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The Future of Civil Litigation in Ontario: Inside the Final Policy Report from the Civil Rules Review

We have closely tracked the Civil Rules Review Working Group and its mandate to overhaul Ontario's civil justice process.

Building on earlier proposals (which we have covered here), and after extensive consultation with stakeholders (see here), the Working Group released its Final Policy Report on December 15, 2025.

This report maintains the Working Group's earlier proposals to promote prompt adjudication, expand case conferences and similar informal mechanisms, overhaul discovery, and put more responsibility on the Court itself to move matters forward to merits-based adjudication.

These proposals reflect a significant departure from how civil litigation is currently conducted in Ontario. If implemented, they are likely to fundamentally alter litigation strategy, case management, and the cost of litigation. The proposals will, in our view, shift a significant amount of cost and effort to the front end making early preparation and case assessment critical.

We highlight some key proposals below and will continue to monitor and report developments as the proposed rules move toward implementation.

Reframing Civil Process Around Core Goals

The report proposes the *Rules of Civil Procedure* prioritize proportionality, cost-effectiveness, timeliness, cooperation, and efficient use of court resources. It introduces a **General Duty to Cooperate** on parties and their lawyers and a new **Representations Rule** requiring parties to certify the accuracy of pleadings, motions, or other filings. These rules increase risks for litigants who have relied on the tactics the proposals target.

Accelerated Timelines

The Working Group's stated goal is to have most two-party cases reach a **dispositive hearing within two years** of the close of pleadings, with adjournments only in exceptional circumstances. A summary of the pleadings timeline for cases in

the Summary Track and Trial Track (defined below) can be accessed here.

The report recommends a formal **Delay Penalty**. Under this penalty, subject to a notice requirement, a party who fails to meet an interim deadline must presumptively pay the non-defaulting party $100 per day in Application Track and Summary Track cases or $250 per day in Trial Track cases.

Pre-Litigation Protocols

The report builds on its prior proposals and now proposes several industry-specific Pre-Litigation Protocols (PLPs) and a general application PLP, and it codifies the common law requirements for a pre-claim discovery order (i.e., a *Norwich* order) in the *Rules*. The PLPs would include certain party-identification and document disclosure and production requirements to promote pre-litigation mediation.

Three-Track Litigation System

While the Working Group proposes a single standard **Claim Form** leading to a **Notice of Claim**, a "**claim**" or "**proceeding**" would have three possible tracks litigants will have to consider carefully:

1. **Application Track** presumptively for proceedings currently required or authorized by way of application under statute or current Rule 14.05(3)(a)-(g.1). Matters would begin with a Notice of Claim and Notice of Directions Conference, followed by defendants who intend to participate filing a Notice of Intent. At the **Directions Conference**, a DC Judge will set a timetable, and a Statement of Defence may follow. Where appropriate, the parties will exchange witness statements and expert reports, conduct out-of-court cross-examinations, and participate in mediation. The Application Track results in a dispositive Summary Hearing conducted under a **Paper Record+ Process**, with discretion for the hearing judge to permit oral evidence if necessary.

2. **Summary Track** presumptively for most claims for money or personal property where the claims are greater than $50,000 (the Small Claims Court ceiling) but below $500,000 (with some other exceptions). These matters will proceed similarly to the Application Track but will be guided by a default timetable, rather than being shepherded by the DC Judge. Absent settlement, the Summary Track culminates in a Summary Hearing.

3. **Trial Track** presumptively for all other claims. Parties must schedule a **One-Year Scheduling Conference** after the close of pleadings (or one year after the Notice of Claim is issued if no

defence is filed and default judgment is not sought). Parties may consent to an order rescheduling the One-Year Scheduling Conference to a date up to one year later in order to place the case on an “inactive list” or extend the evidence exchange period. Parties would need to comply with the up-front evidence model as tailored to the Trial Track and will have the opportunity to conduct **focused examinations**. Parties will be required to attend the One-Year Scheduling Conference, at which the Court will set dates for trial management, mediation, and trial. The Trial Track results in a conventional trial.

