

Accreditation of Online Dispute Resolution Practitioners

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The incorporation of ODR into the practice of dispute resolution creates the need to address issues of accreditation such as the qualifications of practitioners and standards of practice for resolving disputes online. This paper outlines models for accrediting practitioners and how this impacts on the emerging field of ODR, including case studies of accreditation systems introduced by ODR providers. This paper is based on research conducted for the Department of Justice Victoria (Conley Tyler, Bornstein and Bretherton, 2004).³

Accreditation and Practitioner Standards

There has been a long history of debate within the conflict resolution community regarding standards and accreditation of practitioners. ADR practitioners can be subject to two types of standards to ensure the quality and effectiveness of their services: requirements for recognition or approval as a precondition to practice (“accreditation”) and standards for conduct (such as codes of practice).

Accreditation involves a practitioner meeting certain levels of education, training or performance in order for that person to practise ADR. Accreditation can be imposed by ADR service providers or by government and can follow a central or localised approach. For example in Australia, as in many jurisdictions, ADR practitioners are subject to a number of standards

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including guidelines, ethics and codes of conduct; however, there is currently no single recognised standard or criteria for accreditation across the ADR field (NADRAC, 2004). This means that there is no limit on who can legitimately practice as an ADR practitioner and ODR is no exception. This experience is typical of the development of ADR accreditation internationally.

Those in favour of accreditation typically argue that:

- accreditation will bring credibility to ADR by ensuring that the practice of ADR is built on a foundation of quality assurance
- accreditation will ensure consumer protection and provide consistent quality
- practitioners' skill levels will become more consistent
- the practice of using qualifications such as law or psychology as a measure of ADR practitioner competency would reduce.

Those who oppose the imposition of accreditation typically argue that:

- a gifted ADR practitioner is not created just through formal education
- many potentially excellent practitioners who have developed skills in ways other than standard training may be excluded from the field
- accreditation systems will favour those with the time and money to acquire mandatory education
- a single overarching system of accreditation will not cater appropriately for complexities such as the particular goals of different ADR programs and the knowledge, skills and abilities that practitioners should have
- accreditation may inhibit the development of innovative programs (Simon, 2003)

- accreditation may be unrealistic given the growth in cross-border practice, especially in areas such as ODR.

Models for Accreditation

One way to broaden what can be at times a sterile debate is through looking in more detail at what accreditation might actually involve. There are at least four distinct models for accreditation of ADR practitioners as identified by the American Bar Association (2002) depending on the mix of requirements set.

Accreditation systems can be characterised according to the "hurdles" they set for initial selection of practitioners and the "maintenance" procedures they have in place for ensuring quality practice (American Bar Association, 2002):

1. Initial Selection "Hurdles"

- References from previous employers or lists of clients from prior cases
- Interviews to assess practitioner understanding of ADR and their capabilities
- Practitioners meeting certain levels of education or holding particular degrees in fields, considered by some to be relevant to ADR, such as conflict resolution, law, psychology or human resources management
- Practitioners meeting certain levels of training, for example, completing a 40 hour approved mediator training program
- Threshold amount of experience such as having handled a particular number of cases
- Performance tests such as mock mediations

2. Maintaining Quality Practice "Maintenance"

- Mentoring, supervision in initial co-mediations or apprenticeship

- Ongoing education or training, for example periodic training sessions aimed at enhancing skills or keeping up with developments in the field
- User evaluations, for example by using questionnaires/evaluations completed by parties to identify quality concerns or removing mediators who are never selected by parties
- Complaint procedures for parties to express concerns (some programs follow this up with targeted mentoring or additional training for particular practitioners).

