



ADR Institute of Canada

Institut d'arbitrage et de
médiation du Canada ^{TM/MC}

*LEADING DISPUTE RESOLUTION IN CANADA
À L'AVANT-PLAN DE LA RÉOLUTION DES DIFFÉRENDS AU CANADA*

Gaining Proficiency & Understanding ODR Using Zoom

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Alternative Titles?

- ODR and the Pendulum of Zoom
- ODR: Zoom Today, Gone Tomorrow?
- ODR: To Zoom and Beyond

The online equivalents of mediation, med-arb and arbitration are very similar to offline dispute resolution techniques

The online equivalents of mediation, med-arb and arbitration are very similar to offline dispute resolution techniques.

But Similar ≠ Same

“There is much more to ODR than simply signing up for a Zoom account.

ODR is a different process that requires different techniques and different skills than traditional, in-person ADR processes.”

Marc Bhalla, LL.M. (DR)
Mediator & Arbitrator
ODR Practitioner

ODR

- A new form of dispute resolution using the internet?

or

- ADR using specific communications technology?

or

- Both?

ODR

- ADR Meets Technology.
- Online Dispute Resolution (ODR) is the use of information and communications technology to help parties find resolution to their disputes.
- Another tool for your toolbox.

Google Search Results

- ODR – 45,600,000 hits
- Online Dispute Resolution – 146,000,000 hits
- Zoom – 5,520,000,000

As at April 8, 2020

Alternative Dispute Resolution (ADR) practitioners already use aspects of ODR in their daily practices.

We already use

- E-mail (like sending a postcard from a privacy perspective).
- Instant Messaging.
- Online chat.
- Video Conferencing.

ODR Is Here?

Jeff Kichaven: “The Era Of Video Mediation Is Here — Or Is It?”

<https://www.law360.com/corporate/articles/1259828/the-era-of-video-mediation-is-here-or-is-it->

What to Think About Before Moving Online

- “The future ain’t what it used to be.”

Yogi Berra

Why ODR?

- In today's crisis ODR may mean the only convenient and safe way to access dispute resolution services
- Offers choice to our clients

- Practitioners must have some idea of best practices.
- Not just using Zoom or equivalent but think about why and what you are doing?
- Being competent includes both process and technology.

- “Good enough” may, or may not, be “good enough”?
- Is this a transition stage?

