



# Newsletter

Winter 2006

## WHAT ARE YOU PAYING YOUR INVESTMENT ADVISOR TO MANAGE YOUR PORTFOLIO?

It is recommended that investors ask their investment advisor for a written list of services they are paying for, including any value-added services they provide, such as tax and estate planning.

How investment advisors are paid depends on the type of investment. With equities, they can charge the investor either a commission on each trade or an annual fee. A commission may be a fixed amount or a percentage of the total transaction, based on the price of the share being bought or sold, while a fee is a percentage of the portfolio being managed. With fees, investors can make several transactions per year without paying commission on the transactions. Fees for non-registered accounts are tax deductible; however, commissions are not.

With mutual funds, many investors believe they are not paying fees; however, the management fee is calculated and deducted inside the mutual fund itself. The Management Expense Ratio (MER) varies between funds (usually between 2.3% and 2.8% for a typical Canadian balanced fund), and is applied by the mutual fund company against the fund returns. There may also be other fees on top of the MER that the mutual fund company charges. The investment advisor receives compensation out of the MER of the fund, not from the investor.

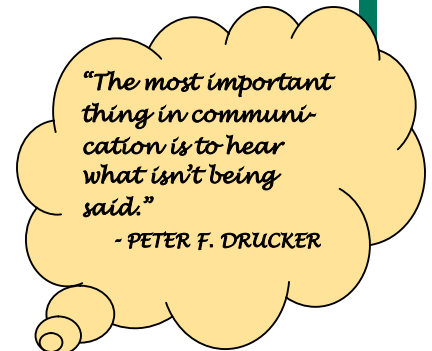
Three different ways investment advisors can earn compensation by selling the same mutual fund are:

1. **Deferred Sales Charge (DSC) or Back-End Load** – Example: On a typical Canadian balanced mutual fund, the investment advisor receives a 5% commission, paid up front by the fund company out of the MER, then an annual 0.5% commission or “trailer.” The investor is locked in for six years, and is subject to a fee for early redemption, payable to the mutual fund company. The investor may change funds within the same fund family without having to pay the early redemption fee.
2. **Low Load** – This is similar to the DSC, except the investment advisor is paid a 1% up-front commission, then a 1% annual trailer. The investor is locked in for a two-year period, and is also subject to early redemption fees.
3. **Front-End Load** – Investment advisors receive no up-front commission from the fund company, but receive a 1% annual trailer out of the MER. They can charge an up-front commission directly to the investor (usually between 0% and 5%). There is no lock-in period, and the investor can sell the fund at any time.

It is also important for investors to ask their investment advisor for an Investment Policy Statement (IPS) - a document of understanding that addresses the investor’s financial resources, needs, goals, risk tolerance, etc., and also outlines roles, responsibilities and expectations of both parties.

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### Special points of interest:

- Newsletters will now include other non-tax topics that may affect your financial position.
- Next personal tax instalments:  
- March 15, 2006  
- June 15, 2006

## AMENDMENTS TO FEDERAL BANKRUPTCY AND INSOLVENCY ACT

Bill C-55 was passed on October 5, 2005, and its enactment is planned on or near June 30, 2006. This article is a brief overview of the amendments to the *Bankruptcy and Insolvency Act* (BIA).

Parliament wishes to facilitate the restructuring of viable businesses in financial trouble; improve worker protection; increase the fairness and reduce misuses of the bankruptcy program, and improve the administration of insolvency programs.

### MAIN AMENDMENTS

1. **Wage Earner Protection Program (WEPP):**
  - Includes remuneration and vacation pay, but not termination pay.
  - The maximum protected amount is \$3,000.
2. **Priority of Wage Claims:**
  - Wage claims receive a limited super-priority regarding short-term assets over secured creditors.
  - Wage earners retain their preferred creditor status for amounts not covered by the super-priority.
3. **Unpaid Pension Contributions:**
  - Regular unpaid contributions are covered by the super-priority.
  - Unfunded liabilities remain a regular claim.
4. **Collective Agreements During the BIA or CCAA Enforcement Period:**
  - When negotiations fail or haven't been undertaken, the corporation may ask the court to obtain an order to serve as notice to negotiate under labour legislation. The court will then consider if negotiations are necessary to the restructuring.
5. **Executory Contracts:**
  - Debtors are allowed to disclaim most types of agreements, but not collective agreements.
  - A right of recovery is given to the joint party for the value of the executory contract.
6. **Interim Financing:**
  - The court can authorize interim financing during restructuring.
  - Priority ranking for current secured claims is authorized.
7. **Governance:**
  - The court can dismiss/replace directors and allow a change in priority in order to protect directors against claims. The court can also authorize payment to third parties to ensure their effective participation.

### INDIVIDUAL BANKRUPTCY

1. **Income Tax Debtors:**
  - The court must establish the conditions for discharge of individuals with an income tax debt of \$200,000+.
2. **Bankrupts with Surplus Income:**
  - Bankrupts with surplus income must pay the amount stipulated in the Superintendent of Bankruptcy guidelines.
  - 1st bankruptcy - mandatory payment period of surplus income is now 21 months.
  - 2nd or ulterior bankruptcy - mandatory payments period is 24 months (possibly 36).
3. **Student Loans:**
  - Discharge period now 7 years (5 years in cases of "undue hardship.")
2. **RRSP:**
  - A larger scale of RRSPs is exempt from seizure.
  - The legislation will determine a maximum amount to be protected and immobilized until retirement.
2. **Second-time Bankrupts:**
  - Second-time bankrupts are eligible for automatic discharge after 24 months.

