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## Is a No-Fault Benefit Assessor an “Expert”?

Reported Case:	<i>Babakar v. Brown</i>
Citation:	OJ No 1270
At Issue:	Is a no-fault benefit assessor an "expert"?
The Court:	Is the way s. 42(1) of the <i>Statutory Accident Benefits Schedule</i> is worded open to the interpretation that the assessor is not an expert, because they are chosen by the insurer to "assist" it in determining whether the claimant is entitled to a benefit Ontario Divisional Court
Judgment Rendered:	June 2, 2009
Factual Summary:	The insurer was being sued for terminating SABS benefits, a bad faith claim was included in the action.  On discovery, the Insurer's representative refused to make various inquiries of the assessors retained by the insurer for the purposes of assessing entitlement to benefits. Each of the questions was objected to as an "indirect attempt to cross-examine the Defendant's expert".
Disposition Lower Court:	Master Hawkins ordered that the questions were proper under Rule 31.06(3) and should be answered.
Disposition Appeal Court:	The appeal judge found that, for the purposes of Rule 31.06 (3), there is a distinction between experts retained for litigation and experts retained by an insurer pursuant to s.42 of the SABS, resulting in a distinction between experts retained before and after the litigation was commenced. The examples used by the appeal judge were analogous to “parties” whose expertise was the subject of a negligence claim.  Lederer J.'s reasoning appears to be that if an expert has been retained to opine on the issue that is the subject matter of the litigation, and that opinion is acted on to terminate benefits, the expert is not an expert but has become integral to the litigation and, therefore, cannot be considered an expert for the purposes of the Rule.

In effect, Lederer J. decided that an assessor loses his or her status as an expert when offering an opinion that someone is not disabled because this is what the claim being made entails, i.e., whether the benefits were properly terminated.

Assessors are not experts as that term is used in Rule 31.06(3) and, it follows, the limits placed on what may be asked with respect to what they may say is not limited by the provisions of the rule.

Divisional Court  
Decision:

Leave to appeal granted for the issue of whether Rule 31.06(3) applies to experts under s. 42 of the Statutory Accident Benefits Schedule.