Bulletin

No.G-07/00

- General

Monitoring and enforcement report - including prosecution and hearing decisions - for second 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 second quarter of 2000, the FSCO undertook the following:

- **Police Checks**

  A total of 1,193 police checks on the background of prospective agents were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

  FSCO received 31 complaints about the conduct of agents for the second quarter April 1, 2000, to June 30, 2000. The subjects of the complaints included fraud, forgeries, misrepresentation, and agent misconduct.

  Overview of Complaints

Complaints in progress, from end of quarter 2000	44
Plus: *Complaints received* during second quarter, 2000	31
Less: *Complaints in progress* at end of second quarter, 2000	25
Total number of Complaint reviews completed during second quarter, 2000	50

  Disposition of Complaint Reviews

Cases forwarded for potential enforcement	23

Cases resolved	12
Licences surrendered	0
Cases closed	15
Total	50

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

- **Investigations initiated**

A total of 55 cases were forwarded to Investigations. Of that total, 41 cases related to agents and adjusters, four related to mortgage brokers, two related to cooperatives and eight related to insurance companies.

Source of investigations

- Agents:

Complaints about agent conduct	25
Allegations of unsuitability of agents	2
Doing business without a licence in force	11

Continuing education audits	3
Total	41

- Mortgage Brokers:

Doing business without a licence in force	3
Complaints about mortgage broker conduct	1
Total	4

- Cooperatives:

Complaints about cooperative conduct	2

- Insurance Companies:

Doing business without a licence in force	8
Total	55

Outcome of investigations

A total of 63 cases were completed:

Charges laid in Provincial Offences court	22
Advisory Board Hearings held	0
Sponsorship of agent withdrawn	0
Superintendent's Orders issued	3
Letters of Censure issued	16
Licence Surrendered	1
Closed files (no enforcement action warranted)	21
	63

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

- **Letters of Warning**

During the second quarter, 233 Letters of Warning were issued to life agents who were late in applying for licence renewal.

- **Letters of Censure**

In addition to the 16 Letters of Censure issued as a result of formal investigations, six Letters of Censure were issued to life agents who did not provide full disclosure of information on their licence applications and one Letter of Censure was issued to an agent 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 investigations statistics, are as follows:

Prime Capital Funding	The company voluntarily surrendered its mortgage broker's licence since there were no longer any company directors registered as mortgage brokers. The situation arose after a director who held a mortgage broker's registration, left the company.

- **Minutes of Settlement and Consent Orders**

During the second quarter, five agents entered into Minutes of Settlement for non- compliance with legislated continuing education requirements. There is also one additional case which was not reported in the previous quarter. Three agents consented to orders revoking their licences, and one agent consented to an order granting a conditional licence.

Details are as follows:

<u>Offences, Other than Continuing Education Offences</u>

Sandra F. Collins	By an order, dated May 15, 2000, this Level I agent's licence was revoked. The agent had been licensed, however her sponsor withdrew sponsorship of the licence and it became suspended. During the time she was unlicensed, the agent sold insurance policies to members of the public.
David J. G. Slattery	By an order, dated April 20, 2000, this Level II agent's licence was revoked. The agent admitted to inappropriate sales practices and misrepresentation, placing his own interests ahead of those of his clients.
Lewis Stevenson	By an order, dated June 1, 2000, this Level II agent's licence was revoked. The agent admitted to rebating and churning of life insurance policies for the purpose of commissions, bonuses and production of new business.

Continuing Education Offences

Constantina Annis	By Minutes of Settlement, dated June 12, 2000, this Level I agent agreed to complete her outstanding continuing education credits. Ms. Annis failed to comply with the continuing education requirements and also made a material misstatement in her renewal application. As FSCO received compelling evidence that the agent was misled by her sponsor, no suspension of her licence was ordered, as it would be unfair in these circumstances. Ms. Annis has now completed the required continuing education hours.

