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Ontario Accident Benefits (SABS) – The Role of Doctors and Their Medical Assessments

If you are injured in a car accident in Ontario, you will likely have access to Ontario's no-fault insurance benefits plan, which is the Statutory Accident Benefits Regime (SABS) or more commonly referred to as "Accident Benefits".

When you claim Accident Benefits, you likely will be asked to undergo a medical assessment by a doctor or medical practitioner to evaluate your condition and provide an opinion as to your entitlement to Accident Benefits.

If you are assessed by a medical doctor at the request of the Accident Benefits insurer, is that doctor an expert or a fact witness?

In **Babakar v. Brown** (2009), 96 O.R. 317 (S.C.), the issue arose as to whether a medical doctor who performed an IE (independent medical examination) under s.42 of the SABS was an "expert" or a "fact" witness.

At Discovery, the Accident Benefits insurer refused to answer questions about this s.42 assessment doctor because they viewed the assessor as an expert. At a motion before the Master, the Accident Benefits insurer was ordered to answer the questions. **On appeal before Lederer, J.**, the Accident Benefits insurer was ordered to answer the questions because the s.42 assessor was held to be a fact witness. On application for leave to appeal, Karakatsanis, J. held that the issue was unclear and was an important question which required further consideration and thereby granted leave to appeal.

This is a ruling which may have a significant impact on the conduct of Accident Benefits claims and litigation which is of interest to lawyers who practice in the area. It deals with **Rule 31.06(3) of the Rules of Civil Procedure** and issues related to the scope of discovery regarding experts.

Entitlement to specific heads under the Accident Benefits regime is often a matter which is in dispute and a detailed working knowledge of the regime is required. For some background as to the insurance systems that Ontario has gone through (including changes to the Accident Benefits system), you can see our **March 4** blog. Other blogs related to Accident Benefits can be reviewed **here**.

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