Online Dispute Resolution (ODR) and New Immigrants

A Scoping Review

Prepared For:
Kathyrn Platt, Senior Policy Analyst,
Dispute Resolution Office, Ministry of Attorney General

Lisa Nakamura, Senior Policy Analyst
Dispute Resolution Office, Ministry of Attorney General

Prepared By:
Sara Parker-Toulson, Researcher
Knowledge and Information Services,
Ministry of Labour, Citizens' Services and Open Government

With Contributions From:
Greg Tonn, Researcher
Knowledge and Information Services,
Ministry of Labour, Citizens' Services and Open Government

TABLE OF CONTENTS:

ABSTRACT

This Scoping Review examines Online Dispute Resolution (ODR) in relation to the barriers and/or advantages ODR presents for new immigrant communities in British Columbia. Beginning with an overview of immigration in British Columbia, this document presents a definition and examination of ODR services and products based on a wide-ranging review of recent academic studies, web-based practitioner commentary and discussion, and industry literature. An analysis of this material then informs a discussion of the ways in which ODR presents unique opportunities to address some of the barriers previously shown to prevent new immigrant communities from accessing and utilizing alternative dispute resolution services, as well as an overview of the remaining barriers – particularly in the arenas of language and awareness – that may be obstructing ODR's wider use by new immigrants in British Columbia. This information is particularly useful to Public Legal Education and Information (PLEI) service providers who endeavour to assist new immigrant clients learn more about and/or access ODR services.

EXECUTIVE SUMMARY

Immigrants make up a significant portion of British Columbia's population, and immigration is predicted to be the largest contributor to population growth in the province for the next several years (Statistics Canada, 2009). While some immigrants arrive in Canada equipped with English or French fluency, strong employment prospects and considerable personal economic resources (Sutherland, 2010), current and historical research indicates that many newcomers continue to struggle with considerable underemployment and economic pressures, culture "shock" or cultural non-fluency, and language barriers that often complicate efforts to establish a successful living and family life in Canada (British Columbia Mediator Roster Society & Getz, 2007; Claassen & Shands, 1994; CS/RESORS Consulting, Ltd., 2005; Currie & Kielf, 1994).

These issues can become even more salient in the context of a legal dispute. Whether involved in a family conflict, work or consumer-related dispute, or other legal or monetary conflict, the bureaucratic requirements and knowledge-base necessary to navigate the Canadian legal system can be daunting for nearly all who attempt to resolve them, whether or not they are new to Canada (LeBaron, 1998; Lind, Huo, & Tyler, 1994; British Columbia Ministry of Attorney General, 2007 and 2008).

Alternative dispute resolution (ADR) services (such as mediation) have emerged as a simpler, more cost-effective, and accessible option for resolving disputes outside of traditional court-based processes. Public Legal Education and Information (PLEI) providers can play a critical role in educating individuals about the advantages of seeking such appropriate dispute resolution options (British Columbia Ministry of Attorney General, Justice Services Branch, 2003; Craig 2009).

As ADR services, products, and processes have become increasingly mainstream, practitioners and researchers have begun to examine what role web-based technologies can play in effectively resolving conflict. Online Dispute Resolution (ODR) services, first developed and deployed for monetary-based disputes that originated online, have now become a ubiquitous aspect of e-retail, offering consumers a simple, web-based method of resolving conflicts that arise as a result of both local and international web-based transactions that are now commonplace all over the world. Although consumer-related conflict resolution is still the primary focus of much ODR research and practice, recently practitioners and researchers have begun examining the ways in which ODR can be used to resolve more complex types of conflict, such as custody and divorce settlements as well as complex, multi-party conflicts (Posell, 2010; Rainey, 2010; Todd, 2010; Turel & Yuan, 2010).

There is substantial agreement among both researchers and practitioners that Online Dispute Resolution offers significant benefits over both court-based litigation and in-person alternative dispute resolution processes (Benyekhlef & Gélinas, 2005; Brofman, 2007; Gabuthy, Jacquemet, & Marchand, 2008; Hart, 1999; Hattotuwa, 2008; Hattotuwa & Conley Tyler, 2005; Katsh & Wing, 2006; Mann, 2008; Odrworld.com, 2004; Thompson, 2009). Sizeable reductions in both time and costs are realized when dispute resolution is handled exclusively via telecommunication devices (such as computers and/or telephones) rather than with face-to-face meetings, even when a human third-party mediator is involved. Additionally, the virtual space in which

communication, mediation, and/or resolution takes place in ODR can be developed or experienced in less socio-culturally charged terms than can traditional dispute resolution arenas, such as "official" mediation rooms or courthouses, presenting unique opportunities for a more equitable and fair process than other forms of ADR. Further, the asynchronous communication process inherent to most ODR services allows more time and space for participants to consider both their own statements and those of their disputants before responding, and some studies show that this has a significant effect on achieving a positive outcome (Gabuthy et al., 2008). According to Craig (2009),

While these benefits inherently address some of the barriers – especially those related to time, costs, and overly complex bureaucracy – that new immigrants face when attempting to resolve a dispute, an examination of ODR literature, studies, and practitioner commentary, as well as interviews with several ODR providers in Canada and Europe indicate that new immigrants' rights to accessible, fair and efficient dispute resolution services are not guaranteed by ODR – especially where the needs of new immigrants' have not been seriously addressed or even considered by ODR providers. More specifically, the lack of adequate and/or low-cost translation services, the absence of either mainstream or targeted advertising and/or awareness campaigns, and the failure on the part of most mainstream ODR providers to consider the unique needs and requirements of new immigrant populations in designing their products and services continue to threaten reduced access to and utilization of ODR services by new immigrants, in British Columbia and abroad.

1 INTRODUCTION

1.1 ISSUE

The court system can be expensive to access and complicated to understand, especially when someone is a new immigrant. As an alternative to traditional court-based adjudication, people now have the option to resolve many of their disputes through alternative appropriate dispute resolution services (for example, mediation, negotiation, or arbitration). Recent maturities in information and communications technologies and the decrease in the cost of accessing such technologies have led to the development of various online dispute resolution (ODR) services.

According to Craig (2009), Public Legal Education and Information (PLEI) plays a critical role in educating individuals about the advantages of seeking such appropriate dispute resolution options, including ODR. The information in this Scoping Review will help PLEI providers better understand these emerging ODR services, and thereby improve the PLEI providers' capacity to provide a more comprehensive service, and to educate and inform their clients (new immigrant and non-immigrant alike) about these innovative ways to resolve disputes.

1.2 SCOPE

This Scoping Review is based on an extensive, but not exhaustive, review of recent ODR literature, media coverage, industry blogs, case studies, and interviews with three major online dispute resolution service providers, with a specific emphasis on what the barriers and challenges are for new immigrants to access such services. It must be noted, however, that discussion and/or study on the specific issue of providing ODR services to new immigrants is very limited. Some literature describes or discusses cultural and linguistic barriers that non-English and non-Canadians may face in accessing or using appropriate dispute resolution services, but these papers are generally not specific to new immigrants or to online dispute resolution.

Further, information and/or research on the relationship between PLEI and online dispute resolution are also extremely limited. A review completed in early 2011 of the 12 websites of the core PLEI providers in Canada[1] using relevant search terms (for example: ODR, online dispute resolution, online dispute, and online resolution) did not find any substantial information on available ODR services and/or technologies. Although a variety of resources on ODR (including primary interviews with several ODR providers) were reviewed and analyzed as part of drafting this document, the primary focus of both ODR research and service provision appears to be on simple consumer-related disputes. As well, the needs and requirements of new immigrant communities continues to be largely absent in both the literature and in the practitioner commentary sourced in this report.

