

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of September 21 - 25, 2009

160 C-Notes in Costs Not Music to Insured's Ears

**Mr. C. and Kingsway General Insurance Company, FSCO A04-001815,
August 27, 2009, Arbitrator David Leitch**

March 26, April 13 & October 29, 2001 collisions. Insured ("C") applied for and received benefits. Benefits terminated on October 6th 2002. Following mediation, the Insurer was successful at Arbitration in resisting a claim for past benefits and a special award. The matter with respect to Arbitration costs and disbursements payable to the Insurer from C was not heard until over a year later.

The Insurer claimed that it was entitled to \$26,154.05 in legal costs and an additional sum of approximately \$16,000.00 in disbursements to be paid to it by C. The hourly rate charged by the Insurer's lawyers and law clerks was limited to \$93.34/hr and \$23.00/hr respectively. The Arbitrator noted that the award of costs and disbursements was governed by the *Insurance Act, The Dispute Resolution Practice Code* and the *Legal Aid Services Act, 1998*. There appeared to be no dispute that the hourly rates charged were appropriate under the legislation.

The Arbitrator disagreed with the legal/witness preparation time costs to hearing costs ratio of 4:1 suggested by the Insurer. He felt that a 2.5:1 ratio was appropriate. He also noted that the Arbitration itself dealt with conflicting issues in medical evidence. Both parties engaged in practice at the hearing that might be regarded as sharp. As a result the costs amount payable by C to the insurer was reduced to \$16,050. With respect to the disbursements, the Arbitrator disallowed 'Official Examiner Fees' and 'Expert Fees' in relation to preparation and giving evidence at Arbitration. C was also ordered to pay the Insurer \$7440 in disbursements.

Implications:

Insurers will continue to be at a significant advantage in Arbitrations and Civil Litigation settings using decisions such as this one to discourage risk adverse injured persons. Insured's must be kept aware at all times that there are risks to bringing Arbitrations and Civil Law suits. No guarantees can be given regarding any matter. This decision also clearly illustrates for Insureds that paying \$160 C-Notes in costs and another \$74 C-Notes in disbursements ended C's case on - a sour note.

Accessing Arbitration Decisions



If you would like to read the arbitration decisions for yourself, they can be found at <http://www.fSCO.ca/english/insurance/auto/drs/decisions/default.asp>.

Please contact FSCO at 1-800-517-2332 ext. 7202 to obtain a password to gain access to the site.

If you have questions or comments about this edition of the newsletter, contact Dr. Brian Murphy at Legate & Associates: bmurphy@legate.ca.