

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** November 2, 2021

**CASES:** 2020-00381N, 2020-00403N, 2021-00077R

**Citation:** Calderon v. York Condominium Corporation No. 274, 2021 ONCAT 101

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

**Member:** Maureen Carter-Whitney, Member

**The Applicant,**

Ney Calderon

Self-Represented

**The Respondent,**

York Condominium Corporation No. 274

Represented by Luis Hernandez, Counsel

**Hearing:** Written Online Hearing – March 4, 2021 to October 14, 2021

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] The Condominium Authority Tribunal (“CAT”) made an order, dated March 30, 2021, that cases 2020-00381N, 2020-00403N, 2021-00077R be heard together, pursuant to Rule 16.2 of the CAT Rules of Practice.
- [2] I note that, during the hearing of these cases, YCC 274 brought motions stating that the Applicant’s applications in these and other CAT proceedings were vexatious and should be dismissed. On July 27, 2021, CAT Chair Ian Darling issued a motion order finding that there were not sufficient grounds to grant YCC 274’s motion to declare the Applicant’s behaviour vexatious.<sup>1</sup>
- [3] This case relates to the enforcement of those provisions of the York Condominium Corporation No. 274’s “Rules and Regulations - 2004” that govern pets (“Pet Rules”) and parking (“Parking Rules”). It also concerns a records request for a

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<sup>1</sup> *Calderon v. York Condominium Corporation No. 274*, 2021 ONCAT 70.

grounds map referred to in Rule 12(9) ("Grounds Map").

- [4] The Applicant, Ney Calderon, is a unit owner in York Condominium Corporation No. 274 ("YCC 274"). Mr. Calderon asserts that YCC 274's Board of Directors ("Board") has allowed some individuals to park in the visitors' parking spaces without repercussions but has targeted him and other residents by enforcing the parking rules against them, and that it has failed to enforce its pet rules by allowing owners to walk with their pets on common element areas near his unit. He has also made a record request for the Grounds Map. Mr. Calderon seeks an order requiring the Condominium to pay a penalty under s. 1.44(6) of the *Condominium Act, 1998* (the "Act") and requests an award of costs.
- [5] YCC 274 states that it has used its discretion to enforce the rules appropriately, it did not refuse to provide a copy of the Grounds Map, and it provided a version of the Grounds Map at its first opportunity after it was found. It is YCC 274's position that Mr. Calderon brought these applications to further his argument that YCC 274, which became self-managed in 2019, should hire a professional management company. YCC 274 also requests a costs award.
- [6] For the reasons set out below, I find that: Mr. Calderon has not provided sufficient evidence to establish that YCC 274 did not enforce its Pet Rules and Parking Rules in a consistent, fair, and reasonable manner; YCC 274 did not refuse to provide the Grounds Map to Mr. Calderon and provided it as soon as it located what appeared to be the requested record; YCC 274 has not refused to provide a record without a reasonable excuse, so a penalty is not warranted; and neither party is entitled to an award of costs.

## **B. ISSUES & ANALYSIS**

### **Issue 1: Has YCC 274 enforced its Pet Rules and Parking Rules in a consistent, fair, and reasonable manner?**

#### *Relevant Pet Rules and Parking Rules*

- [7] The Pet Rules and Parking Rules that were raised in the hearing are as follows:

#### 12. PETS:

3) When outside the Owner's suite, each dog and/or cat must wear a collar with an identification of its Owner and shall be kept or held in hand by means of a 1 metre lead, leash or chain. This provision shall be applicable to the whole of the common elements whether interior or exterior. Entry and exist of pets must be at the rear door basement level and not through the main lobby.

7) No pet shall be permitted to soil or damage any part of the common elements whether by waste, excrement or otherwise, and in the event of same the owner of the pet shall make good such damage and effect the removal of any such excrement and save harmless the Corporation from any expense in connection therewith. And it is hereby declared that the minimum charge for removal of excrement from the property shall be set from time to time by the Board of Directors and shall be chargeable against the Owner in whose suite the Pet is resident or which suite the Pet is visiting. It is understood that any repeated instances of a Pet soiling or damaging the general common elements, or any exclusive-use common element balcony shall be sufficient for the Property Manager or the Board of Directors to deem a Pet a nuisance and require its removal from the Corporation's premises.

