

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** August 11, 2021

**CASE:** 2020-00356R

**Citation:** Taylor v. Toronto Standard Condominium Corporation No. 2689, 2021 ONCAT 75

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

**Member:** Ian Darling, Chair

**The Applicant,**

Gail Taylor  
Self-Represented

**The Respondent,**

Toronto Standard Condominium Corporation No. 2689  
Represented by Robert Weinberg, Agent

**Hearing:** Written Online Hearing – April 29, 2021 to July 20, 2021

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] On September 5, 2020, the Applicant received an email from the Respondent informing owners of a resolution to terminate the contract with their condominium management provider. On September 16, 2020, the Respondent issued a second notice informing owners that they were engaging with a new company. In the interim, the Applicant had started to ask for information from the board about the decision. When they did not receive a response to their inquiries, the Applicant submitted a Request for Records on September 23, 2020. The Applicant sent a second Request on September 25, 2020. The Applicant filed a CAT case on October 27, 2020.
- [2] In this decision I explain my finding that, although the Applicant is entitled to the records requested, the Respondent did not respond to the request or provide any of the requested records. I further find that the Respondent has kept inadequate records in at least one regard.
- [3] The Respondent provided some records in October and November 2020. On November 8, 2020, the Respondent joined the CAT case, but did not participate in a meaningful way in the Negotiation or Mediation. The Applicant continued to

attempt to informally resolve the case outside of the CAT-ODR system without success. Once the case entered Stage 3 - Tribunal Decision, the Respondent provided some of the requested records.

- [4] This adjudication started with CAT Member, Daniella Corapi, who was unable to conduct the case to its conclusion. I was then assigned as the Member for the case. Since the hearing was an online written hearing the complete record of the hearing was available to me. As the case was still in its disclosure stage, I was able to resume the case without any interruption.
- [5] The Respondent was represented by the President/CEO of the Respondent's new condominium management provider. The Respondent's representative was rude and dismissive in his interactions with the Tribunal. Throughout the hearing it was evident that the Respondent's representative laboured under the misapprehension that he and his condominium management firm were the respondents to this case. This complicated the proceedings. Although only some of the requested records were uploaded to the CAT system, the Respondent's representative asserted that the case should be closed. No further submissions were made by the Respondent's representative either to explain the Respondent's assertion or to answer the Applicant's submissions. Ultimately, the Respondent stopped participating; however, I was satisfied that they were aware of the case, its timelines and of their responsibilities as a party, so I proceeded with the hearing despite their lack of participation.
- [6] The issues to be decided were:
1. Has the Respondent provided all the requested records?
  2. If the Respondent has not provided all the requested records, was the Respondent's failure to provide the Applicant with the requested records without reasonable excuse?
  3. Should the CAT award costs?

## **B. ISSUES & ANALYSIS**

### **Has the Respondent provided all the requested records?**

- [7] The Respondent provided some records in October and November 2020, and others during the disclosure phase of this case in June 2021. The Applicant indicated that following the disclosure, the following records remained outstanding or incomplete:

1. Record of Owners and Mortgagees
2. Minutes from Board meetings on August 5, 2020, September 16, 2020, and September 22, 2020.
3. Resolution to Terminate Contract with Del Condominium Management Inc. (“DEL”)
4. Resolution to Retain Percel Inc. (“Percel”)
5. Minutes from Board meetings for the 12 months preceding the Request in September 2020.
6. Agreements and Contracts.

#### Record of Owners and Mortgagees.

[8] The requirement to maintain the record of owners and mortgagees is established in section 46.1 of the *Condominium Act, 1998*. Section 46.1(3) indicates that the record should contain:

(a) the owner’s name and the identification of the unit, if an owner, at any time, gives notice to the corporation in writing, setting out the owner’s name and, in accordance with the regulations, identifying the owner’s unit;

(b) the owner’s address for service if,

(i) an owner who has given the notice described in clause (a), notifies the corporation in writing, at any time, of the owner’s name and address for service, including any change in the address for service, and

(ii) the owner’s address for service is in Ontario

In June 2021 the Respondent provided a list of names and unit numbers. The addresses for service were redacted. Although section 55(4)c allows corporations to redact “records relating to specific units or owners,” section 55(5) states that clause 55(4)c does not prevent “an owner, a purchaser or a mortgagee of a unit or an agent of one of them duly authorized in writing from examining or obtaining copies of the record that section 46.1 requires the corporation to maintain.” The Respondent has not complied with the request and is ordered to provide an unredacted list of owners and mortgagees that complies with section 46.1(3).

