

Ontario Rules Changes: Practical Guidance From the Bench, Plaintiff and Defence Counsel

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Introduction – Final Policy Proposal

- History of the Proposal
- Summary Overview of the Proposal (281 pages including appendices!)
- Q&A



Purpose of Proposed Rules Reforms

“[T]he intent was not to simply “tinker around the edges.” Rather, it was wholesale reform—a reimagining of the civil justice system from the ground up.”

“[W]e propose a broad range of reforms across core areas of the civil litigation process. The proposed reforms, offered in satisfaction of our mandate, are designed to *reduce delays and costs and increase access to the civil justice system* for Ontario litigants.”

The Process

CRR Launched:
January 2024

Phase 1 Report:
released May 2024

Phase 2 Report:
released April 2025

Final Policy Report:
released October 31, 2025



Stakeholder Feedback

Best-Received Proposals:

- adopting a single originating process;
- imposing shorter timelines;
- enforcing deadlines more strictly;
- using directions conferences to resolve procedural motions;
- introducing presumptive summary hearings;
- simplifying the process for removal of counsel;
- expanding mandatory mediation.

Least Supported Proposals:

- the up-front evidence framework, and
- the elimination of oral discoveries



Trio of New Rules

The Goals

The Representations
Rule

The Duty to
Cooperate

“Goals” of the Final Policy Proposal

The guiding principles in Rule 1.04 will be replaced by Goals.

The Goals – reduce delay and cost and increase access to justice.

The new Rules will direct “that *the Court must seek to achieve the Goals* when imposing orders and giving directions.”

The Representations Rule

Discourages parties from advancing patently indefensible positions, engaging in gamesmanship, or advancing arguments without factual support.

“...[W]e do not support an overly technical application (of the Rules)...”

“*We reject “gotcha” litigation tactics...*there should be costs consequences for parties who engage in such time-wasting conduct.”

Violation of the Rule may lead to application of the “Full Indemnity Presumption.”



There is a New Duty to Cooperate

The Duty to Cooperate will be codified in the Rules. It will require:

- Early issue identification
- Proportionality
- Compliance with the Rules and timelines
- Use of technology for efficiency and efficacy
- Courtesy, cooperation, and prompt communication



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How Will Cases Run?



How Will Cases Run?

A Three Track System

1. Application Track
2. Summary Track (specific cases, and under \$500,000)
3. Trial Track (all other cases)

If the matter is pursued in the wrong track:

1. Costs can be awarded against the offending party
2. Costs can be denied to the successful party
3. The matter can be transferred to another track, without right of appeal



Which Cases Proceed Under Each Track?

Application Track

- New Rules largely continue as current
- Will be presumptively decided at a
- “summary hearing”

Summary Track

- Claims \$50,000 - \$500,000
- Mortgage enforcement proceedings (for any amount)
- Liquidated damages (for any amount)
- Construction lien claims
- Contested estate claims
- Will be presumptively decided at a “summary hearing”

Trial Track

- All other claims will presumptively be decided at a conventional trial



Application Track Process

- Proceed directly to a Directions Conference after filing claim
- At this conference, a Dispositive Summary Hearing will be scheduled
- Exchange of witness statements and expert reports will be scheduled
- Out of court cross-examinations will be scheduled, if required
- Attendance at a mediation will be scheduled, if ordered or agreed upon
- Exchange of factums to be scheduled
- Proceeds to a dispositive summary Hearing, primarily on paper record with limited role for oral evidence



Summary Track Process (\$50,000 - \$500,000)

- Upon close of pleadings, a Directions Conference will be scheduled
- At this Conference, a dispositive Summary Hearing will be scheduled
- A timetable will be ordered
 - Witness statements
 - Document exchange
 - Expert reports
 - Out of court cross-examinations
 - Mandatory mediation – province-wide
 - Factums
- Dispositive Summary Hearing, primarily on paper record with limited role for oral evidence
- “Costs cap” currently under Rule 76 will not apply

