In the Matter of the

FINANCIAL INSTITUTIONS ACT, RSBC 1996, c. 141
(the "Act")

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

DARWIN BERNARD PETER BRAUN
(the "Licensee")

and

BRAUN & ASSOCIATES LTD.
(the "Agency")

ORDER TO AMEND COUNCIL'S AUGUST 16, 2019 ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Licensee and the Agency to dispute an intended decision made June 11, 2017 and issued August 25, 2017.

A Hearing Committee heard the matter over December 4-6, 2018 and January 16-18, 2019. On July 23, 2019, the Report of the Hearing Committee (the "Report") was presented to Council.[1]

Council considered the Report and made an order, effective August 16, 2019, to cancel the Licensee's life and accident and sickness licence with no opportunity to apply for an insurance licence for a period of five years and impose certain fines, costs and prohibitions ("Council's Order"), pursuant to sections 231, 236, and 241.1 of the Act. No orders were issued against the Agency.

The Licensee appealed Council's Order to the Financial Services Tribunal ("FST") and asked for a stay pending determination of the appeal. Council consented to the stay subject to conditions, including that the Licensee could retain his licence while the appeal was underway as long as he remained under supervision. Accordingly, the Licensee's licence was never cancelled.

On October 25, 2019, on request by the Licensee to withdraw the appeal, the FST issued an order dismissing the appeal but gave no direction as to the effective date of Council's Order given the stay.

On December 10, 2019, Council considered the matter and held that the new effective date of

[1] Council's August 16, 2019 order erroneously indicates that the Report of the Hearing Committee was presented to Council on February 26, 2019. The Report was actually presented on July 23, 2019.

Council's Order against the Licensee is October 25, 2019, the date the FST dismissed the Licensee's appeal. Therefore, Council's Order is amended as follows (amendments underlined):

1. The Licensee's life and accident and sickness insurance licence is cancelled with no opportunity to apply for an insurance licence for a period of five years, commencing October 25, 2019 and ending at midnight on October 24, 2024;

2. The Licensee is fined $10,000, due and payable no later than January 23, 2020;

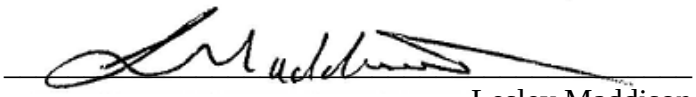
3. The Licensee is assessed Council's investigation costs of $3,125, due and payable no later than January 23, 2020;

4. The Licensee is assessed Council's hearing costs of $48,903.20, due and payable no later than January 23, 2020; and

5. The Licensee is prohibited from being a shareholder, partner, officer, director or employee of any licensed insurance agency for a period of five years, commencing October 25, 2019 and ending at midnight on October 24, 2024.

No order is issued against the Agency.

This order was issued by Council on December 12, 2019.



Lesley Maddison
Chairperson, Insurance Council of British Columbia

In the Matter of the

FINANCIAL INSTITUTIONS ACT, RSBC 1996, c. 141
(the "Act")

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

DARWIN BERNARD PETER BRAUN
(the "Licensee")

and

BRAUN & ASSOCIATES LTD.
(the "Agency")

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Licensee and Agency to dispute an intended decision made June 11, 2017 and issued August 25, 2017.

The subject of the hearing was set out in a Notice of Hearing dated September 26, 2018. A second Notice of Hearing was issued on December 12, 2018.

A Hearing Committee heard the matter over December 4-6, 2018 and January 16-18, 2019. On February 26, 2019, the Report of the Hearing Committee (the "Report") was presented to Council.

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

1. The Licensee's life and accident and sickness insurance licence is cancelled with no opportunity to apply for an insurance licence for a period of five years, commencing August 16, 2019 and ending at midnight on August 15, 2024;

2. The Licensee is fined $10,000, due and payable no later than November 14, 2019;

3. The Licensee is assessed Council's investigation costs of $3,125, due and payable no later than November 14, 2019;

4. The Licensee is assessed Council's hearing costs of $48,903.20, due and payable no later than November 14, 2019; and

5. The Licensee is prohibited from being a shareholder, partner, officer, director or employee of any licensed insurance agency for a period of five years, commencing August 16, 2019 and ending at midnight on August 15, 2024.

No order is issued against the Agency.

This order takes effect on the **16th day of August, 2019.**

Lesley Maddison
Chairperson, Insurance Council of British Columbia

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

REPORT OF THE HEARING COMMITTEE

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

AND

DARWIN BERNARD PETER BRAUN
(the "Licensee")

AND

BRAUN & ASSOCIATES LTD.
(the "Agency")

Date:	December 4-6, 2018 January 16-18, 2019 9:30 a.m. start on each day Additional written submissions received from the parties on April 22, 2019 and May 31, 2019 (Licensee and Agency) and May 17, 2019 (Council)	
Before:	Ken Kukkonen Frank Mackleston John Crisp	Chair Member Member
Location:	Suite 300, 1040 West Georgia Street Vancouver, British Columbia V6E 4H1	
Present:	David McKnight/Thea Hoogstraten Christopher McHardy Darwin Bernard Peter Braun Michael Shirreff	Counsel for Council Counsel for the Licensee & Agency Licensee Counsel for the Hearing Committee

BACKGROUND AND ISSUES

On June 11, 2017, Council issued an intended decision pursuant to sections 231, 236 and 241.1 of the Act, which outlined a number of serious allegations against the Licensee and the Agency. In broad terms, the intended decision alleged that the Licensee and the Agency failed to provide proper disclosure to a client with respect to life insurance that the Licensee and Agency had placed and also that the Licensee and Agency facilitated a series of client investments in exempt

market products ("EMPs") which were inappropriate for his clients given their individual financial circumstances and requirements.

In accordance with the Act, Council provided the Licensee and the Agency with written reasons and notice of its intended decision. The Licensee and the Agency requested a hearing before Council to dispute the intended decision, as provided for in section 237(3) of the Act.

The allegations outlined in the Notice of Hearing were as follows:

> The Licensee and Agency failed to act in a trustworthy and competent manner, in good faith and in accordance with the usual practice of the business of insurance and in accordance with Council's Rules, Code of Conduct and pursuant to section 231(1)(a) of the Act; by:
>
> a. facilitating the purchase of EMPs which were inappropriate for clients given the clients' financial circumstances;
>
> b. failing to properly and adequately identify and disclose a conflict of interest relating to an EMP product which was purchased by clients;
>
> c. failing to maintain proper and adequate books and records for his insurance business;
>
> d. failing to ensure a proper needs analysis was conducted for a client;
>
> e. failing to ensure a client was in a position to make an informed decision about the purchase of insurance policies;
>
> f. misrepresenting to an insurer that the placement of an insurance policy for a client was for a mortgage when the client did not have a mortgage and did not plan to take out a mortgage; and
>
> g. in any other manner.

The hearing took place over the course of six days in late 2018 and early 2019. It was a lengthy matter and the Hearing Committee heard evidence from four witnesses, including the Licensee. It is fair to say that there were many disagreements between the Licensee and the complainants, SS and GL (see below), with respect to the key events.

By the end of the hearing the Licensee acknowledged and accepted that he had failed in his professional obligations as alleged by Council in the Notice of Hearing and the Licensee conceded that it was appropriate that he be disciplined and penalized. As the Licensee stated in his closing submissions (at paras. 2-4):

> He admits that he did not keep proper records, did not properly assess [SS]'s insurance needs, did not properly complete her applications, did not place her in appropriate insurance products, did not disclose his conflict of interest in the [GH] shares he sold to

> her, did not disclose to her that he did not have any training or accreditation to provide her with non-insurance financial advice.
>
> He also admits that he did not disclose his conflict of interest in a number of investments made by [CL] and [GL]…, namely the [GH], [Tech Co.], [Systems] and the Barrier (sic) Project. He also did not disclose to [CL and GL] that he did not have any training or accreditation to provide them with non-insurance financial advice.
>
> Accordingly, Council's decision is not so much concerned with evaluating Darwin's guilt, rather, Council's decision is principally a question of what is the appropriate disciplinary consequence.

Given these admissions by the Licensee, the focus of the submissions as between the Licensee and Council related to the disciplinary action that should result from the Licensee's misconduct. There was general agreement between the parties that the Licensee's actions demanded a rather serious disciplinary penalty by Council, but they were not in agreement as to what the sanction should be.

Although conceding his culpability with respect to the allegations outlined in the Notice of Hearing, the Licensee took the position that much of the evidence introduced by Council was either exaggerated or incorrect and did not show that he had acted with the level of *intention* that Council urged the Hearing Committee to find. The Licensee submitted that an objective assessment of the evidence revealed his misconduct to be on par with other licensees whose licences had been suspended for a period of time as opposed to being cancelled outright. The Licensee argued that Council could meet its public interest mandate in this instance with a one year period of suspension coupled with a $5,000 fine.

Conversely, Council took the position that the Licensee's actions were much more serious than the Licensee suggested. Council submitted that the Licensee was an ongoing risk to the public and that the appropriate order was for Council to permanently cancel the Licensee's licence, together with a significant fine against the Licensee, as well as a separate fine against the Agency (and costs of Council's investigation and hearing).

In order to assess these competing positions, it was necessary for the Hearing Committee to carefully review and consider the evidence given by the Licensee and the complainants, which we have done in the body of our report below. After reviewing the evidence, the Hearing Committee has provided our recommendations to Council with respect to the appropriate disciplinary action for the Licensee. In our view, this is a matter where Council must issue a significant penalty. The Licensee's professional failings with respect to the two life insurance policies that he placed raise very serious concerns with respect to his compliance with his professional obligations *vis a vis* both his client and the insurer. Even more significantly, the Licensee's pattern of recommending risky EMPs to his clients, particularly in circumstances where the Licensee was in an obvious conflict of interest, revealed that the Licensee acted well-beyond the limitations of his licence and in clear breach of the professional and fiduciary obligations that he owed his clients. The Hearing Committee has concluded that the Licensee is a

significant ongoing risk to the public and we recommend that Council consider a lengthy period of suspension along with a significant fine. For the reasons outlined below, the Hearing Committee has not recommended that the Agency also be fined in addition to the Licensee.

EVIDENCE

Exhibits

Even though the hearing of this matter occupied six full days, the parties were able to reach significant consensus on certain aspects of the evidence. With respect to the witnesses, Council called the two complainants, SS and GL. Council also called GL's son, DL, who was also licensed with Council and worked for a period of time with the Licensee.

The Licensee also testified at length about the events in issue.

The parties were able to provide a rather substantial Agreed Statement of Facts, along with a detailed Chronology, both of which were very helpful to the Hearing Committee and were entered as exhibits at the hearing.

The following exhibits were filed during the course of the hearing:

Exhibit 1 – Agreed Statement of Facts and Document Agreement
Exhibit 2 – Two volume set of Council's Book of Documents
Exhibit 3 – Booklet of documents of the Agency and the Licensee
Exhibit 4 – A collection of emails exchanged between the Licensee and DL
Exhibit 5 – Agreed Statement of Facts Chronology
Exhibit 6 – Council's Investigation File Activity Report – Time Log

In addition to these exhibits, both parties provided comprehensive written submissions. It is fair to say that this matter could have taken many more days had it not been for the level of cooperation between the parties. The Hearing Committee is appreciative of the efforts that were made to conduct the most efficient hearing possible.

Agreed Statement of Facts

The majority of the evidence summarized in this next section of this report was agreed to by the parties by way of the Agreed Statement of Facts (Exhibit 1).

i.) Background

The Licensee has been licensed with Council as a life and accident and sickness insurance agent ("Life Agent") since 1994. The Agency has been licensed with Council since August 2010. The Licensee is the only authorized representative of the Agency.