Daniel N. Ayotte	By an order, dated June 26, 2000, this Level I agent's licence was suspended for a period of 30 days. Mr. Ayotte failed to comply with the continuing education requirements and also made a material misstatement in his renewal application. Mr. Ayotte has now completed the required continuing education hours.
Geoffrey Campbell	By an order, dated May 15, 2000, this Level II agent's licence will expire on August 14, 2000, unless conditions specified in Minutes of Settlement related to continuing education are met.
Arthur J. Helpard	By an order, dated April 13, 2000, this Level II agent's licence was suspended for a period of 30 days. Mr. Helpard failed to comply with the continuing education requirements and also made a material misstatement in his renewal application. Mr. Helpard has now completed the required continuing education hours.
David M. Mogg	By an order, dated June 5, 2000, this Level II agent's licence was suspended for a period of 30 days. Mr. Mogg failed to comply with the continuing education requirements and also made a material misstatement in his renewal application. Mr. Mogg has now completed the required continuing education hours.
Connie Waites	By Minutes of Settlement, dated March 3, 2000, this Level I agent agreed to complete her outstanding continuing education credits. Ms. Waites failed to comply with the continuing education requirements and also made a material misstatement in her renewal application. As FSCO has received compelling evidence that the agent was misled by her manager, no suspension of her licence was ordered, as it would be

unfair in these circumstances. Ms. Waites has now completed the required continuing education hours.

Prosecutions

Insurance

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

Against: **Wayne Winterfield (Dundas) Level II agent**

Verdict: **Guilty**

On June 20, 2000, in Hamilton provincial court, Wayne Winterfield pleaded guilty and was convicted of practising as an insurance agent after his licence had expired. He was fined $700.

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

Against: **Gabor L. Vaski (Burlington) Level II agent**

Verdict: **Guilty**

On June 13, 2000, in Toronto provincial court, Gabor L. Vaski 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: **Ramon Hojilla (Scarborough), former Level 1 agent**

Verdict: **Guilty**

On June 13, 2000, in Toronto provincial court, Ramon Hojilla pleaded and was convicted of practising as an insurance agent after his licence had expired. He was fined $750. Mr. Hojilla is not currently licensed.

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

Against: **Robert E. Olivier (Pickering) Level 1 agent, sponsored by Pierce National Life**

Verdict: **Guilty**

On June 13, 2000, in Toronto provincial court, Robert Olivier 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: Gordon J. White (Niagara Falls) Level II agent

Verdict: Guilty

On May 11, 2000, in St. Catharines provincial court, Gordon J. White pleaded guilty and was convicted of practising as an insurance agent after his licence had expired. He was fined $2,000.

Charge: Furnishing false information

Against: Vincent Roti (North Bay) Level I agent sponsored by Primerica Life Insurance Company

Verdict: Guilty

On April 25, 2000, in Toronto provincial court, Vincent Roti pleaded guilty and was convicted of furnishing false information in an application for a life insurance agent's licence. He was fined $400.

Mortgage Brokers

Charge: Acting as a mortgage broker without registration

Against: Glasford Alexander; A.A.A. Financial Consulting Inc.; and S.S.K.B. Financial Corporation

Verdict: Guilty

Glasford Alexander, director and administrator of both A.A.A. Financial and S.S.K.B. Financial, was sentenced on April 4, 2000, for a conviction of carrying on the business of a mortgage broker while unregistered. Each of the companies was fined $25,000, and Alexander was fined $5,000 on each of the two counts. He was also ordered to pay restitution totalling $2,360 to three consumers and is not to be employed in any capacity of money lending or mortgage brokering for three years.

The fines are amongst the highest ever levied in a mortgage broker case, reflecting the fact that Alexander and his companies had engaged in dishonest market conduct against vulnerable individuals.

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:	**Douglas Crawford (St. Lazare, Que.) Level II agent**
Advisory Board Hearing:	**Agent did not request hearing**
Decision:	**Licence revoked**

A Notice of Proposed Hearing was sent to Douglas Crawford to consider suspending or revoking his life insurance agent's licence following allegations of multiple acts of forgery and misappropriation of client funds.

By decision dated May 15, 2000, the Superintendent found the allegations against Mr. Crawford to be established and ordered that his life insurance agent's licence be revoked.

Life agent:	**Patrick Tai-Pow (Mississauga) Level II agent**
Advisory Board Hearing:	**Agent did not request hearing**
Decision:	**Licence revoked**

A Notice of Proposed Hearing was sent to Patrick Tai-Pow to consider suspending or revoking his life insurance agent's licence following allegations of multiple acts of forgery and theft of client funds, as well as failure to facilitate an examination.

