

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 31, 2023

CASE: 2022-00399R

Citation: Chai v. Toronto Standard Condominium Corporation No. 2431, 2023 ONCAT 14

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

Member: Gerald Genge, Member

The Applicant,
Somkith Chai
Self-Represented

The Respondent,
Toronto Standard Condominium Corporation No. 2431
Not Represented

Hearing: Written Online Hearing – November 8, 2022 to December 5, 2022

REASONS FOR DECISION

A. INTRODUCTION

- [1] Somkith Chai (the “Applicant”) is a unit owner of Toronto Standard Condominium Corporation No. 2431 (the “Respondent” or “corporation”). He made two requests for records of the Respondent, one request being April 13, 2022, the other being August 3, 2022. These were combined during Stage 2 - Mediation on consent of the parties. The Applicant requested both core and non-core records. The Applicant, in general, alleges that he was denied records, that the records provided were incorrect and excessively redacted, that he was not provided with complete records, that fees charged for records provided electronically were excessive, and that the board is conducting the business of the corporation outside duly convened meetings of the board of directors.
- [2] The Respondent participated in Stage 2 - Mediation and agreed to combine the two requests for records into one hearing. Though aware of the hearing, the Respondent did not participate in this hearing. After seeing no submission of documents by Respondent by November 19, 2022, the closing date of the period for submissions, the condominium manager, Carol Wang, advised the Tribunal on November 25, 2022, that she was “*getting the board to agree on letting the Corporation’s lawyer to take over the case. I will check with them and let you know.*” No lawyer contacted the Tribunal. No documents were received from the Respondent. The Respondent provided no explanation for not participating and no

request for an extension of time was made.

[3] As of the end of the Stage 2 process, the Applicant sought to have the Tribunal decide:

- Whether the fees requested by the respondent TSCC 2431 for non-core records were reasonable.
- Whether he has received the requested non-core, in-camera minutes.
- Whether the respondent TSCC 2431 has refused to provide the non-core Seal of the Corporation.
- The adequacy and sufficiency of board minutes, by-laws, records of owners and mortgagees, record of notices relating to leases, Periodic Information Certificates (PIC) and Information Certificate Updates (ICU).

[4] In his submission, the Applicant particularized the issues that he wanted the Tribunal to decide. I have reviewed the Applicant's arguments in detail and established the following issues:

- Issue 1: Does the Notice of Future Funding of the Reserve Fund provided meet the requirements for providing that record?
- Issue 2: Must the Notice of Future Funding of the Reserve Fund provided contain the seal of the corporation in order to be considered adequate?
- Issue 3: Has the Respondent provided an adequate record in response to the request for the by-law permitting electronic meetings?
- Issue 4: Has the Respondent provided an adequate record in response to the request for the record of owners and mortgagees?
- Issue 5: Has the Respondent provided an adequate record in response to the request for the record of the notices of leased units?
- Issue 6: Has the Respondent provided an adequate record in response to the request for the record of the PICs and ICUs within the 12-months before the request?
- Issue 7: Has the Respondent provided an adequate record in response to the request for the record of the appointment and re-appointment of Steve Chang as a board member?
- Issue 8: Has the Respondent complied with the previous order of this Tribunal from Case 2020-00364R?
- Issue 9: Did the Respondent conduct business of the corporation outside of scheduled board meetings?

- Issue 10: Did the Respondent provide unnecessarily redacted records when providing those records?
- Issue 11: Are the costs claimed by the Respondent for the provision of non-core records is excessive?
- Issue 12: Was the Respondent refused non-core records of private meetings minutes prior to June 2019?
- Issue 13: Should costs be awarded to the Applicant?

