

TOP 5 COLLABORATIVE TRAINING TOPICS

#1 Online Dispute Resolution Tools for Collaborative Professionals

Getting Started

- Every minute the Professional Team must spend paying attention and learning how to deal with technology, the less time they will have to focus on people and the issue.
- The more clients focus on using the technology, the less they will be focused on the issues to be solved.
- The ethical imperative is for the team to choose the right technology, describe it to clients realistically, prepare them to use it and monitor as they use it, being alert to signs that clients may be having problems or be disadvantaged by a particular platform.
- It is the task of the Professional Team to create an environment in which clients feel they are treated fairly and do not feel that the medium itself can negatively influence a possible outcome.
- Lawyers and other collaborative professionals should add this attention to their preparations for joint meetings, as well as when evaluating the meetings - ask if their client was comfortable or if they need to refer this in another way with the other lawyer/Mental Health Professional/Collaborative Finance Professional/client.
- During meetings, notice if the client is actively participating or having any issues with the platform or connection. Or even if they are dispersed.
- Check if there is a need to suspend the procedure - even if it would be possible to have face-to-face or hybrid meetings, with the client being alongside their lawyer or PSM.
- Online Collaborative Procedure is not analogous to face-to-face: there are changes in interaction and the skills needed to manage communication and information exchange that impact the team we are working with.

For professionals to check before meeting clients

- The Professional Team is responsible for choosing the platform that will be used (in the same way as you would agree which office to meet in: alternate? At the most convenient location for clients?) and should explain criteria.
- Choosing to use a platform for whose license one of the professionals has paid might give the impression that we are being biased?
- Am I trained for the online collaborative environment? Have I described to the client my level of experience in this environment?
- Confidentiality:
 - o Do I have basic knowledge of ICT security?
 - o Have I agreed with another lawyer/ PSM/ PFC the security measures that will be used to protect the information?
- Does the virtual process we will use allow the parties to fully interact and does it preserve the basic elements of the face-to-face procedure?
- Have we combined our online communication protocols?
- Do clients have easy access to the chosen platform and are they sufficiently trained and comfortable to use it?

Getting ready to work on an audiovisual platform

- Choose and test the rooms you will be using (virtual and physical).
- Check your internet connection and, if possible, have a second connection available (a mobile or cell modem, for example). The "no break" can be of great value in case of power outage, keeping the modem on for another hour. If you use a notebook, leave the charger plugged in and handy, as well as the mobile phone charger. The mobile phone is an excellent Plan B.
- By the way, you should agree with the Professional Team and clients about the use of mobile phones during Meetings: will they ask you to stay off, with notifications turned off or anything goes?
- Look at your appearance in the video and the environment around you that may appear (even with the use of virtual backgrounds, accidents do happen). Your background shouldn't distract your participants (who hasn't tried to read the titles on the spines of the books on the bookshelves in the background? ;o)
- Make sure the framing and lighting are appropriate. A ringlight with a USB socket can be very useful.
- Try to make constant eye contact, rather than moving your eyes around the screen.
- Record a short clip of yourself talking on video and watch it, so you can see what the parties will see and hear when they are working with you. Use this to test your microphone or headphones and check your virtual environment.
- Create a physical space around you that has no distractions for you or your participants. Try to control the intrusion of dogs, cats, children and people.
- Using headphones is a measure that shows care, because the participants' speeches are not heard in the environment.
- Give support to your client as well, guiding him/her on the above points.
- The Team must make sure that all clients start the Joint Meetings with acceptable appearances and video quality.
- Dress appropriately. Remember you may need to stand up suddenly....
- Have a full bottle of water to drink during the meeting. And tissues always come in handy.
- Use a "clean" screen. If you're planning to share your screen to show documents, for example, make sure the screen is relatively clean when you go to start sharing - close unnecessary screens and apps, especially ones that might reveal very personal documents or images.
- If you record the session - for whatever reason and always with participants' permission - record it on your computer and not in the cloud, for security reasons.
- Use the meeting platform's security settings. If possible, use specific meeting IDs; strong passwords; use "waiting rooms" or access locks before parties are admitted by the host - do not allow parties to join before the host.
- The Professional Team can split as co-hosts to monitor the app while the other monitors clients their questions. Control screen sharing. Agree on the use of chat during the meeting, remembering that it can be useful to send direct messages, but side conversations should be avoided.
- Do not allow the transfer of files via chat, on the platform - this can also lead to the transfer of viruses.
- Arrive early for the Joint Meetings. Be online at least 10 minutes before the scheduled start time of the session so that you can resolve any issues that arise and welcome parties as they arrive.

Adapted from Holistic Solutions Inc, Daniel Rainey. HSI - 2020 | ODR Practitioner Certification Program - 2021.

Checking your suitability to do an online dispute resolution procedure

Working online is obviously different from working face to face and requires a high level of self-discipline. If working online for long periods of the day the professional needs to schedule regular breaks away from the computer, maintain a good level of social interaction with other people and exercise to compensate for the sedentary nature of computer-based work.

