Bulletin

No. G-10/07
General

Monitoring and Enforcement Report - including prosecution and hearing decisions - July 1 to September 30, 2007

New online format for the Monitoring and Enforcement Bulletin
FSCO is introducing an online Monitoring and Enforcement Bulletin to deliver the same information as the paper-based bulletin. This is the second to last Monitoring and Enforcement Bulletin in paper format. The new online Monitoring and Enforcement Bulletin will enable you to enter queries in a powerful search engine, to quickly produce customized results. The switch to online publication of the Monitoring and Enforcement Bulletin is in keeping with FSCO's commitment to being a forward-looking regulatory agency that delivers quality service. The online Monitoring and Enforcement Bulletin is scheduled to launch in mid-January 2008.

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 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.

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 2,111 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, 2007	Plus complaints received during the period	Less complaints in progress at end of September 30, 2007	Total number of complaint reviews completed during the period
Agent	26	53	45	34
Paralegal	16	1	17	0
Health Care Provider	4	1	5	0

DISPOSITIONS				
	Total cases concluded	Cases resolved	Cases closed	Cases forwarded for (potential) enforcement
Agent	34	1	20	13

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 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	
Complaints about agent conduct	9

Doing business without a licence	2
Suitability	4
Credit Unions	
Complaints about conduct	1
Insurance Companies	
Doing business without a licence	1
Loan and Trust	
Doing business while unregistered	1
Complaints about conduct	1
Mortgage Brokers	
Complaints about conduct	1
Grand Total	**20**

Outcome of investigations	
A total of 21 cases were completed:	
○ Charges laid in Provincial Offences court	0
○ Minutes of Settlement and Superintendent's Orders issued	6
○ Cease & Desist Orders issued	2
○ Letters of Censure issued	3
○ Closed files (no enforcement action warranted)	10
Total	**21**

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, 65 letters of warning were issued to life agents, all of whom were late in applying for licence renewal.

Letters of Censure

There were three letters of censure that resulted from formal investigations.

Minutes of Settlement and Superintendent's Orders

Aly, Abdelhafiz	By an order dated April 10, 2007, pursuant to the Minutes of Settlement this life insurance agent's licence was suspended for a period of period of 28 days, commencing May 1, 2007. This agent had on one occasion conducted business in Quebec when not licensed to do so, and improperly completed two forms on behalf of that client. *The Monitoring and Enforcement Bulletin (paper version) published on September 12, 2007 contained inaccurate information regarding this individual. The information above is the correct description.*
Garlock, Cory William	By an order dated July 8, 2007, pursuant to the Minutes of Settlement this life insurance agent's licence was suspended for a period of 90 days, commencing August 1, 2007. This agent changed the addresses of policyholders without their knowledge or consent, knowing they did not move, to avoid a chargeback of commissions.
Hyman, Lisa Anne	By an order dated July 26, 2007, pursuant to the Minutes of Settlement this life insurance agent's licence was suspended for a period of 30 days, commencing September 1, 2007. This agent conducted insurance business and collected commission while unlicensed.
Blumwald, Nestor	By an order dated September 12, 2007, pursuant to the Minutes of Settlement, this agent’s life insurance licence has been suspended for a period of 30 days, commencing October 1, 2007. Disclosure forms submitted with new policies were signed by an agent who was not Mr. Blumwald.
Gadula, George	By an order dated September 13, 2007, this agent’s life insurance licence was suspended for a period of 30 days, commencing October 15, 2007. This agent made a material misstatement or omission in his application for a licence.
Demurrell, Cathyann	By an order dated September 14, 2007, this agent’s life insurance licence was revoked. This agent made false and misleading statements in the representation of insurance, and fabricated policy applications for the sale of insurance policies by using false information.
Majid, Michael	By an order dated September 14, 2007, this agent’s life insurance licence and general insurance licence were revoked. This agent falsified information on his application form, and was found to be unsuitable as an insurance agent.

Prosecutions

There were no prosecutions in the third quarter.

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.

The Executive Director of the Licensing and Market Conduct Division (the Director) has been delegated the authority by the Superintendent to render licensing decisions under the Insurance Act with respect to agents and adjusters.

