

Corrected Decision

This decision was amended to update paragraphs 38 and 39 (3) which clarify how the Respondent can provide the Applicant with proof of compliance with the order.

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 14, 2022

CASE: 2021-00433R

Citation: Sidhu v. Peel Condominium Corporation No. 426, 2022 ONCAT 112

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

Member: Michael Clifton, Vice-Chair

The Applicant,

Norman Sidhu

Represented by Gurjeet Singh, Paralegal

The Respondent,

Peel Condominium Corporation No. 426

Represented by Jamie Cockburn, Legal Counsel

Hearing: Written Online Hearing – March 2, 2022 to October 14, 2022

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Mr. Sidhu, is the owner of two units of the Respondent condominium corporation, which is an industrial/commercial condominium property. As with many applicants who bring cases before this Tribunal relating to requests for records, Mr. Sidhu has serious concerns about the governance and management of the Respondent. Though emphatically expressed in Mr. Sidhu's submissions, such matters are outside the scope of this Tribunal's current jurisdiction and will not be addressed in this decision. This decision is restricted to dealing with Mr. Sidhu's requests for records and their handling by the Respondent.
- [2] On December 22, 2021, Mr. Sidhu submitted his seventh request for records to the Respondent since December 2019. Mr. Sidhu states that none of his requests have ever been fully or adequately responded to by the Respondent. It is the lack of response that has largely resulted in multiple and repeated requests. However, the requests that form the basis for this application are the four made between October 25, 2021, and October 29, 2021 (at a rate of almost one per day). It is not relevant to this decision to distinguish between those requests.
- [3] Mr. Sidhu not only seeks provision of the records he has requested, but also compensation for "financial loss and huge mental stress & agony" he claims to have experienced as a result of the manner in which the Respondent has dealt with his requests, which he states includes reprisals. Alleged reprisals have included a failure or refusal to complete repairs required to his units, the placement of garbage bins to block entry points to his units, and surveillance by a member of the Respondent's board for the purposes of identifying and quickly enforcing any infraction of condominium rules against him. Mr. Sidhu seeks awards of costs, a

penalty, and compensation against the Respondent, in addition to provision of the requested records.

- [4] The Respondent asserts that the Tribunal lacks authority to award damages for “pain and suffering,” as requested by Mr. Sidhu, and that the evidence does not, in any case, support this request. Specifically, the Respondent acknowledges that the Tribunal has authority under section 1.44 (1) 3 of the Condominium Act, 1998 (the “Act”) to order a party to pay compensation to another for damages incurred on account of the paying party’s non-compliance but asserts that the evidence in this case does not show any connection between the alleged reprisals and the Respondent’s handling of the Applicant’s requests for records. The Respondent also sought the dismissal of the application on the basis that all records that exist and could be provided to the Applicant were given to him during these proceedings.
- [5] For the reasons set out below, I find the Applicant is entitled to the provision of the requested records, some of which have been already given, and some of which the Respondent is required to create and provide. I also find that the Applicant is entitled to reimbursement of his filing fees for this case and to a penalty awarded against the Respondent in the amount of \$3000. No other costs or compensation are awarded.

B. ISSUES AND ANALYSIS

Issue No. 1: Status and Resolution of Records Requests

- [6] The Applicant is entitled to all of the records he requested, subject to appropriate redactions.
- [7] The Respondent has provided no argument for the Applicant’s disentitlement based on any of the exceptions to access to records that are set out in the Act and its regulations (the “Regulations”). However, the Respondent does argue that some records do not exist. I will first review the status of each record requested by the Applicant, based upon the submissions of the parties, to indicate which of them remains outstanding and must be provided by the Respondent, and which are not ordered to be produced since they were already delivered or do not exist.
- [8] The following are the records requested by the Applicant that have been satisfactorily provided by the Respondent either during these proceedings or previously:
1. Record of Owners and Mortgagees – Provided during these proceedings and at prior times.
 2. Periodic Information Certificates (October 2020-October 2021) – Provided during these proceedings.
 3. Current Plan for Future Funding of the Reserve Fund – Provided during these proceedings and also allegedly given around December 2021.
 4. Owners Meeting Minutes (October 2019-October 2020) – Minutes of the 2019 AGM were provided to the Applicant during these proceedings. No 2020 AGM occurred.
 5. Proxy Instruments and related documents (October 2019-October 2020) – Proxy information and data from the 2019 AGM were provided during these proceedings.

