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**Civil Rules Review Working Group**

Attn: The Honourable Justice Cary Boswell, Allison Speigel and Jennifer Smart  
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June 16, 2025

## **EXECUTIVE SUMMARY: MLA RESPONSE TO CIVIL RULES REFORM (PHASE 2)**

### **Framing the Issue**

Ontario's proposed civil procedure reforms represent one of the most substantial procedural overhauls in recent memory. While well-intentioned, their rapid timeline and top-down implementation risk destabilizing access to justice, especially for marginalized litigants and regional communities like London and the Southwest.

### **Our Position**

The Middlesex Law Association (MLA) supports civil justice modernization, but strongly cautions against an overly rigid, Toronto-centric rollout. Reforms must reflect regional differences, real-world capacity constraints, and preserve key elements of fairness.

### **Summary of Critical Recommendations**

#### **1. Oral Discoveries Carve-Out**

- Maintain oral discoveries (limited to 3 hours) for cases involving abuse, personal injury, fraud, self-represented litigants, or complex facts.
- Allow hybrid discovery and judicial discretion to approve discovery at Directions Conferences.

#### **2. Evidence-First Model Modifications**

- Pilot the evidence-first model before province-wide rollout.
- Introduce a 3-year transition phase.
- Scale discovery obligations by case complexity and value.



3. Regional Resource Recognition
  - Address judicial shortages in London and Southwest Ontario before mandating Directions Conferences and judicial oversight.
  - Expand associate judge appointments outside major urban centres.
4. Justice Equity Audit and Exemptions for Pre-Litigation Protocols (PLPs)
  - Delay implementation of PLPs until equity impacts are assessed.
  - Introduce opt-out clauses for survivors of violence or vulnerable litigants.
  - Develop PLP templates with multilingual and plain-language supports.
5. Access to Oral Hearings
  - Guarantee oral hearings where credibility is at issue.
  - Permit simple applications to convert written hearings to oral format.
6. Fair Expert Evidence Standards
  - Limit joint expert mandates to claims under \$100,000.
  - Preserve right to appoint independent experts for each party.
  - Fund neutral panels to support under-resourced parties.
7. Modernized Electronic Infrastructure & Practice Direction Harmonization
  - Upgrade Case Centre platform.
  - Standardize practice directions province-wide to reduce administrative waste.
8. Oppose Evaluative Mediation Reports
  - Reject mediator report requirements that compromise neutrality.
  - Alternatively, create appeal mechanism for mediator assessments.

### **Prioritization of MLA Recommendations**

To support thoughtful adoption, we classify our recommendations into three tiers:

#### **Critical Reforms (Immediate Risk Mitigation)**

- Preserve limited oral discoveries (e.g., 3 hours) in select case types.
- Delay or pilot Pre-Litigation Protocols (PLPs), especially in estate litigation and abuse cases.
- Avoid mandatory evaluative mediator reports; maintain neutrality of mediation process.
- Fund associate judge appointments in underserved regions to address trial backlogs.



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### **High-Impact Enhancements (Improves Equity & Efficiency)**

- Scale documentary discovery to case complexity and value.
- Permit judicial discretion to approve oral discovery at Directions Conferences.
- Standardize practice directions across Ontario to streamline filings.
- Clarify expert report obligations for physicians and avoid unnecessary duplication.

### **System Modernization (Long-Term Structural Improvements)**

- Upgrade the Case Centre to ensure integration with evolving Rules.
- Promote best practice toolkits for digital service and self-rep supports.
- Implement Trial Management Conferences with sufficient resourcing.

### **Supporting Evidence**

Survey data from MLA members (May–June 2025):

- 32 Responses.
- 66.7% say meaningful consultation has not occurred.
- 83% express mixed or negative views of the reforms.
- Key concerns: loss of oral discovery, joint expert mandate, one-size-fits-all timelines.

