

## **CONDOMINIUM AUTHORITY TRIBUNAL**

**DATE:** February 1, 2021

**CASE:** 2020-00134R

**Citation:** Geissler v. Toronto Standard Condominium Corporation No. 2045, 2021 ONCAT 9

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

**Member:** Laurie Sanford, Member

**The Applicant,**  
Cheryl Geissler  
Self-Represented

**The Respondent,**  
Toronto Standard Condominium Corporation No. 2045  
Represented by Michael Petcherski, Board Member

**Hearing:** Written Online Hearing – November 17, 2020 to January 22, 2021

### **REASONS FOR MOTION DECISIONS**

#### **A. OVERVIEW**

- [1] Ms. Cheryl Geissler has applied to the Condominium Authority Tribunal (the “CAT”) for an order directing Toronto Standard Condominium Corporation No. 2045 (“TSCC2045”) to provide her with certain records. At the time of her records requests, she was an owner of a unit in TSCC2045 and she remained an owner at the time of her application to the CAT. At the outset of the hearing, five preliminary motions were brought. During the hearing of these preliminary motions, Ms. Geissler completed the sale of her unit.
- [2] This decision addresses the five preliminary motions. For the reasons set out below, I make the following decisions with respect to these motions:
1. The motion to determine that the representative of TSCC2045 is not properly authorised is denied;
  2. The motion to have this matter heard by a panel of three is denied;

3. The motion to have this application dismissed on the grounds that Ms. Geissler is no longer entitled to the records she seeks is granted;
4. The motion to have certain documents and parts of the transcript of the hearing made confidential is denied; and
5. It is not necessary to decide the motion to have additional requests for records addressed in the hearing.

## **B. ISSUES & ANALYSIS**

[3] At the outset of the hearing, Ms. Geissler made certain requests. We agreed that two of these requests would be heard as motions. The first was a motion to determine if Mr. Petcherski is an authorized representative of TSCC2045. The second motion was to have four additional requests for records addressed during this hearing. I initiated a third motion, to determine if Ms. Geissler is entitled to request records under section 55 of the *Condominium Act, 1998* (the “Act”). While TSCC2045 adopted this motion and made submissions on it, the motion was initiated by me because there was a reference in the summary of the mediation that preceded the hearing to the possibility that Ms. Geissler had sold her unit. During the course of hearing these three motions, two further motions were brought: Ms. Geissler requested that this matter be heard by a panel of three and TSCC2045 requested that certain parts of the adjudicative record of the hearing not be disclosed to non-parties.

[4] The issues that arise from these motions will be decided in the following order:

1. Is Mr. Petcherski authorised to represent TSCC2045?
2. Should this matter be heard by a panel of three?
3. Is Ms. Geissler entitled to examine or obtain copies of the records she has requested?
4. Should parts of the adjudicative record of the hearing be kept confidential?
5. Is it necessary to decide the motion to have additional records requests addressed in the hearing?

### **Motion 1: Is Mr. Petcherski authorized to represent TSCC2045?**

[5] Ms. Geissler submits that Mr. Petcherski is not authorized to represent TSCC2045. She notes that the board of directors of TSCC2045 consists of three directors, one of whom was elected and two of whom were appointed to fill vacancies on the

board. Ms. Geissler submits that while the elected board member may have a term which continues until the next Annual General Meeting (“AGM”) is actually held, the two appointed members are subject to different statutory provisions. In Ms. Geissler’s submission, their appointment is only valid until the deadline for holding the next AGM. Ms. Geissler argues that the deadline for holding the AGM was in October 2020 and, since no meeting was held, the terms of the appointed board members have expired. If that is the case, Ms. Geissler submits, the board of TSCC2045 no longer has a quorum and therefore cannot act in this matter.

