

**FINAL REPORT**  
**Streamlining the Ontario Civil Justice System**  
**A Policy Forum**

Thursday, March 9, 2006, Hilton Toronto

*"The defects I identified in our present system were that it is too expensive in that the costs often exceed the value of the claim; too slow in bringing cases to a conclusion and too unequal: there is a lack of equality between the powerful, wealthy litigant and the under-resourced litigant. It is too uncertain: the difficulty of forecasting what litigation will cost and how long it will last induces the fear of the unknown; and it is incomprehensible to many litigants..."*

Lord Woolf, "Access to Justice Report" 1996

## **THE GENESIS OF THE POLICY FORUM**

Civil litigators in Ontario are increasingly concerned that the costs and delays in resolving civil disputes in our courts make our civil justice system inaccessible to average Canadians.

For many years The Advocates' Society has been so troubled by the failure of successive governments to provide adequate resources to support an efficient and robust justice system that it has devoted most of its energy to urging government to reinvest.

While the Society continues to champion the need for enhanced resources for the justice system, it also believes the time has come to foster thoughtful discussion and debate on reform measures aimed at streamlining the civil justice system.

To that end, the Society invited a diverse selection of participants from across the province -- including representatives of the bench, the bar, government, the Ministry of the Attorney General, legal organizations, academia, and the public sector -- to attend a day-long policy forum featuring panel discussions, a keynote address, plenary sessions and topical workshops. The overarching goal of the forum was to enhance access to justice by engaging the bench and the bar in the search for creative ways to promote more efficient, less expensive dispute resolution in our courts.

When Linda Rothstein, president of The Advocates' Society and initiator of the policy forum, made her opening remarks on March 9, the 176-member audience included Chief Justices Roy McMurtry, Heather Smith and Brian Lennox, Associate Chief Justice Douglas Cunningham, members of the judiciary from across the province, Attorney General Michael Bryant and members of his ministry, representatives of the Department of Justice, and a large contingent of the province's most accomplished and experienced advocates.

## THE STRUCTURE OF THE POLICY FORUM

"Streamlining Justice" was structured by its chair, Peter Griffin, to yield recommendations that could be carried forward both to those responsible for the administration of justice in Ontario and through the vehicle of the National Civil Justice Reform Conference, *Into the Future: The Agenda for Civil Justice Reform in Canada*, in Montreal on May 1-2, 2006.

The forum opened with a survey of civil justice reforms in Canada and the United Kingdom, and then focused on identifying the barriers that prevent effective reform from occurring in Ontario.

Afternoon breakout sessions allowed participants to tackle one of four pre-identified areas of concern, and a final plenary session brought forward the comments and suggestions from these breakout discussions.

## MAJOR THEMES

The problems of excessive costs, complexity and delay in civil justice systems exist throughout the common law world. Guest speakers touched on a number of common themes in their review of the specific initiatives under way in jurisdictions outside Ontario.

### Access to justice: A working definition

As a starting point, the Honourable Justice Marvyn Koenigsberg of the Supreme Court of British Columbia advanced a "working definition" for access to justice:

1. The availability of court processes that enable effective dispute resolution and adjudication;
2. The availability of court processes accessible to persons without lawyers;
3. The availability of lawyers who are trained to be effective advocates within such processes.

### The principle of proportionality

All of the guest speakers maintained that the principle of proportionality -- the idea that we should match the extent and scope of pre-trial process, and the trial itself, to the magnitude of the dispute -- should be used to inform the contours of changes to the rules of civil procedure. The 'magnitude of the dispute' is assessed in accordance with four criteria:

- the amount of money involved;
- the importance of the case;
- the complexity of the issues;
- the financial position of each party.<sup>2</sup>

### Changing the culture of the bench and the bar

Guest speakers and the panel participants also emphasized the need to foster "cultural change" amongst the bench and the bar and not just changes to the rules of civil procedure.

As the Honourable Associate Chief Justice André Wery of the Superior Court of Québec observed, there is a growing gap between what some lawyers think clients want from their legal service providers and what the clients themselves are saying: clients want their lawyers to develop a strategic litigation plan and to align their fees in accordance with the importance of the case.