### **Implementation Approach**

- Phase-in over 3 years, as in Quebec's reform.
- Pilot reforms regionally with robust feedback loops.
- Appoint an Access to Justice Advisory Panel for ongoing oversight.
- Fund legal clinics and technology upgrades to support transition.

### **Conclusion**

The MLA does not oppose reform. We oppose reckless, underfunded, top-down experimentation that could make justice more inaccessible. We urge a measured, data-driven approach grounded in Ontario's regional realities.

### **On Behalf Of**

Jacqueline Fortner, President

Rasha El-Tawil & John Nicholson, Bar & Bench Chairs, Middlesex Law Association



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**RE: The Middlesex Law Association's Constructive and Targeted Feedback to the Phase 2 Consultation Paper of the Civil Rules Review**

Dear Members of the Civil Rules Review Working Group,

We recognize the substantial effort and expertise that underpins your work and thank you for your commitment to modernizing Ontario's Rules of Civil Procedure. As members of the legal community — including those serving self-represented litigants, legal aid clients, and marginalized communities — we are acutely aware of the need for reform. We also understand the Committee's priorities: reducing delays, ensuring proportionality, and enhancing procedural efficiency.

However, the scope and speed of these reforms, coupled with the abbreviated 75-day consultation window, present a fundamental contradiction. If procedural fairness and accessibility are central values of this reform effort, then those same principles should guide the reform process itself. We respectfully submit that a full-year consultation, sector-wide stakeholder engagement, and real-world piloting are essential to achieve the outcomes the Committee seeks. These civil reforms touch nearly every Ontarian. Justice reform must be deliberate—not rushed.

Ontario is not alone in civil reform efforts. Notably:

- Quebec implemented sweeping procedural reforms through a phased 3-year rollout (2016–2019). Results showed a reduction in procedural delays without front-loading litigation costs to the same extent as the proposed Ontario model.
- British Columbia's Civil Resolution Tribunal has emphasized simplicity, plain language forms, and robust online dispute tools—key lessons for Ontario's access-to-justice goals.
- The United Kingdom's Woolf Reforms highlighted the importance of judicial case management but found that loss of oral processes hindered settlement and increased adversarial behavior in some settings.

Ontario must take heed of these experiences and design a framework that avoids replicating their missteps while learning from their incremental successes.

Reforms should also reflect the reality of what causes delays in the civil litigation process in various centers in the province. The Phase 2 Report suggests that the scheduling of discoveries, pre-trials and motions are the substantial causes of delay. This is simply not the case in London and the Southwest Region generally.



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The local bar is able to schedule discoveries in a timely way, and motion dates and pre-trial conference dates are readily available.

The greatest source of delay in this Region for cases that require a resolution by trial is the availability of judges to conduct those trials. Frequently matters scheduled for trial are not heard when the trial date arrives and are adjourned due to a lack of judicial resources. Trials being prepared for trial and then adjourned two or three times because no judge is available, is not uncommon. The elimination of oral discoveries and judicial pre-trials – the stages where most cases are settled – is likely to require more trials to be heard and to exacerbate the problem of trial adjournment in London and the Southwest Region, causing greater delay and increased costs.

This submission is tailored to reflect the Committee’s likely concerns: clear rule drafting, efficient implementation, and measurable improvement in access to justice. It includes practical recommendations as requested — with accompanying analysis of the consequences we believe merit deeper consideration.

This document highlights our concerns in relation to the following primary areas: (1) elimination of oral discoveries; (2) the up-front evidence model; (3) new expert rules; (4) increased expense for litigants.

### **Overall Timelines**

Predictable case progression is essential for managing judicial resources. However, strict timelines may lead to unintended consequences, such as a surge in dismissal motions due to non-compliance—especially among self-represented litigants—and increased scheduling disputes, which could further burden court dockets. These timelines may also overlook the challenges faced by litigants experiencing trauma, disability, or systemic disadvantage. Forcing even tighter timelines on counsel will also work to negatively impact mental health in the profession. Further, litigation will increase with a three-year limitation period as less cases will be statutorily barred. Expediency cannot be the primary goal of the Rules at all costs.