- [6] The statutory scheme set out in the Act for the board of directors’ election, appointment and term of office may be summarised as follows. Condominium unit owners elect a board of directors (s.28). There are statutory qualifications to becoming a director and there are disqualifiers (s.29). For example, a board member is disqualified if he or she does not complete the requisite training within a specified time. None of those disqualifying provisions apply in this case. The term of office is prescribed (s. 31(1)). Subsection 31(2) of the Act states “Despite subsection (1), a director may continue to act until a successor is elected.” A vacancy may be filled by appointment if a quorum remains on the board and the term of that appointment is “until the next annual general meeting” (s. 34(2)). Finally, subsection 45(2) provides for the timing of an AGM. There appears to be no disagreement that the AGM was to have occurred by October 2020, a time that had been extended due to the Covid-19 pandemic. TSCC2045 does not contest the assertion that no AGM was held in 2020.
- [7] Mr. Petcherski submitted that the CAT does not have the jurisdiction to consider whether or not the board of directors of TSCC2045 is properly constituted. Mr. Petcherski also submitted that the Act does not state that a board member is disqualified because an AGM is delayed.
- [8] Concerning the question of jurisdiction, Ms. Geissler submits that under Rule 7.2(b) of the Condominium Authority Tribunal Rules of Practice, effective September 21, 2020, (the “CAT’s Rules of Procedure”) each party in a hearing must “have enough information and instructions to effectively participate in the Case, and have the authority to make agreements or settle any issues.” In Ms. Geissler’s submission, this Rule together with the general provision that a tribunal may control its own processes, give the CAT the jurisdiction to consider whether the representatives appearing before it are authorised to be representatives.
- [9] I agree with Ms. Geissler. If the CAT were unable to confirm that someone purporting to have the authority to act did in fact have that authority, then the CAT would run the risk of issuing decisions that are not binding on the parties. Within

the confines of our Rules and our ability to control our processes, the CAT has the jurisdiction to confirm the authority of the participants to act.

- [10] The next question is whether Ms. Geissler has demonstrated that Mr. Petcherski is not authorised to represent TSCC2045. I conclude that she has not. Mr. Petcherski submits that while a board member may be disqualified for one of the reasons set out in section 29, none of those reasons apply here. He submits that there is nothing in the Act that states that a board member is disqualified if an AGM is delayed. Mr. Petcherski further submits that, if the legislature had intended to disqualify an appointed board member if an AGM were delayed, they could have included such a disqualification in section 29 of the Act. I agree with Mr. Petcherski on all of these points. Ms. Geissler is attempting to connect two sections of the Act which appear to be distinct, the term of an appointed board member and the timing of the AGM. I can find nothing in the Act that makes a distinction between elected and appointed directors that would disqualify the latter if an AGM is delayed. I conclude that Ms. Geissler has not demonstrated that Mr. Petcherski is disqualified from representing TSCC2045 in this matter. The motion is denied.

**Motion 2: Should this matter be heard by a panel of three?**

- [11] Ms. Geissler brought this motion to redress what she submitted were issues of unfairness in the way she was treated during the hearing of these preliminary motions and bias she submitted that I showed in favour of TSCC2045. Ms. Geissler's proposed remedy for this perceived unfairness was to have the hearing adjourned until it could be reconvened with a panel of three CAT members, including one or both of two Vice-Chairs of the CAT, whom she named.
- [12] The fact that any party feels that she or he has not received a fair hearing is something the CAT takes seriously and in order to address this motion, it is necessary to go into more detail than might ordinarily be required.
- [13] Ms. Geissler's concerns about perceived unfairness fall into several categories. First, Ms. Geissler submits that I was unfair in not responding to, or not granting, requests she made in the course of dealing with the preliminary motions. For example, Ms. Geissler requested that the hearing be adjourned until her request to have the matter heard by a panel of three was granted. Ms. Geissler also requested that the hearing be adjourned until her motion to have Mr. Petcherski determined not to be an authorised representative of TSCC2045 was heard.
- [14] In this case, both Ms. Geissler and TSCC2045 were self-represented. At the outset of the hearing of the preliminary motions, I explained what a motion was

and outlined the procedure that we would use. In response to Ms. Geissler's requests for an immediate ruling, I explained that it would not be possible for me to decide a motion before hearing from both sides. I am satisfied that Ms. Geissler was not unfairly treated when her requests were not granted or otherwise responded to at the time they were made.