#### Board Minutes and Resolutions.

[9] I will deal with the minutes and resolutions (items 2 through 5 in the list of records set out above) together. Upon receiving notice that the Respondent had resolved

to change condominium management providers, the Applicant sought records of the resolutions to terminate the contract with DEL and retain Percel. The first request was for minutes of three board meetings around the time of the decision to change providers. The Applicant expanded the request for board meeting minutes from the twelve months preceding the decision, in order to ensure the requests included a longer period when the resolutions might be recorded. The Respondent provided the minutes, but they do not contain the resolutions. The Applicant also requested that the Respondent indicate where the resolutions appear in the minutes. The Respondent did not provide this information.

[10] I conclude that the Respondent has provided minutes for the time of the request. Since the Respondent did not participate in the hearing, I am unable to conclude if there were formal resolutions related to the decisions to terminate and appoint condominium management providers. I accept the Applicant's assertion that when they read the minutes, "Nowhere in any minutes did I see any discussion of these two contracts nor any record of the Board's decision to terminate one contract and engage the other, nor how the vote was taken nor its result."

[11] The Applicant summarized the responsibilities of the board. The Applicant pointed out that the board is:

to manage the assets of the Corporation; to take decisions as a Board in quorum, and only as a Board in quorum: s. 32.(1); to act honestly and in good faith: s. 37.(1) (a); to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances: s. 37.(1) (b); to create and maintain adequate records of their decisions in a minute book: s. 55(1); to make records available to owners: s. 55(3), redacted as appropriate under s. 55 (4); and to maintain records of owners and mortgagees under s 46.1. In addition, s.13.3(6) of the Ontario Regulation 48/01 sets out the process a Corporation must follow to respond to a Request for Records in the proper form under s. 55 (3). Specifically, the Corporation shall respond within 30 days to the requester using the mandatory form, "Respondent's Response to Request for Records."

[12] When indicating that they found no record of the decision to change managers, the Applicant further asserted that:

Either the minutes are incomplete and therefore inaccurate, or the board never produced a record, as required by s. 55(1), or has produced but not made the record accessible, as required by s. 55 (3). In any scenario, the board has not fulfilled its fundamental obligation of s. 55(1) to create and maintain adequate records. Since the subject records are not in the minutes, the minutes therefore must be incomplete. ...an important principle (is) at stake: Minutes of Board meetings are fundamental documents. Minutes provide an agreed-upon corporate memory of the Corporation's affairs for the benefit of past, present and future directors and owners. To be adequate, they need to be

accurate. To be accurate, they need to be complete.

- [13] The Applicant is correct that section 55(1) of the *Act* requires that a condominium corporation keep “adequate” records. What is considered an adequate record has been discussed in court decisions and in prior CAT decisions. In *McKay v. Waterloo North Condominium Corp. No. 23, 1992 CanLII 7501 (ON SC)* the court states:

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

- [14] When considering the adequacy of board minutes in particular, CAT decisions have emphasized “a reasonably high standard and expectation for accuracy” due to the “special place and purpose in helping to ensure that ‘the affairs and dealing of the corporation and its board of directors are an open book to .... owners,’ and in helping owners protect their ‘unique interest in how the corporation is managed.’” (*Yeung v. Metropolitan Toronto Condominium Corporation No. 1136, (2020 ONCAT 33)*).

