Getting It Right

The Report of the Ontario Bar Association Justice Stakeholder Summit

Ontario Bar Association
A Branch of the Canadian Bar Association

TABLE OF CONTENTS

Executive Report

- Background 5
- Resources 5
- Barriers to Access 8
- Conclusion 10

Recommendations: Family Law 11

Recommendations: Criminal Law 15

Recommendations: Civil Law 21

Conclusion 25

Summit Facilitators and Presenters 26

Appendix A: Opening Plenary Speeches

- The Hon. Rob Nicholson, Minister of Justice, Attorney General of Canada 27
- The Hon. Heather Smith, Chief Justice of The Superior Court of Justice 31
- André Marin, Ombudsman of Ontario 35

Ontario Justice Stakeholder Summit Participants 38

Ontario Bar Association Town Hall Meetings 39

"Without an accessible justice system, particularly in these times, respect for the rule of law will rapidly deteriorate. The OBA recognized the necessity of engaging all justice stakeholders in the dialogue. Remarkably, as we endeavoured to do so we have found that the public are the greatest supporters of our efforts; and, in the process, those who participated came to a broader understanding of adequately resourcing Ontario's justice system. "

– Greg Goulin, President, OBA

"We have travelled the province and we have listened. Public confidence in the justice system must be earned with constant investment and innovation. We ignore calls for change at our peril."

– Heather A. McGee, Chair,
OBA Access to Justice Committee

"We have heard consistently across the province that there have been many good initiatives to deal with one-off issues, but it's time we step back, look at the entire system and find better ways to ensure access to justice."

– James Morton, Past President, OBA

EXECUTIVE REPORT

Background

Between June 24th and June 26th, 2007, the Ontario Bar Association (OBA) hosted Getting It Right – The Justice Stakeholder Summit to develop recommendations on how to improve accessibility to Ontario's legal system.

During the unprecedented three-day summit, representatives from a variety of groups, including victims' rights, poverty activists and the aboriginal community, convened to discuss issues facing Ontario's justice system such as accessibility, user-friendliness, affordability and functionality. They were joined by lawyers, judges, law professors and government representatives.

Before the Summit, the OBA hosted eight public Town Hall Meetings with local MPPs. These meetings, like the Summit, took a unique approach to public consultation by involving members of the legal community, including lawyers, judges, and stakeholder groups. The discussions and recommendations from the Town Hall Meetings formed a strong foundation for the Summit by identifying and providing a broader understanding of barriers to access to justice in Ontario.

This report summarizes the key issues and, where identified, stakeholder recommendations intended to address barriers currently limiting access to justice. The recommendations are an attempt on behalf of those whom are served by the justice system to bring positive change to the delivery of justice services.

At our Town Hall Meetings held across the province, local justice stakeholders were asked three questions:

- *What is needed to ensure fair and timely access in the justice /legal system for all Ontarians?*
- *What improvements or changes should be made to our justice system, locally and province-wide?*
- *Does our community have adequate resources to meet the needs of our citizens?*

"I understand that grassroots participants have sent the message that they want everyone to look at the whole justice system and not engage in simple 'tinkering.'"

- The Hon. Chief Justice Heather Smith

Resources

Overwhelmingly, participants identified a lack of infrastructure and financial resources across the entire system as the primary factors in creating barriers to access and in the proper functioning of Ontario's justice system.

A Shortage of Judges

One of the most pressing issues facing the justice system is the acute shortage of judges, causing significant negative implications for access to justice.

Ontario's population has increased more rapidly than the contingent of judges. The complexity of the administration of justice, together with an increasing volume of cases, severely taxes existing judicial resources, resulting in significant delays in all areas of the law.

Chief Justice Heather Smith addresses shortages in the Ontario Superior Court of Justice

Barriers to Accessing Legal Aid

Summit participants agreed that Legal Aid is under-funded and not able to fulfill properly its mandate of ensuring that all Ontarians have equal and meaningful access to the justice system.

Legal Aid is unavailable to many lower and middle income applicants because of strict qualifying standards. It is almost wholly unavailable in civil matters. As well, Legal Aid pays lawyers at rates substantially below rates in private practice. As a result, fewer lawyers can take Legal Aid cases. Litigants who do qualify for Legal Aid, particularly in rural areas, are experiencing difficulty in finding a lawyer who will act.

Even if a Certificate can be obtained, limited time allotments place further stress on both counsel and the litigant. Limited hours can reduce the likelihood of pre-court negotiations, as counsel must allocate time sparingly in anticipation of lengthy court delays.

"The first point of access to our legal/justice system is knowledge. One thing we don't think we do well enough in this province is to educate people about their entitlements and protections."

- Ronald Cronkhite, Executive Director, Lanark, Leeds & Grenville Legal Clinic

Integration of Services

Town Hall and Summit stakeholders expressed frustration at the "silos" between criminal and family court. Much attention was focused on domestic violence and intimate partner violence and their affect on children. Criminal charges usually precipitate family breakdown and it makes no sense to treat the criminal charge and family breakdown as unrelated, separate events with parallel processes.

Participants recommended cross-training for judges, police, lawyers, and all court and support personnel on issues of family law, domestic violence and cultural sensitivity on these issues.

"Spreading ourselves thinner and thinner is not the answer. It might give the look of "Access to Justice", but it would be a lie."

- Richard Owen, Executive Director, Renfrew County Legal Clinic

They also recommended that a specialty court for domestic violence be integrated with family court to allow for the sharing of databases, consistent outcomes and planned security.

Court Security

Courts, particularly in rural areas, are under-resourced and potentially unprepared in the case of a security threat or emergency. This is due, in part, to the downloading of court security to municipalities. This has strained Ontario's municipal police services, which, in the absence of proper courtroom security personnel, are called upon to provide urgent security detail to courtrooms.

Court Services and Public Education

Courts are the most expensive and perception-driven of our public judicial resources. Town Hall and Summit participants spoke universally of the need to resolve and prevent disputes before and during court processes so that our courts truly are forums for a last resort.

In order to broaden Ontario's capacity to resolve disputes, to divert disputes from trial toward alternative resolution processes and to educate citizens to present unnecessary criminal, civil and family proceedings, justice support services and community services must be broadened and public legal education must be enhanced.

Critical court support services such as probation and parole, supervised access, family mediation, child protection, youth services and mental health services are available inconsistently across the province. Services vary widely both between and within judicial districts.

We must seek opportunities for early resolution of dispute, engage in programs to prevent against recidivism and provide public legal education at all levels. This latter recommendation regarding education was a consistent recommendation of the Summit stakeholders.

"Administration of justice, be it criminal or family, requires recognition of the impediments to access. If the government chooses to fund police, the Office of the Crown Attorney, or Children's Aid Societies, they need to recognize that even more money will be required on the other side for legal aid, supervised access, counselling and support services."

- Alex Winkler, Q.C., Area Director, Legal Aid Ontario Hastings-Prince Edward

Need for Specialty Courts

Implementing specialized drug courts, mental health courts and domestic violence courts can alleviate the load on the criminal court system. These specialty courts have been a success in pilot projects in major centres and Summit participants agreed that they should be expanded across the province. However, participants noted that these courts require adequate funding and judicial education.

Overcrowded Jails

Overcrowded jails continue to pose problems in Ontario's criminal courts.

Court scheduling is adversely affected by inmates' inability to arrive on time. Defense counsel requests for extra pre-sentence credit as a result of their client serving time in overcrowded jails is having an impact on sentencing. Such extra pre-sentence credit attracts negative public reaction.

"There are many people in need who are not aware of our services. After over twenty years, we still hear new citizens telling us "I never knew you existed until now." We hesitate to publicize our services, because we would not be able to meet the demand."

- Richard Owen,
Executive Director,
Renfrew County Legal Clinic

Smaller Urban and Rural Communities

Accessibility is a particular problem for people in smaller urban and rural communities. Centralization of court facilities has meant that litigants in remote areas of the province must travel hundreds of kilometers to get to a court.
This poses additional cost and accessibility issues for rural litigants in terms of transportation, child care and missed work. This problem gets worse as satellite courts are closed in rural areas.

Barriers to Access

Access to justice is a fundamental right of all Canadians. However, a number of barriers inhibit fair and timely access to Ontario's legal system.

System Too Complex

Stakeholders and members of the public universally found Ontario's legal system to be too expensive and too complicated for the vast majority of people. There is growing inequality between wealthy litigants and poorer litigants. The system is seen as intimidating to the average user and as catering to Ontario's elite.

