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Bulletin

No. G-07/02

- General

Monitoring and enforcement report - including prosecution and hearing decisions - for first quarter 2002

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 Services Branch, Ombudsman/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 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 2002, FSCO undertook the following:

- **Police Checks**

  A total of 2,568 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 first quarter January 1, 2002, to March 31, 2002. The subjects of the complaints included fraud, forgeries, misrepresentation and agent misconduct.

Overview of Complaints

Complaints in progress, from end of fourth quarter 2001	25
Plus: *Complaints received* during the first quarter 2002	29
Less: *Complaints in progress* at end of first quarter 2002	30
Total number of *Complaint reviews* completed during first quarter 2002	24

Disposition of Complaint Reviews

Cases forwarded for potential enforcement	16
Cases resolved	4
Cases closed	4
Total	24

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 120 audits of life agents during the first quarter to ensure they met their CE requirements. There were no cases requiring enforcement action to be initiated as a result of the audits.

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 2002, FSCO undertook the following:

- **Investigations initiated**

A total of 28 cases were forwarded to Investigations. Of that total, 23 cases related to agents and adjusters, two related to insurance companies, one related to credit unions, one related to loan and trust companies, and one related to cooperatives.

Source of investigations

- Agents:

Complaints about agent conduct	15
Doing business without a licence in force	7
Allegations of unsuitability of agents	1
Total	23

- Insurance Companies:

Doing business without a licence in force	2
Total	2

- Credit Unions

Complaints about a credit union's conduct	1
Total	1

- Loan & Trust Companies

Doing business without a licence in force	1
Total	1

- Cooperatives

Complaints about a cooperative's conduct	1
Total	1

Grand Total	28

Outcome of investigations

- A total of 46 cases were completed:

Charges laid in Provincial Offences Court	4
Sponsorship of agent withdrawn	2
Superintendent's Orders issued	10
Letters of Censure issued	10
Closed files (no enforcement action warranted)	20
Total	46

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 first quarter, 59 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 10 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 first quarter, 10 agents entered into Minutes of Settlement for non-compliance with legislated requirements, and of these, six consented to orders revoking their licences.

Gordon C. Butler	By an order, dated February 21, 2002, this Level II agent's licence was revoked effective March 1, 2002. The agent sold new policies to numerous policyholders, advising that premiums would be paid out of dividends from their existing policies, when in fact, the agent took unauthorized loans against their existing policies to cover the premiums.
George J. Dell	By an order, dated February 5, 2002, this Level II agent's licence was suspended for a period of three months, effective January 16, 2002. The agent falsified information on a group benefits application and then signed a declaration attesting that the application was complete and true.
Kori S. King	By an order, dated March 15, 2002, this Level I agent's licence was revoked. The agent admitted to using a policyholder's money for his own purposes, and then providing false documentation to the policyholder.
Bradley K. Mayer	By an order, dated March 5, 2002, this Level II agent's licence was revoked. The agent admitted to submitting numerous policy applications with incomplete or incorrect information, or without the policyholders' permission.
Mark E. Nuernberger	By an order, dated March 7, 2002, this Level I agent's licence was revoked. The agent unsuccessfully attempted to write a Mutual Funds' examination for another agent, using the second agent's identification.

Barry F. Playter By an order, dated March 18, 2002, this Level II agent's licence was suspended for a period of one year, commencing April 1, 2002. The agent admitted to submitting fictitious applications.

Michael J. Ricci By an order, dated February 7, 2002, both this agent's Level I and general insurance agent's licences were revoked. The agent submitted several life insurance applications with missing information. In his dealings with general insurance clientele, there were instances of: missing application information; altered claims' file documents; failure to place coverages for several clients who had paid for such and were told coverage was in place; and a letter allegedly from a sales associate, with a forged signature.

Robert O. Schindelheim By an order, dated March 12, 2002, this Level II agent's licence was revoked. The agent admitted to requesting funds on behalf of two policyholders, without their permission, forging the clients' signatures on the cheques and using the proceeds for his own purposes.

