

## Online Dispute Resolution: The Tools of the Future for Mediators, Arbitrators and Lawyers are here today!

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Most dispute resolution practitioners see themselves as working face-to-face with their clients. This view has not changed in years, but it is in the process of being upended by online dispute resolution (ODR). ODR and technologies such as artificial intelligence are not sometime in the future. They exist now and we must learn to “race with the machine” if we are to be competitive in what will soon become an even more crowded marketplace.

Technology is changing not only the way we communicate; it is altering the way we disagree and the way we resolve our disputes.... Technology is also changing people’s expectations about how disputes should be resolved.<sup>1</sup>

The Internet has over 3 billion users.<sup>2</sup> Personal computers have more or less replaced mainframes, but are being replaced by laptops, while tablets are replacing laptops. This does not even include “smart phones” which are replacing landlines and to a certain extent, tablets. More than 60% of Google searches are now from mobile devices.

ADR and legal practitioners use aspects of online dispute resolution (ODR) in their daily practices even if they do not see it as ODR. Smart phones, e-mail, video-conferencing and document searching/disclosure software are some examples of common technologies used today. Many practitioners also use online directories and calendars as well as social media such as LinkedIn, Twitter and Facebook.

In the ADR world, we are seeing the emergence of practice management type software, in common use. Examples such as Mediate.com’s Caseload<sup>3</sup> and Mediate to Go’s case manager<sup>4</sup> are integrated systems that are fully scalable to manage as many clients as needed. This type of technology, important for managing larger practices, will likely lead to more clients, although with lower revenue per client. Therefore, management through technology will be the key to the successful ODR practice.

A rigid distinction between online and offline worlds makes little sense today. Few of us live entirely online, but few people live entirely offline either. Most of us are comfortable using technology to communicate electronically and at other times getting together face-to-face. We constantly move back and forth between our online and offline lives.

Despite this acceptance of technology, many in the ADR field recoil at the idea of ODR in much the same way as lawyers do with talk of artificial intelligence, IBM’s Watson<sup>5</sup> and other so called disruptive

<sup>1</sup> Colin Rule, Technology and the Future of Dispute Resolution in Dispute Resolution Magazine, Winter 2015 p. 4

<sup>2</sup> <http://www.internetworldstats.com/stats.htm> as at November 2015.

<sup>3</sup> <http://www.caseloadmanager.com/>

<sup>4</sup> Mediate to Go is a Canadian app at <https://www.mediate2go.com/>

<sup>5</sup> <http://www.ibm.com/smarterplanet/us/en/ibmwatson/>

technologies.<sup>6</sup> Innovation and technology are part of ADR. But it is up to us whether this will be a “disruptive” force for us or an innovative opportunity to access and provide additional services to improve and sustain our practices.

A simple ODR process can have both online and face-to-face components such as:

1. Process begins by the parties completing an online intake form.
2. A mixture of telephone calls, e-mails and face-to-face meetings or video-conferences occur.
3. Important documents can be exchanged electronically.
4. Joint sessions might be held in person or on-line.
5. In-between session communication may be through e-mail and/or dedicated chat facilities.
6. The settlement agreement is circulated and signed on-line.

More sophisticated ODR systems support video, along with text-based conversations, and software tools such as Solution Explorer from BC’s Civil Resolution Tribunal to help parties explore their options in order to be prepared for resolution of their disputes.<sup>7</sup> Much as there are many different processes under the umbrella of ADR, ODR is not a single technology.

Governments are conferring legitimacy on ODR through the implementation of on-line tribunals to supplement or replace certain courts. This is part of a global movement to address access to justice. In the U.K., there are proposals for on-line courts. There are similar discussions and pilot projects in many other jurisdictions around the world.

Canada is at the forefront of this movement. A model of the future of dispute resolution can be found in the Civil Resolution Tribunal in British Columbia.<sup>8</sup> By moving small claims and strata (condo) disputes on-line, this tribunal will provide a very different experience and likely one that many consumers will welcome.

The European Union has enacted legislation requiring online sellers to provide an online redress system to consumers.<sup>9</sup> This will directly impact corporations that engage in e-commerce. Canadian corporate counsel will likely have to look at on-line systems for both dispute resolution and customer satisfaction purposes, especially when the Canada-European Union: Comprehensive Economic and Trade Agreement comes into effect.

The conflict management and dispute resolution market is ready for something cheaper, easier, or more convenient than what is already out there. Mediators who make better use of online technology will have a competitive advantage as they will be able to offer their services to parties who simply cannot afford the time and money for traditional dispute resolution. ODR will allow ADR professionals to market their services to industries and organizations with large numbers of disputes in a far more efficient and profitable way.

Whether we like it or not, ODR is here to stay. While there is no “Oz” like person or machine behind the electronic curtain as of yet, we need to learn about technology and be willing to “race with the machine”.<sup>10</sup> We need to innovate, to provide the types of services that our clients need and can afford.

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<sup>6</sup> A disruptive technology is one that displaces an established technology and shakes up the industry or a groundbreaking product that creates a completely new industry. <http://whatis.techtarget.com/definition/disruptive-technology>

<sup>7</sup> <https://www.civilresolutionbc.ca/come-try-the-solution-explorer/>

<sup>8</sup> <http://www.civilresolutionbc.ca/>

<sup>9</sup> Settling consumer disputes online [http://ec.europa.eu/consumers/solving\\_consumer\\_disputes/docs/adr-odr\\_factsheet\\_web.pdf](http://ec.europa.eu/consumers/solving_consumer_disputes/docs/adr-odr_factsheet_web.pdf) and <http://ecommercenews.eu/online-dispute-resolution-platform-doesnt-work/>

<sup>10</sup> Concept from Erik Brynjolfsson and Andrew McAfee’s *Race Against The Machine*, Lexington, Massachusetts, 2011.