Mediation 20/20

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5th Key-Technology: Take Advantage of ODR's Full Potential

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Editorial Note:

Mediate.com has published a series of peer reviewed articles and videos under the collective title **Seven Keys to Unlock Mediation's Golden Age (https://www.mediate.com/mediation2020/pg308.cfm)**. The objective of the *Seven Keys* is to encourage discussion among all stakeholders on navigating mediation's best future. Here is the **Table of Contents (https://www.mediate.com/mediation2020/pg308.cfm)**.

The *Seven Keys* are: Leadership, Data, Education, Profession, Technology, Government and Usage, each with supportive articles and videos, contributed by some 40 leading authors around the world.

The Seven Keys articles recognize mediation's extraordinary versatility: a) resolving disputes, b) deal making, c) managing interpersonal disputes in families and communities, e) designing systems for schools and the workplace, f) peace-making between groups, g) and national public policy decision-making. Each key is a jigsaw piece that forms a vibrant, exciting vision of how the field can dramatically improve and prosper.

Mediate.com strongly supports convening the field's stakeholders to further grow mediation. This is the goal of our upcoming online conference: Mediation 20/20: Navigating Mediation's Best (http://www.mediate.com/mediation2020) Future on September 30-October 2, 2020. #7KeysMediate

5th Key-Technology: Take Advantage of ODR's Full Potential

Online Dispute Resolution ("ODR") is now universal, especially since the Coronavirus pandemic began. What was rejected as a mere theoretical concept by many experienced mediators a few weeks ago has now been completely integrated into their own practices. But what we mean by ODR is somewhat fluid. Due to its origins in e-commerce, ODR used to be considered as a total system, hijacking face-to-face mediation and moving everything online. In fact, ODR had crept into mediation practice even before then. Now it is poised to reach its full potential.

ODR Was Already Happening Slowly and Subconsciously

rooms and pre-registrations. KUDOWAY, another online platform, also allows for multilingual videoconferencing by providing different language channels to allow simultaneous interpretation. Using such platforms significantly decreases the costs of travel and allows for effective preparation, and to track progress differently.

Greater Use of Video Conferencing

As the security of online videoconferencing improves across all platforms, we need to think about how to use these platforms better, and different ways in which ODR can ease interaction with participants in preparatory or "pre-caucus" meetings. Seeing people online beforehand, in the comfort of their own office or home surroundings, facilitates greeting them in person at a later stage. Online conferencing allows everyone to gain a first impression of the other participants involved, and to break the ice.

For particularly tense situations, ODR can also defuse the potential challenges of a first face-to-face meeting. Learning together how to use an ODR system allows the parties to enter into the process differently. It can be a transformative process in itself, triggering "in-group" pro-social behaviour or emotions, as people often offer to help one-another (even if they themselves are using the technology for the first-time). Dealing with the novelty of videoconferencing in mediations can help put people (and their counsel) collectively at ease, sharing one-another's vulnerabilities. These shared learning experiences can generate productive social bonds.

ODR is also useful in other ways: it changes the notion of seating plans, ensures you have the participants' attention, and can also be used creatively to do joint exercises or ask polls that stimulate collective thinking. It can also help when having to manage multiple participants (up to 100-500 participants with basic versions of ZOOM) and put them into breakout groups for discussion. Some of these systems also include Artificial Intelligence that can help collect or analyse data to help generate zones of possible agreement (ZOPAs).

While no ODR system claims to be better in all respects than physical meetings, technical or connectivity issues can still occur, and some mediators feel they are deprived of the benefits of working face-to-face, ODR can sometimes better address the parties' procedural needs or alternatives. It can save significant time and money, especially for long-distance disputes, small organizations and private individuals. While in-person meetings may be better, ODR is clearly better than no mediation at all.

The Courts were already beginning to think along these lines before COVID-19. Statistics from a recent ODR program in Franklin County, Ohio (USA) show that 91% of participants in that program would recommend ODR. If given the choice between ODR or going to court, 94% would prefer ODR.[6] This willingness to embrace ODR is being seen in courts and in arbitral tribunals across all continents.[7]

Training

Training on the use of ODR and different commercially available ICT systems are available. There are videos and useful postings on how to prepare for ODR sessions.[8] It is in the best interests of mediators to learn more about the impact of ODR and to assess how well prepared they are to use it skilfully and to its full extent. Formal ODR trainings, linked to mediation certification programs, are beginning to emerge.[9] The International Mediation Institute (IMI) is preparing to provide certifications for accredited online mediators.[10] The Access to Justice Commission in the State of Virginia (USA) is also designing ODR training as part of its Continuing Mediation Education (CME) program.

