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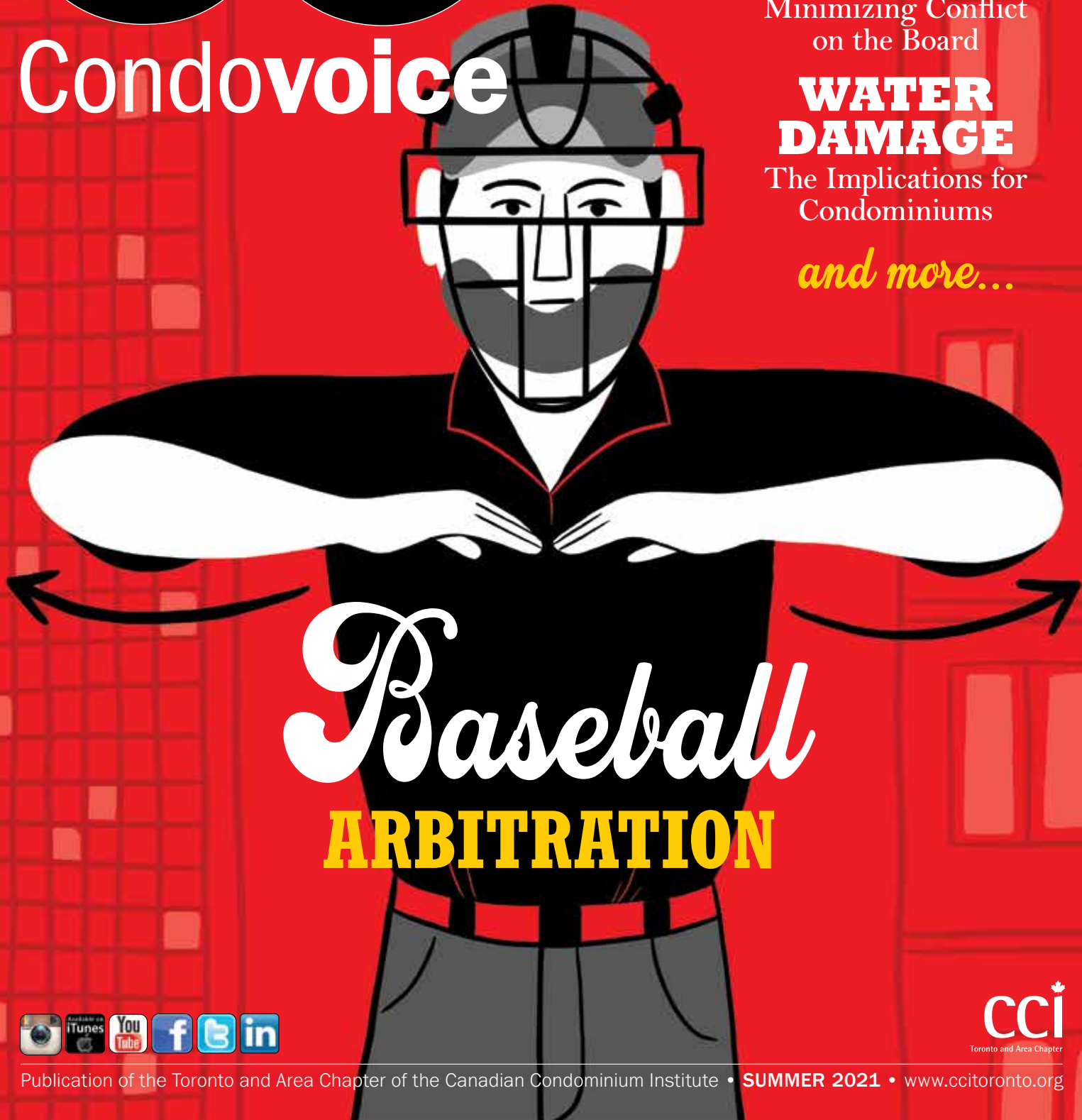
**RULES OF
ORDER**

Minimizing Conflict
on the Board

**WATER
DAMAGE**

The Implications for
Condominiums

and more...