### CONSUMER PROPOSALS

Eligibility limit of total debtor debts is \$250,000 (excludes main residence mortgage).

## COLLABORATIVE FAMILY LAW—THE NEW “SMART DIVORCE” NEGOTIATIONS TO PREVENT A FINANCIAL MELTDOWN

**When significant relationships come to an end, it is critical that spouses pause to carefully consider their process choices. Financial and emotional disaster can be avoided if negotiation and settlement are prioritized over positional bargaining and court posturing where sometimes settlement only seems to be an afterthought.**

**Collaborative Family Law (“CFL”)** is a new negotiation process where separated spouses directly negotiate their family law issues in a safe, respectful, lawyer-supported meeting environment. The lawyers are specially trained to collaborate to ensure respect for communication rules, provide legal advice, support their clients, and keep the activity focussed on productive discourse, information exchange, and option analysis. The goal is the discovery of the best possible solution for the parties, as they define it, followed by the completion and execution of a written separation agreement. What is it all about?

**The lawyers are different** - Your lawyer may not act like you expect them to! They listen, and want to know what you want. They try to avoid positions, and instead seek to have everyone explore the different facets of an issue together. The communication is face-to-face – no hiding behind the nasty letters and affidavits. They brainstorm – unleashing their creative power and the “law model” is only one solution. It is important to know what the law looks like, but unless that is the best solution for the parties, it isn’t chosen by default.

**The lawyers are in it with you** - Everyone (including the lawyers) signs a written commitment to settlement outside of court. If the process fails, the lawyers must withdraw. This key distinguishing point makes the motivation and goals of all participants singular and congruent: settlement, and nothing but. Counsel are self-interested in settlement. If the negotiation fails, the lawyer gets fired!

This guarantee lets the client viscerally feel that “my lawyer is in this with me,” and assuages a deep client fear that they may be lead down into the “divorce from hell.”

**It ain’t easy** – CFL is not lawyers and clients holding hands and singing “Kumbaya” while dancing around a burning pile of legal rights. It is for those who can take ownership and responsibility for their relationship and separation and who want more control over the terms of their agreement. It demands direct negotiation with perhaps the last person in the world the spouse wants to see – the other spouse.

**This ain’t mediation** - CFL is not a co-mediation. There is no neutral in the room. The two collaborative lawyers, working together (what a concept!) control the process, keep the communication respectful, make sure each outstanding issue gets explored and addressed fully. Each lawyer is also partisan counsel to their own client, fully available to answer questions, develop options, guide and advise. This addresses a concern of some mediation clients, who feel awfully alone and unsupported in the mediation process, and often fear having to take the product of the mediation back to their counsel and possibly hear how bad a job they did.

**It works** – No process can guarantee success, but the experience locally, provincially, nationally, and internationally, has been overwhelmingly positive. CFL isn’t therapy, but it can be therapeutic. Done right, the negotiations are efficient, respectful, dignified, and generally faster and cheaper (not cheap, but cheaper) than if that same matter had been “resolved” by court litigation.



**New approach to separation/divorce hopefully will reduce financial and emotional disasters.**



## GETTING READY TO COMPLETE YOUR PERSONAL TAX RETURN

It's almost that time of the year again! Many of the tax receipts you'll need to complete your 2005 tax return are likely already filed away in your tax receipt "shoe box." Now all you have to do is organize them, right?

A simple tax receipt filing system is really all you need. Organizing them sooner vs. later could save you time, money, and lots of aggravation.

### Expenses

A review of the expense receipts required:

- Medical receipts showing payment dates
- Charitable donations receipts (not pledge forms)
- Cancelled cheques and agreement for child and spousal support
- Moving expense receipts
- Investment gains and loss transactions from the broker
- Detail of other gains and losses and supporting detail of proceeds, historical costs, and disposition costs

- Automobile costs, including a detailed log of travel (need T2200)
- RRSP contribution receipts
- Interest and investment costs from bank/broker
- Tuition slips (check university web sites)

### Income

Income amounts include:

- T4 employment
- T5 investment
- T5013 partnerships
- QAS/PPP
- Rentals and self-employment statements
- T3 for trust income.

Although most slips are available by February 28th, T3 and T5013 slips are not required to be mailed out until March 31st.

If you have bank "trust" accounts for your children, you should ensure each child's social insurance number (SIN) is registered on their respective account.

The Canada Revenue Agency (CRA) is matching the SIN on the T5 and T3 slips, and, if your SIN is on your child's account, the CRA may include the amount in your income and force you prove it is not your income.

If you, subsequently, find an unreported 2005 income receipt, please let us know. The CRA could penalize you if a slip is missed, and then another slip goes missing within the next three years.

The preferred method of filing personal tax returns is e-filing. If you decide to e-file your return, the CRA may send you a "pre-assessment" request for receipts before they will assess your return. While it is considered an "audit," if they are only asking you to provide receipts (the same as you would have with paper filing), it is just a check-up procedure. That is why we must be given the actual receipts before the return is e-filed.



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