6. Reserve Fund studies (January 2017-October 2021 – The 2013 and 2021 reserve fund studies were provided during these proceedings. The 2021 study was stated to have also been provided to the Applicant in December 2021.
7. Parking lot resurfacing cost, tenders, study or expert opinion leading to decision, invoices, contracts and any and all documents relating to this expense (January 2017-October 2021) – Provided during these proceedings.

[9] The following are the records requested by the Applicant that the Respondent alleges do not exist:

1. Mutual Use Agreements – The Respondent notes there are no mutual use agreements for this condominium. The Applicant's submissions in these proceedings indicate he was, in fact, seeking the Respondent's management agreement, legal services agreement, "common area use" agreement, garbage collection agreements, telephone and internet agreement, and surveillance and monitoring agreement, as well as something he refers to as "parking space issue". None of these constitutes a mutual use agreement. No order for these requested records shall be made.
2. Environment Reports (January 2017-October 2021) – The Respondent advises there are no such records.
3. Any environmental issue, notice, expense or document related to environmental issues (January 2017-October 2021) – The Respondent advises there are no such records.
4. Any and all notices from the City of Mississauga (January 2017-October 2021) – The Respondent advises there are no such records.
5. Any and all parking enforcement requests made to the City of Mississauga (January 2017-October 2021) – The Respondent advises there are no such records.
6. Any and all insurance claims and complete account of funds received from insurers (January 2017-October 2021) – The Respondent advises there are no such records.

I accept as credible the Respondent's statements that these records do not exist. In the absence of contrary evidence or an obligation under the Act to produce them, it cannot be compelled to produce records that do not exist. I make no such order with respect to these records

[10] Distinct from the foregoing list are certain records that, while the Respondent credibly alleges they do not exist, are records that the Respondent is statutorily required to keep, and therefore I may make an order that they are to be produced. This is consistent with the Tribunal's jurisdiction over subsection 55 (1) of the Act as well as subsection 55 (3) and other provisions in the Act and Regulations relating to records. These records and the orders associated with them are discussed in the following paragraphs.

Board Meeting Minutes

[11] The Respondent states it does not keep minutes of board meetings. It has offered no explanation for this obvious breach of the requirements of the Act. It is unlikely

that there could be a reasonable explanation for it.

- [12] Condominium corporations cannot operate in accordance with law without holding board meetings where resolutions are duly passed and every condominium bears a strict, clear, and ongoing statutory duty to keep adequate records of such meetings; i.e., minutes. The lack of board meeting minutes is a significant breach of the Act and introduces uncertainty as to the authority of the condominium's transactions and affairs, impacting fundamental rights of unit owners to have access to a record of the condominium's key decisions, including decisions relating to budgets, enforcement actions, banking arrangements, and contracts for services. The lack of board meeting minutes cannot be considered either acceptable or reasonable.
- [13] Based on these considerations, I make an order under subsection 1.44 (1) 1 of the Act that the Respondent immediately commence keeping proper and appropriate minutes of all of its board meetings, in accordance with the Act.
- [14] With respect to the requested minutes for the period from October 2019 to October 2021, I recognize the practical difficulty in ordering that these be created at this time. I also recognize that in some decisions of this Tribunal, orders to create non-existing records have not been made. Whether an order should be made or not is a determination that is dependent on the particular facts of the case before the Tribunal member adjudicating the matter. In this case, the only facts which compel me to withhold ordering the creation of the missing minutes are the remoteness and extent of the time period in question. However, it would not be appropriate for the Tribunal to effectively condone the Respondent's long-standing disregard for the fundamental duty to keep minutes or to leave the Respondent's owners open to the potential prejudice and difficulties that could follow from that neglect.
- [15] Accordingly, under subsection 1.44 (1) 7, which grants authority to the Tribunal to make an order "directing whatever other relief the Tribunal considers fair in the circumstances," I order as follows:
1. That the Respondent shall make a concerted, honest, and good faith effort to generate a record that includes a list of all the dates on which the board met since September 30, 2019, and of all the decisions made in such meetings, along with any other relevant data that would ordinarily be included in the minutes of such meetings, relying on the best information that can be provided by the existing records of the condominium and the collective memory and efforts of its current and past board members, managers, and others who may have knowledge of such affairs; and
 2. that this record shall be provided to all of the owners of the condominium within 120 days of the date of this decision.

