IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c. 141)
(the "Act")

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

EUNICE CHEW HOON GAN
(the "Licensee")

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Licensee to dispute an intended decision of Council dated August 8, 2019.

The subject of the hearing was set out in an Amended Notice of Hearing dated May 28, 2020.

A Hearing Committee heard the matter between June 17-19, 2020 and presented a Report of the Hearing Committee to Council at its October 20, 2020 meeting.

Council considered the Report of the Hearing Committee and made the following order pursuant to sections 231, 236 and 241.1 of the Act:

1. The Licensee is fined $10,000.00, due and payable by April 20, 2021;

2. A condition is imposed on the Licensee's life and accident and sickness insurance agent ("Life Agent") licence that requires her to be supervised for a period of twenty-four months of active licensing by a qualified Life Agent supervisor, as approved by Council, commencing on or before February 22, 2021;

3. A condition is imposed on the Licensee's Life Agent licence that requires her to complete the following courses:

   a) Advocis Module 911 (Financial Planning Profession & Financial Services Industry Regulation);
   b) Advocis Module 912 (Financial Analysis);
   c) Advocis Module 918 (Investments);
   d) FP Canada's "Introduction to Professional Ethics" (IPE) course;

e) the Council Rules Course, available through Advocis; and
f) an elder planning course, as approved by Council (collectively, the “Courses”).

4. The Licensee is assessed Council’s investigative costs of $2,887.50 due and payable by April 20, 2021;

5. A condition is imposed on the Licensee’s Life Agent licence that failure to successfully complete the Courses by January 21, 2022 will result in the suspension of her licence and she will not be permitted to complete her 2022 annual filing until such time as she has successfully completed the Courses;

6. A condition is imposed on the Licensee’s Life Agent licence that failure to pay the fine and investigative costs by April 20, 2021 will result in the automatic suspension of that licence, and the Licensee will not be permitted to complete her 2022 annual filing until such time as the Licensee has paid the fine and investigative costs in full; and

7. Council will consider whether to impose hearing costs on the Licensee, in an amount to be determined, after receipt and review of submissions from both the Licensee and Council on hearing costs, due no later than November 30, 2020.

At its December 15, 2020 meeting, Council considered the matter of hearing costs and made the following order pursuant to sections 231, 236 and 241.1 of the Act:

1. The Licensee is assessed hearing costs of $15,722.35, due and payable by April 20, 2021; and

2. A condition is imposed on the Licensee’s Life Agent licence that failure to pay the hearing costs by April 20, 2021 will result in the automatic suspension of that licence, and the Licensee will not be permitted to complete her 2022 annual filing until such time as the Licensee has paid the hearing costs in full.

<u>A Note on Hearing Costs</u>

The Report of the Hearing Committee did not include a recommendation regarding hearing costs, as submissions on hearing costs had not been received from the Licensee at the time of the Report’s finalization. As such, when the matter was reviewed by Council at its October 20, 2020 meeting, Council gave the Licensee a deadline of November 30, 2020 to provide submissions on hearing costs.

The hearing costs submissions subsequently provided by the Licensee were reviewed by Council at its meeting on December 15, 2020, along with hearing costs submissions prepared by Council's external legal counsel. After review and discussion of both sets of submissions, as well as of the Report of the Hearing Committee, Council decided that the Licensee should be responsible for assessed hearing costs.

The assessed hearing costs of $15,722.35 have been calculated based on the costs assessment schedule set out in Council's policy *J.21 – Assessing Investigation Costs and Hearing Costs Policy* (the "Costs Policy"). The actual expenses accrued by Council as a result of this hearing are much higher than the assessed amount.

As a self-funded regulatory body, Council looks to licensees who have engaged in misconduct to bear the costs of their disciplinary proceedings, so that those costs are not borne by other members of the industry in general, particularly when, as in this case, a licensee has been largely unsuccessful. Council notes that the Licensee's submissions did not include an argument or indication that the imposition of hearing costs would create hardship for the Licensee.

As noted in the Costs Policy, Council recognizes the importance of ensuring that hearing costs not be a barrier to the due process provided to licensees under the Act. However, this is not to be interpreted as equivalent to Council renouncing its right to recover its hearing costs in the absence of circumstances which would fully and reasonably justify a decision by Council not to assess hearing costs to a licensee. A licensee whose misconduct engages Council's resources ought to bear at least some of the costs of disciplinary proceedings, so that those costs are not unfairly borne by other licensees.

This order takes effect on the **21st day of January, 2021.**

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Janet Sinclair, Executive Director
Insurance Council of British Columbia

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

REPORT OF THE HEARING COMMITTEE

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(the "Act")
(S.B.C. 1996, c. 141)

AND

EUNICE CHEW HOON GAN
(the "Licensee")

Date:	June 17-19, 2020 9:30 a.m.	
Before:	Bill Bennett	Chair
	Barbara Price	Member
	Brett Simpson	Member
Location:	By video Suite 300, 1040 West Georgia Street Vancouver, British Columbia V6E 4H1	
Present:	Thea Hoogstraten	Counsel for the Council
	Sean Boyle/Danny Urquhart	Counsel for the Licensee
	Eunice Chew Hoon Gan	Licensee
	Michael Shirreff	Counsel for the Hearing Committee

BACKGROUND AND ISSUES

The Licensee has been licensed with the Council as a life and accident and sickness insurance agent (a "Life Agent") since 1990. The allegations in this matter raise concerns about investment advice that the Licensee gave to one of her clients, an elderly, retired public health nurse, who had been a client of the Licensee dating back to the early 2000s (the "Client").

In 2017, the Council received a complaint from Ms. F., who was the power of attorney ("POA") for the Client. Ms. F. was concerned that the Licensee had made investment

recommendations that were not in the Client's best interests and which were generally not appropriate given the Client's overall financial situation and age.

The matter was investigated by the Council, which issued an Intended Decision on May 14, 2019 in accordance with sections 231, 236 and 241.1 of the Act. As was her right pursuant to section 237 of the Act, the Licensee asked to have the issues addressed through a hearing.

As outlined in the Amended Notice of Hearing, the purpose of the hearing was to determine whether the Licensee:

1. breached the requirements of the Act, Council's Rules and Council's Code of Conduct and acted improperly in providing investment recommendations to an elderly client that were inappropriate considering the client's age and overall financial circumstances, by failing to conduct an accurate needs analysis when facilitating these investments, and in failing to respond in a timely manner to a client's requests and in failing to keep adequate records;

2. is able to carry on the business of insurance in good faith, in a trustworthy and competent manner, and in accordance with the usual practice, as required under Council Rule 7(8) and pursuant to section 231(1)(a) of the Act; and

3. should be subject to any disciplinary or other action in the circumstances; and if so, whether Council should do one or more of the following in accordance with sections 231, 236, or 241.1 of the Act:

    (a) reprimand the Licensee;

    (b) suspend or cancel the Licensee's Life Agent licence;

    (c) impose conditions on the Licensee's Life Agent licence;

    (d) fine the Licensee an amount no more than $10,000;

    (e) require the Licensee to pay the cost of Council's investigation and/or this hearing;

    (f) take any other measures that Council deems appropriate.

The Hearing Committee was constituted pursuant to section 223(1) of the Act and the hearing of this matter took place by video conference between June 17 and 19, 2020. This is the written report of the Hearing Committee, which has been prepared in accordance with section 223(4) of the Act.

EXHIBITS

The following documentary exhibits were entered by consent at the beginning of the hearing:

Exhibit 1 Agreed Statement of Facts.

Exhibit 2 Joint Book of Documents, which contained two volumes and 124 documents.

The Council called evidence from only one witness, Ms. F., who as noted above was the POA for the Client for much of the material period and who had filed the complaint with the Council.

The Licensee testified on her own behalf and she also called evidence from her former colleague, Mr. L., who had been the Client's insurance advisor for many years before the Licensee and who had introduced the Client to the Licensee.

The evidence from all of the witnesses is summarized below.

At the conclusion of the hearing, both the Council and the Licensee provided written submissions, which set out their respective positions on the issues in this matter and which also contained references to prior decisions of the Council.

