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Bulletin

No. G-09/02

- General

Monitoring and enforcement report - including prosecution and hearing decisions - for second 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 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) and errors & omissions insurance (E&O) 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 2002, FSCO undertook the following:

- **Police Checks**

  A total of 3,574 police checks on the background of prospective agents were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

FSCO received 24 complaints about the conduct of agents for the second quarter April 1, 2002, to June 30, 2002.

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

Overview of Complaints

Complaints in progress, from end of first quarter 2002	30
Plus: *Complaints received* during the second quarter 2002	24
Less: *Complaints in progres*s at end of second quarter 2002	20
Total number of *Complaint reviews* completed during second quarter 2002	34

Disposition of Complaint Reviews

Cases forwarded for potential enforcement	15
Cases resolved	4
Cases closed	15
Total	34

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**

Due to circumstances beyond FSCO's control, audits of life agents during the second quarter to ensure they met their CE requirements were deferred. However, 323 audits were initiated to ensure life agents met their E&O insurance requirements. There was one case 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 second quarter of 2002, FSCO undertook the following:

- **Investigations initiated**

A total of 34 cases were forwarded to Investigations. Of that total, 30 cases related to agents and adjusters, one related to insurance companies, one related to credit unions, and two related to loan and trust companies.

Source of investigations

- Agents:

Complaints about agent conduct	17
Doing business without a licence in force	11
Allegations of unsuitability of agents	2
Total	30

- Insurance Companies:

Doing business without a licence in force	1
Total	1

- Credit Unions

Doing business without a licence in force	1
Total	1

- Loan & Trust Companies

Doing business without a licence in force	2
Total	2
Grand Total	34

Outcome of investigations

- A total of 34 cases were completed:

Charges laid in Provincial Offences court	1
Sponsorship of agent withdrawn	1
Superintendent's Orders issued	5
Letters of Censure issued	10
Closed files (no enforcement action warranted)	17
Total	34

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, 88 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 Letters of Censure issued as a result of formal investigations, three 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, five agents entered into Minutes of Settlement for non-compliance with legislated requirements, and of these, two consented to orders revoking their licences.

Peter H. Breuer	By an order, dated May 24, 2002, this Level II agent's licence was suspended for a period of 30 days, effective July 1, 2002. 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.
Todd L. Casselman	By an order, dated June 17, 2002, this Level II agent's licence was revoked. The agent admitted to using funds received from a policyholder for his own use.
Jose L. Evangelista	By an order, dated May 21, 2002, this Level I agent's licence was revoked. The agent falsely stated on his application for licensing that his sole occupation would be selling financial products. Contrary to his statement, he continued to be employed at a casino.
Roland C. Jocano	By an order, dated June 18, 2002, this Level II agent's licence was suspended for a period of 30 days, effective June 15, 2002. The agent admitted to providing false information on his licence renewal application.
Larry C. Sherwood	By an order, dated May 31, 2002, this Level I agent's licence was suspended for a period of 30 days, effective July 1, 2002. The agent had failed to complete the required continuing education hours and had made a material misstatement in his renewal application. The agent has since completed the required continuing education hours.

Prosecutions

Insurance

Charge:	**Acting as an agent while unlicensed**
Against:	**Glendon M. Lancaster (Mississauga) Level II Life Agent, unlicensed 2 ½ months**
Verdict:	**Guilty**

On May 16, 2002, at the Ontario Court of Justice, Toronto, Glendon M. Lancaster was convicted of acting as an insurance agent without a licence. Mr. Lancaster pleaded not guilty, but the evidence established that he sold 2 policies for investment in segregated funds while unlicensed. He received commissions totalling $288.21. The court imposed a fine of $250. The agent is currently licensed.

Charge:	**Failure to disclose information**
Against:	**Errol F. Rodman (Ajax) General Agent applicant sponsored by Certas Direct Insurance Company**
Verdict:	**Guilty**

On June 6, 2002, at the Ontario Court of Justice, Toronto, Errol F. Rodman was convicted of failing to disclose information relating to previous employment, on his application for licensing as a general insurance agent. Mr. Rodman pleaded guilty to the charge. The court imposed a fine of $300. Mr. Rodman's sponsor continued to be willing to employ him and he was subsequently granted a licence.

Mortgage Brokers

Charge:	**Acting as a Mortgage Broker while unregistered**
Against:	**Robert Irving Goldin**
Verdict:	**Guilty**

On May 6, 2002, at the Ontario Court of Justice, Toronto, Robert Irving Goldin was convicted of carrying on business as a mortgage broker without being registered by the Superintendent of Financial Services as required by the

Mortgage Brokers Act. The evidence indicated that for several years, Mr. Goldin had persuaded an investor to invest significant sums in a series of phony mortgages. As part of his scheme, he provided the investor with phony statements, mortgage registration documents and tax forms. Mr. Goldin converted the investment funds to his own use. The court found that Mr. Goldin had held himself out to the investor as being a registered mortgage broker and was thus guilty of carrying on business as a mortgage broker without being registered.

