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TAB 5

ADR for Paralegals

Tips & Considerations for Online Dispute Resolution

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ADR For Paralegals

Tips & Considerations for Online Dispute Resolution

by Marc Bhalla, LL.M. (DR)

Online dispute resolution (ODR) can add layers of convenience to resolving disputes. It can also introduce new stresses, uncertainties and unknowns. As a representative, it can be worthwhile to consider how this impacts your clients and also your own performance - how online settings can play to your strengths and where they may expose your weaknesses. These processes can offer better experiences than are traditionally available, though advanced consideration and attention may be needed to help your client make the most of ODR.

What follows are tips and considerations to reflect upon in preparing yourself and your clients to participate in ODR:

1. What is your client's comfort-level with technology?

Since the onset of the COVID-19 pandemic within Ontario, many have become more familiar with communicating through technology. Family check-ins on Zoom, online schooling and social media have kept us connected while physically distanced in ways many were not familiar with just over a year ago. ODR is disruptive because it is not the same as traditional processes. The online experience can be enhanced when we focus not on trying to replicate in-person practices and instead leverage the comfort that parties have with the technologies that are available in this day and age to address conflict.

Consider if your client...

- has participated in many video meetings (if so, of what duration and in what context?)
- regularly uses email to communicate
- is comfortable with text messaging (do they know what common emojis mean?)
- is active on social media (if so, on which platforms? There is a difference between Facebook and TikTok!)

2. How is your client's Internet quality and what are their equipment options?

A primary consideration ahead of participating in any ODR process is how one is going to do so. A significant matter in the contemporary consideration of access-to-justice is equipment availability and connection quality. They make a difference! Paralegals are wise to review the equipment that will be used to participate in advance.

Consider if your client...

- will participate with a desktop computer, laptop, tablet or mobile device
- will connect to the Internet through a wired or wireless connection
- has a secure Internet connection
- will be sharing their Internet connection with others during the proceeding

Tip: Some Internet services are reduced in quality when multiple people/devices are connected at the same time. It may be worthwhile to ensure that others are not streaming shows, playing video games or engaging in a video conference on the same network during the proceeding to preserve available bandwidth.

3. Where will your client participate in the online proceeding?

The location where one participates in ODR can impact both their experience and the proceeding. Certain processes – like private mediation or arbitration – may be confidential in nature, imposing a requirement of participating from a secure location. Practically, the nature and extent of distractions will be influenced by the location from which one participates.

Consider if your client...

- will be at home, at an office, in their car or at a public space as they take part in ODR
- can or should consider using a virtual background if they will appear on camera
- can anticipate getting distracted as they participate (including if pets or children may be in the vicinity during the proceeding)

Tip: If your client will be participating from a location that is not ideal (such as a closet), it may be worth considering how to make them more comfortable. For example, the process facilitator may allow for the use of a virtual background, though others might object - including out of concern about confidentiality or security. It can be worthwhile to review this in advance to avoid disruptions or embarrassment. On some occasions (when it is safe to do so) clients may prefer to be physically with you in-person as they participate in an online proceeding. You may be able to offer the option of jointly participating from your office or board room. There are advantages and disadvantages of this to consider before offering it as an option.

4. What is your client's process flexibility?

Some public justice online processes are more flexible than others. Private dispute resolution is flexible in nature, but the extent such can be leveraged can depend on the attitudes of others participating. It can be worthwhile to consider the flexibility of ODR and to think about what options may work best for your client.

Consider if your client...

- would prefer to participate in a synchronous or asynchronous proceeding
- must appear live and on-camera or if text-based, prepared or pre-recorded participation may be more comfortable for them
- may benefit from having some time to think about what takes place or regain control of their emotions (should the dispute's subject matter be difficult for them) as they participate in ODR - that is, if breaks would help or hinder the process

Tip: You may not have many options; yet, it can be helpful to inquire what they are and to think about what can work in the circumstance. Propose what is likely to give your client the best procedural experience.

5. Can your client take time to run a test before taking part in ODR?

Testing the equipment that your client will be using ahead of the online proceeding can allow you to identify any challenges that may need to be taken into account and offer opportunity to adapt as may be needed.

It also provides you with an opportunity to build additional rapport with your client and offer comfort by helping them form a realistic expectation of how they will experience the process.

In a private dispute resolution scenario, the process facilitator may be willing to attend a test meeting. In a public justice system setting, there may be resources available to help guide expectations about how the ODR process will work. Taking some time to review this with your client can be worthwhile.

Tip: It is worth establishing multiple ways to connect with your client during the ODR proceeding. Can you call or text them if someone experiences an Internet issue? There may be merit in having a line of communication outside of the platform you are participating on – if, for nothing else, to reduce the chance of mishaps surrounding private communications.

6. Apply the above considerations to yourself, too.

Now, re-visit the five questions posed removing references to 'your client'. Make the questions about you - from the perspective of the paralegal representative participating in ODR.

This will help you assess your comfort levels and preferences with respect to ODR. Such self-awareness can only enhance your services.

Additional Readings About Online Dispute Resolution

With courts on pause, ADR offers ways to resolve disputes online

Law Times:

<https://www.lawtimesnews.com/practice-areas/adr/with-courts-on-pause-adr-offers-ways-to-resolve-disputes-online/328640>

permanent link: <https://perma.cc/QCB8-9PR8>

Asynchronous ADR: Tipping In-Person Processes Off Their Pedestal

Canadian Mediation and Arbitration Journal:

https://www.canlii.org/en/commentary/doc/2021CanLIIDocs757#!fragment/zoupio-_Tocpdf_bk_4/BQCwhgziBcwMYgK4DsDWszlQewE4BUBTADwBdoAvbRABwEtsBaAfX2zhoBMAzZgl1TMALAEoANMmylCEAlqJCuAJ7QA5KrERCYXAnmKV6zdt0gAynIIAhFQCUAogBl7ANQCCAQQDC9saTB80KTsliJAA

permanent link: <https://perma.cc/T4HL-J8RZ>

Canada, Conflict & COVID-19

Journal of the Canadian Collaborative for Engagement & Conflict Management:

<https://www.c4ecm.ca/journal/canada-conflict-covid>

permanent link: <https://perma.cc/3DKP-VY6U>

Gender Identity & Text-Based, Online Mediation

McGill Journal of Dispute Resolution:

<https://mjdr-rrdm.ca/articles/volume-6/gender-identity-text-based-online-mediation/>

permanent link: <https://perma.cc/KN64-UH3K>

Your Online Dispute Resolution Resource

Condovoice Magazine:

<https://ccitoronto.org/sites/default/uploads/files/condovoice/CCI-T-Condovoice-Spring2018-FB52.pdf>

permanent link: <https://perma.cc/S3MX-NCNC>

Book of interest...

Susskind, Richard, *Online Courts and the Future of Justice* (United Kingdom: Oxford University Press, 2019)*

Book review:

https://adr-ontario.ca/wp-content/uploads/2020/03/ADR-Update_Winter2020_Final_2020_.pdf#page=12 (page 12)

permanent link: <https://perma.cc/54WQ-ELL4>

** a paperback edition of this publication is expected in June 2021 with an additional chapter added that speaks to the impact of the COVID-19 pandemic...*

<https://twitter.com/richardsusskind/status/1384080749091979279>