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Professional Liability and the Duty of Care

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Duty of Care Common Law Definition

- ❖ The legal obligation to take reasonable care to avoid causing damage or harm to others.
- ❖ There is no liability in tort for negligence unless the act or omission that causes damage is a breach of a duty of care owed to the claimant.
- ❖ But there is a duty to take care in most situations in which one can reasonably foresee that one's actions may cause physical damage to the person or property of others.
- ❖ The duty is owed to those people likely to be affected by the conduct in question. Thus doctors have a duty of care to their patients and drivers on a highway have a duty of care to all others on the road.



Duty of Care Errors and Omissions Definition

- ❖ There is a clear responsibility or legal obligation of a person to avoid acts or omissions, which can reasonably be foreseen, and are likely to cause harm to others.
- ❖ A Duty of Care is owed by a financial advisor to a client to ensure that the products or services that are provided to the client do not impair or harm the financial position of the client because they were inappropriate for the client in light of the client's particular circumstances.
- ❖ However the degree to which a duty of care is owed is dependent on the particular nature of the relationship between the client and the financial advisor.




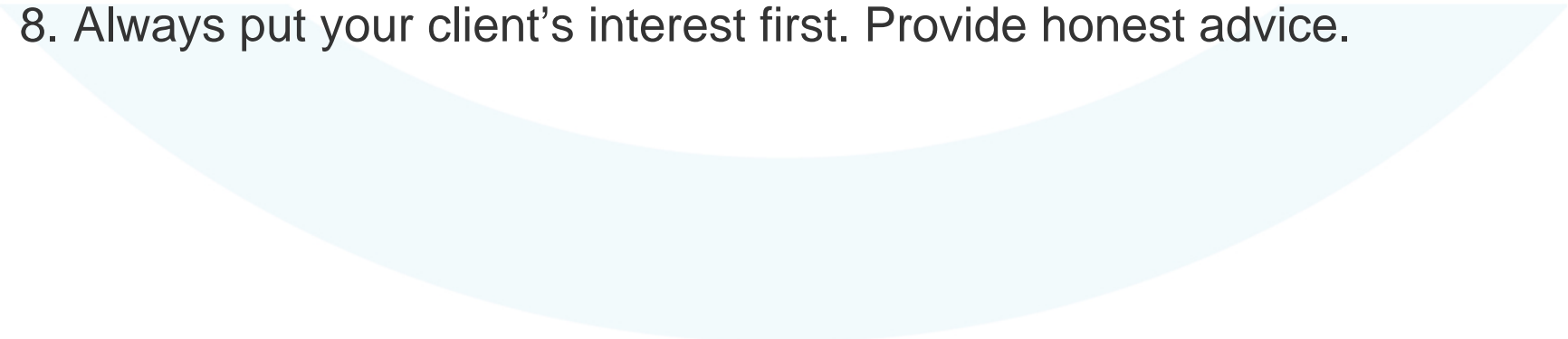
Duty of Care Common Issues in Judgments

- ❖ Did the advisor collect the information required in order to perform the expected duties?
- ❖ Was there a fiduciary relationship between the client and the advisor?
- ❖ Did the advisor breach his or her duty of care?
- ❖ Did the advisor deliver the services they promised to deliver?
- ❖ Did the advisor meet the standards expected under the applicable code of professional conduct?
- ❖ What damages is the client entitled to? In considering this issue, it must be determined whether the client had a duty to mitigate the loss and to what degree the client did so.

Eight Rules For Advisors

1. Know your client - get complete information and require that the client sign the Know Your Client form. Also always update the form as the client's circumstances change.
2. Determine the nature of your relationship with your client.
3. Provide advice that is suitable for the client after considering their particular circumstances.
4. Point out in writing situations where the client has not followed your advice.

Eight Rules For Advisors

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5. If your advice has been proven to be incorrect point it out immediately and in writing.
 6. You are who you say you are – Do not advertise services you will not actually provide.
 7. Do not feel obligated to provide advice outside of your area of expertise.
 8. Always put your client's interest first. Provide honest advice.
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Rule # 1

Know your client - get complete information and require that the client sign the Know Your Client form. Also always update the form as the client's circumstances change.