Four different systems of accreditation (varying according to different combinations of "hurdles" and "maintenance") have merits and drawbacks as summarised below:

A. Low Hurdles/Low Maintenance	B. High Hurdles/Low Maintenance
<ul style="list-style-type: none"> • High practitioner diversity • No significant bureaucracy • Minimal support structures for practitioners • Variation of practitioner skill levels • Some assurance of quality practice and adherence to ethics • Reduced emphasis on "reflective practice" and professional development • Less public credibility • New practitioners easily accepted within the ADR field 	<ul style="list-style-type: none"> • Reduction of practitioner diversity • Moderate level of bureaucracy • Moderate support structures for practitioners • Good mediator skill levels • Reduced emphasis on "reflective practice" and development • High public credibility • Unlikely to be universally acceptable within the ADR field • Harder for new practitioners to gain entry into the ADR field
C. High Hurdles/High Maintenance	D. Low Hurdles/High Maintenance
<ul style="list-style-type: none"> • Reduction of practitioner diversity • High level of bureaucracy • Significant support structures for practitioners • High mediator skill levels • Promotion of particular ADR styles • Reduced emphasis on responding to the individual client's needs due to the promotion of particular ADR styles or requirements to follow rigid 	<ul style="list-style-type: none"> • High practitioner diversity • Moderate level of bureaucracy • Moderate support structures for practitioners • High mediator skill levels • Long-term commitment to practitioners and from practitioners • Substantial public credibility if: <ol style="list-style-type: none"> a. implemented with support structures addressing the developmental needs of

<ul style="list-style-type: none"> • High public credibility • Unlikely to be universally acceptable within the ADR field 	<ul style="list-style-type: none"> b. consumer education is provided explaining the inadequacies of "hurdles" as appropriate indicators of practitioner quality • Easily accepted within the ADR field
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This framework provides a useful way of distinguishing and analysing current accreditation systems. Arguably each of these models could be appropriate in different situations depending upon factors such as the client group, the level of acceptance of ADR and the maturity of ADR practice. ABA (2002) found that the majority of accreditation systems within the US currently have fairly low "hurdles" and "maintenance".

ODR Accreditation Practice

In line with the development of accreditation standards for ADR, a number of standards for ODR have been developed (Clark et al, 2003; Wiener, 2001a and 2001b; Wentworth, 2002).

Most ODR sites have formal policies and procedures, including dispute management protocols, standards of conduct, codes of practice and explicit policies on privacy. These have been created for the same reasons as for traditional ADR: to provide credibility for ODR practitioners and quality assurance for users (Simon, 2003).

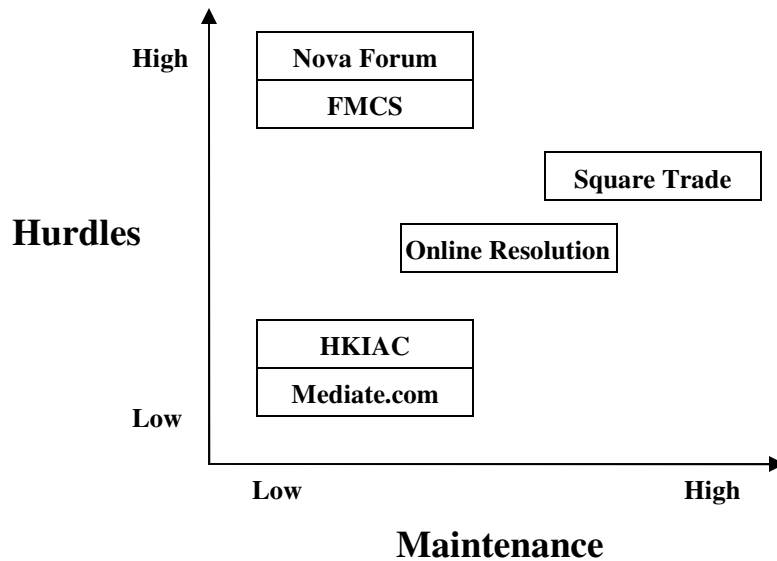
Typically, ODR standards of practice have evolved as an adaptation of standards of practice for traditional ADR. However new accreditation practices for ODR have also evolved. Additions to traditional ADR accreditation requirements include technical competency and provision of ODR training.

