

**FINANCIAL SERVICES TRIBUNAL**

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

**AND IN THE MATTER OF** a Decision and Order dated October 13, 2006, of the Executive Director, Licencing and Market Conduct Division by delegated authority from the Superintendent of Financial Services, to revoke the life insurance agent licence of Ellen MacDougall;

**AND IN THE MATTER OF** a Notice of Appeal in accordance with sections 17(1) and 393(10.2) of the Act;

**BETWEEN:**

**ELLEN MACDOUGALL**

**Appellant**

**-and-**

**SUPERINTENDENT OF FINANCIAL SERVICES**

**Respondent**

**ORDER**

**WHEREAS** the parties have agreed upon terms of settlement as evidenced by the attached Minutes of Settlement dated January 8, 2007,

**THIS TRIBUNAL ORDERS:**

1. The Minutes of Settlement are hereby approved; and
2. That the life agent licence of Ellen MacDougall be suspended for a period of three months commencing October 13, 2006.

**DATED** at Toronto this 10<sup>th</sup> day of January, 2007

“Denis Boivin”

Denis Boivin  
Chair of the Panel and  
Member of the Tribunal



## SUPERINTENDENT OF FINANCIAL SERVICES

Regarding the life insurance agent's licence #  
97044333 of **Ellen MacDougall** (Hereinafter  
referred to as "*the agent*")

**AND** the *Insurance Act*, R.S.O. 1990, c.l.8, as  
amended, particularly section 393

### Minutes of Settlement

The Superintendent of Financial Services ("Superintendent") initiated an investigation regarding the conduct of the agent.

A Notice of Opportunity for Hearing was sent to the agent on June 15, 2006. The agent failed to respond in the time provided.

The agent's licence was revoked by an Order of the Superintendent dated October 13, 2006.

The agent received a copy of the Order and filed an appeal before the Financial Services Tribunal on November 29, 2006.

A Pre-Hearing Conference on the matter was held on December 13, 2006. The Agent has brought forward additional information that was not available at the time the Order revoking the agent's licence was made.

The parties have since met to discuss a resolution of the matter without a hearing before the Financial Services Tribunal.

In consideration of the mutual covenants and promises set out below and on the basis of the facts attached in Schedule "A", the Superintendent and the agent agree as follows:

1. The agent acknowledges and agrees that she has been advised to seek and receive independent legal advice and is entering into these minutes of settlement voluntarily, understanding the consequences of her doing so;
2. The agent, for the purposes of this proceeding, admits to the facts as set out and appended in Schedule "A";

3. The agent has obtained Errors and Omissions Insurance and understands the importance of maintaining Errors and Omissions Insurance.
4. The agent agrees to the suspension of her Life Insurance Agent licence for a period of 3 months from the date of the Superintendent's Order dated October 13, 2006.

P. Chauvin  
Witness

J. Housier  
Witness

[Signature]  
Ellen MacDougall  
Jan 8/2007  
Date

[Signature]  
Grant Swanson, Executive  
Director Licensing and Market  
Conduct Division  
Financial Services Commission  
of Ontario  
by Delegated Authority from the  
Superintendent of Financial  
Services

January 8, 2007  
Date

### Schedule "A"

1. Ms. Ellen MacDougall (MacDougall) was a licensed Life Insurance agent with a license issued under the *Insurance Act* and numbered 97044333.
2. By application filed electronically on January 6, 2005, MacDougall applied for the renewal of her Life Insurance Agent's licence.
3. The questions on the application for renewal that MacDougall submitted were preceded by the following instructions:

**Providing false, misleading or incomplete information in this application and/or any attachments requested maybe sufficient grounds to reject the application or revoke a licence, or result in your prosecution. By clicking the "Confirmed" button below, you swear that you have truthfully answered all questions contained within this electronic application. [bold typeface in the application]**

4. Step IV on the electronic application contains the following statement:

You will maintain Errors and Omissions Insurance, as required, through Liberty Insurance Company of Canada, as indicated by your reply to Item 7.

