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Evaluation of the Ontario Mediation Program (Rule 24.1) Final Report: The First 23 Months

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Evaluation of the Ontario Mandatory Mediation Program (Rule 24.1): Executive Summary and Recommendations

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Finally, special thanks are extended to the many mediators, lawyers and litigants who provided critical information for the evaluation by filling out long and complex evaluation forms in hundreds of cases in Ottawa and Toronto.

1: Objectives of the Evaluation

Rule 24.1 introduced subject to evaluation

On January 4, 1999, Rule 24.1 introduced -- on a test basis – a common set of rules and procedures mandating mediation for non-family civil case-managed cases in the Ontario Superior Court of Justice in Ottawa and Toronto, Canada.

Continuation of the Rule past July 4, 2001 was to be in large part dependent on the results of a thorough and independent 23-month evaluation – with supervision of the evaluation being undertaken by a committee of the Civil Rules Committee, the Evaluation Committee for the Mandatory Mediation Pilot Project.

Accordingly, the Ontario Ministry of the Attorney General, at the request of the Civil Rules Committee, instituted a competitive process to select an independent evaluator to conduct an intensive and broad-ranging evaluation covering the first 23 months of the Rule.

This document is the Executive Summary of the final report of that evaluation.

Four areas evaluated

The evaluation addresses a wide range of issues of interest to the Civil Rules Committee, to the judiciary, to governmental policy makers, to the general public -- and to lawyers, mediators, court administrators, litigants and other stakeholders involved in the day to day operation of the court and litigation processes.

However, the focus of the evaluation was on the four major objectives of mandatory mediation under Rule 24.1, namely:

- Does Rule 24.1 improve the pace of litigation?
- Does Rule 24.1 reduce the costs to the participants in the litigation process?
- Does Rule 24.1 improve the quality of disposition outcomes? and
- Does Rule 24.1 improve the operation of the mediation and litigation process?

2: Main Overall Findings and Recommendations

Key overall findings

Section 4 summarizes the key specific findings of the project. However, all of those findings should be considered in light of one overall finding:

- In light of its demonstrated positive impact on the pace, costs and outcomes of litigation, Rule 24.1 must be generally regarded as a successful addition to the case management and dispute resolution mechanisms available through the Ontario Superior Court of Justice in both Toronto and Ottawa. More specifically, the evaluation provides strong evidence that:
  - Mandatory mediation under the Rule has resulted in significant reductions in the time taken to dispose of cases.
  - Mandatory mediation has resulted in decreased costs to the litigants.
  - Mandatory mediation has resulted in a 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.
  - In general, litigants and lawyers have expressed considerable satisfaction with the mediation process under Rule 24.1.
  - Although there were at times variations from one type of case to another, these positive findings applied generally to all case types – and to cases in both Ottawa and Toronto.

- The evaluation has also identified a limited number of specific areas in which improvements to the Rule would enhance the operation of the mediation program.

Key overall recommen-dations

In light of these findings, it is recommended that:

R 1. The Rule be extended for the current types of cases covered beyond July 4, 2001.

R 2. The Rule be amended, or other procedural changes be made in line with the findings in this report, as part of a process of continuous improvement of Rule 24.1.

R 3. The Rule be extended to other civil cases in Toronto and across the province as part of the expansion of case management.

3: Other Aspects of the Scope of the Evaluation

Besides focusing on all four major areas in which mandatory mediation was expected to have an impact, other aspects of the design of the evaluation differentiated it from similar previous evaluation efforts.

Actual and perceived impacts

First, the main focus of the evaluation was on the *actual* impact that the Rule had in each of the areas of pace of litigation, costs, outcomes and process. However, recognizing that the success of any new initiative relies as well on the expectations and perceptions of various groups, the evaluation devoted considerable effort to assessing the *expected and perceived* impacts of the Rule.

Particular attention was paid to comparing the perceptions of litigants, mediators and lawyers on key issues – and to differences in perceptions of stakeholders in Ottawa and Toronto. Finally, comparison of perceptions of accomplishments with actual accomplishments in certain areas yielded especially interesting results.

