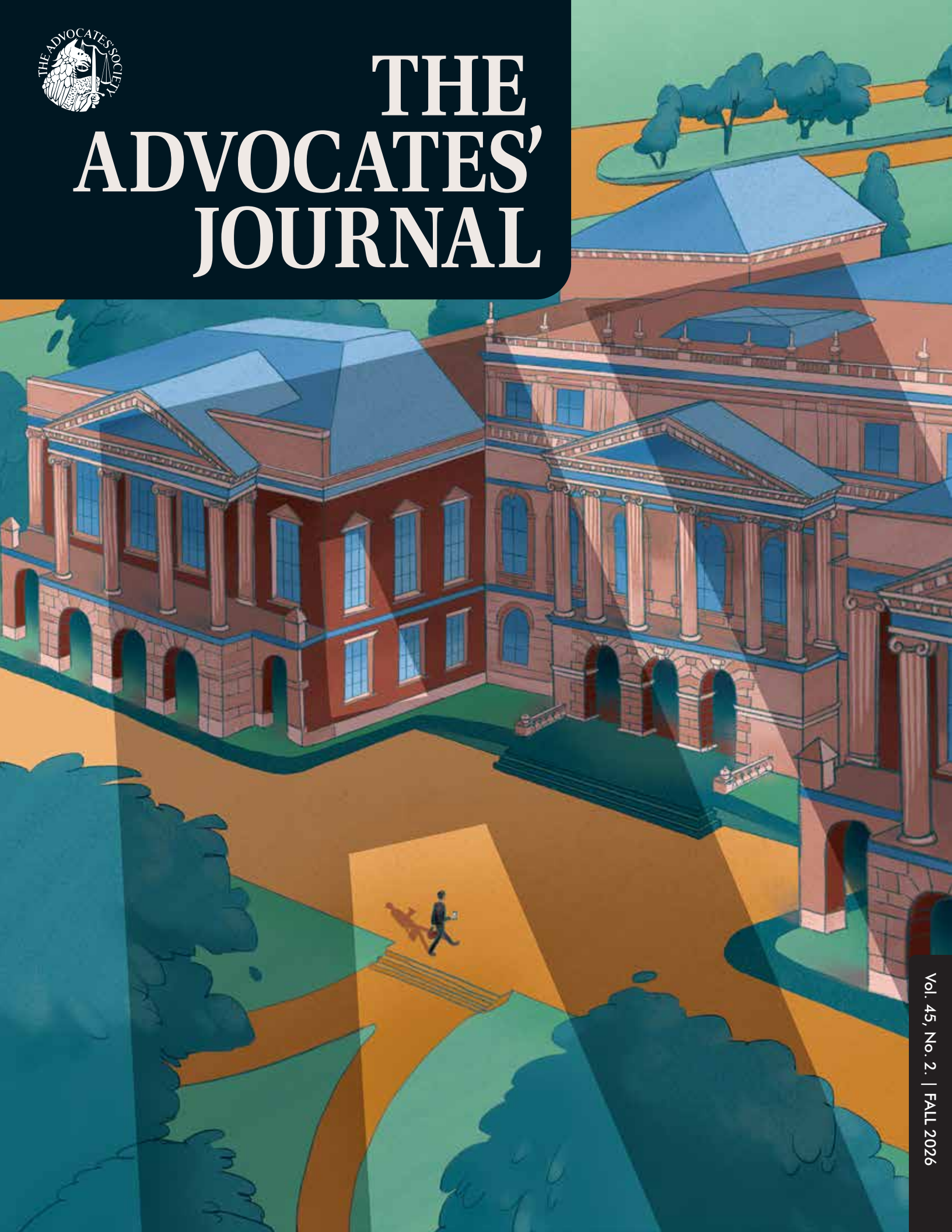




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Mediation: To Zoom or not to Zoom – consider the question

Jennifer L. Egsgard

Virtual mediation quickly became the norm in many countries when the pandemic began, prompting extensive commentary about its efficacy and best practices. Six years later, mediation has remained almost entirely virtual in Ontario, while other regions have returned to predominantly in-person proceedings. This divergence suggests that the form of mediation may currently be shaped more by local practice norms than by a deliberate assessment of what best serves a particular dispute.

