

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 23, 2023

CASE: 2021-00308R

Citation: Gagnon v. Carleton Condominium Corporation No. 331, 2023 ONCAT 13

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

Member: Nicole Aylwin, Member

The Applicant,
Édith Gagnon
Self-Represented

The Respondent,
Carleton Condominium Corporation No. 331
Represented by Emily Deng, Counsel

Hearing: Written Online Hearing – June 22, 2022 to October 18, 2022

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Édith Gagnon, is the owner of a unit of the Respondent, Carleton Condominium Corporation No. 331 (“CCC 331”). Ms. Gagnon brought this application in relation to two Requests for Records (the “Requests”); the first dated April 29, 2021 (“R1”) and the second dated June 30, 2021 (“R2”). Ms. Gagnon claims that CCC 331 has failed to provide the requested records to which she is entitled under s. 55 of the *Condominium Act, 1998* (the “Act”). Furthermore, she claims that CCC 331 has failed to keep adequate records as required by the Act and that this amounts to her being refused the records without a reasonable excuse, as does the failure of CCC 331 to provide her with a separate written explanation for redactions as required by s.13.8 (1) (b) of Ontario Regulation 48/01 (“O. Reg. 48/01”). She has asked the Tribunal to order that CCC 331 provide her with the records she believes are outstanding, including ordering CCC 331 to create records where necessary, and pay a penalty for refusing to allow her to examine or obtain records to which she is entitled without a reasonable excuse.
- [2] CCC 331 claims that it provided all the records Ms. Gagnon is entitled to and for those it did not provide, it claims it had a reasonable excuse for the refusal, namely that the records Ms. Gagnon seeks do not exist. CCC 331 further argues that while it did not provide a separate accompanying statement for the redactions made, it did provide a written explanation of the redactions to Ms. Gagnon in an email, which they argue, served the same purpose, and does not amount to a refusal

without a reasonable excuse.

- [3] For the reasons set out below, I find that CCC 331 did refuse to provide Ms. Gagnon with some of the records she requested without a reasonable excuse and order that CCC 331 pay a penalty in the amount of \$750.
- [4] Finally, I note this is not the first Tribunal case between these parties. It is evident from the submissions that mistrust and frustration abound and there are issues between the parties that are outside of the scope of this hearing. 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.

B. BACKGROUND

Preliminary Issues

- [5] Two preliminary issues were addressed at the outset of the hearing.
- [6] First, while the Stage 2 – Mediation of this case took place in French with a bilingual Tribunal Member, both parties agreed that Stage 3 – Tribunal Decision would be conducted fully in English.
- [7] Second, as noted above, this case deals with two requests for records made by Ms. Gagnon (R1 and R2). At the outset of the hearing, Ms. Gagnon made a motion to add issues related to a third request, dated July 5, 2022, to the hearing. Ms. Gagnon eventually withdrew this request and the hearing proceeded dealing only with R1 and R2.

Agreed Facts

- [8] The Summary and Order provided by the Tribunal Member who mediated this case at Stage 2 – Mediation, contained several agreed facts. At the outset of the hearing, I asked both parties to confirm the agreed facts. The parties confirmed that the facts below are agreed upon and thus I have relied on these facts in making my decision. The facts are as follows and reflect the wording used and agreed to by the parties:
 1. Ms. Gagnon submitted, and CCC 331 received, two Request for Records forms from Ms. Gagnon - R1 and R2.
 2. R1 asked for electronic copies of minutes of board meetings for the previous twelve months.
 3. CCC 331 responded to R1 on May 11, 2021. In its Response to Request for Records form, CCC 331 indicated it had determined that Ms. Gagnon was entitled to the records requested and provided Ms. Gagnon the following sets of minutes by email:

