

February 29, 2000

**IN THE MATTER OF: THE SECURITIES ACT**

**- and -**

**IN THE MATTER OF: ROLAND EMILE TETRAULT**

**REASONS FOR DECISION  
OF  
THE MANITOBA SECURITIES COMMISSION**

CHAIRMAN:	Mr. D. G. Murray
BOARD MEMBERS:	Ms L. M. McCarthy
	Mr. K. S. Kristjanson

**APPEARANCES:**

Ms K.G.R. Laycock	)	Counsel for the Commission
Mr. Campbell G. Wright	)	Counsel for the respondent
	)	Roland Emile Tetrault

**I. Background**

This matter came on for Hearing August 24, 25 and 26, 1999, was continued on November 4 and 5, 1999 and final written argument was received by the panel in December, 1999.

Tetrault is a registrant with the Commission whose registration is limited to the sale of mutual funds. In addition, he is licensed to sell insurance products. After successfully completing the IFIC course, he became registered with the Commission in 1993 as an employee of PrimeAmerica, a registered dealer. In 1995 through 1997 during which time he dealt with John and Lucie Parent, he was (and continues to be) registered with Pro-Fund.

Tetrault deals actively in both the sale of insurance products and mutual funds. At the time of the hearing, he estimated that he had some 300 mutual fund clients in 200 households. When first meeting with the Parents, he estimated that he had 80-90 clients. He testified that the holdings of his clientele are varied running from very small investors to those with investments in the range of \$300,000. His "average" client has between \$30,000 and \$50,000 invested in mutual funds.

The Parents relocated to Winnipeg from Stratford, Ontario in 1994. They were referred to Tetrault for investment advice by Lucie Parent's parents who were acquaintances of Tetrault. The

Parents met with Tetrault first in 1995. At that time, they were inexperienced as investors and had never invested in equities or mutual funds. The Parents' investment experience had been in term deposits and GICs. John Parent had at the time a locked-in RRSP (term deposit) of approximately \$4,500. Lucie Parent had a GIC with SunLife in the approximate sum of \$14,500. In addition, the Parents had a savings account of approximately \$5,000 bringing their estimated financial resources to \$24,000.

The Parents' only other assets were two automobiles and household furnishings. They lived in rented accommodations. In 1995, John Parent was a millwright with gross earnings of approximately \$35,000. Lucie Parent was not employed at that time.

Tetrault first met with the Parents in his professional capacity at their home in February, 1995. Lucie Parent had contacted Tetrault to set up the meeting. A series of meetings and telephone communications continued off and on until November 1997 when the Parents terminated their relationship with Tetrault. During this time activities and transactions occurred giving rise to this hearing.

Much of the evidence of the parties was diametrically opposed. In general terms, Tetrault testified that he provided appropriate levels of service, advice and disclosure and that the trades made by the Parents on his recommendation were informed decisions and suitable for his clients. In general terms, the Parents testified that they were neophyte investors who relied entirely on Tetrault's judgment and that he failed to fulfill his obligations to them and he put them into unsuitable investments that eventually resulted in losses.

## **II. Chronology**

Mr. Wright, counsel for Tetrault, argued that credibility must be a major issue in determining the merits of the allegations against his client. The panel agrees and these reasons for decision deal with the issue of credibility below.

Some issues such as the chronology of events are not in dispute. There is some merit in setting out this chronology of events and transactions prior to dealing with the issue of credibility.

### **Chronology of Events:**

1) The parties first met to discuss investments in February, 1995. The meeting took place at the Parents' home and lasted between one and two hours. No documents were completed and no transactions authorized.

2) A second meeting took place March 18, 1995. As with the initial meeting, it occurred at the Parents' home, lasted between one and two hours and only the parties were present. At this meeting, one new client application form was completed for John Parent and documentation was also completed to transfer John Parent's locked-in RRSP account into a Mackenzie money market fund and to set up a pre-authorized monthly deposit account of \$100 per month in Lucie Parent's name. The funds were to be invested in various Mackenzie Industrial Group mutual funds and were to be contributed by John Parent.

