

# LITIGATING MOTOR VEHICLE ACCIDENT CLAIMS

## Gearing Up for Regime Reform

September 30 – October 1, 2009 | St. Andrew's Club and Conference Centre | 150 King Street West, Toronto



Leading experts on motor vehicle accident litigation will address the impact of Ontario's **Five Year Reform** and discuss these and other hot button topics:

- Analysing recent threshold cases and strategies to advance and defend them
- An overview of **Bill 198** proposed changes and their impact on your practice
- Representing the catastrophically impaired litigant and the insurer of the claim
- Recommended objectives and achievable results for settlement and pre-trial conferences
- Interpreting the meaning of Glasgow Coma Scale Results
- Preparing medical experts for discovery and trial
- The interaction of benefits regimes and cut-off implications on ongoing entitlements

*and much more...*

### PROGRAM CO-CHAIRS

**Charles Gluckstein**

*Partner*

*Gluckstein and Associates LLP*

**Alan L. Rachlin**

*Partner*

*Rachlin & Wolfson LLP*

### LUNCHEON KEYNOTE ADDRESS

Getting it Right at Your FSCO Arbitration: The View from Appeals

**Lawrence Blackman**

*Directors' Delegate*

*Financial Services Commission of Ontario*

Marketing Partner

**LAW TIMES**



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An  incisivemedia event

Dear Colleague,

**Bill 198**, the governing law of Ontario's automobile sector, is about to undergo a radical facelift. Ontario's industry regulator, the **Financial Services Commission of Ontario (FSCO)**, after lengthy consultation with industry stakeholders and review of their submissions, published its **Report on the Five Year Review of Automobile Insurance** on March 31, 2009. Whether you are a lawyer, paralegal, health professional or insurance claims handler, **the FSCO Report** recommendations, expected to soon amend **Bill 198**, will radically change the nature of your practice.

Where are the courts heading with threshold, catastrophic impairment ("CAT") and bad faith cases? How can Accident Benefits ("AB") including the Pre-Approved Framework ("PAF") and assessment processes operate more efficiently, speedily and with better results? What are the best practices to prepare for mediation, arbitration and successfully negotiate an early and favourable settlement for your client?

You will get the answers to these and other critical questions and hear from leading experts about what legislative reform will mean for you by attending **Insight's LITIGATING MOTOR VEHICLE ACCIDENT CLAIMS**. This timely Insight event will afford you a one stop networking and learning opportunity to meet your peers and hear about:

- An overview of **FSCO's Report on the Five Year Review of Automobile Insurance**
- Preparing medical experts for discovery and trial
- Assessing **Sherman v. Guckelsburger** and the future direction of threshold cases
- Calculating the real value of a future care cost claim
- Accessing benefits under collateral benefits plans
- Counsel and Party representatives' "do's and don'ts" at mediation

We look forward to seeing you on September 30!



**Charles Gluckstein**  
Partner  
*Gluckstein and Associates LLP*



**Alan L. Rachlin**  
Partner  
*Rachlin & Wolfson LLP*

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#### WHO SHOULD ATTEND

- Personal Injury Lawyers
- Defense Lawyers
- In-House Insurance Counsel
- Accident Benefits and Liability Insurance Claims Adjusters
- FSCO Regulators, in-House Counsel, Mediators and Arbitrators
- ADR Professionals
- Future Care, Vocational, Occupational and Rehabilitation Assessors and Consultants
- Medical Professionals
- Accident Benefits Consultants and Paralegals
- Law Clerks
- Actuaries

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8:00 | 8:45

Registration and Continental Breakfast

8:45 | 8:50

Welcoming Remarks from Insight

8:50 | 9:00

Welcoming Remarks from the Co-Chairs

**Charles Gluckstein**

*Partner*

*Gluckstein and Associates LLP*

**Alan L. Rachlin**

*Partner*

*Rachlin & Wolfson LLP*

9:00 | 10:15

PANEL

Perspectives on Damages Awards, Bad Faith Claims and the Bill 198 Threshold Test in Motor Vehicle Accident (MVA) Cases

