

**REMARKS BY**

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**ON THE OCCASION OF  
THE CANADIAN FORUM ON CIVIL JUSTICE CONFERENCE  
INTO THE FUTURE: THE AGENDA FOR CIVIL JUSTICE REFORM**

**HILTON MONTRÉAL BONAVENTURE**

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**Check Against Delivery**

Good morning, and thank you for that kind introduction.

Ten years ago, former CBA President, and fellow Nova Scotian, Gordon Proudfoot stood at a podium much like this one to welcome the CBA's Report on Civil Justice System Reform. The report sprang forth from the immense work undertaken by the Systems of Civil Justice Task Force chaired by Eleanor Cronk, now a Justice of the Ontario Court of Appeal, and peopled by some of the brightest and most dedicated legal minds in the country.

It was a momentous report, containing within its pages dozens of recommendations to improve civil justice in Canada. It also contained a clear directive from this Association: the *status quo* simply wasn't good enough anymore.

### ***History of the Report***

Ten years ago, Gordon held a copy of this report in his hand and said, "Canadians want a different system of dispute resolution. They want win-win, rather than winner-take-all. They want a system that recognizes the

realities of a middle class that seeks justice — not at any cost, but despite the costs.” Truer words were never spoken, and they resonate today, a decade later, as we celebrate the tenth anniversary of this landmark report.

The CBA immediately translated these words into concrete actions. In a few short weeks, we had created an Implementation Committee, chaired by Brian Crane of Ottawa, in order to realize the objectives set out in the *Systems of Civil Justice Report*. The Committee was charged with a simple mandate although rich in challenge, which consisted of encouraging governments, members of the judiciary and court administrators to put into action the Recommendations from the Report regarding the delays and considerable costs which have become a veritable scourge for Canadians who want access to justice.

Our Implementation Committee’s message to these stakeholders was simple: the time had come to make access to justice real. It was time to reform the system and make it more efficient, improve public accessibility to justice, and increase public understanding of the civil justice process. Our courts, we told these stakeholders, must become more open to community input and

involvement. They must become more modern and more relevant to Canadians.

Let the record show that Brian Crane's Committee was a success. This report was not destined to gather dust on a shelf like so many other well-intentioned missives from other organizations. The CBA's Systems of Civil Justice Report had teeth. It was created to be a force for change, and it fulfilled its purpose. Today, as we survey a civil justice system streamlined and improved from its 1996 incarnation, we have the work of Eleanor Cronk's and Brian Crane's commissions to thank.

### ***Successful Recommendations***

During the course of this conference, you are going to hear about these successes. You are going to learn just how far we have come in ten short years. You are also going to learn just how far we have yet to go — I will have more to say about that later. But before we consider the road ahead — before we take heed of this conference's title and look "Into The Future" — we must look back and marvel with pride at just how much of a significant difference the CBA's Systems of Civil Justice Report has made.

The Report offered no fewer than 53 recommendations to enhance the viability and accessibility of our justice system. When you consider the diverse range of stakeholders and priorities intertwined in that system — federal and provincial governments, federally and provincially appointed judges, scores of court management and staff personnel, numerous lawyers and law societies, not to mention an ever-changing blend of political considerations — some might think it remarkable were any of these recommendations to see the light of day.

In truth, however, many of these recommendations have had an impact throughout and across the Canadian justice system. Let me read out to you just a partial list of some of the report’s recommendations that have been largely or entirely implemented in the past ten years:

**Recommendation 7:** Every jurisdiction should provide for case management in all cases where there is a need for judicial supervision or intervention on an ongoing basis. Fully implemented.

**Recommendation 14:** Every jurisdiction should establish expedited and simplified proceedings, mandatory for all cases worth \$50,000 or less and available at the option of the parties and with leave of the court where more than \$50,000 is at issue. Widely implemented.

**Recommendation 20:** Every jurisdiction should provide for, and promote the use of, summary trial procedures. Fully implemented.

**Recommendation 24:** Every appellate court should take a more active role in supervising the progress of appeals. Widely implemented.

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

**Recommendation 29:** Every court should establish an advisory committee to obtain advice on ways to improve the administration of civil justice, to reduce or remove barriers to access, and to implement, evaluate and monitor reform measures. Widely implemented.

I could, quite literally, go on. Canada's systems of civil justice are, without any doubt, evolving upwards. Despite its influential effect, the Systems of Civil Justice Report cannot take credit for all of the changes that have occurred. The process of reform is interactive. In coming up with its recommendations, the Task Force studied some reforms that had been introduced or were being considered in civil justice systems within and outside Canada.

For example, by 1996, Saskatchewan was already offering mediation as an alternative to trial, while Ontario and British Columbia were conducting their own civil justice system reviews. But it is also clear that the CBA's Civil Justice Systems Report acted as a catalyst to major change throughout the country at multiple levels of the justice system.

