Financial Services Commission of Ontario

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Providing Services Across Financial Services Sectors

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No. G-04/01

- General

Monitoring and Enforcement Report - Including Prosecution and Hearing Decisions - for First Quarter, 2001

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 (Superintendent), who makes the majority of first line regulatory 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.

The Superintendent, FSCO, administers and enforces the Financial Services Commission of Ontario Act, 1997 (FSCO Act), and other Acts that confer powers or assign duties to the Superintendent. Under the FSCO Act, the Superintendent may delegate the exercise of any power or the performance of any duty conferred on or assigned to the Superintendent.

The Director of the Licensing and Enforcement Division (the Director) has been delegated the authority by the Superintendent to render licensing decisions.

The Dispute Resolution Group provides mediation, neutral evaluation, arbitration and appeal services as fair, cost-effective and timely alternatives to the court system. 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 that has unreasonably withheld or delayed the payment of benefits.

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.

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 percent 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 2001, FSCO undertook the following:

- **Police Checks**

  A total of 1,292 police checks on the background of prospective agents were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

FSCO received 55 complaints about the conduct of agents for the first quarter January 1, 2001, to March 31, 2001. The subjects of the complaints included fraud, forgeries, misrepresentation and agent misconduct.

Overview of Complaints

Complaints in progress, from end of fourth quarter 2000	36
Plus: *Complaints received* during first quarter, 2001	55
Less: *Complaints in progress* at end of first quarter, 2001	54
Total number of *Complaint reviews* completed during first quarter, 2001	37

Disposition of Complaint Reviews

Cases forwarded for potential enforcement	17
Cases resolved	8
Licences surrendered	0
Cases closed	12
Total	37

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 307 audits of life agents during the first quarter of 2001, 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 2001, FSCO undertook the following:

- **Investigations initiated**

A total of 28 cases were forwarded to Investigations. Of that total, 24 cases related to agents and adjusters, one related to credit unions, and three related to insurance companies.

Source of investigations

- Agents:

Complaints about agent conduct	18
Allegations of unsuitability of agents	2
Doing business without a licence in force	2
Continuing education audits	2
Total	24

- Credit Unions:

Complaints about credit union conduct	1
Total	1

- Insurance Companies:

Complaints about insurance company conduct	1
Doing business without a licence in force	2
Total	3
Grand Total	28

Outcome of investigations

A total of 47 cases were completed:

Charges laid in Provincial Offences court	4
Advisory Board Hearings held	2
Sponsorship of agent withdrawn	4
Superintendent's Orders issued	14
Letters of Censure issued	13
Licence Surrendered	4
Cease and Desist Orders issued	0
Closed files (no enforcement action warranted)	6
Total	47

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

The results of the individual court cases and the Advisory Board hearings are reported in the quarter when the decisions are rendered. The names of individuals subject to Superintendents Orders or who have surrendered their licences are listed when they occur.

- **Letters of Warning**

During the first quarter, 205 Letters of Warning were issued to life agents who were late in applying for licence renewal. Letters of Warning do not require formal investigations and are not included in the preceding statistics.

- **Letters of Censure**

In addition to the 13 Letters of Censure issued as a result of formal investigations, two 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 surrender of a licence, indicated in the investigations statistics, are as follows:

Henry Guzman	The agent surrendered his licence following allegations of failing to complete disclosure statements in at least three instances of policy replacement.

Todd Johnson	The agent surrendered his licence following allegations of the sale of improper investment products to clients.
Michael Stradling	The agent surrendered his licence following allegations of fronting for a former life insurance agent.
Bill Winters	The agent surrendered his licence following allegations of misrepresentation and being untrustworthy.

Minutes of Settlement and Superintendent's Orders

During the first quarter, 13 agents and one corporate agency entered into Minutes of Settlement for non-compliance with legislated requirements, and of these, nine consented to orders revoking their licences.

Bill Winters	The agent surrendered his licence following allegations of misrepresentation and being untrustworthy.
Kenneth M. Barker	By an order, dated March 21, 2001, this Level II agent's licence was revoked. The agent admitted to submitting fictitious applications for insurance.
Ronald Cass	By an order, dated February 27, 2001, this Level II agent's licence was suspended for 90 days. The agent admitted to uttering a forged document to an insurer.
Lenny D'Aiuto	By an order, dated February 19, 2001, this Accident & Sickness only agent's licence was revoked. The agent admitted to submitting applications for insurance without the client's consent and forging the client’s signature on the insurance applications.

