

January 13, 2017

Senior Legal Officer and Secretary for the Rules Committee
Court of Appeal for Ontario
130 Queen Street West, Toronto, Ontario
M5H 2N5

Dear Secretary,

On Dec. 27, 2015 I sent a letter (suggestion) to the Rules Committee regarding adducing prior adverse judicial comments as a means to clean up the proliferation of “hired gun” medico-legal experts embedded in the Ontario civil justice/personal injury system. The Committee rejected my suggestion.

A July 14, 2016 letter from Alison Wagner (Senior Legal Officer) states the following: *“It is clearly good practice for counsel to assess their own expert witnesses 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”*.

Ms. Wagner is right in her assertion regarding adverse judicial comments. In fact, she is merely reiterating the starting point of my submission. Had she read it in its entirety, however, she would have seen that I cite legal history which indicates that many if not most judges refuse to allow lawyers to challenge an expert’s impartiality by adducing prior judicial rebukes for partisanship (etc.). So while it may be good practice, it is far from standard practice. If it were, the Ontario civil justice system would not continue to be plagued by medico-legal experts who don’t take their Form 53 promises seriously. (Did anyone really expect them to?) See the enclosed *National Post* column for a mainstream account of some of the personal tragedies that result from this neglect.

In its reply to me I had hoped the Rules Committee would have addressed the substance of my concern, that is, making revisions to the rules that would make “good practice” more likely to occur. Your dismissive reply to my letter suggests an indifference to the expert witness nightmare, and a willingness to protect “hired guns”.

Regards,

Brian Francis