By decision dated April 17, 2000, the Superintendent found the allegations against Mr. Tai-Pow to be established and ordered that his life insurance agent's licence be revoked.

Life agent:	**Zenon Slipenskyj (Orangeville) Level II agent**
Advisory Board Hearing:	**January 25, 2000**
Decision:	**Licence suspended**

An Advisory Board hearing was conducted in Toronto to consider allegations that Mr. Slipenskyj had failed to comply with the continuing education requirements, and was not truthful in his renewal application. The Board found the allegations against Mr. Slipenskyj to be established. In its report, the Board recommended that Mr. Slipenskyj's licence be suspended for a period of 30 days; and that he complete the required continuing education hours on or before April 15, 2000.

By decision dated April 17, 2000, the Superintendent accepted the findings of fact of the Board, and ordered a variation of the recommended penalty, extending the completion time for the required continuing education hours, but also adding a consequence should Mr. Slipenskyj fail to complete the required continuing education hours. The Superintendent ordered that Mr. Slipenskyj's life insurance agent's licence be suspended for a period of 30 days, commencing June 1, 2000. Additionally, the Superintendent ordered that Mr. Slipenskyj submit by July 31, 2000, evidence acceptable to the Superintendent, of completion of 30 hours of continuing education. If such evidence is not submitted by July 31, 2000, Mr. Slipenskyj's licence will be suspended until such time as he completes the required continuing education.

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**

Re:	**(FSCO A98-001203, April 20, 2000); Bill 59; not appealed as of August 10, 2000**
Applicant:	**Cindy Baird**
Insurer:	**Pilot Insurance Company**
Award:	**Assessment Award**

The Applicant was injured in a car accident on June 11, 1997. Neither the Applicant nor anyone on her behalf appeared at the arbitration hearing. In the absence of any evidence to prove her claims, the Arbitrator dismissed the matter in her decision of April 20, 2000. The Arbitrator found that the applicant had prolonged the process:

- by failing to attend three scheduled pre-hearing discussions and the hearing, although properly notified; and,
- by failing to co-operate with her own counsel (who was subsequently allowed off the record), and with the Insurer by refusing to produce pertinent financial and medical information.

The Arbitrator found that the Applicant had demonstrated an obvious disregard and disrespect for the process, amounting to an abuse, and accordingly, awarded the Insurer its expenses of the arbitration to be assessed, as well as an award of $1,000 pursuant to subsection 282(11.2) of the Insurance Act, R.S.O. 1990, c.I.8, as amended.

Type of Decision:	**Arbitration**
Re:	**(FSCO A98-000429, April 27, 2000); Bill 59; Notice of Appeal received May 19, 2000**
Applicant:	**Khouchaba Korkiss**
Insurer:	**Progressive Casualty Insurance Company**
Award:	**Special Award**

In his April 27, 2000 decision, the Arbitrator found that the applicant was entitled to a special award on the basis that the Insurer had unreasonably withheld benefits when it maintained its initial allegation that the Applicant was involved in a "staged" accident despite the fact that:

- criminal charges were never laid;

- it failed to make timely and reasonable steps to investigate the claim but rather relied on highly questionable and ultimately no credible evidence; and,
- it failed to comply with its obligations under section 30 (upon which it was relying) and under the pay-pending provisions of the 1996 Schedule.

The Arbitrator found that the applicant had developed a severe psychiatric condition, acknowledged by the Insurer (which, nonetheless, had failed to pay any medical or rehabilitation benefits), which disabled him and may have led to the breakup of his family. Considering the serious nature of the Insurer's conduct and the serious consequences, the Arbitrator granted a special award of $15,000, inclusive of interest, which amounted to about 50% of the outstanding income replacement benefits.

Type of Decision:	**Arbitration**
Re:	**(FSCO A98-001146, May 4, 2000); Bill 59; not appealed as of August 10, 2000**
Applicant:	**Osei Monney**
Insurer:	**Dominion of Canada General Insurance Company**
Award:	**Assessment Award**

In permitting the applicant to withdraw his Application for Arbitration, the Arbitrator held, pursuant to Rule 67.39(c) of the Dispute Resolution Practice Code, that the Applicant pay the Insurer's assessment fee of $3,000, on the grounds that the applicant's:

- failure to comply with significant and relevant production requests;
- forcing an earlier adjournment because of non-availability; and
- withdrawing his claim close to the subsequently scheduled hearing,

indicated a contempt for the process amounted to an abuse.