Impacts assessed in two different court environments

Second, the scope of change introduced by Rule 24.1 was significantly different for Toronto and Ottawa. Prior to January 4, 1999, court-connected and essentially voluntary mediation was utilized in Toronto through a relatively small pilot project for only a small percent of the case-managed civil cases. In addition, only 25% of "eligible" civil claims (16% of the total civil caseload) in Toronto are case managed. Conversely, prior to January 4, 1999, Ottawa had for two years – under a local Practice Direction – already conducted mandatory mediations for all civil case-managed cases. Virtually all of the Ottawa civil caseload is case managed.

This evaluation is therefore especially important and useful since it assesses the impacts of introducing mandatory mediation in two very different court settings -- one relatively unfamiliar with mandatory mediation, the other very familiar with (and committed to) a different set of procedures for conducting mandatory mediations.

Confidence in results enhanced by multiple sources of data utilized

Third, the evaluation was able to develop and cross-check its findings against extensive quantitative and qualitative information collected from a wide variety of sources, including:

- data on some 100 variables for each of some 23,000 cases commenced since 1996 – extracted from the ongoing automated court information systems maintained by the Ontario Ministry of the Attorney General;
- Key data on over 3000 mediations – provided through a specially designed form (the Mediator's Report) filled out by mediators in all mediations under Rule 24.1;

- More extensive data on participants' perceptions on the full range of potential impacts of mediation in a large sample of specific mediations – from 600 evaluation questionnaires completed by litigants, 1,130 completed by lawyers and 1,243 completed by mediators –all specifically designed for the evaluation;
- The results of a number of separate workshops and focus groups conducted with the assistance and broad participation of lawyers, mediators and the Local Mediation Committees in both Ottawa and Toronto;
- The insights offered by key members of the bench, the bar, mediators, case management masters, and court administrators and policy personnel – through key-person structured interviews with those who designed and participated in this and other mediation programs, and
- Data on the timing and outcomes of litigation in a control group of cases conducted before the introduction of the Rule – through a special questionnaire completed by lawyers in those cases.

The breadth and variety of perspectives offered through this wealth of information greatly enhances the confidence that can be placed in the evaluation findings. The acknowledgements give credit to the large number of people who contributed to the collection of this information.

4: Format, Specific Findings and Recommendations

4.1 Caseflow Context: from Claim to Mediation

The evaluation began by providing an operational context for the results and a description of some of the key characteristics of the mediated cases.

Key findings regarding caseflow

A court caseflow environment is described in which:

- The inclusion of Simplified Rules cases within the scope of Rule 24.1 in Ottawa, but not Toronto, would lead to misleading findings unless results for Simplified Rules cases were reported separately.

- After removing Simplified Rules cases, different case types comprise similar proportions of the total caseload in both Ottawa and Toronto (the exception being for motor vehicle cases which are proportionally more prevalent in Toronto).
- The number of defended cases eligible for mediation under Rule 24.1 has been fairly stable over the past 12 months in both Ottawa and Toronto.
- There had been steady initial growth in both Ottawa and Toronto in the numbers of mediations that were completed each quarter. That upward growth continued in Toronto until the second quarter of 2000, after which a decrease occurred. Conversely, the number of mediations per quarter has been stable throughout 2000 in Ottawa.

Key characteristics of mediations

In completed mediations

- Parties are considerably more likely in Ottawa than in Toronto to select their own mediator (82% of Ottawa mediations vs. only 53% of Toronto mediations).
- Selection of off-roster mediators is very rare in Ottawa (1%), but less rare in Toronto (6%).
- A sizeable proportion of mediated cases involve two or more defendants (45% in Ottawa vs. 54% in Toronto).

Recommendations regarding caseflow characteristics of mediations

In light of these findings **it is recommended that:**

R 4. Any comparison between cities take into account differences in the mix of case types. In particular, analyses comparing Ottawa and Toronto should separate out results related to Simplified Rules cases.

R 5. Because of its importance to an understanding of how mandatory mediation functions, the considerable difference between Ottawa and Toronto regarding the likelihood of parties selecting their own mediator be monitored on an ongoing basis.

R 6. Monitoring of the use of non-roster mediators continue.

4.2 The Pace of Mediated Litigation

The evaluation then addresses the first fundamental question, "Does mandatory mediation under Rule 24.1 reduce delay?"

