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FSCO dispute system needs an overhaul



PERSONAL INJURY

The next problem the Financial Services Commission of Ontario needs to address, after getting a handle on the backlog of mediations, is arbitration timelines for both getting a date for a hearing and waiting indefinitely to receive a decision afterwards, Toronto personal injury lawyer **Darcy Merkur** writes in *Law Times*.

“Most plaintiffs’ personal injury lawyers detest FSCO arbitrations and avoid them whenever possible,” Merkur, partner at **Thomson Rogers**, writes in the article, adding the arbitration process makes it impossible to quickly and economically arbitrate any day-to-day treatment denials. “There’s simply no way to arbitrate a treatment denial and get a timely result and, even if that was possible, the cost of arbitrating would greatly exceed the amount in dispute even after considering the modest FSCO cost contribution consequences.”

The unfortunate result, he writes, is that accident victims have to pick their battles with their accident benefit insurer rather than fighting every small dispute along the way. And as a result,

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“plaintiffs’ personal injury lawyers try to work around the day-to-day treatment denials by persuading adjusters on the merits of the request, investigating other options, and making a business case to the insurers about the cost of approving the recommended treatment as opposed to engaging in an expensive dispute process they won’t be successful in,” he writes.

Matters currently arbitrated at FSCO are the big ones, such as the catastrophic impairment designation and ongoing entitlement to weekly benefits, writes Merkur. And while getting an arbitration date can take a long time, he says, “what’s most frustrating is waiting several months for the decision itself.”

Merkur says the FSCO dispute system needs an overhaul that includes, “binding timelines, a simplified and expedient process for day-to-day disputes, and, most importantly, severe cost consequences for unsuccessful insurers that can afford to pay the penalties and can modify their behaviour in fear of them,” he writes.

The system must change to level the playing field between vulnerable accident victims and sophisticated insurers, he writes in the article.


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