June 9, 2025

The Honourable Douglas Downey
The Attorney General of Ontario
McMurtry-Scott Building, 11th Floor
720 Bay Street
Toronto, ON M7A 2S9
Doug.Downey@ontario.ca / Patrick.Schertzer@ontario.ca / Anthony.Galea@ontario.ca

Civil Rules Review Working Group
Attn: The Honourable Justice Cary Boswell, Allison Speigel and Jennifer Smart
Jennifer.Smart@Ontario.ca

Response to the Phase 2 Consultation Paper of the Civil Rules Review

This response to the Civil Rules Review Working Group's Phase 2 Consultation Paper (the "**CRR Consultation Paper**") is submitted on behalf of a number of law firms and Ontario-based practitioners who practice in the area of complex / commercial litigation. This group, which was convened for the specific purpose of responding to the Working Group's solicitation for feedback, is comprised of representatives from the following law firms:

- Bennett Jones LLP
- Borden Ladner Gervais LLP
- Crawley MacKewn Brush LLP
- DLA Piper (Canada) LLP
- Fasken LLP
- Goodmans LLP
- Lax O'Sullivan Lisus Gottlieb LLP
- Osler, Hoskin & Harcourt LLP
- Polley Faith LLP
- Torys LLP

While the various members of this group have differing perspectives and viewpoints on certain of the amendments and initiatives contemplated by the CRR Consultation Paper (the "**Proposed Reforms**"), and the firms in the group recognize that other areas of practice – even among their own membership – may have other perspectives, we collectively agree on the fundamental concerns and positions set out below.

At the outset, we wish to acknowledge the obvious time and effort that the members of the Working Group have committed to this initiative. The underlying motivation behind the CRR Consultation Paper, namely improving access to justice in Ontario, is obviously a priority for practitioners across the province – including those of us who practice in the area of complex / commercial litigation. We greatly appreciate the efforts of the Working Group. There is no question that the current system needs to be improved in order to ensure that Ontarians have meaningful and timely access to justice.

That said, based on the collective Ontario litigation experience of our group, we believe that some of proposals set out in the CRR Consultation Paper may prove to be counter-productive or otherwise problematic, both in implementation and in practice. While some of these concerns arise from the specific context of our area of practice, we believe similar problems are likely to occur in many other practice areas as well. We have set out below the core concerns of this group.

This letter highlights our concerns in relation to three primary issues: (1) elimination of oral discoveries; (2) elimination of most motions; and (3) the up-front evidence model. Aside from these conceptual concerns, our group has also identified a number of more discrete issues that arise from the proposals contained in the CRR Consultation Paper. In an effort to be constructive and to advance the dialogue surrounding access to justice issues, we have prepared a summary chart which seeks to outline some of these areas of concern *together with some proposed solutions or alternatives that might be considered* (attached as Appendix "A"). We welcome the opportunity to discuss these issues with the Working Group or other interested constituents.

1. Proposed Elimination of Oral Discovery: Foremost among this group's concerns is the proposed elimination of oral discovery. We are very concerned that the value and efficacy of oral discovery in civil litigation in Ontario should be given much more weight in discussions regarding the Proposed Reforms. Oral discovery has been an essential feature of the civil process in Ontario for over 170 years, and is a bedrock element of the process that promotes timely settlements and efficient trials. A form of oral discovery exists in every Canadian province, the Canadian Federal Court system, all 50 US states and in the US Federal system. This is not an accident of history – oral discovery of the opposing case is a necessary and beneficial step to getting to the truth and paving the way for timely resolution of disputes or narrowing of issues. Most parties will not consider themselves in a position to meaningfully explore settlement if they do not really understand the other side's evidence and positions. In many ways, oral discovery presents the only opportunity for commercial litigants to understand the other side's evidence and legal positions, to explore important credibility disputes, and to stress-test the adequacy of the documentary disclosure. Among other things, oral discovery allows the parties to narrow the issues in dispute, clarify the strength of positions (and thereby promote settlement), inquire as to possible witnesses, confirm positions and undertake valuable fact-finding that is not otherwise accommodated under the Proposed Reforms. Without oral discovery, our principal concern is that fewer cases would achieve timely settlements before reaching the threshold of trial, and that trials themselves would be less efficient.

