

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 28, 2021

CASE: 2021-00092R

Citation: Comtois v. Ottawa-Carleton Standard Condominium Corporation No. 783,
2021 ONCAT 100

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

Member: Jennifer Webster, Member

The Applicant,

Christine Comtois

Self-represented

The Respondent,

Ottawa-Carleton Standard Condominium Corporation No. 783

Represented by Tammy Zollinger, Condominium Manager

Hearing: Written Online Hearing – July 15, 2021 to September 27, 2021

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Ms. Christine Comtois, is a unit owner of Ottawa-Carleton Standard Condominium Corporation #783 (“OCSCC783”), the Respondent.

[2] The Applicant submitted a Request for Records (“R1”) to OCSCC783 on February 16, 2021, to obtain paper copies of the following records:

- i. Condominium corporation declaration;
- ii. Condominium corporation by-laws;
- iii. Condominium corporation rules;
- iv. Record of owners and mortgagees;
- v. Record of notices relating to leases of units under s.83 of the *Condominium Act, 1998*;
- vi. Periodic information certificates from the past 12 months;

- vii. Budget for the corporation's fiscal year, including any amendments ;
- viii. Most recent approved financial statements;
- ix. Most recent auditor's report;
- x. The current plan for the future funding of the reserve fund;
- xi. Mutual use agreements;
- xii. Minutes of Board minutes held within the last 12 months;
- xiii. The CMG Contract / Contract with Law Firms/ Contracts with All Contractors from 2017 to February 2021;
- xiv. Special Assessment – "Law Suite with Callow Inc." – 2017 to February 2021;
- xv. Property Manager – Description of Employment / Contractual Obligations / All – 2017 to February 2021;
- xvi. Corporation 783 – Rule and Regulations – 2017 to February 2021; and
- xvii. Full Disclosure of Board of Directors – Name, Address and Telephone number and emails – 2017 to February 2021.

The reference to CMG in the records request is a reference to the Condominium Management Group. OCSCC783 has retained CMG to provide condominium management services. In its response to R1, OCSCC783 stated that the Applicant was not entitled to certain of the records and required that she pay a fee to access certain other records. The Applicant did not pay the fees and filed this application with the Tribunal.

- [3] Both parties participated in Stage 2 Mediation and the Tribunal Member issued a Stage 2 Summary and Order. According to the Summary and Order, the parties agreed during mediation that the Applicant would submit a second Request for Records. She sent a second Request ("R2") on May 10, 2021, requesting the same records identified in points (i) through (xii) above and the following records for the date range of 2015 to 2021: all CMG Contracts; all Contracts; and records related to Mr. Foundation, Callow-Paul and all others.
- [4] OCSCC783 responded to R2 on June 1, 2021, and provided electronic copies to the Applicant of most, but not all, of the requested records. It determined that the Applicant could not obtain copies of the board meeting minutes for the last 12 months because these records did not exist. Other than its response in relation to the board meeting minutes, OCSCC783 did not dispute that the Applicant was

entitled to the requested records. However, OCSCC783 provided no response to the Applicant's request for Contracts or the records related to Mr. Foundation, Callow-Paul and all others. in its Response to R2.

- [5] The Applicant asked that this dispute be moved to Stage 3 -Tribunal Decision. The Applicant asserts that OCSCC783 has failed to provide records to which she is entitled and that it was not keeping adequate records within the meaning of s.55(1) of the *Condominium Act, 1998* (the *Act*).
- [6] The hearing was conducted as a bilingual written hearing in the CAT-ODR platform. Each party participated in French or English, according to the party's preference. I communicated with the parties in both languages. The Tribunal decision is being issued in French and English at the same time.
- [7] In the hearing, the Applicant provided extensive evidence and submissions about issues that were not directly related to the requested records. In particular, she identified concerns about the condominium manager's performance and her compliance with the Code of Ethics set out in O. Reg. 3/18 under the Condominium Management Services Act. She also identified problems about the Respondent's failure to comply with a City of Ottawa order and about repairs to her unit and common areas. I have carefully reviewed and considered all the evidence presented by the Applicant. In this decision, I will only address the evidence that is relevant to the issues to be decided about the Requests for Record and the Respondent's response to it.
- [8] OCSCC783 participated only in a limited way in the hearing, and this lack of participation made the hearing more difficult. Although OCSCC783 initially proposed to provide evidence through a witness statement, it ultimately presented no evidence and only explained its position on the requested records in closing submissions.
- [9] The issues to be decided in this case are:
1. Did OCSCC783 provide all the requested records?
 2. Has OCSCC783 failed to keep adequate records as required by s.55(1) of the *Act*?
 3. Should the Tribunal order the payment of costs and / or penalty?

