Bulletin

No. G-01/04

- General

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

- **Police Checks**

  A total of 3,967 police checks on the background of existing and prospective agents were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

FSCO received 28 complaints about the conduct of agents for the third quarter July 1, 2003, to September 30, 2003. The subjects of the complaints included fraud, forgeries, misrepresentation and agent misconduct.

Overview of Complaints

Complaints in progress, from end of second quarter 2003	14
Plus: *Complaints received* during the third quarter 2003	28
Less: *Complaints in progress* at end of third quarter 2003	9
Total number of *Complaint reviews* completed during third quarter 2003	33

Disposition of Complaint Reviews

Cases forwarded for potential enforcement	13
Cases resolved	7
Cases closed	13
Total:	33

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 201 audits of life agents during the third quarter to ensure they met their CE requirements. 345 audits were initiated to ensure life agents met their E&O insurance requirements.

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 2003, FSCO undertook the following:

- **Investigations initiated**

A total of 60 cases were forwarded to Investigations. Of that total, 53 cases related to agents and adjusters, three related to insurance companies, and four related to mortgage brokers.

Source of investigations

\- Agents:

Complaints about agent conduct	36
Doing business without a licence in force	17
Total:	53

\- Insurance Companies:

Doing business without a licence in force	1
Complaints about insurance company conduct	2
Total:	3

\- Mortgage Brokers:

Complaints about mortgage broker conduct	4
Total:	4
Grand Total:	60

Outcome of investigations

- A total of 25 cases were completed:

Charges laid in Provincial Offences court	6
Sponsorship of agent withdrawn	3
Superintendent's Orders issued	4

Letters of Censure issued	5
Closed files (no enforcement action warranted)	7
Total:	25

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, 71 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**

  There were five Letters of Censure issued as a result of formal investigations.

Minutes of Settlement and Superintendent's Orders

During the third quarter, four agents entered into Minutes of Settlement for non-compliance with legislated requirements, of these one consented to an order revoking their licence.

Vaughn L. Chambers	By an order, dated June 30, 2003, this Level II agent's licence was revoked. The agent forged a client's signature on a loan application, and then purchased a product in the clien's name that was different that the one requested. (This order was omitted from the second quarter bulletin).

Gary R. Drinkill	By an order, dated July 23, 2003, this Level II agent's licence was suspended for a period of 30 days. The agent admitted to signing as the agent of record on several insurance applications on behalf of an unlicensed agent, or engaging in the practice of "fronting."
Carolyn A. Harrison	By an order, dated August 1, 2003, this Level II agent's licence was suspended for a period of 30 days. The agent admitted to forging a client's name to a policy transfer form. The agent acknowledges that the business practice was inappropriate.
Kim A. Tran	By an order, dated September 11, 2003, this Level I agent's licence was suspended for a period of seven days, effective September 15, 2003. The agent admitted to signing as the agent of record and receiving commissions on two insurance policies, when an unlicenced agent had actually accepted the applications and she had not been present.

Mortgage Brokers

Mortgage Time Inc.	By an order, dated July 18, 2003, the registration of Mortgage Time Inc. was suspended for a period of six months effective September 1, 2003. False or misleading information was furnished to FSCO during the course of an investigation.

Prosecutions

Mortgage Brokers

Charge: Acting as a mortgage broker while unregistered

Against: Walter Moran

Verdict: Guilty

On September 23, 2003, at the Ontario Court of Justice in Barrie, Walter Moran pleaded guilty to a charge of acting as a mortgage broker while unregistered. A fine of $5,000 was imposed, after the court took into account Mr. Moran's present financial circumstances.

Mr. Moran and an associate advertised a mortgage investment program for seniors in Simcoe County between 1997 and 2000. The investment information did not explain that the mortgage would not be fully secured until repairs and renovations were completed and the actual market value was determined. Some investors received the advertised rate of return, but other investors lost a portion of their investment.

Credit Unions and Caisses Populaires

Charge: Permitting a member to withdraw more funds than on deposit

Against: Tina I. Bertram

Verdict: Guilty

On August 29, 2003, at the Ontario Court of Justice in Toronto, Ms. Bertram, general manager of a credit union, pleaded guilty and was convicted of permitting a person to withdraw more money from an account than the person had on deposit in the account. She was fined $250.

Ms. Bertram delayed the processing of NSF cheques for certain members with the intention of processing them when the accounts held sufficient funds. The cheques were honoured using credit union funds. The effect was that members were permitted to withdraw more money from their accounts than they had on deposit.

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 third quarter.

12-Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months (October 1, 2002 - September 30, 2003), FSCO took 140 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	57
Licence conditions via Minutes of Settlement	6
Provincial Offences Court convictions and fines	12
Revocation of sponsorship	10
Licence suspensions	18
Licence surrenders	22
Licence revocations	11
Cease & Desist orders	1
Disciplinary cautions	1
Undertakings	2
Total:	140

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring throughout the year. Over the past 12 months, there have been 22,121 instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken.

Monitoring Activities	Number of Occurrences
Continuing education audits	606
Police criminal record checks life agents/ applicants	19,971
Complaint reviews	154
Errors & Omissions insurance audits	1,390

Total:	22,121

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:	**Appeal**
Re:	**(FSCO P02-00017, July 17, 2003); Bill 59**
Applicant:	**Elmer Langdon**
Insurer:	**Pafco Insurance Company Limited**
Type of Award:	**Special Award**

In a decision dated June 7, 2002, the Arbitrator ordered Allstate to pay treatment expenses, interest on those benefits, and special award of $1,000 for failing to honour its obligations following the release of a Designated Assessment Centre report (reported in the Monitoring and Enforcement Report for second quarter 2002). Allstate appealed.

