

INTO THE FUTURE

The Agenda for Civil Justice Reform

Hilton Montréal Bonaventure, Montréal, Québec

CONFERENCE PROGRAM

SUNDAY, APRIL 30, 2006

12 NOON – 7 P.M. REGISTRATION



Main Lobby

Hilton Montréal Bonaventure

900 rue De la Gauchetière ouest, Montréal, Québec

6 P.M. – 7:30 P.M. WELCOME & COCKTAIL RECEPTION

**Welcoming remarks by the Honorary Co-Chairs &
Introduction by Presidents / Chairs of Partner Organizations**

- Chief Justice J. J. Michel Robert (Québec)**
- Madam Justice Eleanore Cronk (Ontario, CA)**
- Mr. Yvon Marcoux, Minister of Justice and Attorney
General of Québec**



Court of Appeal
Édifice Ernest-Cormier
100, rue Notre-Dame E.,
Montréal, Québec

MONDAY, MAY 1, 2006

7:30 – 9:00 A.M. 1: BREAKFAST AND KEYNOTE SPEAKER

INTRODUCTION BY **MADAM JUSTICE DEBRA PAULSETH**,
CHAIR OF THE INTO THE FUTURE CONFERENCE COMMITTEE

Keynote Address: Brian A. Tabor, QC (President, Canadian Bar Association)

Ten Years Later: So Much Accomplished, So Much Still To Do in Civil Justice Reform.

9:00 – 9:30 A.M. 2: OPENING OF CONFERENCE

BARRIERS TO ACCESS TO JUSTICE IN THE CIVIL JUSTICE SYSTEM

INTRODUCTION BY CBA PRESIDENT, **BRIAN A. TABOR, QC**

Madam Justice Eleanore Cronk (Ontario, CA)

Cultural competencies: Examining barriers that prevent litigants from accessing the civil justice system.

9:30 - 9:55 A.M. 3: KEYNOTE ADDRESS ON ACCESS TO JUSTICE IN QUEBEC

INTRODUCTION BY CHAIR OF BOARD OF CANADIAN FORUM ON CIVIL JUSTICE,
MARY ELLEN HODGINS

Chief Justice François Rolland (Superior Court of Québec)

Access to Justice: Three years after the reform of civil procedure

9:55 – 10:10 A.M. BREAK AND EXHIBIT VIEWING

10:10 A.M. – 12:25 P.M.

4: CHALLENGES FACING THE CIVIL JUSTICE SYSTEM – BARRIERS TO ACCESS AND TO EFFECTIVE REFORM

Moderators: Deputy Attorney General Allan P. Seckel, QC (British Columbia) and **Mr. Justice Thomas A. Cromwell** (Nova Scotia CA)

Speakers:

Chief Justice Donald I. Brenner, Co-Chair of BC Justice Review Task Force; **Associate Chief Justice Neil C. Wittmann**, Chair, Alberta Rules of Court Project Steering Committee; **Mr. Justice Robert A. Blair**, Co-Chair, Ontario Civil Justice Review; **Robert G. Patzelt, QC** (Nova Scotia); **Terry O’Sullivan** (Ontario); **Pierre A. Fournier** (Québec); **Diana Lowe** (Canadian Forum on Civil Justice)

Panelists will debate the key problems that face the civil justice system. Access to justice, unrepresented litigants, rising costs for litigants, the culture of litigation among lawyers, the image of civil justice created by the media and the impact of technology on the system, are areas that will be considered.

Panelists will then focus on barriers to reform. What slows or inhibits civil justice system reform in Canada? What constrains innovation? What lessons have been learned and what strategies have been employed to make reform happen? Are changes to procedural rules sufficient without corresponding changes to legal culture?

12:25 – 1:30 P.M.

5: LUNCH & KEYNOTE SPEAKER

INTRODUCTION BY PAST PRESIDENT OF THE CIAJ, **MADAM JUSTICE NICOLE DUVAL HESLER**

Mr. Justice Geoffrey L. Davies, AO (Queensland, CA)

Civil Justice Reform: Some Common Problems, Some Possible Solutions

1:30 – 1:45 P.M.

EXHIBIT VIEWING

1:45 – 3:00 P.M.

6: KEEPING LITIGATION COSTS IN CHECK – PROCEDURES FOR DEALING WITH SMALLER CLAIMS. SIMPLIFIED PROCEDURES, SUMMARY TRIAL, SUMMARY JUDGMENT & SMALL CLAIMS COURT

Speakers:

Judge Pierre E. Audet (Court of Québec.); **Associate Chief Judge Dennis E. Schmidt** (British Columbia Prov. Ct.); **Chief Justice Heather Smith** (Ontario SCJ); **Judge Sandra L. Hunt McDonald** (Alberta Prov. Ct.); **Master William McCallum** (British Columbia SC).