2. Robert M. Goldschmid, "The Civil Justice Reform Context Behind British Columbia's Expedited Litigation Rule and the Small Claims Court Jurisdictional Limit Increase," The Continuing Legal Education Society of British Columbia, June 2005.

Panelists agreed that too many litigators, both plaintiff and defence, embark upon pre-trial procedures (motions, discovery, even pre-trials) without a focused, strategic litigation plan -- a logical map of where they want to go. Panelists and speakers worried that many advocates have lost both the ability to see the essence of a case and the courage to focus on the key issues. When combined with an increasing lack of cooperation between opposing counsel, particularly in larger centres, the result is spiralling costs.

Equally, panelists and speakers emphasized that judges must do more to manage the conduct of trials; to control lawyers who add to their length and expense by, for example, engaging in needlessly long cross-examinations.

### **One size does not fit all**

In his opening remarks, the Honourable Michael Bryant, Attorney General of Ontario, made clear that civil justice reforms need not be uniform across the province. Bill 14, the government's Access to Justice bill expressly envisages future rule changes that are limited to specific geographical areas.

It was common ground that Toronto has unique challenges in addressing the problems of delay and cost. Likewise, Ottawa and other areas in which the Ontario population is quickly growing are experiencing serious strains given their limited judicial resources. Thus, proposed changes to the Rules of Civil Procedure should be targeted at Toronto or other centres on a pilot project basis and should not be rolled out in jurisdictions where practice or procedure changes are unnecessary or unsuitable.

### **THE BRITISH COLUMBIA EXPERIENCE**

Justice Koenigsberg opened her presentation by outlining the characteristics of an accessible justice system: just results, fair treatment, reasonable costs, reasonable speed, understandable to users, responsive to needs, certain and effective.

She reported that in 2004, a 10-member Civil Justice Reform Working

Group ("CJRWG")<sup>3</sup> comprised of representatives from the judiciary, the legal profession and the Ministry of the Attorney General was established to consider ways to make fundamental changes to the B.C. Supreme Court civil process. This group met regularly to explore options for reform and was guided by the principles of accessibility, proportionality, fairness, public confidence, efficiency and justice. Their findings will be presented by June 30, 2006.

Justice Koenigsberg outlined three broad areas in which existing initiatives have proven positive.

#### **A. Court processes designed to enable dispute resolution and adjudication to proceed in an efficient manner**

##### **Expedited procedures for claims of \$100,000 or less:**

Rule 68 was brought into force on September 1, 2005 and will operate as a pilot project for two years in four of the registries of the Supreme Court. Its objective is to simplify procedures, particularly at the pre-trial but also at the trial stage, and thereby reduce the time spent litigating and the cost to litigants where the total monetary claim is \$100,000 or less.

Rule 68 removes or limits the procedures ordinarily available to civil litigants by incorporating a proportionality test into the process. Documentary discovery is earlier and more limited than in most Supreme Court actions, examinations for discovery are ordinarily limited to two hours per side, and expert evidence is typically limited to one expert each. Litigants are required to engage in an earlier and more comprehensive exchange of witness lists, evidence summaries and trial briefs.

The Rule also provides for both a case management conference and a trial management conference at which the court can make orders aimed at further streamlining the conduct of the proceeding and the trial.

3. One of the four working groups formed under the Justice Review Task Force established in March 2002 on the initiation of the Law Society of British Columbia.

## Other streamlining procedures

Justice Koenigsberg outlined a variety of processes and pilot projects aimed at increasing the efficiency of the civil cases litigated in the British Columbia Supreme Court:

- Rule 66, which "fast tracks" cases, other than family law cases, that can be tried in two days or less;
- Rule 60E, a pilot project, which mandates a judicial case conference prior to any interlocutory proceeding in a family law action;
- Rule 51A, a streamlined motion/application ("Chambers") process designed to reduce the number of applications and motions and ensure they are well prepared and efficiently argued;
- The Commercial Chambers Mini-pilot Project, targeted at commercial applications requiring at least a day of hearing.

