

**FINANCIAL SERVICES TRIBUNAL**

**IN THE MATTER OF** the *Insurance Act*, R.S.O. 1990, c. I.8, as am. (the “Act”);

**AND IN THE MATTER OF** an interim cease and desist order made by the Superintendent of Financial Services under date of August 30, 2004 (the “Interim Order”) against SNC Insurance Company (Barbados) Inc. and Stop 'N' Cash 1000 Inc. pursuant to s. 441(4) of the Act;

**AND IN THE MATTER OF** a request for a hearing in respect of the Interim Order made pursuant to s. 441(5) of the Act;

**BETWEEN:**

**SNC INSURANCE COMPANY (BARBADOS) INC.**  
**STOP ‘N’ CASH 1000 INC.**

Applicants

- and -

**SUPERINTENDENT OF FINANCIAL SERVICES**

Respondent

**Before:**

Mr. Colin H.H. McNairn  
Chair of the Tribunal and of the Panel

Mr. Kevin Ashe  
Member of the Tribunal and of the Panel

Ms. Florence A. Holden  
Member of the Tribunal and of the Panel

**Appearances:**

Mr. Steven Sofer and  
Mr. Scott Kugler  
For SNC Insurance Company (Barbados) Inc.  
and Stop 'N' Cash 1000 Inc.

Mr. Robert Conway  
For the Superintendent of Financial Services

**Heard:**

October 15 and 22, 2004

**REASONS FOR DECISION**

**The Background**

Stop 'N' Cash 1000 Inc. ("Stop 'N' Cash Inc.") and SNC Insurance (Barbados) Inc. ("SNC Insurance") are the Applicants in this proceeding before the Financial Services Tribunal (the "Tribunal").

Stop 'N' Cash Inc. was established, with an office in Ontario, for the purpose of providing small, short term loans to customers, generally repayable on the customer's next payday. That service is offered through approximately 60 stores that operate under the Stop 'N' Cash name. Of these stores, 52 are owned and operated by franchisees, under a franchise agreement with Stop 'N' Cash Inc., and the rest are owned and operated by Stop 'N' Cash Inc., either alone or with third party investors. Some 95% of the franchised stores are in Ontario, the balance being in other Canadian provinces.

SNC Insurance was incorporated in Barbados and holds an "exempt insurance licence" in that jurisdiction that entitles it to insure risks located outside Barbados provided that the insurance for those risks is paid for through premiums originating outside Barbados. That incorporation and licensing may be expected to lead to some level of regulation by the authorities in Barbados. While we heard some evidence of the applicable minimum capital, reserving and reporting requirements to which SNC Insurance would be subject in Barbados, that evidence came from the Applicants' witness who was qualified as an expert in risk management but not as an expert in the law of Barbados. Therefore, we do not accept the evidence as to the detailed régime of insurance regulation that applies to SNC Insurance in Barbados.

SNC Insurance serves as a captive insurer for Stop 'N' Cash Inc. and its franchisees in that it only insures risks related to their activities. The beneficial owners of SNC Insurance reside in Ontario, one of them being affiliated with a franchisee of Stop 'N'

Cash Inc. Some of the directors of SNC Insurance are Ontario residents. Its financial statements are expressed in Canadian dollars.

The connections that SNC Insurance has with Barbados include the following;

- ◆ all of the meetings of its directors are held in Barbados,
- ◆ its financial statements are audited by an international auditing firm out of an office in Barbados, and
- ◆ all aspects of its business are managed, subject to the overriding authority of its board of directors and principal representatives, by a company incorporated in Barbados that is a registered insurance manager in that jurisdiction.

The specific responsibilities of the insurance manager, under the terms of its management agreement with SNC Insurance, include the collection of premiums, the payment of return premiums and, in accordance with the directions of SNC Insurance, the adjustment, compromise and payment of losses.