- [15] Ms. Geissler's second set of concerns relate to what she perceived as the unfairness of the process for a number of the motions. Concerning the fourth motion, that is the accessibility of the adjudicative record, Ms. Geissler submitted that I acted unfairly by initiating the motion when Mr. Petcherski had not done so. As noted above, both parties in this matter were self-represented. I decided that, since Mr. Petcherski had requested that some parts of the record be kept confidential and Ms. Geissler had requested that two of Mr. Petcherski's posts be "redacted", it was appropriate to hear from both parties on the issue of public accessibility to the record. Ms. Geissler also submitted that it was unjust to change "rules" in the midst of a process. The change she referred to was the introduction of a new Condominium Authority of Ontario ("CAO") policy about access to the adjudicative record. The new policy was issued after submissions had been made by the parties but before the issue had been decided. The history and reasons for this policy change will be discussed below. The new policy increases public access to the adjudicative record, which supports Ms. Geissler's position. Ms. Geissler acknowledged that the new policy was "possibly better". It should also be noted that, following the change, both parties were given an opportunity to make further submissions.
- [16] The third category of concerns that Ms. Geissler raised about perceived unfairness related to the sale of her unit and the effect it might have on her ability to continue her application to the CAT. Ms. Geissler was concerned that the matter of her ownership was raised in the summary of the mediation and referred to by TSCC2045. She submits that I acted unfairly in initiating the motion. Ms. Geissler submitted that she had been unduly pressured on this issue. The problem with these assertions is that the question of whether or not Ms. Geissler had sold her unit is a matter of fact that exists irrespective of who raised the issue. Ms. Geissler has acknowledged that she had sold her unit around the end of November. The issue of the legal significance of that sale is one which needs to be determined. As it goes directly to the question of Ms. Geissler's status to pursue this matter, it is appropriate to deal with it as a preliminary issue.
- [17] Ms. Geissler questioned my ability to be impartial because I have, in the past, made decisions about the effect of a sale of a unit on the continuing ability of an applicant to request records. It is in the nature of the adjudicator's responsibilities

that he or she will make decisions on a range of issues. If no adjudicator could make a decision on an issue similar to one which had come before them in the past, the administration of justice would quickly grind to a halt. The fact that these decisions are made is not, by itself, sufficient grounds to impugn the impartiality of an adjudicator.

[18] Ms. Geissler also alleged bias in favour of TSCC2045 in how the motions were scheduled. I have reviewed the motion schedules and find no bias. The schedules were set to provide both parties with time to file any documents and to make submissions in support of their positions while maintaining an efficient hearing process.

[19] Ms. Geissler made other submissions about her perceptions of the bias and unfairness shown to her but the above examples are sufficient to explain my decision. I am satisfied there is no reasonable basis for an allegation of either unfairness or bias. Given that, there is no reason for another person to be assigned to this matter or for three adjudicators to be empanelled, as Ms. Geissler requests. At the CAT, cases are usually heard by one adjudicator, as scheduled by the Chair. There are no exceptional circumstances in this case that would warrant an exception to the usual practice. This motion is denied.

**Motion 3: Is Ms. Geissler entitled to examine or obtain copies of the records she has requested?**

[20] Ms. Geissler was an owner of a unit in TSCC2045 at the time she made a series of requests for records. She remained an owner when she made her application to the CAT for an order directing TSCC2045 to either permit her to examine the records or make copies of them under subsection 55 (3) of the Act. Ms. Geissler informed the CAT that she had sold her unit around the end of November, 2020. The question is what effect does that sale have on Ms. Geissler's ability to pursue this matter?

