

**CONDOMINIUM AUTHORITY TRIBUNAL  
AMENDED DECISION AND ORDER**

**ORIGINAL RELEASE DATE:** November 8, 2019

**AMENDED VERSION RELEASE DATE:** December 3, 2019

**CASE:** 2019-00067R

**Citation:** Chai v. Toronto Standard Condominium Corporation No. 2431, 2019 ONCAT 45

Order under section 1.44 of the *Condominium Act, 1998*.

**Member:** Mary Ann Spencer, Member

**The Applicant**

Somkith Chai

Self-Represented

**The Respondent**

Toronto Standard Condominium Corporation No. 2431

Alex Etkin, Student-at-Law

**Hearing:** September 23 to November 2, 2019, Written electronic hearing

**AMENDED REASONS FOR DECISION**

**A. OVERVIEW**

- [1] Somkith Chai (the “Applicant”) is the owner of a unit of Toronto Standard Condominium Corporation No. 2431 (the “Respondent”). On November 12, 2018, he submitted a Request for Records to the Respondent in which he requested multiple records. On May 13, 2019 and on August 8, 2019, he submitted further Requests for Records in which he also requested multiple records.
- [2] The Applicant alleges that he has not received all of the records he requested on November 12, 2018 and May 13, 2019 and asks the Tribunal to order the Respondent to provide the records. He also alleges that the Respondent failed to respond properly to his November 12, 2018 Request and that the fees charged for the production of non-core records were not reasonable. He asks the Tribunal to order the Respondent to reimburse the fees and to assess a penalty to the Respondent for its alleged refusal to provide records. He also requests his costs in this matter.

- [3] The Respondent denies that it either failed or refused to provide the Applicant with the requested records and submits that no penalty should be assessed. It requests its costs in this matter.
- [4] For the reasons set out below, I find that the Respondent's failure to provide all of the requested records initially constitutes a refusal to permit the Applicant to examine or obtain copies of the records without reasonable excuse and I order the Respondent to pay a penalty of \$200. I also order the Respondent to provide two records. I further find that the fee charged to the Applicant for the non-core records requested on November 12, 2018 was reasonable. I find the fee charged for the non-core records on May 13, 2019 was unreasonably low and therefore make no order in that regard. I also order the Respondent to pay the Applicant costs totalling \$200.

## **B. ISSUES**

- [5] Ontario Regulation 179/17 establishes that the Tribunal's jurisdiction is limited to the sections of the Condominium Act, 1998 (the "Act") and of Ontario Regulation 48/01 ("O. Reg. 48/01") which relate to the requirements that a corporation keep adequate records and permit an owner to examine or obtain copies of those records.
- [6] The Applicant raised a number of questions which are outside of the jurisdiction of the Tribunal. Among others, these included requests that the Tribunal ask the Respondent to require owners to comply with their obligations to report leased units, to confirm the status of a director and the validity of board meetings that director attended, and to confirm the accuracy of information provided in certain records including the record of owners and mortgagees and Periodic Information Certificates ("PICs"). He also asked the Tribunal a number of questions relating to interpretation of the Act.
- [7] As a preliminary matter, the Applicant and the Respondent confirmed the issues to be addressed. This decision will only deal with those issues. To the extent that the Applicant's questions relate to the issues, they will be addressed. The issues to be decided in this matter are:
1. Did the Respondent provide all of the records in response to the Applicant's November 12, 2018 and May 13, 2019 Requests for Records?
  2. Did the Respondent respond to the Requests for Records in accordance with the provisions of the Act and O. Reg. 48/01?

3. Were the fees charged by the Respondent reasonable for the records it provided?
4. Is the Respondent keeping adequate records in accordance with s. 55(1) of the Act?
5. If the Respondent did not comply with the requirements of the Act and/or O. Reg. 48/01 should it be assessed a penalty?

### **C. EVIDENCE AND ANALYSIS**

- [8] The evidence comprised documents submitted by the Applicant and his written testimony. The Respondent's representative posted documents to the CAT-ODR system but called no witnesses.
- [9] The Applicant submitted approximately 175 documents and a lengthy witness statement. Some of the evidence related to matters such as the status of directors, the timing of the Respondent's AGMs, and a maintenance request. Only the key evidence relevant to the issues I must decide is set out in this decision.
- [10] The chronology of the Applicant's Requests for Records is summarized below. While not at issue in this matter, I have included the Applicant's August 8, 2019 Request for Records because the Applicant relied on some of the documents he received in response to that request.

