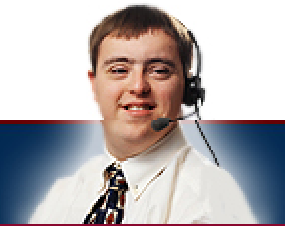

Bulletin

No. G-08/97

- General

Monitoring and enforcement report - including prosecution and hearing decisions - for third quarter 1997

Beginning with this Bulletin on monitoring and enforcement, the Ontario Insurance Commission (OIC) is replacing the "prosecution and hearings decisions" Bulletins that it has been publishing since 1992. While maintaining reportage on OIC prosecution activities and the decisions arising out of OIC hearings, the content of this superseding Bulletin covers other regulatory activities that the OIC undertakes to help ensure consumer confidence in the insurance system in Ontario.

The information in "Monitoring and Enforcement" Bulletins is being presented under these classifications:

- Monitoring activities
- Monitoring results
- Dispute resolution (DR) penalty decisions
- Prosecutions
- Hearings

MONITORING ACTIVITIES

Re Agents and Adjusters

The OIC conducts police background checks on prospective agents, and reviews complaints against agents made by agents, insurers and policyholders. In addition, the OIC audits approximately 10% of all life agent renewal applications to ensure continuing education requirements are met. These checks, reviews and audits are the first step in the enforcement process. Most matters are resolved at this first step.

During the third quarter of 1997, the OIC undertook the following:

- **Police Checks**

  1,340 checks on the background of prospective agents were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

  42 complaints relating to agents were received. The subjects of the complaints included forgeries, misrepresentation, misappropriation of funds, agent misconduct, acting without a licence, policy replacements and additional employment.

- **Audits**

  123 audits of continuing education by life agents were initiated.

MONITORING RESULTS

Re Agents and Adjusters

Based on the police checks conducted, complaints received and audits completed, some matters may require investigation. Assignment to investigation is the second step in the enforcement process and is used where prosecution or Advisory Board hearings (see "Prosecution" and "Hearings" sections below) may be involved.

- **Complaints referred to Investigation**

  Of the 42 complaints received, 11 cases were forwarded to OIC investigators, 4 resulted in letters of censure, 12 were closed for various reasons and 15 are still in progress.

- **Letters of Warning**

  Two hundred Letters of Warning were issued to life agents who were late in applying for licence renewal.

- **Letters of Censure**

Six Letters of Censure were issued to life agents who did not provide full disclosure of information on their licence applications. An additional four Letters of Censure were issued as a result of complaints received against life agents.

DISPUTE RESOLUTION PENALTY DECISIONS

The OIC may decide, through the arbitration processes it uses to resolve disputes between insurers and accident benefits claimants, to impose penalties under the Insurance Act (the Act). Under section 282(10) of the Act, a Special Award may be made to recognize unreasonable and unwarranted behaviour of an insurer. Under section 282 (11.2) of the Act, an Assessment Award may be against an insured person for a frivolous or vexatious action.

During the third quarter of 1997, the OIC made the following Special Awards and Assessment Awards:

Type of Decision	**Arbitration**
Applicant	**Sunanda Saini**
Insurer	**CIBC General Insurance Company Ltd.**
Penalty	**Assessment Award**

The OIC made a decision, on July 7, 1997, regarding accident victim Sunanda Saini's application for an OIC arbitration hearing involving CIBC General Insurance Company Ltd. The applicant was ordered to pay the insurer the sum of $2,000, which represented the return of the assessment that the insurer was required to pay for the arbitration hearing. The insurer argued successfully that the applicant initiated an arbitration that was frivolous, vexatious or an abuse of process.

Type of Decision	**Arbitration**
Applicant	**Teodor Brait**
Insurer	**Allstate Insurance Company of Canada**
Penalty	**Special Award**

The OIC made a decision, on July 23, 1997, regarding accident victim Teodor Brait's application for arbitration involving Allstate Insurance Company of Canada. The applicant received a Special Award of $5,000, including interest, following a determination that the insurer was unreasonable in withholding weekly income benefits that Mr. Brait was entitled to receive.

