

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 12, 2022

CASE: 2022-00136R

Citation: Roumy v. York Condominium Corporation No. 50, 2022 ONCAT 109

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

Member: Stephen Roth, Member

The Applicant,
Monique Roumy
Self-Represented

The Respondent,
York Condominium Corporation No. 50
Represented by Benjamin Rutherford, Counsel

Hearing: Written Online Hearing – May 11, 2022 to September 13, 2022

REASONS FOR DECISION

A. INTRODUCTION

- [1] Monique Roumy, the Applicant, is the owner of a unit in York Condominium Corporation No. 50 (the “Respondent” or “YCC50”).
- [2] The Applicant delivered the prescribed Request for Records form to the Respondent’s property manager by email on December 12, 2021, requesting the following records in electronic form:
 - (1) Board meeting minutes for the period December 1, 2020, to December 1, 2021
- [3] The Respondent confirmed receipt of the request by an email on the same date; however, the Respondent did not further respond or provide a Board’s Response to Request for Records form within 30 days (by January 11, 2022) as required by the *Condominium Act, 1988* (the “Act”).
- [4] Having not received a response to her request, the Applicant sent a follow-up email to the Respondent’s condominium manager on January 19, 2022. On January 20, 2022, the following day, the Respondent’s lawyer advised Ms. Roumy by email that her request was being finalized and that she would receive the

records by the end of that day.

- [5] The Respondent delivered the Board's Response to Request for Records form and the board minutes to the Applicant on January 20, 2022, except for minutes for the four-month period of September-December, 2021. The Respondent indicated that these minutes were still in draft form and had not yet been approved by the board. Therefore, these draft minutes did not form part of the Respondent's records. The minutes provided to the Applicant included in-camera minutes. The Respondent advised the Applicant that the in-camera minutes had been redacted pursuant to subsections 55(4)(a-c) of the Act.
- [6] Importantly, the Respondent provided the records without advising the Applicant that she would have to pay a fee before receiving the records.
- [7] On March 1, 2022, the Respondent sent the Applicant an email with an invoice in the amount of \$960.50 for fees related to her Request for Records and a chargeback letter. The Applicant was advised of the debt-collection procedure if she did not pay.
- [8] The Applicant paid the \$960.50 and filed a CAT application asking for the return of her \$960.50.
- [9] The Applicant agreed that she received all of the requested records, albeit late.

B. ISSUES

- [10] The Summary and Order arising from the Stage 2—Mediation identified the following issues for Stage 3:
 - 1. Did the Respondent refuse to provide records to the Applicant without reasonable excuse?
 - 2. Is the amount of money charged by the Respondent to the Applicant to access records appropriate?
 - 3. Is a penalty warranted?
- [11] When I asked the parties to confirm the issues at the commencement of the hearing, the Applicant indicated that the Respondent did not refuse to provide records and that the issue was the fee charged by the Respondent. However, the Applicant agreed with the other two issues.
- [12] Ms. Roumy also requested reimbursement of \$9.95, the cost of the money order she purchased to pay the \$960.50 in fees. She also requested that the Tribunal direct the Respondent to amend its policy with respect to "Access to Minutes of In-

Camera and/or Special Meetings,” its debt collection policy and the exercise of that policy.

[13] As such, the issues before me are:

- (i) Should the Respondent reimburse the Applicant \$960.50 for the records fees?
- (ii) Should the Respondent reimburse the Applicant \$9.95, the cost of the money order?
- (iii) If there was no refusal to provide a record, is there any basis to award a penalty?
- (iv) Should the Respondent be directed to amend its Access to Minutes of In-Camera and/or Special Meetings and debt collection policies, and the exercise of those policies?
- (v) Is the Applicant entitled to a filing fee and is either party entitled to costs?

[14] While I have commented on the extent of the redaction of the in-camera minutes, below, I have declined to make an Order on this issue as explained below.