B. ISSUES & ANALYSIS

Issue 1: Did OCSCC783 provide all the requested records?

[10] OCSCC783 disputed that the records requested in R1 were part of this hearing. It stated that R1 was withdrawn as part of the agreement reached in mediation for the Applicant to submit R2. Due to the Respondent's limited participation in the hearing, it did not raise this issue until its closing submissions. The Stage 2 Summary and Order is, however, clear on this point. The Member outlined agreed facts in the Summary and Order and there is no reference in the agreed facts that R1 was withdrawn. In fact, the Member expressly ordered that the case will deal with the two record requests. The Applicant participated in the hearing on the basis that both requests were before me, and I accepted evidence about both requests based on the Stage 2 Summary and Order. I conclude that both requests are within the scope of this hearing.

[11] The core records in both requests are the same records; the differences between the two requests are found in the Applicant's description of the non-core records. In R1, she requested the following non-core records for the time period from 2017 to February 2021:

- CMG Contract;
- Contracts with Law Firms;
- Contracts with all Contractors;
- Records related to the special assessment from the lawsuit with Callow Inc; and
- Description of employment / contractual obligations of the property manager.

She changed the description and time period for the non-core records in R2. She identified the time period as 2015 to 2021 and she described the records as:

- All CMG Contracts;
- Contracts; and
- Records relating to "Mr. Foundation – Callow Paul and all other".

[12] The Applicant stated in her testimony that she was seeking all contracts between OCSCC783 and any service providers from 2015 to 2021. She further clarified that she was unable to identify specific contracts except for those related to Mr. Foundation and Callow Paul at the time she submitted R2.

[13] The Applicant argued that she has not been provided with the following requested records: (a) minutes of board meetings held within the last 12 months; (b) all CMG contracts from 2015 to 2021; (c) all contracts from 2015 to 2021; and (d) specific contracts related to Mr. Foundation and Callow Paul from 2015 to 2021. The Applicant confirmed that all other records were provided to her electronically. She also argued that OCSCC783 was not keeping adequate records with respect to board meeting minutes and financial records.

Minutes of board meetings

[14] OCSCC783 stated that it did not provide minutes of board meetings because no minutes are kept. It explained that, as there are only 24 units in the corporation, there is a small board and no board meetings are held. It indicated that all decisions are made by email vote and the condominium manager, Ms. Tammy Zollinger, keeps records of the approvals made by email.

[15] The Applicant relied on information provided by the Condominium Authority of Ontario (CAO) on its website to support her position that minutes are required. The CAO material is intended as guidance for condominium corporations and unit owners, and to provide plain language interpretations of the requirements of the Act. The Applicant noted that the CAO has described the nature of board meetings on its website in the following excerpt:

The primary purpose of a board meeting is to conduct condo business. Condo business is conducted when a condo corporation's board of directors makes decisions, issues approvals or performs any other task that affects the governance or management of the corporation. Common examples of condo business include creating, modifying or terminating contracts with vendors or appointing new directors to fill a vacancy on the board.

Condo business cannot be conducted by individual directors or the entire board outside of a board meeting (e.g., by email). This means that boards cannot conduct condo business without first calling and holding a board meeting. Commonly, board meetings are held monthly, but condo boards can hold as many meetings as needed to run the condo corporation effectively.

[16] She highlighted that the CAO states that business must be conducted in a meeting and cannot be conducted by email, and she argued that the Respondent board is acting in contravention of this requirement. The Applicant is correct that board meeting minutes are required by the Act. Section 32(1) of the Act requires that condominium boards "not transact any business except as a meeting of directors at which a quorum of the board is present." It is evident from the other records provided by the Respondent to the Applicant that its board has transacted

business in the past twelve months and, in particular, that it has approved financial transactions including the imposition of a special assessment in February 2021.