This article considers what we have learned about the effectiveness of virtual and in-person mediation, both during and after the pandemic period, aiming to help practitioners step outside the assumptions of their jurisdiction or practice area and consider what format may best serve the case at hand. Looking beyond the mediation field, the article considers academic research on online versus in-person communication from both neuroscience and social science perspectives. It then examines the results of a 2025 survey of 98 lawyers and mediators regarding their experiences, preferences, and views on best practices for virtual and in-person mediation and compares perceived settlement rates with those reported during the pandemic. The article dives deeper into trends in Ontario, the home of 62% of survey respondents, concluding with factors to consider when selecting in-person or virtual mediation for a particular dispute.

Academia's findings on impacts of in-person versus virtual communication

The enormous migration from in-person to virtual communication during the pandemic prompted academic scrutiny of differences between the two. Several areas of research assess virtual versus in-person communications: neuroscience studies examining interpersonal brain synchronization, and social science studies analyzing communication outcomes.

Brains more synchronized during in-person communications

Neuroscience research shows that people who communicate in person experience greater brain synchronicity than those communicating virtually.

A growing body of research has used “hyperscanning”



techniques to evaluate the degree to which brains of two or more people exhibit synchronized behaviour. Hyperscanning involves using simultaneous brain neuroimaging techniques on people communicating with one another, allowing researchers to observe patterns of coordinated neural activity across participants.¹

Higher levels of synchronized brain activity between individuals have been associated with empathy, cooperation, mutual understanding, and trust. Collaborative teams exhibit greater

functional interconnection between brains than do those in conflict.² These positive correlations suggest that mediation conditions might be optimized in environments that foster synchronized brain activity.

Brain activity is more synchronized in face-to-face than in virtual communications, research has found. In one study, neural brain responses were recorded in pairs engaged in both Zoom and face-to-face conversations. Researchers found that the strength of neural signalling was greatly reduced in the virtual conversations, whereas face-to-face participant conversations involved more coordinated neural activity between the two brains.³

A study of mothers and their (on average) 12-year-old children found that within the brains of each pair there were “9 significant links working in tandem during the live interaction, [but] only 1 link connected the two brains during video-chat communication.”⁴

Face-to-face interactions lead to enhanced brain coherence in the right side of the brain compared to virtual interactions, according to another study. The right side of the brain is generally associated with social interactions. The study also noted that in-person conversations involve longer eye contact and, thus, a greater ability to observe facial micromovements.⁵

Virtual interactions limit brain region coherence between individuals and involve less conversational turn-taking than in-person communication, a different study found. The authors stated that lower levels of turn-taking were associated with less positive subjective and behavioural aspects of social interaction (i.e., lower subjective cooperation and lower subjective and observed performance) and, thus, decreased turn-taking likely reflects an adverse effect of virtual interaction. Interestingly, although the virtual environment negatively impacted the participants’ actual behaviour, the participants did not perceive any effect on their effectiveness or performance.⁶

Even minor technological problems can negatively impact brain synchronicity, according to another work. Despite being imperceptible to study participants, transmission delays of 450 milliseconds significantly disrupt the brain synchronicity of partners communicating virtually. This finding is important, the authors said, because neural synchronicity

has been shown to be essential to effective interaction and engagement.⁷

Studies of communication outcomes

A separate line of academic inquiry, considering social outcomes from virtual versus in-person interactions, also emphasized better communication in face-to-face interactions.

People who interacted briefly with a stranger more accurately predicted the stranger’s subsequent cooperative behaviour when the interaction was in person versus virtual, according to recently published research. This finding is important, according to the authors, because accurate social perceptions and predictions are proven components of successful and productive interpersonal interactions which lead to efficient processes and effective results.⁸

Perceptions of rapport and empathy are higher in face-to-face compared to virtual conversations, and overall genuine interpersonal connections may be more difficult to establish online (though this finding was less true for participants under age 40), found another study. The authors noted that while earlier research discovered that some people felt uncomfortable disclosing sensitive information in online discussions, others, including introverts, felt more relaxed and comfortable with online discussions. Aside from comfort, the authors cited research indicating that it’s common for behaviour to be misunderstood online, with feelings of unease masked owing to limited body cues.⁹

Other research looked at the impact of virtual/in-person communications on groups. One study found that videoconferencing inhibits the production of creative ideas, though not the ability of a group to select an idea,¹⁰ and another also found that in-person environments were best for idea generation and task absorption.¹¹

Mediation implications

A mediator’s job involves efficiently working with lawyers and parties to understand interests and canvass possible resolutions to a conflict. Conversations between mediators and participants often involve combinations of trust building, analytical reasoning, creative idea-generation, emotion, negotiation strategy, risk assessment, and decision-making under uncertainty.

