A New Vision for Litigation:

Your Guide to the Proposed Civil Justice Reforms in Ontario

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Contents

Summary of Proposed Changes to the *Rules of Civil Procedure* in Ontario

STAGE	CURRENT *RULES*	PROPOSED *RULE* CHANGES
Overall Timelines	› Dismissal of actions if not set down for trial within 5 years of issuing the claim, subject to extensions › No standard timetable for litigation steps (production of documents, examinations for discovery, etc.)	› Judicial conference within 1 year of issuing the claim (Summary Track and Trial Track) › **Default timetables for all steps** before 1-year judicial conference (Summary Track and Trial Track), unless otherwise ordered (e.g., document production, witness statements, expert evidence timetable) › **Final Dispositive Hearing to occur within approximately 2 years** of issuing the claim
Pre-Litigation	› No *Rules* requirements › Addressed by case law (e.g., obtaining pre-litigation discovery (*Norwich*) orders	› Prescribed **"pre-litigation protocols" (PLPs)** starting with certain kinds of cases (e.g., personal injury, debt collection) and expanding to include a "general PLP" for all civil matters with some exceptions › Codifying when **pre-litigation discovery** is available in the *Rules*
Pleadings	› Proceedings started as either actions (to proceed to trial) or originating applications (to proceed to a hearing on a paper record)	› **All proceedings started using a single, online Notice of Claim form** › Claimants select which of three "tracks" the matter will proceed on (Application Track, Summary Track, or Trial Track), which determines the kind of Dispositive Hearing

STAGE	CURRENT *RULES*	PROPOSED *RULE* CHANGES

Document Discovery	▸ For actions, parties produce all relevant documents within their power, possession, or control
	  ▸ Documents referred to in a pleading produced on request
	▸ For applications, evidence via affidavits and out-of-court cross-examinations
		▸ "Up-front evidence model" for the disclosure of documents and witness statements earlier in the proceeding
		▸ **Claim-Based Disclosure: Parties produce all non-public documents referred to in their pleading**
		▸ **Primary Disclosure:**
		  ▸ **Reliance Documents** (all tracks): documents upon which the party intends to rely to prove its case
		  ▸ **Witness Statements:**
		  ▸ (all tracks) of each witness on whom the party intends to rely
		  ▸ (Trial Track) high-level summary will-say statements for non-party witnesses
		▸ **Supplementary Disclosure:** Parties exchange any **additional requests for specific documents** (Trial and Summary Tracks), or request documents at out-of-court cross-examinations (Application Track)

Oral Examinations	▸ In actions, oral examinations for discovery
	▸ In applications, out-of-court cross-examinations of affiants
		▸ **Application and Summary Tracks:**
		  ▸ No oral examinations for discovery
		  ▸ Exchange of "Discovery Request Charts" for additional document requests or written interrogatories
		▸ **Trial Track:**
		  ▸ Parties exchange schedules for "focused examinations" in the Primary Disclosure phase
		  ▸ "Focused examinations" of up to 90 minutes (with additional time for third or fourth parties)
		  ▸ As an alternative to focused examinations, written interrogatories of up to 50 questions

STAGE	CURRENT *RULES*	PROPOSED *RULE* CHANGES

Expert Evidence	▸ Default exchange of expert reports within 90 or 60 days before pre-trial conference
	▸ Expert qualifications and admissibility of expert evidence dealt with under case law
		▸ Defining categories of expert witnesses in the *Rules* (litigation experts, participant experts, and non-party experts)
		▸ Codifying requirements for the admissibility of expert evidence in the *Rules*
		▸ **Use of Joint Experts** retained by all parties where expert is opining on economic loss or care costs in personal injury matters, and real estate/property valuations of primarily developed land
		▸ Duty for litigation experts to exercise independent, impartial, and objective judgement, and a "two-strikes-you're out" rule prohibiting experts found to have breached their duties twice from providing expert evidence
		▸ Standardized format for litigation expert reports
		▸ Requirement for opposing experts to meet before trial and prepare a joint report on areas of agreement and disagreement (required in Trial Track; may be ordered in Summary Track)
		▸ **Application and Summary Tracks:**
		  ▸ Expert reports exchanged in the Primary Disclosure Phase (approx. 5 months after issuance of Notice of Claim for claimant and 8 months for defendant)
		▸ **Trial Track:**
		  ▸ Parties exchange schedules for the delivery of expert reports in the Primary Disclosure phase