---

[1] "Core PLEI providers" are the 13 PLEI service providers that receive annual funding and support from the federal Department of Justice. There is one core PLEI provider for each province and territory. At the time of the review, the Nunavut Legal Services Board did not have a public website that could be reviewed. For more information on the 13 core PLEI providers in Canada, please refer to the Department of Justice's PLEI website: http://www.justice.gc.ca/eng/pi/pb-dgp/prog/plei-pvij.html

2 DEFINITIONS

Appropriate Dispute Resolution

Appropriate dispute resolution (ADR) refers to the range of dispute resolution options, which people can consider and select when attempting to resolve disputes. Appropriate dispute resolution extends beyond traditional, adversarial dispute resolution through the court system to include less formal methods, such as arbitration, and collaborative methods, such as negotiation and mediation. ADR options can range along a continuum from collaborative, non-binding processes to binding adjudication.

Originally, the term ADR referred to "alternative dispute resolution," as dispute resolution options were historically regarded as an *alternative* to litigation in formal court proceedings. In some instances, the literature still refers to "alternative dispute resolution." However, dispute resolution options exist along a continuum that includes litigation. At one end of the continuum are dispute resolution options that afford disputants a great degree of control over the process and the outcome of that process (i.e. prevention, negotiation and mediation). At the other end of the continuum are dispute resolution options in which the disputants have relatively little control over the process and the outcome is imposed (i.e. adjudication and litigation). Because of the nature of this continuum, the term ADR was updated to "appropriate dispute resolution" to reflect the need to choose a dispute resolution option that is most *appropriate* for the dispute (British Columbia Ministry of Attorney General, Justice Services Branch, 2003; British Columbia Ministry of Attorney General, Dispute Resolution Office, 2004).

Adjudication

Adjudication refers to any dispute resolution process, mainly arbitration and court-based litigation, wherein a neutral third party hears each disputing party's evidence and arguments, and subsequently renders a binding decision (British Columbia Ministry of Attorney General, Justice Services Branch, 2003).

Arbitration

Arbitration is a binding dispute resolution process in which a neutral adjudicator, who has the power to render a binding decision, strives to resolve a dispute between parties through careful consideration of the evidence and arguments presented by the disputing parties.

Generally, arbitration is a voluntary and private dispute resolution process. In some instances, however, a contract may provide that potential disputes will be resolved by arbitration rather than litigation. Furthermore, legislation, such as B.C.'s Residential Tenancy Act, can require that certain disputes be submitted to arbitration (British Columbia Ministry of Attorney General, Dispute Resolution Office, 2004).

Assisted Negotiation

Assisted negotiation or automated negotiation refers to a form of online dispute resolution in which the third party neutral is a non-human, web-based software product that allows disputing parties to present their claims and counter-claims to each other and arrive at a resolution without the aid of a human mediator (Lipsky & Avgar, 2007).

Blind Bidding

Blind bidding is a form of automated negotiation whereby parties mutually bid on a monetary resolution to a consumer-related dispute. The software generally asks each party to enter a settlement offer into its online system. The software algorithm then compares the offers of the parties and determines whether they are within a preset range of each other, usually within 20-30% of each other (parties know ahead of time). If the offers meet the requirement, the software program will split the difference and inform the parties that an agreement has been reached (Lipsky & Avgar, 2007).

Mediation (rights-based or interest-based)

Mediation is a non-binding, generally private, dispute resolution process. Mediation requires a neutral, impartial third party who has no decision-making authority to facilitate a settlement between disputing parties. Mediation is often accessed on a voluntary basis, but mediation can be mandated or court ordered (British Columbia Ministry of Attorney General, Dispute Resolution Office, 2004).

There are two different traditional concepts of mediation: rights-based mediation and interest-based mediation. In rights-based mediation, the dispute is analyzed in terms of opposing legal rights and duties. The mediator provides direction to the parties about appropriate settlement terms, but the focus of the rights-based mediation is to identify who is right or wrong. Unlike right-based mediation, interest-based mediation requires the dispute to be framed in terms of the parties' underlying concerns, goals, and needs, and not in terms of legal rights. Two key aspects of interest-based mediation are that it does not generate winners or losers, and it does afford the disputants an increased range of potential solutions not necessarily bound by legal precedent (British Columbia Ministry of Attorney General, Justice Services Branch, 2003).

Med-Arb

Short for mediation-arbitration, med-arb is a dispute resolution process in which the neutral third party acts first as a mediator; however, if the initial mediation is unsuccessful, the mediator becomes an arbitrator and makes a binding decision(s) (British Columbia Ministry of Attorney General, Justice Services Branch, 2003).

Negotiation

Negotiation refers to any form of "un-facilitated" communication in which disputants discuss steps they could take to resolve a dispute between them. Negotiation can occur directly between the parties or indirectly through agents, such as lawyers, acting on behalf of the parties (British Columbia Ministry of Attorney General, Dispute Resolution Office, 2004).

Neutral Evaluation

Neutral evaluation is a process in which parties obtain from an experienced, knowledgeable, neutral third party a non-binding, reasoned evaluation of their case based on the case's merits. Because the neutral third party is jointly selected by the opposing parties, the opinion or assessment of the neutral third party is expected to have persuasive value (British Columbia Ministry of Attorney General, Dispute Resolution Office, 2004).

Newcomer

For the purposes of this Scoping Review, "newcomer" refers to anyone who fits into Citizenship and Immigration Canada's (2009) immigration/refugee categories, including the three main groups of permanent residents: **family class**, **economic class**, and **refugees**, as well as other immigrants and refugees who do not fit into or qualify for the three main categories, such as: persons admitted into Canada for humanitarian or public policy reasons, Post-Determination Refugee Claimants, and persons landed through the Deferred Removal Order Class and Backlog Clearance program.

Although not a standard, the term "newcomer" typically refers to someone who has come to Canada within five years or less (Caidi and Allard, 2005).

Online Dispute Resolution (ODR)

Online Dispute Resolution is the appropriate application of information and communication technology to the practice of conflict and dispute intervention (Rainey, 2010).

ODR uses information technology (such as e-mail, telephones, web-based interfaces, and expert systems) and internet communication applications (such as webforms or web filing platforms) to resolve disputes outside of the courts. Although ODR is a progeny of ADR, using some of the same processes such as mediation and arbitration, ODR is also different from ADR in that it adds new and transformative technology and processes (Hornle, 2009).

PLEI

Public Legal Education and Information (PLEI) is a comprehensive list of informative content and/or any activity that allows individuals or groups to better understand and use the law. A deeper understanding of the law can help prevent disputes from occurring in the first place. Furthermore, PLEI can provide a foundation for the selection and subsequent use of appropriate dispute resolution options, including alternatives to court-based litigation. PLEI, however, does not include legal advice, legal aid, or training intended specifically for lawyers (CS/RESORS Consulting Ltd., 2005; Craig, 2009; Lisa Nakamura, Senior Policy Analyst, Dispute Resolution Office, British Columbia Ministry of Attorney General, personal communication, July 6, 2010).

Shuttle Mediation

Shuttle mediation is a type of appropriate conflict resolution in which parties do not speak or see each other, "shuttling" communication via a third party human mediator who normally travels to and from each party (The National Center on Dispute Resolution in Special Education, 2010).