- i. June 18, 2020
 - ii. August 10, 2020
 - iii. October 8, 2020
 - iv. November 17, 2020
 - v. December 1, 2020
 - vi. January 12, 2021
 - vii. February 18, 2021
4. The minutes that were provided contained redactions, and five sets of minutes were not attached to the email. The missing sets of minutes were for meetings held on July 23, 2020, August 14, 2020, September 16, 2020, March 2021, and April 2021. CCC 331 stated that there were no minutes for July 23, August 14, or September 16, 2020. No explanation was provided for why the minutes for March and April 2021 were not provided.
5. After an email exchange, wherein Ms. Gagnon questioned why she had not received all the minutes and questioned the redactions, CCC 331 provided the minutes for July and September 2020 and confirmed that there were no August 2020 minutes because no meeting was held on that date. CCC 331 also indicated that “all unit information” had been redacted. No additional written statement explaining the reasons for the redactions and indicating which provision of s. 55 of the Act it relied on for the redactions, as required by s. 13.8 (1) (b) of O. Reg. 48/01, was provided to Ms. Gagnon other than this email.
6. Ms. Gagnon submitted R2 on June 30, 2021, wherein she requested the budget for the current fiscal year, the minutes from February 2021 to the date of the response, a “Maintenance and Repair Chart”, and records related to mice and mold remedy prevention and any fence repairs related to her unit from 2015 to present.
7. On July 28, 2021, the CCC 331 sent Ms. Gagnon its Response to Records Request form stating she could obtain or examine these records at no charge, but it did not attach any of the records to its form.
8. On October 4, 2021, the property manager on behalf of CCC 331 sent Ms. Gagnon an email stating in full: “As per the Board’s request please find attached the following: redacted minutes February to Current; budget for the fiscal year; Maintenance and Repair Chart – Bylaw No. 14”. The email did not include meeting minutes for July 2021, nor did it include documents relating to mice, mold, or fence repairs, nor any explanation for why those records were not provided.

9. During Stage 2 - Mediation further records were provided; specifically, a work order related to a leak in the garage (dated 4/11/2020), a work order issued for fence repairs (dated 09/14/2020) and an invoice related to fence repairs for work completed (dated 9/11/2021).
10. During Stage 2 – Mediation, CCC 331 also confirmed that there were no records related to mice to be provided.

[9] After agreeing to these facts, the parties also agreed that the following issues were to be decided:

1. Has the Respondent failed, without reasonable excuse, to provide records to which the Applicant is entitled?
2. Has the Respondent failed to keep adequate records as required by s. 55(1) of the Act?
3. Does the Respondent's failure to provide a separate written explanation for redactions as required by s.13.8(1)(b) of O. Reg. 48/01 amount to a refusal to provide the redacted records?
4. Should the Respondent be required to pay a penalty under s. 1.44(1)6 of the Act for refusing to provide the Applicant with the records requested without reasonable excuse, and if so, in what amount?
5. Should the Applicant be awarded any costs?

[10] These are the only issues addressed in this decision.

C. ISSUES & ANALYSIS

Issues no. 1 and no. 2: Has the Respondent failed, without reasonable excuse, to provide records to which the Applicant is entitled? Has the Respondent failed to keep adequate records as required by s. 55 (1) of the Act?

[11] As outlined above, Ms. Gagnon received some of the outstanding records requested during Stage 2 – Mediation. However, there are several requested records that remain in dispute. These records are:

1. Board meeting minutes for July 2021.
2. Maintenance and Repair chart.
3. Records related to fence repairs to Ms. Gagnon's unit, 2015 – present.
4. Records related to mice and mold remedy prevention in Ms. Gagnon's unit, 2015 – present.

[12] Below, I address the issue of failure to provide records and the issue of adequacy

together as these issues are closely related.

