Property and Casualty - Auto Bulletins

Pension Bulletins

Monitoring and Enforcement Bulletins

Licensing Changes Bulletins

Bulletins by Sector

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Bulletin

No. G-03/03

- General

Monitoring and enforcement report - including prosecution and hearing decisions - for fourth 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, 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 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. A significant number of matters are resolved at this first step.

During the fourth quarter of 2002, FSCO undertook the following:

- **Police Checks**

  A total of 5,386 police checks on the background of existing and prospective agents were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

FSCO received 37 complaints about the conduct of agents for the fourth quarter October 1, 2002, to December 31, 2002. The subjects of the complaints included fraud, forgeries, misrepresentation and agent misconduct.

Overview of Complaints

Complaints in progress, from end of third quarter 2002	32
Plus: *Complaints received* during the fourth quarter 2002	37
Less: *Complaints in progress* at end of fourth quarter 2002	32
Total number of *Complaint reviews* completed during fourth quarter 2002	37

Disposition of Complaint Reviews

Cases forwarded for potential enforcement	23
Cases resolved	6
Cases closed	8
Total:	37

Cases may be closed for a variety of reasons. The most common are: the issue raised is outside FSCOs jurisdiction; there is insufficient evidence to substantiate a complaint; or the complaint is unfounded.

- **Audits**

FSCO initiated 118 audits of life agents during the fourth quarter to ensure they met their CE requirements and 346 audits to ensure life agents met their E&O insurance requirements. There were two 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 review 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 2002, FSCO undertook the following:

- **Investigations initiated**

  A total of 29 cases were forwarded to Investigations. Of that total, 24 cases related to agents and adjusters, two related to insurance companies and three related to loan and trust companies.

  Source of investigations

  - Agents:

Complaints about agent conduct	19
Doing business without a licence in force	2
Allegations of unsuitability of agents	1
Continuing education audits	2
Total:	24

  - Insurance Companies:

Complaints about insurance company conduct	2
Total:	2

  - Loan & Trust Companies:

Doing business without a licence in force	3
Total:	3
Grand Total:	29

Outcome of investigations

- A total of 29 cases were completed:

Charges laid in Provincial Offences court	7

Sponsorship of agent withdrawn	0
Superintendent's Orders issued	6
Letters of Censure issued	6
Closed files (no enforcement action warranted)	10
Total:	29

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, 63 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 six Letters of Censure issued as a result of formal investigations, 14 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 fourth quarter, six agents entered into Minutes of Settlement for non-compliance with legislated requirements. There were no orders revoking licences.

Monita L. Chan	By an order, dated November 1, 2002, this Level II agent's licence was suspended for a period of two years, effective October 1, 2002. The agent acknowledged that she had engaged in improper business practices and agreed to the suspension.

Andrew W. Dencs	By an order, dated October 25, 2002, this Level II agent's licence was suspended for a period of 30 days, effective November 15, 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.
Paul V. West	By an order, dated November 30, 2002, this Level II agent's licence was suspended for a period of 30 days, effective December 15, 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.
Jeffrey M. White	By minutes of settlement, dated December 13, 2002, this Level II agent agreed to take two courses with respect to ethical obligations of agents and to speak at a seminar. The agent invested the cash surrender value of a policy without the policyholder's instructions. The agent took direction from the wife of the policyholder, who was separated from the policyholder at the time. The investment is now being held in a trust account.

Accommodation for Disability

L. C.	By minutes of settlement, dated November 1, 2002, this Level II agent's licence was conditionally renewed. The agent had failed to complete the required continuing education hours and had made a material misstatement in the renewal application. The agent has since completed the required continuing education hours. As an accommodation for health reasons, there was no penalty.
N. K.	By minutes of settlement, dated November 11, 2002, this Level II agent's licence was conditionally renewed. The agent had failed to complete the required continuing education hours and had made a material misstatement in the renewal application. The agent has since completed the required continuing education hours. As an accommodation for health reasons, there was no penalty.

Prosecutions

Insurance

Charge:	**Acting as an insurance agent without a licence**
Against:	**PGM Investments Inc. (Ottawa)**
Verdict:	**Guilty**

On October 3, 2002, at the Ontario Court of Justice, Ottawa, PGM Investments Inc. pleaded guilty to a charge of acting as a life insurance agent without the licence required by the Insurance Act. PGM had failed to renew its licence and remained unlicenced for approximately a year. During that year, it continued to act as an agent in violation of the Act and earned commissions. A fine of $1,500 was imposed. PGM Investments Inc. is currently licensed.

Charge:	**Acting as an insurance agent without a licence**

Against: **Ram Singh Dhanota (Mississauga) Level II Life Agent**

Verdict: **Guilty**

On November 21, 2002, at the Ontario Court of Justice in Toronto, Ram Singh Dhanota was convicted of acting as an insurance agent without a licence. Mr. Dhanota pleaded guilty. He admitted that he sold 39 travel insurance policies while unlicenced. He received commissions totaling $2,701.14. The Court imposed a fine of $500 with 30 days to pay. The automatic victim fine surcharge is $110. The agent is currently licensed.

