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Bulletins by Sector

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Bulletin

No. G-05/03

- General

Monitoring and enforcement report - including prosecution and hearing decisions - for first quarter 2003

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 first quarter of 2003, FSCO undertook the following:

- **Police Checks**

  A total of 5,571 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 first quarter January 1, 2003, to March 31, 2003. The subjects of the complaints included fraud, forgeries, misrepresentation and agent misconduct.

Overview of Complaints

Complaints in progress, from end of fourth quarter 2002	32
Plus: *Complaints received* during the first quarter 2003	37
Less*: Complaints in progress* at end of first quarter 2003	30
Total number of *Complaint reviews* completed during first quarter 2003	39

Disposition of Complaint Reviews

Cases forwarded for potential enforcement	19
Cases resolved	7
Cases closed	13
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 203 audits of life agents during the first quarter to ensure they met their CE requirements. 351 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 first quarter of 2003, FSCO undertook the following:

- **Investigations initiated**

A total of 18 cases were forwarded to Investigations. Of that total, 14 cases related to agents and adjusters, two related to insurance companies and two related to credit unions.

Source of investigations

- Agents:

Complaints about agent conduct	10
Doing business without a licence in force	3
Continuing education audits	1
Total:	14

- Insurance Companies:

Complaints about insurance company conduct	2
Total:	2

- Credit Unions:

Complaints about credit union conduct	2
Total:	2
Grand Total:	18

Outcome of investigations

A total of 46 cases were completed:

Charges laid in Provincial Offences Court	10
Sponsorship of agent withdrawn	1
Superintendent's Orders issued	8

Letters of Censure issued	6
Closed files (no enforcement action warranted)	21
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, 61 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, eight 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, eight agents entered into Minutes of Settlement for non-compliance with legislated requirements, of these four consented to orders revoking their licences.

Jawed Asrani	By an order, dated February 16, 2003, this Level I agent's licence was suspended for a period of 90 days, effective February 16, 2003. The agent acknowledged that he was engaged in employment other than that of selling financial products while licenced, in violation of the Insurance Act.

Lawrence A. Bennett	By an order, dated August 26, 2002, this Level II agent's licence was suspended for a period of one year, effective October 1, 2002. The agent admitted to asking for a personal loan from elderly clients, assisting said clients in redeeming an investment, and then failing to repay that money. The monies have since been repaid to the clients by the insurer. (This case was omitted from the third quarter bulletin, 2002).
Christopher J. Cunningham	By an order, dated March 8, 2003, this Level I agent's licence was suspended for a period of 30 days, effective April 1, 2003. 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.
Chaim Forer	By an order, dated February 16, 2003, this Level II agent's licence was revoked effective April 15, 2003. The agent listed his wife as an employee of several fictitious companies, in order to submit fraudulent group insurance benefit claims.
Sarah Forer	By an order, dated February 16, 2003, this Level II agent's licence was suspended for 90 days, effective January 15, 2003. The agent's husband had listed her as an employee of several fictitious companies, in order to submit fraudulent group insurance benefit claims. As an officer and director of Forer & Associates she had an obligation to ensure that all business submitted to insurance companies was legitimate.

Joseph J. Pederson	By an order, dated February 7, 2003, this Level II agent's licence was revoked. The agent received a total of $70,000 from a client for investment purposes. Only half of the client's money was actually invested. As a result of the agent's actions, the client sustained a loss $35,000.
Roger A. Rambhajan	By an order, dated February 16, 2003, this Level I agent's licence was revoked. The agent had been the subject of disciplinary charges and a permanent registration ban by the Investment Dealers Association. This information was not disclosed in his application for a life insurance agent's licence and the agent made a material misstatement in his application.
Dean J. Robinson	By an order, dated January 16, 2003, this Level I agent's licence was revoked. The agent admitted to submitting numerous policy applications without the policyholders' knowledge or consent, and forging their signatures.

Prosecutions

Insurance

Charge: Acting as an insurance agent without a licence

Against: Canadian Funeral Programs Inc.