Six ODR services were selected from those identified in Conley Tyler (2004) for more detailed analysis of their accreditation systems (see **Appendix 1** for a detailed description):

- Federal Mediation and Conciliation Service www.fmcs.gov, a U.S. government service that brings mobile technology to the workplace to help conciliate labour/management disputes
- Hong Kong International Arbitration Centre www.hkiac.org, a China-based company offering arbitration for domain name disputes.
- Mediate.com www.mediate.com, a portal that provides an online referral process to ODR practitioners, mainly in the U.S.
- Nova Forum (The Electronic Courthouse) www.novaforum.com, a Canadian membership-based provider of online mediation and arbitration for consumer and business disputes
- Online Resolution www.onlineresolution.com, a U.S. based provider of online mediation and arbitration services
- Square Trade www.squaretrade.com, a U.S. service that offers negotiation and mediation of mainly online disputes, including eBay, Google, Yahoo! and other online disputes

The hurdle and maintenance requirements placed upon practitioners by each of these ODR providers is summarised below:

Examples of ODR Accreditation



There is a wide variety among the accreditation systems to date, ranging from relatively low hurdle and maintenance requirements to relatively high requirements on both scales. What is common among the systems is the stress placed on the importance of practitioners acquiring practical skills, especially through a structured process (Brannigan, 2003; Rivkin, 2001; Rule, 2002). For example Rule (2002) suggests:

- provision of opportunity for practitioners to take part in ODR simulations before they tackle actual cases online
- the mentoring of novice ODR practitioners by more experienced ODR practitioners is encouraged
- encouragement of practitioners to discuss difficult ethical and practical issues related to ODR with other online practitioners

- encouraging practitioners to share the language that they are using (such as opening statements and ground rules) so that practitioners can provide each other with feedback.

Criteria for Accreditation in ODR

Given the variation in current accreditation systems, it is worth considering what the criteria for accreditation of competent ODR practitioners should be. As ODR is adopted as part of formal dispute resolution processes, there are a number of implications for ADR providers. However most of the changes needed will be incremental rather than revolutionary. The most helpful way of viewing ODR is as simply another modality to resolve disputes (Raines, 2004; Rule, 2000).

ODR will require ADR practitioners to make changes to their knowledge and skills that will need to be reflected in the criteria for accreditation in ODR. Current ADR standards regarding practitioner skills, knowledge and ethics should serve as a useful reference for the development of ODR practitioner accreditation. For an example of an adaptation of traditional ADR standards to cater for the ODR context see NADRAC 2002 extracted as **Appendix 2**.

Practitioner Knowledge

To provide ODR services, ADR practitioners must possess a minimum level of knowledge and familiarity with the computer system and ODR software being used. They need to be comfortable with navigating the program interface, whether it is text or video-based (Brannigan 2003; Rivkin, 2001).

For most practitioners, this will require a small investment of time to add to their existing knowledge of computer systems. For some, it may require a more substantial time spent developing initial computer and keyboard skills.

The technological competence of being able to handle the software and platform used are a prerequisite for successfully managing ODR:

"ODR practitioners must learn some very specific skills before they can handle difficult dispute resolution procedures online. If a neutral doesn't know how to manage the platform she is using to work with the parties, or if she can't effectively multitask between multiple caucus spaces and the joint discussion, or if she doesn't get online and respond to the parties enough, it doesn't matter how well she can engage in face-to-face active listening" (Rule, 2002, p. 242).

Technological competency is similar to a requirement for proficiency in the language in which an ADR service is being provided. Given the rapid development of ODR, initial training in ODR should be followed by ongoing training to ensure that skills keep pace with technological innovations.

Practitioner Skills

ODR has grown directly out of the history of offline ADR and many of the skills used can be easily translated to the new technology (Raines, 2004). For this reason, some experience or knowledge of ADR processes can be built into or assumed as a required ODR skill.

"The lessons learnt in ADR over the years about the importance of impartiality, how to effectively move parties towards resolution, about the importance of

listening and transparency, and the challenges of managing power imbalances all are central to effective ODR practice" (Rule, 2002, p. 13).