Findings regarding the overall pace of mediated litigation

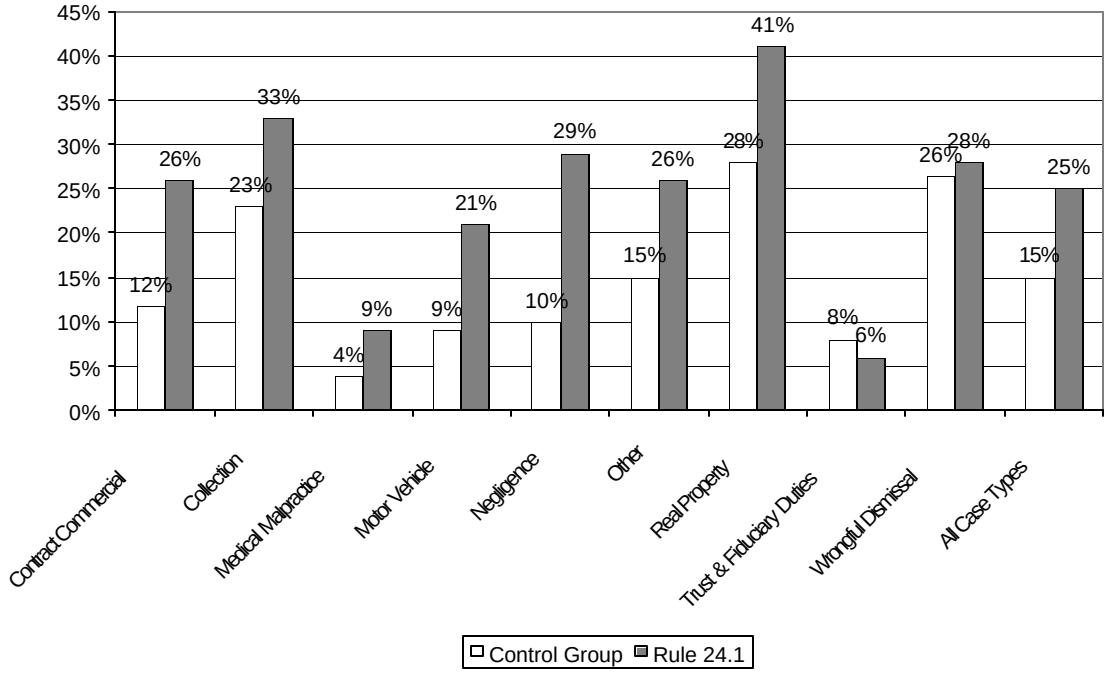
The overall conclusion is that **cases under Rule 24.1 do proceed to disposition faster than did case-managed cases before the introduction of the Rule.**

Analysis comparing times from first defence to final disposition for cases in a control group of case-managed cases defended before the introduction of Rule 24.1 and defended mediated cases subject to the Rule found:

- For all case types combined, a substantially larger proportion of cases in the mandatory mediation sample were disposed of at 3, 6, 9 and 12 months after defence.
- This finding also generally applied when each of ten case types were examined separately. Figure 1.1 for example compares control group and Rule 24.1 cases in Toronto in terms of the percentage of cases finally disposed within 6 months of first defence.

Figure 1.1

% of Cases Disposed Within 6 Months of 1st Defence: Control Group vs. Rule 24.1 Cases



- For each case type (except trust and fiduciary duties) a higher percentage of Rule 24.1 cases had been disposed within 6 months than for cases in the control group.
- Further, when the comparison is made both after 9 months and after 12 months from first defence, higher percentages are disposed under Rule 24.1 in each and every case type.
- The improvement in disposition rates within 12 months varied considerably with the type of case, but were especially dramatic for negligence, contract/commercial, collections, wrongful dismissal, and trust and fiduciary duties cases.

Ottawa compared to Toronto

A comparison was also made of the results at the two pilot project sites, Ottawa and Toronto. Comparisons were also made between Ottawa under the earlier Practice Direction and Ottawa under Rule 24.1. The results show that:

- Case dispositions in Ottawa have been somewhat more expeditious under Rule 24.1 than in Toronto.
- Case dispositions under the Practice Direction in Ottawa were somewhat faster than under Rule 24.

