Corrected Decision
This decision was amended on May 2, 2022 to correct paragraphs 5 and 14 in accordance with Rule 46 of the CAT's Rules of Practice.

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 11, 2022
CASE: 2021-00248R
Citation: Tanner-Kaplash v. Middlesex Standard Condominium Corporation No. 776, 2022 ONCAT 33

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

Member: Benjamin Drory, Member

The Applicant,
Sonja C. Tanner-Kaplash
Self-Represented

The Respondent,
Middlesex Standard Condominium Corporation No. 776
Represented by Inderpreet Suri, Counsel

Hearing: Written Online Hearing – February 2 to March 23, 2022

REASONS FOR DECISION

OVERVIEW

[1] The Applicant, Sonja C. Tanner-Kaplash, is a unit owner of the Respondent, and submitted four Requests for Records to the Respondent, the contents of which are the subject of this hearing – dated November 11, 2020, and March 31, May 22, and September 24, 2021. Some of the same records were requested in the four records requests. The chronology set out below is relevant to the issues in the case.

[2] As background information, effective September 24, 2020 the Applicant was subject to a "communications protocol" with the Respondent's board of directors and condominium management team, Trademark Property Management Limited ("Trademark"), under which Applicant was informed that Trademark would only respond to her when required to do so by the *Condominium Act, 1998* (the "Act") or its management contract, and would not "engage in dialogue" with her where

not required. The Respondent stated that this protocol was implemented as a result of a "pattern of rude and condescending communication" from the Applicant. While I will not comment on the communication protocol itself, the evidence suggests that it likely resulted in more challenging communications between the parties, and matters that one might expect to be simple became more complicated by it.

[3] In her first Request for Records (November 11, 2020), the Applicant requested board meeting minutes from March 2020 to that date, as well as a report from Edison Engineering Ltd. (the "Edison Report") and the 2019 AGM minutes. The Respondent replied that only two board meetings were held during the period of the request – March 10, 2020 and September 9, 2020 – and for which September 9, 2020 minutes hadn't been approved. Accordingly, it provided minutes of the March 10, 2020 meeting and the 2019 AGM.

[4] The Respondent asserted in the same response that the Edison Report discusses the building's construction and deficiencies, and refused to provide it, on the basis that it related to actual or contemplated litigation it was considering against its developer, pursuant to s. 55 (4) (b) of the Act.

[5] The Applicant submitted a second records request on March 31, 2021, requesting a record of owners and mortgagees, the plan for future funding of the reserve fund, board meeting minutes since March 2020, the board's resolution regarding the determination of its methods of electronic communication (the "Resolution"), and the Edison Report.

[6] The Respondent replied that Applicant could receive a copy of both the Resolution and the Edison Report – and asked her to pay a labour cost of $5 each, and deliver the payment to them with the confirmation form. The board said it had reconsidered its position on the Edison Report because it wasn't considering pursuing litigation against the developer then, and on that basis no longer objected to providing it.

[7] After some communication with the Respondent about her request, the Applicant asserted that she received an inoperable web link by email from Trademark on May 6, 2021, so she then authorized a direct deposit to Trademark's bank account that day, and notified their managers – attaching a copy of the bank deposit slip that showed the account number and $10 paid. However, the records were not provided.

[8] The Applicant submitted a third records request on May 22, 2021, which was fundamentally a re-submission of a portion of the second request, i.e., requesting

Board meeting minutes since March 2020. The response was different this time. The Respondent's counsel at the time replied to the May 22, 2021, Request for Records by a July 19, 2021, letter to a lawyer that the Applicant had retained for other matters (but not respecting records requests issues). The Respondent acknowledged during this hearing that the letter was not a formal Board's Response to Request for Records as prescribed by the Act, but believed it was best to have its counsel respond to the request, given the parties' history.

