Property and Casualty - Auto Bulletins

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Bulletin

No. G-05/99

- General

Monitoring and enforcement report - including prosecution and hearing decisions - for first quarter 1999

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 sectors that FSCO regulates -- insurance, credit unions/caisses populaires, loan and trusts, co-operatives and mortgage brokers. FSCO also regulates pensions; its monitoring and enforcement reports on this sector appear separately in FSCO's Pension Bulletins.

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 (CE) requirements. These checks, reviews and audits are the first step in the enforcement process. Most matters are resolved at this first step.

During the first quarter of 1999, the FSCO undertook the following:

- **Police Checks**

A total of 1,590 police checks on the background of prospective agents were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

FSCO received 40 complaints about the conduct of agents for the first quarter January 1, 1999 to March 31, 1999. The subjects of the complaints included fraud, forgeries, misrepresentation, and agent misconduct.

Overview of Complaints

Complaints in progress, from end of fourth quarter 1998	80
Plus: *Complaints received* during first quarter, 1999	40
Less: *Complaints in progress* at end of first quarter, 1999	81
Complaint reviews completed during first quarter, 1999	**39**

Disposition of Complaint Reviews

Cases forwarded for investigation	10
Cases resolved	4
Licences surrendered	1
Cases closed	24
Total	39

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

- **Audits**

FSCO initiated 333 audits of life agents during the first quarter to ensure they met their CE 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 CE requirements -- FSCO may decide that some matters need to 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 first quarter of 1999, FSCO undertook the following:

- **Investigations initiated**

A total of 33 cases were forwarded to Investigations. Of that total, 25 cases related to agents and adjusters, six related to mortgage brokers, one related to insurance companies, and one related to loan and trust companies.

Source of investigations

Agents

Complaints about agent conduct	10
Allegations of unsuitability of agents	5
Doing business without a licence in force	1
Continuing education audits	9
	25

Mortgage Brokers

Doing business without a licence in force	6
	6

Insurance Companies

Doing business without a licence in force	1
	1

Loan & Trust Companies

Doing business without a licence in force	1

	1
	33

Outcome of investigations

A total of 51 cases were completed:

Charges laid in Provincial Offences court	24
Advisory Board Hearings held	3
Sponsorship of agent withdrawn	6
Superintendent's Orders issued	1
Letters of Censure issued	2
Closed files (no enforcement action warranted)	15
	51

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

- **Letters of Warning**

  During the first quarter, 497 Letters of Warning were issued to life agents who were late in applying for licence renewal.

- **Letters of Censure**

  Twelve 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:

  John P. Bem agreed to surrender his Level I life agent licence following a complaint that the agent had not placed the interests of his clients first in the sale of two policies of insurance.

- **Minutes of Settlement and Consent Orders**

  During the first quarter, 16 agents entered into Minutes of Settlement for non-compliance with legislated continuing education requirements. The Director of the Licensing and Enforcement Division (the Director) has been delegated the authority by the Superintendent of Financial Services (Superintendent) to render licensing decisions.

Continuing Education Offences

Warren J. Adams	By an order, dated January 25, 1999, of the Director, this agent's licence would have expired April 12, 1999, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met.
Vincent Agro	By an order, dated March 30, 1999, of the Director, this agent's licence would have expired May 14, 1999, unless conditions specified in Minutes of Settlement related to continuing education are met. Conditions were met.
Jacques J. Belec	By an order, dated March 17, 1999, of the Director, this agent's licence will expire December 31, 1999, unless conditions specified in Minutes of Settlement related to continuing education are met.
Jack Burgess	By an order, dated March 24, 1999, of the Director, this agent's licence expired June 25, 1999, because conditions specified in Minutes of Settlement related to continuing education were not met.

Bernard Comtois	By an order, dated March 24, 1999, of the Director, this agent's licence would have expired June 15, 1999, unless conditions specified in Minutes of Settlement related to continuing education are met. Due to extenuating circumstances, by a further order of the Director, the agent’s licence was issued conditional upon his meeting continuing education conditions by September 15, 1999.
Terry Flynn	By an order, dated January 25, 1999, of the Director, this agent's licence would have expired May 14, 1999, unless conditions specified in Minutes of Settlement related to continuing education are met. Conditions were met.
Joseph Harrison	By an order, dated January 29, 1999, of the Director, this agent's licence would have expired June 14, 1999, unless conditions specified in Minutes of Settlement related to continuing education are met. Conditions were met.
Roderick Johnson	By an order, dated February 26, 1999, of the Director, this agent's licence would have expired June 11, 1999, unless conditions specified in Minutes of Settlement related to continuing education are met. Conditions were met.