Robert N. Wolfe By an order, dated February 5, 2002, this Level II agent's licence was suspended for a period of nine months. The agent had forged a policyholder's signature and made an investment without the policyholder's knowledge.

Accommodation for Disability

W. S.	As an accommodation for a serious illness, this Level II agent's licence was renewed. By an order, dated January 7, 2002, 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:	**Michael P. Albanese (Mississauga) General agent, unlicensed 31 months** **Douglas S. Oxley (Aurora) General agent, unlicensed 30 months** **Douglas W. Wade (Oakville) General agent, unlicensed 27 months** **Christopher A. Case (Bolton) General agent, unlicensed 19 months**
Verdict:	**Guilty**

On January 17, 2002, at the Ontario Court of Justice in Toronto, the four agents named above pleaded guilty and were convicted of acting as agents while unlicensed. The court fined each agent $3,500 based on a joint submission by FSCO and the four agents.

The four agents assumed that their employer's administrative staff would monitor their renewal dates and ensure that their licences were renewed on time. Their employer did not do so through inadvertence as a result of its major re-structuring at the time. All four agents are currently licensed.

Charge:	**Paying commissions to unlicensed agents**

Against: **Euler American Credit Indemnity Company (Mississauga)**

Verdict: **Guilty**

On January 17, 2002, at the Ontario Court of Justice in Toronto, Euler American Credit Indemnity Company pleaded guilty and was convicted of paying commissions to four unlicensed persons, the four general agents referred to in the preceding case. Euler's lapse in compliance resulted in all four of its Ontario agents operating without licences for an extended period. Euler was fined $15,000, based on a joint submission by FSCO and Euler.

Charge: **Acting on Behalf of an Unlicensed Insurer (2 counts)**

Against: **Interchange Advertising Corporation**

Verdict: **Guilty**

On January 28, 2002, at the Ontario Court of Justice in Toronto, Interchange Advertising Corporation ("Interchange"), pleaded guilty to both counts of acting on behalf of an insurer that is not licensed in Ontario under the Insurance Act. Interchange received a fine of $9,000.

Over the course of several years, Interchange advertised auto insurance policies on behalf of Tri-Continental Exchange ("Tri-Continental"), an insurer that was not licensed in Ontario, in its publication entitled "Let's Make A Deal Revue." As a result of the advertisements, numerous people purchased worthless auto insurance policies that did not provide any protection for the policyholders. In the January 2002 "Let's Make A Deal Revue," Interchange published a note indicating that the policies sold by Tri-Continental are not recognized by the Financial Services Commission of Ontario and indicates that Interchange will no longer advertise Tri-Continental's policies.

Charge: **Holding out**

Against: **Direct Quote Insurance Agency Inc. (Mississauga)**

Verdict: **Guilty**

On February 12, 2002, at the Ontario Court of Justice in Toronto, Direct Quote Insurance Agency Inc. pleaded guilty and was convicted of representing itself as being in the business of insurance between June 1998 and October 1999 while unlicensed, by means of business cards, letterheads and other methods. It was fined $7,500, based on a joint

submission.

A principal of Direct Quote who did not have a licence, and an employee who did have a licence at the time, attended at numerous businesses in order to solicit and negotiate policies of insurance in the name of Direct Quote, even though Direct Quote had not applied for a licence. Direct Quote received commissions totalling $55,121.73 as a result of its unlicensed activity. Direct Quote and its principal are currently unlicensed.

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

Against: **Sergio M. Fedullo (Niagara-on-the-Lake), Level I agent, unlicensed 5 weeks**

Verdict: **Guilty**

On February 21, 2002, at the Ontario Court of Justice in Toronto, Sergio Fedullo pleaded guilty and was convicted of practising as a life insurance agent without a licence. The Court imposed a reduced fine of $250 in consideration of his financial circumstances.