The Licensee and the Agency operate from the Licensee's home in Kamloops, British Columbia. The Licensee is the nominee of the Agency. The Licensee and the Agency remit insurance business through National Financial Insurance Agency Inc., IDC Worldsource Insurance Network, and Canada Loyal Financial.

In January 2016, Council received complaints concerning the actions of the Licensee from two of his clients, SS and GL.

The SS complaint concerned the suitability of two Industrial Life insurance policies that the Licensee had placed for SS in February 2012. SS also complained to Council about recommendations that the Licensee made encouraging her to purchase some high-risk EMPs.

The complaint filed with Council by GL also concerned the Licensee's recommendations and involvement in GL's purchase (together with her husband CL) of several EMPs, as well as the Licensee's treatment of their son, DL, who had worked as an agent with the Licensee.

ii.) The Licensee places two policies for SS

The Licensee was first introduced to DL in or around the spring of 2008. At that time, DL's grandmother and uncle were insurance clients of the Licensee. Later in 2008, DL introduced the Licensee to his mother and father (GL and CL). DL also introduced the Licensee to SS, who was a longstanding friend of DL's family (in this report, we have referred to the family as the "L Family").

SS and her husband were dairy farmers who owned and operated a farm in the interior of British Columbia. On July 25, 2011, SS's husband was tragically killed in a farming accident. In October 2011, the estate of SS's husband was settled for [redacted], which included both the sale of the acreage as well as the dairy cows.

SS was entitled to only a share of her husband's estate. She used this money to purchase a mortgage-free home near the farm. At that time, SS had no debt [redacted] In addition to the house, SS also owned a life insurance policy that had a face value of [redacted] which her husband had purchased for her in 1998.

Early in November 2011, the Licensee met with SS to discuss her financial situation, some investment opportunities and the potential purchase of two new life insurance policies. On November 19, 2011, the Licensee prepared an illustration for SS of a Genesis Universal Life Insurance policy with a face value of [redacted]. The death benefit was the face amount, plus the fund value with Wealth Maximizer Option. The cost of the insurance was level and could be renewed annually. The minimal annual premium for the policy was [redacted] The target premium was established at [redacted] ("Policy One").

On November 21, 2011, the Licensee prepared an illustration for SS for a second Genesis Life Insurance policy, this time with a face value of [redacted]. With respect to this illustration, the

death benefit was the face amount of the policy, plus the value of the fund. The cost of insurance was level and the minimum annual premium was [redacted]. The target annual premium was set at [redacted] ("Policy Two").

On November 22, 2011, SS signed the application forms for both Policy One and Policy Two. DL, who was working with the Licensee at that time, was named in the applications as the joint agent for both policies.

SS subsequently attended a medical examination on January 25, 2012, which formed part of her application for both policies. Policy One and Policy Two were issued to SS on February 26, 2012, each with an effective date of February 27, 2012.

The Licensee delivered the policies to SS in early March 2012 and SS wrote two cheques on March 9, 2012 to IA Pacific – one in the amount of [redacted] for Policy Two; and a second cheque in the amount of [redacted] for Policy One.

Approximately one year later, in February 2013, SS made a further deposit of [redacted] to Policy Two and [redacted] to Policy One.

In addition to placing these two life insurance policies, the Licensee also facilitated SS's purchase of [redacted] in precious metals in February 2013, along with another purchase of [redacted] shares in a corporation called GH (see below), at a purchase price of [redacted] per share.

iii.) The Licensee's involvement with the L Family

GL and CL were also dairy farmers. Their farm was operated by the family through a holding company (the "Holding Company"). As noted above, the Licensee was introduced to the family by DL in or around 2008. The Licensee soon thereafter helped place life insurance for GL, as well as some other members of her family, including her mother and brother.

Over the course of many years, GL and CL, sometimes through the Holding Company, purchased a number of EMPs and other investments which GL testified had been introduced to the family by the Licensee (who had encouraged them to invest in the companies). The companies in which the L Family invested included:

a. GH Co. ("GH"), which was a start-up technology company. The L Family purchased a total of [redacted] of GH shares in 2009 and 2011 (for which the Licensee earned a [redacted] referral fee);

b. FTC Co., which was an investment company that had a number of projects and developments, including an industrial park development in Alberta. The L Family invested [redacted] with FTC Co. between 2009 and 2011;

c. G Technologies Inc. ("G Tech"), which was a developer and supplier of scientifically-engineered fabric technologies. The L Family invested [redacted] with G Tech in 2011. The Licensee was a consultant for G Tech for approximately four years during the material period and was paid [redacted] per month for basic services and [redacted] per month as an allowance (the Licensee and his wife also personally invested [redacted] in G Tech);

d. Systems Co. ("Systems"), which was a fleet management solutions technology company in the interior of British Columbia. The L Family invested [redacted] in Systems in 2011. The Licensee was the group benefits agent of Systems and earned a [redacted] commission on the first [redacted] invested by the L Family; and

e. Systems Canada, which was a company related to Systems. The L Family purchased [redacted] worth of Systems Canada shares.

In addition to the above, GL and her husband also invested in two real estate projects that GL testified had been recommended by the Licensee – a land development project near Barriere, British Columbia (the "Barriere Project"), along with the purchase of six condominium units in Lethbridge, Alberta which were purchased through their involvement with a Realty Company that was involved in projects across Western Canada ("Realty Co.").

The L Family invested a total of [redacted] in the Barriere Project between 2010 and 2011. The Licensee initially referred the L Family to the developer of the project, who was a longtime client of the Licensee. The Licensee was paid a referral fee for introducing the L Family to the developer and the Licensee's son received a [redacted] shareholding interest in the project.

With respect to the Realty Co. investment, the L Family invested [redacted] in the purchase of six condominiums in Lethbridge, Alberta.

Evidence of SS

Council's first witness was SS, who was one of the complainants. In 2011, SS's husband was killed in a farm accident, which subsequently led to a sale of the family farm. From the sale proceeds, SS ended up with approximately [redacted] which she used to purchase a house close to where the farm was located. Other than her house, SS had [redacted]. She had approximately [redacted] in savings, along with a life insurance policy worth [redacted].

SS was not a sophisticated investor. She had no investment experience and her husband had historically taken care of the family finances.

DL introduced SS to the Licensee shortly after SS's husband passed away. SS said that she was looking for financial advice and she trusted the Licensee because he had been referred to her by

the L Family, to which SS was very close. When they first met, SS believed that the Licensee was a general financial advisor and did not understand him to be only an insurance agent.

SS recalled that her first meeting with the Licensee was at her family farm. DL also attended. At that time, SS said that she was trying to figure out what to do with the money that she was going to receive from her husband's estate. As she described it, "What I wanted was something to put my money in that would earn a little bit of interest, and maybe I could pay some property taxes with what I earned on it, and just tuck it away until retirement." SS's memory of the initial meeting was admittedly quite vague. She said there was a binder of material that was reviewed and recalled indicating to the Licensee that she was hoping to put her funds in something similar to a tax-free savings account. SS said that she did not need further life insurance at that point.

There was a subsequent meeting between only the Licensee and SS later that month. During that meeting, based on the Licensee's advice, SS decided to purchase two life insurance policies. Policy One had a face value of [redacted]. The face value of Policy Two was [redacted]. SS understood from the Licensee that these policies were like savings accounts, but that each offered the bonus of also having a life insurance component. SS could not recall why these amounts were selected for the policies. She testified that she was unaware that these policies would require the payment of policy premiums. She believed that she could choose to add funds each year, but that she was not required to put additional money into the policies.

The application forms for the two policies were signed by SS at her home with the Licensee present. Both applications had been already been filled out by the Licensee before the meeting (Tabs 2 and 4, Exhibit 2). When reviewing the forms during the hearing, SS noted that there were numerous errors in the applications – for example, SS was not self-employed; she did not have a gross annual income of [redacted]; her net worth was not [redacted] and the purpose of the insurance was not for "mortgage insurance" as the Licensee had written.

With respect to the investor profile form, SS testified that there were also a number of errors made by the Licensee on that form. For question 1, SS said she would have selected option d) not a), as her objective was not to obtain life insurance, but was to save money. With respect to question 3, SS testified that she would not have selected option e), as she wanted to be able to access her money on short notice and the intent was not to leave the money in the account for a long period of time. Again, on this form, SS confirmed that her gross annual income was also overstated by the Licensee. Finally, SS noted that when the "points" on the form were added up, the total suggested that the policy she was purchasing did not match her investor profile. SS said that she had no discussion with the Licensee about writing "client's choice" on the application to explain why the insurance policy was selected even though it did not appear to suit SS's insurance needs based on the points accumulated.

SS acknowledged that the Licensee went through the policy illustrations with her, but she said that she did not understand the details of the information (Tabs 1 and 3, Exhibit 2). She agreed that she was generally aware that these illustrations explained the "accounts" that she had agreed to put her money into. She said that she trusted the Licensee and was nervous about asking any

questions given her lack of financial sophistication. At a general level, SS understood that she could contribute additional funds in later years if she had the money, but she did not understand there to be any mandatory contributions.

SS agreed that she subsequently went through a medical examination which took place at her home and that she later received copies of both insurance policies (Tabs 53 and 54, Exhibit 2).

On March 7, 2012, SS met with the Licensee and acknowledged receipt of both policies. She provided two cheques to the Licensee in the amounts of [redacted] and [redacted]. SS regarded these payments as her initial deposits into her new "savings" accounts. She still believed the life insurance was merely a component of the investments.

SS next saw the Licensee one year later when they discussed making further contributions to the policies. In February 2013, SS deposited an additional [redacted] and [redacted] on the two policies (Tab 5, Exhibit 2).

SS acknowledged that she received her policy statements each year (Tab 55, Exhibit 2), but she explained that she never paid attention to the details of the policies until after she re-married in 2013. When she finally looked at the statements, it appeared to her that her investments were losing money over time, as her balances were noted to be decreasing.

SS eventually emailed the Licensee on June 10, 2014 asking to get together to review the investments (Tab 11, Exhibit 2). She said that the Licensee did not respond to her email for many months, so she then phoned the Licensee on January 16, 2015. SS recorded this phone call without the Licensee's knowledge. A transcript was referred to at the hearing (Tab 76, Exhibit 2). Immediately after her call with the Licensee, SS then phoned Industrial Alliance to ask the insurer questions about the policies. That call was also recorded by SS (Tab 77, Exhibit 2).

After these calls, SS said that she did not want to speak with the Licensee again. She believed that he had not been honest with her and she wrote a letter of complaint to Industrial Alliance on January 26, 2015 (Tab 52, Exhibit 2) and subsequently filed a complaint with Council.

With respect to Policy Two (which was also described as the "property tax deferral" Policy) SS never made any further contributions after 2013. As a result, the ongoing annual premiums for the policy were paid out of the funds that SS had deposited and Policy Two eventually dissolved, as it "ate itself up in fees". This represented a [redacted] loss for SS.

As of the date of the hearing, the Licensee was still the agent for Policy One, although SS had also not made any further payments on that policy since 2013.

Finally, in addition to the above policies, SS also testified about other investments that she made through the Licensee. In February 2013, the Licensee arranged for SS to purchase [redacted] of gold and silver, which he had recommended that she purchase as part of having a diversified portfolio (SS later sold the metal for an [redacted] loss).

SS also purchased [redacted] shares of GH for [redacted] per share in March 2013. SS still owns these shares, but she did not know whether they had any value as of the date of the hearing. She said that she was never told by the Licensee that he was associated with GH and there were no discussions about how these shares were being issued to SS in lieu of referral fees owed to the Licensee by the company (which had been the Licensee's initial explanation to Council's investigator).

