



April 28, 2025

The Honourable Douglas Downey
The Attorney General of Ontario
McMurtry-Scott Building, 11th Floor
720 Bay Street
Toronto, ON M7A 2S9

*Via Email (Doug.Downey@ontario.ca; Patrick.Schertzer@ontario.ca;
Anthony.Galea@ontario.ca)*

Dear Mr. Downey:

Re: Urgent Legal Community Concerns About Proposed Civil Rules Reform Process

As you know, the Federation of Ontario Law Associations (“FOLA”) represents the province’s 46 county and district law associations, and through them, their members. We are the **only** provincial law association representing lawyers in all parts of the province, largely outside of Toronto. Our membership base consists primarily of lawyers on the front lines of legal services and access to justice – those working in “Main Street” sole practices and small firms.

It is on behalf of this constituency that we write today to raise our alarm over the work of the Civil Rules Reform Working Group (“CRR Working Group”) and its recommendations. We have now heard preliminary thoughts from lawyers in our constituency from across the province, and we join them in conveying our profound and unreserved concern that, to a significant extent, the proposed reforms are misguided, undermine their own objectives of modernizing Ontario’s civil process toward the more fair and efficient disposition of litigation, and may actually decimate the private bar’s ability to service the people of Ontario, including those living and working in underserved and rural communities.

We will be clear and direct in our assessment of these proposed changes: the most significant and far-reaching proposals from the CRR Working Group strike FOLA and our constituents as little more than ‘Big Law’ and commercial list regulatory capture over this process. These proposed changes to the Civil Rules are bad for the public. They are also bad for lawyers trying to maintain viable civil litigation practices, many of whom describe the reforms as ‘practice killers’ that will remove sole practitioners and small firms from civil practice altogether. While there are various technical aspects to civil process under scrutiny, our high-level concerns are as follows:

1. **The Proposals Are Not Evidence-Based:** The CRR Working Group has stated in Town Halls that the reforms are not based on reliable court data, of which they state there

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is little to none available. This results in concern that the reforms are based on the anecdotes of the CRR Working Group's members and of those with whom they have chosen to consult. The CRR Working Group's membership is curiously drawn almost entirely from commercial litigators at large Toronto (Bay Street) firms, who serve a narrow subset of clients in a limited number of judicial regions of Ontario. We have no confidence that any effort has been taken to compare legal process statistics, cost awards, or "time to trial" milestones between Ontario's judicial regions. Transformative policy change needs to be rooted in evidence, not anecdotal hunches. Instead, the group has relied heavily on procedural models from other jurisdictions that do not reflect the access to justice needs of Ontarians.

2. **The Working Group is Designing Rules for the Greater Toronto Area (Bay Street) and imposing them on the Rest of Us Who Practice Law Servicing Main Street:** The CRR Working Group is Bay Street-focused and, consequently, is not equipped to identify procedural challenges and best practices from experiences across the province. We all know that most cases in civil litigation involve "Main Street" law, and are in the practice areas of personal injury, insurance defence, estates, real estate, and small business disputes. Yet only 1 of the 14 Working Group members practice in these areas and actually serves the everyday litigant. The other lawyers of the CRR Working Group practice in areas typically serving big businesses and institutions as their primary clients. When asked to address this issue during the limited consultations we have had to date, we have been told to take comfort in the fact that one of the co-chairs includes a lawyer practicing in Mississauga and a former lawyer practicing in Barrie – this clearly does not sit well for much of our constituency. This is not just an equity issue. It is very apparent that the proposed reforms do not account for procedural needs in other areas of practice, particularly personal injury (which accounts for a sizeable majority of civil proceedings in Ontario), or class actions. Absolutely no consideration has been given to the fact that many of these matters involve trial by jury. We would like to know how the members of the Working Group were chosen.
3. **The Working Group Doesn't Seem to Know What Claims are Actually Economical:** During a Town Hall FOLA hosted with representatives of the CRR Working group on April 16, 2025, we were told, as though it were a matter of fact, that it is currently "uneconomical" to litigate cases worth less than \$500,000. That is patently and unequivocally false, as our thousands of members who are retained to represent individuals and small businesses in civil disputes can attest. Ontario's civil process needs to be reformed with the budget of everyday litigants and small businesses in mind – not Bay Street clients with massive litigation budgets. These types of comments only reinforce the perception that these proposed changes to the Civil Rules are designed in the lavish board rooms of Bay Street, without any consideration whatsoever as to how they will impact lawyers and everyday Ontarians on Main Street.
4. **Front-Loading of Costs Creates a Barrier to Access to Justice:** The CRR Working Group's proposal front-loads enormous costs that normally do not arise until much later in the civil litigation process. This will create a massive access to justice obstacle