Mortgage Brokers

Charge: **Acting as a Mortgage Broker while unregistered**

Against: **Allied Financial Corporation (Toronto), unlicensed 5 years**

Verdict: **Guilty**

On February 21, 2002, at the Ontario Court of Justice in Toronto, Allied Financial Corporation pleaded guilty and was convicted of carrying on business as a mortgage broker while unregistered. It was fined $1,500, based on a joint submission. The conviction is based on an administrative licensing requirement, and it does not reflect on the competence of Allied Financial or its principal.

Allied Financial Corporation did not apply for registration because it misunderstood the registration requirements. It was entitled to be registered as a mortgage broker for a short period of time before it committed the offence. It arranged 37 commercial mortgage loans during the five- year period, and its revenue was quite substantial. There was no evidence of intent to circumvent the requirements of the Mortgage Brokers Act. There were no client

complaints. Allied Financial co-operated fully and promptly with the investigation. It indicated early during the investigation that it would plead guilty. Allied Financial has since taken the necessary steps to become registered as a mortgage broker.

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:	**Patrick Lee**
Advisory Board Hearing:	**October 21, 2001**
Decision:	**Licence revokeduilty**

An Advisory Board hearing was conducted in Toronto to consider the suspension or revocation of Mr. Lee's licence following allegations that he had engaged in falsehoods and deceptions in order to not have to repay a debt. Mr. Lee did not attend the hearing. The Board found the allegations against Mr. Lee to be established. In its report, the Board recommended that Mr. Lee's life insurance agent's licence be revoked.

By decision dated January 17, 2002, the Superintendent accepted the findings of fact of the Board, and ordered that the licence of Mr. Lee be revoked.

Mr. Lee appealed the Superintendent's decision, and his appeal was dismissed.

12-Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months (April 1, 2001 - March 31, 2002), FSCO took 126 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	39

Licence conditions via Minutes of Settlement	4
Provincial Offences Court convictions and fines	24
Revocation of sponsorship	8
Disciplinary cautions	1
Undertakings	2
Licence suspensions	25
Licence surrenders	2
Licence revocations	21
Total:	126

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring throughout the year. Over the past 12 months, there have been 9,123 instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken.

Monitoring Activities	Number of Occurrences
Continuing education audits	692
Police criminal record checks life agents/ applicants	8,275
Complaint reviews	156
Total:	9,123

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 A01-000215, February 6, 2002); Bill 59; under appeal**
Applicant:	**Pamela Simpson**
Insurer:	**Allstate Insurance Company of Canada**
Award:	**Special Award**

Note: This decision is currently under appeal.

The issues at arbitration were whether Allstate could reduce Ms. Simpson's income replacement benefits (IRBs) by the amount of benefits she received from another insurer with respect to a later accident, and whether it could recover amounts that it already paid based on a supplement paid to Ms. Simpson by the second insurer under s.32 of the SABS-1996.

The Arbitrator held that Allstate was entitled to reduce Ms. Simpson's IRBs by the amount of the benefit she received from the second insurer, and that it could deduct 20 percent from each payment to recover the supplement she received from the second insurer. However, he also concluded that Allstate should pay a special award of 25 percent due to its unreasonable decision to suspend Ms. Simpson's IRBs, a decision that it reversed approximately seven months before the arbitration hearing.

The Arbitrator ordered that:

- Allstate is entitled to deduct from the Applicant’s IRBs the amount of the benefit she received from Trafalgar.
- Allstate is entitled to deduct 20 percent from each payment of the Applicant's IRBs in order to recover an amount in respect of the benefit she received from Trafalgar. The parties agreed that the total amount of the deduction is to be calculated at the rate of $250 per week for the period May 11, 2000 to April 25, 2001.
- Allstate is required to pay a special award to the Applicant in the amount of $2,060.67.

Type of Decision: **Arbitration**

Re: **(FSCO A01-000225, February 12, 2002); Bill 59**

Applicant: **Ali Abraham**

Insurer: **Belair Insurance Company Inc.**

Award: **Assessment Award**

The insured person claimed income replacement benefits (IRBs) and certain treatment expenses.

