

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** April 19, 2021

**CASE:** 2020-00047R

**Citation:** Greasley v. Peel Condominium Corporation No. 55, 2021 ONCAT 33

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

**Member:** Kathryn Kertesz, Member

**The Applicant,**  
Patrick Greasley  
Self-Represented

**The Respondent,**  
Peel Condominium Corporation No. 55  
Represented by Barbara Donald, Agent

**Hearing:** Written Online Hearing – October 1, 2020 to March 23, 2021

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] The Applicant, Patrick Greasley, is the owner of a unit of the Respondent, Peel Condominium Corporation No. 55 (“PCC55”). The Applicant submitted a request for records to the Respondent under section 55 of the *Condominium Act, 1998*, (the “Act”) dated September 25, 2019, asking for board meeting minutes occurring between June 2018 and July 2019 and referring to a playground, along with any invoices and contracts referencing the playground.
- [2] There was no factual dispute relating to the request for records and eventual receipt of the records received; however, the Applicant confirmed receipt of the records only in Stage 2 - Mediation. The main issue of non-compliance with the Act and Ontario Regulation 48/01 (the “Regulation”) raised by the Applicant in this case deals with scope and method of redaction of the minutes received and the failure by the Respondent to include a written statement relating to an explanation of the redaction of the board minutes as required by subsection 13.8(1)(b) of the Regulation.
- [3] The Applicant requests that the Tribunal order the Respondent to provide

unredacted copies of the minutes in question. He also requests that the Tribunal assess a penalty to the Respondent for its refusal to provide the record without reasonable excuse. Finally, he requests his costs in this matter.

- [4] There are three issues to be decided in this case:
1. Did the Respondent respond to the Request for Records in accordance with the provisions of the Act and the Regulation? More specifically, did the Respondent comply with the requirements set out in s. 13.8(1) of the Regulation regarding the scope and explanation for redactions?
  2. Has the Respondent refused without reasonable excuse to permit him to examine or obtain copies of the records? If so, should the Applicant be awarded a penalty under s. 1.44(1)6 of the Act?
  3. Is the Applicant entitled to his costs?

## **B. RESULT**

- [5] For the reasons set out below, I find that the Applicant is entitled to receive from the Respondent a statement as required by subsection 13.8(1)(b) of the Regulation that explains the reason for each redaction and an indication of the provisions of section 55 of the Act or the Regulation being relied on by the board. 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. The Respondent is ordered to pay a penalty in the amount of \$650 for its refusal to provide the record without reasonable excuse.
- [6] Further, pursuant to s. 1.44(1)4 of the Act, I award costs of \$200 to the Applicant representing the filing fees he paid to the Tribunal.

## **C. BACKGROUND**

- [7] Problems arose in this condominium community around issues of contention regarding a playground put up on the common elements during the summer of 2018. A “playground committee” was formed by unit owners opposed to the playground. Further issues and frustration arose according to the Applicant, a playground committee member, when the playground committee’s concerns were either ignored, dismissed, or met with resistance from the board.
- [8] On multiple occasions during this hearing, the Applicant raised s. 37(1) of the Act relating to an alleged breach by PCC55 of the required standard of care as prescribed in that section of the Act. The Applicant sought to resolve underlying

disputes and sought relief beyond what the Tribunal can provide. At various times during the process, I explained that although I understand the Appellant's apparent frustration, issues related to s. 37 of the Act are not within the Tribunal's current jurisdiction.

- [9] It is important to note that the Respondent's participation in the Tribunal's Stage 3 hearing was inconsistent. The hearing began on October 1, 2020. The Respondent's Representative missed multiple scheduled deadlines without providing any explanation for their delay or any indication of their challenge in meeting deadlines. The Respondent's Representative did not avail herself of the opportunity to cross-examine the Applicant, did not respond to the questions put to her in cross-examination of her own testimony and also did not provide a closing statement.
- [10] On several occasions, CAT staff contacted PCC55's Representative and confirmed she was aware of the case and the responsibility to participate. On the rare occasion that Ms. Donald, the president of the PCC55 participated, she did not follow my instructions. I cautioned her and explained that since she had provided her testimony as a witness she was required, as are all witnesses, to answer cross examination questions.
- [11] Although the Applicant uploaded much information about disputes and issues related to the playground committee, my role is to decide the issues set out above and therefore will only address those issues in this decision.

#### **D. ANALYSIS**

##### **Issue 1: Did the Respondent follow the Act and Regulation regarding the scope and explanation of redactions as required subsection 13.8(1)(b) of the Regulation?**

- [12] Board meeting minutes for the period from June 2018 to July 2020 were provided to the Applicant. The most heavily redacted minutes are dated June 9, 2020. The Applicant submitted that the redactions made were excessive and seemingly arbitrary. The Applicant took exception to the manner in which the redactions were made; specifically, that the Respondent had not fulfilled its obligation under the Act and not complied with s. 13.8(1)(b) of the Regulation. This states that each copy of a record that the corporation makes available for examination or delivers shall be accompanied by a written statement of the board's reason for its determination (for redaction) and an indication of which provision of s. 55 of the Act or Regulation the board bases its reason for redaction.
- [13] PCC55's representative stated at the outset of the hearing that:

The Board is aware of the concern of redaction for Board Minutes, we have corrected our method to conform to the rules since January 2020.

