

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

STAGE	CURRENT RULES	PROPOSED RULE CHANGES
Overall Timelines	<ul style="list-style-type: none"> <li>Dismissal of actions if not set down for trial within 5 years of issuing the claim, subject to extensions</li> <li>No standard timetable for litigation steps (production of documents, examinations for discovery, etc.)</li> </ul>	<ul style="list-style-type: none"> <li>Judicial conference within 1 year of issuing the claim</li> <li><b>Standard timetable for all steps</b> before 1-year judicial conference (e.g., document production, witness statements, expert evidence timetable)</li> <li>Final Dispositive <b>Hearing to occur within 2 years</b> of commencement issuing the claim</li> </ul>
Pre-Litigation	<ul style="list-style-type: none"> <li>No <i>Rules</i> requirements</li> <li>Addressed by case law (e.g., obtaining pre-litigation discovery (<i>Norwich</i>) orders)</li> </ul>	<ul style="list-style-type: none"> <li>Prescribed <b>“pre-litigation protocols” (PLPs)</b> starting with certain kinds of cases (e.g., personal injury)</li> <li>Codifying when <b>pre-litigation discovery</b> is available in the <i>Rules</i></li> <li>Proposal to <b>increase Ontario’s basic 2-year limitation period to 3 years</b></li> </ul>
Pleadings	<ul style="list-style-type: none"> <li>Proceedings started as either actions (to proceed to trial) or originating applications (to proceed to a hearing on a paper record)</li> </ul>	<ul style="list-style-type: none"> <li><b>All proceedings started using a single, online form</b></li> <li>Type of Dispositive Hearing (Summary Hearing on a paper record or Trial model “live evidence hearing”) determined later               <ul style="list-style-type: none"> <li>“Presumptive Summary Proceedings” (similar to existing originating applications) which proceed to a Summary Hearing</li> </ul> </li> </ul>
Document Discovery	<ul style="list-style-type: none"> <li>For actions, parties produce all relevant documents within their power, possession, or control               <ul style="list-style-type: none"> <li>Documents referred to in a pleading produced on request</li> </ul> </li> <li>For applications, evidence via affidavits and out of court cross-examinations</li> </ul>	<ul style="list-style-type: none"> <li>Initial Disclosure: Parties <b>produce all non-public documents referred to in their pleading</b></li> <li><b>Primary Disclosure: Within 1 year</b> all parties produce:               <ul style="list-style-type: none"> <li><b>Witness statements</b> of all witnesses they plan to rely on</li> <li><b>Documents they rely on, and any “Adverse documents”</b> they know about</li> <li>Proposed timetable for expert evidence</li> </ul> </li> <li>Supplementary Disclosure: Parties exchange any <b>additional requests for specific documents</b></li> </ul>

