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Online dispute resolution has a long way to go in Ontario



News that British Columbia is set to introduce a mandatory online tribunal system to settle small claims court and strata disputes has reignited discussion around online dispute resolution, says Toronto arbitrator [Marvin J. Huberman](#).

B.C. Attorney-General Suzanne Anton said amendments to the Civil Resolution Tribunal Act will make online justice the first step in settling disputes, but the parties still have the option to take

the matter to court, reports [The Globe and Mail](#).

"Our goal is to make these cases start off in the tribunal itself," Anton says in the article.

"This is very new technology. We're actually the first in the world to be doing this. You can start your claim at midnight from your desktop at home."

Huberman tells [AdvocateDaily.com](#) that online dispute resolution (ODR) has many advantages that make it a cheaper, quicker and more efficient way to settle certain disputes. However, it is not a one-size-fits-all approach and should be used as a tool for appropriate dispute resolution.

"No matter what justice system — private or public or both — I think you have to identify the goals," he says. "If you're looking for the most fair and just resolution, then that does not necessarily translate into a process like ODR."

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He gives an analogy of seeing a dentist about a tooth problem.

"It can be quicker, cheaper and more convenient to pull the tooth but it's not necessarily the right solution," he says. "Conversely, you could have a root canal or some other procedure to save the tooth but it would be a slower, more expensive and less-convenient process. It really depends on your end goal — if the goal is to save the tooth, then perhaps pulling the tooth is not the best thing to do."

There are also challenges to ODR that require thoughtful consideration, Huberman says.

"Participants have to have access to the technology as well as have a comfort level with using that technology," he says. "When people talk about access to justice and using ODR to maximize that, there are assumptions made."

Those assumptions, he says, may overlook segments of society who may not have the access or comfort level with ODR technologies.

"For example, many seniors, people living below the poverty line, people with mental health issues or people for whom English is a second language may not have the access or proficiency. In those cases, ODR wouldn't appear to be an effective process for dispute resolution," Huberman says.

Beyond the individual disputants, the system as a whole has to be functional, well-funded and account for privacy concerns.

"Particularly in Ontario, the courts are slow to respond to the Internet age and that has been well-established," he says. "We don't even have a basic online filing system established in this province. You have to have all the stakeholders, not just the public, but also the government and the courts and its stakeholders, on board."

Those hurdles aside, Huberman says there are numerous advantages to ODR when applied to the appropriate disputes.

"What I'm seeing in the literature and in application is ODR being used for e-commerce and consumer disputes, such as eBay's Resolution Center. B.C. plans to use it for strata and small claims disputes and it has been used in family mediation and child support calculations online," he says.

"There are challenges but I think ODR has an amazing potential. We just have to make sure that the underlying assumptions are there, and that it's a process that is chosen with a lot of thought and creative thinking."

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