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Bulletin

No. G- 03/06
– General

Monitoring and enforcement report - including prosecution and hearing decisions - October 1 to December 31, 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 5,608 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 September 30, 2005	**Plus complaints received during the period**	**Less complaints in progress at end of December 31, 2005**	**Total number of complaint reviews completed during the period**
Agent	85	75	68	92
Paralegal	30	2	30	2
Health Care Provider	6	1	6	1

DISPOSITIONS				
	Total Cases Received	**Cases resolved**	**Cases closed**	**Cases forwarded for (potential) enforcement**
Agent	92	12	13	67

Audits

FSCO initiated 665 audits of life agents during the 4th 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 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.

Investigations Initiated	
Agents	
Suitability	9

Complaints about agent conduct	13
Doing business without a licence	7
Insurance Companies	
Doing business without a licence	1
Complaints about insurance company conduct	3
Mortgage Brokers	
Complaints about mortgage broker conduct	1
Paralegals	
Doing business unregistered	1
Complaints about paralegal conduct	2
Suitability	3
Loan & Trust Companies	
Doing business unregistered	2
Grand Total	**42**

Outcome of investigations	
A total of 30 cases were completed:	
Charges laid in Provincial Offences court	1
Minutes of Settlement and Superintendent's Orders issued	3
Cease & Desist Orders issued	3
Letters of Censure issued	2
Closed files (no enforcement action warranted)	23
Total	**30**

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, 140 Letters of Warning were issued to life agents, all of whom were late in applying for licence renewal. In addition, three Letters of Warning were issued to SABS representatives and one 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 five Letters of Censure issued in addition to two Letters of Censure that resulted from formal

investigations.

Minutes of Settlement and Superintendent's Orders

Andrew Houlahan

By an Order dated December 22, 2005, the life insurance agent's licence of Andrew Houlahan was revoked. The agent was involved in forgery and fraud.

Alexandra E. Middlemiss

By an Order dated December 12, 2005, the insurance agent's licence of Alexandra E. Middlemiss was revoked. The agent had had misappropriated funds. The agent deposited clients' cheques and cash to her own personal account and used the funds for personal use.

Timothy David Magill
Ben Net Corporation

By an Order dated December 29, 2005, Timothy David Magill and Ben Net Corporation were prohibited from acting as an insurance agent. Mr. Magill and Ben Net Corporation were inadvertently acting as an insurance agent without being licensed. Mr. Magill signed Minutes of Settlement on behalf of himself and his corporation. Ben Net Corporation is now insolvent.

David E. Sampson

By an Order dated November 16, 2005, the insurance agent's licence of David E. Sampson was revoked. The agent had committed fraud, licensing violation and was untrustworthy. The agent admitted that he misappropriated his clients' funds in two separate incidents.

Prosecutions

Mortgage Brokers

Charge: Failure to file financial statements
Against: Walter Muroff & Company
Verdict: Guilty

On October 20, 2005, at the Ontario Court of Justice in Toronto, Walter Muroff & Company pleaded guilty and was convicted of two counts of failing to file financial statements as required under the Mortgage Brokers Act. The company was fined $3,000 in total.

Insurance

Charge: Acting as an insurance agent without holding a corporate agent's licence
Against: Baker and Baker Insurance Inc.
Verdict: Guilty

On December 7, 2005, at the Ontario Court of Justice in Toronto, Baker and Baker Insurance Inc. pleaded guilty and was convicted under the Insurance Act of acting as an insurance agent without a corporate licence. The company was fined $4,500.

Loan and Trust Corporation / Insurance

Charge: **Conducting the business of a loan and trust corporation without being registered; and carrying on the business of insurance in Ontario without a licence**

Against: **Joseph LaCroix**

Verdict: **Guilty**

On October 3, 2005, Joseph LaCroix, the sole officer and director of Digital World Financial, pleaded guilty and was convicted of conducting the business of a loan and trust corporation without being registered in the province of Ontario. LaCroix was fined $50,000 and placed on probation for two years. As a condition of the probation LaCroix must pay approximately $2.2 million in restitution to depositors.

LaCroix also pleaded guilty and was convicted of carrying on the business of insurance in Ontario without a licence and was fined $5,000.

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/adjuster, as well as that put forward by counsel for FSCO, and then makes recommendations to the Superintendent.

Life agent: Leslie P. Jacobs (Thornhill)
Advisory Board Hearing: September 8 and 9, 2005
Decision: Application for licence denied

An Advisory Board hearing was conducted in Toronto to consider whether Leslie P. Jacobs is a suitable person to hold a life insurance agent's licence. The Advisory Board found that Mr. Jacobs committed acts which demonstrated that he was not of good character, is not suitable to hold a licence and does not have a satisfactory record in the business of insurance. The Advisory Board recommended that the Superintendent refuse his application for a life insurance agent's licence.

