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Bulletin

No. G-04/98

- General

Monitoring and Enforcement Report - Including Prosecution and Hearing Decisions - for Fourth Quarter 1997 and First Quarter 1998

Ontario Insurance Commission (OIC) Monitoring and Enforcement bulletins report on its prosecution activities, the decisions arising out of the hearings it conducts, and other regulatory activities that help ensure consumer confidence in the insurance system in Ontario.

Many changes are occurring in the enforcement process. Recently, the OIC issued a Bulletin that described a protocol for reporting situations where there is evidence of agents who have contravened the *Insurance Act* (the *Act*) and its regulations. Also, the OIC is changing its approach to advisory board hearings to help improve administrative processes. Hearing dates are now set in advance for several months, and any cases ready to be heard are scheduled on the first available hearing date. This will mean that a panel can hear several cases rather than convening a panel for each case.

RESULTS OF MONitoring activities -- first step in the enforcement process

Re: Agents and Adjusters

The OIC undertakes a number of monitoring activities as part of its regulatory functions. It conducts police background checks on prospective agents, and also reviews complaints against agents made by other agents,

insurers and policyholders. In addition, the OIC audits approximately 10% of all life agent renewal applications to ensure they meet continuing education requirements. These checks, reviews and audits are the first step in the enforcement process. Most matters are resolved at this first step.

During the fourth quarter of 1997 and the first quarter of 1998, the OIC undertook the following:

- **Police Checks**

  A total of 2,940 police checks on the background of prospective agents were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

  The OIC received 100 complaints about the conduct of agents for the two quarters (October 1, 1997 to March 31, 1998). The subjects of the complaints included fraud, forgeries, misrepresentation, misappropriation of funds, agent misconduct, acting without a licence, policy replacements and rebating. Eighty-two reviews were completed, and 33 are still in progress.

Overview of Complaints

Complaints in progress, from third quarter, 1997	15
Plus: *Complaints received* during fourth quarter, 1997	53
Plus: *Complaints received* during first quarter, 1998	47
Less: *Complaints in progress* at end of first quarter, 1998	33
Complaint reviews completed during fourth quarter, 1997 and first quarter, 1998	82

Disposition of Complaint Reviews

Cases forwarded to Investigation	21
Letters of Censure issued	21
Cases closed	40
Total	82

Cases may be closed for a variety of reasons. The most common are: the issue

raised is outside the OIC's jurisdiction; there is insufficient evidence to substantiate a complaint; or the complaint is unfounded.

- **Audits**

The OIC initiated 302 audits of life agents to ensure they met their continuing education requirements.

RESULTS OF INVESTIGATIONS -- second step in the enforcement process

Re: Agents and Adjusters

As a follow up to its regular monitoring activities -- police background checks on prospective agents, the reviews of complaints received against agents, and audits of agents' compliance with continuing education requirements -- the OIC may decide that some matters be investigated.

An investigation is the second step in the enforcement process. It is used where prosecution or Advisory Board hearings may be contemplated.

During the fourth quarter of 1997 and the first quarter of 1998, the OIC undertook the following:

- **Investigations initiated**

A total of 91 cases were forwarded to Investigations.

Source of investigations

Complaints about agent conduct	20
Allegations of unsuitability of agents	27
Doing business without a licence in force	27
Continuing Education credits	17
	91

Outcome of investigations

A total of 57 cases were completed:

Charges in Provincial Offences court	12
Advisory Board Hearings	4
Sponsorship of agent withdrawn	6
Licence surrendered by agent	3
Undertaking by agent	1
Closed files	31
	57

Cases may be closed if there is insufficient evidence to support the allegations, or if the allegations are unfounded.

- **Letters of Warning**

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

- **Letters of Censure**

Nineteen Letters of Censure were issued to life agents who did not provide full disclosure of information on their licence applications. An additional 21 Letters of Censure were issued as a result of complaints received against life agents.

- **Surrendered licences**

The details surrounding the surrendering of licences, indicated in the investigation statistics above, are as follows:

Dennis Howarth was an agent who failed to comply with the continuing education requirements. He surrendered his licence.

