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Bulletin

No. G-08/07
General

Monitoring and Enforcement Report - including prosecution and hearing decisions - April 1 to June 30, 2007

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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 available at www.fSCO.gov.on.ca under the *Pensions* section.

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 1,312 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 December 31, 2006	Plus complaints received during the period	Less complaints in progress at end of March 31, 2007	Total number of complaint reviews completed during the period
Agent	16	42	26	32
Paralegal	15	1	16	0
Health Care Provider	5	1	4	2

DISPOSITIONS				
	Total cases concluded	Cases resolved	Cases closed	Cases forwarded for (potential) enforcement
Agent	32	5	5	22

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 330 audits of life agents during the first quarter to ensure they met their errors and omissions (E&O) insurance requirements.

Investigation Activities

As a follow up to its regular monitoring activities B 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	
Complaints about agent conduct	16
Doing business without a licence	5
Insurance Companies	
Complaints about conduct	1
Loan and Trust	
Doing business while unregistered	1
Mortgage Brokers	
Doing business while unregistered	1
Complaints about conduct	3
Paralegals	
Complaints about conduct	4
Grand Total	31

Outcome of investigations	
A total of 32 cases were completed:	
Charges laid in Provincial Offences court	1
Minutes of Settlement and Superintendent's Orders issued	5
Cease & Desist Orders issued	1
Letters of Censure issued	3
Closed files (no enforcement action warranted)	22
Total	32

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 60 Letters of Warning were issued to life agents, all of whom were late in applying for licence renewal.

Letters of Censure

There was one Letter of Censure, in addition to three Letters of Censure that resulted from formal investigations.

Minutes of Settlement and Superintendent's Orders

Hanson, Edward Harvey	By an order effective April 5, 2007, this life insurance agent's licence was revoked for failure to facilitate an examination and furnish information as required by the Superintendent.
Chan, Philip Lip Fee	By an order dated April 10, 2007, this life insurance agent's licence was revoked for failure to furnish information as required by the Superintendent.
Millar, Randy	By an order effective April 12, 2007, this life insurance agent's licence was suspended. The agent failed to: conduct business in good faith, protect client interests, and submit 35 policy applications. The suspension is in effect until the later of the following two activities is completed: 1. The date that he presents evidence acceptable to the Superintendent of any relevant disability, along with proof that the disability is being managed, so that he is not a risk to the public. 2. The date Mr. Millar completes the Life Licensing Qualification Program, should the evidence described in the first condition be provided two years after the date of this decision and order.
Goddard, Christopher	By an order effective April 23, 2007, this accident & sickness insurance agent's licence was revoked for committing the following acts: rebating, forging signatures, fraud, and uttering.
Aly, Abdelhafiz	Pursuant to the Minutes of Settlement, the Superintendent has ordered the suspension of this life insurance agent's licence for a period of 28 days, effective May 1, 2007. The agent was not licenced to sell life insurance products in the province of Quebec, and two counts of forgery were committed.

Prosecutions

Mortgage Brokers Act
Charge: Furnishing false information to the Superintendent in annual financial statements from 2002 to 2005. Against: Diamond Mortgage Inc. / Earl Willi Verdict: Guilty Earl Willi of Toronto, the Principal of Diamond Mortgage Inc., was convicted under the Mortgage Brokers Act of furnishing false information to the Superintendent in his annual financial statements from 2002 to 2005. The false information consisted of a statement that he signed and swore Form A of the annual financial statements in the presence of the named witness, and that the witness was a notary public. Mr. Willi did not sign and swear Form A in the presence of the named witness, and the named witness was not a notary public. The Superintendent did not see any evidence that the actual financial information contained in the financial statements was false. The fine was \$2,500.

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 first 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: Unifund Assurance Company Date: June 6, 2007

On June 6, 2007, the Superintendent issued a Cease and Desist Order against Unifund Assurance Company for committing an unfair or deceptive act or practice by charging rates for coverages or categories of automobile insurance that were not approved by the Superintendent.

Under the Cease and Desist Order, the Superintendent ordered Unifund to refund all current and former policyholders who were overcharged ("eligible policyholders") by a date and manner acceptable to the Superintendent. Eligible policyholders will be refunded the amount that was paid in excess of the approved rate, plus five per cent interest, calculated annually from the date of payment (for the policy). Reimbursement shall be made by a cheque and/or credit to the policyholder's account. A letter in a form approved by the Superintendent shall be sent to the policyholder to explain why a refund was received.

If the address of a former eligible policyholder is unavailable, or a cheque sent to a policyholder is returned, Unifund will make reasonable efforts to verify whether a more up-to-date address can be obtained. If a new address is obtained, the cheque will then be resent to the former eligible policyholder. On February 15, 2008, if any cheques that have been sent remain uncashed, or have been determined to be undeliverable, the value of these cheques will be pledged to the United Way.

Adequate records shall be maintained to reconcile refunds payable, refunds paid, refunds outstanding (as applicable), and the amounts representing refund cheques that remain uncashed or are determined to be undeliverable in connection with this Order. At the conclusion of the refund process (on or before February 15, 2008), Unifund shall provide the Superintendent a written report providing details of its compliance with the refund plan in this Order. The report will include a full reconciliation of the refunds payable, the refunds paid and the amounts that remain uncashed or are determined to be undeliverable.

