Bulletin

No. G-03/99

- General

Monitoring and enforcement report - including prosecution and hearing decisions - for fourth quarter 1998

The Financial Services Commission of Ontario's (FSCO) 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 financial services industry in Ontario.

INSURANCE

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

Re: Agents and Adjusters

FSCO 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, FSCO audits approximately 10 per cent 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 1998, FSCO undertook the following:

- **Police Checks**

A total of 1,525 police checks on the background of prospective agents were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

FSCO received 60 complaints about the conduct of agents for the fourth quarter October 1, 1998 to December 31, 1998. The subjects of the complaints included alleged fraud, forgeries, misrepresentation, and agent misconduct.

Overview of Complaints

Complaints in progress, from end of third quarter 1998	60
Plus: *Complaints received* during fourth quarter, 1998	60
Less: *Complaints in progress* at end of fourth quarter, 1998	80
***Complaint reviews* completed during fourth quarter, 1998**	**40**

Disposition of Complaint Reviews

Cases forwarded for investigation	11
Cases resolved	3
Licences surrendered	1
Cases closed	25
Total	**40**

Cases may be closed for a variety of reasons. The most common are: the issue raised is outside FSCOs jurisdiction; there is insufficient evidence to substantiate a complaint; or the complaint is unfounded.

- **Audits**

FSCO initiated 348 audits of life agents during the fourth quarter to ensure they met their continuing education requirements. As a result of the audits, nine cases required enforcement action to be initiated.

INVESTIGATIONS -- second step in the enforcement process

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 -- FSCO 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 1998, FSCO undertook the following:

- **Investigations initiated**

A total of 80 cases were forwarded to Investigations. Of that total, 54 cases related to agents and adjusters, and 26 related to mortgage brokers.

Source of investigations

Agents

Complaints about agent conduct	11
Allegations of unsuitability of agents applying for a licence	9
Doing business without a licence in force	25
Continuing education audits	9
	54

Mortgage Brokers

Complaints about mortgage broker conduct	1
Doing business without a licence in force	4
Failure to file return	21
	26

Outcome of investigations

A total of 39 cases were completed:

Charges laid in Provincial Offences court	7
Advisory Board hearings held	9
Sponsorship of agent withdrawn	9
Superintendent's orders issued	1
Letters of censure issued	3
Closed files (no enforcement action warranted)	10
	39

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

- **Letters of Warning**

  During the fourth quarter, 571 Letters of Warning were issued to life agents who were late in applying for licence renewal.

- **Letters of Censure**

  Twenty Letters of Censure were issued to life agents who did not provide full disclosure of information on their licence applications.

Surrendered Licences

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

William Grenville agreed to surrender his Level II licence following the investigation of a complaint that the agent had misrepresented policy coverages and premiums to clients.

- **Minutes of Settlement and Consent Orders**

  During the fourth quarter, 15 agents entered into Minutes of Settlement for non-compliance with legislated continuing education requirements, and one agent consented to an order against him for a licensing offence. The Director of the Licensing and Enforcement Division (the Director) has been delegated the authority by the Superintendent of Financial Services to render licensing decisions.

Non-continuing Education Offences

Charles Dale Lockhart	By an order, dated December 11, 1998, of the Director, this Level II agent’s licence was suspended for a period of 30 days to commence December 18, 1998. The agent had been convicted of mischief contrary to section 430(1.1)(b) of the Criminal Code, in relation to his unauthorized use and access to the computer system of an insurance agency.

Continuing Education Offences

Debra Aronson-Stone	By an order, dated October 15, 1998, of the Director, this agent's licence would have xpired November 24, 1998, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met.
Frank Basso	By an order, dated November 27, 1998, of the Director, this agent's licence would have expired February 13, 1999, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met.
Yves Daniel Bourget	By an order, dated November 19, 1998, of the Director, this agent's licence would have expired December 23, 1998, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met.

Michel Carriere	By an order, dated October 31, 1998, of the Director, this agent's licence would have expired February 1, 1999, unless conditions specified in Minutes of Settlement related to continuing education were met. Agent's licence has expired.
Frederick Coe	By an order, dated December 8, 1998, of the Director, this agent's licence would have expired January 23, 1999, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met.
Jack R. Cormack	By an order, dated October 28, 1998, of the Director, this agent's licence would have expired November 26, 1998, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met.
Frank D'Andrade	By an order, dated October 21, 1998, of the Director, this agent's licence would have expired March 14, 1999, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met.

