

Tips for legal representatives

Why wait to mediate?

Consider mediating earlier when the costs and risks are lower.

Prepare your client

Your clients need to know what mediation is beforehand so that their expectations can be managed. Mediation can also be more productive if clients are introduced to the concept of compromise and settlement early on.

Ensure all decision-makers are present

The persons present at the mediation should have authority to bind the party to any agreement. Also, while the parties should be present, there may be others (spouse, family member, business partner) who are essential to the decision-making process and whose presence might help to achieve a successful outcome.

Position statements (case summaries)and disclosure

Try to focus on the bare essentials (issues/facts/ law/relevant documents) that might be referred to. Ensure that your client has read the position statements. Keep it as short as possible.

Consider early voluntary disclosure of documents were such disclosure will assist the other party in understanding your case and where it might assist with progress.

Your file of papers

Mediation can be unpredictable. Try to have everything available that you might need to make your point, support your argument or convey your message.

Costs information

Ensure that you have a summary of your current and estimated fees and disbursements.

Persistence

It can pay to stick around. Sometimes momentum can suddenly build later than expected and rushing off can interrupt that momentum and prevent progress. If you believe the other side is being unreasonable, before putting your coat on and leaving, ask yourself if there's something useful that could be accomplished. Try exploring this with the mediator.

The settlement agreement

Be prepared to draft settlement agreement. Ensure you have access to word processor and printer. Where appropriate, if you have a draft Tomlin Order, consider bringing that with you so that you only need to deal with the schedule.

Trust the process

Have faith in the process and listen to the mediator. If he recommends a joint session, or even a meeting with the parties and without lawyers or a meeting of lawyers, then be open-minded about this.

Following the mediation day

If there is no settlement on the mediation day, the mediator can still be involved if you wish. Cases can settle following mediation and sometimes mediations can be adjourned or further mediation days arranged.