

***DISPUTE RESOLUTION OFFICER PILOT PROJECT - A NEW AND
INNOVATIVE PROGRAM IN FAMILY LAW***

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GENERAL

When parents separate, there are often increased tensions and a lot of unknowns. There are questions or custody, access, child support, spousal support and property division. Additionally, there may be safety concerns and the fear of the unknown.

The usual procedure is that each party meets with a lawyer to understand their rights and obligations. Many people are self-represented and they look after matters on their own. The parties then often try to negotiate a settlement, proceed to mediation or possibly attend Court. The process is time consuming, negative and expensive. More importantly, the relationship between the parents may increase in conflict, and that conflict will directly reflect upon the children. Many psychological studies have indicated that the most significant factor affecting the well being of children upon separation and divorce is the level of conflict between the parents. The less the conflict, the better.

SELF REPRESENTED LITIGANTS

There has been a significant increase in self-represented litigants over the last few years. One study in California estimates that 70% of litigants represent themselves. Many think that this trend will continue.

Any system establishing a Court-based pro bono program needs to meet the needs of all litigants, whether self-represented or with counsel. This can be challenging because of the variety of potential users of the system. Whether represented or not, litigants come in all forms: the person looking for revenge; the person looking for "fairness" the person who is a know-it-all; the person with a narcissistic personality; etc.

BRIEF HISTORY

The litigation process is not generally well suited for Family Law problems. Even when one party "wins" and the other "loses", each of the litigants must usually continue to have an ongoing relationship due to the presence of children. This post-court contact often results in increased friction between the parents'

problems which are never seemingly resolved in court. The legal system is not meeting the needs of its participants.

THE CURRENT SYSTEM

At the present, a parent wishing to apply for child support, either to have a support order made pursuant to the Federal Child Support Guidelines, or an annual recalculation as contemplated by the Guidelines, requires a Notice of Motion and supporting Affidavit to be presented to the court for hearing. Delays often result at the early stages of the proceedings because one or the other party is not prepared or information is lacking and adjournments are required. Once all parties are in a position to proceed to court, a morning chambers application (less than 20 minutes) is generally insufficient time to hear the evidence and make a well-informed decision. A special domestic chambers application may be required, again at greater delay and significantly increased costs.

At the special domestic chambers application, the court then considers the evidence before it and makes a decision binding upon the parties. Some further delays are often experienced in completing the formal requirements to file the resulting order.

A PROPOSED SOLUTION

Most lawyers who have had extensive experience in family law agree that early intervention in family law disputes often results in settlement. This experience has been borne out by the now common practice of using mediation at the early stages of separation.

Generally, the litigation system is "back-end loaded" in that many of the resources and judicial time are expended late in the process to ultimately result in a trial. A more appropriate use of resources, it is reasoned, would be to "front-end load" the system to place emphasis on intervention at the earliest possible stage. The use of mediation skills at this point in time would be beneficial to all parties. Hence: the concept of the Dispute Resolution Officer Pilot Project.

DISPUTE RESOLUTION OFFICER PILOT PROJECT

The Dispute Resolution Officer Pilot Project is an experiment to help parents deal with their family law disagreements in a positive manner.

About 70 leading family law practitioners in Calgary have donated about one-half day every six weeks of their time towards the project. The Dispute Resolution Officer ("DRO") is assigned cases and given a hearing room at the Court of Queen's Bench to conduct dispute resolutions. Specifically, the DRO has the following functions:

1. To handle any family law interim or variation child support applications on the first return date (mandatory);

2. To conduct settlement conferences for the parties on ongoing matters at any stage of the proceeding (on consent); and
3. From time to time, to sort out contested motions referred by a judge (on consent). Parties and their counsel are free to choose the DRO before whom they want to appear and schedule an appointment accordingly.