#### Chronology

- [11] On November 12, 2018, the Applicant submitted a Request for Records to the Respondent in which he requested electronic copies of the following core records: the corporation's declaration, by-laws, rules, the record of owners and mortgagees, the record of notices relating to leases of units, periodic information certificates ("PICS") for the past 12 months, the budget for the current fiscal year, the most recent financial statements and auditors' report, the current plan for funding of the reserve, mutual use agreements, and the minutes of board and owners' meetings which took place from November 1, 2017 to November 12, 2018. He also requested copies of non-core records, namely, the minutes of meetings held before November 1, 2017.
- [12] On December 11, 2018, the Respondent's condominium management company, First Service Residential ("First Service") e-mailed the Applicant the Board's Response to Request for Records along with the majority of the requested core records. The e-mail stated the estimated fee for the non-core records was \$90.00

plus \$11.70 HST payable by cheque, money order or bank draft. It further stated that unless the fee was paid by January 11, 2019, the request would be considered abandoned.

- [13] In follow-up e-mails to First Service on December 11 and 12, 2018, the Applicant asked for confirmation that there had been no meetings after June 2018, questioned the absence of minutes prior to May 2015 and asked for clarification about the method of payment.
- [14] On December 13, 2018, First Service forwarded board meeting minutes for August and September, 2018 along with the record of owners and mortgagees and the record of notices of leased units.
- [15] On January 8, 2019, the Applicant paid the \$101.70 fee for the non-core records by money order. First Service acknowledged receipt of the fee on January 11, 2019. On February 4, 2019, minutes of 16 board meetings responsive to the non-core records request were sent to the Applicant.
- [16] On February 13, 2019, the Applicant wrote to First Service noting that he believed minutes were missing because none had been provided for the period July to November, 2017. On February 14, 2019, the First Service administrator advised they had already double-checked and had sent all the minutes they had received from the company which had managed the condominium during the relevant time period.
- [17] On February 20, 2019, the administrator again e-mailed the Applicant and advised they would contact the on-site condominium manager to check for further minutes.
- [18] On February 25, 2019, the administrator e-mailed the Applicant and advised that they had reached out to board members who recalled meetings held in October, 2017 and January, 2018. The administrator stated they had determined that some minutes had not been sent to the Applicant and attached minutes for meetings held on December 4, 2017 and on January 8 and 29, 2018. They further advised that they were attempting to locate the minutes from October, 2017.
- [19] On February 26, 2019, the administrator again e-mailed the Applicant and advised that they had been able to obtain a copy of the October, 2017 minutes from the company which had acted as the recording secretary at the meeting.
- [20] On May 1, 2019, the Applicant filed his application with the Tribunal.

- [21] On May 13, 2019, the Applicant submitted a further Request for Records to the Respondent. The request for core records duplicated his November 12, 2018 request with two exceptions: he did not ask for mutual use agreements and the time period for the requested minutes of board and owners' meetings was May 14, 2018 to May 13, 2019. The Applicant also requested non-core records of the minutes of owners' and board meetings for the period May 5, 2015 to May 14, 2018.
- [22] Property Manager Andrew Smith e-mailed the Board's Response to Request for Records to the Applicant on June 11, 2019. Mr. Smith noted that the fee for the non-core records would total \$7.88 plus HST of \$1.03 and that if it was not paid by August 11, 2019, the request would be considered abandoned. Mr. Smith also advised that the records would be redacted in accordance with the requirements of s. 55(4)(c) of the Act.
- [23] All of the requested core records, with the exception of the board meeting held on October 24, 2018, were forwarded by e-mail to the Applicant on June 11, 2019. The board minutes dated October 24, 2018 were forwarded on July 12, 2019. The Applicant paid the fee for non-core records on June 13, 2019 and these were forwarded to the Applicant on July 12, 2019. In the covering e-mail, Mr. Smith indicated that the actual costs to produce the records totaled \$94.50 but there would be no additional charge to the Applicant.
- [24] On August 8, 2019, the Applicant submitted a further Request for Records. He requested electronic copies of the following core records: the record of owners and mortgagees, the record of notices of leases, the budget for the current fiscal year, the most recent approved financial statements and auditor's report, the current plan for funding of the reserve and the minutes of meetings held from August 9, 2018 to August 8, 2019.
- [25] On August 28, 2019, Mr. Smith sent both the Board's Response to Request for Records and all of the requested records to the Applicant.