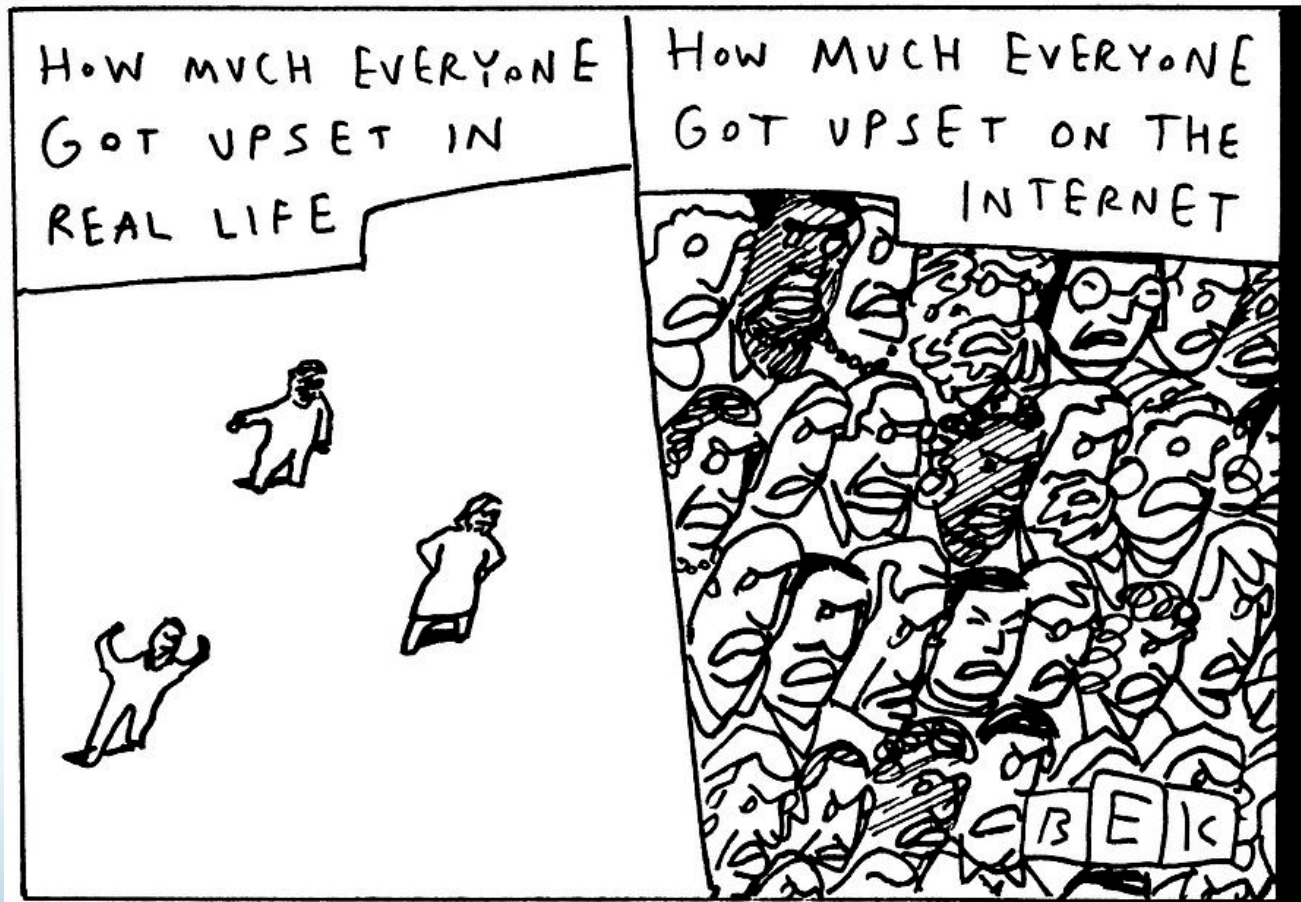
The Prime Directives of ODR

- First, Do No Harm
- It is not All or Nothing
- Check Your Settings

ODR Challenges

- Technology,
- Some people are still uncomfortable with technology,
- Speed and capacity of internet connections,
- People may behave differently online,

Why Do We Need ODR?



Why Zoom?

- Easy to use and reliable.
- Encrypted (Know what that means).
- No need for participants to have a Zoom account.

The Seesaw of Zoom

- One day it is terrific?
- Next day it is awful?
- But it is neither – it depends on how you use it.

The Seesaw of Zoom

- Several Major Law Firms won't use it.
- Insurance Companies won't use it.
- Courts in the Canada, US and UK are using it.

- Simon Boehme, a leading ODR expert in the US has said, when balancing the risks look at it this way:
- Do you still email potentially sensitive information back and forth with clients or opposing counsel?
- Do you send attachments by email?

- Do you occasionally log into public Wi-Fi hotspots without using a VPN?
- If so, and you're worried about security/privacy, then you should take a hard look at those practices before you worry about Zoom.

Example of Ontario Court Order

Endorsement issued April 1, 2020 by Mr. Justice David L. Corbett in Nation Rise v. Minister of the Environment, 2020 CanLII 25863 (ON SCDC).

A virtual hearing scheduled for April 17, 2020 using ZOOM technology organized through Arbitration Place.

- “[2] The hearing will be conducted as a video conference. ZOOM technology will be used. The hearing will be run through Arbitration Place. The parties may expect to hear from Arbitration Place about the arrangements and for information about how the hearing will be conducted

- [3] Neither counsel nor the court will gown for the hearing. Instead, business attire is required for anyone with a speaking role in the hearing. All parties must ensure that they participate in the videoconference from appropriate surroundings and that they (and the Court) will not be interrupted or disturbed during the hearing. ...

- [6] It is currently anticipated that the hearing will follow a webinar format and will accommodate up to 500 members of the public. Particulars will be confirmed to the parties by Arbitration Place and in due course by the court”.

UK Trial

- \$530m Zoom trial was a success, says partner. The first commercial trial to be heard entirely via Zoom was 'robust and reliable'.
- <https://www.lawgazette.co.uk/news/530m-zoom-trial-was-a-success-says-partner/5103747.article>

- But remember that courts are public places.
- ADR is not.

The Seesaw of Zoom - Continued

The Friday, April 3rd, The Citizen Lab Report

<https://citizenlab.ca/2020/04/move-fast-roll-your-own-crypto-a-quick-look-at-the-confidentiality-of-zoom-meetings/>

The Seesaw of Zoom – Continued – Do Not Use It If

- You are (Government) worried about espionage.
- A business concerned about cybercrime and industrial espionage.

- Healthcare providers handling sensitive patient information.
- Activists, lawyers, and journalists working on ***sensitive*** topics (emphasis added)

Zoom's Response

A Message to Our Users

- <https://blog.zoom.us/wordpress/2020/04/01/a-message-to-our-users/>

Update on Zoom's 90-Day Plan to Bolster Key Privacy and Security Initiatives

<https://blog.zoom.us/wordpress/2020/04/08/update-on-zoom-90-day-plan-to-bolster-key-privacy-and-security-initiatives/>

Zoom Product Updates: New Security Toolbar Icon for Hosts, Meeting ID No Longer Displayed

<https://blog.zoom.us/wordpress/2020/04/08/zoom-product-updates-new-security-toolbar-icon-for-hosts-meeting-id-hidden/>

Zoom Can Be Safe

Zoom is Safe for Lawyers (if you use it right)

https://agileattorney.com/zoom_is_safe_for_lawyers/

The same applies to mediators and arbitrators.

The Seesaw of Zoom

Vince Crisler, cybersecurity expert, April 5, 2020, on Medium, “Zooming to Conclusions”

https://medium.com/@vince_17729/zooming-to-conclusions-20560d9f40b9

The Seesaw of Zoom. What to Do?