3 BACKGROUND

3.1 B.C.'S NEW IMMIGRANT POPULATIONS

British Columbia has a very diverse population. According to data from the 2006 census, almost 27% of B.C.'s population are first generation immigrants. In Canada, Ontario is the only province with a larger total immigrant population percentage (28%). Greater Vancouver, where approximately 40% of the population are first generation immigrants, is B.C.'s most diverse region (Statistics Canada, 2009). The influx of newcomers (recent immigrants) to Canada is predicted to continue, and net international migration will be the largest contributor to B.C.'s population for at least the next 50 years. The numerous immigrants to this province come from a wide variety of source countries, speak many different languages, and observe an assortment of unique and sometimes divergent cultural traditions (The Urban Futures Institute, Ramlo, Berlin, and Baxter, 2009).

3.2 NEW IMMIGRANT POPULATIONS AND APPROPRIATE DISPUTE RESOLUTION

As research has shown, new immigrants can face significant barriers when attempting to access appropriate dispute resolution services or when involved in a court-based conflict[2]. English and/or French non-fluency, economic limitations that relate to underemployment and non-recognized professional credentials, differing conceptions of law, justice, and the rules of commerce, as well as differing styles of approaching and resolving conflict can amount to very different experiences with conflict and dispute resolution when compared with populations that have resided in Canada for longer periods.

Literature on new immigrant populations and dispute resolution underlines that several barriers often prevent equitable access and usage of dispute resolution services, whether in court or out-of court, online or not (Currie & Kielf, 1994; LeBaron Duryea & Grundison, 1993; Grant, 2004; Isajiw, 2000; Preston et al., 2009). These barriers include:

- *Language* – many new immigrants arrive in Canada without English or French fluency, or without well-established literacy in English or French.

- *Cost* – Newcomers to Canada are often confronted with underemployment due to non-recognized or non-accredited educational and/or professional designations. Repeated studies underline that new immigrants can and often do face substantial economic pressures.

- *Familial/Work Responsibilities* – Balancing work and/or familial responsibilities is challenging for all Canadians, especially when involved in a dispute. New immigrants are

---

[2] For more information on ADR and newcomers, please see the Scoping Review titled *Appropriate Dispute Resolution and Immigrant Newcomers.*

often confronted with new administrative and legal processes when attempting to help spouses and other family members immigrate to Canada.

- ***Bureaucratic Complexity*** – Both appropriate and online dispute resolution professionals and researchers agree that the traditional court system is more difficult to navigate than more informal means of resolving a dispute.

- ***Cultural-Non Fluency*** – without many years in Canada, some new immigrants may be unfamiliar with some aspects of mainstream Canadian culture that are related to dispute resolution. In particular, they may not be fully aware of their consumer-rights, their tenant rights, or family law in Canada, and this puts them at a distinct disadvantage if involved in a dispute. Many immigrants come from places where the justice system is not functionally based on the rule of law, so these immigrants may be inclined to view the justice system and its officials with suspicion.

Accounting for cultural differences in the context of dispute resolution is complex. While some research does indicate that culture plays a significant role in the ways that conflict is defined (Rao, 2005), approached, and resolved, other studies indicate that ethnic and cultural groups do not differ widely enough in their conceptions of and experiences with legal conflict to warrant attempts to anticipate or account for them in the context of legal or consumer disputes (Grant, 2004; Lind et al., 1994).

Taking into account the well-documented association between new immigrant status and an increased usage of personal computers and internet in British Columbia, it appears that online dispute resolution could be a more promising, effective and accessible tool for resolving newcomer disputes than other forms of ADR.

4 DISCUSSION

4.1 ONLINE DISPUTE RESOLUTION: AN OVERVIEW

Online dispute resolution (ODR) is a form of appropriate dispute resolution that utilizes telecommunication (usually internet-based, but to a lesser extent, telephones and cellular phones) to facilitate speedy and efficient resolution mainly by compressing or reducing the time, costs and geographic space that is shared between disputing parties (British Columbia Ministry of Attorney General Dispute Resolution Office, 2004; Katsh & Wing, 2006; Oakes, 2008; Poblet, Casanovas, López -Cobo, Cabrerizo, & Prieto, 2010; Susskind, 2010; Turel & Yuan, 2010).

Beginning in the mid 1990's, ODR services were developed to resolve disputes over domain-name registration. Shortly thereafter, ODR services and products were designed and developed specifically to address consumer-related disputes originating in online transactions (Lipsky & Avgar, 2007; Bilinsky, 2010; Brofman, 2007; Katsh & Wing, 2006; The National Center for Technology and Dispute Resolution, 2010).

Most contemporary ODR services are designed to resolve simple, consumer-based conflicts based on a single monetary issue. Much of the current research on ODR is still very focused on this type of dispute (Gabuthy, Jacquemet, & Marchand, 2008; Internet Corporation for Assigned Names and Numbers (ICANN), 2010; Katsh & Wing, 2006; Oakes, 2008; Susskind, 2010; The National Center for Technology and Dispute Resolution, 2010; Xu, Zhang, Zhao, & Gao, 2008).

Now that online technology has become ubiquitous, many legal practitioners (not simply those directly involved with ODR) are becoming interested in how web technologies can help them streamline legal services and conflict resolution. According to Susskind (2010):

> The next few years will bring further massive change: legal process outsourcing (LPO) will burgeon; paralegals will be employed more extensively; clients will share the costs of some legal services; document and workflow automation will be widely deployed; social networking will take hold; and high definition, desktop-to-desktop video conferencing will transform communication between lawyers and clients. Big cuts in public legal funding will compel lawyers to rethink the ways that they work and urge professional bodies to think more profoundly about the future (the American Bar Association is leading the way with its commission on ethics 20/20) and governments will increasingly be committed to virtual courts and online legal guidance. Leading accountancy firms will renew their interest in the legal sector, largely by offering multidisciplinary services to the mid-market, as well as LPO. Top legal publishers will expand their dominance over online legal service. And private equity firms will make their long-awaited investments, mainly by helping to build high-tech, process-driven legal businesses that can deliver high-volume work at lower prices than conventional law firms.

As a service, ODR has not yet become as mainstream as the above quotation may imply. Rather, most currently practising legal professionals are seeking ways to integrate online technologies into an existing legal process or set of processes, rather than using the web to re-conceive or redefine dispute resolution in new ways (Benyekhlef & Gélinas, 2005; Mehta, 2010; Melamed, 2009a, 2009b; Posell, 2010; Thompson, 2009).

ODR services can take many forms; however, they are generally offered for private sale to the public in three types:

"Assisted Mediation" aka "Automated Mediation"

In this type of online dispute resolution service, the third party neutral is a fully automated, web-based software program. In this technique, the software does not "call for any interaction between the parties but merely requires them to submit their proposals and counter-proposals. The program software then determines whether there is a zone of possible settlement" (Lipsky & Avgar, 2007, p. 58).

In practical terms, automated mediation may include everything from the simple exchange of e-mail communications between participants, who themselves choose when and how to resolve the dispute, to all-inclusive web based software interfaces that allow participants to chat live or offline, submit statements and responses, and submit and cooperatively edit relevant documents.

Some ODR providers that primarily concentrate on consumer-related disputes offer the option of a "blind bidding" process.

In blind bidding, the software generally asks each party to enter a settlement offer into its online system. The software algorithm then compares the offers of the parties and determines whether they are within a preset range of each other, usually within 20-30% of each other (parties know ahead of time). If the offers meet the requirement, the software program will split the difference and inform the parties that an agreement has been reached (Brofman, 2007; Hattotuwa, 2008; Lipsky & Avgar, 2007).