9) Pets shall only be walked in the area shown on the Grounds Map as the "Pet Walking Area". All other areas are out of bounds except a direct route from the service entrance to the Pet Walking Area. No pets are allowed on your exclusive use balcony at any time.

### 13. PARKING:

2) All motor vehicles operated by residents or their visitors and parked in the parking garage must be registered with the Property Manager. Residents are required to properly display authorized parking stickers on the front windshield of their vehicles at all times.

3) Owners shall utilize only the parking space(s) assigned to their suite in Schedule "G" of the Declaration.

7(d) Parking is prohibited in the following areas: residents are prohibited from parking in visitor areas, except by prior written authorization.

17) Overnight guests of an Owner may use the otherwise unused parking space of an Owner. Where an overnight guest wishes to park overnight in the visitors' parking areas a permit authorized by the Owner covering a specified twenty-four (24) hour period must be obtained from the Property Manager or Superintendent and displayed on the parked car's dashboard. Guest parking beyond twenty-four (24) hours must be authorized by the Property Manager or Superintendent. Authorization forms are valid only for the time(s) and date(s) shown. Altered forms or photocopies are invalid.

18) If overnight permits are issued in excess of three times per week for any one vehicle, the visitor(s) or Owner must arrange to rent a parking space from the Corporation.

*Mr. Calderon's Evidence and Submissions*

- [8] Regarding the Pet Rules, Mr. Calderon provided evidence that he has witnessed multiple owners exiting through a door that is not designated for use by pets, walking their pets in an area of the YCC 274 property that is also not designated for pets, walking their dogs off leash, leaving the dogs unattended, and allowing them to leave feces outside his balcony area and in common element areas. He provided a version of the Grounds Map noted in Rule 12(9) that marks a pet walking area, which was provided to him by Anthony Capra, another condominium owner. Mr. Calderon described the complaints he has made regarding these incidents to the Board and YCC 274 concierge and security staff and submitted photographs and video footage of individuals walking their dogs to demonstrate what he has observed. He stated that this is contrary to Pet Rules, which are displayed on some public notice boards on the condominium premises.
- [9] Mr. Calderon specifically highlighted one incident in which his children gathered video footage of a dog owner acting contrary to the Pet Rules and directing harassing gestures toward them, which he described as sexual in nature. He included this video in his evidence, noting that he contacted the police about this incident. Mr. Calderon said he believes that the Board has favoured certain dog owners and breached his privacy by informing these individuals of his complaints, and that they have targeted him and his family.
- [10] Mr. Calderon submits that, based on the Grounds Map referred to in Rules 12(9), there are specific areas where residents may walk their dogs on the YCC 274 property, and that this does not include the area outside of his unit. He further submits that YCC 274 has acknowledged that it has failed to sufficiently enforce its Pet Rules against condominium residents, and that this lack of enforcement has led to certain dog owners taking negative actions against him and his family. Mr. Calderon also submits that YCC 274 has only communicated to remind owners of the Pet Rules instead of enforcing them. Regarding the harassment incident, he submits that YCC 274 failed to acknowledge the seriousness of the matter and allowed that owner to continue to break the Pet Rules.
- [11] Regarding the Parking Rules, Mr. Calderon testified that despite owners being prohibited from parking in the visitors' parking area, some owners are permitted to park there without being subject to enforcement. He stated that the Parking Rules have not been enforced against members of the Board, but have been enforced against others, including Mr. Calderon himself. Mr. Calderon provided photographs and video evidence of cars that he says were parked in visitors' parking contrary to the Parking Rules. He said that these vehicles are not being loaded and unloaded because they remain there for long periods of time and alleged that Mr. Geburt has signed six-month visitors' parking permits for some owners.

