

## Injured in a Car Accident, Must You Attend a Two Day Psychiatric Medical Assessment?

In Ontario, when you are injured in a car accident, you inevitably undergo some form of medical assessment.

If you make a claim for Accident Benefits and seek treatment outside the Pre-Approved Framework (PAF), then you will likely be assessed by a medical practitioner. The purpose is to evaluate whether you are entitled to benefits.

If you start a lawsuit against the car(s) that caused your accident, then you are likely to undergo a medical assessment at the request of the defence. You may have to go to two or more of such defence medical examinations over the course of your lawsuit.

What are the limits to what the defence can ask you to do at a defence medical?

Is a psychiatric medical assessment which takes two days to administer reasonable or is that too much?

In the case of [Safi v. Steele](#) (2009 Ontario Superior Court of Justice), it was held that a two day psychiatric defence medical was too long and onerous for that plaintiff to attend. The proposed defence psychiatric expert, Dr. Robert Notkin, proposed to conduct psychometric testing on one day and then an extensive interview on the other day.

The plaintiff, Safi, had a lengthy medical history relating to psychiatric and psychological treatment, particularly since his 2004 car accident. There was evidence tendered that the plaintiff could not endure lengthy medical assessments and also needed frequent breaks during any assessment. His condition was considered to be fragile.

Dr. Notkin, psychiatrist, was cross-examined as a part of this motion. The motions Master found there to be a concern about Dr. Notkin's potential bias against plaintiffs who seek damages in personal injury lawsuits, based on some literature published previously by Dr. Notkin. Further, the motions Master found that Dr. Notkin's refusal to disclose in advance the type of psychometric testing he was proposing to conduct was not entirely reasonable in these circumstances. Finally, the motions Master consider evidence that psychometric testing may not be reasonable or necessary, in these circumstances.

The result is that the Master allowed psychiatric testing but limited it to a 3 hours assessment.

These types of issues surrounding defence medical continue to be debated in the personal injury Bar, with various recent decisions surrounding videotaping of medical assessments and challenging the scope of the assessments.

Readers may be interested in reviewing the Master's decision [on costs in Safi v. Steele](#).

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