[9] In the July 19, 2021, letter, the Respondent stated that its board had again reconsidered its position on the Edison Report during a May 31, 2021 meeting, and reclassified it as litigation-privileged, as it was again contemplating litigation against the developer. It also submitted during this hearing that it had previously assumed the Applicant no longer wanted the Edison Report or the Resolution because it didn't receive payment in any accepted method, nor was it aware any payment had been deposited to its bank account. In the letter, counsel stated that the Respondent would leave the Applicant a $10 cheque for pick-up at the site office, and she was to submit a $5 cheque in return to receive the Resolution. The letter also stated:

> …
> With respect to payments for records requests, you are not permitted to direct deposit to Trademark's bank accounts. You must provide the payments in accordance with the directions of the Board and Trademark, namely a cheque payable to the Condominium and delivered to Trademark. The Condominium was not aware that you deposited the funds until you recently advised of such. It is important that you use the directed methods to ensure the funds are properly recorded in the Condominium's records. Trademark will issue a cheque to return the funds to you and you will need to provide a cheque payable to the Condominium. The cheque will be available for pick-up from the site office. …

[10] Regarding the board minutes, The Respondent acknowledged during this hearing that its board actually approved the minutes for its September 9, 2020, February 28, 2021, and March 3, 2021, board meetings during the May 31, 2021 board meeting. The Respondent submitted that it failed to inform the Applicant of this at the time because of a miscommunication with its counsel.

[11] The Respondent stated during the hearing that the Applicant attended Trademark's head office on August 19, 2021, to drop off a cheque for $10, purportedly to receive both the Edison Report and the Resolution. The Respondent did not provide either record to the Applicant, as it asserted she had once again failed to follow instructions and provide the proper payment.

[12] The Applicant completed a fourth records request (dated September 24, 2021, but

actually submitted October 3, 2021), in which she again requested board meeting minutes since March 2020. She stated that the delay occurred because her emails to Trademark were blocked, and registered mail couldn't be delivered. The Respondent had retained new counsel by this time, who delivered a Board's Response to Request for Records and the approved board meeting minutes from March 2020 through September 2021 by email to the Applicant on November 2, 2021.

[13] The Respondent submitted that the Applicant never picked up the $10 cheque from the site office, so the building manager slid the cheque through her unit door on November 10, 2021.

[14] A series of issues arise from the chronology. The Applicant requests copies of the Edison Report and the Resolution. She stated that the Respondent changed its mind about the Edison Report based on no new information, and it had been dithering about pursuing litigation for over four years since the discovery of serious building defects in 2016/17. The Applicant further challenged that the meeting minutes provided are inadequate, and seeks a penalty for the way the minutes were provided.

[15] The Respondent asserts that it already provided the Applicant with all of the records to which she is entitled, except for the Resolution, which it is willing to provide upon the Applicant's delivery of the $5 payment by an accepted method. The Respondent asserts that the Edison Report relates to actual or contemplated litigation, and is accordingly exempt from production pursuant to s. 55 (4) (b) of the Act. Finally, the Respondent asserts that its board meeting minutes were adequate, as minutes are not intended to be a word-for-word transcription of discussions, but rather a general summary of the meeting.

[16] The issues I have been asked to determine are:

- Is the Applicant entitled to examine or obtain copies of the Edison Report?
- With respect to providing a copy of the Resolution, is the Respondent entitled to charge the Applicant a fee and to prescribe the method by which payment must be made?
- Did the Respondent fail to provide its board meeting minutes from March 2020 through September 2021 in a timely manner in accordance with the Act?
- Are the Respondent's records 'adequate'?
- Is an award of costs and/or a penalty appropriate in this case?

RESULT

[17] The Applicant is entitled to production of the Resolution, for which the Respondent is entitled to charge the $5 fee. However, the Applicant is not entitled to production of the Edison Report, and I have determined that the meeting minutes were substantively adequate. I am ordering that the Respondent pay the Applicant a $750 penalty for its deemed refusal to provide the requested meeting minutes as of June 21, 2021. The Applicant is entitled to her $200 Tribunal filing fees, but neither party is entitled to costs beyond that.

EVIDENCE & ANALYSIS

Issue 1: Is the Applicant entitled to examine or obtain copies of the Edison Report?

[18] The Applicant stated she became aware of the Edison Report because it was quoted at a September 2017 board meeting and asserted that the Edison Report detailed building deficiencies with significant repair costs (e.g., flashing, stucco, and caulking).

[19] The Respondent submits that s. 55 (4) (b) of the Act allows a condominium corporation to refuse to provide records relating actual or contemplated litigation – which s. 1 (2) of Ontario Regulation 48/01 (the "Regulation") defines as "any matter that might reasonably be expected to become actual litigation based on information that is within a corporation's knowledge or control." The Respondent asserted that this Tribunal stated in *Zamfir v. York Condominium Corporation No. 238* (2021 ONCAT 118) that records merely need to contain information relating to actual or contemplated litigation.