Record of Notices of Leases under s. 83 of the Act

- [16] The Respondent states that it does not have a record corresponding to the record described in subsection 83 (3) of the Act. As a substitute, it provided a spreadsheet that contains a list of owners and includes an indication of whether the units are "owner-occupied" or "tenanted". This substituted document, uploaded during these proceedings, appears to be a modified version of the simple owners' list that the Respondent had provided previously to the Applicant without the "owner-occupied" or "tenanted" information being included; it has the appearance of having been modified only for the purposes of attempting to satisfy the Applicant's records request during the course of these proceedings.

[17] In any event, the substituted document is not the record contemplated by the Act. Although it indicates whether a unit is known or believed to be tenanted rather than “owner-occupied,” it does not indicate whether any notices required under section 83 of the Act were received with respect to such units. The Respondent is required to have such a record, and I therefore order that it be made and provided to the Applicant within 30 days of the date of this order. The Respondent is reminded that the Act also requires that this record must continually be maintained and kept up to date.

Issue No. 2: Relief to Be Ordered

[18] As relief in this case, the Applicant has requested reimbursement of his filing costs of these proceedings, his legal expenses relating to these proceedings, an amount of \$150 for “personal expenses”, and compensation for various alleged harms suffered. The Applicant also asks that a penalty be awarded against the Respondent.

[19] Under subsection 1.44 (1) the Tribunal has authority to order the following monetary awards:

1. 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 the greater of \$25,000 or the amount, if any, that is prescribed.
2. An order directing a party to the proceeding to pay the costs of another party to the proceeding.
3. An order directing a party to the proceeding to pay the costs of the Tribunal.
4. 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.

In addition, the Tribunal’s Rule 48.1 provides that the unsuccessful party in a case will be ordered to reimburse the successful applicant’s Tribunal fees as a costs award under 1.44 (1) 4.

[20] Regarding the Applicant’s request for reimbursement of its Tribunal filing fees, the Respondent argues that,

Tribunal fees are not warranted because all records within the Condominium’s possession have now been provided; Sidhu cannot be ‘successful’ in the resulting Order: i.e., the Tribunal will not order the production of any record.

[21] Regarding payment of a penalty under 1.44 (1) 6 of the Act, the Respondent argues,

...because [the Applicant] was ultimately provided with all requested records within the Condominium’s possession... a penalty is not warranted.

The Respondent also cites, “technical difficulties with the Tribunal’s ODR system.”

[22] Alternatively, the Respondent argues that the amount of the penalty, if awarded, should be reduced, on the basis that,

As Mr. Sidhu was ultimately provided with the requested records in existence, the Condominium's conduct clearly does not fall within the ambit of: "wilful misconduct or behaviour that is highhanded, intransigent or egregious."