July 2021 Board Meeting Minutes

- [13] Both parties agreed at the outset of the hearing that the July 2021 board meeting minutes had not been provided to Ms. Gagnon.
- [14] CCC 331 did not dispute that Ms. Gagnon is entitled to board minutes. Rather, CCC 331 submits that the reason why these minutes have not been provided to her is because no board meeting was held during July 2021 and thus no minutes existed, which they argued was a reasonable excuse for not providing the record. Ms. Gagnon claimed otherwise. She submits that a board meeting was held in July 2021 and that at least one of her neighbours had received minutes for this meeting.
- [15] After both parties had completed their submissions, Ms. Gagnon made a request to provide late evidence. One of the pieces of late evidence she wished to provide was a copy of the July 2021 minutes that she had recently secured from a neighbour. Before allowing the late evidence, I asked CCC 331 for submissions on the request. CCC 331 indicated they had no objection provided they had the opportunity to reply to any late evidence submitted. I agreed to allow the evidence and Ms. Gagnon uploaded a copy of the board meeting minutes dated July 7, 2021.
- [16] In response to this evidence, CCC 331 claimed that its position, which until the July minutes surfaced, was that no board meeting was held in July 2021 and thus no minutes existed, was based on the “best recollection” of board member William Laycraft. This position was supported by Mr. Laycraft’s testimony where he confirmed that the board “did not meet in July 2021 and, as such, there are no minutes to be provided”. CCC 331 submitted that after viewing the late evidence, Mr. Laycraft completed a further review of his personal records related to the affairs of the corporation and in doing so was “reminded” of the July meeting.
- [17] CCC 331 then provided further context, arguing that since Ms. Gagnon’s records request was handled by the previous condominium manager, whose termination was discussed at the July 2021 meeting and recorded in the minutes, these minutes would not have been made available to that manager. As a result, when the previous manager fulfilled Ms. Gagnon’s request and provided the minutes requested, she would not have had access to the July 2021 minutes and could not provide them. CCC 331 further explained, that when the current condominium manager took over the role, they gained full access to those minutes which is why they were provided to Ms. Gagnon’s neighbour on request.
- [18] Finally, CCC 331 argued that there was no intent to mislead Ms. Gagnon or this Tribunal. It submits that Mr. Laycraft was honest in his belief that there were no minutes to provide and that it was a series of unfortunate staffing circumstances that led to Ms. Gagnon not receiving a copy of those minutes, which she now has

in her possession, making the issue a moot point.

- [19] Ms. Gagnon argues that such an explanation is not a reasonable excuse for refusing to provide her with this record. She notes that Mr. Laycraft was asked to provide his testimony to this Tribunal by written statement and thus had plenty of time to review his notes and ensure his statement was accurate. She further argues that as a reasonable course of action, CCC 331 should have done a thorough review of the minutes it had in its possession once this Tribunal process began, and her claims were made, ensuring that the records she was entitled to had been provided.
- [20] While Mr. Laycraft might have genuinely not recalled that there was a meeting and might not, in that regard, have intended to mislead Ms. Gagnon or this Tribunal, a calculated 'intent' to refuse or mislead is not necessarily required to result at the conclusion that a record was refused without a reasonable excuse. In this case, the facts demonstrate that CCC 331 showed an extraordinary lack of diligence and care in meeting their obligations under the Act. CCC 331 spent the entirety of the time in which this dispute has been in progress – both before and during these Tribunal proceedings – relying on an incorrect belief and never checking the facts. The fact that another unit owner received the very same minutes Ms. Gagnon was seeking suggests a negligent attitude towards finding a fair and honest resolution to this part of the dispute.
- [21] While CCC 331 may not have intentionally refused Ms. Gagnon the records to which she was entitled, they did effectively refuse her the records by not checking their facts, taking care in their record keeping and ensuring that proper processes are in place to ensure that unit owners, when entitled to records, receive them. Claiming after the fact that they 'forgot' there was a board meeting and have now recalled that management did not have access to the records Ms. Gagnon requested are not reasonable excuses in this case. It is ultimately the responsibility of CCC 331 to maintain records and provide these records to unit owners in accordance with the Act. Thus, I find that CCC 331 did effectively refuse to allow Ms. Gagnon to obtain or examine a copy of a record to which she is entitled under s. 55 of the Act and that CCC 331 had no reasonable excuse for doing so.