The evaluation also tested whether litigants were delaying the filing of a defence to subvert the defence-triggered time lines in Rule 24.1:

- In fact, cases were found to be defended somewhat more quickly under Rule 24.1 than they were in the period before the Rule. This finding applied in both Ottawa and Toronto.
- There is, however, evidence of a modest increase under the Rule in the rate at which cases are defended.

Examination of the time between the first defence and the mediation found that the time provisions of the Rule were satisfactory; i.e. cases were being mediated within reasonable tolerances of the 90- and 150-day time standards:

- In both Toronto and Ottawa, over half the mediations were held within 90 days.
- Just under one-third of the mediations were held between the 90-day standard and the extension to 150 days allowed by the Rule.
- The flexibility of the Rule was demonstrated by roughly a sixth of the mediations in Ottawa and one in seven mediations in Toronto being allowed to occur after the 150-day time standard.
- The time to mediation seems to be more "rule driven" in Toronto, with litigants more likely than in Ottawa to delay the mediation to the last possible time allowed by the 90- and 150-day time standards in the Rule. In contrast, it is likely that the timing of Ottawa mediations is influenced less by the Rule and more by the specific requirements of the case, and the practices of the lawyers involved are adjusted accordingly.
- Perceptions of mediators, litigants and lawyers about the impact of Rule 24.1 on timing issues were generally positive.

More specific responses on the timing of the mediations included:

- Generally, litigants in both cities were more likely to feel that the mediation should *not* have been held later. This feeling was felt much more strongly in Ottawa (73% opposed to later vs. 9% in agreement to later) than in Toronto (47% vs. 31%).
- A solid 73% of Ottawa litigants and 60% of Toronto litigants agreed with the statement, "One of the benefits of mandatory mediation was that it required parties and their counsel to begin negotiations earlier than would otherwise have been the case."

- Lawyers in Toronto were more likely to feel that the mediation should have been held later (54%, vs. 35% who disagreed), while Ottawa lawyers supported the existing timing by three to one (66% vs. 22%).

A majority of mediators in both cities felt that it would have had a harmful impact if examinations for discovery had taken place before mediation began.

However, despite the above overall positive perceptions, a minority (but not insignificant) proportion of respondents to our questionnaires did express negative views regarding the appropriateness of early mediation for some types of cases. This position was also expressed by a minority of participants in the focus groups (especially lawyers in Toronto).

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Recommen-dations regarding timing provisions of Rule 24.1

Given the positive impact of Rule 24.1 on the pace of litigation, and given the current progress of the vast majority of cases within the existing time standards, **it is recommended that:**

R 7. The time standards not be lengthened.

Given the different results of mandatory mediation from case type to another (found here and throughout the report), **it is recommended that**:

R 8. Any analyses of the impact of mandatory mediation present results separately for different types of cases.

Since a majority of litigants, lawyers and mediators are generally satisfied with the timing provisions of the Rule, but since a minority but still sizeable proportion have negative views about the timing provisions in particular cases, **it is recommended that:**

R 9. Further analysis and investigation be undertaken to better understand the situations in which negative views about the timing provisions of the Rule are more prevalent.

R 10. Steps be taken to better inform mediators, litigators and lawyers about the demonstrated generally positive impact of Rule 24.1 on time to disposition.

R 11. Lawyers and litigants be made more widely aware of provisions in the Rule for obtaining an extension in the time for mediation. At the same time, there should be continuing development of clearer policies and guidelines regarding situations under which extensions would be beneficial or inappropriate, so that the granting of extensions reinforce rather than subvert the Rule's purpose: the expeditious and inexpensive disposition of civil cases.

4.3 The Costs of Mediated Litigation

Developing a full understanding of the impact of Rule 24.1 on legal costs is a task far beyond the resources and information available to the current evaluation. Nonetheless, important contributions were made to knowledge in this area.

Key findings regarding costs

The initial overall conclusion of the analysis undertaken within this evaluation is quite clear: when cases settle at or soon after the mandatory mediation, litigants save a substantial amount of money. The responses to questionnaires supported the conclusion that early mandatory mediation reduces costs. The response from focus groups was positive but not as strong.

