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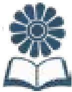

Reforming Civil Procedure in Ontario, Canada: Lessons for Comparative Civil Justice Systems

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I. Introduction

Ontario is undertaking one of the boldest overhauls of its procedural law in decades through the *Civil Rules Review (CRR)* initiative, launched in 2024. At the heart of the debate lies discovery, the mechanism by which parties exchange evidence before trial. The CRR's Phase 2 Consultation Paper proposes eliminating oral examinations for discovery entirely and shifting to an "up-front evidence model," in which parties exchange written witness statements and limited document disclosure early in the case. This shift is contentious: proponents argue it curbs delay and cost, while critics caution it may hamper fact-finding, cross-examination, or the protection against "trial by ambush."

Beyond its procedural significance, this reform must also be understood in a broader socio-economic context. In short, an effective civil justice system is a cornerstone of a functioning economy. As *the Organization for Economic Co-operation and Development (OECD)* observes, the proper protection of contractual and property rights "encourages savings and investment while promoting the establishment of economic relationships, bringing positive impacts on competition, innovation, the development of financial markets, and growth."

Likewise, the [World Bank] emphasizes that "efficient contract enforcement is essential to economic development and sustained growth." Without confidence that one's legal rights can be vindicated through fair and timely adjudication, individuals and businesses alike are less willing to transact, reducing economic activity and eroding trust in legal institutions. Thus, Ontario's civil procedural reform is not only a matter of judicial administration; it is a structural component of economic vitality and public confidence in the rule of law.

II. Background of the Ontario Civil Rules

Ontario's Rules of Civil Procedure, commonly called "the Rules," govern all civil proceedings in the province's Superior Court of Justice. They are enacted under the *Courts of Justice Act (R.R.O. 1990, Reg. 194)* and were first introduced in 1985, replacing the patchwork of older procedural codes that had governed actions and applications separately. The 1985 Rules were designed to unify practice, promote efficiency, and ensure fairness through structured pleadings, disclosure, and pre-trial mechanisms such as discovery and case management.

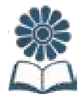
In the decades since their adoption, the Rules have undergone only limited amendment. However, the landscape of civil litigation has changed dramatically. Civil cases have grown more complex, often involving multiple parties, expert evidence, and cross-border elements. The digital age has produced an explosion in the volume and variety of documents that must be disclosed under the traditional relevance-based standard. At the same time, the number of self-represented litigants has increased sharply, placing new strains on judicial resources and exposing the limits of a system originally designed for lawyer-conducted litigation.

Earlier reform efforts sought incremental improvements, the 1990s Simplified Procedure to streamline smaller claims, the 2010 introduction of e-filing and electronic service, and post-COVID measures expanding virtual hearings and digital case management. Yet persistent problems remain: disproportionate litigation costs, procedural complexity, inconsistent case management, and delays that undermine timely access to justice. After nearly forty years, Ontario's civil procedure stands at a critical juncture, its foundational architecture largely unchanged while the demands of modern litigation have evolved beyond its original design.

III. The 2024–2025 Civil Rules Review Initiative

A. Ontario's Civil Justice in Crisis

Civil justice in Ontario is experiencing an existential crisis. A decade ago, in *Hryniak v. Mauldin,* the Supreme Court concluded that ordinary Canadians cannot afford to access the civil justice system. Moreover, even those who can are confronted with the troubling reality that many civil cases are not economically



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rational to pursue. There is consensus that the problem of access to timely and affordable civil justice has only gotten worse since Hryniak. As a result, litigants are increasingly turning to private arbitrations to resolve their disputes. Our civil justice system, in its present form, risks becoming irrelevant.