AGREED STATEMENT OF FACTS

The key facts in this matter arise from the advice that was given to the Client by the Licensee in relation to the purchase of certain segregated fund investments. These first of these investments was purchased by the Client in 2002. However, beginning in 2007, a partial withdrawal from the initial investment was combined with additional borrowings, into a new leveraged investing strategy that was carried on through 2017.

In advance of the hearing, the parties were able to agree on a set of facts that provided an overview of the relevant investments. The Hearing Committee believes it is helpful to set out the agreed facts in full before then reviewing the evidence given by the witnesses.

The Client was born in 1927. She worked as a public health nurse until she retired in 1990. The Licensee became the Client's advisor in or around 2002. Prior to that date, the Client had been advised by Mr. L., who eventually came to work jointly with the Licensee and then later transitioned his clients to the Licensee when he began to wind down his own insurance practice.

The initial transactions that were referred to the Hearing Committee dated back to 2002. In April 2002, the Licensee and Mr. L. met together with the Client and helped her open a segregated fund account with an insurer ("Insurer A Account 1"), with an initial deposit of $[redacted]. The application for that fund was signed by both Mr. L. and the Licensee as the Client's advisors.

Five years later, in October 2007, the Licensee and Mr. L. met again with the Client and completed a 2:1 loan application, which led to the Client taking out a $[redacted] loan from a bank ("Bank A") for investment purposes ("2007 Loan").

The 2007 Loan, plus $[redacted]0 that was a partial withdrawal from Insurer A Account 1, were then invested by the Client into a new Insurer A segregated fund account ("Insurer A Account 2"). As of 2007, the Client had a total new investment in Insurer A Account 2 in the amount of $[redacted] as well as the remaining value in Insurer A Account 1 after the withdrawal.

The Client and the Licensee both signed the 2007 Loan application and investment instructions, as well as the Insurer A Account 2 application. Mr. L. did not sign these documents.

After these transactions, the Client held the new leveraged Insurer A Account 2, along with the original Insurer A Account 1 (reduced by the withdrawal).

The Client incurred approximately $[redacted] capital gains for the transactions involved in Insurer A Accounts 1 and 2 in 2007. On account of the 2007 Loan, Insurer A Account 2 was held in trust to collateralize the loan with Bank A. The remaining balance of Insurer A Account 1 was used to fund the interest payments on the Bank A loan collateralized by Insurer A Account 2.

The Insurer A Account 1 funds sold in 2006 and 2007 incurred capital gains of $ in 2006 and $ in 2007.

The transactions in Insurer A Account 2 incurred capital gains of $ in 2007.

Almost seven years later, in 2014, the Client's Insurer A Account 2 was redeemed to cash and $ was transferred into a new segregated fund with another insurer, with a 5% Deferred Sales Charge ("DSC") fee structure ("Insurer B Account 1").

The Licensee and the Client both signed the Insurer B Account 1 application.

In that same period of time, on May 20, 2014, the Client signed a new application for an updated Bank A investment loan (the "2014 Loan"). The balance on the 2007 Loan was $ at that time. This balance was transferred to the 2014 Loan.

Similar to what had taken place in 2007, the 2014 Loan amount of $ was used to fund part of the Client's investment in Insurer B Account 1, which was again held in trust with Bank A.

On June 23, 2014 the Licensee also redeemed the balance in Insurer A Account 1 to cash and $ from that account was transferred to a new Insurer B Account 2 (Front End Load Zero (0), no DSC fee structure) ("Insurer B Account 2").

The Client and the Licensee both signed the application for Insurer B Account 2. This new unrestricted Insurer B Account 2 took over the role of paying the monthly interest charges on the renewed Bank A 2014 Loan collateralized by Insurer A Account 1.

The redemption to cash and transfers to Insurer B Accounts 1 and 2 in 2014 incurred capital gains for the Client of $ and $ respectively.

On October 23, 2014, there was a meeting involving a number of parties, including the Client, Ms. F., Mr. L. and the Licensee, during which the Client's investment portfolio was reviewed. During this meeting, it was discussed that steps would be taken by the Licensee to pay off the Client's 2014 Loan.

After this meeting, the Licensee began facilitating repayments on the 2014 Loan with a combination of unrestricted Insurer B Account 2 redemptions and 10% "DSC fee free" redemptions from Insurer B Account 1. Insurer B Account 2 continued to fund the interest payments on the 2014 Loan.

On October 27, 2014 $[redacted] was paid down on the 2014 Loan.

On February 11, 2015 $[redacted] was paid down on the 2014 Loan.

On February 22, 2016 $[redacted] was paid down on the 2014 Loan.

In January 2017, Ms. F. contacted Bank A and Insurer B and asked if the investments could be redeemed in full; the 2014 Loan repaid; and the remaining DSC fees waived.

Eventually, as the POA, Ms. F. took steps to fully redeem both Insurer B Accounts 1 and 2. The redemption of the accounts resulted in capital gains for the Client of $[redacted] (2017) and $[redacted] (2016). The full redemption of the Insurer B accounts occurred in 2017. Contractually, the redemption of Insurer B Account 1 would have resulted in a substantial DSC fee for the Client.

Insurer B performed an investigation into the background of what occurred and summarized its findings in its letter, dated February 23, 2017, which stated, in part:

> [Insurer B] has conducted an investigation into concerns brought forth by [the POA] for [the Client]…
>
> The investigation included a review of all [Insurer B] head office material regarding the policy as well as material and information provided by [the POA] and [the Licensee].
>
> [Insurer B] has concluded that the suitability of the Deferred Sales Charge (DSC) load option as it applies to [Insurer B] policy [redacted], issued in 2014, is not sufficiently supported.
>
> [Insurer B] acted in accordance with the documentation received to establish [the policy], which included the DSC load option. The onus is on the producer to ensure the client's best interests have been served and that the client file documentation supports this practice. The client file documentation provided by [the Licensee] was not sufficient to clearly demonstrate that all available load options had been presented to [the Client] at the point of sale, fully understood by her and the decision to elect the DSC option made by her.
>
> …

As noted in the letter, Insurer B agreed to waive the Client's remaining DSC fees upon redemption and assessed the Licensee these DSC fees of $[redacted]. Subsequently, the Licensee's E&O policy reimbursed Insurer B the DSC fees less a $1,000 deductible.

EVIDENCE FROM MS. F.

Ms. F. is a retired nutritionist and dietician who was almost 70 years old as of the date of the hearing. Ms. F. described how she had known her friend, the Client, for many years, dating back to when they had worked together at the same hospital where her friend had been a public health nurse.

Ms. F. said that her friend effectively became a member of her family through the years. She described the Client as a "delight" and said that she was an independent, single woman with no direct family in Canada other than her brother. It was Ms. F.'s evidence that her friend was not much of a "paperwork person" and had always been very clear that she did not want to have any debt.

As she aged, Ms. F. described that the Client began to suffer from a number of health issues and, as of the date of the hearing, the Client's health had deteriorated to the point where she was in full-time care, experiencing both physical and cognitive issues.

In April 2014, Ms. F. took the Client to meet the Client's long-time accountant to discuss the filing of her annual tax returns. During this meeting, Ms. F. described the Client as being quite surprised when the accountant told her that she had a significant loan that she was paying interest on. Ms. F. did not understand the specifics of what was being discussed at that point, but she recalled the accountant saying it was a $ loan that the Client had taken out many years before.

In May 2014, Ms. F. said that the Client called her to talk about a meeting that she had just had with Mr. L., who Ms. F. knew to have been the Client's long-standing financial advisor. Ms. F. described her friend as being upset after Mr. L.'s visit. Ms. F. later visited the Client to help review some of her financial documents. It was during that review that Ms. F. found a copy of the Licensee's business card.

Ms. F. called the Licensee and asked her to meet with the Client to answer her questions about the investments. The Licensee said she would come by and speak with the Client. Ms. F. understood that such a meeting had taken place and she believed that the Client's concerns about the investments had been resolved.

In June 2014, Ms. F. was still helping her friend and she came across documents from Insurer A that indicated the Client's account with that company then had a zero balance. It was unclear to Ms. F. where the money had gone, but further documents subsequently arrived which suggested that the Client's money had been transferred to Insurer B and that the Client still had a loan from Bank A.

The Client was unable to explain to Ms. F. what had happened with the transfers, so Ms. F. suggested that they gather up all of the documents and seek advice from another professional. Specifically, Ms. F. sought assistance from a CGA in Surrey who reviewed the Client's portfolio and prepared a letter summarizing where things appeared to stand.