Stephen R. Johnson	By an order, dated October 16, 1998, of the Director, this agent's licence would have expired November 24, 1998, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met
Wildred N. Keddy	By an order, dated November 25, 1998, of the Director, this agent's licence would have expired December 31, 1998, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met.
Howard J. Kenney	By an order, dated October 28, 1998, of the Director, this agent's licence would have expired November 29, 1998, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met.
Grant D. Logan	By an order, dated October 6, 1998, of the Director, this agent's licence would have expired November 24, 1998, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met.

Tony Marcantonio	By an order, dated October 16, 1998, of the Director, this agent's licence would have expired November 6, 1998, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met.
Nessa Attracta McGuire	By an order, dated October 16, 1998, of the Director, this agent's licence would have expired November 23, 1998, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met.
Rosa M. Mendez	By an order, dated October 20, 1998, of the Director, this agent's licence would have expired November 4, 1998, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met.
Arthur Williams	By an order, dated November 12, 1998, of the Director, this agent's licence would have expired December 29, 1998, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met.

DISPUTE RESOLUTION SERVICES

An arbitrator may decide, through various dispute resolution processes involving insurers and statutory accident benefits claimants, to impose penalties under the *Insurance Act*. Under section 282(10), a special award may be made against an insurer where it has acted unreasonably. Under section 282(11.2), an assessment award may be made against an insured person if the arbitration is frivolous or vexatious, or an abuse of process.

Type of Decision	**Arbitration**
Applicant	**Roland A. Bland**
Insurer	**Allstate Insurance Company of Canada**
Penalty	**Special Award**

On December 12, 1998, an arbitration decision on a claim by Roland A. Bland for statutory accident benefits was released. The insurer was Allstate Insurance Company of Canada. Mr. Bland received income replacement benefits after sustaining personal injuries in a motor vehicle accident on July 27, 1996. He returned to work on March 14, 1997 but Allstate paid him benefits only up to February 20, 1997. In the decision, the arbitrator ruled that Mr. Bland was not entitled to benefits for the 21-day period between February 20, 1997, and March 14, 1997. However, Allstate was required to pay Mr. Bland a special award on the allowed chiropractic expenses plus transportation expenses, together with interest on all amounts owing to him by Allstate.

Type of Decision	**Arbitration**
Applicant	**Desmond McLennon**
Insurer	**Pilot Insurance Company**
Penalty	**Special Award**

An arbitration decision on a claim by Desmond McLennon was released on October 20, 1998, involving Pilot Insurance Company. On August 21, 1995, the insurer terminated the payment of Mr. McLennon's income replacement benefits, which were paid to him following two motor vehicle accidents. The insurer explained that this was done because the applicant allegedly failed to provide verifying information about his self-employment income to an accounting firm hired by the insurer. The arbitration, in the decision, ruled that Mr. McLennon was entitled to $3,700 worth of benefits, plus interest, but was not entitled to caregiver benefits and other expenses. The insurer was required to pay a special award of $1,800, plus interest. The decision is under appeal on grounds other than the special award.

Type of Decision	**Arbitration**
Applicant	**Rupert Mike**

Insurer	**State Farm Mutual Automobile Insurance Company**
Penalty	**Special Award**

On November 12, 1998, an arbitration decision on a claim by Rupert Mike for statutory accident benefits was released. The insurer was State Farm Mutual Automobile Insurance Company. State Farm paid Mr. Mike income replacement benefits after he was injured in a motor vehicle accident on May 15, 1995. The insurer terminated his benefits on June 30, 1995. State Farm stated that Mr. Mike's continuing disability was due to a knee injury not related to the accident. In the decision, the arbitrator ruled that Mr. Mike was entitled to income replacement benefits from July 1, 1995 and beyond because he was unable to complete the essential tasks of his employment. The arbitrator made a special award of $5,000 to the applicant as the insurer was deemed to be in non-compliance with regulations and was not careful handling the applicant's file. The decision was appealed and settled before the appeal hearing.

Type of Decision	**Arbitration**
Applicant	**Dieter Muller**
Insurer	**Zurich Insurance Company**
Penalty	**Assessment Awardpecial Award**

On November 12, 1998, an arbitration decision on a claim by Dieter Muller for statutory accident benefits was released. The insurer was Zurich Insurance Company. The insurer paid Mr. Muller income replacement benefits after he was injured in a motor vehicle accident on January 5, 1996. It terminated benefits on August 5, 1996. After filing for arbitration, Mr. Muller disappeared and his whereabouts were unknown. In the decision, the arbitrator ruled that since there was no proof that Mr. Muller was aware of the hearing date, no order was made on his claim for further benefits. However, Mr. Muller, in his absence, was required to pay an assessment award to Zurich of $2,000 plus the insurer's expenses of $500.