Professor Paul Paton of Queen's University facilitates the Civil Law Workshop.

Participants commented that the legal process was overly complex and that such complexity led to unnecessary and harmful delays. Streamlining civil, criminal and family processes is essential; eliminating redundancies is necessary.

The quest to create the perfect system has become the engine of imperfection. Many commented that the trend towards creating a perfect system, with meticulous standards of legal representation and excessive expectations for due diligence in the discovery and presentation of evidence, has resulted in lengthy processes that have become too complex. Such processes have left the system inflexible, unable to respond expeditiously to the needs of litigants and too expensive.

The Threat of Rising Rates of Self-Representation

Forty per cent of litigants in Canada represent themselves in court matters. In certain jurisdictions the proportion is higher. Anecdotal advice is that small claims courts and administrative tribunals see that almost all litigants are self-represented. In 2005-2006, criminal matters in provincial court and family law matters at all levels of court saw higher than average self-represented persons.

The number of self-represented litigants will often increase as matters progress, as many are unable to fund lengthy proceedings. This trend is growing, posing challenges to the functional and financial vitality of Ontario's court system and threatening the fundamental rights of litigants.

Self-represented litigant Kathrine Farris discusses barriers she faced accessing the justice system.

Further study is needed to understand this growing dynamic and to differentiate between those who can afford legal advice but choose to self-represent, and those who want legal counsel but cannot afford or fund a lawyer to take their case.

The growing number of self-represented litigants slows the judicial process, increases costs and jeopardizes the right of all parties to a fair trial.

Self-represented litigants often come to court without having legal advice and with little understanding of the legal system. The presiding judge must inform the litigant of the law, his or her rights and what procedures are available, placing at risk his or her role as an impartial arbiter.

Self-representation in court is based on the assumption that litigants have a basic understanding of the legal system, a basic level of legal education and are litigating in good faith. People attempting to access the system without this knowledge can be intimidated and confused. Those litigating in bad faith seize upon opportunities to confuse, delay or take unfair advantage.

Engaging counsel is the most effective screen for litigation. Counsel will divert matters to resolution, discourage unrealistic claims and narrow the legal issues to be determined. Without legal counsel, litigants can enter the judicial arena with unrealistic expectations and unfocussed and non-legal grievances.

Attempts to make the civil system more user friendly for the self-represented, such as the introduction of the new Family Law Rules, and direct accessibility of forms through the Internet and Family Law Information Centres (FLIC) have had mixed results. While document preparation is easier, the expectations of self-represented litigants can remain unaffected and highly emotional.

An unchecked dynamic of emotional reasoning, rather than legal reasoning can make our family and civil courts volatile arenas for blame and discontent, rather than facilities for objective dispute resolution.

In criminal courts, self-represented litigants, particularly those suffering from mental illnesses, are at a significant disadvantage in understanding the process and making presentations to the Court. Such vulnerability gives no advantage to either society or the victims of crime who must often endure with the accused the delays and resulting confusion.

Conclusion

Ontario's legal system is in critical need of reform.

A lack of resources in terms of judicial appointments, court facilities, justice and community support services and the under-funding of Legal Aid have combined with other challenges to create significant barriers to justice for Ontarians.

We need change: just as a health care system is there to deliver health care, Ontario's justice system is there to deliver justice. If we think health care is expensive, try disease. There comes a point in a patient's deterioration that bandages just won't work anymore. Ontario's justice system is at that stage, now.

The following are recommendations on how to increase accessibility to Ontario's justice system.

"We have a legal system, not a justice system"

- Chief of Police Armond LeBarge
York Region Town Hall

RECOMMENDATIONS TO INCREASE ACCESS TO JUSTICE IN ONTARIO

Resourcing of the Courts

- Appoint more family court judges at both the Superior Court of Justice and the Ontario Court of Justice, targeted to address the current lack of judicial resources required to meet the needs of a growing population.
- Extend the Unified Family Court to all parts of the province.
- Ensure that non-family court judges are not dealing with family court matters. Specialized judges should be dealing with family court matters.
- Include in the Unified Family Court Model a specialized court for domestic violence and youth services resulting from family breakdown, as well as community services, mediation, consulting referrals and family law education.
- Where feasible, locate such family law support services, including community policing, in one location.
- Foster cooperation amongst government ministries that deal with justice issues in order to ensure adequate funding to the family court to remediate current shortcomings of resources.
- Develop an effective and ongoing strategy to approach government for additional resources on a needs basis.

"The Family Responsibility Office was created to deal with "deadbeat dads" and has grown into an administrative nightmare often penalizing the very people it was created to protect and often unable to achieve its prime mandate."

- Alex Winkler, Q.C., Area Director, Legal Aid Ontario Hastings-Prince Edward Town Hall

Cost of Legal Services

- Eliminate the GST on legal fees and permit individuals to claim a tax deduction for legal expenses, similar to the deduction for legal fees enjoyed by corporations.
- Promote better public education on existing tax deductibility provisions for legal fees such as in child support.
- Eliminate unnecessary court attendances or procedural steps, such as First Appearances or Trial Scheduling Court.
- Study mechanisms to expedite the court process, such as court appointed experts, appraisers, child specialists and interim business receivers.

Parent Peter Holleley discusses road blocks faced when trying to act in a child's best interests.

- Expand the role of the Office of the Children's Lawyer in high conflict disputes involving children.
- Expand the role of and fund community mediation services that can divert family law and child protection disputes to resolution centres.
- Investigate and develop electronic platforms for the filing of court documents and scheduling of court matters.
- Make access to the legal system an insured process similar to healthcare.

"Many cases do not get heard on any given day and the physical space is severely limited, meaning that people are literally falling all over each other in the hallway outside the Family Court Room."

- Nicholas Roche, Lawyer, Bracebridge

Legal Aid

- Expand the eligibility criteria for Legal Aid to ensure increased accessibility for persons unable to afford legal representation, thereby ensuring that every citizen has equal access to the justice system.
- Expedite the Legal Aid application and approval process, such as placing it online.
- Provide services through a broader range of delivery models, using private lawyers, some staff offices, an expanded duty counsel program, both private and staff lawyers, supervised paralegals and other non-lawyer professionals, and public legal education.
- Increase the salary of Legal Aid lawyers and the tariff rate for lawyers accepting Certificates to attract more professionals to Legal Aid cases.
- Increase the number of hours available on Family Law Certificates.
- Increase the range of matters for which civil Legal Aid is available.

Ontario PC AG critic Christine Elliott listens to advice given during the Family Law breakout. Better education of the public was a central theme discussed by participants.

Education

- Public legal education, including seminars, informational videos, and self-help guides, should be an important component of a family law Legal Aid model. Legal Aid Area Offices, and/or expanded duty counsel offices, as well as court administration offices and Family Law Information Centres should have more informational materials available for family law litigants.

"The system is way too expensive, slow, out of touch and out of reach to possibly be able to adjudicate and act in any child's best interests."

- Peter Holleley, Parent

- Expand the Family Law Information Centre system to include online and broadband, and to be available in locations other than just courthouses, such as schools, public libraries, community centres and malls.

- Ensure that the self-represented litigants are directed to educational resources on both the procedure and substance of family law prior to hearings so that judges can remain impartial adjudicators. Such resources can be available online, through Family Law Information Centres or through duty counsel.

- Increase significantly the number of duty counsel available to provide the services now offered for family law proceedings.

- Expand information on the legal system to provide high school students in comprehensive academic courses.

- Ensure that all information available to the public on family law is written in a clear and concise format that is understandable to all persons.

- Encourage the government to provide funding for public education on precedent-setting cases in family law.

- Provide more education to judges and lawyers regarding high-conflict litigants and how to focus proceedings on legal outcomes.

"Until these issues have been addressed, all of us involved in the justice system are failing to promote and protect the best interests of our children."

- Jerome Goldhar, Durham Children's Aid Society

- Use less legal jargon and present matters in layman's terms to avoid litigant confusion and to minimize intimidation of the legal system.

- Revise "Family Law Rules" to make them more user-friendly and accessible.

Accountability

- Increase the justice system's sensitivity and responsiveness to ethno-cultural differences to address disparities in knowledge of the justice system and to attenuate conflicts with cultural or religious practice. In order to meet this objective, judges, lawyers, mediators, court support officers and administrators, securities officers and all those involved in the justice system must be given training for cultural sensitivity and awareness.