Trial Track Process

- “One-year Scheduling Conference” - 1 year after close of pleadings
- Before the One-Year Scheduling Conference, parties will have:
 - Exchanged all documents
 - Witness statements/will-say statements
 - Agreed on timetable for expert reports
 - Agreed on timetable for “Focused Examinations”
 - Conducted these “Focused Examinations” – limited to 90 minutes per party
- Trial Management Conference will occur
- Conventional Trial by 2 year mark (usually)



Trial Track Process

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 - Agreed on timetable for “Focused Examinations”
 - Conducted these “Focused Examinations” – limited to 90 minutes per party

How Long will Cases Take?

“[T]he goal will be to conduct dispositive hearings for most claims commenced under the new system within roughly two years of the close of pleadings.”

“Dispositive hearing dates on all tracks will be set early and are *intended to be inflexible once set*. They will be adjourned only in exceptional circumstances and only with the approval of a Regional Senior Justice or his or her designate.”

What if More Time is Needed?

- Parties can seek to delay the presumptive timeline by one year
 - A one-time right to delay the One-Year Scheduling Conference by up to 12 months (on consent)
- Can be done two ways:
 - Place the case on the “Inactive List” for up to 12 months, during which no steps in the litigation will be taken; or
 - Extending the evidence exchange period from 1 year up to max of 2 years
- If opposed, within 30 days of receiving notice of the One-Year Scheduling Conference the requesting party will bring the matter to an early Scheduling Conference



What if More Time is Needed?

- Factors to be considered when a (permissible) delay is requested:
 - Whether damages have crystalized
 - Whether liability documents can be exchanged while damages documents are deferred
 - Whether number of documents in case is significant
 - Involvement of large organizations (i.e., the Federal Government) which need to coordinate internally across multiple departments
 - Is the delay otherwise consistent with the Goals

Pre-Litigation Protocols

“PLPs can help facilitate settlement, thereby reducing the number of claims commenced.”

“Where settlement is not possible, PLPs can help narrow the issues in dispute, so that, if commenced, cases will proceed more expeditiously.”



What do PLPs require parties to do?

(a) outline the nature of the claim and the response;

(b) confirm or, where possible, provide the identity of the correct responding party;

(c) identify any relevant insurer who may respond to the claim;

(d) disclose a defined set of documents (i.e., materials that would be exchanged in the proceeding in any event);

(e) request the production of relevant and material documents in the possession of third parties; and

(f) consider whether an early mediation would help to settle the dispute or narrow the issues.



PLPs will apply to all civil cases, with a few case types which are exempt:

- (i) counterclaims, crossclaims, or third (or subsequent) party claims;

- (ii) the following types of claims:
 - claims alleging violence or abuse (whether that be gender-based, sexual, domestic, etc.);
 - estate matters;
 - class proceedings;
 - claims involving a person under disability, a minor, or in which capacity is at issue (except FLA claims, which will be subject to PLPs);
 - claims proceeding on the Application Track;
 - appeals;
 - matters governed by the federal or provincial *Crown Liability and Proceedings Acts*; or
 - any claim in which the claimant seeks (i) urgent relief or (ii) early relief and notice to the defendants is likely to defeat or frustrate the relief that the claimant seeks.



Some PLPs will be case-type specific

- (i) Personal injury;
- (ii) Medical malpractice;
- (iii) Collection of a liquidated debt or enforcement of a mortgage, unless the parties have agreed to an alternative pre-litigation protocol; and
- (iv) Other types of contractual disputes, unless the parties have agreed to an alternative pre-litigation protocol.

PLPs – Other Factors

- PLPs will not extend the limitation period
- When the Notice of Claim is filed, confirmation will be required on Appendix A as to whether or not the PLPs have been complied with
- Where PLPs have not been complied with;
 - By the Plaintiff: the case will be stayed,
 - By any party; \$1,000 costs will be ordered.
- Completion of PLPs will be included in the Order made at the initial Case Conference (Summary Track and Trial Track)



What about Motions?

