ODR AS A PUBLIC SERVICE: THE ACCESS TO JUSTICE DRIVEN CANADIAN EXPERIENCE

Professor Nicolas Vermeys, Faculty of Law, Université de Montréal
Professor Jean-François Roberge, Faculty of Law, Université de Sherbrooke
1. Access to Justice from a user-centric perspective

2. Canadian ODR initiatives

3. How users rate quality and value of ODR

4. Next steps: Artificial Intelligence development in public ODR platform
PART 1. ACCESS TO JUSTICE FROM A USER’S PERSPECTIVE

The Canadian trend to overcome access to justice challenges through a user-centric approach
“Historically, access to justice has been a concept that centered on the formal justice system (courts, tribunals, lawyers and judges) and its procedures. The formal system is, of course, important. But a more expansive, user-centered vision of an accessible civil and family justice system is required.

Key to this understanding of the justice system is that it looks at everyday legal problems from the point of view of the people experiencing them.”

2. THE NEED FOR A CULTURAL SHIFT

“Increasingly, there is recognition that a culture shift is required in order to create an environment promoting timely and affordable access to the civil justice system. This shift entails simplifying pre-trial procedures and moving the emphasis away from the conventional trial in favor of proportional procedures tailored to the needs of the particular case.

“And while going to trial has long been seen as a last resort, other dispute resolution mechanisms such as mediation and settlement are more likely to produce fair and just results when adjudication remains a realistic alternative.”

3. TOWARDS A CULTURE OF COOPERATION FOR CIVIL PROCEDURE

- Disputes must be prevented or resolved “through appropriate, efficient and fair-minded processes that encourages the persons involved to play an active role
- Parties must exercise their rights in a “spirit of co-operation and balance”
- Judges are responsible for the “fair, simple, proportionate and economical application of procedural rules”
- Preliminary provision, Quebec Civil Procedure Code (CPC)

- “The new Code of civil procedure imposes a new approach to civil procedure focused on efficiency and promptness. The guiding principles set out in Articles 18 (proportionality), 19 (good faith) and 20 (cooperation) of the Code of civil procedure go in that direction.”
- Lavigne v. 6040993 Canada inc., 2016 QCCA 1755
Which concept to measure user’s satisfaction with justice?

Sense of Access to Justice (SAJ) is the litigants’ experience with fairness and efficiency of the process used to solve their dispute.
SENSE OF ACCESS TO JUSTICE (SAJ)
HOW LITIGANT’S EXPERIENCED JUSTICE?

Feeling of Fairness

- Transparent
- Participatif
- Informationnel
- Interpersonnel
- Réparateur
- Fonctionnel

Feeling of efficiency

- Actif sur l’injustice
- Ressources économiques
- Actif sur les besoins
- Ressources psychologiques
- Actif en droit
- Capital réputationnel

Roberge, 2019
PART 2. CANADIAN ODR INITIATIVES

What are Canadian initiatives in ODR and best practices to share?
BEST PRACTICES IN ODR PLATFORM DESIGN

3 stages and 6 steps

1. Pre-DR
   - 1. Diagnosis
     - Tools + Info + Predictors

2. Case Filing

3. Decision
   - 3. Negotiation + Guide
   - 4. Mediation + Guide
   - 5. Adjudication + Guide
   - 6. Enforcement mechanisms
Established by Civil Resolution Tribunal Act (2012)
Launched in 2016.

Jurisdictions:
- Small claims, under $5,000
- Condominium disputes
- Motor vehicle accidents, under $50k
- Societies and cooperatives (Fall 2019)

Characteristics of the platform and cases:
- Solution Explorer: 54,324 explorations
- Total disputes: 9,294 cases filed
- Negotiation – Facilitation: 7,154 cases processed
- Tribunal Decision: 1,231 cases resolved
- New disputes filed every month: about 450 cases
- User’s Satisfaction rate: 65% would recommend

Contact the Chair:
Ms Shannon Salter
Shannon.Salter@crtbc.ca
Visit:
https://civilresolutionbc.ca
CONDOMINIUM AUTHORITY TRIBUNAL (CAT) - ONTARIO

Contacts:
Mr Ian Darling, Chair
ian.darling@condoauthorityontario.ca

Visit:

- Jurisdictions – Condo disputes
- Disputes about condominium corporation records, including retention, sufficiency, and access to records by owners
- Characteristics of the platform and cases:
  - Negotiation: 84 cases processed
  - Mediation: 64 cases processed
  - Tribunal Decision: 25 cases processed
- Settlement rate: 51%
- User’s Satisfaction rate: in development
CONSUMER PROTECTION OFFICE - QUÉBEC

Contact the Administrator:
Mr Patrick Lahaie
Patrick.Lahaie@opc.gouv.qc.ca

Visit: https://www.opc.gouv.qc.ca/a-propos/parle/

verb par·ley ˈpär-lē\ : to talk with an enemy or someone you disagree with especially in order to end a conflict.
CONSUMER PROTECTION OFFICE - QUÉBEC

Contact the Administrator:
Mr Patrick Lahaie
Patrick.Lahaie@opc.gouv.qc.ca

Visit: https://www.opc.gouv.qc.ca/a-propos/parle/
Launched in 2016 by the OPC, the PARLe platform covers six economic sectors:

- Number of Canadian participating merchants: 115
- Jurisdictions – Consumer disputes:
  - Product or service not delivered, delayed, not conform to the contract or advertisement
  - Defective good or not effective for a reasonable time
- Characteristics of the PARLe and cases:
  - Over 7,100 cases referred
  - 2/3 of cases end at Negotiation stage
  - 1/3 at Mediation stage
- Settlement rate on PARLe: 70%
- User’s Satisfaction rate: 90%
- Average settlement amount: $2,315
PARLe helps resolve disputes for 12 times less money and 12 times more quickly than going to Small claims court...