STAGE	CURRENT *RULES*	PROPOSED *RULE* CHANGES

Judicial Conferences	▸ Judicial case conferences may be convened as needed
	▸ Pre-trial conference to be held within 180 days after an action is set down for trial unless otherwise ordered
		▸ System of **Scheduling Conferences** for scheduling issues only, **Directions Conferences** for interlocutory disputes and other pre-Dispositive Hearing issues, **Trial Management Conferences** (Trial Track) to replace existing Pre-Trial Conferences
		▸ **Application Track:**
		  ▸ Notice of Directions Conference to be served with Notice of Claim to set **Directions Conference** on at least 10 days' notice
		▸ **Summary Track:**
		  ▸ **Directions Conference** to be scheduled within 10 days of the close of pleadings to set Dispositive Hearing (Summary Hearing) date, timetable for Primary and Supplementary Disclosure, cross-examinations, mediation, expert conferencing (if ordered), and factums
		▸ **Trial Track:**
		  ▸ **One-Year Scheduling Conference** to be scheduled following the close of pleadings, targeted for approximately one year after being scheduled
		  ▸ At One-Year Scheduling Conference, judge will confirm that up-front evidence model steps completed, order schedule for exchange of expert reports, schedule mediation if not scheduled, facilitate settlement discussions, set Trial Management Conference date, set schedule for delivery of sworn witness statements for witnesses who provided will-say statements, and set a trial date targeted within 12 months of the One-Year Scheduling Conference
		  ▸ **Scheduling Conference** may be set instead of, or in addition to, One-Year Scheduling Conference in certain circumstances
		  ▸ Proposal to engage senior members of the bar as **Case Management Officers** to conduct select conferences

STAGE	CURRENT *RULES*	PROPOSED *RULE* CHANGES
Motions	▸ Parties may bring motions as they see fit, subject to the *Rules* ▸ All motions commenced by Notice of Motion, with affidavit evidence and out-of-court cross-examinations if required ▸ In practice, some procedural and other issues dealt with at judicial case conferences, particularly on the Commercial List	▸ All requests for interlocutory relief to be subject to a **Directions Conference**, except certain categories (e.g., contested motions to presumptively be heard in writing, requests for urgent interlocutory relief ▸ Directions Conference judge will dispose of most interlocutory disputes, or may direct a formal motion in certain circumstances ▸ Certain relief, such as contesting jurisdiction or striking a claim, to be dealt with at an early Directions Conference to be requested by the moving party ▸ Streamlined Directions Conference materials consisting of an Interlocutory Relief Form and written submissions of no more than 10 pages which include both evidence and legal argument ▸ Streamlining and simplifying certain common motions (e.g., motions to strike pleadings, pleading amendment motions, dismissals on consent, discovery disputes)
Pre-Trial Procedures & Mediation	▸ Pre-Trial Conference before a judge, where the potential for settlement is discussed ▸ Mandatory mediation in certain areas (e.g., Toronto), and in certain types of actions (e.g., some estates matters)	▸ **Mandatory mediation** out of court for all Trial Track and Summary Track matters, subject to certain exceptions ▸ **Trial Management Conferences** for all Trial Track matters, to deal with only trial management issues and not settlement discussions ▸ **Binding judicial dispute resolution** on the consent of the parties and with Court approval at a Directions Conference