**Issue 1: Did the Respondent provide all of the records in response to the Applicant's November 12, 2018 and May 13, 2019 Requests for Records?**

- [26] The Applicant's witness statement was organized by each of his two records requests and included charts indicating when each document was received. The Applicant clearly spent time and effort to produce the charts and I accept their

accuracy. However, the method of organization and the fact that the May 13, 2019 request was largely a duplicate of the November 12, 2018 request made it challenging to determine which, if any, records remain outstanding. For certainty, I asked the Applicant to clarify the records he was still seeking. He indicated the following:

- 2015, 2016, 2017 AGM minutes with proper corrections
- Minutes for meetings to approve a standard unit by-law
- Minutes for February 28, 2018 board meeting
- all minutes with signatures
- all in camera minutes properly redacted
- accurate renter list
- record of owners and mortgagees with statement of method of electronic communication
- accurate PICs
- most recent approved financial statement
- most recent reserve fund plan

The Applicant also requested that the Respondent provide a more detailed response to his November 12, 2018 Request for Records. This is not a record requested in the Requests for Records and I will address this request in a later section of this decision.

### Minutes of Meetings

[27] The Applicant requests copies of the minutes of the “2015, 2016 or 2017 AGMs with the proper corrections.” The 2016, 2017 and 2018 minutes all indicate that the prior year’s minutes were approved “as amended” with the requested amendments duly recorded. The Applicant does not dispute that he received copies of the minutes. While it would be a best practice to produce a final “Amended” version of the AGM minutes, it is up to the corporation to determine how the minutes are amended and the Tribunal will not order it to make revisions retroactively. The Applicant has received the records he requested.

[28] The Applicant noted that at both the 2016 and 2017 AGM’s, a motion was made to adjourn the approval of a standard unit by-law with the matter to be “reconvened at a later date.” He testified that he had not received the minutes for these subsequent meetings. However, he provided no evidence to indicate that the meetings had been reconvened.

[29] The Applicant testified that he spent considerable amounts of time reviewing each of the documents he received in order to track whether he had received all of the minutes he requested. In addition to the charts he presented in his witness statement, he also submitted as evidence the detailed tracking charts he prepared during the mediation in this matter. Given the Applicant's attention to detail, I find it improbable that he cannot identify the dates of any missing minutes. Further, I note he would have received a Notice of Meeting had an owners' meeting been called. Therefore, I conclude that there are no missing minutes of meetings relating to the by-law approval.

[30] With respect to the minutes of a February 28, 2018 board meeting, the March 26, 2018 board minute meetings indicate that the board approved the minutes of a prior meeting held on February 28, 2018. I note that the February 8, 2018 minutes were signed on March 26, 2018 and therefore it is possible that the reference to February 28<sup>th</sup> should be to February 8<sup>th</sup>. However, because the Respondent led no evidence, I cannot determine if this is the case. Therefore, I will order the Respondent to provide this record or to confirm that it does not exist. If the corporation confirms that it does not exist, this issue will be deemed to be closed.

[31] The Applicant requested "all minutes with signatures", noting many he received were unsigned. As support for his request, he referred me to *Tonu Orav v York Condominium Corporation No. 344, 2019 ONCAT 18 (CanLII)*, a case in which the Tribunal ordered the Respondent to provide approved and signed minutes.

[32] In the e-mail dated June 11, 2019 sent in response to the Applicant's May 13, 2019 request, Mr. Smith wrote:

As you are aware, all of the records, including the non-core minutes have been previously provided to you in January and February of this year. We have confirmed with the Property Manager that there are no additional minutes. Even though some of the minutes may not have been signed, the Condominium Act does not require them to be. Therefore, should you wish to save your \$8.91, please let us know and we will cancel this part of your request.

I acknowledge that it would be a best practice for board members to sign approved minutes. However, Mr. Smith's e-mail makes it clear that not all minutes were signed. I note that *Orav* can be distinguished from the case before me because the Respondent in *Orav* had not provided the records to the Applicant. In this case, the Applicant has received the records and the Tribunal will not order the Respondent's current board to sign the minutes, some of which date back as far as May, 2015.

