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Bulletin

No.G-02/96

- General

Prosecutions and Hearings - 1995

Prosecutions

There were nine agent prosecutions, and one company prosecution during 1995. The cases, heard in Ontario Court (Provincial Division), were disposed of as follows:

Charge:	**Breaching the Take-All-Comers provisions of the Facility Association's Articles contrary to the *Compulsory Automobile Insurance Act***
Against:	**Lumbermens Mutual Casualty Company (Toronto)**
Verdict:	**Guilty**

Lumbermens Mutual Casualty Company pleaded guilty in provincial court on December 5, 1995 to the above charge. The company had made an arrangement with one of its brokers that violated Lumbermens' filed underwriting rules and breached the Take-All-Comers requirements of the Facility Association's Plan of Operation, thereby violating the *Compulsory Automobile Insurance Act*. The company was fined $45,000.

Charge:	**Furnishing false information**

Against: Babijide Odusanya (Mississauga) formerly sponsored by Sun Alliance and London Life Insurance Company

Verdict: Guilty

Babijide Odusanya was found guilty after a trial in provincial court on February 14, 1995 to a charge of providing false information to the Ontario Insurance Commission (OIC) in his application for a life insurance agent's licence. He failed to disclose criminal charges pending against him. He was fined $200. Mr. Odusanya is not currently licensed.

Charge: Failing to co-operate with an OIC investigation

Against: Keith E. Bellamy (Toronto) formerly sponsored by The Manufacturers Life Insurance Company

Verdict: Guilty

Mr. Bellamy pleaded guilty in provincial court on June 27, 1995 for failing to co-operate with an OIC investigation. He had been asked to explain certain allegations made against him, and despite promising to do so, failed to provide that explanation. A fine of $1,000 was imposed.

Charge: Working as an agent while unlicensed

Against: Peter Hobson (Toronto) formerly sponsored by London Life Insurance Company; currently sponsored by North American Life Insurance Company

Verdict: Guilty

Peter Hobson pleaded guilty in provincial court on November 21, 1995 to a charge of acting as a life insurance agent without ensuring that he was properly licensed. Mr. Hobson has been a licensed agent since 1991 but failed to ensure that his licence was properly renewed between October 23, 1993 and May 15, 1995. During this period Mr. Hobson continued to sell insurance products. A fine of $1,000 was imposed.

Charge: Working as an agent while unlicensed

Against: Friedman and Associates Insurance (Markham)

Verdict: Guilty

On October 25, 1995, the life insurance agency of Friedman and Associates Insurance was found guilty of carrying on business as an unlicensed insurance agent. The agency was previously licensed but failed to apply and submit a renewal for the 1994 licensing year. The firm also had filed its renewals late in 1993 and 1995. A fine of $1,400 was imposed by the provincial court in Toronto.

Charge: Furnishing false information

Against: Majid Darwich (Toronto) formerly sponsored by Mutual of Omaha Insurance Company

Verdict: Guilty

On January 10, 1995, Mr. Darwich was convicted of furnishing false information to the OIC by the provincial court in Toronto. Mr. Darwich failed to disclose in his application for an insurance agent's licence that he had been convicted of an offence in 1993. The Justice of the Peace ruled that the questions on the application are clear and unambiguous, and demand a correct answer. The onus, the ruling said, is on the applicant to read the questions and ensure that the answers are correct. A fine of $500 was imposed. Mr. Darwich withdrew his licence application.

Charge: Furnishing False Information

Against: Daryl Similas (Sutton) sponsored by The Great-West Life Assurance Company

Verdict: Guilty

On December 12, 1995, the provincial court in Toronto convicted Daryl Similas on the charge of furnishing false information to the OIC. Mr. Similas is a licensed agent. In 1992 he failed to renew his licence and in 1993 he was required to submit an application in order to enter the industry again. Mr. Similas failed to disclose in his application the fact that in 1992 he had been found guilty of an offence and given a conditional discharge. The court imposed a fine of $800.

Charge: Furnishing False Information

Against: Terry Maiato (Hamilton) formerly sponsored by The Canada Life Assurance Company

Verdict: Guilty

The provincial court in Toronto convicted Mr. Maiato on the charge of furnishing false information to the OIC on May 16, 1995. Mr. Maiato failed to disclose his three Criminal Code convictions in his application for an insurance agent's licence. A fine of $500 was imposed. Mr. Maiato's sponsorship was withdrawn and his licence application discontinued.

Charge: Furnishing False Information

Against: Roy G. Pollington (Burlington) formerly sponsored by The Imperial Life Assurance Company of Canada

Verdict: Guilty

Mr. Pollington was convicted in the provincial court in Toronto of furnishing false information to the OIC on September 12, 1995. He has last been licensed in 1990 and was applying to enter the industry again. The applicant failed to disclose on his application the fact that in June 1994 he had been convicted of an offence. The court fined Mr. Pollington $750. Mr. Pollington's application was referred to an Advisory Board to consider his suitability to receive a licence.