Justice Rosalie Abella, a former Supreme Court judge, in her *Opening Address to the Bencher's Retreat in 1999,* made remarks that perfectly describe the problem:

> *"We have moved from being a society governed by the rule of law to being a society governed by the law of rules. We have become so completely seduced by the notion, borrowed from criminal law, that process ensures justice, that we have come to believe that process is justice. Yet to members of the public who find themselves mired for years in the civil justice system's process, process may be the obstacle to justice. It may be time – again to rethink how civil disputes are resolved."*

In 2024, the Ontario Superior Court of Justice launched a comprehensive Civil Rules Review (CRR), the most extensive evaluation of the province's procedural framework since the Rules of Civil Procedure were introduced in 1985. The initiative was jointly led by members of the judiciary, the bar, and senior legal academics, reflecting a collective recognition that Ontario's civil justice system has become increasingly costly, complex, and inaccessible to many litigants. The Review invites written submissions from judges, lawyers, law associations, legal aid organizations, and the public at large, emphasizing transparency and collaboration.

The stated goal of the Review is not merely to "tinker" with existing provisions, but to reimagine the system holistically to align it with the realities of modern litigation. As outlined on *the Court's official website,* the primary objectives are:

- **Simplification and modernization:** Streamlining procedures, forms, and terminology to reduce complexity.
- **Proportionality and access to justice:** Ensuring that the time, expense, and procedural burden are proportionate to the case's importance and value.
- **Digital and hybrid integration:** Building on post-pandemic innovations to enable remote hearings, e-filing, and digital service.
- **Reduction of interlocutory delay:** Curtailing excessive motion practice and procedural fragmentation that impede timely resolution.

The Review is structured in *multiple phases*. The first phase involved identifying systemic problems through stakeholder consultations and comparative studies. The second phase, now underway, focuses on developing specific proposals for reform, while the final phase will submit concrete recommendations to the Civil Rules Committee for legislative and regulatory consideration.

B. Civil Rules Review (CRR)'s Guiding Principles

To ensure coherence and accountability, the Review is anchored in six guiding principles:

1. **Access:** All reforms must enhance efficiency and access to justice for both represented and self-represented litigants. The Rules should be drafted in clear and comprehensible language.
2. **Diversity and Inclusion:** The process must recognize the diverse realities of Ontario's population and the varying needs of regional courts and vulnerable groups.
3. **Modernization:** Reforms are coordinated with the province's Courts Digital Transformation Initiative and informed by best practices in other jurisdictions, both within Canada and abroad.
4. **Proportionality:** The time and expense devoted to civil proceedings must be proportionate to the amount in dispute and the importance of the issues.
5. **Timeliness:** Proposed changes should be implemented efficiently, progressively, and iteratively, avoiding abrupt disruption.
6. **Transparency:** The CRR's workplan and consultations are to be published and regularly updated, ensuring that justice system participants remain informed and able to contribute meaningfully to the process.

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C. Methodology and Expected Outcomes

The CRR adopts a consultative and comparative methodology, drawing lessons from procedural reforms in other Canadian provinces (such as *British Columbia's Civil Resolution Tribunal* model and *Alberta's case management system*) and international systems like the *United Kingdom's Civil Procedure Rules* and *Australia's Federal Court Rules*.

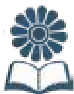
Although individual reform proposals, such as discovery reform, case management, and digital transformation, are discussed separately, the Review's approach is holistic. Its architects stress that efficiency cannot be achieved in isolation from fairness, access, and cultural change within the legal profession. The ultimate goal is to produce a set of recommendations that modernize the Rules of Civil Procedure while preserving the integrity of Ontario's civil justice system as a fair, accessible, and trusted forum for dispute resolution.

The challenge is a significant one. Currently, the Rules tend to prioritize the idea of "perfect" procedural fairness at every juncture. This pursuit of perfect procedural fairness, however, significantly contributes to the unsustainable cost and duration of civil actions and impairs the ability of litigants to access a publicly-funded system capable of resolving their civil disputes in a timely and economically rational manner. The quest for "perfect" procedural fairness for those few litigants capable of affording it should, in our view, be eschewed in favour of a system guided by the overarching principle of proportionality, one that will be better positioned to try to deliver justice for all.