- [12] Mr. Calderon stated that he has witnessed multiple owners parking daily in the visitors' parking area without being tagged or ticketed by the City of Toronto ("City"), including in the reserved accessible parking area, despite not having a valid accessible parking permit. He testified that, in contrast, his vehicle was tagged, and City parking officials were called when he was parked in that area to unload, despite displaying a valid accessible parking permit belonging to his father. Mr. Calderon said that YCC 274 directed the concierge to call City parking officials, and that no other owner's cars are being tagged. A City Notice of Screening Decision was filed, confirming that a parking violation notice was issued on October 23, 2020, and an administrative penalty of \$30.00 was affirmed.
- [13] Mr. Calderon testified that notice of the Parking Rules is posted in public areas at the condominium and that it was announced at YCC 274's January 2021 Annual General Meeting that no owner is allowed to park in the visitors' parking area. However, he said that, although he has informed YCC 274 and its staff of parking violations on multiple occasions, enforcement has not taken place and, in one instance, he received what he described as a disrespectful, antagonistic response from Mr. Geburt. He stated that, while YCC 274 claims to have taken action, parking violations have continued.
- [14] Mr. Calderon also provided evidence from two other condominium owners. Mr. Capra testified that he has witnessed the Board not being fair and acting contrary to the Parking Rules, and that he and his family have received approximately 22 parking tickets over a two-year period. Maha Hassan testified that he has also witnessed the Board not enforcing the Parking Rules fairly and creating their own rules. He said that he and his family received parking tickets three times while following the Parking Rules, but the Board had changed them without telling them.
- [15] Mr. Calderon submits that YCC 274 has failed to enforce the Parking Rules by not enforcing them for certain owners, despite his complaints. He asserts that Mr. Geburt has acknowledged that the Parking Rules are not always enforced, including during the day. He also submits that although YCC 274 said Parking Rules are not enforced during daytime hours on weekdays, he and the other witnesses were tagged by city parking officials during the day, who were called by YCC 274 management.

#### *YCC 274's Evidence and Submissions*

- [16] YCC 274 provided evidence from Peter Geburt, who is President of the Board. He testified that the Pet Rules are approximately 45 years old, and the Board considers them to be badly written, not making sense in some cases, and believes they should be updated or replaced. Mr. Geburt provided several examples of the

Board's problems with the Pet Rules, noting that they:

- prohibit owners from entering or exiting the underground garage with their pets to get into a car;
- limit owners to using only one door with their pets, when there are numerous other doors available to enter and exit the building;
- prohibit owners from walking their pets in the small forest trails on the 3.8-acre property; and
- require owners to take their pets directly from the rear exit door to a designated dog walking area about 0.25 kilometres away through terrain that is difficult for owners with small dogs, especially in the winter, given that most dogs are well under 25 pounds in weight, which is the upper limit that is allowed under the Pet Rules, and which is strictly enforced.

[17] Mr. Geburt stated that the Board has enforced serious breaches of its Pet Rules but believes that escalation of enforcement generally breeds animosity and results in increased costs and should only be done in circumstances that merit it. He testified that the Board has posted signs regarding the Pet Rules, and they verbally remind owners of the Pet Rules as needed. Mr. Geburt said that Mr. Calderon has yelled at and been verbally abusive towards some dog owners who wrote an anonymous letter asking him to stop, and that the Board could not prevent them from taking this action. He further testified that the Board is in the process of revising the Pet Rules and has consulted with residents to produce a revised draft of the Pet Rules that will eliminate many of the current provisions that are difficult to enforce. Mr. Geburt said that he happened to locate a version of the Grounds Map during this proceeding and YCC 274's counsel uploaded it to the CAT-ODR system soon after that. This version of the Grounds Map does not indicate a pet walking area.

[18] YCC 274 submits that it has consistently, fairly, and reasonably enforced its existing Pet Rules. Regarding Rule 12(9), which refers to the Grounds Map, YCC 274 submits that it is not aware of any issues that would have required enforcement of Rule 12(9), and that it has reasonably used its discretion not to enforce Rule 12(9). YCC 274 notes that there are two versions of the Grounds Map, one of which shows no designated pet walking path or area while the other shows a designated pet walking path and area. YCC 274 states that it cannot confirm which of the two versions of the Grounds Map is referred to in Rule 12(9). YCC 274 submits, however, that Mr. Calderon has not demonstrated how he has been negatively affected by residents using the grassy area located by his unit to

walk their pets, and enforcement would needlessly impact the residents who are making use of the common elements for this purpose.

