

### **Corrected Decision**

This decision was amended on June 13, 2022 to correct typographical errors in accordance with Rule 46 of the CAT's Rules of Practice.

## **CONDOMINIUM AUTHORITY TRIBUNAL**

**DATE:** June 1, 2022

**CASE:** 2021-00072R

**Citation:** Harder v. Metropolitan Toronto Condominium Corporation No. 905, 2022 ONCAT 58

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

**Member:** Noeline Paul, Member

**The Applicant,**  
Karen Harder  
Self-Represented

**The Respondent,**  
Metropolitan Toronto Condominium Corporation No. 905  
Represented by Greg Marley, Counsel

**Hearing:** Written Online Hearing – November 9, 2021 to May 2, 2022

## **REASONS FOR DECISION**

### **A. INTRODUCTION**

[1] This Application was brought to the Condominium Authority Tribunal (“CAT”) under the *Condominium Act, 1998* (“Act”). The Applicant is a unit owner of the Respondent, which is a residential condominium. She submitted a request, dated February 12, 2021, to obtain records. Some of the requested records were delivered to the Applicant by the Respondent prior to the start of the CAT Stage 3 hearing and the remainder were to be provided to the Applicant upon payment of fees. The Applicant disputed the need to pay fees to access records in this case and, where fees are required to be paid, she asserted that the Respondent's estimate is not in compliance with the Act. Both parties requested an order of costs.

[2] The issues to be decided in this Application are as follows:

1. Is the Respondent permitted, under the Act, to charge a fee for access to

proxies?

2. Is the amount of fees estimated by the Respondent reasonable?
3. Should any costs and/or penalty be awarded?

[3] For the reasons below, I find that the Respondent is entitled to charge a fee to the Applicant for access to proxies. I find that the hourly labour rate of \$30 charged by the Respondent is reasonable, but this amount shall be adjusted in the event that the rate they incur is less than the \$30 per hour. The Respondent must also change their printing and copying costs in the estimate to \$0.012 per page. Finally, I conclude that the Applicant should be reimbursed her \$200 CAT application fee and that further costs and a penalty are not warranted.

**B. BACKGROUND**

[4] The Applicant submitted a request dated February 12, 2021, (the “Request”) to obtain records related to the Respondent’s 2021 AGM election, which was held using GetQuorum Services’ virtual platform. In the prescribed government form, the Applicant indicated that she was seeking access to records under both the ‘Request for core records’ and ‘Request for non-core records’ sections of the prescribed form. Under the ‘Request for core records’ section, the Applicant ticked off the checkbox for ‘Additional records specified in a by-law of the corporation’ and specified that she was requesting a vote tally for two Board positions, including electronic/paper proxies and votes at the meeting. The date for these records is noted as February 10, 2021. Under the ‘Request for non-core records’ section of the prescribed form, the Applicant again listed the AGM vote tally for two Board positions, along with the date of February 10, 2021.

[5] On March 3, 2021, the Respondent provided the Applicant with the prescribed response form, along with a letter and an estimate of fees, in response to the Request. The Respondent indicated in the prescribed form that they would provide the Applicant with all voting records, including proxy forms, from the February 10, 2021, AGM by electronic delivery. The Respondent further indicated in the letter and estimate that they would charge a fee of \$30 per hour and \$0.25 per photocopy, plus HST for non-core records. The estimate specifically lists a breakdown of the fees and copying/printing charges as follows:

3 Paper Proxies  (copied, redacted and scanned)	9 pages	0.10 hours x \$30.00 =	\$3.00
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177 Virtual Proxies (printed, redacted and scanned to digital files)	708 pages	4 hours x \$30.00 =	\$120.00
0.25 per page x 717 =			\$179.25
		Sub-total	\$302.25
		HST 13%	39.29
		<b>Total:</b>	<b>\$341.51</b>

- [6] Prior to the start of the CAT hearing, the Respondent provided the Applicant with a USB stick with ballots. The outstanding records in this case are the electronic proxies and paper proxies. The Applicant disputes the fees related to these records.
- [7] The CAT hearing was conducted using the CAT's online dispute resolution platform with evidence provided through supporting documents and witness sworn statements. The Applicant and two witnesses, Mr. Pedro Berrios and Ms. Cindy Robin, provided testimony. Mr. Berrios, who was the Applicant's witness, is another unit owner of the Respondent. Ms. Robin, who was the Respondent's witness, is the administrative assistant of their property manager. Closing submissions were received from both parties.