**Moderator: Jamie Pollack**

*Partner*

*Laxton Glass LLP*

**Russell Howe**

*Partner*

*Boland Howe LLP*

**The Honourable Madame Justice Jane Milanetti**

*Ontario Superior Court of Justice*

**David Zarek**

*Partner*

*Zarek Taylor Grossman Hanrahan LLP*

- Overview of and trends in personal injury cases in Canada: Where are the courts heading?
- Assessing **Sherman v. Guckelsburger** and the future direction of threshold cases
- Calculating the real value of a future care cost claim
- Analysing recent threshold cases: Has anything changed since **Meyer v. Bright**?
- What are the constituent elements of insurer bad faith?
- How can an insurer defend a bad faith claim?
- Examining **Fidler v. Sun Life Insurance Company of Canada**: Has it settled the law?

10:15 | 10:30

Networking Coffee Break

10:30 | 11:45

PANEL

An Overview of Bill 198 Reform Initiatives: How Can MVA Legislation Effectively Resolve Competing Stakeholder Interests?

**Moderator: J. Patrick Brown**

*McLeish Orlando LLP*

**Richard Halpern**

*Partner*

*Thomson, Rogers LLP*

**Ivan Luxenberg**

*Partner*

*Malach & Fidler LLP*

**Philippa Samworth**

*Partner*

*Dutton Brock LLP*

On March 31, 2009, the **Financial Services Commission of Ontario ("FSCO")** issued its **Report of the Five Year Review of Automobile Insurance**. The Report considers the submissions received from industry stakeholders. It will be the blueprint for imminent reform of **Bill 198**. In this session, renowned experts representing frequently divergent industry and claimant perspectives will debate the pros and cons of the proposed changes, and their impact on motor vehicle accident litigation in Ontario. They will discuss these and other hot button topics:

- Changes to the deductible and the definition of permanent impairment
- Reduction of med/rehab limits to \$25,000.00
- Limits to insurer examinations and section 24 assessments
- The new **PAF**
- Changes to income replacement, housekeeping and attendant care benefits

11:45 | 12:45

Mastering the MVA Juggling Act: Getting the Best AB and Tort Settlement for Your Client

**Andrew Murray**

*Partner*

*Lerners LLP (London)*

**Alan L. Rachlin**

*Partner*

*Rachlin & Wolfson LLP*

- Winning strategies to coordinate the **MVA** claimant's AB and tort proceedings and achieve either optimal recovery (plaintiff) or reduced liability exposure (defendant)
- Working up the claim to meet the threshold
- Defense techniques to challenge threshold entitlement
- Limits on sharing information, privilege and privacy concerns in communications between co-defendant insurers as well as plaintiffs' legal advisors acting in dual proceedings
- When is counsel at risk for settling too prematurely? Identifying the right time to settle

12:45 | 1:45

Networking Luncheon

1:45 | 2:15

LUNCHEON KEYNOTE ADDRESS

Getting it Right at Your FSCO Arbitration: The View from Appeals

**Lawrence Blackman**

*Directors' Delegate*

*Financial Services Commission of Ontario*

2:15 | 3:15

Getting the Best Deal for Your Client: Accessing Benefits Sources and Structuring the Settlement

**Aleks Mladenovic**

*Partner*

*Thomson, Rogers LLP*

**Laura A. Mullin**

*Principal*

*McKellar Structured Settlements Inc. (Guelph)*

- The interaction of benefits regimes and cut-off implications on ongoing entitlements
- Accessing benefits under long-term disability (**LTD**), Canada Pension Plan (**CPP**), workers' compensation and employment insurance (**EI**)
- Set-off and subrogation issues

- Assessing different pay out modalities and their tax consequences
- Best practices in structuring a settlement
  - past versus future benefits
  - lump sum versus annuity payments

