

The new Statutory Accident Benefits Schedule comes into effect September 1 - are you ready?

# The New SABS and FSCO Arbitration of Personal Injury Claims

Attend this program for immediately-applicable information and practice tips from practitioners and FSCO arbitrators in:

- Navigating the transitional rules between the old and new SABS
- How the new SABS (Ont. Reg. 34/10) opens up a range of new deductibles for insureds
- How the meaning of "incurred" expenses has changed - what must be shown to make them payable?
- How an injury or impairment may be deemed "catastrophic" so as to keep benefits payable
- Medical and legal perspectives on "minor" injuries and their treatment under the new Minor Injury Guideline (MIG)
- Recent arbitral and judicial decisions on priorities between insurers
- The issue of "deemed insureds" under SABS s.66 and in recent caselaw
- The smartest approaches to handling pre-arbitration conferences at the Financial Services Commission of Ontario (FSCO)
- Disclosure and document exchange in the arbitration process
- Strategic and tactical considerations in relation to offers to settle
- Meeting the criteria for special awards at FSCO
- The recent judicial and arbitral decisions likely to have the strongest downstream impact on this area of practice

## Chair

Catherine H. Zingg, Flaherty Dow Elliott & McCarthy



## DATE & TIME

Friday, September 17, 2010  
8:30 a.m. - 3:30 p.m. EDT/EST

## LOCATION

Osgoode Professional  
Development Centre  
1 Dundas St. W., 26th Floor  
Toronto, ON

Webcast  
Available



# The New SABS and FSCO Arbitration of Personal Injury Claims

Are you ready to make the most of the new opportunities (and avoid the evolving risks) of accident benefits/tort practice under the revised Ontario regime?

The new Statutory Accident Benefits Schedule (Ontario Reg. 34/10) raises complex questions – both procedural and strategic – for all personal injury lawyers involved with accident benefits issues. To what extent does the new SABS actually restrict or reduce the medical and rehab benefits available to insureds involved in MVA accidents after September 1, 2010? What decisions and processes are open to them to best protect their remaining entitlements? How will the new treatment and assessment plans work? What impact will the changed definitions of “incurred” expenses and catastrophic injury have on the strategies and tactics adopted by both insureds’ and insurers’ counsel?

Knowing the answers will be critical to your success in this practice area. The same is true for understanding the range of strategic and tactical considerations to bear in mind when deciding whether or not to pursue arbitration of MVA injury claims at the Financial Services Commission of Ontario (FSCO), or when counselling one’s client through the arbitral process. Indeed, some counsel argue that unfamiliarity with FSCO’s processes results in its still being an underutilized resource, one that can result in quicker, more efficient dispute resolution in the right cases. Savvy counsel recognize the importance of accurate, up-to-date knowledge of these processes in order to be truly in command of all options and resources available to assist their clients.

This *Osgoode Professional Development* program is a must-attend event for lawyers practising in accident benefits and tort, clearly summarizing where the law is and where it’s going under the new SABS. Tort lawyers will gain invaluable knowledge of what’s available to their clients by way of accident benefits. Defence counsel will gain or solidify their knowledge of the range of available deductions from tort damages. All attendees will benefit from insights straight from FSCO arbitrators, a physician with comprehensive experience in MVA cases, and distinguished practitioners (from both the plaintiffs’ and defendants’ sides).

Register now by visiting [www.osgoodepd.ca](http://www.osgoodepd.ca), calling 416.597.9724 or 1.888.923.3394, emailing [opd-registration@osgoode.yorku.ca](mailto:opd-registration@osgoode.yorku.ca) or faxing 416.597.9736.

## Chair

Catherine H. Zingg, Flaherty Dow Elliott & McCarthy

## Faculty

Dr. Arthur Ameis, MD

Lawrence Blackman, Appeals Officer  
Financial Services Commission of Ontario

Harry P. Brown, Brown & Korte Barristers

Albert M. Conforzi, Pace Law Firm P.C.

Mark K. Donaldson, Dutton Brock LLP

Leilah Edroos, Brown & Korte Barristers

Richard A. Feldman, Arbitrator  
Financial Services Commission of Ontario

Jennifer J. Griffiths, Zarek Taylor Grossman  
Hanrahan LLP

David B. Hayward, Martin Hillyer

James R. Howie, Howie, Sacks & Henry LLP

Edward Lee, Arbitrator  
Financial Services Commission of Ontario

Todd J. McCarthy, Flaherty Dow Elliott  
& McCarthy

Lee Samis, Samis & Company

Alexander M. Voudouris, David S. Wilson P.C.

Adam K. Wagman, Howie, Sacks & Henry LLP

**8:00 Registration and Continental Breakfast**

**8:30 Welcome and Introduction from the Chair**

Catherine H. Zingg, Flaherty Dow Elliott & McCarthy

**PART I: THE NEW STATUTORY ACCIDENT BENEFITS SCHEDULE (SABS)**

Understanding the compensation system in light of the new SABS, with emphasis on the following seven key aspects:

**8:35 Rules Governing the Transition Between the Old and New SABS**

James R. Howie, Howie, Sacks & Henry LLP

- The application and implication of transitional rules (sections 2 and 68)
- “Old SABS never die, they just fade away” – continuing relevance of the old SABS and determining which regime you fall under
- Calculation of income replacement benefits

**Optional Benefits, Including the New Tort Regulation (Ont. Reg. 664)**

Lee Samis, Samis & Company

- The range of new deductibles available to insureds
- General damages and *Family Law Act* awards
- The different levels of IRBs, attendant care and medical rehab
- The right to reduce insurance deductibles

**The Changed Definition of “Incurred” Expenses and Its Practical Implications**

Leilah Edroos, Brown & Korte Barristers

- Has anything really changed under the new SABS?
- Delayed payments and deeming expenses to be incurred
- Practical significance of the class of service provider (professional vs. family member)
- Which expenses need to be incurred to be payable?
- Has there been a change in quantum entitlement?