- [15] The Tribunal also found in *Rahman v. Peel Standard Condominium Corporation No. 779, (2021 ONCAT 32)* that,

In matters before the Tribunal, we see a wide variety of minutes in terms of form and detail. Issues about the adequacy of minutes arise frequently. It is well settled law at this point that the purpose of minutes is to document a board’s business transactions and to show how the corporation’s affairs are controlled, managed, and administered. There is an implied requirement that the minutes be accurate, but the *Act* does not impose a standard of perfection. Minutes are not required to be a verbatim account of a meeting.

- [16] In *Mawji v. York Condominium Corporation No. 415 (2021 ONCAT 72)*, the Tribunal summarized the principles outlined in *McKay*, *Yeung* and *Rahman*, stating that:

These decisions establish that an adequate record of a board meeting is a document with sufficient detail to allow the owners to understand what is going on in their

corporation, how decisions are being made, when the decisions are made and what the financial basis is for the decisions.

- [17] The Applicant was very clear, both in communication with the Respondent and in the CAT case, about which records they were seeking. The Respondent did not make any submissions on this issue. Based on the evidence before me, I conclude that although the Respondent has provided the minutes, they do not contain the record of a resolution of the corporation to terminate DEL, nor do they contain the record of a resolution to retain Percel.
- [18] The decisions were clearly made. I accept the analysis set out by the Applicant, that the decisions must therefore have been made as resolutions at duly held meetings of the Respondent's board in accordance with the Act during the period covered by the minutes requested by the Applicant. I conclude that these omissions render the minutes, as provided by the Respondent, inadequate.
- [19] The Applicant requested that the Tribunal order the Respondent to produce the resolutions. This case is similar to Mawij - the minutes provided do not contain the resolutions related to the change in managers. The overall corporate record of the decision is incomplete unless read together with the letters from the board to the owners, and the management contracts. However, it is evident from the Act that unit owners, seeking verification of decisions, should not be required to navigate through an array of documents to find them. The transactions of the business of the corporation are to be recorded in board minutes to ensure clarity, transparency and certainty for owners with respect to the management and governance of the condominium. It is on this basis that I conclude that the Respondent's records related to the change of manager are inadequate.
- [20] Although I find that the minutes are inadequate, I do not have sufficient information from the Respondent (due to both the Respondent's overall lack of participation and the lack of useful submissions by its representative) to make an order that specifies how this is best remedied. Only the Respondent's board is likely to know why it lacks a proper record of those decisions and, therefore, how best to remedy it. Therefore, I leave it to them to do so. I order that they take steps to ensure the records of the corporation, and particularly its minutes of board meetings, are complete and clear with respect to both the termination of the DEL contract and entering into the new contract with Percel, and that the Respondent shall provide to the Applicant, within 30 days of this decision, a letter containing (a) confirmation as to whether and when such resolutions were made, and (b) an explanation of how the lack of a proper record of those resolutions is or has been remedied.

Contracts.

[21] The Applicant requested “all agreements” of the corporation, as specified under s. 55 (1) of the Act. On June 6, 2021, the Respondent provided five contracts: a cleaning contract, a grounds maintenance contract, the agreements with both Percel and DEL, and a contract with Condor Security Inc. The Applicant indicated that they had requested all agreements, and had identified additional service providers from the minutes and financial statements. The Applicant is entitled to contracts for these providers where they exist.

[22] The Applicant used the corporate minutes and financial statements to develop a list of service providers the Corporation engaged during the period covered by the request. It is not clear to me whether these were single services or contracted services. These providers are:

1. Antonini Construction Services
2. COVIN Group Inc.
3. Johnson Construction Controls T6067
4. Spectrum Building Services Company Limited
5. Metro Compactor Service
6. Mircom/Guardia Limited
7. Your Home Audio and Visual
8. Provident Energy Management
9. Atrens – Counsel Insurance Brokers
10. City and Country Pest Control
11. Waste Management of Canada
12. TAPP & Company – Audit Services
13. Concentra Bank – investment services
14. President’s Choice Bank
15. Canadian Tire Bank
16. Equitable Bank
17. Home Equity Bank
18. Home Trust Bank
19. City Wide Door and Hardware, Inc.
20. Atlas Overhead Doors
21. Lash Condominium Law
22. Minute Takers, Inc.
23. SDA Building Services, Inc.

