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Bulletin

No. G-06/00

- General

Monitoring and enforcement report - including prosecution and hearing decisions - for first quarter, 2000

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.

The Financial Services Tribunal (FST), an independent adjudicative body, hears all appeals or reviews of proposed or intended decisions of the Superintendent of Financial Services, who makes the majority of first line regulatory decisions. 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. These appeals or reviews are conducted at the request of one of the affected parties. In hearing appeals or reviews of these decisions, the FST determines all questions of fact or law. As well, the FST has authority to make rules for the practice and procedure to be observed in a proceeding before it, and to order a party to a proceeding before it to pay the costs of another party or the FST's costs of the proceeding.

Actions of the Financial Services Commission of Ontario and the Financial Services Tribunal

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 2000, the FSCO undertook the following:

- **Police Checks**

  A total of 1,053 police checks on the background of prospective agents were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

  FSCO received 41 complaints about the conduct of agents for the first quarter January 1, 2000, to March 31, 2000. The subjects of the complaints included fraud, forgeries, misrepresentation, and agent misconduct.

  Overview of Complaints

Complaints in progress, from end of fourth quarter 1999	45
Plus: Complaints received during first quarter, 2000	41
Less: Complaints in progress at end of first quarter, 2000	44
Total number of Complaint reviews completed during first quarter, 2000	42

  Disposition of Complaint Reviews

Cases forwarded for potential enforcement	14

Cases resolved	10
Licences surrendered	1
Cases closed	17
Total	42

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 79 audits of life agents during the first quarter to ensure they met their CE requirements. As a result of the audits, two 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 2000, FSCO undertook the following:

- **Investigations initiated**

A total of 40 cases were forwarded to Investigations. Of that total, 36 cases related to agents and adjusters, two related to mortgage brokers, and two related to insurance companies.

Source of investigations

- Agents

Complaints about agent conduct	19
Allegations of unsuitability of agents	2

Doing business without a licence in force	13
Continuing education audits	2
Total	36

- Mortgage Brokers

Doing business without a licence in force	2

- Insurance Companies

Complaints about insurance company conduct	2
Total	40

Outcome of investigations

A total of 54 cases were completed:

Charges laid in Provincial Offences court	7
Advisory Board Hearings held	2
Sponsorship of agent withdrawn	4
Superintendent's Orders issued	6
Letters of Censure issued	14
Licence Surrendered	2
Closed files (no enforcement action warranted)	19
	54

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

- **Letters of Censure**

In addition to the 14 Letters of Censure issued as a result of formal investigations, five Letters of Censure were

issued to life agents who did not provide full disclosure of information on their licence applications and three Letters of Censure were issued to agents as a result of information received via Life Agent Reporting Forms alleging agent misconduct.

- **Surrendered Licences**

The details surrounding the surrender of licence, indicated in the complaint statistics, are as follows:

Andrew Lai	The agent surrendered his Level II life insurance agent's licence following allegations of forgery of policyholders' signatures to insurance applications for policyholders who had not applied for insurance.

- **Minutes of Settlement and Consent Orders**

During the first quarter, one agent entered into Minutes of Settlement for non-compliance with legislated continuing education requirements, and three agents had their licences revoked for failing to meet conditions of prior advisory board hearing decisions. Eight agents consented to orders revoking their licences, and one agent consented to a licence suspension. In addition, one former agent admitted to wrongdoing and undertook not to reapply for licensing for a specified period of time, and one mortgage broker surrendered his registration. Details are as follows:

Offences, Other than Continuing Education Offences

David Achacon VII	By an order, dated January 5, 2000, this Level II agent's licence was revoked. The agent admitted to compromising and converting the policies of two clients solely for his own personal gain.

Shawn V. Cosgrove	By an order, dated February 1, 2000, this Level II agent's licence was revoked. The agent had submitted an application for insurance, for which he was paid commission, which was later found to have been submitted without the knowledge of the client. The agent had also forged the signature of the policyholder on the application.
Nigel Da Costa	By an order, dated March 31, 2000, this Level II agent's licence was suspended for a period of two years. The agent admitted to forging a policyholder's signature on three applications for insurance; changing the mailing address on all three policies to his own; and paying the premiums for the policies from his own bank account for a period of two years.
Ryszard Kafka	By an order, dated February 9, 2000, this Level II agent's licence was revoked. The agent, by deceit and other fraudulent means, caused numerous clients to purchase nonexisting G.I.C.s by having them complete applications and then creating fraudulent certificates from the forms. The agent continued this practice with several groups of clients so that he could finance interest payments to previous groups of clients.
Victor Marin	By an order, dated January 27, 2000, this Level II agent's licence was revoked. The agent improperly replaced client insurance policies, arranged for stop payments on client accounts and had the clients reapply for new coverage. He also failed to provide replacement forms to these insurers.