We are competent dispute resolvers in the face-to-face environment and therefore already possess general skills in collaborative procedure - as well as mediation - with the online environment being yet another tool we have at our disposal.

Evidently the pandemic has pushed us towards screens, headsets, cameras, microphones, and total dependence on broadband (yes, we are dealing with a certain extraction of society).

Yet today we can reflect:

- Is this type of work right for me?
- Do I relate well to using a computer as a means of interacting with my clients?
- Do I feel comfortable and enjoy interacting with others through an online medium?
- Am I satisfied working without the physical presence of my clients?
- Do I have the resources to manage the administration of an "online office" with the associated responsibilities?
- Am I able to manage the work balance between online and face-to-face work?
- Do I have the necessary technical skills?
- Do I have the necessary communication skills?
- Do I know the ethical obligations (neutrality, awareness of possible biases - conscious and unconscious - and confidentiality), among others?

Adapted from ODR Practitioner Certification Program material - ODR Foundations Training

Technology-related skills

Basic technology skills are indispensable when a dispute resolution professional wishes to use the online environment for their practice.

Here is a list of technology-related skills developed by the ODR Working Group of the International Mediation Institute, co-chaired by Daniel Rainey and Ana Maria Maia Gonçalves, and adapted for this Workshop.

- Basic computer knowledge and basic mobile computing skills;
- Work with ICT platform configuration, operation and troubleshooting;
- Ability to effectively manage any technology challenges;
- Ability to use the technical equipment and environment (e.g., lighting, sounds, distractions) in order to provide a high-quality experience to the participants of the respective electronic dispute resolution process;
- Ability to convey clear and effective messages in verbal and non-verbal communication synchronously and asynchronously;
- Ability to use the ICT platform in such a way that the platform does not take the focus away from the content of the conversation with / between the parties;
- Ability to show confidence and critical self-awareness when working with technology to solve parties' problems;
- Ability to simultaneously address people who are in different countries and regions and different time zones - understanding the impact this can have on communication dynamics;
- Understanding the implications for privacy in storing digital information and communicating with parties and others online;
- Ability to combine asynchronous communication and video conferencing to manage private meetings;
- Ability to use ICT platform specific options such as (i) meeting planning, (ii) screen sharing, (iii) online convention, (iv) provide mouse controls, (v) disable and enable sound, (vi) multiple webcams (vii) multiple communication modes simultaneously.

Suitability of the online environment for a particular dispute

In determining suitability, the dispute resolution professional should analyze the particular situation and perform a set of tasks to make a decision, considering, for example:

- Will the online environment add value to the resolution process?
 - Are the specific parties to the process ready to use it?
 - Is there an imbalance between the technical skills of the parties?
 - Should I define a specific process for this case?
 - Should I conduct assessment of the parties before deciding which tool to use online?
 - Are these parties enrolled in another parallel dispute resolution process that I need to be aware of and that may affect the process I am leading here?
 - What cultural issues do I need to take into consideration?
 - Are there any third parties in this case that I need to integrate into the design of the process I will use?
- What is the best way to convey and/or agree with all process participants the online working model?
- Are there any legal implications that I need to take into consideration?

Finally, it is important to remind clients that the online environment, no matter how much care is taken with security, does not guarantee confidentiality! Documents and files may be protected, but information exchanged in a meeting is kept by human beings, through professional secrecy and Term of Participation.

Good faith must be reinforced when we are connected by broadband and there is no way to ensure that meetings are not being recorded or that there is no one else in the room following the meeting.

ETHICAL PRINCIPLES FOR ONLINE DISPUTE RESOLUTION

by the National Center for Technology and Dispute Resolution

Extraído de <http://odr.info/ethics-and-odr/>

PREAMBLE

The Ethical Principles for Online Dispute Resolution (ODR) are designed to enhance the quality, effectiveness, and scope of dispute resolution processes with technological components. Taken together they can provide a touchstone for best practices, standards, rules, qualifications, and certification efforts in dispute resolution and related fields that address dispute resolution processes and practices. This document builds on previous work by the National Center for Technology and Dispute Resolution on principles and standards of practice as well as the growing body of literature and the standards of numerous professional, governmental, and commercial bodies concerning ODR and dispute resolution more generally. There is no priority to be implied by the sequence of the principles that are list alphabetically. They are meant to be taken as a framework that is interlocking and interdependent.

With the rapidly growing adoption of ODR in a number of sectors it is timely to produce a living document of ethical principles integral to the design, structure, practices, and implementation of online dispute resolution systems. Therefore, while debate will likely continue over time about the definition and scope of ODR and what practices and standards should be formalized, if any, it is hoped that the creation of these Ethical Principles for Online Dispute Resolution can provide a benchmark for these discussions and for systems development, usage, and the integration of ODR into existing institutions.