B. BACKGROUND

- [5] The Applicant has had three prior hearings before the Tribunal concerning access to records. These were cases 2020-00364R¹, 2021-00307R², and 2019 – 00067R³. I recognize that there is unresolved animosity between the Applicant and the Respondent and its condominium management provider and that the animosity stems from the Applicant’s belief that the Respondent is not adhering to its obligations under the *Condominium Act, 1998*, S.O. 1998, c. 19 (the “Act”) and Ontario Regulation 48/01.
- [6] The Applicant’s 54 submissions were detailed, organized, and identified by name and content. To those, I added Exhibit and Tab numbers for reference. As the documents are numerous, I have created a table which is uploaded to the case documents.
- [7] As stated above, the Applicant made two requests for records. There was duplication in the requests, therefore, I will deal with the issues by subject matter rather than by the two requests.

C. ISSUES & ANALYSIS

Issue 1: Does the Notice of Future Funding of the Reserve Fund provided meet the requirements for providing that record?

- [8] The Applicant alleges that the “Notice of Reserve Fund Study” received does not comply with the corporation’s obligation to provide the current reserve fund plan, a core record of the corporation. Based on the Applicant’s evidence, it appears that he wished to have a copy of the actual reserve fund study report.
- [9] On May 13, 2022, by email, the Respondent provided a record of a reserve fund based on a Class 2 reserve fund study prepared by Criterium-Jansen Engineers. The record was dated July 5, 2021 and contained the Notice of Future Funding of the Reserve Fund, a Summary of the Reserve Fund, a Cash Flow Table, a

¹ Chai v. Toronto Standard Condominium Corporation No. 2431, 2021 ONCAT 116

² Chai v. Toronto Standard Condominium Corporation No. 2431, 2022 ONCAT 142

³ Chai v. Toronto Standard Condominium Corporation No. 2431, 2019 ONCAT 45

Summary of Proposed Plan for Future Funding a Contribution Table, and Differences Between the Reserve Fund Study and the Proposed Plan for Future Funding stating there was no difference.

- [10] Sections 93 (1) and 93 (2) of the Act require that the corporation establish and maintain one or more reserve funds for the purpose of funding major capital repairs and replacement of the common elements and assets of the corporation. Section 94 (6) requires that the reserve fund study (on which the plan for future funding is based) be conducted by a person of a prescribed class. That class of persons includes professional engineers. Section 94 (8) and s. 94 (9) of the Act require that within 120 days of receipt of the reserve fund study, the corporation review the reserve fund study, develop a funding plan, and then within 15 days of developing the funding plan, the board shall:
- a. send to the owners a notice containing a summary of the study, a summary of the proposed plan and a statement indicating the areas, if any, in which the proposed plan differs from the study; and
 - b. send to the auditor a copy of the study, a copy of the proposed plan and a copy of the notice sent to the owners under clause (a).

- [11] I reviewed the record provided to the Applicant and conclude that it includes the essential components of the plan to be provided to owners as required by s. 94 (9) of the Act, and that delivery of that record satisfies the corporation's obligation to provide the requested record under s. 55 (3) of the Act.

Issue 2: Must the Notice of Future Funding of the Reserve Fund provided contain the seal of the corporation in order to be considered adequate?

- [12] The Applicant alleges that the corporation's seal was not affixed to the Notice of Reserve Fund and, in the alternative, that there was no declaration by the corporation on the Notice of Reserve Fund as to its validity. The Applicant requested a copy of the corporation's seal.
- [13] The Respondent denied access to the corporation's seal as it was not a record of the corporation.
- [14] As required by s. 16(1) of the Act, the corporation shall have a seal. While s. 55 (7) of the Act obligates the corporation to affix a seal or make a statement attesting to the accuracy of evidence in a matter as proof of facts, there is no obligation in the Act to affix the corporate seal to records disclosed to owners under a request for records, nor does the seal constitute a record to which the Applicant would be entitled under the Act.

Issue 3: Has the Respondent provided an adequate record in response to the request for the by-law permitting electronic meetings?

- [15] The Applicant requested a copy of the by-law approved at a meeting of the owners

held September 13, 2021. He was not provided a copy in response to his first request of April 13, 2022. In that request, among other things, he asked for a copy of the corporation's by-laws.

