Bulletin

No. G-06/04

- General

Monitoring and Enforcement Report - Including Prosecution and Hearing Decisions - for First Quarter 2004

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. Until recently, an insured person could be ordered to pay an assessment of up to $3,000 under section 282(11.2) for bringing an arbitration that was frivolous, vexatious, or an abuse of process. This section was revoked on October 1, 2003, and replaced by a section allowing arbitrators to order representatives to pay expenses personally in certain situations.

ACTIONS OF THE FINANCIAL SERVICES COMMISSION OF ONTARIO AND THE FINANCIAL SERVICES TRIBUNAL

Results of Monitoring Activities – First Step in the Enforcement Process

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, paralegals and health care providers. 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. Paralegals are also subject to E&O audits.

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 2004, FSCO undertook the following:

- **Police Checks**

  A total of 5,103 police checks on the background of existing and prospective agents were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

COMPLAINTS				
	Complaints in Progress from fourth quarter 2003	**Plus complaints received during the first quarter 2004**	**Less Complaints in progress at end of first quarter 2004**	**Total number of complaints reviews completed during first quarter 2004**
Agent	19	35	22	32
Paralegal	13*	29	24	18
Health Care Provider	0	2	2	0

*adjustment resulting from the implementation of the paralegal program.

DISPOSITIONS				
	Cases forwarded for potential enforcement	**Cases resolved**	**Cases closed**	**Total**
Agent	19	5	8	32
Paralegal	12	0	6	18

Health Care Provider	0	0	0	0

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 99 audits of life agents during the first quarter to ensure they met their CE requirements. 310 audits were initiated to ensure life agents met their E&O insurance requirements. There were also 77 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, the reviews of complaints received and audits of compliance with CE requirements and E&O compliance – 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 2004, FSCO undertook the following:

- **Investigations Initiated**

Source of investigations	
Agents	
Suitability	2
Complaints about agent conduct	21
Doing business without a licence in force	4
Insurance Companies	
Complaints about insurance company conduct	1

Mortgage Brokers	
Complaints about mortgage broker conduct	2
Credit Unions	
Complaints about credit union conduct	1
Loan & Trust Companies	
Doing business while unregistered	1
Paralegals	
Complaints about paralegal conduct	7
Other	
Conduct of related third party	3
Grand Total	**42**

Outcome of investigations	
A total of 56 cases were completed:	
• Charges laid in Provincial Offences court	1
• Sponsorship of agent withdrawn	1
• Superintendent's Orders issued	6
• Cease & Desist Orders	1
• Letters of Censure issued	9
• Closed files (no enforcement action warranted)	38
Total	56

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, 42 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 nine Letters of Censure issued in addition to the nine Letters of Censure which resulted from formal investigations.

Minutes of Settlement and Superintendent's Orders

During the first quarter, six agents entered into Minutes of Settlement for non-compliance with legislated requirements, of these four consented to orders revoking their licences.

David Braganza	By an order, dated January 12, 2004, this Level II agent's licence was revoked. The agent misappropriated investment funds from a client, and has since dealt with the matter to the satisfaction of the client.
Joseph G. Caputo	By an order, dated March 10, 2004, this Level II agent's licence was revoked. The agent had changed the policy period dates on his certificate of insurance for errors and omissions insurance.
Sahil Celly	By an order, dated March 16, 2004, this Level I agent's licence was revoked. The agent had engaged in improper sales activity by having two unlicensed persons take information from potential clients and then provide it to him for electronic input. The clients signatures' were also improperly witnessed on signature pages, and some incorrect banking

	information was also provided.
Gaetan Lefebvre	By an order, dated January 23, 2004, this Level II agent's licence was suspended for a period of 30 days, effective February 1, 2004 subject to conditions. The agent had failed to complete the required continuing education hours and had made a material misstatement in his renewal application. The agent was given until June 26, 2004, to complete the continuing education requirement, failing which his licence will be revoked June 27, 2004. The agent did not complete his credits and his licence was revoked.
Stephen M. Lewis	By an order, dated February 12, 2004, this Level II agent's licence was suspended for a period of 30 days, effective March 15, 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.
Arvind P. Singh	By an order, dated February 4, 2004, this Level I agent's licence was revoked. Irregularities concerning policyholder's signatures and the witnessing thereof on applications for insurance were discovered, and in other situations, incorrect applicant information had been placed on insurance applications.

