NOTE: The bulletins posted on this website are provided for historical reference. Information contained in the bulletins is accurate on the date published, but is subject to change and may have been superceded by a later bulletin. Users should verify the information before making decisions or acting upon it.

The bulletins posted may contain forms that are no longer current. For the current version of any FSCO form, please visit the forms area of this website.

Bulletin

No. G-08/03

- General

Monitoring and enforcement report - including prosecution and hearing decisions - for second 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 second quarter of 2003, FSCO undertook the following:

- **Police Checks**

  A total of 5,047 police checks on the background of existing and prospective agents were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

FSCO received 29 complaints about the conduct of agents for the second quarter April 1, 2003, to June 30, 2003.

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

Overview of Complaints

Complaints in progress, from end of first quarter 2003	30
Plus: *Complaints received* during the second quarter 2003	29
Less: *Complaints in progress* at end of second quarter 2003	14
Total number of *Complaint reviews* completed during second quarter 2003	45

Disposition of Complaint Reviews

Cases forwarded for potential enforcement	17
Cases resolved	9
Cases closed	19
Total:	45

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 84 audits of life agents during the second quarter to ensure they met their CE requirements. 348 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 2003, FSCO undertook the following:

- **Investigations initiated**

A total of 44 cases were forwarded to Investigations. Of that total, 34 cases related to agents and adjusters, four related to insurance companies, two related to mortgage brokers, 3 related to loan and trust companies, and one related to credit unions.

Source of investigations

- Agents:

Complaints about agent conduct	27
Allegations of unsuitability of agents	2
Doing business without a licence in force	4
Continuing education audits	1
Total:	34

- Insurance Companies:

Doing business without a licence in force	1
Complaints about insurance company conduct	3
Total:	4

- Mortgage Brokers:

Complaints about mortgage broker conduct	1
Allegations of unsuitability of mortgage brokers	1
Total:	2

- Loan & Trust Companies

Doing business without a licence in force	3
Total:	3

- Credit Unions:

Doing business without a licence in force	1
Total:	1
Grand Total:	44

Outcome of investigations

- A total of 61 cases were completed:

Charges laid in Provincial Offences Court	0
Sponsorship of agent withdrawn	6
Superintendent's Orders issued	18
Letters of Censure issued	7
Cease & Desist Orders issued	1
Closed files (no enforcement action warranted)	29
Total:	61

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, 65 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 seven Letters of Censure issued as a result of formal investigations, 11 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, 18 agents entered into Minutes of Settlement for non-compliance with legislated requirements, of these five consented to orders revoking their licences.

Zenon Barchynsky	By Minutes of Settlement dated May 20, 2003, this Level II agent received a disciplinary caution. The agent admitted to forging a client's name to a policy transfer request in an effort to save time. The agent acknowledges that he exercised poor judgement.
Marc R. Blais	By an order, dated June 30, 2003, this Level I agent's licence was revoked. The agent admitted to submitting an application for insurance without the policyholders' permission, and forging their signatures on the application.
John R. Button	By an order, dated June 27, 2003, this Level I agent's licence was revoked. The agent had misappropriated investment funds from eight clients, converting the monies for his own use.
Roger J. Chaisson	By Minutes of Settlement, dated June 5, 2003, this Level II agent undertook not to renew his agent's licence, or apply for a new licence for a period of three years. His licence had expired. The agent had promoted highly speculative investments to clients, some of whom were his insurance clients. It was alleged that he made false representations to induce those clients to participate, including statements to the effect that the investments were guaranteed, risk-free and would yield a high rate of return.

Irvine J. Dyck	By Minutes of Settlement, dated May 8, 2003, this Level II agent undertook not to renew his agent's licence, or apply for a new licence for a period of five years. His licence had expired. The agent had promoted highly speculative investments to clients, some of whom were his insurance clients. It was alleged that he made false representations to induce those clients to participate, including statements to the effect that the investments were guaranteed, risk-free and would yield a high rate of return.
Ken L. Hampel	By an order, dated June 26, 2003, this Level I agent's licence was revoked. The agent admitted to submitting applications for insurance without consent, forging signatures on the applications, and then paying the premiums himself so that he could earn the commission monies.
Michael A. Hill	By an order, dated May 13, 2003, this Level II agent's licence was revoked. The agent forged client signatures and failed to submit monies received from a client to an insurer.
Paul A. Ilgner	By an order, dated May 20, 2003, this Level II agent's licence was suspended for a period of 30 days, effective June 15, 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.