[21] Subsection 55(3) of the Act provides:

The corporation shall permit an owner, a purchaser or a mortgagee of a unit or an agent of one of them duly authorized in writing, to examine or obtain copies of the records of the corporation in accordance with the regulations, except those records described in subsection (4)

[22] The Act and Regulation 48/01 set out the procedure for requesting records. It is clear from these provisions that Ms. Geissler was entitled under the Act to request the records and was likewise entitled to pursue her request by application to the CAT. Both the records request and the application to the CAT occurred prior to the

sale of her unit. The question that remains is whether Ms. Geissler is entitled to continue to pursue this matter now that she has sold her unit. It should be noted that the motion was expressed as a question of whether Ms. Geissler had the “authority” to “request” records. The wording of the issue in this decision is different, for the sake of clarity. Both parties made submissions on the question of Ms. Geissler’s entitlement to the records following her sale of the unit and I am satisfied that they both understood that the issue was the effect of Ms. Geissler’s sale of her unit on her entitlement to access the records she had requested.

- [23] TSCC2045 referred to several earlier decisions of the CAT which held that a person requesting records must remain an owner throughout the hearing to be entitled under subsection 55(3) to examine or obtain copies of records. Ms. Geissler submitted that the issue of her ownership had been addressed in the Stage 2 – Mediation stage of this matter. Mr. Petcherski submitted that the issue had been raised but not resolved. It is appropriate to address this issue in the Stage 3 Hearing as it goes directly to Ms. Geissler’s entitlement to the records she seeks. The fact that the issue first emerged in the mediation does not alter that fact.
- [24] Ms. Geissler submits that the motion as expressed was ambiguous. However, she did make comprehensive submissions which showed an understanding of the issues. She notes that she was considered entitled at the time of her request and at the time of her application to the CAT. She submits that TSCC2045 set a precedent when they released certain records to her before this application and that they have not raised the issue until now. Ms. Geissler also points to the fact that her application was accepted by the CAT and she was permitted to proceed through two stages of the matter before the issue was raised. These submissions are factually correct. However, they ignore the change in Ms. Geissler’s status as a unit owner in TSCC2045 and the effect that change has on her status to examine or obtain copies of the records she requests.
- [25] Ms. Geissler referred to Rule 7 of the CAT’s Rules of Procedure and questioned whether it was being used in determining this issue. Rule 7 relates to the authority of the participants and also sets out the standard of expected conduct. In this case, the issue is not Ms. Geissler’s authority to represent herself in this matter. She is representing herself here. The issue is whether, having sold her unit, she is still entitled to obtain access to the requested records.
- [26] Ms. Geissler submits that, because she was questioned about her unit ownership during the mediation, she is now facing a form of double jeopardy. The sale of Ms. Geissler’s unit had not occurred at the time of the mediation. It was only after the

sale had concluded that the issue of her entitlement to the records needed to be determined. The notion of double jeopardy is not relevant or applicable here. She also submitted that continually being questioned about her ownership status was unfair and the fact that the issue was included in a report of the mediation was “inherently unfair and prejudicial”. The question of the timing of the conclusion of her sale is highly relevant to this motion. Prior to the sale being concluded, there was no issue to be decided. There was nothing unfair in asking Ms. Geissler, during the hearing of this motion, what her ownership status was.