“Any interlocutory issues that arise will be addressed initially or ultimately through a directions conference...which will result in an order resolving the interlocutory issue where possible and *scheduling formal motions only when necessary*”



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Conferences

Directions Conferences

Timing and function depends on the track and other triggers.

- a. **Application Track** – heard following service of the claim to determine the procedures, set the date for the Summary Hearing, and give any appropriate directions.
- b. **Summary Track** – occurs:
 - i. to deal with relief sought by a defendant, a non-party added as a defendant by counterclaim, or a third party, re: jurisdiction, capacity, venue, stays, no cause of action or consolidation;
 - ii. following the close of pleadings to set the Summary Hearing date, give directions, determine deviations from standard timetable.
- c. **Trial Track** - occurs:
 - i. to deal with relief sought by a defendant, a non-party added as a defendant by counterclaim or a third party re: jurisdiction, capacity, venue, stays, no cause of action or consolidation;
 - ii. if and when necessary to deal with issues that arise before the One-Year Scheduling Conference.

A Directions Conference may replace the One-Year Scheduling Conference especially if it occurs within 60 days before the date set the One-Year Scheduling Conference.



One-Year Scheduling Conferences

- a. Verify that evidence has been exchanged and no interlocutory relief is requested.

- b. Set a timetable including:
 - i. expert reports and expert conferences
 - ii. mediation (if not already done)
 - iii. binding Judicial Dispute Resolution if requested (on consent)
 - iv. trial management conference date
 - v. timetable for delivery of sworn witness statements for those witnesses that have only done will-says to date
 - vi. trial date, within 12 months (after transition to New Rules)

- c. Facilitate settlement discussions, and if appropriate, schedule a Judicial Settlement Conference



Trial Management Conferences

- Will replace mandatory Judicial pre-trials
 - Sole purpose is to manage the trial process
 - Will occur 4-5 weeks before trial
 - Optimally, the assigned Trial Judge will preside
 - No settlement component
 - Court retains jurisdiction to order a separate Judicial Settlement Conference

Trial Management Conferences (cont'd)

- Issues to be considered:
 - How opening statements will be delivered
 - In writing - for judge alone
 - Orally for jury
 - Filing of chronologies, with Agreed Chronology where possible (replaces Request to Admit)
 - To be exchanged 60 days before TMC
 - Reply with agree/disagree/no knowledge 30 days before TMC



Trial Management Conferences (cont'd)

- Filing of joint book of documents – *Girao* and *Bruno* cases
- 90/60/30 days prior to TMC
- Unless otherwise noted, all documents submitted are authentic and true
- If Plaintiff is self-represented, index is to be prepared by opposing party
- Filing of agreed glossary of definitions
- Identification of any Motions
- Consider use of technology
- Finalize trial length and schedule and limits on internal steps – “chess clocks”
- Witness and expert evidence procedure at Trial

Other Conferences

Address scheduling issues other than at a Directions Conference or a One-Year Scheduling Conference

- 15 minutes long, to run at least twice per week in each judicial region.
- In Trial Track: occurs if One-Year Scheduling Conference has not been scheduled and default judgement has not been obtained against all defendants within 12 months of issuance of Notice of Claim

Default Scheduling Conference

- Will occur if within 12 months of the issuance of the Notice of Claim a One Year Scheduling Conference has not been scheduled

Proposal for “Case Management Officers”

- Designed to assist with lack of judicial resources
- Senior members of the Bar
- Will conduct select conferences such as interlocutory proceedings, Settlement Conferences, timetabling



No more Motions to get off the record (mostly)