**Baseball
ARBITRATION**





Marc Bhalla
Mediator & Arbitrator

Cover Story

Baseball Arbitration for Condominium Communities

“Somebody’s gotta win, somebody’s gotta lose. Just don’t fight about it.” – Yogi Berra

Final offer selection is known as baseball arbitration because it is the process used by Major League Baseball when a player and team cannot agree on compensation. Rather than going to a third party decision maker to provide any resolution they see fit, potential outcomes are limited to the final offers provided by the parties. The decision maker selects either offer as the end result of the matter.

This could be useful in a variety of condominium disputes, particularly those pesky lower range disputes that are not worth the cost or time of being dragged out. Consider two condominiums that share facilities. They have equal representation on their Shared Facilities Committee and are deadlocked in coming to a decision. While the decision to be made is important to all involved, they have trouble reaching consensus and it is not an issue worthy of thousands of dollars or the passing of multiple seasons waiting for an imposed outcome.

There Are No Ties in Baseball

In baseball arbitration, the decision maker selects from the final offers presented to allow everyone to move on. When established in advance as the way to break ties, this form of decision making can offer a timely way forward. The decision also ultimately comes



from within – as it is an offer presented by someone directly involved in the dispute – and thereby allows the committee to retain a degree of control; to keep self-determination despite using a dispute resolution mechanism that is adversarial in nature.

The formality of the decision-making process can vary based on the significance

and complexity of the issue to be decided. Formal submissions can be offered for big budget decisions, while arguments supporting each position can be relaxed for what may be considered more minor issues. In all instances, this can offer a way forward that avoids dwelling, stalling or otherwise partaking in the kind of behaviour that draws out a game of baseball.

ILLUSTRATION BY JAMIE BENNETT

Baseball arbitration limits challenges to the outcome. This reduces complication, cost and delay that comes with appeal rights.

The Umpire Makes the Call

The decision maker is neutral. This means bringing in a third party without ties to the community. The decision maker being a layer removed from the deadlocked group and their most immediate service providers offers several advantages:

1. Fairness. Involving a decision maker without ties to the community addresses many concerns about bias playing into the outcome.
2. Scape Goat. The decision maker can be blamed by the “losing” party for the outcome not going their way. So long as the victorious faction does not behave like a sore winner, this can reduce

the political fallout of the decision for members of the committee and preserve opportunities for collaboration moving forward.

3. Cost. While far from the five figure fees that make international commercial arbitrators rich, the incurrence of a little cost in coming to a decision encourages cost conscious committee members to do all they can to reach consensus. Baseball arbitration offers a way forward only if the committee cannot reach a decision itself. Offering a clear path to a decision at the outset offers a chance for all to consider related costs before the decision maker is called upon.

Changing How the Game Is Played

Like domed stadiums, the designated hitter and the three-batter minimum, baseball arbitration can change the way the “game” is played. Final offer selection changes how parties participate. The mentality of presenting a final offer that an arbitrator will assess promotes taking a more reasonable approach. Rather than pushing for the result that most benefits them, each party must consider what may be received by the decision maker as reasonable. Such an approach can improve chances of reaching agreement and offers perspective beyond one’s own world view.

There is No Crying in Baseball

Baseball arbitration limits challenges to the outcome. This reduces complication,

cost and delay that comes with appeal rights. If there is concern about the legality of the final offer presented by another party, this could be addressed before the matter is turned over to the arbitrator to decide... so it is clear to all before a decision is made that the potential outcomes are legally feasible and the parties will be bound to any/either of them. In the spirit of the baseball analogy at hand, think of this as clarifying the strike zone before the pitch is made. There are no grounds to appeal the decision made by the arbitrator once they select one party’s final offer as the outcome. The idea is to move on.

Baseball arbitration may be well suited for addressing a variety of condominium disputes, particularly those with a limited focus or where those responsible for making a decision that cannot be reached have to continue to work together on an ongoing basis. While it is a process that can be available for larger issues, it may not always be in the best interests of all parties to “tie the hands” of the arbitrator tasked with delivering an outcome to a complex conflict. This is especially the case if stakes are high or there may be comfort offered to anyone who faces the prospect of losing to allow the decision maker to soften the consequence of the outcome beyond what the other party offers. Still, baseball arbitration can offer a viable and cost effective way forward when condominium communities need to have a decision made and move on. **CV**



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