Under this three-track system, courts would retain discretion to transfer cases between the Summary and Trial Tracks. In a significant departure from the current procedures, Application Track matters are not transferable and can never result in a full trial. A flow chart outlining key aspects of the three-track system can be accessed here.

Discovery: The Up-Front Evidence Model

The Working Group’s proposals for reform of discovery under the *Rules* were some of its most controversial and this report reflects its reaction to significant stakeholder feedback. The report proposes to replace the current discovery regime with an up-front evidence model featuring claim-based, primary, and supplemental disclosure requirements tailored to each litigation track. The Working Group no longer proposes production of “known adverse documents.”

- **Claim-based disclosure**. Across all tracks, parties would be required, at the time a pleading is served, to produce all non-publicly available documents referred to in the pleading.
- **Primary disclosure**.
    - In Application and Summary Track cases, in accordance with directions given at the Directions Conference, parties exchange Reliance Documents, witness statements, and expert reports. Counsel may conduct out-of-court cross-examinations where appropriate.
    - In Trial Track cases, primary disclosure would consist of Reliance Documents, witness statements for party witnesses, will-say statements for non-party witnesses, and schedules for focused examinations and expert report delivery.
- **Supplementary disclosure**. In all tracks, parties may request additional documents where claim-based and primary disclosure is insufficient.

In response to overwhelming opposition to the Working Group's initial proposal to eliminate oral examinations for discovery, the report instead proposes to replace traditional examinations for discovery with **focused examinations**, capped at 90 minutes per party. All out-of-court examinations would have more stringent rules, including limiting objections on the basis of relevance. It remains to be seen whether this revised proposal, made at least in part to placate opponents, will reflect the right approach to the costs and benefits of oral discovery.

Finally, the Working Group proposes all out-of-court examinations be audio- and video-recorded. While some may resist this change, we believe it has the significant potential to curb inappropriate behaviour by lawyers and witnesses.

Motions

The report proposes to overhaul what the Working Group calls the current "pervasive" motions practice to reduce cost, delay, and procedural complexity. Key changes include:

- Mandatory pre-screening of almost all interlocutory disputes at Directions Conferences, promoting informal resolution
- Prescribed forms and page limits to streamline interlocutory motion preparation
- Consolidated rules governing pleadings motions
- A streamlined process for resolving common interlocutory disputes (including disclosure, interrogatories, refusals, and witness-statement issues)

Experts

The report walks back earlier proposals for increased use of "joint experts," but still proposes a presumptive requirement for joint experts on defined financial issues, including in the valuation of developed land. Despite considerable opposition, the report recommends presumptive expert conferencing in Trial Track cases. Under this model, experts are to meet and discuss their opinions before trial with the intention of narrowing and clarifying the key differences between their opinions. Joint experts will then be required to prepare joint reports on areas of agreement and disagreement.

The Working Group also proposes stronger expert witness duties to the court, with a proposed "two-strikes-you're-out" rule, and consideration of the creation of a central registry recording all decisions in which experts were found to have breached their duty to the court.

Costs, Appeals, & Enforcement

The Working Group recommends codifying definitions for Partial Indemnity Costs (60% of legal fees and 100% of disbursements) and Full Indemnity Costs (100% of legal fees and disbursements) and codifying various costs presumptions. Courts would be able to depart from costs presumptions where such presumptions would result in injustice — which would be a high threshold. The report also recommends several rules to clarify the distinction between interlocutory and final orders and streamline their respective appeal routes.

Additionally, the Working Group has proposed to reform enforcement mechanisms by clarifying creditors' powers and making it faster and easier to collect on judgments. The report proposes to:

- eliminate the leave requirement for issuing writs of seizure and sale and notices of garnishment more than six years after judgment
- allow multiple garnishments to be issued on a single requisition
- create a mechanism by which judgment creditors can obtain production orders to compel financial institutions to disclose judgment debtors' bank accounts and whether there are positive balances in them
- amend the Rules to provide for active management of contempt motions
- ensure judgment creditors can recover full indemnity costs for enforcement efforts