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Check out our Website

Our address is the same (http://www.cfcj-fcjc.org) but much of what you will find on our website is new. We've updated, replaced, expanded and are ready for you to take a look! Our links page has expanded significantly and provides a comprehensive list of websites relevant to the civil justice system. Our database has grown to a collection of 16,000 entries, including the first previously unpublished materials that we are able to make available to you full-text. The website and database are bilingual and you can search the database by author, title and subject. We are interested in receiving your feedback on the subject headings we have developed, the materials we have included in our collection, and also about any unpublished materials that should be included in the Clearinghouse.

We would like to hear your comments whether by phone, letter or e-mail (you can e-mail us directly from our new feedback page). Please spend some time on the new site and let us know what you think. We are already making plans for the next upgrade and we want to incorporate your feedback into those plans.

Publications

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Courtroom Technology SCAN

Andrew C. L. Sims, QC

Over the past eighteen months, the Alberta Court of Appeal has undertaken a pilot project using totally electronic appeal documents. This article will describe briefly what is involved and how it has worked so far.

Physically, the electronic appeal documents for an appeal involve a CD-Rom, or in a very large appeal, a DVD disk, containing electronic copies of all the documents for use in an appeal. This includes reasons under appeal, pleadings, facta, transcripts, authorities and exhibits all stored together in electronic form on the disk. What is of more significance is that these various documents are all hypertext linked so that, for example, case quotes, exhibits or transcript extracts can be accessed directly from a factum – that is, you can "click" from one document to another and back.

In the courtroom each judge and lawyer looks at the documents using their own computer and copy of the electronic appeal documents rather than having a centrally controlled projector screen.

The Alberta Court of Appeal has required electronic copies of transcripts for several years. In the past it used a product called Smartext for navigation, annotation and searching. When Lotus discontinued that product, the Court searched for a replacement, which led to the broader experiment with totally electronic appeal documents.

The Court wanted a product that used as open and familiar a standard as possible. It also wanted to avoid, if possible, the loss of pagination, page structure and other familiar elements. It recognized that for some counsel, some judges and some circumstances paper copies would still be needed or at least preferred.

After an initial experiment using HTML, the Court opted to use Adobe Acrobat 5.0 for pilot appeals. The program is well known for its use in transmitting formatted documents on the web. It can accept text or graphics from any pc computer program (Windows or Mac). It preserves pagination, type style and format. Any page from the electronic appeal documents can be printed in its original form.

Advantages? – There are several. First, electronic appeal documents are portable with everything you need in one place. Second, it is easy to navigate. Appeals involve constant cross-referencing from one document to another. Having them all hypertext linked makes this more efficient. Third, you can cut and paste from electronic documents into new documents. This is proving increasingly useful for judges whether preparing for a hearing or writing reasons afterwards. Fourth, you can annotate these documents. You can add notes, create your own hypertext links, highlight or do virtually anything else you can do with a paper copy. In fact, several people can each annotate the documents and share their notes with each other. This is useful when working with colleagues or staff.

Cost is an issue. There are savings for litigants with the elimination of multiple copies of appeal books. However, Court Reporters still need to be paid so it is not a total saving. Also, there is a cost to the hypertext linking, much of which must be done manually to be effective. Large firms may be able to produce the CD's but smaller firms will still need to retain a service provider as is the case with most appeal book production. The savings will increase as electronic exhibits become more commonplace in the trial courts. For the courts the savings are in ease of handling and storing large volumes of material.

Adding authorities into electronic appeal documents can be done straightforwardly. Most authorities are now available in electronic form. However, Acrobat easily handles scanned documents and, using the optical character recognition function, still yields a fully searchable document.

Electronic appeal documents can incorporate a variety of multi-media formats, although the five pilot project appeals in Alberta have not used this technology. For example, video copies of recorded witness testimony can be included and so can computer simulations and similar exhibits. This will become more significant as courts increase the use of video-conferencing and as electronic exhibits become more commonplace. Several of the appeals did include photographic exhibits. However, it has not been the Court's intention to encourage high-tech presentations. It is a working tool, not Hollywood comes to Courtroom 5!

Some counsel will react with horror to the idea that their courtroom perambulations will be confined because of the need to refer to a computer screen. What, no factum to wave, no law book to read from with a flourish! Experience shows this is less of a burden than one might suspect. Counsel still tend to print out their key documents. However, when it comes to finding the answer to that pointed question from the bench, the most flamboyant counsel is glad to be able to do a quick search, or click on a hypertext link, to retrieve just the right answer.

Some counsel have used Adobe to prepare their own hypertext linked courtroom reference document, with links to the answers to the questions they thought might be asked.

The Court, in its prototype for the pilot project, required one joint set of electronic documents. Much of the efficiency of hypertext linking is lost if each side creates its own electronic argument. It takes a measure of co-operation between counsel to co-ordinate the production of the single product but the result is beneficial to all. An appearance of unevenness may also arise if one side presents electronic documents while the other does not.

There is a learning curve for judges in getting to know Adobe Acrobat. Most master the basics in a matter of an hour or so, but learning some of the program's less obvious abilities yields rewards. Those with computer or internet experience find it no challenge. While appeal documents are delivered via CD-Rom they are actually loaded on each judge's office computer, laptop or both, allowing them to make and save their annotations.

By and large the experience of counsel and judges has been positive. The degree of satisfaction clearly increases with the degree of familiarity. As yet, courtrooms equipped for electronic advocacy are scarce, and improved podiums and the like are needed to enhance the experience. Improvement can also be expected as counsel become more accustomed to writing documents that will be read in electronic form.

There are still many issues to be worked out. Allowance has to be made for the unrepresented litigant. Decisions need to be made about just what size or nature of appeal is suitable for presentation in electronic form. Care still needs to be taken to make sure only materials important to the court are included.

The Alberta Court of Appeal is now evaluating the use of electronic appeal documents based on this pilot project. It has since ordered electronic documents in one case and entertained requests from the

parties in others. Consultation with the Bar will continue in the hope this technology can help improve the administration of justice in Alberta.

Andrew Sims is a lawyer practicing in Edmonton and principal of the Sims Group, a consulting practice providing advice to courts and tribunals. He will write "Court Technology Scan" as a regular column for our newsletter.

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Membership

Many of you have asked about how you can become involved in and support the work of the Forum. One answer is through membership and donations to the Forum.

We would like to encourage you to show your support for the Forum through membership ($50 annually) and donations to the Forum. As a member you will be assisting the Forum to continue our core work on the Civil Justice Clearinghouse, our newsletter, continuing legal education programs, conferences and the development of new and innovative research projects on civil justice reform. You will receive copies of our newsletters (published twice annually) and as we grow we will develop other member services such as discounts on publications and conference fees.

You will receive a tax receipt for all donations in excess of $50 (receipts will not include the $50 membership fee.) To join the Forum and support our work, please fill out the Membership Application.

Publications

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New Program Director

The team at the Forum has grown to include researchers, additional administrative staff and most recently a new Program Director. Mary Birdsell joined the Forum in October 2001 and has taken on our website and Clearinghouse upgrade, the publishing of our newsletter and will soon begin meeting with key contacts in Quebec, Saskatchewan and other provinces and territories to ensure that every jurisdiction is using and contributing to our Clearinghouse. Mary did her BA at the University of Alberta, her LLB at Dalhousie Law School and was called to the Bar in Ontario in 1996. She practiced at "Justice for Children and Youth" where her work included advocacy, test case litigation, public legal education, community development and law reform. Mary's interest and experience in improving the public's understanding of our legal system and access to justice are strengths that she brings to our team. You can reach Mary by telephone at (780) 492-9435, or by e-mail at mbirdsel@law.ualberta.ca.

Publications

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The Civil Justice System and the Public – Expanded Research at the Forum

With generous multi-year funding from the Social Science and Humanities Research Council (SSHRC) we have been able to greatly expand our Civil Justice system and the Public research project. Originally expected to be confined to Alberta, the study is now nation-wide.

The goal of this research is to advance important recommendations of the Canadian Bar Association *Systems of Civil Justice Task Force Report*. Our research is concerned with increasing the participation of the public in civil justice system reform efforts by developing effective two-way communication between the courts and the public. Our project has three components: one is to study the existing state of communication between those working within the civil justice system and members of the public involved in a civil court case; another is to actively involve a broad range of people (professionals and lay persons) in identifying communication practices that can bring about change and improvement within the system. Finally, we will implement demonstration projects to test and evaluate effective models of communication and make concrete recommendations for improvements that will ultimately enhance both the operation of, and meaningful public access to, the civil justice system.

In order to achieve our goals we will need, at every stage of the project, the active participation of all groups of people within the civil justice system, as well as the public. We will be contacting members of the judiciary, lawyers, court administrators, and many other justice system workers to ask for your support and input in identifying best practices for communicating with the public and involving them in implementing needed changes to the system.

In September 2001, Mary Stratton joined the Forum team as project Research Coordinator. Mary is completing the final stages of a Doctorate in sociology, and has interdisciplinary training in human and community development. She has specialised in involving community partners in the design of research approaches that value the pre-existing knowledge and expertise of community members who will be affected by the study results and recommendations. She also has experience working within institutional settings which will be helpful in studying the civil justice system.

A detailed research plan is now in place and research interview guides have been developed for pilot testing. During March 2002 we asked our research partners across Canada to review our interview questions and simultaneously we conducted pilot interviews in the Edmonton area. Once feedback from the pilot testing has been incorporated, we will commence the Alberta field research. We anticipate moving to the national phase of the project in the Fall of 2002. For more details about the research project and methodology we invite you to contact Mary by e-mail at mstratto@law.ualberta.ca, or by

telephone at (780) 492-9426.

Publications

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Cross Country Snapshot of Dispute Resolution

The Federal-Provincial-Territorial Working Group on Dispute Resolution: Time for a Revival!