[33] The Applicant also requested “in-camera” minutes with only the necessary redactions required by the Act. It is his position that:

Withholding the whole in-camera minutes is not proper redaction. Information pertaining to my unit should not be redacted. Only information that may identify other unit owners should be redacted. For proper transparency, the context of the discussion should not be completely redacted.

The Applicant is correct that he is entitled to see information pertaining to his unit. However, a record “relating to specific units or owners” is only one of the exclusions to an owner’s right to examine or obtain copies of records set out in s. 55(4) of the Act.

[34] The minutes of the “in-camera” meeting held October 24, 2016 is the only record which I can identify which includes a totally redacted item. The Applicant’s evidence is that this document was provided to him during the Stage 2 mediation in this matter and I have no knowledge of whether a reason for the redaction was provided to him at that time. Therefore, while I have no basis on which to find that the redaction was improper, I will order the Respondent to provide the Applicant a copy of the minutes and a written reason for any redaction as required by s. 13. 8(1)(b) of O. Reg. 48/01.

[35] I note that in response to my request for clarification of the records he was seeking, the Applicant listed minutes dated February 12, 2018 and included this record as “missing” in his closing statement. He also requested the minutes for the meeting at which the minutes dated January 29, 2018 were approved. However, the Applicant did not provide any evidence with respect to these records other than the fact that there is a minuted reference to a potential future meeting date of February 12, 2018. This is insufficient evidence on which to conclude the meeting took place. Therefore, I will not address these issues.

[36] Finally, for the information of the Applicant, the Respondent is not required to provide copies of documents which may be referred to in the minutes it provides in response to a Request for Records. The Applicant would be required to submit a further request if he wished to obtain those documents.

#### Record of Notices of Leased Units

[37] The Applicant requested an “accurate” record of the notices of leased units. He does not dispute that he received the records of notices of leased units he requested. Rather, he questions the amount of information contained in the



records and their accuracy, noting that they indicated a fewer number of leased units than had been set out on the Respondent's PICs.

[38] Section 83(1) of the Act requires the owner of a unit to notify the corporation within ten days of leasing their unit. Section 83(3) requires the corporation to keep a record of the notices it receives. The Respondent provided the Applicant with a list of the units from which it received notices. I find this satisfies the requirement set out in s. 83(3) of the Act.

[39] I also note that the Applicant's concern about the difference in the numbers cited in the record of notices of leased units and the PICs has been addressed. The number of leased units set out in the July 15, 2019 PIC corresponds to the number set out on the "Record of Notices Relating to Leases August 9, 2019" which the Applicant received in response to his August 8, 2019 Request for Records. The Applicant expressed his concern that owners had not been canvassed to update the records. This concern is outside the jurisdiction of this Tribunal.

#### Record of Owners and Mortgagees

[40] The Applicant testified that the records of owners and mortgagees he received did not identify those owners who had agreed to electronic communication or a statement of the method of that communication.

[41] If an owner agrees to a method of electronic communication, section 46.1(3)(d) of the Act requires a corporation to keep the name of the owner and a statement of the agreed method. Section 55(4)(d) of the Act states that any records that may be prescribed are excluded from the right of an owner to examine or obtain copies of records. One of the records prescribed in s. 13.11(2) of O. Reg. 48/01 is the record of the method of electronic communication. Therefore, the Applicant is not entitled to access this information and I find that he has been provided properly with the records of owners and mortgagees which he requested.

#### Accurate PICs

[42] The Applicant indicated that the PICs he received "may" not be accurate and that Information Certificate Updates ("ICUs") were not filed by the Respondent in certain circumstances.

[43] The Applicant's specific concerns and questions set out in his witness statement relate to the requirements for a director to report selling his unit; for director

disclosure forms to be attached to PICs; and, for filing of an ICU if the individual representing the condominium management company changes.

- [44] The evidence is that the Applicant did receive the PICs he requested. For the Applicant's information, the specific requirements for the content of a PIC and an ICU are set out in s. 26.3 of the Act and s. 11 of O. Reg. 48/01.

#### Most Recent Approved Financial Statements

- [45] The Applicant testified that he did not receive the most recent approved financial statements in response to his May 13, 2019 request. He indicated that he received financial statements dated October 31, 2018 but there is "at least one approved on December 2018."

