

ONLINE VIDEO MEDIATION

3 KEY QUESTIONS TO DETERMINE WHETHER YOU SHOULD USE IT NOW

To view the online arbitration resources package, click [here](#).

*Is online ADR right for you? Here is what
some Toronto Lawyers have to say:*

"I was initially unsure of what to expect with an online mediation...the experience far surpassed my expectations and in many ways was more effective than an in-person meeting."

"I believe that my clients felt very much part of the process and were not prevented from having input or making their opinions and concerns known."

"...it saved me a lot of travel time. In addition, my client and I could both focus on other tasks while the mediator was in caucus with the other parties, without disturbing one another."

In these challenging times, the ADR Institute of Ontario (ADRIO), supported by the ADR Institute of Canada (ADRIC), is committed to helping its members and the legal community understand how to safely employ online video for dispute resolution. However, lawyers are justifiably concerned about whether moving to this technology is sensible and worthwhile. In this publication, we address the key questions around online video mediation. We also offer best practices and checklists to help mediators and lawyers choose the most suitable videoconferencing platform, safeguard confidentiality and address client concerns.



Subject to appropriate screening for suitability, ADRIO is recommending that parties move to online video mediation during COVID-19. When considering this transition, lawyers have raised three important questions:

- How does one select the best videoconferencing platform?
- Is it as effective as an in-person mediation?
- Will clients embrace the use of this technology?



1. Security and Confidentiality

Q. What about the recent news on security problems?

A. Past security concerns raised in the media often related to the use of videoconferencing platforms that were largely “open” to intrusions by outsiders. Appendix A of this guide will explain how a mediator can and should secure the session against uninvited participants.

For example, recent news reports citing lack of security in videoconferencing identified situations where participants were sharing confidential log-in details, like passwords, which led to disruptions and pranks. In Appendix B, we offer important changes needed to mediation agreements to help all participants understand their role in preventing any breach of confidentiality and security.

Most videoconferencing platforms allow the mediator to act as a virtual gatekeeper and regulate admissions into the mediation session. In addition, the chosen platform must also allow the mediator to establish security and confidentiality settings that protect all parties’ information and participation during the process. When the appropriate security protocols are in place and followed, online security is achievable.

Finally, online video mediation and arbitration is being actively supported by the Ontario Bar Association.

For an in-depth discussion about the full range of important security and confidentiality practices, please read *Appendix A - Choosing an Online Videoconferencing Platform for Security and Confidentiality* and *Appendix B - Key Provisions for Mediation Agreements*. You can download the appendices [here](#).



1. Security and Confidentiality (*Continued*)

Q. How do I choose from different videoconferencing platforms?

A. Videoconferencing platforms have been on the market for a number of years now, and each platform has a range of features, as well as pros and cons. ADRIO recommends that you match the platform's security features and reputation to the sensitivity of your client's information.

For example, Cisco Webex and Microsoft Teams are known for offering strong security encryption, suitable for the highly confidential and sensitive data. On the other hand, products like Zoom, while offering security features to protect confidentiality, also provide more functionality and ease of use for the mediation process.

ADRIO has been working with its members so they can assist in selecting the most appropriate platform for the case at hand and design an effective process.



2. Effectiveness of Online Mediation

Q. Can online video mediations be as good as in-person sessions?

A. Lawyers have expressed concerns around the effectiveness of online video mediations, especially about loss of the ability to read body language and see facial expressions. There is also the belief that the quality of online communication can never approximate face-to-face discussions and negotiations.

ADRIO understands these challenges, but also believes that communicating remotely is a learned and acquired skill.

Mediators can employ the same skill sets that executive coaches use to work with their clients remotely when seeking to understand their clients' needs, goals and vision for success. This requires a very high level of active listening, helping the parties feel they've been heard and then leading them to think about and weigh options.

Consider that high conflict situations are often resolved by remote communication. Mediators study the telephone and communication skills employed by law enforcement when negotiating in hostage-taking situations, for example. Electronic communications are also the foundation to high-stakes diplomatic negotiations. These require the building of trust, addressing needs, negotiating terms and influencing the outcome. In other words, there are no inherent barriers that prevent mediators and lawyers from resolving conflict at a distance.