During cross-examination, SS was asked to review in detail the events of her various meetings with the Licensee. It was clear from SS's evidence that she did not have a vivid recollection of the specifics of each meeting. She acknowledged that the Licensee presented her at the initial meeting with a binder or folder that had various ideas for investments in it. SS accepted that she and the Licensee discussed a variety of different investment options during that meeting; however, the specific details of the ideas that were discussed were no longer with her. SS repeatedly testified that she believed the Licensee was going to assist her in setting up a TFSA.

Counsel for the Licensee also went through the policy applications and illustrations with SS in some detail. She agreed that she was presented with these documents by the Licensee and she accepted that the documents provided information about what the Licensee was recommending. SS acknowledged, in a general sense, that the Licensee told her she should be considering some vessel which would allow her to save her funds, but which would also provide some coverage for her children in case something happened. SS also agreed that the Licensee had a discussion with her about deferring her property taxes as part of the investment plan, but she maintained that the concept of a property tax deferral was never carried out with the Licensee.

SS accepted that she signed the policy applications, which included the incorrect information referred to above, but she maintained that she did not understand the documentation and that the Licensee had gone through it with her very quickly. With respect to the illustrations, on page 2 of the application for Policy One, SS was shown that the illustration identified that the premiums for the first five years were to be [redacted] annually. On page 5, SS agreed that the projected value of the policy also showed five installment payments of [redacted] each year in the first five years. SS conceded that the Licensee may have explained these things to her, but she indicated that she did not understand what was being recommended. The clear tenor of her evidence was that she trusted the Licensee and assumed that he was acting in her best interests.

SS was also shown an updated statement with respect to Policy One, dated November 29, 2018. As of the date of the statement, it showed that SS had invested [redacted] in that policy. As per the statement, the balance was [redacted]. Although the net profit figure was never provided to the Hearing Committee, the updated statement for Policy One demonstrated that SS might not have lost money with respect to that policy. SS agreed that in addition to appearing to make some interest on her deposits to Policy One, she also had access to life insurance for the past seven years.

SS also accepted that very shortly after she spoke by phone with the Licensee and Industrial Alliance in early 2015, she used [redacted] to open an investment account with another life

insurance company. That account was opened on January 22, 2015. In the result, SS had funds available at that time to pay the premiums on Policy Two (Tab 51, Exhibit 2). This evidence was adduced by the Licensee to show that SS could have maintained Policy Two if she had made the additional premium payments with the [redacted] in funds that she invested at that time.

Evidence of GL

GL and her husband CL worked on their farm until approximately 2011. One of their children was DL, who obtained his insurance license in or around 2008 when he was a young adult. [redacted] At some point in or around late 2008, DL began to work with the Licensee after they met when the Licensee was arranging life insurance for members of the family.

GL recalled that she had regular meetings with the Licensee starting in late 2008 during which he would come by the farm to discuss various investment opportunities with GL and her husband. She explained how the Licensee would bring pamphlets or photocopies of information on investing and described various opportunities as being "baskets one would put their eggs into." In addition to discussing investments, the Licensee would also talk with GL and her husband about their insurance needs and strategies to minimize tax on death.

GL testified about how the Licensee provided her family with general advice about where to keep their money and how to invest. Among other things, GL said the Licensee encouraged them to purchase things that you "walk on or touch", such as metal and land. Further, the Licensee often recommended an investment strategy that he called "OPM", which stood for using "other people's money" to invest. What this meant in practical terms was using credit lines or borrowing money to then hopefully invest those funds at higher rates of return than one is paying in interest.

During the course of her many discussions with the Licensee, GL testified that the Licensee never indicated that he was a certified financial planner. GL also did not recall any distinctions being drawn between products that the Licensee was licensed to sell as compared to products that he was not licensed to sell.

In January 2016, GL provided Council with a chronology of various investments that her family was introduced to by the Licensee (Tab 12, Exhibit 2). After initially purchasing life insurance in March 2009, the Licensee then facilitated a meeting between the family and a local lawyer, MW, who was acting for GH. GL and her husband met with MW and the Licensee at the lawyer's office where they were shown a video presentation about the GH technology. GL and her husband ultimately invested [redacted] in GH through their Holding Company. Later, they invested an additional [redacted] through a family trust. The share purchase agreement for the investments in GH, along with other documentation relating to the purchase of the investments was shown to the Hearing Committee (Tabs 14-16, Exhibit 2).

As of the date of the hearing, GL said that she had not received any return as a result of the investment in GH. She believed that the shares in GH were valueless.

In addition to GH, GL testified about the Licensee introducing her family to another investment opportunity through a company called FTC Co. GL described the FTC Co. investment opportunity as a chance to use a TFSA to invest in large-scale development projects (Tabs 19-20, Exhibit 2). GL said that the Licensee recommended that they invest in FTC Co. and told them that investing in such a proposal was better than purchasing mutual funds and GICs, both of which had a ceiling in terms of potential upside. In August 2009, CL invested [redacted] in a FTC Co. industrial park development in Alberta. GL testified that the Licensee had no discussions with her and her husband about any risks associated with investing in FTC Co. Subsequently, in the spring of 2011, GL said that the Licensee also recommended that CL transfer his RRSP to FTC Co., which CL did.

As at the date of the hearing, GL believed that her family had lost approximately [redacted] in the FTC Co. investments.

G Tech was another investment opportunity that the Licensee introduced to GL and her family. GL testified that the Licensee advised her that G Tech was a fabric technology company that used superior materials compared to other popular clothing manufacturers. Because the company was going to go public, GL and her family purchased shares in G Tech through Raymond James, which was a regulated entity. Again, GL said that the Licensee never mentioned any risks associated with investing in G Tech. Even more importantly, GL testified that the Licensee never told her that he had a paid consulting agreement with G Tech.

When GL and her family were considering investing in G Tech, the Licensee would attend their house to discuss the company (and its prospects). GL recalled that they would also sometimes phone the CEO of G Tech in Vancouver who would then participate in the meetings. GL and her family invested [redacted] in G Tech in 2012. At that time, GL believed that she would be paid back on her investment with interest in very short order given the imminence of G Tech becoming a public company.

As far as GL was aware, as at the date of the hearing, G Tech no longer existed and GL and her husband had lost their entire investment.

There were two other companies that the Licensee also introduced to GL and her family – Systems and Systems Canada. GL understood that the Licensee personally knew the CEO of Systems. When they were considering investing in the Systems companies, GL said that the family was looking for an investment that would provide them with a regular monthly return. In the fall of 2011, the family invested [redacted] in Systems. A second tranche of [redacted] was subsequently invested by the family in Systems. For the second investment, GL and her husband took out a home equity line of credit against their property. She described this as one of the instances of "OPM" that had been recommended by the Licensee. She said there were

no specific discussions with the Licensee about the risks of taking out a home equity line of credit on the house to invest in the company.

The idea behind the investment, in very general terms, was that GL and her husband were purchasing "tag units" in the company. These units paid a significant quarterly rate of return of [redacted] (Tab 27, Exhibit 2). For a period of time, GL testified that they did receive returns on their investment from Systems. GL testified that it was the Licensee who explained how they were supposed to profit from the investment in Systems. GL indicated that the Licensee never told her that he would be receiving compensation as a result of her investment. GL did not understand what her son's role was, if any, in Systems but she knew that her son had also mentioned Systems to family friends. GL regarded the investment as being very much driven by the Licensee.

With respect to all of the investments, GL described in general terms how she had discussions with the Licensee about the concept of "due diligence". She said that she did not have the experience to review the investments on her own, nor did she have the interest. GL said that she and CL were assured by the Licensee that for any opportunities that he brought to the family he would take the time to do the due diligence. It was clear to the Hearing Committee that GL believed that she could trust in the opportunities that the Licensee brought her family to consider.

Another project that was introduced to GL and her husband by the Licensee was a property development near Barriere, British Columbia. The project involved the purchase of a 10 acre lot next to the river which was to be developed into a modular home park. The plan was to provide affordable housing for the employees of a local mine. According to GL, the Licensee advised that if they invested [redacted], the project would be developed quickly and "would sell like hot cakes" the following spring. The Licensee recommended the project to the family and encouraged GL and her husband to invest. Only later did GL learn that the Licensee also had an ownership interest in the Barriere Project. She learned that the Licensee was to receive 20% of the value of the project. She said that she only found this out when she reviewed the documentation which outlined the share structure for the project company.

Again, similar to what had taken place with both G Tech and Systems, with respect to the Barriere Project, the Licensee took GL and her husband to meet the head developer of the project on a number of occasions. There were meetings with the Licensee and the developer on the property and in the developer's office (the developer was a client of the Licensee).

Unfortunately, the Barriere Project ran into financial troubles. As directors of the company, GL and CL had also signed personal guarantees. In July 2011, the Licensee and the developer asked if they would arrange a second mortgage on the project, as they required additional funds for the development. GL and her husband declined that opportunity. In the fall of 2011, GL and CL were again asked if they had money available for a second mortgage to pay out the high interest loan that was in first position on title. At that time, GL and her husband invested a further [redacted] in the project.

Overall, GL and her husband invested over [redacted] in the Barriere Project, along with providing the personal guarantees for the corporate debt. Eventually, the property was foreclosed and listed for sale in the summer of 2013. It is unclear exactly how much the L Family has lost on this investment.

Finally, GL also testified about a further investment that was made with a company called Realty Co. that owned a rental pool of condominiums. As GL described it, investors would purchase a condo through Realty Co. and that property would then be placed into a rental pool. Even if your condo was empty on a particular night, you would still earn income as a result of the other members in the pool. GL testified that this opportunity was again brought to them by the Licensee. She said that he told them that it was a good investment because there was a security in being on title. As she recalled the conversation, the Licensee explained that the investor had more control over the investment as you had a title that could be sold if necessary. The Licensee told GL that it was safer than putting your money in the market and provided a higher rate of return as compared to leaving your money in a bank.

Again, the Licensee advised GL to use "OPM" in order to fund the investment in Realty Co. GL and her husband purchased five condos through Realty Co., which ended up costing approximately [redacted]. GL indicated that the Realty Co. has proven to be a very unsuccessful investment, although it was difficult for her to provide a precise figure for the family's losses as of the date of the hearing.

The thrust of much of the cross-examination of GL was that she had advice from other professionals with respect to many of the investments. Counsel for the Licensee established that GL and her husband received investment advice from a number of other individuals in addition to the Licensee during the material period. The family held investments with other banks, including ING and RBC. With respect to the EMPs that were addressed in the hearing, GL had access to advice from the lawyer MW with respect to the paperwork and investment in GH. When investing with G Tech, GL and her husband met with and received advice from a broker with Raymond James.

GL also accepted that she also brought her own judgment to bear on some of these investments. She admitted that she and her husband assessed and liked the G Tech product. She admitted that she had confidence in the fact that the company was regulated and she liked being able to physically see and touch the product. Even though the Licensee introduced her to the company, GL also accepted that the Licensee did not advise them as to how much money to invest. Further, when the L Family invested the final [redacted], GL acknowledged that they decided to invest at that point even though they had already identified "red flags" with respect to how the company was being managed, which influenced how much additional money they were willing to put into the company.

With respect to the FTC Co. investment, GL conceded that she was not in the country at the time that company was first discussed between the Licensee and her husband. GL accepted that her information about the FTC Co. opportunity had been relayed to her via her husband and she

assumed that the information her husband had about FTC Co. had been given to him by the Licensee. Similar to the G Tech investment, GL did not have any evidence as to why her husband initially invested [redacted] in FTC Co. Further, GL conceded that even though the Licensee had introduced them to the company, she did not know whether the Licensee had specifically advised CL to take money out of his RRSP and move those funds to FTC Co. All GL could say was that the Licensee had recommended generally keeping RRSP funds out of banks and investing them in different products.

With respect to the Systems companies, GL confirmed that she had contact not only with the Licensee, but also directly with the CEO of Systems. GL also confirmed that the Licensee again did not recommend the amount of money that GL and CL invested with the Systems companies. Finally, GL also confirmed that she was aware that her son, DL, was involved with Systems and was being compensated in some manner for his own referrals.