Notably, this very phenomenon arose when oral examinations for discovery were eliminated from the Simplified Procedure (Rule 76) some 27 years ago, resulting in the re-introduction of (time limited) oral examination for discovery in such cases some 15 years ago. The experience in our own jurisdiction shows that, even for cases with lower amounts at issue, discoveries are necessary for the fair and efficient administration of justice, and promote timely settlements.

We have reviewed the letter submitted by the Federation of Ontario Law Associations, dated April 28, 2025, and the response letter of Robert S. Harrison, and agree with the concerns expressed in both letters regarding the risks of eliminating oral discovery. We understand that one of the primary goals of the Proposed Reforms is to avoid the delays associated with motions practice and the corresponding diversion of court resources. Given that oral discovery does not itself take court time, the risks identified by Mr. Harrison could be avoided by instead limiting the discovery *motions* that are a drain on valuable judicial resources. This burden can be significantly reduced or eliminated without the need to dispense with oral discovery – such as by requiring (as the

Working Group proposes) that all questions must be answered except for narrowly defined exceptions (such as for privilege, scandalously irrelevant questions, or those requiring a witness to speculate outside their knowledge), and prohibiting evidence at trial on subjects refused on discovery. We note that this approach has long been the practice of the Commercial List court.

We are similarly concerned about the deleterious effect that this proposed elimination of oral discovery may have on the viability of Ontario as a forum of choice for commercial litigants. Often, complex / commercial matters – including national class actions – involve parties in multiple jurisdictions who have an ability to decide where to commence a proceeding. If commercial litigants are deprived of meaningful access to oral discovery rights under Ontario law, it is very likely that they will choose to litigate in another forum or, where possible, transfer their litigation to a private arbitration process. This would have a chilling effect on the development of the common law in Ontario, and adversely impact litigants who seek to avail themselves of the Ontario justice system. In addition, we are concerned that the Proposed Reforms will simply shift the burden and delays associated with discovery motion practice to other provincial jurisdictions, if Ontario does not offer a way to maintain discovery while streamlining motions.

We understand another primary goal of the Proposed Reforms, including the proposal to eliminate oral discoveries, is to reduce unnecessary costs of litigation. While we recognize the importance of this goal, we believe that other ways to reduce costs should be pursued (such as limiting motions arising from discoveries, as discussed above).

We also note that seeking to eliminate both oral discoveries and most formal motions (discussed below) is likely to have a real impact on the profession and, in particular, the development and mentoring of young lawyers – who typically learn important skills through such interlocutory steps.

2. Proposed Interlocutory Dispute Process: Relatedly, the proposed interlocutory dispute process appears to be directed at eliminating most formal motions. This is concerning, both with respect to the impact on the development of the Ontario common law and – more practically – on the ability of parties to effectively resolve important interlocutory disputes. While discovery-related motions should be sharply curtailed, and *certain* motions can await trial where they can be most efficiently addressed by the trial judge, the ability to seek procedural and substantive relief by way of interlocutory motion can be vital in complex / commercial matters. Among other things, it allows parties to narrow and refine legal and factual disputes, seek direction from the courts, and achieve early adjudication of material issues. Motions can often be critical in achieving early settlements and forcing discontinuance of non-viable cases. While the new "Directions Conference" procedure may accommodate some of these initiatives on more straightforward procedural disputes, it would appear to significantly reduce the scope and effectiveness of motions to resolve important procedural and substantive issues.

Moreover, it is unclear what evidentiary standard will be applied at the Directions Conferences, which appear to encourage parties to make submissions that are somewhat untethered to an evidentiary record. Experience has taught us that this sort of "free-wheeling" advocacy, in the absence of any evidentiary rigour, can be hugely problematic in the commercial context. In addition, interlocutory decisions made exclusively at Direction Conferences, which will presumably not be open to the public and may result in directions without reasons – unlike current motions– risk reducing the public's confidence in the administration of justice and trial fairness.

