



JTC Resource Bulletin

Case Studies in ODR for Courts: A view from the front lines

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Abstract

Pioneering ODR efforts are unfolding around the world. Many courts and justice organizations are looking for signs that ODR technologies are beyond the major pitfalls of early adoption (the “bleeding edge”) and that successes can be leveraged and replicated. The use of information and communications technology (ICT) to help parties resolve their disputes is an encouraging trend with notable benefits to parties with disputes and the organizations (public or private) chartered with resolving those disputes.

For more information on this topic, contact technology@ncsc.org.

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To improve the administration of justice through technology

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Introduction

Information technology has been used successfully in the dispute resolution process in the US and abroad for over twenty years. Billions of disputes have been resolved using Online Dispute Resolution (ODR), but ODR is utilized in only a small fraction of US courts. ODR presents new, untapped potential for helping courts to increase fairness and access to justice while decreasing costs for both courts and parties in a dispute. Not handling at least some aspects of dispute resolution digitally is costly to courts as well as to the public.

Digital-first services are not only an attractive prospect for cash-strapped courts and regulators, but also the medium of choice for a generation of digital natives that has grown to expect online interaction in all areas of life – including lodging a complaint.¹

Why ODR? The court’s “customers” are primarily tech-savvy, and digital natives are not the only ones with technology expectations. Digital adopters of all demographics are the norm, rather than exception today. They bring private-sector technology expectations to public-sector court procedures and are increasingly dissatisfied with the courts’ sluggish adoption of technology. As Mirèze Philippe, Special Counsel to the ICC International Court of Arbitration, observed, “We offer everything online except justice. Users expect online solution services.”²

This paper draws on the acumen of ODR pioneers and scholars, as well as the experiences and insights from practitioners at the forefront of ODR use in courts. An overview of current ODR initiatives can help court leaders see possibilities as well as pitfalls for their jurisdictions. A related publication, “ODR for Courts” covers maturity factors and provides specific implementation recommendations.

Case Studies

Pioneering ODR efforts are unfolding around the world. Many courts and justice organizations are looking for signs that ODR technologies are beyond the major pitfalls of early adoption (the “bleeding edge”) and that successes can be leveraged and replicated. While there are many excellent examples of ODR in use in the private sector, the following case studies come from the public sector, courts specifically. Currently the US lags well behind Europe and the Pacific Rim in adoption of ODR.³ Because the most ambitious and successful ODR initiatives today are going on outside the United States, this paper describes court-based ODR both at home and abroad.

¹ Case, Lucinda. “[The Impact of ODR Technology on Dispute Resolution in the UK.](#)” Legal Solutions UK and Ireland Blog, Thompson Reuters, 2016.

² Technology Panel, Equal Access to Information and Justice Online Dispute Resolution ODR 2017 Conference, Paris.

³ Ambrogi, Robert. “[Is There a Future for Online Dispute Resolution for Lawyers?](#)” *Robert Ambrogi’s LawSites*, 11 Apr. 2016, www.lawsitesblog.com/2016/04/future-online-dispute-resolution.html.

The following case studies illustrate a variety of technologies, philosophies, and approaches. They include successes as well as unforeseen challenges in the application of ODR technologies to court processes. Some courts have overcome those challenges and for some, the outcome is still unknown. Their learning experiences are instructive and can be applied more broadly, regardless of geography or jurisdiction. Anecdotes of project successes and failures hint at key factors that can influence, inform, and encourage the application of ODR to a variety of court processes.

Franklin County, Ohio Small Claims

Mediation is part of the court culture in Franklin County, Ohio. For more than 30 years, mediation has been an integral component of dispute resolution processes from pre-filing through post judgment. Motivated by the results of NCSC's 2015 public opinion study,⁴ Franklin County's manager for the Municipal Court Small Claims Division and Dispute Resolution Department launched an ODR initiative to help make mediation services more accessible and convenient. When Alex Sanchez presented the idea to the court, the response was very positive. "[ODR] is a straightforward and cost-effective way to resolve disputes and provide access to justice." In essence, "Why *wouldn't* we do that?"⁵ With the active support and encouragement of court and judicial leaders, the system went live less than a year later.

Potential users are invited by mail to use ODR; information is provided in the same envelope as a summons and complaint. Interested parties go to the website, provide email and cell phone contact information, and select potential resolution options from a few simple check boxes. After establishing a password, users enter the Negotiation Space – a web page only accessible by the two parties and a qualified, professional court mediator. Parties can send messages and files asynchronously any time of the day or night, and make and accept offers, including payment arrangements. If the parties come to agreement, they sign electronically and the agreement may be submitted to the court if an active lawsuit is pending. If the parties do not reach an agreement, they can proceed with other legal options if no lawsuit has been filed, or proceed through the traditional court process if a lawsuit is pending.

⁴ gbastrategies. *The State of State Courts*. The National Center for State Courts, Nov. 2015.

⁵ Embley, P.L. "Interview with Alex Sanchez, Manager, Franklin County (OH) Municipal Court Small Claims Division and Dispute Resolution Department." 2 Nov. 2017.

