

In the Matter of

**The *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c.141)
(the “Act”)**

and

**The *INSURANCE COUNCIL OF BRITISH COLUMBIA*
 (“Council”)**

and

**JACK LEONARD PARKIN
(the “Licensee”)**

ORDER

As Council made an intended decision on December 16, 2014, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated January 13, 2015; and

As the Licensee has not requested a hearing of Council’s intended decision within the time period provided by the Act;

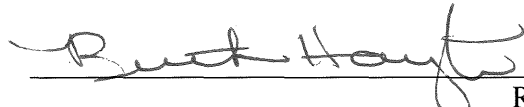
Under authority of sections 231, 236, and 241.1 of the Act, Council orders:

1. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that requires him to successfully complete the courses CFP 231 – Financial Planning Fundamentals, CFP 232 – Contemporary Practices in Financial Planning, and CFP 233 – Comprehensive Practices in Risk and Retirement Planning (the “Courses”).
2. A condition is imposed on the Licensee’s life and accident and sickness insurance licence that requires him to be supervised by a qualified life and accident and sickness insurance agent until such time as he accumulates an additional 24 months of active licensing from the effective date of this order or successfully completes the Courses listed in item 1 above, whichever is greater.
3. The Licensee is assessed Council’s investigative costs of \$1,775.00.

Order
Jack Leonard Parkin
40113-I1461
February 3, 2015
Page 2 of 2

4. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires him to pay the above-ordered investigative costs no later than **May 4, 2015**. If the Licensee does not pay the investigative costs in full by this date, the Licensee's life and accident and sickness insurance licence is suspended as of **May 5, 2015**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered investigative costs are paid in full.

This order takes effect on the **3rd day of February, 2015**.



Ruth Hoyte
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA (“Council”)

respecting

JACK LEONARD PARKIN (the “Licensee”)

INTRODUCTION

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee acted in compliance with the requirements of the Act.

As part of Council’s investigation, on November 24, 2014 a Review Committee (the “Committee”) met with the Licensee to discuss allegations that the Licensee sold clients (the “Clients”) a product that did not suit their needs, and was not adequately or correctly explained.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee’s meeting with the Licensee, an investigation report was distributed to the Committee and the Licensee for review. A discussion of this report took place at the meeting and the Licensee was provided an opportunity to make further submissions. Having reviewed the investigation materials and after discussing this matter with the Licensee, the Committee made a recommendation to Council as to the manner in which this matter should be disposed.

The Committee’s report, which included a recommended disposition, along with the aforementioned investigation report, were reviewed by Council at its December 16, 2014 meeting, where it was determined the matter should be disposed of in the manner set out below.

PROCESS

Pursuant to section 237 of the Act, Council must provide written notice to the Licensee of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Licensee may then accept Council’s decision or request a formal hearing. This intended decision operates as written notice of the action Council intends to take against the Licensee.

FACTS

The Licensee is an independent life and accident and sickness insurance agent (“life agent”) and has been licensed in British Columbia since 1982.

The Complaint

In 2008, the Licensee sold the Clients a Guaranteed Investment Fund with optional guaranteed benefits (the “Product”). The Clients later complained, alleging that the Licensee sold them a product that did not suit their needs. They claimed the Licensee did not properly explain the guarantees or the terms of the Product contract. The Clients allege that the Licensee incorrectly advised them that the Product would provide an income until age 85.

Client Objectives

The Licensee advised that between 2004 and 2007, he managed the Clients’ investments and was able to increase the value of the Clients’ investments by readjusting the allocation of the funds to respond to market conditions. The Licensee completed a risk analysis for the Clients in 2004, and concluded that they were “moderate-high” risk investors. He was not aware of the Clients’ “full financial picture” and debt situation, as the Clients did not wish to make full disclosure on all of their financial affairs.

In 2007, the Clients became concerned about the economy, and sought to protect their principal investments in a manner that would not be heavily dependent upon market conditions. They wanted their money to last until age 85.

The Product

In response to the Clients’ goals in 2007, the Licensee did some research and determined that the Product would be appropriate for the Clients’ needs. He determined that the Product “guarantees the principle” and provides a 7% rate of return for 10 years if no withdrawals are made. The Licensee acknowledged that the Clients intended to retire and begin withdrawals in less than 10 years. The plan was for the Clients to retire between ages 63 and 65 (approximately five years post Product purchase) and begin monthly withdrawals of \$2,000.00 upon retirement.

The Licensee was unable to explain how the Product, based on 10 years of no withdrawals was appropriate in the circumstances, given that the Clients never intended to leave the funds untouched for this length of time.

Because the Clients were going to be making withdrawals, the Licensee explained that it was important to keep adjusting the funds to ensure that the market value would increase. The Licensee was unable to reconcile this requirement of the Product with the Clients' stated objective to invest in a product that was less dependent upon market performance.

When the Licensee met with the Clients in 2007, he did not perform another risk assessment or needs analysis for the Clients.

Client Concerns and the Licensee's Response

By 2009, the Clients appeared confused about the nature of the Product and advised the Licensee that they were concerned about the Product, and sought further clarification on how the Product worked. When the Licensee could not answer all the Clients' questions he sought further clarification from a Product representative. The Licensee then arranged a meeting that was attended by the Product representative, the Clients, and himself.

