



Gaining Proficiency & Understanding ODR Using Zoom

COLM BRANNIGAN, FCIARB, C.Med., C. Arb.


Mediate.ca – Brannigan ADR

colm@mediate.ca


ADRIC Webinar Presentation – April 8, 2020

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?

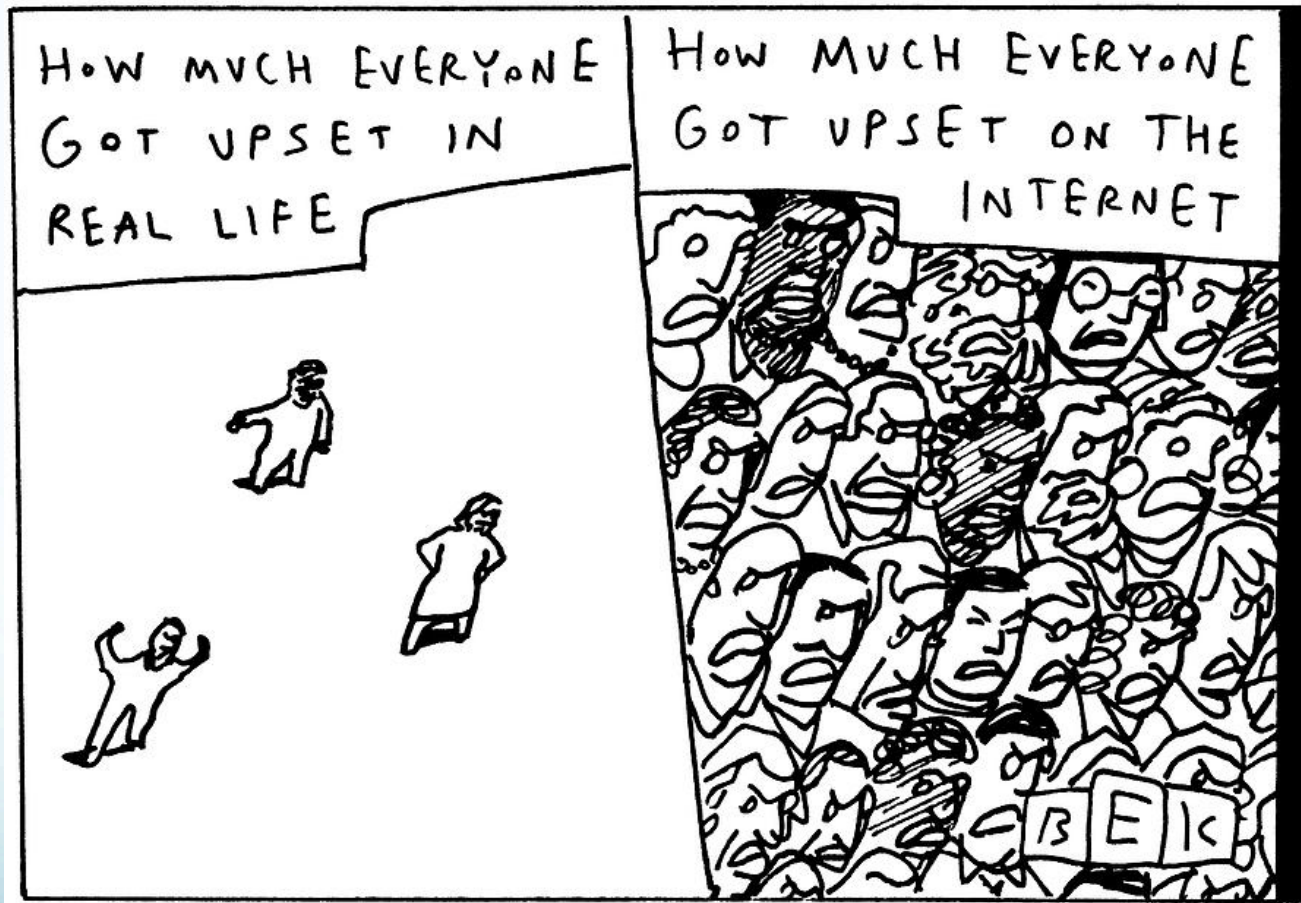
The Prime Directives of ODR

- 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.

