



## WHY CONDOS MUST MEDIATE BY: MARC BHALLA JANUARY 2013

---

Mediation is often misunderstood. When it is considered a compromise or a process that is only successful if it leaves everyone unhappy with the settlement, the advantages that come with engaging the parties in conflict resolution are missed.

In the condominium context, the nature of conflict is somewhat unique as, in many cases, those engaged in a dispute must “live in community” throughout the course of the conflict and thereafter. Considering this against the lengthy duration of the trial process and the fact that courts are not in the business of examining the interests that lie behind the positions of the parties in imposing a resolution, it is hard to make the case for overlooking the opportunity to bring the parties together before proceeding to court. The law, the courts and public sentiment all appear to be directing condominium disputes to mediation or some form of conciliatory, timely and cost effective dispute resolution process before proceeding to trial.

Section 132(4) of the *Condominium Act, 1998* (the “Act”) provides that every condominium’s declaration is deemed to require disagreements between owners and the corporation with respect to the condominium’s documents (declaration, by-laws and rules) to proceed to mediation first. Similarly, Section 132(2) of the Act provides that the first step for addressing disputes involving agreements between a declarant and condominium, two or more condominiums, a Section 98 Agreement and/or between a condominium and its property management is also mediation. While mediation is often mandatory, the Act does not provide any structure or guidance to follow. To address this (shortfall), many Ontario condominiums have put in place a mediation/arbitration by-law to set out the dispute resolution process and avoid the hurdles that arise when, for example, there is no set method by which a mediator is selected. This serves to complement the Act and allow mediation to proceed without being sidetracked or complicated as a result of an unclear process.

The Act does not provide that every condominium dispute must be mediated; however the case of *Toronto Common Element Condominium Corp. No. 1508 v. Stasyna* (“Stasyna”) suggests that condominiums should always consider mediation before proceeding to court. In Stasyna, notwithstanding that the court held that mediation was not required prior to the condominium bringing forward its application (as the subject matter of the dispute dealt with a direct breach of the Act and not the condominium’s documents) and notwithstanding that the condominium corporation was successful

in its application and had an indemnification provision in its declaration, costs could only be recovered on a partial indemnity basis, reduced by 20%, as the court found that: *"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."* The result was a costly "win" in court for the condo.

Finally, in the course of the progress made to date surrounding the review of the Act announced by the provincial government in the summer of 2012, dispute resolution has been identified as a prime area of focus. The provision of a low-cost and timely means of addressing condominium conflict was raised at public engagement sessions that took place last autumn in Toronto, Mississauga and Ottawa as it is clear that there is a need and a demand within the greater condominium community for an appropriate, non-litigious, fast and cost effective dispute resolution process.

In addressing condominium conflict, the question seems to be shifting from *"Can we find a way to get straight to court?"* to *"How can we best address this conflict in the interest of all parties - the condominium corporation, the opposing party and all unit owners not otherwise directly involved?"* Particularly in light of the Stasyna decision, if all else fails, the condominium corporation can at least display to a court that it was reasonable and made effort to avoid trial.

Elia Associates is pleased to offer a full range of appropriate dispute resolution services, including mediation services that include both representation at mediations and conducting mediations as neutral, third party mediators.

Contact us for more information.

---

**Marc Bhalla, Hons. B.A., Q. Med.** Marc has serviced the condominium industry since 2002 and has been engaged in Alternative Dispute Resolution since 2005. He holds the Qualified Mediator (Q. Med.) designation of the ADR Institute of Canada.

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**



 [facebook.com/condomediator](https://facebook.com/condomediator)

 [twitter.com/condomediator](https://twitter.com/condomediator)

 [ca.linkedin.com/pub/marc-bhalla/27/731/b47](https://ca.linkedin.com/pub/marc-bhalla/27/731/b47)

E-mail: [mbhalla@elia.org](mailto:mbhalla@elia.org)

Phone: Toll-Free: 866.446.0811, extension 811



## CONDOMEDIATORS.ca

*All of the information contained in this article is of a general nature for informational purposes only, and is not intended to represent the definitive opinion of the firm of Elia Associates on any particular matter. Although every effort is made to ensure that the information contained in this article is accurate and up-to-date, the reader should not act upon it without obtaining appropriate professional advice and assistance.*