Bulletin

No. G-06/01

- General

Monitoring and Enforcement Report - Including Prosecution and Hearing Decisions - for Second 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 of Financial Services (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 Compliance Division (the Director) has been delegated the authority by the Superintendent to render licensing decisions.

The Dispute Resolution Division 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 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 2001, FSCO undertook the following:

- **Police Checks**

  A total of 1,531 police checks on the background of prospective agents were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

FSCO received 35 complaints about the conduct of agents for the second quarter April 1, 2001, to June 30, 2001.

The subjects of the complaints included fraud, forgeries, misrepresentation and agent misconduct.

Overview of Complaints

Complaints in progress from end of first quarter 2001	54
Plus: *Complaints received* during the second quarter 2001	35
Less: *Complaints in progress* at end of second quarter 2001	47
Total number of *Complaint reviews* completed during second quarter 2001	42

Disposition of Complaint Reviews

Cases forwarded for potential enforcement	19
Cases resolved	6
Licences surrendered	0
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 277 audits of life agents during the second 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 second quarter of 2001, FSCO undertook the following:

- **Investigations initiated**

A total of 12 cases were forwarded to Investigations. Of that total, 10 cases related to agents and adjusters, one related to mortgage brokers, and one related to cooperatives.

Source of investigations

- Agents:

Complaints about agent conduct	4
Allegations of unsuitability of agents	0
Doing business without a licence in force	4
Continuing education audits	2
Total	10

- Mortgage Brokers:

Doing business without a licence in force	1
Total	1

- Cooperatives

Complaints about cooperative conduct	1
Total	1
Grand Total	12

Outcome of investigations

A total of 60 cases were completed:

Charges laid in Provincial Offences Court	21
Advisory Board Hearings held	2

Sponsorship of agent withdrawn	2
Superintendent's Orders issued	10
Letters of Censure issued	9
Licence Surrendered	0
Cease and Desist Orders issued	0
Closed files (no enforcement action warranted)	16
Total	60

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 Superintendent's Orders or who have surrendered their licences are listed when they occur.

- **Letters of Warning**

  During the second quarter, 67 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 nine 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.

Minutes of Settlement and Superintendent's Orders

During the second quarter, 10 agents entered into Minutes of Settlement for non-compliance with legislated requirements, and of these, two consented to orders revoking their licences.

Cleve Bourdeau	By an order, dated April 9, 2001, this Level II agent's licence was suspended for three months. The agent admitted to several instances of forging clients' signatures on delivery receipts, as well as on policy disclosure pages or insurance company acknowledgements of policy changes.
Christopher A. Frook	By an order, dated May 29, 2001, this Level I agent's licence was suspended for two months. The agent must also meet licensing conditions upon reinstatement of his licence. The agent admitted to forging several clients' signatures on policy illustrations and replacement forms.
William T. Graham	By an order, dated May 18, 2001, this Level II agent's licence was suspended for one month. The agent admitted to forging a client's signature on a policy rider application.
Aleksandra J. Kowalski	By an order, dated May 8, 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 her renewal application. Additionally, this agent's licence would have expired May 31, 2001, unless conditions specified in Minutes of Settlement related to continuing education were met. Conditions were met.

Ned Krayishnik	By an order, dated April 27, 2001, this Level II agent's licence was suspended for 15 days. The agent had failed to complete the required continuing education hours and also made a material misstatement in his renewal application. Mr. Krayishnik has since completed the required continuing education hours.
Ronald Morris	By an order, dated April 27, 2001, this Level II agent's licence was suspended for 30 days. The agent had failed to complete the required continuing education hours and also made a material misstatement in his renewal application. Mr. Morris has since completed the required continuing education hours.
Nigel R. Ottley	By an order, dated June 11, 2001, this Level II agent's licence was revoked. The agent admitted to receiving commissions to which he was not entitled, by means of fraudulent practices. Ottley altered internal company commissions statements to hide the fact that he was receiving the funds rather than the agency for whom he was acting as manager. The agent has made restitution of the funds to the agency.