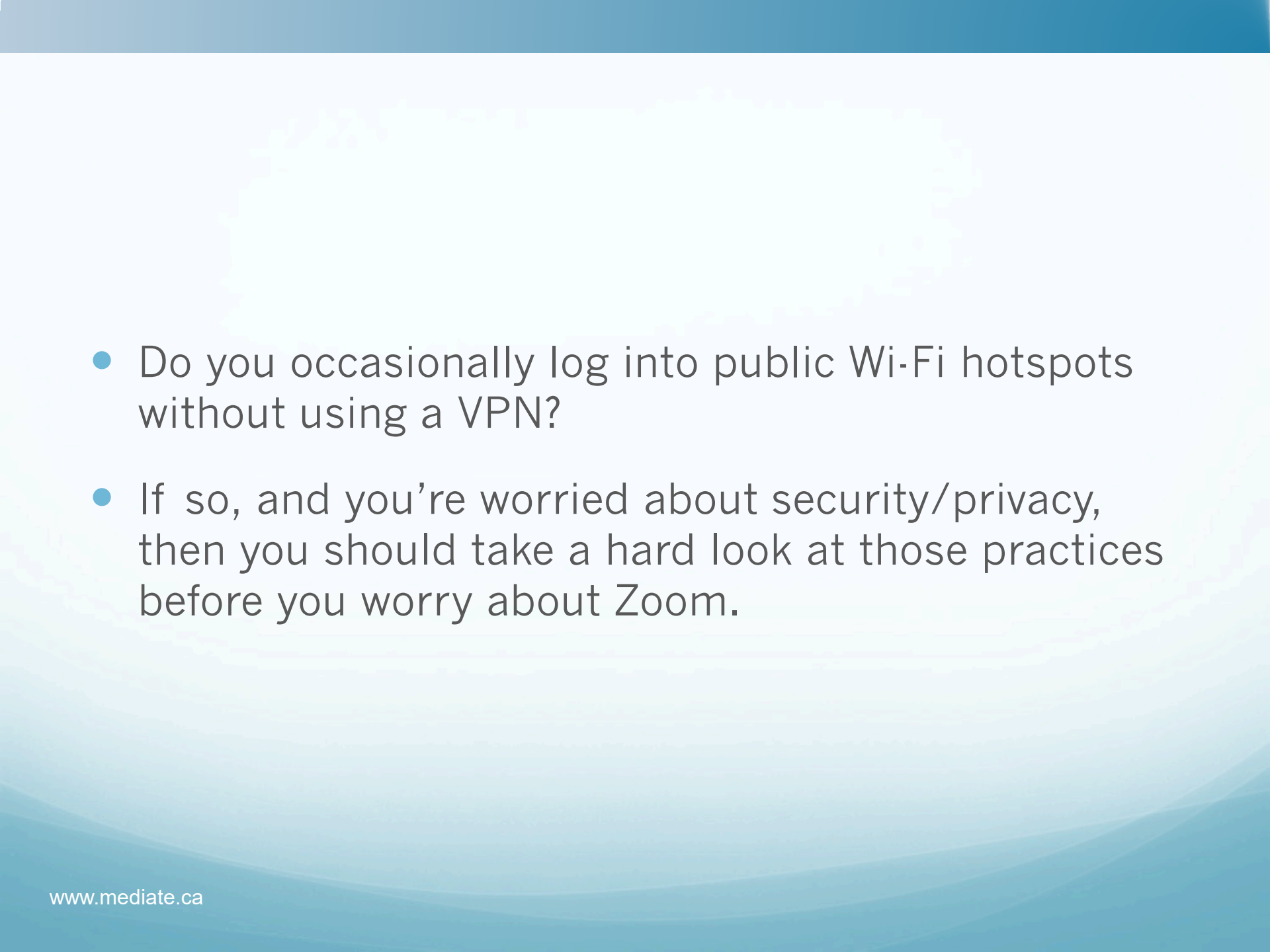
The Seesaw of Zoom

- 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 Canada, the 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?