Congratulations to the Canadian Forum on Civil Justice for asking the question "Should the Federal-Provincial-Territorial Working Group on Dispute Resolution be revived?" The answer to this excellent question should be a resounding "Yes"!

Background
The Federal-Provincial-Territorial Working Group on Dispute Resolution has, in the past, served as a forum for government dispute resolution practitioners to identify solutions to DR problems common to governments across Canada. It met regularly to share information and best practices. Agenda items from past meetings have included reviews of: court annexed mediation initiatives, the challenge of gathering hard data on DR projects, our common need to develop credible evaluation capacity, and confidentiality issues in the context of government access to information legislation.

Challenges
Unfortunately, the Working Group has not been able to sustain itself for a variety of very valid reasons, including pressures on Working Group members to focus their energies on advancing the cause of dispute resolution close to home. Two key challenges must be met if we are to revive the Working Group. First, we need to ensure the Working Group is relevant and cost effective. Second, we need to assess whether government DR practitioners have the time, energy and interest necessary to give life to a renewed Working Group.

The Future
Based on informal conversations with colleagues across the country, I am sure that government DR practitioners will take up the challenge. Readers who have suggestions on how we can meet these challenges are most welcome to contact me at david.merner@justice.gc.ca I bet that within the year we will be thanking the Canadian Forum on Civil Justice for launching the revival!

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- Canada
- British Columbia
- Alberta
- Saskatchewan
- Manitoba
- Nova Scotia
- Prince Edward Island
- Newfoundland and Labrador
- Nunavut
- Northwest Territories

- Ontario
- Quebec
- New Brunswick
- Yukon Territory

Canada

Dispute Resolution at the Federal Department of Justice: Successes, Challenges and High Hopes

Canada's Department of Justice created the Dispute Resolution Services (DRS) in 1992 and gave it the mandate to serve as "the leading centre of dispute resolution in Canada". The team has had great successes, faces serious challenges and has high hopes for the future. This brief summary reviews some of those successes, challenges and hopes, concluding that the DRS team must reach out to its federal, provincial and territorial allies if it is ever to turn its ambitious mandate into a practical reality.

Successes and Challenges

Three of the most visible successes of the Justice DRS team include: (1) the creation and administration of the Government of Canada's Dispute Resolution fund; (2) the creation of the Government of Canada shared mediators program; and (3) the DR Award.

1. Over three years, the DR Fund has invested $6.9 million in funding to 52 Government of Canada projects. Under the guidance of Lissa Heringer, this program seeded and cultivated the very best dispute resolution practices and policies government-wide. The challenge here is that future funding is very uncertain: the DRS team is currently examining return on investment data to assess whether a case can be made to continue the fund.

2. The Shared Mediators Program ensures that a qualified, trained pool of mediators exists within the federal public service to assist in the resolution of workplace conflict and harassment cases. Conceived and launched under the leadership of Carole Whissell, its day-to-day management was transferred to the Public Service Commission. The next key challenge for the program is to fit it into the current major overhaul of federal public service human resources management.

3. The Dispute Resolution Award in Law Studies offers the law program in each Canadian university an opportunity to recognise research and writing in the Dispute Resolution field with an award of $1500. Under the supervision of Jane Hansen, the DR Award represents an important source of support for research and writing in the field of Dispute Resolution, as well as a visible way of reaching out to the next generation of lawyers by encouraging their interest in Dispute Resolution. The winning papers can be read, full text, at cfcj-fcjc.org/clearinghouse/drpapers-en.php. The challenge for this program again relates to ongoing funding, particularly in the context of shifting federal government spending priorities following September 11.

High Hopes

The DRS team at the Department of Justice has identified several critical priorities for the coming years. We have high hopes that we can help improve communications and information sharing with our key allies, both within the Government of Canada and beyond. Enormous potential exists for governments at the federal, provincial and territorial level to avoid re-inventing wheels in our respective DR endeavours. Through the use of a variety of tools, from simple e-mail consultations, to videoconferencing, to a shared web site, we hope public servants from across Canada who are active in dispute resolution will be able to advance our common cause in new, exciting and effective ways. I encourage all who are interested in participating in this initiative to contact me at (613) 957-1235.

For More Information

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British Columbia

B.C. Ministry of the Attorney General – Dispute Resolution Office

The Ministry of the Attorney General opened the Dispute Resolution Office (DRO) in December 1996. The primary focus of the DRO is to support the use of alternative dispute resolution processes in the civil justice system and in government. Some of the programs and initiatives established by the DRO include:

Notice to Mediate Process

The Notice to Mediate process allows any party involved in a Supreme Court action to compel all other parties to participate in a mediation session. The process was originally introduced with respect to motor vehicle actions and residential construction actions. On the basis of its success in these areas, it has expanded to cover most civil, non-family cases in the BC Supreme Court.

Court Mediation Program

The Small Claims Court Mediation Program has three objectives: to provide training and experience for mediators; to make mediation services available to small claims litigants at no cost; and to relieve backlog pressure on the Small Claims Court. Cases are referred to mediation on both a voluntary and mandatory basis. The Program is meeting all of its objectives.

British Columbia Mediator Roster Society

The Society administers a roster of trained and experienced mediators who meet admission qualifications and subscribe to a Code of Conduct. The Roster is accessible to the public by telephone and on the Internet.

Mandatory Referral to Parenting After Separation (PAS) Sessions

PAS sessions provide separating parents with information about the effects of separation on children and adults, available dispute resolution options, and child support guidelines. PAS sessions are mandatory for most parties in 8 of the largest Provincial Court registries.

Family Relations Act Caseflow Management Project ("Family Justice Registries")

Provincial Court (Family) Rules brought into force in 1998 provide more early settlement opportunities and ensure cases are managed more efficiently. A dispute resolution track is being tested in five Family Justice Registries. Before parties to non-urgent cases proceed to court, they meet with a Family Justice Counsellor to learn about available services, including mediation. An Evaluation of the pilot is underway. Early information indicates very positive outcomes.

Child Protection Mediation

The *Child, Family and Community Service Act* allows the Ministry for Children and Families and parents to voluntarily choose mediation to resolve child protection disputes. Mediation services are free and are delivered by child protection mediators on contract with the Dispute Resolution Office in 17 locations around the province. A new process called a "facilitated planning meeting" is currently being piloted in Surrey. Early response to the pilot is very positive. A full evaluation will be conducted.

ADR in Government

The Dispute Resolution Office has worked with a number of ministries, agencies, boards and commissions to help design dispute resolution systems intended to divert cases from tribunal hearings by providing an opportunity for them to settle in mediation. Other initiatives include providing dispute resolution advice on various issues relating to First Nations, including treaty negotiations, and developing model contract clauses and rules for the referral of disputes arising under government contracts to mediation.

For More Information

Contact the Dispute Resolution Office, at BC's Ministry of the Attorney General: dro@ag.gov.bc.ca

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Alberta

New Developments in Dispute Resolution in the Alberta Courts

This update is to let you know of some changes in the programs available in the Provincial Court and the Court of Queen's Bench of Alberta.

Civil (Non-Family) Matters

Mediation

Mediation is available in Provincial Court (Civil Division) in Edmonton and Calgary. Parties may request mediation or cases may be selected for mediation. A roster of trained mediators assists parties to resolve their cases in ways which meet their needs.

Alberta Justice is currently conducting a consultation process concerning civil mediation in the courts. After the final stage, recommendations will be made to the Minister of Justice. One or more pilot programs may result from these recommendations.

Judicial Dispute Resolution ("JDR")

Judicial Dispute Resolution is available to people with civil cases before the Court of Queen's Bench in Edmonton and Calgary. Parties may choose which Justice they wish to have preside over their case.

Pre-Trial Conferences in Provincial Court, Civil Division

Provincial Court judges meet with parties whose cases are to be set for trial, to discuss their case, and express an opinion as to what is likely to happen in a trial. The parties can negotiate a settlement, or prepare for court, with the judge's assistance.

Family Matters

Conflict Prevention: A Course for High Conflict Parents

Family Mediation Services will be piloting a skill based course to help parents improve their communication skills and handling of conflicts so they can best support and protect their children. This course is supported by a grant from the Federal Government.

Dispute Resolution Officer

This pilot project is an initiative of senior Calgary family law practitioners, the Court of Queen's Bench and Alberta Justice. A roster of senior counsel volunteer to meet with parents making applications to vary child support orders, or related applications, to advise them of the effect of the Child Support Guidelines in their case, and what a court would be likely to do in their situation. A consent order may

then be filed.

Intake and Caseflow Coordination Pilot Program in Provincial Court, Family and Youth Division, Edmonton

All unrepresented people wishing to resolve family matters in this court receive information on their options, necessary referrals, help to prepare for court, and in most cases, help to negotiate with the other party to see if they can agree on what they need to do. Cases which require immediate attention by the court are directed to court as quickly as possible, often the same day.

Judicial Dispute Resolution ("JDR")

Judicial Dispute Resolution is available to people with family cases before the Court of Queen's Bench in Edmonton and Calgary. Parties may choose which Justice they wish to have preside over their case.

A one year pilot project to test a new Judicial Dispute Resolution Program in Provincial Court (Family Division) in Edmonton was completed September 30, 2001. Evaluation showed the pilot project to be a success, and the service well received by parties and counsel. JDR in the Provincial Court (Family Division) is also available in Calgary, Lethbridge and Medicine Hat.

Mediation

People with family law cases involving custody, access, guardianship or child welfare issues before the Court of Queen's Bench or the Provincial Court, who qualify, may go to mediation to resolve their disputes, free of charge.

Parental Conflict Resolution

Practice Note 7 to the Alberta Rules of Court provides that a Justice of the Court of Queen's Bench may refer a family for help from a psychologist, who will advise parents on what is best for their children, and may assist them to negotiate a custody and access agreement. Family Mediation Services provides subsidies for this service.