3) The third meeting took place April 24, 1995. Again, the meeting took place at the Parents' home, involving the parties and lasted between one and two hours. At this meeting, the following transactions occurred:

a) documentation was completed to transfer \$5,000 from the Parents' savings account into a Mackenzie money market account;

b) documentation was completed to transfer John Parent's money market funds (approximately \$4,400) into the Mackenzie Universal Precious Metals Fund.

4) The fourth meeting took place August 3, 1995 at the Parents' home. No clear evidence was provided as to the length of the meeting which again involved only Tetrault and the Parents. At this meeting, documentation was completed to transfer Linda Parent's GIC with SunLife into a Mackenzie Industrial Group money market account.

5) The fifth meeting occurred at the Parents' home on January 31, 1996. The accounts were reviewed but no transactions took place. Following this meeting, in February 1996, John Parent instructed Tetrault to liquidate his units in the precious metals fund and invest them in a money market fund. John Parent's investment in the Precious Metals fund had increased by 37-38% since April of 1995.

6) The next meeting did not take place until February, 1997. As usual, the meeting occurred at the home of the Parents. No clear evidence was led as to the length of the meeting. It was attended by only the three parties. Documentation was completed for the movement of the money market funds (approximately \$6,800 for John Parent and \$14,500 for Lucie Parent) into the Mackenzie Universal Precious Metals Fund. As a result of these transactions, with the exception of about \$5,000 in a money market fund, all of the Parents' investments were in units in the precious metals fund.

7) Over the next nine months a number of telephone conversations and brief meetings occurred between Tetrault and one or both of the Parents, however, with the exception of the redemption in September, 1996, of the \$5,000 remaining in money markets no transactions occurred until November, 1997 when the Parents transferred all of their accounts to a dealer in Ontario. The transfer was out of the Mackenzie family of funds resulting in the triggering of a deferred service charge. After acquiring the units in the precious metals fund their value dropped steadily resulting in a loss to the Parents of approximately \$10,000.

A cursory look at the transactions without any additional information or explanation would naturally lead the panel to question why Tetrault would place the bulk of available cash of inexperienced investors with few assets not once but twice into a relatively volatile and high-risk sector fund like a Precious Metals fund. It is necessary to review the details of the transactions and to do so the panel must determine which evidence is reliable. In this case of conflicting testimony a determination as to credibility must be made.

### **III. Credibility**

Commission staff have leveled allegations against Tetrault arising out of these transactions. Without reviewing the allegations in detail, their main thrust is that Tetrault put the Parents into investments without adequate disclosure that were unsuitable for them. Staff seeks cancellation or suspension of Tetrault's registration as a mutual fund sales person.

The panel was not impressed with the evidence of either John or Lucie Parent. Their evidence, for the most part, was consistent in suggesting that they had no investment knowledge and relied entirely on Tetrault to pick their investments for them which they testified he did without letting them know the true nature of them or the risks involved. Both Mr. and Mrs. Parent returned to this theme repeatedly in direct and cross-examination. What particularly struck the panel, however, was that beyond the assertions by the Parents as to their lack of understanding of their investments, they showed a dramatic failure of memory as to what had actually transpired between themselves and Tetrault.

John Parent:

The following represents some of the concerns of the panel in accepting reliability of John Parent's testimony:

- A. He had no clear recollection of the timing or number of meetings that took place with Tetrault;
- B. His documentary records were, in his own words, "a complete mess";
- C. He testified that he hoped to achieve a return on his investments of 10-15% but also testified that he could not recall if he discussed his investment objectives with Tetrault;
- D. He offered his testimony in very broad and general terms but when questioned in some detail about specifics he almost invariably acknowledged exceptions to his prior testimony. For example,
  - i. He indicated initially that he and Mrs. Parent did not throw out any documents received in their dealings with Tetrault. He subsequently acknowledged that indeed some documents were thrown out but he could not identify which documents may have been disposed of.
  - ii. He testified initially that he did not think that he and Mrs. Parent had received in 1995 a prospectus for the Mackenzie Universal Group of Funds. He subsequently acknowledged that a confirmation of receipt for it had been signed and testified that "it would be a little heavy" to suggest for sure that he had not been provided with a copy.
  - iii. He initially testified that he could not recall discussing deferred service charges with Tetrault but subsequently acknowledged that the issue had indeed been discussed.