Trial / Hearing	▸ For Originating Applications, a hearing on a paper record (with possibility of live evidence or the trial of an issue)
	▸ For Actions, a trial with live evidence (with possibility for "hybrid trial" with some affidavit evidence)
		▸ **Application and Summary Tracks:** Summary Hearing on a "Paper Record+" for summary proceedings, allowing the presiding judge the discretion to allow limited oral evidence if necessary
		▸ **Trial Track:**
		  ▸ A trial hearing presumptively hearing all fact evidence first, and then all expert evidence
		  ▸ In non-jury trials, the expert report will presumptively be read into evidence and testimony will focus on areas of disagreement between the experts
		  ▸ Evidence-in-chief of party witnesses presumptively oral, and limited to the "four corners" of the party's witness statements, productions, and any focused examination
		  ▸ Evidence-in-chief of non-party witnesses presumptively by witness statement (non-jury trials) or oral (jury trials)

STAGE	CURRENT *RULES*	PROPOSED *RULE* CHANGES

Post-Hearing Processes	▸ Costs awarded at judge's discretion based on factors set out in the *Rules*
	▸ Enforcement of orders via enforcement mechanisms in the *Rules* (e.g., garnishment, seizure and sale, etc.)
	▸ Appeals to Divisional Court or Court of Appeal based on nature of order
		▸ **Costs:**
		  ▸ Defining "partial indemnity" (60% of actual fees) and "full indemnity" (100% of actual fees) costs scales in the *Rules*
		  ▸ **Codifying that partial indemnity costs are presumptively available**, with discretion for the presiding judge, and full indemnity costs are presumptively available in certain circumstances (e.g., the unsuccessful party engaged in egregious conduct like deceiving the Court, or the proceeding or motion was frivolous, vexatious, or an abuse of process)
		▸ **Enforcement:** Simplifying processes and removing procedural barriers for writs of seizure and sale and garnishment
		▸ **Appeals:**
		  ▸ Codifying a **complete list of orders appealable** to the Court of Appeal
		  ▸ Merging interlocutory orders with final orders at the end of a proceeding, giving a right to appeal interlocutory orders at the time they are given and at the end of a proceeding
		  ▸ **Relaxing the standard for granting leave to appeal** interlocutory orders to the Divisional Court
		  ▸ Separating rules for appeals to the Court of Appeal, Divisional Court, and Superior Court of Justice

Strategic Insights & Practical Steps for In-House Counsel

Dramatic changes have been proposed for Ontario's *Rules of Civil Procedure*. Now that the final recommendations from the Civil Rules Review Working Group have been released, in-house counsel teams should be thinking about steps that may be needed to ensure their business can transition seamlessly to a new litigation procedure. We have set out some considerations for in-house teams to help prepare for a smooth transition.

OVERVIEW OF THE PROPOSED FRAMEWORK

The Civil Rules Review Working Group, established by the Ontario Superior Court of Justice and the Ministry of the Attorney General, has proposed significant reforms to the *Rules of Civil Procedure* in the Civil Rules Review Final Policy Report. The proposed changes aim to create a more efficient and accessible civil justice system. Our overview of the proposed changes and key differences from the existing *Rules* can be found here.

The proposed changes are still under review by the Attorney General. The timing, extent, and specifics as to how the proposed changes will be implemented are not clear. However, if the proposed recommendations are adopted in any fashion, the conduct of litigation in Ontario will fundamentally change for both lawyers and their clients.

While litigants and lawyers await the Attorney General's response, we have compiled steps that in-house legal teams can consider taking now to assist with an eventual transition, particularly in light of three key elements of the proposals.

