

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 15, 2022

CASE: 2022-00071R

Citation: Hamid-Rajroop v. Metropolitan Toronto Condominium Corporation No. 728, 2022 ONCAT 77

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

Member: Nicole Aylwin, Member

The Applicant,

Faziah Hamid-Rajroop
Self-Represented

The Respondent,

Metropolitan Toronto Condominium Corporation No. 728
Represented by Dean McCabe, Agent

Hearing: Written Online Hearing – April 21, 2022 to June 17, 2022

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Faziah Hamid-Rajroop, is a unit owner of the Respondent, Metropolitan Toronto Condominium Corporation No. 728 (“MTCC 728”). In a records request made on March 22, 2021, Ms. Hamid-Rajroop requested from the corporation a copy of the notice of leases held by the corporation and the proxies, ballots and attendance lists for the Annual General Meeting (“AGM”) held on December 11, 2021, and the Special General Meeting (“SGM”) held on August 10, 2021, among other records. MTCC 728 responded to the request by providing some the requested records to Ms. Hamid-Rajroop; however, it did not provide the notice of leases, claiming that it had not received any notices, and cited fees of \$453 to produce the records related to the AGM and SGM.

[2] Ms. Hamid-Rajroop alleges that MTCC 728 does have units that are leased and therefore it should have a record of notices of leases to provide. It is her position that if MTCC 728 has no such notices to provide then they have failed to keep adequate records in relation to s. 83 of the *Condominium Act, 1998* (the “Act”). She also disputes the estimated fee that MTCC 728 has quoted her to produce records related to the AGM and SGM.

- [3] Ms. Hamid-Rajroop has asked the Tribunal to impose a penalty of \$5000 on the condominium for refusing to provide her with records without a reasonable excuse and award her costs in the amount of \$200 to cover her Tribunal filing fees.
- [4] For the reasons set out below, I find that that MTCC 728 has failed to keep adequate records under the Act, and as such cannot provide Ms. Hamid-Rajroop with the records she is entitled to under s. 55 (1) of Act, which in this case amounts to a refusal of records without a reasonable excuse. I further find that some of the fees estimated by MTCC 728 to provide the proxies, ballots and attendance lists are not in accordance with the Act, and order MTCC 728 to provide these records to Ms. Hamid Rajroop for a total fee of \$182.40. Finally, I find that a penalty is appropriate in this case and order MTCC 728 to pay a penalty of \$750 to Ms. Hamid-Rajroop and to pay her costs of \$200 for Tribunal fees.
- [5] Finally, it is evident from both parties' submissions that there is an ongoing acrimonious relationship between the parties. This resulted in an attempt to argue some issues that were not properly before me. While I have reviewed all the evidence and submissions provided to me, I only refer to that which is most relevant to the issues to be decided.

B. ISSUES & ANALYSIS

Issue no. 1: Has MTCC 728 failed to keep adequate records under the Act?

- [6] In March 2021, Ms. Hamid-Rajroop submitted a records request to MTCC 728; one of the records requested by Ms. Hamid-Rajroop was the record of notices the corporation had received under s. 83 of the Act. In its response to this request MTCC 728 indicated that Ms. Hamid-Rajroop could not examine or obtain a copy of this record because it had not received any "Form 5's".
- [7] On May 1, 2021, Ms. Hamid-Rajroop sent a follow up email to the board and condominium management indicating that she had just noticed her request for the notices of leases had been denied with the comment of "No Form 5's". She asked for further clarification on this refusal as her review of the Condominium Authority of Ontario ("CAO") website did not reference any "Form 5s".
- [8] On May 5, 2021, the condominium manager replied to Ms. Hamid-Rajroop's email stating that, "[a]ll of the documents that you have requested, that we have available, have been provided to you".
- [9] Before proceeding further, it is worth clarifying what a "Form 5" is and its relationship to the Act. Prior to the amending of the Act, a Form 5 was a form

appended to that Act that unit owners could fill out to notify the corporation that they had leased their unit under s. 83 of the Act. These form numbers no longer apply and as I discuss below there is currently no mandated form that a unit owner must fill out when they notify the corporation of a leased unit.

[10] It is Ms. Hamid-Rajroop's position that MTCC 728 has failed to keep adequate records under s. 83 of the Act and in doing so has refused to provide her records without a reasonable excuse. As evidence for this position, she provided copies of two Periodic Information Certificates ("PICs"), one for 2021-2022 which states that the corporation had received notice under s. 83 of the Act that 13 units were leased within the current fiscal year; and one which was included in the 2022-2023 budget package, which indicates that the corporation had received notice under s. 83 of the Act that eight units were leased during the current fiscal year. Ms. Hamid-Rajroop argues that at the very least, eight units in the condominium are currently leased and therefore MTCC 728 should have a record of notices that they can provide to her that should list eight units.