Some skills are relatively easily translated - for example, practitioners can reframe by cutting and pasting sentences to reflect and give priority to certain issues. However, online practitioners also need to develop new skills. Specific things practitioners need to learn include:

- maintaining communication with parties where communication is delayed and may extend over time
- creating online "rituals" and "ceremonial moments"
- controlling information flow through quick and active intervention - particular important since online communication can encourage greater expression of emotion
- "active reading" between the lines (Brannigan, 2003; Raines, 2004; Rivkin, 2001)

Some knowledge of how online communication differs from verbal communication could be part of the accreditation process. This could be tested through online role-play observation or transcript analysis. Continuing good practice could be maintained through practitioner performance assessments or skills audit and the submission of online sessions for assessment/discussion.

Options for Accreditation of ODR

The continued increase in the number of people utilising the internet coupled with changing expectations regarding provision of services indicates that the trend towards ODR is likely to continue (Conley Tyler, Bretherton and Bastian, 2003). This potentially has significant implications for the ADR profession including internationalization of ADR markets, increased competition and

thus pressure for accreditation (DeSteven and Helie 2002). If ADR providers are to keep up with the trend, they will need to consider their current accreditation practices in light of the ODR context.

There are four broad options for accreditation of ODR practitioners:

- Incorporation of ODR into Current Practitioner Accreditation Systems
- Independent Accreditation of ODR Practitioners
- Accreditation of Specialist ODR Skills
- Accrediting Agencies to provide ODR.

The strengths and weaknesses of each option will be considered below.

Incorporation of ODR into Current Practitioner Accreditation Systems

This option involves incorporating ODR skills into current ADR practitioner accreditation systems. In most cases ADR agencies would find it easy to add ODR into initial practitioner training and implementing this option would be relatively low cost. This option would mean that all practitioners accredited by these agencies would have skills in ODR.

<i>Strengths</i>	<i>Weaknesses</i>
<ul style="list-style-type: none"> • Minimal disruption to current accreditation practices • Enabling agencies to gradually implement the practice of ODR • Enabling continued development of innovations in practice and programs 	<ul style="list-style-type: none"> • May be an inappropriate allocation of agency resources to train all staff in ODR • There may be variations in practitioner skill levels and interest in ODR • Wasted time and resources due to lack of recognition of ODR skills between ADR agencies, requiring multiple accreditation

Independent Accreditation of ODR Practitioners

This option involves establishing a separate accreditation system for ODR practitioners. This could be administered by a central or independent body or by one ADR agency on behalf of other ADR agencies. Practitioners would be accredited as ODR practitioners and their skills would be recognised across agencies.

<i>Strengths</i>	<i>Weaknesses</i>
<ul style="list-style-type: none">• Providing the public with consistent quality of ODR practitioners• Contributing to the credibility of the practice of ADR• Mutual recognition of the hurdle requirements and maintenance procedures between agencies saving time and resources• Practitioner skill levels will become more consistent across agencies, increasing the likelihood of practitioner transferability	<ul style="list-style-type: none">• Difficulty in creating an independent central accrediting body• Concerns regarding the vested interests of potential accrediting bodies• Complexity involved in establishing a single accreditation system that caters to varying ADR provider contexts• Increased costs associated with accreditation systems• Risk that the ADR tool involved (online technologies) will drive ADR services• Difficulty in keeping pace with rapid developments in ODR

Accreditation of Specialist ODR Skills

This option involves offering additional accreditation of ODR skills to currently accredited practitioners. This would mean that not all ADR practitioners would need to develop online skills but that accreditation in ODR would be available as a “specialty” for those who are interested.

The specialist accreditation could be provided either by the agency that provided initial ADR accreditation or by a central or independent body that administers accreditation of ODR.

