

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** December 2, 2022

**CASE:** 2022-90000R

**Citation:** Yeung v. Metropolitan Toronto Condominium Corporation No. 1136, 2022 ONCAT 137

Order under section 1.41 of the *Condominium Act, 1998*.

**Member:** Ian Darling, Chair

**The Applicant,**  
Kai Sin Yeung  
Self-Represented

**The Respondent,**  
Metropolitan Toronto Condominium Corporation No. 1136

**Hearing:** Written Submissions – October 19, 2022 - November 5, 2022.

### **MOTION DECISION**

#### **A. INTRODUCTION**

- [1] Kai Sin Yeung (“the Applicant”), is an owner in Metropolitan Toronto Condominium Corporation No. 1136 (“the Respondent”). In December 2020 the Tribunal dismissed<sup>1</sup> two CAT cases filed by the Applicant and ordered that the Applicant must obtain permission from the Tribunal before filing any new applications.
- [2] On October 19, 2022, the Applicant requested permission to submit a new application. The CAT requested submissions from the Applicant and Respondent.
- [3] For the following reasons, the request to submit a new application is denied, and I award \$500 in costs to the Respondent.

#### **B. ISSUES & ANALYSIS**

##### **Should the CAT permit the Applicant to file a new case?**

- [4] This is the third time since the CAT restricted access that the Applicant has requested permission to file an application with the Tribunal. The first<sup>2</sup> request resulted in an order denying the request. The second request resulted in the Respondent providing records, after discovering that they had misplaced a previous record request. Upon receipt of the records, the Applicant withdrew their

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<sup>1</sup> [Yeung v. Metropolitan Toronto Condominium Corporation No. 1136, 2020 ONCAT 45](#)

<sup>2</sup> [Yeung v. Metropolitan Toronto Condominium Corporation No. 1136, 2021 ONCAT 17](#)

request to submit an application.

- [5] The CAT restricted the Applicant's access to the CAT because the Applicant had engaged in a pattern of conduct consistent with the criteria of vexatious conduct<sup>3</sup>:
1. The Applicant submitted several cases where it was obvious that the case cannot succeed.
  2. CAT applications identified minor, or clerical issues, and requests for substantial penalties were brought for purposes other than the assertion of legitimate rights.
  3. Applications rolled forward grounds and issues into subsequent actions.

The CAT determined that the frequency of new applications was increasing, and concluded that without limiting new applications, this pattern would continue.

- [6] Requiring an Applicant to seek permission from the Tribunal to file new applications is a significant step. The CAT restricted access to the Tribunal to prevent abuse to an abuse of process. It follows that the decision to lift this restriction should only follow where there are clear and compelling reasons to set aside the order – even if temporarily.
- [7] I have reviewed the record request, and the basis of the Applicant's current request to submit a case to the Tribunal. I conclude that the basis of the request to file a case is similar in nature to the prior requests. The issues in dispute are minor and are consistent with the findings that the Applicant was using the CAT to impose his standard for recordkeeping and governance on the Respondent.
- [8] I conclude that there is not sufficient reason to set aside the Tribunal's order, and to allow the case to proceed. The motion to file a new case is denied.

### **Should the CAT award costs?**

- [9] The Respondent requested the Tribunal award \$5000 in costs against the Applicant. The Respondent did not provide any evidence of the costs incurred – however, they were required to respond to the motion to file a new case. The response was submitted by counsel. Both parties were to provide a 500-word response to the Applicant's request to file the application as well as a maximum 1000-word submission on the issue of whether this application is a vexatious proceeding.
- [10] While it is true that the Applicant's access to the Tribunal was restricted because the Tribunal determined that applications had been submitted for an improper purpose, this does not mean that costs will be automatically awarded against the

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<sup>3</sup> [Yeung v. Metropolitan Toronto Condominium Corporation No. 1136, 2020 ONCAT 45](#)

Applicant in every instance. In *Yeung v. Metropolitan Toronto Condominium Corporation No. 1136*, 2021 ONCAT 17 costs were not an issue because the Respondent was not required to respond. In the second request, costs were not appropriate, because the records were only provided after the Applicant made the request to the Tribunal. In the current case, the Respondent was involved and the submissions were succinct and helpful to the Tribunal in deciding the motion.

[11] In their request for costs, the Respondent cited a variety of Small Claims Court cases that they assert speak to the vexatious conduct of the Applicant. The court has not determined the applications, and in this case their existence is not relevant to the questions I have to consider.

[12] The Respondent also included emails sent by the Applicant to the Respondent's board of directors that criticized the decision to require the Applicant to seek the permission of the Tribunal to file new cases. These emails are irrelevant to the question of whether the Applicant is using the CAT for an improper purpose. I give them no weight in my assessment of costs.

[13] The CAT's statutory authority to issue orders is outlined in section 1.44 of the *Condominium Act, 1998* (the "Act") and includes:

...

4. An order directing a party to the proceeding to pay the costs of another party to the proceeding.
5. An order directing a party to the proceeding to pay the costs of the Tribunal.

The Act also states that an order for costs shall be determined in accordance with the CAT's Rules of Practice.

[14] The CAT Rules of Practice<sup>4</sup>, and Practice Direction on Costs<sup>5</sup> provide helpful guidance on this topic. Rule 48.2 states that:

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.

[15] The Practice Direction further outlines factors for the Tribunal to consider when

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<sup>4</sup> <https://www.condoauthorityontario.ca/wp-content/uploads/2022/01/CAT-Rules-of-Practice-Jan-1-2022.pdf>

<sup>5</sup> <https://www.condoauthorityontario.ca/wp-content/uploads/2021/12/CAT-Practice-Direction-Approach-to-Ordering-Costs-January-1-2022.pdf>

assigning costs. Several are relevant to my decision to award costs. First, I have concluded that since this request is a continuation of the behaviour that led to the restriction, it was filed for an improper purpose. Second, the Applicant's conduct has resulted in legal costs to the condominium, that all of its owners, most of whom have no direct involvement or interest in this case, must contribute to. Third, though the parties did attempt to resolve the issue before coming to the CAT, the conflict appears intractable – with both parties contributing to the problem. The fact that both parties have contributed to this situation mitigates the amount of costs I might award. I also consider it appropriate for consequences of an unsuccessful application to escalate in severity following another unsuccessful application.

[16] The Respondent cited a recent CAT case<sup>6</sup> where the CAT ordered an Applicant to pay \$3000 in costs after a determination that the Applicant was using the case for an improper purpose. That award was at the conclusion of a case that went through all three CAT stages. Here, the Respondent was required to make only one submission, not longer than 1500 words. I also note that previously when the Applicant requested permission to submit a case, it was due to the Respondent's error in failing to respond to the request. On balance, considering these factors, an award of just \$500 in costs is appropriate.

### **C. ORDER**

[17] The motion is denied.

[18] The Applicant is ordered to pay \$500 to the Respondent within 30 days of this decision.

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Ian Darling  
Chair, Condominium Authority Tribunal

Released on: December 2, 2022

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<sup>6</sup> [Gale v. Halton Condominium Corporation No. 61, 2022 ONCAT 85](#)