

INTO THE FUTURE

The Agenda for Civil Justice Reform

Into the Future

Civil Justice Reform in Canada 1996 to 2006 and Beyond

December 2006

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Research Project – Final Report

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Introduction to the Final Report

The two-part Conference *Into the Future: The Agenda for Civil Justice Reform* is sponsored by the Canadian Forum on Civil Justice (the Forum), the Canadian Bar Association (CBA) the Association of Canadian Court Administrators (ACCA), and the Canadian Institute for the Administration of Justice (CIAJ). Part 1 of the Conference was held in in Montreal from April 30 to May 2, 2006. Part 2 of the Conference will be held in Toronto from December 7 to 8, 2006.

The Conference marks the 10-year anniversary of the publication by the CBA of the Report of its *Task Force on Systems of Civil Justice* (the CBA Task Force Report). The Report is available online at: www.cba.org (click on “Publications” on the sidebar, then on “Report” and scroll down to “Free Downloads”). The CBA Task Force account of the systems of civil justice in Canada as they stood in 1996 and its 53 recommendations provide a useful benchmark from which to assess developments over the past decade and consider future reforms.

In conjunction with the Conference, the Forum undertook a Research Project to collect information about developments since 1996 in systems of civil justice in Canada, gather opinions about the appropriateness of the 1996 vision for the years 2006 and beyond and canvass for ideas about the direction reform of the systems of civil justice in Canada could or should take in the future.

The Research Project was conducted in three stages:

- In the first stage, ACCA Board members arranged for representatives from each jurisdiction to report on developments in the civil justice system in their jurisdictions by completing a “**jurisdictional questionnaire**”. The jurisdictional questionnaire covered CBA Task Force recommendations 1-11, 13-31, 34, 36 and 37. It was distributed to each of Canada’s 10 provinces, 3 territories, the 3 federal courts and the Supreme Court of Canada (SCC). The results of Stage 1 were published in an *Interim Report* which was distributed at Part 1 of the Conference *Into the Future: The Agenda for Civil Justice Reform*. In this, the Final Report, those results are reproduced in the section headed “Stage 1.”
- In the second stage, “**recommendation-specific questionnaires**” were directed to individual organizations or groups named in the Task Force recommendations to perform certain tasks (e.g., the CBA, ACCA, the judiciary, Canadian Council of Law Deans, law societies and the Canadian Centre for Justice Statistics). This batch of questionnaires covered CBA Task Force recommendations 12, 15, 23, 26, 32, 33, 35, 36 and 38-53. Stage 2 completed the collection of information about changes since 1996 that relate to the CBA Task Force recommendations.
- In the third stage, wide distribution was given to a questionnaire asking for ideas

and opinions about the direction the systems of civil justice in Canada should take in 2006 and Beyond. The “**2006 and beyond questionnaire**” built on the foundational principles and philosophical premises which formed the basis for the CBA Task Force recommendations. In all, 123 questionnaires were distributed to governments, Chief Justices of every Court, the Canadian Bar Association, Law Societies, the Association of Canadian General Counsel, law school deans, legal aid organizations and public legal education bodies throughout Canada, and to the Consumers Council of Canada. Of this number, 52 questionnaires representing a good cross-section of these constituencies were completed and returned. The distribution package for the Stage 3 questionnaire included the Interim Report on the Stage 1 results.

The systems of civil justice in Canada are changing, of this there can be no doubt. Despite its influential effect, the CBA Task Force cannot take credit for all of the changes that have occurred. The process of reform is interactive. The Task Force studied reforms that had been introduced or were being considered in civil justice systems within and outside Canada. For example, by 1996, Saskatchewan, early off the mark, was already offering mediation as an alternative to trial. Two provinces, Ontario and British Columbia, were conducting their own civil justice system reviews. Major jurisdictional initiatives continue to be taken, and the CBA Task Force Report and recommendations – together with other choices, events and influences within a particular jurisdiction – are considered in this connection. Examples here include: Quebec, which introduced the first round of reforms to its *Code of Civil Procedure* in 2003 and is now working on the second phase; Alberta and Nova Scotia, where law reform commissions are currently working on major rewrites of their rules of court; and the Yukon, which is writing its own rules of court (historically, the Yukon has relied on the British Columbia rules).

A great deal has been accomplished over the past decade, but the systems of civil justice in Canada still attract both public criticism and concern from within the civil justice community. The question we must face is: what should be the focus of reform in *2006 and Beyond*? Responding to this question will be the challenge for participants in Part 2 of the Conference ***Into the Future: The Agenda for Civil Justice Reform***.

The Forum wishes to thank all of the persons who took the time to complete the Research Project questionnaires. Completion was no small feat. The questionnaires, particularly those for Stages 1 and 3, were lengthy and demanding. The willingness of so many players in Canada’s civil justice systems to participate in the Research Project is strong evidence of the commitment of the civil justice community to undertake reform in the interest, and for the benefit, of all members of Canadian society.

The reports on the results in Stages 1, 2 and 3 of the Research Project follow this Introduction.

Stage 1

The report on Stage 1 is based on the information that jurisdictions have provided about themselves in response to the “**jurisdictional questionnaire**”. These results were first published as the *Interim Report on the Jurisdictional Questionnaire* and distributed to the participants in attendance at Part 1 of the Conference ***Into the Future: The Agenda for Civil Justice Reform*** held in Montreal from April 30 to May 2, 2006.

ACCA Board members arranged for the completion of the jurisdictional questionnaire by representatives from each of Canada’s 10 provinces, 3 territories, 3 federal courts and the Supreme Court of Canada. The jurisdictions responded, in a relatively short time, to the large number of questions posed. The questionnaire was distributed in mid-February. By early April, all but three jurisdictions (Nunavut, New Brunswick and the Supreme Court of Canada) had responded by completing the questionnaire. Nunavut is concentrating on building a new court house; responses from New Brunswick and the Supreme Court of Canada remain pending.

For each CBA Task Force recommendation, the jurisdictional questionnaire asked: whether the recommendation had been implemented (fully or partially) or not implemented (implementation being considered, not considered or rejected); and, if implemented, the authority for the implementation (e.g., rule, practice directive, statute or other provision), a description of highlights of the provision, and other comments. The Forum will use the results to build a database of information that will be available to assist jurisdictions with future reforms, among other uses. All going well, this data-gathering process will be repeated periodically, perhaps at two or three year intervals, in order to track changes and maintain currency.

The discussion in the Stage 1 report is organized around six of the themes¹ put forward in the CBA Task Force Report: creating a multi-option civil justice system; reducing delay through court supervision of the progress of cases; reducing costs and increasing access; appellate reform; improving public understanding; and managing the courts of the twenty-first century. Those responding have made different choices about the amount of detail to give about reforms in their jurisdictions. Over time, as jurisdictions contribute additional information to the database and as the questionnaire is refined for use in future years, greater consistency in detail can be expected.

A wealth of information has been amassed. It is not possible within the compass of this report to include all details of the information provided in the questionnaire responses. Discretion has been used in the selection of the examples that illustrate the content of various reform initiatives. The Forum is giving thought to various means of further

¹ The Final Report will discuss the CBA Task Force recommendations on other themes, such as the role and responsibilities of the legal profession and an increased focus on systems of civil justice in Canada. These themes are covered in the questionnaires for Stages 2 and 3.

disseminating the information gathered, for example, in articles in its publication *News & Views on Civil Justice Reform*, the publication of a book on Canada's evolving civil justice systems, and an online database of the questionnaire responses.

An effort has been made to stay true to the language used in the responses to the jurisdictional questionnaire, at times by reproducing the exact words, at other times by closely paraphrasing them.

The Chart appended to the Stage 1 report (Appendix A) records the authorities cited, state of implementation and the year of commencement of any initiative reported. In some instances, respondents have responded separately for different courts or programs, and the Chart reflects this. Sometimes "full" implementation refers to a particular court or program, and not to implementation of the recommendation in all of its aspects.

First Theme: Multi-Option Civil Justice System

Task Force Recommendations 1 to 3 promote the idea of creating a multi-option civil justice system. The multi-option theme focuses on the inclusion, within the civil justice system, of methods of dispute resolution that are alternative to traditional litigation and ultimate determination by a judge. The alternative methods should be non-binding, leaving resolution to agreement by the parties to the dispute, and available both early in the court process and post-discovery. The parties should be under an obligation to consider using alternative processes to resolve the dispute.

A. Early and Post-Discovery Non-Binding Dispute Resolution (Recommendation 1)

RECOMMENDATION 1:

Every jurisdiction

- (a) make available as part of the civil justice system opportunities for litigants to use non-binding dispute resolution processes as early as possible in the litigation process and, at a minimum, at or shortly after the close of pleadings and again following completion of examinations for discovery;
- (b) establish, as a pre-condition for using the court system after the close of pleadings, and later as a pre-condition for entitlement to a trial or hearing date, a requirement that litigants certify either that they have availed themselves of the opportunity to participate in a non-binding dispute resolution process or that the circumstances of the case are such that participation is not warranted or has been considered and rejected for sound reasons; and
- (c) Ensure that individuals involved in helping litigants in non-binding dispute resolution processes have suitable training and support to carry out this function.

IMPLEMENTATION POINTS:

- Providers of dispute resolution services could include court personnel, judges, the private sector, or a combination of these.
- Dispute resolution services could be court-annexed, provided by the private sector, or some combination of these two.
- Consideration to be given to issue of how these services are to be funded.

The jurisdictional responses disclose much activity on the multi-option front. Of the 14 reporting jurisdictions, 8 jurisdictions report full or partial implementation (in most instances, full); two other jurisdictions are considering implementation. Most of the innovations post-date 1996. Non-binding dispute resolution processes are not viable in the Tax Court of Canada (Tax Court) because the Minister of National Revenue lacks authority to enter into compromise settlements.

1. Range of options

The processes put in place for dispute resolution vary from jurisdiction to jurisdiction. Court-connected processes tend to offer mediation, typically interest-based. The dispute resolution may be facilitated by persons drawn from the private sector and placed on a roster (*e.g.*, mandatory mediation in Ontario; mediation in Alberta small claims and the Queen's Bench pilot project), by public sector employees (*e.g.*, mediation services in Saskatchewan) or senior lawyers (*e.g.*, mediation of child custody or support order variations in Alberta). Often a dispute resolution option commences with a pilot project in one or two court centres, then expands to other centres.

The dispute resolution options being introduced may be available or required in the general civil justice system or for certain types of dispute. Family law matters and small claims are often identified. Ontario has a separate rule for contested estates, trusts and issues of legal incapacity to make decisions. Ordinarily, provision is made for exemption, usually by court order on application by a party, from any requirement to use a dispute resolution option (*e.g.*, British Columbia, Ontario, Alberta).

Recommendation 1(a) calls for the use of dispute resolution options on two occasions – one early in the litigation process (at the close of pleadings) and the other later in the process (post-discovery). Many jurisdictions expect a dispute resolution option (mediation) to be used early in the litigation process. Courts in some jurisdictions mandate front-end conferences with a judge (*e.g.*, small claims in Alberta). Post-discovery, jurisdictions tend to place greater reliance on conferences with a judge. These conferences are known by assorted names (*e.g.*, pre-trial conference, settlement conference, judicial dispute resolution conference, and so forth). Generally, jurisdictions have not imposed a requirement to use dispute resolution options at two points in time – early in the proceeding and again post-discovery.

2. Mandatory or voluntary use

Some jurisdictions mandate the use of certain programs (*e.g.*, early mandatory mediation in five designated judicial centres in Saskatchewan; early mandatory mediation of most case-managed actions in Ottawa, Toronto and Windsor; certain family law programs in Alberta). Other jurisdictions hold fast to the principle of voluntary use (*e.g.*, Quebec with the exception of mandatory attendance at an information session in family law matters). Mandatory participation may be systemic (*e.g.*, Ontario

mediation program), initiated by one party by the delivery of a notice to mediate (*e.g.*, British Columbia Supreme Court and Provincial Court; civil mediation pilot project in Alberta Court of Queen's Bench) or court-ordered in an individual case. In Alberta, in the superior court, two pilot programs mandate the use of dispute resolution options for certain family law issues. In contrast, in the provincial court, small claims matters are systemically screened for mandatory mediation; once selected, the parties must participate or obtain a court order exempting them.

3. Judicial involvement

As will be seen in the discussion of the Second Theme, the CBA Task Force called for greater involvement of the judiciary in the management of civil litigation. Partly in consequence of this involvement, judges have come to assume a greater role in both encouraging and facilitating settlement. At conferences with the parties, judges explore the possibility that the parties may be able to reach agreement without going to trial, encourage the use of the dispute resolution options, and even facilitate settlement discussions between or among the parties. In some jurisdictions, these conferences operate as an extension of pre-trial conference rules which pre-date 1996. Initially, a pre-trial conference was held late in the proceeding, prior to trial, for the purpose of readying the case for trial. Later, the rules were revised to include canvassing the possibility of settlement (*e.g.*, Ontario, Alberta, Saskatchewan). In Alberta, a pre-trial conference now may be held at any stage in the proceeding.

In a growing trend, some jurisdictions provide for a judicial role in facilitating dispute resolution by scheduling judicial time for this function (*e.g.*, Alberta, Manitoba, the Federal Court). Judicial dispute resolution at the appellate court level may also be available in some jurisdictions (*e.g.*, Quebec, Alberta). In Quebec, mediation is generally the preserve of the judiciary both at trial and at appeal; however, accredited mediators handle family law matters and small claims.

The mingling of the roles of case management, settlement facilitation and adjudication is more pronounced in provincial small claims courts than in the superior courts. In contrast, in the superior courts, a judge who participates in case management or settlement facilitation usually does not conduct the trial.

