John Simonett, *Keep Justice Civil*, Trial, pg. 48 (July 2003)

LawPro Special Report, Aggressive *Behaviour, Poor Communication Prompt Claims*, *Speak out and I May Eat Your Words*" (June, 2003)

Robert P. Sokalski, *Civility in Practice* Manitoba Bar Association *Headnotes & Footnotes August/September 2000 edition Volume XXXII No. 7*

Justice Colin Campbell, "Civility" Revisited – A Matter of Expectations, O.T.L.A. The Litigator, Fall 2004 pg. 27

Report of the Ontario Civil Justice Reform Project

First Impressions that Last

*R. Lee Akazaki**

The Gordian Knot is a legend associated with Alexander the Great. It is often used as a metaphor for an intractable problem, solved by a bold stroke ("cutting the Gordian knot").

—Wikipedia

Some 15 years ago, a judge of the Court of Appeal for Ontario heard an appeal from a registrar's order dismissing the appeal of a litigant for failing to perfect her appeal. The appellant lacked the legal ability to do so, and she had long run out of lawyers prepared to act for her. Instead of upholding the registrar's order, the judge first waived the requirement to file an appellant's factum. He then ordered the respondent to perfect the appeal for her. This way, at least, the appeal could be heard on the merits.[1] This was very much "thinking outside the box," before that phrase fully crept into our vernacular. In the first half of the 1990's, an order requiring a party to instruct its lawyers to help an opponent would unquestionably have exceeded the judge's fundamental jurisdiction in an adversarial system of justice. As unpalatable as it was to the respondent, the decision was an inescapably practical solution to litigation deadlocked between an appellant's inability to satisfy a procedural formality and the paramountcy of her day in court. The judge was the Hon. Coulter Osborne. The lawyer for the burdened respondent, ordered to help the appellant, was me.

On November 22, 2007, Mr. Osborne, now retired from the court, having served as Associate Chief Justice of Ontario and continuing in public service as the Province's Integrity Commissioner, delivered his long-awaited report as head of the Ontario Civil Justice Reform Project. His task was no less than an overhaul of Ontario's beleaguered civil justice system.

Mr. Osborne proved once again that he was not afraid to challenge conventional thinking in order to unblock procedural impediments to the access of parties, both represented and acting for themselves, to the civil justice system. His complete report, available on the web site of the Ministry of the Attorney General, should be required reading for all jurists expecting to continue working in this area. Beyond the list of recommendations, his background analysis is a bold and detailed appeal to the best practices of our legal training.

The Osborne report starts appropriately with a historical review. This is helpful because those who lived through two decades of major court reform will identify how civil justice has been transformed in this jurisdiction. The report recognizes that, despite new problems, the reforms were successful.

Today, a collaborative approach to procedural justice has changed the culture of civil litigation to the point that Mr. Justice Osborne's ruling requiring a respondent to help an appellant prepare an appeal would not be considered out of step with the adversarial system.

In the 1990's, however, litigation before the good ship Ontario Court (General Division) was sailing straight into a perfect storm. Its motion courts were bursting at the seams as the bench and the bar were still coming to grips with the "new" Rules of Civil Procedure. Civility among practitioners was plunging to new depths. The District, County and High Courts were still labouring under consolidation. Experimentation with automobile tort reform ensured that whiplash cases were diverted into a no-fault administrative tribunal, only to be replaced with more complex catastrophic personal injury litigation. In 1990, *R. v. Askov* shocked the courts into allocating scarce judicial resources from the civil system to relieve the criminal case load. The civil trial "Blitz" became part of the litigation lawyer's day at the office.

In 1996, the *Ontario Civil Justice Review* and the CBA's *Report of the Task Force on Systems of Civil Justice* called for nothing short of a wholesale modernization of the civil justice system and the *culture* of litigation. Most of the recommendations in these reports were eventually implemented by the courts of Ontario, and all but a stubborn few would agree that we cannot return to the way it was.

Yet 10 years later, the cost of litigation and institutional delays both ballooned out of control. With all of the goodwill in the world, the solutions implemented to solve the crises of the 1990's were themselves creating their own problems.

Enter the Hon. Coulter Osborne, appointed by then Attorney-General Michael Bryant to lead the 2006 Civil Justice Reform Project. The OBA was quick to respond and to lead, and assembled a broad-based task force to respond to the Project.[2] The product of the task force's work was a submission to the Project which drew upon wide input from the diverse Section Executives. Those familiar with the OBA submission will recognize much of this work woven into the Osborne recommendations. Today we pause to congratulate the OBA for helping to shape the future course of civil justice in Ontario. Tomorrow, the work of transformation begins.

* *R. Lee Akazaki, Gilbertson Davis Emerson LLP*, (416) 979-2020.

[1] A judge of the Supreme Court of Canada was not so charitable with the court's time, and refused to extend the time to apply for leave to appeal: *Wong v. Thomson, Rogers*, [1995] S.C.C.A. No. 165

[2] The OBA Task Force was chaired by Peter Henderson and consisted of Section representatives Morris Chochla (Insurance), Gaylanne Phelan (ADR), Susan Heakes (Trusts and Estates), Tom Dart (Family) and Lee Akazaki (Civil Litigation). The task force was supported by OBA Executive Director Steve Pengelly and Louise Harris, Director of AGR and Communications. We also received generous input from both sides of the personal injury litigation bar, in Dan Reisler (Canadian Defence Lawyers), and Richard Halpern (Ontario Trial Lawyers Association).