[11] It is MTCC 728's position that they have never disputed that Ms. Hamid-Rajroop is entitled to the notice of leases. Rather, they argue that the corporation has received no notices since December 2021. They state firmly that the "records did not exist as the documents have never been provided by the owners in accordance with Condominium Act, 1998". In its submissions, MTCC 728 emphasizes that it is the owner's responsibility to provide a notice of lease to the corporation and that a copy of the notice of lease form is provided with every status certificate request to encourage owners to properly fulfill their obligation to inform the corporation of a leased unit.

[12] Section 55 (1) of the Act, outlines the records that a condominium corporation is required to keep, among this list is "the records required under subsection 46.1 (3) and 83 (3)."

[13] Section 83 of the Act reads:

83(1) The owner of a unit who leases the unit or renews a lease of the unit shall, within 10 days of entering into the lease or the renewal, as the case may be,

- (a) notify the corporation that the unit is leased;
- (b) provide the corporation with the lessee's name, the owner's address and a copy of the lease or renewal or a summary of it in the form prescribed by the Minister; and
- (c) provide the lessee with a copy of the declaration, by-laws and rules of the

corporation. 1998, c. 19, s. 83 (1); 2015, c. 28, Sched. 1, s. 75 (1).

...

Record of notices

(3) A corporation shall maintain a record of the notices that it receives under this section. 1998, c. 19, s. 83 (3).

- [14] Under s. 83 (1) (b) of the Act, unit owners have two options, they must “provide the corporation with the lessee’s name, the owner’s address and a copy of the lease or renewal **or** a summary of it in the form prescribed by the Minister...” [emphasis mine]. There is no requirement that unit owners notify the corporation on an official form; they may choose to simply provide the corporation with the information as set out in s. 83 (1) (b) (i.e., the lessee’s name, the owner’s address and a copy of the lease or renewal). In doing so they would be notifying the corporation of the lease of their unit.
- [15] Section 83 (3) of the Act clearly requires the corporation to maintain a record of the notices it receives under s. 83 of the Act – regardless of whether that notice is provided on a particular form. If MTCC 728 is aware that at least eight units are leased within the current fiscal year as stated in the PIC, they must have received some sort of notice from those eight unit owners and a record of these notices should then be maintained as per the Act. Additionally, s. 83 (2) also provides that, “[i]f a lease of a unit is terminated and not renewed, the owner of the unit shall notify the corporation in writing within 10 days of the termination”. This means that unless the corporation has received a notice of termination the notice should remain active, that is, older notices should be maintained and listed in the record of notices.
- [16] Based on the above facts, I find that MTCC 728 has failed to keep adequate records under the Act as it has not maintained a record of the notices it has received under s. 83 of the Act. Therefore, I order that MTCC 728 bring itself into compliance with the Act by creating a record of the notices it has received under s. 83 of the Act and provide this record to Ms. Hamid-Rajroop within 30 days of the date of this decision.

Issue no. 2: Should MTCC 728 be required to pay a penalty under s.1.44(1)6 of the Act and in what amount?

- [17] Under s.1.44 (1) 6 of the Act, the Tribunal may award a penalty that it considers appropriate if it finds that the corporation has, without reasonable excuse, refused to permit a person to examine or obtain records.

- [18] I do not find the reasons MTCC 728 provided for the refusal of the record reasonable. MTCC 728 claims that they did not provide Ms. Hamid-Rajroop with the record because it did not receive any “Form 5s” so there was no record to provide. As discussed above, unit owners are not required to submit a prescribed form to properly notify the corporation of a leased unit. Not receiving a Form 5, a form which no longer exists, and is not mandated, is not a reasonable excuse for refusal in this case.
- [19] I also do not accept as a reasonable excuse MTCC 728’s attempt to blame their failure to maintain the record on owners by saying that these “records did not exist as the documents have never been provided by the owners in accordance with Condominium Act, 1998”. Claims that the record did not exist because owners did not provide the required information or “documents” do not seem plausible or justifiable. The record sought by Ms. Hamid-Rajroop, is simply a list of notices the corporation has received, that is, a list of unit numbers that are leased. MTCC 728 must have received, at some point, at least eight notifications from owners that their units were leased, as they indicated on the PIC that these eight units had been leased during the current fiscal year. Even if those notices received by the corporation did not contain, to the letter, all of information required by the Act, this is a technicality (one that could easily be rectified by the corporation which could request additional information) not a reasonable excuse for failing to maintain and provide records under the Act. Moreover, as discussed above, older notices remain active until a notice of termination is received from an owner (in which case the notice of termination should also be kept by the corporation) Thus, the excuse that no notices were received since December 2021 is not a reasonable excuse for not adequately maintaining a record of the notices of leases.
- [20] Therefore, I find that in failing to adequately maintain this record, MTCC 728 could not provide Ms. Hamid-Rajroop with the requested records to which she is entitled under s. 55 (1) of the Act and has refused to provide Ms. Hamid-Rajroop the record without a reasonable excuse. Thus, a penalty is appropriate in this case. One of the purposes of assessing a penalty is to deter future similar action. In determining the amount of the penalty, I have considered that the Act clearly sets out that a record of notices a corporation receives under s. 83 of the Act should be maintained and that this record is clearly one that an owner is entitled to under s. 55 of the Act. MTCC 728 is obliged to know what records need to be maintained and provided, and to ensure that those responsible (in this case condominium management) for handling responses to records requests are also aware. However, while I have found that MTCC 728 reasons for refusal do not comprise a reasonable excuse under the Act, in this case MTCC 728’s refusal to provide the record does not appear intentional, due to acrimony between the parties, or a