We further propose that a regional exemption process be added, allowing courts to tailor deadlines based on resource availability and demographic realities, especially in regions such as London and the Southwest where court delays stem from judicial scarcity, not procedural inefficiencies.

To mitigate these issues, we recommend implementing a mechanism that would allow for extensions to the procedural deadlines as necessary and changes to



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timetables by consent, employ a pilot project and gather regional data to validate feasibility before full rollout, and introduce a three year transition period to allow for extensive training and a phased-in approach for the application of the rules, reflective of the five-year timeline used in previous rule reforms.

### **Pre-Litigation Protocols (PLPs)**

Encouraging early resolution can alleviate court backlogs and we see some value in the PLPs. However, PLPs may become procedural landmines for self-represented litigants and risk disproportionately excluding those already marginalized within the legal system. PLP adds more work onto already burdened lawyers. PLPs may also not be appropriate in cases where information to be exchanged does not belong to any of the parties involved. In disputes about the validity of a testamentary instrument, the information belongs to the deceased. The Courts have upheld the special duty owed by executors and the Court to safeguard the private affairs of a deceased person. Production of such information is not automatic, which is why an Order Giving Directions is required – the Court needs to be satisfied such information is relevant, proportional, and necessary to adjudicate a dispute. No examples of draft PLPs for estate litigation were provided by the Committee, so it is unclear as to what the scope of a PLP concerning the validity of a testamentary instrument would be.

To increase feasibility and avoid disproportionately penalizing vulnerable litigants, we also recommend that PLPs be introduced via a limited pilot program in one urban and one rural region. This would allow real-world evaluation and refinement before mandatory province-wide implementation.

We would advise to delay implementation pending a justice equity audit, develop standard PLP templates for all contemplated impacted areas of law with multilingual guides, provide legal clinic resources for PLP support, and include in the Rules a fairness-based opt-out mechanism for vulnerable litigants, such as survivors of violence, that would be overseen by the court. We also recommend the development of confidentiality protocols enforceable even before litigation.

### **Pleadings and Hearing Types**

We acknowledge that streamlined initiation of proceedings may reduce front-end complexity. However, default summary hearings may undermine complex or high-stakes claims, and parties are unable to plan case strategy without knowing the hearing format. We would recommend requiring hearing type designation by the first Directions Conference, allowing trial election at the time of filing for specific case types (such as employment, Charter, or discrimination cases), and publishing toolkits to improve hearing type literacy.



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We are opposed to permitting service of Statements of Claim by email without requiring a Defendant to accept service via email. There is too much risk that the pleading will not go to the appropriate person within a large institution, such as an insurer, in a timely fashion. Alternatively, we recommend the Statement of Claim be emailed to an email address that is specifically indicated for service by the Defendant. Also, to mitigate against the threat of viruses being sent via email, we recommend Statements of Claim be sent as an attachment in pdf format only or as a link to the official court website.

We believe that allowing service of a claim on a lawyer who represents a party or an insurer of a party that has already responded to a notice of claim should be automatically permitted. We also recommend the creation of a public-facing best practices toolkit co-developed with legal clinics, to support service-by-email protocols and educate institutional defendants on properly routing service communications.

This will eliminate unnecessary motions and promote efficiency.

Parties should be given the opportunity to have their file marked inactive automatically at the outset without necessitating a court attendance. It is our understanding that a file can only be inactive for one year. Parties should be given the opportunity to seek further extensions at a Directions Conference where circumstances are extenuating and/or where the parties mutually consent.

