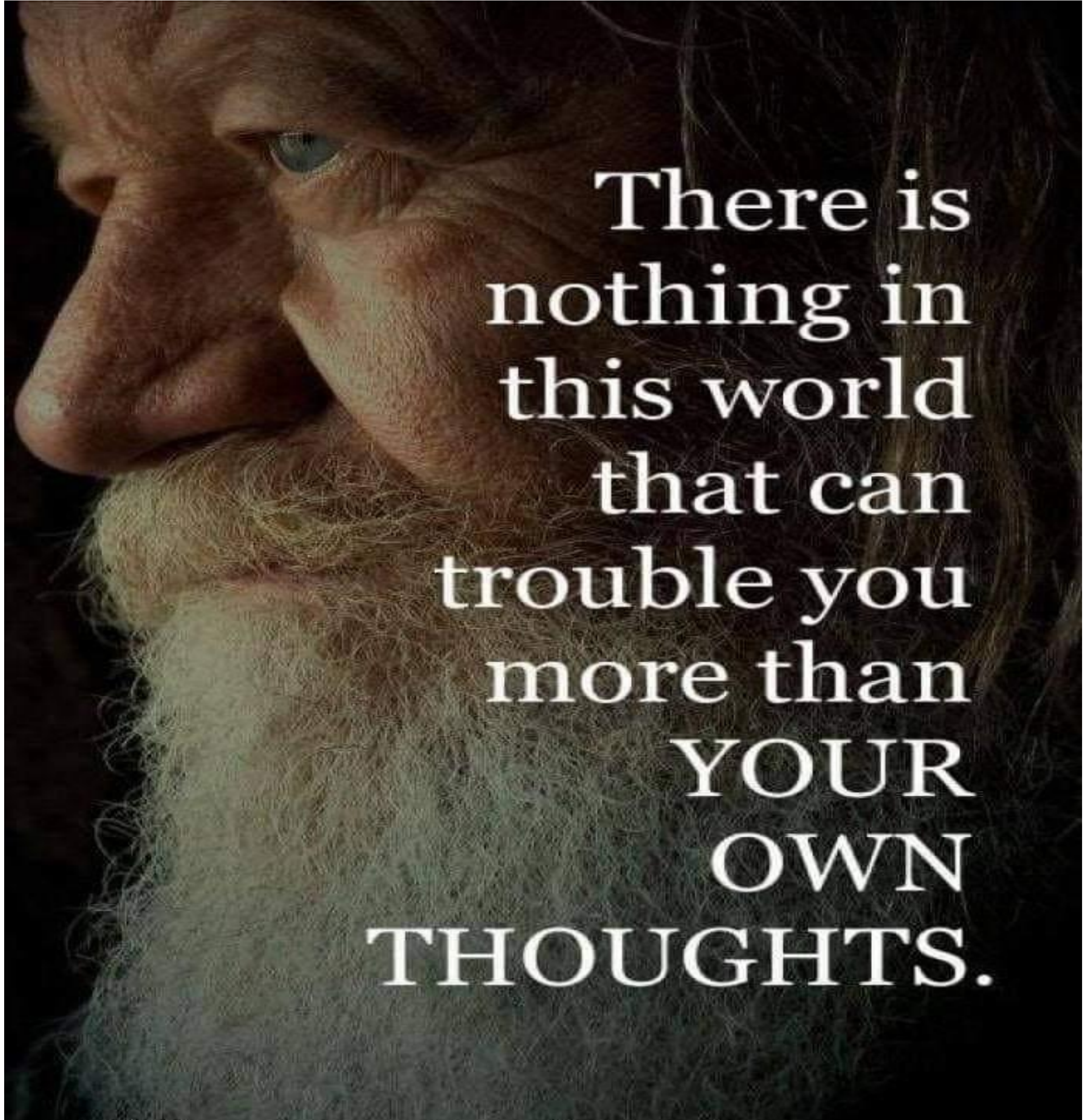


# This is where the problem started



Date	Title	Start Page	End Page





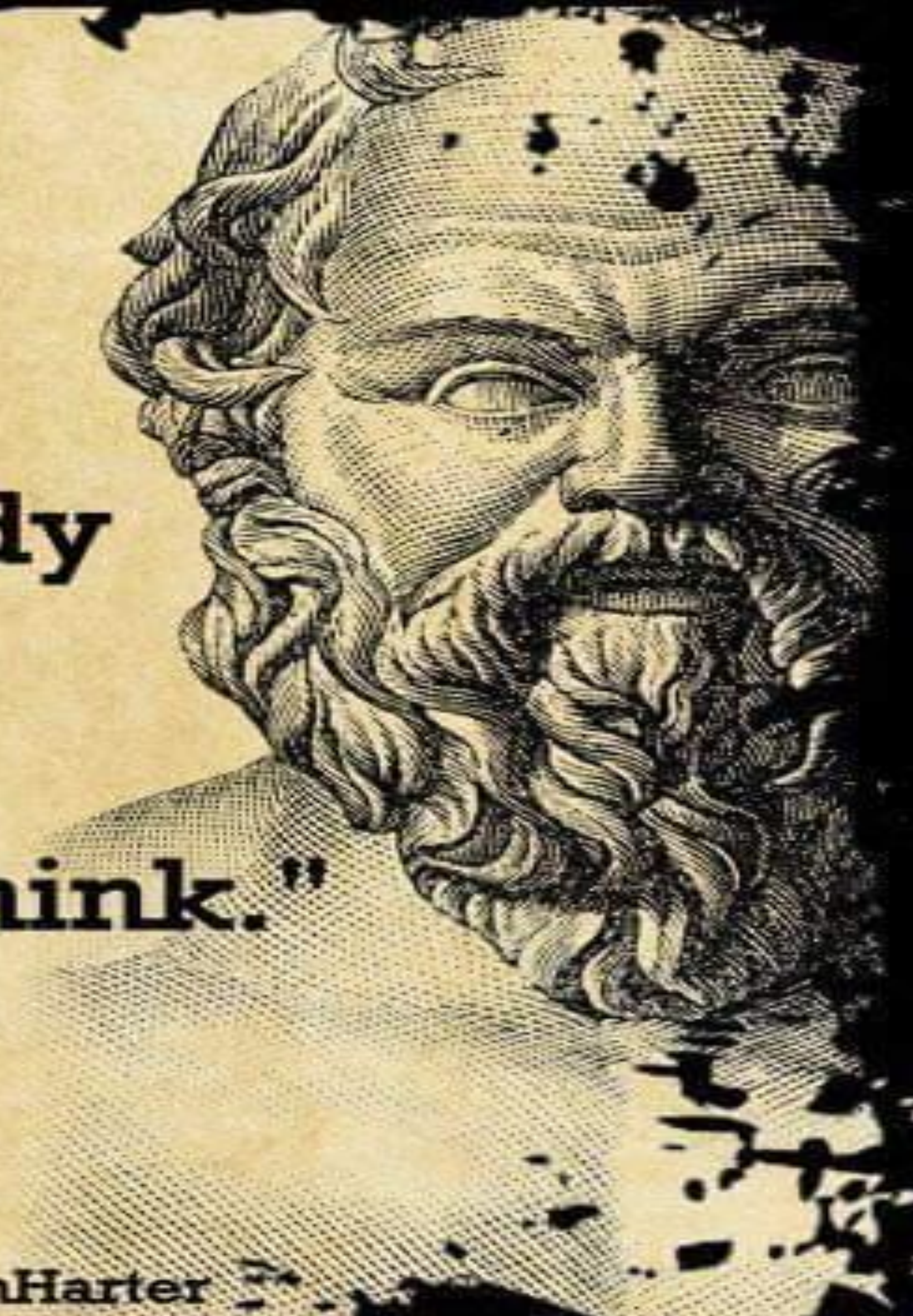
There is  
nothing in  
this world  
that can  
trouble you  
more than  
**YOUR  
OWN  
THOUGHTS.**



