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Including Prosecution and Hearing Decisions - for Third Quarter 2001

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Bulletin

No. G-08/01

- General

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

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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 third quarter of 2001, FSCO undertook the following:

- **Police Checks**

A total of 1,916 police checks on the background of prospective agents were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

FSCO received 39 complaints about the conduct of agents for the third quarter

July 1, 2001, to September 30, 2001. The subjects of the complaints included fraud, forgeries, misrepresentation

and agent misconduct.

Overview of Complaints

Complaints in progress, from end of second quarter 2001	47
Plus: Complaints received during the third quarter 2001	39
Less: Complaints in progress at end of third quarter 2001	<u>35</u>
Total number of Complaint reviews completed during third quarter 2001	51

Disposition of Complaint Reviews

-	
Cases forwarded for potential enforcement	25
Cases resolved	9
Cases closed	<u>17</u>
Total	51

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 129 audits of life agents during the third quarter to ensure they met their CE requirements. As a result of the audits, one case 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 third quarter of 2001, FSCO undertook the following:

• Investigations initiated

A total of 27 cases were forwarded to Investigations. Of that total, 25 cases related to agents and adjusters, one related to loan and trust companies, and one related to caisse populaires.

Source of investigations

-

- Agents:

Complaints about agent conduct	20
Allegations of unsuitability of agents	1
Doing business without a licence in force	3
Continuing education audits	<u>1</u>
Total	25

- Loan & Trust Companies:

Doing business without a licence in force	<u>1</u>
Total	1

- Caisse Populaires:

Complaints about caisse populaire conduct	<u>1</u>
Total	1
Grand Total	27

Outcome of investigations

-

A total of 47 cases were completed:

Charges laid in Provincial Offences court	6
Sponsorship of agent withdrawn	3
Superintendent's Orders issued	12
Letters of Censure issued	5
Closed files (no enforcement action warranted)	<u>21</u>

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

- **Letters of Warning**

During the third quarter, 80 Letters of Warning were issued: 79 to life agents and one to an adjuster, all of whom 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 five 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 third quarter, 12 agents entered into Minutes of Settlement for non-compliance with legislated requirements, and of these, four consented to orders revoking their licences.

Jacob Boot

By a minutes of settlement and an undertaking, dated August 22, 2001, this Level I agent received a disciplinary caution. The agent had neglected to have a client sign a comparison disclosure form or to leave a copy of the form with him. When Mr. Boot returned to meet with the client, only the client's wife was at home. Mr. Boot allowed the client's wife to sign her husband's signature to the disclosure form.

**Thomas M.
Bradshaw**

By an order, dated August 24, 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. Bradshaw has since completed the required continuing education hours.

Jeffrey Calam

By a consent and an undertaking, dated August 9, 2001, this Level I agent agreed not to apply for a renewed life insurance agent's licence or any other licence from FSCO, for a period of five years. The agent admitted to several instances of forging clients' signatures on application forms.

Francisco Fonseca

By an order, dated August 22, 2001, this Level II agent's licence was suspended for one month. The agent signed as a witness on application forms without having actually witnessed the signatures. He also admitted to requesting quotations from several insurance companies on behalf of another agent, or engaging in the practice of "fronting."

Arthur Kamiyama

By an order, dated July 19, 2001, this Level II agent's licence was revoked. The agent had on approximately 65 different occasions submitted fictitious life insurance application forms. He also forged clients' signatures and in one instance submitted an insurance application while he was unlicensed.

Marion Knox

By an order, dated August 24, 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. Ms. Knox has since completed the required continuing education hours.

Wilfred Leibel

By an order, dated August 8, 2001, this Level I agent's licence was suspended for two months. The agent admitted to misrepresentation. On several occasions the agent was with his employer when the employer used a false name when dealing with clients and also admitted to introducing his employer using the false name.

William J. Mackay

By an order, dated August 24, 2001, this Level I 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. Mackay has since completed the required continuing education hours.

Brock A. Parker

By an order, dated August 24, 2001, this Level I agent's licence was revoked. The agent had failed to complete the required continuing education hours and also made a material misstatement in his renewal application. Mr. Parker chose to surrender his licence.

Jacques H.

Perreault

By an order, dated September 13, 2001, this Accident & Sickness agent's licence was revoked. The agent admitted to 75 instances where he kept policyholders' cash premium payments for his own personal use.

Linda Randolph

By an order, dated August 22, 2001, this Level II agent's licence was revoked. The agent admitted to fronting for an unlicensed agent.

John N. Talarico

By an order, dated July 3, 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. Talarico has since completed the required continuing education hours.

Prosecutions

Insurance

Charge: Furnishing false information

Against: John Henwood (Toronto), adjuster

Verdict: Guilty

On June 19, 2001, in Toronto provincial court, John Henwood pleaded guilty and was convicted of furnishing false information in a renewal application for an insurance adjuster's licence. He was fined \$500 and instructed to provide FSCO with an undertaking relating to his future renewal applications. Mr. Henwood is currently licensed and has provided the required undertaking. (This case occurred during the second quarter, but reporting was delayed pending receipt of the undertaking.)