- [23] In summary, in regard to both Tribunal filing fees and a penalty, the basis of the Respondent's argument against them is simply that it provided the Applicant with the requested records during the Tribunal proceedings. With all due respect to the Respondent and its counsel, this argument makes no sense.
- [24] The fact that the Respondent waited until these Tribunal proceedings to provide the majority of records requested by the Applicant demonstrates, rather than mitigates, the fact that the Applicant needed to commence his Tribunal application in order to obtain the records. The Applicant was therefore obviously successful. Further, although the majority of non-existent records do not have to be produced by the Respondent, some do, and the Applicant was clearly right to want and to request such records, which the Respondent has no justification for having failed to maintain or produce. The Applicant is entitled to reimbursement of his Tribunal fees.
- [25] The same facts also demonstrate, in part, why a penalty is appropriate in this case. Additionally, when asked why the records that exist were not all provided to the Applicant prior to this case commencing, the Respondent cited the facts that its condominium manager had "no previous experience with the CAT-ODR interface," and "is not a legal professional." These answers are not reasonable excuses and simply disregard the expectation under the Act that records should be provided when requested in accordance with the Regulations without requiring the person making the request to start Tribunal proceedings.
- [26] The Respondent also suggested that the manager "initially believed that the records requests were satisfied based on: (i) previously provided records; and (ii) because certain records do not exist," however this is also not a credible or satisfactory answer. Clearly, nearly half of the requested records do not fit into the category of records that "do not exist". Of those existing records, the Respondent admits it gave the Applicant fewer than half of them prior to these proceedings. It is not reasonable for the Respondent or its manager to have believed that the records requests were previously satisfied in the face of such clear and obvious facts.
- [27] It is also worth commenting that a condominium corporation and its board cannot wash its hands of its duties by abdicating them to its manager. The corporation, as represented by its board, is the party responsible for satisfying records requests and is accountable for failing to ensure that the manager is adequately equipped, informed, and instructed so the request can be properly fulfilled.
- [28] Additionally, as has been explained in other Tribunal cases, the inability of a condominium corporation to produce records that do not exist solely because of its own failure to maintain those records contrary to a statutory requirement, may be determined to be an effective refusal for which there may be no reasonable excuse. In this case, the Respondent has not even made any effort to suggest an excuse, let alone a reasonable one, for having failed over several years to maintain board meeting minutes as required by the Act. When directly asked to explain why the condominium has no board meeting minutes, the Respondent's counsel repeatedly answered,

The Condominium does not possess minutes of Board meetings because such are not maintained.

This answer, while probably a complete statement of the facts, also constitutes evidence of what seems to be a long-standing, unashamed, and unmitigated disregard for a very important and fundamental statutory duty, resulting in an effective refusal to provide the requested records to the Applicant. Contrary to the Respondent's submissions, this certainly appears to be "wilful ... highhanded, intransigent or egregious," and should attract a substantial penalty.

- [29] I order that the Respondent pay the Applicant his \$200 in Tribunal fees and a penalty under subsection 1.44 (1) 6 in the amount of \$3000.
- [30] Regarding the Applicant's request for reimbursement of his legal expenses, totalling \$2,140, the Respondent submits that a costs award for legal fees is rarely provided at the Tribunal. It notes that no detailed bill of costs was submitted, and that this case does not set out the kind of extraordinary circumstances that would normally give rise to such a reimbursement. In all these respects, the Respondent is correct. Rule 48.2 of the Tribunal's rules states,
- 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.*
- [31] Although the parties have an evidently long and acrimonious history, their conduct during these Stage 3 proceedings was appropriate and neither party caused the proceedings to be extended, delayed, aggravated, or complicated in any way. There are no grounds justifying an exceptional requirement that the Respondent reimburse the Applicant for his legal expenses.
- [32] I have carefully considered the Applicant's request for compensation due to "pain and suffering". The Applicant submitted various materials as evidence of neglected repair work, harassment, and nuisances which the Applicant alleges were caused or done by the Respondent directly as reprisal for the Applicant's requests for records. In closing submissions, the Applicant cited section 137 of the Act regarding offences for which prosecution may be available and reiterated many general allegations regarding the Respondent's conduct and non-compliance with statutory standards and obligations.
- [33] The evidence is reasonably compelling that certain incidents did occur that may represent an unfortunate animosity toward the Applicant on the part of members of the Respondent's board or that are understandably interpreted that way by the Applicant; however, I do not find evidence that such incidents necessarily constitute reprisals for or relate in any other way to the Applicant's requests for records or the Respondent's failure to comply with its duties in regard to them. As such, these matters, as noted earlier in this decision, are outside the scope of this Tribunal's jurisdiction and do not justify an award for compensation under subsection 1.44 (1) 3 of the Act in this case.
- [34] I wish to clarify for the Applicant and other potential applicants to this Tribunal who may read this decision, that general complaints about repairs and maintenance are not presently within the jurisdiction of this Tribunal to address. Issues of harassment and general misconduct or non-compliance are also not within our ability to address unless occurring in relation to or arising out of a matter that is within one of our stated areas of jurisdiction in Ont. Reg. 179/17, as amended. The Tribunal's remedies are restricted to those section in Part I.2 of the Act, and do not