Maintenance and Repair Chart

- [22] Section 55 (1) 4 of the Act provides that a corporation shall keep "all lists, items, records and other documents mentioned in subsections 43 (4) and (5)." Section 43(5) of the Act details the records and items that the declarant will deliver to the board within 30 days of the 'turn-over' meeting. Item (g) in this list is "a table setting out the responsibilities for repair after damage and maintenance and indicating whether the corporation or the owners are responsible" ("Maintenance and Repair Chart").
- [23] Ms. Gagnon argues that CCC 331 is required by s. 55 (1) 4 of the Act to keep and maintain a copy of the Maintenance and Repair Chart and that she is entitled to

examine it under s. 55 (3) of the Act. However, she argues that in response to her request for this record, instead of providing her with the Maintenance and Repair Chart, CCC 331 provided her with a copy of the Corporation's "By-law No.14", which is titled "Maintenance by the Corporation on behalf of owners".

- [24] CCC 331 claims it does not have or maintain the requested record in the form of a table as specified in s.43 (5) (g). The reason for this is because the requirement for the declarant to provide this table only came into effect in May 2001, when the *Condominium Act, 1998* came into force. CCC 331 was declared in 1986, far prior to this requirement being enacted, thus such a table was never provided to the Corporation. The table does not exist and never has.
- [25] Nonetheless, CCC 331 notes that in the place of such a table CCC 331 does have its By-law No. 14, which they provided to Ms. Gagnon, and Article IX of its Declaration, both of which serve the same purpose as the table in so far as these documents set out the repair and maintenance obligations of the corporation and the owners. CCC 331 argues that this would have fulfilled the legal requirements of what was to be prepared and turned over at the time CCC 331 was declared.
- [26] Ms. Gagnon argues that By-law No. 14 and Article IX of the Declaration are not equivalent to the Maintenance and Repair Chart required by the Act. She argues that the by-law lacks detail and does not itemize or specifically allocate responsibility for maintenance. As a result, she argues it has caused confusion regarding who (i.e., the unit owner or the condominium) is responsible for specific maintenance tasks and repairs. Ms. Gagnon argues that even if the Maintenance and Repair Chart was not provided by the declarant, CCC 331 should be obligated to create one as it is a record that a condominium is required to adequately keep under s. 55 of the Act. She has asked the Tribunal to use its powers under s. 1.44(7) of the Act, which allows the Tribunal to make an "order directing whatever other relief the Tribunal considers fair in the circumstances", to order CCC 331 to create the record. She further asserts that failure to have this record is evidence that the CCC 331 is not keeping adequate records.
- [27] In making her arguments, Ms. Gagnon relied on a blog post published by the legal firm that represents CCC 331 which contained commentary that suggested the Maintenance and Repair Chart was "required" by the Act. However, during the hearing that blog post was edited and the language that indicated that the chart was required by the Act was removed or modified (for example "required" was replaced with "supposed to have"). Ms. Gagnon submitted the updated blog as evidence that the law firm had "changed their narrative" to undermine Ms. Gagnon's arguments in this hearing.
- [28] I note that while the blog post was helpful in allowing me to understand Ms. Gagnon's position and how she came to her conclusions, the blog post itself – both before and after the edits – is simply an author's opinion. It does not serve as an authority on the law. It is the Act itself and relevant decisions by courts and the Tribunal that determine the law.

