

INTRODUCTION TO THE REPORT

1. BACKGROUND

The Task Force on the Discovery Process in Ontario was appointed by the Attorney General and the Chief Justice of the Superior Court of Justice in 2001 to undertake a comprehensive review of the province's civil discovery process, identify problems with the current process and recommend options for reform.

The impetus for this review originated with the Civil Justice Review of 1995, which questioned whether the discovery process had become too expensive and time-consuming in its current form. In particular, it noted the increase in time spent in relation to oral examinations, and the proliferation of motions relating to discovery. The Civil Justice Review proposed that consideration be given to methods for achieving a more efficient discovery process to reduce costs and delay in the resolution of civil proceedings, while preserving essential disclosure principles.

Since that time, several professional organizations have noted similar problems and have proposed reform options. To date, no comprehensive review of the discovery process in Ontario has been undertaken.

2. TERMS OF REFERENCE

The Discovery Task Force was mandated to:

- consider all aspects of the discovery process in Ontario, including documentary, written and oral discovery, and discovery-related motions;
- consider the effectiveness of the current discovery process in Ontario;
- develop options for a more efficient discovery process; and
- make specific recommendations as to which of the proposed options would best achieve the Task Force's objective.

In conducting its review, the Task Force was given the mandate to engage in consultation with representatives of the judiciary and bar across the province, collect quantitative and qualitative data, and consider the discovery processes in jurisdictions outside of Ontario.

3. COMPOSITION OF THE TASK FORCE

The Discovery Task Force is comprised of the following members and staff:

- Judicial representatives, appointed by the Chief Justice of the Superior Court of Justice:
 - Justice Colin Campbell, Superior Court of Justice, Toronto Region (Chair)
 - Justice Catherine Aitken, Superior Court of Justice, East Region

- Ministry of the Attorney General representatives, appointed by the Attorney General:
 - Debra Paulseth, Assistant Deputy Attorney General, Court Services Division (Associate Chair)
 - Ann Merritt, Director, Civil/Family Policy and Programs Branch, Court Services Division
- Bar representatives, jointly appointed by the Chief Justice of the Superior Court of Justice and the Attorney General:
 - Kristopher H. Knutsen, Q. C., Carrell & Partners, Thunder Bay
 - Susan Wortzman, Lerner & Associates, LLP, Toronto
- Project Director: Susan Charendoff, Lead Counsel, Civil/Family Policy and Programs Branch, Court Services Division
- Research Counsel: Mohan Sharma, Counsel, Civil/Family Policy and Programs Branch, Court Services Division
- Research assistants (Civil/Family Policy and Program Branch): Nayla Mitha, Counsel; Yvonne Parkhill, Articling Student; and Andrea Bell, Articling Student

4. ORGANIZATION OF THE REPORT

This Report consists of seven parts:

- Part I describes the methodology adopted by the Task Force in conducting the review.
- Part II outlines the history of the discovery process in Ontario and the current discovery rules.
- Part III compares the discovery processes in Canadian, American and other common law jurisdictions.
- Part IV sets out the characteristics of the cases surveyed in the case specific questionnaire.
- Part V reviews the findings of the Task Force with respect to Ontario's discovery process, based on quantitative and qualitative data obtained through a variety of sources.
- Part VI discusses potential reform options and the Task Force's recommendations.
- Part VII sets out the conclusions of the Task Force.