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Mandatory Mediation in Ontario: Resolving Cases for 25 Years

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For nearly 25 years, mediation has been required in many civil litigation proceedings in parts of Ontario, Canada through the Ontario Mandatory Mediation Program (“OMMP”). While initially very resistant to the program, many Ontario lawyers experienced with mandatory mediation now consider it tremendously beneficial.

Initially sceptics were concerned that mandating mediation would result in costly, delay-inducing and unsuccessful negotiations. Proponents believed mandatory mediation would decrease legal costs and delays, increase access to justice and satisfaction experienced in resolving disputes. This article reviews how the OMMP works, why and how it was introduced, and surveys recent Ontario lawyer views of the program.

The OMMP has been the subject of significant international interest and influence as countries grapple with how to encourage settlement discussions while maintaining appropriate access to trials as necessary. Indeed, the OMMP informed the U.K.’s expansion of automatic mediation in some litigated cases.¹ This article will be of interest to attorneys in other jurisdictions as well as to lawyers in Ontario regions not yet familiar with automatic mediation.

1. Mandatory Mediation in Ontario – How it Works

The OMMP currently applies to most civil litigation proceedings² in the cities of Toronto, Ottawa, and Windsor. While mediation is required under the OMMP, settlement certainly is not. If the matter does not settle at the mediation, parties remain entitled to continue pursuing their rights before the courts.

Timing: Mediations under the OMMP must take place within 180 days after the first defence is filed, unless the parties agree otherwise, or one party obtains a court order abridging or extending the time or opting out of mediation entirely.³ This flexibility allows parties to determine themselves when mediation is most useful. In some cases, such as employment matters, the parties will have enough information soon after exchanging pleadings to settle the case. In other cases, such as personal injury cases where only the passage of time will reveal the extent of injury recovery and thus damages, mediation is more appropriate later in the litigation.

Mediator Selection: The parties select a private mediator who is paid directly by the parties.⁴ If the parties cannot agree on a mediator, the local government Mediation Co-ordinator appoints a mediator from its roster to the case. The government maintains a roster of fixed-fee private mediators who have obtained a basic level of training and experience and need not be lawyers. The parties are also free to choose a non-roster, often more expensive, mediator. The litigation market dictates mediator fees based on a particular mediator's skill and reputation. More expensive non-roster mediators are often selected for higher value cases. Costs of the mediation are split evenly between the parties unless they agree otherwise, for instance, as part of a settlement agreement.

Location: The mediation may be held anywhere the parties agree, often virtually, at the neutral offices of a court reporter, a mediator's offices, or the offices of counsel for one party.

Who attends: The parties and their lawyers are required to attend the mediation. If a party's insurer may be liable, then, only the insurer and its counsel, and not the insured, need attend. Attending parties, including corporations, partnerships and other organizations, must have authority to settle the case or have ready telephone access to anyone whose approval is needed to settle.⁵

Mediation procedure: Seven days before the mediation, the parties are required to provide the mediator with a document outlining the facts, issues, and interests in the case. While a roster mediator is booked for a minimum of three hours, mediations can last days for more complex and multiparty cases. The OMMP does not dictate any specific procedure at the mediation itself, other than the presence of the parties. Many mediations begin with a joint session with all parties and counsel present, after which the parties "caucus" and the mediator deals with them individually. Each case may be managed differently, dependent upon the mediator's style, and the parties and issues at play.

Consequences of non-compliance: If a party fails to attend within 30 minutes of the scheduled mediation time, or fails to submit the required documents to the mediator, the mediator may file a Certificate of Non-Compliance, which ultimately may result in a master or judge: establishing a timetable for the action; striking out any document filed by a party; dismissing the action, if the non-complying party is a plaintiff, or striking out the statement of defence, if that party is a defendant; ordering a party to pay cost; or making any other order that is just.⁶

2. History of Mandatory Mediation in Ontario

Mandatory mediation was first introduced in Ontario in a series of pilot projects. The success of these projects, combined with Provincial and Federal-level recommendations supportive of mandatory mediation, resulted in the permanent adoption of the OMMP in Toronto, Ottawa, and, later, Windsor.

