Property and Casualty - Auto Bulletins
Pension Bulletins
Monitoring and Enforcement Bulletins
Licensing Changes Bulletins
Bulletins by Sector

NOTE: The bulletins posted on this website are provided for historical reference. Information contained in the bulletins is accurate on the date published, but is subject to change and may have been superceded by a later bulletin.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The bulletins posted may contain forms that are no longer current.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-03/05

– General

Monitoring and enforcement report - including prosecution and hearing decisions - July 1 to December 31, 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 trust corporations, co-operative corporations 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 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 Services Branch 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

Monitoring Activities

FSCO undertakes a number of monitoring activities as part of its regulatory functions. It conducts police background checks on prospective agents and paralegals 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.

- **Police Checks**

During the period, a total of 12,718 police checks on the background of existing and prospective agents and paralegals were made with the Canadian Police Information Centre.

- **Complaints and Reviews**

COMPLAINTS				
	Complaints in Progress from second quarter 2004	Plus complaints received during the period	Less complaints in progress at end of 2004	Total number of complaints reviews completed during the period
Agent	24	68	28	64
Paralegal	28*	34	36	26
Health Care Provider	5*	1	4	2

*adjustment from second quarter figure.

DISPOSITIONS				
	Cases forwarded for (potential) enforcement	Cases resolved	Cases closed	Total
Agent	54	3	7	64
Paralegal	5	15	6	26
Health Care Provider	1	1	0	2

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 392 audits of life agents during the period to ensure they met their CE requirements. There were also 2,030 audits 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, Advisory Board hearings or other administrative action may be contemplated.

- **Investigations Initiated**

Source of investigations	
Agents	
Suitability	6
Complaints about agent conduct	31
Doing business without a licence in force	10
Insurance Companies	
Complaints about insurance company conduct	1
Doing business without a licence in force	2
Mortgage Brokers	
Suitability	2
Complaints about mortgage broker conduct	10
Doing business without a licence in force	1
Paralegals	
Suitability	13
Complaints about paralegal conduct	24

Loan & Trust Companies	
Complaints about Loan & Trust company conduct	1
Doing business without a licence in force	6
Credit Unions	
Doing business without a licence in force	3
Grand Total	**110**

Outcome of investigations	
A total of 70 cases were completed:	
Charges laid in Provincial Offences court	5
Sponsorship of agent withdrawn	2
Superintendent's Orders issued	14
Cease & Desist Orders issued	5
Letters of Censure issued	15
Closed files (no enforcement action warranted)	29
Total	**70**

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 period 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 period 265 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 23 Letters of Censure issued in addition to the 15 Letters of Censure which resulted from formal investigations.

Minutes of Settlement and Superintendent's Orders

Fourteen agents/representatives entered into Minutes of Settlement for non-compliance with legislated requirements, of these nine consented to orders revoking their licences.

Farzaneh Abravani **Farzaneh Abravani Immigration & Paralegal Services Inc.**	By an order, dated December 14, 2004, Ms. Abravani agreed that neither she nor her business would solicit the right to negotiate, for compensation, the settlement of a claim for loss or damage arising out of a motor vehicle accident resulting from bodily injury to or death of any person or damage to property on behalf of a claimant; or hold herself out as an adjuster, investigator, consultant or otherwise on behalf of any person having a claim against an insured or an insurer for which indemnity is provided by a motor vehicle liability policy, including a claim for SABS benefits for a period of five years. It was determined that Ms. Abravani was holding herself out as a SABS consultant/ advisor without filing with FSCO, and she also did not have the required errors & omissions insurance.

