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Bulletin

No. G-03/02

- General

Monitoring and enforcement report - including prosecution and hearing decisions - for fourth 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 fourth quarter of 2001, FSCO undertook the following:

- **Police Checks**

  A total of 2,260 police checks on the background of prospective agents were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

FSCO received 29 complaints about the conduct of agents for the fourth quarter October 1, 2001, to December 31, 2001. The subjects of the complaints included fraud, forgeries, misrepresentation and agent misconduct.

Overview of Complaints

Complaints in progress, from end of third quarter 2001	35
Plus: *Complaints received* during the fourth quarter 2001	29
Less: *Complaints in progress* at end of fourth quarter 2001	25
Total number of *Complaint reviews* completed during fourth quarter 2001	39

Disposition of Complaint Reviews

Cases forwarded for potential enforcement	18
Cases resolved	7
Cases closed	14
Total	39

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 166 audits of life agents during the fourth 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 fourth quarter of 2001, FSCO undertook the following:

- **Investigations initiated**

A total of 42 cases were forwarded to Investigations. Of that total, 37 cases related to agents and adjusters, two related to insurance companies, and three related to mortgage brokers.

Source of investigations

- Agents:

Complaints about agent conduct	28
Doing business without a licence in force	6
Continuing education audits	3
Total	37

- Insurance Companies:

Complaints about insurance company conduct	2
Total	2

- Mortgage Brokers:

Doing business without a licence in force	3
Total	3
Grand Total	42

Outcome of investigations

A total of 50 cases were completed:

Charges laid in Provincial Offences court	12
Sponsorship of agent withdrawn	1
Superintendent's Orders issued	19
Letters of Censure issued	7
Closed files (no enforcement action warranted)	11

Total	50

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 fourth quarter, 82 Letters of Warning were issued to life agents, 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 seven Letters of Censure issued as a result of formal investigations, one Letter of Censure was issued to a life agent who did not provide full disclosure of information on their licence application, and one Letter of Censure was issued to an agent who was late in meeting continuing education requirements.

Minutes of Settlement and Superintendent's Orders

During the fourth quarter, 19 agents entered into Minutes of Settlement for non-compliance with legislated requirements, and of these, seven consented to orders revoking their licences.

William P. Cody	By an order, dated November 13, 2001, this Level II agent's licence was revoked. The agent was alleged to have misappropriated a client's funds. The agent denies the allegations. He voluntarily surrendered his licence for revocation.

James W. Deeks	By an order, dated November 12, 2001, this Level II agent's licence was revoked. The agent admitted to submitting policy applications without policyholders' knowledge, and also submitting numerous fictitious applications.
Jens (John) K. Ernst	By an order, dated December 13, 2001, this Level II agent's licence was suspended for a period of 30 days. The agent admitted to forging a policyholder's signature on a policy amendment form in order to expedite the payment of commissions related to the sale.
Wayne A. Groves	By an order, dated November 14, 2001, this Level II agent's licence was issued conditional upon his completion of outstanding continuing education credits. The agent has since completed the outstanding credits.
Astley St. John Jarrett	By an order, dated November 14, 2001, this Level II agent's licence was revoked. The agent failed to provide proof of completion of required continuing education hours and also made a material misstatement in his renewal application.
Conrad Lamadeleine	This Level II agent's licence was surrendered on November 2, 2001. The agent was alleged to have acted improperly in the sale of several insurance products. The agent did not admit to the allegations, but has voluntarily surrendered his licence.

William G. Lowes	By an order, dated November 14, 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. The agent has since completed the required continuing education hours.
Donald Mathers	By an order, dated November 14, 2001, this Level II agent's licence was suspended for a period of 45 days. The agent accepted money from a policyholder in payment of a policy loan, and failed to submit it to the insurer in a timely manner.
James H. McElroy	By an undertaking, dated October 9, 2001, this Level II agent's licence was surrendered. The agent submitted fund transfer forms on behalf of two clients, whose signatures later turned out to be forgeries. The agent had signed as a witness to the forged signatures.
Fareshta A. Nazari	By an order, dated November 14, 2001, this Level I agent's licence was revoked. The agent admitted to forging a signature on a "Notice of appointment of agent by sponsor company," on a life insurance agent application form.
S. Wayne Parsons	By an order, dated November 2, 2001, this Level I 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. The agent has since completed the required continuing education hours.

