



***Civil Rules Committee Consultation on Automatic  
Stays Pending Appeals***

**Submitted to:** Stays Pending Appeals  
Subcommittee of the Civil Rules Committee

**Submitted by:** Ontario Bar Association

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## Introduction

The Ontario Bar Association (“**OBA**”) appreciates the opportunity to comment on potential amendments to Rule 63.01 of the *Rules of Civil Procedure* (“**the Rules**”).<sup>1</sup> This submission is intended to support the mandate of the Stays Pending Appeals Subcommittee of the Civil Rules Committee (“**the Subcommittee**”) to consider broadly whether any changes should be made to Rule 63.01 and to advance the broader goal of improving the civil justice system.

## Ontario Bar Association

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with close to 16,000 members, practicing in every area of law in every region of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public and we deliver over 325 in-person and online professional development programs to an audience of over 20,000 lawyers, judges, students, and professors.

This submission was prepared and reviewed by members of the OBA’s Civil Litigation, Class Actions, Business, Family, and Insurance Law sections. Members of these sections include barristers and solicitors in public and private practice in large, medium, and small firms, and in-house counsel across every region in Ontario with expertise in their respective areas of practice, all of which have extensive experience with the *Rules*.

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<sup>1</sup> *Rules of Civil Procedure*, RRO 1990, Reg 194 r 63.01.



## Comments & Recommendations

The OBA provides the following comments on the *Rules*. This submission addresses proposed amendments to Rule 63.01. Under this Rule, monetary orders (with limited exceptions of support orders and refusals to set aside a default judgment), eviction orders under the *Residential Tenancies Act, 2006* and certain co-operative housing orders are automatically stayed upon delivery of a notice of appeal.

In the context of civil proceedings,<sup>2</sup> Rule 63.01 serves a useful purpose by protecting appellants with meritorious appeals from payments they may ultimately not be required to make, including related costs and opportunity losses from those payments or from the alternative of posting bonds. This helps ensure that a meritorious appeal can be brought and a failure of justice does not occur because of an advance payment obligation. This is especially useful in large monetary judgment cases, although it can also be important in smaller-value cases where parties cannot afford the cash flow consequences of paying money into court, and/or the cost of posting a bond or bringing a motion to obtain a stay. The Rule also promotes judicial efficiency by avoiding unnecessary motion practice and conserving scarce judicial resources.

The automatic stay in Ontario is longstanding and, as noted on page five of the Consultation Paper, there are well understood mechanisms in place for addressing frivolous appeals brought to delay payment.<sup>3</sup>

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<sup>2</sup> Excluding family law proceedings, discussed on page 9.

<sup>3</sup> As outlined in the Consultation Paper these mechanisms include: (1) bringing a rule 2.1 request to have the appeal stayed or dismissed as frivolous, vexatious or an abuse of process; (2) bringing a motion to lift the stay; and (3) bringing a motion for security of costs.



Thus, for the reasons set out below, the OBA recommends that the Subcommittee refrain from proposing amendments to Rule 63.01, with limited exceptions discussed in this submission.

## ***Consequences of Removing Automatic Stays of Monetary Orders***

### ***(1) Increase in Motions***

Removing Rule 63.01 risks exacerbating the civil justice system's existing "motions culture" as parties will be obliged to bring motions seeking stays of monetary orders if they wish to pursue an appeal. This would place additional pressure on appellate courts and run counter to the Subcommittee's objective of making the civil justice system more efficient. More broadly, it also risks undermining the work of the Civil Rules Committee, which has recommended significant changes to the system aimed at "reducing the existing motions culture that drives delays and costs."<sup>4</sup>

Based on the information provided in the Consultation Paper, it is not clear whether removing Rule 63.01 would result in fewer motions seeking stays than are currently brought to address the consequences of automatic stays. We believe it would instead increase the number of motions, although data from other jurisdictions may assist in assessing this issue.

Thus, in considering the perceived effectiveness of the subject proposal, the Subcommittee ought to further review, and make public, data and research from other provinces to assess whether similar reforms have, in practice, reduced court workloads or produced the opposite effect.

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<sup>4</sup> Civil Rules Committee, "Phase 2 Consultation Paper" (2025), online: <<https://www.ontariocourts.ca/scj/files/pubs/Civil-Rules-Review-2025-phase-two-EN.pdf>>.



## ***(2) Requirement of a New Test***

Currently, when determining whether to stay a challenged order, the Court applies the *RJR-MacDonald* tripartite test.<sup>5</sup> However, if Rule 63.01 is eliminated, a new test would be required. The existing *RJR* framework is not well-suited to the question of whether to stay ordinary monetary judgments, due to the concept of “irreparable harm,” under which, at the second stage of the test, the applicant is required to demonstrate that irreparable harm will result if the relief is not granted. ‘Irreparable’ refers to the nature of the harm rather than its magnitude.”<sup>6</sup>

Notably, developing a new test would create challenges. There would be a period of uncertainty as parties litigate over requests to stay monetary judgments, and courts would need time to develop the jurisprudence that defines the requirements of the new test.