Ms. F. and the Client then met with the Licensee at the CGA's office in August 2014 to review the Client's investments. During this meeting, the Licensee brought documents that showed the Client's investment history with Insurer A and explained the reasons why the switch had recently been made to Insurer B in May 2014.

Ms. F. said that it was agreed during that meeting that steps would be taken by the Licensee to clear up the Client's 2014 Loan and move the Client into a more conservative portfolio. The Licensee put forward a plan for how to do that without great penalty, by making certain payments towards the 2014 Loan, along with taking steps to make the investments in the portfolio safer. Ms. F. said that the Client specifically expressed during that meeting that she did not want any loans.

Ms. F. testified that her concerns at that time related in large part to the type of investments that the Client had purchased. It appeared to Ms. F. that the investments did not allow enough flexibility to ensure that the Client could pay for her escalating personal health expenses in the years ahead. Ms. F. was also concerned that the investment strategy seemed to favour or prefer the Client's estate, which did not make sense to Ms. F. as she knew that the Client was intending to leave any money she had to charity.

Put simply, Ms. F. did not think that the investment strategy was sound given the Client's personal circumstances and her need for money on an annual basis. She said the Client expressed that she wanted a safe haven for her money, not a product where the goal was to try to maximize investment gains.

A further meeting occurred at the Licensee's office on October 23, 2014. This meeting was organized because the Licensee did not appear to have taken the steps that had been discussed in August with respect to paying down the 2014 Loan. The meeting was attended by the Client, Ms. F., her husband, the CGA, Mr. L. and the Licensee. It seemed straightforward to Ms. F. that the loans should be paid down and she did not understand why the Licensee had yet to implement what had been discussed in August.

At the conclusion of that meeting, Ms. F. believed that the Client's portfolio would quickly be transferred by the Licensee to something much less risky. A few days later,

on October 27, 2014, the Licensee took steps to withdraw the maximum allowable fee free portion (10%) from Insurer B Account 1 and used those funds to pay down the Client's loan. A further similar payment was then facilitated by the Licensee in early 2015, when the new calendar year allowed another 10% withdrawal without cost to the Client.

In October 2015, the Client had a fall in her home and she was required to move into assisted living. Her residence was eventually sold in 2016 for $[redacted]. As her health continued to deteriorate, Ms. F. said that the Client's physical health needs and associated expenses were also increasing.

Ms. F. became the Client's POA on February 22, 2016.

On October 11, 2016, Ms. F. described another meeting with the Licensee during which they again discussed the Client's financial affairs. Ms. F. specifically asked to review the Client's portfolio at that time given her significant changes in needs and circumstances as a result of her failing health.

Ms. F. had also been referred by that time to an investment advisor who had reviewed the Client's investments and had offered advice to Ms. F. about the appropriateness of the overall investment strategy. At the October 2016 meeting, Ms. F. asked the Licensee a series of pointed questions about the investments and the overall financial plan. Ms. F. recalled that she was not satisfied with what the Licensee explained about the fee structures on the accounts. As Ms. F. described, she believed the Licensee's answers were too vague with respect to how she was compensated in relation to the Client's investments.

There were emails then exchanged between Ms. F. and the Licensee in late October 2016 in which the Licensee responded to questions that Ms. F. asked about the advisor compensation. Ms. F. remained unsatisfied with the answers given by the Licensee and believed that she was not providing the very specific information that had been requested.

In November 2016, the Client's health took another turn and some cognitive issues emerged. She was also hospitalized for a period of time in late 2016 after a fall that resulted in a fractured hip. Ms. F. became even more concerned about the Client's investments and believed that the Client needed to have her money in an investment vehicle that provided her with a stream of capital that could be used in the short-term to cover her care needs – an investment that was guaranteed and safe.

By January 2017, Ms. F. had lost all confidence and faith in the Licensee. After she consulted with an accountant and a lawyer, Ms. F. wrote a letter to Bank A and asked the bank to allow the 2014 Loan to be cashed out and repaid without any transaction fees given her view that the overall investment strategy had not made sense for the Client from the outset (specifically, the notion of the Client having a leveraged investment account at that stage of her life).

The Licensee learned about the request for the fee waiver and called Ms. F. on January 20, 2017. During this call, the Licensee said she had wished that Ms. F. had come to her first before going to Bank A.

There were further emails between the Licensee and Ms. F. in early 2017 relating to Ms. F.'s desire to cash out the Client's investments. During this time, the Licensee proposed a new portfolio for the Client that Ms. F. accepted was more conservative than the leveraged segregated funds the Client was in at the time. However, Ms. F. was not asking the Licensee for a new portfolio recommendation. All she wanted was help from the Licensee to pay off the 2014 Loan, so the portfolio could be cashed out and moved to safer investments.

During this same period, Ms. F. worked through the process of cashing out the non-DSC fee policy (Insurer B Account 2) and, as noted above, requested that the remaining DSC fees be waived on the second policy (Insurer B Account 1). The Licensee had advised Ms. F. that the waiver of the fees was unlikely to be approved by Insurer B on medical grounds, which Ms. F. described as "annoying" because that was not what she was seeking. Ms. F. wanted the fees waived because the investment strategy had not been in the Client's best interests.

Ms. F. was eventually advised by Insurer B that the DSC fees would be waived on the basis that the investment was not suitable for the Client. Ms. F. said the Licensee then contacted her to discuss an alternative arrangement to offset the repayment of the fees that the Licensee would have to make, but Ms. F. would have none of the proposed plan.

Much of the cross-examination of Ms. F. related to events that occurred long before she became the POA for the Client. Ms. F. readily admitted that she was not involved in the Client's finances when she first purchased the Insurer A accounts many years before in 2002 and 2007, or when she had taken out the initial 2:1 Bank A loan in 2007. Ms. F. accepted that she had no knowledge about what was explained to the Client about these investments by either the Licensee or Mr. L. at those times.

Ms. F. also accepted that she had no knowledge about what was discussed in May 2014 when the Client signed a new agreement to borrow funds from Bank A and to move her investments to Insurer B. Ms. F. further agreed that these loans were taken out and the investment strategy was initiated long before Ms. F. had a POA and at a time when there were no concerns about the Client's competency.

Counsel for the Licensee took Ms. F. through the Client's prior tax returns in the years prior to 2014 and illustrated how the loan interest on the 2007 Loan was clearly reflected in the Client's taxes, with the interest on the loan being deducted from her income each year. Based on these documents, it was suggested to Ms. F. that the Client would certainly have known about the 2007 Loan and its annual tax treatment. It was also put to Ms. F. that the information in the tax returns was inconsistent with what Ms. F. had said about the Client being surprised to learn she had a loan when they attended with the accountant in April 2014.

It was further suggested to Ms. F. that her involvement with the Client's finances was much less altruistic than she attempted to portray during her evidence in chief. It was suggested that she had personally gained financially from becoming the Client's POA, both in terms of the monthly POA fees, but also in relation to assuming ownership of the Client's vehicle after her incapacitation. Counsel for the Licensee also emphasized the fact that the Client's money was now held in a joint bank account that would presumably pass to Ms. F., outside of the Client's estate.

Finally, it was also suggested in a variety of ways that Ms. F.'s complaint with the Council was initiated largely due the fact that she had a philosophical view that people should not leverage themselves to borrow money for investments. There were many questions to Ms. F. about how her alleged issues with the Licensee were based on nothing more than her overall views about leveraged investing. Ms. F. admitted that she did not believe the strategy was appropriate for an elderly person, given the volatility of the market and what a senior needs in terms of access to cash on a regular basis.

MS. GAN'S TESTIMONY

The Licensee testified for a full day and was cross-examined at length by the Council's lawyer.

The Licensee had been involved in the insurance industry in Singapore before moving to Canada in the early 1990s, where she pursued the schooling required to become

licensed in British Columbia. She has practised in British Columbia since that time without any previous disciplinary issues.

The Licensee was introduced to Mr. L. at a golf club that they both belonged to and they started to work together shortly after the Licensee obtained her licence, initially in an office-share arrangement.

