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# Up-Front Evidence: A New Era in Discovery Proposed by the Civil Rules Review in Ontario

Following their April 2025 proposals, the Ontario Superior Court of Justice and the Ministry of the Attorney General have proposed final reforms to the *Rules of Civil Procedure* in the Civil Rules Review Final Policy Report. The Working Group responsible for the Civil Rules Review is rethinking the system of civil litigation in Ontario "from the ground up" to ensure accessible and expeditious justice for all.

The Working Group's efforts at bold reform are most apparent in the proposed full-scale redesign of the discovery process from a relevance-based model to an up-front evidence model.

**The New Discovery Rules**

The proposed changes to the discovery process focus on three main areas:

1. **Document Production**: The process will more closely resemble arbitration, where litigants first produce key documents followed by additional document requests from other parties.
2. **Examinations for Discovery**: In the proposed Application Track and Summary Track proceedings, oral examinations for discovery will be eliminated. In the proposed Trial Track proceedings, oral examinations for discovery will be limited to 90 minutes subject to certain exceptions.
3. **Discovery Disputes**: Disputes arising from document requests, written interrogatories, and refusals will be dealt with in a streamlined written motion process based on a prescribed "Discovery Dispute Chart."

The Working Group refers to the discovery reform as the up-front evidence model and contrasts its proposed revisions to the relevance-based model currently in place. Under the relevance-based model, litigants have a duty to produce all documents relevant to the issues in the action. In the Working Group's view, this approach provides a low return on investment given that in many cases a party must collect, review, and produce thousands (and, in some cases, tens of thousands) of records, very few of which ultimately impact the

disposition of the case.

Oral discovery under the current regime is quite burdensome. Scheduling conflicts often push examinations months out, and attendance by all litigants is mandatory. After the examinations, parties must handle the time-consuming tasks of answering undertakings and addressing refusals. The process frequently leads to disputes, resulting in motions that take time to resolve and often have little to do with core issues in the case.

In contrast, the Working Group positions the up-front evidence model as quite different in that it is not driven by a “no stone left unturned” ethos that takes months (and sometimes years) to execute. Instead, it aims to get all the pertinent facts out very early in an action with minimal opportunities for delay or avenues for dispute.

The final proposed up-front evidence model aims to streamline the litigation process by requiring parties to present key evidence early on. Here’s what it entails:

1. **Claim-Based Disclosure**: All documents mentioned in the pleadings must be produced when the pleadings are served.
2. **Witness Statements**: Statements from all witnesses whose evidence will be presented at trial must be produced.
3. **Primary Disclosure**: Parties must produce documents they intend to rely on early in the process.
4. **Expert Reports**: Parties must exchange their expert reports early in the process in Application Track and Summary Track proceedings. In Trial Track proceedings, a schedule for exchanging expert reports must be established early.
5. **Supplementary Disclosure**: Document requests from other parties are limited and must follow a prescribed “Discovery Request Chart” format.
6. **Focused Examinations or Written Interrogatories**: In Trial Track proceedings, parties may seek either an oral “focused examination” of a maximum of 90 minutes subject to certain exceptions, or a maximum of 50 written interrogatories as an alternative to a focused examination.

Notably, these steps must be completed within the first 13 to 18 months of the issuance of the claim, depending on the track and whether third or fourth parties are involved. In cases with no third or fourth parties, the first three steps must be completed within 8 months of the issuance of the claim. Expert reports in Trial Track matters are subject to agreed-upon timing.

Timing is tight given the work required to identify, collect, and review documents in such a way as to ensure a good grasp of one's case, draft witness statements, and retain and manage experts.

In addition, the Report proposes Pre-Litigation Protocols (PLPs) for certain types of cases (e.g., personal injury), as well as the development of a general PLP for all other civil matters. PLPs will require the disclosure of certain documents before a claim is commenced.

**Impact on Litigation**

The up-front evidence model will translate into up-front costs for litigants. Instead of spreading their costs related to evidence over months or even years, litigants will be required to spend heftily before they serve a claim or defence, and in the weeks thereafter, to understand their case and adequately prepare their discovery. The requirement for sworn witness statements early confirms that litigants will want to be very sure of the case that they are making and the evidence they are relying on to make it. Content in sworn statements must be accurate and must align with documents being produced and interrogatories served.

An up-front evidence model should be less favourable to claimants who bring vague, broad, and unspecified claims for large damages amounts in hopes of a quick settlement before any real work needs to be done. Conversely, this model provides significantly less room for defendants to avoid a hearing on the merits through delay, or by grinding plaintiffs down with expensive motions practice.

Although the limitation of oral discovery most certainly means less cost and delay, it is unclear whether there will be any cost savings in document discovery. Clients rarely have key documents at their fingertips. Litigants will still need to go through the process of identifying, collecting, and reviewing significant volumes of data to decide what to use and what to include in witness statements. Indeed, documents could be reviewed up to three separate times under the new model given the two-step process for discovery and the requirement to answer interrogatories. Current technology used to assist with discovery is not well-suited for this new model and may soon

be rendered obsolete with significant and rapid gains in the use of generative AI for document discovery.

The up-front evidence model aligns well with generative AI that can quickly and accurately identify categories of documents, extract factual points, or answer questions about document contents. Advances in generative AI technology for e-discovery, and not the proposed *Rules*, will likely be the source of future cost savings in document discovery.

***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 Ontario's Rules of Civil Procedure
- Preparing for Proposed Changes to the Rules of Civil Procedure in Ontario: Strategic Insights & Practical Steps for In-House Counsel
- Motions Practice Transformed: What the Proposed Civil Justice Reform in Ontario Means for Litigants
- Expediting Justice: Pre-Litigation Protocol in the Proposed Changes to the Rules of Civil Procedure in Ontario
- Trials on Trial: A New Vision for Adjudication in Ontario
- Proposed Changes to the Rules for Expert Witnesses: Cooperation, Conferencing, & Consequences