Michael F. Manning	By an order, dated June 27, 2003, this Level II agent's licence was suspended for a period of 30 days, effective August 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 been given until August 31, 2003, to complete the continuing education requirement, failing which his licence will expire.
Michael J. Plumley	By an order, dated May 20, 2003, this Level II agent's licence was suspended for a period of 30 days, effective June 15, 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.
Teresita Sagala	By an order, dated May 20, 2003, this Level II agent's licence was suspended for a period of 30 days, effective June 15, 2003. The agent had failed to complete the required continuing education hours and had made a material misstatement in her renewal application. The agent has since completed the required continuing education hours.
Christabelle Sinanan-Crichlow	By an order, dated May 27, 2003, this Level II agent's licence was suspended for a period of 30 days, effective July 1, 2003. The agent had failed to complete the required continuing education hours and had made a material misstatement in her renewal application. The agent has since completed the required continuing education hours

Surinder P. Singh	By an order, dated April 25, 2003, this Level II agent's licence was suspended for a period of 90 days. The agent admitted to four instances of forging clients' signatures on life insurance illustration forms.
Amina Sohail	By an order, dated May 20, 2003, this Level II agent's licence was suspended for a period of 90 days, effective June 15, 2003. The agent had prepared policies for her clients to sign, and signed that she had witnessed their signatures on the policies when in fact she had not.
Kamal B. Wadhwani	By an order, dated April 30, 2003, this Level II agent's licence was revoked. The agent admitted to several instances of forging policyholders' signatures on forms. There were also numerous situations where the agent had never actually met the applicants, yet he completed their insurance applications and claimed to witness their signatures.

Accommodation for Disability

R. H. C.	By minutes of settlement, dated June 9, 2003, this Level II agent's licence was conditionally renewed. The agent 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.

R. K. F	By minutes of settlement, dated May 20, 2003, this Level II agent's licence was conditionally renewed. The agent 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.
L. W. K.	By minutes of settlement, dated May 20, 2003, this Level II agent's licence was conditionally renewed. The agent 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: Failing to maintain errors & omissions insurance

Charge: Furnishing false, misleading or incomplete information

Against: William Cody (Oakville) former Level II agent

Verdict: Guilty

On May 5, 2003, William Cody pleaded guilty and was convicted in the Ontario Court of Justice in Toronto, of failing to maintain errors and omissions insurance in a form approved by the Superintendent of Financial Services and of furnishing false, misleading or incomplete information to the Financial Services Commission of Ontario. He was fined $3,000. The agent is not currently licensed.

Charge: **Publishing promotional material that contained a misrepresentation about its Retail Leasing Insurance Programme**

Against: **Hunter Keilty Muntz & Beatty (Toronto)**

Verdict: **Guilty**

On May 28, 2003, the insurance brokerage firm of Hunter Keilty Muntz and Beatty pleaded guilty and was convicted in the Ontario Court of Justice in Toronto, of publishing promotional material that misrepresented that a "Retail Leasing Insurance Programme" had been approved by the Financial Services Commission of Ontario and the Registered Insurance Brokers of Ontario. The company was fined $10,000. FSCO is unaware that any prospective leasing companies suffered economic loss as a result of this practice.

Mortgage Brokers

Charge: **Acting as a broker while unregistered**

Against: **Stevens H. Fraser (London) former mortgage agent**

Verdict: **Guilty**

On June 9, 2003, Stevens Fraser pleaded guilty and was convicted in the Ontario Court of Justice in London, of acting as a broker while unregistered . He was fined $1,000 and put on probation for 3 months. A condition of his probation is that he repay the monies to the investor involved in the transaction in question. Should he fail to comply with the terms of his probation, he is subject to further prosecution.

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 second quarter.

Other FSCO Hearings and Related Court Actions

Action: **Cease and Desist Order**

Against: **Sivakumaran Ratnasingam (Toronto)**

Date: **May 28, 2003**

On May 28, 2003, the Superintendent issued a Cease and Desist Order against Sivakumaran Ratnasingam of Toronto, directing him to cease and desist acting as an auto insurance agent. Mr. Ratnasingam consented to the Order. Mr. Ratnasingam procured auto insurance policies for an estimated 88 individuals from insurers who sell directly to the public by telephone. He concealed his identity from the insurers by using the names of the applicants. He received a fee of approximately $250 from each applicant. Mr. Ratnasingam also undertook not to offer mortgage brokers services to the public. In addition to acting as an auto insurance agent, Mr. Ratnasingam had also held himself out as a mortgage broker and/or indicated that he arranged or dealt in mortgages, without holding the required registration.

12-Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months (July 1, 2002 - June 30, 2003), FSCO took 165 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	73
Licence conditions via Minutes of Settlement	7
Provincial Offences Court convictions and fines	14
Revocation of sponsorship	10
Licence suspensions	17
Licence surrenders	28
Licence revocations	14
Cease & Desist Orders	2
Total:	165

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring throughout the year. Over the past 12 months, there have been 24,522 instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken.