Marjan Abravani	By an order, dated December 14, 2004, Ms. Abravani agreed not to solicit the right to negotiate, for compensation, the settlement of a claim for loss or damage arising out of a motor vehicle accident resulting from bodily injury to or death of any person or damage to property on behalf of a claimant; or hold herself out as an adjuster, investigator, consultant or otherwise on behalf of any person having a claim against an insured or an insurer for which indemnity is provided by a motor vehicle liability policy, including a claim for SABS benefits for a period of five years. It was determined that Ms. Abravani was holding herself out as a SABS consultant/ advisor without filing with FSCO, and she also did not have the required errors & omissions insurance.
Malcolm Cho-kee	By an order, dated September 28, 2004, this Level I agent's licence was suspended for a period of 30 days, effective November 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 was given until December 20, 2004, to complete the continuing education requirement, failing which, his licence would expire on that date. The agent did

	not complete the required hours and his licence has been terminated.
Gregory P. Deacon	By an order, dated July 6, 2004, this life insurance agent's licence was revoked. The agent had misappropriated clients' investment funds and invested those funds in two of his own companies. This resulted in substantial losses to his clients.
Joseph Jelenic	By an order, dated July 5, 2004, this life insurance agent's licence was revoked. The agent had misappropriated clients' funds and deposited the monies into his own bank account for his personal use.
John A. Krug	By an order, dated November 9, 2004, this life insurance agent's licence was revoked. The agent had borrowed $26,000 from two elderly clients for his own use and failed to repay the monies.
Gaetan Lefebvre	By an order, dated July 13, 2004, this life insurance agent's licence was revoked. The agent had failed to complete the required continuing education hours and had made a material misstatement in his renewal application. The agent had been given until June 26, 2004, to complete the continuing education requirement, failing which his licence would be revoked. The agent did not complete the continuing education requirement and his licence was revoked.

Anita Michaud	By an order, dated October 5, 2004, this life insurance agent's licence was revoked. The agent had failed to complete the required continuing education hours and had made a material misstatement in her renewal application.
Daniel Moyaert	By an order, dated October 6, 2004, this life insurance agent's licence was revoked. The agent failed to comply with the requirements of the Superintendent's July 12, 2004 decision.
Parivash Naderi	By an order, dated December 14, 2004, Ms. Naderi agreed not to solicit the right to negotiate, for compensation, the settlement of a claim for loss or damage arising out of a motor vehicle accident resulting from bodily injury to or death of any person or damage to property on behalf of a claimant; or hold herself out as an adjuster, investigator, consultant or otherwise on behalf of any person having a claim against an insured or an insurer for which indemnity is provided by a motor vehicle liability policy, including a claim for SABS benefits for a period of five years. It was determined that Ms. Naderi was holding herself out as a SABS consultant/ advisor without filing with FSCO, and she also did not have the required errors & omissions insurance.

Brian A. Pinto	By an order, dated December 8, 2004, this life insurance agent's licence was revoked. The agent had replaced some 45 existing policies as new policies without cancelling the original policies or submitting the required replacement form documentation.
Radu Sabau	By an order, dated November 8, 2004, this life insurance agent's licence was revoked. The agent had taken monies from two clients for payment of an insurance premium in one case and for investment purposes in another, and in both situations, failed to remit the full amount received from the clients, keeping a portion from each transaction for his own use.
John F. Slavin	By an order, dated October 5, 2004, this life insurance agent's licence was revoked. The agent had failed to complete the required continuing education hours and had made a material misstatement in his renewal application.
Ricardo (Ricky) Timbol	By an order, dated November 29, 2004, this life insurance agent's licence was suspended for nine months, effective January 1, 2005. The agent had written 14 insurance policy applications in Montreal and marked the applications as having been signed in Toronto. The agent is not licensed to sell insurance in the Province of Quebec.

Prosecutions

Insurance

Charge:	Acting as a SABS representative without filing a declaration
Against:	Frank Chiodo
Verdict:	Guilty

On November 3, 2004, in Toronto provincial court, Frank Chiodo pleaded guilty and was convicted under the *Insurance Act* of acting as a SABS representative without having filed a declaration with the Superintendent, contrary to s. 398. He was fined $1,000.