Andre Roberge	By an order, dated April 27, 2001, this Level II agent's licence was suspended for 30 days. The agent had failed to complete the required continuing education hours and also made a material misstatement in his renewal application. Mr. Roberge has since completed the required continuing education hours.
Peter Tilley	By an order, dated June 19, 2001, this Level II agent's licence was suspended for 30 days. The agent had failed to complete the required continuing education hours and also made a material misstatement in his renewal application. Mr. Tilley has since completed the required continuing education hours.
Mark G. Williams	By an order, dated May 25, 2001, this Level II agent's licence was revoked. The agent admitted to requesting loans against policies held by various clients, forging the clients' signatures on the loan cheques, and using the proceeds for his own purposes.

Prosecutions

Insurance

Charge:	**Working as an agent while unlicensed**
Against:	**Gregory R. Gaffney (Newmarket), Level II agent**
Verdict:	**Guilty**

On May 11, 2001, in Newmarket provincial court, Gregory Gaffney pleaded guilty and was convicted of practising as an insurance agent without a licence. He was fined $100 and is currently licensed.

Charge:	**Working as an agent while unlicensed**
Against:	**John F. Higgs (Mississauga), Level II agent**
Verdict:	**Guilty**

On April 10, 2001, in Brampton provincial court, John Higgs pleaded guilty and was convicted of practising as an insurance agent without a licence. He was fined $100 and is currently licensed.

Charge:	**Working as an agent while unlicensed**
Against:	**Hyung-Jung (Paul) Kim (Oakville), Level I agent sponsored by Forethought Life Insurance Company**
Verdict:	**Guilty**

On June 6, 2001, in Toronto provincial court, Hyung-Jung (Paul) Kim pleaded guilty and was convicted of practising as an insurance agent without a licence. He was fined $500 and is currently licensed.

Charge:	**Premium rebating and providing inducements to policyholders**
Against:	**Transamerica Life Insurance Company of Canada (Scarborough)**
Verdict:	**Guilty**

On May 2, 2001, in Toronto provincial court after a trial, Transamerica Life Insurance Company of Canada was found guilty of inducing 63 of its policyholders to switch insurance products by offering a rebate of up to three times the annual premiums paid on the original policies. A significant mitigating factor in the case was that there was no evidence of policyholders being hurt. The company was fined $5,000 on each of the two counts for a total of $10,000. Transamerica has filed an appeal but no date has been set.

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:	**Mart Barks (Ashburn), Level II agent**
Advisory Board Hearing:	**March 1, 2001**
Decision:	**Licence suspended**

An Advisory Board hearing was conducted in Toronto to consider allegations that Ms. Barks failed to comply with the continuing education requirements and made a material misstatement in her renewal application that she had completed the required continuing education hours. In its report, the Board recommended that Ms. Barks' licence be suspended for a period of 15 days, and that of the 27 out-of-period credit hours provided by Ms. Barks, 22.5 be applied to the past period, leaving 4.5 for the current period.

By decision dated April 30, 2001, the Superintendent accepted the findings of fact of the Board and ordered that Ms. Barks' licence be suspended for a period of 15 days, commencing on June 1, 2001, and that of the 27 hours of continuing education that were completed by Ms. Barks after June 2, 2000, 22.5 hours be applied to the licence period ended on June 2, 2000.

Life agent:	**Judson Bumstead (Grand Bend), Level II agent**
Advisory Board Hearing:	**April 4, 2001**
Decision:	**Licence suspended**

An Advisory Board hearing was conducted in Toronto to consider allegations that Mr. Bumstead demonstrated incompetency in transacting insurance business following several instances where he had forged client signatures. The signatures were allegedly placed on documents over a period of several months, in circumstances where a client signature was not necessary to effect the transaction. In its report, the Board recommended that Mr. Bumstead's licence be suspended for a period of 30 days. The Board noted that this case is distinct from others involving forgery in that none of the transactions actually required a client signature. It was further noted that Mr. Bumstead has rehabilitated himself and is unlikely to engage in this behaviour again.