Know Your Client Parent v. Leach

- ❖ Mr. Parent invested with the defendant investment advisor Mr. Leach over an eight year period. Parent was actively involved in the investment decisions and discussed every trade with Leach.
- ❖ Parent initially had a portfolio of fairly standard investments but over time he began to trade in options. He employed a strategy he called “buy and extend”. A very risky strategy using leverage it required that the same options were continually purchased when a position became negative in order to turn losses into gains.
- ❖ Using this strategy Parent made over \$100,000 from 93 to 96 with Leach. But it was uneven. He lost a total of \$100,000 in the first two years (1993 & 1994) and made \$200,000 in the next two (1995 & 1996). Parent also lost \$100,000 in an investment fund in 1995 which offset his option trading gains. The net result was zero.



Know Your Client Parent v. Leach

- ❖ Continuing with this strategy Parent lost \$87,000 in 1997, made \$163,000 in 1998 and lost \$36,000 in 1999 for a net gain of \$40,000.
- ❖ But Parent lost \$285,000 investing with a New York city broker during 1998 which wiped out all of his gains earned with Leach.
- ❖ Parent continued this strategy and lost well in excess of \$500,000 in 2000, 2001 and 2002 before moving his accounts from Merrill Lynch in 2002.
- ❖ Parent blamed Leach for his losses even though he did not give Leach any discretionary and was the decision maker on every trade. He asserted that he was unsophisticated and acted on Leach's direction to make these trades.



Know Your Client Parent v. Leach

- ❖ Leach did not keep the KYC documentation up to date during Parent's move from being a conservative investor to becoming an active options trader.
- ❖ The Justice Lederer in his decision said "the obligation to ***Know Your Client*** includes the direction that Client account documentation should reflect all material information about the client's current status, and should be updated to reflect any material changes to the client's status in order to assure the suitability of investment recommendations".
- ❖ "It would have been better if Mr. Leach had paid more attention to the applicable documentation. Had he done so, some of the difficulty that arose might have been avoided."

Know Your Client Parent v. Leach

- ❖ In his decision the judge reviewed the Canadian Securities Handbook and the fact that “The *Know Your Client*” (KYC) rule is paramount for the industry. All registrants must make a diligent and business-like effort to learn the essential financial and personal circumstances and the investment objectives of each *client*.
- ❖ *Client* account documentation should reflect all the curial information about the *client*'s current status, and it should be updated to reflect any material changes to the *client*'s status in order to ensure suitability of investment recommendations.
- ❖ The description goes on to review the second and third major components of the "Duty of Care".



Know Your Client Parent v. Leach

- ❖ These underscore the importance of the duty to "*Know Your Client*". The description states:
 - Due Diligence: Advisors must make all recommendations based on a careful analysis of information about the *client* and information related to the particular transaction.
 - Unsolicited Orders: Advisors who give advice to *clients* must provide appropriate cautionary advice with respect to unsolicited orders that appear unsuitable based on *client* information. The registrant must be aware of the objectives and strategies behind each order accepted on behalf of his or her *clients*, whether it is solicited or not. Registrants should take appropriate safeguarding measures when *clients* insist on proceeding with unsolicited, unsuitable orders.

Know Your Client Parent v. Leach

- ❖ Leach contended that Parent was an experienced investor and knew the risk associated with the investment decisions he was making. He also contended that Parent was told of the risks and accepted them.
- ❖ The judge found that Parent was an experienced investor and that even though the Know Your Client documentation in the file was not as complete as it should be, Leach through repeated conversations with Parent and their years of working together did in fact know his client.
- ❖ In his verdict the judge said “Whatever responsibilities the "Know Your Client" rule may impose in the circumstances of this case, it is not enough to allow Parent to escape his role in the investment practices he undertook and place the responsibility for his loss on either Leach or Merrill Lynch.” The action was dismissed.