### ***Still a long way to go***

So we have come a long way. But let us also be clear that we have a long way yet to go. As proud of our accomplishments as we are, this is no time to rest on our laurels. Many of the Report's recommendations remain only partly implemented, if they have been implemented at all. Canada's systems

of civil justice still attract both criticism from the public and concern from within the civil justice community. The question we must face, then, is: what should be the focus of reform in 2006 and beyond?

This Conference will explore these crucial and pressing stakes. From this perspective, however, I would like to propose five questions on which we could focus and attempt to answer. These questions could serve as a starting point for discussions around the next steps of civil justice reform.

**First**, where is the agenda for civil justice reform? Our new government in Ottawa has made clear that it intends to address criminal justice issues, and there is certainly much to be done in that respect. But while political focus and public money is always available for criminal justice, there is very little forthcoming from governments for the civil side — even though many more Canadians are involved in the civil justice system than the criminal justice process.

**Second**, is justice still priced out of the range of both the working poor and the middle class? The tenets of democracy demand that “access” to civil justice be meaningful. Yet the reality is that legal services are expensive, and

individual litigants still finds themselves having to invest tens of thousands of dollars in order to seek justice, with no guarantee of victory or eventual recovery. A justice system accessible only to those with vast amounts of disposable income may dispense something, but it cannot be called “justice.”

**Third**, by what avenues should we seek to achieve real access to justice? Should we continue the CBA’s groundbreaking yet challenging efforts to improve legal aid funding? Should we renew and redirect our efforts to encourage a vast increase in *pro bono* efforts? Should lawyers explore new, innovative and transparent billing systems instead? Or do we have to consider some combination of these three? While we should not look to close doors prematurely, the fact is that we need to start focusing our efforts on prioritized solutions.

**Fourth**, do our successful efforts to divert disputes away from the court system run the risk of destabilizing our common-law institutions? The rising popularity of ADR, while certainly a good thing, does present a threat to the continued viability of a court system that relies upon litigants to raise new issues and help develop the common law. Arguably, private ADR might eventually oust the responsibility of government to provide neutral decision-

making in a transparent court system. We must be alive to this unintended consequence of our progress.

**Fifth**, is there a commitment among justice system stakeholders to ensure a continued focus on research capabilities and national databases to make it possible to assess reforms? Any project of this size requires a constantly refreshing wealth of data, and while there are organizations in Canada and abroad dedicated to this cause, their funding and support requires an equal commitment from those of us who support civil justice reform.

### *Celebrating the CFCJ*

This fifth point brings me to the final matter I wish to address this morning. I want to speak to you about the one recommendation of that Report that has borne the richest fruit — indeed, it is the reason we are here today. It is the proudest offspring of this long-lived legal organization. It is the Canadian Forum on Civil Justice.

The Forum was founded in 1998 to provide an independent resource centre — a clearinghouse for information on the civil justice reform initiatives

accessible to the legal profession, policymakers, scholars and the general public. Based since its inception at the University of Alberta Faculty of Law in Edmonton, the Forum has spent its brief existence fulfilling each of these five directives:

- systematically collecting information relating to the civil justice system;
- conducting in-depth research into civil justice operations nationwide;
- promoting the sharing of information about best-use practices;
- functioning as a clearinghouse and library for civil justice information; and
- leading the way in the provision of information on civil justice reform.

The Canadian Forum on Civil Justice has been a critical force in the modernization of the justice system, helping to make it more relevant to Canadians. It is the greatest legacy of the Civil Justice Systems Report, and

stands as proof that the CBA not only makes recommendations in the public interest, but delivers on them as well. Best of all, it is no mere symbol: the CFCJ today continues its tireless efforts to improve the justice system for all Canadians.

The CBA owes many debts of gratitude to the CFCJ's numerous supporters, movers and shakers. My time is drawing to a close, and I cannot list them all. But I want to explicitly recognize:

- Doug Robinson, Q.C., of Vancouver, Inaugural Chair of the CFCJ's Board and of its original guiding committee, as well as subsequent Chair Rod Wacowich and current Chair Mary Ellen Hodgins.
- Seymour Trachimovsky of Mississauga, Ontario, General Counsel for Dupont Canada, who sponsored and helped raise funds for the CFCJ's launch and for this conference, and now serves on the CFCJ's advisory board.

- Chantal Corriveau, of Montréal, currently a judge of the Superior Court of Québec and member of the *Bureau d'administration* and long standing defender of this cause.
- Then-Dean Lewis Klar, then-Professor June Ross (now a Justice of the Alberta Queen's Bench), and others at the University of Alberta Law School for their hosting, sponsorship and expert assistance through the years.
- And finally, CFCJ Executive Director Diana Lowe and her devoted staff in Edmonton, who serve as the heartbeat of this critically important organization.

The CBA is proud to be associated with the Canadian Forum on Civil Justice and with this conference, marking the 10th anniversary of our Systems of Civil Justice Report. Our mandate includes improving the administration of justice and improving and promoting access to justice. We believed ten years ago, and we believe today, that this project will help us achieve those objectives, to the benefit of all Canadians. Thank you very much.