Property and Casualty - Auto Bulletins
Pension Bulletins
Monitoring and Enforcement Bulletins
Licensing Changes Bulletins
Bulletins by Sector

Bulletin

No. G-09/04

- General

New Agent Licensing Regulation 347/04 (and Revocation of Regulation 663) Enhancements to FSCO's Internet Application System Changes to the Life Licence Qualification Program Examination Fees

To the attention of insurance agents and agencies licensed to transact insurance business in the Province of Ontario

This Bulletin addresses the following topics:

1. New Ontario Regulation 347/04
2. Enhancements to FSCO's **I**nternet **A**pplication **S**ystem (IAS)
3. FSCO's Response to Incidents of Cheating on Provincial Exams

1. ONTARIO REGULATION 347/04 - Including new Conflict of Interest requirements for life agents.

The Government has made important changes in the law which add enhancements to insurance agent licensing requirements designed to:

- Provide an enhanced level of consumer protection.

- Eliminate unnecessary barriers to licensing.
- Update certain licensing requirements.
- Ontario Regulation 347/04 under the *Insurance Act* became effective on November 1, 2004.
- Regulation 347/04 replaces Regulation 663 which has been revoked.

1.1 **Changes Affecting Life Insurance Agents** - **You now have new responsibilities related to Conflict of Interest**

The insurance industry and FSCO have worked together to develop steadily improving standards governing agents' qualifications. This regulation builds on existing standards by implementing a disclosure requirement for conflicts of interest and potential conflicts of interest that is consistent with the standards employed in other professions.

Conflict of Interest Disclosure Requirements - Section 16 of the Regulation

The regulation requires that you provide your clients with written disclosure of any conflict of interest or potential conflict associated with each transaction or recommendation. You must take this standard into account each time you deal with a client. Once you advise your client about the conflict, the client can decide whether or not to proceed with the transaction or your recommendation.

A conflict of interest in simple terms means that the agent has an incentive to act other than in the best interest of the client or prospective client.

FSCO does not propose to itemize all possible conflict situations, as each situation or transaction entails knowledge of the unique circumstances. As guidance, however, agents must handle all of their dealings with their clients with openness and transparency, and provide written disclosure if any doubt exists as to whether a particular situation will give rise to a conflict or potential conflict.

When dealing with your clients, you should ask yourself two questions to ensure you comply with the regulation:

1. **Would your advice or the product offered have been different if the situation or incentive giving rise to the potential conflict of interest did not exist?**

2. **Would it appear to a reasonable, informed third party looking at all the facts that you acted in the best interest of your client?**

FSCO recognizes that all agents establish their own networks in order to sell various products. A conflict of interest does not exist simply because one agent has easier access to a market than another agent. The regulation does not require disclosure of commissions as a routine matter, unless a difference in commissions would influence, or be perceived to influence, the recommendation or choice of insurance product.

You should ensure you retain copies of the written disclosure, or other records, to demonstrate compliance with the standard. You also need to understand how the concept of conflict of interest differs from coercion and undue influence. The fact that there is no conflict does not make the transaction acceptable if you used coercion or undue influence, including coercion through the influence of a professional or business relationship, in order to obtain the business.

Also, disclosure does not relieve you of your responsibility to act in the best interests of your client in accordance with the licensing qualification requirements such as suitability and carrying on business in good faith.

There is nothing in the regulation that precludes a company or agent from establishing standards that exceed the requirements in the regulation.

You do not require pre-approval or post-approval from FSCO, and therefore, FSCO will not be providing rulings on individual situations. If you are in doubt in a transaction - disclose.

Elimination of Unnecessary Barriers

Life insurance agents are no longer restricted to working in the financial services sector during their 2-year sponsored period.

Life agents can now obtain credit in calculating their sponsored period for the time they were licensed in another Canadian or U.S. jurisdiction if the Superintendent is satisfied that the category of the licence is equivalent to an Ontario life insurance licence.