2. Determine the nature of your relationship with your client.





Nature of Relationship Fiduciary Responsibility

- ❖ The relationship between a financial advisor and his or her client is not, in and of itself, a fiduciary relationship. It is dependent on the particular facts that categorize the relationship.
- ❖ At one end of the spectrum is a relationship of full trust and advice. The advisor effectively makes all the decisions because of the great reliance and trust reposed in him or her by the client.
- ❖ This is exacerbated where the account is discretionary, such that the advisor has the authority to purchase financial products without the client's consent or even knowledge. Obviously, there is a fiduciary relationship at this end of the spectrum.
- ❖ At the other end is a relationship where the advisor is merely an "order taker" for the client, the client does not rely on any advice from the advisor, and the advisor had no discretion.

Fiduciary Responsibility Hodgkinson v Simms

- ❖ The Supreme Court of Canada dealt exhaustively with the matter of fiduciary relationships in the case of financial advisors in Hodgkinson v Simms.
- ❖ A stockbroker (Hodgkinson), with little experience in tax planning, hired an accountant (Simms) to advise him regarding his tax planning needs, particularly with respect to real estate investments.
- ❖ Hodgkinson relied heavily on the accountant Simms' advice. He purchased four income tax sheltered properties, on Simms' advice, and lost heavily during a decline in the real estate market.
- ❖ It was later revealed that Simms had an interest in the properties that he had failed to disclose. Hodgkinson alleged breach of fiduciary duty and breach of contract against Simms.

Fiduciary Responsibility Hodgkinson v Simms

- ❖ The Court held that, in view of the professional relationship between the parties that was based on trust, confidence and independence, and the plaintiff's reliance on the defendant's advice, there was a fiduciary relationship and the defendant was liable for breach of that duty.
- ❖ Justice La Forest gave a comprehensive outline in his judgment in which he identified and summarized five interrelated factors to be considered when determining whether the financial advisor has a fiduciary relationship with their client:


Fiduciary Responsibility Hodgkinson v Simms

1. Vulnerability – the degree of vulnerability of the client that exists due to such things as age or lack of language skills, investment knowledge, education or experience in the stock market.
2. Trust – the degree of trust and confidence that a client reposes in the advisor and the extent to which the advisor accepts that trust.
3. Reliance – whether there is a long history of relying on the advisor’s judgment and advice and whether the advisor holds him or herself out as having special skills and knowledge upon which the client can rely.
4. Discretion – the extent to which the advisor has power or discretion over the client’s account.
5. Professional Rules or Codes of Conduct – help to establish the duties of the advisor and the standards to which the advisor will be held.



3. Provide advice that is suitable for the client after considering their particular circumstances.

Suitability of Advice

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- ❖ The “Know your Client” rule is related to another fundamental duty owed by the financial advisor to the client, which is to ensure that all investments made for the client are suitable for the client and in keeping with the client’s investment objectives and risk tolerances.
 - ❖ An investment portfolio created by an advisor for his client must be suitable for the client.
 - ❖ The advisor must also monitor the ongoing suitability of investments to ensure they continue to remain suitable when there are material changes to the client’s personal or financial circumstances, investment objectives or tolerances.

Suitability of Advice

- Suitability involves a consideration of the following five factors relating to an investor:
 1. Age;
 2. Income and net worth;
 3. Investment knowledge;
 4. Investment objectives; and
 5. Risk tolerance.

- These five factors are also summarized in the Canadian Securities Institute Handbook.



Suitability Robinson v. Fundex

- ❖ The Robinsons were business professionals people. Mr. Robinson was a chartered accountant “The focus of his practice was providing accounting and business advisory services.”
- ❖ Mrs. Robinson worked as a stockbroker for six years at a major brokerage.
- ❖ Subsequently, she and her husband began a business which she operated. He managed the financial aspects of the company and, in time, left his accounting practice to assist his wife.
- ❖ In March 1998, the Robinsons engaged the services of Mr. Klimkowski, a financial advisor, to assist them in planning for their retirement. As a result, they invested \$218,600 in certain mutual funds through Klimkowski.