Mr. L. had been a long-time advisor for the Client and he introduced the Licensee to the Client in the early 2000s. The Licensee testified that the Client's broad investment objectives early in their relationship were essentially three-fold: 1. ensure that her investments grew tax efficiently; 2. preserve her assets so she could have liquid assets available if needed during her lifetime; and 3. direct her assets to the beneficiaries of her estate following her death.

In 2002, the Client inherited some money and sought advice from the Licensee and Mr. L. about how to invest these funds. At that time, Mr. L. and the Licensee recommended that the Client purchase a segregated account, which she did by making an investment of $[redacted] with Insurer A. It was the Licensee's evidence that Mr. L. was heavily involved in the initial advice in 2002 that led to the Client investing in a segregated fund. The Licensee testified that the Client's overall financial circumstances appeared to be very healthy at that time – she had a pension from Europe, a British Columbia pension from her nursing career and she also owned her condominium.

In 2007, the Licensee then helped facilitate the Client to take out a $[redacted] leveraged loan from Bank A that was then combined with $[redacted] cashed out of the initial Insurer A account (Insurer A Account 1) to invest in a new segregated fund with a total investment of $[redacted] (Insurer A Account 2).

The Licensee believed this was to have been a safe investment strategy for the Client at that time, in large part due to the principal and maturity guarantees provided in the segregated account. Even though the Client was borrowing to invest, the Licensee believed that the overall strategy mitigated the risk to the Client given the guarantees and she viewed it to be a sound overall strategy in light of the Client's stated investment goals. Of note, the Licensee also indicated that she had only limited prior experience with leveraged investing.

The Licensee testified that the Client was very much aware in 2007 that a leveraged investment strategy was being pursued when the 2007 Loan was applied for and said that, in fact, it was the Client who had approached the Licensee and Mr. L. with the idea of borrowing to invest. The Licensee testified that the Client was aware of the risks of

the strategy and said that no needs analysis or fact-finding was necessary at that time given the long-standing relationship that the Client had with Mr. L. and the Licensee. The Licensee testified there had been frequent discussions about the Client's overall financial needs during the preceding years, even though the Licensee did not retain any records confirming exactly what was discussed.

The Licensee described that the plan starting with the 2007 Loan was to use the borrowed funds to invest and then, when the market rose, they would "re-set" the account at the higher value so that the Client's estate would never be liable for having to pay the full principal of the investment loan (it would be covered by the principal guarantee). The Licensee would follow the market and then preserve and lock-in the gains for the Client at the appropriate juncture as the market matured.

Again, the Licensee maintained that the Client was aware of the risks of this strategy. She said that the benefits and risks were discussed with the Licensee at length and the Client was the type of person who was careful and always read everything to ensure that she understood investments clearly before signing any application forms.

In May 2014, the original 2007 Loan was rolled-over and continued with the new 2014 Loan. The Licensee explained that a new loan from Bank A was necessary at that point because the Client was moving her investments from Insurer A to a Insurer B nominee account. The Licensee testified that she again had a detailed discussion with the Client prior to making that change and she said that the Client was very aware of why the funds were being transferred. The Licensee pointed to the Client's signature on the various forms in 2014 and noted that there were no concerns at that point about the Client's competency.

In May 2014, the Licensee confirmed that approximately $ from Insurer A was redeemed and re-invested for the Client with Insurer B. Of this amount, $ was from the 2014 Loan. As set out in the application documents, the Client identified her "estate" as the designated beneficiary entitled to the proceeds of the benefit payable on death. The Licensee testified that this was specifically requested by the Client, who wanted to leave her estate to charities. As the investment principal was guaranteed, the Licensee believed there would be no potential for liability on the 2014 Loan should the Client pass away.

When the move was made to Insurer B in 2014, the Licensee explained that this was appropriate in her view for two reasons. First, she wanted to capture the gains that had been made in the investment since 2007. Second, she wanted to avoid any risks caused by the underlying sale of Insurer A to another insurer ("Insurer C"). Specifically, the

Licensee testified that she was concerned about the terms of the replacement products that would be available to the Client through Insurer C. In transferring the investment to Insurer B in 2014, the Licensee said that they "re-set" the Client with a new $[redacted] principal guarantee.

At a general level, the Licensee testified that she viewed this leveraged approach as a good investment strategy for a senior like the Client because of the key features of a segregated fund, particularly the provision of a capital guarantee should the investor pass away. Further, the Licensee emphasized that by naming a beneficiary of the account, an investor is able to avoid certain probate fees associated with administering an estate. Of note, this latter benefit was difficult to reconcile with the fact that the Licensee had the Client indicate only her "estate" as the beneficiary of the fund.

The Licensee also testified about the fee structure used on the Client's investments. The first two purchases, in 2002 and 2007, were undertaken with "no load" structures, which did not have any upfront fees for the Client but instead provided advisor compensation through imbedded trailing commissions.

In 2014, when the Client purchased Insurer B Account 1, the fee structure was established as DSC, paying the Licensee 5% of the investment value up-front, with a reduced trailing commission. The Licensee explained that this change was made solely for the sake of convenience, as she was still splitting commissions with Mr. L. at that time and he no longer had an advisor code with Insurer B. As Mr. L. did not have a code, it was more administratively convenient to calculate and pay the commission split agreed with Mr. L. at the contract initiation point, using a DSC fee structure. The Licensee said that the fee structure was also explained to the Client and approved during the course of the meetings in May 2014. The fees on Insurer B Account 2 continued to be paid as trailers.

With respect to her Client file, the Licensee conceded that her record-keeping was lacking. She did not have a file that contained the types of documents one might expect concerning a client's investments, including notes or any other documentation confirming that a particular investment strategy had been explained to the Client and that the Client had consented to the risks or the fee structure. The Licensee did refer the Hearing Committee to some monthly fund value reports that she said she had generated about the Client's investments that she indicated she had provided to the Client at regular intervals.

In terms of the Licensee's dealings with the Ms. F., she explained that they first met in August 2014. At that time, the Licensee reviewed the Client's investments with Ms. F. in

detail and provided an overview of the history of the investments, as well as some recommendations about what steps could be taken to pay down the 2014 Loan. The Licensee agreed that Ms. F. raised concerns with the Licensee about the nature of the Client's investments. Ms. F. had suggested to the Licensee that she wanted the Client's portfolio to be rebalanced and the Licensee agreed to redesign a more conservative plan.

Despite what Ms. F. said during her evidence, the Licensee denied moving too slowly in terms of the next steps and said that she developed a plan to pay down the 2014 Loan using the proceeds from the Insurer B Account 1, as well as the available proceeds from the Insurer B Account 2. The Licensee later prepared a summary in early 2017 showing a proposed schedule to pay down the 2014 Loan.

In 2017, Ms. F. decided to redeem the accounts in full. This led to issues with the DSC fees on the larger account, as well as capital gains for the Client. The Licensee was not satisfied that Ms. F. in fact had the best interests of the Client in mind when these steps were taken and she became concerned that Ms. F., as the POA, appeared poised to have the redemption amounts paid into a joint account that she held with the Client. To protect the Client, the Licensee raised concerns about the redemptions with Insurer B and Bank A and also reported the matter to the Public Guardian and Trustee. The Licensee viewed these steps as part of her ongoing obligations to the Client to ensure that her assets were protected.

Under cross-examination, the Licensee admitted that she had no professional qualifications in financial planning or tax planning. She also conceded that she had never done a financial plan for her Client and that she was also not aware of such a plan ever having been put together by Mr. L. The Licensee also admitted that she had never undertaken a needs analysis for her Client when these investments had been recommended and she had not undertaken any analysis of the financial aspects of the Client's care or medical needs as she was aging. The Licensee accepted that leveraged investing was inherently risky and testified that she had not been involved in a leveraged investment strategy before the products that the Client had purchased. She insisted throughout that the Client had been the one to suggest the leveraged strategy.

Mr. L. had testified in the hearing before the Licensee gave her evidence and Mr. L. had suggested that the Client was not all that sophisticated when it came to her financial matters. The Licensee disagreed with Mr. L.'s evidence on this issue and testified that the Client was a very intelligent person and was someone who had good knowledge of her financial affairs.