- Expand the mandate of the Ontario Ombudsman to include oversight of children's aid societies and similar public bodies.

- Encourage the government, when providing funding to agencies that offer support to individuals within the justice system, to create reports to ensure that service recipients have received timely, effective and appropriate service.

- Publish statistical surveys of court results on the Internet

Security

- Create a standard security protocol for the province. Fund this standard security uniformly through the provincial government with municipalities continuing to fund security levels above or in addition to the security protocol.

- Provide more education to service providers – judges, lawyers, therapists-in the areas of family, parenting, gender and cultural differences, with respect to domestic violence.

- Coordinate the criminal and family law systems in order to harmonize criminal and civil orders in cases of domestic violence.

- Anticipate security threats in advance of family court hearings and provide alternatives for hearings in which both the accused and the complainant are present.

Security was a major concern raised during the Family Law breakout session

RECOMMENDATIONS TO INCREASE ACCESS TO JUSTICE IN ONTARIO

Resourcing, Management and Structure of the Criminal Justice System

Judges

- Appoint more justices of the peace to alleviate the current backlog in the Provincial Offences Courts and the Ontario Court of Justice.
- Develop a strategy to address increasing volumes of traffic ticket and bylaw infractions and ensure effective processing of these matters in the courts.
- Appoint more criminal court justices at both the Superior Court of Justice and the Ontario Court of Justice to address current lack of judicial resources required to meet the needs of a growing population.
- Consider the consolidation of two levels of court with respect to criminal matters: Provincial and Superior (Federal) into one level of court to allow for operating and jurisdictional efficiencies.
- Specialized judges should be dealing with criminal court matters.
- On a priority basis, work to reduce backlogs in criminal law through the opening of additional courts, increased complement of judges and enhanced diversion programs.
- Foster cooperation amongst government ministries that deal with justice issues in order to ensure adequate funding to the criminal court to remediate current shortcomings of resources.
- Develop an effective and ongoing strategy to approach government for additional resources on a needs basis.
- Broaden the jurisdiction of justices of the peace (disclosure motions, summary conviction matters) to allow for more matters to be dealt with quickly.

"Stakeholders have been reduced to deliberating about a crisis in order to get the attention of the media, then politicians, which will then lead to funding."

- Professor James Stribopoulos, Osgoode Hall Law School

"It's great to have a wish list, but any time we have a change in process we have to look at the staffing and resource impacts on all players in the justice system. That's not happening now."

- Paul Vesa, Ontario Crown Attorneys Association

Police

- Provide police officers with a broader mandate – they should be aware of alternatives and services available in the community and should be sharing this information with those in need of it.
- Ensure that police officers work much more closely with social services agencies.
- Provide police officers with more training in the application of discretion.

Crown Attorneys

- Increase the complement of Crown Attorneys to ensure that backlogs do not develop and there is adequate time for consultations with police officers, defense counsel, victim services and the accused prior to court attendances.
- Dedicate Crown resources at the front end of the process to flush out minor matters and allow the system resources to be used for more serious matters.

Discussing ways to prevent backlogs in courts.

Bail

- Review the operation of local bail courts and implement whatever measures are required to expedite the appearance of all detained persons for a bail hearing as soon as possible.
- Establish additional bail courts in busy jurisdictions.
- Assign at least two duty counsel to each bail court and adequate court staff to busy bail courts to ensure that efficient and streamlined processing occurs.
- Where feasible, assign Crown to bail court for intervals of at least one full week's duration. As well as they should be available to meet with defense counsel prior to the commencement of court.
- Ensure that an adequate number of duty counsel are available to assist unrepresented accused at bail hearings; to ascertain the Crown's tentative position on sentence; and to provide basic legal advice to unrepresented accused on the consequences of entering a guilty plea.
- Expedite and remediate problems concerning prisoner transportation and bail court problems and procedures.
- Bail courts must be provided with computers equipped with suitable word processing programs and templates to assist court staff in preparing bail orders and related documents.

"The fact is that we are desperately short of mental health services for victims as well as the offenders. We need numbers; we need critical research so that it's not all anecdotal. We need to have a systematic approach."

- Priscilla de Villiers, Office of the Victims of Crime

- The Government of Ontario should continue to fund bail supervision or equivalent programs.
- Prohibit family members from being used as sureties for bail of accused.
- If bail is skipped, forfeit the relevant security to the benefit of the victims of the crime.
- Continue to make use of video-conferencing technology for purposes of remands to facilitate access to the court, especially in the more remote regions of the province and hope to expand our use of video wherever appropriate.

Current OBA President Greg Goulin and long-time victim's rights advocate Priscilla de Villiers

Early Intervention and Access

- Increase the number of first appearances dates in rural communities.
- Designate alternative measures programs for adults which not only enhance the efficiency of the criminal courts – by ensuring that judicial resources are available to deal with serious offences – but also improve the quality of the justice system.
- Develop and expand, where possible, programs for restorative justice. Involve community services in youth and minor offences, with the goal of restoring those who are charged to the community.
- Focus resources of the criminal justice system on more serious offences and offenders.
- Facilitate plea negotiations between the Crown and defense counsel and encourage early guilty plea.

- Modernize the prosecution service in Provincial Offences Court. Address workload issues. Undertake an operational review to identify process and structure options to improve service delivery.
- Consider eliminating preliminary inquires but strengthen disclosure resources.

Specialized Courts

- Approach the government for additional funding and resources to open several additional mental health courts, particularly in rural communities. Avoid criminalizing the mentally ill.
- Approach the government for additional funding and resources to open several additional drug courts, particularly in rural communities.
- Approach the government for additional funding and resources to open several additional domestic violence courts, particularly in rural, northern and remote communities.

- Develop mechanisms to deal with domestic violence outside of the criminal justice system.
- Institute a reverse onus standard of proof in domestic violence bail hearings.
- Implement a mandatory comprehensive risk assessment process for domestic violence bail hearings.

Corrections and Parole

- Work closely with corrections facilities and parole to create and maintain programming that will reduce recidivism and enhance community safety.

Alan Smith of Legal Aid Ontario offers advice on how we can make the system work better for those in need.

Cost of Legal Services

- Establish case flow management goals and guidelines, and monitor system performance.
- Limit the number of unproductive court appearances. Consideration should be given as to eliminating preliminary inquiries entirely.
- Provide reliable and predictable trial date scheduling.
- Investigate and develop electronic platforms for filing of court documents and scheduling court matters.

Legal Aid

- Provide all accused persons, at the time of arrest or the issuing of an appearance notice, summons or other forms of statutory release, an information-based brochure prepared by the Ontario Legal Aid Plan.
- Legal Aid Ontario should establish an expanded duty counsel program for criminal and young offender law proceedings.
- In order to increase the likelihood of an early resolution, increase the availability and mandate of duty counsel to assist accused during the initial stages of the criminal process.
- Broaden the current qualifying criteria of Legal Aid to increase access for persons unable to afford legal representation, thereby ensuring that every citizen has equal access to the justice system.
- Expedite the legal aid application and approval process, such as placing it on-line.

Current OBA President Greg Goulin raises the issue of victim's rights within the justice system.

- The system should provide services through a much broader range of delivery models, using private lawyers, some staff offices, an expanded duty counsel program, supervised paralegals and other non-lawyer professionals. There must be greater public legal education.

- Increase the salary of Legal Aid lawyers and the tariff rate for lawyers accepting Certificates to attract more professionals to legal aid cases, and to ensure that resources within criminal justice are balances between the roles of Crown Attorneys and defense counsel.

- Increase the number of hours available on criminal certificates.

- Separate budgeting for "mega cases" with costs estimated over $75,000.00 and the standard tract criminal law matters.

Education

- Enhance and expand courses in high school that study law and the legal system.

- Increase access to the Crown's office and educate the public as to the role of the Crown Attorney.

- Educate the public about the causes and affect of domestic violence, especially the detrimental affect on children.

- Ensure that there is communication between family and criminal court so that orders are consistent.

- Mandatory training must be conducted for all police and court personnel in both family and criminal court.

- Ensure that everyone, no matter what their language, mode of communication or literacy level, can understand their rights and have those rights fully respected.

- Ensure that physical and mental disabilities are not barriers to any justice or judicial process.

- Present basic legal knowledge in layman's terms.