12-Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months, FSCO took 241 enforcement actions. The chart below details the types of activities taken.

Type of Enforcement Action	Number of Cases
Letters of censure	154
Licence conditions via Minutes of Settlement	0
Paralegals via Minutes of Settlement	0
Provincial Offences Court convictions and fines	7
Revocation of sponsorship	2

Licence suspensions	3
Licence surrenders	50
Licence revocations	19
Cease & Desist Orders	4
Paralegal terminations	0
Application denied	2
Total	241

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring throughout the year. Over the past 12 months, there have been **8,827** instances of enforcement monitoring. The chart below details the types of monitoring that were undertaken.

Monitoring Activities	Number of Occurrences
Continuing education audits	20
Police criminal record checks for life agents/applicants/paralegals	6,530
Complaint reviews	246
Errors & Omissions insurance audits - insurance agents	2,031
Errors & Omissions insurance audits - paralegals	0
Total	8,827

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	April 20, 2007
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	\$10,000/\$40,000

Issue	Did Mr. Melchiorre die as a result of an "accident," as defined in the legislation, making funeral expenses and death benefits payable?
Findings	In a decision dated December 22, 2006, the arbitrator determined that Mr. Melchiorre's fatal fall arose from the use or operation of an automobile. The arbitrator concluded that the insurer's refusal to pay was unreasonable and warranted a special award (see Bulletin No. G-01/07- General). In this decision, the arbitrator calculated the amount of the award based on a number of recent cases, the lack of mitigating factors (other than no proof of actual malice) and the importance of deterrence. The arbitrator determined that the insurer's willful blindness, its immoderate, stubborn and inflexible attitude, and its adversarial approach warranted an award near the maximum payable amount.
Order	Wawanesa Mutual Insurance Company shall pay a special award of \$10,000 to the estate of Alberto Melchiorre, based on the funeral benefits found payable. It will also pay a special award of \$40,000 to Irma Melchiorre based on the death benefits found payable.

Type of Decision	Arbitration
Date of Decision	April 20, 2007
File Number	A06-001439
Legislation	SABS-1996
Appeal Status	No appeal
Applicant	Tausif Ahmed Siddiqui
Insurer	TTC Insurance Company Limited
Type of Award	Special Award
Amount of Award	\$200
Issue	Medical and rehabilitation benefits
Findings	The arbitrator concluded that the TTC Insurance Company provided little evidence which disputed a DAC opinion, that four additional chiropractic treatments were reasonable and necessary. The arbitrator also found that the TTC Insurance Company unreasonably denied paying \$380 for those sessions and that it was appropriate to award Mr. Siddiqui an additional \$200 as a special award.
Order	The TTC Insurance Company shall pay Mr. Siddiqui a special award in the amount of \$200 under section 282(10) of the <i>Insurance Act</i> .

Type of Decision	Arbitration
Date of Decision	April 25, 2007
File Number	A05-000498

Legislation	SABS-1996
Appeal Status	Under appeal
Applicant	Sergiy Zapisnoy
Insurer	Certas Direct Insurance Company
Type of Award	Enforcement
Amount of Award	\$4,621.17
Issue	Liability of counsel to pay the insurer's expenses
Findings	In a decision dated May 10, 2006, the arbitrator concluded that Mr. Zapisnoy's claim be withdrawn and that Certas Direct Insurance Company was entitled to its arbitration proceeding expenses. The arbitrator questioned how the firm of Mazin & Rooz was able to obtain instructions from Mr. Zapisnoy when he had returned to the Ukraine almost two years before the application for arbitration. At the expense hearing, where Mr. Rooz appeared, the arbitrator considered s. 282 (11.2) of the <i>Insurance Act</i>, which allows an award to be made against a representative in certain circumstances. The arbitrator determined that Mr. Rooz did not confirm his retainer and that he did not have an insured person as a client, at the time he filed the application for arbitration. Thus, he had no authority to commence and conduct an arbitration proceeding as required by s. 282 (11.2)(a). The arbitrator found that arbitration shouldn't have commenced, causing Certas Direct Insurance Company to incur the expenses of the arbitration proceeding without reasonable cause pursuant to s. 282 (11.2)(c). The arbitrator also considered s. 282 (11.3), which provides that a lawyer "acting in the usual course of the practice of law," is exempted from the provisions of s. 282 (11.2)(a). It was concluded that the exemption did not apply because the application was filed to avoid a negligence action for missing a limitation period. "In commencing the arbitration, Mr. Rooz abandoned his role as advocate and donned the mantle of litigant. In so doing, he ceased to be 'acting in the usual course of the practice of law' and is liable for Certas' expenses."
Order	Mr. Alon Rooz, barrister and solicitor, is liable to pay Certas Direct Insurance Company its assessed expenses of \$4,621.17 forthwith, pursuant to section 282 (11.2)(a) and (c) of the <i>Insurance Act</i> .

