Kluwer Mediation Blog

It is urgent for all of us to become professionals of Online Dispute Resolution – but it is a journey, not an Instagram moment.

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Online courses have been around on the internet for decades now. You can learn almost everything you want online, and multiple online learning platforms such as Udemy, Skillshare, Coggno, or Skillwise give you an infinite choice of courses that you can take from the comfort of your home, when you want, and at your own pace. Most part of these e-learning courses are pre-recorded videos of commented slides and articles, with some practical quizzes, usually multiple-choice questions, so that the students can self-check their learning progress. The major critics that are done to these courses is that, once they have registered, students do not access the platform and do not complete the course. In these MOOCs (massive open online courses), only 10% of students who register for a course actually complete it.

In the mediation field, online teaching has not been very much used yet. Until recently, as with most courses designed to trigger a behavioural change, it was believed and tacitly acknowledged that the personal interaction with the teacher and with other learners was the only way a participant could get a valuable leaning experience. These courses usually used a wide variety of formats including lectures, discussions, videos, simulations exercises and role-plays (the latter being seen as extremely important teaching tools, according to the bi-annual e-newsletter from NP@PON (Negotiation Pedagogy at the Program on Negotiation) at Harvard. Mediation was not a practice well suited to online training, and furthermore, it was surely not a practice for which you could get any type of certification through a course delivered online. Incidentally, this approach has been limiting the development of truly international and multicultural mediators because a mediator who wants to learn how mediation is performed in other countries needs to physically travel and take the training in that country.

In the last couple of years, some presential mediation courses have started covering the topic of online dispute resolution in their curriculum, which means that at some point, students learn that is also possible to mediate online, and how. However, despite the ubiquitous usage of ICT (Information and communication technology) for most common business and collaborative tasks, the use of technology for teaching mediation is still in its infancy. On the other hand, more and more dispute resolvers

(mediators, arbitrators, conciliators) started using some kind of ICT in their practice, without being able to get properly trained about it, while the vast majority of practitioners preferred continuing not using ICT. COVID-19 has totally changed the game. Since a lockdown has been implemented in many countries where alternative dispute resolution is widely used, more and more arbitrations and mediations have to be conducted fully online. Parties and counsel prefer to move online and solve their problem rather to wait the day they will be able to meet again in person, with no certainty about the date when this might happen and no certainty either about if "meeting" will be the same as before (mandatory mask? 6 feet minimum distance? Showing a proof of immunity?). The loss of personal contact – or, to use a term that has become popular in just a few weeks, the loss of social closeness – matters suddenly less than having to keep the dispute resolution in a limbo. And suddenly, conflict resolution practitioners need to develop new skills in order to transfer their mediation practice to the online world. Because there is a sense of urgency, the temptation is strong to go for a "quick and dirty" learning solution, often improvised to seize the business opportunity given by the lockdown.

The reality is that becoming a professional of ODR means a change of paradigm, and change takes time. All the stakeholders of mediation (mediator, parties, counsel) have to relearn, adjust and recalibrate their way of acting in order to adapt to the new environment. Scheduling methods are being redefined, preparation is about explaining that everything changes when going online and conducting mediation is more than ever about coaching parties and counsel in getting the best of technology. As very nicely written in the Singapore Mediation Handbook by Nadja Alexander, Joel Lee and Lum Kit-Wye : "Factors such as the nature of asynchronous and synchronous communication, the creation of a written record, the reduction in non-verbal communication, minimisation of travel and face to face meetings have an impact on conflict resolution dynamics. In addition, new issues of identity, authenticity, confidentiality, security, accessibility and suitability arise".

I believe this context was taken in consideration when the ODR Practitioner Certification Program was designed. It has been years in the making and was not improvised and the proof is that its first edition actually ran before the Covid-19 crisis. Its learning journey is unique in many ways. It is an innovative online multicultural experience that immerses participants in the challenges of communicating online. Whatever their native language, participants can use it and interact with participants and guest speakers from other regions of the world, since the conferencing platform offers a simultaneous translation feature for each live session, allowing participants to fully engage with others. The two main faculty come from different worlds: Ana brings her insights from the tech industry and from her practice of mediation and Daniel brings his experience of teaching ODR since the term was invented. The most reputed experts of the ODR world join as guest speakers from all continents to give a broad view of concrete experiences about ODR. The learning program is both highly reflective and social: a program manager engages with the participants on a daily basis and the interaction with faculty and guest speakers is only done via live sessions, not pre-recorded videos. Special attention is given to possible technical problems to connect – it is well known this can be one of the main stumbling blocks of online training. Participants can seamlessly connect from their mobile phone or desktop computer. The forums allow students to have group discussions, to post what they

found about the topics at hand and also to interact with alumni of the program. This gives ample opportunities for social interaction and social learning. The learning objectives are clearly explained on the website of the course, which creates alignment from the very beginning of the learning journey, since participants know what they should expect and what is expected from them. Furthermore, the program is useful and practical. It is primarily about helping participants in their day-to-day work to communicate better online and help them to become better professional mediators. The course content is based on the latest research done on ODR. Ana and Daniel have spent several years as co-chairs of the IMI ODR Taskforce, defining the standards for the actuation of the mediator in the online environment. The course content is aligned with the outcomes of the task force and includes the contribution of highly knowledgeable and multicultural professionals, academics and practitioners of ODR: Colin Rule, Paul Embley, Noam Ebner, Alberto Elisavetsky, Ana Luiza Isoldi, Jessica Carter, Juliana Loss de Andrade, Frank Fowley, Leah Wing, Larry Bridgesmith, François Bogacz and Chris Draper – many diverse voices that will trigger many insights during the 12 weeks of the journey!

In summary, I can highly recommend to my colleagues who are mediators and arbitrators to take this road to excellence in Online Dispute Resolution. I feel I have joined not only a growing community of savvy ODR practitioners, but also that I have improved my skills as a trusted advisor to my clients.

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