### **C. ANALYSIS**

- [8] As noted above, the Applicant disputes the fees that the Respondent has charged for access to the requested electronic and paper proxies from the February 2021 AGM. In her closing submissions, the Applicant took the position that she should not be required to pay a fee for access to proxies because she contends that proxies are core records. The Applicant based her argument on the fact that she made her request for the proxies under the 'Request for core records' section of the prescribed form, where she ticked of the checkbox for 'Additional records specified in a by-law of the corporation'. The Applicant argued that proxies are noted in the Respondent's By-law No. 6 and, therefore, should be considered a core record. In addition, the Applicant asserted that she indicated in her Request that she would like to access the records electronically and, therefore, there should not be a charge for this type of access. She further disputed the amount of the fee estimate for preparing and accessing the records.

[9] In contrast, the Respondent has argued in their closing submissions that proxies are non-core records and these proxies require redaction prior to providing them to the Applicant. The Respondent further asserted that there are costs associated with preparing proxies for review, specifically noting that the proxies are printed and then redacted, and this practice gives rise to copying costs. The Respondent argued that they do not alter any documents electronically in order to avoid allegations of tampering and, therefore, their practice of printing and then redacting proxies is reasonable. They maintained that their estimate is reasonable, with the exception of their printing and copying rate, which they agreed to reduce to \$0.20 per page.

**Issue 1: Is the Respondent permitted, under the Act, to charge a fee for access to proxies?**

[10] The first point I will turn to is whether the Applicant is correct in her assertion that proxies are core records that she can access without cost.

[11] Core records are defined in section 1(1) of Ontario Regulation 48/01 (the “Regulation”). This section provides a list of records, held by a condominium corporation, that are considered core records. Proxies are not specifically listed in section 1(1) as a core record.

[12] Section 1(1) of the Regulation includes a further catch-all clause for records in the by-laws of a condominium corporation. This phrase stipulates that any other record specified as a core record in a by-law is also considered to be a core record. In order for a record to fall under this provision of the Regulation, a condominium corporation’s by-law should clearly specify that the record is a core record. The regulatory provision states as follows:

“core record” means any of the following records of a corporation:

...

10. Any other record that a by-law of the corporation **specifies as a core record**; [Emphasis mine].

[13] The Applicant’s position is that proxies are considered core records because they are specifically referenced in the Respondent’s By-law No. 6. While the Applicant is correct that By-law No. 6 includes proxies as one of the records that the Respondent is required to keep and maintain, this by-law does not specify proxies as core records. This important requirement is missing from the language of the by-law, which was signed in December 2015. As I have previously noted in

another case<sup>1</sup> where I considered a similar argument related to this same by-law, the Respondent's By-law No. 6 predates the current version of the Act, so this by-law could not have been intended to define *core* records for the purposes of the current legislative regime. As such, I find that the evidence provided by the Applicant does not establish that the Respondent's by-laws specify proxies as core records. The significance of the distinction between core and non-core records in this case is that the Applicant can expect to pay fees associated with accessing proxies.

- [14] For the purposes of clarity related to any potential future request for records by the Applicant, I note that simply listing a record under the 'Request for core records' section of a Request for Records form also does not cause the record to become a core record. The Condominium Authority of Ontario ("CAO") has strived to assist parties in clarifying which records are core and non-core by providing a clear guide that is available on the CAO's website. This guide, entitled "CAO Guide to Condominium Corporation Records", is intended to assist individuals like the Applicant, who are self-represented and may need further guidance on issues related to accessing condominium records. For the purposes of potential future requests, I strongly urge the Applicant to consult the CAO materials so that she is aware of potential costs that she will likely need to pay when seeking access to records.

## **Issue 2: Is the amount of fees estimated by the Respondent reasonable?**

- [15] With respect to the amount of the Respondent's estimated fees for access to records, the Respondent has indicated, in their correspondence of March 3, 2021, a labour charge of \$30 per hour and a printing/copying charge of \$0.25 per page. The Respondent estimated 4.1 hours to prepare 177 virtual proxies and 3 paper proxies for a total labour estimate of \$123, not including applicable taxes. The preparation involved in this labour is printing, redacting and scanning of records.
- [16] In her closing submissions, the Applicant argued that she should be able to access proxies electronically and, therefore, without printing or copying charges. Further, the Applicant's position regarding estimates related to labour and printing costs is that these estimates should be based on actual costs. She argued that the Respondent's labour charge is \$25 per hour, including HST and their printing costs are \$0.012 per page for copying/printing. The Applicant disputed the extent of labour involved in producing redacted records and also noted that section 13.3(8)

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<sup>1</sup> *Harder v. Metropolitan Toronto Condominium Corporation 905*, 2022 ONCAT 18.

of the Regulation sets out a maximum printing cost of \$0.20 per page.