With respect to the Barriere Project, GL conceded that she had access to and received advice from the developer of the project in addition to the Licensee.

In an effort to show that the L Family was involved in a broad range of investments that had not been brought to them by the Licensee, GL was also cross-examined at length about her family's investment in another project referred to as "Crazy Creek". GL acknowledged that the Crazy Creek project was a [redacted] property investment that her family had undertaken without involvement of either the Licensee or their son, DL. In some ways, the project was similar to the Barriere Project, but there were no evidentiary links between the Crazy Creek project and the Licensee (Exhibit 3).

With respect to the Realty Co. project, GL acknowledged that other than introducing her to the project, the Licensee did not recommend how much she should invest with respect to that project. GL also accepted that this was another investment opportunity where her son DL was involved with referring people and obtaining commissions independent of the Licensee.

Evidence of DL

At the time of the hearing, DL was 30 years old. He graduated from high school in 2006 and wrote his LLQP examinations in 2007. He became licensed with Council in June 2008 when he was 20 years old.

DL was introduced to the Licensee through his uncle, when the Licensee was doing some work with the family. The Licensee offered to take DL "under his wing" and mentor him in the insurance industry. According to DL, he and the Licensee had a verbal agreement that they would split commissions 50/50 on any business or referrals that they did together. In 2008, DL described his general investment knowledge as extremely rudimentary. He testified that he had no experience with products other than insurance.

It was DL who introduced the Licensee to SS after her husband had passed away. DL recalled an initial meeting with SS and the Licensee during which they discussed non-insurance related investments. DL testified that he did not know that the Licensee had subsequently placed the two life insurance policies for SS until he found about it much later. Had he known at the time, DL said he would have expected to be paid a 50/50 referral fee on those policies.

DL testified that he learned about GH from the Licensee. He understood that GH was a technology company that facilitated data transfers by increasing the sound quality on the shrinking of files. DL acknowledged that he was bullish about the company's prospects. He said that he discussed the company with his parents; facilitated appointments between the Licensee and his parents; and advised his parents that GH looked like a good investment opportunity. DL explained that the Licensee believed it to be an excellent investment and very much encouraged DL and his family to invest in the company. DL himself invested approximately [redacted] in GH over the years. DL said that he did not know at the beginning whether the Licensee was paid for introducing people to GH, but he found out later that the Licensee received shares in the company for bringing in investors.

Similarly, with respect to G Tech, DL said he was again introduced to the company by the Licensee. Based on what he was told by the Licensee, DL believed G Tech to be another excellent investment opportunity and he thought it would be a good fit for his parents. He understood the company would be going public in the near future and he believed that the investors would make a lot of money very quickly. DL said that the Licensee again did not initially disclose his personal financial interest in G Tech. Similar to GH, DL found out later that there was a consulting agreement in place between the Licensee and G Tech through which the Licensee received compensation for bringing investors to the company.

DL acknowledged that he also told his parents about the FTC Co. investment opportunity even though he had no personal involvement in the company. DL did not receive any commissions or compensation for recommending FTC Co. to his parents or others, but he again believed it to be a good investment opportunity.

With respect to the Systems companies, this was another project that DL said he was told about by the Licensee. DL testified that the Licensee recommended that his parents invest in Systems and advised that the company was paying a fixed rate of return in the neighbourhood of 15%. DL acknowledged that he also personally spoke to his parents about the project and believed that he would split commissions with the Licensee on any funds that his parents invested. During questions from Council, DL was shown the corporate registry search for Systems which identified DL as one of the directors of the company. DL denied having any knowledge as to how he became a director of the company.

With respect to the Barriere Project, DL described his involvement as being somewhat of a conduit between the Licensee and his parents. DL had a general understanding about the nature of the project, being the development of a mobile home park near Barriere, but he was not intimately involved with the development. DL testified that the Licensee would at times pressure

him to encourage his parents to invest more money in the project. DL again accepted that he hoped to be paid for his efforts to raise money through his family.

In or around 2014, DL stopped working with the Licensee. He said his last contact with the Licensee was after he learned that SS had made her complaint to Council. In that period of time, the Licensee repeatedly phoned DL asking him to find out what SS had said in her complaint. The Licensee said to DL that he wanted to know what was in the complaint so he would know how to answer the questions from the investigator. During one of the last telephone calls, DL testified that the Licensee advised something along the lines that if he was "going down", then he was taking DL down with him. DL viewed this as a threat and it was the last time that he spoke with the Licensee.

In cross-examination, many questions were focused on the steps taken by DL to encourage others to invest in these various projects and investments outside of his relationship with the Licensee. DL acknowledged that he had facilitated a number of other people to also invest in G Tech. DL also acknowledged selling some of his own personal shares in GH to one of his friends, as well as selling GH shares to his siblings.

With respect to G Tech, DL agreed that that he had believed in the company and thought it was going to be a financial success. He conceded that he had actively solicited a number of investors for the company. Further, DL acknowledged that the Licensee never told him the exact amounts to invest in the project. It was a matter of DL being introduced to the company by the Licensee and, in DL's words, being "brainwashed" that it was a good company and investment opportunity. DL accepted that he knew there were risks with the investments, but testified that he had placed his faith in the Licensee.

In terms of the Systems companies, DL said that the Licensee introduced him to the owners of the companies and again encouraged DL and his family to invest. DL accepted that he formed a relationship with the owner that was independent of the Licensee and acknowledged that he had arranged for others to invest in Systems (and also that he obtained a commission for arranging these investments).

DL was also cross-examined at length on other projects that he was involved with that had nothing to do with the Licensee. DL acknowledged being involved with an Agri-tech business in Alberta that dealt with carbon credits. As outlined in the many emails that were shown to the Hearing Committee (Exhibit 3), DL also proposed a series of his own investment ideas to the Licensee, including savings accounts in Manhattan, mining stocks and the purchase of foreign currencies (Exhibit 4). DL accepted that he was undertaking his own evaluation of these various opportunities and then making recommendations to the Licensee.

The Licensee's Evidence

The Licensee was licensed with Council in 1994. His initial job was selling disability policies. He has been an independent life agent since 1998.

With respect to the matters material to this proceeding, the Licensee testified that he was introduced to DL when the Licensee was undertaking some insurance work for an Alberta company. At that time, the Licensee understood that DL had recently joined a large brokerage. The Licensee described the arrangement with DL as largely having DL set up appointments for the Licensee to speak with people in DL's town. The Licensee confirmed that they were going to share in the commissions depending on the nature of DL's involvement in each transaction. The Licensee said that he and DL did not do much in the way of business in the first couple of years. There were perhaps 10 policies in that time when they worked together, with not much occurring in terms of insurance after 2012 (during which time he and DL were involved with the EMP investments).

Through their work, DL introduced the Licensee to SS. The Licensee recalled taking some G Tech samples to SS at their initial meeting at her farm, but SS advised him that she did not want any investments with risk; she was looking for an investment that was guaranteed. Given what SS had told him, the Licensee subsequently discussed universal life insurance policies with her. The Licensee recalled SS advising him that she wanted something where she was not going to lose her money and where she would have something left for her children at the end.

With respect to Policy Two, the Licensee recalled the insurance company promoting a property tax deferral program at that time. The idea was quite simple – you defer your property taxes and put that deferred money into an insurance policy. When you pass away, the policy pays back the taxes and there are additional proceeds that remain for your beneficiaries. SS was interested in this policy as well as Policy One.

When the Licensee was completing the application form for Policy Two, he testified that he ticked the box suggesting the insurance was being taken out as mortgage insurance because the insurance was going to be part of the property tax deferral program. He denied that he completed the application in a misleading manner. The Licensee testified that he went through the illustrations with SS in detail and that the documents were signed in person during the course of a meeting. He believed that SS understood the nature of the policies that he was placing for her. He explained to SS that a nurse would come by at some point in the future and that SS would have to undergo a medical examination.

With respect to the commission split identified by the Licensee in the application, he testified that he changed it from 50/50 to 10/90 because DL had not been involved in the policy at that time and there was also some thought that DL would soon be leaving the insurance industry. In the result, the Licensee believed a 10/90 split to be fair with respect to the placement of the insurance for SS.

As the years went by, the Licensee said there were no concerns raised by SS with respect to the policies. At one point, the Licensee recalled SS contacting him to change the beneficiary on the policies to her new husband and not her children. The Licensee indicated that he received a yearly statement outlining the status of the policies. Overall, the Licensee testified that he believed SS understood the nature of both these two policies – one was to account for the

property tax deferral program; the other was to be considered a safe investment. The Licensee advised that SS had never mentioned to him that she felt misled with respect to the policies.

The Licensee vehemently denied at any time advising SS that she was investing in a TFSA. The Licensee said that such advice would have made no sense, as there would be no reason for a client to undertake a medical examination to open a savings account.

In addition to the two insurance policies, the Licensee acknowledged that he helped SS purchase precious metal from a bullion dealer. He agreed that he recommended that purchase to SS. He also admitted that he facilitated SS's purchase of [redacted] of his own shares in GH.

The Licensee's testimony with respect to G Tech was difficult to reconcile against the independent evidence. The Licensee's evidence focused heavily on what DL did in terms of promoting the company. The Licensee testified that he never met the people who DL was introducing to the company and he did not pay attention to what DL was doing in terms of raising investors. As far as the Licensee was concerned, his only role was facilitating sample orders that DL would arrange to drop with potential investors.

The Licensee testified that he was not responsible for how much people invested in G Tech or for the completion of any of the paperwork associated with the investments. He said that these matters were taken care of by Raymond James and the owner of the company and that he had no knowledge as to how much money GL and her family had invested. The Licensee and his wife invested just over $50,000 in G Tech through his holding company, as well as the Agency. As far as the Licensee was aware, G Tech is now bankrupt and all of the investors have lost their money.

The Licensee acknowledged that he was a consultant with G Tech and had also arranged the company's group benefits early on, but those topics were not the focus of his testimony.

With respect to FTC Co., the Licensee agreed that he had introduced the company to CL and mentioned that FTC Co. held events in various cities. The Licensee recalled that he had attended one of the FTC Co. events in Kamloops, but CL was not there with him. Other than mentioning FTC Co. to CL, the Licensee said he had no involvement with the company. He did not know how much the L Family was investing through FTC Co. and he testified that he did not make any recommendations with respect to how much to invest or which FTC Co. investments to put money into.

With respect to the Systems investments, the Licensee acknowledged that he received a referral fee on the L Family's first [redacted] investment. He understood there was a second investment by the L Family, but he was uncertain as to the amount. Again, the Licensee's evidence attempted to portray the L Family as dealing primarily with DL and the CEO of the Systems companies, as opposed to himself.

On the Barriere Project, the Licensee acknowledged that he had received a referral fee for introducing the L Family to the project. The Licensee explained that the developer owed money to the Licensee from a previous project that had not been successful. As a result, the developer was re-paying the Licensee through the Barriere Project by having the Licensee's son receive an ownership interest in the project company.

In terms of the Realty Co. project, the Licensee indicated his only involvement was putting DL in touch with the company through one of its employees (who had also done work with the Licensee). The Licensee said that he did not receive any benefit as a result of funds invested with Realty Co. by the L Family.

At a general level, the Licensee testified that he was never involved in putting together a financial plan for the L Family. He understood that some of the investments that he referred the family to would be considered higher risk than others, but he believed that the risks were being discussed with the family by other people involved in the projects, including Raymond James and the CEOs of the various companies. In his mind, he was not "selling" any of these investments. He believed that he was just referring people to various opportunities and they were deciding on their own whether to invest and how much money to commit.