There were a series of questions put to the Licensee about the answers she had given to the Council investigator during the course of the investigation. It was suggested to the Licensee that she had been untruthful on key matters in her responses to the Council, both in writing and then again when she was interviewed as part of the investigation. It was also suggested that the Licensee had attempted to shift or deflect blame for any issues by suggesting that the leveraged investment strategy had been put in place by Mr. L. *before the Licensee was the primary advisor*. In particular, the Council referred the Licensee to documents that she had prepared during the investigation which stated that the Bank A loan had been taken out in 2002 and not 2007. The Licensee acknowledged that some of the information she had provided to the Council on these issue had not been accurate, but she maintained that Mr. L. had been involved in the formation of the leveraged investing strategy in 2002 and was still involved in 2007 when the initial Bank A loan was taken out.

Many issues with the application forms were also highlighted during the course of the Licensee's cross-examination. Notably, in the application for the 2014 Loan the Client was said to have a gross annual income of $[redacted], while also owning property valued at $[redacted]. Both of these facts were clearly untrue at that time and the Licensee's explanations for how these mistakes were made on the application were not at all compelling to the Hearing Committee.

It was directly suggested to the Licensee that the switch to Insurer B in 2014 had nothing to do with "re-setting" the Client's investments, but was instead simply an opportunity to take advantage of her 87 year old Client and receive many years of future trailing commissions as a front-end lump sum under the DSC fee structure. This was denied by the Licensee, who insisted that the fee structure was one of administrative convenience given that Mr. L. no longer had a contract and advisor code with Insurer B. Again, on that issue, the Council referred the Licensee to the initial answers she had given when she was interviewed by the Council investigator and she had suggested that the DSC fee structure had been a legacy from when Mr. L. was involved with the Client. During the hearing, the Licensee testified that she had been mistaken during her interview and took issue with the manner in which the interview had been conducted by the Council.

In the eyes of the Hearing Committee, the most troubling aspect of the Licensee's testimony was her claim during cross-examination that she had a verbal agreement with Mr. L. that they would refund the DSC fees to the Client if there were ever any medical issues that required the Client to need to redeem the fund early. This alleged verbal agreement did not appear to have been mentioned at any time to Insurer B or to the Council earlier in the investigation. The Hearing Committee did not find the Licensee credible when she testified that this verbal agreement had been made, or why

it was never implemented when needed. Her evidence about this alleged agreement caused the Hearing Committee serious concerns about the reliability of other aspects of the Licensee's evidence.

Finally, the Licensee confirmed that the total lump sum commission she made on the 2014 Insurer B Account 1 was approximately $56,000. Of this amount, the Licensee had to repay approximately $34,000 in 2017 after the Insurer B investigation. She also confirmed that she had received ongoing trailing commissions on both Insurer B Accounts 1 and 2.

EVIDENCE FROM MR. L.

The Licensee also called evidence at the hearing from Mr. L. Mr. L. had known the Client dating back to the early 1970s when the Client had worked at the same hospital as Mr. L.'s wife.

Mr. L.'s areas of expertise during his career had been life insurance and financial planning. He said that he was at one point qualified as an estate planning specialist with Insurer B. Near the end of his career, when Mr. L. sought to transition into retirement, he began to refer his base of clients to the Licensee. He testified that this referral arrangement started in the mid-1990s.

After Mr. L. transitioned the Client to the Licensee, he stayed involved with her matters for a number of years and attended annual meetings with the Client along with the Licensee. Mr. L. said that he considered the Client to be a good friend.

It became clear during the course of his evidence that Mr. L. did not have a great recall of the events potentially material to the issues in this hearing. No doubt this was largely a function of the passage of time. At a very general level, Mr. L. testified that the Client's investment objective was always relatively straightforward – she wanted someplace to put her money that would earn her a decent return. When he was her advisor, she expected Mr. L. to look after her investments and she wanted them to grow as much as possible. Mr. L. testified that the Client did not have significant financial knowledge and she relied heavily on his advice.

Counsel for the Licensee attempted to take Mr. L. back through some of the investment documents, including certain application forms relating to the Client's investments that appeared to have been signed by Mr. L. It appeared that the Licensee was expecting that Mr. L. would be able to give evidence about the Client's instructions and/or

directions during the course of the meetings when these applications were completed. Unfortunately, Mr. L.'s evidence about these events was inconsistent, difficult to follow and was not of much assistance to the Hearing Committee.

SUBMISSIONS OF THE COUNCIL

The Council submitted that in recommending the leveraged investing strategy and placing the Client in segregated funds that were supported by a significant investment loan, the Licensee acted in direct contravention of her professional obligations as an insurance agent, which required her to ensure at all times that she was acting in the best interests of her clients and in accordance with the usual practice of the business of insurance.

The Council submitted that the only reasonable conclusion based on the evidence of Ms. F. and Mr. L. was that the Client was an unsophisticated, inexperienced investor who relied on her advisors to act in her best interests. The Council took the position that the evidence established that the Licensee had placed her Client in *objectively inappropriate* investments on multiple occasions in 2007 and 2014 and had also attempted to mislead the Council and the Hearing Committee about her level of involvement with the Client's financial matters during that period, suggesting that the leveraged strategy was initiated by the Client and also attempting to deflect blame for the genesis of the investment plan to Mr. L.

The Council took the position that the evidence revealed the Licensee to have used her position of trust as an insurance agent to personally benefit at her Client's expense, by placing her in investments that had no benefit to the Client given her age and financial position, while earning significant fees on the products that she recommended, particularly the front-end loaded DSC fees on Insurer B Account 1 that was purchased in 2014. It was clear that the Council considered this to be a situation where the Licensee had taken advantage of an unsophisticated, but trusting, elderly client.

The Council emphasized how the Licensee had placed the Client in these leveraged investments on two occasions, 2007 and then again in 2014, both times without documenting any client needs analysis or financial plan so as to ensure the suitability of the investments for her Client. Further, the recommendations made by the Licensee failed to consider her Client's likely financial needs in her remaining years. These were risky investments for an elderly client and the Licensee took no steps to assess her Client's future financial needs or to ensure that the Client's risks were mitigated in any way other than through the maturity and death benefit guarantees within the

segregated fund contracts. With respect to the overall investment strategy facilitated by the Licensee, the Council submitted that it had proven multiple serious breaches of the Licensee's professional obligations of honesty and good faith.

Despite the Licensee's focus on the fact that the investment provided for a 100% death benefit guarantee, the Council took the position that the overall investment plan was not sound and should never have been recommended by the Licensee. In 2014, the Licensee moved the Client out of the Insurer A account and into a new Insurer B segregated account at a time when the Client was already 87 years old, triggering capital gains, adding the less liquid, penalty restricted DSC structure and resetting the date of maturity on the leveraged loans years further into the future. In so doing, the Licensee submitted application documents that misstated the Client's assets and income and all of these steps were taken at a time when the Licensee should instead have focused her advice on the Client's age and health situation.

The Council also noted how the Licensee's evidence about the benefits of the investments to her Client's estate were wholly negated by the fact that a beneficiary was not named in the investment, which meant that the fund was to pass to the Client's estate in the ordinary course and not to the named beneficiary. Despite what the Licensee said during her evidence in chief, the manner in which the investment had been set up provided no estate-planning benefit to the Client.

In putting her Client in these products, the Licensee earned a significant upfront payment when she switched the client's investments. Her commission in 2014, which she testified was in the range of $56,000, was directly tied to the size of her Client's loan and the investment – the bigger the loan, the larger the investment and more the Licensee received in the way of compensation. The Client had no need to use loan interest as a tax write-off from her annual income, given her marginal rate of tax at the time. She was not a high income earner in her retirement. In fact, it would appear fair to say that the Client was of rather modest means. Of note, the loan application documentation prepared in 2014 suggested that the Client was making an annual income of $[redacted], which was not accurate and would perhaps have suggested to Bank A that the leveraged investment strategy was appropriate.

Further, while recommending and facilitating this investment strategy, the Licensee failed to ensure that the Client was in a position to make informed decisions about these matters, as the only reasonable inference is that she did not explain her changed fee structure to the Client in 2014 and that she also failed to disclose the commission splitting arrangement that she had with Mr. L. With respect to these issues, the Council

submitted that the Licensee breached her professional obligations of disclosure to her client.