### **The Evidence First Model**

The shift to an “evidence-first” model, requiring lawyers to build their entire case immediately after filing a claim is a significant shift. Today, most people can retain a lawyer with a smaller initial fee to assess the claim, with many settling early. Under the new model, lawyers would need to prepare for trial up front, requiring full witness statements, expert reports, and production of the documents to be relied upon at trial. This shifts legal work—and legal cost—dramatically forward. Civil justice is already financially unavailable to most Ontarians. The proposed changes would make the situation worse and require cases to be ready to go to trial at the outset and requiring claimants to pay large trial sized retainers at the outset of their claims. It is far from clear that those proposed changes would reduce the cost of that trial in every case. Everyday Ontarians with modest claims (employment, wrongful dismissal, contract disputes, personal injury) will be shut out entirely—an unacceptable outcome in a just society.

### **Documentary Discovery**



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We understand that early disclosure may have the potential to enhance efficiency and promote settlement. Still, aggressive discovery timelines can strain the resources of legal clinics and law firms and increase non-compliance among self-represented parties. We would suggest other reforms could include scaling discovery obligations based on the monetary value and complexity of the case, permitting staggered primary disclosure, creating fillable, plain-language templates, and providing grants for rural technology upgrades to meet electronic discovery demands.

At a minimum, there should be a mechanism to test the adequacy of a party's disclosure in their Affidavit of Documents where the parties believe they are incomplete. There should be meaningful sanctions such as significant costs for a party's failure to produce "adverse" documents.

We also recommend a Schedule D be added to Affidavits of Documents, requiring parties to list individuals who are reasonably expected to have knowledge of issues relevant to the litigation as there are times when such individuals are not identifiable from the documents alone.

### **Oral Examinations**

Oral discovery is the civil justice system's most powerful equalizer. Discovery allows parties — especially those facing institutions — to understand the full story and be heard. Without it, the playing field tilts further in favour of deep-pocketed parties.

We understand the desire to view written interrogatories as a means of offering consistency and reducing costs. However, eliminating oral discovery may hinder fact-finding in credibility-dependent cases or technically demanding cases, and obscure inconsistencies or bad faith. Eliminating discoveries also removes the only opportunity for victims of abuse to use their own voice to finally tell their story. Written statements and written interrogatories invariably are more expensive than oral discoveries and are drafted by lawyers. An opportunity to ask clarification questions, even in a time limited manner is more efficient than written interrogatories. Proceeding to a trial without ever testing the other side's case at discoveries will lead to reduced settlement rates. Discoveries are an opportunity to test the evidence, obtain necessary evidence not disclosed by the other party, and meet the parties. This often results in settlement of cases. Without discoveries, settlement rates will likely be reduced, more trials will need to be held, and costs will increase substantially for many litigants.



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As a compromise, oral discoveries could also be limited to a maximum of 2 hours unless judicial leave is granted, with streamlined electronic scheduling to control cost and duration. This provides proportionality without full elimination.

To preserve balance, we urge the Committee to maintain oral discovery limited to 3 hours in cases involving fraud, employment, personal injury, abuse and violence, complex facts, or self-represented litigants, allow hybrid discovery models, and permit parties to consent to discoveries or seek leave of a judge to conduct discoveries. Alternatively, parties should be permitted to justify the need for the discovery at a Directions Conference.

### **Witness Statements**

Early written witness statements are a make-work project and untenable in cases where damages do not crystalize until much later. This is a burdensome time-consuming task for counsel. Instead, we suggest that summaries of evidence be produced at various intervals of the case. If a matter is proceeding by way of summary trial, the deadlines for production of affidavits would be built into the Rules.

Experts who are physicians or other medical or allied healthcare professionals (treating or retained) should not have to sign a witness statement or affidavit. Their records and reports should suffice unless a party wishes to present their evidence on matters not contained within the records. Ontario's medical system is overburdened. Having to review and revise witness statements would be problematic to most physicians and an unnecessary cost for the parties.

We also seek clarity as to whether a physician is expected to provide an updated witness statement each time their records are produced. That would be untenable and increase costs substantially. Physicians do not have the time or inclination to do any additional work as they are extremely burdened by their workload, which will not likely be alleviated.