Civil litigation in Canada, as elsewhere, is being suffocated by expense. The pursuit of civil claims has become complex and, for most, unaffordable. To improve access to justice, jurisdictions throughout Canada have implemented summary procedures to reduce cost and delay in resolving certain claims. Topics to be addressed by panellists include the concept of “proportionality”, simplified procedures for claims below a fixed monetary value, summary judgment, summary trials, judicial mediation and case management in small claims court.

How best can these mechanisms be used to reduce the cost of litigation and improve access to justice? How and where should the balance be struck between access and affordability on the one hand and procedural fairness on the other? What contributions might technology make?

3:00 – 3:15 P.M. BREAK AND EXHIBIT VIEWING

3:15 – 4:30 P.M. 7. STANDARDS FOR THE NEW MILLENNIUM – MEETING PUBLIC EXPECTATIONS

Moderator: Chief Justice J. J. Michel Robert (Québec)

Speakers: Joanne Spriet (ACCA President); **Regional Senior Justice Warren K. Winkler** (Ontario SCJ); **Marie José Longtin** (Québec)

What are reasonable service expectations that courts and court administrations should strive to achieve? What standards ought to be adopted and applied in order to preserve the integrity of the civil justice system? For example, should “time-to-disposition” standards be adopted, and what mechanisms might be employed to achieve such standards? How can our data collection and evaluation processes contribute to effective reform?

A variety of reforms aimed at reducing cost and delay, improving satisfaction, increasing case management and ensuring proportionality, have been initiated in Canadian jurisdictions in recent years. Learn about the Quebec experience to date with these reforms, and their process of evaluation and modification. Does this process of recommendation, implementation, evaluation and reflection provide a model for similar reform initiatives in Quebec and elsewhere?

Specialist courts, case management and fixed trial dates are mechanisms that have been used in courts in Canada and the UK. How can courts and court administrations build upon these and other practices to improve how the system operates for the public? Scarce resources will always present challenges for court operations. What standards for court administration could be implemented that involve little or reasonable cost?

4:30 – 4:40 P.M. PRESENTATION BY ACCA 2006 ANNUAL MEETING ORGANIZERS

4:40 – 5:30 P.M. EXHIBIT VIEWING

6:00 – 7:30 P.M. COCKTAIL RECEPTION

Hilton Montréal Bonaventure

7:30 – 9:00 P.M.

8: DINNER & KEYNOTE SPEAKER

INTRODUCTION BY CONFERENCE CHAIR, **MADAM JUSTICE DEBRA PAULSETH**,
ONTARIO COURT OF JUSTICE

Associate Chief Justice Dennis R. O'Connor, Court of Appeal for Ontario

*Celebrating achievements to date & options for new and innovative ways of
connecting with users of the civil justice system.*

TUESDAY, MAY 2, 2006

7:30 – 9:00 A.M.

9: BREAKFAST AND KEYNOTE SPEAKER

INTRODUCTION BY ACCA PRESIDENT, **JOANNE SPRIET**

Keynote Address: Professor Pascoe Pleasence, Head of the Legal Services Research Centre, Legal Services Commission, and Visiting Professor at University College London

The Future of Civil Justice: Culture, Communication and Change

9:00 – 9:30 A.M.

ADDRESS FROM THE FEDERAL DEPARTMENT OF JUSTICE

Keynote Address: Bill Pentney, Senior Assistant Deputy Minister, Federal Department of Justice

The Role of the State in Civil Justice

9:30 – 10:30 A.M.

10: LITIGANTS – THEIR VIEWS, EXPERIENCES & EXPECTATIONS

Moderator: Diana Lowe (Executive Director, Canadian Forum on Civil Justice)

Presenters: Barbara Billingsley, Doug F. Robinson, QC, Naomi Schmold, Margaret Shone, QC, Mary Stratton, Kim Taylor, Holly Turner

Access to justice is fundamentally about serving the public. Civil litigation and reform must be considered primarily from the perspective of litigants. What do they want from the system? How do they think it is working? What do litigants think of judges and of lawyers? In what areas do litigants expect improvements? What can or should judges do to protect a litigant's interests? The voices of litigants will be heard in a multi-media presentation drawn from the *Civil Justice System & the Public* research of the Canadian Forum on Civil Justice.