Some researchers and practitioners have called into question the fairness of the blind bidding system. Russell Weiss of the US-based CyberSettle (2010) site for example, argues that repeat users of a given blind bidding system can "cheat" by aggregating bid histories and outcomes in a way that a one-time user cannot (Davis, 2006, p. 4).

Mediation

In this model, a human mediator and the web-based interface share the role of third party neutral. Comments, claim statements, and responses by one party may be filtered or edited before being made available to both parties. This is the most common type of product offered on the private market in North America.

Arbitration

Arbitration is a process where a neutral third party resolves the dispute/issue. Arbitration is helpful when parties want a neutral to make the decision for them. The parties hand over the decision making authority to the neutral Arbitrator. The neutral Arbitrator plays the role of a

communicator and tries to tease out issues and help parties reconcile, and finally gives his/her decision on the dispute/issue. All communications pass through the neutral Arbitrator. Communications are secure web-based communications via message board(s) and/or online chat (or other versions of similar technology). The decision rendered may be drawn into a legally binding agreement.

4.1.1 Recent Developments in ODR Research and Practice

Now that web-based technologies such as web cameras and chatrooms are largely mature and familiar in mainstream Canada, legal professionals and ODR practitioners are beginning to implement ODR models capable of addressing more complex disputes.

ODR and Family Law

Although the use of online dispute resolution in the arena of family law is currently being explored worldwide, Australian researchers and policy makers have been concentrating attention on this area for several years.

In their recent article on multi-agent online dispute resolution systems, Abrahams and Zeleznikow (2010) examine and discuss the workings of an automated, web-based system designed to distribute property and assets among the parties of a dissolved marriage. In the article, the authors propose changes to an existing system to allow for the merging of "integrative bargaining techniques developed from argumentation, artificial intelligence and game theory with a multi-agent environment where individual agents are assigned specific negotiation tasks" (p. 9). More specifically, using algorithms and calculations based on the future needs of either spouse (based on education and skill levels as well as current/past employment), current and past financial contributions to the marriage, and the (agreed upon) value of the common set of assets, the system is designed to create a fair, efficient, and cost-effective means of property division among divorced parties. Notably, the authors propose creating more opportunity for disputing parties to rate the importance and monetary value of assets being divided, in order to construct a fairer process without requiring more involvement from a human mediator.

The use of online shuttle mediation is growing in popularity in Australia to resolve disputes related to family law. Currently, shuttle mediation is widely used in family law in British Columbia, although it is usually conducted in person and not online. Shuttle mediation is a form of alternative dispute resolution in which the disputing parties "shuttle" all communication and related documents between them using a human third-party mediator. Shuttle mediation is commonly used when parties' direct contact with each other compromises their ability to communicate effectively. Before the advent of online shuttle mediation, mediators would have to meet the disputing parties at different times and/or locations. Conducting shuttle mediation within an online venue removes the need to travel or to hold separate meetings (Wilson-Evered, Macfarlane, Zeleznikow, & Thomson, 2010).

ODR Globally

In *An Asian Perspective on Online Mediation*, Hattotuwa and Conley Tyler (2005) discuss the potential role online dispute resolution has to play in inter-cultural conflicts that transcend political borders. They advise that in order to be effective, ODR used in this context must be based in:

- Defining ODR requirements and systems based on needs and priorities that have been expressed by the communities and users themselves, and not just articulated by political stakeholders or traditional power-centres;

- The provision of state-of-the-art tools to ignite community aspirations and transfer appropriate skills for fostering sustainable development, while at the same time keeping in mind the fragility of socio-political relations in the context of on-going peace processes;

- Expanding a community's social capital through enhanced access to ODR, while eschewing the facile notion that the prevalence of PC's itself is indicative of community empowerment;

- Embedding community-based ODR services within existing economic, governance and social structures, while at the same time creating opportunities for communities to use ODR systems to transcend regressive socio-political architectures and create new social contracts; and

- Infusing enhanced capabilities for information access within and between communities, for purposes of grassroots conflict transformation.

Although there is some current discussion on this topic among dispute resolution providers and researchers informally, most of the focus in global ODR is on building a legal infrastructure for cross-border disputes that arise when consumers and companies conduct international transactions (Hornle, 2009; Rule, 2010).

4.2 ONLINE DISPUTE RESOLUTION AND NEW IMMIGRANTS: BENEFITS AND BARRIERS

Some aspects of ODR, such as remote access to dispute resolution processes, lowered costs compared to more traditional dispute resolution services, and asynchronous communication methods seem to implicitly mitigate some of the barriers new immigrants can face when attempting to access dispute resolution services. However, an analysis of recent literature on online dispute resolution as well as an examination of some of the most well-established online dispute resolution services currently available in Canada indicates that the barriers of language, cultural non-fluency, and lack of awareness may still be preventing new immigrant populations from accessing and using these services.

The sections below examine both the possible benefits of and barriers to online dispute resolution services that new immigrants may experience if attempting to access and use them today.

4.2.1 Language

Language is easily the most significant barrier between new immigrant populations and access to online dispute resolution services.

Most privately-owned online dispute resolution service providers in North America do not provide service in languages other than English.

Although some providers offer translation services to their clients, these are associated with substantial increases in both time and cost. Some providers only offer translation services in the context of complex, multi-party conflicts.

While some public-sector ODR services are available in several different languages, at no extra cost to the client, private ODR practitioners note that reliable, professional translation and/or interpretation services are very difficult to obtain. Increased linkages between ODR services providers and professional translators and interpreters would be beneficial.

In the "assisted mediation" or "automated mediation" arena, some providers are experimenting with multi-lingual software and electronic translation tools; however, such technologies are not yet mature. It may take some more time and experimentation before multi-lingual software and electronic translation tools become effective at helping new immigrants overcome the language barrier when resolving disputes online. Further research and examination of the possible role of technology-based translation tools would be beneficial.

4.2.2 Low-Cost, Automated Processes

Another benefit of using ODR over in-person ADR services is the potential cost savings associated with automating the process. However, some degree of human supervision of the automated process is required to ensure fairness and equality.

At the 2008 Chinese Control and Decision Conference (CCDC), Xu, Zhang, Zhao and Gao presented a "principle-based" system for ODR that combines human mediation and automated communication processes. Although the system was designed primarily for simple, consumer-based conflicts, the interplay of automated, asynchronous communication and human mediation exemplifies how the barriers of language, cultural non-fluency, and cost can be mitigated through ODR.

The following is the six step process developed by Xu et al. (2008):

1) Disputed parties submit their arguments in a structured form including facts and claims at the first step;

2) An inspector checks and verifies their arguments with necessary correction, forwards them to the interference engine (which has been designed based on legal information, laws, and rules), and stores them in the working space of the system;

3) Statements that may be unclear due to varying levels of literacy and/or misconceptions due to different definitions of the conflict are be clarified;

4) The interference engine derives a conclusion according to the rules and the facts, and gives a recommended verdict to a legal expert;

5) The legal expert verifies the verdict and forwards it to the disputed parties;

6) The disputed parties evaluate the recommended verdict and negotiate with each other, with possible negotiation support, for a detailed settlement; and

7) The case is either resolved or referred to another forum for resolution.

4.2.3 Asynchronous Communication

Synchronous technologies allow for communication between disputing parties in real time. Asynchronous technologies provide participants with the capacity to store and retrieve data or material over time. Convergence refers to a system that integrates or blends the two. The majority of ODR providers use asynchronous communication methods (Lipsky & Avgar, 2007, p. 54).

