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Bulletin

No. G- 01/06

– General

Monitoring and enforcement report - including prosecution and hearing decisions - July 1 to September 30, 2005

The Financial Services Commission of Ontario's (FSCO) Monitoring and Enforcement Bulletin reports on its prosecution activities, the decisions arising out of the hearings under FSCO legislation, and other regulatory activities that help ensure consumer confidence in the financial services sectors regulated by FSCO -- insurance, credit unions/caisses populaires, loan and trusts, co-operative corporations and mortgage brokers. FSCO also regulates pensions; its monitoring and enforcement report on this sector appears separately in FSCO's Pension Bulletins.

The Financial Services Tribunal (FST), an independent adjudicative body, hears appeals or reviews 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 an affected party. In its hearings, 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 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*.

The *Insurance Act* authorizes arbitrators and appeal adjudicators to make two types of enforcement orders that are reported in this Bulletin. First, under section 282(10), a special award may be made against an insurer that has unreasonably withheld or delayed the payment of benefits. Second, under section 282(11.2) a representative may be ordered 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 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 6,331 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 June 30, 2005	Plus complaints received during the period	Less complaints in progress at end of September 30, 2005	Total number of complaint reviews completed during the period
Agent	83	79	85	77
Paralegal	34	3	30	7

Health Care Provider	6	2	6	2

DISPOSITIONS				
	Total Cases Received	**Cases resolved**	***Cases closed***	***Cases forwarded for (potential) enforcement***
Agent	77	6	11	60

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 653 audits of life agents during the 3rd quarter to ensure they met their Errors and Omissions (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 GI 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.

Investigations Initiated	
Agents	
Suitability	2
Complaints about agent conduct	16
Doing business without a licence	8
Insurance Companies	
Complaints about insurance company conduct	1
Mortgage Brokers	
Suitability	1
Paralegals	
Complaints about paralegal conduct	*3*
Loan & Trust Companies	
Complaints about Loan & Trust company conduct	*2*

Grand Total	**33**

Outcome of investigations	
A total of **35** cases were completed:	
Charges laid in Provincial Offences court	4
Minutes of Settlement and Superintendent's Orders issued	2
Cease & Desist Orders issued	4
Letters of Censure issued	11
Closed files (no enforcement action warranted)	14
Total	**35**

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 recorded on the date they occur.

Administrative Sanctions

Letters of Warning

During the period 91 Letters of Warning were issued to life agents, all of whom were late in applying for licence renewal. In addition, 3 Letters of Warning were issued to SABS representatives and 1 Letter of Warning was issued to a health care provider. Letters of Warning do not require formal investigations and are not included in the preceding statistics.

Letters of Censure

There were 15 Letters of Censure issued in addition to the 11 Letters of Censure that resulted from formal investigations.

Minutes of Settlement and Superintendent's Orders

Two agents/representatives entered into Minutes of Settlement for non-compliance with legislated requirements, of these one agent consented to an order revoking his licence.

Amado Bisda

By an order, dated August 17, 2005, this life insurance agent's licence was revoked. The agent admitted to forging a client's signature and to selling insurance policies while not licensed.

Shiwali Mohan,

AB Consultants Group Inc.

By an order, dated September 6, 2005, Ms. Mohan agreed that she will not on her own behalf or on behalf of another person, directly or indirectly, unless she is employed and supervised by a lawyer in good standing with the Law Society of

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 as an adviser, 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 two years. It was determined that Ms. Mohan had violated the Code of Conduct for Statutory Accident Benefit Representatives.

Prosecutions

Mortgage Brokers

Charge: Acting as a mortgage broker while unregistered

Against: Daniel MacDonald

Verdict: Guilty

On May 20, 2005, in the Ontario Court of Justice in Brockton, Ontario, Mr. MacDonald pleaded guilty and was convicted of one count of carrying on business as a mortgage broker while unregistered, contrary to the *Mortgage Brokers Ac*t. He was fined $2,500, and sentenced to 6 months in jail, which was suspended on the condition that he be placed on probation for two years, that he provide records to FSCO, that he dissolve his corporation Dan MacDonald Investments Ltd., that he advise all borrowers that he cannot act as a broker, and that he not communicate with investors and borrowers except through counsel.