Online Dispute Resolution
Franklin County Municipal Court
Columbus, OH

Home Help Center Negotiation Space

Enter your information

Welcome! Before you can start negotiating with the other party, please enter your information on this page and click submit. We'll then take you to your Negotiation Space. It's a web page that's private to you, the other party, and a court mediator. You can send messages and files, and make and accept offers whenever it's convenient for you.

Name
First Middle Last

Current Mailing Address
Address 1
Address 2
City -- Zip

Case Number (if known)

Is this a City of Columbus tax case?
 Yes
 No

What options for resolving your case are you interested in? Check all that apply.
 Discounted lump sum
 Discounted short term payment plan
 Long term payment plan
 I'm interested in resolving my case but dispute the claims and/or amount owed

Upload a File:
Choose Files No file chosen

Where should we send you status updates on your online negotiation? We will not share your phone and email address with anyone other than the court, for any reason - ever. You may share your contact information with the other party during negotiations if you want to.

Email

Cell Phone
(555) 555-5555

Password

8 or more characters, upper and lower case letters, at least one digit or special character.

Already Registered? Please log in.
Email

Password

LOG IN

Figure 1 - Franklin County, Ohio ODR login page

and middle-to-upper income (42%), based on census data derived from user location.

Nearly 30% access the system outside traditional court hours. Approximately 17% of users reside outside the county and/or state and would likely have had significant difficulty resolving their cases without the ODR process.

According to Paul Khoury, attorney for the City of Columbus, online negotiation is working well. "Communications with citizens via online negotiation are cordial,

The ODR system may be used to resolve any civil dispute including city tax issues, small claims, credit card debt, landlord-tenant issues, and other disputes under \$6,000. The City of Columbus Division of Income Tax is the highest volume filer in the Small Claims Division. City tax cases also comprise the highest number of default judgements based on failure to appear at trial. Prior to implementation, default judgments based on failure to appear represented 55% of cases. In the first year of implementation, approximately 78% of city tax cases handled through ODR were resolved either through short-term agreements that resulted in full dismissal (55%) or through some form of long-term payment plan (23%).

Users accessing the ODR system represent all income levels from low-to-moderate income (40%)

we're working out payment arrangements, and those arrangements are being followed.”⁶

The system's success garnered recognition from the Ohio State Bar Association, which awarded Franklin County its Judicial Administration and Legal Reform Committee Innovative Court Practices for 2017.

Noteworthy:

- The website uses very brief videos, hosted on YouTube, to introduce the system and explain key processes.
- Technical support, mediation assistance, and language translation services are available to system users by phone.
- A card with information about the online system including URL and telephone contact information is provided with the Summons and Complaint mailed to defendants.
- There is no cost for users to resolve a dispute using the online dispute resolution system, including professional mediation services. If the parties cannot come to agreement, they can choose another process, including filing a lawsuit (which does carry a fee). Mediation can still occur after a lawsuit is filed.

Washtenaw County, Michigan Online Traffic Pleading

The 14A District Court in Washtenaw County, Michigan partnered with Matterhorn to address high volume Civil Infractions. System users plead their traffic violation cases in their own words from the convenience and comfort of home. For cases that qualify, mediation is offered, adjusting the charge to “impeding traffic,” which does not negatively impact the individual’s driving record and auto insurance.

To protect public safety, the system filters out infractions by individuals with more than a certain number of violations in the past 3-5 years, construction zone violations, those tied to a traffic accident or incident with a school bus, or other more serious infractions. Those cases are handled in a traditional court setting, as are the cases of individuals who opt not to use the ODR process.

The entire process takes less than 15 minutes for users, and doesn't require time off work, child care, or transportation. Approximately 50% of system users complete the process using a smart phone or other mobile device. The court benefits from a lower administrative cost per case tied to reductions in the need for courtroom space, court dockets, and magistrate time. Cases are resolved

⁶ Cravener, Veronica M. “Resolve Your Case from the Comfort of Your Home.” *Lawyers Quarterly*, Columbus Bar Association, 2017, p. 19., www.cbalaw.org.

more quickly and parties pay their fines faster and far more consistently leading to fewer default judgments. The online process also reduces foot traffic into courthouses, improving building security.

