

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 25, 2021

CASE: 2020-00199R

Citation: Horvath v. Carleton Condominium Corporation No. 89, 2021 ONCAT 57

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

Member: Jennifer Webster, Member

The Applicant,
Steve Horvath
Self-Represented

The Respondent,
Carleton Condominium Corporation No. 89
Represented by Franziska Graf, Agent

Hearing: Written Online Hearing – January 4, 2021 to June 4, 2021

REASONS FOR DECISION

A. INTRODUCTION

- [1] Steve Horvath (the “Applicant”) is the owner of a unit of Carleton Condominium Corporation No. 89 (the “Respondent”). This decision involves four Requests for records that the Applicant submitted to the Respondent between June and August 2020, and the Respondent’s Response to each of these requests.
- [2] The Applicant claims that the Respondent is not maintaining adequate records as required by section 55(1) of the *Condominium Act, 1988* (the “Act”). He argues that the Respondent has failed to provide him with records that he is entitled to because the records he received contain irregularities, inconsistencies, and errors, and demonstrate overall mismanagement of the corporation. He further claims that the Respondent has refused records without reasonable excuse by requesting unreasonable fees for non-core records. He asks the Tribunal to find that the Respondent’s records are inadequate and, on the basis of such a finding, he seeks an order for an investigation under section 130 of the Act and the appointment of an administrator under section 131 of the Act. He further requests an order for the production of non-core records, and he seeks his costs and a penalty against the Respondent.

- [3] The Respondent states that it has provided all core records in accordance with the Act. It acknowledges that one core record, the record of notices related to leases, was not provided until Stage 2 of the Tribunal's process, and it explains that the reason for the failure to provide the record was an inadvertent error. The Respondent submits that it worked diligently to respond to the Applicant's requests and did not refuse to provide records. In addition, the Respondent argues that it proposed reasonable fees for the non-core records sought by the Applicant. It is the Respondent's position that a penalty is not justified in this application.
- [4] For the reasons set out below, I find that the Applicant has received the core records that he requested. I find that the Respondent is keeping adequate records in accordance with s.55(1) of the Act with the exception of the Periodic Information Certificate (PIC). I order the Respondent to provide the Applicant with the two PICs for the twelve-month period between June, 2019 and June, 2020, and to include on these records the dates on which they were originally issued.
- [5] I also find that the Respondent proposed unreasonable fees for the delivery of non-core records and order the Respondent to charge for labour only in relation to the delivery of these records. I do not find that the unreasonable fees were so excessive as to create a refusal to provide records without reasonable excuse.
- [6] The Applicant requested correspondence between the board and its legal counsel related to bulk TV and internet. He clarified at Stage 2 and during the hearing that his request was only for the legal opinion referenced in the board's email to owners on July 20, 2020. Based on this clarification, I order the Respondent to provide the legal opinion in question and that no fee be charged for this record.
- [7] I order the Respondent to pay costs of \$200 to the Applicant. I do not assess a penalty in this case.

B. ISSUES

- [8] As a preliminary matter in Stage 3, I outlined my understanding of the issues, and the parties confirmed the issues as follows:
1. Has the Respondent provided the Applicant with the records which he is entitled to receive in response to his requests for records?
 2. Is the Respondent keeping adequate records in accordance with the Act?
 3. Has the Respondent provided a reasonable excuse for refusing to provide certain records?

4. Are the fees proposed by the Respondent for non-core records reasonable?
5. Should a penalty be assessed against the Respondent?
6. Should costs be awarded?

C. EVIDENCE & ANALYSIS

- [9] The parties submitted evidence in the form of documents and witness statements. The Applicant provided his testimony in a witness statement, and the witnesses on behalf of the Respondent were Ms. Franziska Graf, condominium manager, Ms. Carolyn Daniels, president of the Respondent, Mr. Chris Irwin, treasurer of the Respondent, and Mr. Gregory Smith, auditor.
- [10] The Applicant proposed nine other witnesses, eight of whom were unnamed individuals who work for agencies or contractors who have provided or do currently provide services to the Respondent. The other witness was the Respondent's former condominium manager who the Applicant wanted to question about the transfer of records from his management company to the current condominium manager. I did not allow the testimony of these witnesses on the basis that their proposed evidence was not relevant to the issues within the Tribunal's jurisdiction.
- [11] The Applicant has presented over 2000 pages of documents, submissions, and testimony related to his issues and concerns with the Respondent's management and record-keeping. I have carefully reviewed and considered all the evidence provided by the parties. I will, however, only address the evidence most relevant to the issues I must decide in this application.
- [12] I have summarized the chronology of the Applicant's Requests for Records below.