C. ANALYSIS

Reimbursement of \$960.50 in fees

[15] A condominium owner’s request for records and the condominium corporation’s response to the request are to be completed using prescribed forms – the “Request for Records” form and the “Board’s Response to Request for Records” form. These forms set out the request for records process. Once a condominium corporation reviews a request for records, its response is to include the estimated cost it will incur to provide the records.

[16] Once the owner receives the Board’s response, if the owner is satisfied with the fee request, the owner delivers the confirmation portion of the Board’s response and the requested fee for the records. If the owner is not satisfied with the fee request, absent a resolution between the parties, an owner can file a CAT application requesting a determination of the reasonableness of the fee requested.

[17] This process ensures that an owner can decline to proceed with obtaining records if a fee is requested, even if the fee is reasonable.

[18] It is not contested by the Respondent that it did not include a fee request in its Board’s Response to Request for Records form, or prior to providing the records.

[19] I find that the failure to request a fee before providing the records disentitles the

Respondent from pursuing a fee subsequently. The Respondent did not follow the mandated process and waived its right to a fee by its actions. The process is in place to prevent the dispute that is currently before me.

[20] I do not need to determine whether the \$960.50 fee would have otherwise been reasonable. It is a moot issue given my finding.

[21] The Respondent argued that the \$960.50 in fees requested were separate and distinct from the costs contemplated by the regulations. The Respondent argued that the charge was associated with the legal costs incurred by YCC50 in obtaining legal advice pertaining to the Applicant's records request. The Respondent submitted that it is entitled to a chargeback under the general indemnity provisions of Section 14.02(a)(iii) of its by-law No 5.

[22] Condominium manager Daniel Cripaul testified as follows:

YCC 50 stands ready to reimburse Roumy for the charges. However, going forward, YCC50 intends to enforce more strictly Article XIV of By-law No. 5 because the costs of requests and challenges by owners continue to mount and YCC50 has to protect the interests of all owners. It is not fair that all of the owners should have to bear the costs of these constant requests and challenges

[23] The Respondent referred to By-law No. 5, in evidence, and its general indemnity provisions. While the Respondent specifically referred to Section 14.02(a)(iii), Section 14.02 needs to be read in conjunction with Section 14.01.

[24] Section 14.01 states:

Each owner shall indemnify and save the Corporation harmless from any loss, cost, damage, injury or liability ("losses"), in respect of the owner's unit, common elements or any other unit, which the Corporation may suffer or incur"

(a) which is not otherwise recoverable from insurance; and,

(b) which results from or is caused by any act or omission of:

(i) such owner; or,

(ii) any resident, tenant, employee, agent, invitee or licensee of such own's unit.

[25] Section 14.02 lists a non exhaustive list of the types of losses contemplated by the indemnification provision. Section 14.02(a)(iii) includes any and all legal costs

incurred by the condominium corporation, including the cost of any legal advice given to the condominium corporation.

[26] I do not accept the Respondent's argument for four reasons. Firstly, the Respondent, in its testimony, specifically states that the legal advice pertained to the Applicant's record request. Furthermore, the chargeback letter of February 28, 2022 also indicates that the legal advice related to Ms. Roumy's records request. It is my finding that advice related to records request does not fall into the parameters of section 14.01 of the by-law. While the list in Section 14.02 is not exhaustive, and includes costs of legal opinions, it cannot be applied too broadly. Essentially, such clauses are meant to ensure owners are not burdened by extraordinary or exceptional costs caused by the acts or omissions of other owners. The costs associated with ordinary administrative activities, like responding to a unit owner's request for records - including obtaining legal advice in relation to it - are reasonably within the range of services for which unit owners should expect to contribute collectively, and share little resemblance to a "loss, cost, damage, injury or liability" suffered by the condominium. Secondly, where fees are appropriately charged to an owner in relation to a records request, they are paid to help cover the costs of the actual production of the records, not in relation to the board's decision-making process when it is determining how it will respond. Thirdly, even if the amount claimed as fees by the Respondent in this case was appropriate, the Respondent was required to inform the Applicant of the projected amount of those fees, before the records were provided. Fourthly, the requested records are core records, for which the Respondent was not entitled to charge any fee (other than the costs of printing and copying, based on a maximum rate of 20-cents per page, but only where paper copies were specifically requested and provided, in accordance with sections 13.3(8) 4 and 6 of Ontario Regulation 48/01 (O.Reg 48/01)).

