

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 17, 2023

CASE: 2022-00396R

Citation: Lochner v. Toronto Standard Condominium Corporation No. 1953. 2023 ONCAT 6

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

Member: Ian Darling, Chair

The Applicant,
Silvano Lochner
Self-Represented

The Respondent,
Toronto Standard Condominium Corporation No. 1953
Represented by David Thiel, Counsel

Hearing: Written Online Hearing – October 12, 2022 to December 21, 2022

REASONS FOR DECISION

A. INTRODUCTION

- [1] This decision relates to the fees a condominium corporation may charge for the production of non-core records. I have determined, in the context of the circumstances of this case, that the Respondent may charge \$600 for labour to produce six categories of non-core records. I further find that the Respondent did not adequately justify \$48 in photocopying costs, so this shall not be included in the fee for production of records.
- [2] The Respondent requested that it be awarded its legal costs. In my decision, I have considered the impact of the Applicant's conduct during the course of the case when assessing the Respondent's request for legal fees.
- [3] The Applicant's submissions show significant mistrust and frustration with the Respondent. Many of these issues are outside of the scope of this hearing. Specifically, the Applicant's concerns with the state of repair of the condominium, and the level of service provided by the condominium manager. The Applicant was advised several times during the case that the Tribunal could only deal with issues surrounding the records request. I recognize that this decision will not resolve the other underlying issues. I encourage the parties to work together to develop a sustainable solution to address these issues.

B. BACKGROUND

- [4] Before considering the issues to be decided I will provide background on the dispute. Although self-represented before the Tribunal, the Applicant was represented by legal counsel prior to the application being filed with the CAT. The Applicant, through their legal counsel, delivered a Request for Records dated March 9, 2022. The Request was for eight core records and seven non-core records. The Board's Response was sent April 14, 2022 – several days beyond the 30-day limit to respond to records requests. The Response indicated that the Applicant could obtain copies of all requested records.
- [5] The Respondent's condominium manager sent an email to the Applicant's counsel with the response form explaining that the "estimated labour costs to gather everything summerside [sic] all together under item 6". The Board's Response Request for Records form listed \$600 as the total labour costs. The Response also estimated \$54 for photocopying costs.
- [6] On April 26, the Applicant dropped off a cheque for \$32.00 to pay the photocopying costs of two categories of records (related to plumbing and the waste stack). The cheque was never cashed.
- [7] Also on April 26, the Applicant's counsel responded in a letter objecting to the cost of the roof repair records. The Applicant's counsel attached a new Request for Records, stating that the Applicant "amends its request for documents relating to the Corporation's roof in a new Request for Records, which is enclosed."
- [8] The Respondent considered the initial request for roof records to be withdrawn and replaced with the new Request for Records.
- [9] The core records were provided and are not an issue in this case.
- [10] The parties confirmed that the case related to the cost to produce the following non-core records:
1. Repairs and maintenance ledger going back three years - January 1, 2019, to present.
 2. Documentation with respect to the two floods that affected a Unit know to the Parties (August 2021 and January 16, 2022) including incident reports, invoices for repairs, invoices for plumbing costs, plumbing reports and all communication with owners affected by the flood.
 3. All plumbing reports and invoices for plumbing work going back two years, January 1, 2019, to present.
 4. Invoices and records for waste stack maintenance going back five years, January 1, 2019, to present.

5. Communications and board meeting minutes that relate to cancelling the waste stack maintenance program.
6. Documentation pertaining to the roof repair – all reports pertaining to roof deficiencies, communications with third parties pertaining to the need to repair the roof, and quotations for repairs.
7. Board meeting minutes – all board meeting minutes from January 1, 2019, to present (the most recent 12 months are core records).

[11] The Respondent proposed the following fees for the production of the records:

Record	Labour Costs (@ \$25.00 Hourly Rate)	Photocopying costs (@ \$0.20 Cost Per Page)	Total
1	3 hours = \$75	30 pages = \$6	\$ 81
2	2 hours = \$50	50 pages = \$10	\$ 60
3	6 hours = \$150	60 pages = \$12	\$162
4	6 hours = \$150	100 pages = \$20	\$170
5	3 hours = \$ 75	0 pages	\$ 75
6	N/A	N/A	N/A
7	4 hours = \$100	0 Pages	\$ 100
Total:	\$600	\$48	\$648

[12] I note that the Respondent was several days late in responding to the March 9 records request, and there were errors in their response. I consider these minor errors, that were rendered moot by the April 26th records request. I have chosen to acknowledge them but find that they are extraneous to the questions to be determined in this case.

[13] During the hearing, there was some dispute over which request was valid, whether the Respondent was entitled to amend the estimated cost of producing the records and whether the Respondent was required to produce records 1-5 and 7 at no cost.

