

STOCKWOODS

Barristers

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February 7, 2008

Via Facsimile (416-212-6879)

The Honourable Stephen T. Goudge
Commissioner
Inquiry into Pediatric Forensic Pathology in Ontario
22nd Floor, 180 Dundas Street West
Toronto, ON M5G 1Z8

Dear Commissioner Goudge:

Re: Motion for Examination of Dr. Young on Death Penalty Issue

I have reviewed the Notice of Motion filed on behalf of ALST/NAN AIDWYC the Criminal Lawyers Association and the Mullins-Johnson Group (the "Moving Parties"). On behalf of Dr. Young and the Office of the Chief Coroner I make the following submissions in opposition to the position advanced by the Moving Parties.

Let us recall why Dr. Young is being recalled to testify on February 8, 2008. He is being recalled for a very specific – and limited – purpose. He is being recalled to provide him with an opportunity to respond to evidence given by Michele Mann, who testified on January 16, 2008. A so-called "*Browne v. Dunn*" issue¹ has arisen because when Dr. Young testified on November 29 and 30 and December 3 and 4, 2007, Ms. Mann's subsequent testimony specifically detailing her recollection of a meeting that took place between Dr. Young and her on February 14, 1997 was not put to Dr. Young by either counsel for the College of Physicians and Surgeons of Ontario or by Commission Counsel. This, despite the fact that during her interview with Commission Counsel on December 3, 2007² Ms. Mann had recounted her version of matters discussed at the meeting with Dr. Young. In addition, Ms. Mann's note of the meeting was not put to Dr. Young during his testimony. Commission counsel agreed that this unfairness ought to be addressed. It is understood that Dr. Young's testimony concerning the meeting with Ms. Mann will be relatively brief.

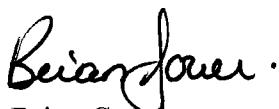
1 *Browne v. Dunn* (1893), 6 R. 67 (H.L.)

2 That is, before completion of Commission Counsel's examination of Dr. Young. Counsel for the College of Physicians and Surgeons of Ontario attended the interview of Ms. Mann.

Now, more than two months after Dr. Young's testimony and despite the limited purpose for which Dr. Young is being recalled, the Moving Parties seek the opportunity to cross-examine Dr. Young in connection with Dr. Smith's involvement in *State of Ohio v. Christopher Fuller*, a death penalty case.

They should not be permitted to do so. The records of Commission Counsel demonstrate that PFP115000, the September 22, 2000 letter to Dr. Smith from Assistant Prosecuting Attorney John Holcomb was included in the *first set* of documents released to each of the Moving Parties on September 21, 2007. In fact, PFP115000 was included in the document notice served by counsel for the Defence of Children – International in connection with her cross-examination of Dr. Young, although she apparently chose not refer to it in cross-examining Dr. Young. Each of the Moving Parties had full opportunity to cross-examine Dr. Young on the issue of Dr. Smith's involvement in the *Fuller* case when they cross-examined him on December 3 and 4, 2007. With the exercise of reasonable diligence, the Moving Parties could have pursued the issue now said to be of significance. The Moving Parties failed to pursue the issue then, and they have failed to demonstrate that they should be permitted to do so now.

All of which is respectfully submitted,



Brian Gover
BG/ln

c.c. Commission Counsel (via email)

Parties with Standing (via email)