- [29] Ms. Gagnon did point me to several Tribunal decisions, including *Jasper Developments Corp. v. York Condominium Corporation No. 82, 2022* (“Jasper”), *Rafael Barreto-Rivera v Metropolitan Toronto Condominium Corporation No. 704, 2018* (“Barreto-Rivera”) and, *Novak v. Peel Condominium Corporation No. 485, 2021* (“Novak”), each of which she argued demonstrated that failure to have a record that is required by the Act equates to a refusal without a reasonable excuse. However, the nature of the records at issue in these cases as well as the facts of the cases differ from this one and therefore the cases are of limited relevance.
- [30] While in Jasper the Tribunal found that the failure to turn over records was not a reasonable excuse for a refusal, in that case the phrase ‘turn over’ was simply used to describe a situation where certain records were not available because the property management provider failed to provide (or “turn over”) these records to the condominium when it ceased providing management services. It did not refer to the term of art used to describe the transaction of a declarant ‘turning over’ records that it created and maintained to the first owner board of directors. Moreover, in Jasper, the finding of an unreasonable refusal to provide records was based on facts that demonstrated a consistent pattern of poor record keeping by the corporation, which was failing to create and maintain records such as board meeting minutes and Periodic Information Certificates which are records required to be kept on a regular and ongoing basis by the corporation. In this case, the record in question, the Maintenance and Repair Chart, would be the responsibility of the declarant to create and turn over. It was not the corporation’s responsibility to create this record.
- [31] In Barreto-Rivera, the record at issue was a set of meeting minutes. The Tribunal found that a set of meeting minutes should have been taken during a meeting of owners that was classified as an ‘information meeting’ and the fact that these minutes did not exist constituted a refusal of a record that the corporation is required to keep. The Tribunal did require the Respondent to create minutes for the meeting. However, it was the failure of the corporation to create and maintain a record, whereas here, it was the declarant who did not create or provide the record.
- [32] Finally in Novak, again, it was meeting minutes that were the record at issue. However, in Novak, while the Tribunal did find that the corporation was required to have kept copies of the requested meeting minutes to meet the adequacy requirements of the Act, the Tribunal concluded that the corporation could not produce records that did not exist and found this to be a reasonable excuse for the refusal to provide the records.
- [33] In summary, in each of the above cases, the records at issue are ones that it is the responsibility of the corporation to create and then maintain. In the case of the Maintenance and Repair Chart, s. 43 (5) of the Act specifically refers to documents that are to be turned over by the declarant making it the obligation of the declarant to create and then turn over the document to the corporation.

[34] I accept that when CCC 331 was declared, the requirements to have and maintain such a chart were different, and that a Maintenance and Repair Chart as defined in the current Act, was not turned over by the declarant. Therefore CCC 331 does not have such a chart to keep or maintain. I also accept that CCC 331 has provided Ms. Gagnon with the records in its possession that provide information on maintenance and repair responsibilities and has thus not failed to provide the record requested without a reasonable excuse. I do not make any determination on Ms. Gagnon's claim that By-law No. 14 and Article IX of the Declaration are inadequate, as this question is not properly before me.

Records Related to Fence Repairs

[35] As part of her R2 request, Ms. Gagnon requested records related to the fence repairs on her unit. Several months after the request was made, Ms. Gagnon received an email from the condominium manager which contained several of the records requested in R2, but no records related to fence repairs. Both parties agree that no explanation was offered at the time for why these records were not provided. During the Tribunal Stage 2 – Mediation, CCC 331 provided Ms. Gagnon with the following records related to the fence repairs: two quotes, an invoice, and a document that provides contact information for the engineering company.

[36] There is no dispute over entitlement to the fence repair records. However, Ms. Gagnon argues that in addition to the records she has received, further records related to fence repairs do or should exist and have not been provided. She further argues that CCC 331 does not have a reasonable excuse for not providing the records as per the Act.

[37] First, I will address the alleged missing records. Ms. Gagnon submitted email correspondence between herself and the property manager that she argues provides evidence that further fence repair records, beyond what she has received, should exist. She was not specific, however, about what records she believes should exist and has not clearly indicated how this correspondence demonstrates that fact. CCC 331 submits that they have provided all the records they have related to the fence repairs to Ms. Gagnon's unit.

[38] I have reviewed the emails submitted by Ms. Gagnon, and while they demonstrate that Ms. Gagnon and the condominium manager had a back-and-forth about what repairs may need to be made to her fence and when they might be done, I do not find anything specific in the correspondence that indicates that CCC 331 has records that they have not provided. Nor does the correspondence provide evidence that there are specific records that the corporation should have under the Act but does not. Based on the evidence before me, I accept that CCC 331 has provided all the records they have related to the fence repairs to Ms. Gagnon's unit and there is not sufficient evidence for me to find that CCC 331 is obligated to have or maintain any additional records beyond what they have already provided.

[39] Regarding the failure to provide the records they did have at the time of Ms.