result of a willful disregard of its responsibilities. Rather, its failure to maintain the record seems to stem from confusion about its obligations under the Act, which hopefully has now been eliminated. Therefore, I find that penalty on the lower end of the scale, in the amount to \$750 is appropriate.

Issue no 3: What cost, if any, should be paid by the Applicant for the proxies, ballots and attendance lists for AGM and SGM?

[21] Ms. Hamid-Rajroop claims that MTCC 728 is requesting unreasonable fees to provide the records and she has asked the Tribunal to reduce these fees.

[22] In response to Ms. Hamid-Rajroop's records requests, MTCC 728 provided the following estimates for fees and labour to produce the records for examination:

[23] For the proxies, ballots and attendance list for the AGM:

1. Estimated number of pages to be copied: 228 at \$0.25 per page for a total estimated printing and copying fee of \$57
2. Labour for providing access to records: 3 hours at \$75 per hour. Total estimated fee for labour: \$225

[24] For the proxies, ballots and attendance list for the SGM:

1. Estimated number of pages to be copied: 84 at \$0.25 per page, for a total estimated printing and copying fee of \$21
2. Labour for providing access to records: 2 hours at \$75 per hour for a total estimated fee for labour of \$150

[25] Ms. Hamid-Rajroop argues that fees proposed by MTCC 728 are excessive. She claims that the hourly rate of \$75 is inflated to discourage her from accessing records and that the proxies and ballots already exist in electronic form since they were uploaded to the GetQuorum system that was used to conduct voting and do not need to be copied. Ms. Hamid-Rajroop suggests that \$20-\$30 per hour would be a reasonable fee for labour as the work required is akin to straightforward administrative work.

[26] It is MTCC 728's position that its estimate is reasonable and reflects the necessary time to review all the proxies and ballots from the meetings. They dispute Ms. Hamid-Rajroop's position that \$20-\$30 per hour is a reasonable fee, arguing that the work to be done cannot be characterized as administrative work since the work requires a licensed condominium manager with training beyond that of clerical staff, to redact the records in accordance with the Act. They further note that even

though the proxies and ballots from the meeting processed electronically, they need to be printed/copied for the corporation to make the appropriate redactions.

[27] Finally, MTCC 728 notes that the time spent attending to this request is time during which the condominium manager is not available to other unit owners and takes time away from other duties. Throughout its submissions MTCC 728 made several mentions of the fact that Ms. Hamid-Rajroop has made a significant number of records requests since 2017, and that a substantial amount of time has been spent on “managing the relationship between Ms. Hamid-Rajroop...[and the] other parties affected by these records requests”.

[28] Section 13.3 (8) of Ontario Regulation 48/01 (“O.Reg 48/01”) sets out what fees may be charged for the records. Part 1 of section 13.3 (8) states:

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.

[29] It is very clear from MTCC 728’s submissions, which were prepared by one of the condominium managers who oversees the management of MTCC 728 and was acting as the MTCC 728’s representative, that there is a great deal of frustration over Ms. Hamid-Rajroop’s behaviour and what management perceives to be a misuse of its time in dealing with Ms. Hamid-Rajroop. The submissions provided suggest that her behaviour should somehow provide “context” to the arguments offered by MTCC 728. In this situation, it does not. The Act requires that the estimated fee be a reasonable estimate of the amount required to reimburse the corporation for the *actual labour* incurred for making the record requested available for examination. The amount of time “commandeered” by a unit owner in previous interactions is not a factor in this case in determining what is a reasonable fee for producing a record for examination or delivery. Fees are compensatory, not punitive.

[30] What is relevant and consistent with this Tribunal’s approach to determining reasonable fees, is evidence that speaks to the actual nature of work required to provide these records, the amount of work involved, who will be doing this work, and the time it might take to produce the record.

