

Property and Casualty - Auto Bulletins

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Monitoring and Enforcement Bulletins

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# Bulletin

No. G- 08/06
- General

## Monitoring and Enforcement Report - including prosecution and hearing decisions - April 1 to June 30, 2006

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 of the Automobile Insurance Division provides mediation, neutral evaluation, arbitration and appeal services as fair, cost-effective and timely alternatives to the court system. An arbitrator may decide at the conclusion of an arbitration hearing involving insurers and statutory accident benefits claimants, to impose penalties under the *Insurance Act*.

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, health care providers, insurance companies, and other financial services sectors. 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 1,924 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 March 31, 2006** | **Plus complaints received during the period** | **Less complaints in progress at end of June 30, 2006** | **Total number of complaint reviews completed during the period** |
| **Agent** | 61 | 58 | 63 | 56 |
| **Paralegal** | 33* | 4 | 26 | 11 |
| **Health Care Provider** | 3* | 1 | 2 | 2 |

**Note:** *Adjusted from previous reports.

| DISPOSITIONS | | | | |
|---|---|---|---|---|
| | **Total Cases Concluded** | **Cases resolved** | **Cases closed** | **Cases forwarded for (potential) enforcement** |
| **Agent** | 56 | 9 | 13 | 34 |

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 344 audits of life agents and 20 audits of paralegals during the 2nd quarter to ensure they met their Errors and Omissions (E&O) insurance requirements. Fifty (50) continuing education audits were initiated to ensure life agents met their Continuing Education (CE) 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 administrative action may be contemplated.

| **Investigations Initiated** | |
|---|---|
| **Agents** | |
| Suitability | 15 |
| Complaints about agent conduct | 9 |
| Doing business without a licence | 1 |
| **Insurance Companies** | |
| Doing business without a licence | 0 |
| Complaints about insurance company conduct | 1 |
| **Mortgage Brokers** | |
| Doing business unregistered | 0 |
| **Paralegals** | |
| Suitability | 1 |
| Complaints about company conduct | 1 |
| **Grand Total** | **28** |

| **Outcome of investigations** | |
|---|---|
| A total of 23 cases were completed: | |
| ○ Charges laid in Provincial Offences court | 0 |
| ○ Minutes of Settlement and Superintendent's Orders issued | 7 |
| ○ Cease & Desist Orders issued | 0 |
| ○ Letters of Censure issued | 1 |
| ○ Closed files (no enforcement action warranted) | 15 |
| **Total** | **23** |

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

## Letters of Censure

There was one Letter of Censure issued that resulted from formal investigations.

## Minutes of Settlement and Superintendent's Orders

Three agents entered into Minutes of Settlement for non-compliance with legislated requirements, and of these, two consented to orders revoking their licences.

### Kenneth Joseph Gareau

By an order, dated April 20, 2006, this life insurance agent was ordered to attend and successfully complete a course in ethics at his own cost by December 31, 2007, or his licence will be suspended until he completes this course. The agent had failed to carry out in utmost good faith his dealings with two clients and failed to place their interests before that of his own.

### Scott Stevens

By an order, dated June 12, 2006, this life insurance agent's licence was revoked. The agent had obtained loans totalling $77,500 from several clients.

### James W. Wilson and 1009863 Ontario Ltd. o/a Wilson Insurance & Financial Services

By an order, dated June 6, 2006, this life insurance agent's licence was revoked. The insurance agency licence was suspended until certain conditions are met. These conditions include that 51 per cent of all voting shares of the agency must be owned by someone other than the agent, his spouse or a related party. The agent had been affiliated with a company that was receiving deposits from the public but was not registered under the *Loan and Trust Corporations Act.*

Four (4) SABS representatives also entered into Minutes of Settlement**.**

### Miguel Laporte

By an order dated May 17, 2006, Mr. Laporte agreed to enter into a Minutes of Settlement agreement that he will not on his own behalf or on behalf of another person, directly or indirectly, unless he is employed and supervised by a lawyer in good standing with the Law Society of Upper Canada, solicit the right to negotiate, or negotiate or attempt 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 himself 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 Statutory Accident Benefits, until such time as he has filed a declaration pursuant to section 18 of Ontario Regulation 664, as amended, to be exempted from the prohibition set out in section 398 of the *Insurance Act*.