Redaction of In-camera Minutes

[27] In final submissions, the Applicant raised the issue of whether the block redaction of the in-camera minutes exceeded that which was necessary under the exemption provisions of the Act, and whether the Respondent properly explained the reasons for each redaction. A redaction, while in substance a refusal to provide the redacted portion, is permitted and in certain situations, required by the Act. At the commencement of the hearing, the Applicant indicated that there were no refusals, which complicated the issue agenda and what evidence was led.

[28] The Applicant did not specifically request further minutes with some of the redactions removed. It is clear that the Applicant is concerned with the

Respondent's process of redaction and whether the redactions went too far. Insufficient evidence is before me with respect to the specific nature of the redactions beyond a reference to section 55(4) of the Act. Given the absence of evidence, it is not appropriate for me to make any order on this issue. However, I remind the Respondent that redactions under section 55(4) of the Act must be strictly limited to these exceptions and an explanation of each redaction must be made.

Reimbursement to the Applicant of \$9.95, the cost of the money order

- [29] Ms. Roumy testified that on March 1, 2022 she received a letter from the condominium manager with a chargeback letter and an invoice in the amount of \$960.50 for legal services related to her records request. The Applicant had already received the requested records. The Respondent directed that payment be in the form of money order or certified cheque. I have already found that the Respondent did not have the right to request this payment. In the letter, the Applicant was reminded of the Respondent's debt collection procedure and that if the fee was not paid by March 15, 2022, collection enforcement procedures would be initiated. Ms. Roumy testified that under duress, she made the payment by money order and subsequently proceeded with a CAT application.
- [30] In these circumstances, it is understandable that Ms. Roumy made the payment and then filed her CAT application. The Respondent argues that Ms. Roumy could have not paid the fee and then filed her application. Alternatively, the Respondent submits that she should have at least reached out to the Respondent and advised that she disagreed with the fee rather than just paying it.
- [31] I will not second guess the Applicant's course of action. The Respondent created the circumstances when it improperly requested a fee and threatened enforcement action, which includes the use of a lien on the Applicant's unit. The threat of a lien is significant with serious implications if acted upon.
- [32] Does the Tribunal have jurisdiction to award reimbursement of the cost of the money order? The Applicant referred me to the Tribunal case of *Sava v. York Condominium Corporation No. 386*, 2022 ONCAT 52 para 26, as support that the Tribunal has authority to order reimbursement of additional expenses directly related to a condominium corporation's behaviour.
- [33] In *Sava*, the Member relied on Rule 48.2 of the Tribunal's Rules of Practice, which states:

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 to 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.

- [34] It is evident that Rule 48.2 contemplates the awarding of legal costs and disbursements incurred in the course of the proceeding. I am not satisfied that the cost of the money order was incurred in the course of this proceeding.
- [35] Section 1.44(1)(3) of the Act provides the Tribunal authority to make an order directing a party to the proceeding to pay compensation for damages incurred by another party to the proceeding as a result of an act of non-compliance up to \$25,000. I find that the Respondent’s failure to request the fees for records in its response, and its subsequent pursuit of fees as an act of non-compliance. As a direct result of this non-compliance, Ms. Roumy incurred the money order fee. As such, I order reimbursement of \$9.95.

Is a Penalty Warranted?