Chronology

- [13] On June 24, 2020, the Applicant submitted a Request for Records ("R1") to the Respondent. In this request, he asked for electronic copies of five core records: the PIC from the past 12 months; the budget for the current fiscal year; the most recent approved financial statements; the most recent auditor's report; and the current plan for future funding of the reserve fund. He also requested a non-core record described as "audit investigation of reported irregularities in management and use of Reserve Funds and Financial Reporting" for the period of January 1, 2020 to the present.
- [14] The Applicant submitted a second Request for Records ("R2") on July 21, 2020. As of July 21, 2020, he had not received a Response to R1, and he resubmitted his

requests for core records from R1 in R2. In addition to his duplicate request for the five core records, he identified in R2 that he wanted the following core records: the record of owners and mortgagees and the record of notices relating to leases of units under section 83 of the Act. The Applicant requested the record of owners and mortgagees in two places in R2. He also requested non-core records in R2, which he identified as:

- Correspondences between the 'Board Members and Property Mgr' for CCC #89 and their "Legal Counsel" pertaining to Bulk TV & Internet Services and the Owners' Requisition of July 3, 2020 – for the date range of November 1, 2019 to July 21, 2020; and
- Correspondences between the 'Property Mgr & Board Members' and also the Auditor for CCC #89 AND owner Steve Horvath – for the date range of July 1, 2018 to July 21, 2020

[15] Ms. Graf provided the Respondent's Response to R1 by email to the Applicant on July 24, 2020. The email included attachments of the completed Response form, a PIC, the budget for the current fiscal year, the most recent auditor's report, and the current plan for the future funding of the reserve fund. The Respondent identified in its Response to the Applicant that it had provided the same document for the most recent auditor's report and the most recent approved financial statements because it believed that it was a duplicate request.

[16] The Applicant was not able to open the attachments to Ms. Graf's email of July 24, 2020. He did not respond to her email, and he decided to file the present application with the Tribunal because he concluded that the Respondent had failed to provide the records he had requested.

[17] Ms. Graf sent an email to the Applicant on August 20, 2020 with the Respondent's Response to R2. She provided electronic copies of the following records as attachments to the email: the record of owners and mortgagees; a PIC; the budget for the current fiscal year; the most recent auditor's report; and the current plan for the future funding of the reserve fund. The Respondent again stated in its Response that the auditor's report included the most recent approved financial statements and that only one record was provided for the record of owners and mortgagees because the Applicant had submitted a duplicate request for the same record. The Respondent did not provide the record of notices of relating to leases with its email of August 20, 2020. This record was uploaded to the CAT-ODR platform on October 1, 2020 during Stage 2 - Mediation. The Applicant also testified that a paper copy of this record was delivered to his unit door in early October, 2020 with no identifying information on the record or the envelope.

- [18] The Response to R2 included proposed fees for the Respondent to provide the requested non-core records. The proposed fees were \$160.00 for the records related to bulk TV & internet services and \$300.00 for the records of correspondence between the condominium manager, the board, the auditor and the Applicant.
- [19] The Applicant did not reply to the Respondent's Response in relation to R2. He stated that, as of August 20, 2020, the parties were working with a Tribunal member in Stage 2-Mediation. The Applicant's R2 records request was added to his application related to R1.
- [20] The Applicant submitted a Request for Records ("R3") to the Respondent on July 29, 2020, in which he requested the following records:
- The contract of the auditor with the name of the firm and person doing the audit for the Respondent with a contact email address, phone number and associated correspondences for the date range of May 2019 to May 2020; and
 - The contract the auditor with the name of the firm and person doing the audit for the Respondent with a contact email address and phone number and associated correspondences for the date range of May 2020 to May 2021.
- [21] The Respondent provided its response to R3 by email on August 28, 2020. The Respondent proposed a fee in relation to the record for 2019-2020 of \$300.00 for labour, printing and photocopying. With respect to the records for 2020-2021, the Respondent advised the Applicant that the record did not exist because no auditor had been appointed as of the date of the Request.
- [22] The Applicant did not reply to the Response in relation to R3 because the parties were participating in mediation at Stage 2. The issues related to R3 were added to the application with the Tribunal in relation to R1 and R2.
- [23] On August 31, 2020, the Applicant submitted a Request for Records ("R4") to request electronic copies of the following records from the Respondent:
- Minutes of board meetings held within the last 12 months;
 - work contract for Reserve Fund Study following the 2018 [study] by any and all Engineering Firms including WSP Engineering for the date range of 2018 to 2020;
 - compendium of classified inventory and condition with item numbers / codes

by each engineering firm (including WSP Engineering) for the date range of 2018 to 2020;

- “Life-Cycle” Detailed Cash Flow Plan over the next 30-50 years by each Engineering Firm (including WSP Engineering) for the date range of 2018 to 2020;
- any and all correspondences between “former” CMG Property manager, CCC #89 and former Engineering Firm (M&H Engineering) & other Engineering Firms related “solely” to the Reserve Fund Study of 2018 for the date range of January 1, 2018 to the present; and
- any and all correspondences between “REID Property Mgt; CCC #89” and the ‘new’ Engineering Firm (WSP Engineering) & other Engineering Firms related to either of “both” the RFS 2018 and / or RFS 2020 for the date range of January 1, 2018 to the present.

[24] On September 30, 2020, Ms. Graf sent the Respondent’s Response to R4 by email. In this Response, she identified that the minutes of board meetings were core records and she provided electronic copies of the minutes with the Response. She identified all other requested records in R4 as non-core records and proposed fees for providing the records to the Applicant.

[25] The Applicant did not reply to the Response, and the issues related to R4 were joined with the present application.

Issues 1 and 2: Has the Respondent provided the Applicant with the records which he is entitled to receive in response to his requests for records? Is the Respondent keeping adequate records in accordance with the Act?

