

## Settling it online

*Online dispute resolution grows beyond its origins in cyberspace. Will it someday supplant ADR?*



Online Dispute Resolution (ODR) is a small but growing phenomenon that adapts the long-established principles of alternative dispute resolution (ADR) for the web environment. On the Internet, parties can meet — in real time or asynchronously — in shared, protected spaces to exchange information, post and manage key documents, make offers and counteroffers, access databases with precedents, and use voice- and videoconferencing.

“ODR is simply a branch of dispute resolution facilitated by technology,” says mediator Colm Brannigan, a

lawyer by training and one of the principals at Mississauga, Ontario-based mediate.ca. “Essentially, ODR helps people negotiate disputes with online tools that are often cheap and ubiquitous, like email.”

When it works, says Brannigan, ODR can be cheaper, faster, more convenient, and easier than traditional ADR. ODR is now used regularly for commercial transaction dispute settlements, insurance claims, e-commerce, and family law.

Sometimes, ODR is the most logical option. “For disputes that originate in online environments — for example, on Facebook or around domain names — it’s natural that the resolution of those disputes will happen in those environments,” says Michael Erdle, a founding partner at Deeth Williams Wall in Toronto and director of the ADR Institute of Ontario.

And sometimes, ODR is the only option. In many cases, the value of the claim is simply too low to warrant face-to-face mediation. Where there is no clear jurisdiction — for example, an online transaction with the buyer in one country, the seller in another, and the platform in a third — ODR can resolve disputes in the “everywhere and nowhere” of cyberspace.

Brannigan finds ODR useful to mediate in family law cases where there have been instances of domestic abuse and “it makes sense to keep family members apart.” He also cites a family law case where one half of a divorcing couple lived in Ontario and the other in British Columbia. They used ODR to work out the details of their children’s summer holiday visits.

Does ODR have the potential to one day replace its face-to-face version? Erdle, for one, still favours the tried-and-true process of bringing people together in the same room. “I think overall, it’s better to be able to see and hear people when they’re making their positions and hearing the other party’s arguments. There’s a lot in body language in simply sitting across the table and hearing what people have to say. That’s what you lose with ODR.”

By Susan Goldberg. Read the entire article online at [www.cba.org/practicelink/onlinelaw](http://www.cba.org/practicelink/onlinelaw).

## The new competition

New websites offer basic legal services at ultra-low rates or even for free.

“The average [computer] programmer today can do the work of five or six programmers in the late 1990s,” says Jason Anderman. “And one lawyer today can do the work of ... one lawyer in the late 1990s.” The difference, says the founder of American website

whichdraft.com, which offers numerous downloadable commercial contracts for free, lies in their respective approaches to innovation.

It’s a sentiment shared by Chilwin Cheng, co-founder of the new Canadian website Firedwithoutcause.com, which provides information, documentation,

and damages calculations at low prices to people who believe they’ve been wrongfully dismissed.

By automating and streamlining necessary but straightforward and/or repetitive tasks, sites such as Whichdraft and Fired Without Cause can offer legal services more quickly and cheaply than the average law firm associate, or even the average legal secretary. And by lowering or outright eliminating the bar on legal fees, they

can tap into a vast latent market: the average consumer or small business owner who would never consult a lawyer because they find lawyers too expensive.

No one, says Cheng, especially not someone recently laid off, would hire a lawyer at several hundred dollars an hour to get an extra week's severance pay, which averages about \$687. But for between \$40 and \$60, Fired Without Cause can provide not only free tutorials on the law governing dismissals, but also a severance package calculator that assesses a client's offer against a database of thousands of similar cases, as

well as customized counteroffer letter templates that people can use to negotiate with an employer.