Research by Gabuthy et al., 2008 highlights that asynchronous communication technologies allow disputants more time and space to consider and carefully weigh resolution options before replying than synchronous technologies do. The carefully planned communications made possible by asynchronous communication can contribute to faster and more efficient resolution.

The asynchronous communication methods that are the foundation of most ODR services are particularly resonant when considered in the context of research that finds new immigrants to be more likely to avoid or acknowledge conflict, and less likely to seek out formal methods of dispute resolution (Grant, 2004; Hart, 1999; LeBaron, 1998; Lind et al., 1994; Williams, 1994). Populations or cultures that tend to avoid conflict may be more likely to find the pace and requirements of ODR less daunting than face-to-face, real time, synchronous dispute resolution.

4.2.4 Culture

In literature and articles on ODR, the possible absence of direct physical contact between disputing parties is usually noted as a benefit for those parties who may physically fear the other party, for example in a family law case in which there is a history of domestic violence (ADR Chambers Canada, 2010; BC Mediator Roster Society, 2009; Binnie, 2010; Rainey, 2010; The National Center on Dispute Resolution in Special Education, 2010; Wilson-Evered et al., 2010).

Some ODR researchers and practitioners note that varying levels of literacy, legal knowledge, and economic status can strongly affect disputants' "negotiative power", which can place one disputant at a distinct disadvantage. Moreover, the anticipation of being perceived or treated differently as a consequence of cultural non-fluency, language non-fluency, and/or ethnicity (i.e. skin colour) may factor into new immigrants' willingness to enter into a dispute resolution process that requires them to travel to communicate face-to-face with a disputant. There is consensus that cultural difference and cultural non-fluency can result in significant imbalances of power between disputing parties in any dispute, especially those that take place in culturally saturated contexts (such as courts).

Where the dispute resolution process is accessed remotely, people do not face each other directly. The ability of one party to exert substantially more "negotiative power" over the other based on first language or cultural difference is reduced. In this sense, the technology acts at once as an arena of cultural neutrality and as an active equality maker.

Commentators and practitioners agree that ODR has the potential to mitigate power differences by making it more difficult for parties to discriminate against each other based on ethnicity, language non-fluency, and/or cultural non-fluency. For some researchers, ODR represents an opportunity to create a truly level playing field in which the non-human mediation software functions as a culturally neutral environment.

Cultural difference may be more salient in a completely automated process in which both parties are always able to view and comment on each others' claims and claim statements. While automated tools can be less expensive than ODR processes which involve a human mediator, an experienced human mediator who intervenes, edits, or translates parties' communication with each other is more likely to be able to mitigate cultural, linguistic, or economic barriers to a fair and equitable resolution.

It is important for ODR service providers to consider the role of the creator of the technology, also known as the "fifth party", in creating new possibilities for fairer outcomes. Technology is not neutral. The developers of ODR technology need to be committed or at least concerned with creating accessible tools that do not inadvertently reproduce and/or enforce cultural norms.

4.2.5 Awareness

Research studies on immigrants' use of dispute resolution services of any kind show that new immigrant populations are not very likely to pursue any formal dispute resolution service when involved in a dispute (Claassen & Shands, 1994; Currie & Kielf, 1994; LeBaron Duryea & Grundison, 1993; Hattotuwa & Conley Tyler, 2005; Isajiw, 2000; Tyler, 2000).

While many ODR services are likely to be located with basic web-search tools, without an awareness that ODR services are available it is unlikely that an average individual, especially a newcomer, would seek out and attempt to utilize such services when involved in a dispute.

Wide-ranging, multi-lingual awareness campaigns would be likely help to increase use of ODR services; however, private ODR providers are unlikely to take on producing such campaigns themselves.

Overall, the *Online Dispute Resolution Standards of Practice* by the Internet Corporation for Assigned Names and Numbers (2010) highlights the importance of awareness, accessibility and affordability of ODR services:

> ODR systems should be accessible in that they are easy to find and access, but accessible also in the sense that they address geographical and language barriers (p. 2).

> Users without Internet access or with a limited knowledge of technology should not be discriminated against by being forced into using an unfamiliar electronic means. But neither should the law constrain those dispute resolution providers and parties in conflict who feel confident in using Online Dispute Resolution systems and could then benefit from their use (p. 2).

Further, Online Dispute Resolution schemes must provide an economical alternative to formal dispute resolution processes, and provide access to justice where formal channels are not available, at an economic level that does not disenfranchise potential users in developing areas or in conflict/post conflict zones (p. 2).

4.3 CASE STUDIES

Case studies show that while ODR has the potential to address some of the most common barriers new immigrants face when attempting to access appropriate dispute resolution services, equitable access and fair outcomes are not assured. Large ODR providers seem generally unconcerned with addressing the specific needs of new immigrant populations and awareness and language barriers continue to threaten equal access to these services.

4.3.1 SmartSettle

http://www.smartsettle.com/

SmartSettle was originally designed to serve the needs of complex, multi-party disputes normally associated with substantial time and cost requirements. These services still comprise the bulk of SmartSettles' cases.

SmartSettle is in the process of designing a new automated mediation product, called SmartSettle One that is specifically designed for small claims and simple cases that involve only a single monetary issue. Notably, while Dr. Ernest Thiessen, President of iCan Systems Inc. and founder of SmartSettle (personal communication, November 28, 2010), notes that the organization has not attempted to advertise or market its services in any focused or formal way, they are currently researching and developing targeted marketing strategies in relation to the launch of SmartSettle One.

Dr. Thiessen noted that while SmartSettle services are primarily offered in English, the technical infrastructure of the SmartSettle one software product allows the software to be easily translated into many languages.

On the question of culture, SmartSettle One has been tested using participants from several countries. Dr. Thiessen says that cultural difference or non-fluency has not come up as an issue during the testing phase.

4.3.2 Electronic Courthouse

http://www.electroniccourthouse.com/

The Ontario-based Electronic Courthouse offers several different online dispute resolution services and products to its clients.

In an interview with Electronic Courthouse's CEO and founder, Bruce Cooper (personal communication, November 16, 2010), Cooper notes that cultural difference can play a critical role in resolving disputes online, and that cases involving multi-cultural parties require a very experienced human third-party neutral in order to come to resolution.

Cooper also notes that while his firm offers translation services, it has been extremely difficult for the firm to locate professional, reliable translators. Additionally, he noted that while translation services are made available in high-level, more costly cases (at an additional fee of 15%), that these services tend to double the length of a given dispute resolution process.

4.3.3 Juripax

http://www.juripax.com/

Juripax (2010) is an ODR service provider that markets itself as the "world leader in multilingual online dispute resolutions." Currently, the Juripax platform is available in English, German and Dutch. These languages cover the primary market in Europe that Juripax services. In an interview with the Director and co-founder of Juripax, May-Britt Kollenhof-Bruning (personal communication, December 12, 2010), indicates that the Juripax system is suited for any language character set and that Juripax employees a team of professional translators to ensure proper functionality. However, the disputants must agree on one primary language in which to conduct the ODR process. Additional translation and/or interpretation services and multilingual mediators are available at an additional hourly rate to the disputants.

According to Ms. Kollenhof-Bruning, users of the Juripax platform are mainly seeking to resolve consumer-related disputes (about 3,000 cases annually). However, familial law and workplace-related disputes constituted about 500 and 250 of the cases (respectively) handled by Juripax in 2010. Practical examples to highlight the benefits inherent to the remote accessibility of Juripax include divorce cases wherein the parties are separated and reside in different jurisdiction and employment disputes within an internationally operating organization wherein different laws and languages apply.