IV. Key Themes in Reform

In April 2025, the Working Group released its *Phase 2 Consultation Paper*, laying out a new architecture for civil litigation in Ontario. The paper starts from the premise that "status quo is not an option." Some of the signature proposals (beyond discovery) include:

- **Pre-litigation protocols (PLPs):** mandatory early exchange of information and certain documents before a claim is filed in select categories (e.g. personal injury, debt collection).
- **Single point of entry / standardized claim form:** replacing the current dichotomy of "action versus application" with an online fillable form.
- **Duty to cooperate:** embedding a general obligation on parties and counsel to work together to structure efficient proceedings.
- **Case conferences and curtailed motions culture:** many interlocutory matters will be handled through conferences (scheduling, directions) rather than full motion hearings, reserving formal motion practice for significant matters.
- **Stricter adjournment and delay sanctions:** deadlines will be less flexible, and missing them may attract costs or striking of pleadings.
- **Expert evidence reforms:** standard reporting formats, presumptive joint experts in some issues, re-sequencing of fact/expert testimony, and constraints on supplementary reports.



However, discovery reform is the lightning rod, because it strikes at the procedural habits of litigators and the core of adversarial pretrial inquiry.

V. Discovery Reform: Elimination of Oral Examinations and Shift to Up-Front Evidence

Under the current regime, discovery in Ontario consists of two primary axes:

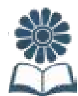
- **Documentary disclosure:** Parties must produce documents in their possession, power, or control that are "relevant to any matter in question in the action."
- **Oral examinations for discovery:** Parties (and sometimes third parties) are examined under oath before trial by opposing counsel; the transcript, undertakings, refusals, and motions arising therefrom are integral to case preparation.

The CRR's proposed "up-front evidence model" changes both main parts of the discovery process:

- Parties would, following the close of pleadings, exchange sworn or affirmed witness statements for all anticipated trial witnesses (i.e. their evidence in chief) and a timetable for expert reports.

- Documentary disclosure would no longer be based on a broad relevance standard. Instead, a modified reliance-based standard: each party must produce the documents they intend to rely on at trial, plus "known adverse documents" in their possession, power, or control.
- Supplementary disclosure may be permitted via the Redfern document request mechanism (borrowed from arbitration): a formal schedule where one party requests additional documents in focused categories, with a right to object and seek judicial direction.
- Oral examinations for discovery would be removed entirely; parties would no longer have the right to examine opposing parties before a court reporter in advance of trial.
- A limited number of written interrogatories may be available (narrow in number and scope).

Thus, the model seeks to front-load case preparation: litigants must develop their evidence early (rather than deferring to discovery), and interpose minimal further discovery only as needed. Supporters portray this as a radical simplification of the "discovery-industrial complex", reducing motion practice, document bloat, delay, and gamesmanship.



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VI. Opposition Perspective: Why Many Lawyers in Ontario Oppose Eliminating Oral Discovery

The proposal to abolish oral discovery has sparked strong resistance across Ontario's bar. Many lawyers argue that discovery remains vital to fairness, truth-finding, and early settlement. Their concerns underline that procedural efficiency should never come at the expense of access to justice.

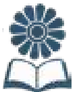
Access to justice is especially important for vulnerable plaintiffs. Opponents stress that discovery is often the only practical tool for individuals to uncover facts held by powerful institutions (insurers, hospitals, governments, large corporations). Removing oral examinations risks entrenching information asymmetries in cases involving disability, institutional abuse, fraud, medical malpractice, employment injustice, and everyday negligence. Several practitioner responses and coverage warn that replacing oral discovery with lawyer-drafted witness statements may disadvantage plaintiffs who need to probe credibility and completeness outside the controlled narratives of written statements. (See *Canadian Lawyer*)

