

The Courts and Section 132 of the *Condominium Act*: A short summary of the current caselaw.

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David Sanders, LL.B
Camberwell House Solutions
114 Dundas Street, London, ON
N6A 1G1
T: 519-317-2877
F: 519-488-1111
david@camberwellhouse.com



www.camberwellhouse.com

Disclaimer

Today's presentation is a "hit the high points" of some key cases of interest regarding Section 132, the "ADR" provision included in the 2001 *Condominium Act*. It does not take any position on the many advantages and some admitted disadvantages of mediation, arbitration and the new section itself, nor, regrettably, can it be a complete canvass of the complete state of the law.

This presentation can not and does not stand as formal legal advice.

Thank You.

David Sanders thanks the Brotherhood of Anglican Churchmen of St. John the Divine Anglican Church, Arva, for the kind invitation to come and speak to their group on January 18, 2009.



What is “ADR” and how does it work?

Alternative dispute resolution (ADR) can be defined as resolving disputes through means other than direct negotiation or the intervention of the court system or administrative law tribunals. It is well established as a cheaper, faster means of resolving disputes.

The cost and delay of the court system is, by now, notorious. ADR, unlike the court system, allows the parties to a problem to play a role in designing how their dispute will be resolved, and by whom: one is not fixed into a preset, one-size-fits-all box and told "that's how the system works". And, if the parties choose, their settlement can take a form that is instantly enforceable by a court. Advantages:

- ✓ Fast.
- ✓ Effective.
- ✓ Far less expensive than court.
- ✓ It cuts your costs.
- ✓ It allows you to design the system by which your disputes will be resolved.
- ✓ It is tailored towards maintaining ongoing relationships, and so can preserve profitable situations in a way that the adversarial nature of courts cannot.
- ✓ Can serve to enable your customers and suppliers to understand each other better and thus solve the current problem and avoid others in the future.

What is “Mediation”?

"**Mediation** is one way for people to settle disputes", potential disputes "or lawsuits outside of court. In mediation, a neutral third party - the mediator - helps the disputing parties look for a solution that works for them."

Mediators, unlike judges, do not decide cases or impose settlements. The mediator's role is to help the people involved in a dispute to communicate and negotiate with each other in a constructive manner, to gain a better understanding of the interests of all parties, and to find a resolution based on common understanding and mutual agreement.

“The purpose of mediation is not to determine who wins and who loses, but to develop creative solutions to disputes in a way that is not possible at a trial.”

Mediation can be applied to any form of dispute or potential dispute, and can be utilized by individuals, organizations, communities, or other people or entities who have an interest in the outcome. There are many styles of and approaches to mediation and many ways of defining those approaches.

What is “Arbitration”?

Arbitration is where parties to a dispute agree to resolve it outside the court system by referring it to an agreed-upon person (the "arbitrator" or "adjudicator") by whose decision they agree to be bound. The parties can agree that an arbitrator's decisions can be enforced through the court system as if they were a court judgment.

Arbitration has a number of very great advantages over the court system, including: speed; less expense; it can be scheduled outside of standard court hours or days; the parties to the dispute play a role in designing how the arbitration will be conducted (including how complex or simple it will be, what types of evidence will or won't be admissible or used, and whether the matter will be done face-to-face or only through documents).

An arbitrator's decision cannot be appealed as easily as a judge's decision can, so it is harder for one party to drag things out if they do not like the result.

What is Section 132 & what is it for?

Section 132

The mandatory ADR section of the Act (replacing the summary application to court procedure under the old Act) creates a process whereby most condominium disputes will go to mediation and, where mediation has failed or is unavailable, will then go to mandatory arbitration. The format of such a process is left largely to the condominiums themselves, as long as there is no breach of the requirements of the Condominium Act or Arbitration Act.

Why ADR?

“The purpose of the mandatory mediation and arbitration provisions in s. 132 of the Act is to permit, among other things, the expeditious resolution of disagreements between a condominium corporation and its unit owners with respect to the corporation’s declaration, by-laws and rules in a simple and inexpensive manner. “

Metro. Condo. Corp. 1143 v. Peng, 2008 CanLII 1951 (On.S.C.) at ¶ 14.

What situations are covered by Section 132?

In most instances a corporation cannot directly proceed to court to enforce its declaration, by-laws and rules. Disputes definitely subject to mandatory ADR include*:

- ✓ Disputes arising from an agreement between a developer and a corporation; an agreement between two or more corporations; an agreement between a corporation and an owner regarding changes to the common elements; an agreement relating to property management.
- ✓ Disagreements between owners and corporations with respect to the declaration, by-laws and rules, with disagreements including “allegations which would amount only to contraventions of the corporation’s declaration, by-laws or rules.
- ✓ The classic “people pets and parking” disputes.