[17] As indicated previously, the Respondent's position is that they do not redact proxies electronically in order to avoid allegations of tampering and, therefore, they must print and then redact proxies. The Respondent argued that their labour charge of \$30 per hour and estimate of 4.1 hours of labour time are reasonable, but they agreed to adjust their printing/copying estimate to \$0.20 per page. They do not agree that their hourly labour rate should be reduced, relying on a CAT's previous decision<sup>2</sup>, and likewise, they do not agree that their printing charges should be lowered to \$0.012 per page. The Respondent argued that the lower printing/copying rate does not cover the rental of the machine or other maintenance costs.

[18] The fees for access to records is addressed in section 13.3 of the Regulation, which states as follows:

**13.3 (8)** The fee payable for the request shall be calculated in accordance with the manner set out in the board's response, subject to the following conditions:

1. The fee shall be a reasonable estimate of the amount required to reimburse the **corporation for the actual labour and delivery costs** that the corporation incurs for making the record requested available for examination or for delivering a copy of the record, which costs shall include the printing and photocopying charges established under paragraph 3 and the actual labour costs that the corporation incurs during the examination.
2. The fee shall be reasonable.
3. The board shall establish a charge of no more than 20 cents per page for printing or photocopying.

...

(9) Subject to subsection (8), the fee payable for the request may vary depending on the following factors:

...

4. Whether the corporation is required to redact the record requested to remove any part that it has determined that it will not allow the requester to examine or of which it will not allow the requester to obtain a copy.

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<sup>2</sup> *Harder v. Metropolitan Toronto Condominium Corporation 905*, 2022 ONCAT 18.

5. The time that the board estimates spending on responding to the request. O.  
Reg. 180/17, s. 17 (1).

[Emphasis mine].

[19] In terms of the estimate of labour costs, I have previously confirmed in a recent case involving this Respondent that \$30 per hour is a reasonable labour rate<sup>3</sup>. This decision is in line with CAT decisions in matters where basic clerical work is conducted<sup>4</sup>. I am confirming again here that this is a reasonable rate for an estimate. However, I must highlight that the law allows the condominium corporation to only be reimbursed for actual labour costs. Therefore, if the labour costs are less than \$30 per hour for work to complete a request for records, the condominium corporation is required to adjust the estimate accordingly. In *Sava v. York Condominium Corporation No. 386*<sup>5</sup>, the CAT found that \$24 per hour was a reasonable rate for similar work. Conversely, depending on the nature of the work to be done, specialized knowledge may be required that warrants an increased rate<sup>6</sup>. This assessment must be taken on a case-by-case basis and will be reflective of the relevant circumstances at the time. For clarity, while the Respondent can expect to be reimbursed for actual labour costs, they should not be profiting from the fees charged to requestors in completing requests for records.

[20] The evidence in this case is that the property management company is paid \$25 per hour for the additional work by the administrative assistant to complete the request for records and to prepare records for disclosure. It is not clear to me, based on the evidence, that there are additional fees paid by the Respondent to the property management company, or any other entity, to complete the work necessary for the records request. In her testimony, Ms. Robin stated that the Respondent board had approved a labour charge of \$30 per hour in May 2020 based on the amount deemed reasonable by CAT. This evidence does not confirm that the Respondent will be charged \$30 per hour for work related to the request for records in this case.

[21] For the purposes of an estimate in this case, the Respondent can maintain the amount of \$30.00 per hour for labour costs but this amount should be adjusted as described above if the labour costs are ultimately less. It is conceivable that work related to a request for records, where redactions are required or multiple inquiries

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<sup>3</sup> *Harder v. Metropolitan Toronto Condominium Corporation 905*, 2022 ONCAT 18.

<sup>4</sup> *Shaheed Mohamed v. York Condominium Corporation No. 414*, 2018 ONCAT 3.

<sup>5</sup> 2019 ONCAT 8 at para. 31.

<sup>6</sup> *Shaheed Mohamed v. York Condominium Corporation No. 414*, 2018 ONCAT 3 at para. 38.

are made, may necessitate the skills and consultation of individuals other than the administrative assistant. The evidence in this case related to correspondence and email inquiries underscores that a request for records may not be as straightforward as initially presumed. Notwithstanding that, if the Respondent expects to be charged less than \$30 per hour by their condominium management services provider to complete requests for records, the Respondent should adjust their estimate for accuracy. I recognize that the Applicant has concerns about the Respondent operating in good faith and, for that reason, I have set out a requirement in the Order below that the Respondent provide a statement confirming the hourly rate that they have paid to complete this Request.

