

## Accident Benefits: The Latest Law and the Future of FSCO

Attend this program for the most useful and current information about accident benefits law and practice, including:

- Current key amendments to the SABS in relation to economic loss, attendant care and housekeeping benefits, the Minor Injury Guideline (MIG) and pre-existing medical conditions, and the election of weekly benefits
- The true meaning of *Scarlett and Belair* in defining a minor injury and determining the applicability of the MIG
- When can chronic pain amount to a catastrophic impairment?
- *Gordukova* and its impact on the choice of forum (FSCO or Court?)
- The likely consequences of the various recommendations in Justice Cunningham's landmark report on Ontario's auto insurance dispute resolution system
- Lessons from cases such as *Simser and Aviva* on the requirement of "economic loss" in relation to incurred expenses and entitlement to attendant care and housekeeping benefits
- SABS interest: implications of the Court of Appeal's decision in *Zacharias*
- *Augustin and Unifund* and other developments on providing "medical reasons" for denying benefits to an insured and conducting an insurer's examination
- How savvy counsel navigate the ethical and professional issues that frequently arise in AB practice

**Plus!** Optional Pre-Conference Workshop: *Fundamentals of Accident Benefits Law & Practice*

### Chairs

Alexander M. Voudouris, Pace Law Firm

Todd J. McCarthy, Flaherty Dow Elliott & McCarthy



### DATE & TIME

Friday, March 28, 2014

9:00 a.m. - 5:00 p.m. EDT/EST

### OPTIONAL WORKSHOP

Thursday, March 27, 2014

1:30 p.m. - 4:30 p.m.

### LOCATION

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

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LSUC (ON) CPD: 7.25 CPD Hours (6.25 Substantive, 1.0 Professionalism)



# Accident Benefits: The Latest Law and the Future of FSCO

**New amendments to the SABS, new caselaw, and a far-reaching report on FSCO – are you fully up-to-date on the implications?**

**T**he Statutory Accident Benefits Schedule (SABS) amendments of 2010 raised complex questions for personal injury lawyers involved with accident benefits issues in Ontario. Additionally, recent FSCO decisions, and forthcoming further amendments to the SABS itself, enable the system to be seen in much greater clarity. As well, the Ontario government, aiming to reduce the cost of auto insurance and prevent future backlogs in the process of resolving auto insurance disputes, appointed former Superior Court Associate Chief Justice J. Douglas Cunningham to undertake a comprehensive review of the system; his interim report is out and the final report (due in February 2014) is expected to recommend far-reaching changes – changes that will impact your practice and your clients' interests.

This *Osgoode Professional Development* program is a must-attend event for lawyers practising in accident benefits and tort, clearly summarizing where the current law and practice stand and where they can now be seen to be heading. Plaintiffs' counsel will update and deepen their knowledge of what's available to their clients by way of accident benefits and best practices in securing them under the amended SABS and caselaw. Defendants' counsel will similarly enhance their knowledge of the range of available deductions from tort damages and the most successful strategies in countering claims.

This is your opportunity to obtain the most up-to-date information and insights from leading practitioners.

**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.**

## Chairs

**Alexander M. Voudouris**, Pace Law Firm

**Todd J. McCarthy**, Flaherty Dow Elliott & McCarthy

## Faculty

**Robert M. Ben**, Thomson, Rogers

**Lawrence Blackman**, Director's Delegate, Dispute Resolution Services Branch, Financial Services Commission of Ontario

**Aimee Draper**, Flaherty Dow Elliott & McCarthy

**George O. Frank**, Devry Smith Frank LLP

**Charles Gluckstein**, Gluckstein Personal Injury Lawyers P.C.

**Catherine A. Korte**, McCague Borlack LLP

**Adam R. Little**, Oatley Vigmond Personal Injury Lawyers LLP

**Ivan Luxenberg**, M + F Mediation and Arbitration Services

**Wendy Moore Mandel**, Thomson, Rogers

**Joyce Miller**, JM Dispute Resolution

**Brad S. Moscato**, Howie, Sacks & Henry LLP

**Andrew C. Murray**, Lerners LLP

**David F. Murray**, Matthews Abogado LLP

**Fred Sampliner**, YorkStreet Dispute Resolution Group Inc.

**Kadey B. J. Schultz**, Hughes Amys LLP

**R. Tally Vanounou**, D'Angela Fox Vanounou LLP

**James L. Vigmond**, Oatley Vigmond Personal Injury Lawyers LLP

# Agenda

## Optional Pre-Conference Workshop

### ***Fundamentals of Accident Benefits Law & Practice***

March 27, 2014 - 1:30 p.m. - 4:30 p.m.