Denise Patterson	By an order, dated February 2, 1999, of the Director, this agent's licence would have expired June 11, 1999, unless conditions specified in Minutes of Settlement related to continuing education are met. Conditions were met.
Tyrone Pieris	By an order, dated January 19, 1999, of the Director, this agent's licence will expire December 16, 1999, unless conditions specified in Minutes of Settlement related to continuing education are met.
Sheila Pitch	By an order, dated March 17, 1999, of the Director, this agent's licence would have expired May 11, 1999, unless conditions specified in Minutes of Settlement related to continuing education are met. Conditions were met.
Douglas I. Speirs	By an order, dated January 6, 1999, of the Director, this agent's licence would have expired February 2, 1999, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met.
Charles Sperrino	By an order, dated March 17, 1999, of the Director, this Level II agent's licence was suspended for a period of 30 days from April 1, 1999, following a Minutes of Settlement signed by the agent to allow the matter to proceed without a hearing before an Advisory Board. Mr. Sperrino had failed to comply with

	the continuing education requirements at the time of his licence renewal, and made a material misstatement in his renewal application by stating that he had completed the required continuing education hours. On October 21, 1998, Mr. Sperrino subsequently completed the outstanding continuing education requirements with respect to the licensing period in question.
John Strickland	By an order, dated February 26, 1999, of the Director, this agent's licence would have expired May 14, 1999, unless conditions specified in Minutes of Settlement related to continuing education are met. Conditions were met.
William Trainor	By an order, dated February 26, 1999, of the Director, this agent's licence would have expired June 15, 1999, unless conditions specified in Minutes of Settlement related to continuing education are met. Conditions were met.
David Wiltshire	By an order, dated March 26, 1999, of the Director, this agent's licence would have expired May 12, 1999, unless conditions specified in Minutes of Settlement related to continuing education are met. Conditions were met.

DISPUTE RESOLUTION DECISIONS

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	**Hai T. Nguyen**
Insurer	**Kingsway General Insurance Company**
Penalty	**Assessment Award**

An arbitration decision was released on January 21, 1999, regarding the application to Kingway General Insurance Company by Hai T. Nguyen for statutory accident benefits. The applicant claimed she sustained personal injuries in a motor vehicle accident on September 11, 1997. The insurer refused to pay any benefits on the grounds that she was not injured in an accident. Kingsway's position was that Ms. Nguyen's car was not involved in a collision and she did not sustain any injuries through the use or operation of an automobile. Since the arbitrator did not find the applicant to be a credible witness, he dismissed the applicant's claim as being unfounded. The applicant was ordered to pay Kingsway the assessment it was required to pay as a result of her arbitration application filing.

Type of Decision	**Arbitration**
Applicant	**J. W. (Ms.)ai T. Nguyen**
Insurer	**Canadian General Insurance Group**
Penalty	**Special Award**

An arbitration decision was released on January 25, 1999, regarding the application to Canadian General Insurance Group by Ms. J. W. for statutory accident benefits. The applicant sustained personal injuries in a motor vehicle accident on October 21, 1993. The applicant received weekly income replacement benefits for various periods until April 23, 1996, when the insurer terminated payments. Ms. J. W. claimed that she was substantially unable to return to her job as a real estate agent and that her accident-related injuries prevented her from engaging in any occupation for which she was reasonably suited by education, training or experience. The arbitrator determined in the decision that Ms. J. W. was entitled to ongoing weekly benefits and made a special award of $3,000 to the applicant as the insurer was deemed to be unresponsive and unreasonable in its conduct in the matter.

Type of Decision	**Arbitration**
Applicant	**Asad Hersi**
Insurer	**American Home Assurance**
Penalty	**Assessment Award**

An arbitration decision was released on February 9, 1999, regarding the application to American Home Assurance by Asad Hersi for statutory accident benefits. Mr. Hersi sustained personal injuries in a motor vehicle accident on June 15, 1996. The applicant applied for weekly income replacement benefits and rehabilitation benefits which the insurer refused to pay. Mr. Hersi did not attend the pre-hearing or the arbitration hearing. The arbitrator relied on the applicant's evidence based on American Home's information based on the applicant's submissions to the company. In the decision, the arbitrator determined that Mr. Hersi's impairments were not the result of the June 15, 1996, accident and that Mr. Hersi was not entitled to weekly income replacement benefits nor was he entitled to expenses for the hearing. American Home was given an assessment award of $1,000 to be paid by Mr. Hersi.

Type of Decision	**Arbitration**
Applicant	**Sandra Alvarez**
Insurer	**Allstate Insurance Company of Canada**
Penalty	**Special Award**

An arbitration decision was released on February 16, 1999, regarding the application to Allstate Insurance Company of Canada by Sandra Alvarez for statutory accident benefits. Mrs. Alvarez sustained personal injuries in a motor vehicle accident on June 30, 1991. For several years following the accident, the applicant received various benefits, including psychological treatment. In mid-1995, the insurer terminated payments for the psychological treatments, although the applicant continued to receive treatments until 1997. In the decision, the arbitrator ruled that the insurer was required to pay half of the cost of the psychological treatments for the period it did not pay. The arbitrator determined also that the insurer violated the rules governing "pay pending dispute" and granted the applicant $2,500 in a special award.