KEY ELEMENTS OF THE PROPOSED FRAMEWORK

1. **Mandatory Pre-Litigation Protocols:** The proposed *Rules* mandate the early exchange of information and key documentation and require parties to make a genuine effort to resolve disputes before starting court proceedings. Specific protocols are proposed for personal injury, medical negligence, and contractual disputes, as well as a general protocol applicable to all remaining civil matters with exceptions for specified claims and parties seeking urgent relief.
2. **Fixed Timelines for Case Resolution:** The proposed *Rules* aim to ensure most cases reach a substantive hearing within two years, with prescribed judicial check-in points. Hearing dates will be fixed, with adjournments granted only in exceptional circumstances.
3. **Up-Front Evidence Model:** The proposed *Rules* significantly curtail oral examinations for discovery, replacing them with sworn witness statements exchanged early in litigation. They also replace the traditional relevance-based discovery process with a reliance-based standard, requiring parties to disclose documents they intend to rely on, with a follow-on process for additional document requests.

STRATEGIC INSIGHTS & PRACTICAL STEPS FOR IN-HOUSE COUNSEL

Steps in-house counsel and clients may consider taking now fall into three broad categories: litigation strategy; financial considerations; and people, process, and technology.

Litigation Strategy

1. **Clear the Docket of Lagging Cases:** Now is the perfect time to assess your current litigation caseload and determine which cases can be expedited or resolved to clear your docket before the proposed *Rules* come into effect. This will create capacity for managing new cases under the proposed *Rules* and help you navigate what will likely be an initial period of uncertainty in the courts. Simplifying your docket and focusing on the most critical cases will ensure your department is well-prepared for the transition and that you can deploy limited legal team resources most efficiently.
2. **Consider Relative Advantages of Claims Before or After Transition:** To the extent you are aware of a claim your company currently has against another person or entity, consider (or seek an opinion about) whether it is more advantageous to initiate litigation now or wait until the new *Rules* are in place. Evaluate which regime—current or forthcoming—best suits the cases you are considering bringing while keeping limitation periods in mind.

3. **Review Insurance Coverage & Confirm Litigation Claims Process:** With mandatory pre-litigation protocols and reduced time frames to defend and lead evidence, legal departments must act swiftly to ascertain coverage or insist on a coverage determination. Consider thoroughly reviewing your insurance policies to understand coverage scope and exclusions. Strengthen relationships with insurers by maintaining open communication and regularly updating them on potential claims. Streamline your internal processes for providing timely notice, designating specific team members and using standardized templates.
4. **Optimize Process for Hiring Outside Litigators:** Reduced timelines will require retaining external counsel quickly. Establish clear criteria and processes for selecting litigation counsel. Review and ensure that your standard terms for engaging external counsel position you well for fast and smooth onboarding. Consider identifying preferred law firms for litigation, or claim types, that you can rely on for swift and effective legal support.

Financial Considerations

1. **Review Budgets to Address Potential Front-Loading of Costs:** One of the aims of the new *Rules* is to reduce overall costs by condensing litigation timelines. To achieve this, there will likely be increased cost earlier in litigation due to early delivery of sworn witness statements and document disclosure. Consider the specific costs associated with preparing sworn witness statements in budgets and adapt discovery-based costs to the up-front evidence model and two-phase document production process. You can likely significantly reduce expenses related to oral examinations and procedural motions.
2. **Consider Impact on Reserves:** Review and update your process for setting and managing reserves related to litigation claims to ensure adequate funds are available to cover potential legal costs, including settlements, judgments, and fees. If the *Rules* are amended as proposed, we expect faster resolution of cases through settlement or judgment. On the positive side, shorter litigation timelines should reduce uncertainty in litigation cost projections. Reserves analyses should include consultation with external counsel and financial advisors.