4. Costs

Some dispute resolution options are government-funded and may be taken up at no cost to the litigants (*e.g.*, small claims mediation in Alberta, a 3-hour mediation session in Saskatchewan). More commonly, the costs of using a dispute resolution option fall on the parties (*e.g.*, mandatory mediation in Ontario). Provision may be made to subsidize the costs of low income litigants. An advantage claimed for the role of judges in facilitating settlement is that the civil justice system absorbs the costs.

5. Certification of use

Recommendation 1(b) proposes that litigants be required to certify either that they have availed themselves of the opportunity to participate in a non-binding dispute resolution process or that the circumstances of the case are such that participation is not warranted or has been considered and rejected for sound reasons. This requirement would operate as a pre-condition for using the court system after the close of pleadings, and later as a pre-condition for entitlement to a trial or hearing date.

The jurisdictions say little about the requirement for certification. Under Ontario's simplified procedure, the party who sets an action down for trial must certify in the notice of readiness for pre-trial conference that there was a settlement discussion. In situations where mandatory use of an option is systemically imposed, the system controls may remove the need for individual certification. Certification is inconsistent with the philosophy of jurisdictions that take a wholly voluntary approach to the use of dispute resolution options (e.g., Quebec).

6. Training of facilitators

Recommendation 1(c) asks jurisdictions to ensure that individuals involved in helping litigants in non-binding dispute resolution processes have suitable training and support to carry out this function. This requirement is dealt with in the responses to Recommendation 36.

British Columbia		
Supreme Court: Notice to Mediate Notice to Mediate regulations under: <i>Motor Vehicle Act,</i> <i>Homeowner Protection Act,</i> and <i>Law and Equity Act</i>	Full	199819992001
Family justice counsellor <i>Family Court Rules, Rule 5</i>		1999
Parenting After Separation Ministry policy		
Provincial Court: Court Mediation Program <i>Small Claims Rules, Rule 7.2</i>		1996
Provincial Court: Notice to Mediate <i>Small Claims Rules, Rule 7.23</i>		2005
Alberta	Implemented	Year
Provincial Court; Pretrial Conference <i>Provincial Court Act, R.S.A. 2000, c. P-31, ss. 64, 65, and 66</i>	Full	2001

Provincial Court; Civil Claims Mediation Program <i>Provincial Court Act</i> , ss. 65 and 66; Mediation Rules, Alta. Reg. 271/97	Partial	1998 (Edmonton & Calgary) 2006 (Lethbridge & Medicine Hat)
Court of Queen's Bench: Judicial Dispute Resolution Process Guidelines for Judicial Dispute Resolution, Court of Queen's Bench of Alberta Consolidated Notices to the Profession.	Full	mid-1980s
Court of Queen's Bench; Civil Mediation Program Civil Practice Note "11", Court Annexed Mediation, effective September 1, 2004	Partial (pilot project)	2005 (Edmonton & Lethbridge)
Court of Queen's Bench: Dispute Resolution Officers (DRO) Family Practice Note No. 9	Partial	2002 (Calgary)
Court of Queen's Bench: Child Support Resolution Officers (CSRO) Practice Directive by the Chief Justice	Partial	2002 (Edmonton)
Provincial Court and Court of Queen's Bench: Family Justice Services Mediation <i>Family Law Act</i> November 1, 2005 s. 5, Duty of Lawyer s. 97, Dispute Resolution	Full	2005 (program commenced in early 1970s, transferred to Alberta Justice in 2000)
Court of Appeal: Judicial Dispute Resolution (JDR) Court initiative	Full	2004
Children's Services Mediation Pilot <i>Child, Youth and Family Enhancement Act</i> , s. 3.1, Alternative Dispute Resolution	Partial	2005
Court of Queen's Bench: Family Law Pretrial Conferences Family Law Practice Note "5"	Full	2003
Saskatchewan		
Dispute Resolution Office Established to provide and encourage the provision of dispute resolution/mediation services to the public		1988
Mediation <i>The Queen's Bench Act</i> , Part VII, s. 42	Full	1995 (pilot in 2 judicial centres, now in 5 judicial centres)
Pre-Trial Conferences <i>Rules of the Court of Queen's Bench for Saskatchewan</i> , Rule 191 and Practice Directive No. 4	Full	1978, revised 1988
Provincial Court: Case Management Conferences in Small Claims Matter <i>The Small Claims Act</i> , s. 7.1	Full	2006

Manitoba		
Judicial Assisted Dispute Resolution (JADR) Notice to the Profession	Partial	
Ontario		
Superior Court of Justice: Mandatory Mediation <i>Rules of Civil Procedure</i> , Rule 24.1 (civil, case managed actions) Rule 75.1 (contested estate matters)	Partial Expansion to additional sites is under consideration	1999 (Toronto, Ottawa) 2002 (Windsor) 2006
Superior Court of Justice: Pretrial Conferences <i>Rules of Civil Procedure</i> , Rule 50.01		pre-dates 1996
Quebec		
Judicial Dispute Resolution <i>Code of Civil Procedure of Quebec</i> (abbrev. CCPQ), R.S.Q., ch. C-25, Rules 151.14-151.22, 508.1, 814.3-814.14 and 973	Full	2003
Family Law Matters Mandatory attendance at one information session		
Small Claims Voluntary mediation by accredited mediators		
Nova Scotia		
Practice Memoranda (PM) 5 and 27		
Prince Edward Island		
	Not implemented	
Newfoundland & Labrador		
	Not Implemented	
Northwest Territories		
	Under consideration	
Yukon		
Small Claims Court <i>Small Claims Court Regulations</i> , Regs. 39-44	Full	1995
Supreme Court: Judicial Dispute Resolution <i>Supreme Court Rules</i> , Rule 35	Partial	Unknown
Certification Requirement	Not Implemented	

Federal Court		
Judicial Dispute Resolution Conference <i>Federal Courts Rules, Rules 386-391</i>		
Federal Court of Appeal		
Alternative Dispute Resolution (ADR) <i>Federal Courts Rules</i>	Full	
Tax Court of Canada		
	Rejected	

B. Obligation to Consider Settlement (Recommendation 2)

RECOMMENDATION 2:

Each jurisdiction through its rules of procedure impose on all litigants a positive, early and continuing obligation to canvass settlement possibilities and to consider opportunities available to them to participate in non-binding dispute resolution processes.

Few jurisdictions report having placed an outright “positive, early and continuing obligation” on the *litigants* themselves to canvass settlement possibilities and to consider participating in non-binding dispute resolution processes. Ontario’s simplified procedure requires the parties to consider the possibilities of settlement, either by meeting or telephone call within 60 days of the first defence. The Federal Court rules place an obligation on *solicitors* to “discuss the possibility” of settling and of asking the court for a dispute resolution conference to deal with unsettled issues. The trend in most jurisdictions has been to build in procedures, often in conferences with judges (e.g., pre-trial, case management), that encourage litigants to look to these possibilities. Such conferences may be mandatory (e.g. Alberta’s family law mandatory pre-trial conference which has a settlement and a case management component; mandatory case management for cases under \$1,000,000 under a 2-year pilot project in selected centres in British Columbia) or initiated on request.

British Columbia	Implemented	Year
Family Law Judicial Case Conferences (Pilot Project) <i>Supreme Court Rules., Rule 60E</i> Rule 60E -" (June 26, 2002)	Full	2002
Fast Track Litigation <i>Supreme Court Rules., Rule 66</i>		1998
Expedited Litigation Project Rule <i>Supreme Court Rules., Rule 68 (2-year pilot project available in 4 registries)</i>		2005
Pre-trial Conference <i>Supreme Court Rules., Rule 35</i>		

Case Management for Trial over 20 days in length Practice Directive		1998
Small Claims Court <i>Small Claims Rules</i> Rules 7 (mandatory settlement conference) Rule 10.1 (monetary penalties for failure to accept an offer to settle close to final court judgment)		1991/1995
Alberta		
Court of Queen's Bench: Pre-trial Conference <i>Alberta Rules of Court, Rule 219, and Civil Practice Note "3"</i>	Full	1998
Saskatchewan		
Pre-trial Conference <i>Rules of Court, Rule 191(2)</i>	Full	1988
Manitoba		
Expedited Actions: Case Conference at Close of Pleadings <i>Queen's Bench Rules, Rule 20A</i>	Partial	1996
Ontario		
Simplified Procedure <i>Rules of Civil Procedure, Rule 76</i>	Full	1996 (pilot) 2001 (permanent)
Civil Case Management <i>Rules of Civil Procedure, Rule 77</i>		1997
Quebec		
	Rejected	
Nova Scotia		
	Under consideration	
Prince Edward Island		
<i>Rules Committee, Rules of Court</i>	Partial	1998
Newfoundland & Labrador		
	Not Considered	
Northwest Territories		
	Not Implemented	

Yukon		
Small Claims Court <i>Small Claims Court Regulations, ss. 39-44</i>	Partial	1995
Supreme Court <i>Supreme Court Rules, Rule 35</i>	Partial	unknown
Federal Court		
Duty of solicitors <i>Federal Courts Rules, Rule 257</i>	Full	1998
Federal Court of Appeal		
	Not Considered	
Tax Court of Canada		
Appointment of Case Management Judge Practice Notes #7 and #12 (status hearing) Practice Note #11 (pre-trial conference)	Partial	

C. Post-Discovery Dispute Resolution Process (Recommendation 3)

RECOMMENDATION 3:

Every court undertake studies or pilot projects to determine best practices concerning the integration of non-binding dispute resolution processes in the post-discovery stages of litigation.

Recommendation 3 invites jurisdictions to launch studies or pilot projects to determine best practices concerning the integration of non-binding dispute resolution processes in the post-discovery stages of litigation. Action on the implementation of this recommendation is slow in coming: the majority of jurisdictions have not considered it. Saskatchewan sees no need to undertake studies or pilots because the experience with pre-trial conferences has already proven the value of integrating non-binding dispute resolution processes in the post-discovery stages. Alberta is working on the determination of best practices in two areas – the judicial dispute resolution process and the children’s services mediation pilot (for child welfare cases). The Federal Court is considering changes to its pre-trial conference rule. It has also implemented rules regarding offers to settle.

British Columbia	Implemented	Year
	Not Implemented	
Alberta		
See Recommendation 1: Court of Queen’s Bench of Alberta -- Judicial Dispute Resolution Process and Children’s Services Mediation Pilot.	Full	

Saskatchewan		
	Not Considered	
Manitoba		
	Not Considered	
Ontario		
Quebec		
	Not Considered	
Nova Scotia		
Practice Memorandum 27		2000
Prince Edward Island		
	Not Implemented	
Newfoundland & Labrador		
	Not Considered	
Northwest Territories		
	Don't know	
Yukon		
	Not Considered	
Federal Court		
<i>Federal Courts Rules</i> , Rules 258 - 263,	Partial	1998
Federal Court of Appeal		
	Not Considered	
Tax Court of Canada		
	Rejected	

Second Theme: Reducing Delay Through Court Supervision of the Progress of Cases

Task Force Recommendations 4 to 11 advance the theme of reducing delay through court supervision of the progress of cases. Seven strategies are proposed: establishing a caseflow management system; setting fixed trial dates; providing for individual case management; introducing multiple litigation tracks; imposing time standards for trial

courts; automatic dismissal of cases that are not moving forward; and setting time standards for rendering judgment.

A. Caseflow management (Recommendations 4 and 5)

RECOMMENDATION 4:

Every court have a caseflow management system to provide for early court intervention in the definition of issues and for the supervision of the progress of cases.

RECOMMENDATION 5:

While the design of a caseflow management system should be at the discretion of each court, at a minimum systems should provide for

- early court intervention by designated and trained individuals in all cases;
- the establishment, monitoring and enforcement of timelines;
- the screening of cases for appropriate use of non-binding dispute resolution processes; and
- reliable and realistic fixed trial dates.

IMPLEMENTATION POINTS:

- the commitment and co-operation of all anticipated participants;
- articulation of guidelines for judicial supervision;
- appropriate technical support; and
- introduction and subsequent monitoring of clear time standards.

Twelve jurisdictions have implemented at least some of the features of a caseflow management system that provides for early court intervention in the definition of issues and for supervision of the progress of cases. In most cases, the initiative has been taken since 1996. Some jurisdictions have systems that provide caseflow management in some courts (e.g., Quebec Court of Appeal), in some court centres or for some types of case (e.g., most civil non-family actions and applications over \$50,000 in Ottawa and Windsor; full case management of most family cases in Winnipeg Centre). Other jurisdictions achieve this effect by allowing the court to direct certain activities. All three federal courts provide for status reviews based on timelines.

In Ottawa and Windsor, the steps and timeline are imposed automatically. This system establishes time frames for specific events to guide the pace of litigation (on either a standard track or a fast track), with flexibility to meet the circumstances of each case. The process provides opportunities for parties to settle, narrow or consolidate issues, and for dismissal for delay. It also involves early and active intervention by the court by means of judicial conferences (case conference, settlement conference, trial management conference) to promote resolution of disputes or to bring cases to trial in a timely manner. (In Toronto, a modified case management rule was introduced on a pilot basis in 2005. The pilot is set to expire in 2008.)