Conclusion

The Court of Queen's Bench, Provincial Court and Alberta Justice hope to continue to improve the processes available to meet the needs of those who come before the courts. A number of the processes discussed above have been evaluated or will be in the near future.

For More Information

Contact Camilla Witt, QC, Court Services, Alberta Justice
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Tel. (780) 427-4993

Saskatchewan

Dispute Resolution Developments a Saskatchewan Update

Beginning – Mediating Farmland Foreclosures

As early as 1988, the Province of Saskatchewan began creating a legislative framework supporting the development of appropriate dispute resolution mechanisms within the province. Mediation Services Branch was created within the Department of Justice and The Saskatchewan *Farm Security Act* was introduced mandating mediation in every legal action to foreclose on farmland in the province.

Mediation Services Branch of the Department of Justice was responsible for the delivery of the mediation services in these cases. The success of the program in resolving difficult situations raised awareness across the province of the potential for mediation. This success quickly led to the Branch delivering family law fee-for-service mediation in 1990, mediating disputes resulting from expropriations and the provision of facilitation services for multi-party disputes.

Non-Family Civil Litigation

One of the next significant steps in the development of appropriate dispute resolution mechanisms in Saskatchewan occurred in 1994 with an amendment to *The Saskatchewan Queen's Bench Act*, which introduced an initial mediation session at the close of pleadings in every non-family civil litigation action. The project commenced as a pilot at that time in two Judicial Centres in Saskatchewan and has since been expanded as a program and is now operating in four Judicial Centres which account for approximately 75% of all non-family civil litigation actions commenced in the province. The Department will be conducting an evaluation over the upcoming year to assess and analyze the impact of the program on the litigation process in Saskatchewan, and to make improvements where appropriate.

Family Law

In family law matters, Saskatchewan's approach has been similar to other jurisdictions across Canada. Parent Education Sessions have been offered on a voluntary basis for a number of years to assist families cope with the impact of separation and divorce on themselves and on their children. In October of 2001, a mandatory Parent Education Program was introduced on a pilot basis in the Judicial Centres of Saskatoon and Yorkton. Collaborative dispute resolution is encouraged through the provision of mediation in situations referred to Mediation Services Branch by the Courts, or by Family Law Support Services' workers who encounter appropriate cases as they conduct custody and access evaluation reports for the courts. Support is also being provided to members of the Saskatchewan Law Society who expressed interest in establishing a collaborative law association. A number of lawyers have been trained in Regina, Saskatoon and Moose Jaw, and further training is scheduled for the spring of 2002 as interest in the practice of collaborative law continues to grow.

Criminal Justice

In Saskatchewan, the Community Services Branch of Saskatchewan Justice is responsible for supporting community-based criminal justice programs by assisting with community development and the community-based approach to justice. The mission of the Branch is to collaborate with, and support communities to develop their capacity to deliver culturally sensitive criminal justice services which promote community-owned responses to crime, encourage family participation, meet the needs of victims and hold offenders accountable, and foster positive change. Community Services Branch works closely with Mediation Services Branch in the provision of dispute resolution training, mentoring and advisory services to assist First Nations Tribal Councils, aboriginal governments, policing agencies and community members establish community justice programs.

For More Information

Contact K. W. Acton, Director, Mediation Services Branch Saskatchewan Justice
E-mail: kacton@justice.gov.sk.ca
or visit www.saskjustice.gov.sk.ca

Manitoba

Manitoba Court and Government initiatives in Dispute Resolution

This is a summary of some of the Dispute Resolution initiatives and processes available in Manitoba. They are shown for both the Court of Queen's Bench and processes available through the provincial government.

Court of Queen's Bench of Manitoba

Judicially Assisted Dispute Resolution

The Court of Queen's Bench is conducting a popular and successful program in Judicially Assisted Dispute Resolution on an informal basis for civil cases. Between April and December 2001, 161 JADR conferences occurred. One QB Justice has an 85% success rate with 53 JADR cases of which 47 settled, resulting in saving an estimated 200 days of trial time. Similar rates are being experienced by the other judges involved.

Provincial Government Initiatives and processes

A wide range of methods are available through branches of the Provincial government that are intended to help citizens resolve disputes in a more cost and time effective method. Here is a selection of some of them:

Comprehensive Family Co-mediation Project

Since January 15, 2001 Family Conciliation (Manitoba Family Services and Housing) has been offering comprehensive mediation services with an objective of providing, as an alternative to court action, a mediation service to individuals undergoing separation or divorce, where there are minor children involved.

"For the Sake of the Children" program is offered to educate and focus parents on the needs of their children in the context of divorce. It is very helpful to all separating parents, is free of charge, and is required prior to beginning mediation.

First Nations Family Justice Project

The First Nations Family Justice Project has as one of its intentions to provide a peacemaking or mediation service to families and aims to reduce the number of children entering care by offering an alternative dispute resolution process. The project is delivered in seven northern communities under the jurisdiction of the Awasis Agency of Northern Manitoba.

The Manitoba Farm Mediation Board

The Manitoba Farm Mediation Board was established to mediate/facilitate agreements between farmers and creditors where financial pressures could lead or are leading to legal action. In the last 3 years the Board has dealt with approximately 150 to 200 applications per year. Since 1993 the Board has achieved settlements in over 80% of the cases dealt with on an annual basis (average 83%).

The Property Registry (Land Titles)

Mortgage foreclosure and realty tax sale processes are dealt with by the Manitoba Land Titles Offices and provide fast and cost effective remedies. Court action is not required and title changes pursuant to these processes are determined by the District Registrar of each Land Titles Office. A mortgagee's costs of foreclosure can be reviewed by the District Registrar and the amount of costs payable by the land owner to the mortgagee may be set by the District Registrar.

Manitoba Conciliation and Mediation and Pay Equity Services Branch

The broad goal of the Conciliation and Mediation and Pay Equity Services Branch is to promote and maintain harmonious labour-management relations in Manitoba.

During 2000/2001, the Branch was active in 247 grievance mediation cases, 96% of these cases were settled. There were 213 voluntary joint applications with a more flexible time frame under Section 129(1) of *The Labour Relations Act*. 90% were settled.

For More Information
Contact Barry C. Effler LLB, C Arb
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Winnipeg, Manitoba R3C 3L6
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Ontario

Ontario's Dispute Resolution Office

In the Fall of 1998, the Province of Ontario launched an Office devoted to dispute resolution services – the Dispute Resolution Office ("DRO") – housed within the Ministry of the Attorney General. Currently, functioning as part of Legal Services Division, the DRO serves as an important central resource in the Provincial Government, dedicated to the provision of consulting services, neutral third party services, training, and information and referral in dispute resolution. Services are provided to ministries, agencies, boards, and commissions throughout the Ontario Public Service ("OPS"). The DRO is staffed by lawyers, mediators and facilitators devoted to promoting the use of efficient methods of dispute resolution throughout the work of the government.

The DRO has provided services to over 100 clients within both the private and public sectors. The Office has trained over 1,000 public sector employees in a variety of dispute resolution theory and practice topics including: mediation, negotiation, mediation advocacy, conflict theory, consensus-building, communication and facilitation. Consulting services provided by the DRO include designing conflict prevention and management systems, providing advice on dispute resolution language in government policies, contracts and legislation, and supporting internal organizations committed to dispute resolution.

A number of ADR networks work with the DRO to support the development and expansion of dispute resolution activities in government. The Dispute Resolution Forum, comprising public sector employees interested in dispute resolution, has delivered numerous educational programs devoted to topical dispute resolution practice areas such as: mediation of sexual harassment claims; public interest negotiation; designing government dispute resolution systems; and the conduct of fact-finding investigations.

The DRO also supports a number of exciting new Provincial initiatives. One example of such an initiative includes Youth Justice Committees which have been established throughout the Province. These Committees are designed to find more effective ways of dealing with non-violent young offenders. Youth Justice Committees comprise panels of trained community members who meet with victims, young offenders accused of minor non-violent offences, and their parents to negotiate an appropriate way for the offender to make amends for his or her actions. The Committees work in partnership with the police, Crown attorneys and probation officers.

Another example of a dispute resolution project involves the use of mediation and arbitration to resolve the terms of Resource Stewardship Agreements. In this regard, processes are in place to resolve the terms of the Agreement between members of the forestry industry and the resource-based tourism industry.

At present, requests for the services of the DRO continue to grow in direct response to client satisfaction. The DRO, with the Ontario Government's continued support, is committed to providing its clients with quality dispute resolution programs and services and developing strong partnerships to foster growth and encourage innovative uses of dispute resolution in government and the dispute resolution arena at large.

For More Information

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Quebec

Quebec Ministry of Justice– Some thoughts on Mediation as an Alternative Dispute Resolution Method

In Quebec, mediation is a tool that is gaining increased attention as a means of avoiding the traditional resort to the courts. Over the past few years, the Ministry of Justice has been considering means of promoting this alternative dispute resolution method, because it is still overlooked by the general public except for family matters.

In family matters, a citizen who wishes to resort to mediation has the benefit of a legislative framework provided by articles 827.2 to 827.7 of the *Code of Civil Procedure*. Family mediation is not mandatory but those who use it are entitled to six free one-hour sessions in the presence of a certified mediator, who must belong to a professional order responsible for his or her certification. To our knowledge, this is quite new in Canada.

The six free sessions paid by the government are often sufficient to find the basis for a separation agreement and settle most of the issues between the spouses, such as child custody, division of assets, child support, etc. This program is constantly being reviewed and a lawyer appointed by the Ministry of Justice oversees the implementation of this program and occasionally suggests some changes to the Ministry in order to improve and upgrade the present system.

