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Motions Practice Transformed: What the Proposed Civil Justice Reform in Ontario Means for Litigants

The Ontario Superior Court of Justice and the Ministry of the Attorney General have proposed significant reforms to the *Rules of Civil Procedure* in the Civil Rules Review Phase 2 Consultation Paper. 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](#).

The Civil Rules Review Working Group focused the bulk of their proposed reforms on two interlocutory procedures: **discoveries** and **motions**. This post addresses the key changes proposed for motions practice. The key changes proposed for discoveries can be found [here](#).

1. Not All Motions are Created Equally

The proposed *Rules* treat motions differently depending on the significance of the issues they raise and the impact they have on the merits of the case. Relief that is more procedural in nature, such as requests for production of additional documents, will be presumptively decided at a Directions Conference and the resulting decision will be a “Direction”. Relief that requires a more comprehensive evidentiary record or legal submissions will be decided at a formal motion, and the resulting decision will be a “Motions Order”. The examples given of relief requiring a Motions Order include requests for security for costs and contested requests for certificates of pending litigation.

The proposed *Rules* include a residual category of “Relief” for which there is no presumption in favour of either a Directions Conference or a formal motion, and which may be decided in either venue.

This change is designed both to: 1) decrease the volume of materials judges must review to decide contested issues that do not progress the substantive issues in the litigation; and 2) create a new forum (the Directions Conference) for deciding procedural disputes quickly.

2. No inherent right to bring a contested motion

All requests for relief that are contested—in other words, any dispute that under the present-day *Rules* would be considered subject for a motion—will be reviewed in a Directions Conference. The Directions Conference Judge will have the power to: 1) decide the issue on the spot; 2) order the parties to attend a further Directions Conference; or 3) schedule a formal motion. Gone are the days when parties were entitled to bring motions over any disputed interlocutory issues.

3. No summary judgment motions

The proposed *Rules* eliminate summary judgment motions and replace them with the "Paper Record+ Process." This new process is designed to closely resemble the old summary judgment process but removes the possibility of a failed summary judgment motion leading to a regular trial.

Types of Proceedings Under Paper Record+ Process

1. Presumptive Summary Proceedings: These are matters that would currently be applications under the existing *Rules*. They are expected to be decided under the Paper Record+ Process by default.

2. Non-Presumptive Summary Proceedings: These include all other matters, essentially actions under the current *Rules*, involving contested issues of fact and law. These may be decided under the Paper Record+ Process if certain criteria are met.

Requesting Paper Record+ Process

For cases that are not Presumptive Summary Proceedings, a party can request to proceed under the Paper Record+ Process during a Directions Conference. The Directions Conference Judge will then decide if the matter will be determined using this process. This aligns with the idea that judges, rather than parties, will now control the timing and occurrence of motions throughout a case.

Implications for In-House Counsel

These changes will significantly affect how litigation is managed (detailed [here](#)). In-house counsel in businesses regularly involved in Ontario should consider the following consequences:

1. Adherence to Timelines: Cases can no longer be dragged out (deliberately or otherwise) by motions on issues that do not resolve the claim's merits. In-house counsel on both plaintiffs and defendants must be ready to proceed according to the proposed *Rules*' timelines.

2. Decisions on Slim Records: Contested issues may

now be decided at informal Directions Conferences on limited records. In-house counsel should ensure their litigation counsel are prepared to make substantive arguments on shorter notice (and in fewer pages!) than the *Rules* currently allow.

3. Quicker Direction Required from Business: In-house counsel should prepare their internal client(s) to provide instructions more quickly due to the shorter timelines imposed by the proposed *Rules*.

4. Summary Dispositions: Cases decided under the Paper Record+ Process must be prepared and argued with the same tenacity as under the “regular” process, because the Paper Record+ Process will lead to a final disposition of the merits. Litigants can no longer assume they will proceed to trial if they successfully defend a summary judgment motion.

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 the *Rules of Civil Procedure* in Ontario
- Preparing for Proposed Changes to the *Rules of Civil Procedure* in Ontario: Strategic Insights & Practical Steps for In-House Counsel
- Expediting Justice: Pre-Litigation Protocol in the Proposed Changes to the *Rules of Civil Procedure* in Ontario
- Up-front Evidence: A New Era in Discovery Proposed by the Civil *Rules* Review in Ontario
- Trials on Trial: A New Vision for Adjudication in Ontario
- The Digital Shift in Ontario Courts: Proposed *Rules* for a Tech-Driven Future