24. SELCA Elevators Limited
25. Silver Stone Landscaping Limited
26. Spectrum Building Services Company, Inc.
27. Waste Management of Canada Corporation.
28. Metro Compactor Services, Inc.
29. Clinic Clinkair Inc.
30. Cigarettes and Scones Inc.
31. Smart Cleaning Limited
32. Storm Building Services Limited
33. Rogers Internet
34. Beanfield Technology Inc.
35. State Window Corporation
36. LNR Alarms, Inc.
37. COVIN Group – Lighting Retrofit
38. SELCO elevators Inc.
39. Johnson Construction Controls
40. Waste Management
41. PPL Fitness
42. SDA Building Services
43. Synergy Partners
44. Millennium
45. Beanfield Telecommunications
46. Bazinga
47. Building Link
48. Boulanger Engineering
49. New Style Signs

[23] Since the Respondent did not participate in the hearing, it is not possible for me to determine if contracts exist for these providers, or if they were services provided on an as needed basis. In this context “all agreements” of the corporation could include retainer agreements, on-going service contracts, work-orders, letters or emails describing the work to be performed, and associated costs. Therefore, I will order that the Respondent provide these records where they exist, and for instances where the services were rendered without a contract or agreement, the Respondent must provide a separate attestation that there are no contracts or



agreements with those providers.

[24] These records are non-core records. Corporations are entitled to charge a reasonable fee for producing non-core records. Since the Respondent did not request any fee, I will order the records to be produced in an electronic form at no cost to the Applicant.

**Was the Respondent's failure to provide the Applicant with the requested records without reasonable excuse?**

[25] Section 1.44 (1) 6. It states that the Tribunal may order the Respondent:

to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies ... if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection.

In this case, the Applicant has requested the CAT consider if the Respondent has refused to provide the records without a reasonable excuse. However, since the penalty against the Corporation would in effect be paid by other owners, the Applicant asked the Tribunal to assess a penalty but stay the order to pay.

[26] I accept the Applicant's assertions that the Respondent's behaviour has demonstrated a refusal to provide records without reasonable excuse. The Applicant demonstrated that the Respondent:

1. Did not respond to the Requests, did not propose a timeline for production of records, and did not provide the records within the statutory timeline.
2. Did not use the mandatory "Board's Response to Request for Records" to reply, which contributed to confusion about the status of the requests.
3. Did not supply all the requested records.
4. Failed to produce certain records it had agreed to provide.
5. Did not provide reasonable explanation for the delays.
6. Provided an incomplete list of Owners' and Mortgagees.
7. Provided some Agreement/Contracts during the Stage 3 hearing, over eight months after the Requests for Records. None were supplied during the Negotiation or Mediation stages.
8. Has not kept adequate records: the minute book is inadequate because it is incomplete.

9. The Respondent did not participate in Negotiation or Mediation to resolve the case, compelling the Applicant to prove an absence of record.
- [27] The Respondent's submissions blamed the previous management company for not providing records and suggested that if the Applicant had "merely worked with Percel to obtain the records once we were advised that DEL did not forward (requests) to the Board of Directors", then the case would have easily been resolved. The evidence before me is that the Applicant's consistent and reasonable steps to informally resolve the case were met with resistance from the Respondent. I find no evidence that the Applicant has prolonged the case, and further find that if the Respondent had made a genuine effort to resolve the issue, a CAT case would not have been necessary. The Respondent suggested that the case had gone on for too long, "at great expense to the Corporation." It is my conclusion that the Respondent bears responsibility for the duration of the case.
- [28] The Respondent's representative blamed the previous management company for any failure to provide records. The representative insisted that his firm had fulfilled the request. They suggested that if a penalty were awarded, it should be awarded against the former manager. The Act sets out the responsibility of the Corporation to maintain adequate records – while the practices of the former manager may be a contributing factor, the responsibility to maintain adequate records remains with the corporation.
- [29] I conclude that this is a clear refusal to provide records and a failure to follow the records request process. The Applicant demonstrated that they attempted on many occasions to resolve the issue informally, only to be met with resistance – even during the hearing process. A review of the evidence shows that the Applicant clearly and consistently communicated their request. The Applicant continued to follow-up on the requests, and even offered to "scale back" the request to help the Respondent fulfil the request. The evidence also shows that the Respondent did not take sufficient care to understand the Applicant's request.
- [30] Typically, this would warrant a substantial penalty since there is a clear entitlement to the records. The Respondent's ongoing refusal without reasonable excuse to provide the records would also be an aggravating factor in the penalty. Notwithstanding the finding that the Respondent refused to provide the records without a reasonable excuse, I decline the Applicant's request to impose, then stay a penalty award. The CAT has the authority to award penalties, but it can also be an educational process. Although I decline to award a penalty, this decision should be taken as a strong condemnation of the Respondent's practices, and the Respondent representative's behaviour throughout this process.