There is no mandatory system for civil and commercial mediation, nor any legislative provisions under which it can take place. For the time being, the Minister plans to promote this method and encourage recourse to mediation on a purely voluntary basis. We do know that various non-governmental organizations and a number of professions (lawyers, engineers, notaries, etc.) offer private mediation services. An example we might mention is the case of the IMAQ, the "Institut de médiation et d'arbitrage du Québec" [the Quebec mediation and arbitration institute], which is to hold a symposium on civil and commercial mediation this Spring. The Ministry has agreed to take part in the event, whose primary goal is to promote this alternative method of resolving disputes among business people and perhaps the public at large.

Another initiative relating to civil and commercial mediation originated in the courts. The Superior Court of Quebec recently included in its Règles de pratique [Rules of procedure], Chapter XIII entitled "Conférence de règlement amiable" [dispute resolution conference]. Its main purpose is to help the

parties settle their disputes out of court.

This conference is offered on a voluntary, confidential basis and parties may drop out at any time unless it has been made part of a settlement approved by the court, conferring on this settlement the authority of a res judicata. Since it is a recent initiative of the Superior Courts, we do not yet have statistics to show whether its use is increasing, but an invitation by judges to use this alternative means remains an interesting initiative.

2002 could therefore prove to be decisive with respect to the future of mediation in Quebec. Experience with family mediation is encouraging and the Ministry plans to increase the publicity it gives to this alternative method of dispute resolution in order to increase the general public's awareness of the numerous advantages it provides, particularly, in savings in time and cost.

We will also follow with interest any future developments with the systems established in other provinces, some of which appear especially promising.

For More Information
visit the Ministry of Justice website at www.justice.gouv.qc.ca

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New Brunswick

New Brunswick Alternative Dispute Resolution – Department of Justice and Office of the Attorney General

Small Claims Court:
The Small Claims Court has jurisdiction in an action for debt or damages where the amount claimed does not exceed $6000 and in actions for the recovery of possession of personal property where the value of the personal property does not exceed $6000.

Senior lawyers are appointed as adjudicators by the Lieutenant-Governor in Council. The Small Claims Court adjudicates cases in each of eight judicial districts.

For more information contact: Court Services Program Support (506) 453-4319.

Family Support Services:
These services include the Family Support Orders Service (FSOS), the Domestic Legal Aid (DLA) program, services provided by the court social workers (information, advice, counselling, mediation) and For the Sake of the Children program.

The Family Support Order Service (FSOS) provides for the collection of support payments and also the enforcement of support orders when payments are not made.

Court social workers provide information, advice, counselling and mediation services to clients going through separation and divorce. Mediation services are provided free of charge in the areas of custody, access and child support and some basic and routine marital property matters. Mediation is not provided where domestic violence is a factor; instead, victims of violence are referred to the Domestic Legal Aid program.

For the Sake of the Children is a new parent information program that was implemented in November 2000. An enhancement of the Domestic Legal Aid program, it is primarily targeted at parents living separately, provides information and teaches skills to reduce parental conflict. The program also promotes a better understanding and use of mediation, and provides information on the roles of court officials and on court services available in New Brunswick.

For more information contact: Court Services Program Support (506) 453-4319.

Office of the Rentalsman:

The Office of the Rentalsman operates and manages The *Residential Tenancies Act* program. The Chief Rentalsman based in Fredericton and nine other rentalsmen in six regional offices throughout the province provide advice and guidance to landlords and tenants, perform investigations for the mediation and arbitration of disputes and provide educational information to improve relations between landlords and tenants. The rentalsmen also decide on disbursement of security deposit monies in cases of dispute in relation to these funds. Services are provided to both landlords and tenants free of charge.

For more information contact: The Office of the Chief Rentalsman (506) 453-2682.

For More Information:

Contact James Burns, Justice Research and Planning
(506) 453-6526

Nova Scotia

Nova Scotia Department of Justice – Dispute Resolution Initiative Highlights

Family Matters

Conciliation was introduced as part of the creation of the Supreme Court (Family Division), the new court system implemented in the Halifax Regional Municipality and Cape Breton on April 6th, 1999. Under Rule 70, the conciliator ensures timely disclosure of financial information; identifies and facilitates areas of possible agreement; drafts consent orders; and where indicted, directs the matter to court where immediate action is warranted in matters of child support and custody and access. Recent evaluation studies, by the Policy, Planning and Research Division of the Nova Scotia Department of Justice show that in most cases, clients have found the process to be fair and impartial, safe, and less stressful than court. Clients indicated their ability to make their views known, and were satisfied with the outcome in the majority of cases.

Mediation is offered through a Roster of private practitioners in matters relating to custody, access, support or maintenance, and property.

Completion of the Implementation of the Family Division is proposed with the expectation of creating one family law system and consistent services for all Nova Scotians. Work has already begun on the implementation of some of the services in other areas of the province.

Civil

The Nova Scotia Barristers' Society, the Department of Justice and members of the mediation community, with the support of the Supreme Court of Nova Scotia, have established guidelines for a

Mediation Roster. It is expected that the Roster will be in place by June 2002.

Small Claims
ADR Atlantic (Nova Scotia) is starting a pilot mediation internship program in the Halifax Region Small Claims Court in February 2002. Four interns and their mentors will provide service to parties who choose mediation as an option.

Probate
A new *Probate Act* came into force on October 1, 2001. Section 106 of the Act provides for rules of probate court to be made by regulation. Regulation 74 addresses the subject of mediation in contentious probate cases. Schedule "A" to the regulations sets out the procedures of conducting mediations referred by regulation 74.

Restorative Justice
A Framework for Restorative Justice was released in June 1998 and is being phased in within the province of Nova Scotia. Copies of the framework document and further information can be obtained from Pat Gorham, Restorative Justice Coordinator at (902) 424-3306 or by emailing gorhampm@gov.ns.ca.

For More Information
Contact the NS Department of Justice website: http://www.gov.ns.ca/just/ or contact Cheryl Hebert, Consultant, Court Services Department of Justice
(902) 424-2887 or by email at hebertcl@gov.ns.ca

Prince Edward Island

Dispute Resolution Services Sponsored by the Government of Prince Edward Island – a Summary

Family Court Services
This is a voluntary, cost-free program, open to all interested participants. There are two family court mediators providing mediation services in the areas of custody and child support.

Positive Parenting From Two Homes
This is a voluntary, cost-free program designed to meet the needs of parents who are concerned about their children getting caught in the middle of the conflict when parents are separating, divorcing and parenting from two homes. This program is presented in two three hour sessions by trained facilitators who give information, present videos, facilitate discussions and answer questions. Participants learn to understand their feelings, their children's needs, and develop a business-like relationship with the other parent.

Maintenance Enforcement Resolution Session
On every default docket day, prior to court, many payors in default are invited to attend a resolution session with the Director of Maintenance Enforcement and Counsel for the Director of Maintenance Enforcement to determine if the matter can be settled out of court. Payors can be put on a repayment schedule or referred to the Child Support Guidelines Office if the payor has grounds for a variation of the order/agreement.

Labour Conciliation

Pursuant to the *Prince Edward Island Labour Act*, if a company and a union cannot reach a settlement regarding a collective agreement, the Minister may appoint a conciliation officer to endeavour to bring about agreement between the parties.

Small Claims Settlement Conferences

Before a trial date is set, a settlement conference must be held. This is mandatory. The Prothonotary may mediate any issues being disputed and decide on any issues that do not require evidence. The Prothonotary may make an order in the terms agreed to by the parties, or set a trial date, if a trial is necessary.

Centre for Conflict Resolution Studies

The Department of Extension and Summer Sessions, University of Prince Edward Island offers professional credit courses in mediation and negotiation. When the program started, government guaranteed a number of spots for government employees. Government employees are encouraged to take these courses. I have been advised that this program is supposed to be one of the most comprehensive certification programs east of Ottawa.

For More Information

Contact M. Juanita Cudmore
Legal Secretary, Legal Services
Office of the Attorney General, Charlottetown, PEI
Tel. (902) 368-4378
Email: mjcudmore@gov.pe.ca

Newfoundland and Labrador

The province of Newfoundland and Labrador
Departments of Justice, Health, Human Resources and Employment, and Education - in conjunction with Justice Canada has developed several new pilot projects dealing with Family Justice issues.

Family Justice Services Western (FJSW)

A new pilot project operating out of Corner Brook, Newfoundland gives separating parents an alternative to the court system. Family Justice Services Western opened its doors in February 2001. FJSW provides on-site education, mediation, and counselling services to adults and children where applications for divorce, custody, access, child and/or spousal support have been made to Supreme or Provincial Family Court. Services include information on family law and parenting; mediation for custody, access, support; counselling and workshops on separation issues, communication skills and conflict resolution; a support group for children; and automatic re-calculation of child support. All applications to both levels of Court are referred directly to the project before a court date is issued, and both parties are expected to attend the initial three hour education session. FJSW is offered by a multi-disciplinary team of professionals, under the umbrella of Community Mental Health Initiative Inc., a grass roots community group.

Recently, a new component was added to the service to allow for automatic and mandatory recalculation of all child support orders as of July 1, 2001 in accordance with section 25.1 of the *Divorce Act*. The Province has now passed Regulations to authorize FJSW as a "Child Support Service". Payers have the option of appealing to court should the recalculated amount be disputed.

Family Justice Services Central (FJSC)

This most recent pilot project serves the central region of Newfoundland and provides an integrated approach to family justice. The project will rely on a mediation model of early dispute resolution, multi-disciplinary approaches, information assistance and other non-traditional alternative delivery mechanisms. The aim is to resolve family law issues without the traditional dependence on litigation.

A broad range of services are provided to inform all users of the Court process; inform parties of relevant family law, available options and how to access them; identify clients' issues and make appropriate referrals; sensitize parents to the impact of separation and divorce on children and teach parents to keep the children out of the dispute; negotiate agreements in child support, custody and access; monitor the development of this service for all users; and to build bridges and alliances with community groups and stakeholders to ensure long term success

Support Applications Social Worker Program

Under this program Social Workers provide information on the Child Support Guidelines and the different options to resolve the issue of child support. It provides the option of resolving these issues through mediation and negotiation, thereby reducing the amount of time spent in Court or avoiding the Court process altogether. Participation is voluntary unless ordered by the Court. The Support Application Social Worker represents the best interest of the children and is a neutral third party. The service is free to the public and is available throughout the province.