Alexander Nicholson had been charged with several Criminal Code offences while licensed. He surrendered his licence.

Anthony Lawes was an agent who failed to comply with the continuing education requirements. He surrendered his licence.

Dispute resolution penalty decisions

Through various dispute resolution processes involving insurers and statutory accident benefits claimants, an

arbitrator may decide to impose penalties under 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 made against an insured person if the arbitration is frivolous or vexatious, or an abuse of process.

During the two quarters under review in this Bulletin, the OIC made the following awards:

Type of Decision: **Arbitration**

Applicant: **Veljko Dubajic**

Insurer: **State Farm Mutual Automobile Insurance Company**

Penalty: **Assessment Award**

An arbitration decision was released on October 21, 1997 regarding the application by State Farm Mutual to obtain repayment of all benefits paid to Veljko Dubajic, and to receive an award of its assessment and expenses against the claimant. The arbitrator determined that Mr. Dubajic abused the arbitration process by failing to comply with pre-hearing production orders, evaded the OIC's attempts to communicate with him, and failed to participate in pre-hearing discussions. As a result, Mr. Dubajic was ordered to pay State Farm Mutual the sum of $2,000 by November 5, 1997, whether or not he proceeded with the arbitration scheduled for November 10 and 12 of 1997. Mr Dubajic subsequently withdrew his application for an appointment of an arbitrator.

Type of Decision: **Arbitration**

Applicant: **Mark McConachie**

Insurer: **GAN Canada Insurance Company Ltd.**

Penalty: **Special Award**

On December 18, 1997, an arbitration decision was released regarding an application for accident benefits by Mark McConachie involving GAN Canada Insurance Company. GAN claimed at the hearing that Mr. McConachie's disability did not result from the accident, and therefore he was not entitled to benefits. The arbitrator ruled, however, that the accident substantially affected Mr. McConachie's ability to perform his essential daily tasks and GAN unreasonably

delayed or withheld payment of benefits that he was entitled to receive. The applicant was awarded a lump sum special award of $10,000 to bear interest from the date of the decision. As of March 31, 1998, this matter was under appeal.

Type of Decision: **Arbitration**

Applicant: **Kathleen Ada Sheppard**

Insurer: **Personal Insurance Company of Canada**

Penalty: **Special Award**

On October 31, 1997, an arbitration decision was released concerning an application for accident benefits by Kathleen Ada Sheppard involving the Personal Insurance Company of Canada. The applicant received a special award of $2,750 following a determination that the insurer was unreasonable in withholding Other Disability Benefits that Mrs. Sheppard was entitled to receive.

Type of Decision: **Arbitration**

Applicant: **Michael P. Gosling**

Insurer: **Zurich Insurance Company**

Penalty: **Special Award**

On December 5, 1997, an arbitration decision was released concerning an application for accident benefits by Michael P. Gosling involving the Zurich Insurance Company. Mr. Gosling received a special award equivalent to 25% of the value of an IBM-compatible laptop computer, software and accessories that were determined to be required for his rehabilitation and pursuit of university studies. Zurich was also ordered to pay interest on the amount, as well as reimbursement for items found to be reasonably required for which he had already incurred expenses.

Type of Decision: **Arbitration**

Applicant: **Shannon Harper**

Insurer: **Liberty Mutual Insurance Company**

Penalty: **Special Award**

An arbitration decision was released on December 19, 1997 regarding the application for statutory accident benefits by Shannon Harper involving Liberty Mutual Insurance Company. The insurer was ordered to pay a special award of 40% of the value of three items: caregiver benefits that were withheld by the insurer; various vehicle costs including the modification, from manual to automatic, of the applicant's two family vehicles' transmission system, and vehicle rental costs that the applicant incurred for a specific period; other transportation services; and supplementary medical and rehabilitation expenses, and the cost of assistive devices. As of March 31, 1998, this matter was under appeal.