- [19] Regarding the Parking Rules, YCC 274 provided evidence from Mr. Geburt that residents are not permitted to use the visitors' parking spaces and must use their own assigned space in the underground garage. However, he testified that the Board believes that some tolerance must be afforded to residents for short-term use of the visitors' parking spaces when they are loading or unloading items. He noted that the visitor parking area is the only access point to the building where shopping carts can be used because the entrances to the underground garage have stairs.
- [20] YCC 274 provided evidence about the enforcement steps it takes, including sample parking violation notices, reports by security staff on patrolling and parking enforcement, and complaints received from individuals who have been ticketed for breaching the visitors' Parking Rules. Mr. Geburt testified that YCC 274 tagged approximately 92 vehicles for breaching Parking Rules from September 1, 2020, to February 21, 2021, including for visitors not registering their vehicles, residents parking for extended periods of time instead of moving their vehicles after loading or unloading, and non-visitors using the parking lot. He further testified that Board members of YCC 274 receive no special treatment compared to other residents and are subject to tagging enforcement for any violations, noting that four of seven Board members, including himself, had received parking tickets over the past few months. Mr. Geburt said that he was not aware of owners parking freely or daily in the visitors' parking area.
- [21] Mr. Geburt stated that the Board provides enforcement instructions to their security contractor, who provides security services from 4 pm to 8 am Monday to Friday, and 24 hours per day on the weekends; the role of the concierge staff working during the daytime from Monday to Friday, is not focused on enforcement but he will respond to serious or emergency complaints. He said that YCC 274 uses the City police to tag cars for parking enforcement rather than a private parking tag contractor. Regarding the incident in which Mr. Calderon received a parking ticket, Mr. Geburt stated that the individual who called parking enforcement alleged that Mr. Calderon parked in one of the two visitors' accessible parking spots, which are not available for residents, displaying a permit that was issued to a relative who was not present at the time of parking as required by law.
- [22] Mr. Geburt testified that, because the Parking Rules are old, outdated, and very difficult to enforce, YCC 274 uses reasonable discretion to enforce them. He testified that the Parking Rules could not be fully enforced without full-time

monitoring of parking, and the Board does not believe this is appropriate or necessary.

- [23] YCC 274 submits that it has consistently, fairly, and reasonably enforced its existing Parking Rules, noting that both its evidence and Mr. Calderon's evidence indicate that the Board has made owners aware of the Parking Rules relating to visitors' parking and there is evidence of individuals other than Mr. Calderon having been ticketed for parking violations. YCC 274 asserts that Mr. Calderon has not provided any evidence, other than his own statements, to demonstrate that YCC 274 has been selective in its parking enforcement. YCC 274 argues that Mr. Calderon's photographic and video evidence fails to show: how long any vehicle was parked in the visitors' parking spaces or whether they were ticketed; that the owners of the vehicles being parked in the visitors' parking area received preferential treatment; and that the use of the visitors' parking area in negatively affected the owners or the availability of visitors' parking spaces.

#### *Analysis and Findings on Issue 1*

- [24] The courts in Ontario have found that condominium boards have the discretion to determine how to enforce their governing documents, including rules, so long as they act reasonably. As set out in a recent CAT case, *Roberts v. Halton Standard Condominium Corporation No. 617 and Yamine* ("Roberts"):

Courts have clearly stated that while a board has a duty to enforce its own declaration and rules where the violation is causing a problem, not every minor violation of a declaration must be met with an enforcement procedure (*Muskoka Condominium Corporation No. 39 v. Kreutzweiser*, 2010 ONSC 2463). A condominium board is vested with some discretion in deciding the manner and extent to which it should enforce its declaration and rules and is owed some deference, provided it acts reasonably and not capriciously.<sup>2</sup>

- [25] The CAT also recently issued a motion order relating to a separate application filed by Mr. Calderon. In its decision on that motion, the Tribunal again found that "a condominium board is vested with some discretion in deciding the manner and extent to which it should enforce its declaration and rules, and is owed deference in that regard, provided that it acts reasonably. It is the reasonableness of the Respondent's actions which would be central to a hearing in this matter."<sup>3</sup>

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<sup>2</sup> *Roberts v. Halton Standard Condominium Corporation No. 617 and Yamine*, 2021 ONCAT 21, para. 16.