"Parents Are Forever"- a parent education program

This is a supportive, educational program for parents experiencing separation and divorce. It is offered through the Unified Family Court in St. John's. This 12 hour skills-building course provides information on the effects of separation and divorce on children and teaches communication and negotiation skills aimed at reducing parental conflict. The topics include: children's and parents' experiences and children's needs; understanding conflict, and how children get caught in the middle; listening, verbal and non-verbal communication; a do-it-yourself mediation 4 step model; parental plans and the legal process, including alternatives to the Court process.

This program and 4 training videos were developed at the Unified Family Court in St. John's Newfoundland and Labrador and has been running for 4 years.

For More Information

Contact J B Reynolds at berkleyreynolds@mail.gov.nf.ca

Nunavut

Watch for information about Dispute Resolution Initiatives in Canada's newest jurisdiction in future issues of *News and Views on Civil Justice Reform*.

Northwest Territories

A Summary of Dispute Resolution in the Northwest Territories – Department of Justice, Government of the NWT

Family Law Mediation

There are currently private sector mediators doing work in the area of family law, however, there is no certification or training offered in the NWT. In 2001 the Department of Justice undertook research and analysis of the current models of family law mediation programs. The Department is currently developing a pilot project on family law mediation for the NWT.

Positive Parenting Program

The Department of Justice in cooperation with the Legal Services Board is offering a Positive Parenting Program to encourage parents to think about how separation and divorce decisions may affect themselves and their children. This program started as a pilot project in Yellowknife. Plans are underway to expand this program into regional centres.

Community Justice

Community Justice is based on two concepts, Restorative Justice and the Teachings of Aboriginal peoples. As part of the Community Justice Initiative, the Department of Justice provides funding and support to communities that wish to assume more control over the administration of justice in their communities. Through local Community Justice Committees, residents can participate in a range of justice related activities. This includes victim offender mediation approaches offered by the Justice Committees, and through the RCMP as part of "Family Group Conferencing".

Alternate Dispute Resolution Process

The Department of Justice is participating in an Alternative Dispute resolution process with former students of Grollier Hall, the Federal Government, and the Roman Catholic Diocese of the Mackenzie. This pilot project is intended to address potential civil claims brought by or on behalf of individuals who were victims of abuse while they were students at Grollier Hall. (Grollier Hall was a student residence operated by the Catholic Church in Inuvik)

For More Information

Contact Janice Laycock, Senior Policy Advisor
Department of Justice, GNWT
Tel. (867) 873-7772

Yukon

The courts in the Yukon do not have a formal court-attached mediation program. However, mediation services are available on a voluntary basis to parties to an action in Small Claims Court. These mediations are done by a Justice of the Peace who has mediation training. If mediation is unsuccessful, or if the parties choose not to use mediation, a settlement will also be attempted at the pre-trial conference.

At the Supreme Court, we do have one justice who has training in mediation. He has been able to

mediate a resolution to some of the civil matters that have come before him.

We do not currently have a court-attached family mediation program. However, there are some mediation practitioners, some of whom are lawyers, who do family mediation.

For More Information

Contact Catherine Simpson
A/Manager, Court Administration
Tel. (867) 667-5089 Fax (867) 393-6212
catherine.simpson@gov.yk.ca

Publications

News and Views Issue 4: Spring 2002

CLE on Technology in the Courts

The Canadian Forum on Civil Justice is organizing a continuing legal education program which will be held in London, Ontario at 1:30 pm on August 13th, as part of the CBA National Conference. The topic of our program is "technology in the courts" which will include discussion and demonstrations of electronic factums, e-filing and video-conferencing. Our presenters come from a number of Canadian jurisdictions where these initiatives are being used, and they will speak about their experiences in incorporating these new technologies into our court procedures. This session will be of interest to lawyers, judges, court administrators and everyone with an interest in the emerging use of technology in our Courts. To register for the CBA National Meeting, contact the CBA directly at 1-800-267-8860, or go to www.cba.org/CBAEvent/

Publications

News and Views Issue 4: Spring 2002

Concise and Precise: a review of *A Plain Language Handbook for Legal Writers*

Reviewed by John Blois, a Vancouver based plain language writer and instructor

KNOW ALL MEN BY THESE PRESENTS THAT if you write like this, you're not communicating clearly. This preamble is incoherent, sexist, hard to read (because of all capitals), and unnecessary, for starters.

Christine Mowat's plain language handbook for legal writers boldly tackles the challenge of concise, precise legal communication. It's an admirable goal but not a simple one. Ms Mowat sets the stage by reviewing the literature, history, and foundations of plain language. She describes its international dimensions and ethical basis, presenting a compelling case that plain language makes the law more accessible and understandable to the people it serves. As well, Ms Mowat says the globalization of English creates a pressing need for plain language legal documents. Ultimately, plain language can increase respect for, and acceptance of, the justice system.

This comprehensive, practical handbook describes a communication triad of audience, purpose, and message, and then explains how good writers tailor their message to the audience and purpose. It also provides a CLARITY checklist for writers—an acronym for

Conciseness
Lean and Lively Language
Active Voice
Regular and Reasonable
Image-evoking, Concrete, and Specific
Tight Organization
You and Your Audience

Ms Mowat chooses seven areas to show how plain language can make the law work better:

- Wills
- Municipal bylaws
- Legislation
- Collective agreements
- Family law
- Release forms
- Public forms

The handbook dispels the myths about plain language, obliterating ideas that plain language is simplistic and that obscure legalese is precise, time-tested, and required by law. It also examines the future of plain language, concluding it must be more actively promoted and taught in law schools to

overcome the status quo.

The second part of the handbook has 13 appendices of before and after samples and a toolbox of exercises and legal writing skills. Some of the suggestions may seem radical but only when compared to current legal writing—writing that simply does not work. Clients don't understand obscure explanations of laws—but those laws affect them profoundly. The clarity of the after samples is striking and may puzzle readers who are used to legal bafflegab. It's hard to imagine why the dismal state of legal writing persists when you see how eloquent the alternatives can be.

With an extensive bibliography, the handbook is a complete package for lawyers who want to improve their communication skills and better serve their clients. Ms Mowat is passionate about clear communication and that passion permeates the book.

The handbook ends by looking at resistance to plain language and concluding it's based on ignorance. There are several obstacles to more widespread acceptance of plain language—but they can be overcome. Lawyers need to realize that writing in plain language is not a simple, mechanical process. It is a sophisticated, complex activity that yields elegant, precise communication. It takes time and energy—but the results are worth it.

Sceptics may not yet have concluded that resistance to clear communication is futile. Ms Mowat's handbook may convince them.

John Blois can be reached at jmblois@shaw.ca

Publications

News and Views Issue 4: Spring 2002

Negotiating the Future

The Forum was a partner and organizer of a national Conference on court annexed mediation which was held in Calgary on November 14th – 16th, 2001. 130 participants came from across Canada to participate in this unique learning opportunity. Our audience included members of the judiciary, court administrators and court services members, the practicing Bar, mediators, academics and law reform agencies. The design of the Conference allowed tremendous opportunities for comparative analysis and dialogue about the emerging practice of court-annexed mediation in Canada and the US.

The Conference began with small group sessions on interest-based mediation, facilitated by experienced mediators and designed to provide participants with information about the basics of mediation. We then heard from speakers from Canadian and American jurisdictions who shared information about the programs that have developed in their respective jurisdictions, including the triggers that caused them to look to mediation, the design of their programs, the challenges they faced and lessons learned. In addition to their very informative presentations, each speaker prepared a paper and background materials which were provided to conference participants. These materials will soon be available in our Clearinghouse on the Forum website. We learned about the Alberta Provincial Court Civil Mediation Program and Family Judicial Dispute Resolution Project, as well as the Judicial Dispute Resolution Program of the Alberta Court of Queen's Bench, the Notice to Mediate Programs which have been developed in British Columbia, the Mediation Program of the Los Angeles Superior Court, Florida's Court-Connected Mediation Program, the Saskatchewan Justice Mediation Program and Ontario's Case Management and Mandatory Mediation Program.

At the close of the individual speaker presentations we held a discussion which was facilitated by Sandra Schulz, QC, lawyer and mediator in private practice in Edmonton, and allowed an opportunity for our speakers and conference participants to ask questions, comment, and provide information. The discussion spilled over into the breaks and social events, and it was clear that the opportunity for sharing ideas and feedback was valuable for everyone involved.

Throughout the Conference we had the benefit of thoughtful and sometimes provocative keynote addresses, which were given by Alberta's Deputy Minister of Justice, Terry Matchett, QC, The Honourable Associate Chief Justice Sulatycky of the Alberta Court of Queen's Bench, Professor Carl Baar, The Honourable Dave Hancock, Minister of Justice for Alberta and Michael Fogel, Chartered Mediator and trainer based in Vancouver.

The Conference closed with a discussion of the proposed Uniform Mediation Act, led by Jerry McHale, QC, ADM of the Justice Services Branch with the Ministry of the Attorney General in BC, and Ken Acton, Director of Mediation Services Branch for Saskatchewan Justice. A commitment was made among those present to pursue an initiative which will see the development of uniform clauses for court annexed mediation, including a confidentiality clause.

Many of the conference sessions were recorded by Court TV Canada, with the intention of expanding our audience beyond those who attended the conference, and to begin the process of engaging the public in discussions about the multi-option justice systems which are emerging in our Courts.

Alberta Justice held a concurrent facilitated discussion, as part of the Alberta Justice commitment to consider court annexed mediation in Alberta.