Type of Decision	Arbitration
Date of Decision	May 16, 2007
File Number	A05-001772
Legislation	Bill 59
Appeal Status	No Appeal
Applicant	Elizabeth Boamah
Insurer	ING Insurance Company of Canada
Type of Award	Expenses against SABS representative
Amount of Award	\$1,500

Issue	Who is responsible for expenses as a result of the adjournment of the hearing?
Findings	The SABS representative was personally liable for expenses of adjournment. He abandoned his practice just prior to the hearing and failed to appear at the hearing. This lead to the adjournment and caused expenses to be incurred without reasonable cause. Although counsel had also failed to appear, this did not cause unnecessary expense. Even if counsel had appeared, the adjournment would have been necessitated by the SABS representative's conduct. Thus, the applicant should not be liable for expenses that were incurred for reasons independent of her actions.
Order	Mr. Alan Leibovitch shall pay ING Insurance Company \$1500 for its fixed expenses in this matter.

Type of Decision	Arbitration
Date of Decision	May 25, 2007
File Number	A05-000327
Legislation	Bill 59
Appeal Status	No Appeal
Applicant	Linton Hutchinson
Insurer	Security National Insurance Co./Monnex Insurance Mgmt. Inc.
Type of Award	Special Award
Amount of Award	\$6,000
Issue	The parties settled the main dispute, but proceeded on the issue of whether the insurer should be required to pay a special award based on its refusal to pay post-104 Income Replacement Benefits (IRBs).
Findings	The insurer's refusal to pay ongoing income replacement benefits was unreasonable. The insurance company should have known that continuing payments was required, once the consent order for payment was signed. The maximum award was \$8,500. Although the amount withheld was small and the delay relatively short, the need for deterrence is an important consideration in this case. The award of \$6,000 reflects the required "proportionality" approach.
Order	Security National shall pay the applicant a special award in the amount of \$6,000.

Type of Decision	Arbitration
Date of Decision	May 30, 2007
File Number	A03-001739
	Bill 59

Legislation	
Appeal Status	No Appeal
Applicant	Norbert J. Boyer
Insurer	Allstate Insurance Company of Canada
Type of Award	Special Award
Amount of Award	\$5,000
Issue	The dispute involved Mr. Boyer's entitlement to income replacement benefits, the amount of those benefits and a significant claim for medical expenses. Mr. Boyer also claimed that Allstate should be ordered to pay a special award based on its refusal to pay income replacement benefits and his medical claims.
Findings	The arbitrator's decision was in favour of Mr. Boyer. Allstate Insurance Company was ordered to pay a special award of \$5,000 based on its refusal to reconsider its termination of income replacement benefits and its failure to pay the claimed medical benefits.
Order	Allstate shall pay the applicant a special award in the amount of \$5,000.

Type of Decision	Arbitration
Date of Decision	May 31, 2007
File Number	A05-001520
Legislation	SABS-1996
Appeal Status	No appeal
Applicant	Umbala Thiyagarajah
Insurer	ING Insurance Company of Canada
Type of Award	Special Award
Amount of Award	\$625
Issue	Does the arbitrator have jurisdiction to order a special award and, if so, whether a special award should be ordered and in what amount.
Findings	On October 26, 2006 the arbitrator awarded additional income replacement benefits (IRBs) and sought submissions on his jurisdiction to make a special award. The jurisdiction issue arose because the insurer had paid IRBs up to June 1, 2005, but the applicant claimed a special award for IRBs both before and after that date. Although the arbitrator had not made an order regarding payment of benefits up to June 1, 2005, and the issue of their payment had not been raised in the arbitration proceeding, he found he had jurisdiction to order a special award for that period. The arbitrator believed he had jurisdiction because: the insurer was not taken by surprise, almost all of its evidence related to its handling of the file up to July 2005 (the

	date of the application for arbitration) and the issue of the special award had not been implicitly settled. However, the arbitrator concluded that the insurer should only be required to pay a special award with respect to an initial payment in August 2004. The insurer essentially conceded the delay was not reasonable for that payment, but because of the relatively modest amount involved (about \$4800), the relatively short delay and the fact the error was corrected, a modest special award of \$625 was appropriate. After that date, the applicant did not provide any further medical reports addressing disability until January 2006, notwithstanding the insurer's continued requests for an updated disability certificate. Both sides had failed to comply with certain obligations of the SABS, but the insurer is not held to a standard of perfection. As for payments withheld after June 1, 2005, the arbitrator noted that the insurer had raised valid doubts about the applicant's claim. Considering the inconsistencies, the lack of medical reports that were not related to pursuing a legal claim, and valid doubts about the applicant's motivation to return to work, it was not unreasonable for the insurer to test the applicant's claims.
Order	The applicant is entitled to a special award of \$625.

Financial Services Tribunal (FST) Decisions

Name	Arun Shrivastava
Sector	Insurance
Date of Decision	June 22, 2007
Disposition	The Tribunal dismissed the appeal and issued a Notice of Dismissal on June 25, 2007.

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.

John Solursh
Chair
Financial Services Commission of Ontario
Financial Services Tribunal

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

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