Charge:	Acting without a licence
Against:	North City Insurance Brokers Ltd.
Verdict:	Guilty

On November 3, 2004, in Toronto provincial court, North City Insurance Brokers Ltd was found guilty and was convicted of acting as an unlicenced insurance agent, contrary to the *Insurance Act.* The company did not renew its corporate licence between May 23, 2003 and August 14, 2003. The company was fined $500.

Charge:	Knowingly making a False or Misleading Statement or Representation
Against:	Peter Tassiopoulos
Verdict:	Guilty

On September 7, 2004, in Toronto provincial court, Peter Tassiopoulos pleaded guilty and was convicted under the *Insurance Act* of knowingly making a false or misleading statement or representation in the e-filing of his SABS declaration by indicating that he had $1 million in errors and omissions insurance when he only had $500,000. Mr. Tassiopoulos received a suspended sentence and will not act as a SABS representative until January 1, 2006 at the earliest.

Charge: Acting as a life insurance agent without Errors & Omissions insurance

Against: Wojciech Zajdel

Verdict: Guilty

On November 4, 2004, in Toronto provincial court, Wojciech Zajdel was found guilty and was convicted of acting as a life insurance agent without errors & omissions insurance as required under the *Insurance Act*. The agent failed to have insurance between June 1, 2003 and November 1, 2003, during which time he sold two policies. He was fined $100.

Mortgage Brokers

Charge: Failure to File Financial Statements

Against: Central Funding Group Ltd.

Verdict: Guilty

On September 7, 2004, in Toronto provincial court, Central Funding Group Ltd was found 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: Gateview Realty Inc.

Verdict: Guilty

On December 3, 2004, in Toronto provincial court, Gateview Realty Inc. pleaded guilty and was convicted of failing to file financial statements as required under the *Mortgage Brokers Act*. The company was fined $150.

Charge: Failure to File Financial Statements

Against: Terra Mortgage Corporation

Verdict: Guilty

On August 18, 2004, in Toronto provincial court, Terra Mortgage Corporation pleaded guilty and was convicted of failing to file financial statements as required under the *Mortgage Brokers Act*. The company was fined $350.

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 applicant: Kamralzama Khan (Willowdale)

Advisory Board Hearing: November 10, 2004

Decision: Application denied

An Advisory Board hearing was conducted in Toronto to consider Mr. Khan's application for a life insurance agent's licence. In its report, the Board recommended that Mr. Khan's application for licensing be denied on the basis that he is not suitable to act as an insurance agent. The Board found that Mr. Khan had an unsatisfactory record in a previous business operating a travel agency, including wrongly taking client funds, and that he had completed the on-line application for a life insurance agent licence without disclosing convictions under the *Travel*

Industry Act. The Superintendent accepted the recommendations and denied the application.

Life agent:	Daniel Moyaert (London), Level II agent
Advisory Board Hearing:	Agent did not request hearing
Decision:	Licence suspended

A Notice of Proposed Hearing was sent to Daniel Moyaert to consider the revocation or suspension of his life insurance agent's licence following allegations that he failed to comply with the continuing education requirements; made a material misstatement in his life insurance agent application that he would have completed 30 hours of continuing education by the end of the two year licensing period; and failed to facilitate an examination.

By decision dated July 12, 2004, the Superintendent found the allegations against Mr. Moyaert to be established and ordered that his life insurance agent's licence be suspended for a period of ninety days, commencing August 1, 2004. It was further ordered that Mr. Moyaert submit by October 4, 2004, evidence acceptable to the Superintendent of completion of 30 hours of continuing education for the licensing period ending on October 4, 2002, and the same information for the licensing period ending October 4, 2004, failing which his licence will be revoked.

Mr. Moyaert failed to meet the above requirements and his licence was revoked October 6, 2004.

Life agent:	James M. Oakes (North Bay), Level II agent
Advisory Board Hearing:	Agent did not request hearing

Decision: Licence suspended

A Notice of Proposed Hearing was sent to James Michael Oakes to consider the revocation or suspension of his life insurance agent's licence following allegations that he replaced a client's insurance policy without completing a comparison disclosure form and as a result, the client incurred fees and tax consequences. Mr. Oakes indicated that replacement was not intended. Allegations of unsuitability, placing his personal interest before that of the client and committing an unfair or deceptive act or practice were considered against Mr. Oakes.