In terms of the discussion with DL after SS filed her complaint, the Licensee testified that all he intended with his comments to DL was that DL was also on SS's policy as a licensee, so if there was to be any discipline action in relation to that policy, they would both be responsible. The Licensee denied that he was threatening DL during that call.

In the Hearing Committee's eyes, it was fair to say that the Licensee's evidence changed quite dramatically from his evidence in chief to the evidence that he gave during cross-examination. During the course of questioning by Council, the Licensee acknowledged several areas where he had not lived up to the expected professional standards.

As general propositions, the Licensee acknowledged that he had no qualifications with respect to general investment matters. He agreed that he had never been licensed in the securities industry; had no qualifications as a financial planner; had no securities related designations; had never been registered with the Securities Commission or IIROC; and had never been accredited as a mutual fund or commodities dealer.

The Licensee also acknowledged that he was aware during the material time of Council's Rules and Code of Conduct (the "Code"). He knew that he had an obligation to comply with the Rules and the Code and he agreed that his obligations were at all times to act in the best interests of his clients and in a trustworthy manner. He understood that he had an obligation of good faith to his clients and he knew, as a Life Agent, that he could not take advantage of a client's lack of sophistication or inexperience. Further, the Licensee appreciated that he was expected to maintain a baseline level of competency in his practice and he was also required to maintain proper books and records.

Perhaps most importantly, the Licensee also accepted that he had an obligation to both avoid conflicts of interest with his clients, but also to disclose any real or potential conflicts of interest that could arise in his dealings with clients, including having a duty to disclose to his clients any direct or indirect financial benefits he might receive related to the advice that he was giving.

With respect to the EMPs that he recommended to the complainants, the Licensee acknowledged that he knew there were risks associated with dealing in the unregulated market, including the fact that an investor might not be able to sell the securities given that they are not publicly traded.

The Licensee was cross-examined at length about the contents of his website, which referred to a number of areas of competence well outside the Licensee's area as a Life Agent. For example, the Licensee's website during the material time suggested that he was qualified in a broad range of areas:

- "Helping you with your financial planning"
- "Tax Planning"
- "Portfolio Analysis"
- "Stocks and Bonds"

The Licensee suggested that his website had been put up by someone who he had hired and that he had done a poor job on vetting the content. The Hearing Committee found the Licensee's explanations on this issue hard to believe and it is the view of the Hearing Committee that, during the material time, the Licensee was clearly holding himself out as performing financial services for clients and number of other things which would not typically be considered part of his licence (Tab 74, Exhibit 2).

With respect to the Licensee's interactions with SS, much was put to the Licensee by Council about the inappropriateness of the property tax deferral program given the age and status of SS's children at the time (the children were of an age where the deferral program would only have been available to SS for a very short period of time, at best). The Licensee agreed that he knew SS was an unsophisticated and inexperienced investor. [redacted]

With respect to Policy One, the Licensee insisted that he explained to SS that she would need to pay into the policy each year for the first five years. That being said, the Licensee also conceded that he could not recall advising SS that if she did not contribute more funds that the premiums would then be paid out of the accumulating interest. Looking back, the Licensee admitted that the policy was not suitable for SS, particularly given that it was based on an incorrect assumption by the Licensee as to how much money SS had available to pay into the policy (Tab 4, Exhibit 2).

With respect to the property tax deferral policy (Policy Two), the Licensee also conceded that his plan was not appropriate for SS, in part because it had to be amended to incorporate her new spouse's children in order to work in the first place, but also because of the age of her children at the time. The idea was to defer the property taxes every year, with the policy paying back the taxes on death and leaving additional money for the children (Tabs 2 and 3, Exhibit 2). However, given the age of SS's children, the Licensee accepted that the program could only have been utilized for a few years.

With respect to the insurance applications for SS, the Licensee acknowledged that he filled out the forms in advance of his meeting and had merely presented them to SS for signature. Some of the information on the forms was conceded to have been known to the Licensee to not have been correct, including the gross income of SS, as well as her net worth (which the Licensee indicated was [redacted] It was put to the Licensee that he had misrepresented these matters to the insurer so as to not raise red flags on the application. The Licensee denied this suggestion and testified that these forms were completed based on SS's income from the previous year. The Licensee also agreed that there were other errors on the form, including where he identified the purpose of the insurance as being for "mortgage insurance" (Tabs 2 and 4, Exhibit 2).

With respect to the investor profile part of the form (Tab 4 of Exhibit 2), the Licensee also accepted that he did not complete that part accurately. He agreed that SS's primary objective was not to have life insurance in place. Further, the value of the accumulation of the insurance was also not to be used in the manner the Licensee indicated on the application. Finally, the Licensee knew that SS was not intending to leave the accumulation in the policy until death. The Licensee knew that SS wanted to be able to access the funds. Again, the Licensee also accepted that SS's annual income and net worth were both incorrectly set out in that form.

The Licensee was also shown his correspondence with Council during the course of the investigation (Tab 32, Exhibit 2). The Licensee acknowledged that his letter to Council was inaccurate insofar as it addressed certain matters concerning SS. By way of example, he had incorrectly advised Council that he had sold shares in GH to SS that he had been issued *in lieu* of referral fees. This was not true, as the Licensee had received commissions for referrals to GH in the range of 6 to 8%.

The Licensee accepted that he was in a conflict of interest with respect to these transactions and he acknowledged that he did not disclose to SS that his protections as a Life Agent did not apply to the sale of these investments.

With respect to the Systems companies, the Licensee acknowledged that he was asked by the CEO of Systems to help raise money and investors. The Licensee agreed that he received commissions based on the number of purchasers he introduced to the companies who purchased investments. The Licensee agreed that he introduced the L Family to the CEO of Systems and that he represented to the family that he believed Systems to be a good investment opportunity. The Licensee also recalled recommending the use of "OPM" in terms of investments in these matters (and he also admitted that he could not recall explaining the risks of using OPM to the

family). He acknowledged that these investments were outside his training and expertise as a Life Agent and he did not recall advising the L Family about the conflict he was in with respect to the Systems investments given that he was to receive compensation for bringing investors to the companies.

For G Tech, the Licensee acknowledged that his compensation from that company was over $100,000 on an annual basis. Again, the Licensee accepted that his initial response to Council was not accurate when he indicated that he did not earn commissions on client investments relating to G Tech. The Licensee also conceded that he did not advise the L Family about his consulting agreement with G Tech before recommending that they invest in the company. He testified that he did not tell his clients that he was in a conflict of interest position given his role as a consultant with G Tech and he agreed that even though DL was also involved, DL had only learned about the project and products through the Licensee's connections.

Finally, the Licensee also acknowledged that he recommended the Barriere Project to the L Family. Again, the Licensee did not tell the L Family that the developer owed him money from other projects. He also never mentioned to the L Family that he was to receive shares in the Barriere Project from the developer. When answering questions from Council, the Licensee acknowledged that he was in a conflict of interest position with respect to the Barriere Project and that he should have disclosed these matters to his clients. The Licensee testified that he knew that the L Family was relying on his advice as to the quality of the investment opportunity and at no time did he advise his clients to seek independent advice with respect to the viability of the project.

Other questions were put to the Licensee about his failure to maintain complete and accurate books and records, as well as his attempts to contact DL after SS filed her complaint with Council. The Licensee accepted that he had not kept proper records during the material period and conceded that he had threatened DL in an attempt to get DL to find out more about SS's complaint.

SUBMISSIONS OF COUNCIL

Council argued that the Licensee used his position of trust and authority as a life agent to learn about his clients' personal financial circumstances and he then preyed on his clients by recommending and encouraging them to invest in risky EMP investments. At the same time, and perhaps more importantly, the Licensee failed to disclose to his clients that he was in a conflict of interest with respect to these investments, as many of the transactions financially benefited the Licensee and/or his family (including GH; G Tech; both Systems companies; and the Barriere Project).

Through his actions, Council submitted that the Licensee breached his obligations of competence, trustworthiness and good faith, both in terms of his interactions with his clients, but also with respect to his involvement with the insurers and DL, who was working with him during

the material period and who the Licensee was supposed to be mentoring (through his altering of the commission on the SS policies and the threat that was made after SS filed her complaint).

Council described the Licensee's actions as "predatory" and took the position that a strong disciplinary penalty was necessary due to the fact that the Licensee poses an ongoing risk to the public and his misconduct and incompetence in this matter was "egregious." In the circumstances of this case, Council took the position that a full license cancellation was necessary for Council to meet its public interest mandate.

As Council filed a lengthy written brief, it is not necessary for the Hearing Committee to review each issue at length. In very general terms, Council highlighted the Licensee's evidence during cross-examination during which he acknowledged that he was aware of the duties he owed to his clients and the insurer during the material period, including the need to make full and complete disclosure of any direct or indirect financial interest that he may have had in the outcome of a transaction. Also, the Licensee conceded that he was aware of and breached his duty and obligation to the insurer to make fulsome inquiries to the risk and to provide full and accurate information with respect to the potential insured.

With respect to SS, Council's position was that the Licensee had failed to act competently and had placed SS in two insurance policies that were unsuitable for her, both in terms of what she had requested from the Licensee, but also given her financial circumstances at the material time. In particular, Council noted that the property tax deferral program was particularly unsuited for SS, given the ages of her children.

Further, Council noted that there were a series of very important and material problems with the applications that were completed and submitted to the insurer with respect to both policies. Council submitted that the Licensee made a series of misrepresentations to the insurer with respect to material and important aspects of the risk, including the purpose of the insurance, as well as SS's net worth and annual income.

Council also identified further concerns arising from the SS applications with respect to the Licensee altering the commission split as between himself and DL, as well as his complete lack of recordkeeping with respect to his interactions with SS and DL. Finally, Council submitted that the Licensee breached his obligations to Council with his lack of candor during the investigation and he also threatened DL when he called to ask what DL knew about SS's interactions with Council.

In terms of the Licensee's interactions with the L Family (and to SS to a lesser extent), Council submitted that after gaining the trust of his clients by way of his insurance knowledge and position of authority, the Licensee effectively embedded himself with his clients as a general financial advisor, straying well-beyond the area of expertise for which he was licensed. Once in this role, the Licensee used his position of trust to induce the L Family to purchase a series of unregulated and risky EMP investments, most of which turned out to be terrible investments (the evidence revealed the L Family to have lost well over [redacted]

Council argued that the Licensee was aware that the L Family was unsophisticated and inexperienced with investments and he capitalized on the trust he had gained with the family to convince them to invest in a series of companies that benefited the Licensee either directly or through his own family. Council emphasized the fact that the Licensee never advised the L Family that he was not licensed to sell the EMPs that he introduced to them. Further, at no time did the Licensee explain to his clients that he had a personal interest in many of the investments, be it by way of a consulting agreement or some other form of compensation.

Council submitted that the Licensee's actions revealed serious and repeated breaches of his obligations outlined in the Rules and Code, particularly involving his honesty and trustworthiness. Council argued that it had proven all of the allegations in the Notice of Hearing and suggested this case to be one of the most serious examples of both incompetence and misconduct.

In light of the fact that the Licensee poses an ongoing risk to the public, Council sought very serious penalties, including a permanent cancellation of the Licensee's license (along with costs of both the investigation and the hearing), as follows:

> Council asks the Hearing Committee to make the following Order:
>
> (a) The Licensee's life and accident and sickness insurance licence be cancelled;
>
> (b) the Licensee be prohibited from being an officer or director or principal shareholder of an insurance agency;
>
> (c) the Licensee be fined $10,000;
>
> (d) the Agency be fined $20,000;
>
> …

SUBMISSIONS OF THE LICENSEE AND AGENCY

The Licensee acknowledged his misconduct during the course of closing submissions and admitted that he did not keep proper records; did not properly assess SS's insurance needs; did not properly complete SS's insurance applications; did not place SS in appropriate insurance products; did not disclose his conflict of interest in the GH shares that he sold to SS; and did not disclose to SS that he did not have any training or accreditation to provide her with non-insurance financial advice.