* - An exhaustive list would take up too much space and is outside the scope of this caselaw summary.

What situations aren't covered by s.132?

Disputes not subject to mandatory ADR include*:

- ✓ Oppression matters under s.135 of the Condominium Act.
- ✓ Damage and injury matters under s.117 of the Condominium Act. (Nuisances remain s.132 matters.)
- ✓ Construction deficiency claims against builders
- ✓ Proceedings against third party providers of services and materials for the benefit of the property (not including telecommunications providers).
- ✓ Enforcement proceedings against tenants in condo units.
- ✓ *Perhaps* where what is at issue is a provision of the Act on a matter not specifically dealt with in the declaration, by-laws or rules is sought to be enforced, it appears that a court application can be made without first resorting to mediation and/or arbitration.

* An exhaustive list would take up too much space and is outside the scope of this caselaw summary.

David Sanders gratefully acknowledges Audrey Loeb's kind permission to use her summaries of matters governed and not governed by Section 132, laid out in excellent detail in her book, The Condominium Act: A User's Manual.

No splitting: The s.132 ADR process can be used to decide “linked” non-132 matters

Where s.132 issues and non-s.132 issues are linked they should be going through the ADR stream together.

The Court of Appeal held a motions judge to be in error in considering a matter that should have gone through the s.132 process: the motions judge separately considered one arguably non-132 matter (a Release on pet rules) separately from the compliance issue which was a s.132 matter.

Metropolitan Toronto Condominium Corp. No. 562 v. Froom,
[2006] O.J. No. 3314 (C.A.)

Is there a great deal of s.132 litigation?

No. There is surprisingly little caselaw on Section 132; it has not been heavily litigated.

Why?

In this author's opinion, there are a number of key reasons:

- ✓ Most condominium disputes remain settled informally.
- ✓ Many condominium Boards are unaware of the new ADR mandate.
- ✓ The section is comparatively clear and unambiguous.
- ✓ The Courts laid down clearly and early (see below) that the Section would be generously interpreted by the bench, removing a litigation incentive to “box off” the ADR requirement to a limited number of circumstances
- ✓ The Courts made it clear that the cases most likely to need the intervention of the Courts (oppression and danger cases) were outside the ambit of Section 132.
- ✓ Many disputes are straightforward breaches of condominium rules (e.g.: parking in the wrong spot). In such cases the corporation's lawyer will send cease-and-desist letters and the condo will recover the lawyer's fees via an indemnity clause.

Now that we're here, can we leave? Opting Out

Can a condo corporation or the owners opt out? No. [S]ections 132 and 134 of the *Condominium Act* are mandatory provisions of a public statute and apply irrespective of any agreement between the parties, or acquiescence in their contravention.

York Region Condo Corp. 890 v. 1185010 Ontario Inc., 2007 CanLII 44831 (On.S.C.) at ¶ 19.

A party cannot seek to use the ADR stream once they've committed to the court process. A defendant waives its right to arbitration by failing to move for a stay of action prior to delivery of its statement of defence.

McKinstry v. York Condo. Corp. 472, 2003 CanLII 22436 (On.S.C.) at ¶ 44, 26 & 27

An act done by a corporation or owner that is in violation of legislation (both the *Condominium Act* specifically, and legislation in general) cannot be changed by any Board meeting; such considerations are irrelevant. In cases where the violation of legislation is by the owner the corporation is obliged to take steps to enforce compliance and it is not a situation in which mediation or arbitration is required.

Peel Condo. Corp. 283 v. Genik, 2007 CanLII 23915 (On.S.C.) at ¶7-9.

Caselaw: How wide is Section 132?

Very wide. The courts have voted early and often and the result is clear: “The Legislature's objective in enacting s. 132 is to enable the resolution of disputes arising within a condominium community through the more informal procedures of mediation and arbitration. To attain this objective, the phrase "with respect to the declaration, by-laws or rules" in s. 132(4), which applies to disagreements between owners and the condominium corporation, should be given a generous interpretation. It applies, in my view, to disagreements about the validity, interpretation, application, or non-application of the declaration, by-laws and rules.”

McKinstry v. York Condo. Corp. 472, 2003 CanLII 22436 (On.S.C.) at ¶19.