Robert R. Pekala By an order, dated February 1, 2000, this Level I agent's licence was revoked. The agent forged the signature of a client to an electronic insurance application and authorization.

George Reynolds By Minutes of Settlement, signed February 9, 2000, this mortgage broker consented to the termination of his registration as a mortgage broker. Mr. Reynolds owned and operated 753301 Ontario Limited, a corporation registered as a mortgage broker and carrying on business under the names "Mortgage Merchant" and "Quinte Mortgage Network". The broker had completed paperwork that contained false statements; put his own interests before those of his clients; and carried out activities that were in contravention of the Regulations made under the Mortgage Brokers Act, resulting in harm to members of the public.

Jeff Kwok Lun Tse By Consent and Undertaking, signed March 23, 2000, this former Level II agent admitted that he completed an application for life insurance on a client without their approval and authority. He also arranged to have the client's signature forged, and personally paid the premium when the application was submitted. The agent also paid premiums on existing clients' policies to ensure business stayed on the books to maintain the branch persistency rate. He also provided false information to FSCO on his renewal application. The agent has undertaken not to reapply for any type of insurance licence in Ontario for a period of five years.

-Woody Weinberg -Woody Weinberg of Woody Weinberg Insurance Agencies Ltd.	By an order, dated February 16, 2000, this Level II agent's licence, and that, were revoked. The agent Insurance Agencies admitted to converting some of his clients' personal investment funds for his Ltd. own personal use, without the permission of the respective clients.

Continuing Education Offences

Regent DesForges	Further to conditions outlined in the Superintendent's Decision dated October 27, 1999, this Level I agent's licence was revoked March 1, 2000, for failing to complete the required continuing education hours.
Carolyn J. Dixon	By an order, dated November 23, 1999, this Level I agent's licence was to expire on January 24, 2000, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met. (This case was not reported in FSCO's Monitoring and Enforcement bulletin for the fourth quarter of 1999.)
H. Bruce Erskine	Further to conditions outlined in the Superintendent's Decision dated July 29, 1999, this Level II agent's licence was revoked March 31, 2000, for failing to complete the required continuing education hours.
Mukadder Evrenler	By an order, dated February 9, 2000, this Level II agent's licence was revoked. Mr. Evrenler had failed to produce documentation to confirm his compliance with the continuing education requirements during an audit.

Thomas Spanton Further to conditions outlined in the Superintendent's Decision dated October 27, 1999, this Level II agent's licence was revoked March 1, 2000, for failing to complete the required continuing education hours.

Accommodation for Disability

G.B. As an accommodation for a serious illness, this Level II agent's licence was renewed. By an order dated March 31, 2000, the agent was given until March 27, 2002 to complete the continuing education requirement, failing which the licence will expire.

Prosecutions

Insurance

Charge: Working as an agent while unlicensed

Against: Otto James Salomons (Fonthill) Level II agent

Verdict: Guilty

On March 28, 2000, in Welland provincial court, Otto James Salomons pleaded guilty and was convicted of practising as an insurance agent after his licence had expired. He was fined $500.

Charge: Working as an agent while unlicensed

Against: Lorne Schecter (Dollard des Ormeaux, Que.) Level I agent, sponsored by Clarica Life Insurance Company

Verdict: Guilty

On March 28, 2000, in Toronto provincial court, Lorne Schecter was found guilty and was convicted of practising as an insurance agent after his licence had expired. He was fined $500.

Charge: Working as an agent while unlicensed

Against: **Shally Yeung (Scarborough) former Level I agentorne Schecter (Dollard des Ormeaux, Que.) Level I agent, sponsored by Clarica Life Insurance Company**

Verdict: **Guilty**

On March 21, 2000, in Toronto provincial court, Shally Yeung was found guilty and was convicted of practising as an insurance agent after her licence had expired. She was fined $3,000. Ms. Yeung is not currently licensed.

Charge: **Paying commissions to an unlicensed person**

Against: **The Equitable Life Insurance Company of Canada (Waterloo)**

Verdict: **Guilty**

On March 21, 2000, in Toronto provincial court, the Equitable Life Insurance Company of Canada pleaded guilty and was convicted of paying commissions to an unlicensed person. The company was fined $7,500.

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

Against: **Shelley Jarrett (Mississauga) Level I agent, sponsored by the Independent Order of Foresters**

Verdict: **Guilty**

On March 14, 2000, in Brampton provincial court, Shelley Jarrett pleaded guilty and was convicted of practising as an insurance agent after her licence had expired. She was fined $100.