[26] It is the Applicant’s position that he has not received the records he is entitled to because the records are inadequate. He argued that the Respondent did not provide him with quality records and that this is an effective refusal to provide the records. Given the Applicant’s position, I will address the issues of receipt and adequacy of records together in this decision.

[27] Section 55(1) of the Act states that “the corporation shall keep adequate records” and sets out a list of records that must be kept.

[28] When the Tribunal has considered the issue of the adequacy of a corporation’s records, it has been guided by the decision of the Ontario Superior Court in *McKay v. Waterloo North Condominium Corp. No. 23*, 1992 CanLII 7501. The Court explained that the obligation on the corporation to keep adequate records means

that the records must be adequate “to permit it to fulfil its duties and obligations.”

[29] The Tribunal has determined that accuracy is a component of adequacy, but that some degree of inaccuracy may be tolerated (*Yeung v. Metropolitan Toronto Condominium Corporation No. 1136*, 2020 ONCAT 33).

[30] In *Ravells v. Metropolitan Toronto Condominium Corporation No. 564*, 2020 ONCAT 44, the Tribunal outlined that the adequacy of records is related to the open book principle at the core of the Act. The Tribunal further noted that there is a difference between an individual owner’s assessment of adequacy and an objective assessment based on the Act, as follows:

However, the extent to which the corporation’s records enable an owner to gain a “true understanding of their investment” is necessarily a subjective assessment. Each owner of a corporation might have a different perspective based on their own priorities and understanding of the records. The issue before me is not whether the Applicant finds the records she received sufficient for her purposes but whether the Respondent is keeping adequate records in accordance with section 55(1) of the Act.

[31] Similarly, the issue in this application is whether the Respondent is objectively keeping adequate records and not whether the Applicant finds the records inadequate.

[32] The Applicant has identified issues with the Respondent’s records that he characterized as irregularities, inconsistencies and misleading information. His concerns about adequacy are primarily related to his disagreement with a particular decision or action taken by the board. A record may accurately record a decision or action of a board, which the owner claims is an erroneous decision or action, as the Applicant does in relation to the Respondent’s records. The record, nonetheless, is an adequate record of the decision or action, despite an owner’s opinion that it was not the appropriate course of action.

The Budget for the current fiscal year (R1 and R2)

[33] In response to the Applicant’s request for the budget for the current fiscal year, the Respondent provided a Notice of Information Meeting dated November 28, 2019. The budget for the fiscal year to December 31, 2020 was attached to the Notice. The budget included columns identified as: 2019 budget; actual to October 31, 2109; estimate for year end; and budget for 2020. For each of these columns, entries were provided for different line items related to revenues and expenses. The budget document also included details about the expenses charged to the reserve fund and a summary of common charges and special assessments for

2020.

[34] The Applicant argued that the budget provided by the Respondent was an inadequate record because it reflected poor planning and insufficient control of expenses. He was concerned that the Respondent had provided a budget document to owners in advance of the meeting in November 2019 that was different from the budget record provided in response to R1 and R2. He claimed that the figures were inconsistent between the two documents and that this created a concern about which document was a true reflection of the Respondent's budget. He asserted that the board had made numerous changes to the budget from the presentation of the budget in 2019 to the actual revenues and expenses shown in the 2020 budget, and he concluded that these changes showed that the board was being less than rigorous in its planning and supervision of the budget. The Applicant was particularly concerned that the budget did not demonstrate adequate planning by the board with respect to the reserve fund and he claimed that the board was not rigorously applying life cycle cash flow planning for the purpose of maintaining the building assets.

[35] I find that the Respondent has provided the Applicant with its budget for the 2020 fiscal year in response to R1 and R2, and that the Respondent is keeping adequate budget records. The budget sets out the actual revenues and expenses for 2019 in comparison with the 2019 budget, and it outlines the forecast for 2020 for every line item of revenue, expenses, and the reserve fund. The Applicant's concerns are related to the board's overall management of the budget and to their planning and governance. Although he may disagree with the board's decisions and planning, the budget record is an adequate record of the corporate decisions.

Most recent approved financial statements / Most recent auditor's report (R1 and R2)

[36] The Applicant requested the most recent approved financial statements and the most recent auditor's report in R1 and R2. The Respondent provided him with the most recent auditor's report and stated that the report included the most recent approved financial statements for the year ending December 31, 2019.

[37] The Applicant argued that the Respondent had failed to provide him with the most recent financial statements and did not accept that the same record could be provided for the auditor's report and the financial statements. He submitted that, since the Request form had two different entries for these records, there must be a difference between the records.

[38] In *Mellon v. Halton Condominium Corporation No. 70*, 2019 ONCAT 2, the Tribunal considered this issue and reached the following conclusions, at paragraph 15:

After considering the submissions of both Users and the legislation, I conclude that:

1. Item 4 in the list of core records and the corresponding phrase, “most recent approved financial statements,” under the heading “Request for core records” in the statutory Request for Records form, clearly references the financial statements approved by the board under [subsection 66\(3\)](#) of the [Act](#);
2. Those are the financial statements that a condominium corporation is required to submit to the unit owners at the annual general meeting along with the auditor’s report (item 5 in the list) under [subsection 69\(1\)](#) of the [Act](#); and
3. They retain their character as the “most recent approved financial statements” even when attached to or included in the auditor’s report.