Mr. McDonald had previously been convicted under the *Mortgage Brokers Act* in 2000.

Credit Unions

Charge: Failing to submit to the Superintendent a report concerning the credit union's liquidity deficiency.

Against: Edward Sarnecki

Verdict: Guilty

On September 20, 2005 in the Ontario Court of Justice in Toronto, Ontario, Mr. Sarnecki, the former chief executive officer of St. Stanislaus-St. Casimir's Polish Parishes Credit Union Limited, pleaded guilty and was convicted of permitting a contravention by the credit union of the regulation made under the *Credit Unions and Caisses Populaires Act*, namely, failing to submit to the Superintendent a report concerning the credit union's liquidity deficiency. He was fined $8,000.

Note: Depository funds were not at risk.

Hearings

An Advisory Board established under the *Insurance Act* 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, and then makes a recommendation to the Superintendent.

Life agent: Dan Benezra (Vaughan)

Advisory Board Hearing: Agent did not request hearing

Decision: Licence revoked

A Notice of Opportunity for Hearing was sent to Mr. Benezra to consider the revocation or suspension of his life insurance agent's licence following allegations that he had demonstrated a lack of requisite knowledge and integrity, caused another person to write an examination on his behalf, provided false information to FSCO and failed in his duty to furnish information. Mr. Benezra did not request a hearing.

By decision dated July 29, 2005, the Superintendent found the allegations against Mr. Benezra to be established and ordered that his life insurance agent licence be revoked effective July 29, 2005.

Life agent: Andre Boisvert (Long Sault)

Advisory Board Hearing: July 14, 2005

Decision: Licence suspended

An Advisory Board hearing was conducted in Cornwall to consider the revocation or suspension of Mr. Boisvert's licence following allegations that he had been convicted of a serious crime and is not of good character or reputation, or a suitable person to hold a licence, and also, that he furnished false or misleading information to FSCO. In its report, the Board found that the first allegation against Mr. Boisvert had been established and recommended that his licence be suspended.

By decision dated August 10, 2005, the Superintendent adopted the findings of the Advisory Board and ordered that Mr. Boisvert's life

insurance agent licence be suspended for a period of four months, commencing September 15, 2005.

Life agent: Gary Mathew Phillips (Courtice)

Advisory Board Hearing: Agent did not request hearing

Decision: Licence revoked

A Notice of Opportunity for Hearing was sent to Mr. Phillips to consider the revocation or suspension of his life insurance agent's licence following allegations that he was not suitable to be an insurance agent as a result of engaging in behaviour described in his Criminal Code conviction and providing false information in his application for a licence as an insurance agent. Mr. Phillips did not request a hearing.

By decision, dated July 26, 2005, the Superintendent found the allegations against Mr. Phillips to be established and ordered that his life insurance agent licence be revoked effective July 26, 2005.

Life agent: Maurice Brazeau (Orleans)

Advisory Board Hearing: May 18-19, 2005

Decision: Licence suspended, undertaking requiring supervision

An Advisory Board hearing was conducted in Ottawa to consider allegations against
Mr. Brazeau. The Board found that Mr. Brazeau had committed fraudulent acts, had committed acts which demonstrated untrustworthiness to transact the insurance agency business, and was not of good character. However, the Board noted this character deficit was neither perpetual nor pervasive.

By decision dated August 16, 2005, the Superintendent ordered that Mr. Brazeau's life insurance agent licence be subject to certain conditions for five years, including providing a written undertaking signed by another licensed agent who will supervise Mr. Brazeau and co-sign all applications as evidence of joint responsibility that there is no continuation of the behaviour by Mr. Brazeau that was the subject of the allegations made at the Board Hearing. The Superintendent also ordered that Mr. Brazeau's licence be suspended for six months, commencing September 30, 2005, but as the decision of the Quebec Chambre de la Securite financiere (CSF) related to the same allegations is being appealed to the Quebec courts and the court has stayed the imposition of the penalty by the CSF pending the appeal, the Superintendent agreed to delay the suspension until September 30, 2006 if Mr. Brazeau provided the undertaking by September 30, 2005. Mr. Brazeau did provide the required undertaking thereby delaying the start of his licence suspension.