Sworn witness statements are even less useful in a jury trial as it will not be useable before a jury. Most personal injury claims are before juries as insurers prefer juries over judge alone trials for personal injury matters. Unless the Rules specify different requirements for different types of trials, this will result in work that will not be used at a jury trial.

### **Judicial and Directions Conferences**

Structured case management reduces procedural drift. However, inconsistent practices across regions and uneven virtual access and interpretation tools pose



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challenges. Standardizing judicial training in trauma-informed and culturally responsive practices, requiring virtual appearance options and remote interpretation services, and publishing metrics on conference outcomes are recommended to ensure equitable and consistent application.

There is significant concern that there are insufficient judicial resources in the Southwest Region to conduct the volume of judicial and directions conferences contemplated by the Phase 2 Report. This concern is magnified given that an integral part of the “Paper Record + Process” is obtaining an “early” Directions Conference required to timetable the procedure. The creation of a number of new associate justice positions by the Province of Ontario, and timely appointments to those positions, will be necessary for such conferences to be held in this Region. The federally appointed judges are too busy with trials and motions that must be heard by a judge to be tasked with handling additional conferences.

The myriads of disparate practice directions across regions leads to significant waste of court resources; at the counter when clerks must review and reject documentation and, in the courtroom, when judges are required to grant adjournments to allow proper papering of court files. The practitioner is at the mercy of the counter clerks who exercise their acquired expertise. Adopting one set of Rules across the province with one set of accepted practice directions for processing, filing or notice protocols will alleviate the stress for clerk, judge and counsel and expedite the processing of litigation.

This administrative roadblock extends to the existing Case Centre which has evolved only its name since its introduction. The Report has not recommended any changes to bring this 1.0 software into the future. Its inadequacies often lead to wasted judicial time while documents are duplicated outside the system and then reinterpreted to coordinate the courts' view with counsel. Dedication to improving the concept will enhance efficiencies in the courtroom, saving time and consequently tax dollars.

## **Motions**

Motions can improve procedural efficiency when appropriately filtered. Yet, compressed formats might oversimplify complex matters, and parties may struggle with uncertainty over what qualifies for a motion, leading to resource waste or missed deadlines. Therefore, clearly distinguishing between conference-resolvable issues and formal motions, permitting urgent procedural motions pre-conference, and offering template motion briefs for unrepresented litigants are key recommendations of the MLA.



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It is worthy of note that London does not have a motions culture and getting a motions date is simple and efficient. Motions in London are simply made returnable on any Friday, and the issue is resolved at that hearing if argument will take 1 hour or less. Motions requiring more time are adjourned to a “special appointment” date, which are readily available. Although the motions system in London is working well, there are many routine motions such as Wagg motions, which could be eliminated or simplified in the new rules, and would reduce the need to bring these motions and reduce court time.

### **Mediation & Pre-Trial Procedures**

Mediation and pre-trial procedures serve the goal of enhancing court capacity through early resolutions. Still, mandatory mediation may exacerbate power imbalances and make trauma survivors or equity-seeking groups feel coerced. To address this, funding mediation with trained professionals, and developing coaching tools for self-represented litigants are recommended. An enhanced trial management checklist for use at pre-trials to improve trial efficiency is helpful.

We oppose the notion of a mediator having to provide an evaluative report. A mediator is not a judge. They are not trained as a judge would be. They may not understand key issues or areas of law. Mediators must be neutral but they also have a business model and this requirement places them in a conflict of interest. Prospects of settlement would be prejudiced as the parties would place more emphasis on advocacy at the mediation where the party is trying to get the mediator to agree with their position rather than the parties speaking to each other. Alternatively, we recommend a direct way to appeal the cost consequences from the mediator’s evaluative report be implemented.

The introduction of Trial Management Conferences on a uniform basis would assist in dealing with potential issues prior to trial. This has been implemented in a variety of jurisdictions; however, it does take some time to complete the review the various requirements and the TMC checklist proposed would potentially consume a significant amount of time and detract from settlement discussions. It also operates on the assumption that there will be additional judicial resources to conduct these conferences, which would likely require a half day to complete.

