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## Who Is An Expert?

<b>Reported Case:</b>	<b><i>Babakar v. Brown</i></b>
<b>Citation:</b>	[2010] O.J. No. 414
<b>At Issue:</b>	Who is an expert?
<b>The Court:</b>	Ontario Superior Court of Justice Divisional Court - Toronto, Ontario
<b>Judgment Rendered:</b>	January 29, 2010
<b>Factual Summary:</b>	The insurer was being sued for terminating statutory accident benefits. The insurer had the claimant assessed under s. 42(1) of the SABS. On discovery, the insurer refused to make various inquiries of the assessors. Each of the questions was objected to as an "indirect attempt to cross-examine the Defendant's expert". On a motion a master ordered that the questions were proper under Rule 31.06(3) and should be answered.
<b>Trial Decision:</b>	<p>The court disagreed with the master, but went on to find that the questions should be answered on another basis.</p> <p>The court noted that except for one, the questions asked were in furtherance of efforts to undermine or contradict the experts' findings, opinions and conclusions and were, therefore, in the nature of cross-examination There was no clarity on how far the right to obtain foundational information extended.</p> <p>It was established that it was improper to allow questions that set out to contradict (or confirm) the findings of experts and enter into the area of cross-examination. It was found that this Rule did not apply as the court found that in the context of a Statutory Accident Benefits Schedule, a SABS assessor was not an expert because "an expert is not treated as an expert when his or her opinion is a proximate or immediate cause of the harm, loss or damage".</p>
<b>Appeal</b>	The Ontario Divisional Court reversed the judge's decision and found that he erred when he held that experts retained by an insurer pursuant to s. 42 of SABS are not covered by the provisions of Rule 36.01(3).