Type of Decision	**Arbitration**
Applicant	**Frima Olszynko**
Insurer	**Dominion of Canada General Insurance Companyllstate Insurance Company of Canada**
Penalty	**Special Award**

An arbitration decision was released on February 22, 1999, regarding the application to Dominion of Canada General Insurance Company by Frima Olszynko for statutory accident benefits. Mrs. Olszynko sustained personal injuries in two motor vehicle accidents on January 12 and January 18, 1994. The applicant received weekly income replacement benefits until September 1997, when the insurer terminated benefits. The applicant disputed the insurer's assessment of her residual earning capacity in her pre-accident job as a retail trade manager. The arbitrator determined that the insurer failed to comply with legal procedures and unreasonably withheld benefits. The arbitrator made a special award to the applicant of $5,000; determined the applicant's residual capacity and ruled that the insurer must pay outstanding medical benefits and housekeeping expenses, and interest on benefits owing.

Type of Decision	**Arbitration**
Applicant	**Mauricio Mariona**
Insurer	**Canadian General Insurance Company**
Penalty	**Special Award**

An arbitration decision was released on February 22, 1999, regarding the application to Canadian General Insurance Company by Mauricio Mariona for statutory accident benefits. Mr. Mariona sustained personal injuries in a motor vehicle accident on July 17, 1995 and was unable to return to his job as a machine operator. Canadian General claimed that the accident took place before coverage under its policy became effective. The arbitrator determined that the insurer's withholding of income replacement benefits was unreasonable and ruled that Mr. Mariona was entitled to benefits after March 1, 1996. The arbitrator also granted a special award of $1,900 to the applicant. In addition, the insurer was required to pay interest on overdue payments and on the amount of the special award because of its non-compliance with the rules governing benefit payments. The decision was appealed to the Director of Arbitrations and settled by the parties before the appeal hearing.

Type of Decision	**Arbitration**
Applicant	**Mario Rocca**
Insurer	**Axa Insurance (Canada)**
Penalty	**Special Award**

An arbitration decision was released on March 10, 1999, regarding the application to Axa Insurance (Canada) by Mario Rocca for statutory accident benefits. Mr. Rocca sustained personal injuries in a motor vehicle accident on August 10, 1995. The applicant received weekly income replacement benefits which the insurer terminated on November 7, 1997. During the period that Mr. Rocca was receiving benefits, the insurer reduced the amount of weekly benefits when it learned that the applicant was receiving federal government employment benefits. The arbitrator determined that the applicant was substantially disabled from performing the physical duties of his job from August 10, 1997, and was therefore entitled to ongoing weekly income benefits from November 7, 1997. The arbitrator also determined that the insurer's actions were unreasonable and granted Mr. Rocca a special award of $10,000, including interest. The decision is under appeal to the Director of Arbitrations.

Type of Decision	**Arbitration**
Applicant	**Azad Mustafa**
Insurer	**Royal Insurance Company of Canada**
Penalty	**Assessment Award**

An arbitration decision was released on March 30, 1999, regarding the application to Royal Insurance Company of Canada by Azad Mustafa for statutory accident benefits. Mr. Mustafa sustained personal injuries in a motor vehicle accident on June 14, 1997. The applicant applied for weekly income replacement benefits which the insurer refused to pay on grounds that the applicant did not qualify for benefits. Royal Insurance claimed there were inconsistencies with the income amount in a letter of employment offered to the applicant by a potential employer at the time of the accident and the amount stated in a signed statement from that employer. The arbitrator dismissed the applicant's claim for weekly income replacement benefits, along with claims for medical benefits, transportation, housekeeping and home maintenance benefits. Mr. Mustafa was ordered to pay $3,000 to Royal Insurance for its arbitration expenses.

PROSECUTIONS

INSURANCE

Charge:	**Working as an agent while unlicensed**
Against:	**Mark S. Fielding (Maberly), Level II agent**
Verdict:	**Guilty**

On March 25, 1999, in Ottawa provincial court, Mark Fielding pleaded guilty to practising as an unlicensed life insurance agent after he failed to renew his licence. Mr. Fielding was convicted and fined $500.

Charge:	**Failing to respond and paying commissions to unlicensed persons**
Against:	**The Grand Orange Lodge of British America**
Verdict:	**Guilty**

On January 19, 1999, in Toronto provincial court, the Grand Orange Lodge of British America pleaded guilty and was convicted of failing to respond and paying commissions to unlicensed persons. The company was fined $2,000 for the failing to respond charge, and $6,000 for paying commissions to four unlicensed agents.