Mr. Goldin has been convicted of fraud in respect of this case, and relating to other investors, and was sentenced to a penitentiary term. In respect of the charge under the Mortgage Brokers Act, Mr. Goldin was sentenced to 30 days incarceration to be served concurrently with his penitentiary term.

Charge:	**Failure to File Financial Statement**
Against:	**Douglas Pfeiffer o/a Spectrum Financial Services**
Verdict:	**Guilty**

On June 24, 2002, at the Ontario Court of Justice, Toronto, Douglas Pfeiffer, operating as Spectrum Financial Services, was convicted of failing to file financial statements for the fiscal years ending in 2000 and 2001. Mr. Pfeiffer pleaded not guilty but the evidence established that during the relevant time Mr. Pfeiffer had failed to file any financial statements with the Financial Services Commission. Mr. Pfeiffer did not administer mortgages or hold any money in trust. Taking into account Mr. Pfeiffer's personal circumstances, the court imposed a total fine of $600.

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:	**Arthur N. D'Souza**
Advisory Board Hearing:	**April 17, 2002**
Decision:	**Licence suspended**

An Advisory Board hearing was conducted in Toronto to consider the suspension or revocation of Mr. D'Souza's licence following allegations that he is not of good character and reputation and not suitable to act as an insurance agent. The Board found that Mr. D'Souza's conduct was not acceptable in that he harassed a prospective client and a fellow agent.

By decision dated June 27, 2002, the Superintendent accepted the findings of fact of the Board, and ordered that the licence of Mr. D'Souza be suspended for a period of three months, commencing August 1, 2002. Additionally, the Superintendent ordered that the period of suspension would be reduced to one month commencing August 1, 2002, if Mr. D'Souza provided a written undertaking to provide evidence of successful completion of a course in conflict resolution by June 30, 2003. Mr. D'Souza has appealed the Superintendent's decision.

Life agent:	**Mark D. Parsons**
Advisory Board Hearing:	**February 21, 2002**
Decision:	**Licence revoked**

An Advisory Board hearing was conducted in Toronto to consider the suspension or revocation of Mr. Parsons' licence following allegations that he failed to maintain errors and omissions insurance while holding a licence as a life insurance agent, and also furnished false information in his affidavit to the FSCO. The maintenance of errors and omissions insurance is a requirement of Regulation 663. The Board found the allegations against Mr. Parsons to be established. In its report, the Board recommended that Mr. Parson's life insurance agent's licence be revoked.

By decision dated June 28, 2002, the Superintendent accepted the findings of fact of the Board, and ordered that the licence of Mr. Parsons be revoked.

Life agent:	**Victorina E. Wong**
Advisory Board Hearing:	**February 12, 2002**
Decision:	**Licence suspended**

An Advisory Board hearing was conducted in Toronto to consider the suspension or revocation of Ms. Wong's licence following allegations that she failed to facilitate an examination relating to her continuing education credits. The Board found that Ms. Wong had in fact completed her continuing education hours at the time she applied for her licence renewal, but that she failed to facilitate an examination and to furnish information to the Commission when it was requested of her. In its report, the Board recommended that Ms. Wong's licence be suspended for a period of two weeks.

By decision dated June 28, 2002, the Superintendent accepted the findings of fact of the Board, and ordered that the licence of Ms. Wong be suspended for a period of two weeks, commencing August 1, 2002.

12-Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months (July 1, 2001 - June 30, 2002), FSCO took 120 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	41
Licence conditions via Minutes of Settlement	4
Provincial Offences Court convictions and fines	22
Revocation of sponsorship	7
Disciplinary cautions	1
Undertakings	2
Licence suspensions	20
Licence surrenders	2
Licence revocations	21
Total:	120

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring throughout the year. Over the past 12 months, there have been 11,819 instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken.

Monitoring Activities	Number of Occurrences
Continuing education audits	415
Police criminal record checks life agents/applicants	10,318
Complaint reviews	148
Errors & Omissions insurance audits	938
Total:	11,819

Dispute Resolution Decisions

The Dispute Resolution Services Branch 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 A01-000231, May 10, 2002); Bill 59**
Applicant:	**Jaime Pereira**
Insurer:	**Allstate Insurance Company of Canada**
Type of Award:	**Special Award**

Note: This decision is currently under appeal.

The insured person claimed $1,740 for treatment expenses. The insurer challenged the need for the treatment, but also questioned whether the insured person had coverage under an extended health insurance policy.

The Arbitrator found that the treatment claimed was a necessary expense, and calculated the amount owing by the insurer, net of other insurance coverage and amounts already paid, to be $993. Further, she found that the insurer unreasonably delayed the payment of benefits, although no one was diligent about ensuring that the insurer had correct information about coverage provided by the disability insurer. As a result, she ordered a special award of $250, including interest.

The Arbitrator ordered that:

- Allstate Insurance Company shall pay Jaime Pereira $993 for services rendered by Integrated Health Recovery.
- Allstate Insurance Company shall pay Jaime Pereira $250, including interest, as a special award under subsection 282(10) of the Insurance Act.