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Oral Examinations	<ul style="list-style-type: none"> <li>➤ In actions, oral examinations for discovery</li> <li>➤ In applications, out of court cross-examinations of affiants</li> </ul>	<ul style="list-style-type: none"> <li>➤ <b><u>No oral examinations for discovery</u></b></li> <li>➤ Limited written questions (interrogatories) to other parties</li> </ul>
Expert Evidence	<ul style="list-style-type: none"> <li>➤ Default exchange of expert reports within 90 or 60 days before pre-trial conference</li> <li>➤ Expert qualifications and admissibility of expert evidence dealt with under case law</li> </ul>	<ul style="list-style-type: none"> <li>➤ Defining categories of expert witnesses in the <i>Rules</i> (litigation experts, participant experts, and non-party experts)</li> <li>➤ Codifying requirements for the admissibility of expert evidence in the <i>Rules</i></li> <li>➤ <b><u>Use of Joint Experts</u></b> retained by all parties</li> <li>➤ Requiring opposing experts to meet before trial and prepare a joint report on areas of agreement and disagreement</li> <li>➤ Agreed-upon schedule for the exchange of expert reports or timetable for exchange of expert reports set at Directions Conference</li> </ul>
Judicial Conferences	<ul style="list-style-type: none"> <li>➤ Judicial case conferences may be convened as needed</li> <li>➤ Pre-trial conference to be held within 180 days after an action is set down for trial unless otherwise ordered</li> </ul>	<ul style="list-style-type: none"> <li>➤ Scheduling Conference to be held within 1 year of commencement (or earlier if needed)</li> <li>➤ <b><u>Directions Conference to be held within 1 year</u></b> of commencement if: <ul style="list-style-type: none"> <li>➤ The matter is going to a Summary Hearing; or</li> <li>➤ A party seeks relief beyond merely scheduling</li> </ul> </li> <li>➤ <b><u>Directions Conference to deal with interlocutory disputes, the type of Dispositive Hearing, and orders governing expert evidence</u></b>, among other things</li> </ul>
Motions	<ul style="list-style-type: none"> <li>➤ Parties may bring motions as they see fit, subject to the <i>Rules</i></li> <li>➤ All motions commenced by Notice of Motion, with affidavit evidence and out of court cross-examinations if required</li> <li>➤ In practice, some procedural and other issues dealt with at judicial case conferences, particularly on the Commercial List</li> </ul>	<ul style="list-style-type: none"> <li>➤ No motions to be brought before a Directions Conference. The Directions Conference Judge may schedule further Directions Conference(s) or motion(s)</li> <li>➤ Many issues previously resolved by <b><u>motions to be resolved in Directions Conferences</u></b> on limited records</li> <li>➤ Different procedures for different types of relief: <ul style="list-style-type: none"> <li>➤ Procedural relief: Directions Conference (e.g., document production)</li> <li>➤ More substantive relief: formal motion (e.g. a request for security for costs)</li> <li>➤ Residual category: Directions Conference or in a formal motion (e.g. striking a claim, disputes about claims of privilege)</li> </ul> </li> </ul>

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Pre-Trial Procedures & Mediation	<ul style="list-style-type: none"> <li>➤ Pre-Trial Conference before a judge, where the potential for settlement is discussed</li> <li>➤ Mandatory mediation in certain areas (e.g., Toronto), and in certain types of actions (e.g., some estates matters)</li> </ul>	<ul style="list-style-type: none"> <li>➤ <b><u>Mandatory mediation</u></b> out of court for all matters not proceeding to a Summary Hearing</li> <li>➤ Trial Management Conference for all matters not proceeding to a Summary Hearing, with a prescribed checklist of items to be addressed</li> <li>➤ Judicial settlement conferences in appropriate circumstances</li> </ul>
Trial / Hearing	<ul style="list-style-type: none"> <li>➤ For Originating Applications, a hearing on a paper record (with possibility of live evidence or the trial of an issue)</li> <li>➤ For Actions, a trial with live evidence (with possibility for “hybrid trial” with some affidavit evidence)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Summary Hearing on a “Paper Record+”, for summary proceedings, allowing the presiding judge the discretion to allow limited oral evidence if necessary</li> <li>➤ Trial / live evidence hearing for other proceedings</li> <li>➤ <b><u>Default elimination of live testimony in chief</u></b> at trial other than from parties</li> </ul>
Post-Hearing Processes	<ul style="list-style-type: none"> <li>➤ Costs awarded at judge’s discretion based on factors set out in the <i>Rules</i></li> <li>➤ Enforcement of orders via enforcement mechanisms in the <i>Rules</i> (e.g., garnishment, seizure and sale, etc.)</li> <li>➤ Appeals to Divisional Court or Court of Appeal based on nature of order</li> </ul>	<ul style="list-style-type: none"> <li>➤ Costs: <ul style="list-style-type: none"> <li>➤ Defining “partial indemnity” (60% of actual fees) and “full indemnity” (100% of actual fees) costs scales in the <i>Rules</i></li> <li>➤ <b><u>Codifying which scale of costs are presumptively available</u></b>, with discretion for the presiding judge</li> </ul> </li> <li>➤ Enforcement: Simplifying processes and removing procedural barriers for writs of seizure and sale and garnishment</li> <li>➤ Appeals: <ul style="list-style-type: none"> <li>➤ Codifying a <b><u>complete list of orders appealable</u></b> to the Court of Appeal</li> <li>➤ <b><u>Relaxing the standard for granting leave to appeal</u></b> interlocutory orders to the Divisional Court</li> </ul> </li> </ul>