Charge:	**Paying commissions to unlicensed person**
Against:	**Marilyn A. Kennedy (Cambridge), Level I agent sponsored by the Empire Life Insurance Company**
Verdict:	**Guilty**

On March 15, 1999, in Cambridge provincial court, Marilyn Kennedy pleaded guilty and was convicted of paying commissions to an unlicensed person. Ms. Kennedy was fined $750.

Charge:	**Working as an agent while unlicensed**

Against:	**Mario Re (Brampton), Level II agent**
Verdict:	**Guilty**

On March 2, 1999, in Toronto provincial court, Mario Re pleaded guilty to practising as an unlicensed life insurance agent after he failed to renew his licence. Mr. Re was convicted and fined $1,000.

Charge:	**Paying commissions to unlicensed person**
Against:	**The Standard Life Assurance Company**
Verdict:	**Guilty**

On March 19, 1999, in Kitchener provincial court, the Standard Life Assurance Company pleaded guilty to the charge of paying commissions to an unlicensed person. The company was fined $10,000.

Charge:	**Working as an agent while unlicensed**
Against:	**Michael R. Stoddart (Waterloo), Level II agent**
Verdict:	**Guilty**

On March 19, 1999, in Kitchener provincial court, Michael Stoddart pleaded guilty to practising as an unlicensed life insurance agent after he failed to renew his licence. Mr. Stoddart was convicted and fined $750.

Charge:	**Working as an agent while unlicensed**
Against:	**Christopher S. Taylor (Cambridge), Level I agent sponsored by London Life Insurance Company**
Verdict:	**Guilty**

On February 11, 1999, in Brantford provincial court, Christopher Taylor pleaded guilty to practising as an unlicensed life insurance agent after he failed to renew his licence. Mr. Taylor was convicted and fined $500.

Charge:	**Working as an agent while unlicensed**

Against:	**Thymen Visser (Nepean), Level II agent**
Verdict:	**Guilty**

On March 25, 1999, in Ottawa provincial court, Thymen Visser pleaded guilty to practising as an unlicensed life insurance agent after he failed to renew his licence. Mr. Visser was convicted and fined $500.

MORTGAGE BROKERS

Charge:	**Breach of Probation**
Against:	**Jeffrey Atlin / Atlin Capital Corporation**
Verdict:	**Guilty**

On January 26, 1999, at Toronto provincial court, Jeffrey Atlin pleaded guilty and was convicted for breach of probation in relation to a probation order issued July 8, 1997, requiring him to file the audited financial statements of his mortgage brokerage, Atlin Capital Corporation, for the year ending August 31, 1995. The probation order required that the statements be filed by October 7, 1997. The financial statements were not filed until August 4, 1998. Mr. Atlin was convicted and sentenced to perform 50 hours of community service within 10 months, commencing February 1999, and he will be on probation for one year's time, commencing January 26, 1999.

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 FSCO. The Director of the Licensing and Enforcement Division (Director) has delegated authority from the Superintendent of Financial Services (Superintendent) to render licensing decisions.

Life agent:	**Randy F. Flemmings (Toronto), Level I agent**
Advisory Board Hearing:	**December 4, 1998**
Decision:	**Licence Suspended**

An Advisory Board hearing was conducted in Toronto to consider the suspension or revocation of Mr. Flemmings' licence because of his failure to comply with the continuing education requirements. In its report, the panel recommended that Mr. Flemmings' licence be suspended for a period of one week. In comparing the situation with other cases, the panel felt there were mitigating circumstances justifying a lesser sentence. By decision dated January 19, 1999, the Director accepted the findings of fact and accepted the recommended penalty of suspension of the life agent's licence for a period of one week, commencing February 1, 1999.

Life agent:	**David E. Snyder (Ajax), Level I agent**
Advisory Board Hearing:	**December 4, 1998**
Decision:	**Licence Suspended**

An Advisory Board hearing was conducted in Toronto to consider the suspension or revocation of Mr. Snyder'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. In its report, the panel recommended that Mr. Snyder's licence be suspended for a minimum period of 30 days and that it be further suspended until such time as he comes forward and provides evidence that he has completed the required continuing education.

By decision dated January 19, 1999, the Director accepted the findings of fact and accepted the recommended penalty of suspending the life agent's licence for a minimum period of 30 days, commencing January 26, 1999; that Mr. Snyder provide satisfactory evidence of completion of sufficient continuing education hours to meet the requirement for the licensing period ending January 17, 1998; and that following completion of these conditions, Mr. Snyder contact the Director to request a meeting to provide assurances that he understand the obligations imposed by the Insurance Act and its regulations.

Dina Palozzi

Chief Executive Officer and

Superintendent of Financial Services

July 29, 1999

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