Charge: **Failing to furnish a notice of termination of agency**

Against: **NN Life Insurance Company of Canada (Don Mills)**

Verdict: **Guilty**

On February 29, 2000, in Toronto provincial court, NN Life Insurance Company of Canada pleaded guilty and was convicted of failing to furnish a notice of termination of agency. The company was fined $4,000.

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

Against: **Mohsen S. Mikhael (Gloucester) Level II agent**

Verdict: **Guilty**

On February 25, 2000, in Ottawa provincial court, Mohsen Mikhael pleaded guilty and was convicted of practising as an insurance agent after his licence had expired. He was fined $500.

Charge: **Working as an agent while unlicensed and holding out**

Against: **Mirwais Aslamyar (Scarborough)**

Verdict: **Guilty**

On February 8, 2000, in Toronto provincial court, Mirwais Aslamyar pleaded guilty to both charges and was convicted of practising as an insurance agent without a licence and of advertising himself as an insurance agent. He was fined $250 on each charge. He remains unlicensed.

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.

Life agent: **Mariana Todorova (Toronto) Level II applicant**

Advisory Board Hearing: **April 26, 1999; May 11, 1999; May 13, 1999; and June 7, 1999**

Decision: **Application denied**

An Advisory Board hearing was conducted in Toronto to consider Ms. Todorova's re-application for a life insurance agent's licence. Ms. Todorova had been previously licensed as an agent.

In its report, the Board recommended that Ms. Todorova's application for licensing be denied on the basis that she is not suitable to act as an insurance agent. The Board found Ms. Todorova had provided false information to an

insurance company; that her explanations concerning events in her past were not credible; and reasoned that "failure to demonstrate honesty and trustworthiness is fatal to any application."

By decision dated February 8, 2000, the Superintendent accepted the findings of fact of the Board, and accepted the recommended action, ordering that Ms. Todorova's application for licensing as a life insurance agent be denied.

Dispute Resolution Decisions

An arbitrator may decide at the conclusion of an arbitration hearing 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:	**Domenica Fimiani**
Insurer:	**Liberty Mutual Insurance Company**

The arbitrator, in a January 11, 2000 decision, awarded the applicant, amongst other items, weekly replacement benefits, payable under Bill 164, amounting to more than $140,000 including interest.

The arbitrator further ordered that Liberty Mutual pay a lump sum Special Award of $30,000 (rather than the five to ten per cent that the insurer suggested) because:

- the insurer did not appear to take the applicant's TMJ disorder seriously;
- its referral letters to medical experts did not provide a fair summary of the applicant's history and the views of all the treating medical practitioners or failed to provide all relevant medical reports;
- it failed to have the applicant's TMJ complaints investigated, but rather relied on the opinions of those who did not have TMJ expertise;
- once it received an opinion supporting a termination of benefits, it chose to remain indifferent to whatever further evidence it received; and

- it failed to offer any explanation for its handling of the matter.

Type of Decision:	**Arbitration**
Applicant:	**Suzanne I. Pepin**
Insurer:	**Security National Insurance**

The applicant was injured in an motor vehicle accident on November 16, 1993. In his decision of January 24, 2000, the arbitrator found the applicant to be entitled, under Bill 68, to, amongst other items, chiropractic treatment. The arbitrator also ordered a Special Award in the lump sum of $350, representing roughly 50 per cent of the outstanding chiropractic account. The arbitrator held that the insurer had violated the "pay-pending-dispute-resolution" protection of subsection 6(7). The insurer was not entitled to rely on an insurer's medical examination as though it was a Designated Assessment Centre (the latter being applicable only to accidents occurring after December 31, 1993).

Type of Decision:	**Arbitration**
Applicant:	**Enrique Mendez, Maritza Mendez, Mariana Mendez Karen Mendez, Jocelyn Mendez and Nicole Mendez Morabito**
Insurer:	**Liberty Mutual Insurance Company**

In a January 25, 2000 decision, the arbitrator awarded the applicants (members of the same family), amongst other items, supplementary medical benefits payable under Bill 164. The entire Mendez family sustained personal injuries in a motor vehicle accident on November 2, 1995. Supplementary medical benefits for all applicants amounted to more than $73,000 and in the case of Mrs. Maritza Mendez, the mother, a further amount of supplementary medical benefits was to be determined at a later date.