<i>Strengths</i>	<i>Weaknesses</i>
<ul style="list-style-type: none">• Minimal disruption to current ADR accreditation systems• Ensuring that the ADR tool (online technologies) does not drive services• ODR practitioner skill levels will be consistent across agencies• Providing the public with consistent quality of ODR practitioners and contributing to the credibility of ODR• Mutual recognition of ODR skills between agencies saving time and resources• Enabling agencies to gradually implement the practice of ODR	<ul style="list-style-type: none">• Costs and accessibility of additional specialist accreditation programs• Difficulties in keeping pace with advances in technology and practice related to ODR• Inhibition of the development of innovative ODR practices and programs• Concerns regarding vested interests of potential accrediting agencies/bodies• Commercial enterprises offering accreditation services may come across tensions between their commercial and service goals

Accrediting Agencies in ODR

Finally, it is possible to accredit agencies, rather than individual practitioners, in ODR. These approved agencies could then accredit ODR practitioners. Agencies could be accredited by an independent accreditation body to offer ODR if that agency has developed and implemented standards for its practitioners.

<i>Strengths</i>	<i>Weaknesses</i>
<ul style="list-style-type: none">• Providing credibility for the ODR provider• Providing the public with consistent quality of ODR providers• Increased consumer protection• Increased practitioner transferability	<ul style="list-style-type: none">• The establishment of an independent entity to develop and ensure compliance with an ODR accreditation system• Inhibition of the development of innovative ODR practices and programs• Concerns regarding vested interests of potential accrediting agencies/bodies

Preferred Option

The decision between these four options for each ADR agency will depend on the context of the dispute resolution provider involved. For example, issues such as whether or not there is a national or local accreditation system already in place, the maturity of the ADR industry and specific characteristics of the agency or ADR service involved will all influence the decision on how to deal with accreditation of ODR practitioners. However some guidance can be offered.

First, where an agency offers both ADR and ODR it makes little sense to have separate accreditation processes. Given the great overlap between the two sets of skills, knowledge and attitudes required, there are two better options:

1. If it is likely that many or most practitioners will be called upon to use online technology in their role, it makes sense to incorporate ODR into the overall accreditation system for all practitioners. Even if individuals are not called upon to use these skills immediately, they will gain understanding of their colleagues' work and the potential of online communication.
2. If ODR is likely to be conducted only by a smaller group, at least in the first instance, then ODR should be seen as an additional specialisation within ADR. This would mean that accredited ADR practitioners would have the opportunity to gain an extra "qualification" or speciality in ODR.

In the longer term, if consumer protection or confidence require it, there is an argument for establishing a system of accrediting agencies in ODR rather than individual practitioners. This will depend on wider debates about accreditation in each jurisdiction.

Conclusion

Trust has been identified as one of the keys to promoting ODR services. Just as ADR went through a period of building trust, including through systems of accreditation, ODR will be faced with the imperative to create perceptions of reliability through practitioner credentialing.

New ODR service providers and existing ADR agencies incorporating ODR into their services will face a choice of how to ensure and to communicate the quality of their services. An understanding of the different models for accreditation based on the combination of hurdle and maintenance criteria chosen will help agencies with this choice.

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Appendix 1: Case Studies

CASE STUDY 1: Federal Mediation and Conciliation Service (FMCS)

The U.S. Federal Mediation and Conciliation Service (FMCS) was established in 1947 as an independent agency dedicated to providing an alternative to adversarial processes in labour-management disputes. The FMCS has developed a high hurdle/low maintenance system (launched in 2003) for selecting and maintaining the quality practice of its ADR practitioners.

The table below outlines the high levels of education, training and experience required:

HURDLES		MAINTENANCE	
<i>SELECTION CRITERIA</i>	<i>PERFORMANCE TESTS</i>	<i>DEVELOPMENT</i>	<i>ASSESSMENT OF PRACTICE</i>
<ul style="list-style-type: none"> • Minimum of 120 hours of FMCS approved ADR education or training • ADR experience (minimum of 20 employment cases, or 50 other cases 10 of which are employment cases) • Minimum of five years experience in the area of dispute (workplace conflict resolution) OR 40 hours training in the area of dispute (employment or DR e.g. employment law or labour management relations) 	<ul style="list-style-type: none"> • Proof of applicants receiving satisfactory individualised feedback in ADR procedures, practice or role-plays 	<ul style="list-style-type: none"> • One hour of ethics or professional conduct training per year • Nine hours of continuing education or training in conflict resolution per year 	<ul style="list-style-type: none"> • Demonstration that the practitioner is utilising ADR processes (in a minimum of three cases in the previous two years) • Consumer complaints process (complaints will be investigated and practitioners may be removed from the list at Director's discretion)

CASE STUDY 2: Mediate.com.