With respect to the Licensee's record-keeping and documentation, the Council focused on the examples of incorrect information in the Client's investment application documents, some of which was clearly material to the insurers' assessment of the suitability of the products for the Client. Further, the Council noted a complete absence of records detailing any of her alleged meetings with the Client or the Client's consent to the high-risk investment plan that was implemented. In particular, the Council noted that the Licensee did not have a single document with notes on it detailing any of the purported twice-annual meetings that she had with the Client. The absence of documentation of such a nature was submitted to be another significant professional oversight on the part of the Licensee.

Ultimately, the Council took the position that this was a situation where the Licensee failed to consider whether the investments were actually in the best interest of the Client and instead preferred her own personal interests associated with generating commissions. The Council suggested that the Licensee acted in blatant disregard for the Rules and the Code of Conduct and submitted that a significant disciplinary penalty was required – an order that includes a fine; a period of significant supervision; and the imposition of a series of educational requirements for the Licensee so as to ensure the public is protected going forward (particularly with respect to any future elderly clients).

SUBMISSIONS OF THE LICENSEE

The Licensee submitted that any issues with respect to her conduct do not give rise to reasonable concerns about her trustworthiness, good faith or competence. In the result, there is no need for a significant disciplinary action. The Licensee conceded that certain of her practices could have been improved, particularly the manner in which she documented her client files, but she encouraged the Hearing Committee to review the issues pursued by the Council at the hearing within the context of the lengthy relationship that the Client had with Mr. L and the Licensee. There should be no question that the Licensee had a detailed and proper understanding of the Client's financial situation.

Further, the Licensee noted that this whole matter had to be seen to as not reflective of the Licensee's overall approach to her obligations given her lengthy career as a Life Agent, during which she has not had any prior complaints or discipline. The Licensee

also emphasized that the Hearing Committee must focus its analysis on the specific allegations set out in the Notice of Hearing and not any peripheral issues that may have emerged during the course of the hearing.

In reviewing the underlying facts, the Licensee submitted that her advice to the Client was appropriate and *bona fide* in the circumstances, particularly in light of the Client's stable financial affairs. The Licensee submitted that her advice centered on the Client's stated investment goals and her desire to utilize the advantages of a segregated account to benefit her estate, particularly the death benefit and maturity guarantees associated with a segregated fund. The Client viewed these accounts as legacy matters that were to be held for the beneficiaries of her estate. Stated another way, the investments were made by the Client with funds that she did not require for her day to day living.

All of the applications and forms were signed by the Client during a period when there were no concerns about her capacity and the Licensee submitted that there was no evidence from which the Hearing Committee could reasonably conclude that the Licensee's advice to the Client had been provided in bad faith. The "re-setting" of the accounts at various times, together with the redemptions, obtained higher guaranteed amounts for the Client on death and the leveraged loan that was taken out starting in 2007 was used to create offsetting interest cost deductions which were shown in detail on the Client's annual income tax returns. Overall, the Licensee highlighted that the Client's investment accounts had appreciated in value over time, which allowed her to maximize the guaranteed amount payable on death, thereby reducing any real risk of the investment.

Despite the absence of notes or other documentation on the issue, the Licensee submitted that the Client's financial circumstances were considered with respect to the formation of this plan and as the strategy evolved through the years. The Licensee submitted that she had good knowledge about the Client's finances given how far back the relationship went. She appreciated that the Client was elderly and she maintained that this was an important focus of the overall investment strategy. The Licensee knew that the Client had a stable pension income, owned her own property and had no other family to support. Despite the concerns voiced by Ms. F. at the hearing, the Licensee was of the view that the Client had access to a significant amount of capital in any given year if she needed money for either lifestyle needs or medical care.

Overall, the Licensee submitted that the evidence did not support a reasonable conclusion that her advice to the Client was influenced by her own pecuniary interest

and commissions. The Licensee maintained that the leveraged loans, together with the redemptions, were sound investments that benefitted the Client.

On that point, the Licensee focused a considerable portion of her submissions on her evidence about her Client's knowledge of the investments, and instructions, all of which occurred prior to any involvement by Ms. F. The Licensee emphasized that the Client herself executed all of the various application documents, dating back to 2002, but also right through the meetings in May 2014 when the Licensee facilitated the Client's transfer of her investments to Insurer B and the new 2014 Loan. It may have been that Ms. F. was not comfortable with the concept of leveraged investing at the Client's age, but the Licensee submitted that there was no evidence from which the Hearing Committee could reasonably conclude that the Client was not aware of the investments that were being made through the Licensee. Without such evidence, it cannot be said that the Client did not approve the overall strategy (which the Licensee in fact testified was the case).

In 2014, when the redemption occurred and the investment was transferred from Insurer A to Insurer B, the Licensee submitted that it was the Client who desired to maintain the current strategy and renew the 2007 Loan. Again, the Licensee noted that the risks of the strategy were mitigated when the balance of Insurer A Account 1 was transferred to Insurer B Account 2 with no DSC fees. This second account was used to fund the interest expense, but it could also be accessed by the Client at any time. When the availability of those funds was considered, together with the Client's annual pension income, the Licensee submitted that the investment strategy was still reasonable for the Client in 2014 given her overall investment goals. If there was any debate about the Client's financial wherewithal and instructions, the Licensee took the position that her direct evidence about her discussions had to be preferred to the inferences that the Council was asking the Hearing Committee to draw from the evidence of Ms. F.

At a general level, the Licensee submitted that her advice to her Client with respect to the advantages of a segregated account focused on the death benefit and maturity guarantees associated with the investment. These were legacy accounts that the Client purchased solely for the beneficiaries of her estate. By "re-setting" the accounts at appropriate times, the Licensee secured a higher guaranteed amount for her Client, while using a leveraged loan to create offsetting capital losses to minimize capital gains. Over time, the Client's accounts appreciated in value, while also providing a maximum guaranteed amount. It may have been a higher risk investment strategy, but it was in keeping with the Client's instructions and goals and the Licensee took the position that evidence does not allow for any conclusion to the contrary.

With respect to her recordkeeping practices, as touched on above, the Licensee acknowledged that her record keeping could have been better. Again, the Licensee excused her failings in this regard by suggesting that the context of the close personal relationship between Mr. L. and the Client was such that advice was often exchanged informally without documentation. Despite the absence of overall file records, the Licensee maintained that she did have monthly spreadsheets relating to the status of the Client's accounts and said that she and Mr. L. would meet with the Client at least once or twice a year to discuss her accounts and update the Client on any issues that may have arisen in that period. In terms of any incorrect information set out in the various applications filled out for the Client, the Licensee took the position that it would be inappropriate for the Hearing Committee to draw inferences about the accuracy of the applications without clear, convincing and cogent evidence that the information in the applications was inaccurate.

At the end of the day, even if the Hearing Committee was to conclude that the Licensee fell short with respect to her professional obligations in some aspect of this matter, the Licensee submitted that the key factor in terms of crafting any disciplinary action must be the principle of rehabilitation. The Licensee has had no prior complaints and has no disciplinary record with the Council. If the Hearing Committee was to recommend a penalty of some kind, the Licensee submitted that the public interest could be served by the Council ordering a small fine along with having the Licensee update her education.

To this end, the Licensee suggested a fine of $2,500; a requirement that the Licensee complete courses on the Council Rules, elder planning and financial planning fundamentals within three years; at most a one year period of supervision; and an order that the Licensee pay Council's investigative costs in the amount of $2,887.50.

ANALYSIS AND RECOMMENDATIONS OF THE HEARING COMMITTEE

Overview

The Hearing Committee was quite concerned with the advice given by the Licensee to her elderly Client. Despite the Licensee's evidence to the contrary, the Hearing Committee accepts the evidence of both Ms. F. and Mr. L. that the Client was not a person with significant financial acumen or experience. The Hearing Committee does not mean to insult the intelligence of the Client in reaching this conclusion. There are many intelligent people who rely very heavily on the advice and recommendations they

receive from her financial advisors and the Committee believes that the Client was one such person. Initially, she relied for many years on Mr. L. and then in more recent times, the Licensee. The Client was a pensioner with only modest assets and her investment goals were quite simple. As Mr. L. described, she relied on his advice with respect to how to invest her available money. After he transitioned his practice, the Licensee came to fill that same role.