Life Licence Qualification Program (LLQP) Recognized in the Regulation

There are no changes to current policies or procedures concerning the LLQP. However, agents are reminded that:

- A restricted licence will expire on the earlier of the 180th day after it is issued, or December 31, 2006 unless, by that time, the licensee is enrolled in the remainder (Part B) of the LLQP.
- Companies sponsoring agents who hold restricted licences are responsible for maintaining records documenting that the agents are complying with the requirements applicable to restricted licence holders.
- The transition period allowing restricted licences ends December 31, 2006. All restricted licences expire on December 31, 2006. All agents holding such licences must complete the LLQP prior to January 1, 2007.
- Current Level I agents are grandfathered but must pass the Level II exams or complete the LLQP within the earlier of 4 years from the date they obtained their Level I licence or December 31, 2006.

1.2 **Changes Affecting All Agents**

Elimination of Prohibition Against Other Occupations

The ability to hold concurrent employment that was available only to unsponsored (formerly known as Level II) life agents under previous regulation has been extended to all insurance agents. The lists of prohibited occupations that were deemed to place an agent in a position to use coercion or undue influence, have been eliminated.

These changes are being implemented to harmonize Ontario requirements with those of other Canadian jurisdictions and with other similar professionals.

The new regulation, however, requires that you not engage in any other business or occupation that would jeopardize your ***integrity, independence or competence***.

Now, when applying for a new or renewal licence, you must declare any other business or occupation in which you are engaged. You may also be asked for this information during an audit. The Superintendent must be satisfied, based on the information provided, that the other business or occupation will not have a negative impact on your integrity, independence or competence. This consideration becomes a part of the test of suitability.

As you can imagine, there are many different occupations and combinations of occupations. Therefore, each case depends on its own facts.

As an aid to compliance, ask yourself the following three questions:

- **Does this other occupation affect my integrity as an agent?**
- **Does this other occupation restrict the independence of the advice I am providing to my clients?**
- **Does this other occupation prevent me from maintaining or increasing my competence as an agent because I will not be receiving adequate experience or training?**

As with conflict of interest, the general rule applies - if in doubt, don't engage in the other occupation.

New Requirement for Ontario Address For Service of Legal Documents

In addition to your home address, the new regulation requires that agents and agencies licenced in Ontario now provide the Superintendent with an address in Ontario that is not a post office box, that is suitable for service of documents by registered mail. This change is being introduced to enable FSCO to initiate any necessary enforcement action and to facilitate service of legal documents such as those related to lawsuits brought against agents.

Agents who reside in Ontario may use their home address as their address for legal service if it meets the criteria set out above.

Agents residing outside Ontario must arrange for an address for legal service in Ontario and advise FSCO of the address.

The *Insurance Act* permits the Superintendent to send mail to the last known address of an agent on record at FSCO and you are deemed to have received the mail sent to that address. Therefore, it is in your interest to ensure that FSCO has current, accurate, information at all times.

Failing to provide and update this information in a timely manner places you in violation of the regulation and could result in your being unaware of important licensing or enforcement matters or proceedings against you.

Regular Correspondence with Agents

FSCO recognizes that it is important that all agents receive regular correspondence on a timely basis, as it impacts your licence and livelihood. Therefore, FSCO will now send all regular correspondence to your home address in order to ensure that it is received promptly. FSCO has found that business address information often becomes obsolete and is not a reliable way of getting mail to agents.

1.3 Changes Affecting General and Accident & Sickness Agents

General and accident and sickness agents are no longer required to work full-time or solely as an insurance agent.

1.4 Changes Affecting Agencies

The majority shareholder of a corporate agency no longer has to be a licensed agent. However, anyone who solicits from the public must still be licensed.

Insurance agencies with a foreign head office are now permitted.

The regulation no longer requires that the incorporating documents expressly state that the agency was incorporated for the purpose of acting as an agent.

For further information on these changes please refer to the attached Frequently Asked Questions.

2. ENHANCEMENTS TO FSCO'S INTERNET APPLICATION SYSTEM (IAS)

General and accident and sickness agents can now join life agents in using FSCO's Internet Application System (IAS) for most licensing activity.

IAS is fast, secure and convenient. Paper-based applications are costly and time-consuming.

Since IAS was introduced, 21,572 applications have been submitted via the Internet and, today, over half of all life agent renewals are done via IAS.

Agents benefit by instantaneous renewals and by helping FSCO to control costs and fees. As you know, the existing licensing fees have not been increased for over a decade because of steps taken by FSCO to control costs.

Why Should You Use the IAS?