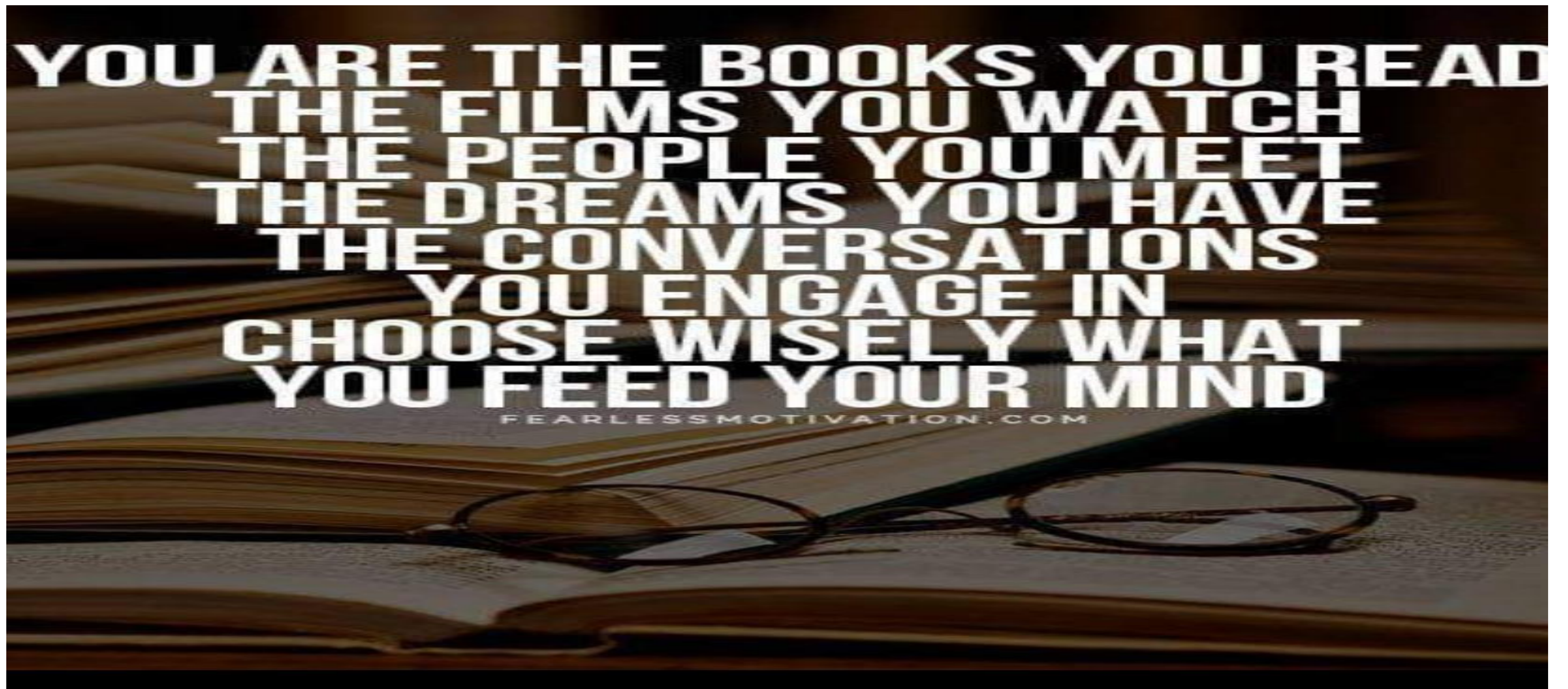
**"I cannot  
teach anybody  
anything,  
I can only  
make them think."**

***~Socrates***

**@JasonHarter**



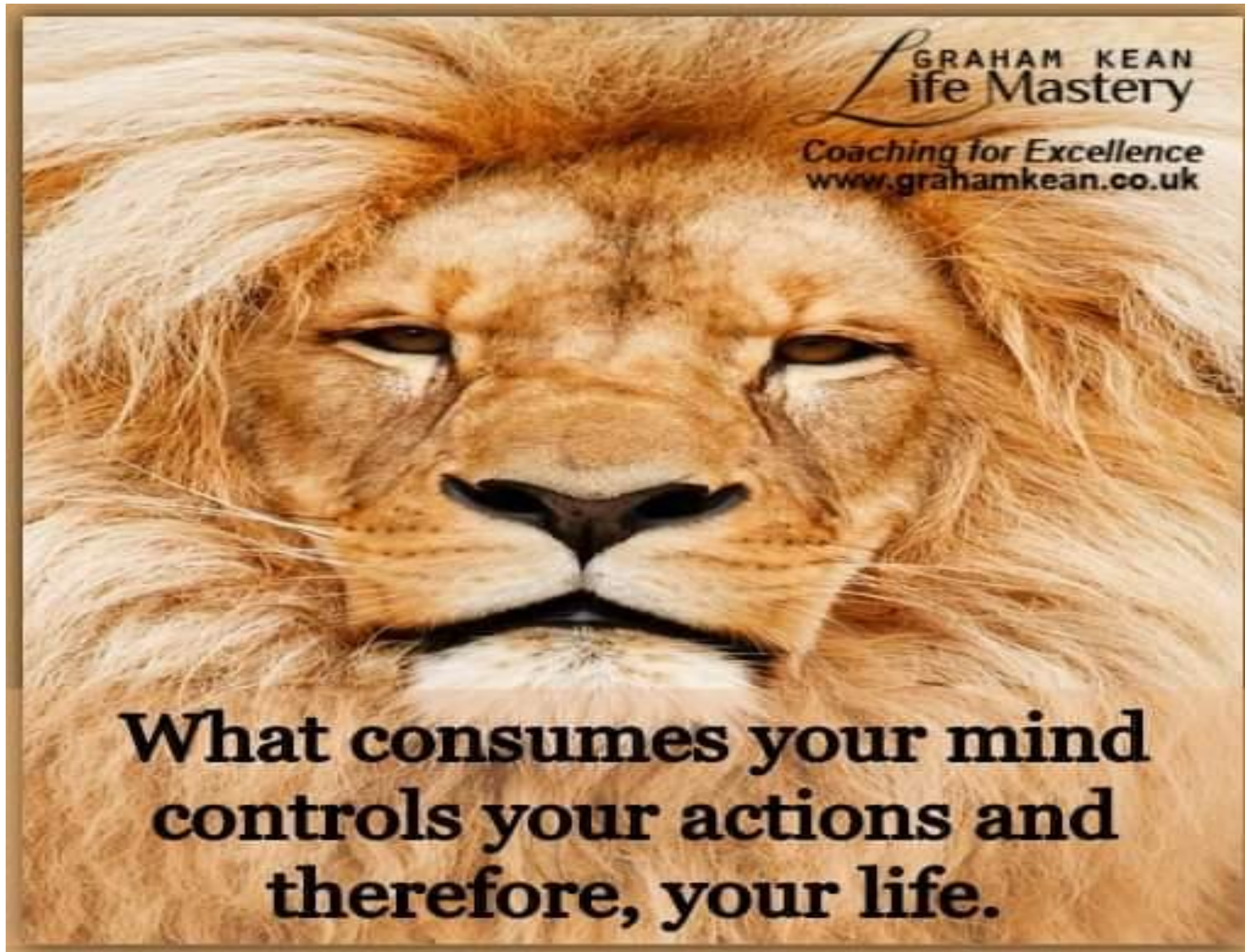




**YOU ARE THE BOOKS YOU READ  
THE FILMS YOU WATCH  
THE PEOPLE YOU MEET  
THE DREAMS YOU HAVE  
THE CONVERSATIONS  
YOU ENGAGE IN  
CHOOSE WISELY WHAT  
YOU FEED YOUR MIND**

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**What consumes your mind  
controls your actions and  
therefore, your life.**



# Aristotle

“There is only one way to avoid criticism:

- Do nothing,
- Say nothing, and
- Be nothing.”



