



THE PRICE OF BEING RIGHT  
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When you proceed to court to resolve a dispute, you set out to ultimately prove that you are right and the other side is wrong. That being said, being right and recovering costs are two separate matters. Even if one is successful in winning a legal battle, there are no guarantees that the cost of doing so can be recovered.

In the context of condominium disputes, an array of recent court rulings has indicated that litigation cost recovery for condominiums is proving to be increasingly difficult. It is not simply a matter of application of Section 134(5) of the *Condominium Act, 1998* (the "Act") - which allows a condominium corporation that obtains an award of damages or costs to recover the actual costs it incurs in obtaining the order in the same manner as common expenses. Rather, judges are considering litigation strategies, whether a conciliatory approach was attempted (required or not) and fairness in assessing and awarding costs. In instances where condominiums are unnecessarily "dragged" to court by unrepresented unit owners who are unclear on their legal standing, there is no equivalent to Section 134(5) for condominiums to apply and obtain "full" cost indemnity.

A variety of factors will ultimately affect the total cost of going to court, including if one is bringing or defending a claim. Case complexity, the number of witnesses involved, the willingness of parties to accept service, adjournments, motions and a variety of other factors can legitimately increase an initial litigation budget of \$10,000.00 to \$15,000.00 quickly and significantly. In fact, it is not uncommon for a condominium's litigation costs to reach the \$20,000.00 to \$50,000.00 range, or higher, by the time a court imposes a decision and then considers costs.

In addition to the cost of proceeding to trial, there is the time involved in waiting for the case to be heard and then, in many cases, for a decision to be rendered. An emotional toll is taken on the parties in terms of stress and uncertainty, which is augmented in condominium communities as parties in conflict often remain in "community" with each other.

While mediation offers no guarantees of settlement, as long as the parties participate in good faith, it will serve disputants on a more timely basis than the court system and is virtually guaranteed to provide greater insight into the perspective of the other side. Even if mediation "fails" and the conflict proceeds, much can be achieved to save cost, time and ill will moving forward. Consider such benefits as narrowing issues to avoid the cost of motions; avoiding some of the games that can be played with adjournments, avoidance of service and the involvement of unnecessary witnesses; and the reduced emotional strain that comes with having an interaction plan in place as the conflict proceeds. Of course, mediation also

presents the chance to resolve the dispute, avoiding the need to spend any more time and money and potentially preserving the relationship. Face to face interaction facilitated by a mediator can help break down barriers and generate options which may not have otherwise been considered.

As the modern adage “*Mo’ Money, Mo’ Problems*” looks to be ringing true in the course of condominium litigation cost recovery, the opportunity to mediate as one waits for the courts to be available is difficult to overlook. The best case scenario is resolving the dispute and the worst case scenario is being able to evidence to a court that you attempted a conciliatory approach before proceeding to trial for consideration in awarding costs.

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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**



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