With respect to the focus groups:

- Lawyers participating in the Ottawa focus groups were convinced that mandatory mediation reduces costs for litigants, even in cases which do not settle at mediation.
- Lawyers in the Toronto focus groups were less positive, and while many comments were similar to those made in Ottawa, Toronto lawyers were more likely to stress the anticipated *increases* in costs in cases which do not settle at mediation. For a significant proportion of the Toronto bar, mandatory mediation is still problematic, its overall advantage unproven.
- The costs of mediation were reported as higher in Toronto than in Ottawa.

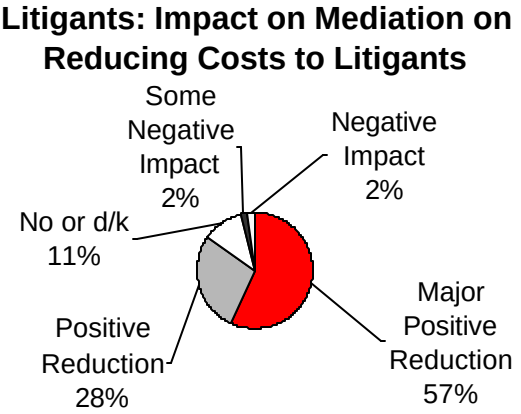
As shown in Figure 1.2 however, as with the results on timing, responses to the questionnaires [1] were considerably more positive than those emanating from the focus groups in Toronto.

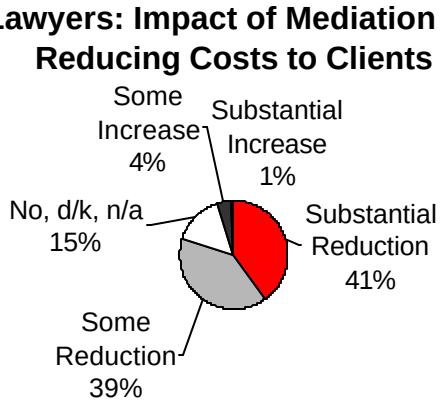
Responses from litigants indicated that in 85% of these cases, mediation was assessed as having a positive impact on reducing costs to litigants – and in 57%, a "major" positive impact.

- Responses from lawyers were similar, suggesting positive impacts in 78% of Toronto cases, (including 34% "substantial" positive impact) and 80% of Ottawa cases, (including 51% "substantial" positive impact).
- In only 2% of Ottawa cases and 7% of Toronto cases, lawyers believed mediation had led to a negative cost impact for their clients.

[1] (Submitted by lawyers and litigants in the subsample of mediated cases finally disposed under the Rule)

Figure 1.2 [2]





- Lawyers' estimates of the amount of savings in legal costs to litigants suggested that in over a third of the cases (38%), the cost savings were in excess of $10,000 (including 8% estimated at over $30,000). In another third (34%), savings were estimated at $5000 or less. The remaining 28% fell in between.
- Conservative calculations indicate that a net savings to litigants in both Ottawa and Toronto courts will emerge from the Mandatory Mediation Program.

The evaluation also explored one indicator of the cost of the mediation session: the duration of the mediation.

- Mediations which require more than one session are rare (2-4%).
- Mediations which require more than three hours (after which the
- generally lower "tariff" rate for mediators is replaced by private rates, assuming the parties wish to pay for it) make up 44% of Ottawa and 35% of Toronto mediations.
- Mediations that take longer than three hours are more likely to result in a complete settlement.

Recommen-dations regarding costs

Similar to the results for timing, perceptions regarding the impact of Rule 24.1 on costs are to some extent at odds with empirical data on actual costs. Therefore, **it is recommended that:**

R 12. Currently available data (e.g. the results of this study) be made widely available -- especially to the Toronto bar.

R 13. Special efforts be made to work with members of the Toronto bar to develop empirical data that better inform and address their concerns regarding the negative impacts of mediation on the costs of litigation.

[2] In this and later Figures, "d/k" means "do not know".

R 14. Results of the above work be used to design and secure funding for a more detailed study to obtain more comprehensive data on the costs associated with civil litigation. This study would not only help understand mandatory mediation (and how its timing affects litigation cost), but also address other issues of access to civil justice.

4.4 The Impacts of Rule 24.1 on Dispute Resolution Outcomes

The Evaluation next considers the impact of mediations under the Rule on various outcomes of the litigation process.