There are numerous additional examples of changes in his evidence by John Parent when his original testimony was subjected to some scrutiny on cross-examination. The panel does not find

it necessary to list every example. The fact is that Mr. Parent could not tell the panel what advice or information he had received from Tetrault, although it had been acknowledged that there were several lengthy meetings involving the parties and that questions were asked of Tetrault, none of which he seemed unable or unwilling to answer.

Lucie Parent:

Lucie Parent, even more than her husband, simply had an inability to recall what had occurred at meetings with Tetrault. She testified that she could not recall:

- A. the dates or length of meetings;
- B. discussing investment goals with Tetrault;
- C. what documents were reviewed with them by Tetrault or what, if any, documents were received by them;
- D. as to whether different types of mutual funds were discussed or as to whether Tetrault explained mutual funds in general;
- E. whether the concept of risk was discussed; and
- F. any discussion about interest rates or return on investment.

The list of matters that Lucie Parent cannot recall is an extensive one and is not fully set out in these reasons. As with her husband, on almost every point on which she testified, she could not recall a suggested event as having occurred. She also could not say for sure that it had not. The events giving rise to the complaint occurred between two and four years before the hearing. While not ascribing any improper motive to it, the panel found Lucie Parent's almost complete lack of recall of specifics to be most unusual. At any rate it caused the panel to have concerns about the reliability of her testimony.

Conflicting Evidence:

The evidence of John and Lucie Parent conflicted in some material respects including the following:

- a) John Parent testified that he and his wife were concerned about the low rate of return on their investments before seeing Tetrault. He testified that they were concerned about retirement and had discussed the possibility of investing in mutual funds to obtain a higher return. John Parent considered a return on investment of 10-15% to be desirable. In contrast, Lucie Parent testified that she was not concerned about the low rate of return on her investments and that she had not discussed the prospect of investing in mutual funds with her husband. She testified that she felt satisfied with the existing rate of return on her investments (described by Mr. Parent at 3-4%) and was not seeking higher results for eventual retirement.
- b) John Parent testified that at the meeting on February 1997 when both he and Lucie Parent transferred their investments into the precious metals fund he had already made up his mind that he wanted to do just that. He testified that investing

in precious metals was his decision and that he was motivated by the high return he had experienced in that fund earlier.

In contrast, Lucie Parent's testimony was that the February, 1997 investment in precious metals came, not as a result of her husband's decision or expectations but solely due to the recommendation of Tetrault. She did not recall that John Parent had expressed a desire to invest in the fund.

#### Misleading Evidence:

a) The Parents wrote a letter of complaint to ProFund, Mr. Tetrault's employer, dated December 5, 1997. In it, the Parents alleged, among other things, that they had not been advised that a redemption of all of the units in their recently acquired funds would result in a back-load fee. It appeared clear to the panel in cross-examination that Mr. Parent acknowledged that the issue of back-load fees on the Mackenzie funds had been explained by Mr. Tetrault back when the Parents first invested in Precious Metals. Mr. Parent could not explain why the letter indicated that a back-load fee had not been discussed when in fact this was not accurate. This appeared to the panel to be an attempt to mislead ProFund as a means of assisting the Parents in negotiations.

b) Also in the letter, the Parents demanded from ProFund a reinstatement of their initial investment together with an additional 10%. When asked by the panel why they asked for an additional 10%, Mr. Parent clearly stated that it had been suggested by Mr. Jan Banasiak, an investigator with the Securities Commission. Mr. Banasiak is an experienced and principled investigator who has testified many times at Commission hearings. Making this type of suggestion would be both improper and out of character for Mr. Banasiak and the panel did not believe Mr. Parent's evidence to be truthful. Not surprisingly, in subsequent testimony Mr. Banasiak denied making such a suggestion to the Parents. We are of the view that in giving this inaccurate evidence, Mr. Parent was intending to mislead the panel.