- [46] The evidence is that at its February 11, 2019 meeting, the Respondent's board "accepted as presented" unaudited statements as of December 31, 2018. Acceptance of unaudited statements does not constitute approval. Section 66(3) of the Act requires the Board to approve financial statements before placing them before an annual general meeting. Section 66(4) requires that the approval be evidenced by the signature of two directors on the balance sheet. The evidence is that the Applicant received the approved financial statements for the fiscal year ended February 28, 2018 (document RB09) in response to his May 13, 2019 Request for Records. These were the most recent statements responsive to his request; the statements for the following fiscal year (document RD06), which were provided in response to the Applicant's August 8, 2019 Request for Records, are dated after the date of the Applicant's request.

#### Most Recent Reserve Fund Plan

- [47] The Applicant testified that he did not receive the most recent plan for funding of the reserve in response to his May 13, 2019 Request for Records. The evidence is that the Applicant was provided with the 2016 plan for future funding of the reserve (document RB04) as a stand-alone document. However, I note he was also provided with the budget package (document RB03) and this includes the plan for future funding of the reserve dated December 4, 2018. The Applicant received another copy of the 2018 plan in response to his August 8, 2019 Request for Records. Therefore, I find his request has been fulfilled.

#### Conclusion

[48] I find that the Respondent has provided the Applicant with all of the records responsive to his November 12, 2018 and May 13, 2019 Requests for Records with the exception of the minutes of a possible February 28, 2018 board meeting. In this regard, I will order the Respondent to provide these minutes to the Applicant or, if the minutes do not exist, to confirm that fact. I will also order the Respondent to provide the “in camera” minutes of October 24, 2016 with a statement of the reasons for any redaction as required by s. 13.8(1)(b) of O. Reg. 48/01.

**Issue 2: Did the Respondent respond to the Requests for Records in accordance with the provisions of the Act and O. Reg. 48/01?**

[49] The process a corporation must follow to respond to a Request for Records is set out in s.13.3(6) of O. Reg. 48/01:

When the corporation receives a request for records in accordance with this section, the board shall determine whether the corporation will allow the requester to examine or obtain a copy of the record that the requester has requested and shall respond to the requester within 30 days in English or French, using the form that the Minister responsible for the administration of subsection 55 (3) of the Act specifies.

[50] Section 13.3(7) of the regulation sets out additional detail and states that the board’s response must contain a description of the record, must indicate whether it is a core record, whether the corporation will allow the requester to examine or obtain a copy of the record, and what fee, if any, the corporation will charge. Section 13.8(c) requires that the corporation provide a statement of the actual cost incurred to provide the records and sets out the requirements for payment and/or refund if the actual cost differs from the estimate initially provided.

[51] The evidence is that First Service e-mailed the Board’s Response to Request for Records form to the Applicant on December 11, 2018 in response to his November 12, 2018 Request for Records. The majority of the requested core records were attached. Section 13.4(1) of O. Reg. 48/01 requires that core records be provided within 30 days of receipt of the request if delivered electronically. Further core records were sent on December 13, 2018. While the Respondent was technically late, I find the delay of one day to be insignificant. However, the evidence is that the Respondent subsequently delivered three further core records on February 25, 2019 and that the January 2018 PIC was not provided until the mediation.

[52] The Board’s Response to Request for Records estimated the fee for the non-core records would be \$90 for 1.5 hours of labour at the rate of \$60 per hour. The

accompanying e-mail stated the fee would total \$90.00 plus \$11.70 HST payable to First Service by cheque, money order or bank draft and indicated that unless the fee was paid by January 11, 2019, the request would be considered abandoned.

- [53] Section 13.10(1) of O. Reg. 48/01 sets out that a request will be deemed to be abandoned if the fee is not paid by the requester within 60 days of receipt of the board's response, not within 30 days as First Service advised. The regulation also states that "the corporation" may charge a fee. While the evidence is that the Applicant made his payment payable to the Respondent, First Service was incorrect in directing the payment be made to it.
- [54] Section 13.5(1) of the Act requires that the corporation provide the records within 30 days of receipt of the fee if the records are kept in electronic form. On February 4, 2019, First Service e-mailed the Applicant 16 non-core records, all of which were meeting minutes. First Service did advise the Applicant that some of the non-core records had been redacted in accordance with s. 55(4) of the Act but did not provide the actual cost of preparing the records. Further, the evidence is that additional non-core records, including the minutes of board meetings held May 5, 2015, September 20, 2016, October 24, 2016 and January 24, 2017 were not provided until the mediation.
- [55] I note that with the exception of the above-noted non-core records that were not provided until the mediation, the Respondent generally met the regulatory requirements when it responded to the Applicant's May 13, 2019 Request for Records. All other records were provided within the prescribed time frames and correct information was given to the Applicant. In an e-mail sent by Mr. Smith, the Applicant was advised he had 60 days in which to pay the estimated fee to the Respondent. The amount of the actual fee was provided to the Applicant in an e-mail accompanying the non-core records