<sup>3</sup> *Calderon v. York Condominium Corporation No. 274*, 2021 ONCAT 88, para. 5.



- [26] I adopt the CAT's reasoning in the above-noted cases and, therefore, have considered whether YCC 274 has acted reasonably in the circumstances of the case before me.
- [27] The version of the Pet Rules and Parking Rules in evidence is dated 2004. However, YCC 274 provided evidence that the Pet Rules are approximately 45 years old and difficult to enforce, and it has determined that they need to be brought up to date. YCC 274 also gave evidence that the Parking Rules are outdated and difficult to enforce. It is currently in the process of revising its Pet Rules and Parking Rules, including eliminating those it does not consider practical to enforce in the present context, based on consultations with condominium owners.
- [28] In the meantime, YCC 274 has taken steps to enforce the current Pet Rules and Parking Rules in what it considers to be a reasonable manner. It has taken steps to ensure that condominium owners and residents are aware of the Pet Rules and Parking Rules, such as posting signs and making verbal reminders, and it has enforced what it believes to be serious breaches of them. However, YCC 274 takes the position that strict enforcement of the existing Pet Rules and Parking Rules will result in increased costs as well as animosity among the residents. Therefore, it has used its discretion to enforce the Pet Rules and Parking Rules in circumstances that it has determined to merit enforcement.
- [29] As set out in *Roberts*, YCC 274's Board is entitled to deference regarding its enforcement decisions unless there is evidence that it has acted in an unreasonable or unpredictable manner. Having reviewed all the evidence and submissions, including Mr. Calderon's concerns, I find that YCC 274 has acted reasonably.
- [30] I find that the evidence has established that the Pet Rules and Parking Rules are not enforced strictly, and that this is acknowledged by YCC 274. Regardless of which version of the Grounds Map is referred to by Rule 12(9), YCC 274 agrees that it has not enforced the pet restrictions indicated on the Grounds Map in Mr. Capra's possession that was submitted by Mr. Calderon. Similarly, YCC 274 acknowledges that it has not rigidly enforced the Parking Rules. However, I accept that YCC 274's Board has considered how best to enforce the current Pet Rules and Parking Rules. In *Roberts*, the Tribunal noted that deciding how and when to take enforcement action often requires a balancing of competing interests.<sup>4</sup> I find that YCC 274 has reasonably considered and balanced the competing interests

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<sup>4</sup> *Roberts v. Halton Standard Condominium Corporation No. 617 and Yamine*, 2021 ONCAT 21, para 17.

discussed above, including the age and appropriateness of the Pet Rules and Parking Rules and the cost of enforcement. I also accept that YCC 274's evidence that it is in the process of updating and modernizing its Pet Rules and Parking Rules to ensure that they are enforceable and suitable to its current context.

[31] I further find that YCC 274's Board has not exercised its discretion in a capricious manner.

[32] I have considered Mr. Calderon's evidence regarding specific incidents in which he believes he was harassed by other pet owners, and the evidence of Mr. Calderon, Mr. Capra, and Mr. Hassan that the Board targeted them in issuing parking tickets. While Mr. Calderon has experienced unpleasant behaviour from other condominium residents, including gesturing in a harassing manner and sending an anonymous letter, the evidence indicates that this behaviour is their response to Mr. Calderon photographing and video recording them from his unit when they are walking their dogs. I find there is no evidence, beyond Mr. Calderon's assertion, that the Board shared his complaints with any other owners, and I accept YCC 274's evidence that the Board was neither responsible for the harassment he experienced nor in a position to prevent this behaviour.