Regulatory Actions and Related Hearings

Under the *Insurance Act*, if the Superintendent intends to make an Order, a notice must first be given to those who may be affected and an opportunity for a hearing must be provided. Where there is a request for a hearing, the FST will hear the matter and decide whether or not the proposed Order should be made. Where there is no request for a hearing, the Superintendent may make the Order set out in the notice.

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 FST.

Action: Permanent Cease And Desist Order

Against: David Braganza operating as "Financial Link" "Financial Traders" and "Capital Traders Plus"

Date: August 11, 2005

On July 29, 2005, a Temporary Cease and Desist Order was issued against Mr. Braganza operating as "Financial Link," "Financial Traders," and "Capital Traders Plus." The Temporary Cease and Desist Order became permanent August 11, 2005. The Superintendent believed that Mr. Braganza was not complying with the requirements of the *Loan and Trust Corporations Act* as neither Mr. Braganza nor "Financial Link," "Financial Traders," or "Capital Traders Plus"is a registered loan or trust corporation under the *Act*; and that Mr. Braganza is conducting, undertaking or transacting in Ontario the business of a loan or trust corporation by borrowing money from the public by receiving deposits for the purpose of lending or investing such money, in contravention of the *Act.*

The Superintendent believed there was clear and cogent evidence that Mr. Braganza's contravention of the *Act* is ongoing; it was reasonable to infer from the clear and cogent evidence of Mr. Braganza's past conduct that informing him that he was contravening the *Act* would not deter him; and it was reasonable to infer from the clear and cogent evidence of Mr. Braganza's past conduct that he would give depositors little information about their deposits, and he would stonewall their requests for information and for repayment.

The Superintendent ordered that: Mr. Braganza and "Financial Link" or any person or corporation acting on behalf of or as agent of Mr. Braganza or "Financial Link" cease conducting, undertaking or transacting in Ontario the business of a loan or trust corporation by receiving deposits and lending or investing such money; Mr. Braganza and Financial Link deliver up to a representative of the Superintendent copies of all business records including but not limited to, lists of the names of all investors, the amounts received from each investor, the bank accounts where all the deposits are invested, and all such other records and documents as are requested; and Mr. Braganza and Financial Link, or any person or corporation acting on behalf of or as agent of David Braganza or Financial Link, take all

action, or cause all such action to be taken, to preserve all existing funds, deposits, securities or assets and to regain control of any funds, deposits, securities or assets from any person, and to hold all such funds, deposits, securities or assets in trust for the Superintendent pending further Order of the Superintendent, the FST, or the Superior Court of Justice.

Action: **Permanent Cease and Desist Order**

Against: **ING Insurance Company of Canada and ING Novex Insurance Company of Canada**

Date: **August 22, 2005**

A Permanent Cease and Desist Order was issued against ING Insurance Company of Canada and ING Novex Insurance Company of Canada. On August 4, 2005, the Superintendent issued a Notice of Proposed Cease and Desist Order being of the opinion that ING and Novex had committed an unfair or deceptive act or practice by inadvertently charging rates for coverages or categories of automobile insurance that were not approved by the Superintendent. ING and Novex were each served with a copy of the Notice of Proposed Cease and Desist Order. Neither ING nor Novex requested a hearing within the prescribed 15 days.

On August 22, 2005, the Superintendent ordered that the companies:

(a) Reimburse affected policyholders by a date and in a manner acceptable to the Superintendent. The plan for reimbursement included the following features:

(i) In any case where the amount to be reimbursed was $5 or greater, reimbursement for the appropriate amount plus interest shall be sent to the latest address on file, or the last known address from the policyholder's broker.

(ii) A notice be placed in a national newspaper informing the public of the reimbursement process and the fact that amounts to be reimbursed of less than $5 can be obtained upon request.

(iii) Any amounts that remain unclaimed after an appropriate period of time be donated to a charity.

(b) On or before the Companies' next annual general meeting, the Companies are required to provide to the Superintendent confirmation, in writing, that their respective boards of directors are satisfied that their current:

(i) written internal control procedures with respect to the handling of policyholder complaints are effective and that senior company officials, with appropriate authority, have the responsibility and adequate resources to oversee the receipt, investigation and response to policyholder complaints, including those complaints involving rates, classification and billing; and,

(ii) written internal control procedures with respect to system change management are effective and that any system change that will have, or potentially have, an impact on rates applied to policyholders, are reviewed and approved by a management official or committee with management responsibility extending beyond the operational unit proposing the change and that system changes are consistent with current industry and IT standards.