Although the Respondent indicated that they have updated their practice as of “January 2020”, minutes dated June 9, 2020 received by the Applicant appear heavily redacted and without accompanying statements and/or explanation for the redactions. In this case, the Respondent did not provide a written statement within the minutes giving any indication of what section in 55(4) it was relying upon when it redacted certain portions.

[14] As noted in Tribunal case *Bryan Mellon v Halton Condominium Corporation No. 70* 2019, ONCAT 2:

“it is appropriate for a condominium corporation to redact information that is personal, confidential, privileged or otherwise private, which includes any information that would serve to identify the unit or unit owner, including but not limited to, the unit owner’s name and unit number.”

However, as stated by the Tribunal in *Sayed Bukhari v. Wentworth Condominium Corporation No. 10*, 2020 ONCAT 4, the Act also stresses transparency in the way in which information is conveyed to owners.

[15] Since the Respondent failed to provide any accompanying statements explaining the extensive redactions, they have not complied with the Regulation. The Respondent redacted the requested board meeting minutes before providing them to the Applicant; however, the Respondent did not provide the accompanying statements required by s. 13.8(1)(b) of the Regulation. This is a straightforward and unambiguous requirement. The Respondent stated that since January 2020 it had sought to address this issue and improve its process; however, the minutes from June 9, 2020, are amongst the most heavily redacted, and still the necessary accompanying statements are not provided. The Respondent has offered no reasonable excuse for its evident failure to comply with the plain requirements of the Regulation in this regard. I therefore order the Respondent to provide a statement as required by s.13.8(1)(b) of the regulation that explains the reason for each redaction in the minutes provided by it for the period from June 2018 to July 2020 and an indication of the provisions of section 55 of the Act or the Regulation being relied on by the board.

**Issue 2: Has the Respondent refused without reasonable excuse to permit him to examine or obtain copies of the records? If so, should the Applicant be awarded a penalty under s. 1.44(1)6 of the Act?**

[16] The relevant section of the Act relating to the imposition of a penalty is s.1.44(1)6 which states that the Tribunal can make an order for a penalty if “the Tribunal

considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection”. Under s. 1.44(3), the Tribunal has authority to award a penalty of up to \$5000. Therefore, the two questions for me to consider are whether the Respondent refused to provide the requested records to the Applicant, and, if so, whether there was a reasonable excuse for such refusal.

[17] In this case, the corporation provided the records but with a five-month delay between the request and when they were provided during the Stage 2 - Mediation. In the absence of the provision of any reasons or excuse 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. Therefore, a penalty is appropriate.

[18] When considering the amount of the penalty, one of the factors is deterrence of future similar action on the part of the Respondent. Here, the Respondent failed to meet the prescribed timeframes for the provision of records in response to Request for Records and failed to provide a valid reason for failing to do so, resulting in this application. When records were provided in the course of this case, they were heavily redacted and there was a failure to comply with s. 13.8(1)(b) of the Regulation. Weighing the refusal, together with these factors, I find that a penalty of \$650 is appropriate.

### **Issue 3: Is the Applicant entitled to his costs?**

[19] Mr. Greasley claims \$200 for the fees he paid to the Tribunal to initiate each stage of this proceeding. It is appropriate for the Respondent to reimburse this amount since he was successful in the case. I direct the Respondent to pay \$200 to Mr. Greasley within 30 days of the date of this Order.

[20] The Applicant also claims legal expenses in the amount of \$1,262.21. In his closing submissions Mr. Greasley mentions that he retained legal representation in response to a letter from a law firm retained by PCC55 on other unrelated matters. However, it should be noted that Mr. Greasley confirmed that he was self-represented and that his legal representation “had neither any involvement nor input into this case”. Therefore, as no legal costs were incurred relating to this case, the applicant is not entitled to reimbursement of any part of the legal expenses.

### **E. ORDER**

[21] The Tribunal Orders that:

1. The Respondent shall, within 30 days of the date of this decision, provide the Applicant with the written statements required by s. 13.8(1)(b) of the Ontario Regulation 48/01 relating to the redactions made to the board meeting minutes from the period of June 2018 to July 2020 that were provided to the Applicant.
2. The Respondent shall pay a penalty of \$650 to the Applicant within 30 days of the date of this decision.
3. The Respondent shall pay costs of \$200 to the Applicant within 30 days of the date of this decision.
4. In the event that the penalty is not provided to the Applicant within 30 days of this Order, the Applicant will be entitled to set-off those amounts against the common expenses attributable to the Applicant's unit(s) in accordance with Section 1.45(3) of the Act.
5. In order to ensure that the Applicant does not have to pay any portion of the penalty award, they will also be given a credit toward the common expenses attributable to their unit(s) in the amount equivalent to their proportionate share(s) of the penalty and costs awarded.

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Kathryn Kertesz  
Member, Condominium Authority Tribunal

Released on: April 19, 2021