Partners in the Negotiating the Future Conference were the Association of Canadian Court Administrators, the Canadian Institute for the Administration of Justice, Alberta Justice, the Canadian Bar Association - Alberta Branch, and the Canadian Forum on Civil Justice. The Conference organizers were Camilla Witt, QC, Court Services Division, Alberta Justice, Sandra Schulz, QC and Diana Lowe, Executive Director of the Canadian Forum on Civil Justice.

Publications

News and Views Issue 4: Spring 2002

Facilitating Access to the Courts through Class Actions: Canadian Developments

Margaret A. Shone (Counsel, Alberta Law Reform Institute)

Introduction

These days, a person can hardly pick up a newspaper or magazine, or turn on a radio or TV broadcast without being told about another class action lawsuit. In Canada, high profile class actions have been brought for damage attributable to defective breast implants, faulty pacemakers, risky weight loss drugs, tainted blood, aboriginal residential schools, cracking toilet tanks, unpaid interest on disabled war veterans' pensions, bogus gold mine representations, credit card and utility company over-charging, disappointing vacations, e-coli in the water supply ... the list goes on. Class actions involving water contamination have received increased media attention, including being featured in Hollywood films: *A Civil Action* and *Erin Brockovich*. Class action examples here and elsewhere include cases involving defective consumer or industrial products, misrepresentation of products or services, securities breaches, mass disasters and creeping disasters (such as injury to health over a prolonged time period or environmental damage), to name but a few. No legal cause of action is immune.

The vast majority of Canadians now have access to modern class proceedings regimes. Quebec enacted legislation in 1978 (in force January 19, 1979), [1] Ontario in 1992 (in force January 1, 1993), [2] British Columbia in 1995 (in force August 1, 1995), [3] Saskatchewan in 2001 (in force January 1, 2002), [4] and Newfoundland has declared its intention to enact class action legislation [5]. Modern class actions rules will be introduced soon in the Federal Court of Canada [6]. Class action legislation has been recommended by the Uniform Law Conference of Canada (in 1996), [7] the Manitoba Law Reform Commission (in January 1999) [8] and the Alberta Law Reform Institute (in December 2000) [9].

The Quebec legislation drew on prior experience with class actions in the United States where Rule 23 of the *Federal Rules of Civil Procedure* is considered to have ushered in "the dawn of the modern age of class proceedings" [10]. This Rule was first adopted in 1938, substantially broadened in the early 1950s and significantly amended again in 1966. The Ontario, British Columbia and Saskatchewan statutes, and the recommendations for class action regimes in other Canadian jurisdictions, owe their genesis to recommendations made by the Ontario Law Reform Commission in the monumental 3-volume: *Report on Class Actions* published in 1982 [11].

The move to enact legislation is only one component of the story. In 2001, the Supreme Court of Canada affirmed the power – indeed, the duty – of the courts to structure class proceedings where appropriate in managing individual cases [12]. Having commented that a legislative framework clearly would be advantageous, [13] the Court stated [14]:

"Absent comprehensive legislation, the courts must fill the void under their inherent power to settle

the rules of practice and procedure as to disputes brought before them. ... However desirable comprehensive legislation on class action practice may be, if such legislation has not been enacted, the courts must determine the availability of the class action and the mechanics of class action practice."

In structuring class proceedings in jurisdictions lacking modern legislation, the courts can obtain guidance from the procedures tested under the class action statutes in force elsewhere in Canada.

What is a "class action"?

A class action is a legal procedure that allows many persons having the same or similar claims against a defendant to pursue their claims through a representative party. One person, the "representative plaintiff," brings an action on behalf of themselves and others who are in the same position in relation to the defendant [15]. Together, the representative plaintiff and other claimants form a "plaintiff class". Parties are permitted to "opt-in" or "opt-out" of the class (depending on the requirements of the governing legislation). The representative plaintiff "represents" the interests of all of the members of the plaintiff class in the lawsuit and all of the class members are bound by the outcome. In short, instead of multiple separate proceedings brought by different plaintiffs raising the same issue against a defendant over and over again, class actions allow an issue that is common to many claimants to be decided in one courtroom at one time. The effect is that the proceedings taken by the representative plaintiff directly affect persons who are in the plaintiff class but are not actively before the court.

Why are class actions attracting interest?

The world of today is not the world of England in the 17th century when the idea of a representative action was introduced into the Court of Chancery [16]. Technological advances have contributed to the shrinking of the world. Trade is now conducted globally, not locally. Increased potential exists for devastating damage, for example, resulting from radioactive materials leaking from a nuclear plant or rail tankers spilling dangerous chemicals. Moreover, given the fast-growing size of the world population, mistakes are more likely today to affect large numbers of people. The phenomenon of many individuals having the same or similar claims against a defendant is, indeed, a modern reality. The issues that need to be sorted out can be technically complex, procedurally cumbersome and, consequently, costly to resolve. Not only are the courts hard-pressed to handle the burgeoning volume of litigation, but also access to the courts for redress frequently lies beyond the means – financial and otherwise – of ordinary citizens.

Objectives of modern class actions

Enter the modern class action. After thoroughly canvassing the possibilities, the Ontario Law Reform Commission identified three objectives of modern class actions [17]. The objectives are consistent with the reasons for the growing interest in this procedural mechanism. Courts look to the objectives in making a determination of whether a class action is the preferred procedure in a particular case. The Supreme Court of Canada has recognized these objectives in describing three important advantages of class actions over a multiplicity of individual suits [18]:

> First, by aggregating similar individual actions, class actions serve judicial economy by avoiding unnecessary duplication in fact-finding and legal analysis. Second, by distributing fixed litigation costs amongst a large number of class members, class actions improve access to justice by making economical the prosecution of claims that any one class member would find too costly to prosecute on his or her own. Third, class actions serve efficiency and justice by ensuring that actual and potential wrongdoers modify their behaviour to take full account of the harm they are causing, or might cause, to the public.

Distinguishing features of a modern class action

A number of features distinguish a modern class action from an historic class action and from an ordinary action (i.e., an action in which each litigant is a party in their own right). It should be emphasized that class actions are a procedural device; they do not confer new causes of action. Legislated safeguards and an expanded role for the court help to ensure that the procedure will be fair not only to the parties (representative plaintiffs, defendants) but also to the members of the plaintiff class. In the class action model adopted in four Canadian jurisdictions and recommended in others, the

distinguishing procedural details include the following five elements [19]:

1. Certification. A court must approve ("certify") a proceeding as a class proceeding before it can go forward. The criteria are important. They are [20]:
    a. the pleadings disclose a cause of action,
    b. there is an identifiable class of 2 or more persons,
    c. the claims of the class members raise a common issue, whether or not the common issue predominates over issues affecting only individual members,
    d. a class proceeding would be the preferable procedure for the resolution of the common issues, and
    e. there is a representative plaintiff who
        i. would fairly and adequately represent the interests of the class,
        ii. has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and
        iii. does not have, on the common issues, an interest that is in conflict with the interests of other class members.
2. Class membership. Potential class members are notified of certification and given an opportunity to decide whether or not they want to be part of the class. Subclasses may be formed in situations where some members of the main class share issues that are not common to other members. Each subclass has its own representative plaintiff.
3. Court Role. The court actively case manages the proceeding. The court's role includes:
    a. certification of the proceeding as a class action;
    b. approval of
        i. notices to class members (certification of the proceeding, opportunity to decide whether or not to be in the class, resolution of the common issues, whether by settlement or judicial disposition),
        ii. the settlement or discontinuance of the action, and
        iii. any agreement between the representative plaintiff and class counsel for the payment of lawyer fees and disbursements;
    c. exercise of judicial discretion to allow class members to participate in the proceeding; and
    d. making provision for the determination of individual issues separate from the common issues.
4. Monetary relief. Class action statutes permit damage awards to be assessed on an individual or aggregated basis (in which case provision is made for subsequent distribution to class members).
5. Limitation periods. Limitation periods that would otherwise run against plaintiff class members are suspended during a class proceeding.

Do class actions achieve their objectives?

Some data is available on the number of cases being brought in Quebec, Ontario and British Columbia and the results in those cases [21]. To a large extent, however, discussion of the experience under modern Canadian regimes is hampered by the lack of "much systematic compilation of information." [22] Instead, colourful anecdotes pepper discussions about the merits of class action lawsuits. These anecdotes fuel heated debates about the achievements of class actions, debates in which perceptions vary depending on the source of the information and on the ideological preferences of the observer [23]. It is, however, useful to examine the Canadian approach by looking at each of the objectives as identified by the Supreme Court.

Objectives: Access to justice

Of the three objectives recognized by the Supreme Court of Canada, the argument that a class action will enhance access to justice has been the most persuasive in convincing courts that a class action is the preferred procedure [24]. Access to the courts to redress civil wrongs is often beyond the financial means of individual citizens. Allowing many persons who are similarly situated to seek relief in a single action facilitates access to justice by eliminating the need for each class member individually to bear the cost of proving all of the facts and making the arguments necessary for the claim to succeed. The courts have considered the prospect that a class action will put the parties on a more even economic footing when deciding whether or not to certify an action [25].

In assessing the extent to which an action will satisfy access to justice objectives, courts have also compared the size of the individual claims, and the likelihood of recovery if the action is successful, to the expense of the litigation. Class actions are especially appropriate where the amounts of individual claims are small and the case raises difficult technical issues that will require highly skilled investigators and expert witnesses to prove liability. Where each class member's claim is sufficiently large that it could be brought economically on an individual basis, access to justice is less of a concern and the court may be less likely to certify a class action [26].

The legislative treatment of costs and methods of financing class actions are other areas that affect access to justice for potential plaintiff classes. Quebec, Ontario and British Columbia take different approaches to costs. These are discussed in the *ALRI Report* [27]. As for financing the class action, it is not unusual for the law firm retained by the representative plaintiff to make its fee contingent on the success of the action and to pay the out-of-pocket disbursements necessary to proceed with the action as part of the agreement [28]. This development ties access to the courts to the lawyer's estimate of the likelihood of success in the action.