***“SOME PEOPLE WANT TO  
SEE YOU ON THE TOP OF THE  
MOUNTAIN AND SOME PEOPLE  
WANT YOU TO KEEP THEM  
COMPANY DOWN  
IN THE VALLEY.”***

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Do not follow the  
majority,  
follow the right  
way.



# Ethical Fading...

## Why good people do bad things....

Ethical aspects of a decision disappear from view

Rely on other aspects of decision – profitability and winning....

Simon Sinek, Lenny Wong

Product of self deception

Tools used

- Over use of Euphemisms (data mining, enhanced interrogation, manage the externalities)
- Rationalising (excuses, everyone is doing it, need to put food on the table)
- How do you sleep at night?

Moral disengagement –

- People restructure reality to make it seem less harmful



# “The rise of selfishness”

## S Sinek

### Milton Friedman Theory (1970's)

- Responsibility of business is to maximise shareholders profits
- Business only existed to make money
- Shareholders over customers and employees
- 1980's and 1990's boom
- Rise of shareholder supremacy

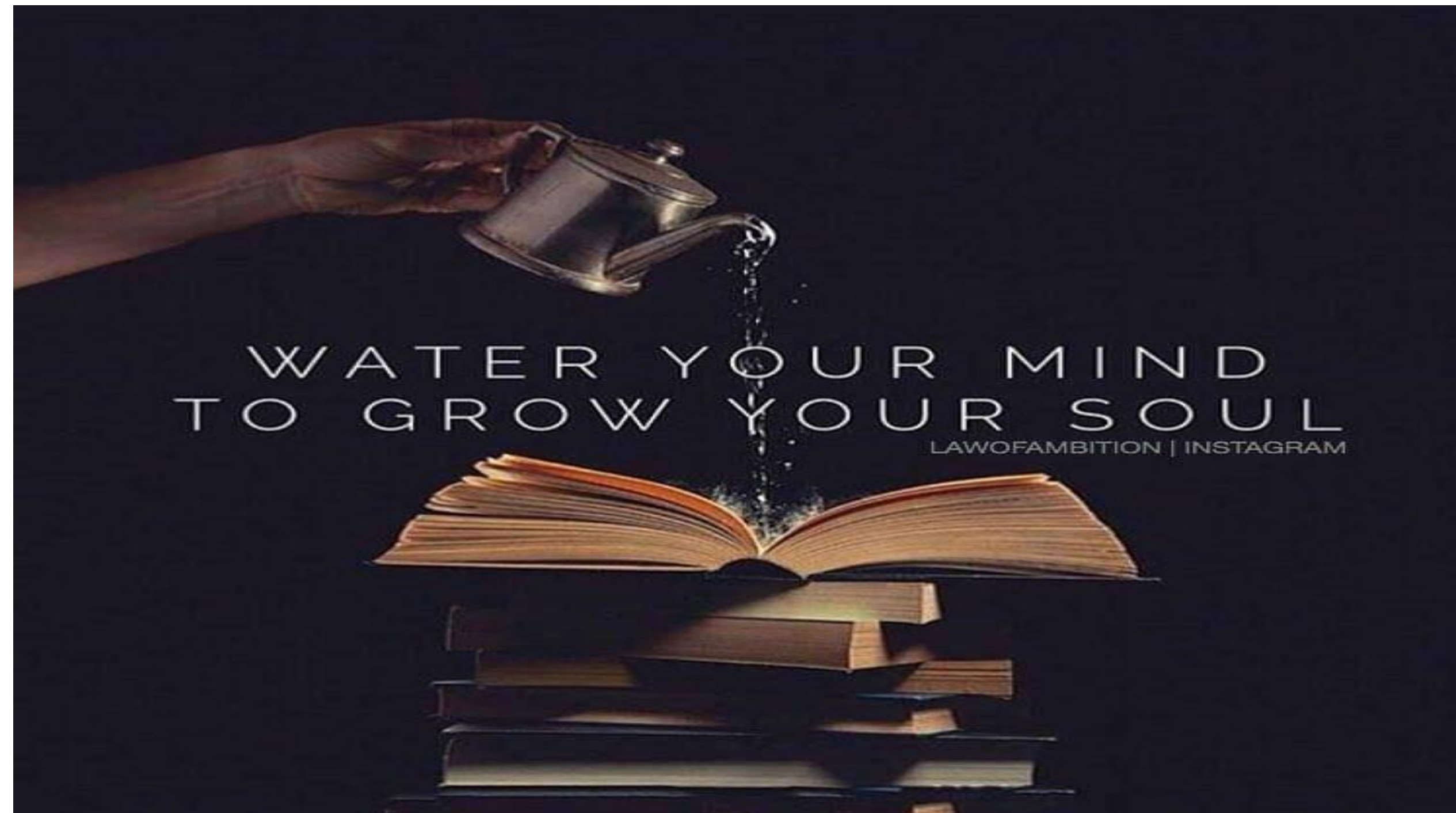


INTEGRITY IS CHOOSING COURAGE  
OVER COMFORT. IT'S CHOOSING  
WHAT IS RIGHT OVER WHAT IS FUN,  
FAST, OR EASY. IT'S CHOOSING TO  
PRACTICE YOUR VALUES RATHER  
THAN SIMPLY PROFESSING THEM.

-Brené Brown



*“Everyone thinks of changing the world, but no one thinks of changing himself”* Leo Tolstoy





# Thoughts to ponder

“The culture of any organization is shaped by the worst behaviour the leader is willing to tolerate”

Stephen R Covey:

Correct principles are like compasses: They are always pointing the way. And if we know how to read them, we won't get lost, confused, or fooled by conflicting voices and values

# Where do we need to be?

Leadership

Accountability

Empathy

Teamwork

Continually learning

# Simon Sinek

Leadership is not a licence to do less. It is a responsibility to do more

A team is not a group of people who work together. A team is a group who trust each other