### Conclusion

- [56] I find that the Respondent did not respond to the Applicant's November 12, 2018 and May 13, 2019 Requests in accordance with the requirements of O. Reg. 48/01. Some of the records were provided later than the prescribed time frames. Further, with respect to the November 12, 2018 request, the Applicant was incorrectly advised that he had only 30 days in which to pay the fee for non-core records and was incorrectly directed to make the fee payable to First Service. And, the Respondent failed to provide the actual costs of producing the records.

- [57] In response to my request for clarification of which records were outstanding, the Applicant requested “the accompanying statement as required by the Condo Act identifying all documents provided and whether anything was redacted and the reason. Also, a confirmation that redactions do not include information pertaining to my unit. Another accompanying statement (in a separate document) indicating the actual cost incurred by the Corporation and any additional details for cost as required by the Condo Act.”
- [58] I find no reason to order the Respondent to produce these statements. The Applicant possesses detailed lists and charts of the records he received and has indicated on those lists which were redacted. Only the reason for redaction of the minutes of October 24, 2016 remains in question and I have addressed this issue.
- [59] In his closing statement, the Applicant wrote “the second request gave the actual cost in an email. I do not consider an email to be an accompanying statement as described in the Condo Act.” Section 13.8(1) of O. Reg. 48/01 states that accompanying statements must be “a separate written document that is addressed to the requester.” I find Mr. Smith’s e-mails satisfy this requirement.

**Issue 3: Were the fees charged by the Respondent reasonable for the records it provided?**

- [60] The Applicant questions the reasonableness of the fees charged with respect to his November 12, 2018 and May 13, 2019 requests for non-core records and seeks reimbursement of those fees.
- [61] There is a significant difference between the fees which the Respondent estimated for the production of what were essentially the same records the Applicant requested in his two requests. The only difference between the requests was that an additional six months of meeting minutes had become non-core records when the Applicant requested them on May 13, 2019.
- [62] The Respondent estimated the November 12, 2018 fee would be \$90, calculated as 1.5 hours labour at \$60 per hour. The Respondent failed to provide the Applicant with an accounting of its actual costs for the preparation of its response to this request.
- [63] The May 13, 2019 estimated fee was \$7.88, calculated as .25 hours labour at \$31.50 per hour. This estimate was clearly unreasonably low; on July 12, 2019, Mr. Smith advised the Applicant that the work took 3 hours and the actual cost was \$94.50 but “the payment for this request has been satisfied in full.” The Applicant

submitted the \$94.50 was “questionable” and there was “no evidence of significant work.” I disagree. By my count, 25 documents were provided and all were minutes of meetings which the Respondent would have been required to review for any necessary redaction.

[64] There is a significant disparity between the 1.5 hours estimated for the November 12, 2018 request, the .25 hours estimated for the May 13, 2019 request and the 3 hours actual reported for the May 13, 2019 request. In the absence of an actual accounting for the November 12, 2018 request, I can only use the number of records produced as a proxy on which to determine whether the estimated time was reasonable. By my count, the Respondent provided the Applicant with the minutes of 18 meetings in response to his November 12, 2018 request. I find the work performed to be similar to that done in response to the May 13, 2019 which took 3 hours. While I acknowledge the May 13<sup>th</sup> request involved an additional six months of records, it arguably was more time-efficient since it was the second time those records had been requested.

[65] I have insufficient evidence to determine whether the \$60 labour rate was reasonable. I note that the Applicant testified that when he asked Mr. Smith about the difference in hourly rates charged for the two requests, he was told only that the rate had changed.

### Conclusion

[66] The Applicant was charged \$90 plus HST for his November 12, 2018 request for non-core records. I find this fee to be reasonable given the evidence that the Respondent’s actual costs for the almost identical May 13<sup>th</sup> request totalled \$94.50. I also find the estimated fee for the May 13<sup>th</sup> cost was unreasonably low and therefore there is no issue to address.