Followed:

Metro. Condo. Corp. 1143 v. Peng, 2008 CanLII 1951 (On.S.C.) at ¶ 15.

Section 132 encompasses a claim for damages.

“The term ‘disagreements’ in s. 132(4) should be interpreted broadly to encompass claims for damages arising from the subject matter of the disagreement. Such a broad interpretation is most consistent with the provision’s objective of resolving disputes by informal procedures rather than by court action. A great many disagreements about declarations, by-laws and rules will be about responsibility for expenditures or about damage caused by failings or neglect. Imposing mediation and arbitration to resolve these disagreements, but requiring court action to claim money somehow at issue because of the disagreement, would frustrate the provision’s aim to have disputes resolved quickly and efficiently.” “It makes little sense to have two separate proceedings, one to resolve the disagreement and a second to deal with damages arising from the disagreement. “

McKinstry v. York Condo. Corp. 472, 2003 CanLII 22436 (On.S.C.), at ¶ 20-23.

If at first you don't succeed, *do it right the first time.*

The Court will not be available where the ADR process wasn't done right.
One cannot commence the ADR process, deem it a failure then move to court.

If the mediation fails or is unavailable (eg: lack of cooperation or failure to respond from a party) then arbitration must follow. It is a mandatory, not optional, requirement.

Metro. Condo. Corp. 1143 v. Peng, 2008 CanLII 1951 (On.S.C.), ¶20-22.

Miskin, Murray. "Give mediation a chance: The high price of condominium arbitration."
The Lawyers' Weekly, September 15, 2006.

One party cannot deem arbitration unavailable because of lack of owner response or initiate the arbitration process then chose to abandon it and bring an application instead. The Arbitration Act [s.27(3)] mandates that if a party fails to appear or produce evidence on arbitration, it can proceed in the absence of the party.

Metro. Condo. Corp. 1143 v. Peng, 2008 CanLII 1951 (On.S.C.), ¶22.

The corporation can't avoid s.132 and retain other rights

A condominium corporation can choose to frame a requirement in a manner which avoids making it a rule and thus avoid the 134(2) requirement to go to mediation or arbitration. But where the corporate decision in question is one that not within the Corporation's exclusive area of responsibility [here, in conflict with the "competing obligations and duties" of unit holders to be "responsible for the maintenance of their units"], the court must carefully balance these interests. The corporation can't use the shield [set down in *York Condominium Corp. 382 v. Dvorchik*, 1997 CanLII 1074 (Ont.C.A.)] of deference to Board decisions without judicial interference and with judicial deference to the board's opinion. Note also that s.134 is discretionary; the corporation runs the risk of the Court declining to grant a compliance order.

Metro. Toronto Condo. Corp. 545 v. Stein,
2006 CanLII 20838 (On.C.A.) at ¶ 48-50; 37.

[Author's opinion: In *Stein Stein*, the Court of Appeal is firing a shot across the bow of corporations who are seeking to slip around the ADR requirements in section 132. The Court was very clear in noting many of the pitfalls and risks associated with such an action, bluntly noted that it might not be successful, and used language which implied, without saying, "well, there's a price to a shifty end run and you'd better be ready to pay it". Note that in an analogous arbitration case here in London [*Middlesex Condominium Corp. No. 185 v. Roney Construction Ltd. (c.o.b. Homecastle*), [2007] O.J. No. 4686, 162 A.C.W.S. (3d) 875 (Ont.Div.Ct.)], the Divisional Court showed a similar reluctance to permit the concept of judicial review to be used as an alternative to the process mandated by s.46 of the Arbitration Act.

The corporation cannot start / necessitate a court action and then plead that ADR should be done first.

A water leak in an owner's suite (arising out of the owner obeying the corporation's instructions) resulted in damage to the unit below. The corporation put a lien on the owners' unit and threatened power of sale. The owner sued to have it removed and the corporation pleaded that the ADR stream should have been followed. Both this approach and the lien itself were rejected by the Court. To do otherwise would have permitted the corporation to have the benefit of an invalid lien while the ADR process went on, and, further, it would have allowed the corporation to delay a court process made necessary by its own actions.

Zafir v. York Region Condominium Corp. No. 632, 2007 CarswellOnt 1044 (Ont.SCJ), ¶37.

Such behaviour may have cost consequences.

Zafir v. York Region Condominium Corp. No. 682, [2007] O.J. No. 1234 (Ont.SCJ)
[costs decision for OJ 632], at ¶4.

Who should be involved with the process?