**Leadership is not about  
being in charge.**

**Leadership is about  
taking care of those  
in your charge.**

@simonsinek

# What can we do to make a difference?

Creating a healthy culture and environment

Effective and ethical leadership

Truth to power

Role modelling

Personal Brand





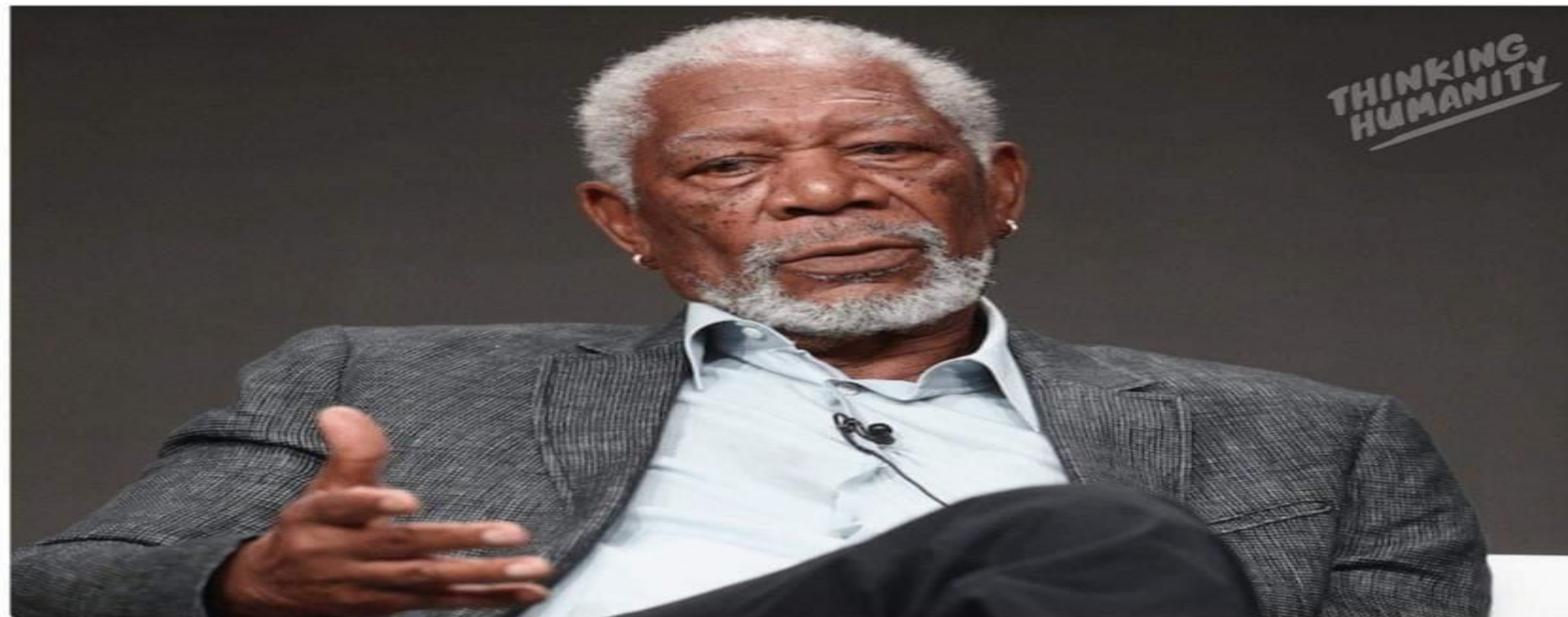
**“EFFECTIVE LEADERSHIP IS  
PUTTING FIRST THINGS  
FIRST. EFFECTIVE  
MANAGEMENT IS  
DISCIPLINE, CARRYING IT  
OUT.”**

**- STEPHEN R. COVEY**





**Degree is just  
a piece of paper,  
real education  
is seen in behaviour.**



**A TRUE LEADER DOESN'T  
CREATE SEPARATION**



**A TRUE LEADER BRINGS  
PEOPLE TOGETHER**



Novak Djokovic was dramatically disqualified from the US Open on Sunday after accidentally striking a female lines judge with a ball in frustration during his last-16 match, sending shock waves through the tournament.



# Professional Behavior

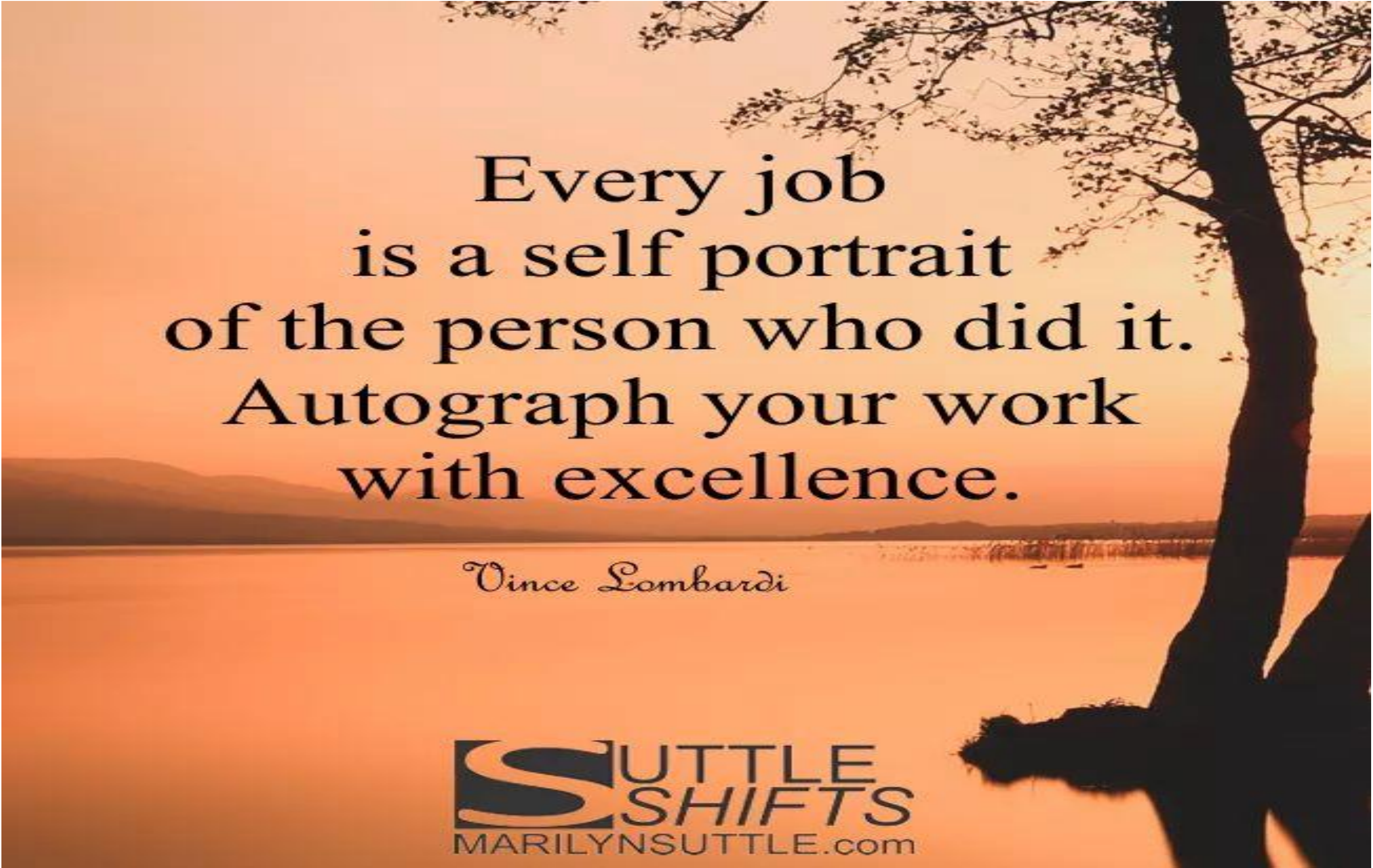


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**- STEPHEN R. COVEY**







Every job  
is a self portrait  
of the person who did it.  
Autograph your work  
with excellence.