The research summarized above indicates that mediations may be more effective in person, where interbrain synchronicity is maximized, rapport and empathy better established, and creative ideas better generated. It also shows that participants in virtual mediation may be unaware whether their performance or effectiveness is modified in a virtual environment. That being said, one of the studies implies that certain people (introverts, some people under 40) may be less negatively affected by working in virtual environments. Research showing that idea generation (though not idea selection) is impeded in virtual mediation implies that mediation of more simple matters may be less negatively impacted by a virtual environment.

Mediators and counsel would do well to consider the dynamics and issues at play in each particular dispute when determining whether virtual or in-person mediation would be best for that case.

Survey results

The results of a 2025 98-person survey suggest that the proportion of virtual mediations in Ontario remains extremely high compared to elsewhere, with many respondents mediating virtually while expressing a preference for in-person mediation. The survey results present an opportunity for both mediators and counsel to reflect on the jurisdictional and practice norms that have developed since the pandemic and to consider what approach in a given case is, in fact, the most effective.

Who was surveyed?

The 98 survey respondents were lawyers and mediators from all over the world with most (62%) from Ontario. Some 14% of respondents were from California, with smaller numbers from Alberta, British Columbia, England and Wales, Scotland, New Zealand, France, Switzerland, Australia, Kenya, Belgium, Israel, India, and various US states (including Florida, Arizona, and Oregon).

Of the respondents, 50% were lawyers or attorneys, and 64% were mediators (respondents could select both roles in their answer).

Virtual versus in-person mediation:

What lawyers and mediators are using

On average, 72% of mediations in which respondents participated were virtual,

with a median of 94%. Different trends emerged by practice area and jurisdiction.

In terms of practice area, those engaged in employment mediations reported the highest rates of virtual mediations at 82%, with a median of 95%. Personal injury mediations were 78% virtual, with a median of 95%, according to respondents. Those engaged in commercial mediation reported that 59% were virtual, with a median of 75%. And 54% of estates mediations were reported as virtual, with a median of 50%.

From a jurisdictional perspective, virtual mediations remain at a very high level in some regions. In Ontario, for example, respondents reported that 88% of their mediations in the last year were virtual, down only slightly from 92% reported in a March 2023 survey,¹² when many Canadian jurisdictions were getting back to normal after long lockdowns. Similarly, respondents from California, Kansas, Missouri, New York, and Florida all reported an overall recent trend toward virtual mediation. Some respondents from Ontario and the US Pacific Northwest noted that some mediators now offer only virtual mediations.

In the United Kingdom, by contrast, only 38% of 2023/24 mediations were virtual, down from 64% in 2022.¹³ Respondents from British Columbia, Scotland, Belgium, Switzerland, Australia, and the US Pacific Northwest, as well as some California respondents, reported a trend toward or complete return to in-person mediations.

Providing a foil for default-virtual jurisdictions, leading mediators from regions where mediation returned in person offered their views on why that might be the case:

In New Zealand we transitioned wholly online for commercial mediations during the COVID lockdowns, but returned promptly to in-person format for the most part as soon as permitted. Lawyers say they just prefer being in the same physical room as each other to get the matter resolved. But there is a new openness to hybrid mediations, using AVL [audio-visual link] to enable overseas parties and experts to participate alongside those in the room.

Online mediation is used regularly in New Zealand for lower value, high volume matters and for certain

government-funded mediations. (Nina Khouri, mediator, New Zealand, Lexology Index Global Elite Thought Leader, distinguished fellow of the International Academy of Mediators)

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In Alabama, most mediations are now conducted in person. While virtual mediation has been widely accepted and many mediations still incorporate a hybrid component, the Alabama bar has historically been very collegial, and that culture lends itself well to in-person mediation. When lawyers and parties are in the same room, it is often easier to build the trust and momentum necessary to resolve a dispute." (Jon E. Lewis, Birmingham, Alabama, member of the National Academy of Distinguished Neutrals)

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... While in my international practice I make extensive use of online platforms, my domestic practice in Israel has remained predominantly in person. There are several reasons for this, both practical and, to some extent, cultural.