Importantly, the Supreme Court of British Columbia has the resources to conduct active case management of all civil actions with estimated trials of 20 days or more.

## Rules 18 and 18A: Summary judgment

Rule 18A was introduced to the British Columbia Rules of Court in an attempt to expedite the early resolution of cases in the context of a summary judgment motion. It authorizes a judge in chambers to give judgment in a case where he/she can decide disputed questions of fact that would otherwise be an impediment to a successful summary judgment motion, provided it would not be unjust to do so. Disputed questions of fact are frequently resolved by affidavit evidence; judges also have discretion to order cross-examination or, in limited cases, mini-trials of an issue or issues.

Justice Koenigsberg contended that initially the rule created as many problems as it solved: the large number of summary judgment applications created delays and tended to promote "litigating by slices." As the bench and the bar developed increased sophistication in applying the rule,

its intended effect -- avoidance of conventional trials in cases where they are not justified - is now being felt.

## B. Initiatives to increase accessibility of court processes to self-represented litigants

### Small Claims jurisdictional limit increase

The provincial Small Claims Court continues to be a court in which the majority of litigants are self-represented. Effective September 1, 2005, the financial limit for matters to be heard in the court was increased from \$10,000 to \$25,000. The impetus for the increase was to enable more cases to be brought within the faster, simpler and more economical procedures of the Provincial Court.

In addition to the increase in the financial limits of the Small Claims Court jurisdiction, an amendment to the *Crown Proceeding Act* now permits civil suits against the Crown to be brought in Provincial Court where formerly such claims would have had to proceed in Supreme Court.

### The Supreme Court Self Help Centre

The number of self-represented persons appearing in Supreme Court has increased dramatically. In response, the court and others within the justice system collaborated in an effort to open a centre to provide information support and assistance to people appearing in court without representation. The Self Help Centre will operate as a pilot project for one year.

## C. Initiatives in advocacy training

Justice Koenigsberg underlined the importance of a highly skilled advocacy bar in ensuring that civil disputes are resolved effectively and efficiently. She noted that young advocates have fewer opportunities than the generation before to practise their advocacy skills, particularly trial skills.

Since 2000, members of the Supreme Court and the Provincial Court have participated as faculty members in an intensive three-day advocacy program. Senior trial lawyers also serve as faculty for this program, which is designed to enhance the advocacy skills of young advocates.

## THE QUÉBEC EXPERIENCE

Associate Chief Justice Wery offered the view that judges are no slower, and lawyers no more expensive, than they were 20 years ago. He presented statistics to demonstrate that "ordinary people have simply deserted the court process," and suggested the culprits are an increasingly slow and expensive judicial process and an outdated tariff of costs that may be awarded to the successful party.

Paradoxically, fewer litigants have not resulted in fewer hearing days (trials and motions). Trials, motions and discoveries are often much longer than they were a generation ago, such that the few who come to court have to wait longer and pay more for their case to proceed.

According to Justice Wery, the increased length of judicial proceedings is a function of increased complexity, not because the issues are themselves more complicated than years ago, but because "the way those issues are processed by the system" is more complicated.

### The reform of the Québec Code of Civil Procedure

In 2003, Québec introduced significant reforms of the Québec Code of Civil Procedure, all revolving around a trinity of goals: the simplification of proceedings, the reduction of delays, and the control of costs.

Justice Wery set out the principles (expressly set out in the Code), which "must now transcend the judicial system":

- Parties are obliged to refrain from acting with intent to cause prejudice or in an excessive or unreasonable manner;
- The courts are mandated to oversee the orderly progress and proper management of a proceeding;
- Parties are obliged to ensure the proceedings they choose accord with the principle of proportionality.

Associate Chief Justice Wery also outlined additional practice changes encompassed by the reforms. In essence, parties are required to negotiate a consensual plan for the conduct of the proceeding, failing which the case is supervised by a judge who may determine:

- a timetable that will "ensure orderly progress;" and
- how the "conduct of the proceeding may be simplified or accelerated."