Verdict: Guilty

On March 17, 2003, at the Ontario Court of Justice, Kitchener, Canadian Funeral Programs Inc. pleaded guilty to a charge of acting as an insurance agent without the licence required by the *Insurance Act.* A fine of $1,500 was imposed. The company, whose licence expired on September 22, 2001, submitted a renewal application in August 2001, however, the application could not be processed because the company no longer met a requirement that the majority shareholder also hold an agents' licence. It was not until April 2002 that all requirements were met and a renewal licence was issued. During the period between September 2001 and April 2002, the company was unlicenced but continued to conduct business. The company was apparently under the impression that while it was communicating with the Commission regarding renewal, it was permitted to continue to conduct business. The company is currently licensed.

Loan and Trust

Charge:	**Carrying on business as a loan corporation without being registered under the *Loan and Trust Corporations Act***
Against:	**Elaine and Esther Holdings Limited**
Verdict:	**Guilty**

Charge:	**Carrying on business as a loan corporation without being registered under the *Loan and Trust Corporations Act***
Against:	**Prior Insurance Agencies Ltd**
Verdict:	**Guilty**

Charge:	**Causing, authorizing or permitting a contravention of the *Loan and Trust Corporations Act* by Prior Insurance Agencies Ltd.**
Against:	**Donald James Prior**
Verdict:	**Guilty**

On January 29, 2003, at the Ontario Court of Justice, Kitchener, the two companies pleaded guilty and were fined $60,000 each (plus victim surcharge). Mr. Prior also pleaded guilty, and was fined $2,000 (plus victim surcharge) after the court took into account his present circumstances.

All of the defendants were charged under the Loan and Trust Corporations Act. Donald Prior was an insurance agent and financial advisor. He persuaded his clients to invest in two Ontario business corporations in return for "Certificates of Investment." The certificates were not insured or secured in any way. He collected several hundreds of thousands of dollars, ran into financial difficulty and many investors lost large sums of money. Taking deposits from the public is prohibited unless authorized by statute.

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:	**Donald G. Hopkins**
Advisory Board Hearing:	**July 8, 2002**
Verdict:	**Licence revoked**

An Advisory Board hearing was conducted in Toronto to consider the suspension or revocation of Mr. Hopkins' licence following allegations that he engaged in three acts of deception, including one against the Superintendent. Mr. Hopkins did not attend the hearing, but his legal counsel was present at the hearing. The Board found that Mr. Hopkins had made false declarations to the Superintendent stating that he had errors and omissions insurance coverage required by law when he did not; that he had engaged in unfair and deceptive acts or practices by offering premium rebates and financial gifts as inducements to purchase policies; and that he had failed to facilitate an examination by refusing to answer questions (on the advice of his counsel) put to him by a Commission investigator. The Board held, after reviewing the relevant case law, that an agent is required to answer questions from a Commission investigator even where there are criminal charges pending.

By decision dated January 3, 2003, the Superintendent accepted the findings of fact and law of the Board, and ordered that the licence of Donald Hopkins be revoked.

Life agent:	**Judiana Kwong**
Advisory Board Hearing:	**November 26, 2002**
Verdict:	**Licence suspended**

An Advisory Board hearing was conducted in Toronto to consider the suspension or revocation of Ms. Kwong's licence following allegations that she failed to disclose to the Commission that she had been investigated in December 1993 by the Registered Insurance Brokers of Ontario (RIBO) and found guilty of forgery. Ms. Kwong resigned from RIBO voluntarily in June of 1994 without meeting the imposed conditions for continued registration. At the hearing, Ms. Kwong agreed that she had committed the acts alleged by the Commission in its Notice of Hearing. In light of Ms. Kwong's admission, the Board recommended that Ms. Kwong's licence be suspended for a period of six months.

By decision dated January 31, 2003, the Superintendent accepted the findings of fact of the Board, and ordered that the licence of Judiana Kwong be suspended for a period of six months, commencing March 1, 2003.

12-Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months (April 1, 2002 - March 31, 2003), FSCO took 142 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	68
Licence conditions via Minutes of Settlement	4
Provincial Offences Court convictions and fines	14
Revocation of sponsorship	5
Licence suspensions	15
Licence surrenders	23
Licence revocations	12
Cease & Desist orders	1
Total:	142

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring throughout the year. Over the past 12 months, there have been 23,544 instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken.