On August 30, 2004, the Superintendent of Financial Services (the "Superintendent"), the Respondent in this proceeding, made an interim cease and desist order (the "Interim Order") against the Applicants pursuant to the s. 441(4) of the *Insurance Act* (the "Act"). The Interim Order recites that the Applicants are engaging in certain activities in Ontario that have caused the Superintendent to be of the opinion that they are committing acts that are unfair and deceptive acts or practices in contravention of the Act. The Interim Order alleges that the conduct of the Applicants constitutes carrying on insurance operations in Ontario without the requisite licences, namely a licence as an insurer under the Act in the case of SNC Insurance, and a licence as an insurance agent under the Act in the case of Stop 'N' Cash Inc. The Interim Order then requires SNC Insurance to cease carrying on insurance business in Ontario, directly or indirectly, and requires Stop 'N' Cash Inc. to cease acting as an insurance agent in Ontario.

On September 9 or 10, 2004, the Applicants made a request for a hearing by this Tribunal in respect of the Interim Order. Shortly before making that request, the Applicants had asked the Tribunal for certain immediate relief, including a stay of the Interim Order pending the conclusion of any proceeding before the Tribunal. On September 10, 2004, the Tribunal, acting through the chair of this panel, denied that relief, for lack of jurisdiction to grant it, a decision that was subsequently supported by written reasons, dated September 13, 2004.

On September 22, 2004, the Superintendent made an amended interim cease and desist order (the "Interim Order as amended") against SNC Insurance and Stop 'N' Cash Inc., replacing the original Interim Order and expanding upon the allegations contained therein. In particular, the Interim Order as amended alleges, among other things, that during the four and a half year period ending May 2004;

- ◆ Stop 'N' Cash Inc. and its Ontario franchisees solicited between 30,000 and 60,000 customers, who borrowed from them, to take out insurance coverage

providing for the re-payment of their loans in the event of death or disability, and

- ◆ SNC Insurance received an estimated \$40 million in premiums in respect of insurance coverage benefiting Canadian customers of Stop 'N' Cash Inc. and its franchisees, an estimated 95%, or \$38 million, of which was paid by Ontario customers, an estimated 97% of which latter amount, or \$36.8 million, was rebated to Stop 'N' Cash Inc. and its Ontario franchisees.

The Interim Order as amended does not alter the requirements of the original Interim Order that SNC Insurance cease carrying on insurance business in Ontario, directly or indirectly, and that Stop 'N' Cash Inc. cease acting as an insurance agent in Ontario.

Since the making of the Interim Order, the Applicants have been in discussions with representatives of the Superintendent as to possible modifications to the way in which they carry on business so as to obviate any need for licences under the Act. In the result, a new business model (the "New Business Model") has evolved but little progress has been made towards its implementation, in large part because the Superintendent has been unable to agree that it will avoid the application of the statutory licensing requirements. The Superintendent has maintained, in essence, that if SNC Insurance is to remain unlicensed in Ontario, it would have to use the services of a fronting organization, that is an Ontario licensed insurer that would, for a fee, assume the role of primary insurer under any insurance program benefiting the Ontario customers of Stop 'N' Cash Inc. or its franchisees, with SNC Insurance confining its role to that of an offshore reinsurer of the risks under the insurance program.

## **The Licensing Requirements of the Act**

### ***Licensing of Insurers***

Subsection (1) of s. 40 of the Act provides that every insurer "undertaking insurance in Ontario" or "carrying on business in Ontario" is required to hold a licence as an insurer under the Act. Subsection (2) of s. 40 prohibits any person from carrying on "business as an insurer" or engaging "in an act constituting the business of insurance" in Ontario without a licence under the Act.

### ***Undertaking Insurance in Ontario***

An insurer is deemed, by s. 39(2) of the Act, to be "undertaking insurance in Ontario" if it undertakes a contract of insurance in Ontario that, under the Act, is deemed to be made in Ontario. Section 123 of the Act deems a contract of insurance to be made in Ontario where the subject matter is property in Ontario or an insurable interest of a person resident in Ontario if the contract is signed, countersigned, issued or delivered in Ontario or committed to the post office or other carrier, messenger or agent to be delivered to the insured or his or her assign or agent in Ontario.