### Beyond the reforms

Associate Chief Justice Wery encouraged the bar not to rely on rule changes alone to address the problems of affordability and delay; instead, to become the first "agents of change." He suggested that advocates adopt two ideas that are fundamental to a streamlined justice system: simplification and cooperation.

## THE VIEW FROM ENGLAND: LORD WOOLF'S REFORMS OF CIVIL JUSTICE

Robert Musgrove, Chief Executive of the Civil Justice Council, Royal Courts of Justice, London, England, outlined the changes made to the English civil justice system by the "Woolf Reforms," implementing recommendations made by Lord Woolf in his "Access to Justice Reports" in 1995 and 1996.

Woolf's recommendations aimed to change the culture of litigation and sought to introduce principles of openness and cooperation between the parties. He wrested control of litigation from the parties into the hands of the court, and pioneered the concept that procedure and process should conform to the principle of proportionality and that the commencement of the proceedings should be a last resort -- used after alternative dispute resolution has been tried and has failed.

### Major procedural changes

The majority of Woolf's reforms were enacted in the 1997 Civil Procedure. Those reforms also created the Civil Justice Council, which Mr. Musgrove leads, to oversee and monitor the civil justice system to ensure that the momentum of reforms is maintained in accordance with the objectives of accessibility, fairness and efficiency.

Significant procedural changes that differ from the current Ontario regime include:

1. pre-action protocols, which provide for mutual disclosure and alternative dispute resolution, and are required prior to the commencement of a civil action;
2. judicial case management by "procedural judges," which enables the court to "take charge of the progress of litigation" and allocate cases to one of the three "tracks" in accordance with their complexity;
3. a range of measures targeted at the proliferation of expert evidence including explicitly defining the expert as having an overriding obligation to the court, not a party; use of a "single joint expert" in many cases; pre-trial expert conferences where there is more than one expert, and judicial control of expert evidence.

### **The impact of Woolf**

Mr. Musgrove reported that the largest tangible impact of the Woolf reforms was the marked decrease in the volume of litigation in the High Court (a reduction of 80%) and the County Courts (a reduction of 20%). In the personal injury area, 85% of all cases are settled at the pre-litigation or "protocol" stage. Of the remaining 15% in which actions are commenced, only 3% proceed to trial.

Notwithstanding the magnitude of the changes brought about by the Woolf reforms, various opinion surveys have consistently reported the bar's widespread satisfaction with the new system. A majority of respondents believed the litigation process had been improved and welcomed the more cooperative, less adversarial culture shift that Woolf had envisaged.

Mr. Musgrove did not attempt to whitewash the consequences of increased emphasis on early resolution. He noted that the pre-action protocols had increased the costs of litigation in some cases by "front-ending" the process. In his view, the protocols promoted better-informed settlements, but at a price.

Similarly, anecdotal evidence has suggested that the system of judicial case management has increased the cost of litigation by, in some cases, creating unnecessary court attendances or requiring unnecessary procedural steps.

## **POLICY CHOICES**

A discussion of justice reform inevitably ignites a policy debate about the goals and compromises inherent in any proposal for change. Professor W. A. Bogart, of the Faculty of Law, University of Windsor, one of Ontario's leading scholars on civil procedure and access to justice, has considered these policy choices throughout his career.

In an effort to guide the discussions in the breakout groups, Prof. Bogart identified ten issues or "flashpoints" to review in assessing any particular procedural reform:

### **1. What - *precisely* - are the problems?**

At the outset, there should be a statement of the problems that is as clear, succinct, and accurate as possible. The cause of these problems should be ascertained as confidently and specifically as possible.

### **2. To go forward - look backward**

If the wheel is truly broken, then radical departures may be called for; but most good policy choices build on what has gone before. Such building does not involve unquestioning adherence to former recommendations, however, careful account should be taken of these recommendations.

### **3. Toronto / Ontario: There's a world of procedure out there**

There can be greater openness to carefully considering developments elsewhere, particularly with regard to the other provinces, the Federal Courts, and similar proceedings of administrative agencies.