Monitoring Activities	Number of Occurrences
Continuing education audits	967
Police criminal record checks life agents/ applicants	21,708
Complaint reviews	149
Errors & Omissions insurance audits	1,698
Total:	24,522

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 A02-000817, April 15, 2003); Bill 59
Applicant:	Durlej Krzysztof
Insurer:	Royal & SunAlliance Insurance Company of Canada
Type of Award:	Assessment

Mr. Krzysztof claimed housekeeping and home maintenance expenses, but did not appear at the arbitration hearing.

The Arbitrator found a breakdown in the relationship between Mr. Krzysztof and his representative, and allowed the representative to withdraw. He also found that Mr. Krzysztof abused the process.

The Arbitrator ordered that:

- The Application for Arbitration be dismissed.
- Durlej Krzysztof pay Royal & SunAlliance Insurance Company of Canada its expenses of the arbitration proceeding pursuant to subsection 282(11) of the Insurance Act after agreement or assessment.
- Durlej Krzysztof pay Royal & SunAlliance Insurance Company of Canada $3,000 pursuant to subsection 282(11.2) of the Insurance Act.

Type of Decision:	Arbitration
Re:	(FSCO A02-000385, April 24, 2003); Bill 59
Applicant:	Hong Ngoc Truong
Insurer:	Coachman Insurance Company
Type of Award:	Assessment

Coachman denied Mrs. Truong's claim on the basis that she was not in the vehicle at the time of the accident.

Mrs. Truong did not appear at the hearing. Based on the evidence presented by Coachman, the Arbitrator found that Mrs. Truong was not a passenger in the vehicle.

The Arbitrator ordered that:

- The Application for Arbitration of Mrs. Truong be dismissed.
- Mrs. Truong pay Coachman $2,668.33 as its reasonable expenses of the arbitration, pursuant to section 282(11) of the Insurance Act.
- Mrs. Truong pay Coachman $3,000, pursuant to section 282(11.2) of the Insurance Act.

Type of Decision:	Arbitration
Re:	(FSCO A02-000845, April 29, 2003); Bill 59
Applicant:	Harold Trottier
Insurer:	Royal & SunAlliance Insurance Company of Canada

Type of Award:	Special Award

Note: This decision is currently under appeal.

The main dispute involved the deductibility of collateral benefits. Mr. Trottier claimed weekly income replacement benefits at a higher rate, as well as home renovations, while Royal & SunAlliance sought a repayment.

The Arbitrator held that Mr. Trottier's long term disability benefits were deductible from his income replacement benefits and, as a result, Royal & SunAlliance had paid him more than he was entitled to receive. The Arbitrator held that Mr. Trottier was required to repay the amount of the overpayment, plus interest. He was not persuaded that Mr. Trottier was entitled to the cost of home renovations. Finally, the Arbitrator held that Royal & SunAlliance unreasonably relied on a flawed report of the Designated Assessment Centre, and awarded a special award of $350.

The Arbitrator ordered that:

- The quantum of Mr. Trottier's income replacement benefits is $237.05 per week, as of May 26, 2002, and that Royal pay Mr. Trottier interest of $230.55 on these benefits.
- Mr. Trottier repay to Royal $40,267.52, plus interest of $475.16.
- Royal pay Mr. Trottier a special award of $350.

Financial Services Tribunal (FST) Decisions

Name:	Global Mortgage Link Corp.
Sector:	Mortgage Brokers
Notice of Proposal:	The Superintendent of Financial Services issued a Notice of Proposal (NOP) on September 18, 2002, to revoke the registration of Global Mortgage Link Corp. as a mortgage broker. The Superintendent's grounds for issuing the NOP relied upon the conviction of Mr. Peter Chatt, the sole shareholder and director of the corporation, of the charge of theft over $5000 in that Mr. Chatt was found to have stolen some $125,000

	from a business partner.
Date of Decision:	April 7, 2003 (Order on motion for stay of FST proceedings)
Disposition:	The Tribunal must consider that Mr. Chatt has been convicted of a serious criminal offence involving the theft of a significant amount of money and findings by the Court that relate directly to his honesty and integrity. The Tribunal also recognizes, however, that denying the Applicant's motion for a stay of these proceedings will have a severe and negative impact on its ability to carry on the business of mortgage brokering, and may in fact cause it to cease. The Tribunal must weigh these competing interests carefully. Having taken into account the requirements of the *Mortgage Brokers Act* and the purposes of the FSCO Act and all of the facts and surrounding circumstances of this case as presented to the Tribunal, the Tribunal concludes that the interest of the public must be protected, particularly having regard to the trust placed in mortgage brokers and their dealing with third party funds or financial interests. The Applicant's request for a stay of the FST proceedings is denied, and the Applicant's motion is dismissed.

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

Bryan P. Davies

Chief Executive Officer and Superintendent of Financial Services

September 30, 2003

Last Modified: 8/23/2005 3:30:50 PM

Financial Services Commission of Ontario
5160 Yonge Street
Toronto, ON M2N 6L9
1-800-668-0128
(416) 250-7250