The Licensee acknowledged that he was mistaken when he advised the Clients that the bonus feature of the Product was compounded growth, and that they would still earn some or all of the annual bonus of 7% even if withdrawals were taken from the Product.

The Licensee was unable to explain precisely how he calculated the allowable withdrawal amount. In 2010, the Licensee prepared illustrations outlining income projections from the Product. In preparing the illustrations for the Clients, the Licensee used the initial capital value instead of the actual market value at the time, the difference being that the actual market values were more than \$70,000.00 less than the initial market value for both the Clients. The Licensee explained that he used these amounts because he was confident he could generate enough growth to achieve the projections shown in the illustrations.

The Licensee argued the reason that the Product did not serve the Clients as intended was because the Clients did not follow his advice with respect to adjusting the investments to ensure market value would increase, and not because he had failed to properly understand all the aspects of the Product.

The Licensee stated he was concerned when the Clients indicated their intent to make withdrawals in excess of what the Licensee considered to be the allowable amount. He discussed his concerns with the Clients but reasoned they could try the excess withdrawal for one year, and then revisit the Product and make adjustments to ensure the funds were protected thereafter. The Licensee did not complete any new illustrations to demonstrate to the Clients precisely how taking excess withdrawals would negatively affect their investments.

ANALYSIS

The Product was designed to provide guaranteed income for a minimum of 15 years, based on a maximum withdrawal of 7% for 14 years, and 2% in the 15th year. The investment provided a 7% annual notional bonus in each year of the investment, up until the end of its 10th year. If a withdrawal was made in any of the first 10 years, there was no bonus in that year.

Council determined that the Clients were seeking some form of a pension investment that would provide a steady income stream until age 85. It was also evident that the Clients did not understand the variable nature of the Product, which could affect their income stream.

Council determined that the Licensee failed to fully understand the Product prior to recommending it to the Clients and, as a result, he did not adequately advise them about certain investment features. As an example, when asked by the Clients about the lack of growth approximately one year into the investment, the Licensee mistakenly explained that the investment would grow by 7% each year on a compounded basis. He also mistakenly explained that they could achieve a net annual growth even if they withdrew an amount which was less than 7%.

Council determined that when the Clients advised of their intent to withdraw more from the Product than was originally projected, the Licensee should have generated updated illustrations to demonstrate to the Clients the long term effect larger withdrawals would have on the investment and projected income stream.

Council had concerns with the illustrations generated by the Licensee approximately two years into the investment. In particular, the illustrations suggest that the Clients would have an income stream for life using the rate of withdrawal that had been projected at the outset of the investment. Council found that these illustrations were misleading as they were based on values that were greater than the actual market values that actually existed at the time the illustrations were prepared.

While Council accepted that the Licensee did not intend to harm the Clients and genuinely believed he had made appropriate recommendations, it determined that his failure to fully understand the Product led to the Clients being misinformed and, as a consequence, unable to make an informed decision before deciding to purchase the Product.

Council concluded that the Licensee failed to act in a competent manner, and in accordance with the usual practice of the business of insurance when recommending the Product and subsequently, when addressing the Clients' concerns about the Product. Of particular concern was the Licensee's lack of a complete understanding of how the Product functioned, even after acknowledging that he made errors when explaining its function to the Clients.

INTENDED DECISION

Pursuant to sections 231, 236, and 241.1 of the Act, Council made an intended decision to:

1. Impose a condition on the Licensee's life and accident and sickness insurance licence that requires him to successfully complete the courses CFP 231 – Financial Planning Fundamentals, CFP 232 – Contemporary Practices in Financial Planning, and CFP 233 – Comprehensive Practices in Risk and Retirement Planning (the "Courses").
2. Impose a condition on the Licensee's life and accident and sickness insurance licence that requires him to be supervised by a qualified life and accident and sickness insurance agent until such time as he accumulates an additional 24 months of active licensing or successfully completes the Courses listed in item 1 above, whichever is greater.
3. Assess the Licensee Council's investigative costs of \$1,775.00.

The Licensee is advised that should the intended decision become final, the investigative costs will be due and payable within 90 days of the date of the order. In addition, failure to pay the investigative costs within the 90 days will result in the automatic suspension of the Licensee's life and accident and sickness insurance licence and the Licensee will not be permitted to complete any annual filing until such time as the investigative costs are paid in full.

The intended decision will take effect on **February 3, 2015**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee may have legal representation and present a case at a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Licensee must give notice to Council by delivering to its office written notice of this intention by **February 2, 2015**. A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice. Please direct written notice to the attention of the Executive Director.

If the Licensee does not request a hearing by **February 2, 2015**, the intended decision of Council will take effect.

Intended Decision
Jack Leonard Parkin
40113-I1461
January 13, 2015
Page 6 of 6


Even if this decision is accepted by the Licensee, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at fst.gov.bc.ca or contact them directly at:

Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

Reception: 250-387-3464
Fax: 250-356-9923
Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the **13th day of January, 2015.**

For the Insurance Council of British Columbia



Gerald D. Matier
Executive Director
604-695-2001
gmatier@insurancecouncilofbc.com

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