### **Trial and Hearings**

Paper hearings can expedite adjudication. However, written-only processes can be costly, can disadvantage individuals with low literacy, disabilities, or no legal counsel. To ensure fairness, oral hearings should be guaranteed where credibility is material, simple applications to convert summary to oral proceedings



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should be enabled, and community-based training on written advocacy should be funded.

It is worthy of note that London, when scheduling trials, uses a running list system. Fixed hearing dates, as contemplated by the Working Group, are preferred, especially as the order of witnesses is expected to be known prior to trial.

### **Expert Evidence**

Expert evidence reforms may offer a significant means for streamlining evidentiary disputes by curbing dueling experts. Yet, joint expert mandates may suppress advocacy and disadvantage less-resourced parties who cannot afford rebuttal experts. Joint experts may prove to be rare as parties will not agree on a joint expert. Our recommendations are to preserve the right for each party to appoint one expert, restrict joint expert requirements to cases where the Plaintiff is claiming damages for under \$100,000, and provide publicly funded neutral expert panels to support access-limited parties.

The Court currently has the authority to exercise control over the number of experts called in an action; but, in our view very rarely, if at all, exercises that discretion. In many instances multiple experts are required to address overriding legal issues (the threshold in motor vehicle cases) as well as areas within their particular expertise. The suggestion that a party be limited to one expert per issue ignores the fact that in a personal injury case, the damages may flow from both physical and mental health issues which would require expertise from different fields of medicine.

The notion of having experts confer prior to trial is not a new concept; however, this may impose a further layer of expense upon litigants. In addition, it is generally expected that counsel would share experts reports with their experts to address and provide opinions regarding areas of dispute. In addition, the suggestion of a Court appointed joint expert would presumably place the expert in the role of a judge or jury in determining a particular issue. The list of issues in which a joint expert might be appointed are typically based upon a series of assumptions or facts which must be determined by a judge or jury.

The order of presentation may lead to some confusion in jury trials as it may not be apparent whose witness the expert is being called for. The presentation of lay or factual witnesses prior to expert testimony is viewed as a positive development. Counsel ought to have the ability to determine the order of witnesses, as scheduling conflicts and other reasons may require a different



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order of witnesses, especially if trials are not fixed dates. This can perhaps be addressed at a TMC.

Clarification as to how surveillance will be addressed under the new process is sought.

### **Electronic Trials, Motions and Injunctions**

Post pandemic the legal profession has acclimatized to using Zoom for many court functions. Zoom can dramatically cut costs for the province and litigants with savings in court staff, infrastructure and party litigants travel expenses. Zoom trials increase access to justice for self represented parties and others who will save travel expenses. Zoom trials can be effective to manage many cases where credibility is not an issue or where the parties agree to presenting their cases that way. These trials can be encouraged with allocating sufficient judges to ensure that choosing an electronic trial leads to earlier trial dates.

### **Post-Hearing: Costs & Appeals**

Predictable cost frameworks deter unnecessary litigation. However, restrictions on cost recovery could discourage valid public interest cases, and limited appeal rights may reduce procedural oversight. Thus, retaining full cost discretion in equity-driven or public interest matters, allowing interlocutory appeals in cases involving access or fairness, and publishing user-friendly appeal guidance are recommended to support fair post-hearing outcomes.

There must be procedural safeguards of reasonableness in relation to having a party's "actual costs" be indemnified by the other party.

### **Class Proceedings**

The proposed civil litigation reforms have the potential to significantly impact class proceedings, and the Working Group is urged to clarify which new Rules will apply to proceedings under the Class Proceedings Act and when – whether in the pre-certification, common issues, and/or individual issues stages.

One key issue is clarifying the applicability of pre-litigation processes. Because PLPS are applicable based on the subject matter of a dispute, not the form, it is unclear whether PLPs are intended to apply to class actions (for ex. those involving "personal injury claims"). The Working Group is urged to consider whether it may be impractical for PLPs to apply to class actions due to the scale and complexity involved.