British Columbia	Implemented	Year
Supreme Court <i>Supreme Court Rules, Rules 35, 60E, 66 and 68</i> Case Management for Trial over 20 days in length, Practice Directive	Full	1998
Provincial Court <i>Small Claims Rules, Rule 7</i> Notice to the Profession		1991, 1998 2006
Alberta		
Early court intervention and screening of cases for appropriate use of non-binding dispute resolution: see Recommendation 1	Under Consideration (Rec. 4) Partial (Rec. 5)	
Saskatchewan		
Under the authority of the Chief Justice of the Court of Queen's Bench	Partial	Ongoing
Manitoba		
Court of Queen's Bench, Family Division <i>Rules of Court, Rule 70 (Family Proceedings)</i>	Full	1996 (pilot project) 2002 (full case management in Winnipeg Centre)
Ontario		
Civil Case Management <i>Rules of Civil Procedure, Rule 77</i>	Full	1997
Quebec		
Implemented in the Court of Appeal	Partial	2003
Nova Scotia		
<i>Civil Procedure Rules, Rule 68</i>	Partial (Halifax)	2000
Prince Edward Island		
Practice Directive	Full	1997
Newfoundland & Labrador		
	Rejected	
Northwest Territories		
<i>Rules of the Supreme Court, Rule 284</i>	Full	1994

Yukon		
	Not Considered	
Federal Court		
<i>Federal Courts Rules, Rules 380 - 385</i>	Full	1998
Federal Court of Appeal		
<i>Federal Courts Rules</i>	Full	1998
Tax Court of Canada		
	Full	2005

B. Fixed trial dates (Recommendation 6)

RECOMMENDATION 6:

Every court that does not currently provide for fixed trial dates develop practices and procedures to ensure greater certainty and reliability in the fixing of trial dates.

Eleven jurisdictions have fixed trial dates or have established practices and procedures to ensure certainty and reliability in the fixing of trial dates. Among the jurisdictions giving dates, the provisions were introduced after 1996 in 4 jurisdictions, before 1996 in 3. In British Columbia, at least, instances of overbooking are rare or non-existent.

British Columbia	Implemented	Year
<i>Supreme Court Rules, Rule 68 (2-year pilot project available in 4 registries)</i> Practice Directives for Trials over 20 days in length	Full	2005/1998
Alberta		
	Full	
Saskatchewan		
	Not Implemented	
Manitoba		
	Not Considered	
Ontario		
	Not Implemented	
Quebec		
<i>Code of Civil Procedure, Rules 275 and 278, and Rules of Court</i>	Full	

Nova Scotia		
<i>Civil Practice Rules, Rule 28.11</i>	Partial Under consideration	1971
Prince Edward Island		
Practice Directive	Full	1997
Newfoundland & Labrador		
	Full	1998
Northwest Territories		
Always had fixed trial dates	Full	1996
Yukon		
Supreme Court, Practice direction #11	Full	Ongoing
Federal Court		
	Full	
Federal Court of Appeal		
<i>Federal Courts Rules</i>	Full	
Tax Court of Canada		
<i>Tax Court of Canada Act</i>	Full	1993

C. Individual case management (Recommendation 7)

RECOMMENDATION 7:

Every jurisdiction provide for case management in all cases where there is a need for judicial supervision or intervention on an ongoing basis.

All 14 reporting jurisdictions provide for the management of individual cases pursuant to court order on party application or the court's own initiative, with a good proportion of the provisions having been introduced since 1996. This is in addition to conferences that are imposed systemically for certain categories of case (e.g., in British Columbia, case management conferences for trials over 20 days in length, pre-trial conferences for Supreme Court trials that will exceed 3 days or for small claims cases that require more than ½ day; in Manitoba, in most family cases in Winnipeg Centre of Queen's Bench). In the Yukon, the judge determines at the pre-trial conference how intensely Supreme Court files should be case managed. Alberta places an obligation on the parties to apply for the appointment of a case management judge in certain actions (e.g., civil jury trial, very long trial action, a class proceeding).

British Columbia	Implemented	Year
Supreme Court Rules, Rule 68 (2-year pilot project available in 4 registries) Practice Directives for Trials over 20 days in length.	Full	2005/1998
Provincial Court, Notice to the Profession		2006
Alberta		
Court of Queen's Bench of Alberta Civil Practice Note "1"	Full	2001
Saskatchewan		
The Court uses its authority to control its own process, to call case management conferences on an ad hoc basis as needed	Full	Ongoing
Manitoba		
<i>Rules of Court</i> , Rule 70 (Family Proceedings) Notice to Profession	Full	1996/1997
Ontario		
<i>Rules of Civil Procedure</i> , Rules 37.15 and 77.09	Full	
Quebec		
<i>Code of Civil Procedure</i> , Rules 151.11 to 151.13	Full	2003
Nova Scotia		
<i>Civil Practice Rules</i> , Rule 68	Full	2000
Prince Edward Island		
Practice Directive	Full	1997
Newfoundland & Labrador		
<i>Rules of Court</i> , Rule 18A	Full	2006
Northwest Territories		
Rule 281	Full	1994
Yukon		
	Full	Ongoing
Federal Court		
<i>Federal Courts Rules</i> , Rules 380-385	Full	1998

Federal Court - Court of Appeal		
<i>Federal Courts Rules, Rules 380-385</i>	Full	
Tax Court of Canada		
	Full	

D. Multiple tracks (Recommendation 8)

RECOMMENDATION 8:

Every jurisdiction provide a multi-track system for the resolution of civil disputes.

Ten jurisdictions report having multiple tracks, most having been established since 1996. British Columbia has a fast track, an expedited track and a standard track in its Supreme Court, and case management of trials over 20 days in length. It also makes special provision for some small claims (e.g., motor vehicle related liability matters are set directly for trial, small claims between \$10,000 and \$25,000 are set for longer settlement conferences before trial). Ontario has 3 separate tracks depending on the monetary value of the claims – cases up to \$10,000 are dealt with in small claims; cases between \$10,000 and \$50,000, under a simplified procedure; and cases over \$50,000, under the ordinary rules of civil procedure. Cases subject to case management are routed to a standard track for complex cases and a fast track for less complex cases or those with a small number of parties. Other jurisdictions have introduced simplified procedures in their superior courts for claims for up to a specified amount (e.g., \$50,000 in Saskatchewan and the Federal Court, \$75,000 in Alberta).

British Columbia	Implemented	Year
Supreme Court <i>Supreme Court Rules, Rules 66 and 68</i> Case Management for Trial over 20 days in length, Practice Directive	Full	
Small Claims Court <i>Small Claims Rules, Rule 7(1), 7(2), 7.2</i>		1998
Family Law Family Rules and policy, Rule 5		
Alberta		
<i>Alberta Rules of Court, AR 390/68, Part 48, Rules 659-673 (streamlined procedure rules)</i>	Partial	1998
Saskatchewan		
Court of Queen's Bench for claims under \$50,000	Full	1998

Simplified Procedure <i>Rules of the Court of Queen's Bench, Part Forty, and Practice Directive 8</i>	Full	
Manitoba		
	Not Considered	
Ontario		
<i>Rules of Civil Procedure and Small Claims Court Rules</i>	Full	
Quebec		
	Not Implemented	
Nova Scotia		
<i>Civil Practice Rules, Rule 68</i>	Full	2000
Prince Edward Island		
Small Claims Rule, Simplified Procedure Rule, Family Law	Partial	1997
Newfoundland & Labrador		
	Not Considered	
Northwest Territories		
	Not Considered	
Yukon		
	Not Considered	
Federal Court		
<i>Federal Courts Rules, Rules 292, 299, 300-334</i>	Full	1998
Federal Court of Appeal		
<i>Federal Courts Rules</i>	Full	
Tax Court of Canada		
<i>Tax Court of Canada Act</i>	Full	1993

E. Time standards for trial courts (Recommendation 9)

RECOMMENDATION 9:

Every court set timelines for the overall determination of civil cases and develop suitable means which to enforce such timelines.

Less progress has been made in setting time standards than in other areas of reform. Five jurisdictions indicate full or partial implementation – 3 after 1996 and 2 before. The Federal Court rules provide for set periods for the completion of procedural steps, status reviews and restrictions on extensions of time. The Tax Court has set periods for the completion of procedural steps in both its informal and general procedures, and a case may be dismissed for delay in prosecution. In Ontario, if an action has not been placed on a trial list within two years after the filing of the defence, the registrar sends a status notice warning the parties that the action will be dismissed for delay unless it is set down for trial within 90 days after service of the notice. If a party requests a status hearing, the judge may dismiss the action or set time limits for completing the steps necessary for the action to be placed on the trial list. If the time limits are not met, the registrar may dismiss the action for delay with costs. Some jurisdictions impose time standards for specific types of case, but not generally (e.g., in Alberta, with some exceptions, a case conference must be held for family law matters that are not settled or set down for trial within 365 days from the date of the first contested court application; in British Columbia, a small claims settlement conference must occur within 2 months of the close of pleadings and trial, within 4 months of the settlement conference).

British Columbia	Implemented	Year
Provincial Court	Full	1997
Supreme Court	Not Considered	
Alberta		
Deadline for Resolution of Family Litigation Court of Queen's Bench, Family Practice Note No. 11	Full	2001
Saskatchewan		
	Rejected	
Manitoba		
	Not Considered	
Ontario		
<i>Rules of Civil Procedure</i> , Rule 48.14 (Status hearings and dismissal for delay)	Full	1991

Quebec		
	Don't Know	
Nova Scotia		
<i>Civil Practice Rules, Rules 28.11 and 68</i>	Full	2000
Prince Edward Island		
Practice Directive	Partial	1997
Newfoundland & Labrador		
	Not Considered	
Northwest Territories		
Yukon		
	Not Considered	
Federal Court		
<i>Federal Courts Rules, Rules 203, 189, 191, 205, 206, 202, 380, 223, 236, 238, 255, 256, 257, 258, 264, 279, 281, 268, 287, 380</i>	Partial	
Federal Court of Appeal		
	Not Considered	
Tax Court of Canada		
<i>Tax Court of Canada Act and Rules</i>	Partial	1993

F. Automatic dismissal (Recommendation 10)

RECOMMENDATION 10:
 Every jurisdiction provide by its rules of procedure for the automatic dismissal of cases where they have not been determined within a specified period, subject to the discretion of the court to order otherwise in compelling circumstances.

Provision for automatic dismissal has not found widespread favour. Most jurisdictions make provision for dismissal on court order (e.g., for lack of activity or non-compliance such as failure to meet a prescribed time period), but only six jurisdictions provide for automatic dismissal, three indicating implementation since 1996, two before, and one not giving a date. Alberta’s “drop dead” rule imposes a 5-year mandatory limit on delay: if nothing has been done to materially advance the action for 5 years, the Court must dismiss the action. The Federal Court sets time frames for status review where required steps have not been taken (e.g., pleadings not closed within 180 days of issuance of

statement of claim; pre-trial conference not requested within 360 days of issuance of statement of claim; hearing date not filed within 180 days of issuance of application or appeal). At the status review, the Court may dismiss the proceeding but dismissal is not automatic. Quebec and Saskatchewan allow cases to proceed at the discretion of and on the time frame selected by the parties. Provisions in the Saskatchewan rules allow either party to push a matter forward if they see fit. In the Yukon, there is no demand for this, or for many other reforms.

British Columbia	Implemented	Year
<i>Supreme Court Rules, Rules 2, 3, 5 15(8), 25(1) Small Claims Rules</i>	Full	1991
Alberta		
<i>Alberta Rules of Court, AR 390/68, Part 24</i>	Full	1996
Saskatchewan		
	Rejected	
Manitoba		
	Not Considered	
Ontario		
<i>Rules of Civil Procedure Rule 24 (Dismissal of Action for Delay) Rule 48.14 (Status Hearings and Dismissal for Delay)</i>	Full	
Quebec		
	Not Considered	
Nova Scotia		
<i>Civil Practice Rules, Rule 28.11</i>	Full	1971
Prince Edward Island		
Simplified Procedure, Timelines for perfection of appeals	Full	1997
Newfoundland & Labrador		
	Not Considered	
Northwest Territories		
	Under consideration	

Yukon		
	Not Considered	
Federal Court		
<i>Federal Courts Rules, Rules 380 – 382</i>	Partial	1998
Federal Court of Appeal		
	Not Considered	
Tax Court of Canada		
	Not Implemented	

G. Standards for rendering judgment (Recommendation 11)

RECOMMENDATION 11:

Every trial court

- require that judgements be rendered promptly and by no later than six months after completion of the trial, and
- develop procedures for monitoring compliance with this standard.

Ten jurisdictions report full, or in 2 instances, partial implementation of the requirement for judgments to be rendered promptly and by not later than 6 months after completion of the trial. Standards for rendering judgment are seen to fall within the purview of the judiciary, and the initiatives generally are not new. Responsibility for addressing delay is generally viewed as a matter for the Chief Justice who finds guidance in the time frame recommended by the Canadian Judicial Council for rendering decisions under reserve (maximum of 6 months: see “Ethical Principles for Judges,” part IV, item 10 of <http://www.cjc-ccm.gc/cmslib/general/ethical-e.pdf>). Some jurisdictions have systems for tracking reserve judgments and reporting delays to the Chief Justice (e.g., Alberta, British Columbia, Saskatchewan and the Federal Court; in the Tax Court judges also receive a personalized report). Some jurisdictions set shorter time periods for some types of case (e.g., in Quebec, 4 months for small claims, 2 months for adoption, alimony and custody matters; in the Tax Court, 90 days for the informal procedure).

British Columbia	Implemented	Year
Judicial practice	Full	
Alberta		
	Full	+ 25 years ago

Saskatchewan		
General supervisory responsibility of the Chief Justice, after consultation with the other Judges regarding an appropriate time frame. For general supervisory authority, see section 14 of <i>The Court of Queen's Bench Act</i> .	Full	1990's
Manitoba		
	Not Considered	
Ontario		
	Not Implemented	
Quebec		
<i>Code of Civil Procedure</i> , Rule 465	Full	Well established Rule
Nova Scotia		
<i>The Judicature Act</i>	Partial	
Prince Edward Island		
<i>Supreme Court Act</i>	Full	
Newfoundland & Labrador		
	Not Considered	
Northwest Territories		
Judge's inter office memo	Full	1998
Yukon		
	Not Considered	
Federal Court		
	Partial	
Federal Court of Appeal		
	Full	
Tax Court of Canada		
	Full	1993

Third Theme: Reducing Costs and Increasing Access

Task Force Recommendations 13 to 21 advance the theme of reducing costs and increasing access. Nine mechanisms are proposed: small claims courts; expedited and simplified proceedings; early disclosure; discovery curtailment; restrictions on expert opinion evidence; judicial assistance and direction on the use of experts; interlocutory proceedings; summary trials; and changing the incentive structure.