While it is unclear whether orders stemming from Directions Conferences will have precedential value, there is also concern amongst our group that the elimination of most motions will also have a chilling effect on the development of the law. The long-term effects of the elimination of meaningful motions jurisprudence in Ontario could seriously and adversely impact the profession and Ontario litigants.

We recognize that the Proposed Reforms indicate presumptions as to which form of relief is accessible by way of Directions Conference or motion. If the proposed new interlocutory process is adopted, we would recommend that – at the very least – the Rules direct judges to override the presumption if the interests of justice warrant or if the procedural issues to be determined are likely to have broader precedential value.

3. Upfront Evidence Model: While our group supports the goals of efficiency and timeliness in advancing cases through the judicial system, we have real concerns about aspects of the proposed "up-front" evidence model that would see each side deliver sworn witness statements in the first number of months after the claim is commenced.

First, mandating this step – which will require significant up-front documentary identification and review, factual and evidentiary investigation, witness interviews, and related steps – will impose significant immediate cost burdens on litigants and witnesses that might in fact hinder access to justice for most Ontarians. It poses a particular challenge in contingency cases, which is the only viable method for some Ontarians to pursue their claims. This increased cost burden will likely negate any cost savings contemplated by other aspects of the Proposed Reforms, and will in fact accelerate such costs.

Second, witness statements prepared at this early stage (which are to serve as examinations in-chief at trial) will lack the benefit of a more developed factual understanding and nuance, and inquiries about the opposing case.

Third, in the interests of protecting themselves, lawyers will undoubtedly err on the side of being over-inclusive in preparing such statements. At the same time, the statements are likely to contain important omissions of facts that subsequently come to light through factual inquiries of the other side, expert input, and many other steps that enhance the understanding of cases along the way. Among other things, we are concerned about unfairness to witnesses who will undoubtedly be cross-examined on gaps or inconsistencies resulting from inadequate information or insufficient access to documents and expert opinions at the time the statements are prepared.

Fourth, in some cases (particularly complex disputes), proceeding with the use of early-prepared witness statements as evidence in-chief at trial may be inefficient and counter-productive as even in the proposed "up front" evidence model, the factual record at trial may differ significantly from the factual record known to the parties within the first few months following commencement of the action. These witness statements will express the facts under the careful drafting of the witness's lawyer, which may lead to unduly highlighting favourable evidence and sheltering unfavourable facts. Finally, requiring early-prepared witness statements to stand as evidence-in-chief at trial removes the ability of advocates to ensure that their factual evidence flows in a format that is digestible for the trial judge and most compelling for their case.

We have proposed various solutions and alternatives that could be implemented in place of upfront delivery of witness statements in the accompanying chart.

In addition to the foregoing concerns, we wish to raise two additional comments for consideration.

The False Analogy to Arbitrations: We wish to briefly address an argument that has been advanced by the Working Group, namely that certain equivalents to the Proposed Reforms work well in arbitrations. An important difference between complex / commercial litigation and arbitrations is that in an arbitration parties have nearly unlimited access to the arbitrator (or panel of arbitrators) who are assigned to the case and whose role it is to manage the proceeding in accordance with what is deemed to be in the interests of justice and the interests of the parties, as tailored to each case. There is no such comparable access to judicial resources in the public system. Indeed, the proposed changes are intended to *reduce* the need for court time. In our view, this difference means that what works in an arbitration process cannot be assumed to work the same way in the court process currently envisioned.

Potential Pilot Project: In view of the fact that many of the Proposed Reforms will necessarily require refinement as the system adjusts to the new regime – whatever form it may ultimately take – we strongly encourage the Working Group and the Attorney General to consider rolling out any reforms by means of a targeted pilot project, limited to certain geographic regions and/or certain practice areas. This would allow the members of the judiciary and the bar to assess the strengths and weaknesses of the reforms in practice without upending the entirety of the civil litigation process in Ontario in favour of an untested new regime. While there are unquestionably areas of the current system that can and should be reformed, it would be unfortunate and counterproductive if those aspects of the current system which do function effectively and efficiently were to be undermined in the name of reform, particularly without the benefit of being able to assess whether the Proposed Reforms are actually accretive to the goal of access to justice.