- [16] On May 13, 2022, the corporation provided By-Law No. 1 which was in effect as of March 9, 2015. By-Law No 3 which allowed for electronic meetings was not provided.
- [17] In his subsequent request of August 3, 2022, the Applicant repeated the request for the corporation by-laws. He was again provided with a copy of By-Law No. 1. By-Law 2 was also provided. By-Law 3, concerning permission to hold electronic meetings, was not included.
- [18] The board did not specifically refuse to provide By-Law No. 3 but provided no reasons for its failure to provide it.
- [19] I find that the corporation's failure to include By-Law No. 3 without reasons, though the Applicant requested it twice, was effectively a refusal. The Respondent is to provide the Applicant a copy of By-Law No. 3 within 10 days of this Order.

Issue 4: Has the Respondent provided an adequate record in response to the request for the record of owners and mortgagees?

- [20] In his April 13, 2022 request, the Applicant requested a list of owners and mortgagees.
- [21] This issue was addressed in 2022 ONCAT 142 and the decision of the Tribunal dated December 8, 2022, particularly, in paragraphs [54] to [60].
- [22] On August 9, the Applicant made a second request for a list of owners and mortgagees. The Board agreed to provide the list. I have reviewed the request and I see no material difference between the Applicant's request dealt with in 2022 ONCAT 142 and the request in this case. To issue a new order on this issue would be duplicative of the previous order and is not necessary or appropriate.

Issue 5: Has the Respondent provided an adequate record in response to the request for the record of the notices of leased units?

- [23] In his requests of April 13 and August 3, the Applicant requested notices of leased units; the corporation provided the record. The Applicant stated that the record was hard to interpret, inaccurate, and did not show previously leased units. His interpretation of the CAO Guide concerning those records is that it must include "a list summarizing all of the notices of lease" which he interprets to mean a complete history of leased units.
- [24] This issue was also addressed in the Tribunal's decision in 2022 ONCAT 142. I have reviewed the request and again, this request is repetitive of the previous one. To issue a new order on this issue would be duplicative of the previous order and

is not necessary or appropriate.

Issue 6: Has the Respondent provided an adequate record in response to the request for the record of the PICs and ICUs within the 12-months before the request?

- [25] The Applicant alleges that the Periodic Information Certificates and the Information Certificate Updates inaccurately represent the board members and the status of the budget.
- [26] This issue was addressed by 2022 ONCAT 142 and an order of the Tribunal, dated December 8, 2022, particularly in paragraphs [13] and [14]. I see no significant difference between the Applicant's request dealt with in 2022 ONCAT 142 and this case. To issue a new order on this issue would be duplicative of the previous order and is not necessary or appropriate.

Issue 7: Has the Respondent provided an adequate record in response to the request for the record of the appointment and re-appointment of Steve Chang as a board member?

- [27] The Applicant alleges that Steve Chang, was appointed as a board member on March 29, 2021. The Applicant provided no documentation in support of that allegation. The Applicant provided a copy of the CAO Certificate of Completion of Condominium Director Training 1.0, for Esteban Steve Chang dated March 14, 2022.
- [28] Board meeting minutes of March 29, 2021 indicate three directors were present. S. Chang is noted to be attendance but not listed as a board member. Redaction prevents a complete understanding of the minutes; however, it is clear that S. Chang is not listed as a board member at that meeting. However, minutes of board meetings held between April 26, 2021 and March 1, 2022, each show Steve Chang as a member of the board.
- [29] The exact date of the appointment of Steve Chang is not in the minutes. However, the reasonable inference from the evidence before me is that Steve Chang was appointed at the March 29, 2021 meeting. Since the minutes do not show a resolution of the board to appoint Steve Chang, I find that the omission indicates an inadequate record of the appointment and thus the March 29, 2021 minutes are inadequate in that regard.
- [30] In addition to the record of the original appointment of Steve Chang to the board, the Applicant alleges that he is being refused the record of an emergency board meeting held on May 6, 2022, to re-appoint Steve Chang to the Board and that there is no record of the appointment. As there is insufficient evidence before me to conclude that a meeting did occur on May 6, I do not find a refusal to provide minutes for the alleged meeting.

