



## 3 WISHES FOR ONTARIO'S CONDOMINIUM DISPUTE RESOLUTION SYSTEM BY: MARC BHALLA JULY 2013

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As a condominium resident, unit owner, director and mediator, I am fascinated by the process being undertaken by the Government of Ontario in respect of its review of condominium legislation and eager to see what ultimately comes of it. While there are many interesting items that have been identified as key focal points – from the regulation of property management to the education of directors – I cannot help but be most intrigued by the analysis and consideration in relation to dispute resolution.

What follows are my three wishes for Ontario's condominium dispute resolution system:

### ***Ontario needs a condominium dispute resolution system that is consistent province-wide***

An obstacle put in place by our current legislation is inconsistency from condominium to condominium. Although the *Condominium Act, 1998* (the “Act”) provides that mediation is mandatory in certain instances, we have no guidance as to how the process should move forward. The task of selecting a mediator can, in and of itself, heighten the conflict at present.

Many condominiums have addressed this by passing a mediation/arbitration by-law to speak to the gaps left by the Act and to guide the process; however, not all condominiums have such a by-law and such by-laws themselves vary considerably between condominiums.

As a lack of education among condominium unit owners and residents is often cited as the root of much condominium conflict and dispute escalation, a procedural model for dispute resolution that applies consistently throughout Ontario will support efforts to educate as all Ontarians will be playing by the same rules.

### ***Ontario needs a condominium dispute resolution system that is accessible***

While it is no surprise that there is general desire to keep the costs of engaging such a system low, in order to allow it to be truly accessible, we also must safeguard our system against the potential for abuse. A system backlog could easily emerge if there is no opportunity cost to engage the system in view of the potential volume of matters which could be brought before it.

Late last year, the Financial Services Commission of Ontario (FSCO) needed to start assigning up to 2000 mediation files per month to ADR Chambers while FSCO mediators continued with their normal workloads to address a high volume of mediation backlog. This serves as a practical example of the reality of such concern which, in the condominium context, is escalated when one appreciates the need for a mediator of condominium disputes to have condominium knowledge.

That being said, to be accessible, a dispute resolution system must also be affordable. A government or third party subsidy could certainly help keep costs affordable to users to strike the opportunity cost-low cost balance, but where will the money come from?

I am not convinced that the idea of having every condominium unit in the province contribute a small amount to accumulate a large pot to fund a system will be embraced by those being asked to make such a contribution – the owners forced to pay. On a larger scale, the result will inevitably be that a collective, large mass of condominium unit owners will be funding a system utilized by only a few. Why should a harmonious condominium community foot the bill to address the problems of a community in turmoil halfway across the province? This is a challenge!

***Ontario needs a condominium dispute resolution system that is timely***

A final consideration to be taken into account is the requirement for a condominium dispute resolution system to be timely. Particularly when those engaged in conflict continue to exist in close community, resolution delays faced as one works through the court system do not help matters.

In a recent article titled *Transformative Mediation & Condominium Conflict*, I examined a condominium dispute heard by the Ontario Human Rights Tribunal which took almost 3 years from start to “finish”. In another article titled *The Nature of Condominium Disputes*, I examine the case of *Dyke v. Metropolitan Toronto Condo. Corp. 972*, wherein a noise matter escalated to the point of a unit owner moving out of her unit more than one year before a court ruling was rendered. Such delays do not advance the interests of the “larger” condominium community and consideration must be provided to ensure a timely system in appreciation of the unique nature of condominium disputes and the often ongoing close proximity of disputants.

The task of developing a condominium dispute resolution system for Ontario is not an easy one, nor a process that will be greeted with widespread consensus at the outset. The Government of Ontario has embraced a legislative review process that engages the condominium community and which looks to find long-term solutions to the shortfalls of our current legislation.

The Association of Condominium Managers of Ontario (ACMO) and the Toronto & Area Chapter of the Canadian Condominium Institute (CCI) formed a Dispute Resolution Sub-Committee which was comprised of twenty-nine (29) condominium stakeholders with a variety of interests and from a range of regions throughout the province. In November 2012, this sub-committee revealed a Condominium Dispute Resolution Model for Ontario which was supported by ACMO, CCI and the ADR Institute of Ontario. It has been presented to the Government of Ontario and addresses the concerns cited in this article while also analyzing dispute resolution models (actual and proposed) from across the country.

Additional information about the Dispute Resolution Sub-Committee and its findings can be found at [CondoConflictManagement.com](http://CondoConflictManagement.com)

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Marc actively manages condominium conflict and advocates for mediation in the early stages of condominium disputes. He earned an Honours Bachelor of Arts at the University of Toronto (Trinity College), holds an Executive Certificate in Conflict Management from the University of Windsor Faculty of Law and is a member of the ADR Institute of Ontario, the ADR Institute of Canada, the Toronto & Area Chapter of the Canadian Condominium Institute, the Association of Condominium Managers of Ontario and the Institute of Law Clerks of Ontario.

Marc brings unique insight in mediating condominium conflict through the knowledge and experience he has gained as a condominium director, resident and law clerk. His mediation practice is focused exclusively on condominium disputes.

Marc Bhalla carries professional liability insurance and is a regular contributor of articles to [CONDOCENTRIC.ca](http://CONDOCENTRIC.ca)



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