



TRANSFORMATIVE MEDIATION & CONDOMINIUM CONFLICT
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“That was too much! It was unfair! It was persecution!” – Roch Carrier, The Hockey Sweater

In the climax of the classic Canadian story featured on our five dollar bill, the main character finds himself in violation of the rules. His response is an emotional outburst caused not just by the infraction but rather the culmination of a *series of events* which left him feeling discriminated against. In the context of condominium communities, disputes often unfold in a similar manner. A conflict may be associated with many smaller events that collectively can be seen as a single larger injustice or inequity.

In a case decided earlier this year by the Human Rights Tribunal of Ontario, a unit owner alleged discrimination on the part of her condominium corporation, its Board of Directors and its property management company as she was asked to cease construction of an unauthorized balcony enclosure.¹ Notwithstanding the fact that the unit owner was advised (1) that the balcony was part of the common elements, (2) that prior approval was required to alter a common element and (3) that the Status Certificate issued in the course of her purchase specifically spoke to new balcony enclosures *not* being permitted, she refused to cease construction. Rather, it would appear that the unit owner saw pre-existing balcony enclosures, felt that she was protecting her child and perceived that objections to hers were based on prejudice and racism. The owner’s beliefs became further entrenched by unrelated events surrounding the handling of her complaint about racist graffiti on an outdoor wall and an incident where her laundry may have been stolen.

Ultimately, the unit owner was not able to establish a link between the actions taken in respect of the balcony enclosure and allegations of discrimination, nor prove that the other incidents cited were a violation of the Ontario Human Rights Code. In the decision rendered by the Ontario Human Rights Tribunal, it is noted that *“the applicant had not actually met any member of the Board of Directors of the condominium corporation prior to the request that she cease construction of the enclosure”*. Accordingly and unfortunately, the unit owner’s introduction to her Board surrounded a notification of her violation and a request that the construction of the balcony enclosure cease at once. The relationship between Board and unit owner did not appear to improve as the construction of the balcony enclosure continued amid the emergence of allegations of discrimination.

¹ <http://canlii.ca/en/on/onhrt/doc/2013/2013hrto105/2013hrto105.html>
[WARNING: some of the language shared in this decision is offensive.]

In situations similar to the case referenced above, mediation can provide opportunities both to potentially prevent the escalation of the conflict and also to improve the relationship of parties who are required to interact on an ongoing basis.

Sitting down to discuss the situation may avoid the cost and ill will that can develop in the course of bringing in a third party to impose a solution. Mediation can allow parties to better understand one another. For example, in the case cited, perhaps the Board was trying to prevent unit owners from wasting money as an imminent restoration project would require the removal of all balcony enclosures and perhaps the owner was sensitive as her actions surrounded her desire to protect her young son, who had health issues. Mediation can be a time-saving measure, as well. Particularly when you consider that this conflict was brought to light in the spring of 2010, yet a solution was not imposed upon the parties until early 2013, when facing similar circumstances, considering an option where a resolution can be reached more quickly between parties is worthwhile.

While there are several “types” of mediation, what is known as transformative mediation can be helpful when parties in conflict continue to have an ongoing relationship, as is often the case in the condominium context. A focus of transformative mediation is to shift the interaction between the parties in conflict from negative to positive. It is a process that is built around empowering the parties to better understand one another and identifying opportunities to improve interactions through insight into each other’s perspective and self reflection/analysis.

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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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