- Educate the community on the judicial process and the responsibilities assigned to police, judges, justices of the peace, the Crown's Office, duty counsel and the role of the Courts.

Accountability

- Ensure that police, court security, victim support services, bail and parole officers and all court personnel are properly trained in accordance with the expectations of the community and the Court.

- Ensure that criminal law provides a fair process to govern the mentally challenged while protecting public safety.

- Strengthen the criminal law's capacity to protect children from abuse, neglect, sexual exploitation and child pornography.

- Ensure that the cultural needs of Aboriginals are taken into account when they come in contact with the justice system as victims or accused.

Victims rights advocate Louise Russo meets with current OBA President Greg Goulin.

Security

- Create processes for coordination between the criminal and the family law systems which would provide for the reconciling of criminal and civil orders in cases of domestic violence.

- Develop a database of those individuals who have not necessarily been convicted in the criminal court, yet have had arrests and charges laid against them with respect to domestic violence.

- Create a standard security protocol for the province. Fund this standard security uniformly through the provincial government with municipalities continuing to fund security levels above or in addition to the security protocol.

- Provide more education to judges, lawyers, therapists, etc. in the areas of family, parenting, gender and cultural differences, with respect to domestic violence.

- Anticipate security threats in advance of criminal court hearings and provide alternatives for hearings in which both the accused and the victim are present.

RECOMMENDATIONS TO INCREASE ACCESS TO JUSTICE IN ONTARIO

Resources of the Civil Courts and Administrative Tribunals

- Appoint more civil court judges at the Superior Court of Justice to address the current lack of judicial resources required to meet the needs of our growing population, particularly major urban centres such as Toronto, Brampton, Ottawa, Windsor and Thunder Bay.
- Better resource the many Administrative Tribunals which operate throughout the province.
- Develop an effective and ongoing strategy to approach government for additional resources on a needs basis.
- With an increased judicial complement reducing workloads per capita, implement more time for case management, administration and early resolution.
- Remove politically motivated decisions from the funding allocation process.
- Remove politically motivated decisions from the judicial / tribunal selection and promotion process.
- Expedite human rights complaints.
- Develop a registry for complaints against expert witnesses and lawyers within the court structure. Once a complaint has been registered, it should be investigated by a body within the court system, or the government.
- Set up a provincial arbitration system for wrongful dismissal claims, which would provide a faster and cheaper alternative to litigants than court proceedings.
- Develop alternative dispute resolution mechanisms for use in civil litigation to reduce cost/time of litigation.
- Review an increase to the civil claims limit in Small Claims Court to allow for improved access by self-represented litigants.

Canada's Attorney General Rob Nicholson spoke at the opening ceremonies. During the Civil Law breakout it was suggested that the GST not be charged for legal fees.

- Continue to make use of video-conferencing technology for purposes of conferences, motions and short hearing to facilitate access to the Court, especially in the more remote regions of the province.
- Build new courthouses and/or renovate existing locations for the better delivery of a wide range of justice services.
- Review compensation for witnesses, jurors and interpreters.

"You don't get justice when you have a mediated settlement; it's negotiation, it's bargaining, it's getting something that you can live with."

- Stan Buell, Small Investor Protection Association

Cost of Legal Services

- Eliminate the GST on legal fees and allow individuals to claim a tax deduction for legal expenses, similar to the deduction for legal fees enjoyed by corporations.
- Exclude class actions from costs rules, i.e.: neither side should be liable for costs at the end of the process.
- Reduce the number of court attendances or procedural steps.
- Study mechanisms to expedite the court process, such as court appointed experts, appraisers, and interim business receivers.
- Use paralegals to do some portions of the pre-trial preparatory work, leaving the lawyer to do the final preparation of the case. This could reduce costs and improve access.
- Promote private sector sponsorship for some aspects of the civil system – including a mediation centre.
- Investigate and develop electronic platforms for filing court documents and scheduling court matters.
- Make access to the legal system an insured process; similar to healthcare.
- Encourage the government to find innovative ways to assist in the preservation and promotion of small town lawyers.
- Provide government subsidies to decrease the elevating cost of law school in Ontario.
- Encourage mentoring systems to ensure young counsel are available and capable to take smaller civil matters at reduced hourly rates.

"The dispute resolution service is controlled by industry and we are very concerned by that. We would like to see a separate tribunal and assessment; not all cases should go to civil litigation because it's long, it's costly and it takes its toll on seniors."

- Stan Buell, Small Investor Protection Association

Legal Aid

"Seventy per cent of litigation in Ontario takes place in small claims court – there is no duty counsel available there and the vast majority of the litigants are suffering."

- Patricia Cassidy, Ontario Deputy Judges Association

- Increase the Certificates available for Civil and Tribunal matters.
- Provide duty counsel for small claims courts.
- Broaden the current eligibility criteria of Legal Aid to ensure increased accessibility for persons unable to afford legal representation, thereby ensuring that every citizen has equal access to the justice system.
- Expedite the Legal Aid application and approval process, such as by placing it online.
- The system should provide services through a much broader range of delivery models, using private lawyers, some staff offices, an expanded duty counsel program, supervised paralegals and other non-lawyer professionals, and public legal education.

Human rights advocate Keith Norton discusses recomendations at the Civil Law workshop.

- Increase the salary of Legal Aid lawyers and the tariff rate for lawyers accepting Certificates to attract more professionals to Legal Aid cases.

Education

- Improve public understanding and knowledge about the justice system through an education strategy and justice web site.
- Expand high school curriculum to enhance knowledge of the civil system, what it is designed to do and how it works.
- Centralize the sources of information for civil and administrative law.
- Ensure that the self-represented litigants are directed to educational resources on both the procedure and substance of civil law prior to hearings so that judges can remain impartial adjudicators.
- Ensure that all information available to the public on civil and administrative law is written in a clear and concise format that is understandable to all persons.

- Encourage the government to play a more prominent role in providing public education about the civil system.

- Promote education about the civil system, focusing on the fact that there is no assurance of equity in the civil system – it is about resolving disputes.

- Use less legal jargon and present matters in layman's terms to avoid confusing litigants and to minimize the amount the legal system intimidates them.

- Provide more education to judges and lawyers regarding high conflict litigants and how to focus proceedings on legal outcomes.

"Many of my clients have no clue when they come to see me that the limitation has already passed – they are working on the old limitation period which changed in 2004. There has been a lack in public education from the government."

- Arleen Huggins, Koskie Minsky LLP, Ontario Bar Association Executive Member

- Revise the "Rules of Civil Procedure" to make them more user-friendly and accessible. Work in partnership with the Ontario government to rewrite and reduce the complexity of the Court.

Accountability

- Increase the justice system's sensitivity and responsiveness to ethno-cultural differences to address disparities in knowledge of the justice system and to attenuate conflicts with cultural or religious practice. In order to meet this objective, justices, lawyers, mediators, court support officers and administrations, securities officers and all those involved in the justice system must be given training for cultural sensitivity and awareness.

- Encourage the government that when providing funding to agencies that offer support to individuals within the justice system, to create reports to ensure that service recipients have received timely, effective and appropriate service.

Osgoode Hall Law School Dean Patrick Monahan facilitates the discussion on case procedure.

Security

- Create a standard security protocol for the province. Fund this standard security uniformly through the provincial government with municipalities continuing to fund security levels above or in addition to the security protocol.

- Work with all affected ministries, provincial and federal, to enhance the integration and effectiveness of the provincial court security program, and to ensure the safety of the judiciary, prosecutors, court staff and the general public.

CONCLUSION

The Justice Stakeholder Summit was a tremendous success. The OBA found that its unique, hands-on approach to public consultation was highly beneficial for all parties involved.

Engaging the public was an exciting and rewarding venture and provided the legal community with a comprehensive picture of how the justice system in Ontario is regarded. Stakeholders were able to voice their concerns in an open forum, while lawyers shared their expertise and knowledge of contemporary issues.

The exchanges were electric. Whether it was resourcing, process failures, law reform, victim's rights, perceived biases or personal experience, every participant was a valuable contributor. All were dedicated to maintaining and enhancing confidence in our legal system. All were passionate that our system must be, and must be seen to be, dynamic, progressive and accessible to all Canadians — not just large corporations, and not just people charged with serious crimes.

Ultimately, the Justice Stakeholder Summit increased the OBA's understanding of current barriers to justice in Ontario, and clearly signaled the need for change on a variety of levels. We are all challenged to adopt our stakeholders' visions of positive reform to ensure a vital and effective justice system.