There were no Advisory Board hearings for life agents and adjusters for the third 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: Old Republic Insurance Company of Canada
Date: July 6, 2007

On July 6, 2007, the Superintendent issued a Cease and Desist Order against Old Republic Insurance Company of Canada for committing an unfair or deceptive act or practice by writing non-fleet insurance business, for which it was not authorized.

Under the Consent Order, the Superintendent orders Old Republic's Chief Executive Officer and Vice President of Finance, on behalf of Old Republic, to provide on or before November 30, 2007, written confirmation to the Superintendent that they are satisfied with Old Republic's written internal control procedures, with respect to its operating processes. Old Republic's operating processes will need to be reviewed and amended, to address the deficiencies that resulted in or permitted the writing of unapproved non-fleet policies with unapproved rates. The confirmation shall also include a description of any revisions or amendments that are made as a result of this review, together with copies of the revised or amended internal control procedures.

Action: Interim Cease and Desist Order
Against: Roland Spiegel
Date: August 16, 2007

On August 16, 2007, the Superintendent issued an Interim Cease and Desist Order against Roland Spiegel for committing unfair or deceptive acts or practices while acting as a statutory accident benefits representative.

The Interim Cease and Desist Order requires Roland Spiegel to immediately cease carrying on business as a statutory accident benefits representative. The Order also requires Roland Spiegel to immediately cease providing anyone any services related to claims for statutory accident benefits, and to immediately cease advertising or holding out to the public any services relating to claims for statutory accident benefits, whether or not a fee is charged for such services.

Roland Spiegel must immediately notify all of his statutory accident benefits clients in writing, to inform them that he and his agents or representatives can no longer act for clients that have claims for statutory accident benefits. Roland Spiegel must also provide all of his clients with a copy of the Interim Cease and Desist Order. A copy of each client's notification must also be provided to the Superintendent.

By a letter dated August 16, 2007, Roland Spiegel requested a hearing by the Financial Services Tribunal. No hearing date has been scheduled yet. The Superintendent is of the opinion that the Interim Cease and Desist Order should be extended until the hearing in this matter has been concluded, and the Interim Cease and Desist Order is either confirmed, varied or revoked by the Financial Services Tribunal.

12-Month Enforcement Action and Monitoring Activities Summary

Over the past 12 months, FSCO took 239 enforcement actions. The following chart details the types of activities taken.

Type of Enforcement Action	Number of Cases
Letters of censure	149

Licence conditions via Minutes of Settlement	0
Paralegals via Minutes of Settlement	0
Provincial Offences Court convictions and fines	6
Revocation of sponsorship	2
Licence suspensions	6
Licence surrenders	53
Licence revocations	15
Cease & Desist orders	6
Paralegal terminations	0
Application denied	2
Total	**239**

In addition to enforcement actions, FSCO conducts ongoing enforcement monitoring throughout the year. Over the past 12 months, there have been **8,983** 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	7,043
Complaint reviews	236
Errors & Omissions insurance audits - insurance agents	1,684
Errors & Omissions insurance audits - paralegals	0
Total	**8,983**

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	August 16, 2007
File Number	A06-000408
Legislation	Bill 59
	No Appeal

Appeal Status	
Applicant	Sophia Sun
Insurer	Wawanesa Mutual Insurance Company
Type of Award	Special Award
Amount of Award	To be determined
Issue	Was Wawanesa's decision to terminate IRBs at the WAD II limit unreasonable?
Findings	Wawanesa's decision to terminate IRBs on WAD II limitation was unreasonable. Wawanesa turned a blind eye to Ms. Sun's psychological impairment and ignored strong medical evidence, including a DAC and its own IE.
Order	Wawanesa is liable to pay Ms. Sun a special award in an amount that has not yet been determined.

Financial Services Tribunal (FST) Decisions

Name	Walter Muroff and Company Limited
Sector	Mortgage Brokers
Date of Decision	August 10, 2007
Disposition	The registration for Walter Muroff and Company Limited is suspended for a period of nine months, with terms and conditions, effective August 10, 2007, by an order of the Financial Services Tribunal (FST). The FST decision is currently under appeal of the Divisional Court.

For the full text of previous decisions or 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

December 3, 2007

ISSN 1481-1499