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Ontario's Civil Litigation Shake-Up: Three Proposed Rule Changes Insurance Claims Professionals Should Know

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Significant changes may soon be coming to Ontario's Rules of Civil Procedure. The Civil Rules Review Working Group's Phase Two Consultation Paper proposes a major overhaul aimed at speeding up civil cases, reducing procedural disputes, and making the court process more efficient and affordable. While much of the buzz around the changes has centered on the impact to litigators, these reforms will also have meaningful implications for insurance professionals managing claims. If you or your team handle insurance claims, three proposed rule changes to watch are:

1. The "up-front" exchange of evidence including delivery of documents at the outset of a claim and sworn witness statements;
2. The implementation of strict, standardized timelines for delivery of pleadings and other litigation milestones (and real penalties for missing them); and
3. A mandatory "Pre-Litigation Protocol" for personal injury claims requiring parties to exchange of information, including insurance policies, and explore settlement in advance of filing a claim.

With the potential for implementation as early as 2026, now is the time to begin preparing to adapt to what is likely to be a wholesale change to civil litigation in Ontario.

1. The "Up-Front Evidence" Model

A central feature of the proposed reforms is the early and comprehensive exchange of evidence. From the outset, each party must produce all non-public documents referenced in their pleadings. Shortly after pleadings are delivered, parties must exchange:

- Sworn witness statements (representing the witness's evidence-in-chief at trial);

- All documents a party intends to rely on and any known adverse documents; and
- Proposed timetables for the exchange of expert reports.

Oral discovery would be eliminated. However, parties may also seek supplementary disclosure of documents or delivery limited written interrogatories.

With an “up-front” evidence model, claims professionals will have access to the parties’ key documents and witness statements within the first year of a claim being field. This should allow for comprehensive evaluations of liability and damages sooner in the litigation process and, in turn, increase opportunities to resolve claims before trial. While the need to produce sworn witness statements may front-load defence costs, these costs may be balanced against the proposed narrower scope of document disclosure (a shift from the current broad relevance-based standard to one focused on reliance).

2. Fixed Timetables and Penalties for Delay

For most claims, the new rules would introduce a standardized timeline for litigation milestones, with some flexibility for modification. Key steps like the exchange of pleadings and setting timelines for expert evidence, would occur within one year after the claim is filed and prior to a “One Year Scheduling Conference” with the court. The ultimate goal is to have a dispositive hearing (e.g. trial) for most claims within two years of filing.

To enforce these timelines, the reforms propose stricter consequences for missed deadlines. Failing to meet a deadline or missing a scheduled appearance could result in delay penalties payable to the other side (e.g. $500/day), or even the striking of pleadings in some cases.

The strict enforcement of deadlines underscores the need for claim professionals to establish early and clear communication with insureds and defence counsel. Further, while deadlines may be altered on consent in some circumstances, there will likely be increased pressure placed on claim professionals to make coverage determinations and resolve coverage issues on complex files quickly.

3. Mandatory Pre-Litigation Protocols

For personal injury, debt collection, and will-challenge cases, the parties would be required to engage in a Pre-Litigation Protocol (PLP). For personal injury claims, the steps in the PLP include:

- The claimant sends a detailed letter of claim with specified information at least 90 days before starting a lawsuit;
- The parties exchange key medical, employment, and insurance documents;
- Within 30 days of receiving the claimant’s documents, the defendant sends a letter of response with specified information, including whether the defendant admits liability or accepts the damages being claimed; and
- Within 18 days of receiving the defendant’s letter of response, the parties discuss whether negotiations or some other alternative-dispute resolution process might be used to resolve the dispute.

With a detailed notice letter becoming the standard in personal injury claims, an initial coverage determination would need to be made quickly based on the allegations in the letter of claim. A further coverage assessment may be necessary if a claim is subsequently filed. In addition, the PLPs requirement for early disclosure of positions on liability and damages, as well as the exchange of documents, will necessitate early intervention by defence counsel to assist insureds through the process.

Looking Ahead – Preparing for Change

The proposed changes are not yet final, and detailed policy proposals will be prepared following completion of the consultation phase. However, it is evident that a shake-up to the status quo is coming and comprehensive, sweeping changes geared toward improving improve access to justice and reducing delays will be introduced.

By considering the potential impact of these proposed changes now and taking time to prepare, you will be better positioned for a smooth transition and continued effective claims management under the new rules. Some ways to start to prepare for the changes include:

- **Assess Day-to-Day Impact:** Consider how the new rules might affect claim handling, reserving, and workflows. Identify any training needs and assess if there are ways to streamline internal claims intake and triage processes. Are there colleagues internationally already managing claims in jurisdictions using the similar “up-front” evidence models or PLPs that can provide insights or guidance?
- **Communicate Early:** Initiate conversations with your clients and service providers to discuss the changes, set expectations, and identify how new deadlines and requirements will be achieved.
- **Stay Informed:** Keep up to date on the progress of the rules review and discuss potential impacts in real-time with your colleagues in the industry. The more you know, the better you can plan.

We are continuing to closely monitor the proposed reforms and their potential impact on the insurance industry. If you have questions about how the changes identified in the Consultation Paper may affect your claims processes or would like to discuss planning specific to your organization, please feel free to get in touch.