### ***Carrying on Business in Ontario***

An insurer is deemed, by s. 39(3) of the Act, to be "carrying on business in Ontario" if, among other things, it:

- ◆ maintains or operates in Ontario, in its own name or that of its agent or representative, an office for the transaction of the business of insurance,
- ◆ distributes or publishes in Ontario any proposal, circular, card, advertisement, printed form or like document,
- ◆ makes any solicitation for insurance in Ontario,
- ◆ issues or delivers any policy of insurance in Ontario,
- ◆ collects, receives or negotiates in Ontario for any premium for a contract of insurance (a "premium" is defined, in s. 1, as a payment under such a contract), or
- ◆ inspects any risk or adjusts any loss under a contract of insurance in Ontario.

An insurer is also deemed to be "carrying on business in Ontario" if it does many of these things indirectly by causing them to be done.

Since the listed activities are simply deemed to constitute "carrying on business in Ontario", they are not exhaustive of the activities that might result in an insurer carrying on business in Ontario for the purposes of the Act.

### ***Licensing of Insurance Agents***

Section 393 of the Act makes it an offence, in subsection (23), for any person to assume to act as an "agent" without the licence required by that section. The section does not, in fact, require anyone to obtain a licence, but it does permit the Superintendent to issue a licence authorizing a person to carry on business as an insurance agent if that person has complied with the Act (subsection (1)). An "agent" is defined, in s. 1 of the Act, as a person who, for compensation, commission or any other thing of value,

- ◆ solicits insurance on behalf of an insurer,
- ◆ transmits an application for insurance or an insurance policy (other than on his or her own behalf) to or from an insurer, or
- ◆ offers or assumes to act in the negotiation of insurance or the continuance or renewal of insurance,

and who is not a member of the Registered Insurance Brokers of Ontario.

### ***Definition of Insurance***

The term "insurance", which is relevant to several of the licensing provisions of the Act, is defined, in s. 1 of the Act, to mean an "undertaking by one person to indemnify another person against loss or liability in respect of a certain risk or peril to which the object of

the insurance may be exposed, or to pay a sum of money upon the happening of a certain event and includes life insurance.”

### **Description of the New Business Model**

The Applicants did not actively pursue the argument, before the Tribunal, that the activities carried on by SNC Insurance and Stop 'N' Cash Inc. in Ontario have not been such as to trigger the requirements under the Act that they be licensed. Therefore, we do not have to consider the detail of those activities. What the Applicants did maintain was that, upon the implementation of the New Business Model, they would not be acting in violation of the Act notwithstanding their failure to obtain licences in Ontario. In support of that conclusion, we were invited by the Applicants to consider the effect of the New Business Model as it was described to us and as it is evidenced, in part, by draft forms of master policy and loan application (referred to below) that were provided to us by the Applicants for our information. The Superintendent concurred in our extending the scope of this proceeding to a consideration of the New Business Model.

The following elements of the New Business Model are relevant to our consideration of the Model in the context of the licensing provisions of the Act:

- (a) SNC Insurance would issue a master credit insurance policy (the "master policy") in Barbados that would be signed, countersigned and accepted in that jurisdiction and would,
  - ◆ name Stop 'N' Cash Inc. and its franchisees as insureds,
  - ◆ provide for the indemnification of an insured for its loss in the event of a default by its customer in paying off the credit advanced to him or her,
  - ◆ provide for the payment by each insured of premiums that, generally speaking, would reflect the application of a prescribed percentage rate to the amount of each credit advanced by that insured to a customer and the term for which each such advance was made,
  - ◆ provide for a waiver by SNC Insurance of its right of subrogation against a defaulting customer of an insured if the failure to pay off the credit advanced were to be the result of the customer's death, disability or loss of employment, and
  - ◆ provide a profit participation feature that would result in a payment by SNC Insurance to an insured of the excess of premiums received from that insured over the sum of any claims (paid and reserved for) and certain other amounts chargeable against those premiums, all relating to the risks undertaken in respect of the particular insured.
- (b) The franchisees of Stop 'N' Cash Inc. would have the option of insuring against their potential credit losses, in accordance with the terms of the master policy, but would not be obliged to do so and, in the event that they exercised the option, they would pay premiums directly to SNC Insurance in Barbados in the same way that premiums due from Stop 'N' Cash Inc. would be paid, that is on a bordereaux basis,

reporting the insured credits, credit details and the corresponding premiums for all credits advanced by the reporting insured during the reporting period.

