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Ontario's civil rules revolution? Breaking down the key proposed reforms

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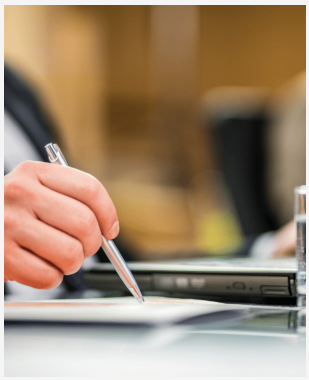

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In April 2025, the Ontario Civil Rules Review Working Group (CRR Working Group) released its Phase 2 Consultation Report [PDF], proposing comprehensive changes to the *Rules of Civil Procedure* (*Rules*).[1]

The Civil Rules Review was launched in January 2024 by Attorney General Downey and Chief Justice Morawetz. Its mandate is to review the *Rules* and identify areas of reform that would make civil court proceedings more efficient, affordable and accessible.

In the Phase 2 Report, the CRR Working Group proposes a major overhaul to civil procedure. Key recommendations include:

- redesigning the documentary discovery process to replace the "relevance-based" disclosure model with a "reliance-based" model, and shifting document production earlier
- eliminating oral examinations for discovery
- reforming motions practice by reducing "formal" motions in favour of an informal process
- changing the selection and presentation of expert evidence and
- shifting generally from a party-driven system to a court-managed system

The discovery process

The current *Rules* require parties to identify and produce all relevant documents that are or have been in their possession, control or power. After pleadings close, parties negotiate a Discovery Plan which identifies the deadline to exchange their Affidavits of Documents. After this exchange, oral examinations for discovery occur.

Documentary production

The CRR Working Group proposes a transition from a relevance-based standard to a modified reliance-based standard. Parties will be required to disclose all documents upon which they intend to rely, as well as all known adverse documents in their possession, control or power. What constitutes a "known adverse document" is still under debate within the CRR Working Group.

The CRR Working Group also proposes to shift document production significantly earlier. There are to be three periods of disclosure:

1. **When pleadings are served:** parties must produce all non-publicly available documents referenced in the pleading that are in the party's possession, custody or control.
2. **After the close of pleadings:** parties will exchange sworn statements of all witnesses on which they intend to rely, all documents upon which they intend to rely, any known adverse documents, and a proposed timetable for the delivery of any expert reports.
3. **Supplementary disclosure:** parties may request additional documents (within limit) and may submit limited written interrogatories if they are not satisfied with the disclosure in the previous steps.

Oral examinations

The new discovery process would not provide parties with any opportunity to conduct oral examinations for discovery. The CRR Working Group justifies this by pointing to the early and focused exchange of documents that they say will limit the benefits of an oral discovery process.

Motions practice

Currently, there are few limits on a party's ability to bring a motion. The proposed reforms contemplate all interlocutory relief to first go to a Directions Conference with a judge who will either decide the interlocutory issue, order a further Directions Conference following the exchange of materials, or schedule a formal motion.

Certain presumptions will also apply depending on the relief sought:

- Relief that is procedural in nature will presumptively be decided at the Directions Conference.
- Relief that requires a more fulsome evidentiary record or legal submissions will presumptively be decided at a formal motion.
- There will be a "residual category" for which no presumption applies.

Selection and presentation of expert evidence

The CRR Working Group further aims to reduce the use of expert evidence in civil proceedings:

- Expert evidence will be restricted to that which is reasonably required to resolve the proceedings and parties will be limited to one expert per issue per party, unless leave is obtained.
- Joint experts will be encouraged and presumptively required for a fixed list of issues, namely those that are standardized, involve mathematical calculations, or are otherwise amenable to a joint litigation expert.
- Opposing experts will be required to meet and conference before trial outside the presence of parties or counsel, to attempt to narrow the issues on which they disagree.

The proposed reforms also contemplate resequencing the presentation of evidence at trial

so that all fact witnesses (for all parties) present their evidence, after which all expert evidence will be presented. Currently, the plaintiff presents its entire case, then the defendant.

A court-managed system

The CRR Working Group claims to be aiming to move civil litigation away from a party-driven system towards a court-managed system. They say this will mitigate the cost and delay associated with the current "maximalist" litigation practice.

There are several proposals that illustrate this shift:

- There will be a strict timeline for each step in the litigation process intended to get each case to trial within two years. Adjournments to fixed hearing dates will only be permitted in exceptional circumstances and parties will have their pleadings struck if they miss the hearing date. Interim deadlines will also be strictly managed, with costs consequences when deadlines are missed.
- In addition to shifting all motions first to Directions Conferences, all parties will be required to attend a One Year Scheduling Conference that will set the timetable for the steps leading to trial.

Key takeaways for litigants

While the nature, extent and timing of any eventual reforms to the *Rules of Civil Procedure* remains unclear, the communications to date suggest that there is a desire to implement the reforms in the near term. The specifics of any proposed transition proposal have not yet been communicated to the profession.

The CRR Working Group has invited feedback from the profession, with a deadline of **June 16, 2025**. While there is little doubt civil procedure in Ontario requires reform, the CRR Working Group's proposals have received mixed reviews to date from Ontario's litigators. Among other things, there is widespread skepticism as to whether these reforms would achieve the stated goal of improving access to justice while also preserving Ontario's reputation as a world-class forum for dispute resolution. The profession has responded with extensive feedback from a range of stakeholders. In this regard, a number of law firms, including Osler, have submitted a joint response [PDF] setting out the perspective of the complex/commercial litigation bar. It will be interesting to see how this feedback is incorporated into the ultimate *Rules* reforms.

If you have any questions or concerns about these proposed reforms, please contact any member of Osler's Disputes team.

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[1] The Working Group previously released its Phase 1 Report, which identified the scope of potential reforms for further consideration. The Phase 1 Report can be found here.