



## CAT Practice Direction: Mediation/Adjudication

**Effective: December 1, 2024**

Practice directions help parties understand the CAT Rules of Practice (“Rules”). They provide guidance about what the Tribunal expects of the parties and what the parties can expect of the Tribunal.

### 1. Introduction

This Practice Direction explains the Mediation/Adjudication (Med/Adj) process under Rule 44 of the CAT Rules. It helps the parties to better understand the Med/Adj process.

#### What is Mediation/Adjudication?

Med/Adj combines mediation and adjudication. Initially, the parties try to reach a settlement through mediation. Any outstanding issues that are not resolved through mediation are decided by the CAT Member conducting the case.

#### Rule 44 – Mediation/Adjudication

Rule 44 sets out how Med/Adj can occur.

44.1 With the agreement of the Parties, the CAT Member assigned to Stage 2 or 3 may conduct a combined mediation-adjudication. In mediation-adjudication, the CAT Member will work with the Parties to try to resolve the issues in dispute. If the Parties cannot resolve the issues in dispute, the CAT Member will then make a final decision.

44.2 Where the Parties agree to mediation-adjudication, they must consent to a mediation-adjudication agreement prepared by the CAT before the mediation-adjudication commences.

### 2. Tribunal Member’s Role

The CAT Chair assigns a Tribunal Member to the case.

The Tribunal Member is responsible for managing the case by exercising their authority as outlined in the CAT Rules and the Condominium Act (1988), to determine all questions of fact or law that arise in any proceeding before it.

If the Member determines that Med/Adj may be appropriate, the Member will explain the process to the parties. The Member will also explain expectations of the parties for each phase.

When acting as Mediator, the Member will remain impartial and may:

1. Meet separately with the parties
2. Question the parties' respective positions
3. Generate, or evaluate options for resolution
4. Provide information about Tribunal cases, and relevant portions of the Condominium Act and Regulations.

If there are unresolved issues, the Member will act as an Adjudicator and will:

1. Ensure a fair adjudication process by providing an opportunity for parties to present their case, challenge evidence presented by the other party and make submissions
2. Make preliminary decisions about substantive and procedural matters
3. Manage the adjudication proceeding
4. Decide evidentiary matters
5. Decide the case on its merits by considering the evidence, parties; submissions, legislation and legal principles
6. Issue a written Decision and Order.

### **3. Med/Adj Process**

#### **Commencing Med/Adj**

Med/Adj can be requested by the parties, or be proposed by the Tribunal:

1. At the start of Stage 2 – Mediation; or
2. During the Mediation if the parties agree to the Member deciding the remaining issues; or
3. At the start of Stage 3 – Adjudication.

The CAT may propose Med/Adj if no mediation previously took place in Stage 2 of the case– for example, where an adjudication starts as a default hearing because the Respondent(s) did not initially join the case but has subsequently joined.

The Member will then prepare a mediation / adjudication agreement and explain the process to the parties.

Med/Adj can only proceed if approved by the Member, and all parties agree.

#### **Transition from Mediation to Adjudication.**

The mediation will follow the Rules for mediation (Rules 31-36). If an adjudication follows the mediation, it will follow the CAT adjudication rules (Rules 37-43).

The mediation phase of Med/Adj will end when:

1. The Parties settle the case;
2. The time limit set by the Member for the mediation has expired;
3. The Member declares the case unlikely to settle;
4. The Member decides it is appropriate to move to Adjudication; or
5. The Parties agree to move on to Adjudication.

### When the Mediation ends

When the Mediation ends, the Member will confirm to the parties which, if any, issues are resolved, and if there are any shared facts from the mediation that will be helpful for the adjudication to follow and the issues to be decided.

### Adjudication.

The Member will provide direction for how the adjudication will proceed.

If a party has disclosed confidential information to the Member during the mediation phase, the Member will not use it when making their final decision in the adjudication. This is to ensure that the adjudication phase will remain impartial and fair.

### Mediation/adjudication and the Open Courts Principle

Messages and other communications sent by the parties for the purpose of reaching a settlement (including settlement offers) are confidential and cannot be made public or discussed in the Adjudication.

Consistent with the open courts principle, everything that occurs during the adjudication phase will be included in the Tribunal's adjudicative records, which are accessible by the public. The Tribunal Member will give instructions to ensure that the adjudicative records are separate and distinct from any communications which occur during the mediation phase.