a. 1990s: Testing the Waters

In 1994, the ADR Centre of the Ontario Court (General Division) was introduced to determine whether the conduct of civil cases would be improved with the presence of ADR programs. Through a pilot project, four in every ten cases at the General Division Court in Toronto were referred to the ADR Centre, with some exceptions. Mediations took place within two to three months after the statement of defence was received.⁷

A 1995 evaluation found that cases referred to the ADR Centre were disposed of more quickly and accordingly reduced client costs,⁸ with 40% of the cases referred to mediation resulting in settlement in the very early stages of the case. Lawyers reported that costs were reduced even for cases that did not settle because parties were forced at an early stage to evaluate the merits of their case.⁹

An evaluation of a second pilot project in Ottawa found that, “44% fully settled; 17% partially settled; and 5% settled within 60 days of having attended a mediation.”¹⁰

b. 1996: National and Provincial in-depth civil litigation studies recommend ADR be required in litigation

At the same time, two major reviews on civil justice were being carried out by the Province of Ontario¹¹ and the Canadian Bar Association (“CBA”)¹². Both reviews concluded that mandatory mediation would be beneficial.

The CBA report noted that while a high percentage of civil cases in Canada settle, the settlements take place too late in the litigation process to save time and money for the litigants or the Court system. The report included a recommendation that amounted to requiring mediation in most cases.¹³

The Ontario civil justice review, which aimed to create a “...speedier, more streamlined and more efficient structure which will maximize the utilization of public resources allocated to civil justice” culminated in a report which recommended mandatory mediation be introduced to all civil litigation matters except family matters.¹⁴

c. Pilot change to the Ontario Rules of Civil Procedure

In 1999, Rule 24.1 of the Ontario *Rules of Civil Procedure* temporarily established mandatory mediation for civil, non-family, case managed actions in Ottawa and Toronto as part of a two-year pilot project, subject to an assessment of the cost, speed, outcome, and satisfaction with the program,¹⁵ with an understanding that the program would be terminated if it did not achieve its desired aims.

Designed to help litigants settle their cases early in the litigation process, the key features of the pilot were similar to the current Rule, although mediations were required to take place within 90, rather than the current 180, days after the first defence was filed, absent a court order extending that time.¹⁶

d. Evaluation of mandatory mediation concludes it is beneficial - mandatory mediation becomes permanent and expands

A major evidence-based study assessed the pilot mandatory mediation program 2001, concluding that mandatory mediation was beneficial. That study, culminating in a report titled, “Evaluation of the Ontario Mandatory Mediation Program (Rule 24.1): Final Report -- The First 23 Months”¹⁷ (the “Hann Report”), reviewed data from 23,000 cases commenced since 1996, 3,000 mediations held under the mandatory mediation program, and the responses of 600 mediation evaluation questionnaires completed by litigants, 1,130 completed by lawyers and 1,243 completed by mediators all specifically designed for the evaluation.

The Hann Report concluded that mandatory mediation resulted in:

- significant reductions in the time taken to dispose of cases;
- decreased costs to the litigants;
- high proportion of cases (roughly 40% overall) being completely settled earlier in the litigation process, with other benefits being noted in many of the other cases that do not completely settle; and
- in general, litigants and lawyers expressed considerable satisfaction with the pilot mediation process.¹⁸

The Hann report also recommended that mandatory mediation be extended to other types of civil cases in Ontario and expanded across the Province of Ontario.¹⁹

As a result of these positive findings, the mandatory mediation program was made permanent and was extended to in 2002 to the third largest Court Registry, Windsor, Ontario, but was not expanded further throughout the province.

3. Results of Recent Ontario Bar Association Member Survey regarding OMMP

In 2019, the Ontario Bar Association²⁰ (“**OBA**”) administered two surveys to its members canvassing views with regard to the OMMP, and whether it ought to be expanded outside of the existing three regions to the rest of the province. The surveys were administered in June/July²¹ and December 2019²², and showed that approximately 90% and 70% of respondents respectively were in favour of expanding mandatory mediation.