Charge: Furnishing False Information

Against: William James Bisson Jr. (Mississauga) formerly sponsored by Penncorp Life Insurance Company

Verdict: Guilty

A conviction for furnishing false information to the OIC was registered against Mr. Bisson in the provincial court on November 28, 1995. On his application for a licence, Mr. Bisson had lied about the circumstances surrounding his conviction. The court fined Mr. Bisson $500 and gave him six months to pay the fine.

Hearing decisions

An Advisory Board assists the Superintendent of Insurance (the Superintendent) in determining whether to grant or refuse a new licence or whether to revoke or suspend an existing licence for insurance agents and adjusters. The board considers, in hearings, evidence presented by the applicant or agent, as well as that put forward by counsel for the OIC.

The Commissioner of Insurance (the Commissioner) also hears matters. These range from appeals of Superintendent's decisions on agents' or adjusters' licences to those that relate to licences for insurers. During 1995, a total of five Advisory Board hearings and three Commissioner's appeals hearings took place.

Appeals-Reconsiderations

Life agent / agency:	**James W. Davies / Jim Davies Insurance Agencies Limited (Newmarket) formerly sponsored by The National Life Assurance Company of Canada Reconsideration of**
Appeal decision released:	**November 28, 1995**
Commissioner's Decision:	**Appeal decision affirmed**

Mr. Davies requested that the Commissioner reconsider his appeal decision that was reported in OIC Bulletin No. G-3/95. After reconsidering his decision, the Commissioner affirmed the appeal decision. As a result, Mr. Davies will still be required to submit a new application for a life insurance agent's licence and will have to rewrite the qualifying examinations.

Upon successful readmission as a licensed agent, Mr. Davies will be required, during the first 12 months after being granted a licence, to provide evidence of attendance at a training class or seminar on insurance agent ethics and practices, submit a quarterly report on his activities as an agent, and submit to an audit of his practice by the Superintendent. The 12-month suspension imposed as a penalty was not reduced by the Commissioner as requested by Mr. Davies.

Life agent/agency:	**Shelley L. Davies-Mcdowall (Newmarket) formerly sponsored by The National Life Assurance Company of Canada**
Appeal decision released:	**May 4, 1995**
Commissioner's Decision:	**Licence revoked**

Shelley Davies-Mcdowall's hearing before an Advisory Board was first heard June 20, 1994. She was found to have forged a policyholder's signature on an application for life insurance, among other things. The details of her case were reported in OIC Bulletin No. G-3/95. Ms. Davies-Mcdowall's licence was revoked by the Superintendent on August 30, 1994. Ms. Davies-Mcdowall appealed the decision of the Superintendent.

A Commissioner's Interim Order (Order) was issued December 16, 1994, suspending Ms. Davies-Mcdowall's licence pending her appeal hearing. The appeal was heard on May 4, 1995. After hearing

submissions from Ms. Davies and from counsel for the Superintendent, the Commissioner affirmed the Superintendent's Order revoking Ms. Davies' life insurance agent's licence.

Life agent/agency:	**Larry I. Kleinmintz (Thornhill) formerly sponsored by North American Life Assurance Company**
Appeal decision released:	**April 18, 1995**
Commissioner's Decision:	**Licence suspended for 11 months beginning May 30, 1995**

Larry Kleinmintz's licence was revoked by the Superintendent on August 30, 1994. His suitability to hold a licence was questioned because of his unsatisfactory record in a previous business. Details were provided in OIC Bulletin No. G-3/95. Mr. Kleinmintz appealed the Superintendent's Decision to the Commissioner.

After hearing submissions from both Mr. Kleinmintz's counsel and the counsel for the Superintendent, the

Commissioner ordered that the penalty be varied from a revocation of licence to a suspension of licence for a period of 11 months beginning May 30, 1995. Mr. Kleinmintz subsequently requested that the Commissioner reconsider his decision, but the Commissioner affirmed the decision made on appeal.

Advisory Board hearings

Life agent:	**Francis Wayne Fowler (Welland) formerly sponsored by Commercial Union Life Assurance Company of Canada**
Date of Decision:	**November 3, 1995**
Result:	**Eight-month suspension**

The Superintendent called for an Advisory Board hearing to consider the suitability of Mr. Fowler to continue to hold a licence in light of allegations of forgery and bearing false witness raised by Mr. Fowler's previous sponsor, Canada Life. Mr. Fowler admitted forging policyholder signatures on policy receipts and causing policies to be issued to clients against their clear instructions to the contrary. In addition, the agent admitted to misleading OIC investigators on two separate occasions in the course of their investigation.

In considering the length of suspension to impose, the Advisory Board's report and the Superintendent considered the 13 months Mr. Fowler had been unable to work after he was dismissed from Canada Life. In addition to the eight-month suspension to April 10, 1996, Mr. Fowler's readmission is conditional on his successful rewriting of the Life and Accident & Sickness examinations, his joining and maintaining membership in the Life Underwriters Association of Canada and its education programs, and his business being closely monitored by his sponsor.

