Bulletin

No. G-01/03

- General

Monitoring and Enforcement Report - Including Prosecution and Hearing Decisions - for Third 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 third quarter of 2002, FSCO undertook the following:

- **Police Checks**

  A total of 5,704 police checks on the background of existing and prospective agents were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

FSCO received 40 complaints about the conduct of agents for the third quarter, July 1, 2002, to September 30, 2002. The subjects of the complaints included fraud, forgeries, misrepresentation and agent misconduct.

Overview of Complaints:

Complaints in progress, from end of second quarter 2002	20
Plus: *Complaints received* during the third quarter 2002	40
Less: *Complaints in progress* at end of third quarter 2002	32
Total number of *Complaint reviews* completed during third quarter 2002:	28

Disposition of Complaint Reviews:

Cases forwarded for potential enforcement	19
Cases resolved	3
Cases closed	6
Total	28

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 562 audits of life agents during the third quarter to ensure they met their CE requirements and 653 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 third quarter of 2002, FSCO undertook the following:

- **Investigations initiated**

A total of 23 cases were forwarded to Investigations. Of that total, 21 cases related to agents and adjusters, one related to credit unions, and one related to mortgage brokers.

Source of investigations:

- Agents:

Complaints about agent conduct	16
Doing business without a licence in force	2
Allegations of unsuitability of agents	2
Continuing education audits	1
Total:	21

- Credit Unions:

Complaints about credit union conduct	1
Total:	1

- Mortgage Brokers:

Doing business without a licence in force	1
Total:	1
Grand Total:	23

Outcome of investigations:

A total of 26 cases were completed:

Charges laid in Provincial Offences Court	1

Sponsorship of agent withdrawn	3
Superintendent's Orders issued	7
Letters of Censure issued	5
Closed files (no enforcement action warranted)	10
Total:	26

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, 84 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 five Letters of Censure issued as a result of formal investigations, 16 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, seven agents entered into Minutes of Settlement for non-compliance with legislated requirements, and of these, four consented to orders revoking their licences.

Nino Agosta	By an order, dated August 26, 2002, this Level II agent's licence was revoked. The agent admitted to submitting several policy applications without the policyholders' permission, and forging their signatures on the applications.

Zlata Bijelic	By an order, dated August 26, 2002, this Level II agent's licence was revoked. The agent admitted to being employed as a mortgage agent while holding a life insurance agent's licence, in violation of the *Insurance Act.*
Richard L. Korzeniewski	By an order, dated August 22, 2002, this Level I agent's licence was revoked. The agent had provided false information in his initial application for licensing as an insurance agent, as well as in a subsequent renewal application. The agent also used a policyholder's money for his own purposes, and was director, secretary and general manager of an unlicensed insurance agency.
Guy J. Marois	By an order, dated August 22, 2002, this Level I agent's licence was revoked. The agent admitted to submitting 14 fictitious applications for life insurance, and signing in the names of the fictitious clients.
Austin C. Sylvester	By an order, dated September 3, 2002, this Level II agent's licence was suspended for a period of 30 days, effective October 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.

Dennis Whiston	By an order, dated July 5, 2002, this Level II agent's licence was suspended for a period of 30 days, effective August 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.

Accommodation for Disability:

M. F. As an accommodation for serious illness, this Level II agent's licence was renewed. By Minutes of Settlement, dated August 8, 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:	**Providing False Information to FSCO (3 counts)**
Against:	**Mark Fridgant**
Verdict:	**Guilty**

On September 6, 2002, Mr. Fridgant was tried on three counts of providing false information to the Commission. Mr. Fridgant was convicted of all three counts and fined a total of $850. Until April 1, 2002, Mr. Fridgant held a Level I life insurance agent’s licence. On his application to renew his life insurance agent’s licence (dated October 19, 1998), Mr. Fridgant failed to indicate that he was being investigated by the Investment Dealers Association (IDA) for professional misconduct. On June 9, 2000, Mr. Fridgant was found guilty of professional misconduct by the IDA. On his application to renew his life insurance agent’s licence (dated October 30, 2000), Mr. Fridgant again failed to indicate that he been investigated by the IDA for professional misconduct. Mr. Fridgant also failed to indicate on that application that he had been the subject of a disciplinary proceeding by a licencing body and that a penalty had been imposed upon him. Mr. Fridgant agreed to the termination of his licence on April 1, 2002.

Mortgage Brokers:

Charge:	**Acting as a Mortgage Broker while unregistered**
Against:	**Steven Yau**
Verdict:	**Guilty**

On September 3, 2002, at the Ontario Court of Justice, Toronto, Steven Yau was convicted of carrying on business as a mortgage broker without being registered under the Mortgage Brokers Act. The evidence established that on behalf of two separate borrowers, Mr. Yau had attempted to secure, and in one case did secure, mortgage financing and collected fees for his services. The court found Mr. Yau guilty and imposed a fine of $27,000.