The Director's Delegate adjusted the interest part of the order in Allstate's favour and reduced the special award from $1,000 to $500.

The Arbitrator ordered that:

- The appeal be allowed in part. Paragraphs 2 and 3 of the arbitration order dated June 7, 2002 be rescinded and replaced with the following:
- Pafco Insurance Company shall pay Mr. Langdon interest in accordance with s. 46(2) as follows:

  - on the first invoice: from 30 days after receipt of the invoice;
  - on the balance of the first 15 sessions: from 30 days after receipt of the second invoice; and
  - on the balance of the first 54 sessions: from 30 days after receipt of the fifth invoice
- Pafco Insurance Company shall pay Mr. Langdon a special award of $500.

Type of Decision:	Arbitration
Re:	FSCO A02-000593 and A02-000646, July 24, 2003); Bill 59
Applicant:	Syed Ibrahim
Insurer:	Non-Marine Underwriters, Mbrs. of Lloyd's
Type of Award:	Assessment

The insured person claimed income replacement benefits, medical benefits and housekeeping benefits. The insurer argued that the accident was staged.

After presenting his evidence, Mr. Ibrahim, through his representative, asked for an adjournment and to withdraw the application for arbitration. When the Arbitrator refused these requests, Mr. Ibrahim and his representative left the hearing. The hearing continued in their absence.

The Arbitrator ordered that:

Preliminary Issues –

- The Applicant's request for an adjournment be dismissed.
- the Applicant's request to withdraw from the arbitration be dismissed.

Substantive Issues –

- The Applicant's claim for income replacement benefits be dismissed.
- The Applicant's claim for a medical benefit for chiropractic treatment be dismissed.

- The Applicant's claim for housekeeping expenses be dismissed.
- The Arbitrator need not decide whether Lloyd's is entitled to rely on section 33 of the Schedule to suspend the Applicant's accident benefits.
- The Arbitrator need not decide whether Lloyd's can rely on section 42 of the Schedule to suspend the Applicant's accident benefits.
- No order be made pursuant to subsection 282(11) of the Insurance Act as to the Applicant's expenses.
- The Applicant pay $5,000 of Lloyd's expenses pursuant to subsection 282(11) of the Insurance Act.
- The Applicant pay to Lloyd's $1,500 pursuant to subsection 282(11.2) of the Insurance Act.

Type of Decision:	Arbitration
Re:	(FSCO A01-000969, August 7, 2002); Bill 59
Applicant:	Ingrid Burke
Insurer:	Allstate Insurance Company of Canada
Type of Award:	Assessment

Ms. Burke applied for arbitration. Allstate raised a preliminary issue. It claimed that Ms. Burke was not entitled to proceed because she had failed to attend and insurer's examination and failed to return the form required to schedule an assessment by a Designated Assessment Centre.

In decisions dated November 8, 2002, and March 24, 2003, the Arbitrator held that Ms. Burke was not entitled to proceed to arbitration. Neither Ms. Burke nor her representative attended at the preliminary issue hearing. The hearing proceeded without them and, in a decision dated November 8, 2002, the Arbitrator ordered that:

- Ms. Burke pay Allstate its reasonable expenses of the arbitration in the amount of $6,965.21.
- Ms. Burke shall pay to Allstate $3,000 pursuant to section 282(11.2) of the Insurance Act because she commenced an arbitration that was frivolous.

Type of Decision:	Arbitration
Re:	(FSCO A99-000521, September 12, 2003); Bill 59
Applicant:	Lucia Stargratt
Insurer:	Zurich Insurance Company
Type of Award:	Special Award

In a decision dated October 4, 2001, the Arbitrator ordered Zurich to pay a special award of 50 per cent of the outstanding benefits (reported in the Monitoring and Enforcement Report for the fourth quarter of 2001). On appeal, the Director's Delegate referred the matter back to the Arbitrator for a determination of the amount of the special award.

In his decision dated September 12, 2003, the Arbitrator fixed the amount of the special award at $35,281.58.

The Arbitrator ordered that:

- Zurich pay to Ms. Stargratt a total of $161,144.87, being outstanding benefits, special award and accrued interest to July 11, 2003.
- This award shall continue to bear interest at 2 per cent per month, compounded monthly, as specified by subsection 46(2) of the Schedule and the contract of insurance from July 11, 2003 until such time as it is paid in full.

Type of Decision:	Arbitration
Re:	(FSCO A02-000642, September 17, 2003); Bill 59
Applicant:	Sheridon F. Forbes
Insurer:	TTC Insurance Company Limited
Type of Award:	Assessment

Mr. Forbes applied for arbitration, claiming various accident benefits. The TTC disputed his claims, including whether he was involved in an "accident," within the meaning of the Schedule. Mr. Forbes failed to produce certain documents and did not appear at the hearing.

The Arbitrator found that Mr. Forbes had commenced an arbitration that was an abuse of process and frivolous.

The Arbitrator ordered that:

- The Application for Arbitration be dismissed.
- Sheridon F. Forbes pay TTC Insurance Company Limited $3,535 pursuant to subsections 282(10) and 282(11.2) of the Insurance Act, R.S.O. 1990, C. I.8.

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 $5,000 in that Mr. Chatt was found to have stolen some $125,000 from a business partner.
Date of Decision:	July 17, 2003
Disposition:	The Tribunal upheld the Superintendent's Notice of Proposal and directed the Superintendent to carry out the terms of the proposal to revoke the registration of Global Mortgage Link Corp.

For the full text of Decisions/Order, please refer to FSCO’s web site at: www.fsco.gov.on.ca

Colin McNairn	Bryan P. Davies
Chair (Acting)	Chief Executive Officer
Financial Services Commission of Ontario	Financial Services Commission of Ontario
Chair (Acting)	Superintendent of Financial Services
Financial Services Tribunal	

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