Similarly, with respect to his interactions with the L Family, the Licensee acknowledged that he did not disclose his conflict of interest to the family with respect to a number of the investments, including GH, G Tech, the Systems companies and the Barriere Project. Similar to SS, he also

admitted that he did not disclose to the L Family that he did not have any training or accreditation to provide the family with non-insurance financial advice.

In the result, the Licensee submitted that Council's decision was "not so much concerned with evaluating the [Licensee's] guilt, rather, Council's decision is principally a question of what is the appropriate disciplinary consequence."

In essence, the Licensee acknowledged that there had been misconduct as alleged by Council, but he took the position that the Hearing Committee needed to assess and evaluate the nature of the specific allegations proven by Council. The Licensee argued that only in the context of all the facts could the Committee fairly evaluate the proper discipline and punishment that should follow. The Licensee suggested that aspects of the allegations and evidence had been either exaggerated by the witnesses or were simply incorrect, insofar as what was alleged by Council.

In terms of the inherent conflict of interest that that Licensee was in with respect to many of the investments that he recommended to his clients, the Licensee submitted that it was important for the Hearing Committee to note that even if he had failed to give specific advice, there was general knowledge by the complainants that the Licensee was benefitting from certain of these transactions. DL was also intimately involved in recommending many of the investments to his family and DL worked on these opportunities with the Licensee. GL testified that she was aware that her son was going to benefit financially from certain of the investments and she would have known the same in terms of the Licensee. In the result, the Licensee submitted this was best viewed as a situation where he failed only to "fully disclose" his interest in the investments he recommended. He conceded that he was in a conflict of interest position, but he stressed that the overall tenor of the evidence was that people were aware that he was receiving some benefit from the various investments.

The Licensee also highlighted the role that DL played with respect to promoting the investment opportunities. The evidence revealed that DL undertook significant work on the opportunities independent of the Licensee. Further, DL sought out and recommended other potential investment opportunities on his own, including investments that had nothing to do with the Licensee. In the result, even though the Licensee was involved with DL's actions with respect to some companies, it could not reasonably be said that everything that was undertaken by DL had been orchestrated by the Licensee. In particular, the Licensee noted the number of other investors that DL brought to the G Tech investment, as well as how DL sold shares in GH to his family. The Licensee argued that the Hearing Committee needed to give consideration to the role that DL played in arranging these investments for his family as also contributing to the unfortunate outcome in this matter. That is, the family was not solely reliant on the advice that they received from the Licensee. They were also following the advice given to them by their son, who also stood to benefit from any investments that were made.

Further, the Licensee also noted that many of the investment decisions undertaken by the L Family were made entirely independent of the Licensee. For example, it was accurate that the Licensee had discussed the FTC Co. with CL, but that was the extent of the Licensee's

involvement with the investment. He gained nothing through that investment and played no role in influencing the L Family to invest or how much to invest. To this end, the Licensee submitted that independent steps taken by the family to invest in FTC Co. and other projects showed that the L Family was not nearly as dependent on the Licensee's financial advice as the witnesses had claimed. Further, the L Family had in fact rejected a number of investment ideas put forward by the Licensee.

The Licensee also emphasized that the L Family had decided on their own how much to invest in the various projects. It was CL who decided to invest [redacted] in GH. With respect to the investments in FTC Co., that was again a decision made by CL without input from the Licensee. Further, the L Family on their own decided to invest [redacted] in the Systems companies. Although the opportunities may have been brought to them by the Licensee, who also encouraged them from time to time to invest using money taken out of a home equity line of credit, the evidence did not show the Licensee advising or recommending that the family invest specific amounts with respect to these projects. The L Family made their own decisions with respect to how much they wished to invest based on their own impressions of the opportunities.

The Licensee raised a series of further points with respect to the individual investments that he submitted to be relevant in terms of fashioning an appropriate penalty. In terms of GH, the Licensee took the position that the evidence did not reveal that the L Family relied solely on information provided by the Licensee in deciding to invest in that product. The Licensee noted that the family had advice about the investment from DL, but also had access to the lawyer for the company, MW, who also encouraged the investment.

With respect to FTC Co., the Licensee noted CL had attended the initial FTC Co. seminar without the Licensee. All that the Licensee did was encourage CL to consider FTC Co. as a possible investment. The L Family's investment in FTC Co. did not result in any commission to the Licensee.

With respect to the G Tech investment, the Licensee noted that all of the investments had to be purchased by the L Family through a licensed broker, Raymond James. As such, the family had access to a broker who provided information about the company independent from the Licensee. Further, although proven to have been unsuccessful, G Tech was not an outright scam, as compared to the investments in some of the precedent cases cited by Council. The Licensee emphasized that he believed G Tech to be a good investment and he and his wife invested and lost approximately $51,000 that they invested in G Tech during the same time that he was encouraging the L Family to invest (although the Licensee certainly came out ahead with G Tech given his consulting agreement).

Similarly, with respect to the Systems companies, the Licensee emphasized the evidence given by DL that he had encouraged his family to invest in both companies. Importantly, the Licensee further submitted that there was no misunderstanding that both he and DL were receiving commissions and compensation for selling those investments. That was known to all involved.

Finally, the Licensee again did not tell the L Family how much to invest in Systems and he testified he only found out how much they invested after the fact.

In terms of the Barriere Project, the Licensee again noted that DL was involved in encouraging his parents to invest in the project. The Licensee acknowledged that he introduced the L Family to the developer of the land, who also happened to be one of the clients of the Licensee. The Licensee noted that the L Family was also involved in the same period with the Crazy Creek project, which was a similar land development deal. They invested in Crazy Creek without any involvement of the Licensee. This revealed that the L Family was more financially sophisticated than GL had portrayed at the hearing.

With respect to the Realty Co. project, the Licensee submitted that his only connection to that investment was the fact that he had introduced the L Family to the Realty Co. contact person. Beyond that, the Licensee had no involvement with the project and he did not receive any benefit from the L Family's investment in the Realty Co.

Overall, for the reasons noted above, the Licensee took the position that this was not a case where the Licensee had manipulated or tricked unsophisticated investors to put money into a series of unregulated projects. He acknowledged his professional wrongdoings with respect to the investments, and he conceded that he was in a conflict of interest position with respect to many of the companies, but he stressed that a balanced view of the evidence revealed the complainants not to have relied on his advice to the extent that they claimed during their testimony.

With respect to the allegations pertaining to the life insurance policies placed for SS, the Licensee acknowledged that he failed to perform the proper needs analysis with respect to SS's insurance needs; however, he denied misleading SS in any way. The Licensee said that he explained the life insurance plan to SS on a number of occasions, including two detailed meetings during which he outlined how the two policies would work for her. The Licensee indicated that he went through the two insurance illustrations with SS and he emphasized that SS subsequently undertook a medical examination, which would of course never be required if someone was simply putting money in a savings account. Further, SS prepared and signed a number of cheques with respect to these policies, which were made out to the insurance company. When all the evidence is considered, the Licensee submitted that it was not realistic for SS to believe that she was putting money into a standard savings account.

Further, the Licensee noted that SS's needs at the time that he met with her in fact did align with the insurance products that he helped her purchase. At the time, SS was looking for somewhere to put her money that would earn "a little bit of interest and maybe pay some property taxes with what I earned on it and just tuck it away until retirement." The Licensee submitted that the policies that he placed for her were in keeping with her stated preferences.

In the Licensee's submission, the allegations arising from the SS events could be characterized as a matter of "buyer's remorse". After she began to examine her policies in recent years, she

made an active and deliberate decision to let Policy Two lapse. When she did this, the minimum payment was such that she could very well have maintained the policy with only a small contribution. Further, in or around the same period of time, SS gave [redacted] to her new advisor for investment in a TFSA. In the result, SS had the means to keep that policy alive had she desired to take such a step.

With respect to Policy One, the Licensee took the position that his overall plan for SS had in fact worked, in that the value of the policy had increased and SS would be able to withdraw those funds in the coming year without surrender charges. In the meantime, SS also had access to life insurance.

The overall point made by the Licensee with respect to his interactions with SS was that even though he conceded that he did not perform a proper needs assessment for his client, and he also accepted that he made a series of errors with respect to completing the application forms, the overall goal and intent of the Licensee was to put SS in a better position and this in fact did occur. With the benefit of hindsight, the Licensee conceded that it is clear that the plans may not have been appropriate in terms of SS's overall financial planning, but he submitted that this does not automatically lead to a conclusion that the Licensee was predatory in terms of what he was recommending.

In terms of some of the other allegations advanced by Council in the Notice of Hearing:

- Allegation (c) – the Licensee admitted that the failed to keep proper records. He explained that there was not the same emphasis when he started in the industry with respect to note taking, but he acknowledged that he was wrong in this instance with respect to his record-keeping practices. As a result of these proceedings, he explained that he has changed his practices and now keeps notes at every meeting.

- Issue (f) – the Licensee denied that he misrepresented to the insurer SS's placement of an insurance policy was for a mortgage. First, the Licensee submitted that the information he completed on the policy would not have been a factor in the insurer's assessment because they were seeking a personal policy as opposed to a business policy. In the result, the section on the application form that referred to a mortgage could have been left blank without any negative effect in terms of the application. Further, the Licensee suggested that his reference to "mortgage insurance" was accurate because the policy was being obtained for an analogous purpose – the property tax deferral. The Licensee conceded that the application was not "100% accurate", but claimed that the spirit or intent of the entry was correct. Finally, even though mistakes were made on the application with respect to SS's net worth, the Licensee argued these to be honest mistakes as he understood SS had significant funds coming to her as a result of her husband's passing.

  Overall, the Licensee acknowledged that he should have done a better assessment and should have confirmed the information on the application, but he said this was not a situation where he was trying to mislead the insurer.

In light of the above, the Licensee submitted that Council could adequately protect the public interest, and provide adequate punishment and deterrence, by suspending the Licensee's licence for one year, fining him $5,000 and ordering that he pay both costs of the investigation and the hearing.

FINDINGS OF THE HEARING COMMITTEE

Legal Principles

As already noted, there is no disagreement between the parties with respect to whether or not the Licensee breached his professional obligations in terms of his involvement with his clients SS and the L Family. The Licensee acknowledged at the hearing that his actions deserve "sanction", including a suspension. However, the Licensee submitted that the penalty need not be as severe as sought by Council, as the circumstances of this matter were not as serious as Council argued; there were a number of mitigating factors that were important for Council to consider; and Council's public interest mandate could be met with the disciplinary action referred to above.

In light of the parties' positions that this is an appropriate matter for disciplinary penalty, the Hearing Committee will not address all of the guidelines and legislation applicable to the facts of this particular matter. Suffice it to say, the Licensee's conduct fell far short of what is demanded of a licensee in Council's Rules, Code and Policies and Guidelines.

We have been guided in our views on penalty by the oft-cited passage from author James T. Casey in the *Regulation of Professions in Canada*, which outlines the principles that apply in terms of determining an appropriate administrative penalty:

> 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, the denunciation by society of the conduct, the need to maintain the public's confidence in the integrity of a profession's ability to properly supervise the conduct of its members, and ensuring that the penalties imposed is not disparate with penalties imposed in other cases.

Pursuant to section 231 of the Act, Council has the ability to suspend, cancel or restrict the Licensee's license, in addition to imposing a fine. Although not strictly bound by precedent, it is helpful for Council to consider the range of sentencing that has been imposed in other similar cases. Both Council and the Licensee offered a number of decisions as being potentially of assistance to the Hearing Committee in terms of establishing an appropriate disciplinary penalty.

