

Civil Justice Reform Project

Terms of Reference Civil Justice Reform Project

Background

In 1996, the Ontario Civil Justice Review released its final report setting out an overall strategy to make Ontario's civil justice system speedier, more streamlined and more efficient. At around the same time, the Canadian Bar Association's (CBA) *Systems of Civil Justice Task Force Report* made recommendations, on a national basis, to develop strategies and mechanisms to assist in the continued modernization of the civil justice system. Since then, significant reforms have been implemented in Ontario to enhance access and affordability, including the introduction of simplified procedures, case management and mandatory mediation, as well as the increase in the monetary limit of the Small Claims Court to \$10,000.

In 2001, the Government of Ontario and the Superior Court of Justice jointly appointed the Task Force on the Discovery Process in Ontario to identify problems with discovery and to make reform recommendations. In its 2003 Report, the Task Force made recommendations on two fronts. First, the Task Force recommended that enhanced cost- and time-saving mechanisms be incorporated into the Rules of Civil Procedure. At the same time, the Task Force acknowledged that not all discovery problems could be addressed simply by the imposition of more rules, and noted that many could be attributed to the adversarial "culture of litigation" or the conduct of particular lawyers. Accordingly, the Task Force made a second set of recommendations for the development of best practices to be adopted by the bench and the bar as appropriate conventions or norms for the conduct of discovery.

Ten years have now passed since the Civil Justice Review and the CBA released their respective reports. Many of their recommendations have been implemented throughout Canada with positive results. Ontario's ongoing civil justice reform strategy has been applauded for significantly enhancing access to justice.

Yet cost and delay continue to be cited in national and provincial reports as formidable barriers that prevent average Canadians from accessing the system. Recent conferences and policy forums have sought to further assess the state of Ontario's civil justice system and reform options. In March of 2006, the Advocates' Society held a Policy Forum, entitled *Streamlining Justice*, to search for creative ways to promote efficient, less expensive dispute resolution in our courts so that access to justice may be enhanced.¹ And in May of 2006, the Canadian Forum on Civil Justice hosted a national conference, entitled *Into the Future: the Agenda for Civil Justice Reform*. The Conference sought to examine

¹ A copy of a the Advocates' Society report arising from this policy forum, entitled *Streamlining the Ontario Civil Justice System: A Policy Forum, Final Report*, may be accessed at: http://www.advocates.ca/pdf/Final_Report.pdf

Civil Justice Reform Project

a variety of issues, including the status of civil justice reforms in Canada, impediments to effective reform, and the development of a national direction for civil justice reforms in the future.²

Mandate

The Honourable Mr. Coulter Osborne will lead the Civil Justice Review Project (CJRP). Its mandate is to review potential areas of reform and deliver recommendations for action to make the civil justice system more accessible and affordable for Ontarians. The proposals should be suitable for implementation within a reasonable amount of time and provide meaningful results in enhancing access to justice for Ontarians. Mr. Osborne has been asked to submit a final report to the Attorney General by the late spring of 2007.

In conducting its review, the CJRP will (a) identify key areas for reform; (b) develop reform options; and (c) make specific recommendations as to which of the proposed options would best achieve the CJRP's objectives. Possible areas of reform for consideration include:

- Expert evidence
- Discovery
- Adversarial litigation culture
- Simplified procedure
- Summary judgment
- Pre-action protocols

Guiding Principles

The work of the CJRP will take into account the following principles and considerations:

- **Access:** Recommendations should promote access to justice for both represented and unrepresented litigants.
- **Proportionality:** Recommendations should reflect the principle that the time and expense devoted to civil proceedings should be proportionate to the amount in dispute and/or the importance of the issues at stake.
- **One size does not fit all:** Recommendations should recognize diversity and the different issues facing different jurisdictions, particularly larger urban centres such as Toronto.

² Papers from the Canadian Forum on Civil Justice's *Into the Future* Conference may be accessed at: <http://www.cfcj-fcjc.org/IntoTheFuture-VersLeFutur/>

Civil Justice Reform Project

- **Culture of Litigation:** Recommendations should recognize that rule and other regulatory reform alone might not adequately respond to problems in the system. Ways to foster “cultural change” among the bench and bar should be considered.

Methodology

In conducting this review, the CJRP will engage in province-wide consultations, research relevant civil justice studies and literature, including recent reforms in other jurisdictions, and consider available quantitative and qualitative data.

Support

An Advisory Committee will assist Mr. Osborne. Members of the Advisory Committee will be selected by Mr. Osborne and are to be representative of the diversity of the province. A Project Director and other counsel at the Ministry of the Attorney General will also provide assistance.