*Vince Lombardi*

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# The Potjie Pot Model

Professional Ethical Choice and Awareness Model





# The 4 Step Process

## Ethical Sensitivity

- What strikes you?
- Raise your awareness and attention to detail, what is being said and what is left unsaid?
- Consider the people involved
- What is it about the situation that makes you feel uncomfortable?
- Look for your sense of what feels good in this context.
- Consider diversity and your own blind spots
- Widen your perspective and extend your empathetic powers

## Ethical Thought Process

- What are the facts?
- What else might I need to find out?
- What do ethical codes & regulations say and are there any legal issues here?
- What does my contract with the client say?
- Who should I consult within the profession?
- Ask the client for their ethical perspective
- If you were a client what would you want from your CA(SA)?

## Ethical Motivation and Competing Values

- What are the conflicts inside yourself?
- What are the costs and benefits of a particular course of action for each individual involved?
- Which of your personal and professional values are being challenged and which are being championed?
- What is the impact on the client, your organisation, your professional reputation and other stakeholders?
- Discuss your values with trusted colleagues, peers or mentors

## Ethical Follow-Through

- Who do I chose to hold me to account?
- Who will champion me?
- What core values can I feel most secure in?
- What do I need to let the client know?

***How will this case/ reflection process influence your practice in the future?***

***What changes will you make in the way you practice?***

***What new awareness do you have?***



# Independence

Why is it so important?

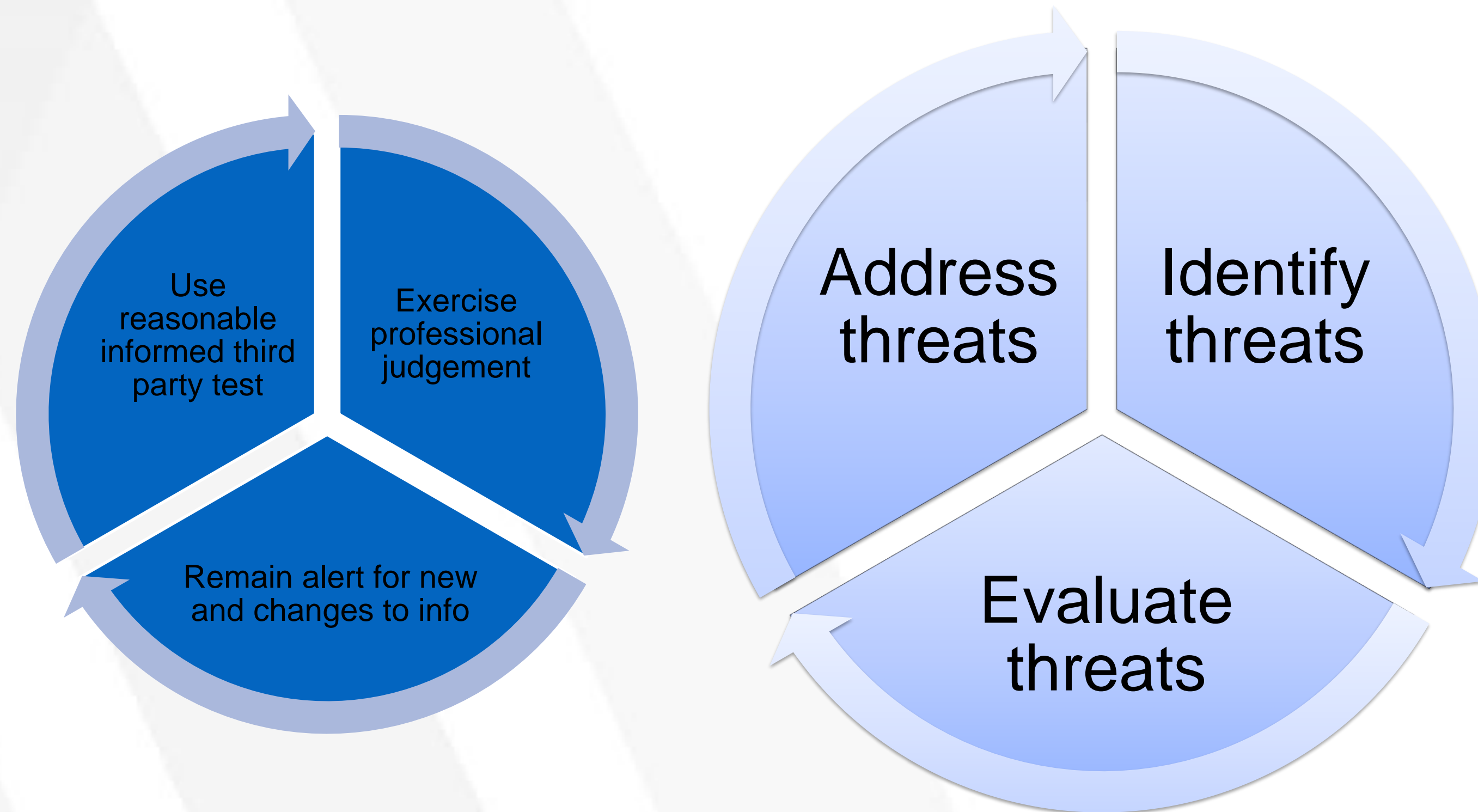
Companies Act S90(2)

Non assurance services

Objectivity



# The Enhanced Conceptual Framework



# Emphasis on Non Assurance Services





# Presenting and Preparation of financial information

Prohibition on exercising discretion when P&P info with intent to mislead or inappropriately influence contractual and regulatory outcomes

# Due Care and Professional Competence\*\*\*





# Intimidation

# Advocacy



# Corruption and its impact

# Decisions at the Boardroom table





# Practical tools

Knowledge

Pre engagement

Independence

Fees

NOCLAR and RI's

# 2 Beers and a puppy test

Judging your circle..