With the knowledge that there is a diversity of perspectives and practices and that there will be a constant innovation of new technologies impacting the ways we use, foster and transform conflict, it is worthwhile to formulate and continue to revisit ethical principles to inform, guide, and inspire best practices. Articulating a set of principles shared across jurisdictions simultaneously requires a recognition that their manifestation will also be necessarily grounded in legal jurisdictional requirements and in sectorally and culturally specific ways.

It is intended that the Ethical Principles for Online Dispute Resolution will find a wide audience, instilling further confidence in the integration of ODR into systems and institutions as the stakeholders in systems of ODR become more expansive and inclusive.

They are designed to guide and foster ethical ODR systems and practice in both the public and private spheres. It is likely that more specific or additional principles may be articulated in the future from within particular sectors and jurisdictions. These, instead, are offered as core, shared values and as a living document that can respond to new conditions, technologies, stakeholders, and knowledge—to prove sustainable to those relying on it.

PRINCIPLES

Accessibility

The design and implementation of efficient and effective processes provide for their usage, not only to the broadest range and number of people, but also by accounting for the reality of cultural differences within and between jurisdictions, as well as differential access to resources and experiences of marginalization that can hinder access to dispute resolution and justice processes, whether formal or informal. ODR systems and processes effectively facilitate and do not limit the right to representation for parties in processes of dispute resolution.

Accountability

The development and implementation of ODR systems, processes, and practices are accountable to the institutions, legal frameworks, and communities that they serve.

Competence

ODR systems, processes, and practitioners will be competent in or provide access to relevant technological or human competency required for the effective implementation of the dispute resolution process that they undertake to assist with. This includes but is not limited to relevant dispute resolution, legal, and technical knowledge; languages; and culture.

Confidentiality

The development and implementation of ODR systems, processes, and practitioners maintain confidentiality in accordance with all legal obligations and in a manner that is consistent, in particular, with the principles of Legal Obligation, Informed Participation, Security, and Transparency.

Empowerment

ODR systems and processes are designed and implemented in ways that seek to enable growth and positive change for individuals, relationships, systems, and society, thereby increasing access to justice and enhancement of choices and effective decision making opportunities.

Equality

ODR processes are designed and implemented in ways that treat all participants with respect and human dignity; that system design and processes enable silenced or marginalized voices to be heard and actively seek to ensure that privileges and disadvantages are not replicated in the experience of

participation; that no participant is placed at a higher risk than others; and, therefore, that ODR processes are designed to respond effectively to the reality that some contexts may put some at more risk than others.

Fairness

ODR processes are designed and implemented to facilitate and uphold due process, without bias or benefits for or against individuals or groups, including those based on algorithms. They are responsive to and reflective of the communities and stakeholders they serve.

Honesty

ODR processes are designed and implemented with the intention that data is gathered, managed, and presented in ways to ensure it is not misrepresented or presented out of context.

Impartiality

ODR processes are designed and implemented and practitioners function with commitment to reducing bias in the delivery of the process. This includes accounting for conditions that could structure patterns of privilege in process and outcome for repeat players with particular attention to the principles of Accessibility, Fairness, and Transparency.

Informed Participation

In the development and implementation of ODR systems and processes active effort is made to ensure (1) explicit disclosure to participants of all information about risks and benefits of the process, (2) the competency of participants to evaluate the information about participation in the process, (3) understanding by participants of the information, (4) whenever possible, the voluntary acceptance by the participants of the risks of participating; and whenever voluntary consent is not possible due to the mandatory nature of participation than that is made transparent.

Innovation

Online dispute resolution continues to innovate to improve the delivery of dispute resolution services and benefits more fairly, effectively, and efficiently in ways that increase peace, trust and access to justice.

Integration

ODR processes are effectively integrated both internally within a system and externally with other systems, networks, and entities. Technology serves the dispute resolution process as seamlessly as possible. The application of technology and of dispute resolution is designed and implemented in the context of their linkages with other existing systems and networks and of knowledge that new ones will emerge. This is implemented with special attention to the integration with public entities to enhance inclusiveness and access to justice.

Legal Obligation

The design and implementation of ODR systems and processes uphold the laws of relevant jurisdictions and ensure that relevant laws are known and followed in the context of the principles of Accessibility, Informed Participation, and Transparency.

Neutrality

ODR systems and practitioners function with independence from the disputing parties, and any conflicts of interest are made transparent.

Protection from Harm

ODR design and implementation seek to prevent and minimize harm and risk for those involved in dispute resolution processes, with particular attention to those most marginalized and with least access to justice.

Security

All reasonable efforts are made to ensure that the data and communication between the parties and other entities linked to ODR processes are secure to the fullest extent of the law, making transparent any known limitations.

Transparency

All reasonable efforts are taken to make transparent the true purposes, risks, and legal obligations inclusive of but not limited to: the form and legal jurisdiction of dispute resolution processes; the identities, affiliations, obligations, and conflicts of interest of the parties, entities, and systems; and the data security, confidentiality, and privacy policies and systems involved.