THE ROLE OF THE DRO

The DRO's role is to:

1. Draw on his or her court experience and mediation skills to predict some outcomes and give the Litigants and their counsel the benefit of the DRO'S views on matters in issue which can lead to a settlement; and
2. Ensure that everything that is procedurally necessary to have the application heard has been done. For example, all financial disclosure should be exchanged. In this way, it is hoped that judicial time could be saved and only one appearance before a judge would be necessary,

PROJECT SUCCESS

The DRO project can only be successful where the parties and their counsel appearing respect the judgment and experience of the people chosen to act as a DRO. Even if lawyers appearing before DROs are senior and experienced, a DRO's perspective can benefit counsel with an independent viewpoint in order to help achieve settlement.

Furthermore, the DRO meeting is a good opportunity to help pre-try a case on a DRO. A lawyer who may not have thought things through can avoid possible embarrassment or delay in front of a judge.

Forcing the parties to meet and discuss settlement is often all that is necessary to divert the parties from a court process that they see as expensive, time consuming and intimidating.

BENEFITS

The benefits of the DRO system include the following:

1. increased likelihood of settle where family law matters are dealt with soon after the initiation of court proceedings;
2. The improved delivery of justice to the public
3. The enhancement of the reputation of the profession in providing free services in conjunction with the current court system;
4. The importance of on-site mediation facilities.

FACILITIES

The Court of Queen's Bench in Calgary has provided the DRO project with the physical facilities to allow the project to succeed. A room on the 7th floor of the Calgary Courts Centre has been set aside for the DRO project. The project also makes use of a computer and printer. ChildView software has been approved for use in the project at no additional cost to the government. A telephone is also available.

The project is administered primarily through Colleen Nicholls (Family Law Information Centre - 403.297.6602) and the DRO Clerk {403.297.3875}.

PROCESS

1. Scheduling

DROs are assigned dates on a quarterly basis. DROs are assigned to sit each day the court is sitting.

Before filing any Notice of Motion in relation to any form of child support, counsel pick a DRO, date and time and schedule a DRO hearing. Hearings are set at 9:00 a.m., 10:00 a.m., 11:00 a.m., noon, 1:00 p.m., 2:00 p.m. and 3:00 p.m. each day. Cancellations or adjournments of the DRO date can be made through the DRO clerk (403.297.3875).

2. Filing Documents

If the Notice of Motion seeks either interim or variation of child support, the clerks will automatically assign a DRO to deal with the matter at the earliest first return date. This is mandatory.

If the parties wish to have a settlement conference and use the experience of the DRO, they may book a DRO at their convenience (by consent).

Where there are other matters referred by judges, including child custody, access, spousal support or property division, a DRO is assigned to help resolve problems between the litigants based on the judge's referral.

The DRO is mandated to try and assist the parties to resolve the conflict. If the conflict cannot be resolved, then only procedural matters may be dealt with (such as proper disclosure) prior to the parties attending before a judge in chambers.

3. Attendance at DRO

Counsel and the parties must attend at least one DRO session before proceeding to court. An exemption from the DRO process is available in emergencies.

4. Implementation Start Date

The project commenced December 1, 2001. All applications dealing with child support filed after this date are referred to a DRO for a hearing.

QUALIFICATIONS

Successful applicants must have the following qualifications:

1. Be a member in good standing of the Law society of Alberta;
2. Have practiced primarily in the field of Family Law for a minimum of ten years;
3. Have the following attributes:
 - (a) Actual and perceived neutrality;
 - (b) A strong command of the legal issues involved;
 - (c) Strong interpersonal skills;
 - (d) The ability to listen and be non-judgmental;
 - (e) The ability to be patient, persistent and positive;
 - (f) The ability to comprehend the nature of the dispute and to develop innovative solutions;
 - (g) Knowledge of the process that will be used to resolve the dispute if no agreement is reached, such as adjudication or arbitration.

In considering the suitability of prospective candidates, the Committee MAY consider the following:

4. Past or current experience as an instructor in the Bar Admission Course;
5. Mediation training or experience;
6. Interest-based negotiation training or experience;
7. Papers or publications authored by the candidate in the area of Family Law;
8. Participation in continuing Legal Education programs in Family Law;
9. Use of child support software.

