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The Honourable Douglas Downey

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Civil Rules Review Working Group

Attn: The Honourable Justice Cary Boswell, Allison Spiegel, and Jennifer Smart
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DRI is providing this response to the Civil Rules Review Working Group's Phase 2 Consultation Paper (CRR Consultation Paper) on behalf of its members both in Canada and the United States and in support of our sister organization the Canadian Defence Lawyers' (CDL) response to the CRR Consultation Paper.

With over 16,000 members, DRI is the largest international membership organization of attorneys defending the interests of business and individuals in civil litigation. DRI is committed to:

- Enhancing the skills, effectiveness, and professionalism of defense lawyers;
- Anticipating and addressing issues germane to defense lawyers and the civil justice system;
- Promoting appreciation of the role of the defense lawyer;
- Improving the civil justice system and preserving the civil jury; and
- Seeking out and embracing the innumerable benefits and contributions a diverse membership provides.

The Center for Law and Public Policy ("The Center") is part of DRI. The Center is DRI's think tank and advocacy voice. Founded by DRI in 2012, The Center is the national policy arm of DRI and serves as the public face of DRI. The Center's three primary committees—Amicus, Public Policy,

and Legislation and Rules—are comprised of numerous task forces and working groups. These subgroups publish scholarly works on a variety of issues, and they undertake in-depth studies of a range of topics such as class actions, social inflation and legal system abuse, data privacy, climate change and sustainability, and changes to the Federal Rules of Civil Procedure and the Federal Rules of Evidence. Since its inception, The Center has been the voice of the civil defense bar on substantive issues of national importance.

The Center joins CDL and supports their positions and recommendations as outlined in their response to the CRR Consultation Paper. Of great importance is CDL's commentary regarding the preservation of the system of oral examination for discovery (depositions) which has been a hallmark of the civil litigation process for over 100 years.

Importance of the Discovery Process

Today, the importance of the deposition in litigation practice cannot be underestimated. The Hon. S. Seeger, a District Judge of the United States District Court for the Northern District of Illinois opined in his Standing Order on the utmost importance of the discovery process as follows:

First and foremost, discovery is about the search for truth.

Depositions, in turn, are one of the primary tools for unearthing the truth. Depositions also help parties streamline cases, narrow disputes, avoid surprises, and prepare for trial. Simply put, depositions are one of the most valuable parts of litigation.¹

Shortening Time to Trial

As noted in the CRR Consultation Paper one driving objective is to shorten the length of time which expires between the time of commencement of a civil action and the trial of that action. The removal of the discovery process does not necessarily equate to lessening the time between issuance of an action and trial.

In the United States, parties in a civil action are permitted to take the oral deposition of any person, including a party, without court permission, subject to only a handful of exceptions.² The Rules permit depositions of parties, including multiple representatives of corporate parties, as well as witnesses. An individual may be deposed so long as their testimony is relevant to the claim or defence.

We understand the current process in Ontario generally restricts depositions (with some limited exceptions) to one representative of each party.

The deposition process in the United States therefore significantly increases the number of individuals deposed during any single civil action. Notwithstanding the multiple depositions of individuals in civil court actions, trials are generally reached within a shorter time frame than in Ontario. As of March 31, 2025, the national data on United States District Courts indicated that

¹ Standing Order of District Judge Steven C. Seeger which applies to all civil cases assigned to Justice Seeger.

² See for example Federal Rules of Civil Procedure, Rule 30.

median times for civil actions to reach trial, from the time of filing to trial, between the years of 2020 – 2025 was 26.1 – 35.4 months (between 2 – 3 years).³

Perhaps the answer then is not the blanket removal of examinations for discovery but permitting additional discoveries to take place.

Conclusions

The Center wholeheartedly agrees with and adopts the well-stated objections and recommendations submitted to this committee in response to the CRR Consultation Paper. Without limiting our agreement with all recommendations of CDL, The Center believes it is extremely detrimental to the “search for truth” in civil litigation to simply remove the process which permits a party to conduct necessary examinations for discovery. Discovery is a hallmark of our respective judicial systems.

Very truly yours,

A handwritten signature in cursive script that reads "Brooks Magratten".

Brooks R. Magratten
Chair, DRI Center for Law and Public Policy Legislation and Rules Committee

³ U.S. District Courts – Median Time from Filing to Trial, March 31, 2025 – www.uscourts.gov