Prosecutions

Insurance

Charge: Knowingly making a False or Misleading Statement or Representation to an Insurer (Seven counts)

Against: Michael Ricci

Verdict: Guilty

On March 29, 2004, in Toronto provincial court, Michael Ricci pleaded guilty and was convicted under the Insurance Act of four counts of knowingly making a false or misleading statement or representation to an insurer in order to obtain payment for goods or services provided to an insured, whether or not the insured received the goods or services. In each of the four cases, which involved four different insureds, Mr. Ricci submitted to an insurance company, a settlement agreement which he purported was signed by the insured person in question, even though he was aware that was not true, and that in each case, he improperly kept money that belonged to the insured person in question. He was fined $8,000. The remaining three counts were withdrawn.

Mortgage Brokers

Charge: Failure to File Financial Statements

Against: Astral Funding Inc.

Verdict: Guilty

On January 14, 2004, in Toronto provincial court, Astral Funding Inc. pleaded guilty and was convicted of failing to file financial statements as required under the *Mortgage Brokers Act.* The company was fined $500.

Charge: Failure to File Financial Statements

Against: Georgina Benscik o/a Benvest Financial Group

Verdict: Guilty

On February 6, 2004, in Toronto provincial court, Benvest Financial Group was convicted of failing to file financial statements as required under the *Mortgage Brokers Act*. The company was fined $100.

Charge: Failure to File Financial Statements

Against: First Canadian Mortgage Corporation

Verdict: Guilty

On February 6, 2004, in Toronto provincial court, First Canadian Mortgage Corporation pleaded guilty and was convicted of failing to file audited financial statements as required under the *Mortgage Brokers Act*. The company was fined $200.

Charge: Failure to File Financial Statements

Against: Edgemark Investments Ltd.

Verdict: Guilty

On January 14, 2004, in Toronto provincial court, Edgemark Investments Ltd pleaded guilty and was convicted of failing to file financial statements as required under the *Mortgage Brokers Act.* The company was fined $200.

Charge: Failure to File Financial Statements

Against: Funds Unlimited Corp.

Verdict: Guilty

On January 14, 2004, in Toronto provincial court, Funds Unlimited Corp. was found guilty and convicted of failing to file financial statements as required under the *Mortgage Brokers Act*. The company was fined $300.

Charge: Failure to File Financial Statements

Against: Joseph Wu o/a SunEast Financial

Verdict: Guilty

On January 14, 2004, in Toronto provincial court, Joseph Wu pleaded guilty on behalf of SunEast Financial and was convicted of failing to file financial statements as required under the *Mortgage Brokers Act*. He was fined $300.

Charge: Failure to File Financial Statements

Against: Kaptor Holdings Inc.

Verdict: Guilty

On January 14, 2004, in Toronto provincial court, Kaptor Holdings Inc. was found guilty and convicted of failing to file financial statements as required under the *Mortgage Brokers Act.* The company was fined $500.

Charge: Failure to File Financial Statements

Against: Kenneth Arthur Field

Verdict: Guilty

On January 14, 2004, in Toronto provincial court, Kenneth Arthur Field was found guilty and convicted of failing to file financial statements as required under the *Mortgage Brokers Act*. He was fined $100.

Charge: Failure to File Financial Statements

Against: Mortgage Outlook Professionals

Verdict: Guilty

On January 14, 2004, in Toronto provincial court, Mortgage Outlook Professionals was found guilty and convicted of failing to file financial statements as required under the *Mortgage Brokers Act.* The company was fined $200.

Charge: Failure to File Financial Statements

Against: Olympia Mortgage Financing

Verdict: Guilty

On January 14, 2004, in Toronto provincial court, Olympic Mortgage Funding was found guilty and convicted of failing to file financial statements as required under the *Mortgage Brokers Act.* The company was fined $100.

Charge: Failure to File Financial Statements

Against: Redley Gerry Investment Corp.

Verdict: Guilty

On January 14, 2004, in Toronto provincial court, Redley Gerry Investment Corp. was found guilty and convicted of failing to file audited financial statements as required under the *Mortgage Brokers Act.* The company was fined $500.

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:	**Lee Burton (Scarborough), Level II agent**
Advisory Board Hearing:	**November 26, 2003**
Decision:	**Licence revoked**

An Advisory Board hearing was conducted in Toronto to consider the suspension or revocation of Mr. Burton's licence following allegations that he attempted to have another agent impersonate him during an examination, using Mr.

Burton's identification. The Board found that Mr. Burton had made persistent attempts to pass the examination before resorting to this isolated instance of dishonest conduct, and was sorry for his actions. In its report, the Board recommended that Mr. Burton's licence be suspended for a period of four months.

By decision dated February 6, 2004, the Superintendent accepted the findings of fact of the Board. However, the Superintendent was not satisfied that the Board had adequately explained why the recommended penalty was appropriate to address its findings, or to differentiate this case from other cases involving cheating. Conspiracy to cheat on an examination is a serious matter since it puts the agent's interests ahead of those of his/her clients, and is dishonest. The Superintendent ordered that Mr. Burton's licence be revoked. Should Mr. Burton wish to reapply he would have to pass the proficiency examinations and satisfy the Superintendent of his suitability.