First, COVID-related restrictions in Israel were relatively short-lived. As a result, there was insufficient time for the market to fully adapt to, and internalize, a structural shift toward online mediation. While online platforms were widely used during the pandemic, mediation in Israel did not evolve into a sustained, fully virtual model.

In addition, Israeli business and social culture tend to be relatively direct and informal, with a strong preference for immediate, personal communication. This cultural characteristic reinforces the value of physical presence, particularly in processes that depend on trust-building and meaningful human interaction.

Geography also plays a role. Israel is a relatively small country, and attending mediation rarely requires long-distance travel or flights. When weighing the time saved by avoiding travel against the advantages of direct, in-person engagement, parties often continue to prefer physical meetings.

In many cases, mediations begin with a joint in-person session, where trust is established and the foundation

for the process is set. The quality of the subsequent interaction often depends on this initial face-to-face meeting. (Orit Asnin, international commercial mediator based in Israel, distinguished fellow and board of governors member of the International Academy of Mediators)

Although many in Ontario express the view that virtual "is just how mediations are now," the disparity in regional approaches makes it clear that virtual need not be a default setting.

What did lawyer and mediator survey respondents prefer?

Despite the high percentage of virtual mediations reported in the 2025 survey (72% mean, 95% median), only 31% of respondents said that they preferred to mediate virtually, with 37% preferring in-person mediations, and 32% saying it depended on the case.

Of those mediating virtually 95% of the time (62% lawyer respondents and 52% mediator respondents), only 48% preferred virtual mediation (46% lawyers, 50% mediators), with 17% preferring in person (14% lawyers, 17% mediators), and 35% (39% lawyers, 33% mediators) saying it depends.

Looking at lawyer preferences in different practice areas, of those lawyers mediating virtually 95% of the time who practise commercial law, 43% preferred virtual, 14% preferred in person, and 43% said it depends. Of lawyers who practise employment law and are mediating virtually 98% of the time, 44% preferred virtual, 11% in person, and 44% said it depends. Of the lawyer respondents practising personal injury and mediating virtually 100% of the time, none preferred virtual, 20% preferred in person, and 80% said it depends.

What do Ontario lawyers prefer?

Although 88% of Ontario lawyer respondent mediations were virtual last year, only 33% of those lawyers preferred virtual mediations, while 29% preferred in-person mediations and 38% said it depends. All the surveyed lawyers who said they preferred in-person mediation, or at least the option for it, but were mediating only virtually were from Ontario,¹⁴ reflecting Canada's ranking as the country with the highest level of post-pandemic remote work in the world.¹⁵

Ontario lawyers respondents	% virtual mediations in last year	% of lawyers who prefer virtual	% of lawyers preferring in person	% of lawyers saying "it depends"
All (42)	88	33	29	38
Employment lawyers (22)	96	36	18	45
Commercial lawyers (12)	89	33	25	41
Personal injury lawyers (7)	95	0	29	71

Perceived settlement rates – post-lockdown correction?

During the pandemic, only about 10% of survey respondents believed more cases settled in person versus virtually. In 2025, that number rose to 42%, suggesting increasing value is now placed on in-person mediations.

more likely in person, but several explanations are possible. The unique pressures and constraints of the pandemic period, including urgent court backlogs, economic uncertainty, a desire to resolve disputes efficiently during a period of disruption, and a lack of any alternative, may have contributed to relatively high

Perceptions of settlement rates in virtual versus in-person mediation

Survey	Same settlement rate	In person higher	Virtual higher	# respondents
2025 survey – all respondents ¹⁶	49%	42%	9%	98
2025 survey – commercial mediations	43%	45%	11%	49
2025 survey – employment mediations	52%	37%	11%	48
2025 survey – personal injury mediations	57%	39%	4%	24
Mediator survey (early 2021) ¹⁷ mediators	71%	10%	10%	~500
Mediator survey (June 2021) ¹⁸	78.4%	11.3%	10.4%	782 mediators

Ontario lawyers and mediators took a similar view of settlement rates for in-person versus online mediations: 40% of Ontario lawyer respondents felt settlement was more likely in person, 50% felt it was the same virtually/in person, and only 10% felt it was higher with a virtual mediation. Of Ontario mediator respondents, 33% felt settlement was more likely in person, 38% felt the settlement rate was the same virtually/in person, and only 14% felt settlement was more likely when virtual. This is striking considering that Ontario's reported 88% virtual mediation rate was far higher than any other jurisdiction's.