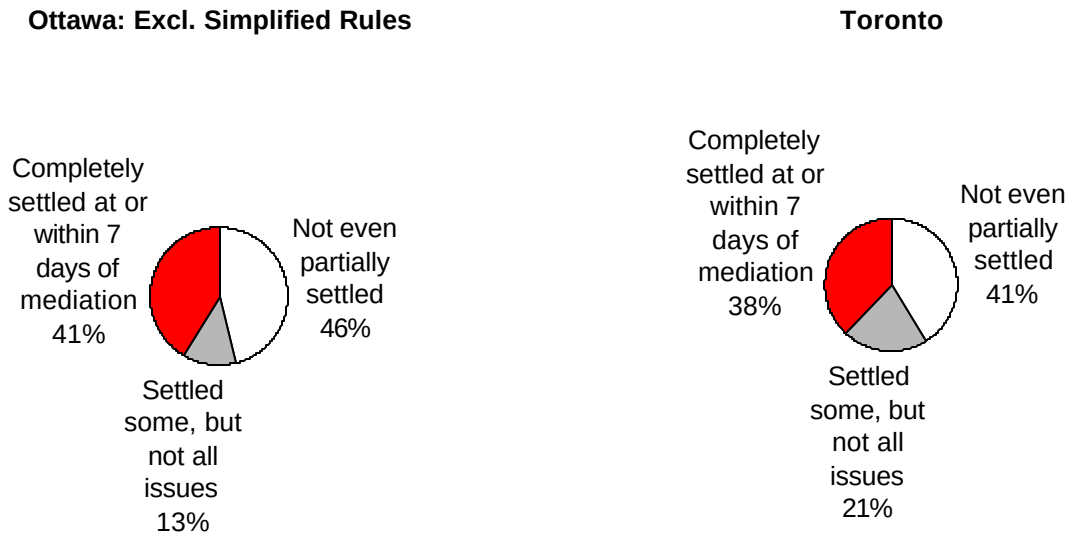
Key findings regarding the settlement of cases

The evaluation focuses on whether or not a complete settlement is achieved earlier in the litigation process through mediation under the Rule.

The main findings are that:

- In both Ottawa and Toronto, a significant proportion of cases – about four out of every ten – are completely settled at or within seven days of mediation.

Figure 1.3



- Comparison of rates of settlement for "pre-Rule 24.1 Control Group" cases and cases mediated under the Rule found that Rule 24.1 has had a significant impact on the percentages of Toronto cases that are completely settled early on (i.e. within three and six months) in the litigation process. This positive impact of the Rule was observed in all ten of the case types examined.
- The rates of complete and partial settlement are very close in both Toronto and Ottawa.
- The speed at which Toronto achieved results similar to Ottawa's, which had two years prior experience under a Practice Direction, attests to the ability to establish an effective program with a very short learning period.
- On the other hand, the mediations also resulted in neither a complete nor a partial settlement in about four out of every ten cases in both Ottawa and Toronto.

More specific results include:

- There are considerable variations in settlement rates at mediation for different case types. Relatively high complete settlement rates were exhibited by wrongful dismissal cases (47%) in Toronto, and by wrongful dismissal, negligence, Simplified Rules and real property cases (50% to 54%) in Ottawa. Relatively low likelihoods of complete settlement were found for medical malpractice, real property and contract/commercial cases (16% to 33%) in Toronto, and for contract/commercial, collection and trust and fiduciary duties cases (21% to 36%) in Ottawa.

- Bivariate analysis of the factors which may influence the settlement outcome revealed the following statistically significant differences:
    - Roster and non-roster mediators had a similar likelihood of reaching a complete settlement, but roster-led mediations were more likely than non-roster mediations to resolve some (but not all) the issues;
    - Mediations were significantly more likely to result in complete settlement if the mediator was selected by the parties, rather than assigned by the local coordinator;
    - Mediations involving six or more named plaintiffs or defendants were less likely to result in a complete settlement;
    - Mediators who did more Rule 24.1 mandatory mediations during the evaluation period were more likely to facilitate a complete or partial settlement in any given case.

