

**CANADIAN
DEFENCE
LAWYERS**

April 4, 2025

The Honourable Justice Cary Boswell
Superior Court of Justice

Allison Speigel
Speigel Nichols Fox LLP

c/o Jennifer Smart
VIA EMAIL: Jennifer.Smart@Ontario.ca

Re: Lack of Meaningful Consultation, Ontario Civil Rules Review Phase 2

Dear Justice Boswell and Ms. Speigel,

Canadian Defence Lawyers (CDL) is Canada's only national association of Civil Defence Lawyers, representing 1,200 members, mostly in Ontario. We write to express preliminary concerns about the process of the Civil Rules Review (CRR). CDL will submit a formal response to the Phase 2 Consultation Report by June 16, 2025.

There is a lack of representation from the insurance defence and personal injury bar in CRR's process. Personal injury and insurance litigation forms a substantial component of Ontario's civil litigation caseload. The CRR Working Group consisted of mostly commercial litigators with no insurance defence lawyers and one personal injury plaintiff lawyer. Early on, CDL expressly requested an insurance defence litigator be added to the Working Group to address this apparent oversight, but that request was denied. The CRR Working Group is not representative of Ontario's litigating bar.

CDL is equally disappointed in the lack of transparency of CRR's process:

- CRR's discussions occur behind closed doors with the members bound by non-disclosure agreements.
- If the CRR relied on data, it should immediately be provided to the public and the bar (as very little is referenced in the Phase 2 Consultation Paper).
- The main source of information cited in the Phase 2 Consultation Paper is the subjective "belief" (presumably, the beliefs of the individual members of the not-representative Working Group).

- The concept of abolishing Examinations for Discovery is absent from every document the CRR has released – Phase 1’s consultation PDF form, Phase 1’s Report, the CRR’s Terms of Reference and all news coverage – until now. What could be the purpose of keeping such a fundamental change to civil litigation a secret from those affected by it – Ontarians seeking justice in the courts, and their advocates?

The CRR has announced a May 12, 2025 webinar. You are participating in an even earlier appearance at The Advocates’ Society on April 10th (a mere 9 days after releasing the Phase 2 Consultation paper). It is hard to conceive of the purpose of not one but two webinars about draft proposals if the consultation process, which does not require written submissions until June 16, 2025, is a legitimate one.

CDL has participated in every Ontario government consultation on civil procedure over several decades. It is regrettable that this group chose this secretive process in which consultation of the bar appears not to value, or even seek, the input of impacted litigators who speak on behalf of their clients who seek access to Ontario’s civil justice system.

CDL is committed to improving civil justice in Ontario and will submit a formal response by June 16, 2025.

Yours,

Canadian Defence Lawyers (Association)