[33] I have also considered the evidence concerning parking tickets issued to Mr. Calderon, Mr. Capra, and Mr. Hassan. For the most part, they do not appear to dispute the fact that they violated the Parking Rules, but believe they were targeted for enforcement while the Parking Rules were not enforced against other owners, including Board members. While Mr. Hassan alleged that the Board changed the Parking Rules without advising him, the evidence establishes that they have not changed in many years. I find that there is no evidence, beyond the assertions of these three individuals, that they were targeted while others received preferential treatment and special permits. In response to their assertions, YCC 274 gave evidence that several Board members, including Mr. Geburt himself, had received parking tickets in the past few months. With respect to the photographic and video evidence related to parking, I find that these photos show cars in a parking lot on different dates, but no evidence was provided to establish how long these cars were present in the lot or to whom they belonged. I am not persuaded that YCC 274 unfairly targeted Mr. Calderon or the other witnesses in having parking tickets issued to them.

[34] Having considered the evidence and submissions, I find that Mr. Calderon has not provided sufficient evidence to establish that YCC 274 did not enforce its Pet Rules and Parking Rules in a consistent, fair, and reasonable manner.

[35] I note Mr. Calderon's submission that, since YCC 274 became self-managed by

the Board, there have been negative changes in the service provided compared to previous services provided by private management companies and that YCC 274 is not capable of adequately managing the condominium. Regarding this submission, I note the CAT's July 27, 2021 motion order relating to the proceeding before me, referred to above, which identified a common theme across his various CAT applications, and stated as follows:

The Applicant does not believe that the Respondent is fairly and consistently applying their rules. While I have decided not to dismiss these cases, I want to reinforce that the CAT is not the venue to deal with the underlying dispute over whether the corporation should be managed by a condominium manager or operate as a self-managed corporation by the directors. The parties are advised to focus their efforts on resolving the issues in dispute before the CAT, and to save larger discussions for how the community will be managed to the community itself.<sup>5</sup>

[36] I agree with this previous finding of the Tribunal regarding this matter. The CAT is not the appropriate venue to address Mr. Calderon's concerns about the self-management of YCC 274, it is not an issue before me, and it is not within the Tribunal's jurisdiction.

**Issue 2: Is Mr. Calderon entitled to receive a copy of the Grounds Map referred to in Rule 12(9)?**

[37] Section 55 (3) of the Act sets out an owner's entitlement to examine or obtain copies of a corporation's records: "The corporation shall permit an owner, a purchaser or a mortgagee of a unit or an agent of one of them duly authorized in writing, to examine or obtain copies of the records of the corporation in accordance with the regulations, except those records described in subsection (4)." The exceptions set out in s. 55(4) of the Act include records related to employees, to actual or contemplated litigation, and to specific units or owners.

[38] Mr. Calderon requested a copy of the Grounds Map on January 26, 2021. Initially, YCC 274 responded that it was not certain what document this referred to and that it was not aware of any maps attached to the Pet Rules. YCC 274 made a formal response to Mr. Calderon's records request within the prescribed timeline.

[39] On April 21, 2021, after the CAT proceeding was underway, YCC 274 uploaded a copy of a Grounds Map that Mr. Geburt found while looking for other files in the YCC 274 archive. Subsequently, Mr. Calderon uploaded a different version of the

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<sup>5</sup> *Calderon v. York Condominium Corporation No. 274*, 2021 ONCAT 70, para. 23.

Grounds Map, as noted above, supplied by Mr. Capra.