A. Small claims court (Recommendation 13)

RECOMMENDATION 13

Every jurisdiction that has not already done so give serious consideration to providing for small claims courts with a monetary jurisdiction of up to \$10,000. Procedures should include options for use of non-binding dispute resolution processes.

IMPLEMENTATION POINTS:

- Consider whether it is appropriate to have judge acting as adjudicators or mediators or whether quasi-judicial or legally-trained personnel can fulfil this function.
- Address training issues, regardless of who is in charge of the process.
- Consider a multi-staged approach, tailored to different classes of claims.

Monetary limit. The monetary limit in small claims courts is on the rise. The CBA Task Force recommended a small claims jurisdiction of \$10,000. Today, the limit in Manitoba is \$7,500, raised from \$5,000 in 1999; in Ontario, \$10,000, raised from \$6,000 in 2001; in Quebec, \$7,000, raised from \$3,000; in Saskatchewan, \$10,000, raised from \$5,000. Four jurisdictions have set their small claims limit at \$25,000, Alberta, raised to \$25,000 from \$7,500 in 2002; British Columbia, raised to \$25,000 from \$10,000 in 2005; Yukon, raised to \$25,000 as of April 1, 2006; and Nova Scotia, where an increase to \$25,000 from \$15,000 is pending. In Alberta, the Lieutenant Governor in Council has authority to raise the limit to \$50,000.

Adjudication or mediation by non-judges. In Ontario, the principal small claims adjudicators are deputy judges (members of the Bar appointed for 3-year terms). In the Yukon, mediation at pre-trial conferences is often conducted by Justices of the Peace who are trained in mediation. Saskatchewan rejected the option of non-judicial or quasi-judicial officers to conduct case management conferences. In that province, the overwhelming response from those consulted was that litigants wanted to hear the opinion of a judge about the merits of the case. As has been seen, a number of jurisdictions offer mediation programs using private or public sector mediators.

Multi-staged approach, tailored to different classes of claims. A multi-staged approach is being tried in some jurisdictions. In 2005, British Columbia made its notice to mediate process available for small claims between \$10,000 and \$25,000. A mediation program for claims up to \$10,000 is available in 5 registries. Saskatchewan has a 2-step process. The first step is a case management conference (which the judge

can waive) to settle the litigation or narrow the issues and resolve procedural matters. It includes familiarizing self-represented litigants with the process that will be followed at trial. The second step is trial, to which the first step has paved an efficient way. The Yukon is considering separate approaches for claims of less than \$10,000 with mediation occurring at the pre-trial conference and claims between \$10,000 and \$25,000 for which mediation would be one stage and the pre-trial conference a second stage.

Training. In Ontario, the Deputy Judges Council established in 2001 is responsible for approving standards of conduct and a training program for deputy judges. Judicial training for Saskatchewan's 2-step process includes a Bench Book for small claims judges, a 1-day session for judges on case management conferences and training sessions for court staff from each court office. In British Columbia, all small claims judges are trained in interest-based mediation with refresher courses offered from time to time.

British Columbia	Implemented	Year
<i>Small Claims Act</i> and Rules 7.2, 7.3	Full	2005
Alberta		
Monetary Jurisdiction <i>Provincial Court Act</i> , RSA 2000, c. P-31, s. 9(1)(l), and <i>Provincial Court Civil Division Regulation</i> , AR 329/89, s. 1.1	Full	2002
Provincial Court: Civil Claims Mediation Program <i>Provincial Court Act</i> , ss. 65 and 66, and Mediation Rules, AR 271/97	Full	1998 (Edmonton & Calgary) 2006 (Lethbridge & Medicine Hat)
Saskatchewan		
<i>The Small Claims Act</i> and Regulations; Report from the Minister's Advisory Committee which conducted a review of the small claims process in 2005.	Full	2006
Manitoba		
<i>The Court of Queen's Bench Small Claims Practices Act</i>	Partial	1999
Ontario		
<i>Small Claims Court Jurisdiction</i> , O. Reg 626/00 ,and <i>Rules of the Small Claims Court</i> , O.Reg. 258/98	Full	2001

Quebec		
<i>Code of Civil Practice, Rules 953, 965 and 997</i>	Partial	2003
Nova Scotia		
<i>Small Claims Act</i>	Full	1993 2004 (amended)
Prince Edward Island		
<i>Supreme Court Act, Small Claims Rules</i>	Partial	1988
Newfoundland & Labrador		
Northwest Territories		
	Full	
Yukon		
<i>Act to Amend the Small Claims Court Act (2005), s. 2</i>	Partial	2006
Federal Court		
	Not Implemented	
Federal Court of Appeal		
	Not Considered	
Tax Court of Canada		
	Rejected	

B. Expedited and simplified proceedings (Recommendation 14)

RECOMMENDATION 14:
 Every jurisdiction establish expedited and simplified proceedings that are
 (a) mandatory, save as the court may otherwise direct, for all cases where \$50,000 or less is at issue; and
 (b) available at the option of the parties and with leave of the court in other cases where more than \$50,000 is at issue and where the subject-matter of the case warrants.

Ten jurisdictions have made provision for expedited and simplified proceedings, seven in or since 1996, one before 1996, and two not reporting the date of implementation. Ontario, Saskatchewan and the Federal Court require the use of this procedure in cases where \$50,000 or less, exclusive of interest or costs, is in issue. In Alberta, use of the procedure is specified for cases of \$75,000 or less; in the Tax Court, for GST appeals and income tax appeals of less than \$12,000 of federal tax and penalty. In

some jurisdictions, the procedure is available for disputes involving a higher amount where the parties agree or the court considers it appropriate. The key features of the Ontario rule provide an example of the contents of simplified proceedings. They include:

... simplified forms and procedures; cost consequences for failing to proceed under the simplified procedure; no examinations for discovery or cross-examination on an affidavit or an examination of a witness; reduced motion activity; lower threshold for summary judgment; automatic dismissal for delay (i.e. where plaintiff does not obtain judgment or set action down for trial within prescribed time); disposal of certain motions by the registrar on consent or where no responding material is filed; mandatory attendance at a pre-trial conference; availability of summary trials (evidence in chief by affidavit, time limit for cross-examination on affidavits; limited time for oral argument).

– Ontario response to jurisdictional questionnaire

Alberta exempts jury, divorce, class action, foreclosure and judicial review proceedings from the simplified procedure. The streamlined procedure in British Columbia is a two-year pilot project available in four locations. It requires parties to exchange comprehensive information at an early stage of the proceeding, and limits pre-trial and trial procedures.

British Columbia	Implemented	Year
<i>Supreme Court Rules</i> , Rule 68 (2-year pilot project available in 4 registries) <i>Small Claims Act</i>	Full	2005
Alberta		
<i>Alberta Rules of Court</i> , AR 390/68, Part 48	Full	1998
Saskatchewan		
<i>Queen's Bench Rules</i> , Rules 478, 479, 480	Full	1998
Manitoba		
Court of Queen's Bench Rule 20A (Expedited Actions)	Full	1996
Ontario		
<i>Rules of Civil Procedure</i> , Rule 76	Full	1996 (Pilot) 2001 (Permanent)
Quebec		
<i>Code of Civil Procedure</i> , Rules 110, 110.1 and 151-151.10, and <i>Code of Civil Procedure</i> , Rules 481.1 to 481.17 (implemented in 1996 and replaced by the 2003 reforms)	Full	2003

Nova Scotia		
	Under consideration	
Prince Edward Island		
<i>Civil Procedure Rules</i>	Partial	1998
Newfoundland & Labrador		
	Not Considered	
Northwest Territories		
	Not Considered	
Yukon		
	Not Considered	
Federal Court		
<i>Federal Courts Rules, Rule 292</i>	Full	
Federal Court of Appeal		
<i>Federal Courts Rules</i>	Full	
Tax Court of Canada		
<i>Tax Court of Canada Act</i>	Full	1993

C. Early disclosure (Recommendation 15)

RECOMMENDATION 15:

The CBA work with selected jurisdictions to establish pilot projects using ‘will-say’ procedures, so as to determine whether it is useful and fair to require will-say documents in civil cases to compel early disclosure of anticipated evidence, and to assess the impact of such a requirement on delay, costs and discovery.

Very little momentum has developed in establishing pilot projects that use “will-say” procedures to compel early disclosure of anticipated evidence. Only British Columbia, Quebec and the Northwest Territories report taking initiative. The Northwest Territories provision introduced in 1996 has not been assessed. Quebec rules introduced in 2003 require each party to provide the other party with all of the evidence its intends to present during trial.

In British Columbia, a 2-year Supreme Court pilot project requires parties, early in the proceeding, to provide a list of witnesses and a summary of what they are expected to say. Commencing January 2006, “will say” statements must be brought to the mandatory pre-trial conference in small claims cases requiring over ½ day for trial.

British Columbia	Implemented	Year
<i>Supreme Court Rules, Rule 68 (2-year pilot project available in 4 registries)</i>	Full	2005-2006
Alberta		
	Don't Know	
Saskatchewan		
	Not Considered	
Manitoba		
	Not Considered	
Ontario		
Quebec		
<i>Code of Civil Procedure, Rules 119, 331.1-331.8</i>	Full	2003
Nova Scotia		
	Under consideration	
Prince Edward Island		
	Not Implemented	
Newfoundland & Labrador		
	Not Considered	
Northwest Territories		
Rule 326	Full	1996
Yukon		
	Not Considered	
Federal Court		
	Don't Know	
Federal Court of Appeal		
	Not Considered	
Tax Court of Canada		
	Not Considered	

D. Discovery (Recommendation 16)

RECOMMENDATION 16:

Every jurisdiction

(a) amend its rules of procedure to limit the scope and number of oral examinations for discovery and the time available for discovery, and

(b) devise means to assist parties in scheduling discovery disputes in an efficient manner.

Ten jurisdictions report taking initiatives since 1996 (for the most part) to limit the scope and number of oral examinations for discovery and the time available for discovery. Sometimes limitations are placed on the number of persons a party can examine (e.g., employees or former employees of a party). Alberta rules permit judges to impose terms on discovery where a party uses or attempts to use discovery for an improper purpose or where full compliance with the discovery rules would produce expense, delay or difficulty grossly disproportionate to the likely benefit. These terms may include: costs, time limits, written interrogatories, the production of documents, a change of venue and the supervision of further discovery by a judge, master, commissioner, clerk or referee. The Federal Court rules make provision against unduly onerous examination; moreover, unless with leave of the Court, an adverse party may be examined only once. In 2003, Ontario's *Task Force on the Discovery Process* issued a report with 57 recommendations for cost and time savings in discovery. To date, the Civil Rules Committee has approved only a few minor rule amendments. The reforms that have been implemented have focused on the development of best practices for the conduct of discovery, as well as e-discovery guidelines.

Limitations on discovery in expedited or streamlined proceedings. Superior court provisions for expedited or streamlined proceedings in several jurisdictions place limitations on discovery. In Alberta, examinations for discovery are limited to 6 hours and a party can elect to conduct written interrogatories. In British Columbia's streamlined procedure pilot project, examinations for discovery are available only by agreement or court order and are limited to 2 hours. Under expedited actions in Manitoba, the court may make orders dispensing with or limiting the nature, scope and duration of examinations for discovery. Ontario, Quebec and Saskatchewan do not permit examinations for discovery in streamlined proceedings. In Ontario, the restriction extends to examinations for discovery, cross-examination on affidavits and examination of witnesses on a motion. Unless the judge permits, parties may only call as a witness those persons whose names and addresses have been disclosed within 10 days of the close of pleadings. In Quebec, they may take place only as agreed by the parties or decided by the court and the court may order the termination and award costs with respect of discoveries that are abusive, vexatious or futile.

Discovery by written questions and answers. In order to avoid or reduce the need for examination for discovery in family matters, Alberta has introduced a process to instigate the exchange of information in writing. The "Notice to Reply to Written Interrogatories" may set out a maximum of 30 questions which are to be answered by

affidavit. The court also has discretion to order discovery by written interrogatories in general civil litigation. The Tax Court provides for oral discovery or discovery by written questions; there, discovery by written questions is subject to specific time frames for questions and answers.

Less activity is reported with respect to recommendation 16(b), prompting jurisdictions to devise means to ***assist parties in scheduling discovery disputes in an efficient manner***. The Federal Court has detailed rules with respect to examinations (e.g., location, interpreters, travel fees, directions to attend, production of documents, service).

British Columbia	Implemented	Year
<i>Supreme Court Rules</i> , Rule 68 (2-year pilot project available in 4 registries)	Full	2005
Alberta		
Family Matters Court of Queen's Bench, Family Practice Note No. 6 (Notice to Reply to Written Interrogatories)	Full	1997
Civil Matters <i>Alberta Rules of Court</i> , Part 13, Division 2	Partial	1995
Saskatchewan		
Part 40 (Simplified Rules)	Partial	1995
Manitoba		
Rule 20A (Expedited Actions)	Partial	1996
Ontario		
<i>Rules of Civil Procedure</i> , Rule 76 (Simplified Procedure)	Full	
Quebec		
<i>Code of Civil Procedure</i> , Rules 151.1, 151.6 and 396.1-396.4	Full	2003
Nova Scotia		
	Under consideration	
Prince Edward Island		
<i>Rules of Civil Procedure</i>	Partial	1998

Newfoundland & Labrador		
	Not Considered	
Northwest Territories		
	Not Implemented	
Yukon		
	Not Considered	
Federal Court		
<i>Federal Courts Rules</i> , Rules 87-100, 234 - 248, 296, 299.24	Full	
Federal Court of Appeal		
	Not Considered	
Tax Court of Canada		
<i>Tax Court of Canada Rules</i>	Full	

E. Expert opinion evidence (Recommendation 17)

Recommendation 17:

Every jurisdiction amend its rules of procedure concerning experts to

- a) Require early disclosure of expert report,
- b) Provide for the exchange of expert critique reports in a timely fashion before trial or hearing,
- c) Impose a continuing obligation to disclose expert reports as they become available.