[20] The Respondent asserted that it was contemplating litigation against its developer and other parties responsible for the construction of the condominium, and the Edison Report discusses the building's construction and its deficiencies. The Respondent stated that even though it changed its position over time about the Edison Report, it had provided sufficient reasons for that reconsideration.

[21] The Respondent also submitted that the Applicant improperly obtained any knowledge she had about the Edison Report, as she allegedly obtained it by removing redactions on electronic documents it had previously provided her.

[22] On a plain reading of s. 55 (4) (b) of the Act, taking s. 1 (2) of the Regulation into account, a determination of whether or not a record relates to contemplated litigation must be made with reference to information the board possessed when

the inquiry was made. It is not unreasonable that a record might relate to contemplated litigation at one time, and at another time might not, and that changes in opinion are possible.

[23] I accept that the Respondent changed its mind and determined that litigation was probable on May 31, 2021 – so as of that time, it could reasonably rely on s. 55 (4)(b) to refuse to provide the Edison Report to the Applicant. I have no basis to doubt that the Respondent, at the very least, genuinely contemplated litigation against its developer. I do not accept that the Respondent continued to be bound by its response to the second records request (i.e., in which it was prepared to provide the Edison Report), in the absence of having actually provided the record.

[24] Notwithstanding this determination, I note that it takes little effort to see how this sequence of developments could have confused or frustrated the Applicant.

Issue 2: With respect to providing a copy of the Resolution, is the Respondent entitled to charge the Applicant a fee and to prescribe the method by which payment must be made?

[25] The Applicant argued that an "Agreement to Receive Notices Electronically" requires an enabling resolution, and the Resolution should have provided to her without charge. The Respondent asserted that it has never refused to provide a copy of the Resolution, but it is not a core record of the condominium, and pursuant to ss. 13.3 (8) and (9) of the Regulation, it can charge a reasonable fee reflecting its actual costs. It submitted that the $5 fee was reasonable.

[26] The Respondent further asserted that it can specify how such payment must be made, and Trademark's current policy is to only accept exact payments by cash or cheque, so that it can keep accurate records and properly apply payments. The Respondent stated that it was willing to provide the Applicant a copy of the Resolution as soon as the $5 was delivered to it properly.

[27] The Applicant submitted that the Respondent has no published policies or procedures on records management, and noted that its managers accept direct deposits for monthly unit fees which is how she pays. She provided evidence that in 2019 the Respondent had identified three permitted methods of payment – cash, cheque, and Visa. She provided further evidence of a $10 direct deposit to Trademark on May 6, 2021, and then a $10 cheque she provided to Trademark dated August 19, 2021.

[28] The Respondent stated that one of its employee's emails was hacked on May 6, 2021, but that it never advised the Applicant to directly deposit funds into

Trademark's bank account. It argued that the only way an owner could deliver funds was by cash or cheque – the Visa option had been removed in early-2020.

[29] The Respondent asserted that because it hadn't received any payments from the Applicant by an accepted method, nor was Trademark aware any payment had been deposited to its bank account, it assumed the Applicant no longer wanted the Edison Report or the Resolution. It stated that the Applicant makes her monthly common expense payments through pre-authorized payments, which differ from direct deposits.

[30] The Regulation entitles a condominium corporation to charge reasonable fees for providing access or copies of non-core records to owners. I accept that the Resolution is not a core document, and that the $5 amount was reasonable.

[31] However, I do not accept that the Respondent can withhold providing the Resolution to the Applicant after she demonstrably made two attempts to pay them – once by direct deposit (May 6), and later by cheque (August 19). Nothing in the Act or Regulation supports the Respondent's position that it was appropriate to continue denying the Applicant copies of the Resolution, and exacerbate their existing dispute over what amounted to an administrative inconvenience. The Act and Regulation are silent about how such payments must be made, but are clear about the obligation upon condominium corporations to provide approved records when the requisite payments are made. None of the listed exceptions relate to how an owner pays.

[32] A condominium manager's policies or procedures do not negate a condominium corporation's responsibilities under the Act. Trademark's insistence on a particular payment method for providing records was an administrative convenience for its own benefit. The policy might have been reasonable on its own, but it did not carry the weight of law – and a corporate policy cannot override legislative obligations, which is essentially what the Respondent was arguing for here.

