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ALISON WARNER
AVOCATE PRINCIPALE (INTÉRIMAIRE)
COUR D'APPEL DE L'ONTARIO

July 14, 2016
Sent by regular mail

Brian Francis
[REDACTED]
[REDACTED]

Dear Mr. Francis:

RE: Suggestions to the Civil Rules Committee on Expert Witnesses

This is to confirm receipt of your letter dated May 18, 2016 and the article by Alan Shanoff dated June 6, 2016. Please be advised that I have referred these materials to the Secretariat of the Civil Rules Committee for its consideration.

Please also be advised that your letters dated December 27, 2015 and January 13, 2016 were considered by the Secretariat and were discussed by the Civil Rules Committee at a meeting of the Committee that was held on May 30, 2016. As you know, you suggested that the *Rules of Civil Procedure* should be amended to make it mandatory for counsel to adduce all prior adverse judicial comments about expert witnesses. You also suggested that judges should encourage counsel to bring all warnings about prospective experts in the form of adverse judicial comments to the court's attention.

After due consideration of your proposal, the Civil Rules Committee has decided not to amend the *Rules* with respect to expert witnesses. The Committee's role is to consider whether a change to the *Rules of Civil Procedure* would assist in redressing the problems referred to in your letters. After careful consideration of the issue, the Committee has concluded that a change to the *Rules of Civil Procedure* is not well-suited to achieving the desired ends identified in your letters.

The existing *Rules* establish that the duty of an expert is to the court and not to the parties: see rule 4.1.01. Form 53 (Acknowledgement of Expert's Duty) requires any expert to sign an acknowledgement of the matters set out in rule 4.1.01. It is clearly good practice for counsel to assess their own expert witness in the light of any adverse judicial comments about a particular expert, and to seek to introduce any prior adverse judicial comments about an opposing expert witness. A judge has the authority to disqualify an expert, to limit the scope of the expert's evidence, or to refuse to admit any evidence that is found to be impartial.

Thank you for your submission to the Civil Rules Committee. Please feel free to contact me if you have any questions about the foregoing.

Yours truly,



Alison Warner
Secretary,
Civil Rules Committee

AW/va