Action: Permanent Cease And Desist Order

Against: Mary (Patricia) Norris aka Pat Norris, aka Mary Patricia Kehoe, aka Patricia Ann Kehoe, aka Patricia Ann Riopelle, aka Mary Riopelle.

Date: September 15, 2005

A Permanent Cease And Desist Order was issued against Mary (Patricia) Norris aka Pat Norris, aka Mary Patricia Kehoe, aka Patricia Ann Kehoe, aka Patricia Ann Riopelle, aka Mary Riopelle.

The Superintendent issued a Notice and an Interim Order on August 31, 2005. There was no request for a hearing within the prescribed 15 days and the Interim Order became permanent on September 15, 2005.

The Superintendent was of the opinion that Ms. Norris had committed unfair or deceptive acts or practices in the business of acting as a statutory accident benefits representative. Serious questions had arisen as to the proper and legal name and identity of Ms. Norris; and Ms. Norris had provided misinformation about her criminal record.

The Superintendent ordered Ms. Norris to: immediately cease carrying on business as a statutory accident benefit representative; immediately notify in writing all her clients who have claims for statutory accident benefits that she can no longer act for them; provide them with a copy of the Cease and Desist Order; provide copies of every notification sent to each client to the Superintendent; and, immediately cease advertising or holding out, in any form, as a statutory accident benefit representative within Ontario.

Action: Cease and Desist Order

Against: David Spektor, Harris Ateka , and GTA Immigration Consulting Agency

Date: August 25, 2005

In August 2005, Cease and Desist Orders were issued against Mr. Spektor, Mr. Ateka, and GTA Immigration Consulting Agency for

committing an unfair and deceptive act or practice by acting as an agent without a licence. Mr. Spektor, Mr. Ateka, and GTA Immigration Consulting Agency had consented to an Order by the Superintendent requiring him to cease and desist acting as an agent without a licence. Mr. Spektor, Mr. Ateka, and GTA Immigration Consulting Agency were ordered to: immediately cease and desist accepting funds from persons in Ontario or elsewhere for the purpose of putting in place automobile insurance policies on vehicles owned by persons other than Mr. Spektor, Mr. Ateka, and GTA Immigration Consulting Agency; and refrain from contacting any insurance company directly or indirectly for the purpose of putting in place insurance on vehicles, property or other things of value that do not belong to Mr. Spektor, Mr. Ateka, or GTA Immigration Consulting Agency.

12-Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months (October 1, 2004 - September 30, 2005), FSCO took 244 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	104
Licence conditions via Minutes of Settlement	1
Paralegals via Minutes of Settlement	1
Provincial Offences Court convictions and fines	13
Revocation of sponsorship	1

Licence suspensions	9
Licence surrenders	55
Licence revocations	20
Cease & Desist orders	15
Undertakings	3
Paralegal terminations	20
Application denied	2
Total	**244**

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring through-out the year. Over the past 12 months, there have been 26,712 instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken.

Monitoring Activities	**Number of Occurrences**
Continuing education audits	195
Police criminal record checks life agents/applicants/paralegals	24,763
Complaint reviews	215

Errors & Omissions insurance audits - insurance agents	1,324
Errors & Omissions insurance audits - paralegals	215
Total	**26,712**

Dispute Resolution 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. Under section 282(11.2), a representative can be ordered to pay expenses personally in certain situations. Appeals are to the Director of Arbitrations, and can be heard by the Director or his Delegate.

Type of Decision	Arbitration
Date of Decision	September 28, 2005
File Number	A03-001643
Legislation	Bill 164
Appeal Status	No appeal

Applicant	Sylvia Crossey
Insurer:	Farmers' Mutual Insurance Company
Type of Award	Special award
Amount of Award	$10,000
Issue	The insured person claimed income replacement benefits, supplementary benefits, housekeeping and home maintenance expenses, interest, a special award and expenses.
Findings	The arbitrator found that despite the insured person's lengthy return to work, she had established that she was entitled to additional benefits due to impairments sustained in the accident. The arbitrator found that the insurer had unreasonably withheld benefits in a number of respects, which are detailed in the decision.

