Property and Casualty - Auto Bulletins

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Bulletin

No. G- 01/07
- General

Monitoring and enforcement report - including prosecution and hearing decisions - October 1 to December 31, 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 B 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 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 1,729 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, 2006	**Plus complaints received during the period**	**Less complaints in progress at end of December 31, 2006**	**Total number of complaint reviews completed during the period**
Agent	79	38	65	52
Paralegal	25	1	20	6
Health Care Provider	2	3	3	2

DISPOSITIONS				
	Total Cases Concluded	**Cases resolved**	**Cases closed**	**Cases forwarded for (potential) enforcement**
Agent	52	5	23	24

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 342 audits of life agents during the fourth 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 B 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	5
Complaints about agent conduct	11
Doing business without a licence	3
Insurance Companies	
Complaints about insurance company conduct	1
Mortgage Brokers	
Complaints about conduct	2
Paralegals	
Complaints about conduct	1
Grand Total	**23**

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	4
○ Cease & Desist Orders issued	2
○ Letters of Censure issued	4
○ Closed files (no enforcement action warranted)	21
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 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 104 Letters of Warning were issued to life agents, all of whom were late in applying for licence renewal.

Letters of Censure

There were fourteen Letters of Censure, in addition to four Letters of Censure that resulted from formal investigations.

Minutes of Settlement and Superintendent's Orders

Bouchard, Andre	By a decision and order, dated October 13, 2006, this life insurance agent's licence was revoked. The agent made a false statement on his application, failed to maintain errors and omissions insurance, failed to comply with an undertaking, and failed to facilitate an examination.
Chail-Teves, Mamta	By a decision and order, dated October 13, 2006, this life insurance agent's licence was revoked. The agent made a false statement on her application, failed to maintain errors and omissions insurance, and failed to facilitate an examination.
MacDougall, Ellen J.	By a decision and order, dated October 13, 2006, this life insurance agent's licence was revoked. The agent failed to maintain errors and omissions insurance, failed to comply with an undertaking, and failed to facilitate an examination. ***Note:*** The decision was appealed before the Financial Services Tribunal. The agent brought forward additional information that was not available at the time of the Order revoking the agent's licence. The agent entered into Minutes of Settlement on January 8, 2007 agreeing to a suspension of the life insurance agent's licence for a period of three months, commencing October 13, 2006.
Yang, Joseph	By a decision and order, dated October 13, 2006, this life insurance agent's licence was revoked. The agent made a false statement on his application, failed to maintain errors and omissions insurance, failed to comply with an undertaking, and failed to facilitate an examination.

Prosecutions

Unregistered Loan and Trust

Charge: Carrying on a business as a Loan and Trust corporation while unregistered
Against: Kingscroft Investments Limited and Donald Carmichael
Verdict: Guilty

Kingscroft Investments Limited and Donald Carmichael were convicted on November 20, 2006 at Toronto of conducting the business of a loan and trust corporation while unregistered. The conviction was based on a plea of guilty. Kingscroft Investments was fined $8,000, and Donald Carmichael was fined $2,000. The fines were based on a joint submission.

Insurance Company

Charge: Charging rates not approved by the Superintendent, 2 counts
Against: State Farm Mutual Automobile Insurance Company
Verdict: Guilty

State Farm Mutual Automobile Insurance Company was convicted on December 12, 2006, at Toronto of 2 counts of charging auto insurance rates not approved by the Superintendent. The convictions were based on a plea of guilty. State Farm was fined a total of $150,000. The fines were based on a joint submission.

Unlicenced Insurance Company

Charge: Breach of Superintendent's Order to Cease and Desist, 2 counts
Against: Gestion Lamca Inc.
Verdict: Guilty

Gestion Lamca Inc. (also known as Lamca Holdings Incorporated) was convicted on October 19, 2006, at Toronto of 2 counts of breaching an Order of the Superintendent to Cease and Desist carrying on the business of insurance in Ontario without a licence. The company was fined a total of $100,000.

Unlicenced Insurance Company

Charge: Breach of Superintendent's Order to Cease and Desist, 2 counts
Against: Société Canadienne de Cautionnement (S.C.C.) Inc.
Verdict: Guilty

Société Canadienne de Cautionnement (S.C.C.) Inc. (also known as Canadian Bonding Corporation) was convicted on December 7, 2006, of 2 counts of breaching an Order of the Superintendent to Cease and Desist carrying on the business of insurance in Ontario without a licence. The company was fined a total of $70,000.

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, 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 fourth 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.

Action: Cease and Desist Order
Against: Kingscroft Investments Limited and Donald Carmichael
Date: December 11, 2006

On December 11, 2006, the Superintendent issued a Cease and Desist Order against Donald Carmichael and Kingscroft Investments Limited for soliciting the business of a loan or trust company in Ontario while not registered under the Loan and Trust Corporations Act.

Under the consent order, Kingscroft Investments Limited and Donald Carmichael will immediately cease soliciting and accepting deposits from the public and soliciting business in Ontario as a loan and trust corporation.

