



Submission on the Expansion of the Dispute Resolution Officer (DRO) Program to the Ontario Court of Justice (OCJ)

Date: May 19, 2023

Submitted to: Ontario Court of Justice –
Advisory Committee on Family
Law

Submitted by: Ontario Bar Association



ONTARIO
BAR ASSOCIATION
A Branch of the
Canadian Bar Association

L'ASSOCIATION DU
BARREAU DE L'ONTARIO
Une division de l'Association
du Barreau canadien



Table of Contents

Introduction.....	2
The Ontario Bar Association (OBA)	2
Executive Summary.....	2
The DRO Program in the Superior Court of Justice	3
DRO Roster	3
Scope of DRO Jurisdiction.....	3
Impact of the DRO Program in the Superior Court of Justice.....	5
Cost Savings	5
A flexible tool to facilitate settlement, reduce backlog, and triage judicial resources	5
Expansion of the DRO Program into the OCJ: Recommendations.....	6
1) Flexible Use of DROs.....	6
2) DRO Empanelment: Same Criteria, One Application Process.....	6
Conclusion	6



Introduction

The Ontario Bar Association (“OBA”) appreciates the opportunity to provide this submission to the Advisory Committee on Family Law in the Ontario Court of Justice to advocate for the expansion of the Dispute Resolution Officers (“DROs”) program to domestic matters in the Ontario Court of Justice.

The Ontario Bar Association (OBA)

The OBA is the largest volunteer lawyer association in Ontario, with close to 16,000 members, practicing in every area of law in every region of the province. We provide updates and education on every area of the law to combined audiences of 20,000 lawyers annually. The members of our 40 practice sections include leading experts in their field who provide practical advice to government to ensure the economy and the justice sector work effectively and efficiently to support access to high-quality justice for Ontarians.

This submission was prepared by members of the OBA Family Law Section who represent a wide range of clients within the family justice system, both in litigation and various alternative dispute resolution processes. They have significant expertise in provincial and federal family law legislation, case law, and applicable court rules across the full spectrum of family law issues.

Executive Summary

The COVID-19 pandemic has resulted in a large volume of cases at all levels of court in Ontario, including at some Ontario Court of Justice locations. Many judicial centres are experiencing larger backlogs of cases due to the continued impact of COVID-19, staffing and judicial appointment challenges, and/or population increases.

In the Superior Court of Justice (SCJ), the DRO program has played an important role in assisting parties to move a matter towards resolution expeditiously. While some judicial centres with DRO programs are in unified family court (UFC) locations (e.g., Hamilton, Newmarket, and Barrie), others are in jurisdictions with separate Superior and provincial courts (e.g., Toronto, Brampton, and Milton) and offered only in the Superior Courts.



The OBA advocates for the DRO program being expanded to the Ontario Court of Justice. Not only has the DRO program in the SCJ yielded financial savings, DROs can greatly assist in early case resolution and free up more judicial time and courtrooms for other cases. The OBA further submits that DROs could provide the resources necessary to make a major impact on current backlogs. It is an important tool to facilitate access to justice for families that should be available in our provincial courts.

The DRO Program in the Superior Court of Justice

The DRO Program involves senior family lawyers appointed by the SCJ regional senior judges to help parties resolve their outstanding issues on a consent basis.

The DRO Program has expanded over time and is currently available in 12 judicial centres, in six Regions, in the Ontario SCJ.¹

DRO Roster

The DRO Roster is comprised of senior members of the family law bar², who have applied and been appointed by the Regional Senior Judge and the Senior Family Judge. DROs receive compensation on a fee-for-service basis at the rate of \$250.00 per day plus HST, if applicable.³ Their role is to help parties resolve their outstanding issues on a consent basis, or where resolution is not possible on all issues, to provide a roadmap toward a procedurally efficient court process.

Scope of DRO Jurisdiction

Subrules 17(9)-(9.1) of the *Family Law Rules* provide that a case conference or settlement conference may be conducted by a lawyer with at least 10 years of experience in the practice of family law, who

¹ DROs are available in Toronto (Toronto Region), Brampton (Central West Region), Milton (Central West Region), Newmarket (Central East Region), Barrie (Central East Region), Durham (Central East Region), Hamilton (Central South Region), St. Catharines (Central South Region), Kitchener (Central South Region), Welland (Central South Region), London (South West Region), and Kingston (East Region): see <https://www.ontariocourts.ca/scj/practice/practice-directions/annex/>.

² With at least 10 years of experience in the practice of family law, as per *Family Law Rules*, [O Reg 114/99](#), R 17(9-9.1).