The applicants were given a special award of $7,500 inclusive of interest, because it was determined by the arbitrator that:

- the insurer refused to pay benefits pending receipt of extensive pre-accident medical and financial documentation. This kind of pre-condition is valid in an ongoing investigation but not in the context of commencing the payment of benefits.
- the insurer ignored the processes outlined in the Schedule regarding dispute resolution. It ignored the pay pending dispute provisions related to supplementary medical benefits. Moreover, it did not schedule any medical assessments for either the medical claims or the weekly claims submitted by the mother and father until the applicants submitted their application for arbitration.

A mitigating factor was the conduct of Mr. Mendez who was found to have lied about his continued ability to return to work which cast doubt about the veracity of his entire claim.

Type of Decision: **Arbitration**

Applicant: **Sharon Morabito**

Insurer: **Liberty Mutual Insurance Company**

The arbitrator, in his January 31, 2000 decision, awarded the applicant, amongst other items, ongoing weekly income replacement benefits payable under Bill 164. At the time of the decision, the outstanding weekly income benefits amounted to more than $31,000, plus interest.

The arbitrator further ordered the insurer to pay a Special Award for the following reasons:

- at the time the insurer terminated weekly income benefits, all the evidence indicated that the applicant was disabled from full-time work. The insurer did not produce any evidence that the applicant could work full time.
- the insurer's submission that the applicant was disabled by pre-existing conditions was refuted by the absence of any expert opinion to that effect and that the insurer offered no reasonable explanation for failing to comply with the Schedule and not making a loss of earning capacity offer.

Considering the amount of weekly income replacement benefits outstanding, the arbitrator determined a special award of $15,000, including interest, to be appropriate.

Type of Decision: **Arbitration**

Applicant: **Pamela Simpson**

Insurer: **Trafalgar Insurance Company of Canada**

The arbitrator, in her February 4, 2000 decision, upheld a Special Award ordered by a different arbitrator on an earlier motion for interim benefits. A special award of 10 per cent of the amount to which the applicant was entitled at the date of the interim award, plus interest compounded monthly, was granted to the applicant. The arbitrator found that the insurer had unreasonably withheld the applicant's weekly benefits by failing to follow the termination procedure or LECB provisions of the 1995 Schedule. The relative novelty and complexity of the provisions persuaded the arbitrator that an award of 50 per cent, as sought by the applicant, was not warranted.

Type of Decision: **Arbitration**

Applicant: **Goran Alobic**

Insurer: **Maplex General Insurance**

The applicant was awarded ongoing weekly income benefits, under Bill 164, in a decision issued February 9, 2000. In his closing submissions, the applicant had raised for the first time the question of a Special Award. The arbitrator held that the issue of a special award could be raised at that point, but that the principles of natural justice and procedural fairness must be met. Accordingly, the issue of a special award was referred back to a pre-hearing discussion to clarify the particulars of the applicant’s claim for a special award and to deal with production exchange and procedural matters.

Type of Decision: **Arbitration**

Applicant: **Margaret Kubarska**

Insurer: **Coachman Insurance Company**

Less than a month before her arbitration hearing was scheduled to begin, the applicant notified the Commission that she sought to withdraw her application for arbitration in order to pursue her claim for accident benefits in a court

action. The arbitrator, in a decision dated February 24, 2000, permitted the applicant to withdraw, pursuant to section 67 of the Dispute Resolution Practice Code. The terms of the withdrawal, included payment of the insurer's $3,000 assessment fee (which had been agreed to by the applicant), and legal fees and disbursements in the amount of $1,916.21 (which was opposed by the applicant).

Type of Decision:	**Arbitration**
Applicant:	**Brian P. Henderson**
Insurer:	**Lombard General Insurance Company of Canada**

The applicant was injured in a November 1, 1994 car accident. In his March 31, 2000 decision, the arbitrator awarded a Special Award of $65,000, inclusive of interest, for the following reasons:

- the insurer demonstrated an inflexible and unyielding attitude, treating its own insured as if he were an adversary;
- it offered no reasonable excuse why more than six months after acknowledging the applicant's entitlement to weekly benefits, it paid him less than half of the principal outstanding weekly benefits;
- it submitted no evidence refuting the opinions of the applicant's health care consultants supporting specific treatment;
- its numerous failures of duty (including a failure to inform the applicant about available accident benefits, evaluating and responding to this claims in a timely manner and misstating the limitation period) contributed to the unreasonable delay and withholding of accident benefits; and
- the amount of withheld or delayed benefits plus applicable interest amounted to more than $160,000.

Financial Services Tribunal Decisions

There were no insurance decisions by the Financial Services Tribunal during the first quarter of 2000.

Martha Milczynski	Dina Palozzi
Chair	Chief Executive Officer

Financial Services Commission of Ontario

Chair Financial Services Tribunal

Financial Services Commission of Ontario

Superintendent of Financial Services

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