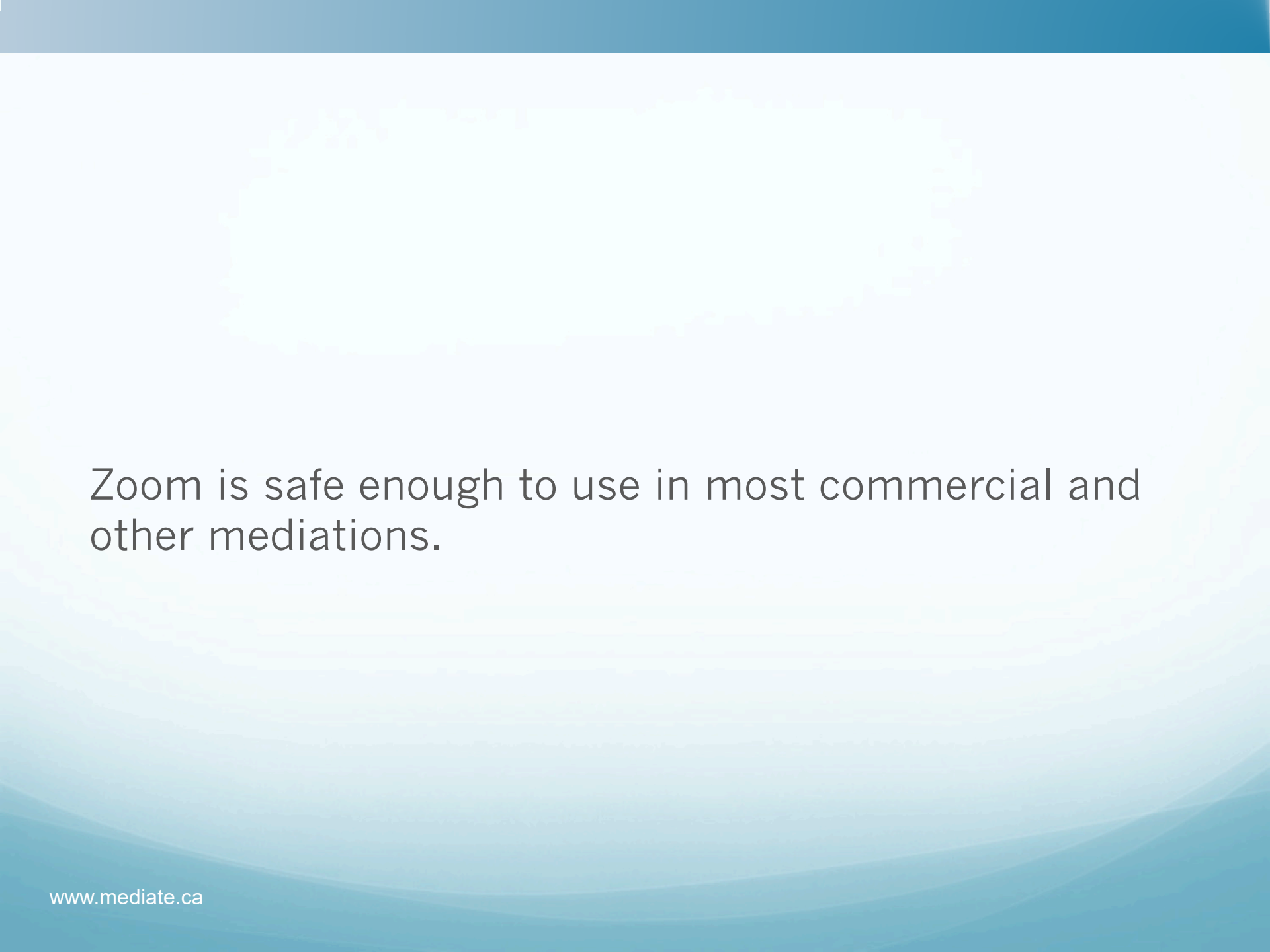
Rick Weiler's April 6, 2020, Kluwer Mediation Blog Post “Is Zoom Good Enough for Mediation?” sets out the way to handle Zoom confusion