10:30 – 11:00 A.M.

BREAK & EXHIBIT VIEWING

11:00 – 12:00 NOON

11: RESPONDING TO THE NEEDS OF UNREPRESENTED AND SELF-REPRESENTED LITIGANTS

Moderator: Madam Justice Barbara M. Hamilton (Manitoba CA)

Speakers: Jeffrey S. Leon (Ontario); **Professor Rollie Thompson** (Nova Scotia); **M. Jerry McHale, QC** (British Columbia Assistant Deputy Minister, Justice Services Branch, Ministry of the Attorney General)

Unrepresented litigants are a fast growing group of users of the civil justice system. A brief summary of the difficulties inherent in having an unrepresented litigant in a civil action from the perspective of the bench, opposing counsel, and court administration, will precede a discussion on novel approaches to dealing with the unrepresented. Where is this trend going? How can the bench, Bar and court administrations better assist the unrepresented?

12:00 – 1:00 P.M.

LUNCH AND EXHIBIT VIEWING

1:00 – 2:15 P.M.

12: ROLE OF LAWYERS IN MANAGING LITIGATION AND ITS COSTS – WHAT PRACTICES CAN LAWYERS IMPLEMENT TO CURB COSTS, DELAY AND ABUSE?

Moderator: Thomas G. Heintzman (Ontario)

Speakers: Louis Charette (Québec), CBA Ethics & Professional Issues Committee; **Linda R. Rothstein** (Advocates' Society); **Mr. Justice Colin L. Campbell** (Ontario SCJ); **Mr. Justice Geoffrey L. Davies, AO** (Australia)

How should the growing impact of cost, delay and complexity on access to the civil justice system influence the lawyer's role? What are the limits to the lawyer's obligation to raise every issue and advance every argument? Do lawyers, in the interest of the profession and the effective administration of justice, have a professional responsibility to take an active role in reducing delays? Should lawyers ignore a client's instruction to stall a case, or be penalized if they deliberately delay a proceeding? How can law societies and other Bar organizations take a leading role in tackling delay?

There will be some discussion about attempts to reduce cost & delay arising from discovery. Recent reforms in the US, Australia & the UK will be compared with what has occurred in Canada to determine what lessons, if any, can be learned on discovery reform and curbing discovery abuse. The emerging issue of electronic discovery and production will also be considered.

2:15 – 3:15 P.M.

13: INTEGRATING ADR INTO CIVIL LITIGATION – WHAT OPTIONS EXIST AND WHICH ARE THE MOST EFFECTIVE?

Moderator: Associate Chief Justice Jeffrey J. Oliphant, Manitoba Court of Queen's Bench

Speakers: Sandra L. Schulz, QC (Alberta); **Allan Stitt** (Ontario); **Ken Acton** (Saskatchewan); **Professor Lorne M. Sossin** (Ontario)

Several jurisdictions have introduced some form of ADR into the litigation process. The type of ADR (mandatory mediation, JDR, arbitration) and the timing within which it must occur differ among the jurisdictions.

This will not be a description of programs, but a more general discussion about what we have learned from those jurisdictions? What works and when and how should it be used? Is ADR better suited to some case types (e.g. wrongful dismissal, personal injury) or parties (e.g. commercial litigant, unrepresented litigant) than others? Is there an unutilized potential to ADR? What are its limits? Should we be concerned about the phenomenon of the disappearing trial?

3:15 – 3:30

COFFEE AND EXHIBIT VIEWING

3:30 – 4:30 P.M.

14: INTO THE FUTURE

Speakers :

Sandra L. Schulz, QC (Alberta), **E. David D. Tavender, QC** (Alberta), **Simon V. Potter** (Québec), **Dr Andrew Cannon AM** Deputy Chief Magistrate for South Australia and adjunct Professor of Law at Muenster University, Germany

What have we learned? How do we respond to the needs, impediments and opportunities that have been identified? What immediate and long-term objectives should we adopt? How aggressive should we be about the civil justice reform agenda? What avenues or mechanisms hold the most promise and who should take leadership? What are the next steps?

4:30- 4:45 P.M.

CLOSING REMARKS

- **Joanne Spriet**, President of the Association of Canadian Court Administrators
- **Bernard Amyot**, 2nd Vice-President of the Canadian Bar Association
- **Madam Justice Nicole Duval Hesler**, Past President of the Canadian Institute for the Administration of Justice
- **Mary Ellen Hodgins**, Chair of the Canadian Forum on Civil Justice
- **Madam Justice Debra Paulseth**, Chair of the *Into the Future* Conference Committee