[33] The Applicant's interest in the records was clear, as was the evidence of her attempts to pay the fee. The money was in fact paid to Trademark accounts. And all of this was done in the shadow of a "communications protocol" that, at the very least, clearly contributed to correspondence between the parties being difficult. While I accept that Trademark might have been inconvenienced, there was probably a reasonable resolution available to the $5 overpayment, but instead the dispute was allowed to escalate.

[34] I express no opinion about the communications protocol itself – that is outside of this Tribunal's jurisdiction. I simply reiterate that a corporate policy cannot abridge

a condominium corporation's legal obligations – of which an owner's right to request and receive records under s. 55 of the Act is one.

Issue 3: Did the Respondent fail to provide its Board meeting minutes from March 2020 through September 2021 in a timely manner in accordance with the Act?

[35] The Applicant asserted that the Respondent did not prepare and finalize the requested minutes until after she had to make four records requests over the course of a year, and filed her application with the Tribunal. She stated that she had to continue making requests every few months since the Respondent wouldn't identify if any Board meetings had taken place.

[36] The Respondent acknowledged its miscommunication with its counsel that contributed to the content of the July 19, 2021 letter, but asserted that all board meeting minutes for the period between March 2020 to September 2021 have now been provided to the Applicant, which it argued actually met the required timelines, as the minutes were provided on November 2, 2021, within 30 days of the Request for Records that it received on October 3, 2021.

[37] While true with respect to the Applicant's fourth records request alone, I find that assertion fundamentally misleading. The chronology is important. The Applicant sought board meeting minutes dating from March 2020 in her first request for records (November 11, 2020), as well as the Edison Report. She received a reply that there were no meeting minutes to provide after March 10, 2020, as none had been approved during Covid. Thus, she submitted a second request on April 1, 2021, again requesting minutes since March 2020, and the Edison Report and the Resolution. This time, she was told she could receive both the Edison Report and the Resolution, but no further board meeting minutes had been approved. She wrote a third time the next month (May 22, 2021), re-requesting board meeting minutes since March 2020 – following which she was told in the July 2021 letter that the board had changed its mind about her entitlement to the Edison Report, and that there were still no board meeting minutes approved. Evidence in this case established that the board meeting minutes had actually been approved on May 31, 2021, at which time they became formal records of the corporation.

[38] Given this history, the Respondent should have provided the approved board meeting minutes to the Applicant as soon as possible after May 31, 2021. Regardless of why this did not happen – the Respondent proffered inadvertence as its only explanation – the Respondent's July 2021 communication to the Applicant incorrectly asserted that the meeting minutes had not been approved. I find this constituted an effective refusal to provide the records to which the

Applicant was entitled.

[39] Ironically, the Respondent asserted several times during this proceeding that the Applicant should have followed its formal rules for making payments, given that she was expecting them to follow the formal rules for returning Board Responses to Requests for Records. With respect, there was a significant difference – Board Responses to Requests for Records are legislated requirements under provincial legislation; the Respondent's preferences for how it wishes to administratively receive payments are not.

Issue 4: Are the Respondent's records 'adequate'?

[40] The final substantive issue in this case was the Applicant's displeasure with the substance of the meeting minutes provided. She stated that the Act requires minutes to be adequate "to document a board's business transactions and to show how the Corporation's business affairs are controlled, managed and administered", with "sufficient detail to allow Owners to understand what is going on in their Corporation, how decisions are being made and what the financial basis is for the decisions." She felt the minutes' major shortcoming was a lack of clarity.

[41] I will not set out all of the Applicant's arguments in detail, and note that the Respondent asserted the Applicant was relying on information she gleaned improperly from redacted records. I simply note my opinion that the quality of the Respondent's redactions was its own responsibility to ensure, and if the Applicant was able to glean information from the records provided to her, the Respondent was in a position to prevent that from happening. Nonetheless, I am also not compelled to give strong weight to the information submitted, much less describe it herein.

[42] The Applicant referenced *Mawji v. York Condominium Corporation No. 415* (2021 ONCAT 72), which stated:

> [26] … as noted in Rahman v. Peel Standard Condominium Corporation No. 779 (2021 ONCAT 32),
>
> > … 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.
>
> [27] 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.

[43] The Applicant asserted that the minutes were not business-like corporate records. She stated that the severity/extent of building defects, proposed repairs, and financing were omitted, and transactions were simply noted as “done deal”, “in process”, or “being reviewed”.