- If you're renewing a licence, your application can be completed in 15 minutes and approved immediately.
- LAS is available to you 24 hours a day, seven days a week, and is fast, secure and convenient.
- You can complete an application from home, office or any location.
- No matter when you complete a licence application, your licensing information at FSCO and on FSCO's website is updated immediately, as soon as you complete the application process. As a result, the agent listing information on our website always contains the most accurate and timely information.

What Do You Need to Do?

- Go to the licensing section of FSCO's website at: www.fsco.gov.on.ca where you can access the IAS, see a demonstration of the easy-to-use system, review an IAS brochure and browse IAS Frequently Asked Questions.
- Complete an electronic application.

3. FSCO'S RESPONSE TO INCIDENTS OF CHEATING ON PROVINCIAL EXAMS

Cheating on examinations is not new, but as a result of inappropriate incidents involving some candidates who were taking the LLQP examination, FSCO has asked Durham College to implement additional security measures. These security measures have resulted in an additional cost to the insurance industry.

In addition, this cheating affects the hard-earned reputation of all insurance agents.

The exam questions are the property of the regulators and are not made available to anyone else, for any purpose. To help protect the hard-earned reputation enjoyed by the majority of agents, anyone who is offered questions which are purported to be from any provincial licensing exam should contact his/her sponsor, his/her manager and the Senior Manager, Licensing and Registration at FSCO, immediately.

FSCO intends to continue to take enforcement action against agents and companies found to have participated in cheating. Any agent who is found to have obtained questions which are, or are purported to be, LLQP exam questions may be subject to enforcement action which could include licence conditions, prosecutions, or civil actions to recover costs.

Effective November 1, 2004, the examination fees in Ontario for both the paper and electronic versions of the LLQP examination have changed. The new prices are available on the Durham College website at: www.durhamcollege.ca/llqp/

For Further Information on These Changes

- Refer to the attached Frequently Asked Questions.
- Visit the Licensing section of FSCO's website at: www.fsco.gov.on.ca , "What's New", "New Regulation Governing Insurance Agents (Nov. 1, 2004)" where you can download a copy of Regulation 347/04. FSCO's website is continually updated with new information that is important to you.
- Contact FSCO's licensing hot line at: (416) 250-9209, toll-free: 1-800-263-0541.

Bryan P. Davies

Chief

Executive Officer and

Superintendent of Financial Services

December 17, 2004

Attachment (PDF):

- Frequently Asked Questions

To view PDF files, you will require Adobe Acrobat® Reader version 7.0. You can download this free software from Adobe's Web site.

Last Modified: 3/23/2006 11:01:34 AM

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FREQUENTLY ASKED QUESTIONS

These are the most commonly asked questions raised in discussions with stakeholders, agents and the public.

REGULATION 347/04

Conflicts of Interest

1. Q. Are conflicts of interest prohibited?

A. Any real or potential conflict of interest associated with each transaction or recommendation must be declared to the client in writing by the agent. The client is then in a position to determine whether or not to proceed with the transaction or accept the recommendation.

2. Q. How do I identify conflicts of interest?

A. Conflicts will arise whenever any interests of the agent may be placed ahead of the interests of the client. Agents have a responsibility to disclose conflicts to the client, in writing, and to ensure that all transactions are conducted with openness and transparency.

When advising a client, an agent should ask himself or herself these two questions in connection with any recommendation or proposed transaction:

1. Would the advice given or product offered be different if the situation or incentive giving rise to the potential conflict of interest did not exist?

2. Would it appear to a reasonable and informed third party looking at the facts that the agent has an incentive to act other than in the best interest of the client or prospective client?

If in doubt, declare.

3. Q. Will FSCO provide a standard disclosure form?

A. No. The regulation does not require the use of a standard form. It is the responsibility of the agent or the company to provide appropriate written disclosure. Disclosure should be clear and appropriate to the client. Disclosure documents which are not clear and appropriate may be found to not meet the written disclosure requirement under the regulation.

4. Q. Is the onus on the agent or the company to provide disclosure?
Who keeps a copy of the written disclosure?
Does the client sign the disclosure as evidence of receipt of written disclosure?

A. Disclosure is the agent's responsibility. It is the insurer's responsibility to ensure that agents comply with the regulation. Agents should keep a record as proof that the required disclosure took place.