Everybody who is necessary. For example:

Where the tenant's activities give rise to the matter in dispute the tenant "must" be a party to the ADR process.

York Region Condominium Corp. No. 890 v. 1610875 Ontario Ltd.,
[2007] O.J. No. 4104 (Ont. SCJ) at ¶12.

Author's note on this case:

Whether that is a "must" in the context of "necessary" or "must" in the context of being judicially compellable remains to be seen. It does raise the issue of whether or not owners should be compelled to have this ADR matter put into any agreements that they have with tenants, and whether the "must" that the judge envisions should be in the ADR bylaw. And, if it be so, what is the interrelationship with the landlord and tenant legislation? That, too, is unlitigated.

Full Disclosure: Is there an impact to failure?

The author notes that full disclosure is a necessary and valuable part of the ADR process, but recognizes that there will always be people who hide documentation.

This was considered in *York Region Condo Corp. 359 v. Solmica Chemical International Inc.*, 2005 CanLII 56226 (On.S.C.) at ¶ 32-33, where the court concluded that a failure of disclosure could – but not necessarily did – give rise to a breach of natural justice triggering s.46 of the Arbitration Act, and whether the arbitrator’s failure to consider allegedly key documentation was such a breach.

The author recommends that the bylaw / agreements incorporate an “honesty incentive” via the “spoliation” doctrine found in some American jurisdictions: where a document is missing or destroyed then the tribunal’s interpretation of that document will be contrary to the interests of that of the party that custody of the document when it went missing or was destroyed.

Step 1: Mediation ... and Court deference

The Court will show deference to the mediation process.

“It is contrary to public policy to allow the revisitation of decisions made at mediation sessions facilitated by neutral mediators. ... The public would be outraged and the efficacy of the legal system damaged if the court were to enter into that type of inquiry in order to challenge a mediated settlement. There would be no settlements and no closure of disputes. In the result, the legal process and the administration of justice would be brought into disrepute. [...] “[I]t is in the public interest to encourage settlements and avoid the hazards and expense of a trial where possible. [...] What is relevant and material to the public interest is that an industrious and competent practitioner should not be unduly inhibited in making a decision to settle a case by the apprehension that some Judge, viewing the matter subsequently, with all the acuity of vision given by hindsight, and from the calm security of the Bench, may tell him he should have done otherwise.”

Kaslik v. Futerma [2003] O.J. No. 113, [2003] O.T.C. 4,
119 A.C.W.S. (3d) 487 (Ont.S.C.J.) at ¶84-85.

Step 2: Arbitration – Some points of interest

The Court can find that an arbitration agreement existed from the communications between individuals (here, between counsel, linked to the existence of an arbitration clause).

Cityscape Richmond Corp. v. Vanbots Construction Corp.,
[2001] O.J. No. 638 (Ont.SCJ) at ¶ 22.

Arbitration clauses shall be given a “large, liberal and remedial interpretation ...that is of sufficient scope” to meet the objectives of the Arbitration Act and such agreements themselves, which is to “encourage parties to resort to arbitration as a method of resolving their disputes ... and to require them to hold to that course once they have agreed to do so.”

Cityscape Richmond Corp. v. Vanbots Construction Corp.,
[2001] O.J. No. 638 (Ont.SCJ) at ¶ 21, 19.

Is an Arbitration Agreement (or bylaw) set in stone? No. The Court's can vary the wording of an arbitrator's agreement to make issues of jurisdiction clear.

Simcoe Condo. Corp. 78 v. Simcoe Condo. Corp. 50 et al.,
2006 CanLII 4510 (On.S.C.) at ¶ 48.

Bias: Standards and measures

The test of reasonable apprehension of bias applies to arbitrators in the same manner as it applies to courts.

The threshold for a finding of real or perceived bias is high.

The grounds must be substantial and the onus is on the party alleging bias to bring forward the evidence. The inquiry is highly fact-specific.

The test for showing reasonable apprehension of bias is an objective test.

A real likelihood of bias must be demonstrated; mere suspicion is not enough.

“[W]hat would an informed person, viewing the matter realistically and practically, and having thought the matter through, conclude.”

Simcoe Condo. Corp. 78 v. Simcoe Condo. Corp. 50 et al., 2006 CanLII 4510 (On.S.C.), ¶ 57.