Council referred the Hearing Committee to the following decisions as being instructive: *Roberta McIntosh* (2012); *James Duke* (2013); *James Milligen* (2011); *Alan Farey* (2011); and *Sherry Matthews* (2008). It may be of some assistance to briefly discuss the facts of these prior decisions.

In *McIntosh*, the licensee introduced a securities investment to a number of her former insurance clients which subsequently failed and went bankrupt. The licensee utilized her knowledge of the finances of the three clients and recommended that these clients invest in a high-risk unregulated private equity investment. The Hearing Committee concluded that the licensee knew or ought to have known that the level of risk posed by the investment was far too great for each of these clients. Further, the Hearing Committee concluded that the licensee had disregarded her clients' financial circumstances when facilitating the investments. The licensee's life and accident and sickness insurance licence was cancelled for a five year period.

In *Duke*, the licensee was an experienced insurance agent who recommended inappropriate exempt market security investments to a 61 year old client. Council determined that the licensee knew or ought to have known that the level of risk posed by the recommended investments was far too great for the client. Through the disciplinary process, the licensee continued to justify his recommendations to his client. The Licensee's lack of recognition of the issues that led to the discipline proceeding was a concern to Council in terms of the licensee's competency. Ultimately, Council concluded that the licensee failed to act in his client's best interests and his life and accident and sickness insurance licence was suspended for a period of 12 months. The licensee was also required to undertake additional courses and practice under supervision until such courses were completed.

In *Milligen*, the licensee fell for an internet scam relating to the alleged shipment of gold bars to Canada. He did not undertake any adequate diligence into the potential investment and he relied on his previous relationships with clients to facilitate the investment, in effect leveraging his position as a licensed insurance agent to persuade clients to invest. The Hearing Committee concluded that the licensee took deliberate and improper steps to entice people to invest with him and that he had specifically preyed upon individuals who trusted him. The licensee's licence was cancelled for a period of five years.

In *Matthews*, the licensee failed to act in the best interests of her clients and made unsuitable insurance recommendations with respect to investments in universal life insurance policies, without consideration of the clients' individual needs and financial circumstances. The licensee's license was cancelled for a period of three years and she was fined $10,000, along with an order that she pay the costs of the investigation.

In *Farey*, the licensee advised a retired client of modest resources and limited income to purchase a non-insurance investment by way of redemption of an annuity contract. Council determined that a proper level of due diligence would easily have revealed the investment to have been unsuitable for the client, which raised concerns with respect to the licensee's competency. Council was also very concerned about the fact that the licensee stood to benefit financially from his actions. The licensee's licence was cancelled for a period of two years and he was ordered to pay a $10,000 fine and costs of the investigation and hearing.

In his submissions, the Licensee also referred the Hearing Committee to the *Farey* decision, emphasizing the direct link in *Farey* between the investments and the commissions that Mr.

Farey was making on the sale of the investments, which he said distinguished *Farey* from the within matter. The Licensee argued that his actions were therefore much less culpable than those of Mr. Farey. Further, the Licensee noted that the investment in *Farey* was determined to be a scam, as opposed to the legitimate investments that were recommended by the Licensee to SS and GL.

The Licensee accepted that, similar to Mr. Farey, he failed to complete a sufficient needs analysis for his client before counselling her to invest in the life insurance policies. Similarly, the Licensee acknowledged that he also earned commissions from securing investments in products that he was selling to his clients. However, the Licensee argued that there was a critical distinction as between the circumstances of the two licensees, as the products introduced to SS and the L Family were legitimate business ventures that unfortunately turned out to be unsuccessful. In the result, the Licensee submitted that the *Farey* decision would tend to support only a one year suspension of the Licensee's licence.

The Licensee also referred the Hearing Committee to the *Adam Heinrich* (2016) decision. In *Heinrich*, the licensee received a three year licence suspension, as well as a fine of $10,000 and an order that he pay Council's investigative and hearing costs. The *Heinrich* matter involved three sets of clients who were unsophisticated investors approaching retirement. The licensee promoted exempt marketing securities to these clients which involved oil and gas and real estate ventures. The licensee had undertaken only limited due diligence on the investments. The Hearing Committee concluded that the licensee, who had almost 10 years' experience as a life agent, ought to have known the degree of financial risk that he created for his clients by recommending the securities investments. The Hearing Committee concluded that the licensee had exposed his clients to potentially devastating financial and personal consequences, which unfortunately had come to fruition. Despite the fact that these clients could not afford to lose money or have uncertainty about whether their investments would generate income for retirement, the licensee implemented retirement investment portfolios that were reliant on generating income from unregulated securities. Further, the Committee concluded that, to some extent, the licensee was motivated to generate commissions, which were paid upon the sale of the securities.

The Licensee again submitted that his actions were less egregious than those of Mr. Heinrich. The Licensee took the position that the evidence showed that he had introduced six investments to the L Family and only recommended that they invest in four. On the other hand, Mr. Heinrich promoted more than 15 securities investments to three sets of clients. Additionally, the Licensee noted that the financial losses to the L Family have not necessarily been as significant as in the Heinrich matter. For these reasons, the Licensee argued that the penalty in this matter should be lower than what Mr. Heinrich received.

Finally, the Licensee also referred the Hearing Committee to the *Kalano Jang* (2008) decision, which involved a rather complex investment scheme that led Council to conclude that the nominee and agencies had failed to act in the best interests of their clients and had made unsuitable recommendations to their clients to invest in certain investments. Of note, Council

concluded that the *Jang* matter involved improper sales techniques designed to generate sales and commissions on the investment products. The Licensee argued that the facts in *Jang* were again more egregious than the within matter, particularly given that the nominee had modified an investment product which was then placed with at least six clients to whom it was ill-suited. Further, the nominee in *Jang* did not acknowledge his misconduct at the hearing, unlike the Licensee (albeit after six full days of evidence). Mr. Jang's licence was cancelled for a five year period, which the Licensee argues would be too severe a penalty for the Licensee given the evidence presented by Council in this case.

Conclusions of the Hearing Committee as to the Licensee's culpability

This was a very troubling case for the Hearing Committee. The Licensee's actions were inexcusable and his misconduct was serious. The Licensee's promotion of the above-noted EMPs was a clear breach of the professional obligations that he owed to his clients as a Life Agent and his actions resulted in very serious financial consequences for the L Family (as well as to SS, although to a much lesser extent).

When one examines the Licensee's actions with respect to placing the two insurance policies for SS, there is also no question that the Licensee fell well below the required professional standards. He failed to undertake a proper needs analysis for SS; he failed to ensure that SS was in a position to make an informed decision about the purchase of the two policies; and he made a series of misrepresentations to the insurer about the reasons the insurance was being sought, as well as the particulars with respect to the personal and financial circumstances of SS.

The Hearing Committee is of the view that the Licensee acted incompetently with respect to the placement of both insurance policies. The property tax deferral policy was not appropriate for SS at the time, given the ages of her children. It was an ill-conceived plan that was pushed on SS by the Licensee. Policy One was also an entirely inappropriate purchase given SS's financial circumstances following the death of her husband and her inability to make annual payments of [redacted]. The inappropriateness of both of these policies should have been readily apparent to the Licensee given his level of experience. It was clear to the Hearing Committee that the Licensee failed to undertake a proper assessment and analysis of SS's financial circumstances, as well as her particular insurance needs.

There was also considerable disagreement between SS and the Licensee about the advice that the Licensee had provided to SS prior to placing the policies. Even though the witnesses did not agree on what had occurred, the Licensee in effect acknowledged that SS had been clear that what she was looking for was a vehicle in which to invest her money that would be relatively safe, or low-risk, over time. It may be that the life insurance policies recommended by the Licensee met certain aspects of SS's financial goals, but the Hearing Committee accepts that the Licensee failed to ensure that SS understood that she was going to be required to make regular, annual contributions to both policies and that she would be unable to access her funds for many years. Unfortunately, the Licensee had no notes or documents that could corroborate his evidence that such matters were discussed. In the circumstances, the Hearing Committee accepts

SS's evidence with respect to what was discussed. In our view, the Licensee capitalized on SS's financial inexperience to encourage her to purchase two life insurance policies that were not appropriate for her at the time.

We also note that the absence of proper records is, on its own, a breach of the Licensee's professional obligations.

Further, the Hearing Committee was also satisfied that Council had proven that the Licensee had made a series of misrepresentations to the insurer when he completed the policy applications. These forms, which the Licensee admitted had been filled out prior to his meeting with SS, contained significant material misrepresentations with respect to SS's occupation, income and net worth. The Hearing Committee does not accept the Licensee's explanation that these errors arose because the Licensee used information from SS's previous financial year. The Licensee's evidence on that point was entirely inconsistent with SS's financial circumstances even before her husband had passed away.

The Licensee knew that the insurer would be relying on the information in the applications to properly assess the risk of the insurance that the Licensee was seeking to place. The Hearing Committee is of the view that the Licensee intentionally completed the applications forms with false information about SS in an attempt to not raise potential red flags with the insurer at the time that the applications were considered. SS already had life insurance and had the Licensee filled out the application forms honestly and accurately, there was a very strong likelihood that the application would not have been approved. In the result, the Hearing Committee views the errors in the forms as intentional misrepresentations to the insurer. At the very least, as the Licensee accepted, he took no independent steps to verify that the financial information on the applications was accurate.

In closing submissions, the Licensee acknowledged that he did not perform a proper needs assessment for SS. He also admitted that he did not properly consider whether the policies were appropriate for his client. That being said, the Licensee submitted that his intentions at the time were to assist SS and better her overall financial security. He argued that his actions may not have been in keeping with his professional obligations, and that with the benefit of hindsight the insurance plans may not have been well-conceived, but he said this was not a situation where the Licensee took advantage of a client for his own personal benefit.

For the reasons that we have outlined above, it is the Hearing Committee's view that the Licensee's actions with respect to placing the SS policies were not simply inadvertent or negligent breaches of the Licensee's obligations. We are of the view that the Licensee intentionally recommended two insurance policies that were inappropriate for his client SS and then completed the policy applications with false information in order to obtain approval of the policies by the insurer. These are very serious breaches of the Licensee's professional obligations that call for a strong disciplinary penalty.

A further issue arose with respect to SS's purchase of the two policies in relation to the Licensee altering the commission split with DL. The Licensee admitted during the hearing that he had altered the commission split after meeting with SS, but prior to sending the applications to the insurer. He explained to the Hearing Committee that he made the changes because he had heard that DL was possibly leaving the industry in the near future. Again, the Hearing Committee does not accept the Licensee's evidence about why he altered the commission. He had been introduced to SS by DL, who had also attended the initial meeting. We accept DL's evidence that there was an oral agreement between him and the Licensee to split commissions on a 50/50 basis. We have concluded that the Licensee acted in an untrustworthy manner and in bad faith when he altered the commission on the SS policies such that he would receive the lion's share. The Hearing Committee views the Licensee's actions on this issue as yet another example of his lack of honesty and overall attitude whereby he consistently and repeatedly preferred his own interests to those of his clients and others, including DL.

The more egregious misconduct in this matter arises from the Licensee's recommendations and encouragement that SS and the L Family purchase and invest significant amounts of money in risky, unregulated EMPs. Further, and even more importantly in terms of assessing the Licensee's professional misconduct, the EMP products that were recommended by the Licensee often provided the Licensee with a direct or indirect financial benefit that the Licensee intentionally failed to disclose to his clients. In encouraging his unsophisticated, but wealthy client to purchase these investments, the Licensee obviously put his own personal interests ahead of those of his clients. On each such occasion, the Licensee breached the professional duties he owed to his clients and his actions revealed very significant concerns with respect to his competence, trustworthiness and good faith.