As an example of an aspect of the current system that already functions efficiently, the Commercial List and the Estate List courts have successfully navigated many of the challenges sought to be addressed by the Working Group. It would be a significant loss to the civil justice system and Ontarians to lose the benefit of the targeted Practice Directions developed by those branches of the Court. As practitioners in complex / commercial cases, among other things, we have seen the functionality and credibility that Ontario's court system gains from the Commercial List, including in the eyes of investors into Canada and other major stakeholders who appreciate the ability to address disputes in a specialized court.

In closing, we are hopeful that the Working Group and the Attorney General will reconsider and refine the current proposals articulated in the CRR Consultation Paper in view of the above concerns, as well as those that have been raised by other members of the Ontario Bar.

Yours truly,

Bennett Jones LLP
Borden Ladner Gervais LLP
Crawley MacKewn Brush LLP
DLA Piper (Canada) LLP
Fasken LLP
Goodmans LLP
Lax O'Sullivan Lisus Gottlieb LLP
Osler, Hoskin & Harcourt LLP
Polley Faith LLP
Torys LLP

Appendix "A" to Letter from Counsel Practicing in the Area of Complex / Commercial Litigation

The concerns and proposed solutions in the following chart are offered for the Working Group's consideration. It should be noted that there are differing views across and within our respective firms about both the nature / extent of the identified concerns and the proposed solutions.

No.	Proposal	Concerns	Solutions
1.	Service amendments	Amendments cannot apply to non-resident defendants as this would risk enforcement in foreign jurisdictions and would fail to meet *Hague Convention* requirements Service on a lawyer communicating on an issue (including, for example, in-house counsel) may impede prelitigation negotiation.	
2.	Proposed timetable fails to address preliminary issues arising from a claim	Issues such as jurisdiction, whether the claim is an abuse of process, whether some or all of a claim is improper, and whether a plaintiff should post security for costs before a defendant must incur significant costs, should be addressed before the presumptive timetable for exchange of documents and affidavits commences.	The presumptive timetable should begin *after* the court's decision regarding such preliminary issues. See Rule 7.4 of New Zealand's High Court Improved Access to Civil Justice Amendment Rules (the "New Zealand Amended Rules").[1] Where a party has 10 business days to provide notice of its intent to bring a preliminary motion, and the standard timetable runs after preliminary matter is decided.

[1] https://www.courtsofnz.govt.nz/assets/4-About-the-judiciary/rules_committee/access-to-civil-justice-consultation/2024-Fourth-Consultation/High-Court-Improved-Access-to-Civil-Justice-Amendment-Rules-v5.7-26-July.pdf).

No.	Proposal	Concerns	Solutions
3.	Parties to produce any "known adverse documents"	Difficult for corporate defendants to identify and locate "known adverse" documents, and documents may be both to be relied upon and potentially "known adverse" Basis for further dispute among parties as to whether "known adverse" documents Certain types of cases (e.g., fraud, intentional misconduct, etc.) are unlikely to result in voluntary compliance with the duty to produce adverse documents – potentially resulting in a form of self-determined "unhelpful document privilege".	Parties should not be required to expressly describe a document as "adverse" even if it is to be produced. Documents produced as Primary Disclosure should not be identified by type but rather simply included in a single production package. When a party makes document disclosure, responds to a Redfern request, or responds to written interrogatories, it should provide an affidavit stating: (a) the steps it has taken to look for producible documents; and (b) that the party has produced all documents that it is obliged to disclose (except those for which a claim of privilege is expressly made). See Rule 8.15 of the New Zealand Amended Rules.[2] This would, at a minimum, create a right of cross-examination on the disclosures at trial. However, ideally the party receiving the affidavit should be entitled to one hour of cross-examination (limited to the issue of proper document disclosure only).

[2] https://www.courtsofnz.govt.nz/assets/4-About-the-judiciary/rules_committee/access-to-civil-justice-consultation/2024-Fourth-Consultation/High-Court-Improved-Access-to-Civil-Justice-Amendment-Rules-v5.7-26-July.pdf).