[44] She asserted that the board was commissioning and reviewing reports, and making important decisions with significant repair costs. She referenced *Jasper Developments Corp. v. York Condominium Corporation No. 82* (2022 ONCAT 4):

> [52] … the evidence is that the board made significant financial decisions which should have been properly minuted. Therefore, I find that the Respondent’s failure to produce and keep the minutes of its board meetings to be an effective refusal to provide records without reasonable excuse and a penalty is warranted.

[45] The Applicant stated that the Respondent’s channels of communication are unusually limited or absent, and therefore minutes are a particularly important source of information, especially in her situation. She said the minutes totaled five lines of text that did not clarify a proposed repair project, nor report any rationale for its significant escalation in costs.

[46] The Respondent submitted that its board meeting minutes are accurate and adequate. It stated that the minutes were clear, easy to read, and sufficiently detailed the decisions made, and further that there is no standard format for how minutes should be kept. It referenced the Tribunal’s decision in *Rahman v. Peel Standard Condominium Corporation No. 779* (2021 ONCAT 32), which held that “the Act does not impose a standard of perfection … minutes are not required to be a verbatim account of a meeting”.

[47] I am satisfied that the records were adequate for their purposes. While not containing details to the level the Applicant would prefer, they sufficiently meet the adequacy test for information in minutes. There is no obligation to provide the granular level of detail that the Applicant was seeking in this case. Board meeting minutes are corporate documents intended to convey the nature of discussions and decisions that were made, and I add that minutes are not the only way condominium corporations can communicate important information to their residents.

Issue 6: Is the award of costs and/or a penalty appropriate in this case?

[48] The Applicant has requested a penalty be imposed against the Respondent pursuant to s. 1.44(1)6 of the Act, which states:

Orders at end of proceeding

1.44(1) Subject to subsection (4), in a proceeding before the Tribunal, the Tribunal may make any of the following orders:

…

6. An order directing a corporation that is a party to a proceeding with respect to a dispute under subsection 55(3) to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under that subsection if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection.

[49] The Applicant referenced *Martynenko v. Peel Standard Condominium Corporation No.935* (2021 ONCAT 125):

> [48] This is not a case where the Respondent expressly refused to provide requested records. It is a case, however, of effective refusal. Several cases before this Tribunal have found effective refusal even where the records have ultimately been provided, particularly where there has been an extensive delay in the provision of records, or other issues (such as charging excessive fees or creating other barriers to delivery of the records) that suggest a negligent or resistant attitude by the condominium corporation board or management with respect to the condominium's duties under the Act relating to requests for records.
>
> [49] In this case, I find that the Respondent did effectively refuse to provide virtually all the records requested by the Applicant. Such effective refusal is indicated by both the unjustified delays of the Respondent, and its carelessness respecting the accuracy of its responses and demands for fees for the records.

[50] She further referenced *Chai v. Toronto Standard Condominium Corporation No. 2431* (2019 ONCAT 45):

> [79] One of the purposes of assessing a penalty is to deter future similar action. O. Reg. 48/01 sets out specific time frames for the provision of records in response to Requests for Records. It should not be without consequence if a corporation fails to meet these time frames without the provision of valid reasons.

[51] The Respondent asserted that it had reasonable excuses for not providing the Edison Report or Resolution, and for not providing the requested board meeting minutes until November 2, 2021, which it asserted (although, I have found, incorrectly) was within the prescribed timelines under the Act.

[52] Section 1.44 (1) 6 of the Act authorizes this Tribunal to direct a condominium corporation to pay a penalty if it refuses to allow a person to examine or obtain copies of records they are entitled to, without reasonable excuse. I have found that

the Respondent effectively refused to provide the Applicant the requested records as of June 21, 2021 – i.e., 30 days after her third records request, dated May 22, 2021. Such records were approved and available as of May 31, 2021, but the Respondent explicitly told the Applicant in July 2021 that such records were not available, and it did not actually provide the records until the Applicant submitted a fourth records request in October 2021.

[53] A penalty is appropriate in these circumstances. The strained communication between the parties – which the Respondent played a part in – did not excuse the Respondent's failure to meet its legislated responsibilities under the Act. The Applicant's Requests for Records were clear, as were the Respondent's obligations. I set the penalty at $750.