The Juripax system uses a blend of automated and human assisted mediation processes to resolve disputes online. Generally, the lower the financial amount at stake and the less complex the case the more automated the process. Disputes originating from e-commerce transactions are generally automated. Ms. Kollenhof-Bruning notes a general tendency to increasingly apply computer-assisted direct negotiation to resolve a portion of more complex issues (for example, a parenting plan in divorce cases). For issues that cannot be resolved by parties amongst themselves, a human third party mediator or counsel is made available, especially to deal with redress options.

Overall, the Juripax system is not designed specifically to serve new immigrant clients. Ms. Kollenhof-Bruning notes that the Juripax system is roughly 70% generic and only about 30% customizable to the specific dispute and the needs of the disputants. This non-generic, customizable portion mainly involves the dispute-resolution preparation phase, such as the online intake procedures and problem diagnosis. To make the system better suited for new immigrants' needs, Ms. Kollenhof-Bruning recognizes that there would need to be changes in the categorization of common issues and potential solutions to align them with new immigrant disputant(s)' needs as well as best-practices and applicable law(s).

CONCLUSION

British Columbia is one of the most diverse provinces in Canada. Almost 27% of B.C. residents are first generation immigrants and international immigration to B.C. will continue to be a significant contributor to population growth in the foreseeable future.

New immigrants to Canada face a number of challenges/barriers when accessing Canada's complex legal system, including but not limited to language fluency, cultural fluency, and high costs. Court-based litigation is regarded as being especially complex and intimidating to newcomers. Appropriate dispute resolution options, for example mediation or arbitration, offer viable alternatives to the daunting court system.

The ongoing development of information and communication technologies, especially internet-based communications (e.g. message boards, email, chat rooms, and video conferencing), have permitted ADR services to move into an online virtual arena known as online dispute resolution.

Many of the initial ODR service providers focused on resolving disputes stemming from e-commerce transactions, such as online retail or auction (e.g. e-Bay) purchases. Consequently, the majority of the research and discussion on ODR is primarily focused upon the context of resolving such disputes. Recently, ODR practitioners have begun to provide services intended to resolve more complex types of dispute (e.g. child custody and divorce settlements as well as complex, multi-party international employment disputes).

The three most common forms of ODR include:

- Assisted/automated mediation, in which an automated neutral third party based in software uses principles and applicable rules to help the disputants come to a mutually agreed upon resolution;

- Online mediation, where a human neutral third party mediator uses information and communications technologies to assist the disputants in arriving at a mutually agreed upon resolution; and

- Online arbitration, wherein a neutral human third party uses information and communications technologies to facilitate the discussion between the disputing parties and then provides a binding decision.

ODR offers significant benefits over both court-based litigation and in-person ADR processes. These include:

- Reduced time and costs of using telecommunication devices (computers and/or telephones) when compared with the time and travel costs required for in-person meetings;

- Improved perceptions of equity and fairness and a less intimidating and bureaucratic process in the virtual, online environment than in "official" arenas, such as courthouses or mediation rooms; and

- Less pressure and more time for disputants to consider their statements before responding when using asynchronous communication (e.g. email or message boards) in the ODR process, which can lead to more positive outcomes.

The benefits of ODR address some of the barriers to in-person dispute resolution options that new immigrants face. These are, largely, time, travel, costs and bureaucracy. Nevertheless, there are currently no guarantees that ODR services can ensure accessible, fair and efficient dispute resolution services for new immigrants. Unfortunately, contemporary ODR services are not designed to address the specific and unique needs of the extremely diverse new immigrant populations in B.C. (and elsewhere).

Public Legal Education and Information plays a crucial role in educating individuals about their options for resolving disputes, especially with regard to the advantages of alternatives to court-based litigation. Currently, core PLEI providers in Canada provide no significant or identifiable information on the advantages and availability of ODR services. This is not necessarily surprising considering that ODR services are a relatively new and growing phenomenon.

PLEI providers can be instrumental in the ongoing development of ODR services, especially ODR services for new immigrants. PLEI providers, particularly those assisting new immigrants, should consider the following:

- Learning more about current ODR technologies and available ODR services;

- Building awareness (especially in first languages) of the available ODR services and the advantages of these services over other dispute resolution options;

- Linking professional translators and/or interpreters with new immigrants wanting to use ODR to resolve a dispute; and

- Collaborating with ODR service providers to develop more customizable or adaptable solutions that meet the needs of new immigrants.

A greater demand for ODR services geared to the specific needs of new immigrants will only serve to improve the availability of such services.

WORKS CONSULTED

Abrahams, B, & Zeleznikow, J. (2010). Including notions of fairness in development of a multi-agent online dispute resolution environment. *Agent and Multi-Agent Systems: Technologies and Applications*, *6070*, 102-111. Retrieved from Springer Science and Business Media database.

ADR Chambers Canada. (2010). *eVideo Mediation*. Retrieved from http://adrchambers.com/ca/mediation/eVideo-mediation/

Ahmed, E. (2005). Promoting inclusivity; Protecting (whose) choice? *Association for Women's Rights in Development.* Retrieved from http://www.awid.org/eng/Issues-and-Analysis/Library/Promoting-Inclusivity-Protecting-whose-Choice

BC Mediator Roster Society. (2009). *BC Mediator Roster.* Retrieved from http://www.mediator-roster.bc.ca/public/index.aspx

Benyekhlef, K., & Gélinas, F. (2005). Online dispute resolution. *Lex Electronica*, *10*(2). Retrieved from http://www.lex-electronica.org/docs/articles_87.pdf

Bierbrauer, G. (1994). Toward an understanding of legal culture: Variations in individualism and collectivism between Kurds, Lebanese, and Germans. *Law & Society Review*, *28*(2), 243-264. Retrieved from JSTOR database.

Bilinsky, D. (2010). Report from the ODR conference in Buenos Aires. *SLAW: A Cooperative Canadian Weblog on all Things Legal*. Retrieved from http://www.slaw.ca/2010/06/03/report-from-the-odr-conference-in-buenos-aires/

Binnie, R. (2010). *Online Family Mediation*. Retrieved from http://www.onlinefamilymediation.com.au/

Boyd, M. (2004). *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion.* Retrieved from http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/boyd/fullreport.pdf

Brannigan, C. (2010). *Mediate.ca: Dispute Resolution Services.* Retrieved from http://www.mediate.ca/

Brett, J., Olekalns, M., Friedman, R., Goates, N., Anderson, C., & Cherry Lisco, C. (2007). Sticks and stones: Language, face and online dispute resolution. *Academy of Management Journal*, *50*(1), 85-99. Retrieved from http://www.owen.vanderbilt.edu/vanderbilt/data/research/2133full.pdf

British Columbia Mediator Roster Society & Getz, C. (2007, December). *Closing the Distance with Technology: Report on Phase 1 of the Technology-Assisted Family Mediation Project*. Retrieved from http://www.mediator-roster.bc.ca/public/pdf/closing_distance.pdf

British Columbia Mediator Roster Society & Getz, C. (2010, May). *Evaluation of the Distance Mediation Project: Report on Phase II of the Technology-Assisted Family Mediation Project.* Retrieved from http://www.mediator-roster.bc.ca/public/pdf/Distance%20Mediation%20Project%20-%20Evaluation%20Report%20Final%20June%2030.pdf

British Columbia Ministry of Attorney General, Dispute Resolution Office. (2004, December). *Dispute Resolution Terminology.* Retrieved from http://www.ag.gov.bc.ca/dro/publications/bulletins/terminology.htm

