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Ontario’s Civil Rules Review: A Comprehensive Overhaul Proposed for Ontario’s Rules of Civil Procedure

Lara Jackson, Christopher Horkins, Kayla Smith

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“Bold reforms are required. The stakes are high. The system needs to be re-thought from the ground up.”[1]

Ontario's *Rules of Civil Procedure* may be heading for major changes impacting the way that all civil and commercial disputes in Ontario are litigated.

On April 1, 2025, the Civil Rules Review Working Group (CRR), a task force struck by Ontario’s Attorney General and the Chief Justice of the Ontario Superior Court of Justice to consider proposed reforms, published its Phase 2 Consultation Paper outlining a new procedural model for Ontario's civil justice system. The proposals reflect a complete overhaul of Ontario’s existing procedures for the adjudication of civil claims which aim to make court proceedings more efficient, affordable, and accessible by reducing complexity, delays, and litigation costs.

These reforms, if adopted, would apply to all civil cases before the Ontario Superior Court of Justice, excluding the Small Claims Court with modifications for proceedings with unique considerations (such as class proceedings, insolvency, non-contentious estate proceedings, and applicable Indigenous claims).

Perhaps the most striking proposed change is the complete elimination of oral examinations for discovery through the adoption of a new “up-front” evidence model. Under the new model, parties would be required to deliver written affidavits from all anticipated trial witnesses outlining their case in chief immediately following the close of pleadings, together with copies of key documents relied upon and any known adverse documents, with limited rights to make further document requests through an arbitration-style “Redfern Request” procedure. Parties will no longer have the right to examine opposing parties before a court reporter in advance of trial.

The shift to this “up-front” evidence model also entails a move away from the current “relevance” standard for document disclosure, where parties are required to conduct extensive collection and review processes to disclose any documents in their possession, power, or control which may be relevant to an issue in dispute. For parties involved in complex commercial disputes in the digital age, this standard often imposes intensive and expensive document review obligations resulting in the production of tens or even hundreds of thousands of documents, most of which will have no bearing on the outcome of a dispute.

The proposals also call for the increased use of judicial case conferencing to streamline cases and eliminate the time-consuming motions culture that has become predominant. All cases will come before a judge for a "Scheduling Conference" or "Directions Conference" within one year of being commenced, with the potential for additional case conferences if needed. The mediation aspect of judicial pre-trials will be fully outsourced to mandatory external mediation in most cases so that "Trial Management Conferences" are focused solely on pre-trial housekeeping.

The Civil Rules Review Working Group has stated that the goal of these proposed reforms is to have civil cases decided within two years of being commenced – which, based on today's standards, would be a significant improvement.

To help with digesting the lengthy and detailed report, we have prepared a summary of the proposed changes below:

A. Pre-litigation protocols (PLPs): A new pre-litigation protocol for specific cases, such as personal injury claims, debt collection claims, and testamentary disputes. PLPs will mandate the early exchange of information and specific relevant documents and require parties to make a genuine effort to resolve their disputes before starting court proceedings.

B. Commencing a claim: A single point-of-entry to initiate a claim via a new standard online fillable claim form, replacing the current choices of either an action or application, thereby eliminating all-too-common disputes over converting inappropriate applications to actions.

C. One-Year Scheduling Conference: All cases will be assigned a scheduling conference approximately one year after claim issuance.

D. Service: Four key changes:

i. Defendants must confirm acceptance when a claim comes to their attention by any means;

ii. Defendants who breach their service-related duties will face costs equal to the higher of actual service costs or $2,500;

iii. Email service will be permitted as alternative to personal service; and

iv. Service will be allowed on any lawyer communicating with the claimant on the defendant's behalf regarding the subject matter of the claim, regardless of formal retention or instructions to accept service.

E. Amending Pleadings: Amendments to pleadings will be permitted by right until witness statements and documents are delivered. After that, amendments will require consent or leave of the court.

F. Default Proceedings: Claimants must serve a Notice of Default giving defendants 14 days to respond seeking to have the default set aside. If a default is set aside, the claimant will be presumptively entitled to full indemnity costs and the court will set a peremptory deadline for delivery of a defence. Non-responsive defendants face default judgment without further notice. There will be a stricter threshold than currently imposed for setting aside default judgments given the additional response opportunity.