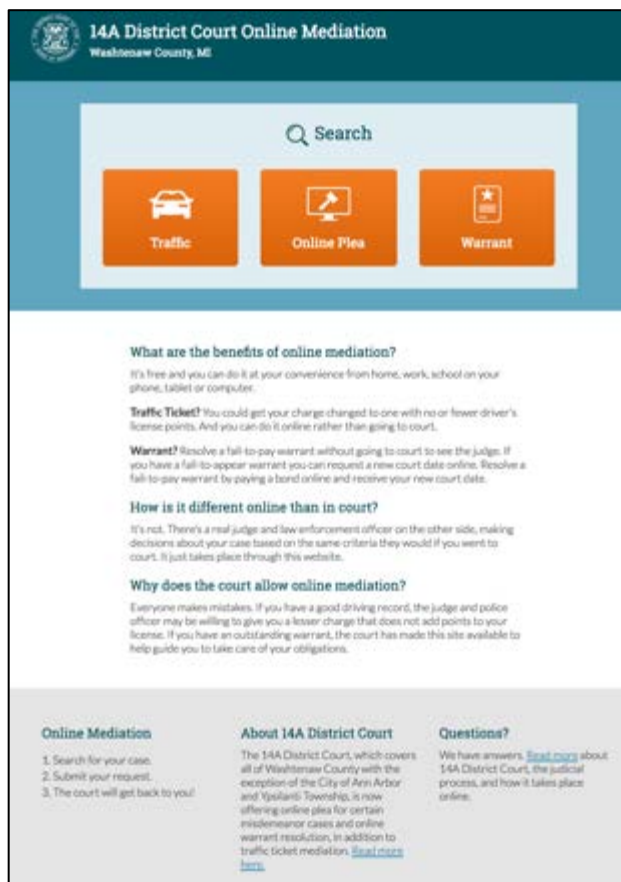
Law enforcement agencies also benefit when individuals use the system. ODR reduces the number of hearings officers must attend, keeping more officers on patrol without increasing the cost to their department. Citizens like the system because it does not require travel, or take time away from work and family responsibilities, and the resolution does not negatively impact their car insurance rate.

Based on the success of the first project, 14A District Court launched a second ODR initiative, this time to address the problem of outstanding warrants. When someone fails to appear for their assigned court date (pre-judgment), a bench warrant is issued for their arrest. With the threat of arrest, many are afraid to come to court, which escalates the negative impacts of even minor offenses. ODR provides a mechanism to have the warrant recalled without appearing in person before a judge or magistrate and gives the individual a new court date and opportunity to resolve the matter.

The program has been so successful in Washtenaw County that 30 more counties are moving forward with similar initiatives. Today, ODR is being used in Michigan for family court compliance, small claims, parking tickets, and outstanding warrants.

Noteworthy:

- Washtenaw County, Michigan's ODR is an "opt in" system. Partner agencies actively encourage participation, but using the online process is not required.
- ODR has improved timeliness not only for those who use the ODR system, but also for those using traditional court processes.



- Before ODR, only 51% of fines were paid within 30 days. For cases that go through the ODR system, 92% of fines are paid within 30 days.⁷
- The success of a few projects has created a cascade of ODR initiatives throughout the state.

Ottawa County, Michigan Family Court Compliance

In many jurisdictions, the traditional method for resolving an issue with a parent who fails to pay child support is to schedule a “show-cause” hearing and order the parent who is out of compliance to attend. If the parent fails to attend the scheduled hearing, an arrest warrant is issued.

Negative impacts to individuals accused of failing to pay child support are significant: Michigan’s state Office of Child Support will place a lien on financial accounts of noncustodial parents (“obligors”) who are out of compliance. This can also negatively impact others who have no financial obligation to the child, but who share a bank account, vehicle title, or real estate with the obligor parent.

The screenshot shows the login page for the Ottawa County Friend of the Court Family Outreach program. At the top left is the seal of the Circuit Court of the 20th District, State of Michigan. To its right, the text reads "Ottawa County Friend of the Court Family Outreach" and "Grand Haven, MI". Below this is a white box with a teal header containing the same text. The main content area is white and contains the following text: "Welcome to the Ottawa County Friend of the Court Family Outreach Program!", "Welcome! Log in to access your private and secure case details page. If you have not yet registered, click the Register Now link below.", and "Please note: If you are the custodial parent, you will not be able to access the site. The court will communicate with you via text messages or email." There are two input fields labeled "Email" and "Password", and an orange "LOGIN" button at the bottom.

Figure 3 - Ottawa County, Michigan Friend of the Court ODR page

Prior to the pilot implementation of family court compliance ODR, Ottawa County’s 20th Circuit Court dealt with as many as 100 very unhappy people each week at show-cause hearings. Hearing days were stressful for court staff who shepherded parents through the hours-long process: check-in, followed by

⁷ Cartwright, M. J. “Online Case Resolution.” Equal Access to Information & Justice Online Dispute Resolution – ODR 2017. International Court of Arbitration, June 2017.

meetings with Investigator (case manager) and court-appointed attorney, and finally an appearance before the judge.

Court staff would juggle schedules for parents, case managers, attorneys, and judges to facilitate meetings and appearances, identify no-shows, and begin the process of issuing failure-to-appear warrants. Much of their time the rest of the week was spent preparing for hearing days, sending letters and communications about balances and hearings, organizing files, and answering calls. Managing warrants and hearings are time-consuming processes.

Hearing days were also stressful for parents. If financial difficulties caused an obligor parent to miss a child support payment, spending a day at the courthouse exacerbated the financial strain as well as the frustration.

Ottawa County's Friend of the Court (FOC) office works with obligor parents who are not in compliance. FOC seeks to engage with parents ahead of court hearings and works to resolve the matter. Caseworkers look for underlying causes of non-payment, and can refer parents to employment and training resources, file support motions if support is set too high, or file for changes in custody or parenting time.

The county piloted the family court compliance ODR system in the fall of 2016. The system provides a secure way for court staff and case managers to communicate with both custodial and non-custodial parents, provides automated notifications via SMS messaging and/or email that help parents comply with court orders, and facilitates resolution before situations have to be addressed in a court hearing.