3:15 | 3:30

**Networking Refreshment Break**

3:30 | 4:30

PANEL

**Why Wait for Trial? Achieving Cost Efficient, Early and Final Resolution to the MVA Claim**

**Moderator**

**Paul Iacono, Q.C.**

*Mediator, Arbitrator and Counsel*

*Beard Winter LLP*

**Frank Gomberg**

*Mediator and Lawyer*

*Teplitsky Colson LLP*

**Todd Allan Reybroek**

*Lawyer*

*Reybroek Barristers Professional Corporation*

**Leslie Wright**

*Partner*

*Rachlin & Wolfson LLP*

- When is the ideal time to mediate an MVA action?
- Getting counsel and party buy-in to the mediation process
- Selecting the right mediator
- Best practices in preparing the mediation brief and preparing your client for the mediation
- The “do’s and don’ts” for counsel and their client party representatives at the mediation
- Recommended objectives and achievable results for settlement and pre-trial conferences
- Who makes the first offer and how many rounds will we go? Successful negotiation strategies, breaking impasse and effective use of **Rule 49** offers
- Where to go after a failed mediation: FSCO, the courts or private arbitration?

4:30 | 5:15

**Managing Constructs of Vocational Rehabilitation to Address Mitigation**

**Frank Martino, BA, ARP, CCRC**

*Rehabilitation Network Canada Inc.*

- Constructs in Vocational Rehabilitation
- Latest developments in assessing
  - Transferable skills
  - Vocational evaluation
- What is vocational rehabilitation and its importance in MVA patient assessment and mitigation for return to work?
- The role of psycho vocational and psycho educational assessments
- Mapping out a patient assessment and vocational strategy
- Working with plaintiff’s counsel and the insurer
- Effectively reading assessment reports
- Challenging the assessor’s conclusions

5:15

**Conference Adjourns**

8:00 | 8:40

**Continental Breakfast**

8:40 | 8:45

**Co-Chairs’ Opening Remarks**

8:45 | 9:45

**Winning Strategies for Advancing and Defending Attendant Care and CAT Cases**

**Eric Grossman**

*Partner*

*Zarek Taylor Grossman Hanrahan LLP*

**Howard R. Blitstein**

*Partner*

*Howie, Sacks & Henry LLP*

- An overview of the jurisprudence in the aftermath of **Arts v. State Farm Insurance**
- Factors to determine **CAT** status
- Examining the criteria of **CAT** status eligibility
- Grappling with multiple factors
- Interpreting the meaning of Glasgow Coma Scale Results
- Assessing long-term attendant care needs
- Terminating attendant care coverage

9:45 | 10:15

**Use or Operation of a Motor Vehicle Accident After Vytlingham and Herbison: Has Anything Changed?**

**Charles Gluckstein**

*Partner*

*Gluckstein and Associates LLP*

- What is the meaning of “use or operation” of an automobile “arising directly or indirectly” under **Bill 198**?
- Analysis of the Ontario Court of Appeal decision in **Russo v. The Personal et al.**
- Protecting coverage issues
- The special cases of leased motor vehicles and unprotected defendants
  - timing issues
  - cost-effective alternatives
  - liability considerations

10:15 | 10:30

**Networking Coffee Break**

10:30 | 11:15

**The Role of the Health Professional as an Expert Witness**

**Chris T. Blom**

*Partner*

*Miller Thomson LLP*

**Robert B. Munroe**

*Partner*

*Ross & McBride LLP (Hamilton)*

- Determining who is an expert: selecting the right expert
- Preparing medical experts for discovery and trial
- Examining and cross-examining medical experts
- Obtaining, understanding and using medical expert reports
- Understanding the professional responsibilities of health professionals as assessors
- Privilege and ethical issues
- The expected impact of **Bill 198** reform on the role of the health expert in **MVA** litigation

