



# Online Dispute Resolution

*This emerging trend is one that the Government of Ontario is watching as it develops the conflict resolution arm of the proposed Condo Office.*

By Marc Bhalla

**TRADITIONALLY**, mediation serves to bring disputing parties together – literally.

Typically, people involved in conflict meet in person with a mediator to share perspectives and explore options.



Benefits of this interpersonal interaction include having the opportunity to let the other side know how you feel and to gain some insight into their point of view. In addition to speaking to one another, non-verbal communication through demeanor, body language and physical reaction also allows parties to interrelate and feel heard. On occasions where people in conflict have an ongoing relationship, mediation can draw on more than just the focus of the dispute and serve to strengthen relationships and future interactions. This can allow for the proactive management of future potential conflict, minimizing the cost, time and stress related to such.

The most rewarding interactions that I have facilitated in my mediations are not necessarily when parties settle but rather the positive exchanges that take place in the course of them attempting to do so – such as the sharing of phone numbers, email addresses and ways to amicably

communicate going forward; clarification of intention; and expressions of desire for reconciliation. Much of this stems from what happens when people are brought together in person. Good will is contagious and much easier to embrace than the negative emotions and discomfort that occur if voices are raised and threats presented. It is easier to present such threats in a letter.

## ■ New Concept

A relatively new phenomenon in the world of Alternative Dispute Resolution (ADR) is the concept of Online Dispute Resolution (ODR). ODR can take shape in many forms and contexts yet the notion surrounds the embrace of technology in the course of dispute resolution. Online mediation, for example, is a natural progression from mediations taking place over the telephone when one considers how mainstream society has embraced Facetime, Skype and the like. Instant messaging, texting, even timely email exchanges now allow people to interact in real time without having to be in the same room ... sometimes without even noticing those who are!

When one considers condominium conflict and the reality that much of it occurs because of the close proximity that people are in to one another, the concept of

ODR may seem backwards. Yet, it is very much an emerging trend and one that the Government of Ontario is keeping in mind in the course of developing the conflict resolution arm of the proposed Condo Office.

There are advantages and disadvantages which result in ODR having a right time and place to be the right conflict resolution option.

### ■ Advantages

- Easy access to information. Technology allows for the sharing of information and resources efficiently and cost effectively. Provisions of legislation, case law and even a condominium corporation's declaration, bylaws and rules can be circulated far more easily than by traditional means.

- Less expensive. Costs associated with dispute resolution can be lowered with the embrace of technology. If parties do not meet in person, the cost of meeting space and travel may be eliminated entirely.

- No distance is too far. Particularly in regions where experts are in short supply, technology allows you

to "travel by map." Thus, an area without mediators qualified to facilitate the mediation of condominium disputes can utilize the services of an appropriate mediator without having to settle for someone unqualified or needing to fly in the facilitator.

- Comfort. In circumstances where parties do not want to be in the same room together, they do not have to be. This can be a good way to reduce the potential for a physical altercation or otherwise help parties who may be hesitant to meet in person. Physical distance can add a layer of comfort for participants.

### ■ Disadvantages

- It is not the same. In addition to missing out on many of the non-verbal interactions that take place when people meet in person, there is the potential that the layer of distance makes it easier for parties to inflate the situation. When one does not appreciate the full impact of their actions upon another, there is greater risk that such may not land as intended. Increased possibility of misper-

ception or a lack of appreciation of the influence one has can detract from the conciliatory approach. This is not unlike the challenges posed in addressing cyberbullying and the propensity for harsher exchanges to take place from behind a keyboard rather than in person.

- You get what you pay for. We often see what happens when condominium boards focus only on cost when finding a property manager. The process of establishing the right forum for addressing disputes is no different. If ODR is selected solely because it appears to be cheaper than other means, the parties may be setting themselves up to fail. It is important to ensure that circumstances are appropriate.

- What distance? Particularly when parties in conflict are both active members of a condominium community, meeting in person may be inevitable. While ODR may provide a convenient way for neighbours to come together, inevitable interaction should not be ignored – particularly if the conflict invokes



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strong emotions. As safe as it may seem to have parties participate through the comfort of their home computers, what happens when they share an elevator or run into one another when checking their mail?

• **Lack of access.** While this may be difficult for teenagers these days to believe, not everyone has a computer. There remain people of all ages who are not comfortable with technologically assisted interactions and the importance of parties being comfortable in a mediation setting should not be taken for granted. We cannot assume that everyone will be comfortable interacting through a camera and monitor – or that everyone will have a

camera and monitor.

ODR can take place in a number of different ways and in conjunction with traditional approaches to dispute resolution. In the right circumstances, it can offer great benefit to parties in conflict and serve to address disputes quickly, cost effectively and comfortably. That being said, there are considerations to be taken into account in assessing if a conflict is appropriate for ODR.

Property managers who find themselves involved in navigating through conflict resolution – whether it be mediation, arbitration or litigation – are wise to be aware of the potential role of technology in the process and to help where they

can in assessing what is appropriate; particularly as property managers are often in a position to understand the dynamics and circumstances surrounding key considerations as to the merits of ODR. ■

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