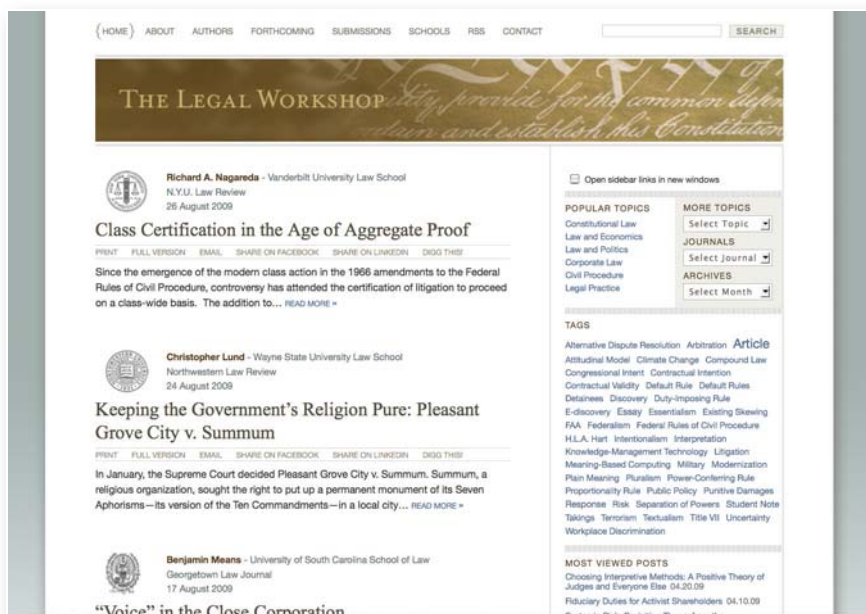
"If the average Canadian can save a month's rent, or three grocery trips, that's a huge deal," says Cheng. "We provide the information to people at a cost that is proportional to their problem."

But is 50 bucks a pop — or, in the case of Whichdraft, free — enough to pay the bills? Anderman freely admits that his site does not generate revenue, yet. Whichdraft aims to make money through a mix of premium services to paying subscribers, custom services for

corporate clients, and the value of its database, which contains multitudes of legal contracts in their various permutations. Fired Without Cause is counting on volume and on the wider profit margins generated by automation.

"Data is free," says Cheng. "Wisdom is free — just look at all the legal blogs out there. But information — where someone has to roll up their sleeves and gather all the data and interpret it — that, people will pay for."

By **Susan Goldberg**. Read the entire article online at [www.cba.org/practicelink/onlineinlaw](http://www.cba.org/practicelink/onlineinlaw).



Seven American universities, including Cornell, Duke and Stanford, are now collaborating to produce a free online magazine with high-quality legal scholarship (left). How will Canada's law journals respond?

Seo Yun Yang is the editor-in-chief of the *McGill Law Journal*. "We have an open access policy," says Yang. "PDF versions of the articles go up soon after the *Journal* is published." But with online content so much faster and cheaper, is the time, effort and cost of publishing a print edition still worth it? "Law journals are rooted in the culture of academia, so whatever content could be posted faster would not be seen as legal scholarship," says Yang.

Beth Bilson is a professor of law at the University of Saskatchewan and the editor of the *Canadian Bar Review* (CBR). The CBR, which dates back to 1923, is now published entirely online, with print copies available for

subscribers upon request. Although Canadian Bar Association mem-

# The online scholar

## Legal journals cope with the arrival of the digital age.

Canada's prestigious law journals have been around for decades and have published through wars, depressions and other upheavals. But they've never seen anything like the Internet.

Now, with their traditional printing-and-mailing model under heavy stress, law journals face flourishing competition from online content that can be vetted, edited, peer-reviewed and posted much faster than print. Online writers, editors and bloggers are not constrained by word count or publishing costs, and its audience can read an article the moment it's ready.

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bers receive the *Bar Review* as a membership benefit, the general public has to pay if they want to access current and past CBR articles.

"One pressure familiar to all publishers of online material is the pressure to remove all barriers to access," says Bilson. "But then the problem is, how do you finance the publication? Putting everything online was an expensive undertaking, and that is part of the reason why the CBA has resisted opening access further. We have had discussions [about access], but so far, that case has failed to catch and the CBR's status as member-protected content remains."

Yang agrees with the need for access, but sees no great advantages to going fully digital. "Legal scholarship will never be able to print an article every day. It will never happen. There would be no way for us to manage and edit the content needed to put something up that frequently."...

By **Ava Chisling**. Read the entire article online at [www.cba.org/practicelink/onlineinlaw](http://www.cba.org/practicelink/onlineinlaw).