<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

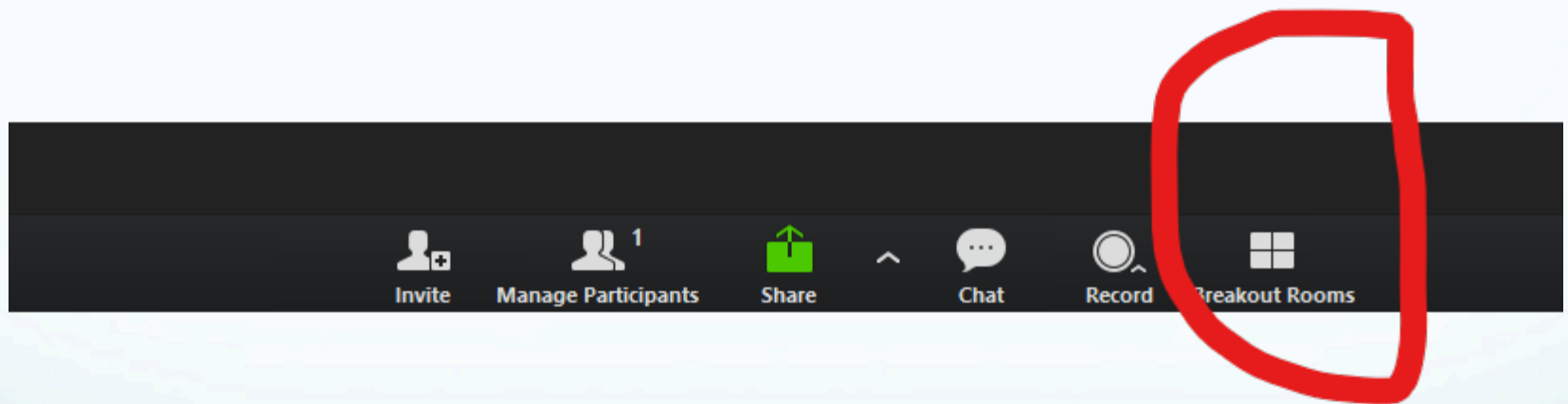
Continued...

- 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.

Recording

- Zoom can record sessions. This can be good or bad?
- Do you need the parties to agree not to use this or record on cell phone etc?
- Mediation agreement should identify everyone participating.
- What about people out of camera range

Recording 1

Recording

Local recording

Allow hosts and participants to record the meeting to a local file

☐ Hosts can give participants the permission to record locally

Save

Cancel



Recording 2

Cloud recording

Allow hosts to record and save the meeting / webinar in the cloud

- ☒ Record active speaker with shared screen
- ☐ Record gallery view with shared screen ?
- ☐ Record active speaker, gallery view and shared screen separately
- ☒ Record an audio only file
- ☒ Save chat messages from the meeting / webinar

Recording 3

Advanced cloud recording settings

- ☐ Add a timestamp to the recording ?
- ☒ Display participants' names in the recording
- ☒ Record thumbnails when sharing ?
- ☐ Optimize the recording for 3rd party video editor ?
- ☐ Save panelist chat to the recording ?

Automatic recording

Record meetings automatically as they start

Breakout Rooms


- Is the mediation primarily joint session or separate?
- Breakout Rooms can have more than one person in them so you can set up as many as you need
- You can move between rooms.

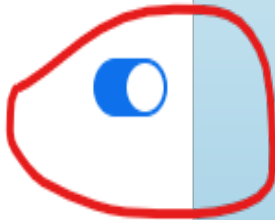
Breakout Rooms

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 



Breakout Rooms

- <https://support.zoom.us/hc/en-us/articles/206476093-Getting-Started-with-Video-Breakout-Rooms>
- <https://support.zoom.us/hc/en-us/articles/206476313-Managing-Video-Breakout-Rooms>