- (c) The loan application that would be used by the franchisees (presumably those that had the benefit of credit insurance) and by Stop 'N' Cash Inc. (at its company owned stores) would indicate that the customer completing the application and approved for a loan would,
  - ◆ be required to pay an additional charge, *i.e.* a charge in addition to the interest on the loan, that would be added to the credit advanced, and
  - ◆ be relieved of the obligation to pay off the credit advanced in the event of death, disability or unemployment.
- (d) The bank account, capital, reserves, books and records of SNC Insurance would be maintained in Barbados and the board of directors would continue to meet there.
- (e) The audit and day-to-day management responsibilities in relation to SNC Insurance would continue as before with the auditor and insurance manager in Barbados and with the latter representative receiving the premiums, handling the claims function and distributing profits in accordance with the participation feature of the master policy, on behalf of SNC Insurance, in or from Barbados.

The Superintendent would have us attach particular significance to certain elements of the New Business Model and the practical effect that he suggests they would have, all as described below:

- (i) The relationships between SNC Insurance and Stop 'N' Cash Inc. would be such that the activities of Stop 'N' Cash Inc. in Ontario that are related, in any way, to the insurance coverage afforded by the master policy could be said to be carried out as the *alter ego* of, on behalf of, or as agent for SNC Insurance, and, therefore, could be fairly attributed to SNC Insurance and the office of Stop 'N' Cash Inc. in Ontario could be fairly considered to be an office of SNC Insurance for the transaction of the business of insurance.
- (ii) In informing franchisees of their option of obtaining credit insurance under the master policy, say through a franchisor disclosure statement, SNC Insurance would be distributing or causing to be published in Ontario a proposal in respect of insurance, particularly having regard to the fact that there would probably be no practical option, because of financial considerations, to decline the coverage.
- (iii) The fact that the loan application form relieves a customer from having to pay off the credit advanced to him or her in the event of death, disability or unemployment, while the master policy denies SNC Insurance any recovery by way of subrogation against the customer if it pays a claim under the policy relating to such an event, means that the customer gets the benefit of the master policy and, therefore, can be

treated as a *de facto* insured who was, in effect, solicited for insurance in Ontario when he or she applied for a loan.

- (iv) The amount of the additional charge, referred to in the loan application, would presumably be applied by the franchisee or Stop 'N' Cash Inc., as the case may be, to that part of the premium payable by it, under the master policy, in respect of the particular credit (even though the charge might not be designated, in the application form, for this or any other specified purpose), with the result that the additional charge could be fairly characterized as an insurance premium that was initially collected in Ontario on behalf of SNC Insurance.

## **Applicability of the Licensing Requirements of the Act in the Circumstances of the New Business Model**

### ***Location of Property or Risks Insured in Ontario***

The master policy will insure property in Ontario, namely the credit receivables of Stop 'N' Cash Inc. and those of its Ontario franchisees that exercise the option of acquiring credit insurance under the policy. The risks that are thereby insured or the persons whose risks are thereby insured may also be said to have their *situs* or residence, as the case may be, in Ontario.

There was some suggestion from the Applicants that the régime under Ontario Regulation 991, made pursuant to the *Registered Insurance Brokers of Ontario Act*, for the placement by an insurance broker of Ontario risks with unlicensed insurers indicates that an insurer need not be licensed in Ontario to insure such risks if the insurance provided by it cannot be obtained at reasonable rates, or on the form of policy required, from an Ontario licensed insurer, a condition for such placement under the Regulation (see s. 10(1)(c)). It was then maintained that the credit insurance to be provided by SNC Insurance under the master policy was of a kind that was not available from Ontario licensed insurers and that no such insurer would be prepared to front for SNC Insurance in respect of such insurance because of a lack of underwriting experience with that type of product. However, this Regulation governs the activities of insurance brokers and cannot be read to colour the interpretation of the Act, *i.e.* the *Insurance Act*, in its régime for the licensing of insurers, which sets out the circumstances in which such licensing will be required. In fact, the two régimes can live together. Regulation 991 permits brokers to place certain risks with an unlicensed insurer subject to compliance with prescribed conditions. To accept such a risk, the insurer need not engage in any activities in Ontario of a kind that would require it to hold a licence under the Act, in which case it may remain an unlicensed insurer notwithstanding its agreement to underwrite an Ontario risk. But if it does engage in one or more of those activities, it would be required to hold a licence as an insurer in Ontario. That does not offend the permission conferred on brokers, by the Regulation, to place certain risks with unlicensed insurers. Therefore, we do not have to decide, for the purposes of the present case, whether the credit insurance