COMPLAINTS

The Dispute Resolution Officer Pilot Project Committee will be responsible for receiving suggestions regarding improvements to the project and for the determination of any complaints regarding the DRO selection or administration process. The Committee will not be required to give reasons for any decisions taken regarding selection of DROs or the administration of the project.

(Forms / schedules are at the end of the document)

DISPUTE RESOLUTION OFFICER

PILOT PROJECT:

BACKGROUND PAPER

BRIEF HISTORY

The litigation process is not generally well suited for Family Law problems. Even when one party “wins” and the other “loses”, each of the litigants must usually continue to have an ongoing relationship due to the presence of children. This post-court contact often results in increased friction between the parents.

Parents complain about: the delay in the legal process; the incredibly high cost; and the problems which are never seemingly resolved in court. The legal system is not meeting the needs of its participants.

THE CURRENT SYSTEM

At the present, a parent wishing to apply for child support, either to have a support order made pursuant to the Federal Child Support Guidelines, or an annual recalculation as contemplated by the Guidelines, requires a Notice of Motion and supporting Affidavit to be presented to the court for hearing. Delays often result at the early stages of the proceedings because one or the other party is not prepared or information is lacking and adjournments are required. Once all parties are in a position to proceed to court, a morning chambers application (less than 20 minutes) is generally insufficient time to hear the evidence and make a well-informed decision. A special domestic chambers application may be required, again at greater delay and significantly increased costs.

At the special domestic chambers application, the court then considers the evidence before it and makes a decision binding upon the parties. Some further delays are often experienced in completing the formal requirements to file the resulting order.

A PROPOSED SOLUTION

Most lawyers who have had extensive experience in family law agree that early intervention in family law disputes often results in settlement. This experience has been borne out by the now common practice of using mediation at the early stages of separation.

Generally, the litigation system is “back-end loaded” in that many of the resources and judicial time are expended late in the process to ultimately result in a trial. A more appropriate use of resources, it is reasoned, would be to “front-end load” the system to place emphasis on intervention at the earliest possible stage. The use of mediation skills at this point in time would be beneficial to all parties. Hence: the concept of the Dispute Resolution Officer Pilot Project.

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Parties and their counsel are free to choose the DRO before whom they want to appear and schedule an appointment accordingly.

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The DRO’s role is to:

1. Draw on his or her court experience and mediation skills to predict some outcomes and give the litigants and their counsel the benefit of the DRO’s views on matters in issue which can lead to a settlement; and
2. Ensure that everything that is procedurally necessary to have the application heard has been done. For example, all financial disclosure should be exchanged. In this way, it is hoped that judicial time could be saved and only one appearance before a judge would be necessary.

PROJECT SUCCESS

The DRO project can only be successful where the parties and their counsel appearing respect the judgment and experience of the people chosen to act as a DRO. Even if lawyers appearing before DROs are senior and experienced, a DRO’s perspective can benefit counsel with an independent viewpoint in order to help achieve settlement.

Furthermore, the DRO meeting is a good opportunity to help pre-try a case on a DRO. A lawyer who may not have thought things through can avoid possible embarrassment or delay in front of a judge.

Forcing the parties to meet and discuss settlement is often all that is necessary to divert the parties from a court process that they see as expensive, time consuming and intimidating.

BENEFITS

The benefits of the DRO system, as experienced from other jurisdictions, include the following:

1. An increased likelihood of settlement where family law matters are dealt with soon after the initiation of court proceedings;
2. The improved delivery of justice to the public;
3. The enhancement of the reputation of the legal profession in providing free services in conjunction with the current court system;
4. The importance of on-site mediation facilities.

FACILITIES

The Court of Queen's Bench in Calgary has provided the DRO Project with the physical facilities to allow the project to proceed. A room on the 7th floor of the Calgary Courts Centre has been set aside for the DRO Project. The project also makes use of a computer and printer. ChildView Software has been approved for use in the project at no additional cost to the government. A telephone is also available.

