Piloting ODR Simulation For Students: A Case Study Using Modria Software At Victoria University

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Introduction

- Until 2014, the Victoria University College of Law and Justice did not teach a stand-alone ADR subject.

- Following representations, in 2015, for the first time, LLW3002 Alternative Dispute Resolution was taught as an elective in the Bachelor of Law Degree.

- We discuss the teaching of this subject, and in particular our novel use of ODR to support ADR students at Victoria University to engage in negotiation simulations.

- Whilst ODR has been used to resolve e-commerce disputes for two decades, and is increasingly being used in civil justice courts, its use to support ADR teaching, is in our belief, novel.

- After two decades, the legal community is finally realizing the potential for ODR to enhance 'access to justice'.

- Chicago Kent College of Law teaches an *Access to Justice and Technology* subject in its JD program.

- Katsh and Rabinovitch-Einy (2017) in their ground-breaking book on digital justice illustrates how ODR can operate for the bulk of disputes that operate outside the e-commerce arena.

VICTORIAN ACCESS TO JUSTICE REVIEW (2016) RECOMMENDATION 5.2

- The Access to Justice Review was commissioned by the Victorian Government in October 2015. The report was released in October 2016. It included 60 recommendations.

- Recommendation 5.2 was for the development of an online system for the resolution for small civil claims at VCAT. The Government agreed to implement this recommendation in May 2017. The review recommends the following three-step process for introducing ODR into the Victorian Civil Justice System:
  - establish an ODR Advisory Panel with terms of reference to oversee the introduction and evaluation of an ODR system for small civil claims in Victoria and make recommendations about the possible future expansion of online dispute resolution to other jurisdictions in Victoria;
  - provide pilot funding, and, subject to evaluation, ongoing funding, for the development and the implementation of a new online system for the resolution of small civil claims in Victoria; and
  - introduce legislation to facilitate the use of the new online system for the resolution of small civil claims.

Teaching ADR at Victoria University

- In 2017 the ADR unit at the Victoria University Law School partnered with ODR leaders from Tyler technologies to integrate ODR into the unit as a key form of assessment.

- The Modria platform utilised in the pilot is the one being used in USA and other countries for court/government and/or commercial purposes. It was not developed to be used for assisting in student assessment.

- All students were required to participate in an ODR simulation in groups of three and primarily to provide legal advice re the content of the simulation together with a written report.

- We now discuss the process of developing an ODR simulation and integrating it into the law degree curriculum.

- We will also consider how to assess student performance.

- We further outline some of the opportunities and challenges for teaching ODR that were identified in conducting the pilot and also provide ODR insights from law students undertaking the course.

LLW3002 ADR at Victoria University

- The ADR unit (LLW3002) at the College of Law and Justice at Victoria University was first delivered in 2015.
- Through a Technology Enhanced Learning Grant, a series of videos were developed which followed a case through mediation and arbitration See <https://www.vu.edu.au/units/LLW3002>.
- ODR integration into the ADR curriculum has the potential to offer many benefits for students.
- The ODR component requires students to develop their technological literacy.
- It also offers greater time and access flexibility for students.
- Some of the features of ODR, as will be seen below, are considered both benefits and limitations for the provision of ADR services.
- It should be noted that students were only exposed to one form of ODR, and it was text-based.
- The system used was developed by Tyler/Modria.
- In our discussion of student comments on the negatives of ODR, we shall point out that there are ODR systems that provide far more functionality than text-based systems.
- Such systems are more likely to meet the concerns of students.

Student insights on benefits of ODR

- The Benefits of ODR

- There are a number of benefits offered by the use of ODR where the parties use a text-based platform with the ability to participate remotely, as compared to traditional mediation:
  - Everything is typed so there is no need to repeat what was said or take notes.
  - It can be more cost-effective; there is no requirement for travel, room hire or paper.
  - Parties participate remotely which can address safety concerns and allow for a more comfortable environment.
  - The conflict is less confrontational or emotional as the parties are not in the same room.
  - A text based discussion keeps the parties more focused on the issues in dispute.

Student insights on limitations of ODR

- Limitations of ODR
- The text-based ODR process comes with a number of limitations as compared to the traditional mediation process:
  - The process is impersonal.
  - It can be hard for the parties to express empathy.
  - There is a greater likelihood of the parties becoming keyboard warriors.
  - There is a lack of non-verbal communication.
  - The parties require competency in digital literacy eg typing speed. This is only the case when using text based systems.
  - Asynchronous text communication can have delays between messages.
  - There can technical difficulties with both the hardware and software.
  - Parties can easily type messages in the wrong room.
  - The mediator has less control.
  - There needs to be confidentiality compliance with the typed record.
  - The process creates added complexity for non-English speakers.

Addressing limitations of ODR

- A number of the limitation and issues with ODR can be addressed through:
- Intake session with mediator to build rapport.
- Introduction to the ODR video: there needs to be an ODR guide for parties that covers:
  - Etiquette
  - Online communication
  - Process
- Use of video chat in mediation
- The ability to view joint and private rooms simultaneously
- There should be alerts for new messages
- A 'typing…' icon should appear when the other party is typing
- There should be indicators for when a message is sent, delivered and read
- Mobile device compatibility
- A Mediator termination option should be available

Opportunities and challenges for ODR in law school curricula

- Following the introduction of the ODR simulation integration pilot in the Victoria University law school ADR unit, it is clear that this is an exciting area that has a number of opportunities and challenges to consider as it is further developed and delivered.

- Group work based assessment has a number of challenges and this is no different in an ODR context.

- ODR is an innovative and new area to which students are being exposed. This requires expectations to be managed.

- For the pilot, we used one fact scenario for all the groups. There is an opportunity for students to develop their own fact scenario for their group to use in the ODR simulation.

- The ODR simulation will be limited by the platform being used. The platform used in the pilot was not designed for student assessment. There was no ability to export the content of the simulation for assessment submission. For the pilot, students were required to copy the text from the platform and paste it into a word document which was then submitted. This a clunky and inefficient process.

Conclusion

- In 2018, the subject BMO5567 Workplace Dispute Resolution, taught in the Victoria University Business School, used the Guided Resolution ODR Software to conduct workplace dispute resolution simulations

- With the exponential increasing use of technology in education, government, commerce and courts there is an urgent need for students to be aware of and use these new technological trends.

- Whilst the use of ODR in legal practice is still very limited, there is wide acceptance that this will no longer be the case in the coming decade.

- Hence, legal education leaders need to train their students in the potential and use of ODR.

- But as well as training legal students for future practice, the use of ODR in law courses has benefits for teaching students about ADR.

- It allows students to watch and most importantly engage in ADR simulations.

- This opportunity is lost in the traditional teaching of ADR.

- Whilst ODR has been used in e-commerce for twenty years and courts are now starting to use ODR, the use of ODR in ADR teaching has been very limited, despite its obvious benefits.