**Changes to Catastrophic Impairment**

Jennifer J. Griffiths, Zarek Taylor Grossman Hanrahan LLP

- Recent interpretation of the definition of catastrophic impairment
- The expanded definition
- Having an injury deemed “catastrophic” in order to preserve the level of applicable benefits
- “Whole person” impairment

**Key Procedural Issues/Changes: Their Impact on FSCO Arbitrations**

David B. Hayward, Martin Hillyer

- Litigating the application of the MIG and the \$3,500 cap
- Proof required for incurred expenses

**Working With the Minor Injury Guideline**

Dr. Arthur Ameis, MD

Harry P. Brown, Brown & Korte Barristers

- Which injuries are characterized as “minor”?
- A medical perspective on the definition of minor injuries
- Inability under the Guideline to claim certain benefits
- Pre-existing injuries as an exception to the \$3,500 cap

**Priority Problems Between Insurers**

Mark K. Donaldson, Dutton Brock LLP

- A review of recent arbitral and judicial decisions concerning Regulation 3(2) and the 90-day exception
- What constitutes a reasonable investigation of priority?
- What is the scope of the arbitrator’s powers, including recourse to equity?

*Note: A refreshment break will be taken during the morning session.*

**12:00 Luncheon**

**PART II: BEST PRACTICES AT FSCO IN LIGHT OF THE NEW SABS**

**12:45 Making the Most of the Pre-Hearing Process and Conference**

Albert M. Conforzi, Pace Law Firm P.C.

Richard A. Feldman, Arbitrator, FSCO

- Purpose and scope of the pre-arbitration hearing
- Working with the relevant sections of the Dispute Resolution Practice Code
- Production of documents: scope and practice
- Crystallizing the issues effectively
- Face-to-face or telephone pre-arbs? Look ‘em in the eye?
- Making the most of settlement opportunities
- When to ask for costs and when they may be awarded
- Combining/severing applications
- Inviting the tortfeasor to the party – a new initiative

**1:25 Effective Evidence and Efficient Hearings**

Todd J. McCarthy, Flaherty Dow Elliott & McCarthy

Ed Lee, Arbitrator, FSCO

- The hearing as an expeditious and inexpensive alternative to settlement
- Disclosure practices and document exchange
- Disclosure of surveillance
- How many experts can or should be called?
- Impact of lay witnesses
- Judging when enough is enough, or, overcoming the fear of being efficient
- Evidentiary considerations in deciding to proceed in court or by way of FSCO

## Agenda [Cont'd]

### 2:10 Expenses and Offers to Settle

Alexander M. Voudouris, David S. Wilson P.C.  
Lawrence Blackman, Appeals Officer, FSCO

- How to conduct an expense hearing and what to expect
- Working with relevant sections of the Dispute Resolution Practice Code
- The impact of relevant case law
- What constitutes a valid settlement offer?
- A checklist of strategic and tactical considerations
- do costs determine everything?

### 2:50 "Hot Cases" – Recent FSCO Decisions Which Will Have the Greatest Downstream Impact

Adam K. Wagman, Howie, Sacks & Henry LLP

A survey of the decisions you need to know about, in areas including criteria for special awards (even where no arbitration is in process).

*Note: A refreshment break will be taken during the afternoon session.*

### 3:30 Program Ends

Register for both *The New SABS and FSCO Arbitration and Personal Injury Law and Practice (September 16, 2010)* and save! See special package price on the right.

## Registration

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\$695 plus 13% HST for a total of \$785.35.

Special pricing package: Register for both *The New SABS and FSCO Arbitration and Personal Injury Law and Practice (September 16, 2010)* for \$1,195 plus 13% HST for a total of \$1,350.35.

Fees include attendance, program materials, continental breakfast, lunch and break refreshments.

Group discounts are available for both on site and webcast participants.

Visit [www.osgoodepd.ca](http://www.osgoodepd.ca) for details. Please inquire about financial assistance and CLE credits.

OPD Searchable e-Binder now available! Contact us for more information.

### CLE Credits

Approved in accordance with the requirements of the LSUC Certified Specialist Program (pending), Barreaux du Québec, BC CPD, and the NY CLE Board (for transitional and non-transitional lawyers).

Note: NY CLE Credits are not available for webcast participants. BC CPD webcast participants must contact us for further information.

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### Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

### Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund (less \$50 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

### Date & Time

Friday, September 17, 2010  
8:30 a.m. - 3:30 p.m. EDT/EST

Please arrive a half hour early for sign-in and material pick-up.

Dress is business casual.

### Location

Osgoode Professional Development  
Downtown Toronto Conference Centre

1 Dundas St. W., 26th Floor  
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3. **FAX** your registration to  
416.597.9736
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