The initial purchase of the segregated fund in 2002, which appeared to have been recommended by both the Licensee and Mr. L., does not raise any concerns for the Hearing Committee with respect to the Licensee's professional obligations. Even though the Client was already advanced in age by that date, the money used to purchase the investment was inherited and the Hearing Committee accepts that there are certain benefits of a segregated fund product that may have made the initial purchase a reasonable investment decision for the Client. It is notable though that the Licensee had no documentation confirming what was discussed with the Client prior to the initial investment. This was a theme of the evidence that the Hearing Committee heard and, as discussed further below, the Licensee's overall file documentation was woefully inadequate.

The most significant issue in this matter in terms of the Licensee's conduct arises from the steps taken to encourage and facilitate the Client borrowing quite significant sums in 2007 and then again in 2014 to leverage her investment portfolio. The Hearing Committee accepts the Council's position that these investments were "objectively not suitable" for the Client given her overall financial circumstances and age.

The Hearing Committee does not accept the Licensee's evidence that it was the Client who brought this strategy to her and suggested borrowing money to invest. The Licensee's evidence with respect to her Client's level of sophistication was inconsistent at many points during her own evidence and was also directly contrary to the evidence given by Ms. F. and Mr. L. In any event, even if the Client had suggested the investment plan, the Hearing Committee would have expected the Licensee to take steps to discourage the Client from pursuing the strategy. At the very least, in such circumstances, the Licensee should have documented her file to confirm and illustrate the advice that was given to her Client at the time of these investments, along with the instructions that the Client provided to proceed with the purchases. This is even more important if, as the Licensee accepted at the hearing, she was helping her Client initiate a risky investment strategy that the Client had brought to her.

Regardless of how the idea was formed, the Licensee was involved in fashioning and placing her elderly Client in an investment strategy that required her to borrow money

from Bank A in order to then invest in segregated funds. At the time that this strategy was first implemented in 2007, there is no evidence that the Licensee undertook any type of needs analysis on the part of the Client. Given only the age of the Client at that time, the Hearing Committee is of the view that the investment strategy was wholly inappropriate, even in 2007. There would need to be quite exceptional circumstances for the leveraged investment strategy implemented in this instance to be appropriate for a client in his or her 80s. The Client's financial circumstances in this instance, including her relatively low annual income and modest real estate holdings, readily demonstrate that such a leveraged investing strategy was not in the Client's best interests.

Not only was the investment plan inappropriate, the Hearing Committee has concluded that the only reasonable view of the evidence is that the plan was put in place to benefit the Licensee and not her Client. By encouraging her Client to take out the 2007 Loan, the Licensee was able to, in effect, triple her overall compensation on that portion of the Client's investments. Instead of receiving trailing commissions on only the initial segregated fund, the Licensee had the Client apply for a 2:1 loan from Bank A that increased the overall value of the Client's portfolio significantly and provided elevated trailing commissions for the duration of the strategy.

During the hearing, the Hearing Committee asked the Licensee a series of questions about the rates of return generated by the Insurer A Accounts 1 and 2 during the material period. Even though there were some market gains in these products, the Licensee did not appear to understand that such gains had to be offset by the interest that was being paid by the Client on the Bank A loan, which was initially over 6% when the 2007 Loan was applied for. It is true that the interest expense was then deducted from the Client's annual income, but she was not paying tax during the material period at anywhere close to the highest marginal rate. Without substantial tax savings, the interest costs significantly lowered the client's realized returns. While a leveraged investing strategy *may* be appropriate for an elderly investor who has multiple sources of income to absorb the interest expense, that was not the situation with the respect to the Licensee's Client.

To truly assess whether or not the leveraged investment scheme, with regular guarantee re-sets (triggering taxable gains), was a reasonable investment strategy for the Client, it would have been necessary for the Licensee to have undertaken an analysis of the rate of return on the segregated fund investments, compared against the interest expenses of the 2007 Loan and the regular pre-payment of taxes on the triggered gains. To look at only the increase in value of the segregated funds failed to account for the interest or taxes being paid by the Client. Ultimately, when all of these factors are

considered, the Hearing Committee is of the view that the only reasonable conclusion was that the switch to the 2007 leveraged system was undertaken for only one purpose – to significantly increase the amount of compensation to be received by the Licensee.

The Hearing Committee is even more concerned about the transfer of the Client's investments from Insurer A to Insurer B in 2014. The Licensee conceded during her evidence that she recommended to her Client that the investments be moved to Insurer B. The Licensee claimed that she was concerned about a recent sale of Insurer A to Insurer C and was worried that there would be a change in the funds available through the new company. The move of the investments at that time triggered significant capital gains for the Client and, even more importantly, saw the Client switch to a new, less liquid, DSC fee structure that front loaded commission to the Licensee, but left the Client restricted by penalties to absorb the Licensee compensation if the Client were to need more than 10% of fund in a calendar year.

Again, there is not a single document that corroborates what the Licensee says about the advice that she gave to her Client when implementing these transactions in 2014. By that date, the Client was 87 years old and there should have been no question to the Licensee that her Client was likely to have increased living expenses in the years ahead. The fact that the application forms were signed by the Client does not assist the Licensee without further documentation confirming the advice that was given and the Client's approval. The application forms were also replete with incorrect information on material issues relating to the Client's assets and income. It was the Licensee's obligation to be putting the interests of her Client ahead of her own personal interests and the continuation of the leveraged investment strategy in 2014 was obviously inappropriate.

The Hearing Committee does not accept the various justifications put forward by the Licensee during the course of her evidence to justify the investments she placed for the Client. The transfer of the investments in 2014 from Insurer A to Insurer B was a move of convenience for the Licensee. It provided the Licensee with a windfall of up-front DSC commission (free and clear in case the Client died), while also maintaining the leverage multiplied trailing commissions at half the former rate.

Prior to that date, all of the products placed for the Client by the Licensee had paid substantial perpetual monthly trailing commissions. There was no legitimate need to move away from these past practices other than the Licensee seeing an opportunity to capitalize some of the future trailing commission into significant lump sum commissions today on an elderly client with an uncertain servicing lifespan. It was predatory behavior and it raises significant concerns about the Licensee's honesty and

integrity. The Hearing Committee has concluded that the Licensee took these steps in order to generate commissions on the investments.

The Hearing Committee was particularly troubled by the Licensee's evidence that she had an agreement with Mr. L. to repay the DSCs to the Client if the investment had to be redeemed by the Client to pay for her medical purposes. This was an incredible statement and it revealed the Licensee's willingness to offer any excuse possible in order to try to justify her behavior in this matter. Had such an agreement been in place, surely the Licensee would have mentioned it to the POA, who she believed was asking for a refund of the fees on the basis of medical issues.

As the Council noted during its closing submissions, throughout the investigation process the Licensee showed a lack of appreciation of the Council's concerns, refusing to admit obvious professional failings and attempting at times to shift blame for various actions to others, including Mr. L. Given the Hearing Committee's views about the objective inappropriateness of the leveraged investing scheme, it is not necessary to review each and every example that the Council highlighted in closing as suggesting the Licensee's evidence as being worthy of less weight as compared to the evidence given by the POA, but the Hearing Committee does generally accept the Council's submission that the Licensee intentionally attempted to shift blame to others, specifically Mr. L.

The Hearing Committee is of the view that the Council has proven the allegations in the Amended Notice of Hearing on the civil balance of probabilities standard. The Hearing Committee believes this to be a matter that involves a serious breach of trust on the part of the Licensee and which raises concerns about a number of her professional obligations, including important principles of honesty and integrity. The Licensee took advantage of an elderly client and put her own financial interests ahead of those of her Client. A significant disciplinary action is required to fulfill the Council's public interest mandate.

The Legislation

The Council is responsible for protecting the public and ensuring that insurance licensees act in good faith, are trustworthy, competent and carry on the business of insurance in accordance with the usual practice in the industry. Having determined that Council has proven its case, the Hearing Committee must determine an appropriate sanction in accordance with the Act.

The fundamental purpose of assessing a sanction for professional misconduct is to ensure the protection of the public from further acts in misconduct by the Licensee, as well as to encourage general deterrence for others in the industry.