At a general level, the Hearing Committee accepts Council's argument that the Licensee used his position as a Life Agent to first earn the trust of his insurance clients and then insert himself into their lives as a general financial advisor. The Licensee's actions with respect to the L Family are particularly concerning to the Hearing Committee, as the Licensee preyed on the financial inexperience of the family to steer the family towards investment opportunities that directly benefitted the Licensee. Further, the Licensee used the naivety of DL and his position as DL's "mentor" to put further pressure on the L Family to invest in these same companies. The evidence showed that the Licensee received significant direct or indirect benefits with respect to investments made by his clients in GH, G Tech, Systems and the Barriere Project. Throughout the material time, as he admitted at the hearing, the fees and commissions that the Licensee was receiving for introducing his clients to these projects were never disclosed by the Licensee.

The Licensee seeks to draw a distinction between the facts of this matter and prior cases by suggesting that he never "fully" disclosed his interest in the investments. The Licensee took the position that the L Family was generally aware that he was being compensated by these companies, particularly given the involvement of DL and the fact that DL also received compensation for introducing investors. In our view, this is not an answer to allegations against the Licensee and, even if you accept the Licensee's submission on this point, the Hearing Committee does not view this to be a mitigating factor in any sense. The Licensee had duties to

his clients to avoid and/or disclose any real or potential conflicts of interest. His failure to do so was a breach of his professional obligations in the Rules and Code. In the circumstances of this matter, where the Licensee was receiving significant compensation for introducing investors to these various companies, he needed to be very clear with his clients about the nature of the compensation he was receiving. Even more importantly, the Licensee needed to be clear with his clients about the scope of his expertise as a Life Agent and fact that the EMP investments fell well outside his professional training and qualifications. The Licensee should have ensured that his clients received appropriate advice about the investments from a person who was properly qualified. He made no such efforts.

At the end of the day, the Hearing Committee accepts that the L Family would certainly have been influenced by the information about the investment opportunities that were presented by their son, DL. However, the Hearing Committee believes that the only reasonable view of the evidence is that the Licensee utilized DL as a conduit to his parents in an effort to further reinforce the purported legitimacy of the investments. It is of no assistance to the Licensee in this matter to rely on the fact that the L Family had access to other advisors during the course of the same period. It was the Licensee who introduced the family to the local lawyer for GH, the CEOs for both G Tech and the Systems companies and the developer of the Barriere Project. The Licensee introduced the L Family to the investment opportunities; encouraged the L Family to invest; and touted each opportunity as being beneficial for the family. It may be that there were others involved who also gave advice to the family, but that does not excuse or allay the Licensee's misconduct.

It is equally of no moment that the Licensee may have himself believed in these companies or invested his own personal funds. This may differentiate this matter from some of the precedent decisions where the investments may not have been legitimate, but it does not provide any defence to the Licensee in terms of assessing his misconduct.

It is trite that the principal of trustworthiness extends beyond a licensee's insurance business activities. A licensee is expressly prohibited from making improper use of his or her position as a salesperson or agent and is not permitted to take any advantage of a client's inexperience or lack of sophistication. The insurance industry is based on fiduciary relationships. As set out very clearly in the Rules and Code, the exercise of good faith by licensees in the practice of the business of insurance is essential to public confidence in the industry.

In recommending these EMPs to his clients, particularly given that he stood to personally benefit from his clients' investments, the Licensee failed to protect his clients' interests and failed to disclose all material information to his clients. A clear conflict of interest situation existed and the Licensee failed to act to appropriately. The results for the L Family have been devastating, with their losses conservatively exceeding [redacted].

As evidenced by the Licensee's website during the material time, he strayed well-beyond the scope of his expertise as a Life Agent and he inserted himself with each client as a general financial advisor. He did so without distinguishing between the financial products that he was

licensed to sell and those that he was not. He recommended and encouraged his clients to invest in risky EMPs, without advising them of the specific risks of the investments and without taking independent steps on his own to verify the returns on investments that he was endorsing to his clients.

Despite the nature and extent of the misconduct committed by the Licensee, the Hearing Committee accepts certain of the points put forward by the Licensee in an attempt to minimize his culpability. It was clear that the L Family was making decisions on their own, without advice from the Licensee, as to how much money to invest in each of the projects. Also, the L Family was investing in a number of outside investments, including the Crazy Creek property development. This suggests that the family was not solely reliant on the Licensee to guide their investments. Further, although the Licensee introduced the family to the FTC Co. and Realty Co. opportunities, these were not investments that benefitted the Licensee in any direct financial manner.

That being said, the actions of the Licensee are still very serious and demand a significant disciplinary response. Although not bound by precedent, the Hearing Committee is informed in its views of this matter by the decisions put forward by Council and the Licensee. The Hearing Committee believes the *Jang*, *McIntosh* and *Milligen* decisions as being the most instructive in terms of establishing a range of penalty. Both licensees in *Mcintosh* and *Milligen* solicited insurance clients to invest in unregulated investments. Both were found unsuitable to hold a license for a period of five years. In *Jang*, the licensee's licence was also suspended for five years.

In our view, the actions of the Licensee in this instance are at a very minimum equivalent to those of the licensees in *Jang, Milligen* and *McIntosh.* As a Life Agent, the Licensee had a responsibility to exercise due care with his clients, particularly with the clients in this matter given their relative lack of sophistication in terms of investment opportunities. Both SS and the L Family place their trust in the Licensee to look out for their best interests. There is no question in this matter that the Licensee failed his clients, which caused significant harm, particularly to the L Family.

In an attempt to address the harm caused to his clients and to prevent against the ongoing risk that the Licensee poses to the public, the Hearing Committee is recommending a five year cancellation of the Licensee's licence as well as other orders set out below. In our view, the Licensee's actions are similar to other licenses who have received such lengthy cancellations and we believe that our recommendations below will ensure public confidence in the industry and will protect the public in the years to come.

Liability of the Agency

Near the end of the hearing, an issue arose as to whether or not it was appropriate, on the facts of this case, for Council to order a fine against the Licensee in his personal capacity along with a fine against the Agency, for which the Licensee was the principal and sole agent.

As counsel were not prepared to address this issue at the hearing, the Hearing Committee asked the parties to exchange written submissions on the issue following the conclusion of the hearing.

In support of his position that fining both respondents was not appropriate, the Licensee referred the Hearing Committee to the Supreme Court of Canada's decision in *R. v. Kienapple*, [1975] 1 S.C.R. 729 (SCC), which is the frequently cited criminal law decision which established the proposition that multiple convictions are inappropriate when the same factual elements underpin both charges. The Licensee noted that the *Kienapple* principle had been applied in the professional regulatory setting to make clear that there cannot be multiple findings of guilt where the same or substantially the same elements make up both offences (see *Elder (Re)*, 2013 SKREC 7, citing *Carruthers v. College of Nurses (Ontario)*, 1996 CarswellOnt 4620).

Citing these principles, the Licensee argued that throughout this disciplinary process, the Licensee and the Agency had been effectively treated as a single respondent. There was no separation as between the two respondents in either the Notice of Hearing or the evidence that was adduced by Council at the hearing. The Licensee submitted that he and the Agency were one and the same for all purposes. All of the conduct in question was the Licensee's conduct and there was no principled basis to differentiate between the conduct of the Licensee as compared to the conduct of the Agency. Further, the Licensee and Agency noted that the initial investigation report had not referred to any allegations specifically against the Agency. It was only when the Notice of Hearing was prepared that the matter was broadened to raise allegations (albeit the same) against both the Licensee and the Agency. It was emphasized that the charges against the Licensee and the Agency were precisely the same and that to fine the Agency along with the Licensee would both circumvent the maximum fine amounts set out in the Act and be breach of the principles of natural justice and procedural fairness given the manner in which these issues were raised at the hearing.

In response, Council noted that section 231 of the Act expressly provided jurisdiction for fines against both the Licensee and the Agency and submitted that the principle against double punishment does not apply on the facts of this matter, as Council is not seeking to punish the same party twice, but is instead seeking to punish two parties for misconduct, the Licensee and the Agency. Council also cited a number of recent decisions where Council had in fact fined both a licensee and agency.

There is no question that the Licensee and the Agency are separate legal entities for the purposes of considering professional discipline pursuant to the Act. Further, as noted, section 231 of the Act expressly provides Council with the ability to seek a fine (or other disciplinary penalty) against both a licensee and an agency. We agree with Council that the *Kienapple* principles do not assist us with respect to assessing this issue. The question for the Hearing Committee in this matter is whether or not this is an instance where it is appropriate to discipline both respondents.

Having reviewed the submissions of both parties, the Hearing Committee prefers the position advanced by the Licensee and Agency. Throughout this hearing, Council effectively treated the Licensee and Agency as one and the same. The allegations in the Notice of Hearing do not

differentiate between the actions of either party and this was not a case where Council advanced any separate allegations of misconduct against the Agency.

In our view, the decisions referred to by Council where both a licensee and agency were fined arose in factual circumstances that are quite different from the within matter. In *N.G. Williams & Associates Ltd. and Nigel Williams* (2014), *Everything Financial Consultants Inc. and Peter Cishecki* (2019) and *Global Warranty (West Coast Corporation) and Andrew Hall* (2017), each decision involved unique circumstances where the agencies could be said to have committed misconduct that was separate and distinct from the misconduct committed by the respondent licensee. On such facts, it would appear reasonable and appropriate to the Hearing Committee that there should be separate fines for both respondents.

Council also referred the Hearing Committee to the recent decision in *Antony Ronald Fransen and Fransen Insurance Services Ltd.* (2019), where both the licensee and the agency were fined for what appears from the decision to have been effectively the same conduct. As noted by the Licensee, the Hearing Committee in *Fransen* does not appear to have been asked to consider the appropriateness of fining both the agency and the licensee for the same acts.

In our view, there is no principled basis on the facts of this matter to fine both the Licensee and the Agency. The misconduct in this instance was that of the Licensee alone. There was no additional misconduct, such as a failure to supervise, that could reasonably be said to lie at the feet of the Agency. In our view, to fine both respondents on the facts of this matter would amount to a circumvention of the maximum fine amounts established in the Act by the Legislature. We believe that fining both respondents would amount to a breach of natural justice and we do not recommend that Council make such an order. To be clear, our views on this issue are based on the particular facts of this case. As noted above, we can envision a variety of factual scenarios where it would be appropriate to fine both a licensee and an agency; however, this matter is not one such scenario.

RECOMMENDATIONS OF THE HEARING COMMITTEE

In light of our conclusions above, the Hearing Committee recommends that Council consider the following penalty:

1. the Licensee's life agent licence be cancelled for a period of five years;

2. the Licensee pay a fine in the amount of $10,000 within 90 days of Council's penalty decision being issued;

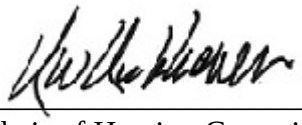
3. the Licensee pay Council's investigation costs in the amount of $3,125, within 90 days of Council's penalty decision being issued; and

4. the Licensee pay Council's costs associated with the hearing, in an amount to be assessed in accordance with the Hearing Costs Assessment Schedule.

In addition to the above, the Hearing Committee recommends that Council also consider an order preventing the Licensee from acting as a shareholder, partner, officer, director or employee of any licensed insurance agency during the period of time when the Licensee's licence is cancelled. We note that a similar order was recently made in *Anthony Ronald Fransen* (2019).

In light of the fact that the Licensee's son has been the nominee of the Agency since October 2017, the Hearing Committee believes that this additional order is necessary to protect the public interest by ensuring that the Licensee is not able to continue working within the Agency in an unlicensed capacity during his period of license cancellation. The Hearing Committee believes that Council has the jurisdiction to make this additional order pursuant to section 231 of the Act.

Dated in Vancouver, British Columbia, on the **28th day of June 2019.**



Ken Kukkonen, Chair of Hearing Committee
Insurance Council of British Columbia