At the end of the day, people simply want to be heard and understood, whether it be over the phone, on camera or across the table.



2. Effectiveness of Online Mediation (*Continued*)

Q. Will the parties be more apt to disengage or quit in an online video mediation?

A. It is often cited that the parties may not have the same level of commitment in an online video mediation, as it is too easy to “pull the plug” on a session.

Our members report that there is no loss of engagement in online video mediations. It is important to consider that clients make the same monetary investment in legal and mediation fees for an online session and share a common interest to find an end to the litigation.

When clients participate from their own space, like at home, mediators notice that emotions and fears are actually reduced in the online setting. For example, family mediators state they can facilitate high conflict meetings remotely that could never occur in person. Video mediations can be less adversarial in nature. Having said this, online mediation in family cases presents substantial new challenges for mediators where clients are still living in the same home as it may be impossible to accurately assess risk. Family mediators are advised to exercise caution by enhancing their intake and screening protocols to address enhanced risks of harm to families.

In addition, clients avoid the stress of commuting to a mediation and the normal anxiety from sitting in a lawyer’s boardroom or court reporter’s office. Our members notice that parties feel less intimidated and are generally more relaxed during online sessions.



3. Servicing Client Needs

Q. What if my clients are not tech-savvy?

A. Choosing a platform that matches the client’s needs and abilities is important. Some, like Zoom, make connecting to an online video mediation as simple as clicking on an email link from a computer. The software automatically installs and seamlessly connects the client to the online session. Other platforms like MS Teams, are slightly more involved. Many of our members are educated about the ease of use of different options, and how to support counsel and clients in preparing for an online video mediation.

Where use of technology is a barrier, it is important to know that most videoconferencing platforms allow participants to simply dial in by telephone for audio-only participation, similar to using any teleconference facility. Members have also had parties join the session on their lawyer’s speakerphone after the lawyer alone connects to the online mediation.



3. Servicing Client Needs (*Continued*)

Q. Are my clients ready for online mediations?

A. Today, your clients are procuring important goods and services online that they cannot see, touch or feel. They are buying everything from beds to automobiles via the internet and are now “visiting” health-care practitioners remotely. The requirement for an in-person, physical experience is quickly changing. Consider the growth of Amazon or online banking that serves many people of all ages.

In reality, our society has already learned how to communicate remotely through technology and social media. Generation Z, those under 25 years old and who make up 23% of Canada’s population, say that their smartphone is their preferred method of communication. Clients today, and certainly those of tomorrow, will increasingly demand that the delivery of legal and mediation services be through non-brick and mortar solutions. This capability is a good one to develop at this time, for now and the future.

Q. What are the other benefits of online video mediation?

A. Online video mediation can help both lawyers and clients be more productive and reduce cost. Since commuting is avoided, lawyers can leverage that time, as well as the usual downtime at mediations, to work on other matters and deadlines. In addition, the parties are able to save mediation room costs or travel costs to attend a mediation at a distance. Mediation scheduling is also facilitated, as travel or commuting time does not need to be factored in when selecting a suitable date. This reality may also allow key decision makers to attend a remote mediation, while not for an in-person one.

The truth is that the length of time before business returns to normal is uncertain. There may not be in-person mediations for some considerable time. The relaxing of social distancing or isolation orders may be delayed or could be reinstated if future circumstances warrant. Counsel who add this skill set now will be building a long-term service and competitive advantage for their clients.



Resources (Links)

Appendix A | *Choosing an Online Videoconferencing Platform for Security and Confidentiality*

Appendix B | *Key Provisions for Mediation Agreements*

Appendix C | *Model Participant Preparation Letter for Online Mediation*

To download the appendices, click [here](#).

To view ADRIO’s directory of mediators who offer online mediation services, click [here](#).

CONTACT ADRIO

WE CAN HELP

The members of the ADR Institute of Ontario (ADRIO) and the ADR Institute of Canada (ADRIC) are available to help lead this change, and train counsel and participants in moving to online video mediation and settlement. Contact ADRIO for more information at ed@adr-ontario.ca, or at [416-487-4447](tel:416-487-4447) ext. 104.

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