- [27] Ms. Geissler submitted that the CAT is failing to distinguish between past and present in this motion. The point of bringing the application to the CAT, in Ms. Geissler’s submission, was that TSCC2045 had been violating its obligations to her under subsection 55(3) for “the past eight months”. In her submission, any potential change in her ownership status should not impact the fact of the violation or serve as an excuse for TSCC2045 for its violation.
- [28] If Ms. Geissler’s submission were correct, then her entitlement to the records would have arisen on her original request for them. In that case, one would expect subsection 55(3) to read “*Upon request*, the Corporation shall permit an owner . . . .to examine or obtain copies of the records . . . .”(emphasis added). The subsection does not read this way because the entitlement to records does not arise on request by an owner. There are several more hurdles that someone requesting records may have to clear before they can obtain condominium records. Regulation 48/01 to the Act sets out a procedure that is to be followed in providing requested records. It includes provisions for a condominium corporation to determine if portions of the records are to be redacted and to determine what a reasonable fee would be for reproducing and providing certain records. If a fee is appropriate, that fee must be paid before records are provided. Additionally, subsection 55(4) of the Act provides certain exemptions from a condominium corporation’s obligation to provide records to requestors. In this case, TSCC2045 is claiming one of these exemptions, the exemption for records relating to actual or contemplated litigation. Regardless of whether TSCC2045 would have been successful in this claim, Ms. Geissler would not have been entitled to the records she seeks until the exemption claim had been litigated in this hearing or resolved by the parties. Neither of those things has occurred. For all these reasons, it cannot be said that Ms. Geissler was previously, or is currently, entitled to the records or that TSCC2045 has violated her rights by failing to provide them.
- [29] It is Ms. Geissler’s status now, not when she made the request or when she filed this application, that determines her entitlement to the records. Ms. Geissler’s ownership status has changed and she is no longer entitled to the records she



seeks. Subsection 55(3) of the Act entitles owners, people with specified ownership interests, or their agents to obtain copies of the records. Ms. Geissler is no longer an owner and has made no submission that she is otherwise qualified under subsection 55(3) despite being invited to do so. It is worth noting that from a policy perspective, this outcome is reasonable. Section 55 exists to give owners and others with ownership interests an extensive right to records of the condominium corporation. That right would not necessarily be appropriate to extend to a non-owner and might, indeed, be contrary to the interests of the condominium and its current owners. For all these reasons, this motion is granted and I will direct that this application be dismissed.

**Motion 4: Should parts of the adjudicative record of the hearing be kept confidential?**

- [30] In the course of submissions on the issue of whether Mr. Petcherski was authorised to represent TSCC2045, Mr. Petcherski raised concerns that portions of the written messages, or “posts”, that were being exchanged between the parties, were being disclosed to non-parties. Ms. Geissler also requested that messages posted by Mr. Petcherski be redacted. To deal with these concerns, I admonished both parties to avoid disclosing material posted during the course of the hearing and initiated a motion to determine if some parts of the adjudicative record should be kept confidential.
- [31] Mr. Petcherski made submissions requesting that the posts relating to the issue of his authority to represent TSCC2045 and some documents that he and Ms. Geissler filed on that issue should not be available to non-parties. Mr. Petcherski submitted that the documents and posts related to private internal matters of TSCC2045 that were intended only for owners and other qualified persons under the Act. Mr. Petcherski submitted, “The disclosure of such material could only bring harm and damage to the corporation and its owners and there is not benefit for any outside party to have access to such material.”
- [32] Ms. Geissler submitted that all of the adjudicative record should be publicly accessible. She submits that any harm and damage to TSCC2045 would be “fair and just” and any reputational damage that might affect the sale price of the underlying units is “arguably insignificant”. Ms. Geissler cited the case of *Toronto Star v AG Ontario*, ONSC 2586 as support for the open court principle. Ms. Geissler did not refer to her earlier request to redact certain messages but I will deal with that request here.
- [33] Public access to the adjudicative record is governed by the CAT Rules of Practice. Rule 19 states:

19.1 In addition to these Rules and any direction or Order of the CAT, the CAT will also be guided by the Access and Privacy Policy of the Condominium Authority of Ontario.

19.2 The public may have reasonable access to adjudicative records related to Stage 3 - Tribunal Decision, including documents and messages that are uploaded or sent through the CAT-ODR system. This public access may be delayed until after the Case is closed.

19.3 Any person may request that the CAT close all or part of a Case to the public or restrict public access to the CAT's adjudicative records. Requests under this section can be made at any time, even after the case has closed.

19.4 The CAT may take any steps and make any directions or Orders that are needed to protect the confidentiality of personal information. The CAT may do this after a request or without a request from a User, in accordance with the CAO's Access and Privacy Policy.

