

Jonathan McDaniel
416-865-9555
jmcdaniel@litigate.com

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The Digital Shift in Ontario Courts: Proposed Rules for a Tech-Driven Future

The proposed reforms to Ontario's *Rules of Civil Procedure* (which we summarize here) includes innovative ways to better harness technology, making the litigation process quicker, simpler, and more accessible. The ongoing Civil Rules Review Working Group has proposed several enhancements to build on the steps our courts have taken since the pandemic, using more electronic means for filings, hearings, and civil litigation overall. These proposed changes aim to streamline legal processes and improve access to justice through the effective use of technology.

Since 2020, the Ontario courts have already advanced the ability of litigants and counsel to take more steps electronically:

- Broadening the filing of court documents through the province’s online filing system;
- Allowing sworn/affirmed documents like affidavits to be commissioned electronically and over videoconference;
- Using Case Center, the Superior Court of Justice’s online system for court materials, to host documents and refer to documents during hearings;
- Requiring hyperlinking of electronic materials;
- Broadening the use of videoconferences for examinations, case conferences, motions, and other court attendances; and
- Permitting greater use of e-mail for the service of documents and communications between the Court and parties.

The current Civil Rules Review proposals continue that welcome trend by recommending that:

- As part of the proposed “duty to cooperate” between litigants and counsel, that parties make use of available technology to promote efficiency;
- All civil claims be commenced online, using a single, fillable online form;

- Claims be permitted to be served by e-mail (together with ordinary mail), and that defendants be required to confirm acceptance of service where a claim comes to their attention in any manner, including by e-mail;
- More types of court documents, like requisitions for writs of seizure and sale, be filed through the online filing portal; and
- Parties and the Court be required to canvass how technology can be used during trial at Trial Management Conferences.

The proposed *Rules* will also require companies and other organizations to think about how they deal with and track litigation documents. If claims are permitted to be served by email, institutions should consider how they instruct employees, directors, or officers to handle claims that they may receive at their individual work email addresses. Institutions that are frequent litigants may consider creating and publishing a designated e-mail address for the service of claims, to ensure that they are directed to the right department.

The Civil Rules Review Phase 2 Consultation Paper also proposes to narrow the scope of documents that parties must produce in litigation. It recommends doing away with the existing requirement to produce all relevant documents and replacing it with the requirement to produce all documents on which a party wishes to rely, and known documents which are adverse to their position. Following that, it envisions parties exchanging requests for specific documents or categories of documents. For organizations with a large amount of electronic data, from e-mails to instant messaging systems, it presents an opportunity to streamline document collection. Organizations who are frequent litigants should consider how the ways they store, organize, search, and export electronic data can make the collection of litigation documents easier, faster, more accurate, and more targeted.

Together with the modernization that has already happened since 2020, these reforms have the potential to help lower costs for clients, speed up the litigation process, and make court documents more portable and accessible.

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
- Motions Practice Transformed: What the Proposed Civil Justice Reform in Ontario Means for Litigants
- Trials on Trial: A New Vision for Adjudication in Ontario