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SHOULD YOUR MEDIATOR UNDERSTAND CONDOS?

On one hand, the mediator does not provide legal advice or impose any decisions upon the parties to a dispute, so there may be reason to question the value of a mediator's subject matter expertise.

What may be more important are the mediator's process skills. Their ability to mediate. Someone who knows condominiums well but who is not experienced in or qualified to mediate risks floundering the mediation opportunity by failing to structure a mediation process to best suit the unique aspects of the conflict at hand or personalities involved – perhaps missing altogether that mediation, at its best, is a flexible process that puts a good mediator's wealth of tools to work in different ways every time.

The other side of the coin in this consideration is the answer to the question of the value of having a mediation with subject matter expertise. While a mediator's understanding of the subject matter of a dispute may offer little value for certain types of conflict, the unique characteristics of conflict in the condominium setting offer many benefits. Often those involved in a condominium conflict are required to have an ongoing relationship, as they are both part of the community. Additionally, the role of a



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condominium Board of Directors, legislation and the existence of governing documents simply cannot be ignored. Appreciating the discomfort that conflict in this context can offer – and the unique parameters in play – allows a mediator to better empathize with the reality of the predicament parties to conflict are facing, permitting the mediator to steer the process in a constructive direction. This includes helping to establish shared expectations or an interaction plan, regardless of how the mediation concludes.

Additionally, condominiums themselves are unique and complicated beasts – a case in point surrounds a condominium corporation appearing to be similar to a business corporation but the indoor management rule not applying to them. Especially when a condominium is a party to a dispute, structuring the process can become quite complex. A mediator familiar with how condominiums operate can help ensure that a condominium corporation is appropriately represented at a mediation, with sufficient authority in place – or at least help clarify the path to resolution at the outset of the process, to avoid any surprises that could hinder perceptions of a good faith negotiation later on, or address potential attempts to manipulate the mediation process altogether.

As mediation in and of itself is a process that is in many ways unlimited, looking away from an attempt to determine who is right and who is wrong to instead focus on trying to find ways to expand the spectrum of possible resolutions and identify mutual satisfaction of the interests of those involved in a conflict, this consideration need not come down to one or the other. You do not have to select between a mediator with process skills and a mediator who understands condominiums. You can have both. The question is, then, how can you tell?

The Association of Condominium Managers of Ontario (ACMO) provides a designation to property managers. While mediation in unregulated, the

ADR Institute of Canada provides designations to practising mediators in a similar manner. This helps the public ensure that their mediator is qualified, ethical, insured and experienced to mediate disputes. The Chartered Mediator (C.Med) designation is the most senior designation available to practising mediators in the nation; such designation can help verify that a mediator has process skills... but what about condominium experience?

The Canadian Condominium Institute does not currently offer the ACCI designation to mediators; how, then, can you determine if your mediator understands condominiums? There is no one determining factor but it is up to condominium directors, managers and lawyers to at least consider the question when selecting a mediator to ensure that they are best equipped to make the most of the mediation opportunity.

Marc Bhalla and Colm Brannigan are two of Ontario's leading condominium conflict management professionals. They are active members of the Golden Horseshoe chapter who have helped developed the chapter's Level 300 Dispute Resolution course and often speak at our annual Conference and Trade Show. Together, they take part in the Mediator v Mediator podcast series, discussing key and controversial issues in the world of alternative dispute resolution (soundcloud.com/mediatorvmediator). Marc and Colm believe that mediation presents opportunities to promote harmony and improve relationships within the condominium environment.

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