Type of Decision: **Arbitration**

Applicant: **RW (Mr.)**

Insurer: **Motor Vehicle Accident Claims Fund**

Penalty: **Special Award**

On January 6, 1998, an arbitration decision was released concerning an application for statutory accident benefits by RW involving the Motor Vehicle Accident Claims Fund (MVACF). It was determined that RW would receive a special award of $500, including interest on the amount, since MVACF unreasonably withheld payment for various expenses incurred by RW. As of March 31, 1998, this matter was under appeal.

Type of Decision: **Arbitration**

Applicant: **Cecil James Ellis**

Insurer: **TTC Insurance Company Limited**

Penalty: **Special Award**

On January 20, 1998, an arbitration decision was released concerning the application for other disability benefits by Cecil James Ellis involving the TTC Insurance Company Limited. The TTC was ordered to pay a special award of

$1,500 with interest on the grounds that it unreasonably withheld benefit payments to Mr. Ellis.

Type of Decision: **Arbitration**

Applicant: **James E. ("Ted") Mathers**

Insurer: **Algoma Mutual Insurance Company**

Penalty: **Special Award**

On February 4, 1998, an arbitration decision was released concerning an application by James E. ("Ted") Mathers for statutory accident benefits involving Algoma Mutual Insurance Company. The arbitrator determined that the company's action in terminating Mr. Mathers' income replacement benefits after 89 weeks was unreasonable. Mr. Mathers was, according to the decision, substantially unable to perform the essential tasks of his job if he were to return to work. Mr. Mathers received a lump sum award of 15% of the amount of weekly income benefits to which he was entitled, along with interest on other amounts owing to him by the insurer at a 2% rate of interest from the time the benefits first became payable. As of March 31, 1998, this matter was under appeal.

Type of Decision: **Arbitration**

Applicant: **Crystal MacAulay**

Insurer: **General Accident Assurance Company of Canada**

Penalty: **Special Award**

On February 9, 1998, an arbitration decision was released concerning an application for accident benefits by Crystal MacAulay involving General Accident Assurance Company of Canada. Ms. MacAulay received a special award of $8,000 since it was determined that the insurer did not properly explain why it failed to pay the cost of services that she received. As of March 31, 1998, this matter was under appeal.

Type of Decision: **Arbitration**

Applicant: **Mark McKelvie**

Insurer: **Dominion of Canada Insurance Company**

Penalty: **Special Award**

On March 14, 1998, an arbitration decision was released regarding Mark McKelvie's application for accident benefits involving Dominion of Canada General Insurance Company. The insurer's action in terminating benefits was deemed to be unreasonable. The insurer claimed at the hearing that Mr. McKelvie had worked through his injury and had substantially recovered when it decided to stop paying him benefits after 156 weeks. The applicant was awarded 35% of the amount of benefits he was entitled to from the date of the arbitrator's decision, in addition to 2% interest, and unpaid interest, compounded monthly from the time that benefits first became payable. As of March 31, 1998, this matter was under appeal.

Type of Decision: **Arbitration**

Applicant: **M.T. (Mrs.)**

Insurer: **Allstate Insurance Company of Canada**

Penalty: **Special Award**

On March 23, 1998 an arbitration decision was released concerning the application for statutory accident benefits by Mrs. M.T. involving Allstate Insurance Company of Canada. MT received an award of $1,000 following a determination by the arbitrator that the company acted unreasonably in failing to pay a medical expense payable, pending resolution of a dispute concerning the expense. As of March 31, 1998, this matter was under appeal.

Type of Decision: **Arbitration**

Applicant: **John Desilva**

Insurer: **Canadian General Insurance Company**

Penalty: **Assessment Award**

On March 30, 1998, an arbitration decision was released concerning an application for income replacement benefits by John Desilva involving Canadian General Insurance Company. Mr. Desilva was ordered to pay the company one

half of the fee assessed against it for the arbitration hearing. Mr. Desilva''s failure to participate in the arbitration proceedings he initiated was determined to be "an abuse of process".

Prosecutions

Charge: Failing to Conduct Pre-Insurance Inspections

Against: Belair Insurance Company Ltd.

Verdict: Guilty

On October 14, 1997, Belair Insurance Company Ltd. pleaded guilty in provincial court to a charge of failing to comply with the pre-insurance inspection requirements for automobile insurance as required by section 232.1 of the Act. The insurer was fined $5,000, plus a 20% victim surcharge assessment.