provided by SNC Insurance was unavailable, on a reasonable basis, from Ontario licensed insurers.

We turn, then, to a consideration of the significance under the licensing provisions of the Act of the fact that an insurer insures property in Ontario or an insurable interest of a person resident in Ontario. In the present case, that fact would only lead to a requirement that SNC Insurance, as the issuer of the master policy, be licensed under the Act if that policy were to be signed, countersigned, issued, delivered, or committed to another person for delivery, in Ontario (s. 40(1), as read with ss. 39(2) and 123 of the Act). We are told that the issue and delivery of the policy will not be connected in any of these ways with the province of Ontario. Therefore, neither the location of the property insured nor the residence of the persons whose risks are insured within Ontario will provide a sufficient nexus to this jurisdiction to trigger a requirement that SNC Insurance be licensed under the Act.

### ***"Carrying on Business" in Ontario***

SNC Insurance could be subject to the licensing requirements of the Act if it were to be "carrying on business" in Ontario in the general sense of that expression without regard to the specific indicia of carrying on business that are identified in the Act.

The Superintendent referred us to the decisions in three cases, which arose outside the context of the Act, in support of the proposition that SNC Insurance has been and would be carrying on business in Ontario. These decisions are as follows; *Canada Life Assurance Co. v. Canadian Imperial Bank of Commerce et al.* (1974), 3 O.R. (2d) 70 (C.A.) (we were referred particularly to pp. 77-79), *Re R.S. Robinson & Son Ltd.*, [1923] 1 D.L.R. 691 (Ont. S.C.) (we were referred particularly to p. 693), and *Mahon/Moore Group of Companies Ltd. et al. v. Mercator Enterprises Ltd. et al.* (1978), 31 N.S.R. (2d) 327 (S.C. T.D.) (we were referred particularly to pp. 343-344). We do not find these decisions to be determinative in the present case; to some extent they turn on their specific contexts and, in any event, if their criteria were to be applied to the activities of SNC Insurance in Ontario, they do not indicate clearly whether that entity could be said to be carrying on business within the jurisdiction or not.

### ***Acting Through an Alter Ego or Agent in Ontario***

We did not receive any evidence that would establish that the operations, functions or management of SNC Insurance and Stop 'N' Cash Inc. were so integrated that Stop 'N' Cash could be said to be the *alter ego* or the agent, in all major respects, of SNC Insurance, as alleged by the Superintendent.

### ***Maintaining an Office for the Transaction of the Business of Insurance in Ontario***

Under the terms of the Act, SNC Insurance would be carrying on business in Ontario, within the meaning of the Act, if it were to maintain or operate in Ontario, directly or

through a representative, an office "for the transaction of the business of insurance" (s. 39(3)). The term "insurance" is defined as meaning life insurance or an undertaking by a person to indemnify another against loss or liability in respect of a certain risk or peril to which the object of the insurance may be exposed (s. 1). SNC Insurance does not have an office in Ontario and the office of Stop 'N' Cash Inc. in Ontario will not be engaged in relation to the giving of undertakings by SNC Insurance to indemnify others against any loss or liability, since the only undertaking of this kind will be the direct undertaking of SNC Insurance, evidenced by the master policy, in favour of Stop 'N' Cash Inc. and its franchisees, issued out of an office in Barbados. Assuming that Stop 'N' Cash Inc. can be said to use its office in Ontario for the purpose of extending the option to its franchisees to take advantage of the master policy, which names them as insureds, that does not involve the "transaction of the business of insurance," having regard to the meaning of the term "insurance" for the purposes of the Act.