Theresa Donovan	By an order, dated February 12, 2001, this Level I agent's licence would have expired February 17, 2001, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met.
Andrew Goodchild	By an order, dated January 2, 2001, this Level II agent's licence was revoked. The agent admitted to forging clients' signatures, and writing a letter falsely accusing another employee of committing this act.
Peter Hedges	By an order, dated March 15, 2001, this Level II agent's licence was revoked effective April 1, 2001. The agent was a former employee of an insurance company and directed business through other organizations to provide his wife commissions to which she was not entitled.
Susan Hedges	By an order, dated March 15, 2001, this Level II agent's licence was revoked. The agent was the beneficiary of the scheme described for agent Peter Hedges.
Peter J. Hunter	By an order, dated February 12, 2001, this Level I agent's licence was revoked. The agent admitted to forging numerous clients' signatures; providing false information to policyholders; instructing a policyholder to sign an application as his wife, after which the agent witnessed the false signature; and submitting an application for insurance by using proceeds of a segregated fund, which incurred a withdrawal fee, without the knowledge of the client.

Akberalli Keshavjee	By an order, dated March 28, 2001, this Level II agent's licence was suspended for a period of 30 days. The agent had failed to complete the required continuing education hours and also made a material misstatement in his renewal application. Mr. Keshavjee has since completed the required continuing education hours.
Danny H. Medwin	By an order, dated January 5, 2001, this Level II agent's licence would have expired March 14, 2001, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met.
Bill O'Reilly	By an order, dated January 31, 2001, this Level I agent's licence was revoked. Prior to being licensed in Ontario, the agent was licensed in Quebec. While a Quebec agent, he admitted to selling 41 life insurance policies in Ontario, indicating on the applications that they had been signed in Quebec.
Robert Pristas and G.B.S. Insurance Agency Ltd.	By an order, dated March 14, 2001, this Level II agent's licence, and that G.B.S. Insurance of G.B.S. Insurance Agency Ltd. (GBS) were revoked effective April 1, Agency Ltd. 2001. This agent and agency were part of the scheme described for agent Peter Hedges.

Accommodation for Disability

A. C. As an accommodation for a serious illness, this Level II agent's licence was renewed. By an order, dated January 19, 2001, the agent was given until October 17, 2001, to complete the continuing education requirement, failing which the licence will expire.

Prosecutions

Insurance

Charge: Failing to facilitate an investigation

Against: Gary Tokmakjian (Markham) former Level II agent

Verdict: Guilty

On January 15, 2001, in the Ontario Court of Justice (Toronto), Gary Tokmakjian pleaded guilty and was convicted of failing to cooperate with a FSCO investigation. He was fined $1,500.

Charge: Paying commissions to unlicensed agents

Against: State Farm Life Insurance Company (Scarborough)

Verdict: Guilty

On January 24, 2001, in the Ontario Court of Justice (Toronto), State Farm Life Insurance Company pleaded guilty and was convicted of paying commissions to unlicensed agents after the agents failed to renew their licences. The company was fined $15,000.

Charge: Furnishing misleading and incomplete information

Against: Allianz Insurance Company of Canada (Toronto)

Verdict: Guilty

On January 25, 2001, in the Ontario Court of Justice (Toronto), Allianz Insurance Company of Canada pleaded guilty and was convicted of furnishing misleading and incomplete information to FSCO in response to inquires from FSCO relating to a "retail leasing insurance program." The company was fined $35,000.

Charge: Working as an agent while unlicensed

Against: Mihaly L. Vass (Shanty Bay), former Level I agent

Verdict: Guilty

On February 5, 2001, in the Ontario Court of Justice (Barrie), Mihaly L. Vass pleaded guilty and was convicted of practising as an insurance agent while his licence was suspended due to lack of sponsorship. He was fined $100 and is currently unlicensed.

Charge:	**Working as an agent while unlicensed**
Against:	**Terrance N. Dahmer (Penetanguishene), former Level I agent**
Verdict:	**Guilty**

On March 8, 2001, in the Ontario Court of Justice (Penetanguishene), Terrance N. Dahmer pleaded guilty and was convicted of practising as an insurance agent without a licence for a period of approximately 26 months. He was fined $2,000 and is currently 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:	**Paul Cappuccitti (Newmarket), Level II agent**
Advisory Board Hearing:	**December 18, 2000**
Decision:	**Licence suspended**

An Advisory Board hearing was conducted in Toronto to consider allegations that Mr. Cappuccitti failed to comply with the continuing education requirements and made a material misstatement in his renewal application that he had completed the required continuing education hours. In its report, the Board recommended that Mr. Cappuccitti's licence be suspended for a period of 30 days and that he complete the required continuing education hours.

By decision dated January 22, 2001, the Superintendent accepted the findings of fact of the Board and ordered that Mr. Cappuccitti's licence be suspended for a period of 30 days, commencing on April 1, 2001. The Superintendent further ordered that Mr. Cappuccitti submit, by June 30, 2001, satisfactory evidence of completion of 30 hours of continuing education failing which his licence will be revoked on June 30, 2001.