In a decision dated November 8, 2004, the Superintendent found the allegations against Mr. Oakes to be established and found that Mr. Oakes demonstrated incompetency and untrustworthiness. The Superintendent ordered that his life insurance agent's licence be suspended for a period of thirty days, commencing January 1, 2005; and that he successfully complete the Life Licence Qualification Program (LLQP), including passing the required LLQP examination and providing evidence of successful completion by May 15, 2005.

Failure to comply with the second condition of the order will result in further suspension of Mr. Oakes' licence until such time as he provides evidence of successful completion of the LLQP to the Superintendent. Mr. Oakes was also ordered to provide a copy of the Superintendent's decision and order to every insurance company with which he directly or indirectly places applications for insurance contracts until such time as he complies with the second and third conditions.

Mr. Oakes subsequently provided proof of passing the LLQP examination.

Other FSCO Hearings and Related Court Actions

Where the Superintendent is of the opinion that the interests of the public may be prejudiced or adversely affected by any delay in the issuance of a permanent order, the Superintendent, without prior notice, may make an interim or temporary order which shall take effect immediately on its making, and which shall become permanent on the 15th day after its making unless within that time the person requests a hearing before the Tribunal.

Action: Temporary Cease and Desist Order

Against: Digital World Financial (DWF) and Joseph Simon LaCroix also known as Joseph Simon

Date: November 30, 2004

On November 30, 2004, the Superintendent issued a temporary Cease and Desist Order against DWF, LaCroix or any person or corporation acting on their behalf to cease conducting, undertaking or transacting in Ontario the business of a loan corporation by receiving deposits from the public and lending or investing such money. DWF is not a registered loan or trust corporation under the *Loan and Trust Corporations Act* or under the federal equivalent. The Order became permanent December 15, 2004.

Action: Temporary Cease and Desist Order

Against: First London Savings & Loans INC (FLSL), a.k.a. First London Savings and Loans, and Robert Vanier

Date: October 12, 2004

On October 12, 2004, the Superintendent issued a temporary Cease and Desist Order against FLSL, Robert Vanier or any person or corporation acting on behalf of or as agent of FLSL or Vanier to cease conducting, undertaking or transacting in Ontario the business of a loan corporation by receiving deposits from the public and lending or investing such money. FLSL is not a registered loan or trust corporation under the *Loan and Trust Corporations Act* or under the federal equivalent. The temporary Cease and Desist Order was made permanent on December 15, 2004. FLSL have filed a notice of appeal with the FST. A hearing is set for October 18, 2005.

Action: Interim Cease and Desist Order

Against: Myrtie Rose Benefit Program Inc. (Myrtie Rose), Joy Morris, Ian Anthony Morris, Fisola Robinson and Tinuola Shaw

Date: December 23, 2004

On December 23, 2004, the Superintendent issued an interim Cease and Desist Order against Myrtie Rose Benefit Program Inc. (Myrtie Rose), Joy Morris, Ian Anthony Morris, Fisola Robinson and Tinuola Shaw, and any agents or representatives thereof directing them to immediately cease carrying on business as an insurer, and in particular cease undertaking or offering to undertake, directly or indirectly, insurance, as defined in the *Insurance Act*, in any form including through a Group Benefit Plan or any form of policy and in particular optical, dental, drug and health care policies. The Order became permanent effective January 7, 2005.

Action: Interim Cease and Desist Order

Against: Carlos and Manuel Castro

Date: December 2, 2004

On December 2, 2004, the Superintendent issued an interim cease and desist order against Carlos Castro and Manuel Castro. Pursuant to subsection 441(4) of the *Insurance Act*, the Superintendent orders that Carlos Castro and Manuel Castro and any agents or representatives thereof, immediately cease carrying on business as statutory accident benefits representatives; immediately notify in writing all of their clients who have claims for statutory accident benefits that they can no longer act for them; provide them with a copy of this cease and desist order; provide copies of every notification sent to each client to the

Superintendent forthwith; and immediately cease advertising or holding themselves out, in any form, as statutory accident benefits representatives within Ontario. Manuel Castro and Carlos Castro have requested a hearing by the Financial Services Tribunal. Dates for the hearing have been set for September 13, 14, 15, 19 and 21.

