



WHEN CLIENTS MAKE BAD DECISIONS

A REVIEW OF THE RISKS TO THE
PLANNER WHEN CLIENTS MAKE
BAD PLANNING DECISIONS AND
HOW TO MITIGATE THOSE RISKS



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OVERVIEW

Planners help their clients:

- Identify their personal goals, needs and priorities
- Realize their financial planning objectives

In this presentation I will:

1. Identify red flags and underlying causes associated with clients making bad planning decisions
2. Describe the risks to planners (litigation/regulatory/FP Canada) and to clients if the course toward making bad planning decisions is not corrected and when planners should consider terminating the relationship
3. Develop a roadmap for planners with tips and tools to avoid and reduce the risks to both planners and their clients

RED FLAGS

Red Flag #1: Information gap

Client fault: Secretive clients don't want to share personal financial information

Planner fault: Planners don't want to push secretive clients

Risk to planner: Planners cannot prepare a financial plan (even a basic one) without the necessary information from their clients (FP Canada Standards of Professional Responsibility 21, 22 and Practice Standards 3, 4)

Risk to clients: Clients will either receive no plan, a plan with unverified assumptions, or a plan with too many gaps; therefore the plan will not be useful

Red Flag #2: Clients expect magic from planners

Client fault: Clients have unreasonable expectations

Planner fault: Planner didn't manage clients' expectations

Risk to planner: Clients sue when they are surprised; so not managing expectations leads to surprising clients, who inevitably leave or sue/complain to regulator

Red Flag #3: Don't make planning a priority

- Client fault:** Some clients don't want to spend the required length of time with a planner – it is just not a priority for them
- Planner fault:** Some planners underestimate the amount of time required to complete a full client discovery or allow clients to rush them through meetings
- Risk to planner:** Rushing leads to missing steps and not getting information required
- Risk to clients:** Not making the discovery process a priority or conducting an incomplete discovery, will result in a plan that does not consider all the important facts and variables

Red Flag #4: Clients are unengaged/ incapacitated/lack basic knowledge

- Client fault:** Clients may be unengaged in the process – they may say nothing and may not ask any questions. Clients may not be transparent about their inability or incapacity to understand due to issues associated with aging or simply do not have any financial background
- Planner fault:** Some planners don't know how and/or are not curious about learning how to engage clients and/or motivate clients to action planning recommendations
- Risk to planner:** Without some basic understanding by the clients, the planner cannot complete a proper discovery
- Risk to clients:** The plans will be deficient/inaccurate and even if plans are properly done, clients may not know how to follow/carry out the steps that are required

Red Flag #5: Indecisive clients

- Client fault:** Clients who don't know what their goals are or who change their minds frequently might not have thought through options
- Planner fault:** Didn't dig down enough during the discovery process or allow clients the time to think during meetings and the planners didn't consider that these clients might not recognize what is reasonable and attainable and may need more guidance (Communication Risk) (FP Canada Practice Standards 1, 2, 3)

Red Flag #6: Risk tolerance high and risk capacity low

- Client fault:** Clients are more aggressive toward investing (risk tolerance high) than the clients can afford (risk capacity low) and pushes planner hard
- Planner fault:** Allows clients to dictate their investment risk
- Risk to planner:** Compliance breach; Client Focused Reforms
- Risk to clients:** Clients might lose more than they can afford to lose

Red Flag #7: Risk need

- Client fault:** Have not saved enough so the clients need higher risk in hope of higher returns
- Planner fault:** Accepts clients' desperation without explaining the risks to these clients
- Risk to planner:** Regulatory infraction – "risk need" is not to be a criteria to determine clients' risk profile
- Risk to clients:** Clients could lose money they cannot afford to lose

Red Flag #8: Plan tucked away

- Client fault:** After plan is delivered clients ignore them, tucking them into their bottom drawers (*Giesbrecht v. Canada Life Assurance Co., MBCA 53, 2013 CarswellMan 256, [2013] 8 W.W.R. 24, 1 C.C.L.T. (4th) 173*)
- Planner fault:** Didn't properly explain the mandate, especially that planning is an ongoing process and didn't follow up and update the discovery process to ensure the clients followed their plan or adjusted the plan if required (*Communication Risk*) (*FP Canada Practice Standards 10*)
- Risk to planner:** Unless the engagement is clearly a limited scope (one-off) exercise, then the planner could be subjected to litigation and/or under the scrutiny of FP Canada (*see Giesbrecht*)