[39] I find that, based on the reasoning in Mellon, the Respondent has provided the Applicant with most recent approved financial statements as part of the most recent auditor’s report.

[40] The Applicant also argued that financial statements and the auditor’s report were inadequate records. He stated that, based on his own comprehensive review of the records, he had found a breakdown between the management and the audit function with respect to the Respondent’s financial records. He alleged that when the Respondent used funds from the reserve fund to fix the oil circuit breaker in 2019, this was a misuse of funds that was not evaluated or supported by the reserve fund study.

[41] The Applicant further stated that the auditor had not performed a full audit and that he had, therefore, failed to oversee the full scope of the Respondent’s operations. The Applicant contacted the board and the auditor directly about his concerns with the management of the reserve fund and the content of the financial statements in December, 2019 and June, 2020. He advised the board and the auditor that he noted irregularities in the statements, and he requested that the irregularities be investigated. The Applicant noted that the auditor’s report did not include such an investigation and that it was, therefore, inadequate. In addition, the Applicant argued that, by failing to investigate the irregularities he reported, the auditor had presented a false and misleading picture of the corporation’s financial status to the owners.

[42] The auditor, Mr. Gregory Smith, testified that he completed the audit of the 2019 financial statements and that his audit did not reveal any improprieties or signs of fraud or potential fraud. He further stated that he conducted the audit “in accordance with Generally Accepted Accounting Standards” and that he was not

commissioned by the Respondent to conduct any particular investigation into the irregularities that had been reported to him by the Applicant.

- [43] The Applicant has sincere concerns about the overall management of the corporation's finances and he believes that the board is not engaging in the necessary planning to ensure efficiency, cost savings and quality of service to the owners. He has noted a multitude of issues about the content of the financial records and what these records demonstrate about the decisions the board is making. Although he may disagree with the decisions and actions of the board, the auditor's report and the financial statement are nonetheless adequate records of the corporation. The Applicant has identified his concerns to both the auditor and this board. His dispute about the records is a disagreement about financial management and governance decisions. His disagreement about such decisions does not render the record of those decisions inadequate.
- [44] I find that the Respondent is keeping adequate records in relation to the most recent auditor's report and most recent approved financial statements, and that the Respondent has provided these records to the Applicant in response to R1 and R2.

Current plan for the future funding of the reserve fund (R1 and R2)

- [45] In response to the Applicant's request in R1 and R2, the Respondent provided the Reserve Fund Study Update that it had given to owners on June 25, 2018. This update included a notice for the future funding of the reserve fund with annual increases in contributions to the reserve fund of 7% annually for the next three years. The plan also showed a special assessment in each of the next three years and identified major projects to be funded through the reserve fund. The notice stated that the board had reviewed a Reserve Fund Study (RFS) update provided by Morrison Hershfield dated May 14, 2018. The plan included a 30-year reserve fund cash flow table and a contribution table.
- [46] The Applicant argued that the Respondent's plan was not credible and therefore, that the Respondent had not provided him with the record he had requested.
- [47] The Applicant testified that he had discovered irregularities in the RFS and the life cycle work plans and budgets over the previous 8 years. In particular, he claimed that the RFS repair jobs had been mislabelled in the expenditure accounts in the financial statements and that board members were not declaring and respecting conflicts of interest with respect to the hiring of engineering firms.
- [48] The Applicant challenged the board's decision to replace the oil circuit breaker in

2019 on the basis that this project had not been identified in the last RFS. He did not accept the Board's explanations about the urgency of the project, the costs, or the impact on the other planned projects. He stated that, without accountability to the owners, the board had cancelled the original reserve fund plan and completed projects, such as the replacement of the oil circuit breaker, that had not been in the plan. The Applicant argued that the plan provided to him was invalid and inadequate, and he emphasized that the board had improperly approved the oil circuit breaker work because it had not been included in the 2019 RFS.

[49] The Respondent submitted that an RFS is a plan of future funding completed at a specific time and updated in accordance with the requirements of the Act. The Respondent stated that it relied on engineering experts and followed those expert opinions in the development and implementation of the plan.

[50] I conclude that the Respondent is keeping adequate records of the current plan for funding the reserve fund and that the Respondent provided these records to the Applicant. The record includes the notice of future funding signed by two board members with a cover letter to owners to explain the plan for the reserve fund. As with many of the records, the Applicant disputes the soundness of the content and the work of the engineering firm. However, the concerns the Applicant raised are irrelevant to the issue of adequacy and again relate to his issues with the Respondent's overall governance. The record is an adequate record of the Respondent's plan, regardless of the Applicant's disagreement with the decisions that the board made and recorded in relation to the plan for future funding.

Record of owners and mortgagees (R2)

[51] The Respondent provided the Applicant with an electronic version of the record of owners and mortgagees by email on August 20, 2020. This record is an eleven-page document with each unit number, the name(s) of the owner or mortgagee, and the address for service. According to this record, several of the owners or mortgagees have an address for service elsewhere in the greater Ottawa area, one owner is a corporation with an address for service in Kingston, and another owner is identified as the estate of a named person.

[52] The Applicant submitted that this record was not adequate because it was incomplete. He stated that it did not identify circumstances where an owner had a power of attorney and there was no information as to how he could contact the person with the power of attorney. He claimed that the address for service for some of the owners was incorrect. He further asserted that the names on the entry console were different from the names on the record and that this meant that people are living in the units who are not identified on the Respondent's record.

