Speaker: Justice Thomas McEwen

First of all, to Chief Justices, Justices and honoured guests, I would like to express my appreciation in being included in this inaugural meeting of JPRN and thanks to colleagues in the Singapore court for all their hard work. My name is Thomas McEwen and I sit in Toronto, Ontario in Canada in the Superior Court which is our main trial division for commercial, civil, criminal, class actions and family matters.

In Toronto we are split into teams in the different areas of law. I am the head of the commercial team which deals only with commercial disputes and insolvency matters. I am joined by this morning by Ms Laura Craig who is senior counsel in the office of our Chief Justice Geoffrey Morawetz. Chief Morawetz oversees the over 300 judges in our province of Ontario. I am very pleased that Ms Craig has agreed to participate in this endeavour with me and thank her for joining us today at a very early hour here in Toronto.

I have had a long outstanding interest in case management and judicial dispute resolution, and that is why the Chief asked me to participate in this important initiative. Case management and dispute resolution have taken on much greater importance in the past 5 to 10 years in Toronto, and Ontario in general. There has been a significant increase in the number of cases being brought to our court which has created issues with timely and affordable access to justice. At the same time, we have not seen a proportionate raise in the complement of judges which has increased the stress on the judicial system. COVID of course, as we all know, only exacerbated these problems. In the past 2 years, on the commercial list in Toronto, insolvency and commercial matters rose about 25 percent. There is a much greater demand and therefore a greater strain on our resources. We are constantly striving to ensure time outs to motions, applications and trials are reasonable and that cases can be resolved as quickly and proportionately as possible, before legal costs become significant and impede resolution.

Here in Canada, we very much look forward to hearing from the other jurisdictions and I made a few notes when I was hearing from our colleague in Australia as to what techniques they are employing to manage cases and particularly dispute resolution ideas. Over the past 5 years or so in Toronto and other regions in Ontario, we have attempted to better manage cases and resolve them as quickly as possible by introducing a number of strategies. I'd like to share a few examples with you.

First, on a micro or a smaller level, we introduced chambers appointments to all civil cases. Lawyers in any civil case can obtain a prompt 15-minute chambers appointment before a judge in their chambers to appear informally to resolve minor issues such as timetabling, or modest production issues, to keep cases moving forward. Again, on a smaller level we have amended our rules of civil procedure- those are the rules that govern how civil cases are run in Ontario- to allow for case conferences. These conferences take place before a judge and usually last 30 to 60 minutes. Typically, the parties file brief memoranda, 3 to 5 pages or so, outlining issues in disputes. There are no formal motion records, affidavits or any such filings. At the conference, our rules of civil procedure allow the judge to make procedural orders, grant interlocutory relief and convene a settlement conference amongst other things. Of course, one of the the purposes of these conferences, the settlement conference, is the key. This allows for quick resolution of minor disputes between the parties and keeps them focused on resolution.

On a more significant level we have also amended our rules of civil procedure to allow for dedicated case management. This has been going on for about 5 years although some jurisdictions had embraced it earlier. Here one judge will manage the entire case including settlement conferences and judicial mediation aimed at resolution right up until trial. If the matter does not settle, another judge will conduct the trial. The goal here is to minimize procedural wrangling, motions and to promote settlement and early resolution. Virtually, all significant cases in Toronto are case managed at this time and as the Chief Justice alluded to, we are also trying to manage those smaller cases that cry out for early resolution before legal costs become punitive, and sometimes exceed the amount in dispute making settlement much more difficult if not impossible.

A few years ago, we also initiated a pilot project called "One Judge Model". This is similar to the case management that I just referred to. The difference here is that one judge oversees all stages in litigation,

including the trial, with the exception of the settlement conference, so it is flipped around a bit and the case management judge now does the trial and not dispute resolution. The thought here is that the judge can handle all of the interlocutory disputes without formal motions and the parties, knowing the judge will conduct the trial, will act sensibly throughout. That judge will also keep an eye on when dispute resolution should be undertaken by another judge.

Both of these case management models are designed to move cases along as quickly as possible with minimal, formal interlocutory motions before one judge towards settlement or if necessary, trial. The key here is speed, minimizing costs and focusing on resolution at the right time.

These are four examples of steps that we have taken. They all have their strengths, and they have some weaknesses. We also have undertaken other steps, for example all civil cases undergo a private mediation with a qualified mediator before they can get a trial date or pre-trial date to discuss judicial resolution. So, on the civil list there are two kicks of the can, the first being private mediation and second judicial mediation.

We also have a process on our commercial list where lawyers can apply for judicial dispute resolution at any time. We conduct a 15 or 30 minute conference for the judge to determine if the case is ripe for settlement. Sometimes cases are just not quite ready, and judicial mediation too soon sometimes can cause more harm than good. Timing is key.

That is a general overview of how we are generally approaching cases in Toronto and Ontario. Fortunately, only about 5 percent of our civil and commercial cases go to trial. But even this small number produces a great strain on judicial resources because, as we all know, trials seem to be getting longer and longer. The strong feeling here in Ontario is that we have to continue to improve our approach to case management and judicial dispute resolution. Otherwise access to justice will be eroded- perhaps significantly. It is becoming more costly,and longer, to get to trial every year. We are always fighting against those two problems. That is why we have introduced the aforementioned methods of trying to manage the issues and doing the best we can in the circumstances.

So that is what we are doing here in Ontario. I very much look forward to hearing the other ideas from the other jurisdictions and the strategies you have developed. Again Ms Craig and I are delighted to be here.