Action:	**Cease and Desist Order**
Against:	**ING Insurance Company of Canada and ING Novex Insurance Company of Canada**
Date:	**December 18, 2006**

On December 18, 2006, the Superintendent issued a Cease and Desist Order on consent against both ING and ING Novex, because they 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.

Under the consent order, ING and ING Novex will reimburse affected policyholders in a manner acceptable to the Superintendent, and report to the Superintendent on what changes have been made to the companies' internal control procedures to address deficiencies.

12-Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months, FSCO took 169 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	11
Revocation of sponsorship	1
Licence suspensions	7
Licence surrenders	59
Licence revocations	16
Cease & Desist orders	5
Paralegal terminations	0
Application denied	1
Total	**169**

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring throughout the year. Over the past 12 months, there have been **13,636** 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	11,259
Complaint reviews	252
Errors & Omissions insurance audits - insurance agents	2,055
Errors & Omissions insurance audits - paralegals	20
Total	**13,636**

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 of arbitration order dated July 7, 2005, requiring the insurer to pay a special award of $10,000 (reported in Monitoring and Enforcement Bulletin No. G – 01/06)
Date of Decision	September 18, 2006
File Number	P05-00021
Legislation	Bill 59
Applicant	Stanislav Kanareitsev
Insurer	TTC Insurance Company Limited
Issue	Did the Arbitrator err in concluding that the Applicant was entitled to benefits and that the insurer should be required to pay a special award?
Findings	It was open to the Arbitrator to conclude that the Applicant was entitled to benefits because of accident-related pain, but she was required to state clearly why she preferred evidence for the applicant to the Insurer's. The Arbitrator erred in failing to address relative strengths and weaknesses and failing to address key disputed points such as the evidence of the progressive nature of the Applicant's pre-accident condition.
Order	Appeal Allowed. New hearing ordered.
Judicial review	Application for judicial review filed, challenging the appeal decision.

Type of Decision	Arbitration
Date of Decision	November 1, 2006
File Number	A04-000068
Legislation	Bill 59
Appeal Status	Under Appeal
Applicant	Ruganraj Sebamalai
Insurer	Royal & Sunalliance Insurance Company of Canada
Type of Award	Expenses against SABS rep.
Amount of Award	$2,910.41
Issue	What amount should be awarded?
Findings	In an earlier decision, the Arbitrator concluded that Mr. Nterekas, a SABS Representative, should pay the insurer's arbitration expenses personally. In this decision, she set the amount at $2,910.41.
Order	Mr. Alexander Nterekas shall pay Royal expenses in the amount of

	$2,910.41.

Type of Decision	Arbitration
Date of Decision	November 10, 2006
File Number	A04-001991
Legislation	Bill 59
Appeal Status	Under Appeal
Applicant	Suzanne Hill
Insurer	Coseco Insurance Co./HB Group
Type of Award	Special Award
Amount of Award	$25,000
Issue	Entitlement to cost of moving to new home.
Findings	The Arbitrator concluded that the insurer acted unreasonably in responding to this claim. Although the Arbitrator did not feel the insurer's conduct was especially egregious, he concluded that a special award at the high end was warranted.
Order	Coseco shall pay Mrs. Hill the amount of $25,000 as a special award. This amount is inclusive of interest to the date of this order, but shall bear interest at the rate of 2 percent per month, compounded monthly commencing with the date of this order.
Type of Decision	Arbitration
Date of Decision	December 22, 2006
File Number	A05-000491 and A05-000492
Legislation	Bill 59
Appeal Status	No appeal
Applicant	Irma Melchiorre / Estate of Alberto Melchiorre
Insurer:	Wawanesa Mutual Insurance Company
Type of Award	Special Award
Amount of Award	To be determined
Issue	Did Mr. Melchiorre die as a result of an "accident," as defined in the legislation, making funeral expenses and death benefits payable?
Findings	The applicant established on a balance of probabilities that the use or operation of an automobile caused Mr. Melchiorre to fall, resulting in his death, and, therefore, funeral expenses and death benefits are payable. Further, Wawanesa's decision to withhold benefits was unreasonable and, therefore, must pay a special award.
Order	Wawanesa shall pay a special award in an amount to be determined based on its refusal to pay funeral expenses and death benefits.

Type of Decision	Appeal of arbitration order dated August 9, 2005, requiring the insurer to pay a special award of $39,295 (reported in Monitoring and

	Enforcement Bulletin No. G-05/05)
File Number	A02-001360
Legislation	Bill 59
Applicant	Ruban Thangarasa
Insurer	Gore Mutual Insurance Company
Order	Appeal settled prior to hearing – November 2006

Financial Services Tribunal (FST) Decisions

Name	Arun Shrivastava
Sector	Insurance
Date of Decision	November 8, 2006
Disposition	Application for stay of the Order revoking the Level II life insurance agent licence of Mr. Shrivastava refused.

Name	Manuel Castro
Sector	Insurance
Date of Decision	December 18, 2006
Disposition	Cease and Desist Order against Mr. Manuel Castro effective for one year from December 18, 2006, to cease carrying on business as a statutory accident benefit representative; and cease advertising or holding himself out, in any form, as a statutory accident benefit representative within Ontario.

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.

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