Rene Parlee	By minutes of settlement, dated December 12, 2001, this Level I agent agreed to complete her outstanding continuing education credits. The agent 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. The agent has since completed the required continuing education hours.
William Schuster	By an order, dated December 4, 2001, this Level II agent's licence was suspended for 60 days. The agent admitted to forging clients' signatures on various forms, primarily as a matter of convenience.
Charles W. Sheppard	By an order, dated December 10, 2001, this Level II agent's licence was revoked. The agent was alleged to have engaged in improper business practices.
Frederick Sooley	By an order, dated October 9, 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. The agent has since completed the required continuing education hours.
Andrew M. Stock	By an order, dated October 25, 2001, this Level II agent's licence was revoked. The agent took loans against several clients' policies without their knowledge or consent, forged signatures on the loan cheques, and deposited the cheques into his own account.

Alan I. Topic	By an undertaking, dated November 14, 2001, this Level I agent agreed not to apply for a life insurance agent's licence from FSCO, for a period of five years. The agent admitted to poor business practices, rebating and misrepresentation.
Nam-Hun (Martin) Youn	By an order, dated October 1, 2001, this Level I agent's licence and general insurance licences were revoked. The agent had on at least 53 occasions, sold automobile insurance policies to clients and collected the year's premium in advance, via cheque made payable to himself. Paperwork was then submitted to the insurer giving the impression clients were paying premiums on a monthly basis. Payments were then made from the agent's personal bank account.

Accommodation for Disability

J. G.	As an accommodation for a serious illness, this Level II agent's licence was renewed. By an order, dated October 9, 2001, the agent was given a conditional licence pending the completion of the continuing education requirement. The agent has since completed the required continuing education hours and met the conditions.

Prosecutions

Insurance

Charge: Working as an agent while unlicensed

Against: **Robert D. Drumm (Ameliasburg) Level I Life Agent, unlicensed two months**

Verdict: **Guilty**

On October 9, 2001, at the Ontario Court of Justice in Belleville, Robert Drumm pleaded guilty and was convicted of practising as an insurance agent without a licence. The court fined him $350.

As a result of an N.S.F. cheque, this agent's application for renewal could not be processed. The agent was advised by someone in his office that his licence was valid. Although a mitigating circumstance, the agent's reliance on a statement from someone else on the validity of his licence, is not a valid defence. Ultimately, it is an agent's responsibility to ensure that the licence is renewed on time. Mr. Drumm submitted eight policies and received in excess of $2,000 in commissions while unlicensed. This agent is currently licensed.

Charge: **Breach of cease and desist order**

Against: **Robert L. Brown (Hamilton and Brantford), unlicensed**

Verdict: **Guilty**

Robert Brown was convicted in absentia on two occasions in 2001, of breaching a 1996 cease and desist order that prohibited him from selling or soliciting any type of insurance in Ontario. The first conviction was on May 17, 2001, at the Ontario Court of Justice in Hamilton. Mr. Brown was fined $75,000. The second conviction was on October 23, 2001, at the Ontario Court of Justice in Brantford. The maximum fine of $100,000 was imposed for that conviction.

Mr. Brown, who has never been licensed as an agent in Ontario, breached the cease and desist order by selling bogus property and auto insurance policies for about five years following the 1996 cease and desist order. He sold some of the policies through a so-called barter arrangement. He used several business names such as Tri-Continental Exchange, Tri-Continental Exchange Limited, Citadel General Surety Limited, Armada Assurance, Combined Services Limited, Alternative Market Exchange and Vanguard Marine and General Limited.

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

Against: **Robert B. Bougie (Toronto), former General Agent, unlicensed three months**

Verdict: Guilty

On November 5, 2001, at the Ontario Court of Justice in Toronto, Robert Bougie pleaded guilty and was convicted of practising as a general insurance agent without a licence. He was fined $100.