5. Q. Do the new conflict of interest requirements apply to policies in force, i.e. a whole life policy, or a universal life policy requiring revisions to investments or deposits?

A. There is no "grandfathering" of existing relationships under the new regulation. Therefore, just because there is an existing client and an existing policy does not mean the conflicts regulation has no application. However, refer to section 16 of the new regulation. It refers to a conflict of interest associated with a "transaction or recommendation". If there is no transaction or recommendation concerning an existing contract, (e.g. if there are no changes or advice provided), there is nothing to disclose. It is not intended that agents would have to revisit and identify actual or potential conflicts that existed when the original contract was signed (although nothing prevents it either). On the other hand, if the agent is giving advice or making changes to the contract after November 1, 2004, the disclosure rule applies.

6. Q. If an agent sells a policy during a contest period, should he or she disclose that?

A. The agent should consider the two questions noted below to assess if he or she should disclose. The agent should ask whether the advice would be different, absent the incentive. Assuming the advice would not change, would an informed third party perceive that the agent has an incentive to act other than in the client's best interest. Asking these questions should serve as a guide to assess whether or not a conflict exists, in the majority of situations.

If there is any doubt at all, disclose.

<u>**Concurrent Employment**</u>

7. Q. Will removing the full-time requirement for general and A&S agents and permitting concurrent occupations for all agents result in decreased consumer protection?

A. No. The changes do not lower standards.

All agents are required to pass the provincial licensing examinations and maintain currency of knowledge. All agents are bound by the same requirements regarding licensing and conduct, regardless of the number of hours they work as an agent.

This regulation extends the opportunity that Level ll agents already had under previous regulation, to all agents, and treats insurance agents like other professionals.

Ontario joins nine other Canadian jurisdictions that permit insurance agents to hold concurrent employment. The new changes are subject to the requirement that the other employment does not result in the use of coercion or undue influence or jeopardize the agent's integrity, independence or competence.

Other jurisdictions have not found an increase in consumer complaints or enforcement actions as a result of permitting agents to hold additional employment.

8. Q. If my company (sponsor) won't let me hold other employment, what can I do?

A. While the regulation removes the prohibition against an agent holding concurrent employment, an employer or sponsor may have its own requirements governing its agents.

9. Q. If I get another job while licensed, do I need to advise FSCO?

A. You are not required to advise FSCO that you hold another job in addition to being a licensed agent until your next licence renewal application. However, if you are directly asked by FSCO to provide this information at any other time, as in the case of an audit for example, you are required to provide the information.

10. Q. Why were the lists of prohibited occupations contained in Regulation 663 eliminated?

A. The former rules deemed that certain occupations put agents in a position to use undue influence or coercion, whether or not any existed. Regulation 347 recognizes that the use of coercion and undue influence arise through the interaction of an agent and client during a transaction but that it may, or may not, have any connection to a concurrent occupation held by the agent.

The avoidance of the use of coercion and undue influence, including through the influence of a business or professional relationship, is a requirement imposed on all life agents. This establishes a better and more direct standard of care with which to ensure the protection of the public.

The Superintendent retains the authority to refuse a licence application if the Superintendent is of the view that the occupation or business would jeopardize the applicant's independence, integrity or competence, as an agent.

The right to appeal a decision of the Superintendent has not changed.

11. Q. As an insurance agent, can I hold a previously excluded occupation or share office space with those who are engaged in a previously excluded occupation?

A. There is no longer an automatic prohibition. You do not need approval from FSCO. The occupation you are engaged must not jeopardize your integrity, independence or competence as an agent.

Your employer or sponsor, however, may have corporate policies which restrict your ability to hold other employment. You should discuss your plans with the company.

In addition, if you intend to hold an occupation which is regulated under other legislation which has restrictions against holding other occupations, including acting as an insurance agent, you must comply with that legislation.

Ontario Mailing Address for Service of Legal Documents

12. Q. Why do I need an Ontario address for service of legal documents?

A. It is not reasonable for the Superintendent or an Ontario resident to have to go outside the province to enforce the *Insurance Act* or take legal action against an agent.

13. Q. Can my home address be my address for legal service if I live in Ontario?

A. Yes. Agents who reside in Ontario may use their home address as their address for legal service, if it meets the criteria set out in the regulation.