"In the workshops and interludes participants demonstrated broad and deep knowledge, great understandings, openness of mind and willingness to contribute. While being careful not to overburden anyone, it would be a pity to let such wondrous value fritter away."

- Peter Holleley, Parent

THE JUSTICE STAKEHOLDER SUMMIT PRESENTERS AND FACILITATORS

- James Morton, 2006-2007 President, Ontario Bar Association
- Heather McGee, Chair, Access to Justice Committee
- The Hon. Rob Nicholson, Minister of Justice for Canada
- The Hon. Heather Smith,
  Chief Justice of the Superior Court of Justice, Ontario
- Mr. André Marin, Ombudsman of Ontario
- Greg Goulin, 2006-2007 Vice President,
  Ontario Bar Association
- Dean Patrick Monahan, Osgoode Hall Law School
- Professor James Stribopoulos, Osgoode Hall Law School
- Professor Arthur Cockfield, Queen's University
- Professor Shelley Kierstead, Osgoode Hall Law School
- Professor Paul Paton, Queen's University
- Alfred Mamo, Practitioner

Opening Plenary Speech by

The Hon. Rob Nicholson,
Minister of Justice, Attorney General of Canada

June 24th, 2007

Thank you very much Heather and your Honour the Chief Justice, justices and the members of the Bar. Ladies and gentlemen, thank you very much for your invitation to be with you this afternoon. I am very pleased to accept your invitation and it gives me an opportunity of course to thank the Ontario Bar Association for organizing this and I can tell you that I am looking forward to whatever resolutions, conclusions or reports that you want to make from this.

I can assure you that we will give it every attention and let me thank you in advance for that. It's always a great privilege as Minister of Justice to get the opportunity to come here, and there are many wonderful things connected with this role. Just a couple of months ago I was asked to say some words about Chief Justice McMurtry and I couldn't help but think when I was asked that, what a remarkable career that he has had both in his public life and in his political life, as well as his contributions to the legal system of this country, and I thought it was a privilege for me to be able to say so. At the risk of embarrassing him, I see another individual who has had a wonderful career in both the public life and his contributions to the judicial system of this country and of course that's Keith Norton, who I see sitting at the table, and he too has had one of those careers that's been able to span both aspects which are so important to the well-being of our society. I am happy to see him.

I appreciate your theme of "Getting It Right" and you'll be discussing a wide range of issues as they relate to the justice system of this country and I can tell you to the extent that it's possible, that we in public life are doing our very best and we are committed to getting it right as well. My approach to this stems from two beliefs that I have carried with me throughout my legal career and my public career, and that is that our political and legal systems are absolutely essential in terms of making a successful society and the measure of that success is directly attributable to the extent that we meet the needs of the people that we serve. And I think we have a great deal to be proud of in both our political and legal systems. They are very often not as appreciated or indeed as understood as they should be.

I get people on a regular basis who say to me, "why isn't it more polite in the House of Commons?" and "why do the debates take the turns they do?" and I remind them of an incident that was told to me by a professor

when I was at Queen's University in the early 70's. At that time in 1972, England had just received entry into the European common market (as it was then known) and up to that point there had been an institution that continues until this day to be known as the European Parliament; the European Parliament was reputed and described to be the most polite debating chamber in the world. A place where everybody applauded everyone else; there were no interruptions; a highly civilized institution. In or about 1972, they received an influx of British members of Parliament who immediately proceeded to interrupt the speaker. Cat calls, disagreements, embarrassing questions were asked, and most observers on the continent of Europe were horrified. And we had the opportunity as members of the political science department of Queen's University, to read some of the comments and my professor and the rest of us were struck by one particular analysis from a German political scientist who started it, (it was translated of course): He said that he agreed with his colleagues in Europe that with the introduction of the British into the European Parliament, there were many aspects of it that were appalling, difficult, if not impossible to understand, but he did point out that he found it rather interesting that the British, alone of all Europeans, have had a legislative tradition that they carried on for 800 years.

And so that there may be just something worth analyzing or worth having a look at; a successful legislative process. And I have seen it myself in my life as a parliamentarian. I remember in or about 1986 getting a call at my office at the Confederation Building to say that there may be violence; there may be great difficulties on Parliament Hill as a result of a protest by Ontario's tobacco farmers and we were told to expect anything. And when we got on what were known as "the little green buses" that took us to the center block, there were barricades and I could see hundreds of people in a quite agitated state with their concerns of the tobacco industry.

The question period took place as it always does at 2:15. I had no responsibility as a back bencher, no questions to ask, and nobody was going to be asking me, so I used to find there was a perfect opportunity to have a look and observe and what I observed was this: the representatives of those individuals out on the lawn of House of Commons had packed the public galleries and they were there to see and hear what would take place on the question period. And the question period was, as it so often is, a very ruckus event. There were questions by both opposition parties, pounding of the table, yelling at the government, "What is the government going to do?" And the interesting part for me was to watch the expressions of the individuals who were there to represent their industry and were the leaders of those who were on the front lawn, and by the end of the question period they were satisfied, in my opinion, that they had been heard that somebody was listening to them.

When I got back out into the little green bus at about 3:45, the crowd on the lawn was already starting to disperse. They had gone out and they had told the individuals assembled what they had heard and they had seen and I was absolutely convinced and I am as convinced today, that if this had been a polite debating chamber where everybody applauded everybody else, they would have gone home unsatisfied and they would've believed that our political institutions aren't working for them and that they are not being heard.

So I have a great appreciation for our legislative process. I remember years ago going down to meet some students from my riding who were going to be witnessing the question period and I remember the woman who worked for me, she said "you know it always gets so crazy in that question period, maybe you should apologize in advance for what they may see or what they may hear and I said I take the exact different approach. I say you are going to get an opportunity to witness the most successful legislative system that the world has ever produced. That's what you get to see at 2:15 and if you want politeness, I suggest go to lectures, go to award ceremonies go to church – it's very polite, very nice. But that's not the system that we have.

That being said we know just as in the legal system we must continue to have a look at it to make sure it works. The Federal Accountability Act is just one such attempt to make sure that the system stays up to date and that it works. Our look at senate reform is another part of that continuing process to make sure that this great legislative process that we have continues to work, and so too with the legal system that we have. The challenge

that I have and my colleagues and the House of Commons rest, on a number of cases and a number of reasons why things have to be done. And they have to be done on a continuous basis to make sure that we have a legal system that responds to the needs and the concerns of the people of this country. Not the least of which, is that the criminal code needs to be continuously modernized.

I tell people the truth - I point out to them that in 1990 it was not arson in this country to set fire to a car but it was arson to set fire to a stack of vegetables. And the reason was that adapting the criminal code as we did in 1892 there were no cars but stacks of vegetables were a continuing concern I am quite sure for many people at that time but it illustrated to me just why we had to continuously be examining the laws of this country to make sure that they are up to date and serving people's needs.

One of the other areas that continue to challenge us and has challenged us for these last 20 years are the many technological changes. I was quite involved in the early 90's with drafting, not me personally, but the drafting of the law to make it a crime to possess child pornography. The state of the law in 1992 was very straight forward; if you sold child pornography, that was a crime. If you produced child pornography, that was a crime. Then we had a whole different category with the advent of the Internet, that there were people who were possessing this thing - downloading it off of a computer - that weren't in the business of selling it. There was no money being transacted. And these people weren't in the manufacture of it. That was a huge gap in the law. And it was a gap that of course we had to respond to. And we face that challenge today.

A couple of days ago, the day before yesterday, the senate passed the Bill that we introduced just a couple of months ago on camcording. This is the theft of people's intellectual property in a theatre. There was a gap in the law, I mean it was a crime in this country it was an offense under the *Copyright Act* for an individual to copy a movie and then to sell that commercially. Well what we found is that there were individuals who were into the business of what we call camcording and they weren't in the business of commercial redistribution afterwards. Their sole job was just for a couple of hundred dollars to record that film and then they pass it on to somebody else. And so there was a gap in the law that this new technology has created and it has created a demand for something like the Bill we put forward; a Bill to make it a crime to simply camcord.

And it doesn't stop there. We get people who report to us and you've heard it as well: People in whole areas what we call identity theft. I don't have to tell you, that if somebody steals your credit card and uses it, that is a crime. If you forge a credit card, that's a crime. But there is a whole new business out there. And these are people are collecting your personal information. And we have to close those gaps so we get at those individuals who are doing that collecting that information and passing that on to others who are in the business of committing crimes.