The result of the investigation concluded that although Mr. Laporte was registered as a SABS Representative from November 2002 to November 2003; he acted as a SABS representative for two clients in November and December 2005 and contacted insurers concerning their SABS claims without filing a declaration with FSCO, as required by law.

## Glen Bowie

By an order dated April 19, 2006, Mr. Bowie agreed to enter into a Minutes of Settlement agreement that he will not on his own behalf or on behalf of another person, directly or indirectly, unless he is employed and supervised by a lawyer in good standing with the Law Society of Upper Canada, solicit the right to negotiate, or negotiate or attempt 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 himself 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 Statutory Accident Benefits, for a period of two years from the date of signing of the Minutes of Settlement.

As a result of the investigation, the Superintendent determined that Bowie had acted as a SABS representative for four claims for statutory accident benefits between September 1, 2004 and October 4, 2004 without having filed a declaration pursuant to section 18 of the Ontario Regulation 664, as amended, to be exempted from the prohibition set out in section 398 of the *Insurance Act*.

## Anthony Ngai

By an order dated June 2, 2006, Mr. Ngai was issued a letter of caution regarding the false housekeeping expenses he submitted to the insurer for payment. During the course of the investigation, it was discovered that Mr. Ngai was also charging a contingency fee for as a percentage of settlements for statutory accident benefit claims. Mr Ngai agreed to enter into a Minutes of Settlement agreement that he will:

- Not charge or collect any fee on a contingency basis.
- Notify in writing all of Ngai and/or the Company's clients with whom a contingency fee arrangement is in place that the fee arrangement is contrary to the *Insurance Act* and regulations.
- Provide proof in writing of the steps taken in i) and ii) within 3 months of the date of the signing of the Minutes of Settlement.

## Richard Gordon

By an order dated June 23, 2006, Mr. Gordon agreed to enter into a Minutes of Settlement agreement acknowledging that he is required to advise his clients of any conflict of interest regarding his acting as a SABS representative.

An investigation was conducted concerning allegations that Mr. Gordon was not properly declaring a conflict of interest with his statutory accident benefits clients.

## Prosecutions

**Insurance**

### Charge: Corporation acting as an insurance agent while unlicensed
### Against: Kopriva Marine Limited
### Verdict: Guilty

Kopriva Marine Limited pleaded guilty and was convicted on June 26, 2006 at Chatham ON of acting as an insurance agent while unlicensed. Based on a joint submission, the sentence was a fine of $1,500. The corporation ceased all business operations in 2000.

## 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.

There were no Advisory Board hearings for life agents and adjusters for the second quarter.

## 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.

There were no regulatory actions and related hearings for this quarter.

## 12-Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months (July 1, 2005 - June 30, 2006), FSCO took 149 enforcement actions. The chart below details the types of activities taken.

| **Type of Enforcement Action** | **Number of Cases** |
|---|---|
| Letters of censure | 64 |
| Licence conditions via Minutes of Settlement | 1 |
| Paralegals via Minutes of Settlement | 4 |
| Provincial Offences Court convictions and fines | 9 |
| Revocation of sponsorship | 0 |
| Licence suspensions | 9 |
| Licence surrenders | 51 |
| Licence revocations | 12 |
| Cease & Desist orders | 0 |

| **Type of Enforcement Action *(Cont'd)*** | **Number of Cases** |
|---|---|
| Paralegal terminations | 0 |
| Application denied | 0 |
| **Total** | **150** |

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring throughout the

year. Over the past 12 months, there have been 22,444 instances of enforcement monitoring.

The chart below details the types of monitoring that were undertaken.

| **Monitoring Activities** | **Number of Occurrences** |
|---|---|
| Continuing education audits | 50 |
| Police criminal record checks life agents/applicants/paralegals | 19,966 |
| Complaint reviews | 66 |
| Errors & Omissions insurance audits - insurance agents | 2,342 |
| Errors & Omissions insurance audits - paralegals | 20 |
| **Total** | **22,444** |

