

A Guide to Online Mediation for Barristers, Solicitors and Clients

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Introduction

We understand that the current environment is full of uncertainty as clients and lawyers adjust to increased remote working and prohibitions on attending in-person meetings. Online mediation can help you continue with business as usual and progress your litigation matters to a negotiated settlement.

In this Guide we cover the following topics:

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If you have additional questions or concerns about mediation please contact our hot line on adr@cedr.com. Our mediation experts are on hand to answer all your questions and keep you moving forward.

1. Equipment



- Having the right kit is key to conducting a successful online mediation. Mediations may be conducted simply by using Smart Phones when in a pinch. However, CEDR has found that online mediations work best when they are done using the proper equipment.
- **Essential Equipment:**
 - A laptop/tablet with a microphone and camera
 - A strong and secure internet connection
 - A secure video conference service provider such as Zoom Pro, WebEx, GoToMeeting, or Skype for Business
- **Enhancements**
 - A headset with a microphone
 - A large screen or double monitor
 - A stylus to mark-up documents

2. Getting Started



- **Costs** - Most video conference service providers, require the host or organiser to have a paid account. Typically, the attendees do not need to have a paid account and they can register and join the mediation for free. This is the case with all CEDR mediations.
- **Downloading Software** – most video conferencing providers require you to download software. If your hardware is issued by your employer, check with your system administrator as early as possible if your system supports the download.
- **Help!** – Most of the major video conference providers have fantastic and comprehensive user guides which you can watch online (e.g. Zoom <https://support.zoom.us/hc/en-us/articles/204772869-Zoom-Rooms-User-Guide>).

3. Best Practice



- Showcase your professionalism by:
 - **Creating a professional background** – ensure the backdrop is neat, tidy, and de-personalised (remove personal photos)
 - **Lighting** – ensure your surroundings are well lit and that you do not have a large light source behind you, which will make it hard to see your face on screen
 - **Frame Yourself** – be mindful of your distance from the screen. As a rule of thumb, your head should take up a maximum of 60-70% of the screen. Always sit with your shoulders back and chin-up.
 - **Make eye contact** – resist the temptation to look at yourself in the corner and really try to connect with others on the call.

4. Designing the Right Process



- Each mediation is unique and it is very important to consider the process which will work best for you and your team, taking into account technical capabilities, available time, attention spans and environment. Sitting on a video conference for eight hours or more can be a challenging and draining experience for even the most focused and determined participant.
- Discuss the following key process points with your mediator:
 - **Location and environment of each participant**
 - **Scheduled breaks** – you will need time away from your screen to move around
 - **Splitting the mediation over 2 days** to keep energy and attention levels high
 - **Advance calls** – a significant amount of work may be completed in advance of the mediation
 - **Settlement** – agree in advance how a settlement agreement will be executed. CEDR can arrange for electronic signatures

5. Ground Rules



Agree the rules of the mediation with all parties. Transparency is key for building trust and confidence. Assist the mediator with reinforcing/following:

Confidentiality

Consider the confidentiality provisions and the effect of without prejudice privilege.

Privacy

Ensure that only individuals listed on the participant form may attend or be present in the rooms where each party member is joining.

Recording

Agree in writing that recording is not permitted.

Planned or Possible Interruptions – Know in advance and discuss with the parties.

If a participant may have an interruption from another household member it is important to alert the other side to this possibility as unexpected interruptions can negatively impact the trust between the parties.

5. Ground Rules (continued)

Joint meetings – Keep microphones on mute

This should be the default setting to avoid distraction from multiple background noise.

Use of Phones/Checking Emails

Parties will be receiving emails and communications on the device they use to log-in to the mediation. Agree ahead of time if participants should have email and messenger functions closed and off during the mediation.

6. Top Tips



1. Familiarise yourself with the technology.

- i.) Have an introductory call with the mediator to see how the tech will be used on the day.
- ii.) Test it out on other calls

2. Raise possible interruptions in advance

3. Take frequent breaks

4. Respect the other party's privacy and confidentiality

- i.) No surprise attendees
- ii.) No recording

5. Always have a Plan B

- i.) Agree in advance what will be done in the event the technology isn't working for one or all parties.



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Better outcomes,
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