Mediate.com is one of the most visited conflict resolution sites in the world with over 2,000 daily users. Mediate.com offers an online referral process to the 5,500 ADR practitioners in its database and makes 12,000 referrals each month.

Mediate.com has a three-tiered system of hurdles for evaluating practitioner qualifications and a low-level maintenance requirement as follows:

HURDLES			MAINTENANCE
<i>SELECTION CRITERIA</i>			<i>DEVELOPMENT</i>
<i>Tier 1 Associate Mediator</i>	<i>Tier 2 Practitioner Mediator</i>	<i>Tier 3 Senior Mediator</i>	<i>Tier 1, Tier 2 and Tier 3</i>
<ul style="list-style-type: none"> • Subscribes to Mediate.com’s standards of practice • Minimum of 40 hours of mediation training • ADR experience (minimum of 10 cases for 40 hours) 	<ul style="list-style-type: none"> • Subscribes to Mediate.com’s standards of practice • Minimum of 100 hours of mediation training • ADR experience (minimum of 50 cases for 200 hours) 	<ul style="list-style-type: none"> • Subscribes to Mediate.com’s standards of practice • Minimum of 150 hours of mediation training • ADR experience (minimum of 100 cases for 400 hours) 	<ul style="list-style-type: none"> • Minimum of 12 hours mediation training per year

CASE STUDY 3: Hong Kong International Arbitration Centre (HKIAC)

The Hong Kong International Arbitration Centre (HKIAC) is a nonprofit company established in 1985 to assist disputing parties to access arbitration and mediation services. HKIAC administers the mediation service for Hong Kong Government contracts. The Hong Kong Mediation Council (HKMC) is the division of HKIAC dealing with mediation. Through the HKMC practitioners can access mediation training and apply for accreditation as a HKIAC Accredited Family or General Mediator. Accredited practitioners are included on the HKIAC Panel of Accredited Mediators.

The HKIAC Mediator Accreditation system has fairly **low hurdle** and **low maintenance** requirements for General Mediators while hurdles for Family Mediators are more extensive:

HURDLES		MAINTENANCE	
<i>SELECTION CRITERIA</i>	<i>PERFORMANCE TESTS</i>	<i>DEVELOPMENT</i>	<i>ASSESSMENT OF PRACTICE</i>
GENERAL MEDIATORS			
Minimum of 40 hours of HKIAC approved mediation training	Role-play/actual mediation: <ul style="list-style-type: none"> • minimum of 2 cases • submission of a self-evaluation sheet • submission of evaluation sheets from two clients • submission of comments from the HKIAC supervisor At the Committee's discretion: <ul style="list-style-type: none"> • personal interview assessment • additional mediation role-plays 	Minimum of 20 hours of professional development activities every 4 years, such as: <ul style="list-style-type: none"> • developing or delivering ADR training • attendance at HKIAC workshops and conferences • participating in ADR, legal awareness and problem-solving training • publishing relevant articles 	Satisfactory completion of a minimum of 2 actual/role-play mediations within a 4-year period
FAMILY MEDIATORS			
<ul style="list-style-type: none"> • Minimum of 40 hours of HKIAC approved family mediation training • HKIAC approved undergraduate or graduate degree in social work, law or psychology • Minimum of 3 years work experience in family law or family welfare or mediation 	Participation in 2 actual family mediations: <ul style="list-style-type: none"> • each case must run for a minimum of 5 hours • each case must be sufficiently complex • submission of a self-evaluation sheet • submission of evaluation sheets from two clients • comments from the HKIAC supervisor Satisfactory completion of a HKIAC approved advanced family mediation course At the Committee's discretion: <ul style="list-style-type: none"> • personal interview • additional mediation role-plays 	Minimum of 20 hours of professional development activities every 4 years such as: <ul style="list-style-type: none"> • developing/ delivering ADR training • attendance at HKIAC workshops and conferences • participating in ADR, legal awareness and problem-solving training • publishing relevant articles 	Satisfactory completion of a minimum of 2 actual/ role-play mediations within a 4-year period