Action: Interim Cease and Desist Order

Against: SNC Insurance Company (Barbados) Inc. and Stop"N" Cash 1000 Inc.

Date: August 30, 2004

On August 30, 2004, the Superintendent issued an interim Cease and Desist Order against SNC Insurance Company (Barbados) Inc. and Stop"N" Cash 1000 Inc., directing them to cease from either directly or indirectly carrying on insurance business in Ontario. Evidence provided to FSCO indicated that SNC Insurance Company (Barbados) Inc was carrying on the business of an insurer in Ontario without a licence and Stop"N" Cash 1000 Inc. was acting as an insurance agent without a licence. Also refer to Financial Services Tribunal Decisions for additional information.

12-Month Enforcement Action and Monitoring Activities Summary

Over the 12 months (January 1, 2004 - December 31, 2004), FSCO took 382 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	74
Licence conditions via Minutes of Settlement	0
Provincial Offences Court convictions and fines	22
Revocation of sponsorship	4

Licence suspensions	12
Licence surrenders	192
Licence revocations	19
Cease & Desist orders	6
Undertakings	4
Paralegal terminations	49
Application Denied	1
Total	383

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring through-out the year. Over the past 12 months, there have been 29,499 instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken.

Monitoring Activities	**Number of Occurrences**
Continuing education audits	623
Police criminal record checks life agents/applicants/ paralegals	24,262
Complaint reviews	172
Errors & Omissions insurance audits - insurance agents	4,365
Errors & Omissions insurance audits - paralegals	77
Total	29,499

Dispute Resolution Decisions

Type of Decision	Arbitration
Re	(FSCO A00-021635, August 3, 2004); Bill 59

Appeal Status	No Appeal
Applicant	Mrs. S
Insurer	Non-Marine Underwriters, Members of Lloyd's
Type of Award	Special Award
Amount of Award	$10,000
Issue	The insured person claimed income replacement benefits, both pre and post-104 weeks, medical benefits, housekeeping and home maintenance expenses, and assessment expenses.
Findings	The Arbitrator concluded that the insured person was entitled to pre-104 income replacement benefits, but not post-104 weeks, and some, but not all, of her other claims. She also concluded that the insurer unreasonably withheld or delayed the payment of benefits in several respects; it terminated income replacement benefits in the face of substantial medical evidence to the contrary, relying on a medical report that was beyond the expertise of the assessor; it unilaterally and surreptitiously retained the DAC assessor to prepare a second report; it turned a blind eye to the insured person's need for massage treatments; it denied certain expenses without any medical evidence to support its position that the expenses were not reasonable and necessary; and its handling of the assessment claims was substandard.

Order	1. Lloyd's shall pay the Applicant income replacement benefits at the rate of $178.84 per week from June 26, 2002 until July 9, 2003 pursuant to section 4 of the *Schedule.* 2. Lloyd's shall pay the Applicant $350.00 for massage treatment, $1,043.47 for prescription expenses, and $142.69 for taxi expenses pursuant to section 14 of the *Schedule*. 3. Lloyd's shall pay the Applicant housekeeping and home maintenance expenses of $6,950.00 pursuant to section 22 of the *Schedule*. 4. Lloyd's shall pay the Applicant the cost of an assessment by Dr. Khadivi in the amount of $735.70; the cost of an assessment by Dr. Celinski in the amount of $2,412.85; and $1,000.00 towards the cost of Dr. Ogilvie-Harris's assessment, pursuant to section 24 of the *Schedule*. 5. Lloyd's shall pay a special award pursuant to subsection 282(10) of the *Insurance Act* in the amount of $10,000 inclusive of interest. 6. The parties made no submissions as to expenses. I remain seized of this matter should the parties not settle this issue. 7. Lloyd's shall pay the Applicant interest on any overdue amounts pursuant to subsection 46(2) of the *Schedule*.