Gagnon's initial request, CCC 331 argues that the delay was a result of poor performance by its previous condominium manager and thus there is a reasonable excuse for the refusal. They submit that CCC 331 expected its condominium manager at the time to carry out her duties and respond to all requests for records in accordance with the Act. They argue that the board remained unaware that the condominium manager had not provided the fence records to Ms. Gagnon as per her R2 request until the fall (approximately three months after the request was made) at which time, Mr. Laycraft testified that he instructed the condominium manager to send the records to Ms. Gagnon. Mr. Laycraft further testified that despite his direction and unbeknownst to the board, the condominium manager did not send the records. Finally, Mr. Laycraft testifies that he only became aware of the fact that the records had still not been provided, when Ms. Gagnon commenced the CAT application. It is CCC 331's position that at no time did they refuse to provide the records requested and that it was always its intention to provide the records, they argue that it was the failure of the condominium manager to carry out their duties that led to the records not being provided.

[40] To support the argument that the poor performance of the condominium manager is a reasonable excuse for a refusal, CCC 331 referred me to a previous case between CCC 331 and Ms. Gagnon, *Gagnon v. Carleton Condominium Corporation No. 331, 2021*. CCC 331 argues that in this case a similar situation resulted in the Tribunal finding that the failure of the condominium manager to provide records did not amount to a refusal without a reasonable excuse. I do not find the situations closely comparable. In the previous case, the reasons cited for the delay in providing the records to Ms. Gagnon were due to technical issues related to the condominium manager's email account and her lack of attentiveness to her emails. The Tribunal also found that some attempt had been made to provide the records and that Ms. Gagnon's own actions contributed to the delay in the provision of records. I further note that in its decision, the Tribunal stressed that more oversight of the property manager by the board may have resulted in a better outcome.

[41] While I accept Mr. Laycraft's testimony that he instructed the previous condominium manager to provide the records, there is no evidence in front of me to suggest that the board took any steps to follow up on the initial instruction they provided to ensure the request had been fulfilled. This was despite being informed twice via email from Ms. Gagnon, once in July 2021 and again in September 2021, that she continued to wait for records that CCC 331 agreed she was entitled to.

[42] Not only was the board aware that the records had not been provided to Ms. Gagnon, the evidence also shows that CCC 331 was aware of a pattern of poor performance by condominium management, noting it had previously experienced "similar issues" with the condominium manager. Yet, CCC 331 still provided a minimum of oversight of management when dealing with Ms. Gagnon's records request.

[43] I find that this inattentiveness, and lack of direction and oversight despite being

aware of the problem, led to an effective refusal to provide the records. I do not find that poor performance of the condominium manager a reasonable excuse for the refusal in this case. The Tribunal has been consistent in its decisions¹ : ultimately it is the board that bears the responsibility for ensuring they meet their obligations under the Act. In this case, CCC 331 demonstrated a degree of carelessness and lack of due diligence that resulted in it not meeting its obligation to provide the records to which Ms. Gagnon to which she was entitled.

Records Related to Mice

- [44] Ms. Gagnon's R2 also requested all records related to mice remedy and prevention.
- [45] It is CCC 331's position that no such records exist. However, it is Ms. Gagnon's position that these records should exist. She argues that recently her cat caught a mouse and that she has seen someone installing mouse traps in the building. She also submits that when doing repairs on her unit the contractor found mice feces. Given these experiences she argues that mice are clearly a problem in the building and some records should exist regarding what is being done about the problem, although she is not specific about what records she believes do or should exist.
- [46] While I accept Ms. Gagnon's submission that she has seen mice, and that mice feces may have been found within her unit, that is not evidence in and of itself that there are or should be records related to the remedy and prevention of such. There is no evidence in front of me that would allow me to conclude that there are records related to mice that have been created and kept by CCC 331 and are available for examination. I also cannot conclude based on the facts in front of me that such records should exist. Without such evidence, I cannot order for CCC 331 to produce the records and find that CCC 331 has a reasonable excuse for refusing Ms. Gagnon these records; namely, that they do not exist.