#### Evidence of Tetrault:

Mr. Tetrault's evidence was more satisfactory than that of Mr. & Mrs. Parent. His testimony was clear and did not contain obvious inconsistencies. Under cross-examination he did not tend to backtrack or contradict earlier testimony. Mr. Tetrault's recollection was much more distinct than that of Mr. or Mrs. Parent.

#### Conclusion as to Credibility:

Human memory is fallible. The events in question had transpired anywhere from two to four years prior to the hearing and people understandably tend to forget. In addition, it was clear to the panel that Mr. Tetrault had an advantage in the area of giving testimony to the extent that he has experience in the mutual fund industry and has familiarity with the terms of usage and the expectations of the industry. Even acknowledging this advantage, however, the panel was dissatisfied with the evidence of the Parents. Their recollection was exceptionally poor and they tended to contradict themselves and each other in their evidence. The panel was also concerned with what it perceived as attempts to mislead.

In every case of conflicting evidence between the Parents or either of them and Tetrault, the panel accepts the evidence of Tetrault as being more reliable.

#### **IV. Findings on the Evidence**

Based on the evidence considered reliable, the panel makes the following findings:

1. Tetrault had been an acquaintance of Lucie Parent's parents since the mid-1970s. Tetrault met Lucie Parent at a social gathering following her return to Winnipeg. Tetrault discussed with her his line of work and gave her a business card.

2. In February 1995, Lucie Parent called Tetrault to set up a meeting to discuss investing. Mrs. Parent indicated that she and her husband were seeking a better rate of return on their investments with a view to eventual retirement.

3. At the February 1995 meeting, the Parents discussed their retirement goals. They were both in their early to mid-forties and were aiming to build a retirement fund over the next 15-20 years. They had no intention of utilizing their investments for interim needs. Their investment goals were long-term growth. John Parent was seeking a return of 10-15%. The Parents' investments at the time were returning, by John Parent's recollection, 3-4%.

4. The February 1995 meeting lasted between one and two hours. Tetrault provided information at the meeting as to the nature of mutual funds, the recent history of certain mutual fund families, and how they could be used to achieve different investment objectives. Tetrault employed what he referred to as his "presentation binder" (Exhibit 28) and referred to, among other things, a chart (Exhibit 26) comparing market movements of both equities and debt instruments over a period of years.

Tetrault discussed long and short-term market trends. The panel is satisfied that he reviewed the concepts of risk and volatility, rates of return, appreciation, diversification, and the difference between a short and long-term outlook.

Tetrault reviewed with the Parents the simplified prospectus for the Mackenzie Industrial Group of funds. Several areas were circled in the prospectus. Tetrault testified that it was his practice to circle certain parts of a prospectus as he reviewed them with clients. The panel is satisfied that he reviewed with the Parents those parts of the prospectus outlining fee options including deferred service charges. Tetrault left the prospectus with the Parents.

No specific investments were contemplated at the meeting and it was left to the Parents to contact Tetrault should they wish to invest with him.

5. Lucie Parent subsequently telephoned Tetrault and set up the March 1995 meeting. During the call, Mrs. Parent advised that she and her husband wished to invest in mutual funds.

At the meeting of March 1995, Tetrault first reviewed the general information he had provided at the first meeting and then discussed specific investments. Tetrault testified, and the panel

accepts, that the Parents asked numerous questions about the several mutual funds referred to at the meeting. Tetrault also testified that he answered every question fully and accurately. John Parent acknowledged that he and his wife did ask questions and that there did not seem to be any question which Tetrault was unwilling or unable to answer. The panel finds this to be the case throughout the term of the relationship between Tetrault and the Parents.

At the meeting, Tetrault completed a New Client Registration Form printed by ProFund. This was completed for John Parent (Exhibit 4). Tetrault did not fill out a similar form for Lucie Parent although an account was opened in her name. He testified he included information for both Mr. and Mrs. Parent on the single form. The form indicated investment goals to be long-term growth. This is in keeping with the testimony of all parties. Other than the fact that only a single form was prepared, the only other noteworthy point about the completion of the document was that Tetrault noted John Parent's investment knowledge and experience to be "good". This is an inaccuracy. There was, however, no evidence led to suggest this inaccuracy was set down for any ulterior motive.