The surveys revealed that mandatory mediation is particularly popular with lawyers who practice in or near regions where mandatory mediation currently exists. For instance, comments from respondents supportive of expanding mandatory mediation included:

- “We almost always commence actions in Toronto, even though our firm is located in [X], in order to gain access to mandatory mediation. Even when working with a difficult client or counsel on the other side, the parties are required to come to the table and consider whether resolution is possible. Often, with a good mediator, a resolution can be achieved.”
- “... it is preferable to commence proceedings in Toronto to benefit from mandatory mediation. In my experience, most matters settle at mediation (whether mandatory or voluntary) or shortly thereafter.”
- “Clients much prefer it... should be expanded to all regions in Ontario... Expedious settlements, great savings in legal fees. It's already much less costly than the alternative, which is to proceed to trial (totally unaffordable for most clients). Beneficial for all cases.”
- “I regularly commence proceedings in Toronto rather than another region to take advantage of mandatory mediation (although this is not the only consideration). Key benefit of mandatory mediation is overcoming knee-jerk resistance to mediation where the process is actually likely to result in a settlement.... Privacy is valued, cost is a major issue, and disputes often are driven by emotional rather than rational factors that can be better addressed in a settlement process than a litigation process.”
- “It allows parties to save face by not requiring either party to initiate or suggest mediation - this can be perceived as showing weakness. “

- "... it is helpful to connect before the parties are entrenched in their views and much money is spent on legal fees... reduces costs, allows creative resolution, allows counsel to assess the credibility of other party and make more informed decision about resolution."
- "I believe the entire province should be included [in expansion of mandatory mediation]... My experience is that for commercial litigation, mediation is highly beneficial to achieving a timely settlement, particularly well before trial. The mandatory nature of such a mediation means that agreement to mediate is taken out of the hands of counsel and the parties in my view, all types of cases benefit [from mandatory mediation]..."

Comments from the respondents opposed to expanding mandatory mediation included concerns that mediation would not result in settlement if it were voluntary, that failed mediations add cost and delay, and that there were no mediators in a particular region. When mandatory mediation was introduced in 1999 similar concerns were raised, according to lawyers practising at the time. The Hann Report data showing that mediation saves costs and results in earlier settlements suggests that these concerns were not statistically borne out. Additionally, a supply of mediators soon appeared to fill the new demand.

4. Mandatory Mediation in Ontario Today – On the Cusp of Growth?

In spring 2025, proposed amendments to Ontario's Rules of Civil Procedure were released, aiming to expand the OMMP beyond its current operation in three cities.²³ This part of the proposed rule changes has received strong support from several leading legal organizations²⁴, citing the OMMP's demonstrated benefits.

As courts around the world grapple with efficiency, rising backlogs, and the pursuit of meaningful resolution, there is value in making mediation a built-in step of the litigation process rather than an optional detour. Looking to evidence-based reviews of models like Ontario's Mandatory Mediation Program offers a practical starting point for jurisdictions considering reforms to promote earlier, more satisfactory, and cost-effective outcomes.



[Jennifer Eggsgard](#) is a Distinguished Fellow of the International Academy of Mediators and a Harvard-trained mediator. Called to the bar in 2002, Jennifer has been mediating contract, commercial, insurance, shareholder, defamation, condominium, employment, personal injury, product liability, board relationship and other disputes since 2018. Jennifer is currently a Member-at-Large Practice Group Leader for the Advocates' Society Arbitration & Mediation Advocacy Practice Group, and the Chair of the Scholar-in-Residence Program with the International Academy of Mediators. Through the Ontario Bar Association Jennifer recently chaired and co-chaired two major multi-section initiatives, culminating in the OBA's [submission](#) to the Ontario Government recommending expansion of mandatory mediation, and an OBA [report](#) highlighting the lack of racial and gender diversity in mediators and arbitrators hired in Ontario and providing concrete recommendations to address the problem. Jennifer is committed to ongoing mediation skill development and regularly attends mediation conferences in Canada and elsewhere via the International Academy of Mediators, a membership organization of leading commercial mediators with whom she also organizes and attends monthly professional development webinars.

¹ "Government reveals plans to divert thousands of civil legal disputes away from court", Press release from U.K. Ministry of Justice, July 26, 2022, available online [here](#).