Settlement reality: discovery is the system's "equalizer." With settlement rates widely estimated above 95% in Ontario civil matters, oral discoveries are often the only time parties face each other, narrow issues, test credibility, and catalyze resolution. Removing them could increase trial risk (or late-stage collapse of

cases) because key credibility testing would be deferred to trial. (See *Law360*)

Fairness over speed: written statements aren't a drop-in replacement. Opponents argue that early sworn statements are not quicker or easier (especially for self-represented litigants or injured parties); they also don't permit live follow-ups or spontaneous probing when an answer raises new concerns. Without oral discovery, case assessment and early settlement can suffer, and courts may face more (not fewer) full hearings. Organizations focused on self-represented litigants have flagged due-process risks if discovery tools are curtailed without robust safeguards. (See *Representing Yourself Canada*)

Proof, not promises: efficiency claims need piloting and data. Critics urge rigorous empirical testing before permanent abolition. Law firm and bar-group submissions point out that in complex and evolving records, "up-front" witness statements drafted early may become misaligned with later-known facts, spawning disputes and evidentiary inefficiencies. They recommend pilots, staged implementation, and robust exceptions rather than a wholesale ban. (See *Osler, Hoskin & Harcourt LLP*)



Power-imbalance concerns. Eliminating oral discovery is viewed by many as a shift that predictably benefits institutional defendants (who control information and resources) at the expense of individuals already at a disadvantage. Medical-malpractice practitioners, for example, warn that credibility testing and admissions, traditionally developed in discovery—are core to fair resolution; removing that stage may tilt the field. (See *Canadian Lawyer*)

Narrow, evidence-based carve-outs instead of a blanket ban. The Ontario Bar Association's submission endorses significant reform but recommends keeping oral discovery by leave and in the right circumstances (complexity, credibility at large, power asymmetry, public-interest dimensions). Opponents argue this targeted, judicially-managed approach better aligns with proportionality than absolute abolition. (See *Ontario Bar Association*)

About "exemptions." Some commentary has suggested that certain specialized lists or proceedings are unaffected. The Consultation Paper itself indicates that bankruptcy/receivership matters and some specialized proceedings (e.g., class actions pre-certification) would be carved out where governing legislation or structure conflicts, and it explicitly draws on Commercial List practices as comparators. That is different from a blanket "Commercial List exemption" from the entire package; it's more precise to say there are tailored modifications and statutory carve-outs rather than wholesale exclusions.

To sum up, critics warn that abolishing oral discoveries would erode fairness, especially for vulnerable or self-represented litigants. Since most cases settle before trial, discovery is often the only way to test credibility and uncover key facts. Written statements cannot replace live questioning; reforms should

therefore be tested and applied selectively, not through a blanket ban that risks efficiency at the expense of justice.

VII. Conclusion

Ontario's ongoing Civil Rules Review may rewrite the procedural script in Canadian civil litigation. Its boldest gamble is the proposed elimination of oral examination for discovery and the adoption of an up-front evidence model. Proponents argue that the new regime offers lower cost, speed, predictability, and judicial efficiency; critics warn of limitations to adversarial investigation, risk of surprise, and disproportionate burden on early case development.

Viewed globally, Ontario's reform reflects a wider movement to modernize civil procedure for the digital age. Across jurisdictions, courts face the same challenge, balancing fairness with efficiency. The Ontario experience enriches this international dialogue, showing that procedural reform is a continuous, comparative pursuit: redefining what effective and just dispute resolution means in the twenty-first century.

For comparative procedural scholars, Ontario's reform offers a real-time laboratory of change. In jurisdictions like Iran, where judges lead fact-finding, this shift reveals tensions between party-driven proof and judicial inquiry. Ontario's hybrid safeguards and discretionary carve-outs illustrate a balanced path, modernizing discovery while preserving fairness and demonstrating how procedural reform can serve both efficiency and justice.