Financial Services Commission of Ontario

Bulletin

No. G-07/04

- General

Monitoring and Enforcement Report Including Prosecution and Hearing Decisions for Second 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 (the "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' 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 Executive Director of the Licensing and Market Conduct 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

Monitoring Activities

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 second quarter of 2004, FSCO undertook the following:

- **Police Checks**

  A total of 6,441 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 first quarter 2004	Plus complaints received during the second quarter 2004	Less complaints in progress at end of second quarter 2004	Total number of complaints reviews completed during second quarter 2004
Agent	22	31	24	29
Paralegal	24	20	29	15
Health Care Provider	2	3	4	1

DISPOSITIONS

	Cases forwarded for potential enforcement	Cases resolved	*Cases closed*	*Total*
Agent	26	0	3	29
Paralegal	2	7	6	15
Health Care Provider	1	0	0	1

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 132 audits of life agents during the second quarter to ensure they met their CE requirements. 2,025 audits were initiated to ensure life agents met their E&O insurance requirements

Investigation Activities

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 second quarter of 2004, FSCO undertook the following:

- **Investigations Initiated**

Source of investigations

Agents	
Suitability	1
Complaints about agent conduct	27
Doing business without a licence in force	2
Insurance Companies	
Complaints about insurance company conduct	1
Doing business without a licence in force	5
Mortgage Brokers	
Complaints about mortgage broker conduct	4
Paralegals	
Complaints about paralegal conduct	7
Grand Total	**47**

Outcome of investigations

A total of 40 cases were completed:

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Sponsorship of agent withdrawn	1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

Letters of Censure issued	11
Closed files (no enforcement action warranted)	8
Total	**40**

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.

Administrative Sanctions

- **Letters of Warning**

During the second quarter, 57 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 13 Letters of Censure issued in addition to the 11 Letters of Censure which resulted from formal investigations.

Minutes of Settlement and Superintendent's Orders

During the second quarter, 10 agents/representatives entered into Minutes of Settlement for non-compliance with legislated requirements, of these six consented to orders revoking their licences.

Patricia Davies	By an order, dated May 27, 2004, this SABS representative agreed not to act as such for a period of two years. As a result of an audit, it was determined that Ms. Davies had misrepresented to FSCO that she had the required errors & omissions insurance.

Paul V. Grech	By an order, dated April 15, 2004, this life insurance agent's licence was revoked. The agent borrowed funds from several clients for his own use, and has not been able to repay the monies owing to the clients.
Sandra Guo	By an order, dated May 5, 2004, this life insurance agent's licence was revoked. The agent had admitted she submitted two policy applications without the policyholder's knowledge or consent, forged the client's signature and falsely signed that she had witnessed the signatures.
Rajdeep S. Mann	By an order, dated June 25, 2004, this life insurance agent's licence was revoked. The agent had used investment funds received from several policyholders for his own use.
John "Glen" McKay	By an order, dated June 10, 2004, this life insurance agent's licence was suspended for a period of 3 months. The agent had led his client to believe her funds were invested in one product, when in reality they were invested in a different product, without her knowledge.
Leslie J. Mroz	By an order, dated April 5, 2004, this life insurance agent's licence was suspended for a period of 30 days, effective May 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.

Teresa A. Pilipenko	By an order, dated May 4, 2004, this life insurance agent's licence was revoked. The agent made several requests for dividend withdrawals from a client's account and then used the money herself.
Joseph Vandervelden	By an order, dated April 30, 2004, this life insurance agent’s licence was revoked. The agent provided false information on his application for renewal of his life insurance agent's licence, failing to disclose that he was the subject of an ongoing investigation by the Mutual Fund Dealers Association.
Garry White	By an order, dated April 22, 2004, this SABS representative agreed not to act as such for a period of two years. As a result of an audit, it was determined that Mr. White had misrepresented to FSCO that he had the required errors & omissions insurance.
Lorna Wilson	By an order, dated April 13, 2004, this life insurance agent's licence was revoked. The agent had taken policyholder funds and deposited them to her personal account instead of investing the money in another investment product. The money has since been returned to the policyholder's bank account, and never reinvested as per the policyholder's original request.

Prosecutions

Insurance

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

Against: Dr. Alwyn Wong

Verdict: Guilty

On June 1, 2004, in Toronto provincial court, Alwyn Wong pleaded guilty and was convicted under the Insurance Act of two counts of knowingly making a false or misleading statement or representation to an insurer in respect of two assessments he had performed. Dr. Wong had indicated that they were conducted in the insureds' homes when in fact, he had conducted the assessments over the telephone. He had never received the fee from the insurer and had revised his reports immediately after the error was discovered. He was fined $500 with respect to one count. A suspended sentence was imposed on the second.