Suitability Robinson v. Fundex

- ❖ During the summer of 1998, the North American markets experienced a stock market crash as a result of events in the Asian markets.
- ❖ Klimkowski recommended that the portfolio should be left unchanged and by the end of 1998, the markets had rebounded and the Robinsons had recovered their losses.
- ❖ Later, in May 2000, the Robinsons sold their business for \$2,600,000. They sought proposals from three different financial advisors as to how to invest the proceeds.
- ❖ One of these was Klimkowski. He was given the job of investing the funds. Klimkowski selected the mutual funds in which the money was placed. Neither of the Robinsons chose any of these funds or told Klimlowski which funds to select.



Suitability Robinson v. Fundex

- ❖ In the seven months immediately following the investment, the portfolio created by Klimkowski experienced a significant decline in value. Shortly thereafter, the Robinsons advised Klimkowski that his services were no longer required and moved the accounts to a new advisor.
- ❖ In his decision in this case Justice Forget stated “As testified to by both experts, the Know Your Client rule is designed to ensure portfolios are suitable for the client. Suitability of the portfolio is the cornerstone of the investment industry.
- ❖ Ultimately, the Judge found that the portfolio created by the advisor was not suitable and that Klimkowski breached the standard of care he owed his clients.



4. Point out in writing situations where the client has not followed your advice.



Advice Disregarded Confirmation in Writing

- ❖ Where a client chooses to disregard a financial advisor's advice it would be prudent for the financial advisor to confirm the advice given, the reasons for the advice in writing, and the fact that the client refused to follow the advice, and to update the Know Your Client form to reflect the current circumstances of the client.”
- ❖ In Parent v Leach justice Lederer judge found that based on documentation in the file there were appropriate warnings from the broker and the brokerage to Parent about the risky nature of his investment strategy. Had they not provided these written warnings to Parent the outcome of the trial would have been very different

Appropriateness of Investments Robinson v. Fundex

- ❖ In his decision in Robinson vs Fundex Justice Forget wrote extensively on the subject. He provided a detailed description of the obligations of a financial advisor when assessing the appropriateness of an investment.
- ❖ “An advisor must ensure the information being received from the client is consistent and makes sense, that orders being received are in the client’s best interests and are suitable for the client.
- ❖ If a client wants to make an investment that is not suitable for the client then the extent of the duty to warn on that point depends on the level of sophistication of the client.

Appropriateness of Investments Robinson v. Fundex

- ❖ For an unsophisticated client, the advisor should warn the client that the investment is unsuitable and if the client does not understand the risks and the harm that could follow the advisor should refuse to execute the instructions even if the client wants the investment.
- ❖ For a sophisticated investor there is still a responsibility to advise the client that the order may not be suitable for them.
- ❖ If the client insists on proceeding notwithstanding the advice, the order can be executed but the advisor should then have the client sign a waiver that they have been advised that the investment is not suitable, but have instructed the advisor to proceed notwithstanding the advice.”



5. If your advice has been proven to be incorrect point it out immediately and in writing.

Mitigation of Risk

- ❖ In negligence and contract the law limits the actions of the parties who are expected to pursue their own best interest.
- ❖ Each is expected to continue to look after their own interests after a breach or tort, and so a duty of mitigation is imposed.
- ❖ In contrast, the hallmark of fiduciary relationship is that the fiduciary, at least within a certain scope, is expected to pursue the best interest of the client. There is absolute liability in these cases.
- ❖ This approach to mitigation follows the basic rule of equitable compensation that the injured party will be reimbursed for all losses flowing directly from the breach. But there are limitations.

Mitigation of Risk

- ❖ When the plaintiff, after due notice and opportunity, fails to take the most obvious steps to alleviate his or her losses, then we may rightly say that the plaintiff has been “the author of his own misfortune”.
- ❖ At this point the plaintiff’s failure to mitigate may become responsible for their own action or inaction and it is no longer sensible to say that the losses which followed were caused by the fiduciary’s breach.
- ❖ If an advisor discovers that advice that was provided has been poor and damage has resulted a remedy should be put in place and the client fully advised on the course of action they should pursue. This action by the advisor shifts the responsibility to the client provided the new advice is appropriate.