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Regarding pleadings, clarification is also sought to ensure plaintiffs in class actions can propose amendments to pleadings to fix deficiencies in response to s. 5(1)(a) of the certification test, paralleling the ability given to responding parties in motions to strike. This is a principled approach, given that s. 5(1)(a) is assessed based on the same standard as a motion to strike. The Working Group should also clarify the timing for the filing of a statement of defence in class actions. It is clear, notably in *Richard v. Canada*, 2022 ONSC 6847, that a statement of defence must be presumptively filed before certification in class actions. The new rules should affirm this standard.

The proposals on expert evidence are also of particular relevance to class actions. The certification test requires a "some basis in fact" standard, often established through competing expert reports. Requiring joint experts on central issues such as standards of care or economic loss may be unworkable, as parties often cannot agree on key assumptions and expert neutrality is difficult to guarantee in class action as experts will align with one party. Restricting class actions to joint experts on central issues thus undermines the court's ability to assess if a dispute exists justifying certification and forces courts to set assumptions that predetermine key issues, which is not an appropriate judicial role.

With respect to discovery reforms, the proposals for witness statements and disclosure timing require clarification in the class context. In complex cases, parties rely on adverse witnesses, and disclosure obligations must reflect this. For example, evidence given by adverse witnesses may comprise a significant portion of a plaintiff's case in chief. There is also ambiguity about when and how disclosure obligations kick in post-certification—whether limited to common issues or extending to individual damages trials, etc. We would also urge courts to retain discretion to permit oral discoveries in class proceedings, given their critical importance in testing complex evidence, though parties could consent to dispense with them.

Regarding motions practices, there is also confusion over how new requirements—such as page limits or streamlined motion materials—would interact with legislated procedures like certification motions. The "One Document" limit of 20 pages is insufficient for complex class motions, like certification, and could shift rather than reduce judicial resource demands, leading to longer oral arguments.

The Working Group should also ensure that Proposed class proceedings receive the same procedural benefits as individual litigation under the new rules. Since a class action is treated as an individual proceeding until certified, excluding it from reforms would create procedural asymmetry. This could lead to a perverse



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incentive for plaintiffs to file individual lawsuits to access new procedural tools earlier, undermining efficiency and increasing duplicative litigation. Such an outcome contradicts the policy goals of both the Class Proceedings Act and the proposed rule changes—namely, access to justice and judicial economy. There is no principled basis for excluding class actions from these reforms. Further, any new rules that would treat proposed class proceedings differently than individual proceedings would be tantamount to amending the CPA, which – as duly noted in the Consultation Paper – is outside of the CRR’s mandate.

### **Transition Provisions**

As for the phase in period, we understand that they did a similar drastic change to the civil litigation procedure in Quebec a few years ago, and it was phased in over a period of years. As there will likely be times when both regimes will operate simultaneously, and some law firms/institutions might need to increase staffing/personnel to handle the workload associated with the up-front evidence model as they come to better appreciate what is required, we suggest that a 3-year phase in period might be more appropriate than just 6 months.

### **Supplementary Analysis Based on MLA Survey Data**

This submission is not only grounded in principle, but also in evidence. Between May 1 and June 1, 2025, we surveyed our membership to better understand the legal profession’s reception to the proposed reforms. We received over 32 responses not including the 12 members on the Civil Rules Response Committee. The results are telling and reinforce the concerns detailed in this letter:

- Two-thirds of respondents (66.7%) believe that legal professionals in Ontario have not received meaningful consultation with respect to the proposed rules. This alone should be a signal to the Committee that the consultation period has failed to meet the threshold of legitimacy required for systemic change.
- Only 16.7% of respondents agreed with most or all proposals. In contrast, 60% expressed mixed views and 20% outright disagreed with most or all proposals. This level of division suggests that the reforms, while well-intentioned, have not been sufficiently tested for consensus or real-world viability.
- Among the top concerns raised in open-ended survey responses:



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- The elimination of oral discovery was overwhelmingly cited as a detrimental change. Respondents warned that it would undermine credibility testing, disproportionately harm plaintiffs, and reduce opportunities to clarify disputes before trial.
- Many highlighted that the joint expert requirement could stifle adversarial fairness, especially for self-represented or under-resourced parties.
- There was acute worry that the new rules cater primarily to Toronto-centric problems and fail to account for regional variability or resource constraints, especially in rural or underserved districts.

