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Court rules reform proposal downloads red tape on doctors

By **Tom Connolly**

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Law360 Canada (June 5, 2025, 2:05 PM EDT) -- The medical profession is under enormous strain right now because family doctors are spending too much time on unnecessary administrative tasks. There is an unrelenting demand for doctors to complete forms from multiple sources and different levels of government. This avalanche of red tape is driving doctor burnout and, in some cases, reducing clinical hours for doctors to do what they do best — care for their patients.

This has contributed to doctors choosing not to practise comprehensive family medicine, where a doctor can spend up to 19 hours a week on administration work. Data obtained by the Ontario Medical Association in 2024 shows the number of people in Ontario without a family doctor has reached 2.5 million.

On April 1, Ontario Attorney General Doug Downey received a report from the Civil Rules Review Working Group (CRR) that he appointed proposing an upfront framework for all civil cases commenced in Ontario that would download more administrative work on doctors and other medical professionals.

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In pursuing the admirable goals of reducing delay and obtaining cost efficiency, the CRR failed to consider the impact and administrative burden on family doctors, emergency room doctors, surgeons and a myriad of other medical practitioners who would now be involved at the outset of every injury case issued in Ontario. Approximately 66,000 civil cases are issued each year and the majority of them are injury cases.

The upfront model requires affidavit evidence from every witness needed to prove a case, and the affidavits must be served within six months of issuance of a lawsuit. These affidavits would be required from multiple health practitioners and would form their written evidence at trial.

It is estimated that initial sworn affidavits will require each doctor to spend an average of at least

four hours in meetings to draft, sign and finalize affidavits and review their clinic notes and records. Doctors may wish to consult their patients before signing any affidavit.

Injuries take time to heal and plateau; the impaired human body cannot be rushed to heal by courts imposing a six-month affidavit rule. As a result, secondary affidavits will likely be required in most cases when the health of a patient improves or deteriorates over time.

In more complex trauma cases and in medical negligence cases, doctors may only be prepared to swear affidavits after seeking independent legal advice from a lawyer of their choice or the Canadian Medical Protective Association. Doctors will need to charge a fee for their work in producing affidavits, which is not covered by OHIP, and that will result in invoices and more paperwork.

The admirable aim of this upfront model is to provide a trial within two years of the issuance of a claim, but it will mandate the involvement of health practitioners in every injury case to do so.

The vast majority of lawyers practising personal injury litigation oppose this upfront model and the elimination of oral examinations for discovery. Lawyers would be required to obtain affidavits even in cases where there is uncertainty in determining whether the injury is serious, permanent and meets the threshold test under the *Insurance Act* and is allowed to proceed to trial.

Lawyers particularly object to being forced by new Rules to obtain sworn affidavits from overworked family doctors and other health practitioners at the outset of every injury claim issued, when it is known that more than 98 per cent of civil cases settle without engaging doctors to swear affidavits or testify at trial. At present, doctors are only interviewed in cases that are on the eve of proceeding to trial and do not need to be involved in drafting and signing sworn affidavits.

Comments and suggestions on these proposed changes can be sent to the CRR by email to Jennifer.Smart@Ontario.ca before June 16, 2025.

Tom Connolly is a founding partner of the Ottawa law firm of Connolly Obagi LLP. Tom was called to the bar in 1975 and practises serious personal injury and medical malpractice litigation. He is a past president of the Ontario Trial Lawyers Association, a member of the American Association for Justice and The Advocates' Society. Tom is a frequent contributor to various continuing legal education programs in civil litigation and has published numerous articles and papers on personal injury litigation.

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