However, a multivariate analysis determined that:

- The variable that was most effective in predicting whether neither a complete nor partial settlement occurred at mediation was "the number of Rule 24.1 mediations conducted during the two years of the program by the mediator in the case". As the Rule 24.1 experience of the mediator increased, the likelihood of the mediation resulting in neither a complete nor partial settlement decreased. (The evaluation focused on cases that resulted in "neither a complete nor partial settlement" since it was those cases that were likely to demand adjustments (if any) to the Rule.)
- Further, after the Rule 24.1 experience of the mediator was taken into account, different sets of variables had a statistically significant impact on identifying groups of cases that had different likelihoods of neither a partial nor complete settlement. Variables that did prove useful in identifying significantly different rates of no settlement (but only for specific groups of cases) included: case type, whether or not the mediator was a roster or non-roster mediator, and the city of the mediation (i.e. Ottawa or Toronto).

Findings regarding partial settlements

Regarding the types of issues resolved in "partially settled" cases:

- In both Ottawa and Toronto, in partially settled cases, less than a majority of lawyers and litigants indicated that the mediation had made progress for every type of substantive issue considered.
- However a substantial proportion indicated that progress had been made in resolving issues such as: types of damages that were recoverable, amount of damages, assignment of liability and determination or clarification or resolution of the important facts.
- Lawyers and litigants had similar assessments of progress made on specific issues. However, mediators' assessments of progress were typically more optimistic.
- It appears that parties and counsel in Ottawa are more likely than their Toronto counterparts to include a more complete list of the relevant issues in their Statement of Issues. (Alternatively, it is possible that Toronto mediators are more likely to expand the discussion past the Statement of Issues.)

Findings regarding other outcomes

Other types of outcomes of mandatory mediation were also explored.

- A majority of mediators in both cities reported an impact on such areas as providing one or both parties with new, relevant information; identifying important matters; setting priorities among issues; developing a process for dealing with the remaining issues; and achieving a better awareness of the potential monetary savings from settling earlier in the litigation process.
- Fewer but still a substantial portion of litigants also reported an impact on certain secondary outcomes.

Findings regarding overall satisfaction with outcomes

Finally, participant satisfaction measures were obtained from litigants and lawyers, which for the most part were positive.

First, on the overall value of the Rule:

- Lawyers and litigants were more likely to feel that their own case had been suitable for mediation (79% in Ottawa and 61% in Toronto) – although those in agreement were less prominent in Toronto (with 24% feeling that their case was not suitable for mediation).
- A particularly thought-provoking finding was that 42% of Toronto mediators felt that the likely impact if "this type of case had been excluded" from mandatory mediation would be "some improvement" in narrowing issues or reaching settlement.
- A minority but still substantial number of lawyers and litigants expressed concern with the quality of the outcome of the mediation. These concerns were especially prominent in Toronto. For instance, 33% of the responses from Toronto lawyers disagreed with the statement that "justice was served by this process."
- However, a substantial majority of litigants and lawyers (more in Ottawa) indicated satisfaction with the overall mandatory mediation experience and said they would use it again if they had a choice in the matter.
- In all types of cases, more litigants and lawyers agreed than disagreed with the statements "Justice was served by this process" and "The settlement was fairer than without mandatory mediation".

Recommen-dations regarding outcomes

Rule 24.1 has resulted in a number of benefits related to the settlement of cases and to other case outcomes. However, for a substantial proportion of cases, many of these benefits are not perceived to be present. This balance of results is reflected in the following **recommendations:**

R 15. The demonstrated positive contribution of Rule 24.1 mediations to the resolution of disputes in roughly six out of every ten cases should be broadly communicated.

R 16. Indicators of the impact of mediation on litigation outcomes must adopt a broader scope than simply "complete settlement". Such indicators should also capture other demonstrated benefits such as settlement of certain types of issues as well as the other specific benefits discussed in the text.

R 17. Further research is required to identify more clearly the factors that are associated with the lack of a complete or partial settlement in four of every ten cases.

R 18. Further research is also required to identify more clearly the factors that determine why a minority, but still substantial proportion, of lawyers and litigants (particularly in Toronto) have negative views regarding the impact of mediation on issues such as "achieving a result that is fair" and "ensuring that justice was served by the mediation process." Results could inform initiatives to extend the Rule and to evaluate its effects in other locations.

R 19. The importance of "prior Rule 24.1 mediation experience" in predicting whether or not a mediation leads to at least a partial settlement strongly suggests the importance of revisiting the criteria for acceptance of mediators to the roster – and the importance of various forms of mediator training.