Red Flag #9: Clients change (unengaged)

- Client fault:** Clients who experience financial or life changes and don't share these developments with the planner (*see Giesbrecht*)
- Planner fault:** Planner didn't follow up regularly with clients to update the discovery process and revise or amend assumptions underlying the financial plan
- Risk to planner:** Similar risks as previous – depends on terms of mandate – if not limited to preparation of plan only then need to follow up

Red Flag #10: Clients don't value/trust the planner's advice

- Client fault:** Clients who are convinced that their bad decisions are better than the planner's advice either have a false sense of their own knowledge or are influenced by another person (family member, or another professional who is not a planner)
- Planner fault:** Planner accepts a mandate even when clients seem to not trust them or follow their advice
- Risk to planner:** Accepting clients who show signs of not trusting the planner's advice is risky – problems/complaints are inevitable down the road as clients don't follow the plan and blame the planner (*Giesbrecht*)

TWO TYPES OF “BAD DECISIONS”

1. Inadvertent bad decisions are as a result of clients not understanding the plan or the planning process due to lack of:

- Knowledge/understanding low
- Capacity/incapacity

You are the professional, you need to:

- Understand clients' level of knowledge and explain accordingly
- Identify incapacity and make sure incapacitated clients draw on their POA document
- Most inadvertent problems can be resolved through better and clearer communication techniques (see roadmap below)
- A risk that clients don't understand is a risk to planner

2. Advertent bad decisions

- Clients do not have confidence in the planner or the plan
- Clients think they know better
- Clients potentially don't trust planner's advice*

Early detection by planner is key and the planner needs to terminate the relationship

- Clients have a legal right not to take your advice but why are you working with them if they don't choose the path(s) you recommend? This type of client is a big risk to planner
- Terminate early! (*note, however, FP Canada termination of engagement Rules 14, 15, 16, 23 and Communication Risk - how and when to fire a client*)

ROADMAP

Tips and tools to avoid these (inadvertent) circumstances:

Tip #1: Set the stage with clients

- Organized **agendas** for the first (and each meeting thereafter)
- Set aside enough time for each meeting
- If joint engagement (family members, spouse, etc.) ensure both clients are available and attend
- Use clear oral and written communication especially in the meetings before the discovery process begins to explain the process and the terms of engagement
- First step of easy record keeping as you can tick off the agenda as you go through each item
- Ensure clients understand their role in respect of the plan – clearly set out their role – the plan is only as effective as the information provided and understood by the client:
 - Past: share historical information
 - Present: how they feel and what they think today
 - Future: contact planner with any changes – plans need to be updated as clients change

Tip #2: Clear terms of engagement

- While terms of engagement are not required to be in writing the role of the planner and the scope of the engagement must be clearly set out (*FP Canada Practice Standards 1, 2 and written disclosure obligations noted in Rules of Conduct, Rule 7*); I strongly recommend these are in writing (*Note that there are Terms of Engagement sample clauses prepared by FP Canada available to certificants of FP Canada so you don't have to build your engagement letters from scratch.*)
- Terms of engagement should set out clearly what are deliverables and what are NOT deliverables at time of engagement, preferably in writing (*Communication Risk*)

Tip #3: Curiosity during the discovery process

- By asking open ended questions **(BIG FAT QUESTIONS)**

Examples of big fat questions: (*See: "Big fat questions to get client talking", IE, June 6, 2022*)

- What are your goals and dreams?
- What has motivated you to work so hard at...?
- What do you enjoy most in your life?
- What do you look forward to?
- What is the key to your success in... (e.g., business)?
- How was your business started and by whom?
- When do you intend to retire?
- Do you think you will work for that company for the rest of your career?
- What is it that you are most proud of in your life?
- What would you change if you could change something in your past or present circumstances?
- What did your parents do for a living?
- How many siblings do you have? Do they live close to you, and do you see them much?
 - Ask the question and shhhhh – let them think and let them tell you
 - Easier to take notes when someone else is talking
 - Asking these questions will lead secretive clients to share more as you are not starting with "what are your assets and liabilities"

Tip #4: Silence is golden

- Leave silence and wait and then listen
- Need to permit clients time to think about your big fat questions
- Spend less time talking and more time listening will permit you to fulfill each of the FP Canada Practice Standards 1-10

Tip #5: Dig-in

- Dig-in to understand better; be curious
- Segmentation can help as long as planner doesn't stereotype