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**
Variation of Order:	**September 23, 2002**

As reported in Bulletin G- 09/02 - General, by decision dated June 27, 2002, the Superintendent 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.

By variation of order dated September 23, 2002, the Superintendent replaced the date August 1, 2002 with September 19, 2002. Additionally, upon receipt of a sworn statement from Mr. D'Souza that he did not engage in any activities requiring licensing as an insurance agent during the period August 1, 2002 to August 19, 2002, the

Superintendent ordered that this period of time would be deducted from the period of suspension in the variation of the order.

Note: This decision is currently under appeal. Mr. D'Souza is permitted to act as an agent pending the appeal.

Other FSCO hearings and related court actions

Action:	**Cease and Desist Order**
Against:	**Puget's Sound Agricultural Society, Limited**
Date	**August 15, 2002**

The Superintendent directed that the Puget's Sound Agricultural Society, Limited (PSASL) and any of its agents or representatives immediately cease and desist selling, offering, or making available in Ontario PSASL's Conveyance Monetary Accountability Program, Burial Program, Personal Property Program, or Structure Program. He also ordered that PSASL immediately cease and desist receiving or collecting any funds from Ontario residents in respect of PSASL's Conveyance Monetary Accountability Program, Burial Program, Personal Property Program, or Structure Program.

PSASL is not, and never has been, licensed as an insurer in Ontario. PSASL's programs constitute insurance under the *Insurance Act.* PSASL was given the opportunity to request a hearing before the Financial Services Tribunal. Neither PSASL nor any of its officers and directors requested a hearing.

12-Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months (October 1, 2001 - September 30, 2002), FSCO took 146 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	55
Licence conditions via Minutes of Settlement	5
Provincial Offences Court convictions and fines	25

Revocation of sponsorship	7
Undertakings	1
Licence suspensions	16
Licence surrenders	15
Licence revocations	21
Cease & Desist orders	1
Total:	146

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring throughout the year. Over the past 12 months, there have been 17,285 instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken._

Monitoring Activities	**Number of Occurrences**
Continuing education audits	848
Police criminal record checks life agents/ applicants	14,106
Complaint reviews	125
Errors & Omissions insurance audits	2,206
Total:	17,285

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 A00-000364, August 21, 2002); Bill 59**
Applicant:	**L.F.**
Insurer:	**State Farm Mutual Automobile Insurance Company**
Award:	**Special Award**

Note: This decision is currently under appeal.

The insured person claimed ongoing income replacement benefits, attendant care benefits and various medical and rehabilitation benefits.

In a lengthy decision, the arbitrator held that the insured person was entitled to ongoing income replacement benefits, attendant care benefits and some of the medical and rehabilitation expenses.

The insured person argued that a special award was warranted as a result of the insurer's refusal to pay the various medical and rehabilitation expenses. The arbitrator found that a number of the refusals were not unreasonable. However, he found that the insurer unreasonably denied the original treatment plan, unreasonably withheld attendant care benefits, and unreasonably refused to follow the recommendations of an occupational therapist that it retained to assess the insured person's needs.

The Arbitrator ordered that:

- The arbitration order is lengthy, but includes an order that the insurer pay "a special award in the amount of $2,500."

Type of Decision:	**Appeal**
Re:	**(FSCO P01-00036, July 29, 2002); Bill 59**
Applicant:	**Jose Docoute**
Insurer:	**Zurich Insurance Company**
Award:	**Assessment**

Note: No judicial review.

The insured person challenged the insurer's refusal to pay the cost of two assessments. In doing so, he raised allegations of institutional and personal bias against the arbitrator. The arbitrator dismissed the insured person's bias motion and, when he refused to proceed with the hearing, dismissed his claim. On appeal, the insured person pursued the issue of bias.

The appeal was misconceived from the outset, and was conducted in an abusive manner, warranting an assessment at the maximum rate.

The Arbitrator ordered that:

- The appeal is dismissed and the arbitration order, dated September 19, 2001, is confirmed.
- Jose Docoute shall pay Zurich Insurance Company's appeal expenses, fixed at $1,500.
- Jose Docoute shall pay Zurich Insurance Company an assessment under s. 282(11.2), fixed at $500.

Financial Services Tribunal Decisions

Name:	Sussman Mortgage Funding Inc.
Sector:	Mortgage
Notice of Proposal:	A Notice of Proposal issued by the Superintendent of Financial Services on August 24, 1999, proposing to revoke the registration of Sussman Mortgage Funding Inc. as a mortgage broker.
Date of Decision:	August 8, 2002
Disposition:	An order will issue to the Superintendent under section 7 (4) of the *Mortgage Brokers Act* to carry out the terms of the Notice of Proposal dated August 24, 1999. Sussman Mortgage Funding Inc. has appealed to the Divisional Court. Decision of FST stayed pending appeal.

For the full text of the Decision/Order, please visit FSCO's web site 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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