5. Item 7 of the application was preceded by a note stating:

*Life insurance agents are required to maintain errors and omissions insurance in an amount of at least \$1,000,000 in respect of any one occurrence, and at least \$2 million in the aggregate, with extended coverage for loss resulting from fraudulent acts. Its deductible must be no more than \$1,000. [italicized typeface in the application]*

6. MacDougall confirmed in item 7 of the application that she currently had Errors and Omissions Insurance and also confirmed that she would maintain her insurance at Step IV of this application. MacDougall confirmed the application and was issued a renewed Life Insurance Agents licence.

7. MacDougall's renewal application was selected for a random audit, and on September 19, 2005, she was sent a letter to ensure compliance with the requirements for Errors and Omissions Insurance coverage. The letter indicated that MacDougall's Life Insurance Agent's license had been renewed based upon

a confirmation by the agent that she will maintain Errors and Omissions Insurance in accordance with the regulatory requirements. The letter stated that MacDougall, her sponsoring insurer, or the E&O insurer must submit evidence of MacDougall's insurance to the Commission by October 10, 2005.

8. MacDougall did not respond to the letter of September 19, 2005.
9. MacDougall was contacted again on October 20, 2005, and put on notice that she had failed to respond to the communication of September 19, 2005. MacDougall was reminded of her obligation to respond to inquiries made of her by the Commission and provide the requested information. MacDougall was advised that she had to respond by November 10, 2005, otherwise she would be in breach of the *Insurance Act* and may be subject to a hearing before the Advisory Board to determine her suitability to remain licensed as an insurance agent.
10. MacDougall contacted the Commission's auditor on November 8, 2005, and stated that she is not a practicing agent and that she wanted an extension and would email a letter requesting two more days. The Commission's auditor explained the importance of Errors and Omissions Insurance coverage and the possibility of suspension or termination. MacDougall also sent a letter on November 8, 2005, restating that she does not sell insurance in her current position with Bank of Montreal and that she is seeking employment with Credential Securities and will find out whether she was successful in attaining that position next week and that they carry Errors and Omissions Insurance for their agents. MacDougall undertook in her letter to contact the Commission's auditor on November 14, 2005.
11. MacDougall did not contact the Commission's auditor.
12. On November 17, 2005, the Commission's auditor attempted to contact MacDougall and left her a voice message communicating once again that proof of her Errors and Omissions Insurance was required in order for her to maintain her licence.
13. MacDougall did not respond to the message until November 22, 2005, at which point she sent an email to the Commission's auditor stating she had been out of town and had just contacted the regulatory department at the Bank of Montreal and hoped to hear back from them that morning. MacDougall indicated that she would contact the Commission's auditor once she had heard back from the Bank of Montreal.
14. MacDougall did not contact the Commission's auditor.

15. On December 20, 2005, the Commission's auditor spoke with MacDougall. MacDougall stated that she did not have Errors and Omissions Insurance. The Commission's auditor restated that MacDougall is required to maintain Errors and Omissions Insurance in order to maintain her licence. MacDougall undertook that she would send a letter to the Commission surrendering her Life Insurance Agent licence.
16. MacDougall did not surrender her licence or contact the Commission.
17. On June 16, 2006, a Notice of Opportunity for hearing was sent by registered and regular mail to MacDougall at the address MacDougall provided to the Commission.
18. The correspondence that was sent to MacDougall was returned to the Commission marked as "Moved to Unknown Address".
19. MacDougall did not respond to the correspondence outlining a request for a hearing before the advisory board in the time provided.
20. On October 13, 2006, an order was made revoking MacDougall's licence.
21. MacDougall acknowledges that she allowed her Errors and Omission Insurance to lapse from March 2005 through to and including June 2006.
22. MacDougall has provided a letter dated January 3, 2007 to the Commission explaining why the June 2006 correspondence containing the Notice of Opportunity for Hearing was returned to the Commission marked as "moved to unknown address" and why the letter containing the revocation was received when delivered to the same address on October 2006. See Appendix A letter from MacDougall dated January 3, 2007.
23. MacDougall has provided additional documentation on January 4, 2007 to support her position that she was undergoing a medical condition that interfered with her functioning and resulted in the breakdown of communication between the MacDougall and the Commission.