include the remedies specified under section 137 of the Act. In addition, while the conduct of condominium managers may be relevant to claims set out in applications at this Tribunal, complaints regarding managers in and of themselves are not properly heard by this Tribunal. Parties must be careful to ensure that matters outside the Tribunal's jurisdiction are not included in their applications in a way that complicates the case or distracts from finding a resolution to the matters the Tribunal can address.

- [35] As noted, the Applicant also requested reimbursement of \$150 in "personal expenses". The Applicant provided no description of such expenses, and there is no basis for compensation of this amount.
- [36] Lastly, monetary awards are not the sole forms of relief or consequences that the Tribunal may order. The general authority of the Tribunal to make orders under subsection 1.44 (1) 7 of the Act, that "the Tribunal considers fair in the circumstances," allows the Tribunal to address underlying issues as well as the more obvious claims (e.g., for costs or compensation) that parties may make.
- [37] In this case, the Respondent's submissions relating to their lack of board meeting minutes, the appearance of their record produced in relation to section 83 of the Act, and their apparent view that their delay in properly responding to the Applicant's requests for records should be treated as inconsequential, together suggest a somewhat extreme degree of either neglect of, or failure to comprehend, some of the fundamental duties of condominium directors.
- [38] It is in part, if not primarily, to ensure that all condominium directors have at least that basic level of understanding that they are required under the Act to complete mandatory training courses provided by the Condominium Authority of Ontario (CAO). It appears to me that this board may require a refresher. Therefore, under subsection 1.44 (1) 7 of the Act, I will order that each of the current board members takes or retakes the mandatory director training prescribed under subsection 29 (2) (e) of the Act within 30 days of the date of this decision. By the end of that 30-day period, the Respondent shall provide the Applicant with evidence of completion. The directors are encouraged to also consider taking any advanced training course the CAO also provides, though I do not make this part of my order.

C. ORDER

[39] It is therefore the order of this Tribunal that:

1. Under subsection 1.44 (1) 1 of the Act:
 - a. the Respondent shall immediately commence keeping minutes of all of its board meetings and retain the same as records of the corporation in accordance with subsection 55 (1) of the Act; and
 - b. within seven (7) days of the date of this decision, the Respondent shall prepare and provide to the Applicant an updated record of notices of leases it receives as required by subsection 83 (3) of the Act, and after that shall consistently maintain that record in accordance with the Act;
2. Under subsection 1.44 (1) 7 of the Act:
 - a. the Respondent shall make a concerted, honest, and good faith effort to generate a record that includes a list of all the dates on which its board of directors has met since September 30, 2019, and of all the decisions made in

such meetings, along with any other relevant information that would ordinarily be included in the minutes of such meetings, relying on the best information that can be provided from the existing records of the condominium and the collective memory and efforts of its current and past board members, managers, and others who may have knowledge of such matters; and

b. this record shall be presented to the unit owners within 120 days after the date of this decision;

3. Also under subsection 1.44 (1) 7 of the Act and within 30 days of the date of this decision, each of the current directors of the Respondent shall take or retake, as the case may be, the mandatory director training course provided by the Condominium Authority of Ontario (CAO) as prescribed pursuant to subsection 29 (2) (e) of the Act and the Respondent shall provide the Applicant with the evidence of completion, if any, that is provided by the CAO or, if the CAO provides no evidence of completion (such as in the case of a retaken course), a sworn attestation of the directors' completion of the program; and
4. Within 30 days of the date of this Order, the Respondent pay the Applicant costs in the amount of \$200 under subsection 1.44 (1) 4 of the Act, and a penalty under subsection 1.44 (1) 6 in the amount of \$3000.

Michael Clifton
Vice-Chair, Condominium Authority Tribunal

Released on: October 14, 2022