Objectives: Judicial economy

The second objective is judicial economy. According to the Supreme Court of Canada, the important question here is practical: will "allowing the suit to proceed as a representative one ... avoid duplication of fact-finding or legal analysis." [29]

Judicial economy can be viewed from three perspectives: a) the cost to the litigants, b) the cost to the civil justice system, and c) the cost to society. Data on the actual economy achieved by class actions is almost non-existent.

a) Cost to the Litigants

For plaintiffs, the cost of going to court for redress is directly related to access to justice and was discussed above in conjunction with that objective. For some defendants, at least where litigation is inevitable, it would seem desirable to deal with allegations that are common to a number of plaintiffs in one proceeding rather than over and over again. In fact, defendants may consent to certification for this reason, or request that class actions commenced by different persons be certified and managed in one proceeding [30]. Traditionally, however, the high cost of complex litigation has militated in favour of defendants: put simply, plaintiffs typically can't afford it, and defendants know this.

b) Cost to the Civil Justice System

Requiring persons to bring individual actions seeking relief for conduct or occurrences that have affected many people in the same or similar ways is uneconomical and inefficient not just for the individuals involved but also for the justice system. As stated in an Ontario case, when it comes to procedure, the "underlying policy of our laws is to resolve disputes in the most just, expeditious and inexpensive manner" [31]. It is the express policy in most jurisdictions to avoid a multiplicity of proceedings.

Do class actions increase or reduce the demands on the courts? On the one hand, if potential compensation is high enough to make it financially possible to bring individual actions, combining those actions into a class action would reduce the total number of cases. It is reasonable to expect that the administration costs attributable to multiple separate claims would be higher than those attributable to one class action conducted by a representative plaintiff. On the other hand, class actions make claims possible that would otherwise not be brought by individuals because the cost of going to court would be prohibitive. In this sense, class actions add to litigation.

Some data exists on the number of class actions being brought [32]. Despite concern expressed by class action opponents that the enactment of class action legislation serves to encourage litigation, the numbers to date do not appear to indicate large increases in litigation in jurisdictions where class action legislation has been implemented. As is true of litigation generally, very few class actions proceed to trial, and not all plaintiffs are successful. Some actions that are commenced are disposed of by motions brought prior to the certification application (e.g. failure to state a cause of action, motions for summary judgement); others are settled before or during the certification process; not all certification applications succeed; and, settlement post certification is common. (In Quebec between 1979 and 1997, 396 certification motions were initiated yet only 35 actions were tried [33].) Most of the contention occurs at the certification stage. If the certification succeeds, settlement negotiations usually begin. Sometimes the parties have already reached a settlement and the defendant wants the certification in order to bind all class members to the settlement terms (known as a "settlement class").

Another consideration affecting judicial economy is the manageability of the litigation. As noted above, in order for a class action to be certified there must be a common issue even if there are also individual issues. If the individual issues are numerous, they may outweigh the advantages of determining the common issues in one proceeding [34]. However, the "predominance" of individual issues "is not in itself fatal to the application" [35]. That is to say, in deciding whether an action should proceed as a class action or as individual actions, the courts weigh the impact of numerous individual issues against other factors such as:

i. the extent to which the common issues will advance the litigation;

ii. the potential the class action has to become a "monster of complexity" and cost; [36] and

iii. the size of the claims compared to the complexity, length and individualistic nature of the procedures required to resolve the individual issues [37].

Judicial economy may be promoted by other procedural efficiencies that are made possible in the class action regime. For example, in deciding whether a class action should be certified, the court is able to consider the availability of alternate means of adjudicating the dispute [38]. Also, the court has considerable latitude when it comes to directing how individual damages will be determined and distributed. Various examples are available, including *Webb* v. *K-Mart Canada Ltd* [39]. Webb involved claims for compensation by 3,000 to 4,000 persons who lost their jobs when the K-Mart corporation merged its retail chain with Zellers and the Bay. The representative plaintiff sought a judgement on the common issues so that the court could direct that "individual issues of entitlement to compensation" be dealt with by references [40]. This "expedited process" included "provision for mandatory mediation and, if unsuccessful, summary hearings" [41].

Also, and significantly, fairness issues must be weighed in the balance when considering the cost to the civil justice system. One factor the courts have considered is the risk of inconsistent findings of

liability in separate litigation if multiple actions are not certified, especially where the question of liability will be a "battle of the experts" [42]. Another factor is the converse possibility of loss of procedural safeguards for the defendant (including discovery of all individuals, and the opportunity to bring in possible third party indemnitors) if a class action is certified [43]. Either of these occurrences - inconsistent findings or the loss of procedural safeguards - might have a negative effect on public perceptions of the administration of justice, and must be guarded against.

c) Cost to Society

Little research has been done on the complex social, economic and political analysis that would be required to assess the cost of class actions to society. As just noted, the availability of class actions may contribute to improved public perceptions of fairness in the administration of justice. On the other hand, the cost to defendants of paying out huge awards to injured individuals may ultimately be a cost to society. For example, if the government is the wrongdoer, the award is likely to be paid with public tax dollars; if a corporation is the wrongdoer, the public may have to pay a higher price for products or services in the future; if the corporation goes bankrupt, a wide range of creditors may suffer losses because of the company's inability to pay the litigation claims and other debts. Insurance against class action litigation is becoming an issue in the business community, with cost consequences for the public.

Objectives: Deterrence of wrongful conduct

The third objective of a class action is to deter wrongful conduct by making sanctions available. Making relief accessible to persons who would not otherwise be able to sue may sanction conduct that might otherwise go unchecked. To illustrate, if one drug company is required to pay persons who suffer (eg., because it has not taken proper precautions in testing the drug before putting it on the market or has failed to warn consumers of various risks), this company (and others) will likely take more care in the future [44].

Shortcomings of modern class action regimes

Objections made by class action detractors

Support for the enactment of modern class action laws is not universal. In fact, class actions are a flashpoint for two opposing ideological perspectives: [45]

> [Critics] believe that the social costs of class actions outweigh their social benefits. They argue that reliance should be placed on individual litigation to secure financial compensation for individual losses and on government regulations to prevent wrongs. Those persons holding the other view believe that the social benefits of damage class actions outweigh their costs. They argue that the cost of individual litigation deprives many people of a remedy because they can't afford to go to court. They are not prepared to leave the enforcement of standards to government. Collective action is the only practical way for them to assert their rights.

Supporters of class action proceedings have responded to these criticisms. The now generally accepted wisdom is not to do away with class actions. It is, instead, to focus attention on improving procedural safeguards and better regulating actionable conduct in order to minimize the grounds for concern.

Objection	Response
Class action laws promote litigation by enabling actions that would not be brought under the existing law because the cost would be prohibitive.	Access to civil remedies ought not to be restricted to those claimants with financial means. No new causes of action are created, only access to existing remedies is expanded.
Many class actions lack merit.	There is no empirical data to support this assertion. Further, this criticism is no more relevant to class actions than to the civil process in general.

Class counsel are the main beneficiaries because they act under contingency fee arrangements.	In all jurisdictions except Ontario contingency fee arrangements are not limited to class actions. Further, and in any event, class counsel also bear the risk that lawsuits will fail under such arrangements; moreover courts must approve fee agreements under Canadian class action laws.
Damage awards are disproportionately high.	This objection appears to be based on experiences in the United States where the law allows for awards of punitive damages in many more situations than Canadian law and where extremely high jury awards are more common. There is no evidence to suggest that damage awards are disproportionately high in Canadian class actions.
The interests of class members are poorly served.	Canadian class action laws take precautions to meet this objection – which also appears to be based on experiences in the United States: among other measures, they require court approval of the disposition of the action by settlement or discontinuance in order to ensure that the interests of class members are satisfied.
The costs of litigating far outweigh the benefits to the class.	This is a decision every plaintiff must face, a class action allows individuals to spread the cost among many, and if the costs still outweigh the benefits they are not likely to bring the action.
Class actions invite forum shopping.	This could be a problem if class action laws in one jurisdiction are seen to offer a significant advantage over class action laws in other jurisdictions. The same applies to regular litigation.

Mass non-class Litigation

Another shortcoming of the class action is that it does not allow for multiple party litigation involving similar claims against a variety of defendants in the absence of a "common issue". For the issue to be "common", the "answer to the question must, at least, be capable of extrapolation to each member of the class or subclass on whose behalf the trial of the common issue is certified for trial by a class proceeding." [46] The answer must also "of necessity ... be capable of extrapolation to all defendants who will be bound by it." [47] This inability to accommodate all multiple party litigation situations was one of the considerations that led legislators in England to reject the idea of introducing "American-style class actions" [48]. Instead, England has adopted a scheme based on judicial discretion to fashion procedures that fit the needs and circumstances of the particular litigation.

Inter-jurisdictional concerns

Modern wrongs do not stop at provincial or even national borders. Requiring persons in different jurisdictions to bring actions seeking relief with respect to the same conduct or event is also uneconomical and inefficient. Therefore, whenever possible, it makes sense for an action commenced in one jurisdiction to allow persons in other jurisdictions to become part of it, and for courts in other jurisdictions to honour the decision.

The British Columbia legislation permits non-residents to join the class action by opting into it. The Ontario legislation is silent about the status of non-residents in class actions brought in that province. The Ontario courts have filled this silence by allowing "national class actions", that is, class actions in which the class encompasses persons resident anywhere in Canada who do not choose to opt out. The effect of a judgement on non-resident national class members will depend on the willingness of courts in a non-resident's home jurisdiction to recognize it as binding. Procedural cooperation between jurisdictions is also desirable [49]. These are next-generation law reform issues.

