

Summary of Proposed Changes to the *Rules of Civil Procedure* in Ontario

STAGE	CURRENT RULES	PROPOSED RULE CHANGES
Overall Timelines	<ul style="list-style-type: none"> ➤ Dismissal of actions if not set down for trial within 5 years of issuing the claim, subject to extensions ➤ No standard timetable for litigation steps (production of documents, examinations for discovery, etc.) 	<ul style="list-style-type: none"> ➤ Judicial conference within 1 year of issuing the claim (Summary Track and Trial Track) ➤ <u>Default timetables for all steps</u> before 1-year judicial conference (Summary Track and Trial Track), unless otherwise ordered (e.g., document production, witness statements, expert evidence timetable) ➤ <u>Final Dispositive Hearing to occur within approximately 2 years</u> of issuing the claim
Pre-Litigation	<ul style="list-style-type: none"> ➤ No <i>Rules</i> requirements ➤ Addressed by case law (e.g., obtaining pre-litigation discovery (<i>Norwich</i>) orders) 	<ul style="list-style-type: none"> ➤ Prescribed <u>“pre-litigation protocols” (PLPs)</u> starting with certain kinds of cases (e.g., personal injury, debt collection) and expanding to include a “general PLP” for all civil matters with some exceptions ➤ Codifying when pre-litigation discovery is available in the <i>Rules</i>
Pleadings	<ul style="list-style-type: none"> ➤ Proceedings started as either actions (to proceed to trial) or originating applications (to proceed to a hearing on a paper record) 	<ul style="list-style-type: none"> ➤ <u>All proceedings started using a single, online Notice of Claim form</u> ➤ Claimants select which of three “tracks” the matter will proceed on (Application Track, Summary Track, or Trial Track), which determines the kind of Dispositive Hearing

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Document Discovery	<ul style="list-style-type: none"> ➤ For actions, parties produce all relevant documents within their power, possession, or control ➤ Documents referred to in a pleading produced on request ➤ For applications, evidence via affidavits and out-of-court cross-examinations 	<ul style="list-style-type: none"> ➤ “Up-front evidence model” for the disclosure of documents and witness statements earlier in the proceeding ➤ <u>Claim-Based Disclosure:</u> Parties produce all non-public documents referred to in their pleading ➤ <u>Primary Disclosure:</u> <ul style="list-style-type: none"> ➤ Reliance Documents (all tracks): documents upon which the party intends to rely to prove its case ➤ Witness Statements: <ul style="list-style-type: none"> ➤ (all tracks) of each witness on whom the party intends to rely ➤ (Trial Track) high-level summary will-say statements for non-party witnesses ➤ <u>Supplementary Disclosure:</u> Parties exchange any additional requests for specific documents (Trial and Summary Tracks), or request documents at out-of-court cross-examinations (Application Track)
Oral Examinations	<ul style="list-style-type: none"> ➤ In actions, oral examinations for discovery ➤ In applications, out-of-court cross-examinations of affiants 	<ul style="list-style-type: none"> ➤ <u>Application and Summary Tracks:</u> <ul style="list-style-type: none"> ➤ No oral examinations for discovery ➤ Exchange of “Discovery Request Charts” for additional document requests or written interrogatories ➤ <u>Trial Track:</u> <ul style="list-style-type: none"> ➤ Parties exchange schedules for “focused examinations” in the Primary Disclosure phase ➤ “Focused examinations” of up to 90 minutes (with additional time for third or fourth parties) ➤ As an alternative to focused examinations, written interrogatories of up to 50 questions

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Expert Evidence	<ul style="list-style-type: none"> ➤ Default exchange of expert reports within 90 or 60 days before pre-trial conference ➤ Expert qualifications and admissibility of expert evidence dealt with under case law 	<ul style="list-style-type: none"> ➤ Defining categories of expert witnesses in the <i>Rules</i> (litigation experts, participant experts, and non-party experts) ➤ Codifying requirements for the admissibility of expert evidence in the <i>Rules</i> ➤ <u>Use of Joint Experts</u> retained by all parties where expert is opining on economic loss or care costs in personal injury matters, and real estate/property valuations of primarily developed land ➤ Duty for litigation experts to exercise independent, impartial, and objective judgement, and a “two-strikes-you’re out” rule prohibiting experts found to have breached their duties twice from providing expert evidence ➤ Standardized format for litigation expert reports ➤ Requirement for opposing experts to meet before trial and prepare a joint report on areas of agreement and disagreement (required in Trial Track; may be ordered in Summary Track) ➤ <u>Application and Summary Tracks:</u> <ul style="list-style-type: none"> ➤ Expert reports exchanged in the Primary Disclosure Phase (approx. 5 months after issuance of Notice of Claim for claimant and 8 months for defendant) ➤ <u>Trial Track:</u> <ul style="list-style-type: none"> ➤ Parties exchange schedules for the delivery of expert reports in the Primary Disclosure phase