Tetrault confirmed that the Parents were seeking long-term growth with their investments and had no intention of accessing them in the short-term. Tetrault discussed the benefits of monthly investing as a means of cost-averaging. The Parents decided to open a monthly pre-authorized checking account and the appropriate paperwork was completed (Exhibit 8). The account was funded by John Parent for Lucie Parent's benefit at one hundred dollars per month. The contribution was diversified among four equity funds from the Mackenzie Industrial Group. No allegations have been made that the funds chosen were inappropriate for the Parents.

Documentation was also completed to transfer John Parent's locked-in RRSP of about \$4,400 from Canada Trust to the Mackenzie Industrial money market fund (Exhibit 6). Tetrault advised Mr. Parent to leave the funds in money market until he had decided upon a growth fund with a better return.

Tetrault also testified that he left the Parents a simplified prospectus for the Mackenzie Universal funds. The Parents could not be sure if this occurred, but Lucie Parent signed an acknowledgement of receipt of this document. The panel accepts Tetrault's testimony and finds that the Universal Funds Prospectus was delivered by Tetrault.

6. At the meeting of April 24, 1995 after some discussion with the Parents that a money market account would offer better returns than a savings account, the Parents used the \$5,000 from their savings account to purchase units in a Mackenzie Industrial Group money market fund.

Tetrault also discussed reinvesting John Parent's money market funds in a long-term growth fund. Tetrault reviewed with John Parent several of the funds outlined in the simplified prospectuses of the Mackenzie Industrial and Universal groups of funds Tetrault brought to Mr. Parent's attention the Universal Precious Metals Fund. Tetrault testified that he recommended this Fund, among others, to Mr. Parent because he had received research information through his employer that the precious metals sector was expected to "take off" soon.



Tetrault showed graph materials to John Parent indicating that precious metals funds were volatile and risky in comparison to other funds being considered. He advised Mr. Parent that while the upside was greater than in most funds, so was the downside. Tetrault recommended that only a part of John Parent's money be invested in precious metals and the rest in other, more stable, growth funds. Tetrault testified and the panel accepts that Mr. Parent wanted to invest all of his money market funds in the fund with the greatest possible return being Universal Precious Metals. Mr. Parent's position was that as he was only investing approximately \$4,400 a loss of this amount would not pose a major concern and that he was in for the long-term and would not be swayed by short-term market fluctuations.

After this discussion, Tetrault completed documentation to move John Parent's \$4,400 from money market into the Universal Precious Metals Fund. The panel finds that Tetrault erred in completion of this transaction. Both Mr. and Mrs. Parent were unsophisticated investors whose only experience had been in term deposits and GIC's where capital was secure. They had very limited means and few assets. Exhibit 4, ProFund's New Client Registration Form, does not appear to contain a section to specify a client's investment outlook. If it did and if it had been properly filled out, the panel is confident that it would have shown the Parents at this time as having a conservative to moderate risk strategy.

The Parents were not the type of investors who were suited to a volatile fund like a precious metals fund which had a history of wide fluctuations. Despite his belief that the fund was set to "take off", this investment should not have been recommended to the Parents. The fact that John Parent made the final decision to enter this investment is not material. It was done on Tetrault's recommendation. The recommendation was an error in judgment. The panel is of the view that in the case of this initial investment into Precious Metals, Mr. Tetrault did not take the forceful steps he should have to dissuade Mr. Parent from placing all of his available funds in this investment. As such, Tetrault did not meet his obligations to his client. The investment of all of Mr. Parent's available funds into Precious Metals was unsuitable. This is so regardless of the fact the Fund did increase in value over the next ten months.

7. At the August 3, 1995 meeting between the parties, Tetrault completed documentation for Lucie Parent to transfer her GIC into a Mackenzie Industrial money market fund. She was not ready at that point to make a decision on a growth fund. The money market account was one of the funds outlined in the Mackenzie Industrial Group Simplified Prospectus. The investment was approximately \$14,000.

