

A New Vision for Litigation:
Your Guide to the
Proposed Civil Justice
Reforms in Ontario

Contents

MAIN

- ◆ Summary of Proposed Changes to the *Rules of Civil Procedure* in Ontario
- ◆ Strategic Insights & Practical Steps for In-House Counsel

EXPERT ANALYSIS

- ◆ Expediting Justice: Pre-Litigation Protocol in the Proposed Changes to the *Rules of Civil Procedure* in Ontario
- ◆ Up-front Evidence: A New Era in Discovery Proposed by the *Civil Rules* Review in Ontario
- ◆ Motions Practice Transformed: What the Proposed Civil Justice Reform in Ontario Means for Litigants
- ◆ Trials on Trial: A New Vision for Adjudication in Ontario
- ◆ The Digital Shift in Ontario Courts: Proposed *Rules* for a Tech-Driven Future

ABOUT LENCZNER SLAGHT

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"> 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.) 	<ul style="list-style-type: none"> Judicial conference within 1 year of issuing the claim Standard timetable for all steps before 1-year judicial conference (e.g., document production, witness statements, expert evidence timetable) Final Dispositive Hearing to occur within 2 years of commencement issuing the claim
Pre-Litigation	<ul style="list-style-type: none"> No <i>Rules</i> requirements Addressed by case law (e.g., obtaining pre-litigation discovery (<i>Norwich</i>) orders) 	<ul style="list-style-type: none"> Prescribed “pre-litigation protocols” (PLPs) starting with certain kinds of cases (e.g., personal injury) Codifying when pre-litigation discovery is available in the <i>Rules</i> Proposal to increase Ontario’s basic 2-year limitation period to 3 years
Pleadings	<ul style="list-style-type: none"> Proceedings started as either actions (to proceed to trial) or originating applications (to proceed to a hearing on a paper record) 	<ul style="list-style-type: none"> All proceedings started using a single, online form Type of Dispositive Hearing (Summary Hearing on a paper record or Trial model “live evidence hearing”) determined later <ul style="list-style-type: none"> “Presumptive Summary Proceedings” (similar to existing originating applications) which proceed to a Summary Hearing
Document Discovery	<ul style="list-style-type: none"> For actions, parties produce all relevant documents within their power, possession, or control <ul style="list-style-type: none"> Documents referred to in a pleading produced on request For applications, evidence via affidavits and out of court cross-examinations 	<ul style="list-style-type: none"> Initial Disclosure: Parties produce all non-public documents referred to in their pleading Primary Disclosure: Within 1 year all parties produce: <ul style="list-style-type: none"> Witness statements of all witnesses they plan to rely on Documents they rely on, and any “Adverse documents” they know about Proposed timetable for expert evidence Supplementary Disclosure: Parties exchange any additional requests for specific documents

STAGE	CURRENT RULES	PROPOSED RULE CHANGES
Oral Examinations	<ul style="list-style-type: none"> ➤ In actions, oral examinations for discovery ➤ In applications, out of court cross-examinations of affiants 	<ul style="list-style-type: none"> ➤ <u>No oral examinations for discovery</u> ➤ Limited written questions (interrogatories) to other parties
Expert Evidence	<ul style="list-style-type: none"> ➤ 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 	<ul style="list-style-type: none"> ➤ Defining categories of expert witnesses in the <i>Rules</i> (litigation experts, participant experts, and non-party experts) ➤ Codifying requirements for the admissibility of expert evidence in the <i>Rules</i> ➤ <u>Use of Joint Experts</u> retained by all parties ➤ Requiring opposing experts to meet before trial and prepare a joint report on areas of agreement and disagreement ➤ Agreed-upon schedule for the exchange of expert reports or timetable for exchange of expert reports set at Directions Conference
Judicial Conferences	<ul style="list-style-type: none"> ➤ 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 	<ul style="list-style-type: none"> ➤ Scheduling Conference to be held within 1 year of commencement (or earlier if needed) ➤ <u>Directions Conference to be held within 1 year</u> of commencement if: <ul style="list-style-type: none"> ➤ The matter is going to a Summary Hearing; or ➤ A party seeks relief beyond merely scheduling ➤ <u>Directions Conference to deal with interlocutory disputes, the type of Dispositive Hearing, and orders governing expert evidence</u>, among other things
Motions	<ul style="list-style-type: none"> ➤ Parties may bring motions as they see fit, subject to the <i>Rules</i> ➤ 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 	<ul style="list-style-type: none"> ➤ No motions to be brought before a Directions Conference. The Directions Conference Judge may schedule further Directions Conference(s) or motion(s) ➤ Many issues previously resolved by <u>motions to be resolved in Directions Conferences</u> on limited records ➤ Different procedures for different types of relief: <ul style="list-style-type: none"> ➤ Procedural relief: Directions Conference (e.g., document production) ➤ More substantive relief: formal motion (e.g. a request for security for costs) ➤ Residual category: Directions Conference or in a formal motion (e.g. striking a claim, disputes about claims of privilege)