The insured person did not appear at the arbitration hearing despite being given proper notice.

The Arbitrator found that the insured person was not a passenger in the vehicle involved in the accident and, therefore, was not entitled to accident benefits. He ordered that:

- Mr. Abrahim's claims for IRBs, treatment at the Spine Clinic, interest and his expenses of the arbitration are dismissed.
- Mr. Abrahim shall repay Belair $806.03 for IRBs together with interest under sections 47 and 48 of the Schedule, $3,000 for its arbitration assessment, and $2,984.91 for its expenses of the arbitration.

Type of Decision: **Arbitration**

Re: **(FSCO A01-000200, February 18, 2002); Bill 59**

Applicant: **Hen Van Do**

Insurer: **Allstate Insurance Company of Canada**

Award: **Special Award**

The insured person claimed income replacement benefits (IRBs), various medical and rehabilitation benefits, housekeeping and home maintenance costs and the cost of various examinations.

The Arbitrator found that the insurer's termination of Mr. Do's weekly IRBs was unreasonable. It relied on a rehabilitation report setting out Mr. Do's prognosis based on a treatment plan, but refused to pay for the treatment plan. While the Arbitrator found this inappropriate, there were mitigating factors, particularly Mr. Do's own delay in pursuing services, that led him to limit the award to 10 percent.

- Mr. Do is entitled to weekly IRBs from March 24, 2001 to the date of the hearing and ongoing. He is also entitled

to the amount outstanding at the time of the termination of benefits. The parties agree that the quantum of IRBs that Mr. Do would be entitled to is $291.23 per week and the outstanding benefit at the time of termination was $1,226.90, plus interest.

- Mr. Do is entitled to payments for housekeeping and home maintenance services, pursuant to section 22 of the Schedule. Mr. Do is entitled to four hours per month valued at $80 per month from the time of the accident to April 17, 2000.
- Mr. Do is entitled to payments for the costs of examinations conducted by Dr. Wu and Dr. Celinski, and interpretation services for Dr. Wu's assessment, pursuant to section 24 of the Schedule.
- Mr. Do is entitled to interest on all outstanding payments to which the Arbitrator has found he is entitled.
- Mr. Do is entitled to a special award of 10 percent together with interest on the amount of this order in respect of IRBs calculated in accordance with the subsection 282(10) of the Insurance Act.

Type of Decision:	**Arbitration**
Re:	**(FSCO A99-000699, February 28, 2002); Bill 164; under appeal**
Applicant:	**Vanessa Fehringer**
Insurer:	**Zurich Insurance Company**
Award:	**Special Award**

Note: This decision is currently under appeal.

The insured person claimed loss of earning capacity benefits (LECBs), supplementary medical expenses (massage therapy, chiropractic services, transportation expenses, nutritional supplements and a mattress box spring), attendant care, housekeeping and home maintenance expenses at $200 per month, and a special award.

The Arbitrator found that the settlement entered in December 1997 did not include LECBs and, therefore, Ms. Fehringer did not release her claim for LECBs. Further, the Arbitrator found that Ms. Fehringer was entitled to an LECB offer with respect to two of her three pre-accident jobs, and that Zurich was obligated to provide such an offer by August 10, 1998.

The Arbitrator found that Ms. Fehringer was entitled to housekeeping and attendant care expenses for 37 months at $200 per month, or $7,400. She also found that Ms. Fehringer was entitled to most of the supplementary medical expenses she claimed, plus a special award for Zurich unreasonably withholding those payments.

Financial Services Tribunal Decisions

Name:	Universal Settlements International Inc., Derek O'Brien and Tony Duscio
Sector:	Licensing & Enforcement
Notice of Proposal:	A Proposed Cease and Desist Order issued by the Superintendent of Financial Services on February 26, 2001, against Universal Settlements International Inc., Derek O'Brien and Tony Duscio
Date of Decision:	January 14, 2002
Disposition:	The Superintendent's Notice of Proposal is of no force or effect.

For the full text of the Decision/Order, please visit FSCOs 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)

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