- A motion will not be required
- Lawyer simply files a “Notice of Withdrawal of Counsel”
 - For 30 days, the lawyer remains responsible for any steps on the claim
 - After 30 days, the client is deemed to be self-represented, but does not need to file a “Notice of Intent to Act In Person”
 - If a client is under a disability, a Litigation Guardian must have been appointed prior to withdrawal
 - Any party may seek the directions of the court at a Directions Conference if (a) a party is under a disability or is a claimant in a class proceeding, and (b) the party has not appointed new counsel within 30 days of service of the Notice of Withdrawal of Counsel
 - If a corporate defendant has not appointed a new lawyer within 30 days of service of the Notice of Withdrawal of Counsel
(or initiated a motion for leave for a non-lawyer to represent the company), any opposing party may move to strike the corporate defendant’s pleadings (consistent with the existing Rule 15.04)
- Expectations – a Motion is required to remove counsel if,
 - There is a motion within 30 days, or
 - A Dispositive Hearing within 120 days



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Discovery



Discovery – The Up-Front Evidence Model

“Since at least the current version of the Rules was introduced in 1985, *litigation counsel have understood that they need not finalize their theory of the case until just before trial*. The current Rules incentivize parties to plead their claims as broadly as possible, thereby maximizing the scope of discovery.”



Discovery – The Up-Front Evidence Model: Application and Summary Tracks

- Claim-based disclosure (a.k.a initial disclosure)
 - All non-publicly available documents in the party's possession which are referred to in the pleading
- Primary disclosure
 - Exchange of “Reliance Documents” – those documents on which a party intends to rely to prove its case
 - Witness statements, sworn from each witness, and referring to the Reliance Documents
 - Expert reports

Discovery in the Summary Track (cont'd)

- Supplementary disclosure
 - Further documents may be requested
 - Typically 13-16 months post-claim
 - Out of court cross-examinations can occur on the witness statements and expert reports (to be audio and video recorded, and presumptively virtual)
- Supplementary/new witness statements will be allowed:
 - On consent
 - If adjournment of hearing is not required; and
 - Parties agree on a timetable
 - There will be expectations for leave



Discovery in the Trial Track

- Claim-based disclosure (a.k.a initial disclosure)
 - All non-publicly available documents in the party's possession which are referred to in the pleading
- Primary disclosure
 - Exchange of “Reliance Documents” – those documents on which a party intends to rely to prove its case
 - Witness statements for party witnesses referring to the Reliance Documents
 - Will-say statements for non-party witnesses
 - High level overview of anticipated evidence
 - For physicians, production of the CNRs will suffice



Discovery in the Trial Track

Primary Disclosure (cont'd)

- Oral discovery must be scheduled concurrently with an agreement for expert evidence exchange
- Schedule for focused examinations (to be audio and video recorded, presumptively virtual)
 - Plaintiff must propose five dates
 - Other parties must choose one of the dates, or propose 5 more
 - If parties cannot agree, must attend a Scheduling Conference
- Supplementary disclosure – further documents may be requested

Focused Examinations – Trial Track

- Limited to 90 minutes per party
- Each time a further party is added (third or fourth party) all existing sides receive an additional 30 minutes
 - Typically 10-13 months post claim
- A standardized “Discovery Request Chart” will be completed by the examining party within 15 days specifying the undertakings and refusals
- Undertakings to be answered within 30 days of examinations
- *An alternative* - Written interrogatories – instead of focused examinations, limited to 50 questions (no compound questions) – response due within 30 days by Affidavit



Refusals

All questions must be answered unless:

1. Privilege applies

2. The question is scandalous – meaning both irrelevant and highly confidential or disgraceful

3. The question is so misleading as to be not appropriate to ask

Refusing Undertakings:

1. Permitted where the cost of fulfilling the request would be disproportionate to the importance of info sought

Under Advisement:

1. Parties can no longer take questions “under advisement”



Disputes Concerning the Discovery Process

1. Seek Court determination of dispute in writing; or

2. Ask Court to draw an adverse inference

3. Costs – presumptively \$500 per disputed question and \$1,000 per undertaking, plus \$4,000 base fee to the more successful party

Expert Evidence

Goals of amendments:

- Enhance clarity of types of experts, and presentation of evidence, and
- Address issues of delay and trial length, number of experts, and bias



Codification of *Westerhoff v Gee*, and *White Burgess*

Classification of experts – Litigation/Participant/Non-Party

Admissibility of experts – Relevant, material, no exclusionary rule, novel science, probative v. prejudicial

Joint Experts

Will be presumptively required in certain areas:

1. Quantification of past and future economic loss in personal injury matters;
2. Quantification of care costs in personal injury matters; and
3. Real estate and property valuations where the property consists primarily of developed land.