It follows that SNC Insurance will not be deemed to be carrying on business in Ontario by virtue of maintaining an office for the transaction of the business of insurance in the province.

#### ***Distributing or Publishing a Proposal or Other Document in Ontario***

An insurer is deemed to be carrying on business in Ontario, requiring a licence under the Act, if it distributes or publishes, or causes to be distributed or published, a proposal or any of certain other documents in Ontario (s. 39(3)). The Act does not specify the subject matter of the distributed or published documents but we think that it ought to be something that is in aid of, or in the hope or expectation of, the transaction of the business of insurance. This limitation is consistent with the context and with the types of documents listed in this provision of the Act, namely "any proposal, circular, card, advertisement, printed form or like document".

Any written communication by Stop 'N' Cash Inc. to its franchisees informing them of the option of obtaining credit insurance under the master policy that might be characterized as a proposal or other like document, distributed or published in Ontario, would be unlikely to fit this subject-matter description. It would not envisage the transaction of the business of insurance by SNC Insurance with any of the franchisees, *i.e.* the entering into of a contract of insurance, being an undertaking to indemnify them against loss, as such a contract would, presumably, be in place at the time of the communication as it may be expected that the master policy would already have been issued, naming all of the franchisees as insureds. Moreover, unless it could be shown that SNC Insurance was in a position to compel Stop 'N' Cash Inc., and did compel it in some way, to communicate in this fashion to its franchisees, it could hardly be said that any proposal, by Stop 'N' Cash Inc. to its franchisees about the master policy, was caused to be made by SNC Insurance.

It follows that SNC Insurance will not be deemed by the Act to be carrying on business in Ontario by virtue of distributing a proposal or other document in the province.

### ***Soliciting Insurance in Ontario***

An insurer that makes a solicitation for insurance in Ontario or causes such a solicitation to be made is deemed by the Act to be carrying on business in Ontario (s. 39(2)). Bearing in mind the statutory meaning of "insurance" and the role of Stop 'N' Cash Inc. as franchisor in relation to its franchisees, the only person that might be said to be solicited for insurance by SNC Insurance is Stop 'N' Cash Inc. It appears that the Applicants will arrange for any such solicitation to take place in Barbados.

The customers of Stop 'N' Cash Inc. and its franchisees in Ontario will certainly receive a benefit that could be said to be made possible, in some measure, by the insurance afforded by the master policy in that payment of their loans will be waived, without recourse against them, in the event that certain of the circumstances giving rise to a claim by their lender under the policy occur, *i.e.* their disability, death or unemployment. But SNC Insurance can hardly be said to have solicited these customers for insurance since, upon the successful conclusion of a contract of insurance, evidenced by the master policy, it will have no contractual relationship with the customers as the master policy will not name them as insureds. If these customers can be said to be solicited in Ontario, on behalf of SNC Insurance, by Stop 'N' Cash Inc. or one of its franchisees, they are solicited not for insurance but for the grant of credit. This conclusion is supported by the fact that the loan application, which the customers will be asked to fill out and will ultimately evidence the terms of the credit if the application is accepted, will make no reference to insurance.

It follows that SNC Insurance will not be deemed by the Act to be carrying on business in Ontario by virtue of soliciting insurance in the province.

### ***Issuing or Delivering a Policy of Insurance in Ontario***

The issue or delivery of a policy of insurance in Ontario by an insurer is an indication that it is carrying on business in Ontario in the sense of the Act (s. 39(3)). However, in the present case, SNC Insurance will not deliver the master policy in Ontario nor, apparently, will it issue or deliver certificates of insurance in Ontario to customers of Stop 'N' Cash Inc. or any of its franchisees that might be considered to constitute policies of insurance (see s. 1 - definition of "contract").

It follows that SNC Insurance will not be deemed by the Act to be carrying on business in Ontario by virtue of having issued or delivered a policy of insurance in the province.