By decision, dated November 6, 2005, the Superintendent considered these attributes are pervasive and are not susceptible to practical management through licence conditions and ordered that Mr. Jacob's application for a licence as an insurance agent be denied.

Life agent: Esteban Alfredo Jacome
Advisory Board Hearing: October 14, 2005
Decision: Application for licence denied

An Advisory Board hearing was conducted in Toronto to consider whether
Esteban Alfredo Jacome is a suitable person to hold a life insurance agent's licence. The Advisory Board found that Mr. Jacome was not suitable to hold a life insurance agent's licence because he demonstrated a lack of honesty and integrity. He was convicted of criminal offences involving dishonesty and falsely stated to FSCO that he has not been convicted of a criminal offence.

In a decision, dated November 6, 2005, the Superintendent agreed with the recommendation of the Advisory Board and ordered that Mr. Jacome's application for a licence as an insurance agent be denied.

Life agent: Antonio Oliveira
Advisory Board Hearing: Agent did not request Hearing
Decision: Licence revoked

A Notice of Opportunity for Hearing was sent to Mr. Oliveira to consider revocation of his licence following allegations that he had failed to facilitate an examination by the Superintendent's delegate and furnished false information to the Superintendent.

By decision, dated December 6, 2005, the Superintendent found the allegations against Mr. Oliveira to be established and ordered that Mr. Oliveira's life insurance agent's licence be revoked.

Life agent: James E. Parker
Advisory Board Hearing: October 17, 2005
Decision: Licence suspended for two years

An Advisory Board hearing was conducted in Toronto to consider allegations against James E. Parker. The allegations were: that he had committed fraudulent acts, had committed acts which demonstrated untrustworthiness to transact the insurance agency business, was not of good character, and had committed acts which demonstrated he was not a suitable person to hold a licence. The Advisory Board found the allegations to be established and recommended Mr. Parker's licence be suspended for two years.

In a decision, dated August 16, 2005, the Superintendent accepted the Advisory Board's recommendation and ordered that Mr. Parker's life insurance agent's licence be suspended for two years commencing January 1, 2006.

Life agent: Kristin Thomas
Advisory Board Hearing: Agent did not request Hearing
Decision: Application for licence denied

A Notice of Opportunity for Hearing was sent to Ms. Thomas to consider refusing her application for a licence following allegations that she had provided false and misleading information on her application for a licence.

By decision, dated December 21, 2005, the Superintendent found the allegations against Ms. Thomas to be established and ordered that Ms. Thomas' application for a life insurance agent's licence be refused.

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: Cease and Desist Order

Against: State Farm Mutual Automobile Insurance
Date: December 9, 2005

On December 8, 2005, the Superintendent issued a Notice of Proposed Cease and Desist Order as he was of the opinion that State Farm Mutual Automobile Insurance Company committed unfair or deceptive acts or practices by charging rates for coverages or categories of automobile insurance that were not approved by the Superintendent. In a letter dated December 8, 2005, State Farm waived its right to a hearing.

On December 9, 2005, the Superintendent issued a Cease and Desist Order requesting State Farm to:

(A) Reimburse all affected policyholders (both current and former policyholders) in a manner acceptable to the Superintendent. The plan for reimbursement shall include the following features:

> (i) Affected policyholders shall be reimbursed the amount that was paid in excess of the approved rate, interest at a rate of 5% from the time of overpayment to the time of reimbursement and any refund required for overpayment of Ontario Sales Tax.
> (ii) Reimbursement shall be by means of a cheque and/or credit to the policyholder's account.
> (iii) In any case where the address of a former policyholder is unavailable or a cheque sent to a policyholder remains uncashed after a specified date, the reimbursement amount shall be donated to charity.
> (iv) At the conclusion of the reimbursement process, State Farm shall provide the Superintendent with a written report containing details of its compliance with the reimbursement plan.

(B) On or before February 28, 2006, State Farm shall:

> (i) Provide written confirmation to the Superintendent that its Chief Agent and Senior Vice-President for Canada is satisfied that State Farm's written internal control procedures with respect to its operating processes have been reviewed and amended so that the deficiencies that resulted in, or permitted, the charging of unapproved rates have been appropriately addressed.
> (ii) Establish and implement written internal control procedures, acceptable to the Superintendent, which shall ensure that a senior company official, with appropriate authority, will be given the responsibility and adequate resources to oversee the receipt, investigation and response to inquiries, complaints and concerns made by agents or policyholders involving rates, classification and billing.