By decision dated June 14, 2001, the Superintendent accepted the findings of fact of the Board and ordered that Mr. Bumstead's licence be suspended for a period of 30 days, commencing on July 15, 2001.

Life agent:	**Grant Oldrieve (Owen Sound), Level II agent**
Advisory Board Hearing:	**Agent did not request hearing**
Decision:	**Licence revoked**

A Notice of Proposed Hearing was sent to Grant Oldrieve to consider suspending or revoking his life insurance agent licence following allegations of misappropriating client funds and being untrustworthy and unsuitable to transact the business of insurance.

By decision dated June 14, 2001, the Superintendent found the allegations against Mr. Oldrieve to be established and ordered that his life insurance agent licence be revoked.

12-Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months (July 1, 2000 - June 30, 2001), FSCO took 175 enforcement actions. This represents a significant amount of enforcement activity. The chart below details the types of activities taken.

Type of Enforcement Action	Number of Cases
Letters of censure	61
Licence conditions via Minutes of Settlement	11
Provincial Offences Court convictions and fines	24
Cease and Desist orders	4
Revocation of sponsorship	15
Licence surrenders	5
Licence suspensions	22
Licence revocations	33
Total:	175

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring throughout the year. Over the past 12 months, there have been 6,595 instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken._

Monitoring Activities	Number of Occurrences
Continuing education audits	1,162
Police criminal record checks life agents/ applicants	5,278
Complaint reviews	155
Total:	6,595

Dispute Resolution Decisions

The Dispute Resolution Division 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.

Type of Decision:	**Arbitration**
Re:	**(FSCO A99-000366, March 28, 2001); Bill 164; under appeal**
Applicant:	**Daniel Cole**
Award:	**Special Award**

The Applicant claimed that he was entitled, on an ongoing basis, to weekly income replacement benefits since termination.

The Arbitrator found that Mr. Cole continued to meet the disability test at the time his weekly income replacement benefits were terminated, and continued to meet the test beyond the 104-week mark. Although Allstate relied on a report stating that Mr. Cole was able to perform the essential tasks of his employment, it was clearly based on an inadequate appreciation of Mr. Cole's pre-accident employment and his residual disabilities. Allstate should not have relied on this report in the face of other contradictory information.

The Arbitrator ordered the Insurer to pay the Applicant:

- income replacement benefits from February 3, 1996 ongoing until the provisions of Part VI of the *Schedule* have been complied with, the amount of the income replacement benefits to be determined;
- a special award of 15 per cent of the amount to which Mr. Cole is entitled together with interest on all amounts owing to him (including unpaid interest) at the rate of two per cent per month, compounded monthly, from the time the benefits first became payable under the *Schedule*; and
- his expenses of the arbitration proceeding.

The amount of the award was five per cent of the income replacement benefits payable, together with interest on all amounts owing (including unpaid interest) at the rate of two per cent per month, compounded monthly, from the time the benefits first became payable under the *Schedule.*

[Note: This decision, dated March 28, 2001, relates to the first quarter of 2001 and was inadvertently omitted from the Monitoring and Enforcement Bulletin for this period.]

Financial Services Tribunal Decisions

Name:	Jatinder S. Suri
Sector:	Licensing & Enforcement
Notice of Proposal:	Decision by Director of Licensing & Enforcement, dated November 20, 2000 to revoke Appellant's Level II life Insurance licence
Date of Decision:	May 28, 2001
Disposition:	Appeal dismissed

For the full text of the Decision/Order, please visit FSCO's web site at www.fsco.gov.on.ca

Martha Milczynski	Philip Howell
Chair	Chief Executive Officer (Acting)
Financial Services Commission	Financial Services Commission
of Ontario	of Ontario
Chair	Superintendent of Financial Services
Financial Services Tribunal (Acting)	

October 5, 2001

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Financial Services Commission of Ontario
5160 Yonge Street
Toronto, ON M2N 6L9
1-800-668-0128
(416) 250-7250