Order	Farmers' shall pay to Sylvia Crossey $44,274.00 for weekly income replacement benefits that are owed to Mrs. Crossey for the period up to March 31, 2005. Farmers' shall pay to Sylvia Crossey supplementary medical expenses as follows:

	(a) $1,887.15 for chiropractic treatment provided by Dr. S. Velji from November 18, 1999 to February 27, 2003; and (b) $1,350.00 for massage therapy provided by Cheryl Wright from May 16, 2002 to March 11, 2003. Farmers' shall pay Sylvia Crossey interest on the overdue amounts set out above from the date each payment became overdue at the rate of 2 per cent per month compounded monthly, pursuant to section 68 of the *Schedule*. Farmers' shall pay Sylvia Crossey a special award, fixed in the sum of $10,000. If the parties cannot agree on the issue of entitlement or amount of the expenses of this Arbitration proceeding, they may request a determination of these issues in accordance with Rule 79 of the *Dispute Resolution Practice Code, 4th Edition*.

Type of Decision	Arbitration

Date of Decision	June 24, 2005 (not included in the 2nd quarter Monitoring and Enforcement Bulletin)
File Number	A04-000521
Legislation	Bill 59
Appeal Status	No appeal
Applicant	Ashokh Gehi
Insurer:	Guarantee Company of North America
Type of Award	**Representative ordered to pay expenses**
Amount of Award	$819.96
Issue	Adjournment request by the insured person
Findings	The arbitrator found that the reason the insured person asked for an adjournment was because he was not ready for the hearing which appeared to be due to the conduct of his representative, Mr. Justin Mariani. The arbitrator allowed the adjournment, but ordered that the insurer would receive its expenses. In this decision, the arbitrator found that the need for the adjournment “stemmed principally from the fact

	that Mr. Mariani had failed to take the necessary steps to be ready for arbitration at an appropriate time," and ordered Mr. Mariani to pay the insurer's expenses personally.
Order	Mr. Mariani was ordered to pay $819.96 forthwith to the Guarantee Company of North America as assessed expenses in this adjournment.

Type of Decision	Arbitration
Date of Decision	July 7, 2005
File Number	A02-001225
Legislation	Bill 59
Appeal Status	Under appeal
Applicant	Stanislav Kanareitsev
Insurer:	TTC Insurance Company Limited
Type of Award	Special award
Amount of Award	$10,000

Issue	The insured person claimed weekly non-earner benefits and other benefits, including medical benefits, attendant care benefits, housekeeping and home maintenance benefits, as well as the cost of various reports.
Findings	The arbitrator found in favour of the insured person on entitlement, and also found that the TTC unreasonably delayed the payment of benefits because it continued to rely on the one medical opinion about the cause of the insured person's injuries despite the many reports that supported the insured person's position.
Order	The arbitrator ordered that Mr. Kanareitsev sustained an "impairment" as a result of the accident, and ordered the TTC to pay the benefits claimed. The arbitrator also ordered the TTC to "pay a special award of $10,000 pursuant to subsection 282(10) of the *Insurance Act* because it unreasonably withheld or delayed payments to Mr. Kanareitsev."

Type of Decision	Arbitration
Date of Decision	July 21, 2005

File Number	A04-001188
Legislation	Bill 59
Appeal Status	No appeal
Applicant	Merg Kong
Insurer:	Personal Insurance Company of Canada
Type of Award	Special award
Amount of Award	$1,000
Issue	The insured person claimed income replacement benefits, physiotherapy services, and the cost of an orthopaedic mattress cover, interest, a special award and expenses.
Findings	The arbitrator found that the insured person was entitled to income replacement benefits, the cost of the orthopaedic mattress, interest on those amounts, and expenses, but not the physiotherapy services claimed. The arbitrator also found that Personal unreasonably delayed the payment of some benefits, and ordered it to pay a special award of $1,000.