Mortgage Brokers

Charge: Working as a mortgage broker without registration

Against: Shiraz A. Mohammed

Verdict: Guilty

On September 20, 2001, in Toronto provincial court, Shiraz Mohammed pleaded guilty and was convicted of practising as a mortgage broker while unregistered. He was fined \$1,000 and remains unregistered.

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.

There were no Superintendent's decisions released during the third quarter.

12-Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months (October 1, 2000 - September 30, 2001), FSCO took 150 enforcement actions. This represents a significant amount of enforcement activity. The chart below details the types of activities taken.

<u>Type of Enforcement Action</u>	<u>Number of Cases</u>
Letters of censure	47
Licence conditions via Minutes of Settlement	6
Provincial Offences Court convictions and fines	20
Cease and Desist orders	2
Revocation of sponsorship	13
Disciplinary cautions	1
Undertakings	1
Licence suspensions	26

Licence surrenders	5
Licence revocations	<u>29</u>
Total:	150

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring throughout the year. Over the past 12 months, there have been 7,064 instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken.

<u>Monitoring Activities</u>	<u>Number of Occurrences</u>
Continuing education audits	920
Police criminal record checks life agents/ applicants	5,967
Complaint reviews	<u>177</u>
Total:	7,064

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	Arbitration
Decision:	
Re:	(FSCO A97-001789, July 4, 2001); Bill 164
Applicant:	Bejia Smith (generally known as Ms. Auger)
Insurer:	Allstate Insurance Company of Canada
Award:	Special Award

The issue revolved around the transition in claiming income replacement (IRBs) to loss of earning capacity benefits (LECBs) and various medical and rehabilitation benefits.

The Arbitrator found a serious lack of co-operation between the parties. The insured person was difficult to deal with, uncooperative and took steps that caused the Insurer to suspect she was trying to cheat the system. The Insurer rejected overtures from the insured person's own treatment team and ignored opinions of its own experts regarding the need for psychological treatment.

On one issue, the Arbitrator concluded that a special award was warranted. The Insurer refused to pay for psychological treatment despite the opinion of the Designated Assessment Centre that this treatment was reasonable and necessary. In the Arbitrator's opinion, this was in contravention of the "pay pending" provisions, a serious matter deserving redress. The Arbitrator ordered a special award of \$3,000, inclusive of interest, based on an outstanding amount of \$5,000, plus interest.

The Arbitrator ordered that:

- the Insurer may substitute LECBs in place of IRBs as of September 24, 1996, and pay the Applicant the difference between the IRB rate of \$431.78 and the LECB rate of \$181.89 the Insurer paid from April 23, 1996 to September 24, 1996.
- the Insurer pay the Applicant LECBs based upon a residual earning capacity associated with working 30 hours per week as a security guard. This LECB is payable from September 25, 1996 to September 25, 1999. The Insurer shall pay the Applicant the difference between this rate and the \$181.89 the Insurer paid, together with interest in accordance with section 68 of the *Schedule*.
- the Applicant is entitled to LECBs from September 25, 1999 onward based upon a residual earning capacity associated with working as a dispatcher 20 hours per week. The Insurer shall pay the Applicant the difference between this rate and the \$24.96 the Insurer paid, together with interest in accordance with section 68 of the *Schedule*.
- the Insurer pay the Applicant supplementary medical expenses totalling \$11,930.50 together with interest in accordance with section 68 of the *Schedule*.
- the Insurer pay the Applicant a special award of \$3,000 inclusive of interest.

Type of Arbitration

Decision:

Re: (FSCO A00-000133, July 20, 2001); Bill 68

Applicant: Ted Graper

Insurer: Liberty Mutual Fire Insurance Company

Award: Special Award

Shortly before the arbitration hearing, the Insurer reinstated income replacement benefits (IRBs) and made a retroactive payment of approximately \$64,000, covering about 90 weeks. The issue was whether the Arbitrator had authority to order a special award and, if so, whether an award was appropriate in this case.

The Arbitrator held that she had jurisdiction to consider a special award despite the settlement of the substantive issue before the commencement of the hearing. After reviewing the facts, she concluded that the Insurer unreasonably withheld IRBs for a period of about 90 weeks. The total principal amount of benefits payable during this period was approximately \$54,000. Based on this amount, the Arbitrator found that the maximum special award she could order was approximately \$40,000. Although the Arbitrator did not find malice, she found that the Insurer withheld benefits despite knowing that its conduct was aggravating the insured person's condition and despite knowing that the insured person would likely succeed if he pressed his claim to arbitration. In the circumstances, she ordered a special award of \$25,000, inclusive of interest.