R. v. R.D.S., 1997 CanLII 324 (S.C.C.), [1997] 3 S.C.R. 484 at 530-32

A.T. Kearney Ltd. v. Harrison, [2003] O.J. No. 438 (S.C.J.), at ¶ 6-7

A failure to disclose a connection between the selected arbitrator and one party can be fatal to the arbitration, even where there is no intent to deceive. An arbitrator can thus be removed for a reasonable apprehension of bias even where his performance is demonstrably not biased:

Idowu v. York Condominium Corp. No. 128,
[2002] O.J. No. 2102 (Ont.SCJ), ¶12-18.

Arbitrations: The Difficulty of Appealing

Assuming that the parties have no specific arbitration agreement or bylaw fixing the limits of an appeal from an arbitrator's decision, section 45 (1) of the Arbitration Act, 1991 will govern. That section provides that a party may appeal on a question of law, but the court shall grant leave only if it is satisfied that (a) the importance to the parties of the matters at stake in the arbitration justifies an appeal; and (b) determination of the question of law at issue will significantly affect the rights of the parties. "[W]ill significantly affect" in section 45 (1) of the Arbitration Act, 1991 implies a future impact.

York Region Condo Corp. 359 v. Solmica Chemical International Inc.,
2005 CanLII 56226 (On.S.C.) at ¶ 14-15, 19.

If the parties did not address the various avenues of appeal in their arbitration agreement [especially regarding mixed fact and law], they should be granted a broad right of appeal.

Harder v. Sheehan & Rosie Ltd., 2002 CarswellOnt 3115 (Ont.SCJ)

However, if they have directed their minds to it they should be presumed to know what they have specified, especially if counsel were involved.

Costa v. Costa, [2008] O.J. No. 930 (Ont.SCJ) ¶ 32-35.

Arbitrations – The Difficulty of Appealing ... (continued)

The Arbitration Act deals with appeals on issues of law. This raises confusion over appeals which are of mixed fact and law.

York Region Condo Corp. 359 v. Solmica Chemical International Inc.,
2005 CanLII 56226 (On.S.C.)

While lawyers may feel comfortable arguing where facts and law begin, end and mix, most other people don't and it is expensive to have the lawyers do so. The author therefore suggests that:

1. It would be very wise of condominium corporations to clearly not only clarify but limit the right to appeal in ADR bylaws, and give serious consideration to contracting out of even the right to appeal on questions of law. This would give certainty to the ADR process, and the natural justice protections found in s.46 of the Arbitration Act would always remain in place; one cannot contract out of them.
2. ADR bylaws should specifically give the arbitrator the power to decide questions of law; if necessary, mandate that the arbitrator be a member of the Bar.

Arbitrations – What’s the standard for an appeal?

The Court’s standard for evaluating an arbitrator’s decision on a question of law is “correctness”.

Simcoe Condo. Corp. 78 v. Simcoe Condo. Corp. 50 et al.,
2006 CanLII 4510 (On.S.C.) at ¶ 24.

York Region Condominium Corp. No. 889 v. York Region Condominium Corp. No. 878,
2008 CarswellOnt 2523 (Ont. SCJ), at ¶ 7.

Arbitrators are given a high standard of deference by courts. Generally the court should not interfere with an arbitrator’s award unless it is satisfied that the arbitrator acted on the basis of a wrong principle, disregarded material evidence or misapprehended the evidence

Robinson v. Robinson, [2000] O.J. No. 3299 (S.C.J.) at ¶ 5.
Costa v Costa, 2008 CanLII 9609 (SCJ) at ¶ 39.

Absent an error of law it is inappropriate for the judge to substitute her views for that of the arbitrator.

Costa v Costa, 2008 CanLII 9609 (SCJ) at ¶ 41.

Costs – The general rules

Costs generally “follow the event”.

The overriding principle in awarding costs: "the objective is to fix an amount that is fair and reasonable for the unsuccessful party to pay in the particular proceeding, rather than an amount fixed by the actual costs incurred by the successful litigant."

Zafir v. York Region Condominium Corp. No. 632, [2007] O.J. No. 1234 (Ont.SCJ)
[costs decision for OJ 632], at ¶15,
[following Boucher et al. v. Public Accountants Council for the Province of Ontario et al. (2004), 71 O.R. (3d) 291 (Ont. C.A.)].

While the parties have the right to pursue claims based on principle, we must review the issue of costs in this context. The court is entitled to look at even a winning party to see if the matter could have been resolved more efficiently. Mediation or arbitration can be taken into account when evaluating this.

Zafir v. York Region Condominium Corp. No. 682, [2007] O.J. No. 1234
(Ont.SCJ) [costs decision for OJ 632], at ¶4, 27.