8. No transactions were concluded at the next meeting on January 31, 1996. Tetrault advised John Parent to consider realizing on the gains he had made in the Precious Metals fund (37-38%) and to diversify his investments. In February 1996, John Parent did instruct Tetrault to redeem his Precious Metals fund units. Again, the funds were placed in money market until a decision as to reinvestment was made.

9. Mr. and Mrs. Parent's funds remained in money market accounts over the next year. Eventually Tetrault contacted the Parents with a view to discussing reinvestment into more growth-oriented funds. This resulted in the February 1997 meeting.

In testifying about this meeting, John Parent was very forthright in indicating that he had decided that he and Mrs. Parent would invest their funds once again in the Universal Precious Metals fund. He had been pleased with the results that had been achieved between April 1995 and February 1996. His decision had been made before the meetings began. He testified that it was "my decision".

Mr. Tetrault came to the meeting prepared to discuss the funds primarily in the Mackenzie Industrial and Universal prospectuses given to the Parents in 1995. He recommended that the Parents diversify into several of the funds. When John Parent indicated that he wanted to put all of his money market funds into Precious Metals, Tetrault advised against it. Tetrault suggested that if the Parents were determined to invest in Precious Metals they do so in a limited amount only at a maximum of 10-20%. Tetrault again stressed the volatile nature of the Fund (which is reflected in the simplified prospectus). The Parents acknowledged that they understood the risk. At the hearing the Parents testified that they did not understand the risk. The panel does not accept this position.

On instructions of the Parents, Tetrault completed documentation transferring their money market accounts into Universal Precious Metals. The combined amounts of just under \$22,000 represented the bulk of their small holdings. While not forming part of the allegations, the panel notes that in February 1997 Tetrault did not provide the Parents with an updated simplified prospectus for the Universal Precious Metals fund. The November 1996 version of the simplified prospectus contained a statement printed in bold not found in the earlier versions as follows:

"The Fund should not be a core-holding in a small investment portfolio".

John Parent testified that he was surprised when this statement later came to the attention of he and his wife. The panel was of the view, however, that the Parents were advised of this by Mr. Tetrault at the time but decided to invest in Precious Metals nonetheless. The Parents had decided that they were going to put most of their funds into Precious Metals in hopes of again reaping benefits similar to those realized earlier. The panel finds that Tetrault attempted to dissuade them. The panel formed the opinion during the hearing that John Parent, once having made up his mind, would be difficult to dissuade from a course of action.

Staff counsel argued that Tetrault did not do enough to dissuade the Parents from making this investment in February 1997. Staff counsel quoted from the IFIC manual the following:

"...if an investor wishes to purchase high risk speculative investments and his financial situation indicates he is not in a position to tolerate the potential losses from such an investment, the salesperson has an obligation to discourage the client".

Interestingly, even Tetrault's employer, ProFund, in its letter of January 15, 1998 to Mr. & Mrs. Parent (Exhibit 25), while supporting Tetrault's actions, suggested if there was an error in judgment by Tetrault, it was not in being more forceful in attempting to dissuade the Parents from this course of action. Accepting Tetrault's version of events as we do, it occurred to the panel that if there was error in judgment shown by Tetrault at this point of the proceedings it was

one of degree. It appeared to the panel that the only step remaining to Tetrault was to simply refuse to accept the order. Under the circumstances, the panel is not prepared to extend Tetrault's duty to attempt to discourage or dissuade to that extent.

The panel finds that the decision to invest most of their available funds in Precious Metals was made by the Parents, against advice received and based on their recent experiences. The panel concludes that in this instance Tetrault did not breach his "know your client" obligation.

10. The next nine months saw the gradual decline in value of the Precious Metal fund units. Between February 1997 and November 1998, a number of telephone conversations and brief meetings took place between Tetrault and either one or both of the Parents. Generally, the Parents expressed their concerns about the decline in value. Tetrault reminded them that their investment objective was long-term and advised that they not redeem in the short-term.

