



THE IMPORTANCE OF HAVING CONDOMINIUM KNOWLEDGE
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There are differing views as to the degree of specialized knowledge that a mediator should have in respect of the subject matter of a dispute. As the mediator is not imposing any decisions upon the parties or providing any advice, some question the need for specialized knowledge.

While the nature of the dispute may impact the degree to which a mediator's expertise in the subject matter may be relevant, in the condominium context, there is tremendous benefit to parties in having a mediator with "condominium knowledge" facilitate their mediation. Such insight includes an appreciation of condominium-focused legislation, current and landmark case law and an understanding of how condominiums "work".

There are several reasons for this:

1. **Boundaries of potential resolution.** As parties review their options and consider potential resolutions to their conflict, it is essential that they recognize that settlement options are not limitless. Resolution must be found within the four corners of the *Condominium Act, 1998* (the "Act"). The Act cannot be ignored, nor can each condominium corporation's unique Declaration, By-laws or Rules. While this is particularly important if the condominium corporation itself is a party to the dispute (as the condominium cannot "contract out" of the Act), such limits apply to all governed by them.

It is not the role of the mediator to provide a legal opinion as to the validity of settlement options; however, it is economically unrealistic to expect parties who have mediated to then incur further costs for a legal opinion which tells them that their mediated settlement, reached in good faith, was for naught. A mediator with sound condominium knowledge can assist the parties in being better aware of the limits imposed upon them and in appropriately ratifying/adopting a potential settlement.

2. **Empathy.** A mediator's ability to understand what a party in conflict (particularly a community-based conflict) is going through is important for the process to be effective as it builds the trust and comfort required to uncover and address the underlying interests at hand.

A mediator who appreciates that condominium units are not apartments, understands that unit boundaries differ by condominium and knows that a condominium's reserve fund cannot be used to pay for "anything" is better equipped to appreciate what the parties are going through.

3. **Consequences.** Often in the course of mediation, parties examine their BATNA (Best Alternative To a Negotiated Agreement). If a conflict is worth resolving, an available settlement option simply has to be more appealing than the next course of action to address the dispute. An effective mediator asks provocative questions, challenges the parties to think outside the box and encourages them to truly consider if settlement is viable. A mediator who appreciates the impact that various options may have on a condominium community can ask the questions that are important for the parties to consider.

Condominium disputes are unique. Someone qualified to facilitate the mediation of condo conflict appreciates that such disputes are distinct in nature yet also that each is different. Condominiums vary by community, from the make-up of governing documents to the “personality” created by the people. When condominiums face conflict, there is genuine benefit to reaching a fast, creative and cost effective resolution that serves to strengthen and foster the ongoing relationship of the parties, and, indirectly, the well-being of the community as a whole.

ADR practitioners interested in facilitating the resolution of condominium conflict are wise to educate themselves as to the nuances of this niche area of practice. There are several ways to go about doing this:

1. **Take condominium courses.** The Canadian Condominium Institute has several chapters across Ontario, all of which regularly host educational courses, circulate publications and make reference materials available. While many of these courses are aimed at educating condominium directors, the information presented is of great value to mediators as well.
2. **Stay informed of industry developments.** Last summer, the Government of Ontario announced that it would be undertaking a review of the province’s condominium legislation, embracing an interactive three-phased process that has recently concluded its second phase. A great deal of information has been circulated which sets out the key areas of concern with respect to the current legislation and an array of proposals and recommendations for improvement. Becoming familiar with the issues identified and proposals being made will help a prospective mediator of condominium disputes understand the issues the industry is currently faced with and how they may be addressed. The Stage Two Solutions Report released last month speaks to the creation of a Condo Office, which will play a significant role in dispute resolution and also serve as a source of information.

A wealth of on-line resources are available to assist you in brushing up on your condominium knowledge. This includes articles provided by industry publications such as Condo Voice, Condo News, Condo Business and CM Magazine, as well as those circulated by prominent condominium law firms. Blogs, such as the popular Ontario Condo Law blog (www.ontariocondolaw.com) maintained by Chris Jaglowitz, provide easy access to information for a great price (free).

3. **Get involved.** With over one million Ontarians calling condominium units their homes and condos representing half of the new homes being built in the province, it is difficult not to know someone involved in condominiums in one way or another. If you happen to live in or own a condominium unit, consider getting involved in your community. Industry organizations such as the Canadian Condominium Institute and Association of Condominium Managers of Ontario offer professional memberships to those servicing the industry.

With the growth and prominence recently provided to Ontario's condominium industry, it is an area of practice increasingly appealing to ADR practitioners. However, it is important to remember that it is a niche area with unique laws and regulations that impact the plausibility of potential resolutions. In the condominium context, resolution possibilities are not limitless.

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Marc holds an Executive Certificate in Conflict Management from the University of Windsor's Faculty of Law 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 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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