Monitoring Activities	Number of Occurrences

Continuing education audits	883
Police criminal record checks life agents/applicants	20,235
Complaint reviews	138
Errors & Omissions insurance audits	2,288
Total:	23,544

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 A01-000841, January 8, 2003); Bill 59**
Applicant:	**Susan P. Driver**
Insurer:	**Traders General Insurance Co.**
Award:	**Special Award**

Note: This decision is currently under appeal.

The insured person claimed "Vistasp therapy" ($103,727.45), various medical expenses ($585), housekeeping and home maintenance expenses ($6,300), Tau Chi ($1,299.86), dog walking expenses ($195) and parking ($290).

The Arbitrator held that the insured person was not entitled to "Vistasp therapy," housekeeping and home maintenance expenses, or parking, but ordered the Insurer to pay for medical expenses, Tai Chi and dog walking expenses. She also ordered the Insurer to pay a special award for $1,000 in respect of the Tai Chi and dog walking expenses.

The Arbitrator ordered that:

- Ms. Driver is not entitled to expenses incurred for Vistasp therapy under section 14 of the Schedule or for housekeeping expenses under section 22 of the Schedule.
- Traders shall pay to Ms. Driver $585 for massage therapy, physiotherapy, hydrotherapy and pool therapy under section 14 of the Schedule.
- Traders shall pay to Ms. Driver $1,299.86 for the cost of two Tai Chi programmes and $195 for dog-walking services under Article 15(5)(1) of the Schedule.
- Traders shall pay to Ms. Driver a special award of $1,000, which includes interest.
- Traders shall pay interest on Items 1 to 3 above, in accordance with section 64 of the Schedule.

Type of Decision:	**Arbitration**
Re:	**(FSCO A02-000630, January 8, 2003); Bill 59**
Applicant:	**Carlos Cisneros**
Insurer:	**State Farm Mutual Automobile Insurance Company**
Award:	**Assessment**

The insured person claimed the cost of an orthopaedic mattress.

The insured person failed to attend two pre-hearings and the hearing.

The Arbitrator ordered that:

- Mr. Cisneros' application for arbitration be dismissed as abandoned.
- Mr. Cisneros pay State Farm $3,000 pursuant to subsection 282(11.2) of the Insurance Act, because he commenced an arbitration that is vexatious and an abuse of process.
- Mr. Cisneros pay State Farm $790.77 for its expenses thrown away in respect of the arbitration under section 282 (11) of the Insurance Act.

Type of Decision:	**Arbitration**
Re:	**(FSCO A01-001341, January 28, 2003); Bill 164**
Applicant:	**Sharon A. Morabito**
Insurer:	**Liberty Mutual Insurance Company**
Award:	**Special Award**

Note: This decision is currently under appeal.

The parties could not agree on the amount of loss of earning capacity benefits ("LECBs").

The Arbitrator held that Mrs. Morabito's LECBs should be based on a pre-accident earning capacity of $31,000 and a residual earning capacity of zero. The Arbitrator also found that the Insurer acted unreasonably in making an LECB offer based on a report that was three years old and contrary to the weight of the evidence.

The Arbitrator ordered that:

- Liberty pay to Mrs. Morabito a LECB benefit based on a gross pre-accident earning capacity of $31,000 and a residual earning capacity of $0. The net weekly income amounts used in the calculation of the LECB shall be indexed in accordance with section 79(1) of the Schedule. The Arbitrator remains seized of this matter should the parties be unable to agree on the amount of the LECB.
- Liberty pay to Mrs. Morabito a special award of $500 pursuant to section 282(10) of the Insurance Act, because it unreasonably withheld or delayed payment of a benefit.
- The parties may speak to the issue of expenses in accordance with Rule 77 of the Dispute Resolution Practice Code.

Type of Decision:	**Arbitration**
Re:	**(FSCO A01-001518, February 26, 2003); Bill 164**
Applicant:	**Randal Kane**
Insurer:	**Lombard General Insurance Company of Canada**

Award:	**Special Award**

Note: This decision is currently under appeal.