## 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** | June 28, 2006 |
| **File Number** | A04B001781 |
| **Legislation** | SABS - 1996 |
| **Appeal Status** | No appeal |
| **Applicant** | Mauro Tarantino |
| **Insurer** | Aviva Canada Inc. |
| **Type of Award** | Special Award |
| **Amount of Award** | $2,000 |
| **Issue** | Income replacement benefits (entitlement and amount) housekeeping, cost of examination, expenses |
| **Findings** | The arbitrator found that the insurer's notice of termination of IRBs was invalid because of an error: "Aviva failed to correct this error. It stubbornly and unreasonably relied on its erroneous termination notice through to arbitration." The arbitrator also found that the withholding and delay in payment of the examination expense was unreasonable: the assessment was conducted at about the time Aviva's assessor would have terminated housekeeping and home maintenance assistance, so a detailed reassessment was necessary. |
| **Order** | Mr. Tarantino is entitled to a special award fixed at $2,000.00 inclusive of interest pursuant to section 282(10) of the *Insurance Act*. |

| | |
|---|---|
| **Type of Decision** | Arbitration |
| **Date of Decision** | June 15, 2006 |
| **File Number** | A03B000041 |
| **Legislation** | SABSC1996 |
| **Appeal Status** | No appeal |
| **Applicant** | Brenda Lee |
| **Insurer** | Certas Direct Insurance Company |
| **Type of Award** | Special Award |
| **Amount of Award** | $1,500 |
| **Issue** | Entitlement to weekly income replacement benefits. |
| **Findings** | Special award payable with respect to benefits up to the 104 week mark, but not after as the insurer had opinion evidence that supported its position. Reasons:<br>○ Insurer failed to provide Ms. Lee with information in writing about the procedure for resolving disputes relating to statutory accident benefits.<br>○ Certas delayed in adjusting and assessing Ms. Lee's claims for pre 104-week income replacement benefits<br>- in arranging insurer examinations (IEs)<br>- in paying benefits once IE determined claimant entitled to those benefits<br>Mitigating circumstances: Certas paid the IRBs with interest and assisted Ms. Lee in obtaining medical and rehabilitation benefits following termination. |
| **Order** | Certas Direct Insurance Company shall pay Brenda Lee a special award in the amount of $1,500 under section 282(10) of the *Insurance Act*. |

| | |
|---|---|
| **Type of Decision** | Arbitration |
| **Date of Decision** | June 21, 2006 |
| **File Number** | A04B000446 |
| **Legislation** | SABS - 1996 |
| **Appeal Status** | Under appeal. |
| **Applicant** | Ms. G |
| **Insurer** | Pilot Insurance Company Inc. |
| **Type of Award** | Special Award |
| **Amount of Award** | $18,426.62 |
| **Issue** | In earlier decisions, the Arbitrator found Ms. G was: |

| | |
|---|---|
| | ○ entitled to nanny services (December 22, 2005); and<br>○ catastrophically impaired (March 16, 2006),<br><br>leaving the issues of expenses and special award. |
| **Findings** | The arbitrator found it unreasonable that Pilot failed to follow the opinion of the DAC. In assessing the amount of the special award, the arbitrator considered:<br><br>○ Pilot's failure to comply with a fundamental, long-standing insurer duty under the SABS.<br>○ The amount of the outstanding benefits and the duration they were outstanding: both were significant.<br>○ Pilot's failure to pay additional benefits on the basis that Ms. G. had reached $100,000 non-catastrophic maximum, but then taking 11 months to advise her that $28,119.85 remained under the limits.<br>○ Ms. G's vulnerable physically and psychologically.<br>○ The possible psychological harm to Ms. G.<br>○ The fact that Ms. G. had assistance from family members was not a mitigating factor.<br>○ The need to deter insurers from obtaining an advantage through delay.<br>○ Payment of interest is not a mitigating factor.<br>○ Proportionality to this and similar cases. |
| **Order** | Pilot Insurance Company Inc. shall pay Ms. G a special award in the amount of $18,426.62. |