Type of Decision	Arbitration

Re	(FSCO A03-000023, August 4, 2004); Bill 164
Appeal Status	Under Appeal
Applicant	Sukwinder Kaur Virk
Insurer	Liberty Mutual Insurance Company
Type of Award	Special Award
Amount of Award	$1,500
Issue	The applicant claimed death benefits in respect of her son who was born approximately two weeks after she was involved in an automobile accident, either as a result of his premature birth or injuries sustained in the accident.
Findings	The Arbitrator concluded that death benefits were payable. She also concluded that the insurer unreasonably withheld the payment of funeral expenses, which were not paid until shortly before the arbitration hearing.
Order	1. Liberty Mutual shall pay to Mrs. Virk death benefits of $10,020 for the death of her child Pushinder under subsection 51(5) of the *Schedule*, with interest from the date of this decision. 2. Liberty Mutual shall pay to Mrs. Virk a special award of $1,500 pursuant to subsection 282 (10) of the *Insurance Act,* because it unreasonably withheld and delayed payment of funeral expenses to which Mrs. Virk was entitled under section 52 of the *Schedule.*

Type of Decision	Arbitration
Re	(FSCO A02-001475, August 20, 2004); Bill 59
Appeal Status	No Appeal
Applicant	Mark Smith
Insurer	Wawanesa Mutual Insurance Company
Type of Award	Special Award
Amount of Award	$39,900
Issue	The parties resolved many of the issues in dispute, but not questions about interest, special award and arbitration expenses. In a decision dated May 28, 2004, the Arbitrator concluded that the insured person was entitled to interest from June 28, 2002, and a special award. The amount of the special award was determined in a second decision, dated August 20, 2004.
Findings	The Arbitrator calculated the amount that could be ordered for a special award and awarded almost the maximum.
Order	1. Wawanesa Mutual Insurance Company shall pay Mark Smith $56,018.80. [note: this amount includes arbitration expenses]

Type of Decision	Arbitration
Re	(FSCO A03-000290, September 24, 2004); Bill 59
Appeal Status	No Appeal

Applicant	J.C.
Insurer	Progressive Casualty Insurance Company of Canada
Type of Award	Special Award
Amount of Award	$5,000
Issue	The insured person claimed income replacement benefits. The insurer did not accept that his problems were caused by the automobile accident.
Findings	The Arbitrator found that the accident was the predominant cause of the insured person's health problems, and that his level of disability met both the "substantial inability" and "complete inability" tests. As a result, she ordered the insurer to pay income replacement benefits. The Arbitrator also concluded that the insurer should pay a special award because it failed to reinstate benefits in the face of mounting evidence of the insured person's disability.
Order	1. Progressive shall pay to the Applicant income replacement benefits at the rate of $275.30 per week from November 20, 1997 to June 14, 1999 pursuant to subsection 4(1), paragraph 1 of the *Schedule*. 2. Progressive shall pay to the Applicant income replacement benefits at the rate of $275.30 per week from June 15, 1999 and ongoing pursuant to subsection 5(2)(b) of the *Schedule*. 3. Progressive shall pay to the Applicant interest on the overdue income replacement benefits

	from June 6, 2001 pursuant to subsection 46(2) of the *Schedule*. 4. Progressive shall pay to the Applicant a special award of $5,000 inclusive of interest pursuant to subsection 282(10) of the *Insurance Act.*

Type of Decision	Arbitration
Re	(FSCO A01-000065, October 7, 2004); Bill 59
Appeal Status	Under Appeal
Applicant	Ken Alex Rumak
Insurer:	Personal Insurance Company of Canada
Type of Award	Special Award
Amount of Award	$12,500
Issue	In a decision dated November 5, 2003, the Arbitrator ordered the insurer to pay income replacement benefits "in the amount of $214.88 per week from April 13, 2001 and ongoing, less any amount for any periods of time that the insured person worked, less any amount for income received by Mr. Rumak in respect of any employment after the accident." She also raised the issue of a special award, giving the parties an opportunity to indicate whether they wanted to file additional evidence on this issue. The hearing reconvened in March 2004 on whether the insurer should be ordered to pay a special award and, if so, how much.