- [53] Section 46.1(3) of the Act sets out the requirements for the content of the record of owners and mortgagees. The corporation is required to maintain a record with the owner's name, the identification of the unit, and the owner's address for service. Each owner is responsible to provide notice to the corporation of the owner's name, unit, and address for service under section 46.1(2) of the Act. The corporation creates and maintains the record from the information provided by the owners.
- [54] The Applicant has not established in his evidence that there are particular discrepancies or mistakes in this record or that the Respondent is not maintaining the record based on the information from the owners. I have no basis on which to conclude that the Respondent's record is not an accurate record of owners and mortgagees based on the information provided by the owners and mortgagees. I find that the record is an adequate record, and that the Respondent did provide the record to the Applicant.

Record of notices relating to leases of units under section 83 of the Act (R2)

- [55] The Respondent stated that it had failed to provide this record with its Response to R2 through inadvertence. Ms. Graf explained that, when she became aware at Stage 2 that this record had not been delivered, she uploaded the document to the CAT-ODR platform on or around October 1, 2020.
- [56] The Applicant testified that he received this record in an envelope at his unit door on October 6, 2020. Ms. Graf did not provide an explanation about the delivery of this envelope. Nonetheless, the Applicant accepted that he received this record, although on a date several weeks beyond the required response deadline of 30 days from the submission of the request.
- [57] The Applicant argued that, although he received the record of notices, the record was not adequate. According to the record delivered to the Applicant, the Respondent had received notices in relation to 17 units and 11 of these units had a tenant. The Applicant submitted that this record was inadequate because it provided different information about rental units from the information in the PIC. The PIC says that 13 units were leased during the fiscal year whereas this record indicated 11 units were leased.
- [58] I note that neither the record of notices nor the PIC is dated and that it is, therefore, not clear whether the two records contradict each other with respect to the number of leased units. It is possible that each record reports correct information about the number of leased units as of the date that the record was issued, but this cannot be confirmed due to a lack of date on each record.

[59] In *Yeung v. Metropolitan Toronto Condominium Corporation No. 1136, 2020 ONCAT 28*, the Tribunal determined that disputes over the content of records were not within its jurisdiction. Similarly, in this matter, the Applicant's issues with the notice of leases are not about adequacy but are rather about content, and these issues are not within the Tribunal's jurisdiction.

[60] I find that the Respondent is keeping an adequate record and provided this record to the Applicant. I also find that the Respondent did not refuse to provide the notices relating to leases, although the record was provided a few weeks after the deadline for the Respondent's Response to R2.

The Periodic Information Certificate from the past 12 months (R1 and R2)

[61] The Applicant requested the PICs from the past 12 months in each of R1 and R2. The Respondent provided the same PIC with each of its Responses on July 24 and August 20, 2020.

[62] The Applicant argued that the PIC provided was inadequate because the financial information had been drawn from the other source documents in which he had found inaccuracies and irregularities. In his view, since the source documents were inaccurate, therefore the PIC would be as well. He claimed that the budget information reported in the PIC was wrong because the auditor had not conducted a full audit of the management practices. He stated that the PIC did not account for the issues he had identified with respect to the RFS. In addition, the Applicant noted that the PIC contained incorrect information about board members because it included a member who had resigned in March 2020 and failed to include a board member who had been designated to replace him.

[63] The Applicant also identified that the number of leased units in the PIC were 13, which contradicted the information in the record of notices of leases.

[64] Section 11.1(4) of Ontario Regulation 48/01 ("the Regulation") requires a corporation to send out a PIC within 60 days after the last day of its first quarter and within 60 days after the last day of its third quarter in each fiscal year. The Applicant submitted his request for the PICs from the last 12 months on June 24, 2020. During the 12-month period between June, 2019 and June, 2020, The Respondent would be required by the Regulation to issue a PIC in November, 2019 and May, 2020. The Respondent provided the Applicant with only one PIC in response to R1 and R2. In addition, the PIC provided is not dated with the result that it is not apparent whether the PIC is from November, 2019 or May, 2020. The CAO has mandated the form for the PIC, and it includes a date as part of the form.

[65] As noted in Yeung, 2020 ONCAT 1136, issues of content such as those raised by the Applicant about the PIC are outside the Tribunal's jurisdiction. However, the omission of a date on the PIC relates to his issues. He stated that the board members are not correctly identified because a board member resigned in March, 2020 and was replaced by another person. According to the Applicant, this change in board membership happened in March, 2020. Therefore, If the PIC is from November, 2019, the board member identification is correct whereas if the PIC is from May, 2020, this information is not correct. It may also be that the information about the number of leases is accurate in either November, 2019 or May, 2020, but without a date on the PIC, it is not possible for the Applicant to assess the information.

[66] I find that the Respondent is not keeping adequate records with respect to the PICs because it has provided only one PIC for the last 12 months and it should have provided two PICs in that time period. In addition, the PIC it provided is undated and the failure to date the PIC makes this record inadequate. I order the Respondent to correct the error and to provide the Applicant with the two PICs for the twelve-month period from June 2019 to June 2020 with the dates on which each PIC was originally issued.