for most prospective litigants of modest means in Ontario. Most of our clients are not able to commit five figures at the front-end of a lawsuit before the defence is even known. We note, with concern, that this proposed procedure appears to serve the interest of the large commercial defendants represented by many of the working group members and their firms. These “front-loading” issues are aside from the practical realities of being (i) unable to get expert assessment completed until after discovery, (ii) the inability to secure *Wagg* productions until the conclusion of parallel criminal processes (and then a further 10 month delay for productions from the Crown commonly experienced over the past several years), and (iii) the frequent need to begin with a *Norwich* order to collect relevant materials before commencing a proceeding. It is unclear that any of this has been considered by the CRR Working Group.

5. **The Proposed Reforms are a Practice Killer:** A by-product of the proposed reforms is going to result in fewer lawyers or small firms being able to practice in areas of law which service the people of Ontario. We have heard from many lawyers who signal that they would have to consider leaving their civil practice under these rules because they are designed for lawyers with the infrastructure and staff resources of the largest and most expensive law firms in the country. Again, this is a result of a Working Group that is incubating rules based on their own limited range of practice environments.
6. **The Model Comes from a Jurisdiction with a Narrow Scope of Civil Practice:** We have heard from some prominent civil litigators that the model proposed by the CRR Working Group is adapted from a jurisdiction in which courts do not handle personal injury and other common civil disputes before Ontario’s courts. This, too, is a consequence of developing rules in a vacuum without perspective from a wider range of practice areas at the table.
7. **The Proposals Require Judicial Resources that Do Not Exist:** While we acknowledge the CRR Working Group has no jurisdiction to expand the federally-appointed Superior Court bench, and neither does the provincial government, the proposed reforms would require more judicial and court resources to be workable, given the requirement for conferences and other touchpoints. The model does this while it proposes to eliminate current litigation steps like oral examinations which tend to lead to out of court resolutions and remove burdens from the court docket. It is unclear how removing procedural steps that lead to resolution, while at the same time adding steps that require the use of more court time, is going to improve the civil process. All of this is taking shape in a context where criminal and family courts routinely take precedence in court scheduling over civil matters.

We raise the above concerns not to advocate in this letter for your office to unilaterally impose alternatives, but rather to underscore that the CRR Working Group and its process does not appear to grasp the realities of civil litigation practice outside of the unique constraints of the GTA courts and limited types of clients and practices that the working group’s members maintain.

We are deeply troubled that these proposals – in their current form – are going to set back Ontario’s civil process and will serve to erect new barriers for parties with a need to commence or defend a civil proceeding. They will also reduce competition in the legal marketplace as lawyers leave practice when their ‘Main Street’ client base dries up due to the confluence of these concerns.

In closing, we want to be clear that **everyone** accepts that there is need for civil process reform in Ontario. We are not calling on Ontario to maintain the status quo. We are calling on you to intervene and reconstitute this committee, which must go back to the drawing board before irreparable damage is caused to civil process and the legal industry which facilitates access to justice for Ontarians.

We remain available to discuss these serious concerns with you directly.

Sincerely,

Allen Wynperle

Allen Wynperle
Chair

- C. Civil Rules Reform Working Group;
FOLA Civil Rules Task Force;
FOLA Board and Executive;
County and District Law Association Presidents;
The Advocates’ Society;
The Ontario Bar Association;
The Ontario Trial Lawyers’ Association
The Holland Group
The Canadian Defence Lawyers
The Toronto Law Association