- [36] As already explained, the Applicant advised me that the issue of whether the Respondent refused to offer records to the Applicant without reasonable excuse was not an issue before me. This language has specific meaning in the Act. While it is not entirely clear whether Ms. Roumy understood the possible implications of taking this position, she did maintain her request for a penalty as an issue. In her final submissions, Ms. Roumy requested a penalty based on the late delivery of the records, and for the Respondent’s request for a chargeback.
- [37] Pursuant to s. 1.44 (1)6 of the Act, the Tribunal may make an order directing a condominium corporation “to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under s.55 (3) if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection.”
- [38] To order a penalty under this section, I must find that the Respondent refused to provide the records and did so without a reasonable excuse. The Applicant did not assert that the Respondent refused to provide the records. The evidence before me does not suggest the Respondent refused without reasonable excuse. While the Respondent did not respond to the request within 30 days as legislatively required, I find that this is not enough, on the facts before me, for a finding of a refusal. When the Applicant followed up with the Respondent on January 19, 2022,

she was advised that her request was being finalized and she would receive the records the following day, which occurred. These circumstances do not suggest that the Respondent was refusing to provide the documents. There is no other evidence before suggesting a refusal. As such, I find that the reason was likely inadvertence. The Applicant received the Board's response and the records nine days late. While an extended delay in responding to a request, may, in some situations, equate to a deemed refusal, I do not make such a finding given the relatively short delay.

- [39] The Applicant advanced the position that when the Respondent sent her a chargeback letter, it took clear and deliberate action against her for having exercised her right to request records. Ms. Roumy argues that section 1.44(1)7 of the Act grants the CAT powers to direct whatever other relief it considers fair in the circumstances. Ms. Roumy argues that these circumstances are exceptional, and a penalty is in order.
- [40] While I agree that section 1.44(1) 7 of the Act provides the Tribunal with the authority to make an order directing whatever other relief the Tribunal considers fair in the circumstances, I do not find that this extends to a penalty. A 'penalty' is a specific term in the Act which may be awarded in certain situations as a consequence for not providing a record. It is not "relief" as contemplated by section 1.44(1)7 of the Act.
- [41] The Applicant referred me to *Russell v. York Condominium Corporation No. 50*, 2021 ONCAT 103. This November 4, 2021 decision levied a penalty under section 1.44(1)6 of the Act against this same Respondent for \$1,000 and found the records request process exposed a considerable lack of knowledge on the part of YCC50 about its obligations to both keep adequate records and to provide owners with copies of records.
- [42] I have decided that a penalty under section 1.44(1)6 or 1.44(1)7 of the Act will not be awarded. However, in the present case, the Respondent's failure to respond within 30 days to the records request and its pursuit of records fees after having already provided them is concerning. This course of action is especially troubling given the Tribunal's November 4, 2021 decision. I find that the pursuit of fees in this manner represents a significant statement about the Respondent's lack of understanding of its statutory obligations.
- [43] Owners have a right to records. The Respondent appears to be taking an adversarial approach to records requests. The Respondent's lack of understanding of its responsibilities is interfering with bona fide requests for records. An element of heavy handedness exists, rooted in the Respondent's assertion that other

owners need to be protected from records requests.

[44] Therefore, I am ordering that the current members of the board of directors within 30 days of the date of this Order, complete Module 8 of the Condominium Authority of Ontario's Foundational Director Training program – "Corporate Records." A notification of the completion and reference to the Tribunal's order shall be posted in a visible and public place within the condominium within 60 days of the order.

Should the Respondent be directed to amend its Access to Minutes of In-Camera and/or Special Meetings and debt collection policies, and the exercise of those policies?

[45] In the Russell decision, the Tribunal ordered as follows:

Within 60 days from the date of this Order YCC50 will develop and implement a transparent procedure for providing access to minutes of in-camera or special meetings of the Board to anyone who is entitled to and who requests such access under the Act and the Regulation. This process will address how YCC50 will disclose the existence of these meetings and how YCC50 will deal with redactions. The process will be published to YCC50 unit owners, whether by posting in a public place or otherwise.

[46] An undated policy is in evidence. I understand this to be the policy developed as a result of the above order in the Russell decision.

[47] The Applicant argues the Respondent should "reverse" the adversarial tone in the policy. Additionally, Ms. Roumy raised the following concerns with the policy:

- a. It implies that redaction fees can be charged for core records;
- b. It states that the Respondent has no obligation to keep minutes for "in-camera" or "special" board meeting; and
- c. It prescribes an unreasonable hourly fee (\$75.00) for redactions that is not based on the complexity of work involved

[48] Although given an opportunity, the Respondent made no submissions on this issue. I agree with Ms. Roumy that certain aspects of the policy are, or could be misleading.