The Parents did redeem in November 1997 crystallizing their losses. In addition they transferred their funds out of the Mackenzie family of funds thereby incurring back-load fees. This step was taken by the Parents on their own or on the advice of others and any fees occasioned cannot reasonably be attributed to either Tetrault or ProFund.

## **V. Decision**

The panel has found that Tetrault erred in the following instances:

i) He failed to complete a new client application form for Mrs. Parent in April 1995. Counsel for Tetrault suggested that there was no codified obligation for the completion of a new client form and that the only obligation on an advisor is to in fact know his or her client. This may be correct, however, the Commission (and to the understanding of the Commission every mutual fund dealer registered in Manitoba) expects all registered sales people to follow industry norms and this is in fact a condition of registration. Industry norms require the completion of a form for every client.

ii) He failed to meet his "know your client" obligations in recommending in April 1995 an investment that was not suitable for his clients. Mr. Parent put all of his available investment funds into Precious Metals in April 1995. This was not a suitable investment for someone in his circumstances. Tetrault should have known this and should not have brought the fund to Mr. Parent's attention in April 1995. At the very least, Tetrault should have been as forceful in attempting to dissuade John Parent from investing all of his funds as the panel found he was in February 1997. The evidence does not suggest this to be the case.

If there is a mitigating factor, it is that Tetrault had at least received research information through his employer that the Precious Metals sector was well positioned to advance in April 1995. (The fund value did increase substantially thereafter.) Nonetheless, as Tetrault knows, expected results do not always materialize and the purchase of Precious Metals as a sole holding was not a

suitable investment for this inexperienced investor with limited resources who clearly could not tolerate a substantial loss of capital.

Among other sanctions, Commission counsel seeks a suspension of eight months. Given the findings of the panel, this is not an appropriate sanction. The panel notes that Tetrault has an otherwise clear record with the Commission over a period of six years. The evidence accepted by the panel suggests that Mr. Tetrault fulfilled his duties of providing full disclosure. He spent a considerable amount of time with the Parents and answered every question they posed fully and to the best of his ability. There is no indication that he provided inaccurate information. He did not appear to rush them into making investment decisions. There is no indication that any investment recommendations were motivated by the prospect of earning commissions. Other than the recommendation of Precious Metals in April 1995, there is no indication that any of the other several investments recommended by Tetrault were inappropriate or unsuitable for them.

Recognizing, however, that Tetrault erred in judgment in initially recommending Precious Metals as an investment, a sanction is warranted. The appropriate sanction is not a suspension but a reprimand which will form part of Tetrault's permanent record with the Commission.

The panel, while finding that Tetrault had breached his obligations to his clients in April 1995, determined that this was not the case in February 1997. The panel, on hearing the testimony, concluded that Mr. Parent had made up his mind that he and his wife were going to invest in Precious Metals and that Tetrault tried to dissuade a very determined client from investing in such an unsuitable manner. When asked during his testimony what he might do differently now, Tetrault testified that he would obtain in the future written acknowledgement when a client chooses to act against his advice. Mr. Tetrault would do well to adopt this policy.

## **VI. Costs**

A finding has been made against Tetrault and it is appropriate that the panel consider costs against him. Ms Laycock, staff counsel, has itemized the costs of a four and one-half day hearing as set out in the Regulations and note that costs and recoverable disbursements are in the amount of \$16,350. Counsel for Tetrault claims that this is an inordinate amount and in fact such awards of costs may operate as a deterrent to registrants who validly wish to defend themselves at a Commission hearing. The sum of \$16,350 does appear to be a large sum in light of the fact that the panel found the conduct of Mr. Tetrault did not warrant a suspension or cancellation of his registration.

Counsel for Tetrault suggests in his written submission that the question of costs should be considered in the context of the findings as to fault. The panel will withhold a final determination as to costs to be assessed against Mr. Tetrault until March 15, 2000. Either counsel may prior to that time make a further brief written submission as to the appropriate costs in light of the findings made. At the same time, neither counsel should feel compelled to make an additional submissions.

D. G. Murray  
Chairman

L. M. McCarthy  
Member

K. S. Kristjanson  
Member