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January 29, 2026

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

The 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 are aimed at creating 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](#).

Pre-Litigation Protocol

The proposed *Rules* contemplate a mandatory Pre-Litigation Protocol (PLP) for all civil matters, with exceptions for specified claims and parties seeking urgent relief.

PLP mandates early exchange of information and key documents before litigation starts and requires parties to make a “genuine effort” to resolve the dispute. Matter-specific PLPs are contemplated for personal injury, medical negligence, mortgage enforcement, and contract claims. All other civil matters would be subject to a general PLP that requires the equivalent of a demand letter and response, as well as the exchange of a defined subset of the most relevant documents. Matters involving allegations of violence or abuse, estate matters, class proceedings, persons under disability or minors, Application Track proceedings, appeals, and matters governed by federal or provincial *Crown Liability and Proceedings Act*, or matters where urgent relief is sought will not be required to engage in a PLP.

The requirement to engage in a PLP will not amend, vary, or extend the applicable statutory limitation period. Parties that fail to engage meaningfully (or at all) in a PLP may be subject to cost consequences.

Mandatory Mediation & Limitation of Judicial Settlement Conferences

The proposed *Rules* make mediation mandatory across Ontario with the goal of outsourcing the settlement portion of pre-trial conferences to third-party mediators. The Court retains

discretion to exempt parties from mandatory mediation or to order a judicial settlement conference where appropriate in the circumstances. Pre-trial conferences will be limited to trial management issues only.

Takeaways for In-House Counsel

PLP is a significant change in the litigation process. For in-house counsel teams, swift access to relevant documents and decision-making about how instructions will be sought and obtained will be crucial to making the most of the opportunity for pre-litigation settlement. It may be prudent to review insurance policies now to set a clear process in place for putting insurers on notice of PLP claims quickly if necessary, and to identify preferred law firms for PLP claims so they can be retained quickly to meet the tight time frames in the PLP process.

The move to mandatory mediation and away from judicial mediation at pre-trial conferences is consistent with what many in-house counsel have already seen in their litigation files in Toronto, Ottawa, and Windsor. This change may bring a welcome increase in the number of cases that can be settled early. To the extent in-house counsel teams have business clients who have historically preferred to have the views of a judge at the pre-trial conference over those of a mediator, it may be prudent to begin socializing the importance and helpfulness of third-party mediators now so expectations are tempered if judicial “mediations” at pre-trial conferences are eliminated.

This is only one part of our series, [A New Vision for Litigation, analyzing the proposed reforms to Ontario's Rules of Civil Procedure](#). See our other blogs here:

- [Summary of Proposed Changes to Ontario's Rules of Civil Procedure](#)
- [Preparing for Proposed Changes to the Rules of Civil Procedure in Ontario: Strategic Insights & Practical Steps for In-House Counsel](#)
- [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](#)
- [Proposed Changes to the Rules for Expert Witnesses: Cooperation, Conferencing, & Consequences](#)