[22] With respect to the time that the Respondent has estimated to prepare the records, the Applicant has argued that this time is not accurate. The Respondent has estimated 4.1 hours to prepare the records and this includes redactions of 177 virtual proxies and 3 paper proxies. The Applicant has also argued that the Respondent's estimate of the extent of their labour costs is unnecessarily inflated because they are opting to scan printed redacted documents so that electronic copies of the records are available for access. The Applicant asserted that this final step is not needed and she should not bear the costs of the Respondent's decision to do this. Since the Applicant has requested electronic copies of the proxies, I find that it is reasonable for the Respondent to use this approach. I also find that this amount of time is reasonable for the purposes of an estimate for the work in this case. This amount of time is not out of line with what has been decided in other CAT cases<sup>7</sup>.

[23] In terms of the printing and copying charges in this case, the Applicant has argued that she should not pay printing or copying charges for the records that are held electronically and she disputes the need to print and then redact proxies. The Applicant has also offered several alternatives to the approach that the Respondent intends to use for redaction, and these include electronic redaction. First, I confirm that proxies must be redacted prior to the Applicant's access of these records. Second, I note that Ms. Robin testified that she does not have the software to electronically redact the records and that she has never done this before. The Respondent has taken the position that they do not want to pursue electronic redaction due to concerns around tampering with proxies. In light of this evidence, I am satisfied that the Respondent can charge printing and copying costs so that they can redact the proxies before these records are accessed by the Applicant.

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<sup>7</sup> *Sakala v. York Condominium Corporation No. 344*, 2022 ONCAT 11.



- [24] While the Applicant would like the Respondent to use more efficient and cost-effective means for preparing records for access, I cannot require the Respondent to follow certain business practices or undertake training to learn specific computer skills. These practices are part of governance matters that are outside of the CAT's jurisdiction.
- [25] In terms of the amount of printing and copying charges estimated by the Respondent, the Applicant has argued that the Respondent's actual costs are \$0.012 per page. In contrast, the Respondent argued in their closing submissions that this rate does not cover the rental of the machine or other maintenance costs. I am not satisfied that the maximum rate of \$0.20 per page reflects the Respondent's actual printing and copying costs. The Respondent should be reimbursed for costs that it must incur in order to complete the request for records. It is not reasonable for the Respondent to offset their other expenses, such as machine rental and maintenance costs, to a requestor of records if these types of expenses would normally flow, regardless of the record request. If the Respondent would normally be required to pay the full machine rental expense, even without completing a request for records, then that should be an expense borne by the Respondent and it should not be shifted in any amount to the requestor. If the Respondent is required to pay increased machine costs for the purposes of completing a request for records, then it is reasonable to shift this increase to the requestor.
- [26] For the purposes of this case, and based on the evidence before me, I find that the rate for printing and copying charges should be set at \$0.012 per page in the estimate. Should the Respondent's actual costs change for future records requests, the Respondent can adjust the rates accordingly but must still comply with the maximum rates set out in the Regulation. As mentioned earlier, the Respondent should not be financially profiting from records requests, nor should they be offsetting their other business expenses to records request fees.

### **Issue 3: Should any costs and/or penalties be awarded?**

- [27] The Applicant has requested that she be reimbursed the filing fee costs of her CAT application, which is \$200. Further, she has also requested that a penalty be levied against the Respondent for their alleged conduct, including their alleged wilful disregard of the Act and Regulations. I have addressed these two separate requests under the subheadings below.
- [28] The Respondent does not agree that the Applicant should be reimbursed the costs of her application fee and they indicated that the Applicant was made aware that these costs were applicable prior to filing the case for Stage 3 Adjudication. In their

closing submissions, the Respondent requested that the CAT order the Applicant to pay \$2,000 to offset some of their legal costs. The Respondent did not previously raise the issue of legal costs and this issue was not canvassed during the hearing. The Respondent argued in submissions that the Applicant's pursuit of this case to the adjudication stage was unreasonable.

1. Reimbursement of CAT Application Fees

[29] The CAT may award costs to an applicant where the applicant has been successful in an application and in the appropriate circumstances, as set out in Rule 48 of the CAT Rules of Practice. The practice of the CAT has been to grant recovery of the Stage 3 application fees to an applicant when that party is successful in the case. The awarding of costs is discretionary.