### **Issue 4: Is the Respondent keeping adequate records in accordance with s. 55(1) of the Act?**

[67] Section 55(1) of the Act requires a corporation to keep adequate records and sets out a list of the records which must be kept. Section 13.1(1) of O. Reg. 48/01 sets out additional records which must be kept. Among others, the Act lists records such as financial records, a minute book and reserve fund studies.

[68] The word “adequate” is not defined in the Act. While the Act has changed substantially since the decision was released, *McKay v. Waterloo*

*North Condominium Corp. No. 23, 1992 CanLII 7501 (ON SC)* provides some guidance:

The Act obliges the corporation to keep adequate records. One is impelled to ask -- adequate for what? An examination of the Act provides some answers. The objects of the corporation are to manage the property and any assets of the corporation (s. 12(1)). It has a duty to control, manage and administer the common elements and the assets of the corporation (s. 12(2)). It has a duty to effect compliance by the owners with the Act, the declaration, the by-laws and the rules (s. 12(3)). Each owner enjoys the correlative right to the performance of any duty of the corporation specified by the Act, the declaration, the by-laws and the rules. The records of the corporation must be adequate, therefore, to permit it to fulfil its duties and obligations.

[69] In this case, the Applicant's concern focused on the accuracy of the records he received and on the Respondent's retention practices and I will address this issue from that perspective.

[70] The evidence the Applicant submitted with respect to the accuracy of the records dealt with the minutes of the Respondent's AGM meetings, the record of notices of leased units, and PICs. As noted under Issue # 1 above, the requested amendments to the AGM minutes were duly recorded in the minutes of the meetings at which they were requested and the Respondent has addressed the discrepancy between the record of notices of leased units and the number of leased units reported in the PICs.

[71] The Applicant asked for a complete set of core records in both his November 12, 2018 and May 13, 2019 requests and duly received them. He also asked for the minutes of all board and owners' meetings held since the corporation's inception. He submitted no evidence to indicate that any of the records he requested are missing, with the exception of the minutes of a possible board meeting held on February 28, 2018. The fact that some minutes were "missing until mediation" does suggest that the Respondent may have had some filing issues but I note the records were in fact located.

### Conclusion

[72] The Respondent produced the records requested by the Applicant. Therefore, I find that with respect to the records the Applicant requested, there is no evidence of inadequacy.

**Issue 5: If the Respondent did not comply with the requirements of the Act and/or O. Reg. 48/01 should it be assessed a penalty?**

- [73] Section 1.44(1)6 of the Act provides that the Tribunal may order a penalty to be paid if it finds that the corporation has, without reasonable excuse, refused to permit a person to examine or obtain records.
- [74] The Applicant submits that the provision of records outside of the time frames prescribed in section 13 of O. Reg. 48/01 constitutes a refusal to permit him to examine or obtain copies of the records he requested. His position is also that the Respondent has failed to provide many records; for example, he considers amended minutes for the Applicant's AGM's or signed copies of board meeting minutes to be outstanding. My finding, however, is that the minutes for a meeting which may have been held on February 28, 2018 is the only record responsive to his requests that has not been provided.
- [75] The Respondent submits that it did not refuse at any time to provide the records requested by the Applicant. I note that the Board's Responses to Request for Records for both the Applicant's November 12, 2018 and May 13, 2019 Requests for Records indicate that the Respondent would provide all of the records.
- [76] The evidence is that the Applicant did not receive all of the records within the prescribed time frames. Although he requested both documents in his November 12, 2018 Request for Records, he did not receive a complete copy of the Respondent's declaration or the minutes of the corporation's 2016 AGM until he made his May 13, 2019 request. Similarly, the January 2018 PIC, the minutes of board meetings held May 5, 2015 and September 20, 2016 and the "in-camera" minutes dated October 24, 2016 and January 24, 2017 were not provided until the mediation.
- [77] I do note that two of the records the Applicant lists as "missing until mediation" were not records which the Respondent was required to provide. The minutes of the October 24, 2018 AGM and the board meeting of the same date had not been approved as of the date of the Applicant's November 12, 2018 request and therefore were not yet formal minutes of the corporation. While the Respondent did provide a draft copy of the AGM minutes during the mediation, it was under no obligation to do so.
- [78] The fact that the Respondent provided a complete copy of the declaration and the 2016 AGM minutes in response to the May 13, 2019 request that it did not provide in response to the November 12, 2018 request suggests that the original omission



was an oversight. However, as noted above, the Respondent provided records during the mediation that it did not provide in either of its responses to the Applicant's requests. Two of those records are "in-camera" meeting minutes which are prefaced with a statement that they contain "sensitive, confidential and personal" information, are to be filed separately from minutes of board meetings and may only be read by directors, officers, management and any other person they may authorize. It is unknown whether the Respondent decided this extended to excluding these records from its responses; because the Respondent called no witnesses, I have no information with respect to the reasons the records were not provided until the mediation in this matter.