Costs – Part 2 – The Big Stick: MCC 1385 v. Skyline Executive Properties

Where an owner lost a compliance action and the subsequent appeal, court costs were ordered against it, and paid. The Corporation then added \$205,000 to owner's common expenses pursuant to s. 134(5) of Condominium Act, placed lien pursuant to s. 85(1) of Act, and advised owner that if payment was not forthcoming, power of sale proceedings would be instituted. The Court of Appeal (reversing the Motion judge) held:

To the extent legal bills owed by corporation to its own lawyers exceeded costs awarded against owner, corporation could properly add those amounts to common expenses of owner's units as long as corporation could demonstrate those costs were incurred in obtaining compliance order; Section 134(5) speaks separately to "an award of costs", which refers to costs court orders one litigant to pay to another litigant and "additional actual costs", which can encompass legal costs owing as between client and its own lawyer beyond costs court ordered paid by opposing party, and costs associated with defence of compliance order from attack on appeal are valid as costs associated with "obtaining the order".

cont'd ...

The Big Stick – MCC 1385 v. Skyline ... (continued)

Enforcement of compliance order is properly distinguished from obtaining that order and costs incurred in enforcement of compliance order are not covered by s. 134(5) -- Costs not related to obtaining compliance order, but related to other legal matters involving same units, cannot be added to common expenses under s. 134(5).

Administrative or managerial expenses could potentially be captured by s. 134(5), the corporation must demonstrate that claimed administrative and managerial expenses were "additional actual costs" which were incurred in "obtaining the order".

Metropolitan Toronto Condominium Corp. 1385 v. Skyline Executive Properties Inc., 2005 CarswellOnt 1576; 31 R.P.R. (4th) 169, 253 D.L.R. (4th) 656, 197 O.A.C. 145 (Ont. CA), reversing 2004 CarswellOnt 3330, 2004 CanLII 6679 (Ont.SCJ)

Are the ADR provisions of the Act going to change?

Not in the foreseeable future

In 2007 an effort was made by MPP Rosario Marchese (NDP – Trinity Spadina) to get rid of Section s.132 and replace it with a condominium tribunal, similar to that used for landlord and tenant disputes. This effort, (“Bill 185”) made to second reading, but died in committee.

Mr. Marchese’s office has informed Sanders that they plan to reintroduce this legislation or something similar, but no date is fixed; his office says that it is open to input and possible changes to the draft.

The office of Chris Bentley, MPP (currently Attorney General for Ontario) has informed the author, David Sanders, that (a) no such legislation is being introduced by the Government, and (b) they would consider such a change to the Condominium Act to be a significant one, and (c) it is not certain in any way that the Government would favourably view such a significant change.

“Stump the Suit.”: Q&A session



Appendix A – Section 132 of the Condominium Act

Mediation and arbitration

132. (1) Every agreement mentioned in subsection (2) shall be deemed to contain a provision to submit a disagreement between the parties with respect to the agreement to,

- (a) mediation by a person selected by the parties unless the parties have previously submitted the disagreement to mediation; and
- (b) unless a mediator has obtained a settlement between the parties with respect to the disagreement, arbitration under the Arbitration Act, 1991,
 - (i) 60 days after the parties submit the disagreement to mediation, if the parties have not selected a mediator under clause (a), or
 - (ii) 30 days after the mediator selected under clause (a) delivers a notice stating that the mediation has failed.

1998, c. 19, s. 132 (1).

Application

(2) Subsection (1) applies to the following agreements:

1. An agreement between a declarant and a corporation.
2. An agreement between two or more corporations.
3. An agreement described in clause 98 (1) (b) between a corporation and an owner.
4. An agreement between a corporation and a person for the management of the property. 1998, c. 19, s. 132 (2).

Appendix A – Section 132 of the Condominium Act - continued.

Disagreements on budget statement

(3) The declarant and the board shall be deemed to have agreed in writing to submit a disagreement between the parties with respect to the budget statement described in subsection 72 (6) or the obligations of the declarant under section 75 to mediation and arbitration in accordance with clauses (1) (a) and (b) respectively. 1998, c. 19, s. 132 (3).

Disagreements between corporation and owners

(4) Every declaration shall be deemed to contain a provision that the corporation and the owners agree to submit a disagreement between the parties with respect to the declaration, by-laws or rules to mediation and arbitration in accordance with clauses (1) (a) and (b) respectively. 1998, c. 19, s. 132 (4).