Eleven jurisdictions have taken initiatives with respect to expert reports, at least 6 in or since 1996. The initiatives include:

- specifying the time for exchanging reports and objecting to admissibility either in the rules (e.g., Alberta, Ontario and the Federal Court) or by judge's order (e.g., expedited action in Manitoba);
- limiting the number of expert witnesses who can be called without leave of the court (e.g., in British Columbia, one per party in the simplified procedure pilot);
- prohibiting expert testimony on issues unless the substance of the testimony on that issue is set out in the expert's report or supplementary report and is served in time;
- imposing cost consequences, including denial of assessed costs and disbursements for the expert witness, for failure to comply with notice requirements; and
- requiring service of affidavits setting out the proposed evidence of experts, before the holding of a pre-trial conference (e.g., under consideration for the Federal Court: <http://canadagazette.gc.ca/part1/2006/20060211/html/regle1->

[e.html](#) and discussion paper http://www.fct-cf.gc.ca/bulletins/notices/DISCUSSION_en.pdf).

British Columbia	Implemented	Year
<i>Supreme Court Rules, Rule 68(33)</i>	Full	2005
Alberta		
<i>Alberta Rules of Court, Part 15 (Experts), Rule 218.1 and ff.</i>	Full	1998 and ongoing
Saskatchewan		
<i>Queen's Bench Rules of Court, Rules 284(C) and 284(D); The Saskatchewan Evidence Act, s. 48 (limits the number of expert witnesses who can be called without leave of the court)</i>	Full	1984 (New Rule) 1987 (Amended)
Manitoba		
Rule 20A (Expedited Actions)	Partial	1996
Ontario		
<i>Rules of Civil Procedure</i> Rule 76 (Simplified Procedure) Rule 53 Rule 30	Full	
Quebec		
Rules 331.1-331.8	Full	2003
Nova Scotia		
	Under Consideration	
Prince Edward Island		
<i>Evidence Act and Civil Procedure Rules</i>	Partial	Ongoing
Newfoundland & Labrador		
<i>Rules of Court</i>	Full	1986
Northwest Territories		
Rules 279-280	Full	1996
Yukon		
	Not Considered	

Federal Court		
<i>Federal Courts Rules, Rules 279 - 281</i>	Partial	
Federal Court of Appeal		
	Not Considered	
Tax Court of Canada		
<i>Tax Court of Canada Rules</i>	Full	

**F. Judicial assistance and direction on use of experts
(Recommendation 18)**

RECOMMENDATION 18:

In every jurisdiction, judges play a more active role in assisting parties to limit the costs and delay associated with the use of experts.

Only British Columbia, Quebec, Saskatchewan and the Federal Court report having introduced provisions in which judges play a more active role in assisting parties to limit the costs and delay associated with the use of experts. The innovations post-date 1996 in 3 of these jurisdictions but pre-date 1996 in Saskatchewan. No change is reported in any other jurisdiction. In the simplified procedure being piloted in British Columbia, expert witnesses are limited to one per party. On application, a judge may decide that additional expert witnesses are appropriate. In Quebec, the court may order the experts who have prepared contradictory reports to meet, in the presence of the parties or their legal counsel who wish to be present, in order to reconcile their opinions, decide on the points of conflict and prepare a report for the justice and the parties within a set time frame. The court may also mitigate the costs related to expert opinion requested by the parties (e.g., whenever it believes the expertise to be futile, the costs to be unreasonable or when one expert would have been sufficient). In the Federal Court, the new case management rules for specially managed proceedings give the case management judge considerable discretion to make directions that “are necessary for the just, most expeditious and least expensive determination of the proceeding on its merits” as well as to “fix and conduct any dispute resolution or pre-trial conferences that he or she considers necessary.” Most Saskatchewan provisions pre-date 1996. However, the 2003 addition of a broad discretion in awarding costs permits the judge to consider the conduct of any party that tended to shorten or unnecessarily lengthen the proceedings. As well, in the case management portion of a pre-trial conference, the judge ensures that the requisite expert notices have been served and a trial date will not be set until this requirement has been complied with. The judge may also set time frames for service.

British Columbia	Implemented	Year
<i>Supreme Court Rules, Rule 68(33)</i>	Full	2005

Alberta		
	Not Implemented	
Saskatchewan		
<i>The Saskatchewan Evidence Act, s. 48 Rules 284(C), (D) and 545</i>	Full	Pre-1965 2003
Manitoba		
	Not Considered	
Ontario		
Quebec		
<i>Code of Civil Procedure, Rules 413.1 and 477</i>	Full	2003
Nova Scotia		
	Under consideration	
Prince Edward Island		
	Not Considered	
Newfoundland & Labrador		
	Not Considered	
Northwest Territories		
	Not Implemented	
Yukon		
	Not Considered	
Federal Court		
<i>Federal Courts Rules, Rule 385</i>	Full	1998
Federal Court of Appeal		
	Not Considered	
Tax Court of Canada		
	Not Implemented	

G. Interlocutory proceedings (Recommendation 19)

RECOMMENDATION 19:

Every jurisdiction

- a) strictly limit appeals from non-dispositive interlocutory orders,
- b) provide for costs awards in suitable cases, payable immediately, in interlocutory matters, and
- c) introduce strict financial sanctions, payable immediately, for clear cases of abuse.

Seven jurisdictions make provision for handling non-dispositive interlocutory orders, the immediate payment of costs awards in interlocutory matters and strict financial sanctions for cases of abuse. Only Alberta and Nova Scotia report having made changes since 1996. The approaches differ from one jurisdiction to another. The Alberta Court of Appeal fast tracks procedural and child custody and access appeals so that they may be heard quickly, and trials are not unduly delayed. On average, these appeals are heard within 3 months of being filed and account for approximately 30% of the civil appeals filed. Costs and financial sanctions are available, as always. Features of the fast track procedure include:

1. No need to agree on contents of appeal books.
2. Cheaper and faster format for appeal books.
3. No need to speak to list; automatic scheduling similar to that used for sentence appeals.
4. Special frequent hearing dates.
5. Leave to appeal needed for appeals from mid-trial rulings, security for costs, or pre-trial fixing of dates or deadlines.

(Alberta response to jurisdictional questionnaire)

British Columbia allows small claims appeals of judgments made at trial, with leave from the Court of Appeal. Cost awards and financial sanctions in the Supreme Court are determined on a case-by-case basis, and the Court has power to award special costs. Nova Scotia provides for costs to be payable forthwith. In Ontario, leave to appeal an interlocutory order is granted only where another judge or court in Ontario or elsewhere has rendered a conflicting decision on the matter in the proposed appeal and the judge hearing the motion thinks that leave should be granted, or the judge hearing the motion doubts the correctness of the order in question and the matter is one of importance. Appeals to the Federal Court of Appeal on interlocutory decisions occur as of right; however, the hearing is limited to one hour and is expedited.

British Columbia	Implemented	Year
<i>Small Claims Act</i> <i>Supreme Court Rules, Rule 19(24)</i>	Full	
Alberta		
Court of Appeal of Alberta Consolidated Practice Directions, Part J.	Full	October 2004

Saskatchewan		
<i>Judicature Act, 1894</i> (adopting leave requirements from English Law <i>The Court of Appeal Act, 2000</i> , s. 8, and <i>The Court of Appeal Rules, Rule 11</i>)	Full	1894
Manitoba		
	Not Considered	
Ontario		
<i>Rules of Civil Procedure, Rule 62</i>	Full	1990
Quebec		
	Not Implemented	
Nova Scotia		
a) <i>Civil Practice Rules, Rule 62</i>	Partial	2002
b) costs payable forthwith	Partial	2002
c)	Under Consideration	
Prince Edward Island		
	Not Considered	
Newfoundland & Labrador		
	Don't Know	
Northwest Territories		
	Not Considered	
Yukon		
	Not Considered	
Federal Court		
	Rejected	
Federal Court of Appeal		
<i>Federal Courts Act</i>	Full	
Tax Court of Canada		
<i>Federal Courts Act</i>	Partial	

H. Summary trials (Recommendation 20)

RECOMMENDATION 20:

Every jurisdiction provide for, and promote the use of, summary trial procedures.

Twelve jurisdictions have made provision for summary trials, many in the decade before 1996. Summary trial differs from summary judgment. A summary trial is a shorter and usually simpler procedure for resolving particular issues in an action, or a dispute in its entirety, whereas a summary judgment may be granted where no defence has been filed or a party claims that no defence has been made out to the whole or part of a claim. Usually, the trial is conducted on the basis of written evidence. Alberta describes its Queen's Bench procedure for summary judgment as follows:

A summary trial is started by notice of motion requiring at least 21 days notice. The notice must include a list of all the evidence the applicant intends to rely on. The responding party is required to give similar notice of all the evidence he or she intends to rely on at least 7 days before the application. Evidence for a summary trial is in document form and can include affidavits, transcripts, answers to interrogatories and admissions. Oral evidence can be given only with leave of the Court.

The judge has discretion to order whether the evidence on which a party intends to rely must be filed and served, whether there will be cross-examination, whether briefs must be filed and timelines for completing any of the above. Upon hearing the evidence, the Judge can grant judgment on an issue or on the action as a whole, direct the matter proceed to trial, impose terms respecting the enforcement of a judgment given at summary trial and award costs. If the judge directs the matter proceed to trial, he or she may make orders and directions to expedite the action.

(Alberta response to jurisdictional questionnaire)

British Columbia and the Yukon allow evidence to be presented by affidavit with legal argument by oral submission in a summary trial before the Supreme Court. This rule is used quite often in the Yukon Supreme Court.

Ontario's simplified procedure provides for a summary trial (evidence in chief by affidavit, time limit for cross-examination on affidavits, limited time for argument). Saskatchewan's simplified procedure rules are likewise intended to produce very short and inexpensive proceedings.

British Columbia	Implemented	Year
<i>Supreme Court Rules, Rules 18 and 18A</i>	Full	
Alberta		
Court of Queen's Bench <i>Alberta Rules of Court, AR 390/68, Part 11, Division 1, Rules 158.1-158.7 (Summary Trial Rules)</i> Civil Practice Note No. "8".	Full	1998

Saskatchewan		
<i>Queen's Bench Rules, Part Forty</i>	Full	1998
Manitoba		
Rule 20 (Summary Judgment and Expedited Trial)	Full	1989
Ontario		
<i>Rules of Civil Procedure, Rule 76</i>	Full	1990
Quebec		
Nova Scotia		
<i>Civil Practice Rules, Rule 13</i>	Full	2002
Prince Edward Island		
<i>Rules of Court</i>	Full	1996
Newfoundland & Labrador		
Rule 17A	Full	1995
Northwest Territories		
	Not Implemented	
Yukon		
<i>Supreme Court Rules, Rule 18A</i>	Full	Ongoing
Federal Court		
<i>Federal Courts Rules, Rules 213 - 219</i>	Full	1994
Federal Court of Appeal		
	Not Considered	
Tax Court of Canada		
<i>Tax Court of Canada Act (Informal Procedure Appeals)</i>	Full	1993
Formal Procedure	Not Considered	

I. Changing the incentive structure (Recommendation 21)

RECOMMENDATION 21:

Every jurisdiction

- a) develop a system of incentives and sanctions to encourage settlement and the prudent use of court time, and
- b) as an essential component of such a system, undertake a reassessment of current indemnity principles.

Four jurisdictions report full implementation and two jurisdictions partial implementation, of a system of incentives and sanctions to encourage settlement and the prudent use of court time and of undertaking a reassessment of current indemnity principles. Only Alberta, which cites its summary trial procedure, gives a date post-1996. British Columbia credits its Supreme Court hearing day fees structure for promoting more efficient use of court time and working as disincentives for longer trials (e.g., a hearing exceeding ½ day costs double the amount of a hearing that is ½-day long or less). To similar effect, a small claims judge may order a party to pay up to 10% of the claim for proceeding to trial with no reasonable basis for success. Sanctions against a party who does not accept an offer and does not recover a judgment equal to or better than the offer help to promote settlement in both the Supreme Court and Small Claims Court. Fast track litigation in the Supreme Court encourages settlement and provides for specific costs to be awarded based on the trial length. Increases to the tariff in the Supreme Court rules – the basis on which litigants are indemnified for their litigation costs – are being considered. Manitoba is currently reviewing its Queen’s Bench tariff. Nova Scotia, Ontario and the Federal Court cite their provisions on settlement offers which are similar to the British Columbia provision (see federal Discussion Paper, <http://www.fct-cf.gc.ca/bulletins/notices/Discussionpaper-OffertoSettle.pdf>). Quebec is examining these questions in the second phase of reform of the *Code of Civil Procedure*. In exercising its discretion over costs, the Tax Court may consider, among other matters: any offer of settlement made in writing; the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding; and the denial or the neglect or refusal of any party to admit anything that should have been admitted.