Minutes of board meetings held in the last 12 months (R4)

[67] The Respondent provided minutes of its monthly board meetings for the period from September, 2019 to August, 2020, in electronic format to the Applicant by email on September 30, 2020.

[68] The Applicant argued that the Respondent had effectively denied him the records because the minutes did not include minutes of the board meeting in March of 2020 or minutes of all the other meetings that he believed would have occurred between board members and the condominium manager, the engineers, the auditor, and other contractors.

[69] The Applicant stated that the board was required to record all important events in its minutes according to the Respondent's By-Law No. 1. He argued that that the failure to provide him minutes of the other many meetings was either a refusal to provide the records of these meetings attended by board members or a failure to follow the By-Law and to prepare minutes of these important events. He also argued that the minutes of the board meetings were vague, undemocratic, and failed to record the details of the discussions and the votes of each board members. For all these reasons, he submitted that the Respondent was not keeping adequate records of its meetings.

[70] I will first address the Applicant's concerns with the board meeting minutes. Ms. Daniels, the board president, testified that the board did not meet in March 2020 due to the public health restrictions necessitated by COVID-19. I accept that there was no board meeting in March 2020 and, therefore, no board meeting minutes. Ms. Daniels confirmed that she had provided all the minutes for the regular board meetings during the 12-month period related to the Applicant's request.

[71] With respect to the content of the minutes, the Respondent submitted that the minutes were prepared in accordance with industry standards and are not intended to be a verbatim transcript. I do not find anything in the board meeting minutes that would justify a finding that these are not adequate records of the business conducted by the board at its regular meetings. I conclude that the Respondent is keeping adequate records and that it provided all minutes of board meetings to the Applicant.

[72] The Applicant claimed that there should be other minutes related to hypothetical meetings attended by board members. There is no evidence of such meetings, and it follows that there is, therefore, no evidence of minutes of such non-existent meetings. In addition, I do not accept the Applicant's argument that By-Law No. 1 requires these types of meetings to be recorded.

[73] He further argued that the Respondent was required to provide him with minutes of the Budget Information Meeting held in November 2019 in response to his request. I disagree with his argument. He requested minutes of board meetings, and the Budget Information Meeting was a meeting with owners and not a board meeting. I find that he was not entitled to minutes of the Budget Information Meeting, if such minutes exist, because this was not a record he requested in R4.

Issue 3: Has the Respondent provided a reasonable excuse for refusing to provide certain records?

[74] The Respondent has not provided a series of records on the basis that such records do not exist, and the Applicant argued that no reasonable excuse had been given to him for the failure to provide the records. These records were:

- The audit of reported irregularities (R1);
- The contract of the auditor for May 2020 to May 2021 (R2);
- The compendium of classified inventory and condition with item numbers/ codes by each engineering firm for 2018 to 2020 (R4);

- The life-cycle detailed case flow plan over the next 30-50 years by each engineering firm for 2018-2020 (R4); and
- Correspondence between the former CMG property manager and the former engineering firm related solely to the RFS of 2018 (R4).

[75] The Applicant has raised different arguments about the Respondent's refusal to provide each of these records, and I will, therefore, address each of the records individually.

The Audit of reported irregularities (R1)

[76] The Applicant submitted that it was not credible that such a record did not exist. He testified that he contacted the board and the auditor about his assessment that there were irregularities in the financial records and that he had understood from the auditor that he would investigate these irregularities as part of his audit of the 2019 financial statements.

[77] The auditor testified that he completed an audit for 2019 for the Respondent, but that a particular audit or investigation into the irregularities identified by the Applicant was not requested or performed. Ms. Graf, the condominium manager, and Mr. Irwin, the board treasurer, confirmed in their witness statements that no such audit investigation was done in response to the Applicant's report of irregularities.

[78] The Applicant argued that he had provided an overwhelming body of evidence to the board about what he characterized as serious irregularities in the management of the corporation's finances as well as suggested solutions. He claimed that the Respondent had failed to conduct the necessary investigation and refused to examine the financial problems.

[79] Despite the Applicant's communications with the board and auditor about his belief that an investigation was required, there is no record of an audit or investigation in response to his report of irregularities. The Applicant has not proven that such a record exists, and I cannot order the production of a record that does not exist, nor can I order the creation of this record.

Contract of the auditor for May 2020 to May 2021 (R3)

[80] The Respondent stated in its Response to R3 on August 28, 2020 that no such record existed because an auditor had not been retained for that time period, as of the date of the response. The Applicant argued that this was not a credible response.

[81] Ms. Graf testified that the Respondent's Annual General Meeting (AGM) is usually held in June of every year, but that in 2020, the meeting was delayed until October due to the COVID-19 pandemic. She stated that the auditor was appointed at the AGM in October, 2020, and that the contract was not finalized until some time after the appointment.

[82] I accept that the auditor's contract for May 2020 to May 2021 did not exist as of the date when the Respondent was required to respond to the Applicant's request, and that this was a reasonable excuse for not providing the record to him.

The compendium of classified inventory and the life cycle detailed cash flow plan (R4)

[83] The Respondent advised the Applicant in its response to R4 that these two records did not exist because it had not received a RFS from WSP Engineering as of the date of its response in September, 2020. The Applicant argued that these records are integral to a RFS and that it was unacceptable and unreasonable that the Respondent did not have the records.