No.	Proposal	Concerns	Solutions
4.	Parties to engage in production of documents at the outset of litigation	Substantially increases the cost of commencing a claim Discounts prospect of post-pleadings resolution given expense and time required Commencing a claim to preserve rights becomes far more costly Certain types of claims (e.g., construction disputes) often necessitate reference to large volumes of irrelevant or marginally relevant documents.[3]	A party that wishes to reserve its rights (for example, while engaged in negotiations) should be able to issue a claim and request a (one-time) 6-month exemption from the standard timetable, without the need to attend at a Scheduling Conference or Directions Conference. (This could also be addressed by changing the time for service of a claim back to 6 months, and having the remainder of the timetable begin at the time of service.) A party's obligation to produce documents referred to in its pleading should be triggered by a request from an adverse party for specified documents.
5.	Inconsistent proposals regarding witness statements/affidavits and examination in chief: (a) pages 29 and 32 of the report state that witness statements will constitute the evidence in chief of each party at trial; however, (b) pages 39 and 63 of the report state that witnesses will provide their evidence in chief orally at trial (subject to a restriction that they remain with "the four corners" of their witness statements).	If the witness statements constitute the evidence in chief then they will be very long, very detailed, and very carefully crafted by counsel so as to put the witness' evidence forward in the most favourable fashion possible (while cushioning the blow of any unfavorable evidence or even contorting the issues so as to make such unhelpful evidence "irrelevant"). As the affidavits are to be exchanged so early in the litigation process, parties and their counsel are likely to err on the side of over-inclusion in the affidavits (even if much of the evidence may ultimately be irrelevant at trial). Such affidavits may be scores or (in complex case) even hundreds of pages long and	Consider adoption of witness statements at trial for secondary or tertiary witnesses whose testimony is expected to be limited to certain issues or less core to the issues in dispute.

[3] The obligation to produce all documents referred to in a Statement of Claim was briefly attempted in Ontario but then abandoned as impractical.

No.	Proposal	Concerns	Solutions
		very costly (certainly more so that a day or two of oral examination for discovery). If the witness statements are not the evidence in chief at trial, and instead are merely "will say" statements, outlining the "four corners" of what the witness will address in examination in chief at trial, then they may be proforma, merely regurgitate the party's pleading, or be generated by unrepresented litigants, or cost-conscious counsel, using Artificial Intelligence. The result would be a superficially plausible but incomplete and inaccurate story.	
6.	Parties to provide witness statements at the same time as documentary production	Unrealistic to expect corporate defendants to identify all necessary witnesses at the outset (or that those witnesses will still be employed by the corporation by trial) The timing of delivery of witness statements is misaligned: document production and more developed arguments may help identify the proper witnesses and prod recollections in the case of longer-dated matters. Inconsistencies and gaps in early witness statements can be exploited on cross-examination to damage credibility where this may not be warranted Restrictions on opinion and argument in witness statements will detract from parties' early appreciation of the issues in the case	Deliver witness statements, or at least supplementary witness statements, following the delivery of expert reports to allow for witness statements to be more specific in the issues they address Rather than delivering of witness statements, deliver a summary of key evidence, without requirement to specify from whom the evidence will be delivered at trial. Such a summary would not stand as evidence in chief at trial. Lay opinion should be permitted if otherwise admissible Challenge to admissibility of plaintiff witness statements to be permitted before defence evidence to be served as doing otherwise