| | |
|---|---|
| **Type of Decision** | Arbitration |
| **Date of Decision** | April 10, 2006 |
| **File Number** | A05B000196 and A05B000197 |
| **Legislation** | SABS - 1996 |
| **Appeal Status** | Under appeal |
| **Applicant** | Denise Udele Peters, Diane Andrea Peters |
| **Insurer** | Aviva Canada Inc. |
| **Type of Award** | Special Award |
| **Amount of Award** | Maximum amount (not quantified) |
| **Issue** | Death benefits |
| **Findings** | Insurer paid a spousal benefit to the deceased's separated husband. The claimants were the deceased's daughters. The arbitrator applied "a broad and equitable interpretation of the status of spouse, with the intention of bringing that interpretation in line with contemporary societal and legal values." The separated husband was also living in a long-term relationship with another, suggesting that there was no ongoing marital relationship with the deceased. The Applicants were held entitled to supplementary death benefits on the basis that the separated husband was no longer a "spouse." The daughters were vulnerable, and the arbitrator found the case law was clear, so the insurer failed its good faith duty. |
| **Order** | Aviva ordered to pay Diane and Denise Peters a special award at 50 per cent of the withheld death benefit together with interest on all amounts owing to them, the maximum rate permitted by the *Insurance Act*. |

| | |
|---|---|
| **Type of Decision** | Arbitration |
| **Date of Decision** | April 25, 2006 |
| **File Number** | A02B001646 |
| **Legislation** | SABS - 1996 |
| **Appeal Status** | Under appeal |
| **Applicant** | Kulaveerasingam Ramalingam |
| **Insurer** | State Farm Mutual Automobile Insurance Company |
| **Type of Award** | Special Award |
| **Amount of Award** | $26,250 |
| **Issue** | Income replacement benefits, interest, housekeeping, delayed payment of treatment plans, prescriptions. |
| **Findings** | In an earlier decision (August 29, 2005) the arbitrator awarded special awards for these benefits. This decision calculates them. The awards and the percentage of the maximum they represent:<br><br>○ Delayed IRBs and housekeeping: though delays of several months, not the most egregious conduct, as insurer did eventually reassess, but refused to pay interest. $18,000/70%.<br>○ Interest: unreasonably delayed once entitlement was conceded, and continued refusal to pay. But interest attracts a smaller penalty. $400/29%.<br>○ DAC-approved treatment: blatant breach of obligation, and no interest paid, so deterrent effect needed. $3,800/91%.<br>○ Incontinence Medication: short delay, only interest outstanding. $1,250/50%.<br>○ No DAC offered: Breach of obligations, long delay in payment. $2,800/85%. |
| **Order** | State Farm shall pay Mr. Ramalingam a special award in the amount of $26,250. |

| | |
|---|---|
| **Type of Decision** | Arbitration |
| **Date of Decision** | June 13, 2006 |
| **File Number** | A04B002722 |
| **Legislation** | SABS - 1996 |
| **Appeal Status** | No appeal |
| **Applicant** | Ray McCormack |
| **Insurer** | Aviva Canada Inc. |
| **Type of Award** | Expenses against representative [Mr. Isabella] |
| **Amount of Award** | $1,566 |
| **Issue** | Withdrawal of claim for medical and rehabilitation benefits |
| **Findings** | In an earlier decision (September 16, 2005), the arbitrator allowed the applicant to withdraw and fixed the insurer's expenses at $1,566. The applicant's representative filed for arbitration of treatment expenses that |

| | |
|---|---|
| | the insurer had already paid, meaning no issue was in dispute. The arbitrator found "that the profound delay by Mr. McCormack and his representative [Mr. Isabella] in recognizing that there was nothing concrete to justify proceeding with the arbitration, and their failure to withdraw the arbitration in a timely manner and so mitigate the costs to the opposing side, was worthy of sanction." The arbitrator found that the representative was the controlling mind behind the litigation. The sole substantive claim involved a third-party payment with nothing payable directly to Mr. McCormack. Either the representative knew the matter was settled or was willfully blind to such knowledge.<br><br>His failure to address the settlement, and the decision to continue with the arbitration in the face of such knowledge was an abuse of the arbitration process and caused un-reasonable delay. |
| **Order** | Mr. Isabella ordered to pay Aviva's fixed expenses of $1,566 inclusive of GST. |

## Financial Services Tribunal (FST) Decisions

| | |
|---|---|
| **Name** | Sussman Mortgage Funding Inc. |
| **Sector** | *Mortgage Brokers Act* |
| **Date of Decision** | May 4, 2006 |
| **Disposition** | Temporary suspension of the registration of Sussman Mortgage Funding Inc., and Murray Sussman, with conditions**.** |

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
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Financial Services Commission
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Chair
Financial Services Tribunal

Bob Christie
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Financial Services Commission
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Superintendent of Financial Services

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