Tool(s) #6: Software programs planner uses

- Be certain that the tools you are using are those that will set you up for success with clients and are in compliance with laws and regulations and FP Canada Standards of Professional Responsibility
- Be aware of how you use planning questionnaires/templates and other technology
- The planner needs to understand the technology and underlying assumptions (*FP Canada rule 28*)
- Do not use cookie cutter plans; you need to ensure the plan is unique to each client

Tip #7: Assumptions

- Don't make assumptions about clients based on superficial information; test all assumptions made
- All assumptions and illustrations need to be clearly set out in the plan (*Giesbrecht case*)
- Ensure any limitations to the plan and changes to underlying key assumptions (e.g. retirement date) are clearly set out
- Your choice of language should make the assumptions crystal clear

Tip # 8: Manage expectations and update throughout process and beyond

This is a crucial aspect of communication

- If clients have unreasonable expectations that is a problem that needs to be identified and managed
- A common risk to advisors are clients who have not saved enough for retirement and have "Risk Need"
- The plan should be used as a living and breathing document, reflecting the clients, so planning is an ongoing process that needs to be updated as clients change
- Clients need to devote sufficient amount of time to meet with planner to ensure they are following the plan or adjusting it as required
- Remind clients of their responsibility to follow the plan or advise the planner why they are unable to follow it and of key life changes (e.g. job loss, divorce, etc.) – consider the need to change any assumptions

Tip #9: The importance of clear communication

Planner needs to carefully choose their language in all communication

- Communicate at the level of client's understanding/sophistication
- Did clients understand the plan and their obligations?

Credibility battle – who will win?

- Depends on strength of planner's paper trail
- The quality of the paper trail depends on the 5C's – Make sure your paper trail is:
 - ✓ Correct
 - ✓ Complete
 - ✓ Current
 - ✓ Consistent
 - ✓ Contemporaneous

Tip #10: Be careful when working with joint clients

- Don't let louder/stronger of joint clients take over the quieter one – (spouses or common law) (*see FP Canada Rules of Conduct 8(c) and 30 (confidentiality)*)

CONCLUSION

- Be persuasive when explaining the risk to clients of making bad decisions (*consider CFR NI 31-103 s. 13(2.1)*)*
- If clients insist on making bad decisions, that is their right but be sure it is not under your watch – I recommend that you terminate the relationship (*see FP Canada rules 14-16; and Communication Risk*)
- Note that FP Canada Rule 23 – the planner cannot implement strategies that they do not think are prudent and appropriate for the client and where the planner does not believe the strategy is in the client's best interest. To put it simply, a client's insistence on an inappropriate strategy cannot override your obligation as a planner under this rule

ACTION ITEMS

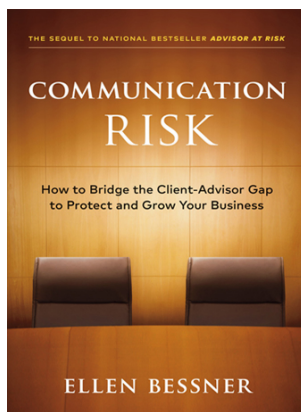
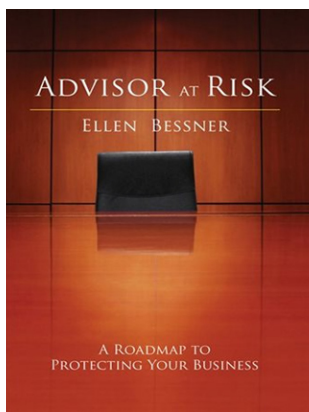
- Understand the risks of clients making bad decisions on your watch
- Manage the risks or show them the EXIT door
- Follow the rules and regulations and laws of each registration you have or risk FP Canada
- Follow the 10 tips and tools!

* While the following provision applies to suitability and NOT planning, you can extrapolate from this in respect of when a client wants to take steps contrary to your recommendations that is construed by you to be a "bad decision":

NI 31-103 (Client Focused Reforms) s. 13.3(2.1) if a registrant receives instructions from a client to take an action that if taken does not satisfy suitability rules in CFR s. 13.3(1) the registrant may carry out the client's instructions if the registrant has

- a) inform the client of the basis for the determination that the action will not satisfy ss(1) – suitability
- b) recommended to the client an alternative action that satisfied ss (1) – to ensure suitable
- c) received recorded confirmation of the client's instructions to proceed with the action despite the determination referred to in para (a)

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