CASE STUDY 4: Square Trade

Square Trade is an ODR provider that has handled more than 1.5 million disputes to date, initially focusing on eBay and other online marketplaces but now extending to traditional home purchases. It has established a network of over 250 professional ADR practitioners worldwide who meet the following hurdle and maintenance requirements:

HURDLES		MAINTENANCE		
<i>SELECTION CRITERIA</i>	<i>PERFORMANCE TESTS</i>	<i>INITIAL TRAINING</i>	<i>DEVELOPMENT</i>	<i>ASSESSMENT OF PRACTICE</i>
<ul style="list-style-type: none"> • Traditional ADR training • Case experience as an ADR practitioner • Area of dispute expertise: <ul style="list-style-type: none"> –expertise in e-commerce marketplaces (eg intellectual property, real estate) OR –international ADR experience OR –multilingual skills or cross-cultural expertise • Some technological experience 	<ul style="list-style-type: none"> • Successful completion of initial three-phase training program • Contracting process through which applicants provide professional references • Successful completion of an initial evaluation period as an Active SquareTrade mediator 	<ul style="list-style-type: none"> • A three-phase training program: <ul style="list-style-type: none"> –training on marketplaces relevant to Square Trade cases (completed online at participants’ own pace) –training on the Square Trade process of conducting dispute resolution (completed online) –supervised participation with live cases (usually 5 cases over 1-2 weeks) 	<ul style="list-style-type: none"> • Ongoing completion of additional online training modules • Free e-mail and telephone support for Square Trade active practitioners 	<ul style="list-style-type: none"> • Random monitoring of cases • Provision of ongoing feedback to practitioners • Evaluation of practitioners against criteria such as: <ul style="list-style-type: none"> –high-quality process practices –online skills –timeliness • Adherence to Ethical Standards and Square Trade Standards of Practice (including Technical Competence to conduct the ADR process effectively) • Ongoing successful ADR practice for SquareTrade

CASE STUDY 5: Online Resolution

Online Resolution was established in 2000 offering mediation, arbitration, expert evaluation and automated negotiation for any form of dispute.

Practitioners wanting to serve as an evaluator, arbitrator and/or mediator must complete an online application form listing the following hurdle requirements and maintenance procedures:

HURDLES		MAINTENANCE	
SELECTION CRITERIA		DEVELOPMENT	ASSESSMENT OF PRACTICE
Experienced Mediator	Expert Mediator	Both	Both
<ul style="list-style-type: none"> • A minimum of 30 hours of mediation training, in addition to other professional education • A minimum of 1 year of experience as a mediator • Completion of 10 to 30 face-to-face mediations • Agreement to abide by Model Standards of Practice for Mediators 	<ul style="list-style-type: none"> • A minimum of 100 hours of mediation training in addition to other professional education • A minimum of 2 years experience as a mediator • Completion of over 30 face-to-face mediations • Agreement to abide by the Model Standards of Practice for Mediators 	<ul style="list-style-type: none"> • Agreement to take part in ongoing Online Dispute Resolution/ Online Mediator training such as: <ul style="list-style-type: none"> – a 60 hour online program including 3 case simulations – a 40 hour face-to-face program that introduces ODR to experienced traditional ADR practitioners 	<ul style="list-style-type: none"> • Agreement to respond promptly to a client’s expressed dissatisfaction with mediator impartiality • Agreement to complete the Online Mediation Mediator Report following each mediation

CASE STUDY 6: NovaForum Electronic Courthouse

The NovaForum Electronic Courthouse is a Canadian web-based ADR service that has provided mediation and arbitration for commercial disputes since 2000. The Electronic Courthouse complies with standards for Mandatory Mediation Programs mandated by state and provincial Justice Departments and Attorneys-General. High-level hurdle requirements must be met by practitioners seeking inclusion on the roster of ADR professionals:

HURDLES		MAINTENANCE
<i>SELECTION CRITERIA</i>	<i>PERFORMANCE TESTS</i>	<i>ASSESSMENT OF PRACTICE</i>
<ul style="list-style-type: none"> • Law degree from a prestigious law faculty • Specialized training in ADR • A minimum of 10 years experience in the practice of law • A minimum of 2 years applied experience in ADR • Specialized expertise in the industries, area of law, and subject matters that accord with Electronic Courthouse's customers' disputes 	<ul style="list-style-type: none"> • Practitioners are screened in accordance with 10 pre-determined criteria to form a short list of expert resolution professionals: <ul style="list-style-type: none"> – Dispute Resolution Methodology e.g. Mediation alone, Arbitration alone – Fluency in other languages – Jurisdictional expertise – Industry expertise e.g. construction, technology – Areas of law expertise e.g. employment, intellectual property – Expertise with types of parties e.g. employees, multinationals – Amount in Dispute e.g. disputes < \$50,000 US or disputes >\$250,000 US – Complexity e.g. straightforward, very complex – Experience with organization e.g. small or large enterprises – Conflict of Interest i.e. written certification assuring no conflict of interest 	<ul style="list-style-type: none"> • Customer feedback is provided by all customers at the end of each resolution session

Appendix 2: Sample Standards of Practice

The following are extracted from NADRAC 2002:

Skills, knowledge and ethics that may serve as a useful reference for the development of ODR practitioner accreditation, assessment and/or selection criteria	
1. Knowledge Areas for Online Practitioners	Example
Online Cultures	Cultural change due to the development of particular online protocols and norms
Online Technology	Email including the sending of attachments
Online Communication	Online communication styles including the use of abbreviations and the symbolic representation of emotions
Online Negotiation Processes	Requiring a response to an e-mail within three days before the practitioner is required to contact the non-responsive party via telephone or fax
Online Context	The legal environment and globalization
Online Procedures	Automated processes
Self	The ADR practitioner's awareness of and reflection on their own attitude to technology and change
Online Decision-making	The role of information technology in evaluating facts and information
ODR	Knowledge of emerging theories and practices in online dispute resolution such as automated processes

2. Skills for Online Practitioners	Example
Assessing a Dispute for ODR	Identifying the forms of technology that are suitable for particular parties and/or disputes such as voice recognition software
Online Gathering and Use of Information	Processing information using information technology and gathering information via the Internet
Defining the Dispute Online	How different forms of online dispute resolution affect the definition of disputes (such as numerical values associated with automated processes)
Online Communication	Online clarity and avoidance of ambiguity
Managing the Online Process	Organising technological facilities such as videoconferencing
Managing Online Interaction between	Understanding and promoting the

Parties	advantages of ODR for non-confrontational interactions such as encouraging parties to vent out loud to themselves and then take time to calm down and compose a constructive response
Online Negotiation	Facilitating negotiations by the use of information technology
Being Impartial Online	Ensuring fairness by considering issues such as the cost of online communication which may place time pressures on particular parties
Making a Decision Online	Ensuring the clear and unambiguous online expression of the decision and its implications
Concluding the ODR Process	Adopting online closing rituals and ensuring authentication of online agreements

3. Ethics for Online Practitioners	Example
Promoting ODR Services Accurately	Making parties aware of hardware and software compatibility and not overstating the benefits of the technology
Ensuring Effective Online Participation by Parties	Ensuring that those with lower levels of computer literacy are supported and possibly provided with information in additional forms
Eliciting Information Online	Verification and authentication of information provided online
Managing Continuation or Termination of the ODR Process	Ensuring online negotiations do not continue indefinitely and managing technical failures
Exhibiting Lack of Bias Online	Considering how parties' perceptions may be affected by the geographical location of the practitioner
Online Maintenance of Impartiality	Taking account of technical disadvantages without overcompensating
Maintaining Confidentiality Online	Developing protocols securely storing and deleting computer records
Ensuring Appropriate Outcomes Online	Considering the international legal context