And so those are the challenges that we have. We have to as well respond to the directions that we are given by the Court. We have to respond to the reality of a *Charter of Rights and Freedoms* in this country. And that's a continuous role that the legislator has to play.

As you know the Supreme Court of Canada has indicated to us that we are to respond within a year to the ruling on security certificates, that we have until February to bring that procedure in compliance with the *Charter*. And this is part of the role. This is the reality of life in the 21st century and the reality of our political process to try and meet that. We have to respond to the needs and the concerns of our citizens.

I am very pleased to see Priscilla De Villiers here. She and I were at a press conference I think about little over a month ago, perhaps two months ago, in which we announced the creation of the first federal ombudsman for the victims of crime. So that we have an individual and an office whose responsibility in Ottawa is to take up those concerns, take up the cause of victims of crime. They too have a role to play in a successful legal justice system in this country. And so I am pleased to be part of that and so we try to respond to the concerns of citizens here in the city of Toronto.

You would know of the concerns that gun violence and gun crime has caused this community as it has in other communities across this country. We are trying to respond to that with Bill C10 with mandatory prison terms for individuals who commit serious crimes with guns. So too with the reverse onus on bail provisions for individuals who are involved with serious crimes with guns and so it's not surprising to me that as recently as this past week the Attorney General of Ontario reiterated to me his support for that particular piece of legislation because I think we are responding to the legitimate concerns that people have and that is the challenge that we have. And that's the challenge that you have in the theme of this, of 'Getting It Right'.

And so I can tell you we are doing our very best and it's not just on the legislative front. As Minister of Justice I look at other programs, other initiatives, to engage people, to try and break the cycle that some individuals find themselves in the crime system.

I was fascinated to get the details for instance of the Aboriginal Justice Strategy. I was fascinated because it provides an alternative to just simply incarcerating people and working with people, finding alternatives. And what fascinated me the most about it was people tell me it works. This sort of thing works.

My colleague Stockwell Day and I not long ago introduced or announced a youth gang initiative. I like ideas like that because again if we break the cycle of violence, break the pattern of criminality, we are all better off, we are all better off when individuals choose another path. And so for those issues, they have my full support, my full confidence that they do work and those are the challenges. So I appreciate the work that you have undertaken, I appreciate the work of the Ontario Bar Association and others.

I wish you well in your deliberations and I can tell you I sincerely look forward to your recommendations and your results. Thank you very much.

Opening Plenary Speech by

The Hon. Heather Smith,
Chief Justice of the Superior Court of Justice

June 24th, 2007

(Mr. Minister), Ladies and Gentlemen, I was very pleased to have received the invitation to participate in the Ontario Bar Association's Justice Stakeholder Summit. By the number of participants here, I can see the large variety of stakeholder interested you represent. It is a pleasure that so many share this level of enthusiasm for this collective goal of improving the justice system for the people of Ontario. I applaud the OBA's extraordinary efforts to facilitate the earlier series of town hall meetings that have now resulted in the present stakeholders gathering together today. This informed and empowered Summit will, hopefully, make powerfully compelling recommendations to "get it right".

Over the last few years as Chief Justice, and from the judicial perspective, I have been deeply immersed in the challenges to create an efficient and accessible justice system – one that would be a model for the people of Ontario who count on our courts to administer justice.

The challenges that we all face in our collaborative efforts to enhance the administration of justice can be difficult, but I share your confidence that they are not insurmountable. In this respect, I welcome the opportunity to engage in the dialogue about how our justice system ***can*** "get it right".

At the outset, it is worth recalling that all of the current attempts to improve the justice system are only the latest steps in a long series of efforts, over many years, to effect positive change on the justice system. I will briefly touch on what have been the major drivers of change to the justice system, both past and present before I provide a few thoughts that might aid you in your work over the next three days towards "getting it right".

Waves of Reform

Within the last 30 years, there have been at least three major "waves' of attempted reforms to the justice system, all with a view to improving the administration of justice in Ontario!

The 1st Wave – Structural Change

The first wave of change started in the 1970's and focused on much-needed major structural changes to the justice system. One, in 1972, the government adopted a recommendation to establish an intermediate civil appellate court, known as the Divisional Court of Ontario, that would also provide a forum for the effective review of government decisions. This court, which is a branch of the Superior Court, has become one of the busiest appellate courts in all of Canada.

A second very important example of structural change was the establishment, in 1977, of the Hamilton-Wentworth Unified Family Court. This endeavour started as a pilot project with join federal-provincial support, because the participants understood the need for proper backing by the province's court administration services. This pilot project became permanent in 1984 and subsequently in 1995 and 1999, the Unified Family Court expanded. At present, there are 17 Family Court sutes across the province. I will come back to this very important, but limited, Superior Court endeavour later on in my thoughts about access to justice.

A final significant structural change to the courts took place in 1989, when all of the county and district courts and the High Court were merged into one province-wide court of superior jurisdiction – what is now the Superior Court of Justice. This reform was aimed at simplifying the divisions between court levels and making more effective use of courts' administrative and judicial resources. And it has done just that!

The 2nd Wave – Process Change

A second wave of reform, starting in the 1990s, shifted its focus to the increasing public concerns about the way in which court proceedings were managed. The reality of significant backlogs in court cases in civil, family and criminal proceedings led to changes such as the introduction of Rule 76 "simplified procedure" in civil proceedings.

From a *judicial* perspective, these changes precipitated a *revolution in the role of the judge* within the court system. Judges increased their active role in pre-trial processes like case management, rather than maintaining only their passive impartial role as adjudicators at the end of the process. More and more, the functions performed by the judiciary began to occur outside the confines of the formal courtroom, in an effort to allow parties to resolve or at least narrow the issues, early on in the court process.

In my opinion, the eddies and currents of this second wave of changes to the court system have not yet crested. A number of projects are still underway. Rule 78, which provides a "light touch" case management, to replace 77 is our newest endeavour. We are continuing our efforts by making processes, like discovery, shorter and more effective, by re-examining the workings of the Small Claims Court and by reviewing the civil justice process, as undertaken by the Honourable Coulter Osbourne.

All of these changes were, and continue to be, aimed at simplifying trials and helping parties focus on the essential points of their proceedings, to achieve faster and more satisfactory resolution of their cases.

The Third Wave – Access to the Courts

The third wave of change has exploded in the last few years. Its focus is on the increased public demand and pressure for *timely and meaningful access* to the courts.

My understanding of the concerns raised at the earlier town hall meetings is very much in line with the objectives of this latest and third wave of improvement to the justice system. I understand that grass roots participants have sent the message that they want everyone to look at the whole justice system and not to engage in simple "tinkering". People fear that small changes are simply band-aid solutions. A solution in one area has simply increased pressure in another. My understanding is that people also feel that the justice system

is too "legal" and that ordinary citizens cannot understand it or access it easily. The feeling continually expressed is that the justice system is too slow, too costly and too complex.

People who represent themselves in the justice system have expressed frustration in having to do so. They have asked for alternatives to "battling it out in the courtroom". All of these concerns are very much "in sync" with the Superior Court's own current focus on promoting timely, accessible and effective court processes.

The most important example of this objective is the Superior Court current effort with its justice partners to put its judicial resources at the "front end" of it court proceedings, where cases can be most effectively resolved or simplified. Recently, the Superior Court has focused its efforts on this objective in two specific areas: criminal law and family law – vitally important areas to ordinary citizens who encounter the justice system.

In respect of the criminal justice system, the Superior Court's ***groundbreaking*** Criminal Trial management Report led our Court to mandate standardized, formal, pre-trial conferences on *every* criminal indictment within 60 days. This requires Crown counsel *and counsel for the accused person* to seriously assess their respective cases and sit down together with a judge to discuss the issues well in advance of the trial. The results of this important pre-trial change are 1) more resolutions of criminal matters before trial, and 2) where a trial is necessary, shorter, more focused and better managed trials. This pragmatic pre-trial approach leads to more realistic and effective scheduling of criminal trials. It is also our hope that this change will reduce the time it takes to *get to trial* – a true access to justice issue in the criminal context – because many cases may resolve earlier and relieve delay in the system.