The Only Constant is the Accelerating Pace of Change

The marketplace is fluid and constantly developing, along with the expectations of disputants, tribunals and other stakeholders. Parties will expect mediators to be familiar with many ODR applications already on the market, and those yet to arrive. Mediators will increasingly need to incorporate them into their daily practices.

Mediation is an exercise in communication. Information and Communication Technology (ICT) has been incorporated into mediators' practices to ease communications: phone, e-mails, and more recently, videoconferencing. Some mediators already shared files or folders electronically by e-mail or used a shared online folder. Few mediators today arrive at a mediation to meet the parties or their advisors for the first time. They have usually communicated with them beforehand, at least by phone or e-mail, and to have received electronic documents that can be annotated and read or searched digitally. While there may be generational or cultural preferences that influence the uptake or extent to which ICT may be employed, using everyday electronic applications was not usually thought about as "ODR", or as a means for conducting a mediation, but as ancillary communication tools. This is all changing.

Interview with Jeremy Lack, Ana Gonçalves, Daniel Rainey, and Francois Bogacz

New ODR Platforms Exist, But Existing Consumer Applications are a First Step

While some organisations are developing bespoke ODR platforms to manage and conduct mediations from start to finish[4], many are focusing on specific types of disputes or addressing certain cultural preferences or mediation styles, which may not appeal to all mediators, parties or their advisors. It is not necessary, however, to adopt any of these platforms to fully practice ODR.

General video conferencing systems already provide huge improvements that enable all mediators to take advantage of ODR. The easiest is to start using consumer applications that are already widely available to the general public and incorporate them fully into mediation practices. There are many to choose from[5]. Most allow information and data sharing behind confidentiality firewalls, where participants can see one-another in real time and chat offline. Simple websites such as www.doodle.com allow disputants and mediators to schedule conference and other calls more effectively across time zones and involve more participants. Most make it possible to take notes and facilitate discussions online, using mind maps to replace flipcharts. ZOOM is particularly popular, as it allows mediators to caucus online with the parties, as well as take anonymous polls. While this platform has recently raised many questions about its confidentiality, its security has greatly improved, and it is possible to add passwords and limit access through waiting

The future of mediation significantly depends on mediators' capacity to keep up with, and leverage, relevant ICT technologies. Now and after the Coronavirus pandemic will be over.

 ENDNOTES

 1,2, and 3: Author bios are below.

[4] For a comprehensive list generated by the National Center for Technology and Dispute Resolution, click here (http://holisticsolutionsinc.org/).

[5] **Chats:** WhatsApp (https://www.whatsapp.com/), Slack (https://slack.com/), Google Hangouts (https://hangouts.google.com/);

Mindmaps: Mindmeister (https://www.mindmeister.com/), XMind (https://www.xmind.net/); Lucidchart (https://www.lucidchart.com/pages/);

Scheduling: Doodle (https://doodle.com/); Calendly;

Web and Video Conferencing: Zoom (https://www.zoom.us/?zcid=1173&gclid=EAIaIQobChMI9L34stn03AIVgUCGCh3eGAUrEAAYASAAEgLg5PD_BwE), Cisco Webex (https://www.webex.com/), GoToMeeting (https://www.gotomeeting.com/en-gb), Google Meet (https://meet.google.com/), Signal (https://signal.org/) (which is extra secure), Skype (https://www.skype.com), Kudoway (https://kudoway.com/);

Document Sharing: Dropbox (https://www.dropbox.com), Google Docs (https://docs.google.com), OwnCloud (https://owncloud.com/)

[6] For more, click here (https://www.mediate.com/articles/FranklinCountyStats.cfm).

[7] For an example, click here (https://economictimes.indiatimes.com/small-biz/startups/features/online-dispute-resolution-is-beginning-to-find-takers-in-india/articleshow/73206371.cms).

[8] For a particularly useful article on preparing for an ODR process, see Manon Schonewille's checklist here (http://toolkitcompany.com/resource-center/page/75/moving-your-mediation-business-online).

[9] Such training or certification entities as Instituto de Certificação de Mediadores Lusófonos (ICFML) in Brazil, Holistic Solutions, Inc. in the USA and Toolkit Company in the Netherlands are offering new ODR programs for practitioners. For more information, click here (https://odrfoundationstraining.com/program/) or here (http://toolkitcompany.com/training/training/16/become-a-qualified-mediator-and-effective-negotiator-online). Other organizations, such as ADR ODR (https://www.adrodrinternational.com/) and the Swiss Chamber of Commercial Mediation (https://skwm.ch/fr/events/) are beginning to propose new online training programs for ODR as well.

[10] The interest in ODR training increased so significantly that IMI issued a special statement on "*Clarifications over online training during the pandemic*" see here (https://www.imimediation.org/2020/04/20/clarifications-over-online-training-during-the-pandemic/).

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