Duty of mediator

(5) A mediator appointed under clause (1) (a) shall confer with the parties and endeavour to obtain a settlement with respect to the disagreement submitted to mediation. 1998, c. 19, s. 132 (5).

Fees and expenses

(6) Each party shall pay the share of the mediator's fees and expenses that,

(a) the settlement specifies, if a settlement is obtained; or

(b) the mediator specifies in the notice stating that the mediation has failed, if the mediation fails. 1998, c. 19, s. 132 (6).

Appendix A – Section 132 of the Condominium Act - continued.

Record of settlement

(7) Upon obtaining a settlement between the parties with respect to the disagreement submitted to mediation, the mediator shall make a written record of the settlement which shall form part of the agreement or matter that was the subject of the mediation. 1998, c. 19, s. 132 (7).

Appendix B: Section 56(1)(o) of the Condominium Act - BYLAWS.

56. (1) The board may, by resolution, make, amend or repeal by-laws, not contrary to this Act or to the declaration,

...
(o) to establish the procedure with respect to the mediation of disputes or disagreements between the corporation and the owners for the purpose of section 125 or 132;

...

Appendix C – Section 134 of the Condominium Act - Compliance orders

134. (1) Subject to subsection (2), an owner, an occupier of a proposed unit, a corporation, a declarant, a lessor of a leasehold condominium corporation or a mortgagee of a unit may make an application to the Superior Court of Justice for an order enforcing compliance with any provision of this Act, the declaration, the by-laws, the rules or an agreement between two or more corporations for the mutual use, provision or maintenance or the cost-sharing of facilities or services of any of the parties to the agreement. 1998, c. 19, s. 134 (1); 2000, c. 26, Sched. B, s. 7 (7).

Pre-condition for application

(2) If the mediation and arbitration processes described in section 132 are available, a person is not entitled to apply for an order under subsection (1) until the person has failed to obtain compliance through using those processes. 1998, c. 19, s. 134 (2)....

Contents of order

(3) On an application, the court may, subject to subsection (4),

- (a) grant the order applied for;
- (b) require the persons named in the order to pay,
 - (i) the damages incurred by the applicant as a result of the acts of non-compliance, and
 - (ii) the costs incurred by the applicant in obtaining the order; or
- (c) grant such other relief as is fair and equitable in the circumstances. 1998, c. 19, s. 134 (3).

Appendix C – Section 134 of the Condominium Act - continued.

Order terminating lease

(4) The court shall not, under subsection (3), grant an order terminating a lease of a unit for residential purposes unless the court is satisfied that,

(a) the lessee is in contravention of an order that has been made under subsection (3); or

(b) the lessee has received a notice described in subsection 87 (1) and has not paid the amount required by that subsection. 1998, c. 19, s. 134 (4).

Addition to common expenses

(5) If a corporation obtains an award of damages or costs in an order made against an owner or occupier of a unit, the damages or costs, together with any additional actual costs to the corporation in obtaining the order, shall be added to the common expenses for the unit and the corporation may specify a time for payment by the owner of the unit. 1998, c. 19, s. 134 (5).

Appendix D – Section 135 of the Condominium Act - The Oppression Remedy

135. (1) An owner, a corporation, a declarant or a mortgagee of a unit may make an application to the Superior Court of Justice for an order under this section. 1998, c. 19, s. 135 (1); 2000, c. 26, Sched. B, s. 7 (7).

Grounds for order

(2) On an application, if the court determines that the conduct of an owner, a corporation, a declarant or a mortgagee of a unit is or threatens to be oppressive or unfairly prejudicial to the applicant or unfairly disregards the interests of the applicant, it may make an order to rectify the matter. 1998, c. 19, s. 135 (2).

Contents of order

(3) On an application, the judge may make any order the judge deems proper including,
(a) an order prohibiting the conduct referred to in the application; and
(b) an order requiring the payment of compensation. 1998, c. 19, s. 135 (3).

Appendix E – Arbitration Act, Section 46

Setting aside award

46. (1) On a party's application, the court may set aside an award on any of the following grounds:

1. A party entered into the arbitration agreement while under a legal incapacity.
2. The arbitration agreement is invalid or has ceased to exist.
3. The award deals with a dispute that the arbitration agreement does not cover or contains a decision on a matter that is beyond the scope of the agreement.
4. The composition of the tribunal was not in accordance with the arbitration agreement or, if the agreement did not deal with that matter, was not in accordance with this Act.
5. The subject-matter of the dispute is not capable of being the subject of arbitration under Ontario law.
6. The applicant was not treated equally and fairly, was not given an opportunity to present a case or to respond to another party's case, or was not given proper notice of the arbitration or of the appointment of an arbitrator.
7. The procedures followed in the arbitration did not comply with this Act.
8. An arbitrator has committed a corrupt or fraudulent act or there is a reasonable apprehension of bias.
9. The award was obtained by fraud.