Personal Meeting ID

Personal Meeting ID

905-840-9882

<https://zoom.us/j/9058409882>

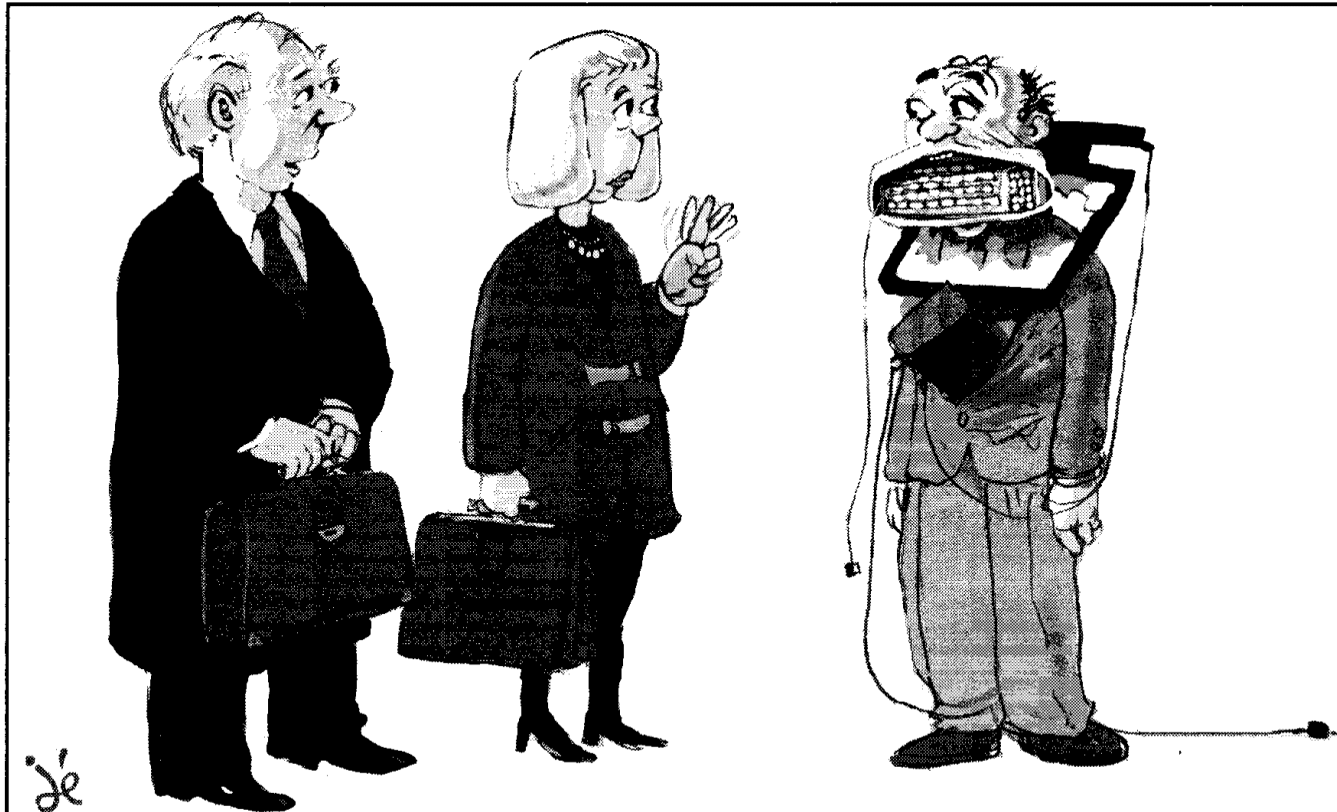
✓ Use this ID for instant meetings

Practical & Ethical Considerations

- The online environment is different.
- Not in the mediator's control, or is it?
- Must have some tech competence.

Practical & Ethical Considerations

- What does this mean for privacy and confidentiality?
- Parties have right to choose but need to give informed consent.
- Insurance coverage? May be an issue if parties in different jurisdictions.



"I believe we did advise you that online dispute resolutions are not without their occasional problematic outcomes."

More than Zoom?

Do you need other programs/platforms for:

Sharing and storing of documents?

Signing documents?

Paying your fees?