It is unclear why there may be an increasing perception that settlement is

perceived virtual settlement rates at that time. As those pressures have eased, in-person mediation's relative communication and relational benefits may have re-established themselves. At the same time, the survey results showing a high perceived settlement rate during the pandemic should be interpreted cautiously: The respondents from the earlier surveys were drawn primarily from mediators in the United States versus a wide range of geographies, mediators, and lawyers in the 2025 survey.

In-person mediation: Why some lawyers and mediators still prefer to be in the room

Those preferring in-person mediations

provided numerous explanations, which are summarized below:

- **Better understanding/connection (33%).** It is easier to make human connections with all participants in person, building rapport/establishing working relationships to benefit the case at hand in addition to building a base of trust for future cases, according to respondents. One Ontario lawyer indicated that it felt "less us vs. them" in in-person mediations.
- **Higher engagement (19%).** During in-person mediation, everyone involved takes the mediation more seriously and is more engaged, respondents said. Indeed, one respondent reported that during a recent mediation a US attorney was simultaneously mediating two other cases. Others felt that the act of attending in person shows more shared commitment to the process, which has positive impacts on settlement.
- **Chance for direct communication (15%).** Productive sidebar and frank discussions with mediators and opposing counsel were cited as more possible during in-person mediations, including during hallway meetings.
- **Better observation (10%).** Body language, posture, and reactions were cited as easier to observe in virtual mediations.
- **Better mediation experience (9%).** Respondents said that in-person mediations feel less transactional, are more comfortable, leave clients feeling that importance was paid to their matter, and are more enjoyable since in the physical presence of others, and that it was harder to shut down or ignore difficult conversations in person.

Virtual mediation:

Why some prefer to remain online

Those preferring virtual mediation cited other reasons for the preference, most of which fell into two categories:

- **Convenience/cost savings (53.57%).** Virtual mediations are less expensive, more comfortable for lawyers and parties, and eliminate travel time; and work on other matters can be performed during the mediation.
- **Easier mediation experience (28%).** Ease of online document sharing,

moving parties from room to virtual room and extending length of mediation, as well as more participation by higher-level decision-makers, were cited by respondents as factors that improved the mediation experience.

One mediator mentioned that in virtual mediations, participants resort to helping behaviours when someone encounters technological difficulties, which can positively impact the mediation dynamics. Other mediators noted that they can usefully focus on individual facial responses without appearing to stare. Some felt parties and lawyers appear to be more comfortable located in environments of their choosing, and they noted that rapport can be built by discussing Zoom backgrounds.

Several respondents identified insurers as requiring virtual mediations for cost-saving reasons, yet several executive-level insurer respondents indicated a preference for in-person mediation, perceiving that it is more effective and efficient than virtual.

Choosing the right forum: What lawyers and mediators say about when virtual and in-person mediation work best

When is in person best?

In-person mediation was cited by respondents as preferable in numerous circumstances, the majority of which fell into three categories.

- **Difficult dynamics/personalities/emotions (22%).** Respondents felt that high conflict, emotional, or contentious matters with adversarial or big-personality lawyers or parties benefited from in-person mediation.
- **Where relationship is important in some way (15%).** Respondents felt that, where future relationship or reconciliation is possible, when an apology might be useful, or when ongoing family or community relationships are engaged, in-person mediation was better.
- **Complex cases (10%).** Complex matters, multiparty cases, and situations where evaluations are far apart or where parties are resistant to settlement benefit from in-person mediation, according to respondents.

Other respondents indicated that in person is preferred where: credibility issues are at play; a party needs to “feel” the discomfort of being in person to get

a sense of trial experience; trauma is involved; it’s important for parties and counsel to remain focused on the mediation; it would be useful for a ceremony (religious or otherwise) to be incorporated into the mediation; a participant has low technological skills; and creative deal-making is being explored as part of the resolution as “in-person tends to be better for creativity and cooperation.”

When is virtual best?