³ See, e.g., <https://www.ontariocourts.ca/scj/notice-to-the-family-law-bar/>.



has been named for that purpose by the appropriate regional senior judge, unless a party requests a conference with a judge.⁴

The SCJ Consolidated Provincial Practice Direction, effective July 1, 2014, provides more information about the DRO Program, including how DROs are appointed.⁵ This Practice Direction also provides that, where the DRO Program is in place, DROs *shall*:

- a. hear *all* first case conferences for motions to change under Rule 15 of the *Family Law Rules*; and
- b. complete a “Screening Report” after the conclusion of each DRO Case Conference, which will be included as part of the court file.⁶

In addition, DROs *may*:

- a. hear first case conferences on matters other than motions to change *only* when referred to the DRO by a judge and when such matters are scheduled to DROs after all first case conferences on motions to change have received priority in scheduling;
- b. attempt to identify, resolve or settle outstanding issues on a consent basis;
- c. assist parties in organizing their issues and disclosure documents in order to make the case “judge-ready”; and/or
- d. assist parties in obtaining a signed consent order from a judge, where the parties have consented in writing at the DRO Case Conference.⁷

⁴ *Family Law Rules*, O Reg 114/99, R 17(9-9.1) (“FLR”).

⁵ SCJ Consolidated Provincial Practice Direction, July https://www.ontariocourts.ca/scj/practice/practice-directions/provincial/#A_Dispute_Resolution_Officer_Program, at para 3.

⁶ *Ibid*, at para 4.

⁷ *Ibid*, at para 5.



Impact of the DRO Program in the Superior Court of Justice

Cost Savings

The 2019 Annual Report from the Office of the Auditor General of Ontario estimated, in 2018/2019, the net savings realized at the then nine participating SCJ courthouses with the DRO Program totalled \$355,000. The Auditor General concluded that expanding the DRO Program could increase cost savings.⁸ The 2021 Annual Follow-Up on Value-for-Money Audits, noted that, “If the [DRO] Program expands to other Superior Court locations and possibly Ontario Court locations, the province could benefit from further potential savings, while freeing up more judicial time and courtrooms to hear other types of cases.”⁹

A flexible tool to facilitate settlement, reduce backlog, and triage judicial resources

The 2021 Annual Follow-up on Value for Money Audits also noted that the 2019 evaluation of the DRO Program “concluded that the Program is meeting the performance goal of meaningful progress in family law cases in the majority of Dispute Resolution Officer locations. The evaluation recognized many benefits to the Program, such as creating efficiencies by providing opportunities for early case resolution.” The evaluation recommended that the Program continue in all its existing nine court locations, resulting in the extension of the program for these sites for three additional years (at that time, to September 2022), and recommended expanding the Program to three additional court locations (Kitchener, Welland and Kingston) in 2021.¹⁰

Different judicial centres have used DROs flexibly, depending on the needs of the court.¹¹ For example, several judicial centres regularly use DROs to hear first case conferences for a regular application on consent of the parties. In the SCJ in Milton (Central West Region), DROs are used to assist in attempts to settle matters that are on a “trial blitz” list, resulting in an average of 50-60% of

⁸ https://www.auditor.on.ca/en/content/annualreports/arreports/en19/v3_400en19.pdf, at p 198. And see <https://www.lawtimesnews.com/practice-areas/adr/program-for-alternative-dispute-resolution-in-family-law-expanding/337215>.

⁹ https://www.auditor.on.ca/en/content/annualreports/arreports/en21/1-17FamilyCourts_en21.pdf, at p 14.

¹⁰ *Ibid.*

¹¹ Considerations could include: wait times to key events, whether the court uses Case management.



cases on this list settling instead of going to trial. Adding to their flexible nature, DRO appearances have been presumptively virtual as per the Provincial and Regional Modes of Appearance that were put in place during the pandemic¹² but in-person DROs have also been used, based on the court's needs (for example, during the above-mentioned trial blitz in Milton).

Expansion of the DRO Program into the OCJ: Recommendations

1) Flexible Use of DROs

The OBA recommends a flexible approach to the use of DROs to meet the needs of each courthouse.

In the Court of Justice specifically, DROs could conduct:

- First Appearances,
- the first case conferences on motions to change,
- the first case conferences in regular applications,
- settlement conferences held prior to trial in an attempt to avoid trial, and/or further narrow the issues or streamline procedure for the trial judge, and/or
- as recommended by the Case Management Judge.

2) DRO Empanelment: Same Criteria, One Application Process

The DRO Roster Empanelment criteria and process could mirror that of the current process for empanelment onto the SCJ Roster. One option may be to create a single application for both levels of court, with applicants applying to one or both (if applicable) courts.

Conclusion

The DRO program has been an effective tool for the SCJ, yielding tangible cost savings, facilitating settlements, and enhancing access to justice for families. The DRO program is a way in which the primary objective of the *Family Law Rules* to deal with cases justly is fulfilled.¹³ The OCJ and the

¹² Notice to the Profession, Parties, Public and the Media, <https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/notice-profession-parties-public-media/#IV> Dispute Resolution Conferences, April 13, 2022.

¹³ FLR, *supra* note 4, at R. 2(2) – (4).



families whose matters are heard in this court should also benefit from this resource. The OBA welcomes the opportunity to discuss this issue further and how we may assist in the expansion of the DRO program into the OCJ.