[14] In deciding these issues, I have reviewed all the evidence and submissions before me, but I only refer to those that are relevant and necessary to making my decision.

C. ISSUES & ANALYSIS

Issue 1: Whether the labor and copy costs quoted by the Respondent for the production of the non-core records is reasonable under the Act.

- [15] Sections 13.3 (8) and 13.3 (9) of Ontario Regulation 48/01 establish that condominium corporations can charge a fee to access and for copies of the requested non-core records. The fee must present a reasonable estimate of the labour, photocopying / printing and delivery costs that a corporation expects to incur when providing the records in their requested format.
- [16] Corporations may charge up to \$0.20 per page for printing and photocopying services, as required, to fulfill the records requests. Requesters must pay the estimated costs to the corporation upfront once received, the corporation must respond to the request within 30 days.
- [17] When corporations fulfil a non-core records request, they are required to provide the requester with an accompanying statement stating whether any document has been redacted and why, as well as the total actual costs that were incurred to provide the records. Corporations must provide the requester a refund if the actual costs are less than the estimate. Requesters may be required to pay a minimal 'top-up' fee if the actual costs exceed the estimate.
- [18] The Applicant asserted that the Respondent did not provide an adequate explanation of the actual costs to produce the records. The Applicant provided an example from a CAT case¹ where the Respondent was not entitled to charge a fee for photocopying when the records were maintained and requested in electronic format. In this case the Applicant also requested the records in electronic format.
- [19] The Applicant suggested that the Respondent had charged an arbitrarily high fee in order to discourage and intimidate owners to prevent record requests.
- [20] The Applicant asserted that since the Respondent's April 14, 2022, response indicated that the cost to produce the roofing records (referred to by both parties as "record #6") was \$600, that he should be entitled to the remaining records at no cost.
- [21] The Respondent clarified that the \$600 cost for producing the records was for all non-core records, not just the roofing records.
- [22] In explaining the time estimate provided in the second response, the Respondent submitted that they estimated that it would require 24 hours of labour - stating that the work would involve locating, retrieving, and compiling the records, along with any required redactions. The Respondent stated that if the Applicant had accepted the estimate they would, have provided the accompanying statement outlining the

¹ Shaheed Mohamed v York Condominium Corporation No. 414

total hours and costs incurred, along with a refund, if necessary, in compliance with the Regulation.

- [23] The Respondent provided a detailed breakdown to justify the time to produce the records – based on average annual number of each type of record, and the number of years requested. I find that the Respondent has reasonably estimated the work to compile the records, and further find that the accompanying statements and refund process, if followed, would ensure the Applicant is not overcharged to produce the records.
- [24] The Respondent submitted that the hourly fee of \$25 is reasonable. I concur, since this hourly rate is consistent with rates determined to be reasonable in other CAT decisions and is consistent with an hourly rate for the kind of administrative work required to produce the records.
- [25] The Respondent justified the \$0.20 fee per page, stating that it was estimated in compliance with the Regulation. The Respondent did not however, provide justification as to why a fee for photocopying was required when the records were requested in electronic form. While corporations may be entitled to charge a fee, they must still demonstrate that the fees relate to actual expenses. In this case, the Respondent has not sufficiently justified why it was necessary to charge \$0.20 per page. I therefore decline to award any fees for the photocopying.
- [26] I will order that if the Applicant wants the records, they must pay \$600 to the Respondent within 30 days of this decision. The Respondent will then have 30 days from the receipt of payment to compile and deliver the records. The Respondent will also be ordered to provide the accompanying statements, and to follow the refund process as appropriate.

Issue 2: Should the Tribunal award a reimbursement of Tribunal fees, or legal costs?

- [27] The Applicant was partially successful in reducing the fee proposed by the Respondent. The CAT Rules of Practice state that when the Applicant is successful, the Tribunal will normally award reimbursement of the Tribunal fees. I decline to award any Tribunal fees in this case for the following reasons. The Applicant unnecessarily prolonged the case and did not follow the Tribunal's directions. The Applicant is not unfamiliar with administrative or judicial processes. This was not a question of lack of understanding of the process. Rather, there appeared to be choices intended to frustrate the Tribunal, the Respondent and its counsel. The behaviour included:
1. Submitting many meritless motions (including several on the same subject);
 2. Persistent incivility – including insulting CAT staff and Tribunal Members, and the Respondent's manager and counsel;
 3. Repeatedly emailing CAT and CAT staff members directly rather than using the CAT-ODR platform (at the time of writing, over 90 emails had been sent to

- CAT staff and Members, and this behaviour continued after the Applicant was instructed not to send such messages). This conduct is prohibited by the Rules, and he was advised as such - so it's not just not following directions, it's deliberately contravening the Tribunal's Rules;
4. Ignoring directions from the Member, ignoring instructions for how to make submissions, and page limits for submissions;
 5. Repeatedly accusing the Tribunal of bias without any credible evidence to support those accusations.