[30] The Applicant paid \$200 to bring her case to Stage 3 Adjudication and she has requested that she be reimbursed her application costs.

[31] In their closing submissions, the Respondent acknowledged that the initial estimate provided to the Applicant was incorrect. Specifically, the Respondent agreed that the printing/copying costs charged should be \$0.20 per page and not \$0.25. This is a point that should, and could, have been recognized prior to the final stage of hearing. As such, the Applicant had no other remedy but to bring her case to adjudicate this matter.

[32] Based on the above circumstances, I find that the Applicant should recover the costs of her CAT application fee. Therefore, I am ordering that the Respondent pay the Applicant the amount of \$200 as set out in the Order below.

2. Penalty

[33] With respect to the Applicant's request that the CAT order a penalty against the Respondent, the Applicant argued, amongst other things, that the Respondent has charged excessive amounts for records and created unnecessary delays. The Applicant further argued that the Respondent has a history of repeated non-compliance of their obligations regarding the provision of records. In the Applicant's opinion, a penalty against the Respondent would serve as a reminder that they need to be honest in their dealings with owners to quote their actual costs and to provide records in the most timely and cost-effective manner as possible under the law. The Applicant did not specify an amount of this penalty but has left it to my discretion.

[34] Section 1.44 (1) 6 of the Act permits the CAT to impose a penalty, when

appropriate, in cases where the condominium corporation has, without reasonable excuse, refused to permit a person to examine or obtain records.

[35] I am not satisfied that there has been a clear refusal to provide records on the part of the Respondent. The issue before me primarily relates to the amount of fees listed in the Respondent's estimate. Some records have already been provided and the remainder are to be provided upon payment of the estimate. As such, I find that the Respondent has not refused to permit a person to examine or obtain records and, therefore, a penalty is not appropriate in this case.

### 3. Reimbursement of Legal Costs

[36] The CAT may order one party to pay another party's legal costs in exceptional circumstances, but this is generally not the CAT's practice. The CAT's Practice Direction: Approach to Ordering Costs, issued January 1, 2022, provides guidance regarding the circumstances in which such costs may be ordered.

[37] The Respondent has requested partial reimbursement of legal fees in the amount of \$2,000 in order to offset some of their legal costs based on the Applicant's pursuit of this case to the final adjudication stage. In their closing submissions, the Respondent takes the position that the Applicant's behaviour was irresponsible and unreasonable. They further argued that an order by CAT to pay these costs would curb such behaviour in the future.

[38] I do not agree that the Applicant's conduct during the hearing process or behaviour in pursuing her case to the final adjudication stage can be described in the manner that the Respondent depicts. As indicated above, the Applicant had legitimate concerns regarding the Respondent's estimate. While the above-noted CAT Practice Direction refers to the conduct of parties as a factor to be considered in determining whether legal costs should be ordered, I find that the Applicant's conduct does not warrant costs to be ordered against her. Further, the Practice Direction is not intended to deter individuals from pursuing legitimate concerns that fall within the CAT jurisdiction. Therefore, I am not ordering the Applicant to pay any of the Respondent's costs.

## D. CONCLUSION

[39] Based on the evidence provided in this case, I conclude that the Respondent is entitled to charge a fee to the Applicant for access to proxies and that the hourly labour rate of \$30 charged by the Respondent is reasonable, but this amount shall be adjusted in the event that the rate they incur is less than the \$30 per hour. I find that the estimate provided by the Respondent is not reasonable to the extent that

they must change their printing and copying costs in the estimate to \$0.012 per page. Finally, I conclude that the Applicant should be reimbursed her \$200 CAT application fees and that further costs and a penalty are not warranted.

**E. ORDER**

[40] The Tribunal Orders that:

1. The Respondent shall pay costs of \$200 to the Applicant within 30 days of the date of this decision.
2. The Respondent must, within 30 days of this decision, provide the Applicant with a new estimate reflecting the labour and printing costs as set out in this decision. For clarity, the hourly rate can be a maximum of \$30 and the printing/copying charges should be set at \$0.012 per page. The actual labour costs must be later adjusted if the estimate is inaccurate, as provided by the Regulation.
3. If the Applicant pays the estimate, the Respondent shall provide to the Applicant a statement that confirms the actual labour rate charged to the Respondent for the purposes of completing the Applicant's request for records. This statement should be provided in, electronic format, at the time that the Applicant is given the records.

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Noeline Paul  
Member, Condominium Authority Tribunal

Released on: June 1, 2022