- In the first year of implementation, hearings are down by 27%. Failure-to-appear arrest warrants are down by 36%. Show-cause hearings are now held just two days a month. This has freed up courtrooms and docket time for other kinds of hearings.
- Getting parents to pay child support is essential not only for the well-being of children and custodial parents, but also for the financial stability of the court. Child support payment compliance rates impact federal funding for court programs including Ottawa County's Friend of the Court office.
- Following the success of Ottawa county's pilot program, several other Michigan county Friend of the Court offices are moving forward to implement similar systems. Discussions are underway with the state's Office of Child Support about using the system state-wide.

Utah Courts Small Claims

Shortly before the economic downturn in 2008, Utah courts launched an ambitious process reengineering effort with a goal of changing court culture for the long-term. It turned out to be a prescient maneuver that became a key

survival strategy when the recession hit. Mandating electronic filing and electronic service, and implementing a paperless electronic record system helped the Utah Administrative Office of the Courts weather the budget impacts that saw some state agencies endure 20% budget cuts.⁸ Nearly ten years later, Utah has significant experience refining business practices and implementing technology. The Judicial council's mandate today is to leverage technology to create new, on-demand services to promote access to justice.

To that end, Utah is nearing implementation of an ODR system for Small Claims. With limited financial implications (disputes under \$10,000) and relatively simple existing procedures, small claims is a good starting point for what is intended to be a broader utilization of ODR technologies. Utah will not need to amend statutes to allow for the online court, but will need to address laws governing venue and, in the justice court, the statutes governing territorial jurisdiction. Rules of civil procedure will be amended to allow complaint and summons to be delivered by mail or using electronic means. State statutes already allow for an electronic signature with the attestation that the filer intended and did file the document as true and original.

The ODR system for Small Claims is currently in development and is slated for pilot in early 2018. Once implemented, ODR will be Utah's sole small claims court process.

Noteworthy:

- Discussions about mandatory e-filing began in late 2011; the rule mandating e-filing on civil cases including probate was adopted in April 2012. New rules were adopted four different times to address the changing status of e-filing capabilities for citations, civil, criminal, and juvenile. In each case, Utah allowed for voluntary e-filing for one year prior to the mandate.
- Utah's court system is unified state-wide (an exception in US court systems), which has facilitated both procedural changes and technology adoption.
- The first user-facing dispute resolution resource Utah implemented was a standalone website to help SRLs fill out forms and get process information. Later, a website (also standalone) was created for lawyers to e-file and access case information. The ODR project began as yet another standalone site. Stakeholders recognized that building standalone apps by case type was not a good long-term architecture and determined to integrate all of these resources to provide a better user experience.

⁸ Durham, Christine M., and Daniel J. Becker. "Reaping Benefits and Paying the Price for Good Business Decisions: Utah's Reengineering Experience." *Future Trends in State Courts*, National Center for State Courts, 2010.

New York State Unified Court System Consumer Debt

Debt collectors in New York rely on state courts to collect on consumer debts. In recent years, consumer debt cases have grown to 35% of all New York State court dockets in courts of limited jurisdiction. These cases represent a disproportionately large segment, straining court resources, overwhelming the capacity of legal services providers, and taking a toll on consumers, who often consent to unfavorable judgements and settlements without understanding their options. A startling majority of consumer defendants fail to file answers and/or don't appear in response to a summons because they are too intimidated (or confused) by the process to appear in court in their own defense, resulting in default judgements.⁹

The impact on consumers can be devastating and wide-ranging: bank accounts may be frozen and wages garnished, limiting an individual's ability to meet basic day-to-day financial needs. Damage to an individual's credit report can negatively impact opportunities for housing, financial supports, and some kinds of employment for years after a judgment.

Consumers with legal counsel are often able to negotiate better outcomes. However, options are limited for consumers who cannot afford a lawyer. Pro bono assistance is available to some low-income consumers through legal services providers funded by Legal Services Corporation (LSC). Nationally, LSC-funded organizations will serve approximately one million Americans in 2017, addressing a range of legal issues including healthcare, housing, child custody, disability, education, and others, including consumer debt.¹⁰ In New York alone, however, nearly double that number appear without counsel in state courts annually. A significant portion of these litigants are defendants in consumer debt matters.

The demand for legal aid services far outpaces available resources. Only a small portion of those who qualify actually receive legal counsel. Less than 5% of defendants in New York consumer debt matters appear with counsel. In 2013, a task force now known as the New York State Permanent Commission on Access to Justice recommended that the New York State Unified Court System explore piloting an ODR platform for consumer debt cases to address the issue.

With a grant from the State Justice Institute, the New York Unified State Court began to design an ODR platform to help consumers triage debt problems, locate appropriate legal assistance, and complete negotiation and mediation. The system would have been more convenient and cost-effective for consumers, decreased caseloads in limited jurisdiction courts, and reduced some of the

⁹ Larson, David Allen. The New York State Unified Court Online Credit Card Debt Collection System: Can Ethical Principles Save a Pilot Project? ODR 2017: Equal Access to Information and Justice Online Dispute Resolution, Paris. June 2017.