Court costs:
• General costs: $10,080 per day
• Judge’s salary: $931 per day
• Total costs: $11,011 per day
At 5 cases per day, cost per case: $2,202

PARLe costs:
• $164 per case
  • Software development
  • Hosting
  • Mediator salaries
  • Clerk salaries

Court delays:
• 11 month average in Montreal

PARLe settlement rate:
• 26 days on average
PART 3. HOW USERS RATE QUALITY AND VALUE OF ODR

PARLE statistics. Feedback evaluation from users.
RESULT 1. QUALITY SCORE. ACCESS TO JUSTICE PERCEPTION

Online Questionnaire (2018) 654 respondents

Consumer disputes

81% Settlement rate: 54% settled in Negotiation and 27% in Mediation

81%: rate of Legal Literacy awareness - consumers used the legal diagnostic tools

• High Quality score on Justice experienced by users’ of PARLE ODR platform.
  • 80% in negotiation and 76% in mediation.
  • Higher amongst those who settled amicably (83%) compared to those who didn't (57%).

• Sense of Fairness is 78%. (Neg + Med)
• Sense of Efficiency is 77%. (Neg + Med)

• Quality of the Process is 77%
• Quality of the Result is 78%
• Quality of ODR Adequacy to dispute is 77%
• Quality of Support by mediator is 78%.
Difference between Negotiation and Mediation

Statistically significant difference with a 95% certainty
Quality of Process: 79%
Quality of Result: 78%
Quality of Adequacy: 77%
Quality of Support: 77%
Global SAJ: 78%
RESULT 2. VALUE SCORE.

BENEFITS EXPERIENCED BY USERS

PARLE is advantageous for users regarding process and results.

- Moderate to High Value of benefits experienced by PARLE platform users.
- Process benefits
  - 76% in negotiation, 69% in mediation
  - Most valuable benefits are: to be treated with respect and dignity (84%), to be heard (81%), to participate in a frank and open discussion (81%), possibility to justify my behaviors (81%), unbiased information exchange (76%), etc.
- Solution benefits
  - 82% in negotiation, 75% in mediation
  - Most valuable benefits are: brings a peace of mind (88%), avoids the risk of a trial (88%), achieved without significant economic costs (85%), tailor-made to needs (81%), preserved my reputation (81%), etc.
84 to 80%: Felt Respected, Had Voice, Open communication, Opportunity to Justify my behavior

79 to 70%: Unbiased information exchange, Good Faith communication, Personal Involvement

69 to 60%: Felt considered by merchant, Improved trust with merchant,

58%: Understood merchant’s justification
**Value of Solution Benefits**

88% to 80%: brings a peace of mind, avoid trial risks, achieved without economic costs, preserves reputation, tailor-made to needs

79 to 72%: brings compensation for damages, fair for both, achieved without psychological costs, acceptable timeframe, take responsibility into account
PART 4. NEXT STEPS: **ARTIFICIAL INTELLIGENCE (AI) DEVELOPMENT IN PUBLIC ODR PLATFORM**

How **AI** could be **leveraged** in the near future to **prevent** and **resolve** conflicts...
Findings:

- Overvaluation of damages by certain consumers
- Incapacity for some consumers to evaluate the value of a counter-offer
- Lack of legal knowledge
Artificial intelligence

1: A branch of computer science dealing with the simulation of intelligent behavior in computers.

2: The capability of a machine to imitate intelligent human behavior

[...] the artificial intelligence problem is taken to be that of making a machine behave in ways that would be called intelligent if a human were so behaving

ODRAI as an answer to the lack of information

Incorporating AI into ODR platforms
ODRAI AS AN ANSWER TO THE LACK OF INFORMATION

Incorporating AI into ODR platforms

Expert system

- Imitate or emulate interactions with human expert
- Not replacing human expert
- “1st wave” AI
  - Logical rules & reasoning
  - Handcrafted knowledge
ODRAI AS AN ANSWER TO THE LACK OF INFORMATION

Incorporating AI into ODR platforms

Guided pathways

Use other forms of AI
- NLP
- Vocal recognition
- Predictive tools
ODRAI AS AN ANSWER TO THE LACK OF INFORMATION

Incorporating AI into ODR platforms

There are three kinds of lies: lies, damned lies, and statistics.
Benjamin Disraeli

There is no artificial intelligence that escapes our control and will precipitate our extinction. There is augmented intelligence that must benefit from just regulation in order to support our own intelligence.
Luc Julia
TO FOLLOW UP

jean-francois.roberge@usherbrooke.ca
1-450-463-1835 ext. 61893

nicolas.vermeys@umontreal.ca
1-514-343-6111 ext. 0652
THANK YOU!