Bulletin

No. G-03/04

- General

Monitoring and enforcement report - including prosecution and hearing decisions - for fourth 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.

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 2003, FSCO undertook the following:

- **Police Checks**

  A total of 4,466 police checks on the background of existing and prospective agents were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

  FSCO received 38 complaints about the conduct of agents for the fourth quarter

October 1, 2003, to December 31, 2003. The subjects of the complaints included fraud, forgeries, misrepresentation and agent misconduct.

Overview of Agent Complaints

Complaints in progress, from end of third quarter 2003	9
Plus: *Complaints received* during the fourth quarter 2003	38
Less: *Complaints in progress* at end of fourth quarter 2003	19
Total number of *Complaint reviews* completed during fourth quarter 2003	28

Disposition of Agent Complaint Reviews

Cases forwarded for potential enforcement	13
Cases resolved	5
Cases closed	10
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.

There were also 16 complaints during the quarter relating to the conduct of paralegals.

Overview of Paralegal Complaints

Complaints in progress, from end of third quarter 2003	0
Plus: *Complaints received* during the fourth quarter 2003	16
Less: *Complaints in progress* at end of fourth quarter 2003	10
Total number of *Complaint reviews* completed during fourth quarter 2003	6

Disposition of Paralegal Complaint Reviews

Cases resolved	2

Cases closed	4
Total:	6

- **Audits**

FSCO initiated 269 audits of life agents during the fourth quarter to ensure they met their CE requirements. 341 audits were initiated to ensure life agents met their E&O insurance requirements. There were also 205 audits of paralegals to ensure E&O insurance compliance.

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 fourth quarter of 2003, FSCO undertook the following:

- **Investigations initiated**

A total of thirty three cases were forwarded to Investigations. Of that total, eighteen cases related to agents and adjusters, one related to insurance companies, ten related to mortgage brokers, three related to credit unions, and one related to loan & trust companies.

Source of investigations

- Agents:

Complaints about agent conduct	13
Doing business without a licence in force	5
Total:	18

- Insurance Companies:

Complaints about insurance company conduct	1

Total:	1

- Mortgage Brokers:

Complaints about mortgage broker conduct	8
Doing business while unregistered	2
Total:	10

- Credit Unions

Complaints about credit union conduct	1
Doing business while unregistered	2
Total:	3

- Loan & Trust Companies:

Doing business while unregistered	1
Total:	1
Grand Total:	33

Outcome of investigations

- A total of 37 cases were completed:

Charges laid in Provincial Offences Court	19
Sponsorship of agent withdrawn	0
Superintendent's Orders issued	3
Letters of Censure issued	7
Closed files (no enforcement action warranted)	8
Total:	37

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, 46 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, two 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, three agents entered into Minutes of Settlement for non-compliance with legislated requirements, of these, two consented to orders revoking their licences.

Nazzareno "Rino" Crescenzi	By an order dated December 10, 2003, this Level II agent's licence was revoked. The agent misappropriated investment funds from seven clients, converting the monies for his own use.
Gaetano Ferraro	By an order dated November 4, 2003, this Level II agent's licence was revoked. The agent misappropriated investment funds from two clients, as well as another client's premium payment, converting the monies for his own use.
Douglas C. Searle	By an order dated November 3, 2003, this Level II agent's licence was suspended for a period of 30 days, effective January 1, 2004. 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.

Prosecutions

There were no prosecutions during the quarter.

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:	**Sydney Baxter-Dennis (Scarborough), Level II agent**
Advisory Board Hearing:	**September 8, 2003; October 29, 2003**
Decision:	**Licence suspended**

An Advisory Board hearing was conducted in Toronto to consider the suspension or revocation of Mr. Baxter-Dennis' licence following allegations that the agent forged the signature of a client on an insurance application form and falsely indicated that he had witnessed the client's signature. The Board did not find him guilty. In its report, the Board recommended that Mr. Baxter-Dennis' licence be suspended for a period of three months, noting mitigating circumstances which included no prior history of misconduct and co-operation with the investigation.

By decision dated December 5, 2003, the Superintendent accepted the findings of fact of the Board, and ordered that the licence of Mr. Baxter-Dennis be suspended for a period of three months, commencing January 1, 2004. By variation of decision dated December 31, 2003, the Superintendent varied the start date of Mr. Baxter-Dennis' suspension from January 1, 2004 to November 1, 2003.

Life agent:	**Michael Benezra (Richmond Hill), Level I agent**

Advisory Board Hearing:	**November 12-13, 2003**
Decision:	**Licence revoked**

An Advisory Board hearing was conducted in Toronto to consider the suspension or revocation of Mr. Benezra's licence following allegations that he signed the signatures of clients on 14 life insurance applications (i.e., 7 instances of 2 policies each), that he advised another client to sign her spouse's signature on an application, and that he submitted false oral swabs in 12 of the applications. The misconduct occurred between July and December 2001. Mr. Benezra admitted all the allegations against him prior to the hearing, but along the way he misled investigators numerous times about the number of signatures that he signed.

By decision dated December 29, 2003, the Superintendent accepted the findings of fact of the Board, and ordered that the licence of Mr. Benezra be revoked.

Life agent:	**Michael G. Goselin (Peterborough), Level II agent**
Advisory Board Hearing:	**Agent did not request hearing**
Decision:	**Licence revoked**

A Notice of Proposed Hearing was sent to Michael Goselin to consider revoking his life insurance agent's licence following disciplinary proceedings by the Ontario Securities Commission. The facts included that Mr. Goselin failed to sufficiently research the investments he sold, that he did not fully understand how those investments worked, and that he made misrepresentations to clients, many of whom suffered losses.