¹⁰ Legal Services Corporation. 2017. [The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans](#). Prepared by NORC at the University of Chicago for Legal Services Corporation. Washington, DC.

strain on legal services providers, freeing up resources to address more complex issues. Parties would have been able to complete negotiation and mediation at their own convenience, instead of having to take time off from work and make transportation arrangements. Eliminating the requirement to physically appear in the courthouse would have greatly lessened transportation costs and barriers, particularly in rural areas.

Legal service providers mounted an all-out assault on the project, claiming that an ODR process would put vulnerable populations at risk for careless or unscrupulous creditors. The resistance was so significant that the Commission recently opted to discontinue efforts to develop ODR for consumer debt and will instead explore a different case type for an ODR pilot.

Noteworthy:

- The November 2015 report to the Chief Judge proposed using volunteer mediators for the online mediation component of the platform.
- The initial recommendation to consider the use of ODR came from the Permanent Commission on Access to Justice, a commission established by the Chief Judge. The NY Courts partnered with the Commission and the ABA to pursue funding, design the platform, and plan for implementation.
- The Task Force to Expand Access to Civil Legal Services in New York proposed limiting use of ODR to only low-income unrepresented parties, and ironically recommended that every litigant be “explicitly advised on the record by a judge that declining to participate in the online dispute resolution pilot” would have no adverse consequences.

British Columbia Civil Resolution Tribunal

British Columbia first began experimenting with ODR in 2011. Two small, separate ODR initiatives were launched, one to resolve disputes related to residential property tax assessments and the other related to consumer protection. In 2012, British Columbia passed the Civil Resolution Tribunal act,



Figure 4 - British Columbia Civil Resolution Tribunal home page

paving the way for the use of technology and ADR to resolve condominium (strata) disputes. An amendment to the CRTA in 2015 made the CRT the mandatory forum. Before the Tribunal was established, condominium disputes had to be heard in British Columbia's Supreme Court — an exorbitantly expensive process that discouraged most from ever pursuing a complaint.

The CRT is a stakeholder-designed solution. The public, community advocates, and legal experts were active participants at every stage of development. The system went live in mid-2016, and is by all accounts, delivering beautifully on the objectives of CRTA, which include “accessible, speedy, economical, informal and flexible”¹¹ dispute resolution for condominium property disputes.

In the first year, more than 10,000 individuals started “explorations” using the strata Solution Explorer. As a front end to the CRT, the Solution Explorer is a free tool designed to help individuals resolve issues without having to make a formal CRT claim. Information entered into the free, anonymous Solution Explorer feeds into the CRT system if the individual decides to go forward with a claim. About 600 “explorations” ended up as actual claims, meaning that the system's “navigator” resources (including a dispute letter generator and person-to-person negotiation) helped an overwhelming majority resolve their disputes without formal intervention. Of the 600 that began a CRT claim, many have come to an agreement. The cost of converting an agreement into an official court judgement is minimal (\$25 Canadian). Even so, some choose not to do so, either finding it unnecessary or preferring not to have a formal court order if the subject matter is particularly sensitive or confidential, since orders are publicly accessible.

¹¹ Salter, Shannon. “Online Dispute Resolution and Justice System Integration: British Columbia's Civil Resolution Tribunal.”

The electronic Tribunal doesn't use technology to replace the role of adjudicator. Rather, the system uses technology, which is a customization of the Salesforce platform, to serve notice of the dispute, facilitate direct negotiation, and escalate to mediation with a skilled (human) facilitator. The facilitator can use any combination of communication methods including email, text, phone, video conferencing, fax, and where necessary, mail.

Initially, the Tribunal was meant to be an "opt in" system, until it became clear that a voluntary scheme would allow one party to "veto the other's ability to use an accessible dispute resolution forum,"¹² forcing the issue back to the costly Supreme Court process. In 2015, the Tribunal Act was amended to make use of the CRT mandatory.

The Tribunal's success has lead British Columbia to expand its ODR offerings. In June of 2017, the CRT assumed jurisdiction of small claims under \$5,000. Over time, the threshold will increase until the CRT handles all small claims disputes under \$25,000.

Noteworthy:

- The "Solution Explorer" system first offers information and free self-help tools to help people identify and where possible, resolve a dispute themselves.
- The CRT system encourages early resolution through a ramped fee structure. Users pay only for the services they use to resolve their dispute. The average fee is about \$200.
- Building on the success of small initiatives helped prepared the way for CRT which, in turn, was implemented for one specific case type (strata) and then expanded to incorporate Small Claims.
- The system is designed explicitly for the public, with their participation in initial and ongoing design, implementation, and enhancement. Rigorous user-experience testing is a key factor in the system's success.

UK Ministry of Justice Personal Injury Claims Portal

The United Kingdom's system for handling personal injury claims from £1,000-£25,000 is the Claims Portal. The Portal's purpose is to provide a secure electronic mechanism for document delivery to facilitate the legally required Pre-Action Protocol for three low value case types: personal injury relating to car accidents, employers' liability, and public liability claims.

¹² Salter, Shannon, [Online Dispute Resolution and Justice System Integration: British Columbia's Civil Resolution Tribunal](#) (May 9, 2017). Windsor Yearbook of Access to Justice, Forthcoming. Available at SSRN: <https://ssrn.com/abstract=2965745>.