² Mandatory mediation applies to all civil litigation proceedings with a claimed value over \$35,000 CAD under Rule 24.1 of the [Ontario Rules of Civil Procedure](#), except: family law proceedings; actions that were the subject of mediation in the context of automobile personal injury cases under the *Insurance Act* s. 258.6, if that mediation was conducted less than a year before the delivery of the first defence; Toronto Commercial List actions; *Mortgage Actions* under [rule 64](#) of the Ontario Rules of Civil Procedure; *Construction Lien Act* actions, except trust claims; *Bankruptcy and Insolvency Act* actions; actions certified as a class proceeding under the *Class Proceedings Act*, and actions which are exempt pursuant to a court Order. Estates, Trusts and Substitute Decisions actions are also subject to the OMMP, under Rule 75.1 of the Ontario Rules of Civil Procedure.

³ Ontario Rules of Civil Procedure, Rule 24.1.09.

⁴ Ontario Rules of Civil Procedure, Rule 24.1.08.

⁵ Ontario Rules of Civil Procedure, Rule 24.1.11.

⁶ Ontario Rules of Civil Procedure, Rule 24.1.13(2).

⁷ "Evaluation of Civil Case Management in the Toronto Region: A Report on the Implementation of Toronto Practice Direction and Rule 78", February 2008, Submitted to the Honourable Chief Justice Heather Smith, Superior Court of Justice, the Honourable Chris Bentley, Attorney General for Ontario, and the Civil Rules Committee, prepared by the Honourable Chief Justice Warren K. Winkler, Chief Justice of Ontario (hereinafter the [2008 Report]), p. 3, available online at: <https://www.ontariocourts.ca/coa/en/ps/reports/rule78.pdf>. Matters not subject to mandatory mediation included applications, family matters, motor vehicle claims, and construction liens.

⁸ *Ibid*, p. 17.

⁹ 2008 Report, p. 3.

¹⁰ Leslie H Macleod, Elana Fleischmann and Anne DeMelo, "The Future of Alternative Dispute Resolution in Ontario: Mechanics of the Mandatory Mediation Program," (1998) 20 Advocates' Quarterly 389, as cited in "The Impact of Mediation on the Culture of Disputing in Canada: Law Schools, Lawyers and Laws", by Catherine Morris p. 101.

¹¹ "Ontario Civil Justice Review: Supplemental and Final Report", (November 1996), available online at: <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjr/> ("Ontario Civil Justice Review"). According to the *Ontario Civil Justice Review*, "The Civil Justice Review

was established in 1994 at the joint initiative of the former Chief Justice of the Ontario Court of Justice and the former Attorney General for Ontario. The Review's mandate is "to develop an overall strategy for the civil justice system in an effort to provide a speedier, more streamlined and more efficient structure which will maximize the utilization of public resources allocated to civil justice".

¹² "Systems of Civil Justice Task Force Report", (The Canadian Bar Association, August 1996).

¹³ *Ibid*, p. 33.

¹⁴ *Ontario Civil Justice Review*, *supra* note 9, recommendation 5.2.

¹⁵ Macleod, Fleischmann and DeMelo (n 138) 399, as cited in Catherine Morris, *supra* note 8.

¹⁶ *2008 Report*, p. 8.

¹⁷ Available online at: <http://www.ontla.on.ca/library/repository/mon/1000/10294958.pdf>

¹⁸ *Hann Report*, p. 2.

¹⁹ *Hann Report*, p. 2.

²⁰ Established in 1907, the OBA is the largest voluntary legal organization in Ontario, representing lawyers, judges, law professors, and students from across the province. OBA lawyers work on the frontlines of the Ontario justice system and in no fewer than 40 different sectors. In addition to providing legal education for its members, the OBA assists government and other decision-makers with several legislative and policy initiatives each year, both in the interest of the profession and in the interest of the public.

²¹ A survey sent to 1,297 OBA members in June and July 2019 received 110 responses, with 90% indicating that they support expansion of mandatory mediation throughout Ontario.

²² A more detailed survey sent to 4,400 OBA members in December 2019 received 104 responses, 71 percent of whom were in support of expanding mandatory mediation. While this survey did not receive a statistically significant response rate, the comments to the survey were useful.

²³ "[Civil Rules Review: Phase 2 Consultation](#)", Ontario Superior Court of Justice, Ontario Ministry of the Attorney General, Civil Rules Review Working Group, April 2025, p. 65.

²⁴ See "[Civil Rules Review: Phase 2 Consultation](#)", Ontario Bar Association, June 16, 2025, p. 25; [Letter from the Advocates' Society to the Civil Rules Review Task Force](#), June 26, 2025, p. 34,