Conclusions

The growing complexities of litigation in modern times pose challenges for the civil justice system – challenges involving issues of access to justice, judicial economy, and respect for the administration of justice. Jurisdictions in Canada and beyond are experimenting with new approaches to meet those challenges. Modern class actions are one procedural mechanism that is showing promise. However, the legislation providing for class actions is relatively new. In order to ensure its continuing success, it will be important to collect empirical data that will allow us to monitor its workings and assess its effects over time.

Endnotes

1. *Code of Civil Procedure*, R.S.Q., c. C-25; first enacted as S.Q. 1978, c. 8, s. 3. Return to Article

2. *Class Proceedings Act, 1992*, S.O. 1992, c. 6. Return to Article

3. *Class Proceedings Act*, R.S.B.C. 1996, c. 50; first enacted as S.B.C. 1995, c. 21. Return to Article

4. *Class Action Act*, S.S. 2001, c. C-12.01 (effective January 1, 2002). Return to Article

5. "Government to draft new class action legislation," Executive Council / Justice news release, July 6, 2001, http://www.gov.nf.ca/releases/2001/exec/0706n07.htm. A Bill introduced in the Prince Edward Island Legislature in 1997 did not proceed beyond first reading. Return to Article

6. The new Rules are the product of the recommendations made by the Rules Committee of the Federal Court of Canada, in its Discussion Paper, *Class Proceedings in the Federal Court of Canada* (Ottawa: Rules Committee of the Federal Court, June 9, 2000) (hereinafter *FedCt DP*). Return to Article

7. Available at <www.ulcc.ca/en/us/> (hereinafter *ULCC Act*). Return to Article

8. Manitoba Law Reform Commission, *Class Proceedings*, Report #100 (Winnipeg: Manitoba Publications Branch, January 1999) (hereinafter *ManLRC Report*). Return to Article

9. Alberta Law Reform Institute, Report No. 85 *Class Actions* (December 2000) (hereinafter *ALRI Report*). Return to Article

10. *The Law of 50 States*, quoted in James Sullivan, *A Guide to the British Columbia Class Proceedings Act* (Toronto and Vancouver: Butterworths, March 1997) at 2-3 (hereinafter Sullivan). In addition to Federal Rule 23, individual states have introduced their own class action regimes. These regimes generally follow Rule 23, but details of the law and procedures vary from state to state. Return to Article

11. Ontario Law Reform Commission, *Report on Class Actions*, 3 vols. (Toronto: Ministry of the Attorney General, 1982) (hereinafter *OLRC Report*). Return to Article

12. *Western Canadian Shopping Centres Inc.* v. *Dutton*, 2001 SCC 46. The Court was asked to determine whether a class action could be brought under Alberta Rule 42, a "representative action" rule derived from 17th century England: see infra note 16. The Court referred approvingly to this discussion in each of the first cases it has heard under the Ontario and British Columbia class action legislation: *Hollick* v. *Toronto (City)*, 2001 SCC 68; and *Rumley* v. *British Columbia*, 2001 SCC 69. Return to Article

13. *Ibid*. at para. 33. Return to Article

14. *Ibid*. at para. 34. Return to Article

15. In a variation on this procedure, some jurisdictions provide that defendants who are in the same position in relation to claims being brought against them may be formed into a "defendant class" and defend through a "representative defendant." Return to Article

16. Most jurisdictions in Canada and elsewhere in the Commonwealth still have "representative action" rules based on the historic Chancery procedure. Although these rules permit "representative actions," they say very little about the procedure to be followed. Over the centuries, the courts have come to interpret their application restrictively, thereby greatly limiting their availability. Modern class action laws build on the historic concept of representation, but specify procedural details designed to suit modern needs and circumstances. The modern class action removes many of the restrictions the courts have placed on the historic representative action. In *Western Canadian Shopping Centres* v. *Dutton*, *supra* note 12 at paras. 25-26, the Supreme Court of Canada described some of the societal changes that make class actions legislation important in today's world. Return to Article

17. *Supra* note 11. Return to Article

18. *Hollick* v. *Toronto (City)*, supra note 12 at para. 15, summarizing the discussion in *Western Canadian Shopping Centres* v. *Dutton*, *supra* note 12 at paras. 27-29. The OLRC identified these objectives in its report, supra note 11. These objectives have been recognized by courts in Ontario and British Columbia: see e.g., *Abdool* v. *Anaheim Management Ltd.*(1995), 21 O.R. (3d) 453 at 461, [1995] O.J. No. 16, (Div. Ct.), O'Brien J., online: QL (OJ); *Endean* v. *Canadian Red Cross Society* (1997), 148 D.L.R. (4th) 158, rev'd on other grounds (1998), 157 D.L.R. (4th) 465, [1997] B.C.J. No. 1209, (B.C.C.A.), online: QL (BCJ); and *McKay* v. *CDI Career Development Institute Ltd.*, [1999] B.C.J. No. 561, online: QL (BCJ). Return to Article

19. Ward K. Branch, *Class Actions in Canada*, looseleaf (Vancouver: Western Legal Publications, December 1998); Michael A. Eizenga, Michael J. Peerless & Charles M. Wright, *Class Actions Law and Practice*, looseleaf (Toronto and Vancouver: Butterworths, June 1999). Return to Article

20. *ULCC Act, supra* note 7 at s. 4. The provisions of this Act are characteristic of the legislation that has been enacted, or recommended for enactment, in Canadian jurisdictions. Return to Article

21. *ALRI Report, supra* note 9 at 27-30, citing *FedCt DP, supra* note 6 at 15-18; and Branch, *supra* note 19 at 4-54 to 4-56, 5-46. Return to Article

22. *FedCt DP, ibid.* Return to Article

23. See text below, at heading: "Shortcomings of modern class action regimes". Return to Article

24. James Sullivan, *A Guide to the British Columbia Class Proceedings Act* (Toronto and Vancouver: Butterworths, March 1997) at 53-54. Return to Article

25. *Chace* v. *Crane Canada Ltd.* (1996), 5 C.P.C. (4th) 292 at para. 22, aff'd 14 C.P.C. (4th) 197 (B.C.C.A.); *Nantais* v. *Telectronics Proprietary (Canada) Ltd.*, (1995) 25 O.R. (3d) 331 (Gen. Div.), leave to appeal refused 25 O.R. (3d) 331 at 347 (Div. Ct.). Return to Article

26. Branch, *supra note* 19 at ¶ 4.910. See e.g., *Harrington* v. *Dow Corning Corp.*, (1996), 22 B.C.L.R. (3d) 97 at para. 49 (S.C.); *Nantais* v. *Telectronics Proprietary (Canada) Ltd.*, ibid.; and *Endean* v. *Canadian Red Cross Society, supra* note 18. Return to Article

27. *Supra* note 9 at 143-154. Return to Article

28. Although contingency fees are prohibited in Ontario under the *Solicitors Act*, R.S.O. 1990, c. S.15, section 33 of Ontario's *Class Proceedings Act, supra* note 2, creates an exemption and

allows for contingency fees in class actions. Return to Article

29. *Western Canadian Shopping Centres* v. *Dutton*, supra note 12 at para. 39, subsequently quoted in *Hollick, supra* note 12 at para. 18, and *Rumley, supra* note 12 at para. 29. Return to Article

30. *Vitapharm Canada Ltd.* v. *F. Hoffman-LaRoche Ltd.* (2000), 48 O.R. (3d) 21 (S.C.J.). Return to Article

31. *Ibid.* at para. 49. Return to Article

32. *Supra* note 21. Return to Article

33. *FedCt DP, supra* note 6 at 15, 17. Return to Article

34. *Hollick, supra* note 12 at para. 32. Return to Article

35. *Endean* v. *Canadian Red Cross Society, supra* note 18 at para. 63. Return to Article

36. *Tiemstra* v. *Insurance Corp. of British Columbia* (1996), 49 C.P.C. (3d) 139 at para. 20, aff'd 12 C.P.C. (4th) 197 (B.C.C.A.); *Bittner* v. *Louisiana Pacific Corp.* (1997), 43 B.C.L.R. (3d) 324 at para. 68 (S.C.). Return to Article

37. *Carom* v. *Bre-X Minerals Ltd.*, [1999] O.J. No. 1662 at paras. 259 and 272 (S.C.J.), online: QL (OJ). Return to Article

38. Eizenga, *supra* note 19 at §3.62 and following. Return to Article

39. (1999), 45 O.R. (3d) 389 at 399 (S.C.J.), Brockenshire J.; for more discussion see Eizenga, *ibid.* at §8.12-8.27. Return to Article

40. *Ibid.* at 400. Return to Article

41. *Ibid.* at 399. Return to Article

42. *Nantais* v. *Telectronics Proprietary (Canada) Ltd.*, *supra* note 25 at 339-40. Return to Article

43. *Sutherland* v. *Red Cross Society* (1994), 17 O.R. (3d) 645 at 652 (Gen.Div.); *Abdool* v. *Anaheim Management Ltd., supra* note 18. Return to Article

44. *Wilson* v. *Servier Canada Inc.* (2000), 50 O.R. (3d) 219 at para. 126 (S.C.J.), Cumming J. Return to Article

45. *ALRI Report, supra* note 9 at para. 91. Return to Article

46. *Harrington* v. *Dow Corning Corp.*, 2000 BCCA 605 at para. 24, [2000] B.C.J. No. 2237, online:QL (BCJ). Return to Article

47. *Ibid.* Return to Article

48. Lord Woolf, *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales*, (United Kingdom: HMSO, 1996). Return to Article

49. In *Webb* v. *K-Mart Canada Ltd.* (1999), 45 O.R. (3d) 638 at 640 (Gen. Div.), MacFarland J., dismissing the application for leave to appeal the decision of Brockenshire J., *supra* note 39, the court certified a national class and appointed referees in other provinces to hold hearings for the purpose of assessing damages and reporting back to the Ontario court. This sensible solution to

a practical problem saved class members out of Ontario from the need to come to Ontario to participate in the suit. Return to Article