



**Marc Bhalla**, Hons. BA.,  
C.Med, Q.Arb, MCI Arb  
Elia Associates

# To Infinity and Beyond

## With Mediation, the Possibilities are Endless

Unlike all other formal dispute resolution processes, mediation focuses on the parties – those involved in conflict coming together and working together to find a mutually acceptable outcome. Processes that impose an outcome on disputants do not worry about how acceptable each of the parties might find the result; such processes are adversarial in nature and focused on right and wrong, as opposed to looking forward in a manner that is agreeable. To that end, mediation truly provides a unique opportunity that makes so much sense in the condominium context, where those experiencing conflict often remain in community with one another throughout and beyond the dispute.

That being said, the mediation process is not set in stone. Among its core benefits is the fact that mediation is flexible

and can be catered to suit those involved in a dispute. Here are some ways that mediation can be customized to provide comfort and convenience:

### Informal Mediation

To go to court, paperwork must be filed and fees paid to formally commence a proceeding. To move ahead with arbitration, an arbitrator must be agreed upon or otherwise determined. While formal mediation typically requires a degree of administration to come together, informal mediation can reduce or alleviate such work. The advantage of informal mediation is that it can take place early on in the course of a conflict, when issues initially emerge and before they boil over.

Sometimes, a condominium's property manager – or a senior manager within

the management company – facilitates a meeting in an effort to address a matter before it escalates further. While it can be a challenge for a property manager acting as mediator to present themselves as impartial – bias is deemed to exist as they presumably have an interest in keeping the board happy and their contract in place – there are occasions where a casual sit down with a property manager can help resolve an emerging dispute.

In other circumstances, the manager may already have enough on their plate, may not have sufficient conflict management training or may have a role in the history of the issue that makes it difficult for them to step into the role of facilitator. Mediators offer informal mediation services. For approximately the same cost as a traditional enforcement letter, a medi-





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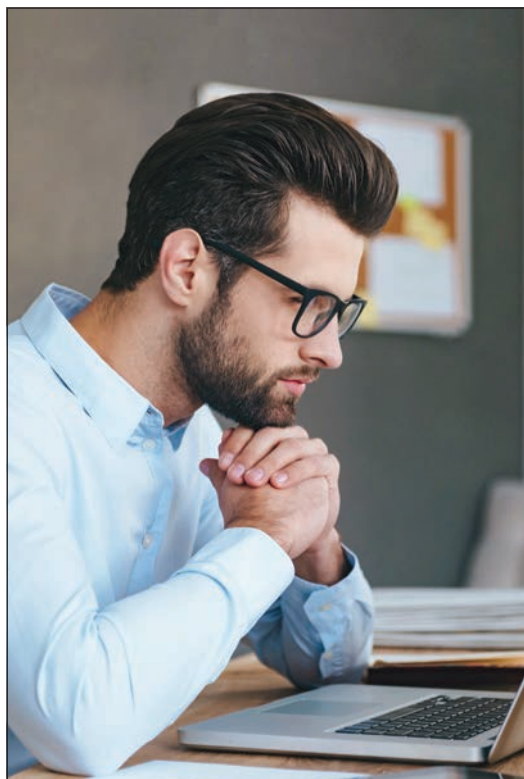
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ator can step in early as an unbiased and impartial third party who has a degree of separation from the community, to help.

These sessions tend to be more formal than a casual sit down yet are much less formal, timely and costly than traditional mediation. Many condominium boards offer to cover the cost of the mediator, particularly in situations of duelling residents, where it is not clear who to enforce against, as a means to fulfil the condominium's legal obligation to take all reasonable steps to effect compliance with the *Condominium Act*, 1998 (the Act), along with the community's declaration, bylaws and rules – in accordance with Section 17.3 of the Act.

### Online Mediation

In a world where we increasingly leverage the internet at our fingertips and communicate, shop and even date online (so much so that many of us are surprised, embarrassed or even tune out weekly reports outlining just how much screen time we take in), it is a natural progression for dispute resolution to move online. It may seem silly when members of a condominium community engaged in a dispute are physically located close together, yet mediating online offers convenience and comfort that traditional, in-person mediation does not. Often those involved in a conflict feel uncomfortable with the notion of sitting in a room with those they see as the root of the conflict to talk it out. The degree of separation by way of an online forum can alleviate anxiety and otherwise make it easier to participate. It can also help parties come together if there are hesitations surrounding the behaviour of others, especially to the extent that behaviours may be abusive in nature. This is not to suggest that online mediation removes the possibility of abuse altogether, but rather that the layer of physical separation can offer heightened protection over an in-person gathering.

Online mediation in this context can often be facilitated by making use of the technology that feuding parties already use and are comfortable with. As the Canadian Internet Registration Authority reported that 74% of Canadians spent at least 3–4 hours online a day in 2018, the chances are that there is an existing degree of familiarity and comfort with technology among those involved in a dispute in your condominium community. To the extent that you are dealing with one of

those rare individuals who has managed to avoid technology from being a part of their lives, the statistics suggest that they are an endangered species as Canadians' use of technology has only increased over the course of the century.

### Hybrid Processes

A downside to mediation of any form is that it offers no guarantees of resolution. This is the result of the great advantage mediation offers over other dispute resolution processes by empowering those directly involved in a conflict with control of the outcome.

Hybrid mediation-arbitration processes, known as “med-arb”, offer the best of both worlds. Whether the same facilitator switches hats if mediation does not look to be able to resolve a matter or a new facilitator (identified in advance) comes in immediately after mediation to arbitrate, the process is designed from the outset to guarantee closure.

This saves the time of having to identify an arbitrator after mediation takes place and has been known to better encourage those mediating to embrace the opportunity to have a

say in the conclusion of their dispute. Someone looming large, ready to impose an outcome can feel more real in this circumstance and encourage settlement considerations over situations when there are many unknowns about arbitration at the mediation stage. Med-arb may not be the right fit in every situation, yet there are certainly occasions where it makes sense to consider it.

While mediation has been around in the world of condominiums for some time, becoming mandatory for certain types of disputes over 18 years ago, there has been a tendency to view it as a set process. Now more than ever, that is not the case. The way that mediation can be structured is tremendously flexible and this flexibility should be considered to ensure that the opportunities offered through mediation are best leveraged. ■

**Marc Bhalla** is a mediator and arbitrator who focuses his practice on condominium dispute resolution. He has been with Elia Associates since 2002 and can be reached at [mbhalla@elia.org](mailto:mbhalla@elia.org). [elia.org](http://elia.org)



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