[54] With respect to costs, sections 1.44(1) and (2) authorize the Tribunal as follows:

> *Orders at end of proceeding*
>
> 1.44(1) Subject to subsection (4), in a proceeding before the Tribunal, the Tribunal may make any of the following orders:
>
> …
>
> 4. An order directing a party to the proceeding to pay the costs of another party to the proceeding.
>
> 5. An order directing a party to the proceeding to pay the costs of the Tribunal.
>
> (2) Despite section 17.1 of the *Statutory Powers Procedure Act,* an order for costs made under paragraph 4 or 5 of subjection (1) shall be determined in accordance with the rules of the Tribunal.

[55] Rules 48 and 49 of the Tribunal's Rules, effective January 1, 2022, state as follows:

> COSTS
>
> 48. Recovery of Fees and Expenses
>
> *Reimbursement of CAT Fees Following a Final Decision*
>
> 48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.
>
> *Reimbursement of Legal Costs and Disbursements at any stage*
>
> 48.2 The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. However,

where appropriate, the CAT may order a Party to pay another Party all or part of their costs, including costs that were directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

…

49. Compensation for Time Generally Not Recoverable

49.1 The CAT generally will not order one Party to pay another Party compensation for time spent related to the CAT proceeding.

[56] The parties were split in their success in this matter. The Applicant is entitled to her Tribunal filling fees of $200, pursuant to Rule 48.1 of the Tribunal's Rules of Practice.

[57] The Applicant also requested the reimbursement of her CAT fees, registered mail charges, and legal costs. She sought diverse forms of relief, including a "token payment of $2,000" in respect of a special assessment for repairs, and the elimination of the Respondent's "communication protocol". The latter claims are simply not reasonably within the Tribunal's jurisdiction under s. 1.44 (1) of the Act, and therefore will not be considered

[58] The Applicant sought $11.36 for registered mail costs, which appears to have been a result of the communications protocol. I decline to award these costs.

[59] The Respondent, conversely, argued that there were exceptional reasons to order the Applicant to pay its legal fees under the Tribunal's Rules of Practice. It submitted that the Applicant had lengthened these proceedings over an extremely narrow matter, and made submissions beyond the Tribunal's jurisdiction. It sought substantial indemnity of its legal costs, on the basis that the Applicant refused to limit her submissions to matters properly before me, and referenced *Kamyshan v. York Condominium Corporation No. 465* (2020 ONCAT 46), wherein it asserted much of that application focused on issues that weren't about the requested records.

[60] Both parties contributed to additional delays or expenses in this matter. It is true that a number of the Applicant's submissions related to relief that the Tribunal could not grant, and included numerous statements that were more in the nature of speaking directly to the Respondent, rather than providing argument or evidence in support of her positions on the issues in dispute. However, I note again that the Applicant was self-represented and less familiar with tribunal processes. I reject the Respondent's assertion that there were no meaningful issues to be tried, and am not satisfied that there are exceptional reasons to warrant an award of legal

costs to the Respondent.

[61] The Respondent was not without fault in its approach, either. It engaged in a course of communications with the Applicant that left her feeling compelled to submit four requests for records – in many cases substantively the same, and in the final case literally owing to a dispute over $5. Its counsel also sent the July 19, 2021 letter to a lawyer who represented the Applicant on condominium matters unrelated to records requests.

[62] The Applicant was self-represented in this matter, but seeks legal costs of $7,745.00, apparently related to legal costs incurred in relation to other ongoing matters against the Respondent, and not regarding these records requests. I accept that that the July 19, 2021 letter was sent to her counsel for the other matters; however, the fact is the Applicant was self-represented in this matter, and therefore I find no basis under the Rules of Practice to award her legal costs. In sum, I am not satisfied that there are any exceptional circumstances to award further costs to either party beyond the $200 filing fees paid by the Applicant.

[63] I acknowledge that the Respondent remains entitled to the $5 it sought for the Resolution, for which it never accepted payment to date. It is entitled to deduct that amount from the penalty it must pay.

ORDER

[64] The Tribunal orders that within 30 days of the date of this Order, the Respondent must:

1. Provide the Applicant with a copy of the Resolution.

2. Pay the Applicant $945 – being the sum of the $750 penalty and the Applicant's $200 Tribunal filing fee, less the $5 fee for providing the Resolution.

Benjamin Drory
Member, Condominium Authority Tribunal

Released on: April 11, 2022