Bulletin

No. G- 10/06
- General

Monitoring and enforcement report - including prosecution and hearing decisions - July 1 to September 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 online Pension Bulletin at www.fsco.gov.on.ca.

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 paralegals 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 1,698 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, 2006	**Plus complaints received during the period**	**Less complaints in progress at end of September 30, 2006**	**Total number of complaint reviews completed during the period**
Agent	63	54	79	38
Paralegal	26	3	25	4
Health Care Provider	2	0	2	0

DISPOSITIONS				
	Total Cases Concluded	**Cases resolved**	**Cases closed**	**Cases forwarded for (potential) enforcement**
Agent	38	2	11	25

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 689 audits of life agents during the third 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 administrative action may be contemplated.

Investigations Initiated	
Agents	
Suitability	10
Complaints about agent conduct	11
Doing business without a licence	4
Insurance Companies	
Complaints about insurance company conduct	1
Mortgage Brokers	
Doing business unregistered	2
Paralegals	
Complaints about conduct	1
Total	**29**

Outcome of investigations	
A total of **26** cases were completed:	
○ Charges laid in Provincial Offences court	1
○ Minutes of Settlement and Superintendent's Orders issued	6
○ Cease & Desist Orders issued	0
○ Letters of Censure issued	5
○ Closed files (no enforcement action warranted)	14
Total	**26**

Cases may be closed if there is insufficient evidence to support the allegations, or if the allegations are unfounded. The result 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 139 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 paralegal. 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 in addition to five Letters of Censure that resulted from formal investigations.

Minutes of Settlement and Superintendent's Orders

Kun Hu, Eric	By an order, dated August 28, 2006, this life insurance agent's licence was revoked. The agent had committed a criminal offense of theft under $5,000 on six occasions. Mr. Hu attempted to prevent his sponsoring insurer and FSCO from finding out about the theft charges by furnishing false information on two occasions.
Tam, Andy C. K.	By an order, datedSeptember 8, 2006, this life insuranceagent's licence was revoked. The agenthad failed to complete the required continuing education hours and had made a material misstatement in his renewal application.
Van Hyfte, Gary	By an order dated September 8, 2006, this life insurance agent's licence was revoked. Mr. Van Hyfte had misappropriated a client's funds by failing to remit the true value of the policies and used the monies for his own benefit without the client's knowledge or consent.
Yang, Yun Yun	By an order, datedSeptember 23, 2006, this life insuranceagent's licence was revoked effective September 25, 2006. The agenthad failed to complete the required continuing education hours and had made a material misstatement in her renewal application.
Benoit, Terrie	By an order, dated August 31, 2006, this life insurance agent's licence was revoked for a period of two years. The agent was the subject of an investigation on allegations of misappropriation of funds and admitted to borrowing funds from clients, as well as using a client's debit card.
Kolapak, Alexander Neil	By an order dated August 29, 2006, this life insurance agent's licence was revoked. Mr. Kolapak had misappropriated death benefit funds from insurance policies.

Prosecutions

Mortgage Broker

Charge: Carrying on business as a mortgage broker while unregistered

Against: Lino Patruno

Verdict: Guilty

Mr. Patruno pleaded guilty and was convicted on August 22, 2006 at Burlington ON of carrying on a business as a mortgage broker while unregistered. The court sentenced Mr. Patruno to a term of imprisonment of 60 days based on a joint submission.

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 two Advisory Board hearings for life agents and adjusters for the third quarter.

Alan Gillespie	By a decision and order, datedAugust 8, 2006, this life insuranceagent's licence was suspended for a period of 30 days, effectiveSeptember 1, 2006. The agentdid not have valid Errors and Omissions insurance for a period of timeand had made a material misstatement in his renewal application.
Arun K. Shrivastava	By a decision and order, dated August 4, 2006, this life insurance agent's licence was revoked effective August 4, 2006. The agent was found to have misrepresented his association with an insurer, possessing and using confidential information about policy holders without authorization for the agent's own purposes, witnessing a signature when not present, unsuitability to hold a licence and having no Errors and Omissions insurance coverage. The agent was also found to have furnished false information for renewal of licence, falsely representing to his Errors and Omissions insurance that no claims had been made against him, and exposing clients to unjustified risk by carrying on business without Errors and Omissions insurance.

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, FSCO took 150 enforcement actions. The chart below details the types of activities taken.

Type of Enforcement Action	Number of Cases
Letters of censure	54
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	8
Licence surrenders	57

Licence revocations	15
Cease & Desist orders	6
Paralegal terminations	0
Application denied	0
Total	**154**

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring throughout the year. Over the past 12 months, there have been **18,023** 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	15,282
Complaint reviews	293
Errors & Omissions insurance audits - insurance agents	2,378
Errors & Omissions insurance audits - paralegals	20
Total	**18,023**

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 27, 2006
File Number	A04–001146
Legislation	Bill 164
Appeal Status	No Appeals
Applicant	Frank M. Rodrigues
Insurer	Jevco Insurance Company
Type of Award	Special Award
Amount of Award	$2,500
Issue	Is Mr. Rodrigues entitled to income replacement benefits for the days he was not able to work? Is the insurer entitled to deduct sick leave benefits received from the income replacement benefits payable? Is Mr. Rodrigues entitled to a special award?

Findings	Mr. Rodrigues returned to work within 104 weeks of the accident. He had to take some days off over a number of years, some of which were paid for from his sick leave benefits and some were not. Case law had established that s. 14(1) of the *SABS–1994* applied in these circumstances, meaning that he was entitled to be paid for the days he could not work, even if he worked for periods exceeding 90 days, and that he is entitled to be paid for miscellaneous days where he could not work. The insurer was entitled to a deduction for the days he received sick pay. However, because the insurer had maintained its position of non-entitlement in the face of the case law and medical evidence (from both parties) linking the insured's disability to injuries arising from the accident, the applicant was entitled to a special award. The maximum special award was $7,133.53.
Order	Mr. Rodrigues is entitled to a special award of $2,500.00

Type of Decision	Arbitration
Date of Decision	August 10, 2006
File Number	A03-001363
Legislation	Bill 59
Appeal Status	Under appeal
Applicant	Maria Michalski
Insurer	Wawanesa Mutual Insurance Company
Type of Award	Special Award
Amount of Award	$150,000
Issue	What is the amount of the special award the Wawanesa is liable to pay?
Findings	The Arbitrator previously found that an award at the high end of the scale was appropriate. The Arbitrator found that the maximum amount of the special award was $179,140.46 and that the appropriate award was $150,000.
Order	Wawanesa Mutual Insurance Company shall pay Maria Michalski a special award in relation to attendant care benefits and housekeeping benefits in the amount of $150,000.

Financial Services Tribunal (FST) Decisions

Name	Claudia A. Smith
Sector	Insurance
Date of Decision	September 25, 2006
Disposition	The Tribunal dismissed the appeal.

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

Colin McNairn
Chair

Bob Christie
Chief Executive Officer

Financial Services Commission
of Ontario
Chair
Financial Services Tribunal

Financial Services Commission
of Ontario
Superintendent of Financial Services

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