Issue 8: Has the Respondent complied with the previous order of this Tribunal in Case 2020-00364R?

[31] The Applicant has asked that the Tribunal determine if the corporation complied with the Tribunal's previous order and if not, to order that the corporation comply.

[32] The Tribunal's jurisdiction does not extend to enforcing compliance with its orders.

Issue 9: Did the Respondent conduct business of the corporation outside of scheduled board meetings?

[33] The Applicant alleges that the business of the corporation is being conducted outside of properly constituted meetings of the Board. Specifically, by resolution on May 16, 2022, the board appointed a lawyer to represent the corporation through CAT case 2021-00307R. The Applicant was told that there was no board meeting on May 16, 2022. The Applicant questions the validity of a resolution not signed by all board members without a meeting of the board.

[34] The Applicant cited s. 32 (1) of the Act requiring that business be conducted only at a proper meeting of the board.

[35] Determination of board governance practices is not within the Tribunal's jurisdiction. Therefore, I cannot make a finding on this issue.

Issue 10: Did the Respondent provide unnecessarily redacted records when providing those records?

[36] The Applicant cited examples of his allegation of unnecessarily redacted meeting minutes. His examples were:

Redacted addresses or portions of addresses where the address is used only to identify a location on the condominium property.

Redacted paragraphs which that Applicant claims were to be redacted correctly as ordered previously in case CAT 2021-00307R and 2020-0364R.

[37] Owners are entitled to examine corporation records except records under s. 55 (4) of the Act which states:

(4) The right to examine or obtain copies of records under subsection (3) does not apply to,

(a) records relating to employees of the corporation, except for contracts of employment between any of the employees and the corporation;

(b) records relating to actual or contemplated litigation, as determined by the regulations, or insurance investigations involving the corporation;

(c) subject to subsection (5), records relating to specific units or owners; or

(d) any prescribed records.

[38] I agree with the Applicant that, in the first example noted above, it is not necessary to redact an address used solely in the context of identifying a location on the condominium property. The redaction deals with the reference to units but only in the context of identifying the location of some dead trees, the location of ramp heating cable failure, and a wasp nest on common elements. Otherwise, s. 55 (4) (c) of the Act applies.

[39] I do not agree with the Applicant concerning the second example. The redaction of the content of an entire paragraph prevents an assessment of the need to have that paragraph of text hidden; however, a clue to its content is given in the preceding paragraph which speaks to the delinquent payment of fees from a unit owner. The name and address of that unit owner is private information and would reasonably warrant redaction under s. 55 (4) (c) of the Act.

[40] In addition, O.Reg. 48/01 provides the following about redacted documents (emphasis added):

13.8 (1) Each copy of a record that the corporation makes available for examination or delivers under any of sections 13.4 to 13.7 shall be accompanied by,

(a) a separate written document that is addressed to the requester and that clearly identifies the record that is being made available or delivered, as the case may be;

(b) if the board has determined that the corporation will redact the record to remove any part that the board has determined that the corporation will not allow the requester to examine or of which it will not allow the requester to obtain a copy, a written statement of the board's reason for its determination and an indication on which provision of section 55 of the Act or this Regulation the board bases its reason;

[41] I found no separate written statement of the board's reason for redaction or reference to the provision in s. 55 of the Act. Therefore, I order that the Applicant be provided with the required written statement for the redacted records delivered in response to his requests of April 13, 2022 and August 3, 2022 as required by O.Reg. 48/01, 13.3 (7) 5 and/or. 13.8 (1) (b).

[42] I examined the redacted meeting minutes [Exhibits 1-34 to 1-54, inclusive], and found no unusually excessive redaction. The redaction is consistent with s. 55 (4) (c). The Applicant's request for disclosure of that information through removal of redaction is dismissed.