Mr. Bougie testified that he was of the opinion it was the company's responsibility to notify him of the renewal of his licence, and he was unaware of the date his licence expired. He contended that he should not be convicted if his employer, through inadvertence, did not remind him that his licence had to be renewed. Ultimately, it is an agent's responsibility to ensure that the licence is renewed on time. Mr. Bougie received a salary of about $8,145 while unlicenced. This agent is currently unlicensed.

Charge: Working as an agent while unlicensed

Against: Gloria B. Chabot (Bradford), General Agent, unlicensed four months

Verdict: Guilty

On November 5, 2001, at the Ontario Court of Justice in Toronto, Gloria Chabot pleaded guilty and was convicted of practising as a general insurance agent without a licence. She was fined $100.

This agent's original licence was issued in her maiden name, but she changed to her married name before her next renewal. Ms. Chabot relied on her employer to send her the renewals and was unaware that her licence had expired. The employer did not remind Ms. Chabot about renewal because Ms. Chabot's name change confused the employer about her renewal date. Ultimately, it is an agent's responsibility to ensure that the licence is renewed on time. Ms. Chabot received a salary and bonus of about $11,982 while unlicensed. This agent is currently licensed.

Charge: Paying commissions to unlicensed agents

Against: The Great-West Life Assurance Company (Winnipeg, MB)

Verdict: Guilty

On November 13, 2001, in Toronto provincial court, the Great-West Life Assurance Company entered a guilty plea to 12 counts of paying commissions to unlicensed agents. Great-West co-operated in FSCO's investigation and accepted full responsibility for the errors that resulted in these payments being made. Great-West is implementing changes designed to prevent a recurrence of the situation.

The court accepted the joint submission of the Great-West Life Assurance Company and FSCO, and imposed a fine of $20,000.

Charge: Working as an agent while unlicensed

Against: "CSSC" Canadian Structured Settlements Corporation, Corporate Insurance Licence, unlicensed 3 ½ years

Verdict: Guilty

On December 21, 2001, at the Ontario Court of Justice in Toronto, the company pleaded guilty to the charge of acting as an agent without a licence. A fine of $7,500 was imposed on the company with six months to pay.

CSSC conducted the business of arranging annuities for accident victims out of insurance settlement proceeds. During that time CSSC negotiated 29 policies and earned commissions of approximately $215,000. CSSC is currently unlicensed.

Mortgage Brokers

Charge: Acting as a Mortgage Broker while unregistered

Against: Salim Kanji (Scarborough), unregistered two years

Verdict: Guilty

On November 20, 2001, at the Ontario Court of Justice in Toronto, Salim Kanji pleaded guilty and was convicted of acting as a mortgage broker while unregistered. He was fined $5,000 based on a joint submission by himself and FSCO.

Mr. Kanji was authorized to be employed as a mortgage agent for a time. Afterward he commenced a part-time business as a mortgage broker, without applying for registration. During the two years that he operated as a mortgage broker while unregistered, he arranged 26 residential mortgages totalling approximately $4.1 million. Mr. Kanji received total commissions of $19,772 for his mortgage brokering services. There were no complaints from customers. Currently he is not registered as a mortgage broker nor employed as a mortgage agent.

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 fourth quarter.

12-Month Enforcement Action and Monitoring Activities Summary

Over the 12 months (January 1, 2001 - December 31, 2001), FSCO took 135 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	42
Licence conditions via Minutes of Settlement	6
Provincial Offences Court convictions and fines	19
Revocation of sponsorship	10
Disciplinary cautions	1
Undertakings	2
Licence suspensions	25
Licence surrenders	6
Licence revocations	24
Total:	135

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring throughout the year. Over the past 12 months, there have been 8,047 instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken.