British Columbia Ministry of Attourney General, Justice Services Branch. (2003). *Reaching Resolution: A Guide to Designing Public Sector Dispute Resolution Systems.* Retrieved from http://www.ag.gov.bc.ca/dro/publications/guides/design.pdf

British Columbia Ministry of Attorney General. (2007). *Guide to Mediation in B.C.* Retrieved from http://www.ag.gov.bc.ca/dro/mediation-in-bc/index.htm

British Columbia Ministry of Attorney General. (2008). *Dispute Resolution Office.* Retrieved from http://www.ag.gov.bc.ca/dro/index.htm

Brofman, C. (2007). Settled! The revolution in online dispute resolution. *The Lexicomm Group.* Retrieved from http://www.mediate.com/Integrating/docs/bronfman%20-%20settled!(1).pdf

Caidi, N., & Allard, D. (2005). Social inclusion of newcomers to Canada: An information problem? *Library & Information Science Research*, *27*(3), 302-324. Retrieved from http://ceris.metropolis.net/PolicyMatter/2005/PolicyMatters23.pdf

Canadian Council on American-Islamic Relations (CAIR-CAN). (2004). *Review of Ontario's Arbitration Process and Arbitration Act: Written Submissions to Marion Boyd.* Retrieved from http://www.caircan.ca/downloads/sst-10082004.pdf

Citizenship and Immigration Canada. (2009). *Facts and Figures 2008 – Immigration Overview: Permanent and Temporary Residents: Glossary of Terms and Concepts.* Retrieved from http://www.cic.gc.ca/english/resources/statistics/facts2008/glossary.asp

Claassen, R., & Shands, R. (1994). Conflict across cultures: Research & training. *MCS Conciliation Quarterly*, *13*(3), 9-16.

Craig, R. (2009, Spring). PLEI as part of the legal services spectrum in a changing world. *Canadian Forum on Civil Justice,* (12), 9-11. Retrieved from http://www.albertacourts.ab.ca/LinkClick.aspx?fileticket=N77oTl5iTEk%3D&tabid=347

CS/RESORS Consulting, Ltd. (2005, February 15). *Public Legal Education and Information (PLEI) in British Columbia: Community Profile and Needs Assessment - Final Report.* Retrieved from http://lss.bc.ca/assets/aboutUs/reports/PLEI/pleiReportProfile&Assessment.pdf

Currie, A., & Kielf, G. (1994). Ethnocultural groups & the justice system in Canada - a review of the issues: Alternate dispute resolution in a multicultural setting. *The Nizkor Project*. Retrieved from http://www.nizkor.org/hweb/orgs/canadian/canada/justice/ethnocultural-groups/ecg-008-00.html

CyberSettle Inc. (2009). *Cybersettle.* Retrieved from http://www.cybersettle.com/pub/

Davis, B. (2006). Walking along in the mission. *University of Toledo Law Review*, *38*(1), 1-19.

Electronic Courthouse. (2010). ElectronicCourthouse: North America's most comprehensive dispute resolution services provider. Retrieved from http://www.electroniccourthouse.com/

Fisher, K., Durrance, J., & Hinton, M. (2004). Information grounds and the use of need-based services by immigrants in Queens, New York: A context-based, outcome evaluation approach. *Journal of the American Society for Information Science and Technology*, *55*(8), 754-766. Retrieved from http://jag85.com/classes/lis490/InformationGroundsImmigrantsInQueens.pdf

Gabuthy, Y., Jacquemet, N., & Marchand, N. (2008). Does resorting to online dispute resolution promote agreements? Experimental evidence. *European Economic Review*, *52*, 259-282. Retrieved from http://halshs.archives-ouvertes.fr/docs/00/17/85/87/PDF/0401.pdf

Grant, B. W. C. (2004). *Adapting Western-Based Restorative Justice Models to Account for Cultural Distinctiveness* (Master of Arts in Conflict Analysis and Management). Retrieved from http://www.sfu.ca/crj/fulltext/grant.pdf

Hart, C. (1999). Online dispute resolution and avoidance in electronic commerce. *Uniform Law Conference of Canada*. Retrieved from http://www.ulcc.ca/en/cls/index.cfm?sec=4&sub=4e

Hattotuwa, S. (2008a, June 22). The future of online dispute resolution (ODR) – Technologies to keep an eye on. *ICT for Peacebuilding (ICT4Peace).* Retrieved from http://ict4peace.wordpress.com/2008/06/22/the-future-of-online-dispute-resolution-odr-technologies-to-keep-an-eye-on/

Hattotuwa, S. (2008b, July 24). Face to Face mediation a thing of that past? *ICT for Peacebuilding (ICT4Peace).* Retrieved from http://ict4peace.wordpress.com/2008/07/24/face-to-face-mediation-a-thing-of-the-past/

Hattotuwa, S., & Conley Tyler, M. (2005). An Asian perspective on online mediation. *The Communication Initiative Network*. Retrieved from http://www.comminit.com/redirect.cgi?m=57885a56bf198c8c82e831981f81d4b0

Homepage of Juripax. (2010). Retrieved from http://www.juripax.com/

Homepage of SamrtSettle. (2010). Retrieved from http://www.smartsettle.com/

Hornle, J. (2009). *Cross-Border Internet Dispute Resolution*. New York, NY: Cambridge University Press.

Internet Corporation for Assigned Names and Numbers (ICANN). (2010). *ICANN Online Dispute Resolution Standards of Practice.* Retrieved from http://www.icann.org/ombudsman/odr-standards-of-practice-en.htm

Isajiw, W. (2000). Approaches to ethnic conflict resolution: Paradigms and principles. *International Journal of Intercultural Relations*, *24*, 105-124. Retrieved from https://tspace.library.utoronto.ca/handle/1807/73

Jani, S. & Getz, C. (2010, June). Mediating from a distance: Suggested practice guidelines for family mediators. *British Columbia Mediator Roster Society*. Retrieved from http://www.mediator-roster.bc.ca/public/pdf/Guidelines_Mediating_Distance%20FINAL%20June%2030%2010.pdf

Katsh, E. & Wing, L. (2006). Ten years of online dispute resolution (ODR): Looking at the past and constructing the future. *The University of Toledo Law Review*, *38*(1), 19-46. Retrieved from http://www.odr.info/toledo%20article%20katshandwing.pdf

Kumar, S. (n.d.). *Virtual Venues: Improving Online Dispute Resolution as an Alternative to Cost-intensive Litigation.* Retrieved from http://lawlib.wlu.edu/lexopus/works/283-1.pdf

LeBaron Duryea, M. & Grundison, B. (1993). Conflict and culture: Research in five communities in Vancouver, British Columbia. *UVic Institute for Dispute Resolution.*

LeBaron, M. (1998). Mediation and multicultural reality. *Institute for Conflict Analysis & Resolution*. Retrieved from http://www.gmu.edu/programs/icar/pcs/lebaron.htm

LeBaron, M. (2003, July). Culture and conflict. *Beyond Intractability*. Retrieved from http://www.beyondintractability.org/essay/culture_conflict/

Lind, E. A., Huo, Y. J., & Tyler, T. (1994). ...And justice for all: Ethnicity, gender and preferences for dispute resolution procedures. *Law and Human Behavior*, *18*(3), 269-290. Retrieved from JSTOR database.

Lipsky, D. B. & Avgar, A. C. (2007). Online dispute resolution through the lens of bargaining and negotiation theory: Toward an integrated model. *University of Toledo Law Review*, *38*(1), 47-88.