11:15 | 12:15

## Litigating Chronic Pain, Reflex Sympathetic Dystrophy (RSD) and Fibromyalgia Cases

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**Heidi Brown**

*Lawyer*

*Bogoroch and Associates LLP*

**Dr. Angela Mailis**

*Director of Comprehensive Pain Management Program*

*Toronto Western Hospital*

- Concepts of Chronic Pain and Chronic Pain Disorder: Are they the same and one?
- Intractable Chronic Pain in the absence of substantial physical injury: Where does it come from?
- Quick overview of common persistent pain syndromes (WAD II and fibromyalgia)
- Quick reference to Reflex Sympathetic Dystrophy (RSD) Complex Regional Pain Syndrome: Is it for real?
- Who is a "Pain Doctor" in Canada
- Advancing and defending chronic pain, RSD, WAD 2 and related fibromyalgia proceedings
- Preparing the chronic pain patient for legal proceedings

12:15 | 1:00

## Examining the Limits of Employee Claims in MVA Cases

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**Angela Currie**

*Lawyer*

*Gluckstein and Associates LLP*

**Joan Takahashi**

*Partner*

*Borden Ladner Gervais LLP*

- Documentation requirements to process an income replacement benefit ("IRB") claim
- Insurer examinations and patient medical reports and assessment issues
- Terminating the IRB and resulting consequences
- Accessing collateral benefits
- Legal issues from the integration of IRB and collateral benefits coverage
- When is the MVA claimant expected to return to work
- Gradual and part-time return to work considerations
- Accommodating the special needs employee in returning to work and its impact on the IRB claim

1:00 | 2:00

## Networking Luncheon

2:00 | 3:00

## Negotiating and Litigating Evidentiary Issues

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**Alfred M. Kwinter**

*Partner*

*Singer, Kwinter LLP*

**Catherine Korte**

*Partner*

*Brown and Korte Barristers*

- Strategically using demonstrative evidence in discovery and trial
- Obtaining and preserving accident reconstruction evidence
- The role of technology in identifying, obtaining and preserving evidence
- To present or hold back: timing issues in producing evidence at different stages of the process

- Avoiding the traps and pitfalls of
  - mishandling evidence
  - improperly questioning a witness
  - being out of step with the jury
- Special considerations for jury trials
- Producing and reading-in reports
- Examining the advantages and disadvantages of trial versus FSCO arbitration

3:00 | 3:15

## Networking Refreshment Break

3:15 | 4:15

PANEL

## Brain and Spinal Cord Injury Cases: Confronting the Special Medical and Legal Challenges

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**Moderator**

**L. Michael Shannon**

*Partner*

*Cassels Brock & Blackwell LLP*

**Dr. Jane Gillett, MD., FRCP**

*Associate Professor*

*Department of Medicine*

*McMaster University (Hamilton)*

**Nurith Safir, MSW RSW**

- Latest developments in diagnosis and treatment options: Is there over reliance on the **Glasgow Scale**?
- A primer on brain anatomy, physiology and function
- Long-term planning issues
  - financial considerations
  - treatment plans
  - future care costs
  - attendant care needs
- Medical reports and experts required to advance and defend the claim
- Special considerations in acting for and defending against the catastrophically impaired litigant
- Litigation issues when plaintiff has suffered a mild traumatic brain injury

4:15 | 5:00

## Effective Treatment and Claims Management for Psychological Disability and Cognitive Impairment

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**Dianne Henderson, R.N. M.Ed.**

*Medical Consultant*

*Gluckstein and Associates*

**Dr. Philip Miller**

*Rehabilitation Psychologist*

- Recognizing the symptoms of a psychological disability arising from the **MVA**
- Selecting the right psychologist
- Assessing treatment methodologies
- Post traumatic stress disorder following the **MVA**: distinguishing normal behaviour from psychological impairment
- Insurer requirements for psychologist reports
- Understanding medical terminology and how to read the report
- Examining and cross-examining the psychologist on discovery and at trial
- Restoring the patient's psychological health in treating the physical injuries

5:00

## Co-Chairs' Closing Remarks and Conference Concludes