The project will be administered primarily through Colleen Nicholls (Family Law Information Centre – 403.297.6602) and the DRO Clerk (403.297.3875).

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2. FILING DOCUMENTS

If your Notice of Motion seeks either interim or variation of child support, the clerks will automatically assign a DRO to deal with the matter at the earliest first return date. This is mandatory.

If the parties wish to have a settlement conference and use the experience of the DRO, they may book a DRO at their convenience (by consent).

Where there are other matters referred by judges, including child custody, access, spousal support or property division, a DRO would be assigned to help resolve problems between the litigants based on the judge's referral.

The DRO is mandated to try and assist the parties to resolve the conflict. If the conflict cannot be resolved, then only procedural matters may be dealt with (such as proper disclosure) prior to the parties attending before a judge in chambers.

3. ATTENDANCE AT DRO

Counsel and the parties must attend at least one DRO session before proceeding to court. An exemption from the DRO process is available in emergencies.

4. IMPLEMENTATION START DATE

The project commenced December 1, 2001. All applications dealing with child support filed after this date are referred to a DRO for a hearing.

Prepared by: Lonny L. Balbi, QC

DRO REPORT

NAME OF DRO: _____ DATE: _____

COURT FILE NO: _____

NAME OF APPLICANT: _____ COUNSEL: _____

NAME OF RESPONDENT: _____ COUNSEL: _____

Parties are:

- Married/Separated
 Divorced
 Never Married/Separated

DRO appointment scheduled because:

- Notice of Motion or Claim was filed
 Referral by Judge
 Parties attend by consent

Did either party attend by telephone?

- Applicant Respondent Neither

Issue**Settled?**

- | | | | |
|--|------------------------------|-----------------------------|--|
| <input type="checkbox"/> Child Support – Ongoing | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> partially settled |
| <input type="checkbox"/> Child Support – Arrears/Retro | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> partially settled |
| <input type="checkbox"/> Spousal/Partner Support | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> partially settled |
| <input type="checkbox"/> Custody/Parenting Time | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> partially settled |
| <input type="checkbox"/> Access/Contact | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> partially settled |
| <input type="checkbox"/> Property | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> partially settled |
| <input type="checkbox"/> Other (specify) _____ | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> partially settled |

If settled, the following was completed:

- Consent Order prepared and signed by parties
 Consent Order prepared but not yet signed
 Consent Order to be prepared by _____
 Minutes of Settlement signed by parties
 Verbal agreement only

If not settled, matter was:

- Adjourned to another DRO meeting
 Referred to mediation
 Adjourned to a Justice for disposition
 No Show by: Applicant Applicant's counsel Respondent Respondent's counsel

The DRO process allowed the parties to avoid the following court procedure:

- None (no court time saved)
 Morning Chambers application
 Special Chambers application
 Trial

IF ANY STEPS ARE TO BE COMPLETED BEFORE COURT APPEARANCE OR DRO APPOINTMENT, LIST ON BACK

THIS FORM SHOULD BE COMPLETED IN EACH CASE. DO NOT PROVIDE ADDITIONAL INFORMATION ON THIS FORM IF CASE MAY GO ON TO COURT.

PARTICIPATING LAWYER QUESTIONNAIRE

NAME OF DRO: _____

DATE: _____

Your Client's Name _____

Court File No: _____

What issues were discussed at this DRO meeting? (Please check off the issue(s), and whether they were settled, not settled or partially settled. You may check off more than one box)

Issue	Settled?		
<input type="checkbox"/> Child Support – Ongoing	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> partially settled
<input type="checkbox"/> Child Support – Arrears/Retro	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> partially settled
<input type="checkbox"/> Spousal/Partner Support	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> partially settled
<input type="checkbox"/> Custody/Parenting Time	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> partially settled
<input type="checkbox"/> Access/Contact	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> partially settled
<input type="checkbox"/> Property	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> partially settled
<input type="checkbox"/> Other (specify) _____	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> partially settled

In your opinion, how much court time was saved by this DRO meeting?