Appendix E – Arbitration Act s. 46 - continued.

10. The award is a family arbitration award that is not enforceable under the Family Law Act. 1991, c. 17, s. 46 (1); 2006, c. 1, s. 1 (7).

Severable parts of award

(2) If paragraph 3 of subsection (1) applies and it is reasonable to separate the decisions on matters covered by the arbitration agreement from the impugned ones, the court shall set aside the impugned decisions and allow the others to stand.

Restriction

(3) The court shall not set aside an award on grounds referred to in paragraph 3 of subsection (1) if the party has agreed to the inclusion of the dispute or matter, waived the right to object to its inclusion or agreed that the arbitral tribunal has power to decide what disputes have been referred to it.

Idem

(4) The court shall not set aside an award on grounds referred to in paragraph 8 of subsection (1) if the party had an opportunity to challenge the arbitrator on those grounds under section 13 before the award was made and did not do so, or if those grounds were the subject of an unsuccessful challenge.

Appendix E – Arbitration Act s. 46 - continued.

Deemed waiver

(5) The court shall not set aside an award on a ground to which the applicant is deemed under section 4 to have waived the right to object.

Exception

(6) If the ground alleged for setting aside the award could have been raised as an objection to the arbitral tribunal's jurisdiction to conduct the arbitration or as an objection that the arbitral tribunal was exceeding its authority, the court may set the award aside on that ground if it considers the applicant's failure to make an objection in accordance with section 17 justified.

Connected matters

(7) When the court sets aside an award, it may remove the arbitral tribunal or an arbitrator and may give directions about the conduct of the arbitration.

Court may remit award to arbitral tribunal

(8) Instead of setting aside an award, the court may remit it to the arbitral tribunal and give directions about the conduct of the arbitration.

David Sanders - A Short Bio

David Sanders was born in Toronto and raised in Thornhill. He started his undergraduate studies at Glendon College (York University's bilingual campus) and graduated from Osgoode Hall Law School in 1989. He articulated in Toronto, and was called to the Bar of Ontario in 1991. His first position as a lawyer was with Rural Legal Services, handling legal aid cases including duty counsel for provincial offences court, unofficial mediator for the small claims court, and in his very first call as a lawyer, the legal implications of a too-amorous bull.

With that contract complete he returned to the GTA where he worked with a number of boutique and specialist firms, moving into his own practice with friends in 1997, where he remained until 2002. His practice with Sanders, Lyn & Ragonetti centred on small and medium sized enterprises, (including and especially their corporate and litigation problems), estate planning, (including wills, powers of attorney and estate litigation), and property and real estate property disputes and lawsuits.

During this period he became convinced of the need not only for dispute resolution methods superior to the court system but also for the even better choice of dispute *prevention* through effective personal and business planning and systems design. To that end he obtained a Certificate in Dispute Resolution from the University of Toronto's demanding program and qualified as a Level II arbitrator with the Arbitration and Mediation Institute, both in 1996-1997.



David Sanders - A Short Bio - Continued

Leaving the law when he moved to London in 2002, David Sanders went into private research work. He then handled administrative, research and writing work with the London Homeless Coalition, followed by a spell as the Strategic Planner for the London Employment Help Centre.

David Sanders founded Camberwell House Solutions (a full service alternative dispute resolution (“ADR”) firm) in 2007, and created its companion firm, Camberwell House Litigation, upon his return to the law in 2008. Camberwell House Litigation which provides legal services with specific emphases: small and medium-sized business, estates work and condominiums.

Full details on the practice areas of Camberwell House are available.

David Sanders has two daughters, age 20 and 10. He is active with several charities and nonprofits and struggles with his longstanding addiction: buying and reading far too many history books.



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Motions, Trials and Appeals



Camberwell House: Practice Areas

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Small & Medium Enterprises Legal Counselling
Small & Medium Enterprises Disputes & Litigation
Contracts: Drafting & Interpretation
Contracts: Disputes & Litigation
Condominium Law & Litigation
Real Estate Litigation
Non-Profit Law
Non-Profits: Dispute Prevention & Resolution
Research & Reports
Collaborative Law

(Any other areas: kindly inquire.)

