

Teach Me How to IME

Employers are entitled to request medical information in order to determine the appropriate accommodation for employees. However, sometimes the medical information provided by an employee's treating physician can be inaccurate, vague and/or inadequate. In these cases, there is often a question of whether an employer is entitled to seek a second medical opinion by requiring the employee to undergo an Independent Medical Examination ("IME").

In *Bottiglia v. Ottawa Catholic School Board*, the Ontario Divisional Court was asked to review an Ontario Human Rights Tribunal decision, and considered whether the employer failed to fulfil its duty to accommodate by requiring an employee to participate in an IME as a pre-condition for his return to work.

The employee in this case was a superintendent at a school board who had been on a two (2) year disability leave. In anticipation of his return to work, the employer asked him to undergo an IME as a pre-condition for his return. The employee rejected the employer's request on the basis that the medical opinion which his treating physician had initially provided contained sufficient information outlining his accommodation needs upon his return. In response, the employer argued that the medical documents provided by the employee were deficient and that it needed an IME to determine appropriate accommodations.

The Court upheld the Tribunal's decision that the employer's request for an IME was justified for the following reasons:

1. The accommodation plan proposed by the employee's physician was unusually onerous;
2. The accommodation plan did not provide adequate reasons for the unusual recommended accommodations;
3. There were significant and unexpected changes in the employee's stated ability to return over a short time frame;
4. The employee had submitted multiple return to work dates; and
5. The accommodation plan failed to address the unique characteristics of the employee's position and duties.

The Court found that the employer acted in good faith throughout the accommodation process, and that its efforts to meet the procedural aspect of the duty to accommodate were reasonable. The Court noted that an employer



may request that an employee undergo an IME only in the rarest of circumstances, but that this case fell well within those parameters.

Key takeaways: This case is a win for employers. This decision confirms that, although rare, circumstances do exist where employers may legitimately require employees to undergo an IME. In the event an employee submits inconsistent information, multiple return to work dates, or requests for accommodation that do not suit their particular functions in the workplace, the request for an employee to submit to an IME may not be inconsistent with the duty to accommodate.

Please contact e2r® to discuss how we can help your organization with medical file management, including guidance on the use of IME's.