- None (no court time saved)
- Morning Chambers application
- Special Chambers application
- Trial

PLEASE ANSWER THE FOLLOWING QUESTIONS:

- Was the Dispute Resolution Officer reasonably informed and prepared for your case? Yes No
- Was there enough time booked for your case? Yes No
- Did you or your client have any safety concerns in this meeting? Yes No
- Was this DRO meeting helpful to you in terms of case management of this file? Yes No
- Is the DRO program helpful to you generally? Yes No

If you would be willing to answer questions about your experience, please provide your name and phone number below.

Your Name: _____ **Phone:** _____

IF YOU HAVE ANY OTHER COMMENTS ABOUT THE DISPUTE RESOLUTION OFFICER PILOT PROJECT OR THIS PARTICULAR DRO, PLEASE WRITE THEM ON THE BACK OF THIS FORM.

PLEASE COMPLETE THIS FORM, AND LEAVE IT WITH THE DRO CLERK ON THE 7TH FLOOR OF THE CALGARY COURTS CENTRE. THANK YOU.

PARTICIPANT QUESTIONNAIRE

NAME OF DRO: _____

DATE: _____

Who booked this DRO appointment?

- I did (or my lawyer did) The other party did

What issues did you discuss at this DRO meeting? (Please check off the issue(s), and whether they were settled, not settled or partially settled. You may check off more than one box)

Issue	Settled?		
<input type="checkbox"/> Child Support – Ongoing	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> partially settled
<input type="checkbox"/> Child Support – Arrears/Retro	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> partially settled
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<input type="checkbox"/> Property	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> partially settled
<input type="checkbox"/> Other (specify) _____	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> partially settled

Please answer the following questions:

- Is this the first time you have been to a DRO meeting? Yes No
- If you have been to a DRO before, is this a follow-up meeting, or is this meeting for a new application? Follow-up
 New
- Was the Dispute Resolution Officer reasonably informed and prepared for your case? Yes No
- Was there enough time booked for your case? Yes No
- Did you feel safe being in the same room as the other party? Yes No
- Did you feel comfortable saying what you needed to say? Yes No
- Do you know what to do next? Yes No
- If the DRO program had not been available, do you think this matter would have gone to court anyway? Yes No

Overall, how satisfied are you with the Dispute Resolution Project?

- Not at all Somewhat dissatisfied Neutral Somewhat satisfied Very satisfied

If you would be willing to answer questions about your experience, please provide your name and phone number below.

Your Name: _____ Daytime phone no: _____

IF YOU HAVE ANY OTHER COMMENTS ABOUT THE DISPUTE RESOLUTION OFFICER PILOT PROJECT, PLEASE WRITE THEM ON THE BACK OF THIS FORM.

PLEASE COMPLETE THIS FORM, AND LEAVE IT WITH THE DRO CLERK ON THE 7TH FLOOR OF THE CALGARY COURTS CENTRE. THANK YOU.

ACTION No: _____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

PLAINTIFF

- and -

DEFENDANT

DISPUTE RESOLUTION OFFICER PILOT PROJECT

APPLICATION FOR EXEMPTION

Date: _____, 20_____

Name of Person Seeking Exemption: _____

Name of Counsel: _____

Name of Other Counsel: _____

Reason for Asking for Exemption:

To be completed by a Justice of the Court of Queen's Bench: In Court In Private Chambers

Exemption not granted.

Fiat: Exempt from attending before the Dispute Resolution Officer.

Fiat: Exempt from attending before the Dispute Resolution Officer before bringing Notice of Motion but must make appointment to attend before the Dispute Resolution Officer by _____, 20_____, unless amended by further Order of the Court.

Printed Name of Justice of the Court of Queen's Bench Signature