Mortgage Brokers

Charge: Failure to File Financial Statements

Against: FundCorp Financial Ltd.

Verdict: Guilty

On April 2, 2004, in Toronto provincial court, FundCorp Financial Ltd. pleaded guilty and was convicted of failing to file financial statements as required under the *Mortgage Brokers Act*. The company was fined $1,500.

Charge: Failure to File Financial Statements

Against: Value Capital Group

Verdict: Guilty

On April 2, 2004, in Toronto provincial court, Value Capital Group pleaded guilty and was convicted of failing to file financial statements as required under the *Mortgage Brokers Act*. The company was fined $3,000.

Charge: Failure to File Financial Statements

Against: Hillcourt Financial Services

Verdict: Guilty

On April 16, 2004, in Toronto provincial court, Hillcourt Financial Services pleaded guilty and was convicted of failing to file audited financial statements as required under the *Mortgage Brokers Act*. The company was fined $3,200.

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 Advisory Board decisions released by the Superintendent during the second quarter.

Other FSCO Hearings and Related Court Actions

Action:	**Cease and Desist Order**
Against:	**Triguard Investments Inc. and Joseph Servidio**
Date:	**April 30, 2004**

On April 30, 2004, the Superintendent issued a Cease and Desist Order against Triguard Investments Inc. and Joseph Servidio, directing them to stop conducting, undertaking, transacting or soliciting in Ontario the business of a loan or trust corporation by receiving deposits and lending or investing such money. Evidence provided to FSCO indicated that Triguard/Servidio were conducting the business of a loan corporation or a trust corporation while unregistered.

Action:	**Superintendent's Order**
Against:	**Legacy Administrators Inc.**
Date:	**June 14, 2004**

On June 14, 2003, Legacy Administrators Inc. entered into an Undertaking with the Superintendent, not to act as an executor, trustee, or estate trustee, nor to advertise its services as such, until such time as it is legally entitled to do so under the requirements of the Canada *Loan and Trust Companies Act* and/or any other statutory provision that may be in force at that time.

12-Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months (July 1, 2003 - June 30, 2004), FSCO took 247 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	50
Licence conditions via Minutes of Settlement	3
Provincial Offences Court convictions and fines	17
Revocation of sponsorship	5
Licence suspensions	12
Licence surrenders	83
Licence revocations	15
Cease & Desist orders	2
Undertakings	1
Paralegal terminations	59
Total	**247**

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring through-out the year. Over the past 12 months, there have been 24,122 instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken.

Monitoring Activities	Number of Occurrences
Continuing education audits	701
Police criminal record checks life agents/applicants	19,977
Complaint reviews	141
Errors & Omissions insurance audits - insurance agents	3,021
Errors & Omissions insurance audits - paralegals	282
Total	**24,122**

Dispute Resolution Decisions

Type of Decision:	**Arbitration**
Re:	**(FSCO A02-001475, May 28, 2004); Bill 59**

Applicant:	**Mark Smith**
Insurer:	**Wawanesa Mutual Insurance Company**
Type of Award:	**Special Award**

Mr. Smith claimed attendant care expenses, housekeeping expenses, increased income replacement benefits, interest and a special award. The attendant care and housekeeping issues were resolved at the outset of the hearing. Between the first and second sitting, Wawanesa's accountant attended at Mr. Smith's business, and the parties resolved the issue about the amount of the income replacement benefit, with the Insurer conceding Mr. Smith was entitled to an increased benefit based on business losses. The remaining issues were interest, special award and expenses.

The Arbitrator found that Wawanesa knew from the outset that Mr. Smith was seriously impaired as a result of the accident, and could not operate his business, a garage, without hiring replacement workers. The Insurer also knew that Mr. Smith had hired a helper, and that his father and wife were also helping to run the business. The Arbitrator found that Mr. Smith provided business records, but was unable to maintain records to satisfy the Insurer's accountant, and neither he nor his wife had any bookkeeping training. In May 2002, Mr. Smith's lawyer invited Wawanesa's accountant to inspect Mr. Smith's business records in Spanish, Ontario. The accountant did not attend until January 2004, and the Arbitrator found that the reference to "logistical problems" was not a valid reason for the delay. He concluded the income replacement benefits, at the higher rate, became "overdue" as of June 2002, when Mr. Smith's accountant provided a report, and interest accrued from that date. He found that Mr. Smith was entitled to a special award based on this delay, and based on the Insurer's failure to comply with the *Welsh and Economical Mutual Insurance Company* decision (FSCO P02-00024, October 7, 2003), which held that business losses may increase the benefit to an amount over the $400 maximum.

