



MANDATORY MEDIATION
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Mediation offers no guarantees that a dispute will be resolved. That is what makes it a safe alternative - parties cannot be forced to do anything against their will...except, in certain circumstances, to mediate in the first place.

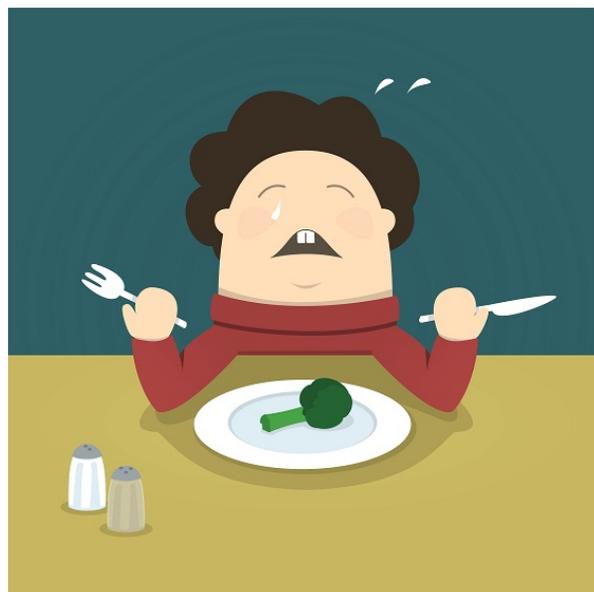
The concept of mandatory mediation is by no means limited to condominium conflict yet, in the context of condominium disputes, the authority for it stems from the *Condominium Act, 1998* – specifically, Section 132.

While the legislation stops short of providing a default procedure¹, it does provide that disputes which pertain to an agreement: between a declarant and condominium corporation, two or more condominium corporations, a condominium corporation and a person in respect of property management or referenced in Section 98(1)(b) of the Act are required to be mediated.

Just as players taking part in a game of Monopoly may react differently to picking up a card that tells them to *Go Directly To Jail (without passing GO)* based upon their particular strategy and position, the concept of mandatory mediation can land differently for people. For example, someone who may not know what mediation is or fails to appreciate how it can apply to the dispute at hand may be hesitant to see its value.

As it is, forcing parties to mediate contradicts the spirit of mediation, which is intended to be a voluntary process. As the fate of mediation lies in the hands of those participating, it is not difficult to identify the problems that can arise when someone is forced at the table against his/her will.

In my experience, a problem is that parties often view their conflict as black and white. They question what there is to mediate and view the situation as having only a single wrong and a single right. By looking ahead to having an arbitrator or court of law determine how the matter will be resolved, one risks missing the opportunities that mediation offers and taking advantage of the chance to have a say in the resolution of the dispute.



As strong as you may think your case is, there are never guarantees as to outcome. In fact, the 2013 case of *Diamantopoulos v. Metropolitan Toronto Condominium Corp. No. 594* provides that court does not always even guarantee an outcome. In this case, the court dismissed an application citing the issues raised by the parties to be too insignificant to merit a decision by a court of law in favour of one party or the other.

So, given that no one can guarantee that a court of law will provide you the outcome that you want - or any outcome at all - why not see if you can guarantee yourself a resolution you find acceptable while it is still within your control to do so?

You may gain insight into another party's perspective and generate settlement options that you did not realize existed. Particularly when conflict exists in the setting of a condominium community, it is not uncommon for assumptions to be made or for the dispute to be about more than what appears on the surface.

I encourage those involved in disputes which are required to proceed to mediation to learn about mediation and how it can apply to their conflict. There must be some reason that the courts and the law are directing you to proceed via this route, so why not try to make the most of it? You may end up saving yourself time and money and perhaps even achieve a result that reflects the interests and values of everyone involved. As the mediation process can be flexible, approaching it with an open mind may allow you to gain comfort and make the most of the opportunity forced upon you.

[1] This shortfall is unfortunate as it represents a missed opportunity to assist in the resolution of disputes that arise within condominium communities. It has been widely speculated that this will be addressed and a default procedure for mediation incorporated into the highly anticipated outcome of the review of Ontario's condominium legislation.

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