R 20. Clarification and enhanced education is needed (especially in Toronto) regarding the types of issues that should be included on the Statement of Issues. This should be part of broader education efforts that need to accompany any expansion of mandatory mediation.

4.5 The Mediation Process and Procedures

Selected issues related to the processes and procedures that support the day-to-day operation of the Rule are also explored in the evaluation.

Key findings regarding the mediation process and procedures

Findings related to the abilities of the mediator and the mediation process include:

- Regarding the mediator and the process of mediation, a majority of litigants in both cities (but fewer in Toronto) gave positive ratings to mediators' overall skills in:
  - moving the parties towards an agreement,
  - ability to understand the facts and the legal issues, and
  - degree of involvement in determining the outcome.
- Mediators' ability to address power imbalances between the parties was less positively rated.
- Lawyers' ratings of mediators in both cities closely paralleled those of the litigants, again with Ottawa lawyers generally more positive.

Regarding issues related to the adequacy of information available at and about mediations:

- In response to most case-specific questions, a strong majority of litigants, lawyers and mediators said that lack of information was not a problem.
- More Toronto than Ottawa litigants would have liked to receive more initial information about the mediation process.
- The problem of at least one of the parties at the mediation not having the authority to reach an agreement was more common than one might hope – 15% of Ottawa lawyers' responses and 18% of Toronto lawyers' responses indicated this was a problem.

The focus groups and interviews also considered issues related to the process for selection, training and monitoring of mediators.

- Many participants felt that the criteria and process for acceptance of mediators onto the roster should be made more rigorous.
- Some lawyers wanted more information to be made available on the background and experience of individual mediators.
- There was support for professional development programs for mediators.
- Opinions differed in Toronto and Ottawa with respect to the need for specialized mediator panels. The idea had more acceptance in Toronto than in Ottawa.

Additional findings concern issues and processes related to the administration of the program:

- Mediator activity in Ottawa is highly concentrated; while 97 mediators have conducted at least one mediation there, four mediators have completed 49.8% of the total.
- Mediator activity is more dispersed in Toronto, where the ten busiest mediators conducted just over one-third of the completed mediations.
- There is evidence of growth in the inventory of defended cases that have not yet been mediated. This growth in pending mediation cases is more evident in Ottawa.
- Particularly important comments were made in focus groups and interviews regarding the critical role played by the Local Mediation Coordinator in ensuring the effective operation of the program – and the need to ensure that the coordinator function is adequately resourced.

Recommendations regarding mediation processes and procedures

In light of these findings, **it is recommended that:**

R 21. Consideration be given to addressing the causes and possible solutions to the problem of parties at the mediation who do not have the authority to settle.

R 22. Lawyers and mediators be advised of the finding that over a quarter of litigants would have liked to have one or more parties supplied with more information about the costs and benefits of proceeding further in the court process.

R 23. The Ministry of the Attorney General consider ways in which it could assist members of the Toronto bar to become better acquainted with mediators in Toronto.

R 24. Distribution of the public information brochure be mandatory in all cases.

R 25. The Ministry of the Attorney General conduct a review of the appropriate resourcing for the Local Mediation Coordinator's offices.

R 26. Further research be undertaken on the granting of extensions.

R 27. The size of inventories of pending mediation cases – and the potential causes of any continued significant growth -- be monitored on an ongoing basis to ensure the effectiveness of the Rule.

R 28. **The Ministry of the Attorney General convene a meeting of members of the two Local Mediation Committees and program staff to enable them to share ideas about "best practices" for program start-up, as well as issues related to selection, training, professional development opportunities, monitoring of mediators -- and other key issues related to attracting and maintaining the appropriate quality of mediators on the roster.**

R 29. **Since the evaluation process has brought together lawyers, mediators, litigants and court officials within a process that has developed valuable information for understanding and improving Rule 24.1 and the mediation program, both the ministry and the Civil Rules Committee ensure that mechanisms are set up to maintain and enhance this process of continuous monitoring, analysis and improvement.**

For more information about the Ontario Mandatory Mediation Program, please access the Ministry of the Attorney General's web site at:

http://www.attorneygeneral.jus.gov.on.ca/sermed.htm

or call the Program's information line at:

1-888-377-2228 (toll free outside Toronto) or 416-314-8356 (in Toronto)