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A common criticism of the ADR community is that ADR practitioners have not done a very good job of marketing themselves. As I am a mediator and not a salesman, rather than once again writing about the great opportunities that mediation presents to address conflict cost effectively, efficiently and in a manner that can serve to preserve relationships through more sustainable solutions than those imposed by someone not personally impacted by the conflict, I thought I would share a few quotes from Ontario judges in the course of rendering decisions...



“This case is not really about non-payment of common expenses. It is about disputes over common expenses. Of course the owners must pay their share of common expenses. TSCC does not deny this, and is in a position to pay, but disputes liability for a host of reasons, all of which are properly addressed through the mediation and arbitration provisions of the Condominium Act. That process should have been followed in this case.”

- D.L. Corbett, J | Toronto Common Elements Condo. Corp. No. 2041 v Toronto Standard Condo. Corp. No. 2051, 2015 ONSC 4245 (CanLII) | June 30, 2015 | Link - <http://canlii.ca/t/gjw5k>

“Both parties made offers to settle. The terms of each are such that they do not trigger any costs consequences. However, as can be seen above, Ms. Wu’s offer was an offer that Peel capitulate rather than an effort to compromise in an effort to settle the case. That conduct should be discouraged.”

- Lemon, J. | Wu and Peel Condominium Corporation No. 245, 2015 ONSC 4101 (CanLII) | June 24, 2015 | Link: <http://canlii.ca/t/gjnwz>

“Because the parties have not yet mediated, the dispute should be deemed to have been submitted for mediation on the date that this endorsement is released and the provisions of section 132(1) should thereafter be applied with necessary modifications.”

- Justice Graeme Mew | MTCC No. 965 v. MTCC No. 1031, 2014 ONSC 5362 (CanLII) | September 23, 2014 | Link: <http://canlii.ca/t/gdpvm>

“I conclude that the Board was not acting in good faith in pushing ahead with this unnecessary litigation.”

– Henderson, J. | Middlesex Condominium Corporation No. 232 v. Bodkin, 2014 ONSC 106 (CanLII) | January 10, 2014 | Link: <http://canlii.ca/t/g2kcd>

“The respondent argued that these matters need to come to court rather than mediation... This approach fanned the flames of conflict, and is a proper basis to reduce the respondent’s costs recovery.”

- D.L. Corbett J. | Diamantopoulos v. Metropolitan Toronto Condominium Corp. No. 594, 2013 ONSC 5988 (CanLII) | September 23, 2013 | Link: <http://canlii.ca/t/g0nkc>

“The dispute resolution mechanism included in the SFA was consensual and provided for a constructive, timely and cost effective method for dealing with differences such as the utilities payments dispute in this case. I find that the parties are bound by their contractual agreement. It makes commercial sense that they abide by the terms of their agreement and proceed by way of mediation and arbitration of the utilities payment dispute. “

– DiTomaso, J. | Grey Standard Condominium Corporation No. 50 v. Grey Standard Condominium Corporation No. 46, 2013 ONSC 122 (CanLII) | January 7, 2013 | Link: <http://canlii.ca/t/fvhtp>

“TCECC No. 1508 has wasted considerable time and expense in my view by insisting on this litigation when mediation was available to the parties. It could have achieved a more conciliatory resolution long before now.”

- Michael G. Quigley, J. | Toronto Common Element Condominium Corporation No. 1508 v. William Stasyna, 2012 ONSC 1504 (CanLII) | March 6, 2012 | Link: <http://canlii.ca/t/fqh7x>

The quotes from these 7 court decisions rendered since 2012 pertain to several different conflicts involving condominium communities. Notwithstanding, the message from the courts is consistent... Ontario judges do not want to see condominium conflicts in their court rooms unless they have to. Proceeding straight to court only because you have the legal right to do so risks creating cost recovery obstacles even if you are successful.

The safe thing about mediation is that it offers no guarantees. You cannot be forced into settlement or have a decision imposed upon you, as the power remains in your hands. Why not utilize that power to try to find a timely, cost effective and reasonable solution? It certainly will not help matters to spend all that time and money proceeding to trial only to be told by a judge that you ought to have done so.



Marc Bhalla, Hons. B.A., Q. Med. is a mediator who specializes in condo conflict management.

He can be reached at mbhalla@elia.org.