Type of Decision:	**Arbitration**
Re:	**(FSCO A01-000896, May 13, 2002); Bill 59**
Applicant:	**Edward J. Zuger**
Insurer:	**Zurich North America Canada**
Type of Award:	**Assessment**

Note: This decision is currently under appeal.

The insured person claimed income replacement benefits. The insurer argued that the application was out-of-time and, in any event, the insured person was not entitled to any further benefits.

The Arbitrator found that the application for arbitration was not time-barred. However, she found that the insured person was not entitled to any further benefits and, further, acted dishonestly in the presentation of his claim.

The Arbitrator ordered that:

- The Applicant is not barred from proceeding to arbitration by the time limit set out under subsection 50(2) of the Schedule.
- The Applicant's claim for income replacement benefits is dismissed.
- The Applicant's claim for physiotherapy treatment is dismissed.
- The Applicant's claim for attendant care benefits is dismissed.

- The Applicant's claim for housekeeping expenses is dismissed.
- The Applicant shall pay Zurich $1,000 of its arbitration expenses.
- The Applicant shall pay Zurich $250 pursuant to subsection 282(11.2) of the Insurance Act.

Type of Decision:	**Appeal**
Re:	**(FSCO P01-00007, May 16, 2002); Bill 164**
Applicant:	**Zita Da Rosa**
Insurer:	**Allstate Insurance Company of Canada**
Type of Award:	**Revocation of special award**

Both parties appealed from the arbitration order, dated December 20, 2001.

The Director's Delegate allowed the appeals in part, revoking portions of the arbitration, including the special award. In her opinion, the evidence did not justify any special award.

The Director's Delegate revoked portions of the arbitration order and substituted her own orders. Paragraph 3 of the Director's Delegate's order revoked the special award ordered by the Arbitrator.

Type of Decision:	**Arbitration**
Re:	**(FSCO A00-000065, June 7, 2002); Bill 59**
Applicant:	**Elmer Langdon**
Insurer:	**Pafco Insurance Company Limited**
Type of Award:	**Special Award**

Note: This decision is currently under appeal.

The insured person claimed $12,575 for the cost of treatment and four treatment plans, plus interest, a special award and his arbitration expenses.

The Arbitrator found that a portion of the insured person's claim was reasonable and necessary. She also found that the insurer failed to meet its obligation to pay full benefits based on the DAC report.

The Arbitrator ordered that:

- Pafco Insurance Company shall pay Mr. Langdon $5,940 as the cost of treatment for 99 sessions at the rate of $60 per session at Target Rehabilitation Centre. Pafco Insurance Company is entitled to a credit of $2,700 for the amounts already paid in relation to Mr. Langdon's treatment at Target Rehabilitation Centre. Pafco Insurance Company shall also pay the cost of four (4) treatment plans at the rate of $75 each.
- Pafco Insurance Company shall pay Mr. Langdon interest at the rate of 2% per month compounded monthly on the benefits owing, from the date the amounts first became overdue. If the parties are unable to agree on the amount, I remain seized of the calculation.
- Pafco Insurance Company shall pay Mr. Langdon a special award in the amount of $1,000 inclusive of all interest.
- If the parties are unable to agree on expenses, that issue may now be addressed.

Type of Decision:	**Arbitration**
Re:	**(FSCO A01-001031, June 14, 2002); Bill 59**
Applicant:	**Delroy Duffus**
Insurer:	**CGU Insurance Company of Canada**
Type of Award:	**Assessment**

The insured person claimed income replacement benefits.

The insured person did not appear at the arbitration hearing. The Arbitrator found that the claim was not proven.

The application for arbitration was dismissed and the insured person ordered to pay an assessment of $3,000, plus expenses of $1,000.

Type of Decision:	**Arbitration**

Re:	**(FSCO A0-001170, June 27, 2002); Bill 59**
Applicant:	**Dung Minh Hoang**
Insurer:	**Kingsway General Insurance Company**
Type of Award:	**Assessment**

The insured person claimed income replacement benefits, treatment expenses, interest, a special award and arbitration expenses. The insurer argued that the insured person was precluded from proceeding with the arbitration because he failed to make himself reasonably available for an insurer's examination and an assessment by a designated assessment centre.

The insured person did not appear at the arbitration hearing. The Arbitrator found that his conduct throughout the proceeding was frivolous and vexatious, and put the insurer to unnecessary expense.

The insured person was ordered to pay arbitration expenses of $2,500 and an assessment of $3,000.

Financial Services Tribunal Decisions

Name:	Patrick Leerbitration
Sector:	Insurance
Notice of Proposal:	A decision dated January 17, 2002 of the Director, Licensing and Compliance Division, of the Financial Services Commission of Ontario, by delegated authority from the Superintendent of Financial Services (the "Superintendent"), revoking the Level II life insurance agent's licence of Patrick Lee
Date of Decision:	April 19, 2002
Disposition:	The appeal in this matter is dismissed.

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

Martha Milczynski	Bryan P. Davies
Chair	Chief Executive Officer
Financial Services Commission of Ontario	Financial Services Commission of Ontario
Chair	Superintendent of Financial Services
Financial Services Tribunal	

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