- [40] Mr. Calderon questioned the authenticity of the version provided by Mr. Geburt, alleging that YCC 274 altered it to accord with its position on how it is enforcing the Pet Rules. In response to this allegation, Mr. Geburt testified that YCC 274 had not altered the Grounds Map it uploaded and stated that there appeared to be multiple versions of the Grounds Map, indicating different information. He noted that the YCC 274 archives include documents going back 45 years and that files are not digitized. As set out above, YCC 274 cannot confirm which version of the Grounds Map is referred to in Rule 12(9).
- [41] Mr. Calderon submits that he has not received the record he requested from YCC 274, stating that it was required to keep records under the Act, and that it is not credible that YCC 274 lost the Grounds Map referred to in Rule 12(9) given that Mr. Capra had it. It is his position that YCC 274 has a copy of that record and withheld it from him.
- [42] YCC 274 does not dispute that Mr. Calderon is entitled to this record but notes that the Board originally could not locate a copy of the Grounds Map in its files and that, other than the reference to it in the Pet Rules, was not aware of it ever existing or being relied on. YCC 274 submits that it communicated this to Mr. Calderon and offered to estimate the labour charges required for it to search its archives if Mr. Calderon wanted to proceed that way. However, it asserts that Mr. Calderon did not respond that he wanted YCC 274 to make additional search efforts, instead launching a CAT case to obtain the record. YCC 274 further submits that, once Mr. Geburt found a version of the Grounds Map, it was uploaded to the CAT-ODR system without delay.
- [43] I accept YCC 274's submission did not dispute that Mr. Calderon is entitled to receive a copy of the Grounds Map. Initially, it was unable to find this record and took the position that it could not provide it. However, as described above, YCC 274 located and uploaded a version of the Grounds Map during this proceeding, which differed from the version uploaded by Mr. Calderon.
- [44] I further accept Mr. Geburt's evidence that he found the Grounds Map in the manner described and that he did not alter it in the version YCC 274 uploaded to the CAT-ODR. While Mr. Calderon speculated otherwise, there is no evidence to establish those allegations. Likewise, there is no evidence to explain why there is more than one version of the Grounds Map, but this appears to be the case.
- [45] I find that YCC 274 did not refuse to provide the Grounds Map to Mr. Calderon, and that it did provide it as soon as it located what appeared to be the requested

record.

**Issue 3: Should YCC 274 be required to pay a penalty under s.1.44(6) of the Act for failing to provide Mr. Calderon with the record requested without reasonable excuse and, if so, in what amount?**

- [46] Under subparagraph 1.44(1)6 of the Act, the Tribunal may order a condominium corporation to pay a penalty that the Tribunal considers appropriate if the Tribunal considers that the corporation has, without reasonable excuse, refused to permit an entitled person to examine or obtain copies of a record.
- [47] Mr. Calderon submits that YCC 274 should pay a penalty for failing to provide him with the requested record without a reasonable excuse and for delivering an incorrect version of the Grounds Map in response to his request. He submits that YCC 274 was obliged to have well kept records and provide him with a copy of the requested record within a reasonable time.
- [48] YCC 274 submits that it should not be ordered to pay a penalty to Mr. Calderon because it had a reasonable excuse for not providing the Grounds Map since it did not have a copy of it and, when it located a copy of it by chance, it immediately produced it. YCC 274 further submits that Mr. Calderon is not entitled to a penalty because he launched the CAT proceeding with respect to the record request instead of responding to its offer to arrange for a further search for the record.
- [49] As noted in the previous section, I have found that YCC 274 did not refuse to provide the requested record to Mr. Calderon and provided it as soon as possible after locating it. Therefore, I find that YCC 274 has not refused to provide a record without a reasonable excuse, and consideration of a penalty is not warranted in this case.

**Issue 4: Should there be an award of costs?**

- [50] Subparagraph 1.44(1)4 of the Act provides that the Tribunal may make an order directing a party to the proceeding to pay the costs of another party to the proceeding. The CAT Rules of Practice further address costs at Section H, which includes the following relevant provisions:

45.1 The CAT may order a User to pay to another User or the CAT any reasonable expenses or other costs related to the use of the CAT, including:

- (a) any fees paid to the CAT by the other User;
- (b) another User's expenses or other costs that were directly related to this other User's participation in the Case; and,

(c) costs that were directly related to a User's behaviour during the Case that was unreasonable, for an improper purpose, or that caused an unreasonable delay.

45.2 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. This does not include legal fees.

46.1 The CAT will not order a User to pay to another User any fees charged by that User's lawyer or paralegal, unless there are exceptional reasons to do so.