Monitoring Activities	Number of Occurrences

Continuing education audits	879
Police criminal record checks life agents/ applicants	6,999
Complaint reviews	169
Total:	8,047

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 A00-000449, October 4, 2001); Bill 164**
Applicant:	**Roza Kolonjari**
Insurer:	**CUMIS General Insurance Company**
Award:	**Special Award**

The issue revolved around the Applicant's claimed entitlement to accident benefits for a variety of expenses, including chiropractic and massage therapy, prescription medication, transportation to and from treatment and housekeeping services.

The Arbitrator found that the Insurer ignored the pay pending dispute provisions of the regulation with respect to chiropractic and massage therapy, and prescription medication.

The Arbitrator ordered that CUMIS:

- pay the outstanding account for the Applicant's treatment at the Prevent Assessment & Rehabilitation Clinic, in the amount of $5,400.89;
- continue to pay her $200 per week for taxi transportation to and from treatment sessions;
- continue to pay her $67.50 per week for housekeeping expenses;
- pay a special award in the amount of $5,000, inclusive of interest; and
- pay interest on the amounts owing, except on the special award, in accordance with section 68 of the Schedule.

Type of Decision:	**Arbitration**
Re:	**(FSCO A99-000521, October 4, 2001); Bill 59; under appeal**
Applicant:	**Lucia Stargratt**
Insurer:	**Zurich Insurance Company**
Award:	**Special Award**

The Applicant claimed entitlement to caregiver, attendant care and physiotherapy expenses.

During the hearing, the Arbitrator put the parties on notice that a special award was potentially at issue. The Arbitrator found that despite having adequate notice, the Insurer did not present evidence to explain its decision to deny the claims. As a result, he found that the Insurer unreasonably withheld benefits. He also found that the Insurer acted unreasonably in encouraging the service provider to withdraw its treatment plan.

In his order, the Arbitrator stated that the Applicant is entitled to:

- caregiver expenses.
- attendant care expenses.
- a medical benefit for the physiotherapy treatment plan filed by Sudbury Physio Centre.
- a special award of 50 per cent of the outstanding benefits.

Type of Decision:	**Arbitration**

Re:	**(FSCO A00-001286, December 20, 2001); Bill 59; no appeal**
Applicant:	**Donnahoque (Donald) Palmer**
Insurer:	**State Farm Mutual Automobile Insurance Company**
Award:	**Special Award**

The Applicant claimed the cost of nerve block injections, botox injections and massage treatment, and that the Insurer should pay a special award for unreasonably withholding or delaying the payment of benefits for psychological treatment and a vocational assessment.

Prior to the hearing, the parties settled the insured person's claim for psychological treatment and a vocational assessment. The Insurer conceded that it had not handled this claim in accordance with the prescribed DAC process. The Arbitrator held that payment on the eve of the hearing does not remove the possibility of a special award. She found that the Insurer had no medical evidence to support denial of psychological treatment, and that its actions were unreasonable and detrimental to the Applicant's recovery.

The Arbitrator ordered that:

- the Insurer pay the cost of the $800 fee for the five sessions of nerve block injections;
- the Applicant be not entitled to the cost of either botox or massage treatments; and
- the Insurer pay a special award of $1,170 together with interest calculated pursuant to subsection 282(10) of the Insurance Act.

Type of Decision:	**Arbitration**
Re:	**(FSCO A99-000790, December 13, 2001); Bill 164; no appeal**
Applicant:	**Balakrishna Raja Ratnam**
Insurer:	**Allstate Insurance Company of Canada**
Award:	**Assessment Award**

The Applicant claimed entitlement to weekly benefits and various expenses. Shortly before the hearing, he wrote to

FSCO asking that his application be withdrawn. He did not appear at the hearing.

The Arbitrator found that, from the outset, the Applicant did not take the proceedings seriously and acted without concern for the unnecessary expenses incurred by the Insurer. The Arbitrator allowed the withdrawal, but ordered the Applicant to pay $3,000 to the Insurer on the basis that his application was frivolous, plus arbitration expenses fixed at $500. The application for arbitration was also dismissed.

Financial Services Tribunal Decisions

There were no decisions for this period. For the full text of previous Decisions/Orders, please visit FSCO's web site at www.fsco.gov.on.ca look under "Publications," and then "Bulletins."

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)

May 6, 2002

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