Findings	The Arbitrator found that the insurer acted unreasonably in terminating the insured person's income replacement benefits and in not paying benefits up to the date of the DAC assessment. Further, she found that despite a "negative DAC" assessment, concluding that the insured person did not meet the disability test, the insurer acted unreasonably in not paying benefits up to the date of the arbitration hearing because there were obvious deficiencies in the DAC report and additional evidence in support of the claim. Finally, the Arbitrator found that the insurer acting unreasonably in not paying benefits for the period between the arbitration hearing and the release of her decision.
Order	Personal shall pay Mr. Rumak a special award in the amount of $12,500.00, inclusive of interest.

Type of Decision	Arbitration
Re	FSCO A04-000305; A04-000027; A04-000014, October 27, 2004); Bill 59
Appeal Status	No Appeal
Applicants	Ziba Miri-Lashkajani, Saeed Baradar-Gohari, Afsaneh Amin-Akbari
Insurer	RBC General Insurance Company
Type of Award	Expenses Against Representative
Amount of Award	$400

Issue	At a pre-hearing, issues were raised about the status of the insured persons' representative, Mr. Manoucher Baradaran, a non-lawyer.
Findings	The Arbitrator found that Mr. Baradaran fell below the minimal performance standards set by the Commission and excluded him from acting as the insured persons' representative under s. 23 of the *Statutory Powers Procedure Act* and ordered him to pay the insurer its expenses, fixed at $400, for two incomplete pre-hearings.
Order	1. Mr. Baradaran shall be barred, pursuant to section 23(3) of the *Statutory Powers Procedure Act*, from appearing as agent or adviser in these proceedings. 2. Mr. Baradaran shall personally pay to the Insurer, its expenses thrown away at the two incomplete pre-hearings held before me on April 20 and May 14, 2004, which I fix at $400, payable forthwith, and in any event of the cause.

Type of Decision	Appeal
Re	(FSCO P04-00020, November 4, 2004); Bill 59
Appeal Status	N/A
Applicant	Marina Bershteyn
Insurer	Allstate Insurance Company of Canada
Type of Award	Expenses Against Representative

Amount of Award	Not Yet Determined
Issue	In a decision dated May 28, 2004, the Arbitrator rejected the insured person's claim and ordered expenses in favour of the insurance company to be paid personally by the insured person's representative, Mr. Roland Spiegel. Mr. Spiegel appealed, challenging the Arbitrator's decision to order him to pay the expenses.
Findings	The Director of Arbitrations rejected the appeal and ordered Mr. Spiegel to pay appeal expenses of $750.
Order	1. The appeal is dismissed and the arbitration order, dated May 28, 2004, is confirmed. 2. Roland Spiegel shall pay Allstate Insurance Company of Canada's appeal expenses, fixed at $750, all inclusive.

Type of Decision	Arbitration
Re	(FSCO A03-000833, November 16, 2004); Bill 59
Appeal Status	Under Appeal
Applicant	Shannon Stewart
Insurer	Liberty Mutual Insurance Company
Type of Award	Special Award
Amount of Award	$25,000, inclusive of interest