- [51] Mr. Calderon submits that, under Rule 45.1, he should be rewarded his reasonable costs incurred by being forced to launch the CAT cases, and for the legal costs and time he incurred due to YCC 274's negligence and non-compliance. He asks to be awarded his costs associated with all stages of the CAT proceedings, in an amount to be determined by the adjudicator.
- [52] However, as discussed above, I have determined the issues in this matter in favour of YCC 274 and find that Mr. Calderon is not entitled to an award of costs.
- [53] YCC 274 submits that it should be awarded its reasonable costs, including its legal costs for exceptional reasons. YCC 274 asserts that the Board has spent an undue amount of time and resources responding to Mr. Calderon's CAT cases over the last eight months, noting that the legal costs have been borne by the condominium owners. YCC 274 also submits that Mr. Calderon conducted himself in a manner that unnecessarily delayed and complicated the proceedings, and that his conduct constitutes an exceptional circumstance under Rule 46.1 of the CAT's Rules of Practice and awarding YCC 274 its legal fees would create a deterrent to other parties seeking to abuse the CAT's process. As such, YCC 274 asks to be permitted to make submissions on costs irrespective of the outcome of this matter.
- [54] Rule 45.2 provides the CAT with the discretion to require that an unsuccessful User pay the successful User's CAT fees and reasonable dispute-related expenses, excluding legal expenses, but the CAT may decide otherwise. As set out in Rule 46.1, the CAT generally will not order a User to pay the fees charged by another User's lawyer or paralegal unless there are exceptional reasons.
- [55] I have decided that this is not an appropriate case in which to require Mr. Calderon to pay YCC 274's costs, and I do not find that there are exceptional reasons in this case to require him to pay YCC 274's legal fees.
- [56] I find that Mr. Calderon launched his applications based on a genuine belief that

YCC 274 was not enforcing certain of its Pet Rules and Parking Rules. YCC 274 has in fact acknowledged that this is the case. Notwithstanding that I have deferred to YCC 274's discretion regarding their enforcement because it has acted reasonably, it remains the case that Mr. Calderon had a valid basis for being concerned that the Pet Rules and Parking Rules were not being strictly enforced.

- [57] YCC 274 argues that there are exceptional reasons to award its legal fees because Mr. Calderon brought a vexatious case, and that he unnecessarily delayed and complicated the proceedings.
- [58] In some past CAT decisions, legal fees have been awarded for exceptional reasons where Users have made vexatious applications.<sup>6</sup> In this proceeding, the question of whether Mr. Calderon's applications were vexatious was addressed in the Tribunal's July 27, 2021 motion order, which found that Mr. Calderon had not behaved in a vexatious manner, and that YCC 274 had not demonstrated that the Applicant was using the CAT for anything other than a legitimate way to resolve multiple disputes. I find that YCC 274's counsel ought not to have raised the vexatious claim again, given that this issue was already determined in the Tribunal's motion order.
- [59] YCC 274 has identified several ways in which it says Mr. Calderon delayed and complicated these proceedings. I note that Mr. Calderon was self-represented in this hearing, leading to him sometimes raising issues that were not related to the issues of the case and seeking relief for which the Tribunal has no jurisdiction. However, this did not lead to a delay in the proceedings. Furthermore, while there were some delays due to Mr. Calderon not fully understanding the process, I find that, overall, he endeavoured to participate fully and, for the most part, he met deadlines or asked for extensions in circumstances where he could not meet them. It was within Mr. Calderon's right to pose cross-examination questions, regardless of the length of Mr. Geburt's witness statement and, while some of his objections and cross-examination questions were not allowed, that is part of the Tribunal procedure and does not merit an award of costs or legal fees to YCC 274.

[60] Therefore, I find that neither party is entitled to an award of costs.

### **C. ORDER**

[61] The Tribunal orders that these applications are dismissed.

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<sup>6</sup> See *Lahrkamp v Metropolitan Toronto Condominium Corporation No. 932*, 2019 ONCAT 4, and *Kamyshan v. York Condominium Corporation No. 465*, 2020 ONCAT 46.

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Maureen Carter-Whitney  
Member, Condominium Authority Tribunal

Released on: November 2, 2021