



SELECTING A MEDIATOR FOR A CONDOMINIUM DISPUTE BY: MARC BHALLA JANUARY 2013

Section 132(1)(b)(i) of the *Condominium Act, 1998* (the Act) permits the parties to a dispute to move on from required mediation and proceed to arbitration if they have not been able to select a mediator within 60 days of "submitting the disagreement to mediation". The Act does not provide a process for selecting a mediator, leaving further process details to be established (voluntarily) by the individual condominium corporation by way of a mediation by-law. While many condominium corporations in Ontario have established such a by-law, the result is an inconsistent process that can vary from condominium to condominium. Often, condominium disputes – or at least related costs – risk escalation as representatives of the parties are unable to agree on a suitable mediator.

What follows are factors for consideration in selecting a mediator to assist in addressing a condominium dispute, including clarification surrounding some misguided notions that we have come across in the course of the mediator selection process.

- 1. Mediation Qualification.** Like condominium property management, mediation is an unregulated profession. Anyone can "hang up a shingle" and call themselves a mediator. Also like condominium property management, an organization exists that has an accreditation program, Code of Ethics, complaints procedure, etcetera. The Association of Condominium Managers of Ontario (ACMO) and the ADR Institute of Ontario (ADRIO) both play a vital role in creating a voluntary framework of regulation in their respective industries. Accreditation from ADRIO can assist parties in ensuring that a proposed mediator is qualified; adoption of ADRIO's Code of Ethics and having appropriate insurance in place may also provide assurances as to a mediator's integrity.
- 2. Condominium Knowledge.** Unlike ACMO, ADRIO is not focused exclusively on condominiums. Accordingly, ADRIO affiliation alone does not indicate a mediator's qualification to mediate condominium disputes, which are unique in nature in light of both the distinctive laws and regulations imposed upon the parties and, often, the on-going relationships between the parties in conflict. Any resolution must be found within the four corners of the Act. The role of the mediator is not to provide legal advice; however, a qualified mediator with knowledge of condominium law can work to keep the parties focused within such framework. To achieve a mediated settlement that contravenes the Act wastes time and money and risks further polarizing the parties. It also risks bringing the mediation process into disrepute.

3. **Bias Perception.** A fundamental aspect of mediation is the neutral role of the third-party mediator. While the mediator does not render a decision upon the parties, to be effective, it is important for the mediation process to present a safe and comfortable environment for the parties to consider their options.

Bias perceptions may be formed through any number of factors – how the mediator is paid, the involvement of a property manager/lawyer with whom the mediator has interacted in the past, shared culture between the mediator and one party, etcetera. Discounting a seemingly appropriate mediator without fully considering, understanding and/or addressing the impact of a prospective perceived bias may be doing the parties an injustice, particularly as the mediator may provide the parties with comfort in the course of addressing a bias concern which will serve them well when they engage in mediation (at the very least by better understanding the process).

The following questions could be posed to a mediator being considered to address a condominium dispute in Ontario:

1. What credentials do you have that qualify you to mediate?
2. Are you affiliated with the ADR Institute of Ontario and are you governed by their Code of Ethics? If not, to which ethical standards do you practice?
3. Do you carry mediator insurance?
4. What experience do you have in addressing condominium conflict?
5. If applicable - We have a concern that due to _____ you may be perceived as having bias if you were to become involved in this conflict. Can you mediate this dispute as a neutral facilitator?

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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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