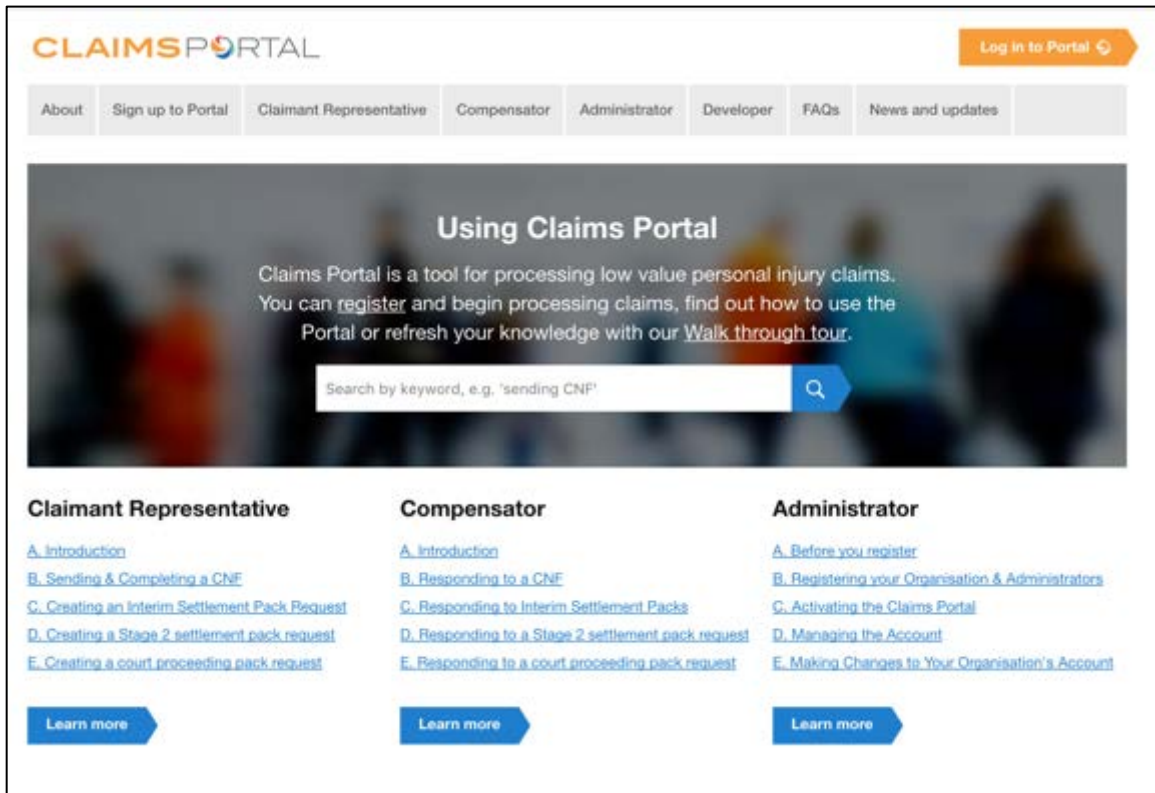


Figure 5 - UK ClaimsPortal home page

The system facilitates communication, provides a secure mechanism for uploading and validating documentation, speeds negotiations, enforces time limits, and ensures victims receive compensation. If the injured party doesn't agree with the settlement after negotiation, he/she can still pursue further legal proceedings in a traditional court setting, but still receives the settlement amount last offered.

In spite of being an example of innovation in the use of ODR, it is interesting to note that the Claims Portal generates paper forms, as that is still the official record of the court. The Ministry of Justice does not currently have a digital case management system.

The injury compensation claims process is under the authority of the Ministry of Justice. The Claims Portal, however, is run by a not-for-profit privately held company made up of equal parts insurance company representatives ("compensators") and claimant community representatives (solicitors). The 13 board members (one independent and six each from compensator and claimant communities) constitute ongoing leadership and governance. Insurers covered the cost of system development, anticipating significant savings tied to greater efficiency in the claims process. In the future, the costs of sustaining and enhancing the system may shift to a user-pay model.

Use of the portal is mandated by the Ministry of Justice and there is no “opt out” option. All personal injury claims that fall within the scope of the pre-action protocols must be processed using the Claims Portal. However, use of the portal does not restrict a claimant from accessing the court.

Approximately 85% of claims are initiated through law firm case management systems. At the time the system launched, there was no cost to a claimant for filing a claim through a lawyer; legal fees were paid by the insurer along with the settlement amount. Reforms designed to reduce costs have changed this dynamic, and claimants now relinquish a portion of their award (up to 25%) in legal fees. Legal reforms will cap fees at £500, and future reforms are likely to reduce that amount further. These changes may end up creating a pro se components of the system, which currently is designed for use by insurers and solicitors.

The website was an “afterthought” to – not the focus of - the Ministry of Justice’s streamlining initiative of 2007-2008. Following the process improvement efforts by a working group of plaintiff attorneys, the Ministry of Justice agreed to make the process electronic. An announcement was made and the website created and piloted in a very short timeframe in 2010. The system is a customization of the CRIF Decision Solutions platform.