[31] MTCC 728 submits that it pays \$4771.15 for condominium management services each month which provide an on-site condominium manager for 20 hours per

week. They conclude that this means that MTCC 728 is paying approximately \$60 per hour for condominium management services. Yet, in its response to Ms. Hamid-Rajroop's request, MTCC 728 estimates an hourly rate of \$75 for labour. To account for this difference, MTCC 728 explains that the rate of \$60 per hour does not account for the fact that this fee reflects the cost of services provided by a limited licensee who is overseen by a supervising licensee who is needed to sign off on any records that are redacted and copied. Thus, to account for this supervision, the estimate of \$75 per hour was provided.

- [32] It is not the responsibility of a unit owner to reimburse the corporation for supervision costs or even the hourly rate of an onsite manager. The corporation must only charge 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, this means considering the nature of the work being carried out not just who is doing that work. I do not find that in this case the simple calculation of a staff member's hourly rate accurately reflects the actual labour and the nature of the work involved in preparing the records requested for examination. The records to be redacted in this case are not records that require reading through a significant number of unique documents and identifying which parts of those documents must be redacted in accordance with the Act. In this case, to prepare proxies for examination requires only that a part of the mandated proxy form be torn off. This is repetitive work that does not require specialized knowledge, nor does redacting an attendance list. I note that in other Tribunal decisions, a fee of approximately \$30 per hour for non-specialized tasks associated with the preparation of requested records has typically been viewed as reasonable and I find that it is also reasonable in this case. MTCC 728 may only charge \$30 per hour for the preparation of the proxies, ballots and attendance lists.
- [33] MTCC 728 has estimated 3 hours of labour to prepare 228 pages of proxies and ballots from the AGM and 2 hours of labour to prepare 84 pages of proxies and ballots for the SGM. Given that some time will need to be spent copying and redacting the documents I accept that the hours estimated to prepare the 228 pages of proxies and ballots from the AGM is reasonable in this case. However, it does not seem reasonable to charge 2 hours for the preparation of 84 pages which is just a little over one-third of the amount of pages estimated for the SGM. Therefore, I will reduce the amount of hours that MTCC 728 can charge for the ballots and proxies related to the SGM to 1 hour.
- [34] Finally, MTCC 728 argues that they must print the proxies and ballots to properly redact them and that MTCC 728 is entitled to charge a fee for copying the records. I agree that it may be necessary to either print or make copies of the proxies and

ballots to redact them and provide them to Ms. Hamid-Rajroop. However, the 0.25 per page that MTCC 728 is proposing to charge exceeds the amount per page allowed by the Act, which limits copying charges to 0.20 per page as set out in 13.3 (8) 3 of O.Reg 48/01. Thus MTCC 728 must charge no more than 0.20 per page.

[35] Based on the above MTCC 728 may charge the following fees for the proxies, ballots, and attendance list for the AGM:

1. Printing/copying fee: 228 pages at \$0.20 per page for a total fee of: \$45.60
2. Labour fees: 3 hours at \$30 per hour for a total fee of \$90

[36] For the proxies, ballots, and attendance list for SGM:

1. Printing/copying fee: 84 pages at \$0.20 per page for a total fee of: \$16.80
2. Labour fees: 1 hours at \$30 per hour for a total fee of: \$30

[37] In summary, MTCC 728 may charge a total of no more than \$182.40 to produce the proxies, ballots and attendance lists for AGM and SGM.

Issue no 4: Should any costs be awarded?

[38] Under s.1.44 (1) 4 of the Act, 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 and the CAT Practice Direction: Approach to Ordering Costs provide guidelines for the awarding of such costs.

[39] Under Rule 48.1 of the CAT's Rules of Practice, 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. In this case, I find that Ms. Hamid-Rajroop was successful and I order MTCC 728 to pay Ms. Hamid-Rajroop \$200 for filing fees.

C. ORDER

[40] The Tribunal Orders that:

1. MTCC 728 bring itself into compliance with the Act by creating a record of the notices it has received under s. 83 of the Act and provide this record to Ms. Hamid-Rajroop within 30 days of the date of this decision.

2. Within 30 days of the date of this decision MTCC 728 pay a penalty of \$750 to Ms. Hamid-Rajroop.
3. MTCC 728 may charge a fee of \$182.40 to produce the proxies, ballots and attendance lists for AGM and SGM for examination. Within 30 days of the date of the payment of that fee, MTCC 728 must provide these records to Ms. Hamid-Rajroop.
4. Within 30 days of the date of this decision MTCC 728 pay Ms. Hamid-Rajroop costs in the amount of \$200.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: July 15, 2022