These results are not outliers; they echo the deep sense of concern expressed across clinics, small firms, and equity-seeking members of the bar. We urge the Committee to understand this feedback not as resistance to change, but as a demand for smarter, more inclusive reform.

We are concerned that these proposals will escalate the cost of litigation in Ontario to price people out of bringing or defending claims. While some of the proposed changes would go a long way to addressing the issues in our system, such as making mediation mandatory province-wide and simplifying the enforcement of court orders. However, other proposed changes will likely achieve the opposite - they will increase barriers for everyday Ontarians, especially those without deep financial means. We are concerned that these proposals have been developed with insufficient consultation, inadequate data, and limited regional representation.

We believe that the government could achieve its stated purpose of faster, less expensive civil justice by less radical means. A simple way to increase access to civil justice would be the widespread appointment of associate judges outside the Greater Toronto Area, Ottawa, and Windsor. These associate judges would deal with the various procedural aspects of civil actions, freeing up judges to hear civil trials. Widespread availability of associate judges would also allow for a consistent, province-wide approach to construction and bankruptcy cases instead of the patchwork of informal processes that exist now. Instead, the government has decided experimentation is easier and cheaper than giving the system the resources it needs.

We are also concerned about the impact of these changes on the culture of the bar when counsel never interact in person or otherwise, and rather only deal with one another electronically or on paper. The impact of the digitization of litigation since Covid-19 has negatively impacted the collegiality of the bar, the mental health of the profession, and advocacy skills. These proposed changes will likely worsen the situation.



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## Conclusion & Forward Path

We recognize the Committee's desire to build a faster, clearer, and more responsive civil justice system. But such a system must be measured not only by speed or efficiency — but by its fairness, accessibility, and proportionality to the lived experiences of those who depend on it.

We respectfully ask the Committee to:

- Extend the consultation window to one year.
- Undertake an independent, data-driven analysis of the civil justice system.
- Engage frontline legal professionals and non-lawyers from across all regions and practice areas;
- Host public engagement sessions with equity-seeking communities and legal clinics.
- Pilot reforms in selected jurisdictions and analyze results.
- Increase judicial appointments and court funding before overhauling procedures.
- Establish a permanent Access to Justice Advisory Panel.

We emphasize that many of our recommendations do not require halting reform but rather redirect it toward more inclusive, data-driven implementation:

- Hybrid and piloted rollouts allow real-world testing in diverse legal environments.
- Procedural opt-outs protect vulnerable litigants from unintended consequences.
- Regional tailoring ensures that Southwest Ontario is not burdened with rules designed for Toronto-specific backlogs.
- Simplified enforcement tools and digitally supported reforms will ease adoption without sacrificing equity or fairness.

Justice must not only be swift—it must be measured, inclusive, and informed by evidence from Ontario and beyond.

We reiterate that many of our proposals, such as hybrid discovery, regional pilot projects, and improved digital infrastructure, are not requests for reversal—but for implementation enhancements that ensure the reforms succeed equitably across Ontario.

These steps are not detours. They are necessary lanes on the road to meaningful reform.



*the* MIDDLESEX  
LAW ASSOCIATION

Yours,  
Jacqueline Fortner, President  
Rasha El-Tawil and John Nicholson, Chairs of the Middlesex Law Association  
Bar and Bench

On behalf of the MLA Subcommittee Response to Civil Rules Changes Task  
Force

**Contact**

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