Your Environment

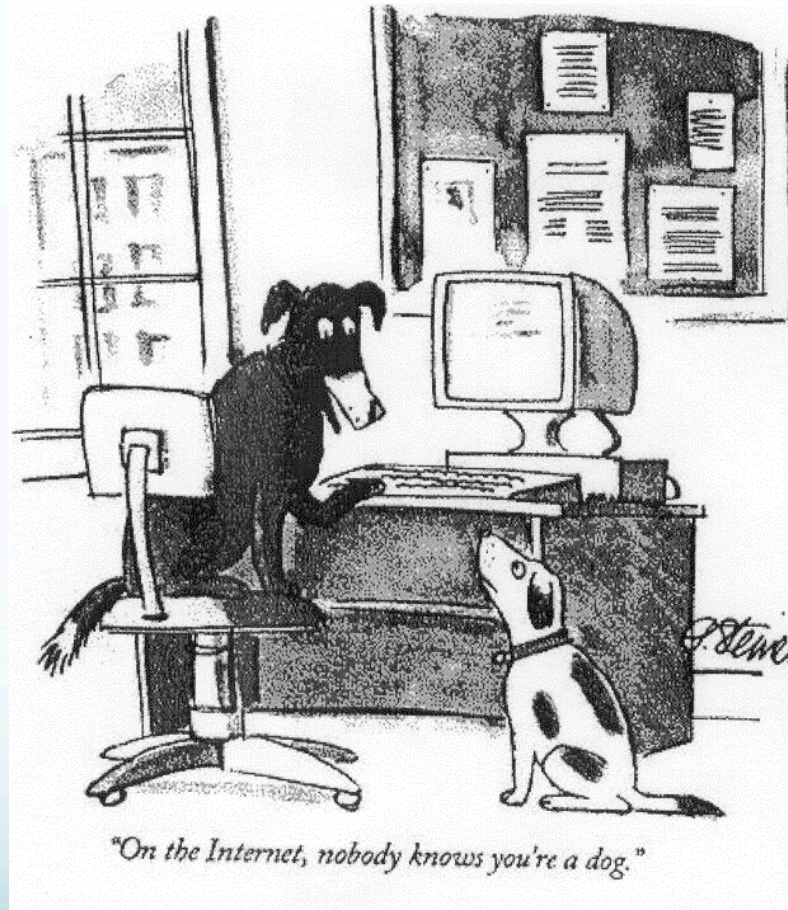
- Turn off Notifications
- Turn off your phone
- Clean up your desktop and browser bookmarks
- Importance of Lighting facing you
- Do Not Disturb
- Check background (Zoom can set custom background)

- **Interruption Free Area**
- **No other Technology**
- **Online Communication is different**

Agreement Issues

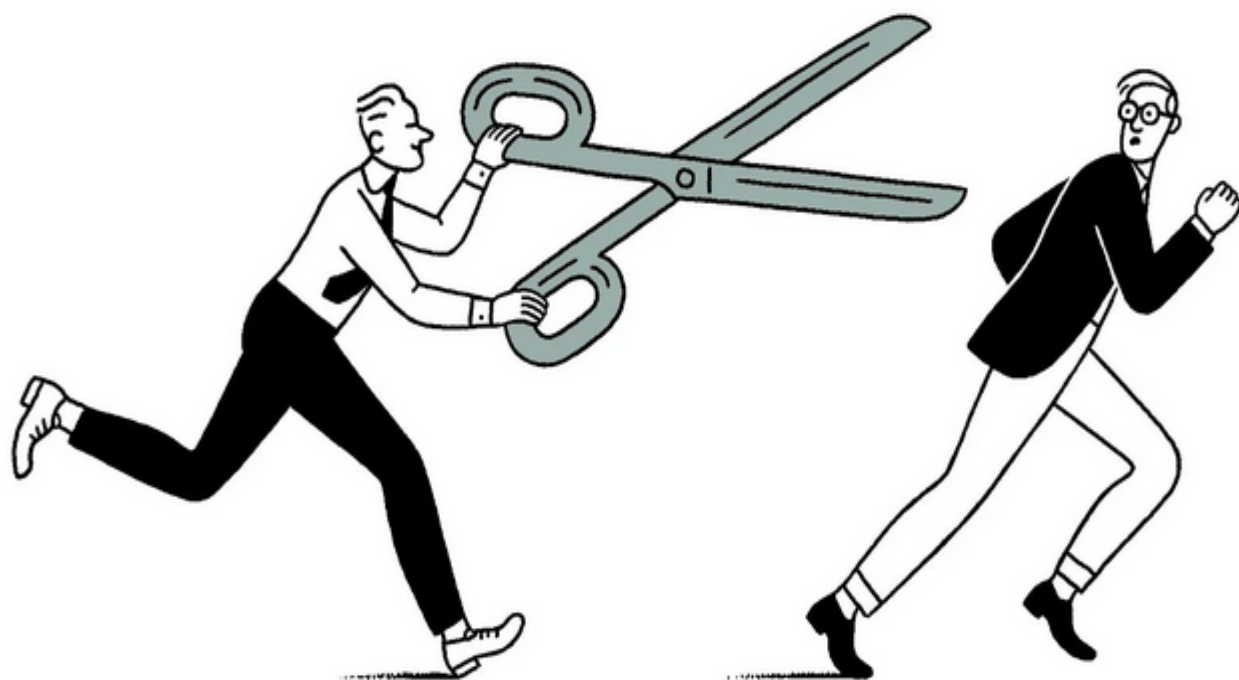
- Privacy – key in mediation
- Privilege – legal issue but settlement privilege or is there specific legislation?
- Address in Agreement