- [34] At the outset of the hearing, the CAO had a policy about public access to records that might be characterised as having a similar philosophy to that enacted in the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31. ("FIPPA"). In the *Toronto Star* case cited by Ms. Geissler, the court held that FIPPA infringed the *Charter of Rights and Freedoms* but the Court also noted that some Tribunals were not subject to FIPPA and had implemented their own access to information policies. About them, the Court stated, at paragraph 50:

Of course, any tribunal implementing its own mechanism for access to Adjudicative Records may deny access in response to a request. In the event of a challenge, there would have to be a case-specific analysis of whether the openness principle and [section 2\(b\)](#) of the [Charter](#) was breached and whether a remedy, whether under [section 24\(1\)](#) of the [Charter](#) or otherwise, was applicable under the circumstances. However, the fact that a given tribunal ignores *FIPPA* in making such a decision on its own raises no larger issue.

- [35] In the aftermath of the *Toronto Star* case, the provincial legislature passed the *Tribunal Adjudicative Records Act*, 2019 c. 7, sched. 60 ("TARA"). TARA sets out a new set of principles and rules governing, among other things, public access to the adjudicative records of the Tribunals which are subject to it.

- [36] It is important to note that the CAT was never subject to FIPPA, nor is it listed as a "prescribed Tribunal" that would be subject to TARA. Thus, the CAT is one of those Tribunals which implements its own mechanism for access to adjudicative records.

[37] Effective January 1, 2021, the CAO issued a new “Access and Privacy Policy” (the “CAO Privacy Policy”). Although the CAO Privacy Policy applies to applications to the CAT made after January 1, 2021, I have decided to use the CAO Privacy Policy in this case because it clarifies some issues and because it specifically states, at section 5.1.1, “The CAT is guided by the open court principle and is committed to transparency, accountability and accessibility in its decision-making and operations.”

[38] The CAO Privacy Policy adopts the definition of “adjudicative record” contained in TARA as follows:

1. An application or other document by which a proceeding before a tribunal is commenced.
2. A notice of a hearing before a tribunal.
3. A written submission filed with a tribunal in respect of a proceeding before the tribunal.
4. A document that has been admitted as evidence at a hearing of a tribunal or otherwise relied upon by a tribunal in making a decision or an order.
5. A transcript of oral evidence given at a hearing of a tribunal.
6. A decision or an order made by a tribunal and any reasons for the decision or order.
7. A docket or schedule of hearings of a tribunal.
8. A register of proceedings before a tribunal.
9. Any other record that relates to a proceeding before a tribunal and that is prescribed by the regulations made under this Act.

[39] In the case of a CAT hearing, the form of the adjudicative record is somewhat different from that of an oral hearing. CAT hearings are ordinarily conducted in writing. In this case, the various motions were heard as separate “Written Topics”, one for each motion. Submissions on the motions were made by “Posts” or written messages posted by each party in accordance with the schedule which I set. There is a separate Documents tabs where documents may be uploaded. Documents must be uploaded before they can be made exhibits but not every document is entered as an exhibit. The usual rules about the relevance and redundancy of documents proffered as exhibits apply to the CAT.

[40] Section 5 of the CAO Privacy Policy deals with access to the adjudicative record of a CAT process. Section 5.1.5 states:

In deciding whether to issue a confidentiality order, the CAT Member will consider several factors including the nature of the information at issue, the interests of affected individuals, and the public interest in the openness of proceedings. For greater specificity, please note that the CAT is guided by the provisions regarding

the issuance of confidentiality orders set out in section 2 (2) of the Tribunal Adjudicative Records Act, 2019 – in particular, the CAT may issue a confidentiality order if: (a) matters involving public security may be disclosed; or (b) intimate financial or personal matters or other matters contained in the record are of such a nature that the public interest or the interest of a person served by avoiding disclosure outweighs the desirability of adhering to the principle that the record be available to the public.