The cumulative effect of this behaviour was to subject a simple case about the cost to produce records to a much longer process. Section 1.44 (1) 5 gives the Tribunal the authority to make an order directing a party to the proceeding to pay the costs of the Tribunal. I have decided not to exercise that exceptional power. In these circumstances, it is not appropriate to award reimbursement of the Applicant's Tribunal fees.

[28] In their submissions, the Respondent asked for an award of costs against the Applicant related to legal fees incurred during the process. Rule 48.2 of the CAT Rules, 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.

[29] The CAT Practice Direction on Costs sets out several factors relevant to deciding whether to order costs. When deciding whether to order a party to reimburse another party's costs under Rule 48 and/or 49, the CAT will balance the parties' rights and interests to arrive at a fair decision. Some of the factors that the Tribunal may consider include:

1. Whether a party or representative's conduct was unreasonable, for an improper purpose, or caused a delay or expense;
2. Whether the Case was filed in bad faith or for an improper purpose;
3. The conduct of all parties and representatives, including the party requesting costs;
4. The potential impact an order for costs would have on the parties;
5. Whether the parties attempted to resolve the issues in dispute before the CAT;
6. Whether a Party has failed to follow or comply with a previous order or direction of the CAT;
7. The provisions of the condominium corporation's declaration, by-laws and rules (collectively referred to as the condominium corporation's "governing documents");
8. Any other factors the CAT considers relevant.

- [30] I have described the Applicant's behaviour above, and conclude that the behaviour was unreasonable, caused delays and additional expenses to the Respondent.
- [31] The Respondent submitted that it was compelled to retain legal counsel, and could not use condominium management or board representation, given the Applicant's responses and communications both before and during this proceeding. The Respondent further stated that the case required experienced counsel due to the combative nature of the Applicant's communication.
- [32] The Applicant pointed to counsel's involvement prior to the CAT case to counter the Respondent's assertion that the choice to hire counsel was not connected to the CAT case. The Applicant provided several examples where the CAT declined to award legal fees because the CAT found that a party's conduct was reasonable and did not cause additional expense. I can easily contrast those cases with the behaviour in this case – in the cases cited, the CAT found the Applicants' behaviour reasonable. The Applicant's behaviour in this case was persistently disruptive and unreasonable.
- [33] I concur that the case required counsel due to the Applicant's conduct, which was frequently disrespectful to the Tribunal, the Respondent and counsel. I also find that the Applicant's behaviour complicated the hearing and required the Respondent to unnecessarily incur legal costs.
- [34] The Respondent indicated that they had incurred \$6000 in legal fees over the course of the proceeding. I note that the Respondent's counsel was judicious about responding to messages during the hearing, and only responded when directed to do so. Further, the written submissions were within the page limits I established for the case and relevant to the issues to be decided. I am satisfied that the Respondent reasonably incurred these fees.
- [35] In deciding what an appropriate cost award might be, I am mindful that the parties will have an ongoing relationship after the case is completed. I do not want the Tribunal fees to further exacerbate the dispute between the parties. However, it would be unfair to all other owners to expect that the community be fully responsible for costs incurred directly related to inappropriate conduct of the Applicant. Further, when reviewing the factors to consider in assessing costs, I have determined that the Applicant's behaviour was extreme. However, I also question the proportionality of incurring \$6000 in legal costs in order to secure \$600 in costs to produce the record. Therefore, on a substantial indemnity basis the Respondent is entitled to costs. In view of the Applicant's conduct, I award the Respondent 80% of their costs – to a total of \$4800

D. CONCLUSION

- [36] I note that the Applicant has concerns with the state of repair of the condominium and effectiveness of the condominium management service. The records

requested are relevant to that dispute. I encourage the parties to work together to resolve the issues in dispute, and to avoid personal insults and attacks. The benefit of condominium living is that it provides community, and a shared responsibility for the common elements. I encourage the parties to keep that spirit of community in mind as they work to resolve the remaining issues in dispute.

E. ORDER

[37] The Tribunal Orders that:

1. If the Applicant requires the records, they must pay \$600 to the Respondent within 30 days of this decision.
2. Upon receipt of payment, the Respondent will have 30 days to compile the records, and provide them to the Applicant.
3. The Respondent must also provide the accompanying statements, and to follow the refund process if it takes less than 24 hours to produce the records.
4. The Applicant is ordered to pay the Respondent \$4800 in costs within 30 days of this decision.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: January 17, 2023