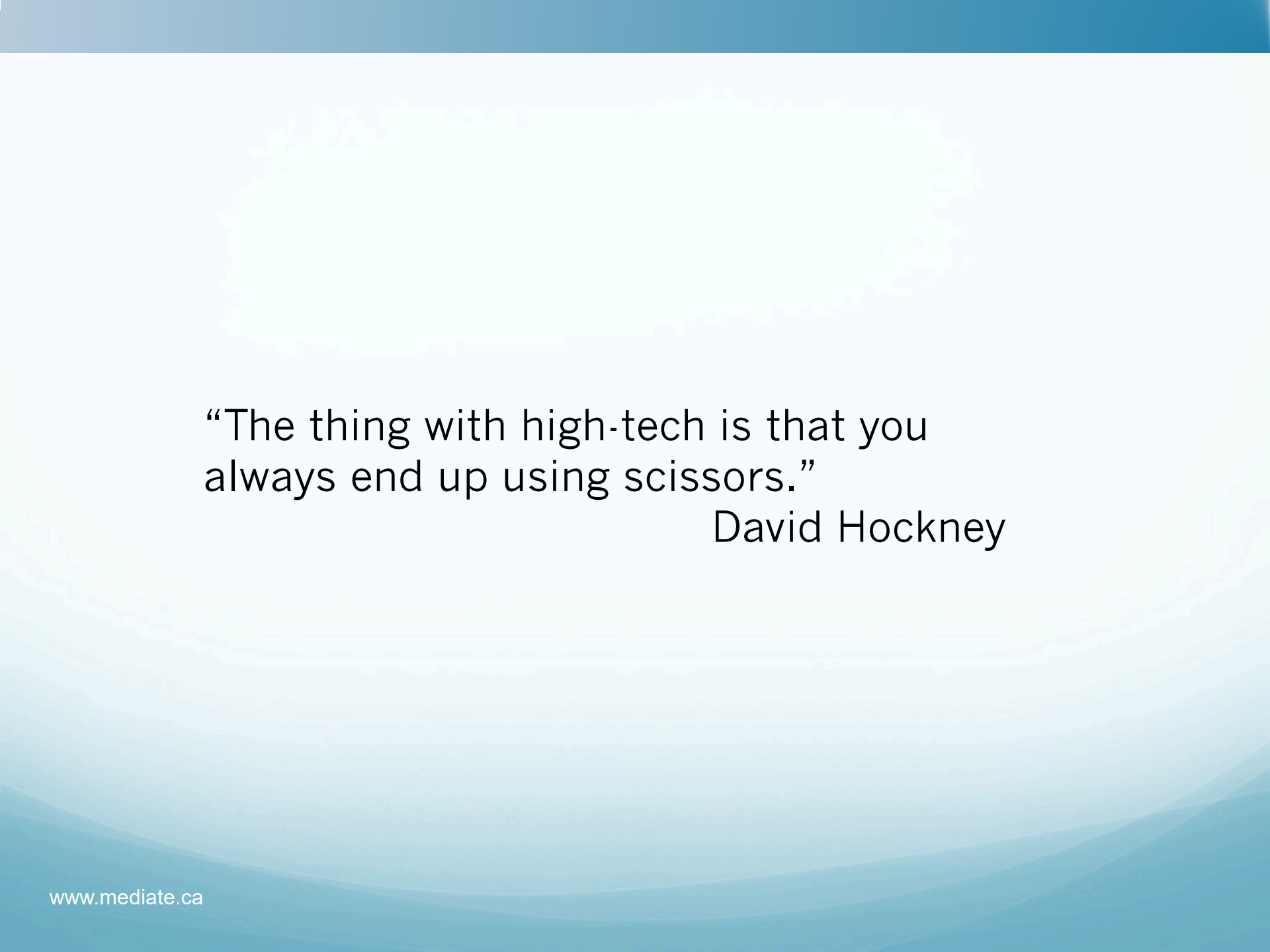
From 1993 & Still True?



