

The Canadian Centre of Excellence in Injury Law response to the Three Strikes rule to purge rogue IME assessors who produce the biased/flawed/unqualified IME reports and testimony used to deny benefits to Ontario's accident victims.

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The Centre is aware of the problem with access to high quality expert evidence.

The Centre considered the "three-strike" rule against a rogue expert. However, these questions must be addressed before that rule might be considered possibly feasible:

1) What is a "strike"? In other words, testimony not accepted is considered a strike? Genuine and earnest evidence may not be accepted. In such situation, it should not be a strike.

2) Who will decide that it is a strike and who will keep count? FSCO arbitrator who conducts the hearing is only adjudicating the issues in dispute, not the "strike". When a "strike" is being considered, fairness dictates that the expert must have a hearing to defend. Which tribunal will conduct such hearings? What is the route of appeal? Who will pay for that tribunal? More tax dollars to come from where?

3) From 1990 to 2013: even assuming we have been having the three strike rule, how many experts would have now been disqualified? It appears quite rare, probably less than 5 experts who might have met the three strike rule in over more than 2 decades. By the time of disqualification, these experts probably have made a good living for 2 decades or more. Many experts who enter the auto injury field do so near the end of their medical careers. Many engage in less than another 20 years before time is up. The three strike rule likely won't expel them before they retire on their own.

Considering the complexity, expense, and limited returns, is it worth taxpayers' money to go down that path of three strike rule? At this point The Centre does not think so.

A solution to this unsatisfactory medicalization problem in injury justice is not obvious.

If you have a recommendation, please forward to Justice Cunningham. He is seeking perspectives from all stakeholders including any individual Ontarian.

Very recently the Final Report of the Action Committee on Access to Justice in Civil and Family Matters was released. It calls for a culture shift, and The Centre has informed Justice Cunningham of the report as it appears relevant to his review. The report reminds us to focus on outcomes, not process per se: <http://www.cfcj-fcjc.org/collaborations#NAC>

Yours very truly,

The Centre.