### **4. One size need not fit all (but beware of balkanization)**

It can be appropriate to treat different issues in a procedurally different way. Obviously, such differentiation needs to be done with care. At the same time, isolating the cases that are at the root of any problem and treating them the way they need to be treated might point the way to effective solutions.

### **5. There's such a thing as too much of a good thing**

Policy making is strewn with examples of people seizing on a good idea -- and not knowing when to stop; not accepting that there is a tipping point where a solution, otherwise benign, can, itself, cause problems.

## 6. Less can be the best policy (sometimes)

The notion that more procedure necessarily equates with better procedure needs to be resisted. A realistic grappling with the burdens of expense, expenditure of time, and complexity of procedures recognizes that in some instances, contracting the procedural repertoire may be the strategy in achieving an appropriate balance between the burdens of procedure and the benefits that it can bestow.

## 7. If there needs to be a procedure, it'll happen

While less may be good, there can arise situations where attempts to bypass desirable procedures can cause more wrangling in the long run. If there are procedural issues that are critical to the just determination of a dispute, they will -- and should -- surface despite attempts in the name of streamlining to pave over them.

## 8. Technology: the boon / the burden

Rapidly developing technology is both a blessing and a curse. Policy makers need the assistance of those who have a thorough understanding of applicable technology and its implications as they come to grips with what Frances Cairncross so eloquently described as "the death of distance."

## 9. Access to justice: an essential element

There are many developments that underscore the commitment of the courts and the profession to access to justice. Engaging in policymaking from the perspective of those of limited means is essential in terms of enhancing justice.

## 10. Good change needs good change agents

Many good ideas have remained on the shelf for want of a champion. Change agents need to have the energy to guide policies to implementation. As important: they need to have the confidence to have the effects of change rigorously assessed and to oversee adjustments when experience suggests that the policies, in practice, need fine-tuning.

## BREAKOUT SESSIONS

To encourage discussion of four key areas of concern, participants took part in breakout groups during the forum's afternoon session. Each group

of approximately forty-five participants represented a diverse cross-section of the bench and the bar in terms of seniority, geographical representation and expertise or practice specialty. Efforts also were made to obtain a balance between plaintiff and defence lawyers.

Prior to the forum, participants were provided with a background paper prepared by their breakout group moderator, on one of the four topics: expert evidence, controlling the discovery process, summary disposition of cases, and improving the efficiency of trials.

The results of each session were reported in the plenary session that concluded the forum. Following is a summary of the conclusions and recommendations from each of the breakouts.

## Managing the proliferation of expert evidence

*Moderators: The Honourable Justice Joan L. Lax, Superior Court of Justice, and Peter C. Wardle, Wardle Daley LLP*

1. As a starting point, there was a consensus that proliferation of experts, and lengthy and uncontrolled expert testimony, is a major problem in Ontario. Many participants expressed their frustration at the absence of a mechanism to deal with issues related to expert evidence prior to the commencement of a trial.
2. Widespread concern was expressed about the failure, except in rare cases, of experts to share information with each other and the absence of any provision in the Rules for a conference of opposing experts focused on attempting to narrow the issues prior to trial;
3. Although there was agreement that expert bias is a problem in Ontario courts, there was insufficient time to discuss this issue.
4. There was a lively discussion about whether Ontario should move in the direction of the Woolf reforms in the UK and similar reforms that have been enacted in Australia. The majority of participants supported the thrust of the Woolf reforms which envisage:
  - a. opposing parties hiring a single joint expert;

- b. instructing experts in a transparent manner;
  - c. requiring experts to expressly confirm that their overriding duty is to the court; and
  - d. expert conferencing prior to trial where two or more experts are needed;
5. There was agreement that a single joint expert would be unsuitable in certain types of cases, such as medical malpractice, which frequently require the use of multiple experts in narrow, highly specialized fields.
  6. The group was not prepared to endorse the specifics of the Woolf reforms without further discussion and a better understanding of the practicalities, for example, the means by which a joint expert is selected where the parties are unable to agree.
  7. A minority of participants favoured less dramatic reform, arguing that requiring experts to certify their obligation to the court and to exchange information and attempt to narrow the issues prior to trial, combined with effective enforcement of our existing procedures, would effect the desired changes. This group also strongly supported earlier and more active case management to resolve issues related to experts and expert evidence.
  8. The group was virtually unanimous in rejecting pre-trial discovery of experts, the U.S. model, because of the fear that it would only increase the delays and costs associated with expert evidence.