Charge: Furnishing False Information

Against: Hemant Tandon (Toronto), sponsored by Mutual Life of Canada

Verdict: Guilty

On December 16, 1997, following a trial, Hemant Tandon was found guilty and convicted of furnishing false information in an application for a life insurance agent's licence. Mr. Tandon was fined $2,000, plus a 20% surcharge. Mutual Life withdrew its sponsorship immediately upon learning that the applicant had provided false information about himself in the application.

Charge: Practising While Unlicensed

Against: Dean French (Toronto) sponsored by London Life Insurance Company

Verdict: Guilty

On January 6, 1998, Dean French pleaded guilty in Toronto provincial court as an unlicensed life insurance agent after he failed to renew his licence. Mr. French was convicted and fined $700.

Charge: Practising While Unlicensed

Against: James Chestnut (London) sponsored by Aetna Life Insurance Company of Canada

Verdict: Guilty

In London provincial court on January 5, 1998, James Chestnut pleaded guilty to practising as an unlicensed life insurance agent after he failed to renew his licence. Mr. Chestnut was convicted and fined $500.

Charge: Practising While Unlicensed

Against: Frederick Travis (London) sponsored by London Life Insurance Company

Verdict: Guilty

On January 5, 1998, in London provincial court, Frederick Travis pleaded guilty to practising as an unlicensed life insurance agent after he failed to renew his licence. Mr. Travis was convicted and fined $500.

Charge: Practising While Unlicensed

Against: Stephen Robinson (Toronto) sponsored by Royal Life Insurance Company of Canada

Verdict: Guilty

In Toronto provincial court on January 6, 1998, Stephen Robinson pleaded guilty to practising as an unlicensed life insurance agent after he failed to renew his licence. Mr. Robinson was convicted and fined $500.

Charge: Practising While Unlicensed

Against: Daryl Becker (Hanover) sponsored by The Maritime Life Assurance Company

Verdict: Guilty

In Toronto provincial court on January 6, 1998, Daryl Becker pleaded guilty to practising as a unlicensed life insurance agent after he failed to renew his licence. Mr. Becker was convicted and fined $500.

Charge: Practising While Unlicensed

Against: Nicholas Godfrey (Oakville) sponsored by Westbury Life Insurance Company

Verdict: Guilty

In Brampton provincial court on January 6, 1998, Nicholas Godfrey pleaded guilty to practising as an unlicensed life insurance agent after he failed to renew his licence. Mr. Godfrey was convicted and fined $400.

Charge: Practising While Unlicensed

Against: John Hanson (Centralia) sponsored by Westbury Canadian Life Insurance Company

Verdict: Guilty

In London provincial court on March 20, 1998, John Hanson pleaded guilty to practising as a unlicensed life insurance agent after he failed to renew his licence. Mr. Hanson was convicted and fined $500.

Charge: Practising While Unlicensed

Against: Edward Wernham (London) sponsored by London Life Insurance Company

Verdict: Guilty

In Toronto provincial court on March 10, 1998, Edward Wernham Nicholas pleaded guilty to practising as a unlicensed life insurance agent after he failed to renew his licence. Mr. Wernham was convicted but the court did not impose a fine due to extenuating circumstances.

Charge: Practising While Unlicensed

Against: Ronald Dagg (Bayfield) sponsored by Aetna Life Insurance Company of Canada

Verdict: Guilty

In London provincial court on March 16, 1998, Ronald Dagg pleaded guilty to practising as a unlicensed life insurance

agent after he failed to renew his licence. Mr. Dagg was convicted and fined $500.

Charge: Furnishing False Information Practising While Unlicensed

Against: Steven Gerardi (Toronto) sponsored by American Income Life Insurance Company

Verdict: Guilty

On January 27, 1998, in Toronto provincial court, Steven Gerardi pleaded guilty to one count of furnishing false information in an application for a life insurance agent licence and to one count of selling insurance while unlicensed. Mr. Gerardi was previously licensed as an agent. After several years' absence from the industry he submitted an application for a new licence. In his application he failed to disclose a criminal conviction.