Now, I turn to family law. Family law litigation affects all segments of the Ontario population. Allowing family cases to drag through the system until they are finally "battles out in the courtroom" is a totally unacceptable approach when the emotional and financical stakes are so high. Real access to justice in family proceedings must ensure that when parties enter the courthouse, they are informed and empowered to resolve their disputes with the most effective tools available. The public should have:

- access to information about the family law court process, including information and parenting sessions;
- knowledgeable staff at the court counter to guide them in the process;
- Mediation services;
- legal advice counsel;
- duty counsel;
- the other court family services identified and recommended as the minimum standard requirements for all family policy by the Canadian Judicial Council. These services are now available at all 17 Family Court sites in Ontario.

But here's the rub! The Superior Court sits on *50 sites* in this province and theirs is no reason that the information, legal assistance and other services should not be available to all Ontarians *at all 50 sites*.

But, the most important underlying need for the public is the timely access to judges at judicial case conferences that will assist families in early and effective resolution of their family disputes, avoiding the vitriolic affidavits and the motions "wars" that are so destructive of the process. Access to justice means *timely* access to the court's judges. Without further judges to properly serves the population of Ontario, the Superior Court cannot deliver on its efforts to provide meaningful early judicial intervention to resolve disputes (family, criminal and civil matters).

When we examine the Superior Court, we must remember that this Court is, in essence, a partnership between the federal and provincial governments. The success of our endeavours to make the court's process meaningful and accessible to all Ontarians can only be achieved if the Court has the *right judicial and administrative resources.*

Our partners - the provincial and federal governments – must engage with us to help achieve that goal. They must help us by providing the necessary supporting judicial and administrative resources. This is especially so, since the new Family Rules *require* all family proceedings *across Ontario* to undergo early judicial case conferencing.

This case conferencing component of the family law system requires a huge new scheduling commitment of judicial time at the front end of the family law system. This was understood by the federal government as early as December 2002, when the federal government itself proposed increasing the judicial complement pool for the hard-pressed Family Courts across the country. The federal government then tabled Bill C-51, that would have provided many additional family judges for Ontario and other provinces. Unfortunately, Bill C-51 died on the Order paper and no federal legislation was ever re-tabled to create the much-needed judicial complement pool for federally appointed judges under section 96.

As many people have heard me say many times, during the last 15-year period in which Ontario has experienced a population increase from nine to well over 12 million people. The complement of Superior Court judges for this province has lagged badly behind.

In your deliberations over the next three days, I ask you to consider the importance of the appropriate judicial complement needed to ensure that the public has timely and effective access to the justice system. I urge you to recommend this important increase to the judicial complement that Ontarians require.

Conclusion

In conclusion, people look to the courts to protect and enforce their rights. If they cannot gain ***timely*** and affordable access to the courts, then do they have meaningful access at all?

In our society, the formal manner in which people seek to enforce their rights is through the justice system. Barriers to justice may come in many forms. These include:

- the complexity of the system;
- the socio-economic status of litigants;
- language and culture;
- the length of time to obtain relief; and
- the social and economic cost to litigants of going to court.

I agree with the statement contained in the invitation to this Summit that future improvements to the justice system must be regarded holistically if the barriers to using the justice system can be surmounted. The earlier town hall meetings and this important conference are excellent initial ways to formulate ideas and suggestions for changing the justice system in a positive way.

I hope I have given you some context and thoughts about the system, from the judicial perspective, which may assist you in your work for this conference. I wish all participants here the very best as you embark on this challenging and vitally important task. I hope that you will have three terrifically successful fays filled with inspired discussion and creative proposals aimed at "getting it right", on behalf of all of us.

Opening Plenary Speech by
Mr. André Marin,
Ombudsman of Ontario

June 24th, 2007

It is a great pleasure for me to be here today to address this first Justice Stakeholder Summit. I am particularly attracted to the goal set for this summit of "seeking ways to deliver justice." One might wonder about the relevance of the office of the Ombudsman of Ontatio, as it is not part of the conventional justice system. I am not a judge, and have no power to enforce my positions on issues. I can only make recommendations. However, this advocacy role is still substantial. I am uniquely placed to address situations of government maladministration that affect thousands of Ontarians, using a process that is less cumbersome, time consuming and expensive than traditional conflict resolution through the courts.

The theme of this summit, "Getting it Right," is a familiar one for me. In fact, that is the exact title I used for my report into the Municipal Property Assessment Corporation last year. As Ombudsman, I use moral suasion to convince government administrators to "get it right."

While judges must be impartial, and litigators advocate for one side or another on behalf of their clients' interests, the Ombudsman is both impartial AND an advocate. My job is to approach cases impartially but to fight for fairness on behalf of all Ontarians.

The Ombudsman is empowered by law to make recommendations if a government decision, process or procedure is, to quote the *Ombudsman Act*, "unjust, unreasonable, oppressive" or – my favorite – simply "wrong."

Unlike the courts, which are immersed in precedent and bound to follow the law, as Ombudsman I can look at the real merits of a case, in search of fairness and reasonableness, and I can recommend solutions that are beyond the realm of the courts.

Not only can the Ombudsman's office get involved in issues of much wider scope than any court, it is surprisingly cost-efficient. For a mere 9.5 million dollars a year, the citizens of Ontario get a dedicated watchdog

that keeps an eye on the entire government and gets involved in tens of thousands of cases. Compared to the cost of trials, judicial inquiries and royal commissions, that's a downright bargain.

As the Justice Stakeholders' Summit wraps up this week, I will be issuing the Ombudsman of Ontario's 32nd Annual Report, detailing whether the government of Ontario is in fact "getting it right" in the 400 or so of its bodies that fall under our jurisdiction. Let me give you examples of our interventions in the last few years.

In the last two years, our Office has shifted its focus. We still deal with about 20,000 individual complaints a year, but we pay special attention to those that expose systemic injustices and lead to large-scale field investigations. The result has been a dramatic and profound impact on public policy affecting millions of ordinary Ontarians.

We have helped the government "get it right" in helping parents of children with special needs who required residential care, and parents seeking child support through the Family Responsibility Office. We have sparked policy reforms in drug funding and improvements to Ontario's program for screening newborn babies for potentially fatal disorders – to the point that the government now boasts that it has gone from having one of the worst programs in the world to one of the best. Our investigations have led to significant improvements in the province's handling of property taxes, support for the disabled, compensation for crime victims, funding for children's mental health services, and the lottery business.

Many of the critical issues that my Office has addressed could have wound up before the courts. Indeed, families who have faced the prospect of relinquishing custody of their children in order to get them into residential care have launched lawsuits. We tackled this issue two years ago in our report, *Between a Rock and a Hard Place*. Our 18-day investigation resulted in an additional $10 million being allocated to help children with severe special needs. An additional $20 million was allocated in last year's budget. On top of that, as of last August, the Ministry of Children and Youth Services had returned 65 children to their parents' custody.

Last year, a legal challenge of the four-month retroactivity limit on Ontario Disability Support Program benefits was announced. We didn't wait for the matter to go to court. We investigated the issue and reported back, publishing our findings and recommendations in a report, *Losing the Waiting Game*. As a result of our investigation, the government revoked the regulation that had denied people their retroactive benefits, and approved a $25-million fund to pay some 19,000 people the money they lost out on simply because it took so long to process their applications.

The Ombudsman process allows for a degree of flexibility that is simply not available through the courts. Judges are bound to consider the government's legal obligations, but the Ombudsman can consider its moral responsibilities and encourage the government to live up to them. Ombudsman investigations have resulted in increased funding for services and reimbursement of losses in circumstances where this was not strictly mandated by law, but where it was required by principles of fairness. We have also sparked changes to the law itself, where legislation was found to be unreasonable.

The judicial process is often complex and can involve lengthy delays. When a cancer patient named Suzanne Aucoin was turned down by the Health Services Appeal and Review Board for funding for her out-of-country chemotherapy treatment, she could have challenged this in court. But she knew she had no time to lose, and so instead of subjecting herself to the court process, she came to our Office last winter. We were able to obtain a remedy for her, as the Health ministry accepted our recommendation that she be reimbursed $76,000 in medical and legal costs. As well, it agreed to do a program review that has the potential of benefiting thousands of other patients.

The reality is, with the high cost of litigation, most individuals simply cannot afford to bring their concerns to court. The Supreme Court of Canada just recently ruled that there is no general constitutional right to counsel.