Yes, yes

Yes, no

No, yes

No, no



# NOCLAR and Reportable Irregularities

# 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



# 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

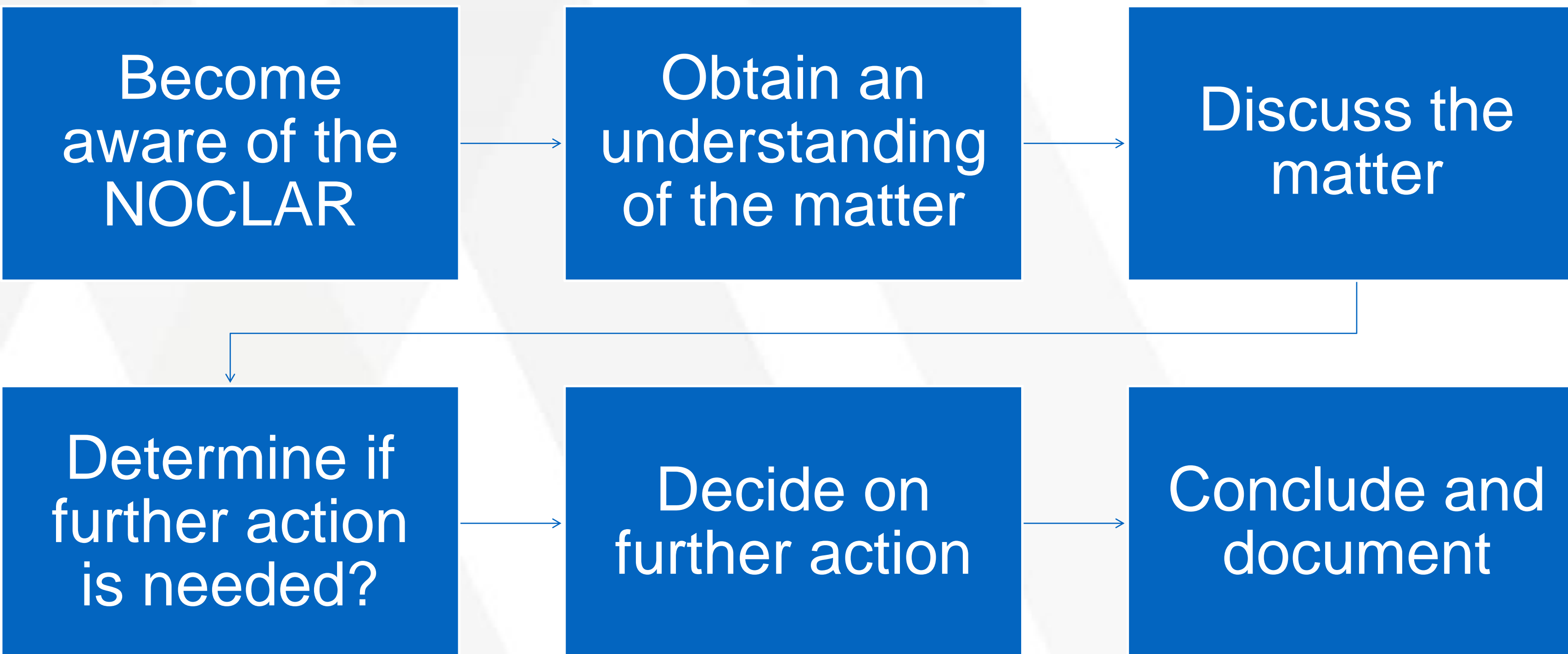
Personal misconduct unrelated to the business activities of the client or the employing organisation

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??



# 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)



# 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

# 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



# Reportable Irregularities

## Section 45 of the APA

“An individual registered auditor referred to in section 44(l)(a) of an entity that is satisfied or has reason to believe that a reportable irregularity has taken place or is taking place in respect of that entity must, without delay, send a written report to the Regulatory Board”  
... [and the remainder of section 45]

- Applies when appointed to perform an “audit”; i.e. any audit or other reasonable assurance engagements
- Excludes any review or other limited assurance engagement L&Rs
- However, includes ISRE 2410 engagement

# Reportable Irregularities Quick Refresher

The Criteria for a RI:

An unlawful act or omission; and  
Committed by any person responsible for management of an  
entity; and

It meets one or a combination of the following:

- Has caused or is likely to cause material financial loss ...;
- Is fraudulent or amounts to theft; or
- Represents a material breach of any fiduciary duty ...

IRBA Guide, Appendix 7 provides 23 examples

# 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.”

# The Code....

# Code of Professional Conduct

IFAC code updated in March 2018

Approved by IRBA by November 2018

Effective date 15 June 2019



# Objective

A distinguishing characteristic of the accounting profession is the acceptance of the responsibility to act in the public interest

## Public Interest

- Client
- Self

# More User Friendly – to use

Completely rewritten

Considered easier to use, navigate and **enforce**

Increased focus on compliance with

- Fundamental principles
- Independence

Enhanced Conceptual Framework

- More robust safeguards
- More tightly integrated into sections

# Included in the Updated Code

All substantive advances from the last 4 years

Enhancements to Conceptual Framework

Enhanced safeguards

Long Association

Preparing and Presenting Information

New provisions wrt to pressure to breach principles

PAIB vs PAPPs

Professional judgement and professional scepticism

Inducements



# Public Interest Entity

A listed company, and

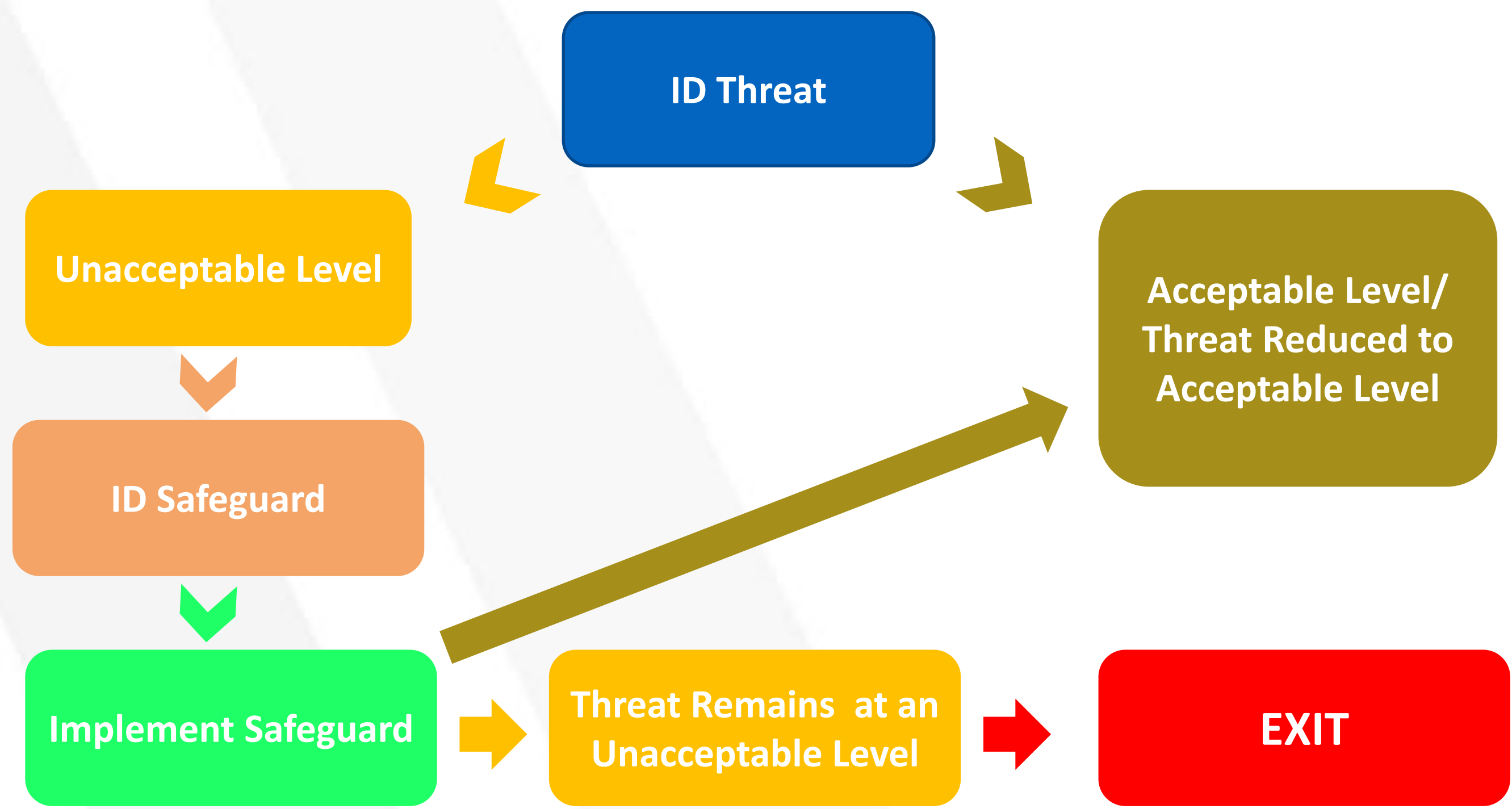
An entity

- Defined by regulation or legislation as a PIE, or
- For which the audit is required by regulation or legislation to be conducted in compliance with the same independence requirements that apply to the audit of listed entities
- Promulgated by any relevant regulator including IRBA
- Other entities set out in para R400.8a and R400.8b

