



REFUSING TO MEDIATE CAN COST YOU

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In the upcoming ACMO Quarterly Report, you will find my recent article on mandatory mediation. In it, I draw attention to the fact that the *Condominium Act, 1998* requires certain types of disputes to proceed to mediation and speak to the opportunities that mediation provides to parties in conflict, even when they are at the table because they have to be. In this spirit, I have found myself equating mandatory mediation to eating your vegetables – while you may be forced to do it, it can be good for you to do.

The case of *Metropolitan Toronto Condominium Corporation No. 965 v. Metropolitan Toronto Condominium Corporation No. 1031 and Metropolitan Toronto Condominium Corporation No. 1056* was released on September 23, 2014 and serves as a case in point of my message.

This case involves a shared facilities dispute – precisely a category of dispute that typically falls into the mandatory mediation provisions of our provincial condominium legislation. Yet, in this case, the plaintiff refused the defendants' requests to mediate. Rather than participate in a process that imposes no resolution upon the plaintiff without its consent, MTCC 965 instead attempted to proceed directly to court, citing an oppression remedy claim as the grounds for doing so.

Ultimately, the Ontario Superior Court of Justice stayed the proceeding until such time as the dispute was submitted for mediation (and, if necessary, arbitration) and awarded costs on a partial indemnity basis in favour of the defendant.

Bottom line: Failing to attempt to first mediate this conflict cost MTCC 965 \$11,808.21 in costs that it now has to pay to MTCC 1031 and MTCC 1056, plus its own legal costs of proceedings to date. This also cost MTCC 1031 and MTCC 1056, as they were unable to recover all of their legal costs in this respect. Time has also been wasted and all parties are likely more entrenched into respective positions, making a conciliatory resolution less likely for communities that are forced to co-exist with each other going forward.



When we speak of mediation, we often describe it as providing the opportunity for parties in conflict to achieve a “win-win” solution. In this case, it is clear that by failing to participate in mediation, the condominiums involved have found themselves in a “lose-lose” situation. After all, the worst case scenario of mediating in the first place would have been failing to resolve the dispute. Notwithstanding the potential of “failed” mediation allowing for better understanding between the neighbouring communities or the establishment of an interaction plan to allow the dispute to simmer until a resolution is imposed, both condominiums could have ended up farther along than where they find themselves right now – with each having spent less money to get there – had they simply embraced the opportunity to attempt to work together to seek resolution through a process which does not force them to do anything that they do not want to do.

Even when mediation is not mandatory, as it was in this case, there is no harm in trying to find a cost effective, sustainable and timely resolution.

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