Virtual mediation was preferred by respondents in the following situations:

- **Travel cost considerations (38%).** Where parties are far away or key decision-makers would not otherwise attend.
- **Power/safety issues (21%).** Respondents indicated that where there are allegations of threats, harassment, abuse, violence, severe power imbalances, or a vulnerable party, virtual may be preferable.
- **Simple, transactional cases (12%).** Where primarily money is at play.

Other respondents preferred virtual when: “parties intend to resolve”; “there is no chance of settlement”; mediation involves meeting only with counsel, where there are concerns about client behaviour; mediation will take place over multiple meetings; it is helpful to have the participation of those who are peripherally involved who would not otherwise participate.

Optimizing virtual mediation

When virtual mediation does take place it works best in the following conditions, according to some survey respondents:

- Each participant appears on their own screen, even if in the same location, to be better observed and participate. (Avoid having one screen for many participants, who become difficult to see when in a single room.)
- Clients attend at lawyer’s office.
- If client is not at lawyer’s office, their location is quiet, confidential, and has good internet connectivity, and the participant is not walking around/multitasking.
- All cameras remain on during discussions.
- Parties, in addition to lawyers, actively participate in discussions.
- Documents are ready to share on screen when relevant.
- Mediator remains engaged until

final settlement documents are signed and is copied on settlement correspondence.

In hybrid mediations where some participants are in person and others are remote, it can be particularly important to have remote participants each appearing on their own screen. The screens in the in-person room should be large enough so that remote attendees can act as real and not forgotten participants in the mediation.

Following these suggestions can help maximize engagement in virtual mediations and create more favourable conditions for settlement.

Conclusion: Virtual or in-person mediation – a meaningful choice

During the COVID-19 pandemic, mediations in most jurisdictions became virtual. Six years later some regions have returned to in-person mediations, but Ontario has remained largely virtual despite a desire for more in-person options. Although virtual and in-person mediation each offer distinct advantages, treating virtual mediation as a default risks forsaking advantages that an in-person process may provide.

Both academic research and survey results suggest that in-person mediation offers opportunities for better communication and collaboration. In-person mediation was identified as especially valuable in matters involving legal or factual complexity, the need for creative problem-solving, difficult parties or counsel, heightened emotion, ongoing or important relationships, multiple participants, apologies, or the development of rapport, empathy, connection, and deeper understanding.

Most mediated disputes involve at least some of these characteristics. Those potential benefits can be weighed case by case against the practical advantages of virtual mediation, including reduced cost and travel time, location flexibility, and greater availability of participants with higher levels of authority. In some matters, particularly those involving power imbalances or traumatized participants, the physical distance created by virtual mediation may also provide a meaningful sense of safety.

It is understandable that virtual mediation became so popular during the pandemic. Now, more than three years after the pandemic ended, evidence

suggests that more lawyers and mediators see value in returning to in-person mediation in at least some cases, and perceived settlement rates in in-person mediations appear to be rising. As the pandemic era recedes, lawyers and mediators

ought not allow convenience alone to dictate mediation format. Rather, they should deliberate choices about whether a virtual or in-person process is likely to advance meaningful engagement and resolution in each particular case. 

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14. These lawyers reported that they practised employment (8), personal injury (6), commercial (4), estates (1), construction (1), and insurance law (2), including senior in-house counsel at a large insurer.
15. C.G. Aksoy et al., "The Global Persistence of Work from Home," *Proc Natl Acad Sci* (2025); <https://pmc.ncbi.nlm.nih.gov/articles/PMC12260529/>.
16. 2025 survey question was: "In your experience have you found that settlement is more likely if the mediation is virtual or in-person? If so, why do you think that is?" Some respondents identified themselves as both mediators and lawyers, whose responses were counted twice in the following breakdown: 55% of the 58 mediator respondents to the survey believed same virtual/in-person settlement rate, 34% thought in person was higher, and 10% thought virtual mediation settlement rate was higher. 54% of the 48 lawyer responses to the survey believed the settlement rate to be the same between virtual/in person; 39% believed it to be higher in person, and 7% perceived higher when mediations were virtual.
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18. *National Survey of Members*, National Academy of Distinguished Neutrals, slide 5 (June 2021); <https://www.disputingblog.com/wp-content/uploads/2021/07/NADN-2021MemberSurvey-Report.pdf>. The question presented on this slide was: "How has your settlement rate been online, compared to in person?"

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