6. You are who you say you are. Do not advertise services you will not actually provide.



Advertising and Holding Out Rhoads v. Prudential-Bache

- ❖ In 1987 Mr. and Mrs. Rhoads accepted the advice of Mr. and Mrs. Yzenbrandt, the branch manager and account representative respectively at Prudential-Bache's Victoria office, that they invest their retirement savings in three mutual funds and in "retractable" preferred shares of two corporations.
- ❖ The Rhoads had attended a seminar given by the Yzenbrandts in response to advertisements in the Victoria daily newspaper which described it as an opportunity for would-be investors to obtain investment advice from "financial advisors with 22 years of combined investment and taxation experience", representing a "rock sound" institution whose resources enabled it to serve investors "in ways that no one else can".



Advertising and Holding Out Rhoads v. Prudential-Bache

- ❖ The advertisements offered advice on "growing and managing your retirement wealth" and "keeping your investments safe".
- ❖ Mr. and Mrs. Rhoads were looking for investment advice, having recently retired to Victoria after selling their furniture business in Fresno, Calif.
- ❖ They had put their retirement savings of somewhat over \$600,000 on deposit at a bank under investment certificates which were yielding interest at approximately 10 percent per annum, producing a combined pre-tax income for them of about \$5,000 a month.



Advertising and Holding Out Rhoads v. Prudential-Bache

- ❖ Mr. and Mrs. Rhoads testified that they wanted to continue to receive a similar income with minimal risk and without drawing on their capital, but that their investments be cared for according to a "more organized plan" so they could travel and would not have to concern themselves with "rolling over" deposits every 60 or 90 days, as they were then doing, or with any other aspect of managing the fund.
- ❖ Mr. and Mrs. Yzenbrandt, on the other hand, maintained that Mr. and Mrs. Rhoads wanted to enter the equity market so as to receive the same gross income but do so in large part through capital appreciation--that their primary objective was to achieve tax advantages from capital gain, and thereby to generate higher after-tax income.



Advertising and Holding Out Rhoads v. Prudential-Bache

- ❖ The judge accepted the evidence of Mr. and Mrs. Rhoads that they were not prepared to risk their capital in order to seek capital appreciation, but wanted the capital maintained at minimal risk and to continue to live off the income produced by it, and that they so informed Mr. and Mrs. Yzenbrandts. He rejected the contention that their objective was tax reduction.
- ❖ The judge found Mr. and Mrs. Rhoads to have been "completely straightforward and thoroughly honest" witnesses, and that they "made their investment objectives very, very clear to Mrs. Yzenbrandt as being 100 percent income".



Advertising and Holding Out Rhoads v. Prudential-Bache

- ❖ Following Mrs. Yzenbrandt's advice, Mr. and Mrs. Rhoads authorized her to put \$400,000 of their money into three "growth-oriented" mutual funds and the balance of \$200,000 in retractable preference shares of two large corporations.
- ❖ During the 11 weeks from August 13, 1987, when they purchased these securities, to October 29, 1987, when they sold them, the value of the mutual shares declined by more than 25 percent, the preference shares in one of the two corporations by 20 percent and the preference shares in the other corporation by 12 percent.
- ❖ The \$132,787.81 total loss amounted to a 22-per cent capital reduction in less than three months.



Advertising and Holding Out Rhoads v. Prudential-Bache

- ❖ The trial judge accepted the opinion of an investment expert that Mr. and Mrs. Yzenbrandt failed to seek the facts they needed from Mr. and Mrs. Rhoads and that the growth-orientated mutual funds selected for them were inappropriate having regard to their circumstances and investment objectives.
- ❖ The expert testified that only "income" or "bond" funds would have been appropriate if Mr. and Mrs. Rhoads were to invest in mutual funds. He gave no opinion as to the appropriateness of recommending the purchase of retractable preference shares.
- ❖ Mr. and Mrs. Rhoads, whose evidence was accepted by the trial judge, said that Mrs. Yzenbrandt had promised to look after their interests on a continuing basis.