Records Related to Mold

- [47] According to Ms. Gagnon the records she requested related to mold remedy and prevention within her unit are those related to 2018 foundation repairs and ceiling mold which she believes resulted from a leak in her bedroom ceiling. It is her position that the records related to mold that CCC 331 provided during the Stage 2 – Mediation were not related to these two maintenance events but rather a garage leak and repair. Thus, she maintains that records related to the mold she believes was found in her foundation and ceiling should exist and have not been provided. She further argues that the board is required to get quotes for any work above a

¹ Maxime Pedneault v Carleton Condominium Corporation No. 227, 2020 ONCAT 8; Zugec v. Wentworth Standard Condominium Corporation No. 566, 2022 ONCAT 13; Sohail Benjamin v Peel Standard Condominium Corporation No.1008, 2019 ONCAT 10

certain monetary amount and that there should be invoices and maybe quotes related to the work that was done on her unit in relation to the mold.

[48] To support these claims, she pointed me to several email exchanges between her and property management. These emails contain several back-and-forth exchanges between Ms. Gagnon and property management regarding various leaks and repairs to her foundation and ceiling. There are only a couple of references to mold in these exchanges. In one email exchange, Ms. Gagnon indicates that she is following up on a discussion with the condominium manager where they discussed the fact that the panelling in her unit was removed due to mold. In another email exchange, the condominium manager indicates to Ms. Gagnon that once her ceiling is dry, they will assess the damage and if they simply need to repaint, they will do so with a mold inhibitor paint as a base coat then flat white ceiling paint.

[49] It is CCC 331's position that they have provided all the records they have regarding mold remediation as part of Stage 2 – Mediation. They maintain that there are no further records to provide in this respect.

[50] Again, while I accept Ms. Gagnon's claim that there may have been discussions with the property manager regarding mold remediation, that she may have also had discussions with the contractor regarding mold, and that repair work may have taken place in her unit, I also accept CCC 331's statements that they have provided in full all the records related to this request and that no further records exist. If there was evidence that such records existed, it may be that Ms. Gagnon would be entitled to them. However, the evidence provided does not establish that these records exist or should exist. The Tribunal cannot order production for a record that does not exist or order the condominium to create records solely to satisfy a unit owner's assertion that it should exist. Without evidence that there are specific records that have not been provided and exist, I cannot compel CCC 331 to create or maintain records related to mold.

Issue no 3: Does the failure to provide a separate written explanation for redactions as required by s.13.8 (1) (b) of O. Reg. 48/1 amount to a refusal to provide the redacted records?

[51] This issue relates to the redaction of the meeting minutes provided to Ms. Gagnon in response to R1.

[52] Ms. Gagnon claims that when she received the minutes requested, they had been redacted but no accompanying statement, as required by s. 13.8 (1) (b) of O. Reg. 48/1 was provided. Ms. Gagnon argues that it is only after she asked about why redactions had been made to information pertaining to her unit, that she was told that redactions were made to information pertaining to "all unit owners." She was also told in this same correspondence that in redacting all unit owner information, information pertaining to Ms. Gagnon's unit was also mistakenly redacted. She argues that the failure to provide a proper accompanying statement regarding the

redactions amount to a refusal to provide the record without a reasonable excuse.

[53] CCC 331 argues that while no formal statement was provided to Ms. Gagnon detailing the reasons for the redactions, the property manager's explanation to Ms. Gagnon by email provided sufficient information as to what redactions were made and served the same purpose as an accompanying statement. CCC 331 further argued that Tribunal decisions such as *Bukhari v. Wentworth Condominium Corporation No. 10, 2020* (Bukhari), and *Robinson v. Durham Condominium Corporation No. 139, 2021* (Robinson) support this position. In both Bukhari and Robinson, CCC 331 notes that the Tribunal found that the purpose of the accompanying statement is to provide transparency in information about redactions which is conveyed to unit owners and that the delivery of a formal accompanying statement does not necessarily amount to the refusal of a record, provided the information about why the redactions were made is clear.

[54] When questioned by Ms. Gagnon about the redactions in the minutes, the property manager responded within 15 minutes of receiving Ms. Gagnon's email. The property manager's reply made clear to Ms. Gagnon that a) the redacted portions of the minutes were redacted because they contained unit owner information b) that in redacting unit owner information, information related to Ms. Gagnon's unit had also mistakenly been redacted; and c) promised to deliver a corrected copy of the minutes that removed redactions continuing information about Ms. Gagnon's unit within one week.