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

Strategic Insights & Practical Steps for In-House Counsel

Dramatic changes have been proposed for Ontario's *Rules of Civil Procedure*. Whether the recommendations are adopted in whole or in part, 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, have proposed significant reforms to the *Rules of Civil Procedure* in the [Civil Rules Review Phase 2 Consultation Paper](#). 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 consultation and review and will not be implemented until January 1, 2026. It is unclear whether the proposed changes will be adopted in their entirety, in a modified form, or not at all. If adopted, the conduct of litigation in Ontario will fundamentally change for both lawyers and their clients.

While litigants and lawyers await the next phase of the consultation process to be completed, we have compiled steps that in-house legal teams can consider taking now to assist with an eventual transition, particularly in light of the two key elements of the proposals.

KEY ELEMENTS OF THE PROPOSED FRAMEWORK

- 1. Fixed Timelines for Case Resolution:** The proposed *Rules* aim to ensure all cases reach a substantive hearing within two years, with several prescribed judicial check-in points. Court appearance dates will be fixed, with adjournments granted only in exceptional circumstances.
- 2. Up-front Evidence Model:** The proposed *Rules* eliminate 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 and known adverse documents.

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 that your company has now 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 reduced timeframes to defend and lead evidence, legal departments must act swiftly to ascertain coverage, or insist on a coverage determination when defending a claim. 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:

Develop or revise litigation budgets to account for what is likely to 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 Redfern production process. At the same time, expenses related to oral examinations can be eliminated, and costs of procedural motions can likely be significantly reduced. But the timing of legal spend will almost certainly change under the new model.

2. **Consider Impact on Reserves:** Review and update your process for setting and managing reserves related to litigation claims to ensure that adequate funds are available to cover potential legal costs, including settlements, judgments, and legal fees. If the *Rules* are amended as proposed, we expect faster resolution of cases through settlement or judgment. Businesses must ensure they have sufficient cash flow to address litigation liabilities and related financial impacts. On the positive side, shorter litigation timelines should also reduce uncertainty in litigation cost projections. Reserves analyses should include consultation with external counsel and financial advisors.

People, Process and 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. Given the time required to engage in PLP, the proposed *Rules* suggest extending the basic limitation period in Ontario from two to three years. 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 its 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, the elimination of summary judgment motions, and the new Paper Record+ Process. 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 key proposed changes for summary judgement motions, evidence at trial, oral evidence in chief, and expert evidence and its potential impact for litigators and litigants.

[Read more here.](#)

The Digital Shift in Ontario Courts: Proposed *Rules* for a Tech-Driven Future

Ontario is proposing reforms to its *Rules of Civil Procedure* to enhance the use of technology in litigation, making the process quicker, simpler, and more accessible. These changes include online filings, electronic service of documents, and increased use of videoconferencing, and more. Learn more about how these innovations could help lower costs for clients, speed up the litigation process, and make court documents more portable and accessible.

[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.

90+

Expert litigators with an intellectual property practice.

30+

Years representing our clients in commercial litigation disputes

24

Years at the Centre of the Lexpert Bull's Eye, Commercial Litigation – Toronto

“Their client services are extraordinary. They are masters of strategic thinking, planning, and execution.”

Chambers Global

Band 1

Chambers Canada 2025,
Dispute Resolution: Ontario

“They have a well-deserved reputation for one of the best litigation teams of lawyers in Canada.”

Chambers Canada

LITIGATE.COM

 @LencznerSlaght

 /LencznerSlaght