The parties could not agree on the amount of Mr. Kane's loss of earning capacity benefits ("LECBs") — specifically his residual earning capacity ("REC").

The Arbitrator found that the DAC report, concluding that Mr. Kane was capable of working as a part-time telemarketer, was seriously flawed. She found that Mr. Kane's residual earning capacity was zero, and that it was unreasonable for the Insurer to rely on the DAC report.

The Arbitrator ordered that:

- Mr. Kane's residual earning capacity is zero. Lombard repay to Mr. Kane $114.60 per week from June 5, 2001 and ongoing, subject to indexation.
- Lombard pay to Mr. Kane a special award of $6,000, inclusive of interest.
- Mr. Kane is entitled to his reasonable expenses of the arbitration.
- Lombard pay interest on benefits owing in accordance with section 68 of the Schedule.

Type of Decision:	**Arbitration**
Re:	**(FSCO A02-000493, February 28, 2003); Bill 59**
Applicant:	**Dolores Strachan**
Insurer:	**Wawanesa Mutual Insurance Company**
Award:	**Assessment**

Ms. Strachan claimed the cost of chiropractic, physiotherapy and massage treatment, as detailed in a treatment plan prepared by Centre City Health Recovery Clinic. Neither she nor her representative appeared at the hearing.

The Arbitrator found that Ms. Strachan's application for arbitration was an abuse of process — it was an attempt to compel settlement, with no intention of proceeding to a hearing.

The Arbitrator ordered that:

- Ms. Strachan's application for arbitration be dismissed as abandoned.
- Ms. Strachan must pay Wawanesa $3,000 pursuant to subsection 282(11.2) of the Insurance Act, because she commenced an arbitration that is vexatious and an abuse of process.
- Ms. Strachan is liable to pay Wawanesa's expenses pursuant to subsection 282(11) of the Insurance Act for its expenses thrown away in respect of the arbitration.

Type of Decision:	**Arbitration**
Re:	**(FSCO A01-000789, March 17, 2003); Bill 59**
Applicant:	**Mohamed Dirie**
Insurer:	**Guarantee Company of North America**
Award:	**Assessment**

Mr. Dirie claimed accident benefits on the basis that he was injured in an automobile accident on December 31, 2000. Guarantee argued that there was no accident.

In a decision dated January 11, 2002, the Arbitrator concluded that Mr. Dirie was not involved in an accident and dismissed his claim. In a second decision, dated March 17, 2003, the Arbitrator ordered Mr. Dirie to pay the Insurer's arbitration expenses, fixed at $3,388.50, and an assessment of $3,000, the maximum, on the basis that the application was fraudulent.

The Arbitrator ordered that:

- Mr. Dirie pay Guarantee $3,388.50 for its expenses of the arbitration.
- Mr. Dirie pay Guarantee $3,000 for its arbitration assessment fee.

Financial Services Tribunal (FST) Decisions

Name:	Sussman Mortgage Funding Inc.
Sector:	Mortgage Brokers

Notice of Proposal:	The Superintendent of Financial Services issued a Notice of Proposal on August 24, 1999, to revoke the corporation's registration as a mortgage broker. The grounds were that the corporation's officers structured their mortgage brokering business in order to circumvent the investment disclosure and accounting requirements under the Mortgage Brokers Act, and they contravened an order of the FST and certain requirements under the Mortgage Brokers Act while the hearing was in progress.
Decision:	August 8, 2002. The FST directed the Superintendent to carry out the Notice of Proposal to revoke the corporation's registration as a mortgage broker.
Ruling on Costs:	February 25, 2003. The FST ordered the broker to pay $15,000 in legal costs to the Superintendent of Financial Services, on grounds that the broker unreasonably prolonged the FST Hearing by expanding it into a hearing unrelated to matters within the jurisdiction of the FST.
Appeal:	The broker has appealed the Decision to Revoke Registration and the Ruling on Costs. The broker is permitted to conduct business while the appeal is pending, pursuant to an Order issued by the FST on August 15, 2002.

For the full text of the Decision/Order, please refer to 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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