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## Appendix "A"

### Report of the Superintendent of Financial Services

1. The *Insurance Act*, R.S.O. 1990, c. I-8 ("the Act") prohibits any person from engaging in an unfair or deceptive act or practice.
2. Section 438 of the Act contains the following definition of "unfair or deceptive acts or practices":

"unfair or deceptive acts or practices" means any activity or failure to act that is prescribed as an unfair or deceptive act or practice.
3. *Ontario Regulation 7/00*, amended to *O. Reg 261/04* ("the Regulation") lists the various activities or failures to act which are prescribed as an "unfair or deceptive act or practice," including the commission of any act prohibited under the Act or the regulations.
4. Pursuant to the Act, where, after an examination, an investigation or upon any other evidence, the Superintendent of Financial Services ("Superintendent") is of the opinion that a person has committed an unfair or deceptive act or practice, the Superintendent shall make a report.
5. Under the Act, the Superintendent may notify, in writing, that he intends to order a person to cease or refrain from doing any act or pursuing any course of conduct identified by the Superintendent and/or to perform the acts that, in the opinion of the Superintendent, are necessary to remedy the situation.

6. 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 order which shall take effect immediately and which shall become permanent unless within 15 days the person requests a hearing before the Financial Services Tribunal.

### **Background**

7. Khalil (Evan) Abraham Ismaeli aka Khalil Asmail (“Ismaeli”) is a paralegal whose business activities include acting as a statutory accident benefits representative on behalf of persons claiming statutory accident benefits arising out of automobile accidents. Ismaeli is the sole director and officer of Top Defence Inc., a corporation owned and operated by Ismaeli and carrying on business as a paralegal.
8. Ismaeli filed the appropriate declarations and other information, including confirmation of errors and omissions insurance, with the Superintendent in order to be exempt from the prohibition under section 398 of the Act so as to be able to act as a statutory accident benefit representative.
9. Belair Insurance wrote to the Financial Services Commission of Ontario (“FSCO”) to complain about the conduct of Ismaeli who had acted on behalf of Mr. S-A in a claim for statutory accident benefits.
10. An investigation was initiated by FSCO. This report is a summary of the findings of that investigation.

11. The investigation revealed that Ismaeli was also known to FSCO under a different name and as a result of a prosecution under the Act in June of 1999. On June 8, 1999, Khalil Asmail, who is one and the same as Ismaeli, was convicted of one count of acting in the business of insurance without a licence and one count of advertising as a broker/insurance agent without a licence to do so, contrary to the Act. Ismaeli was fined \$75,000 for each count.
12. Ismaeli was contacted by a FSCO investigator and attended at FSCO for an interview.
13. Ismaeli confirmed that he and Khalil Asmail are one and same. Ismaeli attributed the confusion to an error or errors by the federal government in processing his immigration to Canada.
14. Furthermore, information confirmed that Ismaeli has driver's licences in his two names with two different dates of birth. At the time of the investigation, the drivers licence issued under the name Khalil Asmaeli was under suspension effective September 24, 2001 for unpaid fines. The second drivers licence issued under the name Khalil Ismaeli was issued on September 5, 2001.
15. Furthermore Ismaeli advised FSCO that he had brought the error to the attention of the Ministry of Transportation in respect of his driver's licences.
16. Ismaeli falsely advised the investigator that he had appealed his convictions under the Act from 1999.
17. On February 8, 2005, the investigator demanded of Ismaeli documentation concerning his legal identity and in particular document from Canadian immigration officials and the

Ministry of Transportation. Ismaeli agreed to provide the information to FSCO by February 17, 2005.

18. Ismaeli requested an extension to March 25, 2005.
19. To date no information has been received by FSCO.

### **Unfair or Deceptive Acts or Practices**

20. The Regulation lists the various activities or failures to act which are prescribed as an “unfair or deceptive act or practice,” including the commission of any act prohibited under the Act or the regulations.
21. Effective November 1, 2003, clause 4(1) 4 of the Regulation made an act or omission inconsistent with the *Code of Conduct for Statutory Accident Benefit Representatives* an unfair or deceptive act or practice.
22. Ismaeli failed to abide by his obligation to act honestly in dealing with FSCO contrary to Section 2.10 of the *Code of Conduct* by misrepresenting to the investigator that he had appealed his two convictions under the Act. In addition, Ismaeli furnished FSCO with false information when completing and filing his declaration for exemption under section 398 of the Act by failing to provide his legal name.
23. Section 3.11 of the *Code of Conduct* obliges a statutory accident benefit representative to respond fully and promptly to a request for information from FSCO.
24. Ismaeli failed to respond fully and promptly to the request for information from FSCO despite his agreement to do so.

**ISSUED AT** the City of Toronto, June 14 , 2005.

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Bryan P. Davies  
Superintendent of Financial Services