Section 231 of the Act states:

> **231** (1) If, after due investigation, the council determines that the licensee or former licensee or any officer, director, employee, controlling shareholder, partner or nominee of the licensee or former licensee
>
> (a) no longer meets a licensing requirement established by a rule made by the council or did not meet that requirement at the time the licence was issued, or at a later time,
>
> …
> then the council by order may do one or more of the following:
>
> (f) reprimand the licensee or former licensee;
>
> (g) suspend or cancel the licence of the licensee;
>
> (h) attach conditions to the licence of the licensee or amend any conditions attached to the licence;
>
> (i) in appropriate circumstances, amend the licence of the licensee by deleting the name of a nominee;
>
> (j) require the licensee or former licensee to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business;
>
> (k) in respect of conduct described in paragraph (a), (b), (c), (d), (e) or (e.1), fine the licensee or former licensee an amount
>
> (i) not more than $50 000 in the case of a corporation or a partnership, or
> (ii) not more than $25 000 in the case of an individual.
>
> …

The Hearing Committee has been informed in our approach to penalty by the oft-cited passage from author James T. Casey, in which he states that there are a number of

factors that can be taken into account with respect to assessing an appropriate action for professional misconduct:

> A number of factors are taken into account in determining how the public might best be protected, including specific deterrence of the member from engaging in further misconduct, general deterrence of other members of the profession, rehabilitation of the offender, punishment of the offender, isolation of the offender, denunciation by society of the conduct, the need to maintain the public's confidence in the integrity of the profession's ability to properly supervise the conduct of its members, and ensuring that the penalty imposed is not disparate with penalties imposed in other cases.
>
> *Regulation of the Professions is Canada,* **Casey, James T.**

The Hearing Committee will not set out all of the provisions of the Code of Conduct that were referred to by the parties during the course of submissions, but the sections that were emphasized by the Council included sections 3.2 (Trustworthiness); 4.2 (Good faith); 5.2 (Competence); 7.2 (Dealing with clients); and 13.2 (Compliance with governing legislation and Council rules).

One of the important factors when assessing a potential disciplinary action is consideration of the range of sentencing in other similar cases (*Financial Services Commission v. The Insurance Council of British Columbia and Maria Pavicic* (November 22, 2005).

In its closing submission, the Council referred the Hearing Committee to a number of decisions that it argued address conduct similar to that of the Licensee. The Hearing Committee has carefully reviewed the following decisions: *Darwin Bernard Peter Braun* (February 2019); *Paul William Moore* (January 2019); *Jiang Ping Zhang* (May 2018); *Khamsouei Phovixayboulom* (February 2018); *Ismat Simo* (September 2017); *Patie Kaur Johl* (May 2015); *Roel Reyes Bernardino* (May 2015); *Jack Leonard Parkin* (January 2015); *Pamela Peen Hong Yee* (December 2014); *James William Duke* (July 2013); and *Roberta McIntosh* (December 2012).

In her closing submissions, the Licensee took the position that if any penalty was necessary in this case, the decision in *Paul William Moore* should be seen to represent the extreme high-end of a penalty that ought to be imposed in this case. The Licensee submitted that Mr. Moore's misconduct, unlike any of the misconduct that may have been committed by the Licensee during her dealings with the Client, involved multiple clients and multiple accounts over the course of multiple years. Further, it was noted

by the Licensee that Mr. Moore was also found to have engaged in “churning” and had also forged or wrongly altered documents. Mr. Moore was ordered to be supervised for 12 months, had to complete an ethics course and a Rules course and pay a $7,500 fine and costs.

One of the orders also sought by the Council in this matter in addition to a fine was a lengthy period of supervision. The Licensee submitted, on the basis of the *Paul William Moore* decision, but also with reference to the *Luan Charles Xing* decision, that there was a lack of evidence of a *pattern of misconduct* in this case to warrant a need for supervision an extended period of time going forward.

Having concluded that the Licensee failed to meet her professional obligations, the Hearing Committee agreed with the Licensee that the *Paul Moore* decision is instructive in terms of setting the range of potential penalty for the Licensee. Of the other decisions that the Hearing Committee was referred to by the Council, the Hearing Committee found the *Darwin Braun* (February 2009), *Ismat Simo* (September 2017) and the *Roel Bernardino* (May 2015) decisions as being of the most assistance with respect to establishing the appropriate range of penalty in this matter.

In *Darwin Braun*, the licensee facilitated a series of client investments in exempt market products that were wholly inappropriate for his clients. Mr. Braun also failed to keep proper records, failed to properly complete his client’s applications and did not adequately assess his client’s insurance needs. Importantly, the financial impact to the clients at issue in *Braun* was much more significant than that in the current matter. In *Braun*, the Council cancelled Mr. Braun’s licence for a five year period and also fined him $10,000.

In *Ismat Simo*, the licensee made insurance and investment recommendations for a 79 year old client that were found by the Hearing Committee to have not been in her best interests. The Hearing Committee concluded that the actions of Mr. Simo brought into question his competency as a Life Agent. Council ordered Mr. Simo’s license to be suspended until he successfully completed remedial education, along with imposing a subsequent two year period of supervision and the assessment of investigative costs.

Finally, in *Roel Bernardino*, a life agent was found to have mispresented or failed to adequately explain changes to a client’s insurance coverage and had clients sign blank insurance transactional forms which were stored by the licensee in the client’s file. The Council found that the overall facts in *Roel Bernardino* revealed that the licensee was focused on the sale of insurance at the expense of his clients’ understanding of the products that the licensee was placing.

In its decision, the Council focused on the licensee's failure to recognize or acknowledge the risks that his clients faced as a result of the investments he recommended and concluded that the licensee's actions cast a serious light on his competency. Ultimately, the Council suspended Mr. Bernardino's licence for a period of 12 months, along with ordering an additional period of supervision, as well as certain remedial education. In reaching its determination, the Council emphasized the important principle that a licensee, whether current or former, cannot reasonably expect a client to appreciate the real risk of investments that are presented to them as viable options by a trusted financial advisor.

In light of the serious nature of the Licensee's misconduct, the Hearing Committee believes this is a matter where a strong message needs to be sent to both the Licensee, as well as other licensees who may consider trying to take advantage of an elderly client. The Hearing Committee does not regard this as being a matter where a period of licence cancellation is necessary, but believes that the public interest can be protected with a significant fine, along with orders that require the Licensee to be subject to a period of supervision while also taking courses to further her education. The Hearing Committee does not believe that a three year period of supervision is required, but similar to the decision in *Simo*, the Hearing Committee does believe that the Licensee should be subject to supervision for a meaningful period of time.

Having considered the range of sanctions from prior cases discussed above, and also looking at the Licensee's unique circumstances, the Hearing Committee recommends that the Council impose the following orders in this matter:

a) the Licensee be fined $10,000.00;

b) a condition be imposed on the Licensee's life and accident and sickness insurance licence that requires her to be supervised by a qualified Life Agent for a <u>two year</u> period;

c) a condition be imposed on the Licensee's life and accident and sickness insurance licence that requires her to complete Advocis Modules 911 ("Financial Planning Profession & Financial Services Industry Regulation"), 912 ("Financial Analysis") and 918 ("Investments");

d) a condition be imposed on the Licensee's life and accident and sickness insurance licence that requires her to complete FP Canada's "Introduction to Professional Ethics" (IPE) course;

e) a condition be imposed on the Licensee's life and accident and sickness insurance license that requires her to complete Council's Rules Course;

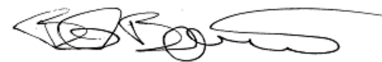
f) a condition be imposed on the Licensee's life and accident and sickness insurance license that requires her to complete an Elder Planning Counsellor course; and

e) that the Licensee be assessed Council's investigative costs of $2,887.50.

With respect to costs for the hearing, the Council had asked to provide written submissions on costs following the hearing dates. As of the date of finalizing this report, the Hearing Committee had received a written submission on costs from the Council, but had yet to receive the Licensee's response submission. This is not intended as a criticism of the Licensee or her counsel, as the submissions from the Council were only delivered very recently.

In the circumstances, the Hearing Committee does not think it appropriate to offer any recommendations on hearing costs without having submissions from the Licensee. If an agreement on hearing costs cannot be reached, the submissions that are exchanged by the parties will be provided to the Council along with this report, which has addressed all other matters at issue in the proceeding.

Dated in Vancouver, British Columbia, on the **30th day of September 2020.**



Bill Bennett, Chair of Hearing Committee
Insurance Council of British Columbia