# 5 Principles vs 5 Threats

	Integrity	Objectivity	Due Care	Confidentiality	Professional Behaviour	<b>INDEPENDENCE</b>				
Self Review							<b>INDEPENDENCE</b>			
Personal Interest								<b>INDEPENDENCE</b>		
Intimidation									<b>INDEPENDENCE</b>	
Advocacy										<b>INDEPENDENCE</b>
Familiarity										
						<b>INDEPENDENCE</b>				

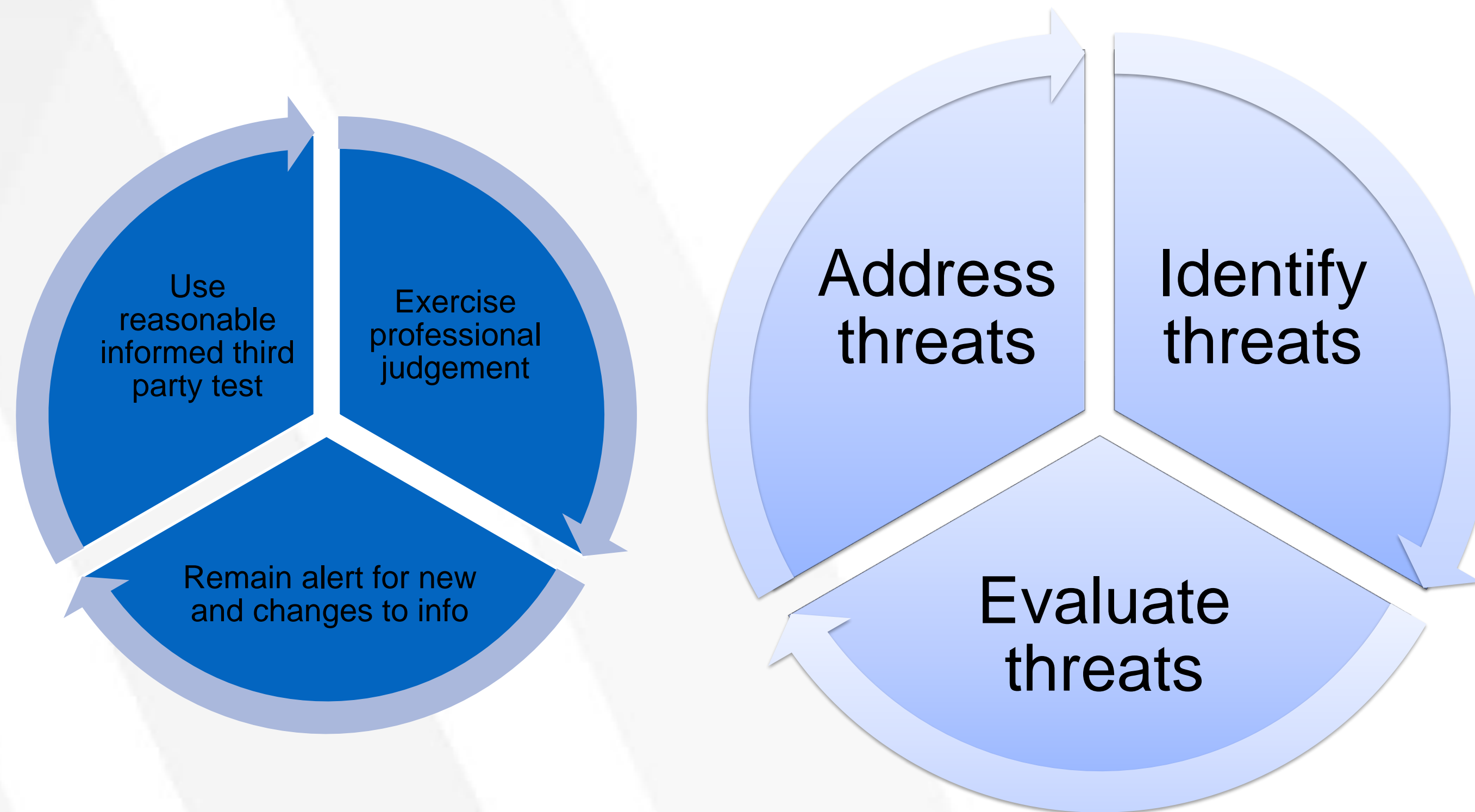
# Threats and Safeguard Decision Flow Chart



S100 Cont...



# The Enhanced Conceptual Framework



# Using the Code

Reduce repetition

Apply part I – everyone

Apply other parts as applicable

Scalability, for example

- Audit
- Non Audit
- Audit that is PIE
- Audit that is non PIE

# Key Enhancements

## Threats that are not acceptable

- Eliminate circumstances causing the threat
- Apply safeguard
- Decline or the specific professional activity/service (Emphasis if threat cannot be addressed)

## Safeguards, RITP and other key concepts clarified

- Safeguards now more clearly aligned to identified threats

**New Requirement** – Step Back in forming overall conclusions



# Inducements

## Including Gifts and Hospitality

- Clarifications about boundaries,
- Prohibitions with intent to improperly influence behaviour
- Application of CF when no actual or perceived improper intent

# Long Association

Strengthen general provisions

Partner rotation for PIE audits

Companies Act (5 years on, 2 years off)

Currently (Extant)	Revised
7 year time on: KAPs	No change
2 year cooling off: all KAP's	5 year cooling off: EP
	3 year cooling off: EQCR
	2 year cooling off: all other KAPs

# Cooling off Restrictions

Continual prohibition on consulting with engagement team or client regarding

- Technical, industry specific issues, transactions and events

## **NEW** restrictions

- Acting as “client relationship” partner
- Undertaking any other role or activity (including Non Assurance services) that would result in individual having significant or frequent interactions with senior management or TCWG or directly influencing the outcome of audit



# PAIB provisions affecting PAPPs

Practitioners are in business too....

# Professional Judgement and Professional Skepticism

All PA's – emphasis on obtaining an understanding of facts and circumstances when exercising professional judgement

For auditors and assurance

- Compliance with principles supports the exercise of professional skepticism

# 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 PA



# 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

No legal privilege

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)
- Multiple firms
  - possible but don't mislead

# Self Interest Threat Examples

Assurance team member having direct financial interest in client

A firm having undue dependence on total fees from a client

Assurance team having a significant close business relationship with an assurance client

A firm being concerned about the possibility of losing a significant client

Contingent fee arrangement with client

# Self Interest Threat Examples

Assurance team member entering into employment negotiations with a client

A PA discovering a significant error when evaluating the results of a previous professional service performed by a member of the PA's firm



# Self Review Threat Examples

A firm issuing an assurance report on the effectiveness of a system after designing/implementing it

A firm having prepared the original data used to generate records that are subject to assurance

Assurance team recently been a director/officer of client (position of significant influence)

**Can't mark your own homework!!**

# Advocacy Threat Examples

The firm promoting shares in an audit client

A PA acting as an advocate on behalf of a client in litigation or disputes with third parties

# Familiarity Threat Examples

Assurance team member having a close or immediate family member who is a director/officer of client (significant influence)

Director/officer having recently been an engagement partner and in a position of influence

PA accepting gifts or preferential treatment unless trivial

Senior personnel having long association with assurance clients (MAFR)

# Intimidation Threat Examples

Threat of dismissal from client engagement

Audit client threatening to withhold non assurance work from firm due to dispute

A firm being threatened with litigation

A being pressured to reduce work performed inappropriately to reduce fees

PA feeling pressured to agree to judgement of client employee because they have more expertise

PA promotion threatened if don't agree...



