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June 13, 2025

**Sent via email to [Jennifer.Smart@ontario.ca](mailto:Jennifer.Smart@ontario.ca)**

Civil Rules Review Working Group  
Jennifer Smart  
Ministry of the Attorney General, Court Services Division  
720 Bay Street, 11<sup>th</sup> floor  
Toronto, Ontario M7A 2S9

Dear Ms. Smart:

**Re: Civil Rules Review – Thunder Bay Law Association Comment**

Please bring this letter to the attention of the Civil Rules Review Working Group.

The Thunder Bay Law Association (“TBLA”) appreciates the opportunity to comment on the proposed reforms to Ontario’s *Rules of Civil Procedure* as outlined in the Civil Rules Review (“CRR”) Phase 1 and Phase 2 Reports.

As background, the TBLA has roughly 300 members, the majority of whom practice in the District of Thunder Bay. In preparing this comment, the TBLA sought the input of members who practice civil litigation in a variety of areas, ranging from insurance defence to employment to estates.

As a preliminary matter, the TBLA is concerned about the very small window of time given to comment on such an important reform. This comment is not nearly as detailed as we would have hoped, primarily because we simply ran out of time trying to gather the input of our membership.

We acknowledge the need for reform and share some of the concerns addressed by the Working Group including concerns that aspects of the current system are inefficient, costly, and, in many cases, inaccessible to everyday Ontarians. However, we strongly believe that many of the proposed changes, while well-intentioned, risk compounding access-to-justice issues, particularly for litigants outside major urban centres.

While we agree that reform is necessary to a degree, we are concerned that some of the proposals may undermine fairness, increase front-end costs, and disincentivize meritorious but cost-sensitive litigation. This letter provides a summary of the views of our local bar, which we trust will be given thoughtful consideration.

### **Supported Areas of Reform**

- *Application vs. Action*: we support doing away with what we view as an unnecessary distinction between the filing procedure for actions and applications. We trust that this will reduce confusion and streamline the process for litigants when initiating a legal proceeding.
- *Directions Conference*: we support the proposition of mandating a “Directions Conference” to set forth a timetable for proceedings that are summary in nature. We also agree with the proposal of having interlocutory motions dealt with at a Directions Conference.
- *Increased Case Management*: we support proactive case management as a helpful tool to reduce delay; however, this must be balanced with regional resource constraints.
- *Requisition to Come Off Record*: we support this procedural tool for counsel to be removed from the record without the need to commence a motion, which we view as unnecessary, time consuming and a strain on judicial resources.

### **Key Concerns**

#### *The Up-Front Evidence Model and the Elimination of Discoveries*

While we appreciate the rationale behind eliminating oral discoveries, the proposal to replace them with an upfront exchange of witness statements is, in our view, problematic for many reasons, including:

- Discoveries drive settlement. Examinations allow parties to test credibility, obtain admissions, and often aid substantially in early resolution without a trial. The removal of this mandated process may in fact increase the volume of cases that proceed to trial.
- Shifting costs: Preparing comprehensive witness statements upfront is an expensive undertaking that may deter plaintiffs' counsel from accepting complex contingency matters. We also suspect that many litigants will not have the funds upfront to fund this undertaking, precluding them from initiating litigation and decreasing access-to-justice.
- Unrealistic expectations: Parties to litigation typically do not appreciate the entire scope of relevant documents and witnesses at the outside, when disclosure is required under the proposed reform, rendering this proposal impractical.

### *Geographical Blind Spots and Resource Inequity*

Several members of our local bar highlighted concerns about the Toronto-centric lens through which these reforms appear to have been developed. The underlying assumption that courts across the province have equal judicial resources is flawed. Courts in Northern Ontario currently face issues with scheduling delays and under-resourcing, which we expect will be exacerbated (not improved) as a consequence of the concerns noted above.

Without investment in the judicial resources and the courts' administrative capacity in smaller regions, such as Thunder Bay, the proposed reforms will likely increase inequalities.

### *Proposed Expert Protocols*

Members of our local bar had concerns with the proposed approach for dealing with expert evidence, favouring the current system over that proposed. In particular it was noted that "hot-tubbing" experts and providing joint expert submissions is impractical and will likely lead to increased, rather than decreased costs to litigants.

### **Recommendation**

The TBLA welcomes reform but cautions against the outright adoption of the proposed model. Rather than a complete overhaul of the *Rules of Civil Procedure*, we suggest incremental change to the above-noted areas that require reform, while leaving intact the procedures and protocols currently mandated by the Rules that continue to work effectively and have stood the test of time.

We thank you for the opportunity to comment on the proposed changes. Please do not hesitate to contact the undersigned for any further information.

Yours truly,

A handwritten signature in blue ink, appearing to be 'JL', is positioned below the closing 'Yours truly,'.

Jordan Lester

President of the Thunder Bay Law Association