British Columbia	Implemented	Year
<i>Supreme Court Rules</i> Fees, Appendix C, Schedule 1, item 14. Rule 37 Rule 66 (for trials up to 2 days)	Full	
<i>Small Claims Rules</i> , Rules 10.2, 20(5)	Full	
Alberta		
Court of Queen's Bench <i>Alberta Rules of Court</i> , AR 390/68, Part 11, Division 1, and Civil Practice Note No. "8"	Full	1998

Saskatchewan		
	Not Considered	
Manitoba		
	Under Consideration	
Ontario		
<i>Rules of Civil Procedure, Rule 49 (Offer to Settle)</i>	Full	
Quebec		
	Not Implemented	
Nova Scotia		
<i>Civil Practice Rules, Rule 41</i>	Partial	
Prince Edward Island		
	Not Considered	
Newfoundland & Labrador		
	Not Considered	
Northwest Territories		
	Not Implemented	
Yukon		
	Under Consideration	
Federal Court		
<i>Federal Courts Rules, Rules 419 - 422</i>	Full	1987
Federal Court of Appeal		
	Not Considered	
Tax Court of Canada		
<i>Tax Court of Canada Rules</i>	Partial	

Fourth Theme: Appellate Reform

Task Force Recommendations 22 to 25 deal with reform at the appellate level. The recommendations cover: time standards; the production of appeal books; case management of appeals; and control over civil dockets.

A. Time standards (Recommendation 22)

RECOMMENDATION 22:

Every appellate court

a) develop and promote the attainment of the following goals:

- i. the initiation of appeals within 30 days after the filing and service of the trial judgement;
- ii. the hearing of appeals within 9 to 12 months after the filing of a notice of appeal; and
- iii. the rendering of judgements promptly and, save in complex cases or where new questions of law are being developed, by no later than 6 months from completion of the appeal; and

b) develop procedures to monitor performance against these goals

Twelve jurisdictions report compliance with the CBA Task Force recommendation for time standards for the initiation of appeals within 30 days after the filing and service of the trial judgment; the hearing of appeals within 9 to 12 months after the filing of a notice of appeal; and prompt rendering of judgments (usually no later than 6 months from completion of the appeal). They also report having procedures to monitor performance against these goals. Often, the provisions pre-date 1996. In Ontario, the Rules of Civil Procedure require service of a notice of appeal within 30 days following the order being appealed, and service of a notice of motion for leave to appeal within 15 days of the order. Most civil appeals are to be heard within 6 months of perfection (all facts filed), but some appeals are heard more quickly. The Ministry works closely with the judiciary in monitoring time to hearing data on a regular basis. In Quebec, the Court of Appeal examines all requests for appeal and, according to each case, may suggest conciliation to the legal counsel – a less cumbersome process with summary trial evidence being submitted rather than the briefs required under the *Code* – or it may offer case management assistance in more complicated cases. The Court of Appeal targets 7 months as the maximum delay allowed for an appeal to be heard. In Saskatchewan, a date for hearing an appeal is fixed within 6 weeks of perfection. Some appeals are expedited through a more streamlined process (e.g., in all family law matters). Because there is only one sitting per year in Whitehorse, in the Yukon the hearing date depends on trial scheduling. Counsel who wish to have the matter heard sooner arrange for a hearing in Vancouver. The Federal Court of Appeal meets all of the goals recommended by the CBA Task Force.

British Columbia	Implemented	Year
	Full	
Alberta		
The <i>Alberta Rules of Court</i> , and various other provincial and federal legislation, govern the time limit for the initiation of appeals.	Full	

Saskatchewan		
22(a)(i) - 30 day appeal period <i>The Court of Appeal Act, 2000, s. 9(2), and The Court of Appeal Rules, Rule 9(2)</i>	Full	Standard practice for over a decade
22(a)ii) - hearing of appeals <i>The Court of Appeal Rules</i> prescribe process that would make this target attainable.	Full	
S. 22(a)iii) 6 month rule for judgments This has been the standard for the Court of Appeal. There is nothing formal that would compel this standard, other than the commitment of the Justices to try to attain it in most cases.	Partially	
Manitoba		
<i>Rules of Court</i> and court practice	Full	1992
Ontario		
<i>Rules of Civil Procedure, Rule 61</i> Judicial Practice Direction Concerning Civil Appeals in the Court of Appeal	Full	2004
Quebec		
Implemented in the Court of Appeal	Full	
Nova Scotia		
<i>Civil Practice Rules, Rules 62 and 65; and Judicature Act</i>	Full	1979
Prince Edward Island		
<i>Supreme Court Act</i>	Full	1997
Newfoundland & Labrador		
	Don't Know	
Northwest Territories		
	Not Implemented	
Yukon		
<i>Court of Appeal Act, s. 10</i>	Partial	ongoing
Federal Court		
Federal Court of Appeal		
<i>Federal Courts Act and Federal Courts Rules</i>	Full	

Tax Court of Canada		

B. Production of appeal books (Recommendation 23)

RECOMMENDATION 23:

The CBA, in consultation with members of the judiciary and lawyers, develop guidelines for the production of appeal books.

Seven jurisdictions have guidelines for the production of appeal books. The provisions pre-date 1996. Under the Ontario rules, the appellant must file an appeal book and compendium as a single document book, containing copies of any excerpts from transcripts, exhibits, or other relevant documents that are referred to in the appellant's factum. The factum is to contain these references by tab, page number and line in the appeal book and compendium, as well as in the exhibit book. The respondent must also file a compendium of those materials referred to in its factum, which must contain similar detailed references to the compendium. A Court of Appeal practice direction introduced in 2004 supplements the rules with guidelines respecting a number of matters. Saskatchewan imposes an obligation on the parties to "make every reasonable effort to exclude irrelevant material from the appeal book, avoid duplication and otherwise confine the contents to that which is necessary for the purposes of the appeal." Costs can be awarded against a party for non-compliance (e.g., lack of cooperation in reaching a written agreement about which portions of the transcript should be transcribed). Parties before the Federal Court of Appeal are to include in an appeal book only such documents, exhibits and transcripts as are required to dispose of the issues on appeal.

British Columbia	Implemented	Year
	Full	
Alberta		
<i>Alberta Rules of Court</i> , R. 530, and Consolidated Practice Directions of the Court of Appeal of Alberta, Part J	Full	
Saskatchewan		
<i>Court of Appeal Rules</i>	Full	Always been there
Manitoba		
<i>Rules of Court</i>	Full	1992

Ontario		
<i>Rules of Civil Procedure</i> Rule 61.10 (Appeal book and compendium) Rule 61.10.1 (Exhibit book) Judicial Practice Direction Concerning Civil Appeals in the Court of Appeal	Full	2004
Quebec		
Nova Scotia		
<i>Civil Practice Rules, Rules 62 and 65</i>	Full	1995
Prince Edward Island		
	Not Considered	
Newfoundland & Labrador		
	Don't Know	
Northwest Territories		
	Not Implemented	
Yukon		
<i>Civil Appeal Rules</i>	Full	1993 (updated 2005)
Federal Court		
Federal Court of Appeal		
	Not Considered	
Tax Court of Canada		

C. Case management of appeals (Recommendation 24)

RECOMMENDATION 24:
Every appellate court take a more active role in supervising the progress of appeals.

Appellate courts in all jurisdictions take an active role in supervising the progress of appeals. Many jurisdictions have introduced reforms since 1996. In Alberta, specific types of appeal requiring more intense monitoring by a judge are brought to the attention of list managers in Edmonton and Calgary for the purpose of appointing a

case management judge or affixing a timetable for filing materials. In addition, list managers “speak to the general appeal list” four times a year. The Court of Appeal rules in British Columbia govern every step of the process. In Ontario, the Court of Appeal practice direction introduced in 2004 establishes a number of guidelines to enhance the court’s ability to supervise the progress of civil appeals and to supplement the rules respecting the content and formatting of materials filed on appeal. These include:

- guidelines for the expeditious hearing of motions to the Court of Appeal in civil matters;
- provision, in exceptional cases, for the assignment of a judge to manage the conduct of appeal through the use of appeal management conferences;
- guidelines respecting unnecessary evidence and exhibits, timely preparation of transcripts, the content and formatting of factums, appeal book and compendium and respondent’s compendium, books, the use of technology;
- scheduling procedures;
- costs; and
- post hearing submissions.

(Ontario response to jurisdictional questionnaire)

Saskatchewan provides for a pre-hearing conference at the request of a party or at the initiative of the Court, allows an appeal to be determined on the basis of factums where the parties agree, sets out the process and time limits for “expedited appeals” (mandatory for appeals that meet the definition), and authorizes the Registrar to handle many procedural issues (e.g., the determination of contested applications for adjournment of appeals that have been set for hearing). In the Yukon, appeals that have sat on the inactive list for 180 days are automatically dismissed as abandoned. The Federal Court of Appeal takes an active role in supervising the progress of appeals; the rules set out the parameters of a status review in this regard.

British Columbia	Implemented	Year
<i>Court of Appeal Rules</i> , Rule 29	Full	
Alberta		
A List Manager in each of Edmonton and Calgary is actively involved in the supervision of all appeals.	Full	
Saskatchewan		
Rule 41 (pre-hearing conference at the request of a party or at the initiative of the Court)	Partial	1997
Manitoba		
Court practice under office of the Registrar	Full	2002
Ontario		
Judicial Practice Direction Concerning Civil Appeals in the Court of Appeal	Full	2004, Jan 1

Quebec		
<i>Code of Civil Procedure, Rules 26, 497 and 501</i>	Full	2003
Nova Scotia		
Discretion of Chief Justice	Full	2000
Prince Edward Island		
<i>Supreme Court Act</i>	Full	1997
Newfoundland & Labrador		
	Don't Know	
Northwest Territories		
Practice Direction	Partial	2006
Yukon		
Court of Appeal <i>Court of Appeal Rules, 2005</i>	Partial	2005
Supreme Court	Under consideration	
Federal Court		
Federal Court of Appeal		
<i>Federal Courts Rules</i>	Full	
Tax Court of Canada		

D. Control over civil dockets (Recommendation 25)

<p>RECOMMENDATION 25: Every jurisdiction consider measures to give appellate courts, including the Supreme Court of Canada, greater control over their civil dockets.</p> <p>IMPLEMENTATION POINTS: – The elimination of appeals as of right to the Supreme Court of Canada and to provincial and territorial appellate courts; and – The expansion of leave to appeal requirements in defined classes of court.</p>
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Seven jurisdictions report taking steps to give appellate courts greater control over their civil dockets, including giving consideration to eliminating appeals as of right and expanding leave to appeal requirements in defined classes of court. In two of these

jurisdictions, steps have been taken since 1996; in one, the steps occurred before 1996; other jurisdictions do not provide dates. In Alberta, the threshold for leave to appeal was raised from \$1,000 to \$25,000 in 2003, interlocutory appeals on procedure or child custody and access are handled expeditiously, the usual court quorum is 3 judges but the Court may designate that certain appeals be heard by panels of fewer than 3, and the court may reduce the number of unnecessary appeals. The British Columbia Court of Appeal has inherent control over its own docket. Control over civil dockets is not an issue for the Manitoba Court of Appeal. The appeal route in Ontario is more complex than in other jurisdictions, with some appeals lying to the Divisional Court and others to the Court of Appeal. Leave is required for appeals from an order made with the consent of the parties, or an order as to costs in the discretion of the court that made the order. Quebec has raised the ceiling for an appeal as of right from \$20,000 to \$50,000, and added as a reason for dismissal of an appeal, the “absence of a reasonable chance of success.” It also requires special permission for the appeal of a judicial review. The Saskatchewan Court of Appeal routinely hears chamber motions by telephone conference. Since 1997, the Registrar has been able initiate action on an inactive appeal by way of a show cause hearing. Leave to appeal is necessary for interlocutory orders, and parties have no right to appeal a ruling by a chamber justice either granting or denying leave. The *Court of Appeal Act, 2000* vests rule making power entirely with the Court. This basically ensures that the Court has complete control over process and procedure.

Unlike appellate courts in the provinces and territories, the Federal Court of Appeal does not have control over the cases coming before it. Rather, the *Federal Courts Act* confers an appeal as of right from the Federal Court and the Tax Court on all judgments or orders, whether final or interlocutory. The federal response to the questionnaire notes that there are no appeals as of right to the Supreme Court of Canada from the Federal Court of Appeal.

British Columbia	Implemented	Year
	Full	
Alberta		
<i>Alberta Rules of Court</i> , Rule 505(4), Court of Appeal Consolidated Practice Directions, Part J <i>Court of Appeal Act</i> , RSA 2000, c. C-30, s. 7	Partial	2003
Saskatchewan		
Teleconference applications <i>The Rules of Court</i> , Rule 48(7) - the Court routinely hears chamber motions by telephone conference.	Partial	Years ago
Show Cause Hearings <i>The Rules of Court</i> , Rule 46(2) - allows the Registrar to initiate action on inactive appeals.	Partial	1997

Expanded Powers of the Registrar <i>The Court of Appeal Act, 2000, s. 21(1), and Rule 60.</i>	Partial	
Leave to appeal requirements <i>The Court of Appeal Act, 2000, s. 9(2), and Rule 9(2). s. 20(3) - Leave to appeal necessary for interlocutory orders. No right to appeal ruling of chamber justice either granting or denying leave.</i>	Partial	
Rule Making Power <i>The Court of Appeal Act, 2000, s. 10 vests rule making power entirely with the Court. This basically ensures that the Court has complete control over process and procedure.</i>	Partial	
Manitoba		
<i>Rules of Court and leave to appeal provisions found in various statutes</i>	Full	
Ontario		
<i>Courts of Justice Act s. 133; s. 6(1) (Court of Appeal) s. 19(1) (Divisional Court)</i>	Full	
Quebec		
Nova Scotia		
<i>See CBA Task Force Report, p. 50</i>	Full	Pre-1996
Prince Edward Island		
	Rejected	
Newfoundland & Labrador		
	Don't Know	
Northwest Territories		
	Not Implemented	
Yukon		
	Don't Know	
Federal Court		

Federal Court of Appeal		
	Not Considered	
Tax Court of Canada		

Fifth Theme: Improving Public Understanding

Task Force Recommendations 26 to 30 advance the theme of improving public understanding of the civil justice system. The recommendations pertain to: public information and education; point of entry advice and assistance; public consultation and involvement; and court charters.