Applicant:	**Roy G. Pollington (Burlington) sponsored by Imperial Life Assurance Company**
Date of Decision:	**November 30, 1995**
Result:	**Application denied**

Mr. Pollington applied for a life insurance agent's licence. In his application he failed to disclose a conviction in 1994. As a result, he was prosecuted and convicted for furnishing false information (please see the "Prosecutions" summary on the charge against Roy G. Pollington elsewhere in this Bulletin). In addition to the 1994 conviction, Mr. Pollington had a number of earlier convictions dating back to 1959.

The finding of the Advisory Board, which was accepted by the Superintendent, was that Mr.Pollington's failure to disclose the June 1994 conviction was an intentional omission made for the purpose of enhancing the likelihood for success of the application. The panel also noted the litany of criminal convictions. The Advisory Board recommended that the application be refused. The recommendation was accepted by the Superintendent and the application for licence was denied.

Agent:	**John David Bailey (Burlington) sponsored by Prudential of America Life Insurance Company (Canada)**
Date of Decision:	**June 23, 1995**
Result:	**Six-Month Suspension**

The sponsoring company had terminated Mr. Bailey's employment for cause. As a result of the termination, an investigation was initiated. Prior to the issuance of formal proceedings, Mr. Bailey and the Superintendent agreed to settle the matter without the need for a hearing.

In the minutes of settlement, Mr. Bailey admitted certain allegations. These include: failing to follow the repeated instructions of a client to cancel a policy; the signing of deposit and transfer forms in the name of a client without the client's knowledge or consent; offering to personally pay the cash surrender value of a policy in order to avoid the commission chargeback; and selling insurance while his licence was suspended. Pursuant to the minutes of settlement the Superintendent ordered a suspension of Mr. Bailey's licence for six months, effective December 15, 1994.

Agent:	**Emmanuel Nkodo (formerly of Stratford) formerly sponsored by Zurich Life Insurance Company**

Date of Decision:	**March 29, 1995**
Result:	**Licence revoked**

The Superintendent had called for a hearing into allegations that Mr. Nkodo had been guilty of fraudulent practices and was not otherwise a suitable person to hold a life insurance agent's licence. Although given an opportunity to be heard by an Advisory Board, Mr. Nkodo failed to respond.

As a result, the Superintendent considered the evidence before him and found that Mr. Nkodo submitted applications of insurance purported to be signed by the applicants when they were not, used internal transfer methods from other policies to pay the premiums of those new policies, improperly endorsed a cheque not made payable to him, and submitted an application for life insurance with incorrect medical information which resulted in a premium much lower than it ought to have been. The Superintendent revoked Mr. Nkodo's licence.

Agent:	**Roman I. Mamalyga (Toronto) formerly sponsored by Mutual of Omaha**
Date of Decision:	**March 22, 1995**
Result:	**Nine-month Suspension**

The sponsoring company had terminated Mr. Mamalyga's employment. As a result of allegations raised about his conduct, an investigation was initiated by the OIC. Formal disciplinary proceedings were commenced but, prior to a hearing, Mr. Mamalyga entered into minutes of settlement and accepted a nine-month suspension of his licence.

The agent admitted that he bore false witness to an insurance application, submitted an application knowing that it had not been signed by the applicant, forged the signature of an applicant, failed to follow the instructions of his client, and offered a cash reward to his client if she would not pursue her complaint. The Superintendent ordered that the licence be suspended for nine months. In addition, readmission is conditional upon enrolment in, and successful completion of the Level I Training course at L.U.A.C. and written confirmation from his sponsor that it is aware of the terms and conditions attached to the reinstated licence.

Other OIC hearings and related court actions

Action: Possession and Control Order; Winding-up Order

Against: Maplex General Insurance Company

A hearing was held before the Commissioner on March 9, 1995 to consider a report of the Superintendent regarding the financial condition of Maplex General Insurance Company and the views of the company=s management and owners. As a result, the Commissioner ordered the Superintendent to take possession and control of Maplex's assets.

Shortly thereafter, the Superintendent made an application to the Ontario Court (General Division) for an Order winding up Maplex. The court made the Winding-up Order on March 21, 1995. Maplex is currently being wound up by Deloitte & Touche, Inc., agent for the Superintendent, who is acting as provisional liquidator.

Action: Licence hearings

Against: York Fire & Casualty Insurance Company

A report in May 1995 by the Superintendent to the Commissioner indicated that York Fire & Casualty Insurance Company (York Fire) did not have sufficient capital to continue to support its business plan. A hearing was held on May 24, 1995. As a result of the hearing, the Commissioner ordered that a number of conditions be placed on York Fire's licence. These included restrictions on non-arm's length transactions, a restriction on payments to certain specified individuals, minimum requirements for the board of directors, and certain financial restrictions based on capital and net written premiums.

York Fire did not satisfy the financial conditions and a further hearing was convened on December 13, 1995 and continued on January 2 and 3, 1996. By the end of 1995, York Fire did not meet the financial conditions imposed upon it by the Commissioner, and has since been sold to a new owner which has the resources necessary to support the company.

Grant Swanson

Acting Superintendent of Insurance

May 3, 1996

Last Modified: 9/30/2005 10:50:01 AM

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