### ***Collecting, Receiving or Negotiating Premiums in Ontario***

For the purposes of the Act, a "premium" is a payment under a contract of insurance (s. 1 - definition of "insurance"). The premium payments that will be made under the master policy by insureds will be negotiated, collected and received by the insurance manager, on behalf of SNC Insurance, in Barbados. The amounts collected or received by an insured in Ontario from its customers by way of an imposed (*i.e.* non-negotiated)

additional charge are not insurance premiums as they will be collected and received under the terms of the loan arrangements between the insured and the customer rather than under the terms of the master policy. Although the collection and receipt of an additional amount from a customer will enable the insured to recoup, in whole or in part, the amount it must pay to SNC Insurance as a premium for insurance coverage on the customer's loan, this does not convert that amount into a premium that the insured has collected or received on behalf of SNC Insurance. Any insured person who is in business may be expected to try to pass along some or all of its insurance expenses, just as it would other business expenses, to its customers in one way or another.

It follows that SNC Insurance will not be deemed to be carrying on business in Ontario by virtue of collecting, receiving or negotiating premiums in the province.

### ***Inspection of Risks or Adjustment of Losses in Ontario***

Since the master policy affords the protection of credit insurance on small, short term loans, it may be expected that it could be written without any physical presence in Ontario, either for the purpose of inspecting the risks or for engaging in the adjustment of losses under the policy. The type of insurance is quite unlike, say, fire insurance on a building that might be likely to involve inspection of the premises before underwriting the risk and inspection of the damage to the building in the event of a fire claim under any policy issued on the building.

In the present case, the insurance manager for SNC Insurance in Barbados will be responsible for the adjustment of claims or losses. While the manager may rely on information about non-payment of a loan provided by an insured located in Ontario, *i.e.* Stop 'N' Cash Inc. or one of its franchisees in Ontario, which may incorporate information obtained by that insured from its customer in Ontario (such as evidence of disability), this would not necessarily entail adjusting the loss in Ontario.

Therefore, in the normal course, SNC Insurance is unlikely to be engaged in inspecting risks or adjusting losses in Ontario so as to be deemed to be carrying on business in Ontario by virtue of either of those activities.

### ***Acting as an Insurance Agent in Ontario***

The Superintendent did not argue that the activities of Stop 'N' Cash Inc. on behalf of SNC Insurance would be such as to require that it be licensed as an "agent" under s. 393 of the Act even if the activities of SNC Insurance, directly or through Stop 'N' Cash Inc., were not such as to require that SNC Insurance be licensed as an insurer under the Act. Consistent with our findings as to the nature of the role of SNC Insurance under the New Business Model, we do not think that Stop 'N' Cash Inc. will be doing anything under that Model that would constitute any of the actions that fit within the definition of the term "agent" in the Act (see s. 1). It follows that Stop 'N' Cash Inc. would not be required to be licensed as an agent under the Act.

## Disposition

Since the Applicants did not contest the existence of circumstances justifying the making of the Interim Order and the Interim Order as amended, we hereby order that the Interim Order as amended shall become permanent with the result that;

- ◆ SNC Insurance is ordered to cease from either directly or indirectly carrying on insurance business in Ontario, and
- ◆ Stop 'N' Cash Inc. is ordered to cease from acting as an insurance agent in Ontario.

This order against the Applicants is made pursuant to s. 441(8) of the Act.

However, as we have determined that if the Applicants were to adopt the New Business Model, the continuation of an order against them, in the terms set out above, would no longer be justified, we order the Superintendent to revoke the forgoing order, pursuant to s. 441(11) of the Act, if and when the Applicants substantially implement the New Business Model in such a way that there is no longer a continuing justification for the order having regard to our conclusions in these Reasons for Decision. We will retain jurisdiction in this matter for the purpose of resolving any dispute between the parties as to whether the New Business Model has been substantially implemented in this fashion. Any such dispute may be brought on before the Tribunal, by either or both of the Applicants or by the Superintendent, by notice of motion.

**DATED** at the City of Toronto this 15<sup>th</sup> day of November, 2004.

“Colin H. H. McNaim”  
Colin H.H. McNaim, Chair of the  
Tribunal and of the Panel

“Kevin Ashe”  
Kevin Ashe, Member of the Tribunal  
and of the Panel

“Florence A. Holden”  
Florence A. Holden, Member of the  
Tribunal and of the Panel