### Conclusion

- [79] One of the purposes of assessing a penalty is to deter future similar action. O. Reg. 48/01 sets out specific time frames for the provision of records in response to Requests for Records. It should not be without consequence if a corporation fails to meet these time frames without the provision of valid reasons.
- [80] In the absence of the provision of any reasons by the Respondent, I find that the delay in providing the above-noted records constitutes a refusal, albeit a temporary one, to permit the Applicant to examine or obtain copies of records without reasonable excuse and I assess a penalty of \$200.
- [81] In determining the quantum of the penalty, I have considered the significant mitigating factors in this case. The Applicant has received the records he requested, the majority of which were provided within the prescribed time periods or with only an insignificant delay. Further, as set out in the chronology of the Applicant's requests, the evidence is that First Service went to some effort to locate missing records when the Applicant identified gaps in the records he initially received. Those efforts included contacting the company which recorded board meeting minutes.

### **D. COSTS**

- [82] The Applicant requested costs totalling \$3,122.35 comprised of \$2,922.35 representing his costs of participation in the Tribunal's proceedings and \$200 in Tribunal fees. The Respondent requested costs totalling \$1,018.50, the legal fees it incurred in this matter.
- [83] Rule 32.1 of the Tribunal's Rules of Practice states that the Tribunal may order a User to pay any reasonable expenses related to the use of the Tribunal.

[84] The majority of the Applicant's claim for costs is for the time he spent to participate in the three stages of the Tribunal's proceedings. The issues in this matter were not complex. Therefore, I question the Applicant's claim for 84.5 hours of his time and note that some of this time was likely not necessary. For example, the Applicant claims 24 hours for the preparation of his closing statement, including 16 hours he indicates he was required to take off work. By his own admission, the statement was not "concise" as I had instructed. Further, like the Applicant's witness statement, it addressed matters unrelated to the agreed issues to be decided and arguably complicated this proceeding.

[85] I also question that the Applicant had to take any time off work during the Stage 3 proceeding. The ODR system is available 24 hours a day, seven days a week and in this case, to accommodate the Applicant, I ensured that the deadlines for disclosure and for preparation of his witness and closing statements spanned a weekend.

[86] The fact that the Applicant had to spend time to prepare his submissions and participate in the Tribunal's process is to be expected. Given the nature of the issues and the fact that Stage 3 proceeded in an orderly fashion with no special requirements, I find there are no reasons to award the Applicant costs for his participation in these proceedings. On the same basis, I award no costs to the Respondent.

[87] With respect to his claim for Tribunal fees, the Applicant did not receive some of the records he requested until the mediation in this matter and I have assessed a penalty to the Respondent because it did not provide any reasons for the delay. Therefore, I award costs of \$200, the total of the filing fees the Applicant paid to the Tribunal, to the Applicant.

## **E. ORDER**

[88] For the reasons set out above, in accordance with s. 1.44 of the Act, the Tribunal orders:

1. Within 15 days of the date of this decision, the Respondent shall provide the Applicant with:
  - a. the minutes of the Respondent's board meeting held on February 28, 2018 or a statement verifying that the minutes do not exist; and

- b. the minutes of the Respondent's "in-camera" board meeting dated October 24, 2016 and, if applicable, the statement required by s. 13.8(1)(b) of O. Reg. 48/01.
2. Within 30 days of the date of this decision, the Respondent shall pay a penalty of \$200 to the Applicant.
3. Within 30 days of the date of this decision, the Respondent shall pay costs of \$200 to the Applicant.
4. To ensure the Applicant does not pay any portion of the costs or penalty awards, the Applicant shall be given a credit towards the common expenses attributable to his unit in the amount equivalent to his unit's proportionate share of the above costs and penalty.

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Mary Ann Spencer  
Member, Condominium Authority Tribunal

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