- [41] In this case, TSCC2045 has requested that certain documents and the entire Written Topic of the motion on the first motion, that is Mr. Petcherski's authority to represent TSCC2045, be subject to a confidentiality order. Ms. Geissler requested that the entire adjudicative record be publicly available.
- [42] Turning first to the question of what documents should be publicly accessible, no document was tendered by either party for entry as an exhibit. While this might have been because the parties were self-represented, I did not prompt them to proffer the documents for several reasons. The parties' submissions seemed to stand on their own without the documents. Some documents were of limited probative value or were not relevant to the issues I had to decide. As a result, I did not rely on the documents uploaded in deciding the preliminary motions.
- [43] Ms. Geissler uploaded documents in support of her motion to have additional record requests included in this hearing. Those records might have been relevant. However, for the reasons set out below, I have concluded that it is not necessary to decide that motion. Therefore, these documents need not be entered as exhibits.
- [44] I conclude that the documents uploaded by the parties were not proffered as exhibits and there is no reason to retroactively enter them as exhibits. Therefore, they will not form part of the adjudicative record and will not be publicly accessible.
- [45] Mr. Petcherski also requested that the Written Topic that contains submissions on the first motion, that is, his authority to represent TSCC2045, should also be made subject to a confidentiality order. The parties in this Written Topic exchanged posts that contained references to the history of disputes between the parties or between TSCC2045 and Ms. Geissler's husband. Had this been an oral hearing, I would have admonished the parties to refrain from this type of exchange. In a written hearing, one challenge is to avoid undue extraneous material from coming in the course of a written post. I have reviewed this material. While it is not relevant to the issue, it does not meet any of the factors noted in section 5 of the CAO Privacy Policy for exclusion. Apart from policy and the CAT's Rules of Procedure, I see no overriding consideration of fairness that would justify ordering that the Written

Topic be subject to a confidentiality order.

- [46] It is true that the Written Topic relates to internal matters of TSCC2045. These include the fact that no AGM was held in 2020. It is not possible to separate this fact from the consideration of the whole motion. While this fact might cause some reputational concerns for TSCC2045, I am not persuaded that these concerns are sufficient to outweigh the open court principle. Therefore, this motion is denied.
- [47] Ms. Geissler requested that two of Mr. Petcherski's posts, both dated November 19, 2020 and both in the Written Topic "Preliminary Matters and Issues" be redacted. She submitted that Mr. Petcherski violated several of the standards of expected conduct set out in Rule 7 of the CAT's Rules of Procedure in posting the messages. In particular, Ms. Geissler submitted that Mr. Petcherski was not acting in good faith in posting the messages. I have reviewed the messages both taken alone and within the context of the overall hearing. I see no evidence of bad faith or misconduct in their posting. The open court principle should apply to permit these posts to be publicly accessible.
- [48] Mr. Petcherski wrote that he might request that other portions of the adjudicative record be subject to a confidentiality order after the decision was released. Ms. Geissler protested this but Rule 19.3 of the CAT's Rules of Procedure provides that the CAT may entertain these requests even after a case has been closed. Any future request for confidentiality will be dealt with by the CAT in accordance with Rule 19.3.

**Motion 5: May Ms. Geissler include additional records requests in this hearing?**

- [49] Ms. Geissler requested that four additional records requests be included in the hearing. In light of my decision to dismiss this application because of the change in Ms. Geissler's ownership status, it is not necessary to decide this motion.

**C. CONCLUSION**

- [50] Ms. Geissler's sale of her unit ended her entitlement to the records she seeks. Therefore, this application is dismissed.

**D. ORDER**

- [51] The Tribunal orders that:

1. The motion to determine that the representative of TSCC2045 is not properly authorised is denied;

2. The motion to have this matter heard by a panel of three is denied;
3. The motion to have this application dismissed on the grounds that Ms. Geissler is no longer entitled to the records she seeks is granted and this application is dismissed;
4. The motion to have certain documents and parts of the transcript of the hearing either redacted or made confidential is denied.
5. It is not necessary to decide the remaining preliminary motion.

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Laurie Sanford  
Member, Condominium Authority Tribunal

Released on: February 1, 2021