# 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

# The reasonable and informed third party (RITP)

The RITP is found in 13 places in the code

Relates to decisions that have been made

Conceptual Framework

Independence

Who is an RITP?

Use the above mentioned tools in your working papers.

# The reasonable and informed third party (RITP)

How does that person make a decision? – Think of EQRP.

“Weighing up all the specific facts and circumstances available to the registered auditor at the time, would likely to conclude that the treats would be eliminated or reduced to an acceptable level by the application of the safeguards” (200.10)

# Safeguards

Leadership

Policies and procedures (ISQCI)

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

# 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?



# Marketing Professional Services

- If concerned – need to consult with regulator

# Gifts and Hospitality

# Custody of Client Assets

- A PA shall not assume custody unless permitted to do so by law and if so, in compliance with additional legal duties imposed on PA
- FICA requirements
- Trust monies
- Acting as trustee

# Objectivity – all services

- Beyond Assurance



# INDEPENDENCE

- Independence
  - of mind
  - in appearance
- Network firms
- Public Interest Entities
  - Section 290.26(a)
- Related entities
- Those charged with governance
- Documentation

# INDEPENDENCE

- Engagement period
- Mergers and Acquisitions
- Breach of a Provision of this Section (S290)
- *Management responsibility:*
  - *controlling, leading, directing an entity*
  - *including making significant decisions*
  - *regarding acquisition, deployment and control*
  - *of human, financial, physical and intangible resources*

# Considerations

- Financial interests
  - Acting as a trustee
- Loans and Guarantees
- Business Relationships
- Family and personal relationships
  - Significant influence
- Employment with an audit client
- Temporary Staff Assignments

# Considerations

- Recent service with an audit client
- Serving as a director/officer of a client
- Long association of senior personnel with Audit client
- Provision of non assurance services to audit clients
  - Management responsibility??
- Valuation services
- Taxation services



# Considerations

- Taxation services resolution of tax disputes?
- Internal Audit
- IT System services
- Litigation support services
- Legal services
- Recruiting services
- Corporate finance services

# Fees

- Relative size
  - 15% over 2 years
- Fees overdue
  - Expected to require payment before report is issued
- Contingent fees

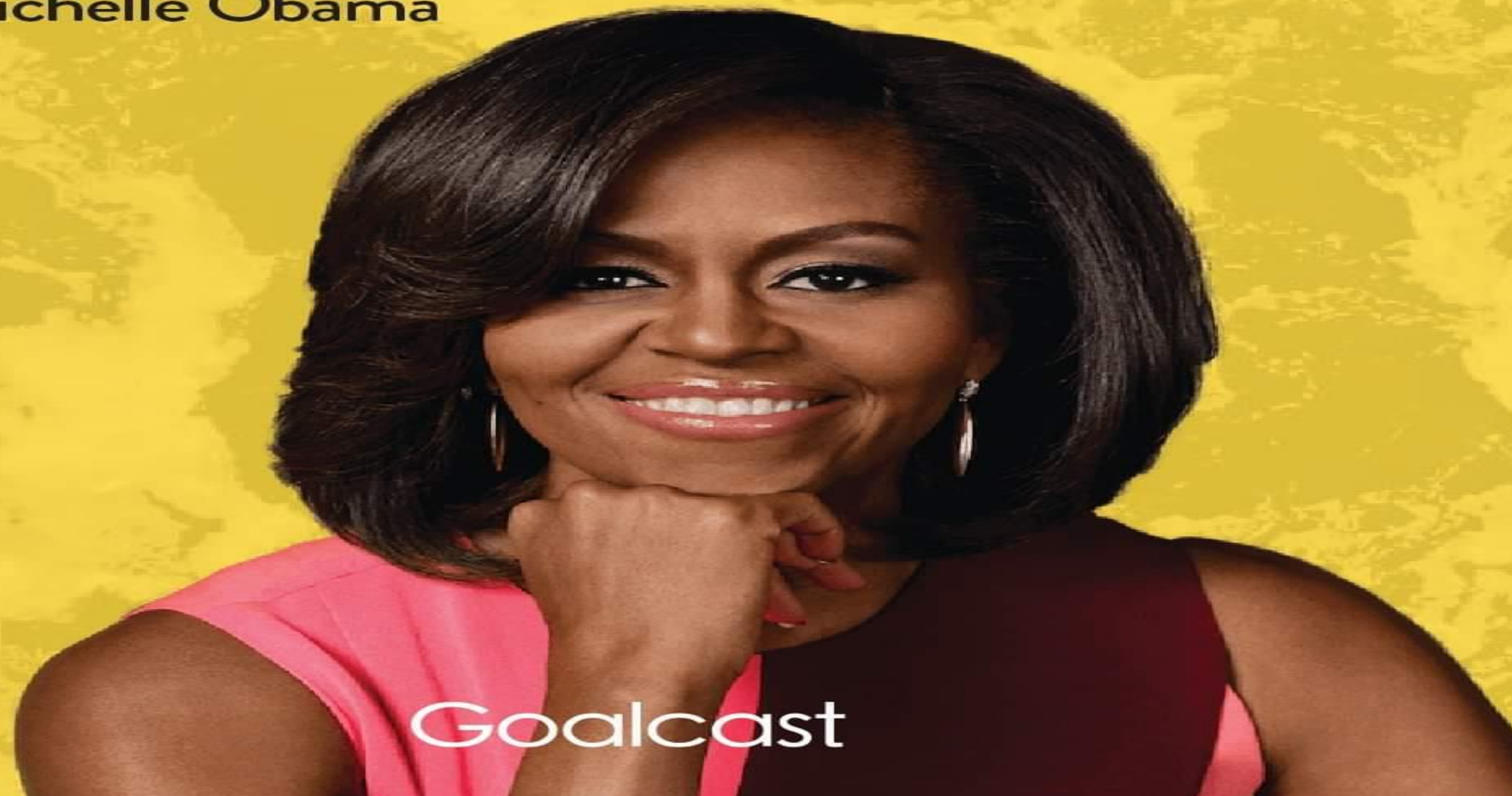
# Other issues

- Compensation and evaluation policies
  - I.e compensation for selling non assurance services
- Gifts and hospitality
- Actual and threatened litigation
- Reports that include a restriction of use and distribution
- **S291 Other assurance engagements**



***Don't ever underestimate the importance you can have, because history has shown us that courage can be contagious and hope can take on a life of its own.***

**~ Michelle Obama**





And...



# Q&A

Please use the chat sidebar to the right of the video / presentation on the screen to ask your questions.

**Thank you for your  
participation**