Note: Workshop not available via webcast attendance.

Brad S. Moscato, Howie, Sacks & Henry LLP

Aimee Draper, Flaherty Dow Elliott & McCarthy

Fred Sampliner, YorkStreet Dispute Resolution Group Inc.

A team combining plaintiffs' and defendants' perspectives with that of a dispute resolution professional with years of experience as a FSCO Arbitrator will address topics, including:

- Making the most of the pre-hearing process and conference
- Effective evidence and efficient hearings
- FSCO motions and preliminary hearings

The workshop is designed for those who are relatively new to this area or who could use a refresher. It will also provide excellent background for the following day's program.

## Friday, March 28, 2014

### 8:30 Registration and Continental Breakfast

### 9:00 Welcome and Introduction from the Chairs

Alexander M. Voudouris, Pace Law Firm

Todd J. McCarthy, Flaherty Dow Elliott & McCarthy

### 9:10 New Amendments to the SABS

Alexander M. Voudouris, Pace Law Firm

This session will review the amendments taking effect in February 2014, focusing on:

- Limiting attendant care benefits to one's economic loss
- Documenting pre-existing medical conditions in terms of the MIG
- The finality of electing a weekly benefit

### 9:25 The Minor Injury Guideline (MIG) and *Scarlett and Belair*

Alexander M. Voudouris, Pace Law Firm

- What "compelling evidence" is required to get an insured out of the \$3500 monetary limit?
- How can insurers challenge "compelling evidence"?
- Proving the insured in or out of the MIG - whose onus?
- The Superintendent of Insurance's powers to issue Guidelines on the MIG - are they binding?
- MIG determinations: full or preliminary hearing?
- A status update on the judicial review application of *Scarlett*

### 9:50 Recent Developments in Catastrophic Injury (CAT)

James Vigmond, Oatley Vigmond Personal Injury Lawyers LLP

- The relationship between CAT status, future care costs, and larger potential credit/deduction and assignment rights for at-fault tortfeasors and their insurers

- Does meeting the definition matter when one can sue for future special damages based on "substantial possibility"?
- When can chronic pain amount to CAT?

### 10:30 Refreshment Break

### 10:45 FSCO or Court? Whose Choice Is It Anyway? The Impact of *Gordyukova v. Certas Direct Insurance*

Todd J. McCarthy, Flaherty Dow Elliott & McCarthy

The insurer's counsel in the Court of Appeal will address the ruling and its implications, including:

- FSCO's initial response to the decision
- Criteria for applying "abuse of process" doctrine
- Impediments to the choice of forum: limitation period defences and issue estoppel
- Impact of abandonment of trial dates/hearing dates

### 11:15 The Cunningham Report: Major Changes Facing FSCO and the Accident Benefits Dispute Resolution System?

Robert M. Ben, Thomson Rogers

David F. Murray, Matthews Abogado LLP

Andrew C. Murray, Lerner LLP

Alexander M. Voudouris, Pace Law Firm & Todd J. McCarthy, Flaherty Dow Elliot & McCarthy (moderators)

Justice Cunningham's draft report (final version anticipated in advance of this program) addresses major issues in the process of resolving AB disputes. Will the adjudicative arm of FSCO remain, or will we see a stand-alone tribunal separated from FSCO's regulatory arm? If a new tribunal is created, who will control it? Will the Arbitrator's function be privatized? Will appeals go directly to Superior Court instead of the Director's Delegate? Might a "Wild West" culture develop? Is this true reform or a watering-down of the tribunal system? This lively panel will explore the changes contemplated by the Report, along with their advantages and disadvantages.