Order	Personal shall pay Ms. Kong's income replacement benefits of $432 per week from June 24, 2003, together with interest under section 46 of the *Schedule*, until Personal complies with the stoppage provisions contained in section 37 of the *Schedule* and subject to Personal's right to claim repayment. Ms. Kong is not entitled to payment for services provided by PhysioMed Davenport. Personal shall pay Ms. Kong $270 for the cost of an orthopaedic mattress cover, together with interest under section 46 of the *Schedule*, from February 23, 2004. Ms. Kong is entitled to a special award in the amount of $1,000 pursuant to section 282(10) of the *Insurance Act*. The arbitrator deferred the issue of entitlement to expenses of the arbitration proceeding.

Type of Decision	Arbitration
Date of Decision	August 29, 2005
File Number	A02-001646

Legislation	Bill 59
Appeal Status	Under appeal
Applicant	Kulaveerasingam Ramalingam
Insurer:	State Farm Mutual Automobile Insurance Company
Type of Award	Special award
Amount of Award	The arbitrator identified the benefit categories upon which the special award will be calculated, but was unable to calculate the amounts upon which the special award will be calculated and the amount of the special award. He remains seized of these issues.
Issue	This dispute has a lengthy history, involving, to this point, seven formal arbitration decisions. The insured person claimed income replacement benefits and various other benefits. Many of these claims were resolved by the time of this hearing, but the insured person asked for a special award.
Findings	The arbitrator found that State Farm had unreasonably withheld or delayed the payment of benefits in a number of instances.

Order	State Farm shall pay Mr.Ramalingam a weekly income replacement benefit of $388.42. The arbitrator then sets out, in 14 paragraphs, the benefits in respect of which State Farm is and is not liable to pay a special award.

Type of Decision	Appeal
Date of Decision	August 9, 2005
File Number	P04-00008
Legislation	Bill 59
Appeal Status	No further appeal or judicial review
Applicant	Vladislav Sorokin
Insurer:	Wawanesa Mutual Insurance Company
Type of Award	Special award

Amount of Award	Reduced from $15,000 to $7,500
Issue	The arbitrator, as reported in Monitoring and Enforcement Bulletin No. G-06/04, ordered Wawanesa to pay income replacement benefits, the cost of various medical treatments, and the cost of a disability certificate. The arbitrator also ordered Wawanesa to pay a special award in the amount of $15,000 for unreasonable delay and withholding of the benefits awarded. Wawanesa appealed, claiming that the arbitrator erred in ordering it to pay benefits and special award.
Findings	On appeal, the Director's Delegate concluded that the arbitrator did not err in respect of the benefits, but overturned the special award, substituting her order that Wawanesa pay a special award of $7,500.

Order	The appeal of the arbitration order, dated February 9, 2004, is dismissed with respect to paragraphs 1 (income replacement benefits), 2 (medical treatment), 3 (disability certificate) and 5 (interest). The appeal is allowed with respect to paragraph 4 (special award), which is revoked and replaced with the following: Wawanesa shall pay a special award of $7,500, less any amounts

	already paid. If the parties are unable to agree on appeal expenses, they may contact the arbitrator in accordance with Rule 79 of the *Dispute Resolution Practice Code*.

Type of Decision	Arbitration
Date of Decision	August 24, 2005
File Number	A04-001459
Legislation	Bill 59
Appeal Status	No appeal
Applicant	Avtar Thind
Insurer:	ING Insurance Company of Canada
Type of Award	Representative ordered to pay expenses
Amount of Award	$500
Issue	The insurer claimed that the insured person's representative, Mr. Richard Gordon, had a conflict of interest that he had not disclosed and, therefore, should not be allowed to appear in the matter as a representative.

Findings	The arbitrator found that Mr. Gordon had not fulfilled his duties and responsibilities as a representative by failing to avoid the appearance of a conflict of interest, failing to act with utmost courtesy, failing to notify the other side of his involvement in a timely manner, and by making inappropriate allegations about the competence of another SABS Representative and the conduct of insurer's counsel.
Order	Mr. Gordon is excluded from representing Mr. Thind in these proceedings. Mr. Gordon shall personally pay to ING expenses of $500.

