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ACCIDENT BENEFITS IN ONTARIO

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**Originally co-authored by the late
James M. Flaherty**

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This service provides in-depth guidance to the *Statutory Accident Benefits Schedule* in Ontario with summaries and analysis of case law with respect to arbitration decisions from the Licence Appeal Tribunal (L.A.T.), relevant judicial decisions and private arbitration decisions. Case digests are available online with links to the full-text decisions. Subscribers also receive the **Accident Benefits in Ontario Newsletter**, a monthly current awareness resource e-mailed to you directly.

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Amendment to Common Rules of Practice and Procedure

Effective February 7, 2019 an amended version of Rule 18 will take effect. Reconsideration will no longer be allowed for interlocutory decisions. The criteria for reconsideration has been clarified in Rule 18.2 as follows:

- a. The tribunal acted outside its jurisdiction or violated the Rules of procedural fairness;
- b. The tribunal made an error of law or fact such that the tribunal would likely have reached a different result had the error not been made;
- c. The tribunal heard false evidence from a party or witness, which was discovered only after the hearing and likely affected the result; or
- d. There is evidence that was not before the tribunal when rendering its decision, could not have been obtained previously by the party now seeking to introduce it and would likely have affected the result.

What's New in this Update

In this release, the author has added new annotations of cases in the following areas: *Statutory Accident Benefits Schedule - 2010*, the Licence Appeal Tribunal Rules of Practice and Procedure, *Disputes Between Insurers*, the *Insurance Act* and the *Licence Appeal Tribunal Act, 1999*. The *Licence Appeal Tribunal Act, 1999*, has also been updated to include amendments to S.O. 2018, c. 12 now in force.

Highlights

The issue of whether benefits were denied in accordance with the requirements set out in *Smith v. Co-operators*, [2002] S.C.R. 129 (S.C.C.), such that the limitation period was triggered was considered in *Aviva Canada Inc. v. Sidhu*, 2018 ONSC 6506 (Ont. Div. Ct.) (Heeney, Conway and Sutherland JJ.) and by the Licence Appeal Tribunal in *16-001308 v. TD General Insurance Company*, 2017 CarswellOnt 21579 (Ont. L.A.T. - AABS) (August 29, 2017, Gottfried).