[84] Although the Applicant may believe that these records are necessary components of any RFS, he has not established that these two records existed or do exist. The Respondent cannot provide non-existent records, and I find that the Respondent had a reasonable excuse for not providing the requested compendium or cash flow plan.

Correspondence between the former CMG property manager and former engineering firm related to the RFS of 2018 (R4)

[85] In its Response to the Applicant's request for these records, the Respondent advised that it had reviewed its files, and had not found any records that met this request. The Applicant argued that these records should exist and that the previous condominium management firm should be required to transfer its records.

[86] I accept that the Respondent reviewed its records in relation to Reserve Fund Studies and did not find any records that satisfied the Applicant's request. The Applicant did not prove that such records exist, but instead claimed that the records should exist and that it was an unacceptable management practice to not transfer and retain records of a previous condominium manager. I find that there were no records for the Respondent to provide to the Applicant that fit the description of correspondence between the former condominium manager and the former engineering firm related to the 2018 RFS.

Issue 4: Are the fees proposed by the Respondent for non-core records

reasonable?

[87] The Respondent proposed fees to provide non-core records, as outlined in the following table:

Record Requested	Labour Cost	Photocopying Cost (\$0.20 per page)
Correspondences between the 'Board Members and Property Mgr' for CCC #89 and their "Legal Counsel" pertaining to Bulk TV & Internet Services and the Owners' Requisition of July 3, 2020" – for the date range of November 1, 2019 to July 21, 2020	\$100.00 for two hours of labour	\$60.00 for 300 pages
Correspondences between the 'Property Mgr & Board Members' and also the Auditor for CCC #89 AND owner Steve Horvath" – for the date range of July 1, 2018 to July 21, 2020	\$200.00 for four hours of labour	\$100.00 for 500 pages
Contract of Auditor with Name of Firm & person doing the Audit for CCC #89, including email address, phone number and associated correspondences for the date range of May 2019 to May 2020	\$200.00 for four hours of labour	\$100.00 for 500 pages
Work contract for Reserve Fund Study following the 2018 by any and all Engineering Firms including WSP Engineering for the date range of 2018 to 2020	No charge for labour	\$3.00 for 15 pages
Any and all correspondences between "REID Property Mgt; CCC #89" and the 'new' Engineering Firm (WSP Engineering) & other Engineering Firms related to either of "both" the RFS 2018 and / or RFS 2020 for the date range of January 1, 2018 to the	\$50.00 for two hours of labour	\$150.00 for 750 pages

present		
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Ms. Graf used an hourly rate for labour of \$50.00 for the Response to R2 and R3. During Stage 2 - Mediation, the parties agreed that the hourly rate for labour in relation to the non-core records would be \$25.00 and Ms. Graf changed the proposed labour rates in the Respondent's Response to R4.

- [88] Ms. Graf testified that she estimated the number of pages and the hours of work related to each requested record in order to propose the fees. She stated that the labour costs would be related to compiling, reviewing and possibly redacting records. She also indicated that, although the records were kept electronically, it was possible that there would be paper copies of some of the records that would need to be scanned as part of the response to the Applicant's request. She did not know how many pages were electronic and how many might be paper.
- [89] The Applicant argued that the fees proposed by the Respondent were inflated and excessive. He submitted that he had requested the records in electronic format and that it was unreasonable for the Respondent to propose any charges for photocopying or printing. He stated that he wanted electronic copies to review before he made a decision about printing paper copies of any of the records.
- [90] The Applicant also claimed that Ms. Graf's estimate of the number of pages was not credible and that the fees were deliberately inflated by her in an effort to discourage him from proceeding with his records requests.
- [91] Section 13.3 (8) of the Regulation outlines the conditions for the calculation of fees for a corporation to provide records. Part 1 of section 13.3(8) states:
- The fee shall be a reasonable estimate of the amount required to reimburse the corporation for the actual labour and delivery costs that the corporation incurs for making the record requested available for examination or for delivering a copy of the record, which costs shall include the printing and photocopying charges established under paragraph 3 and the actual labour costs that the corporation incurs during the examination.
- [92] The Respondent identified in its Responses that the records were kept in electronic format, and the Applicant requested the records electronically. I find that, in these circumstances, it is not reasonable for the Respondent to propose fees for the photocopying of hundreds of pages of records. The Respondent did not present evidence as to the exact number of pages of records, and it relied exclusively on Ms. Graf's estimate. I will not allow any charges for the photocopying of the requested non-core records on the basis that these fees are unreasonable.

[93] I do find, however, that the Respondent may charge labour fees to respond to the Applicant's requests.

[94] The Respondent estimated a total of 12 hours of labour in relation to these requests. The Applicant clarified at the hearing that, for the correspondence related to bulk TV and internet, he was seeking a single document of the legal opinion that the board relied on to cancel a special owners' meeting in July, 2020. The board identified the legal opinion in an email to owners on July 20, 2020. The Respondent had estimated that two hours of labour would be needed to respond to the request about bulk TV and internet. Given the Applicant's statement that he only wants the document with the legal opinion, I would deny the Respondent's two hour labour fee for these records and, therefore, reduce the total number of hours to ten hours because it is not reasonable for the Respondent to claim labour hours for this single document.