### 12:30 Luncheon

### 1:15 Incurred Expense, Attendant Care, Housekeeping, and Economic Loss

Lawrence Blackman, Director's Delegate, FSCO

Catherine A. Korte, McCague Borlack LLP

Charles Gluckstein, Gluckstein Personal Injury Lawyers P.C.

- The requirement of "economic loss" in relation to incurred expenses and entitlement to attendant care, including the effect of the 2014 SABS amendments
- Must the loss be "material", "significant" or "abnormal"? Where is the line to be drawn? Are expenditures on goods a source of "economic loss"?
- What *Simser and Aviva* adds to our understanding

### 2:40 SABS Interest: 1% or 2% to Infinity and Beyond?

R. Tally Vanounou, D'Angela Fox Vanounou LLP

- SABS interest - compensation for delay in payment, or "lottery windfall"?
- The movement from 2% to 1% from September 2010: why or when do insurers get the lower rate?

## Agenda [Cont'd]

- Lessons from the Court of Appeal in *Zacharias v. Zurich*
- *Federico* and the pre-September 2010 rate

### 3:00 Refreshment Break

### 3:10 "Medical Reasons" to Deny Benefits and Conduct an Insurer's Examination

Catherine A. Korte, McCague Borlack LLP

Joyce Miller, JM Dispute Resolution

- Deconstructing *Quinones* and *Augustin*
- What is a "medical reason" sufficient to enable insurers to deny benefits? Who may provide it? Is it the same thing as a medical opinion?
- If a medical reason is not provided, are expenses deemed incurred and is an insurer disentitled to claim that the applicant is within the MIG?

### 4:00 Ethical and Professional Issues in Accident Benefits Practice

Wendy Moore Mandel, Thomson Rogers

Kadey B.J. Schultz, Hughes Amys LLP

George O. Frank, Devry Smith Frank LLP

Ivan Luxenberg, M + F Mediation and Arbitration Services

Adam R. Little, Oatley Vigmond Personal Injury Lawyers LLP

An expert panel will examine, from both plaintiffs' and defendants' perspectives, fact situations raising vexing ethical and professional questions that you will face in the course of your accident benefits practice.

### 5:00 Program Concludes



CPD Credits

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**LSUC (ON) CPD:** 7.25 CPD Hours (6.25 Substantive, 1.0 Professionalism) for the course; 3.0 CPD Hours (3.0 Substantive, 0.0 Professionalism) for the workshop; **BC/Manitoba/Saskatchewan/NWT/Nunavut/Yukon/Quebec/New Brunswick and PEI:** 6.75 CPD/MCLE credit hours for the course (2.75 credit hours for the workshop) towards professional development requirements; **NSBS CPD:** 7.0 credit hours for the course (3.0 credit hours for the workshop); **NY CLE Board (on-site participants only):** 7.5 credit hours for the course (3.0 credit hours for the workshop) in the Area of Professional Practice for transitional and non-transitional lawyers. Also eligible for CLE/Insurance Premium Credits Program offered by the Law Society of PEI and for Alberta CPD credit with the Law Society of Alberta. Questions? E-mail: cpd@osgoode.yorku.ca or refer to the program website.

## Registration

Please complete all registrant information.

### Accident Benefits: The Latest Law and the Future of FSCO

Conference  Conference Plus Workshop  Workshop Only

I will attend:  On site  Via webcast (single viewer - conference only)

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### Fee Per Delegate

**Conference only: \$795 plus 13% HST for a total of \$898.35.**

**Conference plus workshop: \$1095 plus 13% HST for a total of \$1237.35.**

**Workshop only: \$400 plus 13% HST for a total of \$452.00.**

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.

### Payment Options

Cheque enclosed (payable to York University — HST# R119306736)

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### Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund (less \$75 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

### 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.

### Dates & Times

**Friday, March 28, 2014**

**9:00 a.m. - 5:00 p.m. EDT/EST**

**Optional Workshop:**

**March 27, 2014: 1:30 p.m. - 4:30 p.m.**

Please arrive a half hour early for sign-in and material pick-up. Dress is business casual.

### Location

**Osgoode Professional Development  
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1 Dundas St. W., 26th Floor  
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3. **FAX** your registration to  
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