



MAKING THE MOST OUT OF MEDIATION:
HOW TO BE COMFORTABLE IN YOUR MEDIATION SESSION
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Mediation is a process that is driven by the parties. It stands to reason, then, that the parties participating get out of it what they put into it. To make the most of mediation, it is helpful if those taking part are comfortable and sufficiently prepared. What follows are some tips and suggestions for anyone facing an upcoming mediation to consider:

1. **What is mediation?** The more I have participated in mediation over the years, and the more I have observed the comments and perceptions of people who are not immersed in it, it has become clear to me that mediation is not widely understood. The fact that there are a variety of mediation styles (facilitative, evaluative, transformative, etcetera) only adds to the lack of clarity. Before showing up to take part in your mediation session, it can be helpful to understand what you are getting yourself into. A variety of sources are available to help, including the Mediation Agreement, advice from your legal representative and information that is sometimes circulated by the mediator him/herself to assist in preparations.
2. **Authority to settle.** To make the most of the opportunity to resolve a conflict at mediation, it is imperative for those attending to have the authority to settle. This can be a particular challenge for condominium corporations, with Boards of Directors made up of volunteers who are not all readily available to attend or otherwise participate directly. Often, a representative of or from the Board is present with instructions and guidelines for settlement provided to them in advance. Unfortunately, such parameters are often positionally based and do not account for the potential for outside the box thinking that may ensue through the examination of each party's interests. Consider what will happen if a settlement option arises at the mediation which was not considered previously. Failing to accept a good settlement option which surfaces at mediation due to a lack of settlement authority may be viewed as bad faith or otherwise serve to escalate the conflict.

By way of example, a colleague was involved in a mediation that appeared to be progressing well. However, when the clock reached 1pm, one party abruptly left the session without warning. It came to light, after the fact, that his instructions expired at 1pm, which proved difficult to explain as the other party questioned if the conciliatory approach taken until the unexpected departure was genuine.

3. **Comfort.** Mediation is most effective when the parties participating are comfortable. Particularly if this is your first time participating, think about what will put you most at ease. If bringing someone along for support or advice will help, see if they can join you. You may wish to bring a legal representative to assist in presenting your perspective and analyzing the legality of various settlement options to be discussed, though we do encourage parties themselves to actively participate to make the most out of the process. It may even be little clarifications, such as the layout of the room or the temperature of the building (i.e. is it the type of setting that warrants wearing a sweater in the winter or the summer months?) that will help address some of the anxiety that many parties inevitably experience.

4. **Parameters of Resolution.** An aspect of condominium disputes that makes them unique is the confines placed upon potential settlement options imposed by the *Condominium Act, 1998* and each condominium corporation's unique declaration, by-laws and rules. In preparing for mediation, it is prudent for parties to understand the restrictions placed upon them by virtue of the condominium setting of the conflict. An analysis and understanding of these boundaries of resolution – including the advice of a lawyer – can help in making the most of the opportunity that mediation presents.

5. **Reflection, Anticipation and Consideration.** Think ahead about the message that you would like to send the other side and what you would like to get out of the mediation opportunity. In the autumn of 2012, at the 16th Annual Condominium Conference hosted by the Association of Condominium Managers of Ontario (ACMO) and the Toronto and Area Chapter of the Canadian Condominium Institute (CCI-T), prominent condominium mediator Colm Brannigan circulated a list of 29 questions to help parties prepare for mediation. The list includes considerations such as what the conflict is about, what mediation can accomplish, what is realistic and what each party's next step will be if the dispute continues. It is helpful to take the time in advance to reflect upon the reasons for the conflict, anticipate the options that may be presented and consider your next course of action.

Mediation presents tremendous opportunities for parties engaged in conflict to better understand the perspective of one another and to communicate in a confidential setting without prejudice where they need not focus on right or wrong or on winning and losing. The opportunity has the potential to save money and preserve relationships, so parties are wise to prepare in advance and ensure they are equipped with the authority and comfort that they need to make the most of it.

At Elia Associates, we offer a variety of options to cater the mediation process to one that is most comfortable for the parties.

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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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