A. Public information and education (Recommendation 26)

RECOMMENDATION 26:

- a) The CBA enter into discussions with provincial and territorial ministries of education or their equivalents to facilitate the teaching of dispute resolution skills and the operation of the civil justice system in Canadian elementary and secondary schools; and
- b) these efforts be undertaken in consultation with law societies, law schools, members of the judiciary, and governments.

IMPLEMENTATION POINTS:

- Members of the judiciary, lawyers and notaries and provincial and territorial law societies should become more involved in public education efforts;
- Public legal educators should be encouraged and supported in efforts to share information and identify best practices;
- Courts should consider the use of media liaison officers to assist in communication efforts; and
- Special consideration should be given to the unique access issues that will arise as part of a civil justice public education program.

Nine jurisdictions report having taken steps to facilitate the teaching of dispute resolution skills and the operation of the civil justice system in Canadian elementary and secondary schools and to involve the judiciary and legal profession in public legal education efforts. Two more jurisdictions are considering taking this step. Most of these steps have been initiated since 1996. Examples of the steps being taken are:

- the inclusion of units in elementary and high school curriculums (e.g., Alberta);
- efforts (individual and collaborative) by government, Bar, Bench and community agencies to offer public education speakers and programs (e.g., justices of the federal courts; partnering in Ontario; Alberta's Education Speaker Centre: http://www.justice.gov.ab.ca/public_education/just_edu_speak_centre.aspx);
- brochures, pamphlets and do-it-yourself information packages available in courts, at government locations, in libraries and so forth;
- website publications, available on court, court services and public legal education agency websites;
- establishment of local justice education network committees (e.g., Ontario);

- issuing a request for proposals for a feasibility study for a Northern Institute of Justice (in the Yukon); and
- instituting media, public education and public relations liaison officers in the courts (e.g., Manitoba, Nova Scotia, Saskatchewan).

British Columbia	Implemented	Year
	Full	
Alberta		
General Operation of Justice System	Full	2005
Justice Education Speakers Center	Full	2005
Saskatchewan		
Produced two brochures Solving Problems and Resolving Disputes and Family Mediation	Full	1995 - 1996
The Dispute Resolution Office of Saskatchewan Justice participates with the Saskatchewan Legal Education Society in the Bar Admissions courses and in the continuing education seminars for practicing lawyers.	Full	1995 - ongoing
The Dispute Resolution Office assisted the legal community is establishing a Collaborative Lawyers of Saskatchewan in 2001.	Full	2001
The Saskatchewan Department of Justice and The University of Saskatchewan College of Law entered into a joint project with respect to the development and integration of Appropriate Dispute Resolution into the curriculum. There continues to be a very close working relationship with the Dispute Resolution Office of Sask Justice ensuring the students have opportunities to gain practical experience in mediation.	Full	1996 - 1999
The position of Saskatchewan Courts Communications Officer was created. This position coordinates public education programming on behalf of the courts, acts as a media liaison and maintains the court website. Information on the Court Education Program is available on the Courts' website, at http://www.sasklawcourts.ca/ . The Communications Officer also works with other organizations that provide public legal education programs in the province.	Full	2002
Manitoba		
	Full	Early 1990's
Ontario		
Court Services Division Five-Year Plan	Full	2003

Quebec		
Nova Scotia		
	Partial	2002
Prince Edward Island		
	Partial	ongoing
Newfoundland & Labrador		
	Not Considered	
Northwest Territories		
	Not Implemented	
Yukon		
	Under Consideration	
Federal Court		
	Under Consideration	
Federal Court of Appeal		
	Full	
Tax Court of Canada		
	Partial	

B. Point of entry advice and assistance (Recommendations 27 and 28)

RECOMMENDATION 27:
 Every court provide point-of-entry advice to members of the public on dispute resolution options in the civil justice system and available community services.

RECOMMENDATION 28:
 Every court undertake initiatives to assist unrepresented litigants, including simplifying procedures and forms and using plain language.

Nine jurisdictions report full or partial implementation of initiatives to assist unrepresented or other litigants by providing point-of-entry advice on dispute resolution options in the civil justice system and available community services, simplifying procedures and forms, and using plain language. Most of these initiatives have taken place since 1996. Two more jurisdictions are considering implementation. The initiatives include:

- providing user-friendly written information on the trial, pretrial conference and mediation processes to members of the public and parties to small claims actions, family and other actions;
- stamping information about dispute resolution options on the backing sheet of the statement of claim when it is filed (e.g., Alberta);
- placing information on court, court services and community public legal education agency websites;
- providing in-person or by-telephone information about dispute resolution options and community referrals;
- creating simplified forms and procedural instructions for family law, residential tenancy and other matters that arise with frequency;
- creating committees that include members of the public to advise on the needs of self-represented litigants (e.g., Alberta);
- providing family duty counsel to assist lay litigants with legal advice and document preparation (e.g., British Columbia)
- introducing an online Small Claims Filing Assistant (e.g., British Columbia);
- website access to court forms (e.g., Ontario);
- drafting rules with an emphasis on ease of comprehension and plain language; and
- supporting and promoting community organizations devoted to public legal education (e.g., Quebec).

British Columbia	Implemented	Year
	Full	
Alberta		
Recommendation 27 - Associated with Mediation Programs in both the Provincial Court and the Court of Queen's Bench as outlined in Recommendation 1.	Full	1998 - 2005
Recommendation 28: Re Forms and Procedures Family Law Act Application Forms and Instructions <i>Family Law Act</i> , S.A. 2003, c. F-4.5 <i>Family Law Act General Regulation</i> , O.C. 383/2005 <i>Provincial Court Procedures (Family Law) Regulation</i> , O.C. 384/2005 <i>Family Law Act General Regulation</i> , O.C. 383/2005 <i>Alberta Rules of Court Amendment Regulation</i> , O.C. 381/2005 [which introduces Part 44.2 (<i>Family Law Act</i> matters) to the <i>Alberta Rules of Court</i>] <i>Alberta Child Support Guidelines</i> , O.C. 382/2005;	Full	2005
Queen's Bench Family Law Court Procedure Booklets <i>Alberta Rules of Court</i> , Part 44, 44.1 and 44.2 Various federal and provincial statutes/regulations relating to family law matters.	Full	2000

Residential Tenancies Act Forms and Instructions <i>Residential Tenancies Act, S.A. 2004, c. R-17.1</i> <i>Provincial Court Act, R.S.A. 2000, c. P-31</i>	Full	2004
Recommendation 28: Re Self-Represented Litigants Committee	Full	2005
Saskatchewan		
Parent education program The Dispute Resolution Office	Full	1990's
Manitoba		
Recommendation 27 through office of court media/public relations	Full	early 1990's
Recommendation 28 In the Court of Appeal (2005) with courts website self-represented litigant packages for appeal proceedings.	Full	2005
In the Court of Queen's Bench, packages were developed for family proceedings to assist in the variation of child support orders.	Full	2003
Ontario		
Court Services Division Five-Year Plan	Full	2003 and ongoing
Quebec		
Recommendation 27	Not Implemented	
Recommendation 28 - Announcement of services available to the public	Partial	2004
Nova Scotia		
	Partial	2002
Prince Edward Island		
Recommendation 27	Rejected	
Recommendation 28 <i>Rules of Court, Small Claims Rules, brochures, etc.</i>	Partial	1997
Newfoundland & Labrador		
	Not Considered Under Consideration	
Northwest Territories		
	Partial	2005

Yukon		
None	Partial	
Federal Court		
	Under Consideration	
Federal Court of Appeal		
	Not Considered	
Federal Court - Tax Court		
<i>Tax Court of Canada Act</i>	Full	1993

C. Public consultation and involvement (Recommendation 29)

RECOMMENDATION 29:

Every court establish an advisory committee composed of members of the public and other involved in the civil justice system for the purpose of obtaining advice on

- a) ways to improve the administration of civil justice,
- b) reducing or removing barriers to access, and
- c) implementing, evaluating and monitoring reform measures.

Courts in seven jurisdictions have established committees for the purpose of obtaining advice on ways to improve the administration of civil justice, reducing or removing barriers to access and implementing, evaluating and monitoring reform measures. Six jurisdictions report full implementation; 1 jurisdiction reports partial implementation. The committees are composed of members of the public and others involved in the civil justice system. Most of these initiatives have occurred since 1996. Alberta's Justice Policy Advisory Committee has established a Subcommittee on Access to Justice with broad public representation to report on this issue in the fall of 2006. British Columbia has established a Justice Review Task Force to identify a wide range of reform ideas and initiatives that may help make the justice system more responsive, accessible and cost-effective. Ontario annually convenes Court Services Advisory Panels comprised of both government and community stakeholders to obtain input on court services standards and best practices. Quebec has put in place committees with public representation to check on the effectiveness of laws that introduce family mediation and the methods for setting alimony payments. The work of parliamentary commissions also allows for public representation and civil justice system intervenors. Saskatchewan's Ministerial Advisory Committee on Dispute Resolution, which operated from 1995-2000, included members from legal, consumer, mediator, aboriginal, business, labour and education groups. The Committee received numerous suggestions and also served as a forum for the exchange of information and ideas for dispute resolution on a multi-disciplinary basis. The Federal Court of Appeal participates in various committees with

members of the public and others involved in the justice system. The Prince Edward Island Working Group on *Access to Civil Justice Report* is not currently active.

British Columbia	Implemented	Year
	Full	2002
Alberta		
	Full	2005
Saskatchewan		
The Ministerial Advisory Committee on Dispute Resolution was formed in 1995, with membership from legal, consumer, mediator, aboriginal, business, labour and education groups. Numerous recommendations were received by the Committee on dispute resolution. As well, it served as a forum for the exchange of information and ideas for dispute resolution on a multidisciplinary basis.	Full	1995
Manitoba		
	Not Considered	
Ontario		
Court Services Division Five-Year Plan	Full	2003
Quebec		
Family mediation, setting of alimony payments	Full	1998
Nova Scotia		
	Don't Know	
Prince Edward Island		
	Partial	2000
Newfoundland & Labrador		
	Not Considered	
Northwest Territories		
	Not Implemented	
Yukon		
	Not Considered	
Federal Court		
	Not Considered	

Federal Court of Appeal		
	Full	
Tax Court of Canada		
	Not Implemented	

D. Court Charters (Recommendation 30)

RECOMMENDATION 30:

Every court develop and implement a charter specifying standards of service to be provided to members of the public coming into contact with the court.

IMPLEMENTATION POINTS:

- Use of a consultative process to develop court charters, involving representatives of all interested groups;
- Once a court charter has been developed and published, a process should be developed to monitor progress in implementing it; and
- Use of annual reports to describe progress in implementing court charters should be considered.

Four jurisdictions report having developed and implemented a charter specifying standards of service to be provided to members of the public coming into contact with the court; 3 jurisdictions report partial implementation; and 1 jurisdiction is considering a charter. Much of the activity is post-1996. Alberta expects the results of a Client Satisfaction Survey conducted in February and March 2006 to lead to standards on customer service. These standards will be monitored by annual client satisfaction surveys. British Columbia does not have a charter; however, the courts monitor many aspects of the judicial process to assess the level of service being provided. Both the Provincial Court and the Supreme Court publish annual reports which present a variety of statistics on the flow of cases through the civil justice system. The Ministry of the Attorney General publishes its business plan and annual reports. Ontario has developed quality assurance standards for the delivery of services such as counter wait times, court interpreter services, and complaint resolution. These standards are published in the Court Services Division annual report. In addition, the division seeks ongoing feedback from court users through Client Satisfaction Surveys. Quebec has issued a Declaration of Services to the Public and a Statement of Principle regarding Witnesses. Performance indicators have been developed. The Justice Department's annual report gives an accounting of performance based on these indicators. Saskatchewan has developed a Service Management Strategy and commitment to clients. The Courts Administration Service for the Federal Court and Federal Court of Appeal provides a "Mission, Vision, and Values" document at: http://www.cas-satj.gc.ca/about_cas/mission-vision-values_e.php.

British Columbia	Implemented	Year
	Partial	

Alberta		
	Partial	2006
Saskatchewan		
	Full	
Manitoba		
	Not Considered	
Ontario		
Court Services Division Five-Year Plan	Full	2003
Quebec		
Declaration of Services to the Public	Full	1991
Statement of Principle regarding Witnesses	Full	2003
Nova Scotia		
	Not Considered	
Prince Edward Island		
	Rejected	
Newfoundland & Labrador		
	Not Considered	
Northwest Territories		
	Under consideration	
Yukon		
	Not Considered	
Federal Court		
	Partial	2003
Federal Court of Appeal		
	Partial	2003
Tax Court of Canada		
	Under Consideration	

Sixth Theme: Managing the Courts of the Twenty-First Century

Task Force Recommendations 31, 34, 36 and 37 deal with four topics: court management and administration; technology and management information systems; training, monitoring and supervision of persons providing court-supported dispute resolution services; and a 12-month court calendar.

A. Court management and administration (Recommendation 31)

RECOMMENDATION 31:

Every jurisdiction establish a suitable model for management and administration of the courts that embodies the following:

- a) preservation and enhancement of judicial independence in both its individual and institutional elements,
- b) preservation and enhancement of the independence of the Bar,
- c) strong community input and public involvement,
- d) recognition by governments of the need for autonomy in the management and administration of the courts while ensuring accountability for the expenditure of public funds,
- e) within the model chosen, clear lines of responsibility and accountability for administrative and operational matters,
- f) a commitment by government to provide adequate funding and administrative infrastructure,
- g) recognition by governments in budgeting processes of the revenue-producing aspects of the court system and of cost recovery achieved through court fees, and
- h) provision for enhanced training and development to create additional well-trained and efficient court administrators and managers.