Advertising and Holding Out Rhoads v. Prudential-Bache

- ❖ They said that after the loss occurred Mrs. Yzenbrandt told them that as a result of the performance of the market she had felt they should sell their mutual fund shares, and had tried to reach them with this advice two weeks before the market collapse of October 19, 1987.
- ❖ The judge found that Mrs. Yzenbrandt could have reached Mr. and Mrs. Rhoads with this advice had she made appropriate effort, because Mr. and Mrs. Rhoads had left their daughter's address with her before going on the cruise, as well as the name of their ship.
- ❖ The judge held that Mr. and Mrs. Yzenbrandt and their employer breached contractual and fiduciary duties, as well as their common law duty of care towards Mr. and Mrs. Rhoads, in failing to give them appropriate and continuing advice.



Advertising and Holding Out Rhoads v. Prudential-Bache

- ❖ Mr. and Mrs. Rhoads had been told that their capital was not at significant risk, and they were concerned about talk in the media of a possible "market meltdown".
- ❖ They returned to the Prudential Bache office five days later, on Saturday, October 24, 1987, having seen in an advertisement in the newspaper that it would be open to customers wishing to discuss "investment strategy during these uncertain market conditions".
- ❖ This time, the judge found, Mr. and Mrs. Yzenbrandt declined to give any advice. It was then that Mr. and Mrs. Rhoads gave the order to sell everything and put the proceeds back on deposit at their bank.



Advertising and Holding Out Rhoads v. Prudential-Bache

- ❖ The gross losses suffered by Mr. and Mrs. Rhoads, including commissions paid to Prudential-Bache, were agreed by the parties was \$132,787.81.
- ❖ The appellants say the decision to sell was made by Mr. and Mrs. Rhoads on the basis of their own fears of a "market meltdown" and that the resulting loss cannot be regarded as a reasonably foreseeable consequence of any of the wrongful acts alleged.
- ❖ The Judge ruled that "Inappropriate advice and subsequent inaction having destroyed the confidence of Mr. and Mrs. Rhoads in Mr. and Mrs. Yzenbrandt, the decision of Mr. and Mrs. Rhoads to sell everything cannot properly be categorized as inappropriate or unreasonable, or anything other than an effort on their part to effect reasonable mitigation of their losses."



Advertising and Holding Out Rhoads v. Prudential-Bache

- ❖ Justice Taylor made this point: “What, then, is the duty of a stockbroker who chooses to offer financial, investment and taxation advice, in addition to the services of a broker or "order-taker?”
- ❖ “ A stockbroker who merely makes sales and purchases on the instructions of clients may well have no responsibility for the wisdom of the transactions involved.
- ❖ The broker may, if asked, agree to give opinions on purchases or sales, and may make it apparent to the client, if not already well understood between them, that these constitute no more than personal opinions, and are not in the nature of considered investment advice.



Advertising and Holding Out Rhoads v. Prudential-Bache

- ❖ Where, however, as here, the firm and its employees seek to enhance their business by offering guidance to would-be investors-- on "growing and managing retirement wealth" and "keeping investments safe", and to serve in "ways that no one else can" through the advice of "two financial advisors with 22 years of combined investment and taxation experience"- they must expect that their advice may be relied on as that of skilled, independent professional advisors.
- ❖ Stockbrokers who carry on business in this way accept responsibilities beyond those involved in bringing together buyers and sellers.



Advertising and Holding Out Rhoads v. Prudential-Bache

- ❖ They undertake the duty of providing careful, competent, considered professional advice of a sort in which clients, especially those who have no experience of their own to guide them, may well place their complete reliance.
- ❖ In such circumstances a financial advisor must be taken to assume duties similar to those of any other professional advisor - doctor, accountant, engineer, or lawyer.
- ❖ in the sense of being obliged to take reasonable steps to ensure that clients are aware of their available options, and of the main potential benefits and risks associated with the options they are considering.