The Arbitrator ordered the Insurer to pay the Applicant a special award of \$25,000, inclusive of compound interest under subsection 282(10) of the *Insurance Act*, forthwith. She advised that she may be contacted if the parties were unable to agree on arbitration expenses.

Type of Arbitration

Decision:

Re: (FSCO A99-001160, September 11, 2001); Bill 59;
appeal pending

Applicant: Majit Singh

Insurer: Commercial Union Assurance Company

Award: Special Award

Shortly before the arbitration hearing, the parties settled the substantive issue. The Insurer agreed to pay \$60,956.86 for income replacement benefits (IRBs), plus interest of \$27,472, for a total of \$88,428.86. The issue was whether the Arbitrator had authority to order a special award and, if so, whether an award was appropriate in this case.

The Arbitrator held that she had jurisdiction to consider a special award despite the settlement of the substantive issue. The Arbitrator held that she could not order a special award in respect of medical and rehabilitation benefits because they were not in issue in the arbitration. However, with respect to IRBs, she found that the Insurer unreasonably terminated benefits in the face of consistent evidence that the insured person was suffering from a major depression. Further, it acted unreasonably in failing to re-evaluate IRBs in light of medical evidence provided after the termination. Finally, the Insurer failed to adjust the IRBs despite having information that the insured person's entitlement to collateral benefits had ended. In considering the amount of the special award, the Arbitrator held that the Insurer's conduct "not only was unreasonable, but that its behaviour amounts to flagrant misconduct." As a result, she ordered the Insurer to pay a special award at the maximum rate of 50 per cent.

The Arbitrator ordered the Insurer to a special award of \$61,829.52 pursuant to subsection 282(10) of the *Insurance Act*, and advised that, she may be spoken to, if required, on the issue of expenses of the arbitration hearing.

Type of Arbitration

Decision:

**Re: (FSCO A00-000027, September 19, 2001); Bill 59;
appeal pending**

Applicant: Jose Docoute

Insurer: Zurich Insurance Company

Award: Assessment Award

The issues in this arbitration hearing were institutional bias, and medical assessment and functional abilities evaluation.

The Arbitrator refused to adjourn the hearing pending the outcome in the appeal in *Persofsky and Liberty Mutual Insurance Company* which raises, in part, the question of the institutional bias. She then concluded that the insured person had not established institutional bias, or a reasonable apprehension of bias. She also held that she did not have the authority to appoint a different arbitrator under the *Arbitration Act*, 1991. The Arbitrator then dealt with the substantive issues, dismissing the insured person's claims for want of evidence. Finally, the Arbitrator ordered the insured person to pay arbitration expenses fixed at \$500.00 and an assessment under 282(11.2) of \$500.00. In ordering the assessment, the Arbitrator found that the allegations of bias and the request for a private arbitrator were " manifestly unfounded and devoid of merit." She also found that the insured person's "incorrigible and high-handed manner and his undue repetitiveness" unnecessarily prolonged the proceeding.

On the preliminary issues, the Arbitrator:

- declined to allow an adjournment pending the disposition of the appeal decision, *Liberty Mutual Insurance Company and Persofsky* (FSCO P00-00041, July 3, 2001) and other matters alleging bias against FSCO;
- dismissed the Applicant's motion to have the matter brought before a private arbitrator under the *Arbitration Act*, 1991, S.O. 1991, c. 17;
- dismissed the Applicant's motion alleging institutional and/or a reasonable apprehension of bias against FSCO and the dispute resolution process; and
- dismissed the Applicant's motion alleging bias against the arbitrator in this matter.

On the substantive issues, the Arbitrator:

- dismissed the Applicant's claim under section 24 of the *Schedule* for want of evidence to establish his claim;
- dismissed the Applicant's claim for a special award under subsection 282(10) of the *Insurance Act*; (This award is based on a finding of entitlement and she made no such finding.)
- indicated that the Insurer is not liable to pay any part of the Applicant's arbitration expenses pursuant to subsection 282(11) of the *Insurance Act*; and
- ordered the Applicant to pay \$500.00 of the Insurer's arbitration expenses pursuant to subsection 282(11) of the *Insurance Act*.

Financial Services Tribunal Decisions

Name: 894182 Ontario Limited c.o.b. VR Mortgages

Sector: Mortgage Brokers

Notice of Proposal: By Superintendent of Financial Services dated November 27, 2000, to propose to refuse to register the applicant as a Mortgage Broker, on the grounds that more of the active officers of the applicant corporation meet the educational requirements under the *Mortgage Brokers Act*.

Date of Decision: July 5, 2001

Disposition: The FST directed the Superintendent to carry out the Proposal to refuse to register the applicant corporation under the *Mortgage Brokers Act*.

If you wish view the full text of past Decisions/Orders, please visit FSCO's website at www.fSCO.gov.on.ca

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

December 14, 2001