Issue	Mr. Stewart claimed death benefits on the basis that he was the deceased's "spouse" because they had "cohabited in a relationship of some permanence" and were "the natural . . . parents of a child."
Findings	The Arbitrator found that Mr. Stewart was a "spouse" and, therefore, entitled to death benefits. She also found that the Insurer acted unreasonably in investigating Mr. Stewart's status, but not advising him that he might be entitled to a death benefit or explaining any of claims or dispute resolution procedures to him.
Order	1. Liberty Mutual Insurance Company shall pay to Shannon Stewart the following: a) A spousal death benefit of $50,000 pursuant to section 25 of the *Schedule.* b) A special award in the amount of $25,000, inclusive of interest, pursuant to subsection 282 (10) of the *Insurance Act*. c) Interest on the spousal death benefit from January 2, 1998 to April 22, 1999 and from January 18, 2002 until the overdue amounts are paid, in accordance with section 46 of the *Schedule.* d) Mr. Stewart's expenses of this arbitration.

Type of Decision	Arbitration

Re	(FSCO A03-001063, December 24, 2004); Bill 59
Appeal Status	Under Appeal
Applicant	Sivaharan Kulasekarampillai
Insurer	State Farm Mutual Automobile Insurance Company
Type of Award	Special Award
Amount of Award	$5,000
Issue	The insured person claimed ongoing income replacement benefits “at the agreed rate” of $400 per week. Before the hearing, the insurer reinstated the income replacement benefits, but at a substantially lower rate. The insured person refused to consent to adding the issues of quantum and repayment to the hearing and despite the insurer’s reinstatement of benefits, asked for an order for ongoing benefits to get the protection of s. 287 of the *Insurance Act*.
Findings	The Arbitrator ordered the insurer to pay ongoing benefits and because quantum was not before her, ordered payment at the previously agreed rate of $400 per week. In addition, she ordered the insurer to pay a “moderate” special award of $5,000.
Order	1. State Farm shall pay to Mr. Kulasekarampillai ongoing Income Replacement Benefits of $400 per week from May 3, 2003 and ongoing, less any amounts already paid. 2. State Farm shall pay to Mr. Kulasekarampillai housekeeping expenses of $100 per week, less any amounts paid, up to 104 weeks after the accident, December 18, 2004.

	3. State Farm shall pay to Mr. Kulasekarampillai a special award of $5,000, inclusive of interest, in accordance with subsection 282(10) of the *Insurance Act.* 4. State Farm shall pay Mr. Kulasekarampillai his reasonable expenses of the arbitration proceeding as agreed or assessed.

Financial Services Tribunal (FST) Decisions

Name	Lee Burton
Sector	Insurance
Date of Decision	August 19, 2004
Disposition	Pursuant to Minutes of Settlement, the Tribunal ordered that the decision of the Superintendent, dated February 6, 2004, revoking the Agent's Level II life insurance agent's licence, be varied by substituting a suspension of that licence for 12 months effective February 6, 2004.

Name	SNC Insurance Company (Barbados) Inc. and Stop "N" Cash 1000 Inc.
Sector	Insurance
Date of Decision	November 15, 2004

Disposition	The Tribunal ordered that the Interim Order as amended shall become permanent with the result that SNC Insurance is ordered to cease from either directly or indirectly carrying on insurance business in Ontario, and, Stop "N" Cash Inc. is ordered to cease from acting as an insurance agent in Ontario. It is further ordered that the Superintendent revoke the foregoing order, pursuant to s. 441(11) of the Act, if and when the Applicants substantially implement the New Business Model in such a way that there is no longer a continuing justification for the order.

On October 21, 2004 the Divisional Court allowed in part the appeal by Sussman Mortgage Funding Inc. from the decision of the Financial Services Tribunal to revoke the registration of Sussman Mortgage under the *Mortgage Brokers Act*. The Financial Services Tribunal issued its decision in August 2002.

The Divisional Court upheld all the findings of misconduct by Sussman Mortgage, but it reduced the penalty from revocation to specified reporting requirements, for a period of two years. The Superintendent applied to the Court of Appeal for leave to appeal the reduction of the penalty.

Colin McNairn

Chair

Financial Services Commission of Ontario

Chair

Financial Services Tribunal

Bryan P. Davies

Chief Executive Officer

Financial Services Commission of Ontario

Superintendent of Financial Services

June 29, 2005

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