PROSECUTIONS

There were two insurer prosecutions and three agent prosecutions during the third quarter of 1997. The cases were disposed of as follows:

Charge:	**Unfairly delaying or resisting the payment of a claim**
Against:	**Trafalgar Insurance Company of Canada**
Verdict:	**Guilty**

On July 29, 1997, Trafalgar Insurance Company of Canada pleaded guilty in provincial court to a charge of conduct resulting in the unreasonable delay or resistance to the fair adjustment or settlement of a claim, thereby engaging in an unfair or deceptive act or practice. The claim related to a fire loss of an automobile in 1987. Trafalgar was fined $25,000 in addition to a 20% surcharge that is applied to all provincial offence fines.

Charge:	**Using rates not filed with the Ontario Insurance Commission**
Against:	**Canadian General Insurance Company**
Verdict:	**Guilty**

On September 23, 1997, Canadian General Insurance Company pleaded guilty in provincial court to a charge of using rates for its Wayfarer Motor Homes - Rented which had not been filed with the OIC. This activity took place between 1992 and 1996. Canadian General has since filed the requisite rates for that book of business. Canadian General was fined $40,000 in addition to a 20% surcharge that is applied to all provincial offence fines.

Charge:	**Acting as a life insurance agent without a licence**
Against:	**James Childs (Aurora)**
Verdict:	**Guilty**

On July 16, 1997, Mr. Childs pleaded guilty in provincial court to a charge of acting as a life insurance agent when his licence to do so had expired. The court assessed a fine of $1,000 in addition to a 20% surcharge. Mr. Childs was given six months to pay. He is not currently licensed.

Charge:	**Furnishing False Information**
Against:	**James Axler (Kitchener), (originally sponsored by American Income Life Insurance Company, since withdrawn)**
Verdict:	**Guilty**

On August 6, 1997, Mr. Axler pleaded guilty in provincial court to a charge of providing false information to the OIC in an application for an insurance agent's licence. Mr. Axler failed to disclose that he had been disbarred as a lawyer. He was fined $750 and in addition, a surcharge of $100 was imposed. Mr. Axler's sponsor withdrew its support of his application before this matter was heard in court.

Charge:	**Furnishing False Information**
Against:	**Richard Somenzi (Mississauga), Level II**
Verdict:	**Guilty**

On September 9, 1997, Mr. Somenzi pleaded guilty in provincial court to a charge of furnishing false information. He had failed to disclose the revocation of his registration with the Registered Insurance Brokers of Ontario in his application for the renewal of his life agent's licence. Mr. Somenzi was fined $750 in addition to a surcharge of $100.

HEARINGS

An Advisory Board assists the Superintendent of Insurance (Superintendent) in determining the granting or refusal of a new licence or the possible revocation or suspension of an existing licence for insurance agents and adjusters. The board considers evidence presented by the applicant or agent as well as that put forward by counsel for the OIC. The board makes a recommendation to the Superintendent and the Superintendent makes a decision.

Insurance agents and adjusters may appeal decisions of the Superintendent of Insurance to the Commissioner of Insurance. Commissioner's appeal hearings are conducted by the Commissioner or a person appointed by the Commissioner.

During the third quarter of 1997, one Advisory Board hearing was scheduled and held; and one application to the Commissioner appealing on Advisory Board recommendation was withdrawn.

(i) Advisory Board hearing

Life agent:	**Matthew Rath (Toronto) sponsored by Toronto Dominion Life Insurance Company**
Advisory Board Hearing:	**July 15, 1997**
Superintendent's decision:	**Application denied September 19, 1997**

An Advisory Board hearing was conducted on July 15, 1997 to consider Mr. Rath's re-application for a life insurance agent's licence. Mr. Rath had been previously licenced as an agent under the sponsorship of a life insurer but his agency agreement had been terminated in 1995 for forging the signatures of two clients on an amendment to a policy. The panel recommended that the application be denied. The Superintendent adopted the recommendation of the panel and ordered the application be denied.

(ii) Commissioner's Appeal Hearing

Life agent:	**Yves Cyr (Cornwall) sponsored by Industrial-Alliance Life Insurance Company**
Appeal Hearing:	**Appeal Withdrawn**

In OIC Bulletin No. G-6/97-- General, dated August 26, 1997, the OIC reported that Mr. Cyr had his life insurance agent's licence revoked by the Superintendent after an Advisory Board recommendation to that effect. Mr. Cyr appealed that decision, but withdrew his appeal prior to the Commissioner's hearing. Mr. Cyr's licence is currently revoked.

Grant S. Swanson

Acting Superintendent of Insurance

December 8, 1997

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