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**Mediation and arbitration have been part of condominium dispute resolution in Ontario since the Condominium Act, 1998 became law in 2001.**

## Keep Calm and Prepare to Mediate

■ In many types of condominium disputes, mediation is required. In almost all condominium disputes mediation is worth considering whether mandated or not.

We now have the Condominium Authority Tribunal (CAT), but mediation will continue to play a very important role in condominium conflict management and dispute resolution in the future, whether on a private basis and/or, as the CAT increases its jurisdiction (power) to include more types of disputes, as part of the CAT process.

The majority of condominium owners, board members and managers have never been through the mediation process. At its most basic, mediation is negotiation facilitated by an impartial third party (the mediator). The mediator's role is to help you have a

productive conversation with the other party and explore possible solutions but has no power to impose a solution on any party.

Mediation has a high success rate because most people want to bring an end to their disputes. It is future focussed, collaborative and can help you move on. Good outcomes for the individuals involved in disputes are extremely important for condominium communities. Mediation can help maintain or even repair relationships between the parties, which can be crucial to the everyday functioning of the community.

The objective of mediation is to reach a resolution that is fair, will last and can be implemented. Most people are much more likely to accept, and comply with, an outcome that they are part of >>>



>>> making, than one imposed on them by an arbitrator or judge.

Mediation is far quicker and much more cost effective compared to arbitration and litigation. You can set up a mediation in days or weeks as opposed to months or even years for arbitration or litigation. The costs of mediation vary with the experience and expertise of the mediator and many condominium mediations are concluded in a half-day.

It is important that you choose a mediator who has strong process skills, training and experience and also is familiar with condominium disputes. Not just any mediator will do, unless you just want to tick off the box that you have gone through mediation as a step towards arbitration or litigation.

Most mediators follow a step type process and usually

start with meeting all the parties in a “joint session” and after that meet with parties separately in “caucus” before coming back to joint meetings. Mediators help the parties to understand each other’s perspectives, help to guide a meaningful discussion and discuss options for settlement. Mediators do not decide who is right or wrong.

Mediation focuses on interests, not positions. Positions are basically what I want, while interests are what I need. It is important to remember the difference.

Make a list of what you consider the critical issues in the dispute. Think about what information you are willing to disclose to the mediator and what information, and it may not be the same, which you are willing to disclose to the other party?

There are some very important questions to consider before the mediation session:

### What is the dispute really about?

### What will happen if the dispute is not resolved?

### Do you have to deal with each other in the future?

### What would you like to get from the mediation?

### What must you get from the mediation?

### What do you think that the other party needs to get from the mediation?

### Are there realistic options for settlement?

### What does the mediator need to know to help you?

### What does the other side need to know?

Are there documents such as the Declaration, By Laws or Rules that might help convince the other party to change their mind about the things you disagree about? Have copies of those documents, photos or other material available before the mediation begins.

### What does a “good chance of success” mean to you?



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**How comfortable are you with the risk of going to arbitration or court?**

**What is a good outcome?**

**How do you reach that good outcome?**

**What is that worth to you?**

In mediation, you will likely hear things that you disagree with, and you may be asked difficult questions by the mediator, the other party or their lawyer. This may upset you. But you are more likely to be successful if you try to understand the other person's views. Try to keep an open mind and be willing to consider various options for settlement. To quote a mediator colleague, "you can disagree without being disagreeable" and remember that listening does not mean agreeing.

Remember there are costs, including time, legal fees and out of pocket expenses required to achieve your desired outcome. Plus there are additional costs, if you have to go to arbitration or court including:

**Opportunity Costs** – your time and attention will be taken away from more productive activities.

**Reputational Costs** – How important is the private nature of the mediation? Would it bother you to have a public airing of your dispute?

**Personal Costs** – Frustration, stress, strain on relationships.

**Autonomy** – you do not decide the outcome/the outcome is out of your hands once you litigate.

It takes time to work through the issues in mediation. You will not be able to do that if you have not carefully prepared for the mediation. Remember that mediation is likely the best opportunity for everyone involved in the dispute to understand each other, and craft their own solution to the dispute. If you do not know what you are trying to achieve, you will never achieve it.

While it is quite common for people to take part in mediation without their lawyer being with them, you really should look at getting legal advice from an experienced condominium lawyer so that you can evaluate your options and alternatives and prepare accordingly.

Remember the story that brought you and the other party to this dispute, and that mediation can help create a new and better path forward for your future.

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*Colm Brannigan, LL.M. (ADR), C. Med., C. Arb. is one of the most experienced condominium mediators and arbitrators in Ontario. Colm is the principal of Mediate.ca – Brannigan ADR and can be reached through his website [www.mediate.ca](http://www.mediate.ca)*

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*Conor Brannigan, Q. Med., is a mediator and an associate with Mediate.ca – Brannigan ADR with experience in disability and accessibility mediation. Conor is presently working under contract as a mediator with the Canadian Transportation Agency in Ottawa. Conor can also be reached through [www.mediate.ca](http://www.mediate.ca).*