

## IN DEPTH: FINANCIAL REGULATIONS AND THE IMPORTANCE OF LANGUAGE

Jefferson Thorpe makes and loses his fortune through his own investing decisions. This method of investing is commonly referred to as “self-directed investing.” Instead of seeking advice from financial experts, Jeff chooses to do his own research and make his own decisions. He is a self-directed investor. Jeff’s self-directed investing leads Jeff to lose money on wheat futures, make \$40,000 on Northern Star mine shares, and ultimately lose his fortune on a Cuban plantation investment.

The benefits and drawbacks of self-directed investing was the subject of a recent *Globe and Mail* article. It says:

Investing without the services of a financial adviser may be more appealing than ever, but it is not for everyone. Without adequate knowledge, skills and time, and suitable personality traits, direct investing could be a recipe for financial ruin.<sup>40</sup>

Jefferson Thorpe was one such person who met financial ruin from self-directed investing.

People who do not want to end up like Jefferson Thorpe can seek the services of professionals who give financial advice. Some people will seek the help of a “financial advisor” with the **or** suffix. Other people will seek the help of a “financial adviser” with the **er** suffix. The English language has no hard rule about the difference between the words advisor and adviser. However, when used in specific reference to the Canadian financial industry, advisor and adviser are very different terms under the law.

### ADVISERS VS. ADVISORS

Understanding the differences between advisor and adviser requires an understanding of the laws and rules that govern Canada’s investment industry. In each province the investment industry is overseen by an agency known as a Security Regulator. Security Regulators help ensure that investors are protected from unfair, improper, and fraudulent practices. According to the Small Investor Protection Association, there are nearly 122,000 people registered with Security Regulators to provide financial services in Canada.<sup>41</sup>

Most of the people registered to provide financial services are categorised as “Dealing Representatives.” Dealing Representatives often use the term “financial advisor” to describe themselves. Financial advisors provide financial advice to their clients and are bound by certain rules. However, according to a CBC Go Public feature, at the core a financial advisor is a “salesperson”<sup>42</sup>.

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40 Bebee, Gail. “Is self-directed investing right for you?” *The Globe and Mail*, 11 September 2014. [www.theglobeandmail.com/globe-investor/is-self-directed-investing-right-for-you/article20555144/](http://www.theglobeandmail.com/globe-investor/is-self-directed-investing-right-for-you/article20555144/)

41 Small Investor Protection Association. *Advisor Title Trickery: Your Financial Advisor is a Commission Sales Person*. October 2016, [www.sipa.ca/library/SIPAsubmissions/500%20SIPA%20REPORT%20-%20Advisor%20Title%20Trickery%20October%202016.pdf](http://www.sipa.ca/library/SIPAsubmissions/500%20SIPA%20REPORT%20-%20Advisor%20Title%20Trickery%20October%202016.pdf)

42 Johnson, Erica. “I feel duped’: Why bank employees with impressive but misleading titles could cost you big time.” CBC.ca. 29 March 2017. [www.cbc.ca/news/canada/british-columbia/bank-s-deceptive-titles-put-investments-at-risk-1.4044702](http://www.cbc.ca/news/canada/british-columbia/bank-s-deceptive-titles-put-investments-at-risk-1.4044702)



They sell stocks, mutual funds, and other investments to their clients. When they sell these investments to their clients, they are generally held to what is called the “suitability standard.” The suitability standard requires advisors to demonstrate that an investment is appropriate based on the client’s “goals, experience, income and risk tolerance”<sup>43</sup>. The suitability standard, however, can result in decisions that might not be in the client’s absolute best interest. Because advisors receive a commission on the financial products they sell, there is an incentive for advisors to sell their clients products that generate the biggest sales commission. This creates a risk: the advisor’s primary motivation may be their own personal gain, not their client’s best interest.

Conversely, an adviser is a person in the financial industry with a very specific legal relationship with their clients. Advisers have what is called a fiduciary obligation. This is a responsibility to act honestly, in good faith, and strictly in the best interests of their clients. This means that an adviser is *legally obliged* to ensure that the investments they are selling to their clients are what the adviser honestly believes are in the best possible investment interests of that client. Of the 122,000 people registered in Canada’s investment industry, only about 4,000 have the title of adviser.

Thus, Canadian financial regulations hold advisers to a higher legal standard than advisors. This is not to say that financial advisors are unethical or dishonest people: it only is to say that advisers have a higher legal standard to live up to. Because of the differences between advisers and advisors, there has been recent discussion about changing financial industry regulations. The hoped outcome of changing regulations is that clients of financial advisers can be more confident that they are getting the best advice possible.

## DISCUSS

1. The offer Jefferson Thorpe receives to invest in the Cuban plantation “made no rash promises, just admitted straight out that the enterprise might realise 400 per cent, or might conceivably make less. There was no hint of more” (39).
  - a) Could an offer like this confuse a person who is not skilled in finance?
  - b) Is it ethical to make such an offer?
2. The plantation offer seems suspicious from the start. This does not stop Jeff—nor others in Mariposa—from investing. However, Josh Smith “wouldn’t pay Billy, the desk clerk, his back wages when he wanted to put it into Cuba” (43).
  - a) Smith saved Billy from losing his money. Was it right for Smith to do what he did? Or should people be free to do as they please?
  - b) Look into the current debates on regulating the financial industry. What role should the law play?

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43 Bortolotti, Dan. “Screwed! Too many investors are being poorly served by advisors. Here’s how to avoid becoming the next victim.” *MoneySense*, 30 December 2015, [www.moneysense.ca/save/financial-planning/dont-get-screwed-by-your-financial-advisor/](http://www.moneysense.ca/save/financial-planning/dont-get-screwed-by-your-financial-advisor/)