However, quite often the most compelling cases involve the most vulnerable members of our society – those with disabilities, the indigent, the elderly or victims of crime. It is inconceivable for them to either undertake the expense of hiring a lawyer to challenge government conduct, or to go to court without legal representation.

When fairness is at stake, the Ombudsman process works, and works well. When stakeholders in the justice system reflect on ways in which justice can be delivered, I invite you to think of ways in which the Ombudsman can be utilized. My Office is open to all – or at least I would like it to be. Unfortunately, at present, thousands of Ontarians who have serious problems with provincially-funded services are barred from bringing their concerns to my Office. This is because these critical services are deemed outside of our jurisdiction – I'm referring to services that fall within the so-called MUSH sector: Municipalities, universities, school boards, hospitals and long-term care facilities, as well as police and children's aid societies.

We receive thousands of complaints each year about these organizations that we cannot address. In the past two years, I have taken up the cause championed by Arthur Maloney, Ontario's first Ombudsman, to call for modernization of the Ombudsman's mandate to fill these glaring gaps in public oversight. Ironically, one of the rationalizations often used to suggest that expansion of my Office's mandate is unnecessary is that anyone unhappy with these institutions can always launch a lawsuit. However, as most people would readily acknowledge, this option is effectively out of the reach of millions of Ontarians. What are needed are real solutions for real people.

When patients in hospitals experience painful delays or other institutional mismanagement that impacts their care, they should not have to resort to the courts to obtain redress. When residents of long-term care facilities are mistreated, their families should not have to litigate to solve their concerns.

Every day throughout Ontario, people's lives are being detrimentally affected by the administrative misconduct of institutions that deliver these vital services. Yet they have no practical way to fight back. The few who do attempt to take on institutions within the MUSH sector find themselves pitted against formidable, well-heeled opponents who have time on their side. They are effectively denied justice, because existing systems are not capable of delivering it in a timely, inexpensive and equitable way.

I believe that modernizing the Ombudsman's mandate to include such areas as hospitals and long-term care facilities would provide an easily accessible, inexpensive and fair process for the resolution of thousands of disputes in these areas. As a society, we pay a high price when fairness is at stake and we do not provide an avenue for redress. I hope you will bear this in mind today as you ponder ways of "getting it right." We in Ontario have allowed this deplorable situation to continue for more than 30 years. It's not right, and I am confident that eventually, government will recognize that. One thing my experience has taught me is that there is one necessary step in "getting it right" – first, we must be able to recognize when, whether by intent or through ignorance, we are getting it wrong.

Ontario Justice Stakeholder Summit Participants

Adult Entertainment Association
The Advocates' Society
African Canadian Legal Clinic
Lee Akazaki, Gilbertson Davis Emerson LLP
Master Carol Albert
ARCH Disability Law Centre
Association des juristes d'expression
francaise de l'ontario
Association in Defense of the Wrongly Convicted
Association of Community Legal Clinics of Ontario
Association of Translators and Interpreters of Ontario
Canadian Bar Association
Canadian Children's Rights Council
Canadian Evangelical Christian Churches
Canadian Forum on Civil Justice
Professor Paul Carrier, Thomas M. Cooley Law School
CAW Legal Services
Centre for Addiction and Mental Health
Child Find Ontario
Child Witness Centre
Children's Mental Health Ontario
Morris Chochla, Forbes Chochla
Catherine Currie, Barrister & Solicitor
Michael Cochrane, Ricketts, Harris LLP
Community Advocacy & Legal Centre
Court Reporters Association of Ontario
Criminal Injuries Compensation Board
Criminal Lawyers Association
Thomas Dart, Burgar Rowe LLP
Department of Justice Canada
Priscilla De Villiers
Marshall Drukarsh, Green & Spiegel
Christine Elliott, MPP Whitby-Oshawa
Nicole Ewing, Advocate Assist LLP
Elizabeth Fry Society
Kathrine Farris
Fathers 4 Justice
Allen Fraser
Gregory Goulin, Goulin Patrick
Reena Goyal, Fraser Milner Casgrain
GTA Faith Alliance
Halton Multicultural Council
Peter Holleley, Parent
Arleen Huggins, Koskie Minsky LLP
Human Rights Tribunal of Ontario
Sergio Karas, Karas & Associates
Kathleen Kelly, ADR Chambers
Donald Kidd
Kids Internet Safety Alliance
Law Society of Upper Canada
Brian Lawrie, POINTTS
Legal Aid Ontario
C. Kenning Marchant, The Marchant Practice
Ministry of the Attorney General
Heather A. McGee, McGee Fryer LLP
James Morton, Steinberg, Morton, Hope & Israel
Ontario Association for Family Mediation
Ontario Crown Attorneys Association
Ontario Bar Association
Ontario Deputy Judges Association
Office for Victims of Crime
Office of the Ombudsman
Cara O'Hagan, AG-Staff
Ontario Safety League
Ontario Trial Lawyers Association
Osgoode Hall Law School
Paralegal Society of Ontario
Pro Bono Law Ontario
Queen's University
Rhonda Shousterman
Small Investor Protection Association
Alan Smith, Legal Aid Ontario
The Honourable Chief Justice Heather Smith
Society of Ontario Adjudicators and Regulators
Supervised Access Program
United Senior Citizens of Ontario
Paul A. Vesa, Crown Attorney
Louise Russo, Walk Against Violence Everywhere
Women's Abuse Council
Women's Law Association of Ontario
Women's Legal Education and Action Fund
David A. Wright

Special thanks to the workshop facilitators:

Arthur Cockfield, Queen's University
Alfred Mamo, Practitioner
Shelley Kierstead, Osgoode Hall Law School

Patrick Monahan, Osgoode Hall Law School
Keith Norton, Q.C., ADR Chambers
Paul Paton, Queen's University

Special thanks to the Ontario Bar Association Access to Justice Committee 2007:

Heather A. McGee, Chair, McGee Fryer LLP
Thomas Conway, McCarthy Tétrault LLP
Thomas Dart, Burgar Rowe Professional Corporation
Marshall Drukarsh, Green & Spiegel
Donald Kidd, SmithValeriote
David Leitch, FSCO
C. Kenning Marchant, The Marchant Practice
Dawn Melville, Balance and Melville
Norm Panzica, Practitioner
The Honourable Justice Paul Robertson
Judy M. Shea, Nipissing Collaborative Family Lawyers
Rhonda Shousterman, Practitioner
Cynthia Wasser, Wasser McArthur LLP
Peter C. West, Cooper, Sandler, West

Ontario Bar Association Town Hall Meetings

This unique concept of partnering MPPs with an OBA Co-Chair to host a local Town Hall meeting on justice issues began in Brockville in June of 2006. Plans are underway for additional Town Halls in Fall, 2008.

The local bar and all legal / justice stakeholders were invited, along with members of the public, to provide solution-based comments addressing the following three questions:

- What is needed to ensure fair and timely access to the justice/legal system for all Ontarians?
- What improvements or changes should be made to our justice system, locally and province-wide?
- Does our community have adequate resources to meet the needs of our citizens?

Brockville
Date: June 24, 2006
MPP Co-Chair: Bob Runciman
OBA Co-Chair: Paul Fournier

Collingwood
Date: September 14, 2006
MPP Co-Chair: Jim Wilson
OBA Co-Chair: Tom Baulke

Whitby
Date: October 10, 2006
MPP Co-Chair: Christine Elliott
OBA Co-Chair: Peter Dye

Lindsay
Date: November 8, 2006
MPP Co-Chair: Laurie Scott
OBA Co-Chair: Drew Gunsolus

Timmins
Date: November 24, 2006
MPP Co-Chair: Gilles Bisson
OBA Co-Chair: Fran Yungwirth

Belleville
Date: November 24, 2006
MPP Co-Chair: Hon. Leona Dombrowsky and Ernie Parsons
OBA Co-Chair: Jim O'Brien

Barrie
Date: January 25, 2007
MPP Co-Chair: Joe Tascona
OBA Co-Chair: Jim McIntosh

York Region
Date: February 16, 2007
MPP Co-Chair: Frank Klees and Julia Munro
OBA Co-Chair: Heather McGee

Pembroke
Date: March 23, 2007
MPP Co-Chair: John Yakabuski
OBA Co-Chair: Del O'Brien

Bracebridge
Date: May 23, 2007
MPP Co-Chair: Norm Miller
OBA Co-Chair: Jean Polak

For more information please contact:

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