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Judicial Conferences	<ul style="list-style-type: none"> ➤ Judicial case conferences may be convened as needed ➤ Pre-trial conference to be held within 180 days after an action is set down for trial unless otherwise ordered 	<ul style="list-style-type: none"> ➤ System of Scheduling Conferences for scheduling issues only, Directions Conferences for interlocutory disputes and other pre-Dispositive Hearing issues, Trial Management Conferences (Trial Track) to replace existing Pre-Trial Conferences ➤ Application Track: <ul style="list-style-type: none"> ➤ Notice of Directions Conference to be served with Notice of Claim to set Directions Conference on at least 10 days' notice ➤ Summary Track: <ul style="list-style-type: none"> ➤ Directions Conference to be scheduled within 10 days of the close of pleadings to set Dispositive Hearing (Summary Hearing) date, timetable for Primary and Supplementary Disclosure, cross-examinations, mediation, expert conferencing (if ordered), and factums ➤ Trial Track: <ul style="list-style-type: none"> ➤ One-Year Scheduling Conference to be scheduled following the close of pleadings, targeted for approximately one year after being scheduled ➤ At One-Year Scheduling Conference, judge will confirm that up-front evidence model steps completed, order schedule for exchange of expert reports, schedule mediation if not scheduled, facilitate settlement discussions, set Trial Management Conference date, set schedule for delivery of sworn witness statements for witnesses who provided will-say statements, and set a trial date targeted within 12 months of the One-Year Scheduling Conference ➤ Scheduling Conference may be set instead of, or in addition to, One-Year Scheduling Conference in certain circumstances ➤ Proposal to engage senior members of the bar as Case Management Officers to conduct select conferences

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Motions	<ul style="list-style-type: none"> Parties may bring motions as they see fit, subject to the <i>Rules</i> All motions commenced by Notice of Motion, with affidavit evidence and out-of-court cross-examinations if required In practice, some procedural and other issues dealt with at judicial case conferences, particularly on the Commercial List 	<ul style="list-style-type: none"> All requests for interlocutory relief to be subject to a <u>Directions Conference</u>, except certain categories (e.g., contested motions to presumptively be heard in writing, requests for urgent interlocutory relief) Directions Conference judge will dispose of most interlocutory disputes, or may direct a formal motion in certain circumstances Certain relief, such as contesting jurisdiction or striking a claim, to be dealt with at an early Directions Conference to be requested by the moving party Streamlined Directions Conference materials consisting of an Interlocutory Relief Form and written submissions of no more than 10 pages which include both evidence and legal argument Streamlining and simplifying certain common motions (e.g., motions to strike pleadings, pleading amendment motions, dismissals on consent, discovery disputes)
Pre-Trial Procedures & Mediation	<ul style="list-style-type: none"> Pre-Trial Conference before a judge, where the potential for settlement is discussed Mandatory mediation in certain areas (e.g., Toronto), and in certain types of actions (e.g., some estates matters) 	<ul style="list-style-type: none"> <u>Mandatory mediation</u> out of court for all Trial Track and Summary Track matters, subject to certain exceptions <u>Trial Management Conferences</u> for all Trial Track matters, to deal with only trial management issues and not settlement discussions <u>Binding judicial dispute resolution</u> on the consent of the parties and with Court approval at a Directions Conference
Trial / Hearing	<ul style="list-style-type: none"> For Originating Applications, a hearing on a paper record (with possibility of live evidence or the trial of an issue) For Actions, a trial with live evidence (with possibility for “hybrid trial” with some affidavit evidence) 	<ul style="list-style-type: none"> <u>Application and Summary Tracks:</u> Summary Hearing on a “Paper Record+” for summary proceedings, allowing the presiding judge the discretion to allow limited oral evidence if necessary <u>Trial Track:</u> <ul style="list-style-type: none"> A trial hearing presumptively hearing all fact evidence first, and then all expert evidence In non-jury trials, the expert report will presumptively be read into evidence and testimony will focus on areas of disagreement between the experts Evidence-in-chief of party witnesses presumptively oral, and limited to the “four corners” of the party’s witness statements, productions, and any focused examination Evidence-in-chief of non-party witnesses presumptively by witness statement (non-jury trials) or oral (jury trials)

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Post-Hearing Processes	<ul style="list-style-type: none"> ➤ Costs awarded at judge's discretion based on factors set out in the <i>Rules</i> ➤ Enforcement of orders via enforcement mechanisms in the <i>Rules</i> (e.g., garnishment, seizure and sale, etc.) ➤ Appeals to Divisional Court or Court of Appeal based on nature of order 	<ul style="list-style-type: none"> ➤ <u>Costs:</u> <ul style="list-style-type: none"> ➤ Defining “partial indemnity” (60% of actual fees) and “full indemnity” (100% of actual fees) costs scales in the <i>Rules</i> ➤ <u>Codifying that partial indemnity costs are presumptively available</u>, with discretion for the presiding judge, and full indemnity costs are presumptively available in certain circumstances (e.g., the unsuccessful party engaged in egregious conduct like deceiving the Court, or the proceeding or motion was frivolous, vexatious, or an abuse of process) ➤ <u>Enforcement:</u> Simplifying processes and removing procedural barriers for writs of seizure and sale and garnishment ➤ <u>Appeals:</u> <ul style="list-style-type: none"> ➤ Codifying a <u>complete list of orders appealable</u> to the Court of Appeal ➤ Merging interlocutory orders with final orders at the end of a proceeding, giving a right to appeal interlocutory orders at the time they are given and at the end of a proceeding ➤ <u>Relaxing the standard for granting leave to appeal</u> interlocutory orders to the Divisional Court ➤ Separating rules for appeals to the Court of Appeal, Divisional Court, and Superior Court of Justice