Mr. Burton appealed the decision, and the results will be reported in a subsequent bulletin.

12-Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months (April 1, 2003 - March 31, 2004), FSCO took 195 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	44
Licence conditions via Minutes of Settlement	3
Provincial Offences Court convictions and fines	17
Revocation of sponsorship	10
Licence suspensions	15
Licence surrenders	28
Licence revocations	14
Cease & Desist orders	2
Disciplinary cautions	1

Undertakings	2
Paralegal terminations	59
Total	195

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring through-out the year. Over the past 12 months, there have been 21,003 instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken.

Monitoring Activities	**Number of Occurrences**
Continuing education audits	653
Police criminal record checks life agents/ applicants	18,583
Errors & Omissions insurance audits - insurance agents	1,344
Errors & Omissions insurance audits - paralegals	282
Total	21,003

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), a representative can be ordered to pay expenses personally in certain situations.

Type of Decision:	**Arbitration**

Re:	**(FSCO A00-001163, February 9, 2004); Bill 59**
Applicant:	**Vladislav Sorokin**
Insurer:	**Wawanesa Mutual Insurance Company**
Type of Award:	**Special Award**

Note: This decision is under appeal.

Mr. Sorokin claimed income replacement benefits, medical benefits and the cost of a disability certificate.

The Arbitrator accepted Mr. Sorokin's claim that he was entitled to start work within a year of the accident on a written pre-accident contract of employment as a van driver/delivery person, despite some discrepancies about his wages and start-date. She accepted that he could not do the job, which required continuous lifting, carrying, bending, stooping and reaching, as a result of his accident-related impairments. She ordered Wawanesa to pay him income replacement benefits at the rate of $321.22 per week. She also accepted Mr. Sorokin's entitlement to $7,226.08 to cover the cost of medical treatment (physiotherapy, massage and chiropractic treatment), and $81.18, plus GST, for the cost of a disability certificate from his family doctor.

The Arbitrator ordered Wawanesa to pay a special award in the amount of $15,000 for unreasonable delay and withholding of the benefits awarded. She found that Wawanesa
contravened s. 37(1) of the SABS-1996 by failing to give notice of refusal after determining that Mr. Sorokin was not entitled to income replacement benefits; failed to conduct a proper investigation into the employment contract, though Mr.Sorokin and the purported employer were co-operative; contravened s. 38(16) of the SABS-1996 (pay pending dispute) by refusing to fund any of the treatment recommended in two treatment plans pending the report of the Med-Rehab DAC; contravened s. 38(18) of the SABS-1996 by failing to give notice of its reasons for refusing certain treatment plans, supported by an expert opinion, and failing to consider expert reports provided after the reports upon which it relied; and unreasonably refused to pay for the disability certificate.

Type of Decision:	**Arbitration**
Re:	**(FSCO A02-001662, February 17, 2004); Bill 59**

Applicant:	**Ngoc Anh Thi Nguyen**
Insurer:	**Royal & SunAlliance Insurance Company of Canada**
Type of Award:	**Assessment**

Royal & SunAlliance terminated the Applicant's caregiver benefits three months after the accident. The Applicant claimed ongoing benefits. Neither she nor her representative attended at the hearing. The Arbitrator was satisfied that she had received the *Notice of Hearing*, which included a statement that if either party did not attend, the arbitrator might dispose of the case without further notice. The Arbitrator granted the Insurer's motion to dismiss the arbitration, and ordered the Applicant to pay the Insurer's arbitration expenses in the amount of $3,000.

The Arbitrator also ordered the Applicant to pay the Insurer an assessment of $3,000 under s. 282(11.2) because she claimed housekeeping benefits for period when she was not in Canada, and failed to provide basic documentation in support of her claim, despite the Insurer’s many requests. The Arbitrator concluded that the Applicant commenced an arbitration that was an abuse of the Commission's process.

Type of Decision:	**Arbitration**
Re:	**(FSCO A02-001155, March 22, 2004); Bill 59**
Applicant:	**Simak Shalchi-Amirkhiz**
Insurer:	**RBelair Insurance Company Inc.**
Type of Award:	**Expenses against representative**

The Arbitrator found that the insured person's representative made a number of misrepresentations and was responsible for delaying the proceedings. He ordered the representative to pay the insurer's expenses personally ($1,500).

Financial Services Tribunal (FST) Decisions

There are no FST Decisions to report for first quarter 2004. For the full text of previous Decisions/Orders, please visit FSCO’s web site at: www.fsco.gov.on.ca

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

Last Modified: 10/17/2005 9:32:52 AM

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