G. Discontinuing an Action: Claimants may discontinue actions at any time by serving a Notice of Discontinuance without court leave, subject to potential costs.

H. Discovery Process: The proposed new model eliminates oral examinations for discovery in favour of the exchange of sworn (or affirmed) witness statements early in the proceeding. It also transitions from a relevance-based standard of disclosure to a modified reliance-based standard, one that requires parties to disclose the documents upon which they intend to rely to prove their case as well as all known adverse documents in their possession, control, or power. The definition of “adverse” remains in development. Supplementary disclosure will be available through arbitration-style “Redfern Schedule” requests and limited written interrogatories.

I. Presumptive Summary Hearings: Certain cases required or authorized to proceed by way of application pursuant to statute or current Rules 14.05(3)(a) - (g.1) will proceed directly to Directions Conferences to schedule the exchange of materials, as necessary, followed by a paper-based dispositive hearing.

J. Reforming Motions Practice: Three different types of relief for the proposed new interlocutory motions process:

i. Direction: procedural matters to be presumptively decided at Directions Conferences (e.g., bifurcation of trial, document production requests);

ii. Motion: matters requiring fuller evidence or legal submissions decided at formal motions (e.g., security for costs motions, motion for a certificate of pending litigation);

iii. Relief: a residual category with no presumption, to be decided by Directions Conference or a formal motion as required (e.g. motions to strike, document requests with privilege objections).

K. Pre-Trial and Trial Procedure: The settlement portion of pre-trials will be outsourced to mandatory mediation for all non-summary matters. Trial Management Conferences will be established as standard events for trial planning. Joint chronologies will replace Agreed Statements of Facts and Requests to Admit. Mandatory Joint Books of Documents and Glossaries will be required for all trials.

L. Expert Evidence: The proposed reforms include codifying standards for expert admissibility, requiring experts to provide a sworn attestation in their reports in place of the current acknowledgment of expert’s

duty form, expanding and encouraging the use of joint experts, pre-trial expert conferences to determine areas of agreement and disagreement, and standardized report formats. Expert evidence will also be presented sequentially by issue at trial following the testimony of all fact witnesses. Non-jury trials may use filed reports for evidence-in-chief.

M. Delay: Fixed court appearance dates will be established and adjournments will be significantly reduced. If a party fails to attend a fixed hearing date, the court shall strike the defaulting party's document. A Delay Penalty (a fixed amount imposed for each day the defaulting party is in breach) will follow a missed interim deadline.

N. Costs: The proposals include a presumption of partial indemnity costs for most matters, and a presumption of full indemnity costs for certain prescribed situations.

O. Post-Trial Processes and Appeals: The new rules would provide clear definitions of final versus interlocutory orders to clarify appeal routes and eliminate common disputes over appellate jurisdiction and leave requirements. A relaxed leave to appeal test for interlocutory orders is also proposed.

If adopted, the CRR's proposals will fundamentally change the way that civil and commercial disputes are litigated in Ontario courts. While the reforms proposed may seem drastic, the delays and prohibitive costs associated with maintaining the status quo are clearly unacceptable and warrant the consideration of serious reforms.

The Working Group is accepting comments and feedback with respect to its proposed reforms until June 16, 2025. Following the consultation, the CRR's intention is to deliver a final proposal in July 2025 with the proposed reforms entering into force effective January 1, 2026.

Cassels will continue to monitor developments in this area in order to best advise clients on navigating their disputes under the potential new regime. If you have questions or concerns about the proposed reforms and how they might impact your ongoing or anticipated disputes, please contact a member of the firm's Litigation Group.

Christopher Horkins *was a member of the Expert Evidence subgroup of the CRR and was involved in developing the proposals at Part 10 of the Phase 2 Consultation Paper.*

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[1] Civil Rules Review Phase 2 Consultation Paper, at pg. 5, available here: https://www.ontariocourts.ca/scj/files/pubs/Civil-Rules-Review-2025-phase-two-EN.pdf.

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