Nine jurisdictions have taken initiative toward establishing a suitable model for management and administration of the courts that embodies the eight components recommended by the 1996 CBA Task Force. Five jurisdictions report full implementation; four jurisdictions report partial implementation. For the most part, these initiatives have taken place since 1996. British Columbia strives continually to achieve all of the Task Force goals. In Ontario, the Court Services Division Five-Year Plan attends to these matters. Quebec has entered into agreements about the management of certain resources with the Court of Quebec and the Court of Appeal. These Courts have full autonomy over the management of human and budgetary resources. There is no such agreement with the Supreme Court. In the Yukon, a Court Services Executive Board composed of chief judges of Territorial and Supreme Courts, the Deputy Minister of Justice, Assistant Deputy Minister of Legal and Regulatory Services, and Director, Court Services meets monthly to discuss administrative issues. Administration of the 3 federal courts is governed by the *Federal Courts Act* and the *Administration Services Act*. Annual reports of the initial phases of the consolidation of the organizational structure of these courts are available on the Courts Administration Service (CAS) website: <http://www.cas-satj.gc.ca/publications/pub ANN e.php>. The Federal Courts have their own internets and their own servers and overall technology which enhance judicial independence.

Among a host of other initiatives, Alberta and British Columbia have devoted attention to the training and development of court administrators and managers. Since 1996, Alberta has increased overall funding for enhanced training of court administrators by almost \$375,000. In addition, the Alberta Government in partnership with the University of Alberta has implemented comprehensive management training for managers, senior managers, and executive managers. Finally, Court Services has developed a “Toolkit and Learning Inventory” which outlines core competencies for court administrators as well as learning opportunities to support those core competencies and develop skills. British Columbia’s Business Transformation and Change Management unit is working on the transition of all Court Services Branch (CSB) training to a fully supported online blended learning environment to deliver core and ongoing training for court administration (including training on associated case tracking applications and services).

Unlike other jurisdictions, Saskatchewan has rejected the need for a separate system for administration of the courts. Nevertheless, it has monitored the developments in other provinces and reports such as the Friedland Report and the work of the Canadian Judicial Council.

British Columbia	Implemented	Year
	Full	
Alberta		
Justices of the Peace <i>Justice of the Peace Act, RSA 2000, c. J-4 and Judicature Act, RSA 2000, c. J-2</i>	Full	1999
Preservation and enhancement of the independence of the Bar	Don't Know	
Strong community input and public involvement	Full	2005
Recognition by governments of the need for autonomy in the management and administration of the courts while ensuring accountability for the expenditure of public funds	Partial	1982
Within the model chosen, clear lines of responsibility and accountability for administrative and operational matters	Full	2005
A commitment by government to provide adequate funding and administrative infrastructure	Full	
Recognition by governments in budgeting processes of the revenue-producing aspects of the court system and of cost recovery achieved through court fees	Full	
Provision for enhanced training and development to create additional well-trained and efficient court administrators and managers.	Full	Continuous since 1996

Saskatchewan		
	Rejected	
Manitoba		
	Not Implemented	
Ontario		
Court Services Division Five-Year Plan	Full	
Quebec		
Judicial Independence: Court of Quebec Agreements about the management of certain resources	Partial	2002
Judicial Independence: Court of Appeal Agreements about the management of certain resources	Partial	2005
Nova Scotia		
	Don't know	
Prince Edward Island		
	Partial	Ongoing
Newfoundland & Labrador		
	Under Consideration	
Northwest Territories		
	Not Implemented	
Yukon		
Items b & g	Not Implemented	
No statutory authority - by practice only (a, b, d, e, f & h)	Partial	Ongoing
Judicial Affairs, Courts and Tribunal Policy Section		
<i>Courts Administration Service Act</i>	Full	2003
Federal Court		
<i>Federal Courts Act</i> <i>Courts Administration Services Act</i>	Partial	2003
Federal Court of Appeal		
<i>Federal Courts Act</i> <i>Courts Administration Services Act</i>	Full	2003

Tax Court of Canada		
<i>Courts Administration Services Act</i>	Full	2003

**B. Technology and management information systems
(Recommendation 34)**

RECOMMENDATION 34:

Every jurisdiction establish, on a priority basis and to the extent that it has not already done so, enhanced computer-assisted management information systems to enable proper management of the work of the courts and assessment of the impact of reforms.

Five jurisdictions have established enhanced computer-assisted management information systems to enable proper management of the work of the courts and assessment of the impact of reforms; seven jurisdictions report partial implementation. Nearly all of these developments have occurred since 1996. They include:

- introducing e-filing, e-registry services and e-appeals (e.g., British Columbia, Alberta Court of Appeal);
- creating a centralized case management information system for collecting, analyzing and reporting meaningful management information data (e.g., British Columbia’s Central Management Information System, CMIS; Ontario’s FRANK; the Federal Court’s dated but functional electronic Proceedings Management (PM) System which allows for tracking of Court proceedings and creation of statistical reports: see reports available at: http://www.fctcf.gc.ca/about/statistics/statistics_e.shtml);
- providing for the generation of court orders in the courtroom with the use of standardized clauses (e.g., being worked on for family court orders in Manitoba);
- equipping courtrooms with digital recording equipment (e.g., Quebec);
- equipping all justices and their staff with office technology and a secure file exchange network (e.g., Quebec); and
- providing courts with video-conferencing and teleconferencing technology (e.g., Federal Court of Appeal).

Saskatchewan has never had sufficient resources to develop an adequate information system in civil cases. The development and implementation of a new computer system is under consideration in the Yukon, but has been delayed for financial reasons.

British Columbia	Implemented	Year
Court Services Branch mandate and business priority	Full	2004
Alberta		
Court of Appeal	Full	2004
General	Under Consideration	

Saskatchewan		
	Partial	1990's
Manitoba		
Rule 70 (Family Proceedings)	Partial	2004
Ontario		
New management system, FRANK	Partial Full	2004 (version 1) 2006 (target for version 2)
Quebec		
	Full	
Nova Scotia		
	Full	
Prince Edward Island		
<i>Supreme Court Act</i>	Partial	1996
Newfoundland & Labrador		
	Not Considered	
Northwest Territories		
	Partial	2000
Yukon		
	Under consideration	
Federal Court		
	Partial	
Federal Court of Appeal		
	Partial	
Tax Court of Canada		
	Full	

C. Training, monitoring and supervision (Recommendation 36)

RECOMMENDATION 36:

- a) Every jurisdiction develop criteria and a system for the training, monitoring and supervising of all individuals who provide court-supported dispute resolution services, and
- b) the CBA develop a set of model principles and criteria to assist courts in this process.

Seven jurisdictions report having fully or partially developed criteria and a system for training, monitoring and supervising all individuals who provide court-supported dispute resolution services. Most of the developments have taken place since 1996. In Alberta, the criteria differ somewhat for Family and Children’s Services mediators, the Civil Claims Mediation Program in the provincial court and the Queen’s Bench Court-Annexed Civil Mediation pilot project. The requirements include meeting a specified number of hours of mediation training, completing a criminal record check, carrying professional liability insurance, a commitment to continuous learning, and adherence to a Code of Conduct and Ethics. In British Columbia, the Dispute Resolution Office oversees the Court Mediation Program which provides an opportunity for trained but inexperienced mediators to practice mediation skills in a high quality practicum environment. Graduates of the program are eligible to apply to the Provincial Court (Civil) Mediation Program where successful applicants have the opportunity to gain further mediation experience by mediating small claims cases for an honorarium. In Ontario, in those counties that are subject to mandatory mediation, Local Mediation Committees monitor the performance of mediators named in the rosters they compile. In Quebec, Department of Justice staff working in areas which involve conciliation or mediation are trained, supervised and subject to assessment of their performance. The Department oversees the accreditation of family mediators and their billing practices. All individuals employed by Saskatchewan’s Dispute Resolution Office are fully trained in the facilitation of dispute resolution. The Federal Court Education Committee recently organized a 2-day in-house seminar on judicial dispute resolution for judges and prothonotaries. Members of the judiciary, the only persons who provide such dispute resolution services in the Federal Court, also take dispute resolution courses offered by the national Judicial Institute. The dispute resolution services offered by the Federal Court of Appeal are similarly Court-sponsored.

British Columbia	Implemented	Year
	Implemented	1996
Alberta		
Family and Children's Services Mediators	Full	April 2000
Provincial Court; Civil Claims Mediation Program <i>Provincial Court Act, ss. 65 and 66; Mediation Rules, AR 271/97, granted pursuant to the Provincial Court Act)</i>	Full	1998 (Calgary) 2006 (Medicine Hat)

Court of Queen's Bench of Alberta; Civil Mediation Program Civil Practice Note "11", Court Annexed Mediation, effective September 1, 2004	Full	2005
Saskatchewan		
	Full	1988
Manitoba		
	Not Considered	
Ontario		
<i>Rules of Civil Procedure, Rule 24.1.07</i>	Partial	
Quebec		
Conciliation programs set up by the courts; civil procedure (family mediation)	Full	1997
Nova Scotia		
	Don't Know	
Prince Edward Island		
	Not Considered	
Newfoundland & Labrador		
Rule 37A	Full	2003
Northwest Territories		
	Not Implemented	
Yukon		
	Not Considered	
Federal Court		
	Partial	
Federal Court of Appeal		
	Full	
Tax Court of Canada		
	Rejected	

D. Twelve-month court calendar (Recommendation 37)

RECOMMENDATION 37:

Every jurisdiction in which this has not yet occurred give immediate consideration to the merits of adopting a twelve-month court calendar.

Nine jurisdictions report having considered the merits of adopting a 12-month court calendar. Little or no change has been implemented since 1996. In British Columbia, both the Provincial Court and Supreme Court have adopted a 12-month court calendar. Nova Scotia has used a 12-month calendar for some time, as have the Northwest Territories and the Federal Court. The Registry of the Federal Court of Appeal is open for business year-round. The Court sits throughout the year, except for Christmas and summer recesses during which time the Court will still hear motions and urgent matters. In Ontario, matters relating to the scheduling and assignment of judicial duties fall within the responsibility of the Chief Justice of the Superior Court of Justice.

Alberta and Saskatchewan have rejected a twelve-month court calendar; it has not been considered in Manitoba or Newfoundland and Labrador. Alberta gives the following reasons for rejection:

1. Most judges attend seminars during the summer months.
2. Many trials set during the summer months were adjourned due to unavailability of witnesses. (The Court of Queen's Bench now concentrates their efforts on judicial dispute resolution sessions during July and August.)
3. Court staff is greatly reduced in the summer months. As a result, available staff have difficulty covering a "regular sitting" schedule.
4. Several judges, members of the Bar, and police and other witnesses travel with their families during the summer months.
5. Seminars such as Judgment Writing, the Canadian Bar Association Annual Meeting, and criminal and civil law seminars are usually held during the summer. These seminars deplete judicial resources.
6. The judiciary use the summer months to prepare judgments that did not get written during the 10 month period when the Court is extremely busy.

(Alberta response to jurisdictional questionnaire)

Saskatchewan operates on a 10-month court calendar, although trials and Chambers are available throughout the year. Saskatchewan does not have a trial delay problem; therefore, changes to the schedule are not considered necessary.

British Columbia	Implemented	Year
	Full	
Alberta		
	Rejected	

Saskatchewan		
	Rejected	
Manitoba		
	Not Considered	
Ontario		
	Full	
Quebec		
Nova Scotia		
	Full	
Prince Edward Island		
<i>Supreme Court Act</i>	Full	1988
Newfoundland & Labrador		
	Not Considered	
Northwest Territories		
	Full	
Yukon		
Informal, by practice	Full	Ongoing
Federal Court		
	Full	
Federal Court of Appeal		
<i>Federal Courts Rules</i>	Full	
Tax Court of Canada		
	Full	

Summary of Results

Canada's civil justice systems have been actively making changes during the decade spanning 1996 to 2006. Reform consistent with the 1996 CBA Task Force recommendations is happening. As one would expect, more change is evident in some areas than in others. Major headway is apparent in:

- the establishment of multi-option civil justice systems – primarily through the imposition of requirements to use (or consider using) mediation or other non-binding dispute resolution methods as an alternative to litigation, the development of court-connected mediation services, and the availability of judicially-assisted dispute resolution;
- increased management of the flow of cases through the court, in some jurisdictions mandated systemically for some cases or in some courts, but more commonly determined by court order on an individual basis;
- the case management of appeals;
- an abundance of public information and education initiatives – including the liberal distribution of brochures about the civil justice system and its non-binding dispute resolution programs, the development of simplified forms and procedures, and the creation of websites with public access;
- improvements in the availability of point of entry advice and assistance to litigants, and public consultation and involvement in planning for civil justice system reforms; and
- continuing attention to court management and administration including planning mechanisms, technological innovations, initiatives for the training and development of court administrators and managers and the development and establishment of enhanced computer-assisted management information systems.

Less, but still considerable, activity is evident in:

- movement toward the establishment of multiple litigation tracks, with related increases in the monetary ceiling imposed on small claims courts and the introduction of expedited and simplified proceedings;
- placing limitations on discovery, mandating the use of written interrogatories and controlling the use of expert reports, particularly in connection with expedited or streamlined proceedings;
- the introduction of court charters that set standards for the services to be provided to members of the public coming into contact with the court; and
- the training, monitoring and supervision of all individuals who provide court-supported dispute resolution services.

Low momentum is apparent in:

- launching studies or pilot projects to determine best practices concerning the integration of non-binding dispute resolution processes in the post-discovery stages of litigation;
- setting time standards for completion of steps in litigation and providing for automatic dismissal; and
- establishing pilot projects that use “will-say” statements to compel early disclosure of anticipated evidence.

Low activity in some areas is explained by the pre-1996 implementation of the CBA Task Force recommendations in many jurisdictions. Examples include:

- handling non-dispositive interlocutory orders, summary trials and changing the incentive structure;
- appellate level reform of time standards, the production of appeal books and control over civil dockets; and
- the adoption of a 12-month court calendar.