Issue 11: Are the costs claimed by the Respondent for the provision of non-core records excessive?

- [43] The Applicant claims that charges for non-core records that require no redaction, is effectively a refusal. He cited *Martynenko v. Peel Standard Condominium Corporation No 935 2021 ONCAT 125 (Martynenko)*. In *Martynenko*, the issue was improper fee calculation, no disclosure of how the fee was calculated, unjustified delay in providing records, and excessive redaction of provided documents.
- [44] Unlike *Martynenko*, in this case, delays in the corporation's responses have not been a central issue. Further, I have determined that the redaction in the provided minutes of meetings was not excessive. That leaves primarily with the disclosure and calculation of the estimated fee for the record.
- [45] I agree with the Applicant that the estimated fee at \$180 plus HST appears to be excessive. As an estimate of fees, the response from the corporation applied an hourly rate of \$45/hour with one hour each for labour to provide director training certificates, historic PICs and ICUs, a record of board members that left before their term ended and letters, and forms signed by past and present board members concerning disclosures and Code of Ethics. Together these represent four hours labour to deliver electronic records. The Act requires that the fees be reasonable. It does not stipulate what a reasonable fee is to be.
- [46] Similarly, the corporation charged \$90 plus HST at \$45/hour for copies of condominium returns filed with CAO and notices of change filed with CAO.
- [47] The Regulation also places an obligation on the corporation to reconcile the fee paid and the costs incurred and adjust the fee accordingly. O.Reg. 48/01, s.13.8, stipulates as follows (emphasis added):

13.8 (1) Each copy of a record that the corporation makes available for examination or delivers under any of sections 13.4 to 13.7 shall be accompanied by,

(a) a separate written document that is addressed to the requester and that clearly identifies the record that is being made available or delivered, as the case may be;

(b) if the board has determined that the corporation will redact the record to remove any part that the board has determined that the corporation will not allow the requester to examine or of which it will not allow the requester to obtain a copy, a written statement of the board's reason for its determination and an indication on which provision of section 55 of the Act or this Regulation the board bases its reason;

(c) a separate written document that is addressed to the requester and that indicates,

(i) the actual cost that the corporation has incurred for making the copy available or for delivering it, as the case may be, subject

to the limits that subsections 13.3 (8) and (9) place on the fee payable for the request, and

(ii) the difference, if any, between the actual cost described in subclause (i) and the fee that the requester paid for the request; and

(d) if the actual cost described in subclause (c) (i) is less than the fee that the requester paid for the request, payment from the corporation to the requester of the amount of the difference. O. Reg. 180/17, s. 17 (1).

(2) If the actual cost described in subclause (1) (c) (i) is more than the fee that the requester paid for the request, the requester shall pay to the corporation within 30 days after the corporation complies with subsection (1) the least of,

(a) the amount of the difference;

(b) 10 per cent of the fee payable for the request; and

(c) 10 per cent of the fee that the requester paid for the request. O. Reg. 180/17, s. 17 (1).

(3) If clauses (1) (a), (b) and (c) apply to the same request, the information that the separate written documents described in those clauses is required to contain may be contained in a single written document. O. Reg. 180/17, s. 17 (1).

[48] I found no record of a reconciliation of the actual cost and the fee paid by the Applicant in the evidence. As such, I order that within 30 days of this order, the corporation provide the Applicant a reconciliation of costs against fees paid and that the corporation and the Applicant comply with refund and payment requirements as per O.Reg. 48/01, s. 13.8 (1)(c) and s. 13.8(2) respectively as applicable.

Issue 12: Was the Respondent refused non-core records of private meetings minutes prior to June 2019?

[49] The Applicant claims that, in his prior case before the Tribunal (2019 ONCAT 45), he was not provided in camera meeting minutes or provided minutes of meetings held prior to June 2019 and that his issue was not addressed by the Tribunal. As such, he has repeated his request.

