

Business & Careers

Going online with dispute resolution



Luigi Benetton
Hi-Tech

We bank online. We earn continuing legal education credits online. We even work online. But the day when Canadian citizens can resolve common, low-value legal disputes online seems a long way off.

Necessity gave birth to online dispute resolution (ODR) systems in the private sector. Online juggernauts like eBay and PayPal resolve millions of online disputes every year, independent of any legal system. They need to, since these disputes are frequently low dollar value, cross-border, cross-jurisdictional, and of little interest to lawyers.

ODR innovation goes beyond the convenience of handling disputes using Internet-connected devices alone. It helps participants avoid overburdened courts, costly paper-based processes and other issues that create barriers to justice.

Just ask David Bilinsky. The practice management advisor for the Law Society of British Columbia can easily rhyme off the traditional system's limitations and their ODR-based fixes by rote. To pick just one, he notes the adversarial nature of traditional courtroom confrontations and states that ODR enables the possibility of win-win solutions.

"ODR allows people to maintain relationships after the dispute is resolved," he says, noting that this matters in situations like strata disputes or employer/employee issues.

Bilinsky's definition of ODR is



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much narrower than Allan Stitt's. The president of ADR Chambers reckons that ODR encompasses "any automated process that assists in dispute resolution," from e-mail through Skype-assisted mediation and right up to the most sophisticated automated processes that are of little use outside of legal disputes. It's this last category that piques the interest of people who champion the modernization of Canadian legal systems.

Current automated ODR systems seem suited to commercial disputes in which resolutions can be measured in dollars. Application to other areas of law leaves many people scratching their heads.

"There are systems that try to handle creative disputes," Stitt says. "The challenge is that the systems themselves become so complicated that the parties won't figure out how to use them."

Private-sector companies lead the way in ODR innovation. Current stars include: Cybersettle,

used heavily in New York to settle insurance disputes; Boston-based Fair Outcomes, which is available free of charge on several platforms; and Vancouver-based Smartsettle, whose ODR services start at \$200.

ADR Chambers has piloted an automated mediator, ODR Chambers, with a few clients. Parties submit offers to a "mediator" which encourages them to make better offers until those offers overlap, when the mediator tells the parties they have a deal. "It's designed to skim easy-to-settle disputes," Stitt explains.

Kathryn Thomson is sceptical of eBay-like systems. "Those processes were designed in a corporate environment to assist a commercial endeavour," says the doctoral student in law at the University of Victoria. "A public ODR system has a larger social purpose that doesn't exist in processes like eBay's or PayPal's."

The road to ODR in the public sphere seems littered with hurdles, the most obvious of which

is the cost of implementing public ODR systems. Diverting funds from current systems towards innovation and maintenance of "parallel" systems is a tough sell. And once established, systems must consistently produce good results.

"If users aren't satisfied with the results, they may go to court, nullifying any cost and time savings ODR systems promise," Thomson warns.

It's reasonable to assume that eBay and PayPal users are comfortable working through online processes. This assumption doesn't hold for everybody. Alternative avenues like phone, paper (mail) and in-person services must be available for people who don't go online.

The key is to steer users into online channels, since they can be faster, more efficient and less expensive. People who forego online can use traditional channels instead.

Darin Thompson adds a criterion: "No matter how a case comes in, it has to come together on the back end, on the case management side," he says.

Thompson, legal counsel for the Justice Services Branch of the B.C. Public Service, views each obstacle to ODR as a facet of this question: "How can I design a system that balances access to justice, cost to users, cost to the system, need, simplicity, and other factors?"

British Columbia seems to be the hotbed for Canadian ODR activity, though no one interviewed for this article could explain why. However, some speculate that B.C.'s justice sector leans towards using technology.

Thompson has immersed himself in B.C.'s ODR initiatives. He helped found the ODR system now part of Consumer Protection B.C., and he's working on similar initiatives in areas like the recently

launched Property Assessment Appeal Board ODR tool for residential appellants. It's based on the Modria platform (a spinoff from eBay), and Thompson is happy with its success. "They don't even call it a pilot," he says.

Kathryn Thomson studies how people use expert systems like ODR Chambers, so she's looking forward to B.C.'s work with other systems that incorporate artificial intelligence. "It's a new area, so the data is lacking," she says. The B.C. experience "presents an excellent opportunity to gather important data on how these systems work."

Greater public-sector funding for ODR innovation may yet occur. For instance, government agencies can watch the ODR market to see what systems gain acceptance, then move to incorporate successful technology into public systems.

Meanwhile, lawyers may have little reason to learn electronic processes they already understand in traditional (analog) terms. The pessimistic view holds that ODR augurs the disintermediation of lawyers.

The concept concerns Stitt. He figures it's easy for lawyers to steer clients away from ODR by telling them "It's not right for your case."

Litigators considering the use of ODR may want to study how professionals in other industries use sophisticated technologies to streamline business processes every bit as specialized as the negotiations with other parties or consultations with clients that lawyers regularly perform.

"I see it as an opportunity," says Bilinsky. "Lawyers can cast themselves as dispute resolvers, not just litigators. ODR is an emerging discipline that can be used by lawyers on behalf of their clients to resolve disputes effectively and efficiently."

Move: Best to stay put for three to five years, experts say

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Maureen Salama sees job-hopping all the time. As an associate at Brauti Thorning Zibarras, Salama heads up the firm's student committee, which sees her hiring young talent every year. While she considers job-hopping to be more problematic the older someone gets, she doesn't see it as an entirely negative thing for a first- or second-year associate, and even less so for law students.

"The way I view it is, they're young. I expect a varied work history. It's very rare at that stage of the game that they know exactly what they're going to do,"

she said. As a result, Salama focuses on identifying transferable skills. Has someone shown gumption — and the ability to make money — with an entrepreneurial venture?

"I think it's incumbent upon employers hiring students not to be so rigid in what they are looking for," she said, noting that the job market is much tougher now compared to just five years ago.

Abbott, who has spent the last 14 years of a career spanning two decades at MacDonald & Partners, sees no redeeming quality to job-hopping. He thinks it's problematic for someone to have

worked at four places in three or five years.

"It shows to me they either don't get along with their co-workers (or) the people they report to; they can't handle stressful situations and back out and leave their files, or their clients are complaining about them," he said.

Job-hopping can lead to more scrutiny: MacDonald & Partners rarely calls references when hiring lawyers, except when they are shown to be job-hoppers. And if two candidates are neck and neck, the one who has demonstrated a propensity for committing to a job will have the edge.

That's why it's especially important to properly research a firm before accepting an offer, says Abbott. Talk to associates. Talk to partners. Ask for a tour of the office to get a sense of the work environment, and ask about working hours that may affect your long-term happiness.

"I wouldn't reach out and grab the first job that's offered to you because it's pointless if you're not going to like it," he said.

Regardless of how someone ended up at their firm, it's important to stay there for at least three years, says Abbott.

Heller suggests lawyers need

to stay in a position for at least five years. Of course, it depends on where someone is in their career, but in general, lawyers need to display this level of commitment.

"Ideally, a person's career moves should make sense — for example, an opportunity to gain more responsibility, a better title, expand their skill-set, or increase in compensation," she says.

"There will be some short-term advantages to being a job-hopper — potentially more money, better title and greater responsibility — but long-term, you can hurt your career."