Type of Decision	**Arbitration**
Applicant	**Mary Shaddieter Muller**

Insurer	**Prudential of America Insurance Companyurich Insurance Company**
Penalty	**Special Award**

An arbitration decision on a claim by Joan Privett for statutory accident benefits was released on October 2, 1998. The insurer was Prudential of America Insurance Company. Ms. Shadd sought a special award in her claim as she alleged that Prudential failed to implement a settlement agreement signed earlier between them. She had received income accident benefits up to May 1, 1998, following her injuries sustained in a motor vehicle accident on January 14, 1994. In the decision, the arbitrator ruled that Ms. Shadd and Prudential had entered into a binding contract of settlement which denied the parties access to arbitration. Ms. Shadd received a special award of $7,500.

Type of Decision	**Arbitration**
Applicant	**James Tustin**
Insurer	**Canadian General Insurance Group**
Penalty	**Special Award**

On December 30, 1998, an arbitration decision on a claim by James Tustin for statutory accident benefits was released. The insurer was Canadian General Insurance Group. Canadian General paid Mr. Tustin income replacement benefits for more than two years after he suffered injuries in a motor vehicle accident on August 23, 1994. Mr. Tustin, a self-employed person, became eligible for loss of earning benefits after the statutory period for receiving income replacement benefits expired. The insurer delayed the payment of benefits when it and Mr. Tustin disagreed on the calculation of his income replacement benefits and his pre-accident earning capacity. In the decision, the arbitrator set out the correct amount of Mr. Tustin's earning capacity before the accident and the income replacement benefit amount, and ruled that Mr. Tustin was entitled to a special award, in addition to interest on overdue payments for IRBs, LEBs, medical, rehabilitation and attendant care benefits.

The decision is under appeal.

Type of Decision	**Arbitration**
Applicant	**Giuseppe Zeppieri**
Insurer	**Liberty Mutual Insurance Company**

Penalty	**Assessment Award**

On October 29, 1998, an arbitration decision on a claim by Giuseppe Zeppieri for statutory accident benefits was released. The insurer was Liberty Mutual Insurance Company. The insurer paid Mr. Zeppieri income replacement benefits following his injuries sustained in a motor vehicle accident on May 14, 1993. It terminated benefit payments on June 28, 1996. In the decision, the arbitrator denied Mr. Zeppieri's claim for income replacement benefits beyond June 28, 1996, and ruled that he was entitled to medical and rehabilitation benefits of $1,129.75 plus interest as well as a special award of $100 plus interest. The applicant also received reimbursement for his arbitration expenses.

PROSECUTIONS

Charge:	**Failing to Produce**
Against:	**The Maritime Life Assurance Company**
Verdict:	**Guilty**

On November 24, 1998, following a trial at Toronto provincial court, the Maritime Life Assurance Company pleaded guilty and was convicted of failing to produce information as requested by the Commission. The company was fined $2,000.

HEARINGS

An Advisory Board assists 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 Financial Services Commission of Ontario (FSCO). The Director of the Licensing and Enforcement Division (Director) has delegated authority from the Superintendent of Financial Services to render licensing decisions.

Life agent:	**Gary L. Hepburn (Vittoria) Level II agent**
Advisory Board Hearing:	**December 4, 1998**
Decision:	**Licence Suspended**

An Advisory Board hearing was conducted on December 4, 1998, in Toronto, Ontario to consider the suspension or revocation of Mr. Hepburn's licence because of his failure to comply with the continuing education requirements and for making a material misstatement in his renewal application by stating that he had completed the required continuing education hours. The panel recommended that Mr. Hepburn's licence be suspended for a period of thirty days and that he make up his deficiency in continuing education hours. By decision dated December 18, 1998, the Director accepted the findings of fact and accepted the recommended penalty of suspension of the life agent's licence for a period of thirty days, commencing March 15, 1999, and that Mr. Hepburn complete 48.75 hours of continuing education applicable to the licensing period ending May 31, 1998, and provide evidence of completion of these hours by April 15, 1999.