Action: Permanent Cease and Desist Order
Against: Khalil (Evan) Abraham Ismaeli aka Khalil Asmail and Top Defence Inc.
Date: June 30, 2005

In an Interim Cease and Desist Order dated June 14, 2005, the Superintendent ordered that Khalil Abraham Ismaeli aka Khalil Asmail, and Top Defence Inc., and any agents or representatives thereof:

A. Immediately cease carrying on business as statutory accident benefit representatives;
B. Immediately notify in writing all clients of Khalil (Evan) Abraham Ismaeli who have claims for statutory accident benefits that he and Top Defence Inc. can no longer act for them; provide them with a copy of this Cease and Desist Order; and provide copies of every notification sent to each client to the Superintendent forthwith; and,

C. Immediately cease advertising or holding out, in any form, as a statutory accident benefits representative within Ontario.

A request for hearing before the Financial Services Tribunal was made by Khalil (Evan) Ismaeli; however, no further steps were taken to perfect the request for hearing.

On October 20, 2005, by Notice of Dismissal, the Tribunal dismissed the proceeding. Accordingly, no proper

request for hearing was filed with the Tribunal and in accordance with section 441(4) of the Act, the Interim Cease and Desist Order became permanent on June 30, 2005.

Action: Cease and Desist Order
Against: Western Assurance Company
Date: December 2, 2005

On November 25, 2005, the Superintendent issued a Notice of Proposed Cease and Desist Order as he was of the opinion the Western Assurance Company 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. On November 25, 2005, Western waived its right to a hearing.
On December 2, 2005, the Superintendent ordered Western to:
(A) Reimburse affected policyholders in a manner acceptable to the Superintendent. The plan for reimbursement shall include the following features:

> (i) On or before December 15, 2005, Western shall notify both current policyholders and those whose policies have been cancelled or terminated of their entitlement to reimbursement and the amount to be reimbursed. The amount reimbursed shall include interest.
> (ii) Reimbursement shall be by means of either cheque or credit to the policyholder's account.
> (iii) In any case where the address of a former policyholder is unavailable or a cheque sent to a policyholder remains uncashed after a specified date, the reimbursement amount plus interest shall be donated to charity.

(B) On or before February 28, 2006, Western shall provide written confirmation to the Superintendent that its board of directors is satisfied that Western's written internal control procedures with respect to system change management have been reviewed and amended so that the deficiencies that resulted in, or permitted, the charging of unapproved rates has been appropriately addressed.

12-Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months (January 1, 2005 - December 31, 2005), FSCO took 193 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	90
Provincial Offences Court convictions and fines	11
Licence suspensions	8
Licence surrenders	29
Licence revocations	17
Cease & Desist orders	15
Undertakings	3
Paralegal terminations	17
Application denied	3
Total	**193**

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring through-out the year. Over the past 12 months, there have been 25,812 instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken.

Monitoring Activities	Number of Occurrences
Police criminal record checks life agents/applicants/paralegals	24,011
Complaint reviews	268
Errors & Omissions insurance audits - insurance agents	1,318
Errors & Omissions insurance audits - paralegals	215
Total	**25,812**

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	Appeal
Date of Decision	December 7, 2005
File Number	P04-00038
Legislation	Bill 59
Appeal Status	No further proceeding
Applicant	Shannon STEWART
Insurer:	Liberty Insurance Company of Canada
Type of Award	Special award
Amount of Award	Arbitration order, including the special award, revoked and remitted for a new arbitration hearing
Issue	In an order dated November 16, 2004, the Arbitrator concluded that the Mr. Stewart was the spouse of Anna Pyles, who was killed in an automobile accident. As a result, she ordered the insurer to pay relevant benefits, interest, expenses and a special award of $25,000 (Reported in Bulletin G-03/05). Both parties appealed.
Findings	The Director's Delegate concluded that the Arbitrator erred in her interpretation of "spouse." As this affected the entire decision, she did not decide the other issues raised in the appeals.
Order	1. The cross-appeal is dismissed. The appeal is allowed, and the arbitration order of November 16, 2004 is revoked. The matter is remitted for a new arbitration hearing. 2. If the parties are unable to agree on expenses of the appeal and cross-appeal, I may be contacted in accordance with Rule 77 of the *Dispute Resolution Practice Code*.

Type of Decision	Appeal
Date of Decision	October 3, 2005
File Number	P04-00002
Legislation	Bill 59
Appeal Status	No further proceeding
Applicant	Luciano AMATO
Insurer:	Wawanesa Mutual Insurance Company
Type of Award	Special award
Amount of Award	Arbitration award of $40,000 reduced to $10,000
Issue	The insurer appealed an arbitration order, dated December 31, 2003 (reported in Bulletin G-03/04), that it must pay the insured person a special award of $40,000 because it unreasonably delayed the payment of benefits at the outset, and later acted unreasonably in terminating and continuing to withhold benefits.
Findings	On appeal, the Director's Delegate rejected the insurer's argument that the Arbitrator erred in ordering a special award, but found that the amount was too high, reducing it to $10,000.
Order	1. The appeal of the arbitration order, dated July 18, 2003, is dismissed. 2. The appeal of the arbitration order, dated December 31, 2003, is allowed with respect to paragraph 3 (special award), which is revoked and replaced with the following: Wawanesa shall pay a special award of $10,000, less any amounts already paid. 3. If the parties are unable to agree on appeal expenses, they may contact me in accordance with Rule 79 of the *Dispute Resolution Practice Code*.