[55] In this case, the correct practice would have been for CCC 331 to provide a statement explaining the redactions it had made and which section of the Act, it was relying on in making those redactions. This statement should have accompanied each set of redacted minutes. However, in this case, at no time did CCC 331 refuse to explain the redactions and the explanation provided was clear about the reason for the redactions. The mistake in the redactions was also acknowledged and rectified quickly. Therefore, in this case I do not find that the failure to provide a formal accompanying statement amounts to a refusal to allow a unit owner to examine or obtain a record without a reasonable excuse. However, I would encourage CCC 331 to review its obligations under s. 13.8 (1) (b) of O. Reg. 48/01 and ensure that they meet this obligation going forward.

Issue no 4: Should the Respondent be required to pay a penalty under s.1.44 (1)6 of the Act for refusing to provide the Applicant with the records requested without reasonable excuse, and if so, in what amount?

[56] Ms. Gagnon has requested that CCC 331 pay a penalty for refusing to provide the records she has requested without a reasonable excuse.

[57] Section 1.44 (1) 6 of the Act allows the Tribunal to make 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.

- [58] Ms. Gagnon was not specific about the amount of the penalty that she considers appropriate, stating only that a “hard penalty” is in order as this is the third time she has had to bring an application against CCC 331 to the Tribunal for similar issues.
- [59] In this case, I have found that CCC 331 has refused to provide Ms. Gagnon with the July 2021 meeting minutes and the records related to fence repairs without a reasonable excuse.
- [60] Regarding these records, CCC 331 has demonstrated a degree of carelessness and lack of due diligence regarding its obligations with respect to a records request. Regarding the minutes, despite continued claims by Ms. Gagnon that this record existed, it was only after being confronted with indisputable evidence that the minutes did exist, that CCC 331 ‘recalled’ that there was, indeed, minutes from July that could be provided. In the case of the fence repair records it took over three months and the commencement of a Tribunal hearing for CCC 331 to provide the fence repair records, and while the manager may have contributed to the problem, the ultimate responsibility to maintain and produce records lie with the corporation and the board.
- [61] Regarding the amount of the penalty, I have considered that a penalty should be substantial enough to act as a reminder to CCC 331 of its legal obligations to respond and provide records under the Act, as well as the nature of the records requested and the length of time it took to provide records to which there was no dispute over entitlement. I have also considered the fact that the number of records CCC 331 refused to provide was small and that some of the records refused were provided in mediation. Therefore, I find a penalty of \$750 appropriate.

Issue no. 5: Should the Applicant be awarded any costs?

- [62] Ms. Gagnon has requested costs in no specific amount. It is CCC 331’s position that Ms. Gagnon is not entitled any to costs as this matter could have been resolved in Stage 2 with no need to proceed to Stage 3 – Tribunal Decision.
- [63] The authority of the Tribunal to make orders is set out in section 1.44 of the Act. Section 1.44(2) of the Act states that an order for costs “shall be determined...in accordance with the rules of the Tribunal.”
- [64] The cost-related rules of the Tribunal’s Rules of Practice relevant to this case are:
- 48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a Tribunal Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party’s Tribunal fees unless the Tribunal member decides otherwise.

48.2 The Tribunal 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 Tribunal 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.

[65] Not settling in Stage 2 does not eliminate a party’s entitlement to costs. As Ms. Gagnon was partially successful, I will order that CCC 331 reimburse Ms. Gagnon the Tribunal fee paid in the amount of \$200 pursuant to Rule 48.1 of the Rules of Practice. There are no circumstances that would support any further costs award in this case.

D. ORDER

[66] The Tribunal Orders that within 30 days of this decision:

1. CCC 331 will pay Ms. Gagnon a penalty in the amount of \$750.
2. CCC 331 will reimburse Ms. Gagnon \$200 for the Tribunal fees.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: January 23, 2023