People, Process, & Technology

1. **Consider Early Case Assessment Processes:** Develop criteria to identify key documents and critical internal witnesses early and easily. Relevant documents must be preserved for review, even if not produced. Streamline processes for early case assessment and management to handle the increased demands of early case preparation, including potential increased demands on the time of businesspeople.
2. **Revisit Internal Resources & Roles:** Ensure your team is adequately staffed to handle increased demands of early case preparation and active case management under the new proposals. This includes what will likely be a temporary increase in resources needed to manage a period of transition, as some cases proceed under the old *Rules*. Consider the distribution of roles and responsibilities, and the need to hire or train additional personnel.
3. **Train Your Team to Understand the Changes:** Conduct training sessions to familiarize your team with the proposed *Rules* and procedures once they are finalized. Emphasize the importance of early and thorough preparation of witness statements and document disclosure. Consider leveraging your external litigators for assistance.
4. **Enhance Data Storage for Quick Access:** Given the importance of rapid access to and disclosure of documents under the proposed *Rules*, review and update your business' data storage and document management systems. The proposed changes will require prompt access to key documents, making organized data management and search systems essential. Consider updating data retention and litigation hold policies to align with a modified reliance-based discovery model.

CONCLUSION

The proposed changes to Ontario's *Rules of Civil Procedure* represent a significant shift in litigation. By preparing for these changes and adapting your litigation strategies, your in-house counsel team can manage the transition and continue to achieve successful outcomes in your commercial litigation portfolio. Collaborate with your external counsel to ensure a seamless transition and leverage the new framework to enhance your litigation management practices.

Expert Analysis

Expediting Justice: Pre-Litigation Protocol in the Proposed Changes to the *Rules of Civil Procedure* in Ontario

Key changes to the proposed *Rules of Civil Procedure* include the introduction of a Pre-Litigation Protocol (PLP) for early settlements and mandatory mediation to enhance efficiency and accessibility in the civil justice system in Ontario. We've outlined key takeaways for in-house counsel.

Read more here.

Up-Front Evidence: A New Era in Discovery Proposed by the Civil Rules Review in Ontario

The Civil Rules Review Working Group's efforts at bold reform to the *Rules of Civil Procedure* are most apparent in the proposed full-scale redesign of the discovery process from a relevance-based model to an up-front evidence model, which proposes to streamline the litigation process by requiring parties to present key evidence early on. We explain what that entails and it's impact on litigation timing and costs.

Read more here.

Motions Practice Transformed: What the Proposed Civil Justice Reform in Ontario Means for Litigants

Proposed reforms to the *Rules of Civil Procedure* include key changes for motions practice, including the introduction of Directions Conferences and a new "Three-Track Litigation System" from the Final Policy Report released in December 2025. Discover how these changes will impact litigation management and what in-house counsel teams need to know.

Read more here.

Trials on Trial: A New Vision for Adjudication in Ontario

If the Civil Rules Review Working Group's proposed reforms to the *Rules of Civil Procedure* (summarized here) are adopted, trial practice in Ontario will undergo significant changes. We discuss the Final Policy Report's "Three-Track Litigation System" as well as key proposed changes for summary hearings, paper evidence in non-jury trials, oral evidence in chief, and expert evidence. We comment on its potential impact for litigators and litigants and what in-house counsel need to know.

Read more here.

Proposed Changes to the Rules for Expert Witnesses: Cooperation, Conferencing, & Consequences

In its Final Policy Report, the Civil Rules Review Working Group proposed radical changes to the way expert witnesses are treated before and during trial, including—most controversially—a call for experts to be jointly appointed and instructed by opposing parties. We discuss the three major changes to the current regime regarding presumptive joint experts on "financial issues", mandatory expert conferencing, and resequencing and shortening the presentation of expert evidence at trial, and its implications for experts and litigants.

Read more here.

About Lenczner Slaght

Widely recognized as Canada's leading litigation practice, we have successfully represented clients' interests in some of the most complex, high-profile cases in Canadian legal history. Our lawyers are distinguished by their depth of courtroom experience, appearing regularly at all levels of the federal and provincial courts and before professional and regulatory tribunals, as well as in mediation and arbitration proceedings. We bring expert strategy — backed by rigorous research, skilled data management, and solid administrative support — to demanding cases in all areas of litigation. In short, we're expert litigators.

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