INVESTING IN RESOLUTION
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JANUARY 2014

One of my primary concerns surrounding the Government of Ontario's ongoing review of the province's condominium legislation and proposed efforts to address conflict which arises in condominium communities surrounds the notion of having dispute resolution services available for little to no cost. Many have cited that a challenge of the existing system is the high cost of mediation and arbitration. I do not disagree and have been flabbergasted to see mediators and arbitrators routinely charging 2 or 3 times my rates or, at times, even more.

I agree that something needs to be done to make mediation and arbitration more accessible; in part, this is why I support the notion of introducing mediation in the early stages of condominium disputes. However, in addition to balancing accessibility against concerns of system backlog and abuse, there must be an appreciation of what happens when conflict resolution services are offered for little to no cost - when parties invest too little into the dispute resolution process.

A key to the mediation process surrounds the generation and examination of options. Parties brainstorm and aim to draw out a series of possible ways to address the issues – many of which could not have been anticipated without the exchanges and collaborative approach that are incorporated into mediation. In determining whether to pursue any of the options generated, parties to conflict assess such settlement options against the other options available to them to otherwise address the dispute. What is referred to as one's Best Alternative to a Negotiated Agreement - or one's BATNA – is to be considered against the settlement options presented and the most appealing choice selected. If it is more appealing to otherwise address the conflict, settlement is not appropriate.

Unfortunately, when parties have invested little into conflict resolution, they risk not having a genuine understanding of what their options are and may fail to approach the process in good faith. In such circumstances, parties risk overselling or underselling themselves on the reality of their next course of action if the conflict continues unresolved. On one hand, they may risk assuming that proceeding to court will be easier than it really will be; while, on the other hand, they may risk being oblivious to certain legal rights or obligations that leave them better situated than they had thought. While the mediator helps generate options, he/she does not provide legal advice and cannot truly assess how appealing each option may be.

For this reason, parties in conflict are wise to conduct some due diligence and educate themselves, even just initially, into their options outside of settlement before proceeding to mediate. This can be done by reflecting on and investigating the following questions:

What will I do to address the dispute if mediation does not result in settlement?

How will I do this?

How much will it cost?

How long will it take?

What are my chances of obtaining my desired result through this course of action?

Who should I speak with to be sure my answers are correct?

What is the other party likely to consider doing to address the issue?

What might I need to better understand to be sure of my answer?

How would I feel if the status quo continues and nothing is done to address the issue?

What am I prepared to do about it?

What elements of this matter are within my control?

How will the choices I make impact things?

How will I feel if this conflict escalates?

What is my worst case scenario?

What is my best case scenario?

Am I being realistic? How can I be sure?

When parties do not invest much into the dispute or understand their options, they can miss the reality of the situation or fail to understand what will likely transpire. They are not equipped to make the choice that is best for them and risk escalating the conflict, and related costs, as a result of unrealistic expectations or beliefs.

When parties have a good sense of their options going into mediation, they can be comforted by their knowledge and better equipped to determine which settlement options warrant further consideration. They are empowered to make the choice that is best for them with a clearer understanding of what they face moving forward.

The purpose of mediation is <u>not</u> to force parties to compromise and leave without what they wanted to get in a settlement arrangement. The purpose <u>is</u> for the parties to better understand one another's interests, consider what may be plausible ways to address the conflict and proceed with the course of action that suits their best interests.

The adage "you get what you pay for" rings true on many occasions and the high cost of conflict, including many highly publicized cases in recent years, provides good cause for concern for those involved in disputes; however, the cost of conflict is not an all or nothing proposition. Taking the time and making an initial investment of time and/or money to ensure that you understand the reality of your options can ensure that you make the right decision. This is why mediating early on can be worthwhile.

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Marc holds an Executive Certificate in Conflict Management from the University of Windsor's Faculty of Law (Stitt Feld Handy) and earned an Honours Bachelor of Arts at the University of Toronto (Trinity College). He actively manages condominium conflict and advocates for mediation in the early stages of condominium disputes.

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 on condominium disputes.

Marc sits on the Board of Directors of the Toronto & Area Chapter of the Canadian Condominium Institute and is a member of the ADR Institute of Ontario; the ADR Institute of Canada; the Toronto & Area, Golden Horseshoe, Huronia and London & Area Chapters of the Canadian Condominium Institute; the Association of Condominium Managers of Ontario and the Institute of Law Clerks of Ontario.

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