Type of Decision:	**Arbitration**
Re:	**(FSCO A98-000591, June 13, 2000); Bill 164; not appealed as of August 10, 2000**
Applicant:	**Keith Campbell**
Insurer:	**State Farm Automobile Insurance Company**
Award:	**Special Award**

The Arbitrator found that the Insurer had no evidence to explain its withholding of a "pay now, dispute later" rehabilitative account in the amount of $2,671, under Bill 164. A special award of $1,300, inclusive of interest, was ordered. Regarding other allegations of unfair treatment, the Arbitrator held that his jurisdiction to make a special award was dependent on an insurer unreasonably withholding or delaying payments. The Arbitrator found no Authority "that an insurer is to decide what kind of treatment its insured needs."

Type of Decision:	**Arbitration**
Re:	**(FSCO A98-000805, June 21, 2000); Bill 164; not appealed as of August 10, 2000**
Applicant:	**Irene M. Gauthier**
Insurer:	**Allstate Insurance Company of Canada**
Award:	**Special Award**

The Arbitrator granted a special award of $1,750 based on the Insurer's unreasonable two-month delay of payment of settlement funds. The award represented approximately five per cent of the settlement. The Arbitrator held that once the settlement had been entered into, it was not reasonable for the settlement funds to be held pending the Insurer's clarification of whether the settlement was indeed correct or obtaining sufficient authority to requisition settlement funds.

Although the Arbitrator also found that the Insurer had improperly terminated weekly benefits by failing to arrange for a DAC settlement, he held that the standard for a special award was not one of perfection and that in the particulars of this case, that mistake was understandable.

Type of Decision:	**Arbitration**
Re:	**(FSCO A99-000598, June 23, 2000); Bill 68; Notice of Appeal filed July 25, 2000**
Applicant:	**Molly R. Persofsky**
Insurer:	**Liberty Mutual Insurance Company**
Award:	**Special Award**

The Arbitrator found that the Insurer's adjustment of the Applicant's claim "fell dismally below the reasonable standards expected of an accident benefits insurer in Ontario." Although the Insurer was aware fairly soon after the 1992 accident of the serious difficulties the Applicant was experiencing, rather than actively directing her rehabilitation, the Arbitrator found that the insurer mostly sat and waited for the Applicant to present her claims for accident benefits. However, there was no evidence that the Applicant had ever received any information as to what accident benefits were available to her. The Arbitrator found that the Insurer had an obligation to provide such information. Following Kennelly and Wawanesa (FSCO A99-000139, January 21, 2000), the Arbitrator ordered payment of services she found were reasonably required but which were not provided.

Indicating that some of the payments withheld represented a higher order of reasonableness than others, the Arbitrator ordered a special award of 40 per cent of the outstanding care and housekeeping expenses, the maximum 50 per cent of a swimsuit claim, and 30 per cent of all other successful claims, together with the statutory interest.

Re:	**(FSCO A97-000110, June 28, 2000); Bill 164; not appealed on this issue**
Applicant:	**Jose Pires**
Insurer:	**Zurich Insurance Company**
Award:	**Assessment Award**

Pursuant to subsection 282(11.2) of the Insurance Act, the Insurer was awarded its assessment fee of $3,000. The

Arbitrator found that the Applicant had misrepresented both his employment status and his pre- and post-accident income, resulting in the Applicant being unsuccessful in his claims and being ordered to repay all the income replacement benefits which he had received. The Applicant was further ordered to pay the Insurer's expenses, assessed at $16,107.21.

Financial Services Tribunal Decisions

There were no insurance, credit union/caisse populaire, trust and loan or co-operatives decisions by the Financial Services Tribunal during the second quarter of 2000.

Martha Milczynski	Dina Palozzi
Chair	Chief Executive Officer
Financial Services Commission of Ontario	Financial Services Commission of Ontario
Chair Financial Services Tribunal	Superintendent of Financial Services

August 25, 2000

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