Mann, B. (2008). Smoothing some wrinkles in online dispute resolution. *International Journal of Law and Information Technology*, *17*(1), 83-113. Retrieved from http://users.cdli.ca/bmann/0_ARTICLES/Mann_ODR_IJLIT_08.pdf

Mehta, S. (2010). Mediator use of the iPad. *mediate.com*. Retrieved from http://www.mediate.com/articles/mehtaipad.cfm

Melamed, J. (2009a, October). We are all online mediators. *mediate.com.* Retrieved from http://www.mediate.com/articles/we_are_all_online_Mediators.cfm

Melamed, J. (2009b, October). Old Friends, the Internet and Mediation. *mediate.com.* Industry Network Resource, . Retrieved from http://www.mediate.com/articles/my_best_friends.cfm

Morris, C. (2006, January 25). Media's mediation and other matters: Faith-based dispute resolution in Canada. *Canadian Bar Association.* Retrieved from http://www.cba.org/CBA/newsletters/pdf/ADR-Morris_presentation.pdf

National Centre for Technology and Dispute. (2010). National Centre for Technology and Dispute Standards of Practice: Online dispute resolution standards of practice. *ODR and Consumers 2010.* Retrieved from http://www.odrandconsumers2010.org/resources/ncftadr/

Nensteil, A. (2006). Online dispute resolution: A Canada-United States initiative. *Canada-United States Law Journal*, *32*, 313-329. Retrieved from Academic Search Premier database.

Oakes, G. (2008, August 15). Your virtual day in court: How online dispute resolution is transforming the practice of ADR. *The Lawyers Weekly.* Retrieved from http://www.lawyersweekly.ca/index.php?section=article&articleid=737

Odrworld.com. (2004). *About Us.* Retrieved from http://www.odrworld.com/index.php

Poblet, M., Casanovas, P., López-Cobo, J., Cabrerizo, A., & Prieto, J. (2010). Mediation, ODR and the Web 2.0: The case for relational justice. *AICOL Workshops 2009.* Retrieved from Springer Science and Business Media database.

Posell, R. (2010, May). E-discovery in arbitration. *Mediate.com.* Retrieved from http://www.mediate.com/articles/posellR1.cfm

Preston, V., Murdie, R., Wedlock, J., Agrawal, S., Anucha, U., D'Addario, S.,... Murnaghan, A. M. (2009). Immigrants and homelessness - at risk in Canada's outer suburbs. *The Canadian Geographer*, *53*(3), 288-304. Retrieved from Wiley Online Library database.

Rainey, D. (2010, August). Teaching online dispute resolution: Results from a survey of students. *Mediate.com.* Retrieved from http://www.mediate.com/articles/RaineyD1.cfm

Rao, S. (2005). The cultural vacuum in online dispute resolution. *Proceedings of the Third Annual Forum on Online Dispute Resolution.* Retrieved from http://www.odr.info/unforum2004/rao.htm

Rule, C. (2010, November). Building a global ODR system for consumer disputes. *Mediate.com.* Retrieved from http://www.mediate.com/articles/ruleCbl20101115.cfm

Statistics Canada. (2009, March 27). *Population by Immigrant Status and Period of Immigration, 2006 Counts, for Canada, Provinces and Territories, and Census Metropolitan Areas and Census Agglomerations – 20% Sample Data.* Retrieved from

http://www12.statcan.ca/census-recensement/2006/dp-pd/hlt/97-557/T403-eng.cfm?Lang=E&T=403&GH=6&GF=59&G5=0&SC=1&S=0&O=A

Susskind, R. (2010, September 23). Forget the lawyers ... the future's IT. *Times of London*, *23*(69). Retrieved from eLibrary database.

Sutherland, J. (2010, December 23). Is Vancouver in a real estate bubble? *The Globe and Mail*. Retrieved from http://www.theglobeandmail.com/report-on-business/rob-magazine/is-vancouver-in-a-real-estate-bubble/article1808967/

The National Center for Technology and Dispute Resolution. (2010). *odr.info* Retrieved from http://www.odr.info/

The National Center on Dispute Resolution in Special Education. (2010). *Shuttle Mediation*. Retrieved from http://www.directionservice.org/cadre/ctu/practicesA.cfm?id=31

The Urban Futures Institute, Ramlo, A., Berlin, R., & Baxter, D. (2009, November). *Canada to 2058: Projections of Demographic Growth & Change for Canada and its Regions.* Retrieved from http://www.urbanfutures.com/reports/Report%2074.pdf

Thompson, J. (2009, July). Online dispute resolution. *Mediate.com*. Retrieved from http://www.mediate.com/articles/ThompsonJbl20090706.cfm

Todd, R. (2010, September). The new frontier – Legal reportADR. *Canadian Lawyer Magazine*. Retrieved from http://www.canadianlawyermag.com/The-new-frontier.html

Turel, O. & Yuan, Y. (2010). Online dispute resolution services: Justice, concepts, and challenges. In D.M. Kilgour, & C. Eden (Eds.), *Handbook of Group Decision and Negotiation*, *Advances in Group Decision and Negotiation 2010, 4*(4), 425-436. Retrieved from Springer Science and Business Media database.

Tyler, T. R. (2000). Multiculturalism and the willingness of citizens to defer to law and to legal authorities. *Law & Social Inquiry*, *25*(4), 983-1019. Retrieved from Wiley Online Library database.

Williams, A. (1994). Resolving conflict in a multicultural environment. *MCS Conciliation Quarterly, 13*(3), 2-6.

Wilson-Evered, E., Macfarlane, D., Zeleznikow, J., & Thomson, M. (2010). *Towards an Online Family Dispute Resolution Service in Australia.* Retrieved from http://www.odrandconsumers2010.org/wp-content/uploads/2010/06/3.2-Wilson_Towards_Online-1.pdf

Xu, Z., Zhang, C., Zhao, R., & Gao, J. (2008). An architecture and issues for online dispute resolution with fairness and justice. Presented at the 2008 Chinese Control and Decision Conference (CCDC 2008).

APPENDIX A – ODR PROVIDER QUESTIONNAIRE

During the course of drafting this document several ODR providers were contacted and interviewed via both telephone and e-mail for the purposes of obtaining practitioner information. Three ODR providers responded to my requests for interviews, and two were conducted via telephone while a third was conducted via e-mail. The following is a copy of the questionnaire used to perform the interviews:

1. What types of disputes are most common to your organization? Consumer-related? Familial? Complex, high level cases?

2. Is the ODR process automated at all? How much of a role does the third-party (human) mediator play in resolving the most common types of disputes?

3. Approximately how many disputes do you process annually?

4. Do you advertise your services? What methods do you usually use?

5. How many languages are your services available in?

6. What are the most common languages that you operate in?

7. Do you provide translation services? If so, do you use an external translation service? Do your fees vary according to the language services are provided in?

8. Do you use any electronic translation tools?

9. Are any of your third-party (human) mediators multilingual? How many?

10. Does cultural difference ever factor into the disputes you process? If so, how?

11. What are the most common ways that cultural background plays out in the disputes processed at your organization? Can you provide any examples?

12. How often do you serve new immigrant clients?

13. Are any of your services or products specifically designed for new immigrant clients?

14. Do you ever advertise on multicultural channels or in media directed at immigrant communities?

15. Do the service needs and disputes differ for new immigrant clients compared to non-immigrant clients? How so?

16. Are you planning to change your services or delivery methods/processes in order to better serve the needs of new immigrant clients? How and when?