- [17] Section 55 (1) of the *Act* mandates condominium corporations to “keep adequate records” and sets out a non-exhaustive list of required records. This list expressly identifies that a minute book is a required record and that the minute book should contain “the minutes of owners’ meetings and the minutes of board meetings”.
- [18] The Tribunal recognized that board minutes “have a 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... the unit owners,’ and in helping owners protect their ‘unique interest in how the corporation is managed.’” (see *Yeung v. Metropolitan Toronto Condominium Corporation No. 1136*, (2020 ONCAT 33) at 17)
- [19] In *Rahman v. Peel Standard Condominium Corporation No. 779*, ([2021 ONCAT 32](#)) at 20, described that the purpose of minutes was “to document a board’s business transactions and to show how the corporations’ affairs are controlled, managed and administered.” In *Mawji v. York Condominium Corporation No. 415*, (2021 ONCAT 72) at 27, the Tribunal reviewed the *Yeung* and *Rahman* decisions, and provided a summary about the adequacy of board meeting minutes:

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

- [20] Based on OCSCC783’s submissions, it is conducting the business of the corporation without holding meetings and without creating minutes of its decisions. This is clearly contrary to the requirements of the *Act*. I find that OCSCC783 is not meeting the standard of adequate record keeping required by section 55(1) because it is not maintaining minutes of board meetings despite the fact that business of the corporation is being conducted, and I conclude that the non-existence of board meeting minutes constitutes a refusal to provide a record.
- [21] Though I find that OCSCC783 has refused to provide the minutes of board meetings that were requested by the Applicant, I cannot order the Respondent to provide a record that does not exist. I note that the condominium manager is keeping records of the board’s approvals. I do not accept that the condominium manager’s records are a substitute for the minutes of board meetings that are required by the *Act*. However, in the absence of proper record keeping, I find that the condominium manager’s records of approvals are OCSCC783’s records and I order OCSCC783 to provide the condominium manager’s records of approvals for

the 12-month period of May 2020 to May 2021 to the Applicant within seven days of the date of this decision. This order does not absolve OCSCC783 of its obligation for record keeping under the Act, and I also order the directors of OCSCC783 to retake the CAO directors education program and provide an attestation of their completion of the program to the Applicant within thirty days of the date of this decision.

CMG contracts from 2015 to 2021

- [22] The Applicant requested the contracts with CMG, the condominium management company retained by the Respondent. In R2, she requested all contracts with CMG from 2015 to 2021. On June 1, 2021, OCSCC783 provided the contract from 2017. The Applicant argues that OCSCC783 has failed to provide the requested contracts because it only provided the single contract, and she seeks an order that all CMG contracts be delivered to her in electronic form.
- [23] OCSCC783 stated that the CMG contract from 2017 was the only contract within the date range because the contract was automatically renewed each year, without a new contract being prepared.
- [24] I do not accept that there is only one contract between OCSCC783 and CMG that was in effect between 2015 and 2021, and I find that the Respondent has not provided the record requested by the Applicant. I order OCSCC783 to provide all CMG contracts that were in effect between 2015 and 2021.

All contracts from 2015 to 2021

- [25] In R1, the Applicant requested contracts with law firms and contracts with all contractors from 2017 to 2021. She described these records in R2 as contracts from 2015 to 2021. OCSCC783 did not respond to the request for contracts and did not provide any records to the Applicant.
- [26] OCSCC783 stated in its closing submissions that the Applicant did not request contracts in R2 and that, therefore, it did not respond about contracts. The confusion arises because it turns out there were two versions of R2 in play. The version of R2 that OCSCC783 identified as the version it had received has just six pages and does not include a request for contracts. However, the Applicant demonstrated that the correct version of R2 has seven pages, with contracts referenced on the last page. The Applicant provided a series of emails between her and Ms. Zollinger related to R2. Ms. Zollinger sent an email on May 11, 2021, with the following message about R2: "Good morning. I am unable to read or print, please send in another format." The Applicant provided the seven-page version of

R2 in response. This is also the version that the Applicant submitted into evidence in this hearing. Ms. Zollinger acknowledged receipt of this version by a responding email in which she advised that the document was blurry when she printed it but that she would find a way to respond despite this issue. The version of R2 that OCSCC783 provided at the hearing was not blurry and was only six pages. I do not accept that this version is the one received by Ms. Zollinger. I conclude that the seven-page version with the request for contracts is the version that was sent to Ms. Zollinger on May 11, 2021, and the version to which OCSCC783 was to respond.