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 past 12 months (January 1, 2002 - December 31, 2002), FSCO took 141 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	66
Licence conditions via Minutes of Settlement	5
Provincial Offences Court convictions and fines	20
Revocation of sponsorship	6
Licence suspensions	13
Licence surrenders	16
Licence revocations	14

Cease & Desist orders	1
Total:	141

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring throughout the year. Over the past 12 months, there have been 20,707 instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken.

Monitoring Activities	Number of Occurrences
Continuing education audits	800
Police criminal record checks life agents/ applicants	17,232
Complaint reviews	123
Errors & Omissions insurance audits	2,552
Total:	20,707

Dispute Resolution Decisions

Type of Decision:	**Arbitration**
Re:	**(FSCO A02-000084, November 27, 2002); Bill 59**
Applicant:	**Richard Phillips**
Insurer:	**Guarantee Company of North America**
Award:	**Assessment**

The insured person claimed weekly income replacement benefits and the cost of assessment, medical and rehabilitation services.

The insured person did not contact his lawyer or attend the hearing. There was no evidence to support his claims; they were therefore rejected. The insurer established its claim that the insured person had been overpaid and he should be required to repay the excess amount.

The Arbitrator ordered that:

- the Applicant's claims be dismissed in their entirety;
- the Applicant repay the insurer $2,447.72, pursuant to section 47 of the Schedule, which represents an overpayment of income replacement benefits during the period from November 20, 2000 to April 22, 2001;
- the Applicant pay the Insurer's arbitration expenses in the amount of $1,742.00, pursuant to subsection 282(11) of the Insurance Act; and
- the Applicant pay the insurer the amount of $1,000, pursuant to subsection 282(11.2) of the Insurance Act.

Type of Decision:	**Arbitration**
Re:	**(FSCO A01-000333, October 16, 2002); Bill 59**
Applicant:	**Lorna Howden**
Insurer:	**Pembridge Insurance Company (Pafco Ins. Co.)**
Award:	**Special Award**

Note: This decision is currently under appeal.

The insured person claimed weekly income replacement benefits beyond the 104-week mark.

The Arbitrator found that Pembridge failed to deal with Ms. Howden's claim in a balanced and reasonable manner. It unreasonably withheld weekly benefits past the 104-week mark.

The Arbitrator ordered that:

- Pembridge pay to Ms. Howden the income replacement benefits due to her post 104 weeks, plus accrued interest on all outstanding amounts;
- Pembridge pay to Ms. Howden a special award of 50% of the outstanding benefits, including accrued interest; and
- Pembridge pay to Ms. Howden $363 as fulfilment of its outstanding agreement made prior to the hearing.

Type of Decision:	**Arbitration**
Re:	**(FSCO A02-000215, October 30, 2002); Bill 59**
Applicant:	**Mark Green (Estate of)**
Insurer:	**Kingsway General Insurance Company**
Award:	**Assessment**

Mark Green's Estate pursued a claim for weekly benefits, but then asked to withdraw it.

The Arbitrator allowed the withdrawal, but ordered the Estate to pay an assessment of $3,000 on the basis that the claim was devoid of merit.

The Arbitrator ordered that:

- the Estate pay Kingsway's assessment fee in the amount of $3,000, pursuant to subsection 282(11.2) of the Insurance Act; and
- the Estate pay Kingsway's reasonable expenses in this arbitration proceeding, pursuant to subsection 282(11) of the Insurance Act.

Type of Decision:	**Arbitration**
Re:	**(FSCO A01-000486, October 28, 2002); Bill 59**
Applicant:	**Maria Da Ponte**
Insurer:	**Motor Vehicle Accident Claims Fund (MVAC)**
Award:	**Special Award**

Ms. Da Ponte claimed weekly non-earner benefits, attendant care benefits, housekeeping, home maintenance and the cost of some assessments.

The Arbitrator found that in light of Ms. Da Ponte's clearly documented need for attendant care and housekeeping, MVAC acted unreasonably in failing to pay benefits. The amount ordered represented "approximately 50% of the attendant care and housekeeping payments that it [MVAC] unreasonably withheld."

The Arbitrator ordered that:

- MVAC pay Ms. Da Ponte weekly non-earner benefits, starting from the week of May 8, 2000, and ongoing, pursuant to section 12 of the Schedule. Because Ms. Da Ponte was over the age of 65 at the time of the accident, the quantum of her non-earner benefits is to be calculated in accordance with section 10 of the Schedule;
- MVAC pay Ms. Da Ponte for 16 hours of attendant care per week from March 5, 2001 to November 8, 2001, the 104-week mark of the date of the accident, pursuant to sections 16 and 18 of the Schedule;
- MVAC pay Ms. Da Ponte $100 per week for housekeeping and home maintenance services from November 23, 2000 and continuing to November 8, 2001, pursuant to section 22 of the Schedule;
- MVAC pay Ms. Da Ponte for the cost of the occupational therapy assessment report from RMI, dated October 31, 2001, in the amount of $1,704.37, pursuant to section 24 of the Schedule;
- MVAC pay Ms. Da Ponte a special award in the amount of $6,000, inclusive of interest, pursuant to subsection 282 (10) of the Insurance Act; and
- MVAC pay Ms. Da Ponte interest on the amounts owing for the non-earner benefits, attendant care benefits and housekeeping benefits, pursuant to section 46(2) of the Schedule.

Financial Services Tribunal (FST) Decisions

There were no FST decisions during the fourth quarter of 2002.

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	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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