### Controlling the discovery process

*Moderators: The Honourable Justice Colin L. Campbell, Superior Court of Justice; Sandra A. Forbes, Davies Ward Phillips & Vineberg LLP, and Peter H. Griffin, Lenczner Slaght Royce Smith Griffin LLP*

1. There was widespread acknowledgement that, in many cases, the discovery process mandated by our Rules is lengthy and unaffordable. This becomes an access to justice issue.
2. Most participants agreed that the most significant problems with the discovery process are largely restricted to Toronto. Participants from major centres outside Toronto, such as Ottawa and London, reported that the dis-

covery-related problems and abuse experienced by Toronto counsel rarely occur in their jurisdictions. All participants agreed that we should be careful not to impose an Ontario-wide solution for a Toronto problem.

3. There was general recognition that some kind of restrictions on the scope of discovery must be imposed in certain cases. The more difficult question was how this should be done. Do we amend the Rules or do we attempt to implement a culture change through best practices? The work of the Discovery Task Force has demonstrated that Rule amendments in this area are problematic (particularly if they are intended to apply beyond Toronto) because the bar is not, nor ever will be, unanimous in the need for such limits. Most of the group favoured best practices, at least in the short term, but there was an absence of consensus on this point.
4. Advocates must be strongly encouraged to recognize that it is their job to make the discovery process work, or civil litigation will become unaffordable except for the very rich and for large corporations. Opposing counsel must improve their lines of communication and be willing to discuss and resolve discovery-related issues at the outset of a case.
5. A large number of participants favoured time limits for oral discovery, recognizing that no uniform time limit (1 day, 3 days, 5 days) will be appropriate for every kind of case. The important point is that counsel and parties must recognize that discovery is not unlimited. Time limits also would, of necessity, improve the level of advocacy by ensuring that it is focused and consistent with a strategic litigation plan.
6. There was a general consensus that the "semblance of relevance" standard is no longer realistic and leads, in too many cases, to prolific discovery of documents and answers to questions that are never again referred to, including at trial or in settlement discussions. In many cases, this becomes too expensive. Simply put, counsel must be taught to focus and parties cannot expect a wide-ranging discovery comparable to a fishing expedition.
7. The participants recognized that the principle of proportionality is difficult to apply in the context of discovery. That said, there was consensus that it must be the governing principle with respect to e-discovery. Thus, counsel must assess what level of investigation into electronic doc-

uments is justified based on the nature of the case. There will be cases where it will not be worthwhile to spend hundreds of thousands of dollars searching out electronic documents. Counsel must resolve this issue before e-discovery commences.

8. There was considerable agreement that many discovery problems and abuses as well as discovery-related motions stem from poorly-drafted pleadings. The pleadings rules should be studied to see if a solution can be crafted.

9. Any discovery "solution" must recognize the current lack of adequate judicial resources in most jurisdictions. Extra steps or protocols should not be imposed without efficient access to the court to resolve disagreements. Efficient access should have a disciplining effect, as in Ottawa.