For all other issues, parties will be required to discuss at a Directions Conference or a One-Year Scheduling Conference whether a joint expert can be used

Joint Experts (cont'd)

Where a joint expert is retained:

1. The parties will split the fee
2. The parties will jointly select an expert, or if unable, the Court will assist
3. The parties may jointly instruct the expert, or do so individually, but all communication must be joint and open as amongst the parties
4. Both parties retain the right to cross-examine a jointly retained expert

Experts – A Two-Strike Rule

- Courts will be required to provide a written decision when an expert breaches their duty to the Court.
- Decision will be provided:
 - To the Expert
 - To the Parties
- A central registry of such decisions will be kept (like the vexatious litigant registry) and if an expert is registered twice, they will be prohibited from being an expert again



Expert Timelines

- A party relying upon a report must serve it 180 days before the earlier of the TMC and a court-ordered mediation, unless the parties agree to 180 days prior to the TMC
- The responding report is due at least 60 days prior
- A reply report is due at least 30 days prior
- Late reports will be inadmissible without consent or leave of the Court



Expert Hot-Tubbing

- Presumptively will only occur in Trial Track cases
- Will occur without the presence of the parties or counsel
- Parties or counsel may set the agenda
- A report shall be prepared jointly by the experts
- The report will be admissible at trial
- A transcriptionist can be present

Delay

“...[T]he current civil justice system is party-driven as opposed to Court-managed.”

“...[T]he existing Rules, and the way they are interpreted, tend to tolerate delay.”
“A change in litigation culture is required.”

Delay – the Fixes

- Fixed hearing dates, with only “exceptional circumstances” for adjournment
- Consequences of non-attendance:
 - The offending party’s claim will be struck
 - Only exceptional circumstances will set this aside – illness, injury, accident making it impossible to attend
- Breach of interim deadlines, i.e. breach of interim deadlines (court ordered, on consent, or per Rules) will have a two part sanction
 - Materials filed late are only admissible on consent or with leave
 - Delay Penalty
 - \$100 per day in Application and Summary Track cases, payable by the defaulting party to the non-defaulting party
 - \$250 per day in the Trial Track
 - The non-defaulting party will be responsible to 1. Notify the defaulting party that the deadline has been missed; and 2. That they are seeking the delay penalty



Costs

- Goal is to simplify costs, reduce burden for Court and parties in predicting/assessing costs
- Partial Indemnity Costs will be codified as 60% of actual fees, plus 100% of disbursements
- Full Indemnity Costs will be codified as 100% of actual fees, plus 100% of disbursements
- A notional set of rates will be established for salaried counsel, plus contingency fee counsel
- Where costs are ordered on Partial Indemnity, no reasons need be given, only the result



Costs (cont'd)

- There will be limited presumed categories of instances where Full Indemnity is presumed
- There will be guidelines for cases where departing from the presumptive Partial/Full Indemnity may be appropriate in order to prevent an “injustice” – intended to be a high threshold
- For Motions and Summary Hearings
 - The parties must confer about costs in advance
 - If costs are agreed, these will be filed in advance on a standard form
 - If costs are not agreed, costs outlines shall be filed in advance
 - Failure to file a costs outline will disentitle that party from making costs submissions



Costs (cont'd)

- For Trials
 - 20 days prior to trial each party must file their costs outlines current to that date
 - Following judgment, each party may file an updated outline and make submissions

- For Conferences
 - Many issues that formerly would have been motions will be dealt with at Conferences
 - In advance of the Conference, a party will specify their claim for costs in their materials
 - Costs will be awarded as decided by the Judge at the Conference



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