## ***(3) Shifting Issue to Other Party***

A significant impetus behind the proposed reform is the strategic use of Rule 63.01 to delay collection through frivolous appeals. That said, removing this Rule carries a corresponding risk that the strategic imbalance would not disappear, but would instead shift to the opposing party. Without an automatic stay, appellants may be required to post substantial security pending appeal, which can create settlement pressure regardless of the merits. In addition, successful appellants may face difficulty recovering funds (including the cost of bonds, stay motions, and the opportunity losses associated with payments into court) following a successful appeal.

The Consultation Paper acknowledges this concern to some degree and cites a consultee suggestion that appellants pay disputed amounts into court pending appeal. The Paper then asks whether the automatic stay of monetary orders should be replaced with a

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<sup>5</sup> *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC).

<sup>6</sup> *Ibid.*



conditional stay, where the appellant pays the disputed amount into court, into trust, or directly to the respondent.

We caution against these proposals and encourage the Subcommittee to consider the potential logistical consequences and the burdens they may place on court resources, in addition to the costs to litigants mentioned above. While payments into lawyers' trust accounts may serve as an alternative to payments into court that can reduce expenses and delay, they can also generate procedural complications and disputes regarding the administration and release of funds. Moreover, requiring payment into court pending appeal may introduce significant expenses, delays, and administrative work, even where the parties consent. Notably, delays associated with court accounting and processing systems can negatively impact the efficiency of the court system.

### ***The Current Framework Sufficiently Addresses Concerns About Frivolous Appeals***

There are undoubtedly cases where the automatic stay has been used for frivolous appeals (*Popa v Popa*, 2018 ONCA 972).<sup>7</sup> However, as previously mentioned, courts have mechanisms to address this (Rule 2.1 request, motion to lift the stay, and motion for security of costs), and the tests related to those are well understood by counsel and courts. Moreover, the Court of Appeal has case-management processes available to prevent appeals from stagnating or being used as tools for delay.

Thus, rather than eliminating Rule 63.01, we recommend that the Subcommittee considers ways to strengthen the current protective measures outlined above or other pre-existing court processes to better prevent frivolous appeals. For instance, consider:

- Expediting or triaging frivolous appeals.

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<sup>7</sup> *Popa v Popa*, 2018 ONCA 972.



- Adjusting post judgment interest rates following unsuccessful appeals to ensure the respondent recovers the opportunity cost of not having the funds during the time of appeal.
- Expanding scope to consider substantial indemnity costs on appeal.

Notably, the Consultation Paper asks whether there should be any modifications to the application of post-judgment interest in the appeal process. Compound interest is generally more consistent with commercial realities. Thus, the Subcommittee should consider fluctuating post-judgment interest rates. Under the *Courts of Justice Act* and *Rules*, post-judgment interest rates are selected from fixed tables. This structure generally works, however, where there are significant economic events (e.g., COVID) it can result in abnormal results.

For example, in cases where the post-judgment interest rate was fixed in 2021, the rate was locked in at a very low value. Consequently, it became economically rational not to pay the judgment, as the interest rate was lower than what could be obtained if the judgment debtor invested the funds instead of paying the judgment. As the tables of post-judgment interest rates are adjusted to market conditions each quarter, it may be sensible to empower judges to impose post-judgment interest tied to the rates as they fluctuate from quarter to quarter.

Moreover, to reduce delays related to appeals that are impacted by automatic stays, we recommend reviewing current registrar protocols concerning the settling of orders, which is necessary for appeal, and can be a source of significant delay. Clear protocols and training could help ensure that court staff efficiently respond, and move the matter forward, when parties cannot consent to settling an order in a timely fashion.

### ***Expanded Exceptions to the Automatic Stay***

The OBA recommends that the automatic stay of monetary orders be maintained. However, if possible, the Subcommittee should collect and publish data on the *types* of monetary



orders that are often subject to frivolous appeals. Access to this information would enable a more evidence-informed consultation and suggest potential reform options for further exceptions.

Nonetheless, the current exceptions to the automatic stay (support orders and orders refusing to set aside a default judgment) could be expanded in family law matters. Appeals in family law are often used to perpetuate harm in the form of litigation abuse. This reality was recently recognized by the Supreme Court in *Ahluwalia v Ahluwalia* 2026 SCC 16:

Abusers frequently utilize litigation as a tool “to continue to dominate and maintain contact and control following separation” and to deflect attention from their own role as the aggressor (Neilson (2004), at p. 419). **Litigation abuse** — where intimate partners utilize the legal system as a tool “to coerce, control, harass, undermine and dominate” their intimate partners — is a well-documented tactic frequently employed by abusers to control survivors...<sup>8</sup>

Given the distinct nature of family law disputes, the Subcommittee should consider proposing that all monetary family law orders be excluded from automatic stays (including equalization, costs, family violence damages, and support (already excluded)).

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*The OBA would be pleased to discuss this further and answer any questions that you may have.*

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<sup>8</sup> *Ahluwalia v Ahluwalia*, 2026 SCC 16 at para 194.