Before determining the amount of the special award, the Arbitrator invited the parties' written submissions about the amount of income replacement benefit and interest owing.

Type of Decision:	**Appeal**
Re:	**(FSCO P02-00026, June 3, 2004); Bill 59**
Appellant:	**State Farm Mutual Automobile Insurance Company**

Respondent:	**L.F.**
Award:	**Special Award**

Note: The arbitration decision was listed in the third quarter 2002 report.

The Arbitrator ordered State Farm to pay ongoing income replacement benefits and attendant care benefits, various medical and rehabilitation benefits, the cost of several reports, interest, and a special award of $2,500.

State Farm challenged many of the Arbitrator's findings. The Director's Delegate dismissed the appeal with respect to the Arbitrator's factual findings, which were well supported on the evidence. She also found that the Arbitrator's error of law in his analysis of the post 104 week entitlement test did not affect the outcome, since there was evidence that L.F. was completely unable to work and therefore qualified for ongoing income replacement benefits. She agreed with the Arbitrator that L.F. had "incurred" reasonable and necessary attendant care expenses, and that State Farm's failure to explain the procedure for claiming these benefits gave L.F. a reasonable explanation for his delay in applying. However, she found the Arbitrator erred in law in awarding attendant care benefits beyond 104 weeks. The Delegate also found that the Arbitrator erred in ordering payment of a medical benefits claim pending receipt of the DAC report, though the "pay pending dispute" provisions did not apply.

The Delegate reduced the amount of the special award ordered by the Arbitrator to the extent it was based on the Arbitrator's awards that were overturned on appeal (post 104 week attendant care benefits and certain medical benefits). The Delegate estimated that the benefits in respect of which the Arbitrator had authority for a special award totalled no more than $500 plus interest. The award of $2,500 was revoked and replaced with a special award of $200, including interest.

Type of Decision:	**Arbitration**
Re:	**(FSCO A03-000628, June 22, 2004); Bill 59**
Applicant:	**Gagandeep Singh**
Insurer:	**AXA Insurance (Canada)**
Type of Award:	**Special Award**

Mr. Singh claimed housekeeping benefits for six months after his accident. The Arbitrator limited his claim to $2,083, because he found a second invoice never reached the Insurer. The Arbitrator accepted that Mr. Singh was substantially unable to perform certain housekeeping chores for a time after the accident, but did not accept the claim in its entirety. He ordered AXA to pay housekeeping expenses of $315.

The Arbitrator also ordered AXA to pay a special award of $40. He found that while AXA acted reasonably in relying on its in-home occupational assessment, it acted unreasonably in failing to pay benefits before receiving the report.

The Arbitrator noted his dismay over "the parties' adamant refusal to streamline the evidence on such a simple matter," and their insistence on proceeding to a hearing lasting two and one half days.

Type of Decision:	**Arbitration**
Re:	**(FSCO A03-000787, June 16, 2004); Bill 59**
Applicant:	**Iraj Rashidi**
Insurer:	**Wawanesa Mutual Insurance Company**
Type of Award:	**Expenses against representative**

Note: This decision is under appeal.

The Arbitrator found that Wawanesa provided the insured person's representative with $342 for documents, but never received the documents. The Arbitrator ordered that the representative pay this amount personally.

Type of Decision:	**Arbitration**
Re:	**(FSCO A03-001444, June 1, 2004); Bill 59**
Applicant:	**Chak Ng**
Insurer:	**Western Assurance Company**
Type of Award:	**Expenses against representative**

The insured person and his representative failed to attend a scheduled pre-hearing discussion. The Arbitrator ordered expenses in favour of the insurer, fixed at $500, and that Mr. Ng and his representative were jointly and severally liable for these expenses.

Type of Decision:	**Arbitration**
Re:	**(FSCO A01-000858, May 28, 2004); Bill 59**
Applicant:	**Marina Bershteyn**
Insurer:	**Allstate Insurance Company of Canada**
Type of Award:	**Expenses against representative**

The Arbitrator found that the bringing of this arbitration and its conduct were frivolous and vexatious, and that the insured's representative was the controlling mind behind the litigation. In the circumstances, the Arbitrator ordered that the expenses be paid by the insured's representative.

Financial Services Tribunal (FST) Decisions

There are no FST Decisions to report for second quarter 2004. 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
Chair	Chief Executive Officer
Financial Services Commission of Ontario	Financial Services Commission of Ontario
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October 29, 2004

Last Modified: 8/23/2005 3:30:51 PM

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