

A MEDIATOR'S QUALIFICATION IS ESSENTIAL

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Primum non nocere - First, do no harm

In a recent article titled “Condo Knowledge is Power”, I expressed the importance of involving a mediator with demonstrable understanding of how condominiums operate when mediating condominium conflict. I firmly believe that a mediator requires an appreciation of the nuances of condominiums to appropriately get involved in this niche area of practice; however, I hold no pretense that condominium knowledge alone is enough. At the risk of oversimplification, a mediator first needs to be a mediator to minimize the risk of doing more harm than good.



Ponder how someone with a great deal of understanding of condominiums but who lacks sufficient mediation training and experience risks squandering your mediation opportunity and consider the following risks – and costs - involved of having non-mediators mediate:

1. The Appropriate Process. Part of the trouble many have in understanding what mediation is results from the fact that mediation is a flexible process that may not necessarily be applied the same way to every situation. In order to provide parties experiencing a dispute with the best opportunity to resolve their conflict amicably, it is important for the mediator to have enough “tools” in his/her “toolbox” to facilitate a process that caters to them. No number of Annual General Meetings attended or bedtime readings of Declarations, By-laws and Rules can necessarily build such tools.

While the condominium field is certainly a unique and specialized area of practice, proper mediation training and experience equips mediators with an arsenal of strategies and techniques that can be applied on the spot as situations unfold to help direct the mediation process. To believe otherwise would be to naively allow your mediator to rely on the advice of Yogi Berra: “When you come to a fork in the road, take it.”

2. Fool Me Twice, Shame on Me - Lack of Experience. Mediation training, in and of itself, is only half of the battle when it comes to a mediator's qualification. Lectures, textbooks and role plays only go so far. A mediator must have enough successful hands-on experience. While it can be a struggle for many aspiring mediators to gain the expertise needed to be sufficiently qualified – a Catch-22 not uncommon to graduating students in many fields these days – your conflict is too important to risk it escalating as a result of a rookie mistake^[1].

3. You Don't Get What You Pay For. Throughout the course of the recent review of Ontario's condominium legislation leading up to the passing of *Bill 106, Protecting Condominium Owners Act, 2015*, a sentiment expressed by many is a problem of private mediation being too expensive. I believe that the lack of process set out under the *Condominium Act, 1998* is the bigger problem leading to unnecessary, excessive cost.

It is unfortunately the case that some have attempted to manipulate or by-pass the mediation process by only putting forward very expensive mediators as options, including those who lack appropriate qualification to mediate condominium disputes (or to mediate at all). If the proportionality between the

amount in dispute and the cost of addressing it does not make sense, mediation can result in a “lose-lose” rather than the desired “win-win” regardless of outcome. The involvement of a mediator need not be costly. A good and experienced mediator can offer flexibility of process to suit a budget appropriate for the conflict at hand, especially with the emergence of technology to facilitate such online.

I would suggest that any "premium" being invested into mediation may be better spent on legal advice individually or collectively rather than a mediator with an overinflated sense of self-worth. If you want a legal opinion on the situation you are experiencing or a decision to be imposed upon you by an expert, by all means such can be worthwhile investments. Neither is within the role of a mediator to provide.

The good news in all of this is that there are ways to assess if a proposed mediator is indeed qualified to mediate. Voluntary designations such as the “Qualified Mediator” designation of the ADR Institute of Canada are akin to the “RCM” designation of the Association of Condominium Managers of Ontario (ACMO). Such designations are one way to ascertain qualification within an unregulated profession. After all, for mediators, unlike property managers, there is no regulation on the horizon.

To hold a designation of the ADR Institute of Canada, one must have a minimal amount of training and experience as well as successfully completed an ethics course. Parties selecting a mediator with such a designation can also take comfort in the requirement that they must also maintain professional liability insurance and meet ongoing continuing education obligations.

Once you have verified that a potential mediator has the sufficient qualification to mediate, you then should ensure that they are qualified to mediate your condominium dispute. That is where my “Condo Knowledge is Power” article comes in...



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[1] To any aspiring mediators who happen to come across this article, I do not mean to discourage you by stating this fact; rather, I suggest that you consider volunteer opportunities to gain hands-on mediation experience before putting yourself out there and being honest with prospective clients who ask you how many mediations you have facilitated. It hurts the reputation of all mediators if you mislead people into thinking you have more experience than you do and, frankly, that is no way to set the tone needed to build the trust that is so important to the process.