No.	Proposal	Concerns	Solutions
		If witness statements stand as evidence in chief at trial, significantly risks introduction of inadmissible evidence without the ability to challenge statements made	deprives defence of opportunity to limit the evidence they call on the basis of inadmissibility of plaintiff's evidence Consider delivery of a statement of key facts or a summary of anticipated evidence rather than up front identification of witnesses.
7.	Amendments to pleadings with leave are only to be granted where the amendment will not require adjournment of the dispositive hearing date	Strict adherence to this requirement may cause unfairness in the event a party has a legitimate explanation for the later amendment (such as, for example, an admission by the other side)	Provide the court with greater discretion in circumstances requiring leave, perhaps a list of acceptable circumstances such as those found under the test for adjournment.
8.	At a DC on pleadings, the judge may direct trial of specific issues if they can discern one or more legally tenable issues for trial	Judge may be required to descend into the fray by "drafting" a party's pleading for them	Under the Rules today, a judge may direct a party to amend their pleading in a way that remedies the existing defects (if possible).
9.	Elimination of oral discovery	An oral examination for discovery allows for an effective and focused cross-examination at trial. Discovery is ***not*** merely a "dry run" for cross-examination at trial. Oral discovery narrows the live issues at trial and assists the parties to understand their case and the opposing party's case, fostering and promoting timely settlement of disputes. The process of oral discovery allows for evidence gathering (undertakings, admissions, identification of	Amend current Rule 34.12(2) to require that discovery witnesses answer all questions asked on examination for discovery, save for questions seeking privileged or scandalously irrelevant information. Amend current Rule 31.07(2) to effectively prohibit the refusing party from introducing evidence at trial refused on discovery or advisement (with a strong presumption against granting leave to the contrary).

No.	Proposal	Concerns	Solutions
		witnesses, etc.) not otherwise contemplated in the Proposed Reforms Eliminating oral examinations for discovery is likely to result in much longer cross-examinations at trial (as many counsel will, in effect, conduct a form of discovery at trial). This is what occurred when oral examinations for discovery were eliminated from the Simplified Procedure (Rule 76) some 27 years ago and it resulted in the re-introduction of (time limited) oral examination for discovery in such cases some 15 years ago.	Further Amend Rule 31.07(2) to *require* the trial judge to draw an evidentiary adverse inference against the refusing party where the subject-area of the refusal is deemed relevant. Adopt document admissibility rules (as done in SK) that default to admissions of authenticity and business record exemptions.
10.	Limited written interrogatories	Supplants one (effective) form of understanding the other side's case with a less effective, entirely lawyer-driven form. Proposal does not address how vague or incomprehensible questions are to be addressed. It is unclear just how "limited" the limited written interrogatories will be or the fashion in which they will be limited (*e.g.*, number, nature, word count?)	If limited interrogatories are employed in particular cases, require a party or party's representative to swear to the responses to written interrogatories so they can be subject to cross-examination on the answers at trial (and take personal responsibility under pain of perjury for the lawyer drafted responses), or on a limited out of court examination for "disclosure".

No.	Proposal	Concerns	Solutions
11.	Elimination of motions for certain types of relief	Evidentiary issues with "Directions Conferences" – no guidance on evidence resulting in a Direction Fact witnesses all attesting to different facts in a Facts Document will complicate cross-examination Unclear what precedential value (if any) Directions given at a Directions Conference will have	Any fact evidence, or documents should be sworn/affirmed and attached to the Directions Conference briefs. Revert to affidavits, require parties to adhere to requirements regarding duplication across affidavits. The "facts document" concept is already incorporated into common factum drafting. Presumptive Reasons for Directions Orders (even if brief).
12.	Presumptive summary proceedings	Statutory rights to commence certain types of proceeding by application (e.g., oppression remedy proceedings) will likely result in parties trying to shoehorn factually complex matters into the "Paper Record + Process" summary process as (ironically) that process allows for a form of out-of-court oral discovery (via cross-examinations prior to the hearing). The result will likely be more, and more contentious, Directions Conferences. The significant differences between the two alternative streams ("Paper + Process" versus "Live Evidence Process") is likely to result in one overflowing and the other drying up – especially as parties and Directions Conferences push cases towards a default process.	Add liquidated debt-claims on bills of exchange or written instruments to the presumptive list of summary proceedings (these are the exact type of case that does not need to clog up the regular process).