### Summary disposition of cases

*Moderators: The Honourable Justice John C. Murray, Superior Court of Justice, and Paul F. Monahan, Fasken Martineau DuMoulin LLP*

1. There was a broad consensus that Rule 20, the summary judgment rule, is not working.
2. There was a broad consensus that Rule 21, the Rule permitting the court, among other things, to strike a pleading that discloses no reasonable cause of action, is working.
3. There was a consensus that the Rule 20 cost sanctions (presumption of substantial indemnity costs against a losing party) are unfair.
4. The majority of the group favoured a summary judgment/trial rule, similar to Rule 18A in British Columbia, which at a minimum would allow the parties to narrow the issues for trial and, in many cases, would result in summary judgment in advance of trial. British Columbia's Rule 18A is much more permissive in encouraging summary judgment and summary trials.
5. There was widespread consensus that the rules should be amended to increase the monetary jurisdiction (from the existing \$50,000 to between

\$100,000 and \$250,000) for cases under the simplified rules procedure, provided:

- a. it is done as a pilot project;
- b. it is restricted to Toronto;
- c. it permits a brief discovery of every party of approximately two hours each.

There was little support for the use of jury notices in the context of simplified trials.

6. Many in the group favoured the imposition of reasonable time limits by trial judges provided they were not subject to significant review by the Court of Appeal.

### Managing the trial process

*Moderators: The Honourable Justice Todd L. Archibald, Superior Court of Justice, and Jessica A. Kimmel, Goodmans LLP*

1. Like the participants in the Summary Disposition group, this group was strongly of the view the existing summary trial procedure (Rule 76) needs to be improved to overcome the problem of unduly long "simplified trials." Most were of the view that the absence of discovery has caused counsel to, in effect, conduct a discovery at the trial. The group recommended that the procedures be amended to permit a two-hour discovery prior to trial.
2. This group was more cautious than the Summary Disposition group about the option of increasing the monetary jurisdiction of "simplified cases," concluding that, while there could be benefits, it required further consideration and broader consultation.
3. The majority of the group was in favour of increasing the monetary jurisdiction of the Small Claims Court to \$25,000 provided sufficient numbers of full-time judges were appointed to hear the cases. Many were concerned about the significant number of cases currently being tried in the Superior Court where the total amount claimed is \$25,000 or less. The principle of proportionality would strongly favour moving these cases to

Small Claims Court, which uses procedures that allow litigants to participate more easily without legal counsel.

4. There was widespread consensus that all too frequently trials take too long and greatly exceed their estimated length. It was widely recognized that this is often the result of poor trial management by both bench and bar and that greater discipline is required.

5. Accordingly, there was broad support for a rule or practice direction that would permit a trial management judge before the trial, or the trial judge during the trial, to set time limits for each of the trial's processes: opening, examination-in-chief, cross-examination, etc. These time limits would be set after consultation with counsel and would allow for adjustment by the trial judge where necessary and appropriate.

6. There was a broad consensus in favour of the development of best practices and targeted education about the conduct of trials, including refreshers on the rules of evidence. The bench and bar should be encouraged to familiarize themselves with these best practices, with the rules of evidence, and with the principle of "focused and effective advocacy."

## CONCLUSIONS

The Advocates' Society is committed to asking the tough questions that will allow the civil justice system to refresh in imaginative ways; to reform in order to preserve the system we hold dear. If the discussions at the policy forum are any guide, there is more consensus about the contours of proposed reform measures than many thought possible.

The Advocates' Society also is committed to a number of important next steps: emphasizing the messages from *Streamlining Justice* in our educational programs, developing best practices for management of the pre-trial and trial process, and continuing our work with the bench to identify specific initiatives that will increase efficiencies in particular jurisdictions.

We are grateful for the support we have received from so many: the generous financial support of the Law Foundation of Ontario and many of the leading law firms in the province, the encouragement of our Chief

Justices, Associate Chief Justices, Regional Senior Justices and members of the Superior Court and the Court of Appeal, the Attorney General, the Law Society, our sister legal organizations, and law faculties across Ontario.■

## The Advocates' Society extends its gratitude to its speakers and panelists:

**The Honourable R. Roy McMurtry**, *Chief Justice of Ontario*

**The Honourable André Wery**,

*Associate Chief Justice, Superior Court of Québec*

**The Honourable Justice M. Marvyn Koenigsberg**,

*Supreme Court of British Columbia*

**The Honourable Lynne C. Leitch**,

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**The Honourable Justice Susan Himel**, *Superior Court of Justice*

**The Honourable Justice Joan L. Lax**, *Superior Court of Justice*

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