[27] In addition, the request for the contracts was clearly identified in the Stage 2 Summary and Order as one of the issues in dispute between the parties. It may be that the Respondent's representative did not closely review the Stage 2 Summary and Order in order to prepare for the hearing and to understand the issues in dispute. As noted above, its representative did not participate fully in the hearing process until closing submissions. It was apparent from the Applicant's submissions and evidence throughout the hearing that she claimed that she requested contracts and that OCSCC783 did not respond to this request.

[28] I find that the OCSCC783 had notice of the Applicant's request for contracts through both Requests for Records, the Stage 2 Summary and Order, and the Applicant's evidence and submissions in the hearing. OCSCC783 did not respond to the request and did not provide any contracts to the Applicant, and I do not accept that it had a reasonable excuse for its failure to do so.

[29] The Applicant seeks the Respondent's contracts for 2015 to 2021. She identified the names of some contractors in her testimony, such as Keller Engineering and Gowling WLG, but she is unable to identify all service providers who had contracts with OCSCC783. I conclude that the Applicant was entitled to the contracts she requested. I order that OCSCC783 provide a list to the Applicant of all contracts from 2015 to 2021 within fifteen days of this decision. For clarity, the contracts that I have ordered to be identified should be the records defined in section 55 (1) of the *Act* as "all agreements entered into by or on behalf of the corporation." The Applicant may then identify to OCSCC783 which of these contracts she wishes to receive, and I order the Respondent to provide any of the contracts requested to the Applicant in electronic form within 30 days of her request. I consider it fair in these circumstances to require OCSCC783 to provide the contracts at no cost to the Applicant because it effectively ignored her request for contracts in its Response and throughout the Tribunal process.

Mr. Foundation and Callow-Paul records

[30] The Applicant specified in the R2 that she was seeking records related to Mr. Foundation and Callow Paul.

[31] The Applicant clarified in her testimony that the Callow Paul records were records related to a legal case referenced in a letter to all owners dated February 2, 2021. In this letter, OCSCC783 advised the owners that, due to a decision against the Respondent¹ in the Supreme Court of Canada, a special assessment would be levied against all owners. The Respondent attached to the letter a confidential report from its lawyers about the legal case.

[32] On June 1, 2021, OCSCC783 provided the special assessment letter to the Applicant as its response to her request. The Applicant sought additional records relating to the legal expenses, the contract with the lawyers, and the financial accounting for the special assessment.

[33] OCSCC783 argued that a request for records under the *Act* could only seek records after November 1, 2017. It claimed that, since the records related to the legal case were from September 2013 to December 2020, the request was not valid. I do not accept the Respondent's position that records that pre-date 2017 cannot be requested under the *Act*. Section 13.1 (2) of O. Reg. 48/01 requires condominiums to retain records for certain prescribed periods of time, and with respect to some categories of records, the condominium is required to keep the record at all times. Although it is true that the legislation setting out the manner of making a request for records only came into effect on November 1, 2017, this does not mean that records of corporations that existed prior to that date cannot be requested. The fact that a record existed prior to November 1, 2017 does not absolve the Respondent from its responsibility to keep the record or to provide the record to a unit owner, if the owner is entitled to it.

[34] I find, nonetheless, that the Applicant's request for "Callow Paul" records is included in her request for all contracts. She is seeking clarification of the contracts and fees related to the legal case. I conclude that her request for these records will be addressed through the production of contracts as outlined above.

[35] The Applicant also requested records related to Mr. Foundation. She stated that Mr. Foundation had been contracted by the Respondent to perform repair work to her unit. In its closing submissions, OCSCC783 stated that there was a purchase order with Mr. Foundation instead of a contract. At my request, it uploaded the purchase order with Mr. Foundation for the repair work on the CAT-ODR platform.

¹ *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45; the parties to this matter were a number of condominium corporations, including OCSCC783

[36] The Applicant disputed that the document submitted by OCSCC783 was sufficient and argued that a purchase order is not a contract. I find that the difference between a purchase order and a contract is not material in these circumstances. The Respondent's record of its agreement with Mr. Foundation to perform work is a purchase order, and it has provided the record to the Applicant. I find that this request for records has been satisfied by OCSCC783 at the hearing.

Issue 2: has OCSCC783 failed to keep adequate records as required by s.55(1) of the Act?

[37] I have found that OCSCC783 is not keeping adequate records because it is not preparing board meeting minutes. The Applicant also argued that the financial records provided by OCSCC783 in response to R2 were inadequate.