While awaiting proceedings before an Advisory Board to consider his application, Mr. Gerardi wrote several policies and attempted to submit them to an insurer for payment of a commission. A conviction was registered on both counts. The court imposed a fine of $500 on the false information conviction and $1,200 on the conviction for selling while unlicensed. Mr. Gerardi's application was withdrawn. He is not currently licensed.

Charge: Paying Unlicensed Agents

Against: London Life Insurance Company (London)

Verdict: Guilty

In London provincial court on February 2, 1998, London Life pleaded guilty to paying commissions to five of its agents who had failed to renew their life insurance agent licences. London Life accepted full responsibility for its failure to ensure that the licences of its agents were renewed. London Life explained that its ability to monitor its renewals was affected by its acquisition of the business and agents of another insurer. The company has since implemented a new system that will monitor whether an agent is licensed or not.

A conviction was registered and the court imposed a $15,000 fine, plus a $3,000 victim surcharge assessment.

Hearings

An Advisory Board assists the Superintendent of Insurance 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.

Life agent:	**Peter Frank Kett, Level II**
Advisory Board Hearing :	**November 14, 1997**
Result:	**Licence Suspended**

An Advisory Board hearing was conducted in London to consider allegations that Mr. Kett forged the signatures of clients on applications for policies. Mr. Kett admitted to the allegations against him. In its report of November 19, 1997, the Advisory Board was satisfied that Mr. Kett would not likely offend again and recommended that the license be suspended rather than revoked.

By decision dated December 12, 1997, the Superintendent accepted the recommendations and suspended Mr. Kett's licence for a period of 8 months and 12 days and placed conditions on his licence requiring the co-signature of another Level II licence holder on all business for two years.

Life agent:	**David A. Blow (Mt. Albert) sponsored by Industrial Alliance Life Insurance Co.**
Advisory Board Hearing :	**January 28, 1998**
Result:	**Application Accepted with Conditions**

An Advisory Board hearing was convened to consider the application for a life insurance agent's licence by David A. Blow. Mr. Blow was previously licensed as an agent but his licence was terminated when he was convicted in September 1990 and sentenced to six months imprisonment for misappropriating funds from a client.

In its report, the Advisory Board recommended that Mr. Blow be granted a licence subject to certain conditions. By decision dated March 20, 1998, the Superintendent ordered that a licence be issued subject to the following conditions:

1. applications to be submitted only to Industrial-Alliance for a period of two years;

2. the life insurance agent licence to automatically expire upon termination of agent's contract with Industrial-Alliance;
3. the agent must advise the Superintendent immediately if he applies for or acquires any other licence in financial services; and,
4. the agent must attach a copy of the Superintendent's decision to the application sent to any other licensing authority.

UPDATE ON SUPERINTENDENT'S CEASE-AND-DESIST ORDER AGAINST ARMADA ASSURANCE

Provincial offences charges against Armada Assurance Limited of St. Vincent and Robert L. Brown were recently heard in court. The defendants were charged for failing to comply with a Cease-and-Desist Order made against them by the Acting Superintendent of Insurance in 1996. It has been alleged that both defendants continue to sell insurance in Ontario, including automobile insurance policies.

(Also named in the June 28,1996 Order of the Acting Superintendent were the Tri-Continental Exchange Ltd., Tri-Continental Capital, Ltd., and representative John O. Madsen of Surrey, B.C. The Acting Superintendent had ordered that the companies and their representatives cease carrying on the business of insurance in Ontario.)

In court, the two defendants raised preliminary issues in an attempt to prevent the prosecution from proceeding. They argued that because Armada was based in St. Vincent, it was not subject to Ontario insurance laws. Alternatively, they argued that such insurance activity is regulated exclusively by the federal Office of the Superintendent of Financial Institutions (Canada).

The Court rejected both arguments. Armada and Brown are now attempting to appeal the court decision. The OIC is moving to proceed to trial on this matter.

Grant S. Swanson

Acting Superintendent of Insurance

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