Life agent:	**Stanley Gitzel (Waterloo), Level II agent**
Advisory Board Hearing:	**December 18, 2000**
Decision:	**Licence revoked**

An Advisory Board hearing was conducted in Toronto to consider allegations that Mr. Gitzel failed to comply with the continuing education requirements and made a material misstatement in his renewal application that he had completed the required continuing education hours. Mr. Gitzel did not attend the hearing. In its report, the Board recommended that Mr. Gitzel's licence be revoked and that should he seek to reapply, he complete the currently required outstanding continuing education hours.

By decision dated February 19, 2001, the Superintendent accepted the findings of fact of the Board and ordered that Mr. Gitzel's licence be revoked. The Superintendent further ordered that Mr. Gitzel be required to provide satisfactory evidence of completion of 30 hours of continuing education within the two year period immediately preceding the date of any application for an insurance agent's licence, should he so apply in the future.

12 Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months (Apr 1/00 - Mar 31/01), FSCO has taken 182 enforcement actions. This represents a significant amount of enforcement activity. The chart below details the type of activity taken.

Type of Enforcement Action	Number of Cases
Licence revocations	33
Licence surrenders	6
Cease and Desist orders	4
Revocation of sponsorship	13
Licence suspensions	16
Licence conditions via Minutes of Settlement	11
Provincial Offences Court convictions and fines	26

Letters of censure	73
Total:	182

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring throughout the year. Over the past 12 months, there have been 6,208 instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken.

Monitoring Activities	Number of Occurrences
Continuing education audits	1,105
Police criminal record checks life agents/ applicants	4,940
Complaint reviews	163
Total:	6,208

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 that has unreasonably withheld or delayed the payment of benefits. 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 A99-000872, January 4, 2001); Bill 59; no appeal filed**
Applicant:	**Sudah Sivanesan**
Insurer:	**CIBC Insurance**

Award: **Special Award**

The Applicant claimed that she was entitled to the cost of assessments and reports provided by three doctors and a health care centre under s.24 of the *Statutory Accident Benefits Schedule – Accidents on or after November 1, 1996,* Ontario Regulation 403/96, as amended.

The Arbitrator found that the expenses claimed by the Applicant were reasonable; and that the Insurer had unreasonably withheld payment of two parts of the claim.

The Arbitrator ordered the Insurer to pay:

- the cost of the assessments and reports provided by three doctors and a health care centre, totalling $6,184.50, plus interest;
- a special award of 25 percent of the $916.50 to which the Applicant is entitled for the Home Assessment/Report and Job Site Analysis/Report, together with interest on all the amount owing (including unpaid interest) at 2 percent per month, compounded monthly, from September 4, 2000; and
- the Applicant's reasonable expenses of arbitration.

Type of Decision:	**Arbitration**
Re:	**(FSCO A98-000080, March 15, 2001); Bill 59; no appeal filed**
Applicant:	**Roland Falconer**
Insurer:	**York Fire & Casualty Insurance Company**
Award:	**Special Award**

The Arbitrator found that the Insurer was bound by the terms of a settlement agreement negotiated with the Applicant on October 27, 1998.

The Arbitrator found that non-payment of these amounts warranted a special award at the maximum rate to the Applicant, payable by the Insurer.

The Arbitrator ordered the Insurer to pay:

- the amount of $7,000 as per the agreement negotiated on October 27, 1998;
- a special award in the amount of 50 percent of the value of the $7,000 on the day it is paid;
- the sum of $8,000 in non-earner benefits it agreed he was entitled to;
- a special award in the amount of 50 percent of the value of the $8,000; and
- interest on the amounts of $7,000 and $8,000 in accordance with section 68 of the Statutory Accident Benefits Schedule.

Type of Decision:	**Arbitration**
Re:	**(FSCO A00-000471, April 4, 2001); Bill 59; no appeal filed**
Applicant:	**Ming Shan Xiao**
Insurer:	**York Fire & Casualty Insurance Company**
Award:	**Special Award**

The Applicant claimed that he was entitled to costs of assessments performed, treatment plans prepared and treatment provided at a rehabilitation centre.

The Arbitrator found that State Farm was to pay $1,285 of the $2,608.50 claimed by the Applicant, plus interest.

The Arbitrator ordered the Insurer to pay:

- $1,285 pursuant to sections 24 and 14 of the Statutory Accident Benefits Schedule, for assessments performed, treatment plans completed and treatment received at the Logan Rehabilitation Centre Inc. Of this amount, $747.50 became overdue on October 25, 1999 and bears interest at the rate specified by section 46(2) of the Statutory Accident Benefits Schedule; and
- a special award pursuant to subsection 282(10) of the Insurance Act in the amount of $1,223.63.

Neither party was found liable to pay the other's expenses in respect of the arbitration under section 282(11) of the Insurance Act.

Financial Services Tribunal Decisions

There were no decisions for this period.

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

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