Life agent:	**Hilry Hilton Neale (Mississauga) Level II agent**
Advisory Board Hearing:	**October 22, 1998**
Decision:	**Licence Revoked**

An Advisory Board hearing was conducted on October 22, 1998, in Toronto, Ontario to consider the suspension or revocation of Mr. Neale's licence because he repeatedly provided false information to the Commission and the information not disclosed dealt with very serious matters which, if known, would have been relevant in a decision to grant a licence. The information included charges and/or convictions for assault with a weapon, three counts of conspiracy to commit an indictable offence, three counts of fraud over $5,000 and failing to appear. Mr. Neale did not attend the hearing. In its report, the panel recommended that Mr. Neale's licence be revoked. By decision dated November 13, 1998, the Director accepted the finding of facts and accepted the recommended penalty and revoked the life agent's licence of Mr. Neale.

Life agent:	**Zarina Ratansi (Thornhill) Level II agent**
Advisory Board Hearing:	**November 19, 1998**
Decision:	**Licence Suspended**

An Advisory Board hearing was conducted on November 19, 1998, in Toronto, Ontario to consider the suspension or revocation of Ms. Ratansi's licence because of her failure to comply with the continuing education requirements and for making a material misstatement in her renewal application by stating that she had completed the required continuing education hours. The panel recommended that even though Ms. Ratansi had now completed the required continuing education credits, her licence be suspended for a period of thirty days. By decision dated December 18, 1998, the Director accepted the findings of fact and accepted the recommended penalty of suspension of the life agent's licence for a period of thirty days, commencing March 15, 1999.

Life agent:	**Witold Stefanek (Mississauga) Level I agent formerly sponsored by NN Life Insurance Company of Canada**
Advisory Board Hearing:	**June 25, 1998**
Decision:	**Licence Revoked**

An Advisory Board hearing was conducted on June 25, 1998, in Toronto, Ontario to consider the suspension or revocation of Mr. Stefanek's licence because of his failure to comply with the continuing education requirements; for furnishing false information in his renewal application by stating that he had completed the continuing education requirements and that his sole occupation was in the provision of financial services and that during the term of his licence, Mr. Stefanek carried on a business or occupation that was not in the provision of financial services. The panel recommended the licence of Mr. Stefanek be revoked. By decision dated October 9, 1998, the Director accepted the findings of fact and accepted the recommended penalty and revoked the life agent's licence of Mr. Stefanek.

MORTGAGE BROKERS

PROSECUTIONS

Charge:	**Late Filing of Financial Statements**
Against:	**David Bisgould, (Waterloo), Mortgage Broker**
Verdict:	**Guilty**

On October 6, 1998, David Bisgould was found guilty and convicted of late filing of audited financial statements as required under the Mortgage Brokers Act. He was fined $1,000.

Charge:	**Acting as a Mortgage Broker without Registration**
Against:	**Donald Carmichael (Toronto) and Kingscroft Investments (Toronto)**
Verdict:	**Guilty**

On October 20, 1998, Kingscroft Investments of Toronto, and its president, Donald Carmichael, were found guilty and convicted of carrying on business as a mortgage broker in Belleville, while unregistered. Kingscroft Investments was fined $5,000, and Donald Carmichael was fined $1,500.

Charge:	**Breach of Probation**
Against:	**Thomas Putman/Crown Commercial Mortgage Ltd.**
Verdict:	**Guilty**

On November 17, 1998, following a trial at Toronto provincial court, Thomas Putman pleaded guilty and was convicted for breach of probation in relation to a probation order issued October 1, 1997, requiring him as an officer and director of his mortgage brokerage, Crown Commercial Mortgage Limited, to file the audited financial statements for Crown Commercial for 1996. The probation order required that the statements be filed by January 31, 1998. The Court extended the probation order to May 31, 1999.

HEARINGS

Mortgage Broker:	**753301 Ontario Limited o/a The Quinte Mortgage Network (Belleville), Mortgage Broker**
Hearing:	**August 25, 1998, adjourned to and concluded October 7, 1998**

Decision: Conditional Registration

A hearing was commenced August 25, 1998, and then adjoined on consent to October 7, 1998, to determine whether or not The Quinte Mortgage Network, principal George Reynolds, should have its registration revoked. The mortgage broker had three convictions for failing to file its audited financial statement on time, and was also persistently late in paying its fines. The Superintendent agreed to permit the broker to retain its registration on the condition that it engage a management consultant to monitor its operating procedures for three years, and during that three year period, the broker will submit financial statements twice each year, rather than just once.

Dina Palozzi

Chief Executive Officer and

Superintendent of Financial Services

May 14, 1999

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