Crisis = Opportunity

- There is an opportunity to innovate, to provide the types of services that our clients need and can afford.
- Whether we like it or not, ODR is here to stay and not just because of the Corona Virus





“The thing with high-tech is that you
always end up using scissors.”

David Hockney

Tech Challenges

- Tell your clients that problems may and often do happen.
- Let them know what to do if something goes wrong such as to log back in and/or call.
- Do this before it happens, there is no panic.
- Provide written Guidelines.

Zoom Help



MORE INFO

Mediate BC Guidelines

- https://www.mediatebc.com/sites/default/files/Guidelines_Mediating-from-a-Distance-%28Second-edition%29_0.pdf

Further Info

The International Council for Online Dispute Resolution Guidelines for Video Mediation and Video Arbitration.

- <https://icodr.org/guides/videomed.pdf>
- <https://icodr.org/guides/videoarb.pdf>

The Future of ODR - Today

- British Columbia Civil Resolution Tribunal
<https://civilresolutionbc.ca/>
- Ontario Condominium Authority Tribunal (CAT)
<https://www.condoauthorityontario.ca/en-US/tribunal/>

DEDICATED ODR PLATFORMS

- <https://www.modron.com/>
- <https://resolvedisputes.online/>
- <https://www.resolvergroup.com/>
- <https://smartsettle.com/>
- <https://www.bidsettle.com/>
- <https://www.crekodr.com/>


Technology = Convenience




OPTIONS & OPPORTUNITIES

- This is a transition period for ADR & Law.
- ODR is another option (tool) for your clients.
- This is an opportunity for you to develop tech competence.

- Not just online mediation.
- Facilitation, Coaching, Med-Arb and Arbitration.
- Security is an important issue but so are privacy and confidentiality in face to face ADR processes.

- 
- Security is an important issue but so are privacy and confidentiality in face to face ADR processes.
 - But we don't guarantee absolute confidentiality in face to face mediation. Most Agreements to Mediate set out exceptions.

- 
- The key is your understanding of your platform.
 - The second key is making sure your clients know the potential security risks and can make an informed decision to participate.

- Remember text based as well as video options.
- telephone.
- Combine options.
- Good opportunity to show that the ADR and legal community is prepared to adapt and adopt new technology.

A bright sun with rays shining over a blue horizon. The sun is a large, glowing yellow circle with soft rays extending outwards. The background is a gradient of light blue and white, suggesting a clear sky. The horizon line is a soft, wavy blue band at the bottom of the image.

ODR can help you both weather the storm and be poised to move ahead when this is over.

Be innovative and move outside your comfort area.

Practice Makes OK

Take the time to learn how to use Zoom:

<https://support.zoom.us/hc/en-us/articles/206618765-Zoom-Video-Tutorials>

Provide information to your clients and suggest they practice using it

Practice with colleagues, friends, family

Try to keep calm when something goes wrong.