As of September 30, 2017, more than 5,875,000 claim notifications had been created and routed to a compensator through the Claims Portal. Statistics relating to claims handled through the Portal are readily available to the public, ensuring greater transparency and accountability.

Noteworthy:

- Stakeholders lead and funded the initiative.
- The Portal website actively encourages 3rd-party innovation by featuring a “Developer” tab on the main landing page that leads to technical documentation, release notes, and other information necessary to integrate with the Portal. Developers receive free technical support initially.
- Participating law firms have integrated their case management systems but the official record of the Ministry of Justice is still paper.
- User training for both compensators and representatives is available through a separate but feature-identical site with simulated process flows.
- The Executive Dashboard, available to the public, provides key metrics including Portal Service (availability, performance, users) and Claims submitted, pending, and resolved.

Netherlands Rechtwijzer

Rechtwijzer (which translates roughly to “signpost to justice” or “way to justice”) was launched in 2007 by the Dutch Legal Aid Board (LAB) and Hiil to facilitate self-help and mediated settlement in some kinds of disputes. Before Rechtwijzer, Dutch policy on the resolution of disputes centered around legal aid bureaus (Bureau voor Rechtshulp) that provided legal advice and representation either free or on a sliding fee scale depending on income.¹³ Later, the Dutch Ministry of Justice established a network of law “counters” (juridische loketten) that provide walk-in or call-in legal information and self-help assistance instead of representation. Online legal resources are an extension of the law “counter.”

Figure 6 - Netherlands Divorce Platform Uitelkaar.nl home page

The first iteration of Rechtwijzer (referred to as version 0.0 by LAB staff) focused on problem triage and directed users to legal resources appropriate to the specific dispute. Diagnostic questions lead to advice for the user in the form of a

¹³ Smith, Roger. “I Have Seen the Future and It Works - Maybe and in Dutch.” *Human Rights and Rule of Law*, Council of Europe, 5 Dec. 2013, Web 27 Oct. 2017.

table listing possible interventions and professionals able to provide those interventions.

User testing in focus groups showed that end-users didn't understand the advice table at all. That led to the development of Rechtwijzer 1.0, which launched in 2012. Later, Rechtwijzer used interactive capabilities to prepare clients to consult with a lawyer. Rechtwijzer 1.0 was a "game-changer" in the use of technology because it demonstrated that websites could be interactive, serving up information tailored to the unique needs of individual users.¹⁴

In 2014, Rechtwijzer 2.0 added problem resolution to the existing triage/advice platform, incorporating Modria's dispute resolution software that powers private-sector retail dispute resolution. The system guided parties through model agreements, structuring issues and providing a more convenient and less hostile setting for establishing and evaluating options. It ambitiously sought to simultaneously address a variety of complex relational disputes including divorce and separation, landlord-tenant, and employment issues. Advice and information were integrated with online resolution procedures. Adding the ODR component sought to enable individuals to work toward solving their own legal issues, utilizing unbundled and hybrid legal services as needed.

After three years, the project was deemed financially unsustainable, and the partnership was dissolved. In spite of this disappointing outcome, the project "failure" is also an example of "fail forward." A start-up team previously with HiiL re-built the divorce platform for the Dutch market and re-launched it as Uitelkaar.nl ("Apart") in September. Social impact investors were willing to invest in the new platform because there was a convincing proof of concept.

Noteworthy:

- A key element of the Rechtwijzer design was to reduce conflict in disputes by enhancing collaboration between parties using principles of 'integrative negotiation' (helping users get to 'yes' and building on common ground rather than identifying differences).
- The site was developed by a multi-disciplinary team of scholars aided by an advisory group made up of judges, mediators, and lawyers.
- Usability research revealed that users skipped "text dense" pages. To address that issue, text was cut to a bare minimum and presented at a basic reading level.
- The site does not direct users to a specific professional, but instead provides an overview of tasks, a list of qualified legal resources, and an

¹⁴ Smith, Roger. "Classical Lessons from the Rechtwijzer: a Conversation with Professor Barendrecht." Law, Technology and Access to Justice, The Legal Education Foundation, 22 June 2017.

estimate of anticipated costs. The user chooses a professional best suited to his/her situation. This approach relies on unbundled legal services: users retain ownership of the dispute resolution process while seeking legal assistance with parts of the problem.

- In the Netherlands, only lawyers can represent an individual in court, but anyone can provide legal information, advice, and assistance. Quality is an important concern. The LAB has rigorous quality criteria and grants access for two years to those who qualify. An independent advice commission evaluates both new and renewal requests.
- Rechtwijzer is (and was) a voluntary tool (“opt in”), which likely contributed to the demise of 2.0. The Netherlands is in the midst of legal aid reform where digital provision will be a consideration.

British Columbia MyLawBC

The benefits of Rechtwijzer’s pioneering efforts are also being felt in British Columbia. BC’s Legal Services Society (LSS) adapted the Rechtwijzer triage/advice platform for use as the front-end for their legal self-help site MyLawBC. While LSS provides legal aid and representation primarily to low-income individuals, the MyLawBC site is serving a much wider audience.