Advertising and Holding Out Rhoads v. Prudential-Bache

- ❖ Considerable discretion is, of course, allowed to the professional advisor in deciding, as a matter of judgment, on the nature and scope of the advice appropriate to any case.
- ❖ When called on to account the advisor is not, of course, answerable as "guarantor", "custodian" or "insurer"--the terms used by counsel for the appellants in this case.
- ❖ But only to show that he or she reasonably applied the skill and care appropriate to the task undertaken and to the circumstances of the case."



7. Do not feel obligated to provide advice outside of your area of expertise.

Limitations in Advice

- A financial advisor does not owe a duty to give advice that is outside his or her acknowledged and communicated areas of expertise.
- Income tax advice is an excellent example of this point. A financial advisor can make it clear to a client that income tax factors must be taken into consideration when making a final decision on a financial plan or course of action.
- But the financial advisor must point out when giving investment advice, that he or she is not a tax expert and does not suggest that they are a tax expert.
- Advice should be given to consult the clients own tax expert before making a final decision.



Limitations in Advice Newman v Martin

- ❖ In Newman v Martin the clients wanted to minimize the amount of tax they would have to pay on shares of Nortel that had undergone a tremendous increase in value.
- ❖ The Newmans transferred investments of approximately \$1.2 million to T.D. in April 1998. By 2000 the value of their investments peaked at approximately \$3.3 million and by 2002, when they transferred their investments to another broker, the investments had declined to approximately \$1 million.
- ❖ The growth and decline in the value of the Newmans' investments were largely related to the value of Nortel shares, which Mr. Newman acquired through his employment and owned prior to meeting Martin and transferring the investments to T.D.



Limitations in Advice Newman v Martin

- ❖ The Newmans claimed that Martin breached the duty of care owed to them as a financial advisor by failing to recommend that they sell a specific number of their Nortel shares and failed to provide them with a tax plan that would allow them to avoid paying capital gains taxes on the sale of their Nortel shares.
- ❖ Both Mr. Newman and Mrs. Newman testified that they were awaiting a plan from Martin to allow them to avoid paying capital gains taxes on the increased value of their Nortel shares, if they were sold.
- ❖ They complained that Martin had never provided them with such a tax plan during the four years of their relationship.

Limitations in Advice Newman v Martin

- ❖ Justice Smith found that the Newmans' suggestion that Mr. Martin should have provided them with such a tax plan, for shares held in their joint account (a non-R.R.S.P. account), was not a reasonable expectation for any client and that the payment of capital gains taxes is something which cannot be avoided, if the shares have risen above their adjusted cost base and are then sold.
- ❖ “An investment advisor does not owe a duty to give income tax advice and while Martin acknowledged that he considered income tax factors when giving investment advice, he was not a tax expert and did not hold himself out as an expert in income tax matters. Mr. Newman was advised to consult his own tax expert by Martin.”



8. Always put your clients
interest first. Provide honest
advice.



Honest Advice Robinson v. Fundex

- ❖ In Robinson v. Fundex, Justice Forget stated:
- ❖ “It should be remembered that where a broker advises his client honestly and in good faith then the broker has discharged his duty to the client and cannot be faulted if the recommended transaction turns out to be unfavourable.
- ❖ The broker is not a guarantor for the financial success of the client. However, that does not end the enquiry.
- ❖ One then has to re-examine if the Defendant breached any obligation owed to the client in contract or negligence.





Honest Advice Robinson v. Fundex

- ❖ If the evidence demonstrates that contractual obligations were breached, or that there was a failure to adhere to the industry's standard of care, it is open to the Court to examine that evidence and to determine if the breach was a proximate cause of the loss.
- ❖ Financial Advisors are under no duty to offer only successful financial advice. Advisors will inevitably make wrong predictions and it is difficult, in hindsight, to question honest investment advice.”

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Summary

- ❖ The “Duty of Care” is clearly a legal obligation and considerable common law is available to support the need to exercise care.
- ❖ But it is also based in common sense.
- ❖ Offering clients clear sound advice, that is independent, well researched and is appropriate for their needs, never goes out of style.
- ❖ But for the advisor, a word of caution, We live in an environment that requires that you also look after your interests.
- ❖ In this case that means always documenting the process and your advice to your clients.