Type of Decision	Arbitration
Date of Decision	August 30, 2005
File Number	A04-000773
Legislation	Bill 59
Appeal Status	No appeal
Applicant	Antoinetta Valle

Insurer:	Aviva Canada Inc.
Type of Award	Special award
Amount of Award	$500
Issue	The insured person claimed additional attendant care, housekeeping and caregiver benefits, a special award in respect of these benefits, and additional medical benefits.
Findings	The arbitrator found that the insured person was entitled to the benefits claimed, but only for a limited period. He also found that Aviva failed to follow the regulation in suspending the insured person's benefits, resulting in the payment of his benefits being unreasonably withheld or delayed.

Order	Aviva shall pay to Ms. Valle additional attendant care benefits in the amount of $2,352.46, plus interest in accordance with section 46 of the *Schedule* from November 4, 2004. Aviva shall pay to Ms. Valle additional housekeeping care benefits in the amount of $733.86, plus interest in accordance with section 46 of the *Schedule* from December 31, 2004. Aviva shall pay to Ms. Valle additional caregiver benefits in the amount

	of $174.80, plusinterest in accordance with section 46 of the *Schedule* from November 4, 2004. Aviva shall pay to Ms. Valle a special award in the amount of $500. Aviva shall pay to Ms. Valle an additional medical benefit in the amount of $1,523, plusinterest in accordance with section 46 of the *Schedule* from April 20, 2004.

Type of Decision	Appeal
Date of Decision	July 5, 2005
File Number	P04-00027
Legislation	Bill 164
Appeal Status	No further appeal or judicial review
Applicant	Sukwinder Kaur Virk
Insurer:	Liberty Mutual Insurance Company of Canada (now Liberty Insurance Company of Canada)

Type of Award	Special award
Amount of Award	Confirmed the arbitrator's order that Liberty Mutual pay a special award of $1,500.
Issue	In a decision dated August 4, 2004, reported in the Monitoring and Enforcement Bulletin No. G-03/05, the arbitrator found that the insured person was entitled to death benefits. She did not accept the insured person's argument that Liberty Mutual should pay a special award for unreasonably failing to pay these benefits, but ordered Liberty Mutual to pay a special award of $1,500 because it unreasonably withheld the payment of funeral expenses, which were not paid until shortly before the arbitration hearing. Liberty Mutual appealed, claiming that the arbitrator erred in concluding that death benefits were payable. The insured person appealed, challenging the arbitrator's interest award and also claiming that she erred in not imposing a special award for the non-payment of the death benefits.

Order	Liberty's appeal is dismissed with respect to death benefits. Mrs. Virk's appeal is allowed with respect to interest on death benefits. Paragraph 1 of the arbitrator's order, dated August 4, 2004, is revoked and replaced with the following: Liberty shall pay to Mrs. Virk death benefits of $10,020 for the death of her child Pushinder under subsection 51(5) of the *SABS-1994*, with interest under s. 68 of the *SABS-1994* from 30 days after it received her application dated December 27, 1995. Mrs. Virk's appeal is dismissed with respect to special award. Paragraph 2 of the arbitrator's order is confirmed. If the parties are unable to agree on appeal expenses, they may contact the arbitrator in accordance with Rule 79 of the *Dispute Resolution Practice Code*.

Financial Services Tribunal (FST) Decisions

Name	Elias Cicvak
Sector	Insurance

Date of Decision	September 8, 2005
Disposition	Mr. Cicvak (the Appellant) appealed the decision of a delegate of the Superintendent dated February 28, 2005. That decision was to deny the Appellant's application for a life insurance agent's licence on the basis that he had not passed the required qualifying examination. The Tribunal dismissed Mr. Cicvak's appeal on the basis that he had not met the formal proficiency requirements for a licence that have been imposed under the *Insurance Act* and regulations in the interests of protecting the insurance-buying public.

For the full text of previous Decisions/Orders, please visit FSCO's website at www.fsco.gov.on.ca or visit the FST's website at www.fstontario.ca.

Colin McNairn	Bob Christie
Chair	Chief Executive Officer
Financial Services Commission	Financial Services Commission
of Ontario	of Ontario
Chair	Superintendent of Financial Services
Financial Services Tribunal	

January 27, 2006

ISSN 1481-1499

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Last Modified: 2/2/2006 4:07:43 PM

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