## **Costs**

[31] The Applicant requested \$200 be awarded in costs to reimburse their Tribunal application fees. The Applicant was successful in their case, so I award \$200 in costs.

## **C. ORDER**

[32] The Tribunal Orders that:

1. The Respondent shall provide the Applicant with the Record of Owners and Mortgagees, in electronic format, within 30 days of the date of this decision.
2. The Respondent shall take steps to ensure the records of the corporation, and particularly its minutes of board meetings, are complete and clear with respect to both the termination of the DEL contract and entering into the new contract with Percel, and that the Respondent shall provide to the Applicant, within 30 days of this decision, a letter containing (a) confirmation as to whether and when such resolutions were made, and (b) an explanation of how the lack of a proper record of those resolutions is or has been remedied.
3. The Respondent shall provide the Applicant with the following contracts (if any), in electronic format, within 30 days of the date of this decision:
  - 1) Antonini Construction Services
  - 2) COVIN Group Inc.
  - 3) Johnson Construction Controls T6067
  - 4) Spectrum Building Services Company Limited
  - 5) Metro Compactor Service
  - 6) Mircom/Guardia Limited
  - 7) Your Home Audio and Visual
  - 8) Provident Energy Management
  - 9) Atrens – Counsel Insurance Brokers
  - 10) City and Country Pest Control
  - 11) Waste Management of Canada
  - 12) TAPP & Company – Audit Services
  - 13) Concentra Bank – investment services
  - 14) President's Choice Bank
  - 15) Canadian Tire Bank
  - 16) Equitable Bank
  - 17) Home Equity Bank
  - 18) Home Trust Bank

- 19) City Wide Door and Hardware, Inc.
- 20) Atlas Overhead Doors
- 21) Lash Condominium Law
- 22) Minute Takers, Inc.
- 23) SDA Building Services, Inc.
- 24) SELCA Elevators Limited
- 25) Silver Stone Landscaping Limited
- 26) Spectrum Building Services Company, Inc.
- 27) Waste Management of Canada Corporation.
- 28) Metro Compactor Services, Inc.
- 29) Clinic Clinkair Inc.
- 30) Cigarettes and Scones Inc.
- 31) Smart Cleaning Limited
- 32) Storm Building Services Limited
- 33) Rogers Internet
- 34) Beanfield Technology Inc.
- 35) State Window Corporation
- 36) LNR Alarms, Inc.
- 37) COVIN Group – Lighting Retrofit
- 38) SELCO elevators Inc.
- 39) Johnson Construction Controls
- 40) Waste Management
- 41) PPL Fitness
- 42) SDA Building Services
- 43) Synergy Partners
- 44) Millennium
- 45) Beanfield Telecommunications
- 46) Bazinga
- 47) Building Link
- 48) Boulanger Engineering
- 49) New Style Signs

4. If there is no contract or agreement with any of the providers listed above, the Respondent shall provide the Applicant with an attestation of this fact, in electronic format, within 30 days of the date of this decision.
  5. The Respondent shall pay costs of \$200 to the Applicant within 30 days of the date of this decision.
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Ian Darling  
Chair, Condominium Authority Tribunal

Released on: August 11, 2021