[38] The Applicant requested the budget for the corporation's fiscal year. OCSCC783 provided the 2021-2022 budget to her by email on June 1, 2021. She argued that this record was not adequate because there was no approval of the budget in board minutes. The Applicant's argument is accurate that there is no record of the budget's approval: This is again the issue that OCSCC783 is not preparing board meeting minutes and is not related to the adequacy of the budget as a record itself. I have addressed this issue with respect to the minutes. The Applicant also argued that certain items were not entered in the correct lines on the budget and that this resulted in the deficit which caused the need for the special assessment. The Respondent stated that all items were correctly allocated in the budget.

[39] The question of the adequacy of records is related to the open book principle at the core of the *Act*, which applies in this instance to establish that the financial records of a condominium corporation must enable an owner to gain a true understanding of the corporation's finances. In *Ravells v. Metropolitan Toronto Condominium Corporation No. 564*, (2020 ONCAT 44), the Tribunal further outlined that there is a difference between an individual owner's assessment of adequacy and an objective assessment based on the *Act*.

[40] The Tribunal will assess adequacy based on whether OCSCC783 is objectively keeping adequate records and not whether the Applicant's subjectively believes that the records are inadequate.

[41] I can find no basis to conclude that the budget is not an adequate record of the Respondent's budget for the 2021-2022 fiscal year. It is evident that the Applicant disputes the decisions reflected in the budget and the resulting deficit. She has not, however, established that the budget is an inadequate record of the board's financial decisions.

[42] The Applicant also challenged the adequacy of the most recent auditor's report, financial statements, and the reserve fund study. Again, she argued that the records were inadequate because they were not approved in minutes and that OCSCC783 had not made correct decisions about the reserve funds. The lack of minutes speaks to the inadequacy of the minutes; it does not render all other records of the corporation inadequate. I do not find that the Applicant has established that any of these records are inadequate as objective records of the Respondent's transactions and decisions.

Issue 3: Should the Tribunal order the payment of costs and / or penalty?

[43] The Applicant did not request a penalty in this hearing. I note that a penalty is discretionary under the *Act*. Although I have found that OCSCC783 refused to provide records without reasonable excuse, I decline to award a penalty in these circumstances. The Tribunal has explained the purpose of a penalty as being to impress upon a condominium corporation the seriousness of their obligations under the *Act* and to provide unit owners with a remedy when these obligations have not been met. Based on my review of the facts of this case, I conclude that these purposes are or can be met through the Tribunal's orders that OCSCC783 provide the requested records at no cost to the Applicant and that it take steps to ensure that board meeting minutes are kept. I recognize that the cost of producing the records in this case could be significant. The order, and compliance with it, should suffice to satisfy the purposes of a penalty.

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

C. CONCLUSION

[45] I find that OCSCC783 failed to provide records requested by the Applicant without reasonable excuse. I also find that OCSCC783 is not keeping adequate records as required by the *Act* because it is not keeping minutes of board meetings.

D. ORDER

[46] The Tribunal orders that:

1. OCSCC783 shall provide to the Applicant in electronic form all CMG change contracts that were in effect between 2015 and 2021 within fifteen days of this decision.
2. OCSCC783 shall provide to the Applicant a list of all contracts from 2015 to 2021 in electronic form within fifteen days of this decision.

3. The Applicant may advise OCSCC783 within 30 days of receiving the list which contracts she wants to access, and OCSCC783 shall provide the contracts requested by the Applicant within 30 days of her request, in electronic format and at no cost to the Applicant.
4. OCSCC783 shall provide to the Applicant the records kept by the condominium manager of board approvals for the twelve-month period of May 2020 to May 2021, in electronic format, within seven days of this decision.
5. OCSCC783's directors shall retake the CAO's mandatory Director Training course and OCSCC783 shall provide an attestation of the directors' completion of the program to the Applicant within thirty days of the date of this decision.
6. OCSCC783 shall communicate to all unit owners that the Tribunal has found that it is not meeting its obligation to keep adequate records under the *Act* by failing to keep board meeting minutes and that the Tribunal has ordered it to take steps to meet its obligation to keep minutes of board meetings.
7. OCSCC783 shall pay costs of \$200 to the Applicant within 30 days of this decision.

Jennifer Webster
Member, Condominium Authority Tribunal

Released on: October 28, 2021