[49] Minutes for meetings held within the previous 12 months of the request are core records. Sections 13.3 (8) and 13.3 (9) of O.Reg 48/01 establish when a condominium corporation can charge a fee for the examination or production of records. Section 13.3(8)6 of O.Reg 48/01 directs that if the record request is for a

core record, a fee shall not be charged other than for printing and photocopying. As such, redaction fees can be requested only with respect to non-core records. In testimony, the Respondent's property manager testified that he considered in-camera minutes as non-core records. In-camera minutes are not separately defined under the Act. Therefore, core records include minutes from in-camera or special meeting minutes held within the previous 12 months of the request. The Respondent's policy implies that redaction fees from minutes held within the last 12 months before the request are subject to redaction fees. This is incorrect.

- [50] The policy further states, "YCC 50 is not required to keep in-camera minutes or special meeting minutes." In accordance with section 55(1) of the Act, a condominium corporation has a duty to keep adequate records including the minutes of board meetings. Even if in-camera, the duty applies. As such, I find the policy is incorrect. There is a duty to keep minutes of in-camera and special meetings.
- [51] The policy states that "redacting" is charged at an hourly rate of \$75 per hour, which rate is subject to reasonable increases, as the Board may determine from time to time. It further states that "Rates may also be dependant on the labour and expertise required." Many Tribunal decisions analyse what are reasonable redaction fees and they vary based on complexity.
- [52] Although the Tribunal does not have jurisdiction specifically with respect to the internal policies of condominium boards, where such policies cause the condominium to act in a manner that is contrary to provisions of the Act over which the Tribunal does have jurisdiction, it would not be fair or appropriate to permit such policies to persist. Therefore, the Respondent is ordered to amend its policies within 45 days relating to the handling of owners' records requests to be more consistent with the Act, including (i) to remove any suggestion that fees can be charged for redaction of requested core records, (ii) to remove the incorrect statement that minutes for "in-camera" and "special" board meetings are not required, and (iii) to remove the reference to a unreasonable standard fee of \$75. It may state that each request may be subject to a different reasonable fee based upon the complexity of the request. The amended policy shall be posted in a visible and public place within the condominium within 60 days of the order.

D. COSTS

- [53] Ms. Roumy has been largely successful in her application. As such, I order reimbursement of her CAT filing fees totaling \$200.00. Ms. Roumy did not seek other costs.

E. ORDER

[54] The Tribunal Orders that:

1. The Respondent pay the Applicant \$960.50 as reimbursement for the records fees within 30 days of the date of this Order.
2. Pursuant to the authority set out in section 1.44(1)3 of the Act, the Respondent shall pay \$9.95 to the Applicant as reimbursement for the cost of the money order within 30 days of the date of this Order.
3. Pursuant to section 1.44(1)7 of the Act, the current members of the Board of Directors within thirty days of the date of this Order complete Module 8 of the Condominium Authority of Ontario's Foundational Director Training program – "Corporate Records." A notification of the completion and reference to the Tribunal's order shall be posted in a visible and public place within the condominium within 60 days of the order.
4. Pursuant to section 1.44(1)7 of the Act, the Respondent shall amend its Access to Minutes of In-Camera and/or Special Meetings policy within 45 days relating to the handling of owners' records requests to be more consistent with the Act, including (i) to remove any suggestion that fees can be charged for redaction of requested core records, (ii) to remove the incorrect statement that minutes for "in-camera" and "special" board meetings are not required, and (iii) to remove the reference to a unreasonable standard fee of \$75. It may state that each request may be subject to a different reasonable fee based upon the complexity of the request. The amended policy shall be posted in a visible and public place within the condominium within 60 days of the order.
5. Pursuant to Rule 48.1, the Respondent shall pay the Applicant \$200.00 for CAT filing fees within 30 days from the date of this Order.

Stephen Roth
Member, Condominium Authority Tribunal

Released on: October 12, 2022