[50] In case 2019 ONCAT 45, the Tribunal determined that failure to provide certain redacted minutes was a refusal and the Tribunal ordered minutes to be provided to the Applicant.

[51] Having reviewed the decision in 2019 ONCAT 45, and the records addressed by the Tribunal in that decision, I see no significant difference between the Applicant's request dealt with in 2019 ONCAT 45 and this case. To issue a new order on this issue would be duplicative of the previous order and is not necessary or appropriate.

Issue 13: Should costs be awarded to the Applicant?

[52] The assessment of costs is governed by s. 1.44 (1) 5 of the Act which permits the Tribunal to order a party to pay the costs of the Tribunal. If ordered, s. 1.45 (1) requires that the costs or compensation be paid within 30 days of the order.

[53] The corporation has responded to the ongoing requests for records and where there have been issues with the delivered records, I have addressed these. Finally, the corporation has had to exercise a wealth of patience in having to respond for several years to records requests from the Applicant. The Applicant has made a series of complaints against the board's handling of the affairs of the corporation. In this case, though with consent, he has combined two records requests into one case. He has also requested that I review the board's compliance with an order in another case. This repetition of complaints is done at minimal cost in accordance with the Tribunal fee schedule, but it should not be done on a repeat basis at no cost. Rule 48.1 of the Condominium Authority Tribunal Rules of Practice addresses reimbursement of fees by the unsuccessful party. The Applicant has been only partially successful. Therefore, I will not order that the condominium reimburse the Applicant for the Tribunal fee of \$200.

D. CONCLUSION

[54] In his four applications to the Tribunal, the Applicant appears to be blurring the line between the corporation's provision of a record and governance issues within the corporation. The Tribunal has jurisdiction to assess if the provision of a record met the requirements of the Act and regulations. Issues around the governance of the condominium corporation is beyond the purview of the Tribunal.

[55] The Applicant's submissions demonstrate that he is clearly distrustful of the board of directors and management.

[56] The Applicant's ongoing requests for records seems to arise from his personal perception of his entitlements under the Act. The overall tone of his argument, the repeated requests for records, the challenges to his other Tribunal decisions, and requirements that redaction be removed or at least curtailed is mirrored by the corporation's incomplete responses and absence of participation in this hearing. I cannot order that these parties change their approach toward each other, but the time cost and anxiety for both would be substantially lessened if they did.

[57] Finally, I have received and reviewed 54 exhibits from the Applicant in this matter. The Tribunal has reviewed even more exhibits on three prior matters from this same Applicant. While the cost for advancing a case to a hearing is not high, the

patience of the Tribunal in conducting hearings that repeat the same issues from the same Applicant is not endless. On that basis, I recommend that the Applicant reconsider the merits of future applications for records where the corporation has substantially complied within the parameters of the Act.

E. ORDER

[58] The Tribunal Orders that:

- [1] Within 10 days of this order, the Respondent is to provide the Applicant a copy of By-Law 3.
- [2] Within 30 days of this order, the corporation is to provide the Applicant a copy of the board meeting held on April 26, 2021 amended to indicate the exact date that Steve Chang was appointed to the board.
- [3] Within 30 days of this order, the corporation is to provide the Applicant the board's reasons for redaction of each redacted record provided to the Applicant.
- [4] Within 30 days of this order, the corporation shall provide the Applicant a reconciliation of costs against fees paid for records requested in the April 13, 2022, and August 3, 2022, and the corporation and the Applicant shall comply with refund requirements as per O.Reg. 48/01, s. 13.8 (1)(c) or s. 13.8(2), as applicable.
- [5] Within 30 days of this order, the corporation shall provide reasons in accordance with s. 13.12 (2) (4) (iii) of the Act for not providing non-core records requested in the Applicant's August 3, 2022 request.

Gerald Genge
Member, Condominium Authority Tribunal

Released on: January 31, 2023