

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: August 25, 2022

CASE: 2021-00389R

Citation: Kim v. York Condominium Corporation No. 96, 2022 ONCAT 90

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

Member: Marc Bhalla, Member

The Applicant,

John Kim

Self-Represented

The Respondent,

York Condominium Corporation No. 96

Represented by Carol Dirks, Counsel

Hearing: Written Online Hearing – June 1, 2022 to August 19, 2022

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant is a unit owner of the Respondent condominium. This case is about a Request for Records made by the Applicant on May 20, 2021, for two Periodic Information Certificates. The Respondent provided the Applicant with the certificates in early July 2021 and the Applicant questions their adequacy.

[2] There are three issues for me to decide:

1. Are the records provided by the Respondent adequate?
2. Did the Respondent reply to the Request for Records in the prescribed manner and timeline?
3. Is a penalty appropriate?

[3] I find the records provided to be adequate and that a reasonable excuse exists for the Respondent's initial refusal to provide them. No penalty is in order.

B. ISSUES & ANALYSIS

Are the records provided by the Respondent adequate?

- [4] Condominiums are required to issue a Periodic Information Certificate (“PIC”) twice a year - within 60 days of the end of the condominium’s first and third quarters.¹ This certificate provides owners with information about such matters as the board of directors, finances and legal proceedings. On May 20, 2021, the Applicant requested two PICs, issued in February or March 2018 and in August 2019. The Respondent provided these PICs around July 8, 2021.
- [5] The Applicant suggests that the PICs have been deliberately manipulated. They compare the first and second PICs issued in 2018. The Applicant points to duplication of content, page numbering, variant font colours, the expansion of rows in the form and a modified signing date to support their claim.
- [6] While the Applicant takes issue with a variety of PICs, including those beyond the scope of this case, their concerns are consistently about the content of them. The concerns range from form presentation issues to more significant concerns about a lack of reference to a director’s conflict of interest disclosure and the presentation of expenditures in a PIC that is beyond the focus of this case.
- [7] The Applicant also suggests that the “genuine PIC for the first quarter of 2018 has not been provided yet”. I am not convinced that the records provided by the Respondent are false documents. I see no reason to doubt that the PICs the Respondent offers are those prepared and circulated when indicated. This case is not about outstanding records but the adequacy of the PICs that were provided.
- [8] The Respondent does not agree that the PICs are incomplete or inaccurate. It also claims that issues the Applicant raises with the content of the PICs are beyond this Tribunal’s jurisdiction to address. The cases of *Horvath v. Carleton Condominium Corporation No. 89*, 2021 ONCAT 57 (“Horvath”) and *Yeung v. Metropolitan Condominium Corporation No. 1136*, 2020 ONCAT 28 (“Yeung”) are cited in support of the Respondent’s claims.
- [9] In *Yeung*, the Tribunal found that disputes about the content of PICs are not within its jurisdiction:
- “[W]hether or not the PICs contain errors based on the Applicant’s interpretation of the information required in a PIC is not an issue which the Tribunal has jurisdiction to decide under s. 55 of the Act.”*
- [10] While the Tribunal in *Horvath* ordered a condominium to add a missing date to a PIC, the lack of date in that case was material to the accuracy of the record. It was a simple clarification of timing. A director had resigned, and the date of the PIC impacted its accuracy. I distinguish the date insertion order of *Horvath* from this case as the Applicant’s PIC content challenges are more complex here. They require deeper analysis of what should be included in a PIC. To assess the Applicant’s concern about the lack of disclosure of a director’s conflict of interest, I

¹ Section 26.3 of the *Condominium Act, 1998* and Section 11.1(4) of *Ontario Regulation 48/01*.

would need to consider the timing and nature of the disclosure, the disclosures made when the director in question joined the board and then determine if the Respondent should have included this in one of the two PICs of focus in this case. While I am comforted by the fact that the conflict disclosure took place and appears outside of the time of focus in this case, what the Applicant is asking of me is similar to Yeung. I am asked to decide if a PIC contains errors based on the Applicant's interpretation of the information required in a PIC. This extends beyond my jurisdiction from section 55 of the *Condominium Act, 1998* (the "Act"). I accept my limitation and find the records provided by the Respondent are adequate.

Did the Respondent reply to the Request for Records in the prescribed manner and timeline?

[11] Section 13.3 (6) of Ontario Regulation 48/01 requires a condominium board to reply to a Request for Records within 30 days, on the prescribed form. There is no dispute before me about this. The Respondent did not respond with the prescribed form or within the 30-day deadline.

Is a penalty appropriate?

[12] The Applicant cites cases² and correctly identifies the test for me to apply to determine if a penalty is warranted. Section 1.44 (1) 6 of the Act provides a penalty may be warranted if the Respondent refused to provide records without a reasonable excuse. The Applicant seeks a penalty of up to \$5000; they claim the Respondent refused to provide records without reasonable excuse.

[13] The parties agree that the Respondent did not respond to the record request within the prescribed timeline or on the prescribed form. In similar situations, this Tribunal considered a failure to reply in time to be a refusal to provide records.³ The question is if the Respondent refused to provide records without a reasonable excuse.

[14] The Respondent has offered an excuse it considers reasonable for failing to respond. It states that the Applicant also submitted records requests of December 3, 2020, January 27, 2021, and February 12, 2021. The Respondent claims that another case between the parties was in Stage 2 – Mediation at this Tribunal when the Applicant made their May 20, 2021 Request for Records. At that time, the Respondent was attending to the provision of 60 records to the Applicant, including other PICs.

² *Maxime Pedneault v Carleton Condominium Corporation No. 227, 2020 ONCAT 8, Horvath v. Carleton Condominium Corporation No. 89, 2021 ONCAT 57, Zugec v. Wentworth Standard Condominium Corporation No. 566, 2022 ONCAT 13 and Rafael Barreto-Rivera v. Metropolitan Toronto Condominium Corporation No. 704, 2020 ONCAT.*

³ *Zugec v. Wentworth Standard Condominium Corporation No. 566, 2022 ONCAT 81, Ji v. Toronto Standard Condominium Corporation No. 1611, 2022 ONCAT 42 and Ji v. Toronto Standard Condominium Corporation No. 1611, 2021 ONCAT 122.*

- [15] There is no dispute before me about the communications between the parties and the provision of a large volume of records by the Respondent to the Applicant around the time a reply to the Applicant's Request for Records was due.
- [16] The Respondent suggests the lack of reply was an oversight and claims it had no intention of refusing to provide records. This is supported by the Respondent's actions and other communications with the Applicant at the time. The situation was also mitigated by the Respondent providing the PICs requested on May 20, 2021 in early July 2021.
- [17] While the Applicant correctly states that the Respondent had a legal obligation to respond to their Request for Records within 30 days, the circumstances of this case fall short of establishing a refusal to provide records without a reasonable excuse that warrant a penalty.
- [18] When a large volume of records are being addressed and numerous communications exchanged, it is understandable that one could be innocently missed. The Respondent provided the PICs promptly thereafter and the Applicant has offered no consequence of the delay. I accept the Respondent's excuse as reasonable in the circumstance.

C. ORDER

- [19] The Tribunal orders the case dismissed.

Marc Bhalla
Member, Condominium Authority Tribunal

Released on: August 25, 2022