Rick Weiler's April 6, 2020, Kluwer Mediation Blog Post “Is Zoom Good Enough for Mediation?” sets out the way to handle Zoom confusion

<http://mediationblog.kluwerarbitration.com/2020/04/06/is-zoom-good-enough-for-mediation/>

The next nine slides are based on Rick’s article.

Where does all this that leave mediators and lawyers?

Remember we can mediate by teleconference or some hybrid of one of the other online video services and teleconference.

Zoom is safe enough to use in most commercial and other mediations.

Use a unique and private meeting number for each mediation.

Use password.

Warn participants to keep their meeting link and password secure.

Lock the mediation meeting once all participants have joined using the “lock” function.

Advise participants against accessing the meeting by a public network and

Advise participants to satisfy themselves as to the security of the private network they're using.

Require participants to access the meeting using the latest version of the Zoom client software and not a web browser.

Disputants, lawyers and ADR professionals have a mutual interest in getting cases resolved sooner rather than later.

Mediators have an interest in helping them do just that.

Zoom, to date, has proven to be a reliable and robust tool to help everyone achieve these interests.

Privacy and confidentiality are integral to the mediation process, but proportionality needs to factor in as well.

Not every mediation requires “Manhattan Project” level security.

Alternatives to Zoom

- Jitsi (open source)
- MS Teams
- Legaler
- Whereby

Alternatives to Zoom

- Skype
- Google Hangouts
- Webex
- BlueJeans

Alternatives to Zoom

- Facetime
- WhatsApp
- Signal

Alternatives to Zoom

A side by side comparison of Zoom & Teams by Boston University from the end of March:

- <http://www.bu.edu/tech/services/cccs/conf/online/compare/>

Advantages of Zoom

- Technology assisted ADR
- Can access by cell or landline, laptop, tablet or desktop
- Breakout rooms
- Screen sharing

Live Training

Video Tutorials

Knowledge Base

Getting Your Zoom Account

- ADRIC members have access to Zoom Enterprise: <http://adric.ca/membership/member-benefits/zoom-group-plan/>
- Must have minimum of Zoom Pro.
- Overview of Zoom: <https://support.zoom.us/hc/en-us/articles/201362193-How-Do-I-Join-A-Meeting->

What do you need to use Zoom? (The Basics)

- Laptop or Desktop Computer
- Large screen
- Secure WiFi/wired internet access

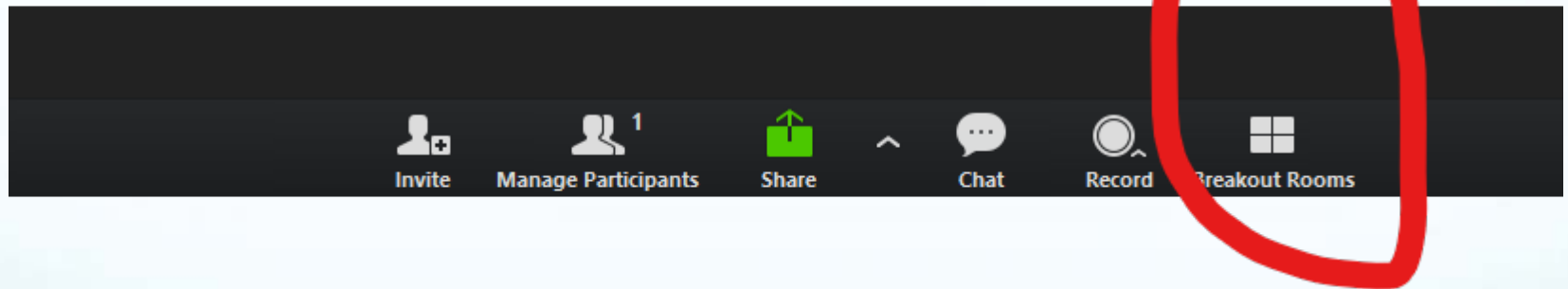
Continued...

- Microphone (External?)
- Camera (HD?)
- Headset (be careful with wired earpieces – noise)

Other Considerations

- Background
- Appearance and Lighting

Zoom Toolbar



Screen Sharing

Easy to share your screen with the mediation participants. This allows everyone who is in the meeting to see whatever is on your computer screen.

Settings

Meeting

Recording

Telephone

Schedule Meeting

In Meeting (Basic)

In Meeting (Advanced)


Email Notification

Other


Waiting Room


Waiting room



Attendees cannot join a meeting until a host admits them individually from the waiting room. If Waiting room is enabled, the option for attendees to join the meeting before the host arrives is automatically disabled. 

Choose which participants to place in the waiting room:

- All participants
- Guest participants only 

Customize the title, logo, and description 

Lock Meeting

- Click Manage Participants
- In the pop-up box, click Lock Meeting
- When the meeting is locked, no one else can join.

Breakout Rooms

In Meeting (Advanced)

Breakout room

Allow host to split meeting participants into separate, smaller rooms

Allow host to assign participants to breakout rooms when scheduling 