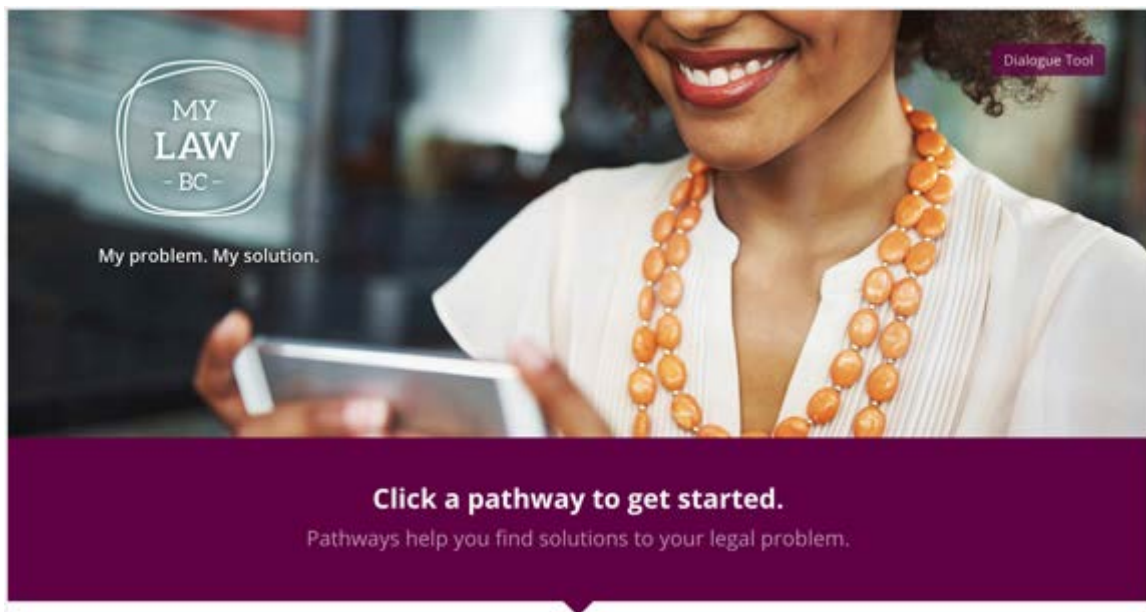


Figure 7 - MyLawBC website landing page

Built on the Modria platform, the website helps users negotiate separation agreements and provides triage and advice on court process, wills and personal planning, and foreclosure avoidance. It also includes resources for domestic abuse victims, including assistance creating a safety plan.

Noteworthy:

- Similar to Rechtwijzer, a key element of the MyLawBC's design is to reduce conflict in disputes by enhancing collaboration between parties, helping users get to 'yes' by building on common ground rather than identifying differences.
- Use of MyLawBC is increasing exponentially. In the first year, 20,000 people used the service; approximately the same number have already utilized MyLawBC in the first six months of year two.

Lessons from the Front Lines

A steadily-increasing number of courts are cautiously implementing ODR in limited ways, with notable success. While there have been a handful of disheartening setbacks, these “failures” are both instructive and essential to the overall acceptance of ODR as a valid court-sponsored dispute resolution mechanism. What is clear from both public and private sector implementations of ODR is that the use of information and communications technology (ICT) to resolve disputes provides notable benefits to parties with disputes and the organizations (public and private) chartered with resolving those disputes. It is an encouraging trend.

ODR is a powerful tool that can assist jurisdictions in advancing the cause of justice and rule of law. Recommendation 5.4 of the 2016 report of the American Bar Association Commission on the Future of Legal Services specifically promotes and endorses the use of “court-annexed” ODR.¹⁵ The Commission’s report goes on to declare that “...Court-annexed ODR ... would help relieve the overburdened court system and facilitate judicial efficiency, as well as preserve the constitutional and traditional role of the courts in dispute resolution.”

Finding a successful business model has been difficult for some ODR projects. That makes court-connected projects even more important. Courts need sustainable funding and a reasonable cost/benefit, as well. Courts are not yet tapping the majority of the potential cost/benefit value.

Court-based ODR implementations to date represent a very small fraction of the potential program design space. Limited experience with case types, resolution processes, and almost everything else about ODR program design means that little is known about what can work and what will be required to expand the variety of case types that can be resolved using ODR.

Court organizations particularly struggle to give adequate attention to and respect for the user perspective. As processes in the private sector become more and more user-centric and finely-tuned to suit individual customer preferences, the public will become increasingly frustrated with low-tech, inconvenient, and complicated court-centric processes. ODR can be a game changer for courts that are willing to innovate.

For more information on this topic, contact technology@ncsc.org

¹⁵ *Report on The Future of Legal Services in The United States*, American Bar Association Commission on the Future of Legal Services, August 2016.

Appendix A: ODR Resources

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Report on The Future of Legal Services in The United States, American Bar Association Commission on the Future of Legal Services, August 2016.

Salter, Shannon, *Online Dispute Resolution and Justice System Integration: British Columbia's Civil Resolution Tribunal* (May 9, 2017). Windsor Yearbook of Access to Justice, Forthcoming. Available at SSRN: <https://ssrn.com/abstract=2965745>.