By decision dated December 5, 2003, the Superintendent found the allegations against
Mr. Goselin to be established and ordered that his life insurance agent’s licence be revoked.

Other FSCO Hearings and Related Court Actions

Action:	**Cease and Desist Order**

Against: **John Lesley May, MT & W Insurance Managers Ltd.**

Date: **December 1, 2003**

On December 1, 2003, the Superintendent issued a Cease and Desist Order against John Leslie May, and MT & W Insurance Managers Ltd., directing them to stop acting as insurance agents, to provide a list of people who paid premiums to Mr. May and/or his company, and to return any premiums that were collected. On two occasions, Mr. May sold insurance when neither he nor his company were licensed, and the alleged Louisiana insurer with whom the insurance was placed, was also not licensed in either Ontario or Louisiana.

12-Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months (January 1, 2003 - December 31, 2003), 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	46
Licence conditions via Minutes of Settlement	3
Provincial Offences Court convictions and fines	10
Revocation of sponsorship	10
Licence suspensions	17
Licence surrenders	27
Licence revocations	15
Cease & Desist orders	2
Disciplinary cautions	1
Undertakings	2
Termination of paralegal filing	13
Total:	146

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring throughout the year. Over the past 12 months, there have been 21,543 instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken.

Monitoring Activities	Number of Occurrences
Continuing education audits	757
Police criminal record checks life agents/ applicants	19,051
Complaint reviews	145
Errors & Omissions insurance audits - insurance agents	1,385
Errors & Omissions insurance audits - paralegals	205
Total:	21,543

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.

Type of Decision:	**Appeal**
Re:	**(FSCO P03-00006, November 18, 2003); Bill 59**
Applicant:	**Susan P. Driver**
Insurer:	**Traders General Insurance Company**
Type of Award:	**Special Award**

In a decision dated January 8, 2003, the Arbitrator ordered General Insurance Company to pay certain accident benefits and a special award of $1,000 (reported in the Monitoring and Enforcement Report for the first quarter of 2003). Both parties appealed aspects of the order.

The Director's Delegate held that the Arbitrator erred in ordering a special award.

The Director's Delegate ordered that:

- The appeal be dismissed. The cross-appeal be allowed. Paragraphs 1, 2 and 5 of the arbitration order dated January 8, 2003, are confirmed. Paragraph 4 (special award) be revoked. Paragraph 3 (Tai Chi and dog walking fees) be revoked and replaced with the following:

  3. Traders shall pay to Ms. Driver $1,299.86 for the cost of two Tai Chi programs under s. 15(5)(l) of the SABS-1996.
- The parties shall bear their own appeal expenses.

Type of Decision:	**Appeal**
Re:	**(FSCO P02-00031, November 20, 2003); Bill 59**
Applicant:	**Lorna Howden**
Insurer:	**Pembridge Insurance Company (Pafco Ins. Co.)**
Type of Award:	**Special Award**

In a decision dated October 16, 2002, the Arbitrator ordered Pembridge Insurance Company (Pafco Ins. Co.) to pay income replacement and a special award of 50 percent of the outstanding benefits, including accrued interest (reported in the Monitoring and Enforcement Report for the fourth quarter of 2002). Pembridge appealed the special award.

The Director of Arbitrations held that the Arbitrator erred in failing to determine the specific amount of the special award, and in concluding that Pembridge should be required to pay the maximum allowed by the legislation. The Director set the special award at $5,000.

The Director of Arbitrations ordered that:

- The appeal from the arbitration order dated October 16, 2002, is allowed in part. Paragraph 2 be revoked and replaced with the following:

  2. Pembridge shall pay to Ms. Howden a special award fixed at $5,000.

Type of Decision:	**Appeal**
Re:	**(FSCO P03-00019, December 15, 2003); Bill 59**
Applicant:	**Harold Trottier**
Insurer:	**Royal & SunAlliance Insurance Company of Canada**
Type of Award:	**Special Award**

In a decision dated April 29, 2003, the Arbitrator ordered Mr. Trottier to repay more than $40,000, but also ordered Royal & SunAlliance Insurance to pay a special award of $350 (reported in General Bulletin G - 08/03: Monitoring and enforcement report -- including prosecution and hearing decisions -- for second quarter 2003). Mr. Trottier appealed both aspects, arguing that the special award should have be higher.

The Director of Arbitrations allowed some aspects of Mr. Trottier's appeal, but did not disturb the amount of the special award.

Type of Decision:	**Arbitration**
Re:	**(FSCO A02-000161, December 31, 2003); Bill 59**
Applicant:	**Luciano Amato**
Insurer:	**Wawanesa Mutual Insurance Company**
Type of Award:	**Special Award**

Mr. Amato claimed ongoing income replacement benefits, including benefits beyond 104 weeks.

The Arbitrator found that Mr. Amato was entitled to ongoing income replacement benefits. She also found that

Wawanesa unreasonably delayed the payment of benefits at the outset, and later acted unreasonably in terminating and continuing to withhold benefits.

The Arbitrator ordered that:

- Wawanesa pay Mr. Amato an income replacement benefit of $400 a week pursuant to sections 4 and 5 of the Schedule from October 25, 2000 and ongoing.
- Wawanesa pay Mr. Amato interest on past benefits owed pursuant to subsection 46(2) of the Schedule.
- Wawanesa pay Mr. Amato a special award of $40,000 inclusive of interest pursuant to subsection 282(10) of the Insurance Act.

Financial Services Tribunal (FST) Decisions

There are no FST Decisions to report for this quarter.

For the full text of previous Decisions/Orders, please visit FSCO's Web site at: www.fsco.gov.on.ca

Colin McNairn	Bryan P. Davies
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