Type of Decision	Arbitration
Date of Decision	October 19, 2005
File Number	A04-001564
Legislation	Bill 59
Appeal Status	No appeal
Applicant	Sarbjit SINGH
Insurer:	Aviva Canada Inc.
Type of Award	Award against representative
Amount of Award	$205.19
Issue	The parties disagreed about Mr. Singh's entitlement to accident benefits. Three pre-hearings were held, but were not productive due to various failures of Mr. Singh and his representatives, Stephen Braithwaite and Gursharan Sidhu.
Findings	The Arbitrator found that Mr. Singh and his representatives were equally responsible for the unnecessary expenses incurred by the insurer.
Order	1. Mr. Singh shall pay Aviva's expenses for pre-hearing time in the amount of $410.38, subject to order #2 below.

	2. Pursuant to subsection 282(11.2) of the *Insurance Act*, Mr. Sidhu and Mr. Braithwaite of Alliance Legal Services Inc. shall forthwith personally pay to Aviva 50% of the order ofexpenses payable to Aviva, in the amount of $205.19.

Type of Decision	Arbitration
Date of Decision	October 31, 2005
File Number	A04-000068
Legislation	Bill 59
Appeal Status	No appeal
Applicant	Ruganraj SEBAMALAI
Insurer:	Royal & SunAlliance Insurance Company of Canada
Type of Award	Expenses against representative
Amount of Award	Not determined
Issue	An application for arbitration was filed, but the insurer questioned whether Mr. Sebamalai had signed the application or authorized the proceedings.
Findings	The Arbitrator was not persuaded that Mr. Sebamalai signed the application or authorized the proceedings, and concluded that his representative, Alexander Nterekas, should be responsible for paying the insurer's reasonable expenses
Order	1. The arbitration application is withdrawn without terms, conditions or an award of expenses against Mr. Sebamalai. 2. Mr. Alexander Nterekas shall pay the arbitration expenses of Royal & SunAlliance as agreed upon or assessed.

Type of Decision	Arbitration
Date of Decision	December 13, 2005
File Number	A03-001363
Legislation	Bill 59
Appeal Status	Under appeal
Applicant	Maria MICHALSKI (for her guardian Krzysztof MICHALSKI)
Insurer:	Wawanesa Mutual Insurance Company
Type of Award	Special award
Amount of Award	Not yet determined
Issue	The parties disagreed about Mrs. Michalski's entitlement to attendant care benefits.
Findings	The Arbitrator found that Mrs. Michalski was catastrophically impaired as a result of the accident and that the insurer knew that from the outset. She also found various failures in the insurer's adjustment of this claim, resulting in an

	unreasonable delay in paying benefits.
Order	1. Wawanesa Mutual Insurance Company shall pay Maria Michalski attendant care benefits in the amount of $178,928.33, less a credit in an amount to be determined. 2. Wawanesa Mutual Insurance Company shall pay Maria Michalski interest on attendant care benefits in an amount to be determined. 3. Wawanesa Mutual Insurance Company shall pay Maria Michalski interest on housekeeping benefits in the amount of $7,062.18 pursuant to section 46 (2) of the *Schedule*. 4. Wawanesa Mutual Insurance Company shall pay Maria Michalski a special award in relation to attendant care benefits and housekeeping benefits in an amount to be determined. 5. The parties shall have 30 days to resolve the issues of the amount of Wawanesa's credit for attendant care benefits, interest on attendant care benefits and to make a joint submission in relation to these amounts, failing which I will receive further evidence and submissions on these issues. I remain seized of these issues, and of the amount of the special award. 6. If the parties are unable to agree on expenses, that issue may now be addressed.

Financial Services Tribunal (FST) Decisions

Name	Robert Crosbie and R.E.C. Paralegal
Sector	Insurance - SABS
Date of Decision	December 1, 2005
Disposition	The Tribunal ordered Crosbie and R.E.C. Paralegal to do the following during the period of one year from the effective date of its order: A. Cease carrying on business as statutory accident benefit representatives; B. Cease providing any service to anyone related in any way to a claim for statutory accident benefits, whether or not such services are charged a fee or not; and C. Cease advertising or holding out to the public in any way that services of any kind relating to claims for statutory accident benefits are offered or provided, whether or not such services are charged a fee or not.

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
Chair
Financial Services Commission
of Ontario
Chair
Financial Services Tribunal

Bob Christie
Chief Executive Officer
Financial Services Commission
of Ontario
Superintendent of Financial Services

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