



Easing Restrictions During COVID-19

Virtual or In-Person Mediation: Which?

Considerations	Virtual	In-Person
Risk of infection	Low to none since participants need not be in the same physical location.	Moderate to high since participants will need to commute or drive to the mediation site, and then be in the same physical space indoors for many hours in a closed room. Even if the mediation is caucus-only (separate rooms and no joint / plenary session), the mediator must move between rooms, and there are some common area considerations, including parking.
Precautions to mitigate risk	Few to none, if participating from home office and within your social bubbles.	Health screening questionnaire and sign in per Public Health <i>COVID-19 Guidance for Employers, Workplaces and Businesses</i> prior to each mediation, physical distancing (at least 2 metres), face masks or shields, minimizing touch points, opening windows (if possible), minimizing total mediation time, plus other precautions that may distract.
Joint / plenary sessions	Yes.	Yes, although may increase infection risk. Number persons must be limited.
Private caucus (with your client, with and without the mediator)	Yes. Zoom paid plans* have a breakout room feature for private meetings with your client. The mediator can join you when you are ready, just like at an in-person mediation.	Yes. Numbers persons must be limited.
Private lawyer and mediator meeting(s)	Yes.	Yes, although may increase infection risk. Number persons must be limited.
Multi-party mediations	Yes.	Yes, but numbers will have to be strictly limited due to increased infection risk.
Digitally savvy	Somewhat. Learning the online platform from an experienced mediator will help and can include a pre-mediation tutorial and support during the mediation. In some cases, third party assistance can also be	No specialized technical skills required.

	available for a party that may need it.	
Privacy concerns	Just like any other online technology such as email, there is always a risk that security protocols fail, and a privacy breach may happen. Use a mediator skilled in (Zoom) videoconference privacy settings and security precautions and ensure the mediation agreement properly covers confidentiality issues.	Just like any other online technology such as email or third-party screen sharing, there is always a risk that security protocols fail, and a privacy breach may happen. Other in-person factors include thin walls of meeting rooms, loud voices or discussions being overheard from common areas.
Technology fails (i.e. poor internet connection, no or broken videocam)	Videoconference workarounds are in place, including telephone and email.	Not applicable.
Cost considerations	No additional cost if participants are participating from home or their usual office.	Possible room rental, food, and travel charges.
Convenience	No need to leave home or office. No issue with participating from afar (i.e. out of province).	Participants must travel to the mediation facility or one of the law firms.
Ability to communicate, read facial expressions	Improvement needed, such as looking directly into the camera and restricting distractions.	Impaired, as face masks are being used for the duration, and there is proper physical distancing.
Settlement rate	Equal to in-person or higher.	Not applicable.
Stress level	Low. May be higher if being on camera is a personal stressor. Comfort is increased as participants are in the privacy of their own homes and offices.	Moderate to high. Some parties do not want to be in the same physical space. Added stress on some participants due to risk of potential infection.
Duration	Mediation time is usually shorter than in-person.	Longer mediation time can increase risk of infection.
Choice of videoconference platforms	There are other suitable videoconferencing platforms (although Zoom is optimal). The mediation can also take place via telephone.	Not applicable.
Signing of settle documentation	Yes, there are digital signature platforms that are secure and encrypted. Email can also be used for this purpose.	In-person signature.