No.	Proposal	Concerns	Solutions
13.	Outsourcing of the settlement or 'evaluative' component of pre-trial conferences to mandatory mediation	Hearing from a judge about the strengths and/or weaknesses of a case at pre-trial is invariably useful and effective at moving the parties. Judicial feedback often avoids the necessity of proceeding further in the litigation.	Inasmuch as the proposed reform is driven by a concern of judicial availability to conduct evaluative pre-trials in all cases, the ability of parties to request a judicial settlement conference (and the court's discretion to grant such a request, especially when jointly requested by all parties) should be maintained to the greatest extent possible. Drawing on the duty of counsel to cooperate, courts could solicit the views of counsel when a request for judicial settlement conference is made as to whether such a settlement conference has a realistic chance of resolving the matter given the stage of the case and the positions of the parties.
14.	Requirement for joint experts	Parties should not be deprived of the opportunity to obtain an expert report that supports their position; this is problematic for an adversarial system Decisions on important issues may be made by joint experts rather than the judge; such experts lack the true independence of judges. Some of the areas where joint experts will presumptively be required are unsuited to joint experts including, for example, business valuations in oppression proceedings.	Ensure the standard that the parties have to meet to rebut the presumption that a joint expert is appropriate is low, but substantive. For example, if a party can show an "air of reality" to an assertion that reasonable experts of the type required for the proceeding at issue can disagree on methodology, then the presumption is rebutted.

No.	Proposal	Concerns	Solutions
15.	Experts required to meet and confer outside the presence of lawyers and parties	May add significant cost to the litigation process and extent timeframes May result in parties choosing experts for their powers of persuasion and advocacy rather than their expertise in a field.	Grant the trial judge discretion to order a meet and confer among experts without making it a requirement; it is unlikely helpful in all cases.
16.	Experts required to create a joint report which will be admitted as evidence.	It is unclear what, if any, role the parties and their counsel may play in the creation of the joint report. The joint report might contain inadmissible evidence (e.g., without prejudice communications). The joint report may supplant the role of the judge or jury, potentially without the usual form of appeal/recourse against a Judgment, and there will always be a concern that experts will lack the true and unquestioned independence of judges.	Clarify the scope of the contents of a joint report, and set out limits on their contents. Clarify role of parties and counsel in assisting experts in creation of joint report. Allow for the possibility of a list of points of agreement by opposing experts instead of forcing a joint report.
17.	Resequencing of expert testimony at trial	Unfair to defendants who are entitled to know the plaintiffs' case before they respond Effectively eliminates Motions to Dismiss / nonsuits. Deprives both sides of the ability to design the flow of their evidence in a way that makes most sense to the trial judge	The appropriate sequence of examinations can be addressed at the Trial Management Conference (which is another reason why the trial judge should preside at the Trial Management Conference).

No.	Proposal	Concerns	Solutions
18.	Parties are to be given the option – subject to the expert executing the attestation – of tendering the report as evidence in chief	Expert report should not be taken as read for purposes of examination in chief without opportunities to the opposing party to object to admissibility	Objections to admissibility should be made at the outset of trial (and telegraphed at the Trial Management Conference), otherwise the expert reports are accepted as read as examination in chief.
19.	Settlement funds paid pursuant to a Pierringer agreement will not be deducted from the damages awarded at trial.	Changes Ontario's compensatory model of damages for civil wrongs. Creates a windfall for plaintiffs of an amount greater (perhaps far greater) than their actual damages. Likely to result in aggressive "entrepreneurial" claims and unnecessary defendants being added to claims (so as to Pierringer settle with such defendants, including on the basis of a settlement amount comparable to their anticipated costs of complying with the new "robust up-front evidence model"). Will contingency fee agreements be permitted to allocate most, or all, of the Pierringer windfall amount to counsel? Courts have made certain settlement provisions standard in Pierringer settlements in certain types of litigation (see, *e.g.*, *Osmun v. Cadbury Adams Canada Inc*., 2010 ONCA 841 re competition class action settlements, and *Cadieux* v. *Cadieux*, 2025 ONCA 405), and the Rule change would risk unintended consequences.	Either do not change the existing law regarding Pierringer agreements or, in the alternative, give the trial judge discretion to determine if a settlement payment made pursuant to a Pierringer agreement should be deducted from the damages awarded at trial.