[95] The Applicant and Respondent agreed to an hourly rate of \$25.00 for labour costs. I find that 10 hours of labour is a reasonable estimate of the time required to respond to the requests for non-core records. I order the Respondent to provide the records to the Applicant in electronic format within 30 days of receiving the payment of \$250.00 in labour costs from him.

[96] The Respondent did not propose labour costs with respect to the record of the work contract for the RFS. Instead, it proposed a photocopying fee of \$3.00 for 15 pages. I have determined that it was not reasonable for the Respondent to propose photocopying costs and I order that the Respondent provide this record to the Applicant in electronic form within 7 days of the date of this decision.

Issue 5 - Should a penalty be assessed against the Respondent?

[97] The Applicant argued that a penalty should be assessed against the Respondent on the basis of its treatment of him which he perceived as hostile and harassing. He submitted that a penalty was warranted in response to the mismanagement of the corporation that he had uncovered through his review of the records. The Respondent submitted that a penalty was not appropriate because it had provided all the requested core records and responded with reasonable fees for the delivery of non-core records. 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. The maximum penalty is \$5000. The Tribunal does not, therefore, have the authority to order a penalty for the reasons outlined by the Applicant, and I can only consider a penalty if I find that the Respondent has refused records without reasonable excuse.

[98] The Respondent provided all core records that it retained. I have found that the Respondent did not have a copy of one of the PICs, and I have ordered that the two PICs be provided with the dates on which they were originally issued. With respect to the non-core records, I have concluded that the Respondent proposed unreasonable fees in relation to photocopying when the Applicant has requested records in electronic form and the Respondent had confirmed that the records were kept electronically. The Respondent proposed printing and photocopying fees in relation to hundreds of pages of records through what Ms. Graf characterized as “a guesstimate” without confirming how many pages were involved and how many of the pages were in fact paper and not electronic. Although I have found that the fees were unreasonable, I do not conclude that the Respondent’s proposal for such fees amounted to a refusal to provide records without reasonable excuse. In the absence of a finding that the Respondent refused records without reasonable excuse, I do not have authority under section 1.44 (1) 6 of the Act to assess a penalty.

[99] The Applicant requested further remedies in addition to the assessment of a penalty. He sought orders under sections 130 and 131 of the Act for an investigation and the appointment of an administrator. Sections 130 and 131 provide that the Ontario Superior Court of Justice may make such orders, and the Applicant’s request is outside the Tribunal’s jurisdiction. He also requested that the Tribunal provide his evidence to the Condominium Management Regulatory Authority of Ontario (CMRAO) to request that it investigate the mismanagement and inadequate record-keeping that he had discovered. Again, this type of remedy is outside the Tribunal’s jurisdiction.

Issue 6 – should costs be awarded?

[100]The Applicant requested his Tribunal costs in this matter.

[101]Rule 45.1 of the Tribunal’s Rules of Practice provides that the Tribunal may order a User to pay to another User or the CAT any reasonable expense or other costs related to the use of the CAT. Rule 45.2 states that if a case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful User will be required to pay the successful User’s CAT fees and reasonable dispute-related expenses, unless the CAT member decides otherwise.

[102]The Applicant was successful in this application, and I award costs of \$200, which is the total amount of fees he paid to the Tribunal.

D. CONCLUSION

[103]I find that the Respondent is keeping adequate records as required by section 55(1) of the Act, with the exception of the issues identified in this decision in relation to its PICs.

[104]I also find that the Respondent proposed unreasonable fees for non-core records and order that only labour costs may be claimed for providing these records. The Respondent shall pay costs of \$200 to the Applicant.

E. ORDER

[105]The Tribunal orders that:

1. The Respondent shall:
 - a. Within thirty (30) days of the date of the issuance of this order, deliver to the Applicant in electronic format and at no cost to the Applicant:
 - i. the two Periodic Information Certificates for the period June 2019 to June 2020; the Periodic Information Certificates shall include the dates on which the Certificates were originally issued;
 - ii. the work contract for the Reserve Fund Study following the 2018 study by any and all Engineering Firms including WSP Engineering for the date range of 2018 to 2020; and
 - iii. the legal opinion provided to the Board in relation to bulk TV and internet services and the request for a special owners meeting in July 2020.
 - b. Within thirty (30) days of the day on which the Applicant pays \$250.00 to the Respondent, deliver to the applicant in electronic format (either through email attachments or on a flash drive / USB stick, at the Applicant's direction), the following Requested Non-Core Records:
 - i. all correspondence between the condominium manager, board members, the Respondent's auditor, and the Applicant for the date range of July 1, 2018 to July 21, 2020;
 - ii. the Respondent's contract with its auditor, including the name of the firm and person conducting the audit, and all associated correspondence for the date range of May 2019 to May 2020; and

- iii. all correspondence between Reid Property Management, the Respondent, and any engineering firms (including WSP Engineering) in relation to the Reserve Fund Study 2018 and / or the Reserve Fund Study 2020 for the date range of January 1, 2018 to August 31, 2020.
- c. Within thirty (30) days of the date of the issuance of this order:
 - i. Pay to the Applicant costs pursuant to paragraph 4 of subsection 1.44(1) of the *Condominium Act, 1998*, in the amount of \$200.00.

Jennifer Webster
Member, Condominium Authority Tribunal

Released on: June 25, 2021