14. Q. If my home address is not in Ontario, can I use my home address as the address for service of legal documents?

A. No. Agents residing outside Ontario must arrange for an address for legal service in Ontario and advise FSCO of the address.

FSCO will, however, send all regular mail to your home address in order to ensure that it is received promptly. FSCO has found that business address information often becomes obsolete and is not a reliable way of getting mail to agents.

Non-resident Agents

15. Q. I live in Gatineau. Can I get an Ontario licence?

A. Provided you have an Ontario address for the service of legal documents which meets the requirements (i.e. is suitable to permit the delivery of registered mail, and is not a post office box) and you meet all other licensing requirements, you can apply for an Ontario agent's licence.

16. Q. I'm an agent in New York state. Can I sell insurance in Ontario or get an Ontario licence?

A. You cannot sell insurance in Ontario unless you hold an Ontario insurance agent's licence and have an Ontario address for service. If you meet the Ontario licensing requirements you can sell insurance in Ontario. At the present time, however, there is no policy regarding non-Canadian licensing equivalencies, particularly, those related to the educational requirements set out in licensing regulations.

17. **Q. Can an Ontario Head Office address be used by out of province agents?**

A. Yes. The Ontario mailing address requirement can be met in a number of ways by the agent. One way is to use the mailing address of the head office of the insurer or the agency, if that address is in Ontario, and provided the insurer or agency agrees to accept documents on behalf of the agent.

18. **Q. I've held a life licence in another Canadian province for 6 months. Do I need to re-write the exams to get an Ontario life licence? Do I need a sponsor? If so, for how long?**

A. You do not need to re-write the LLQP exams. Ontario requires new life agents to be sponsored for two years. Therefore, you will need a sponsor for the remainder of the two year period, i.e.18 months.

<u>Agency Licensing</u>

19. **Q. I'm the sole officer of an agency. Do I need an insurance licence?**

A. The agency must be licenced as does any individual who engages in the activities of an agent. However, if you are not engaged in any activity described in the *Insurance Act* or regulations that requires licensing as an agent, such as the solicitation or selling of insurance to clients, and the company employs a staff that carries out these activities, you do not need to hold an agent licence to own or be an officer or director of an agency.

<u>General Questions</u>

20. **Q. What penalty could apply to insurers if they do not live up to their compliance duties in section 12?**

A. If insurers don't meet requirements in this or any other regulation, the insurer is subject to prosecution for failure to comply with the regulation. The Superintendent can also issue an order against the insurer requiring it to take such action as the Superintendent feels is necessary to remedy the situation, impose terms and conditions, or suspend or revoke a licence.

21. **Q. Is the insurer still responsible for notifying FSCO of termination of sponsorship of agents?**

A. Yes, this is still a requirement.

22. **Q. As a life agent, do I still need to obtain 30 hours CE credits if I'm only working part-time?**

A. Yes. All life agents, regardless of whether they hold other employment, must complete 30 hours CE credits in each licensing period.

23. **Q.** **Are we anticipating the issuing of licenses with conditions?**

A. Yes, if necessary.

24. **Q.** **A new "restricted" agent needs a supervisor for the first 2 years. Can the supervisor be a non-resident?**

A. Yes, as long as they meet the requirements under the regulation to supervise agents holding restricted licences.

25. **Q.** **Are there any changes in the requirements regarding a life insurance agent needing to maintain errors and omissions insurance?**

A. No. The requirements have not changed. A life insurance agent must maintain errors and omissions insurance with a limit of at least $1,000,000 in respect of any one occurrence and with extended coverage for loss from fraudulent acts. In addition, the regulation requires that the errors and omissions insurance be in a form approved by the Superintendent. Under this provision, the Superintendent requires that an aggregate limit be at least $2,000,000 and a deductible be no more than $1,000.

INTERNET APPLICATION SYSTEM

26. **Q.** **To use the Internet Application System, are companies to be given an ID account or number?**

A. Companies must contact FSCO to obtain this information. The related forms are on FSCO's website.

27. **Q.** **Will FSCO still be issuing paper licenses?**

A. Yes.

28. **Q.** **Can one company have more than one account?**

A. Yes.

29. **Q.** **When can we get copies of the new paper application form?**

A. FSCO expects that most applications will be made via the IAS, which is currently ready for use. The paper application form will be available soon, and will be posted on the FSCO website.