CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 2, 2023
CASE: 2022-00430R
Citation: Akash v. York Condominium Corporation No. 78, 2023 ONCAT 63

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

Member: Roger Bilodeau, Member

The Applicant,
Ahmed Akash
Self-Represented

The Respondent,
York Condominium Corporation No. 78
Represented by Natasha Mazzitelli, Counsel

Hearing: Written Online Hearing – October 21, 2022 to March 30, 2023 and April 27, 2023 to May 1, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] At its core, this case is about a straightforward question regarding access to records but the underlying dispute is quite clearly about much more than the records in question. Notwithstanding the Applicant's apparent hope that the Tribunal can address all of his grievances vis-à-vis the Respondent, this decision is solely about what falls within the Tribunal's jurisdiction, i.e. the Applicant's entitlement to the requested records; the process to produce any outstanding records; and finally, any associated penalty and costs, as may be the case.

[2] After reviewing the relevant evidence and submissions, I find that the Applicant is entitled to the records set out in the Order below. I also find that the Respondent is entitled to redact some records in accordance with the *Condominium Act*, *1998* ("Act") and is entitled to charge a fee for the examination and production of the outstanding records. No penalty is awarded.

[3] I award $200 in costs to be paid by the Respondent to the Applicant.

B. BACKGROUND

[4] The Applicant is a unit owner of the Respondent. On April 8, 2022, the Applicant submitted a Request for Records form (the "Request") to the Respondent requesting specific core and non-core records.

[5] As further background to this matter, the Applicant's grievances which I referred to in the Introduction above flow from his concerns with (i) how condominium monies are being spent for property management and various services, (ii) sudden and unexplained changes related to property management, (iii) alleged benefits accruing to some board members and other owners in the form of enclosed balconies which are converted to living space, (iv) records not being maintained properly, and (v) the overall quality of the Respondent's board and governance, among other matters.

[6] The Applicant is self-represented and, from what I can determine, this is his first experience (i) with the process of accessing condominium records and (ii) in a case brought to the Tribunal. For its part, the Respondent is represented by counsel and the evidence shows a difficult relationship between the parties (including between the condominium manager and the Applicant) at various points in time before and during this case.

[7] The Respondent recognizes that for several years before this case arose, a significant number of its records were not adequately maintained, are missing or are incorrect. During the same time period, there was also a significant turnover of directors.

[8] Further in this regard, a great number of the Respondent's records have not been digitized. In addition, many records in hard copy format are stored in boxes which were turned over to the current condominium management provider, Ace Condominium Management Inc. (ACE), during the transition to that company in the summer of 2021, and are now kept at ACE's head office.

C. ISSUES & ANALYSIS

[9] Although I have taken into account the voluminous evidence and submissions of both parties, I will only refer to evidence that is relevant to the issues to be decided in this case, which are as follows:

1. Was the Applicant provided with all of the records that he requested and was entitled to?

2. If the answer to Issue No. 1 is no, what additional documents must the

Respondent provide to the Applicant, and under what conditions (such as, fees payable)?

3. Should costs and/or a penalty be awarded?

Issue 1: Was the Applicant provided with all of the records that he requested and was entitled to?

The Request

[10] As a preliminary matter, I start by noting that from the moment when the Applicant filed his Request on April 8, 2022, there is confusion and disagreement between the parties in regard to the actual date of the Request and how the Respondent dealt with the Request and its deficiencies, namely (i) the omission of the condominium corporation registration number in the Respondent's name on the Request form and (ii) the insertion of the proper date on the Request.

[11] For the purposes of this case, I find that the Respodent was unreasonable in having waited until May 6, 2022 to advise the Applicant of his clerical errors which in my view were not material to the substance of the Applicant's Request. Although the Respondent did not avoid the Request, it delayed its response and initial disclosure to June 12, 2022, on the grounds that in its view, the Applicant's clerical errors in the Request were not corrected until May 13, 2022. I also note that the Respondent provided other records which formed part of its initial disclosure as soon as possible after June 12, 2022. In the circumstances described above, I have therefore determined that there are not sufficient grounds to impose a penalty on the Respondent, as allowed under paragraph 6 of subsection 1.44(1) of the Act.

[12] I also add that this case serves as a reminder that when a party is preparing to file a request for records, it is important to fill out the request form properly in all respects. By the same token, the responding party should not hold up its response due to clerical deficiencies on the part of the Applicant. In the circumstances of this case and given the history between the parties, the Respondent could have easily made a phone call to the Applicant or sent a short email in the days following April 8, 2022 to ask him to correct the form, instead of waiting until May 6, 2022 to do so. If the Respondent had followed such a course of action, it could have gone a long way to reduce the tension and disagreement which arose between the parties on this point, as well as reducing the delay in responding to the Request.

Core records

[13] In its initial disclosure of records, the Respondent provided the most recently approved versions of the core records requested by the Applicant, including:

1. Condominium corporation by-laws;
2. Condominium corporation rules;
3. Record of owners and mortgagees;
4. Record of notices relating to leases of units under section 83 of the *Condominium Act, 1998* (Act);
5. Periodic Information Certificates from the past 12 months;
6. Budget for the Respondent's current fiscal year, including any amendments;
7. Most recent approved financial statements;
8. The current plan for future funding of the reserve fund;
9. Mutual use agreements (a.k.a. shared facilities or reciprocal agreements) mentioned in sections 113 or 154 (5) of the Act; and
10. Minutes of meetings held by the Board within the last 12 months, from May 6, 2021, to May 5, 2022.

[14] The only core records that were missing from that initial disclosure were the Board meeting minutes of April 2022 which had not yet been approved at that time but which were provided to the Applicant upon board approval.

Non-core records

[15] In its initial disclosure, the Respondent also provided a number of electronic non-core records requested by the Applicant that were in its possession and/or that were immediately accessible/retrievable, including:

1. A number of service provider agreements entered into by or on behalf of the Respondent, including but not limited to condominium management providers, cleaning service providers, and security service providers, ranging from January 1, 2016, to May 6, 2022; and
2. Reserve fund studies, ranging from 2019 to 2022.

[16] At the time of the Request and upon the date of the initial disclosure in June 2022,

the most recent Reserve Fund Study was for the year 2020. As soon as the Reserve Fund Study dated March 2022 was approved and the related Form 15 Notice of Future Funding of the Reserve Fund was signed in August 2022, the Respondent provided that document to the Applicant.

[17] The ACE management contract had initially been excluded from the initial disclosure but was provided to the Applicant during the Stage 2 Mediation after an amendment to the contract was finalized.

[18] The outstanding non-core records are therefore as set out below and are all for the period of January 1, 2016, to May 6, 2022:

1. Invoices for legal fees charged to York Condominium Corporation No. 78;

2. Any other historical service agreements that may exist only in hard copy and which are stored off-site in the Corporation's physical archives; and

3. Records relating to actual or contemplated litigation that the Respondent has created or received.

[19] In addition to the above, the Applicant also made a specific request in his submissions for the board minutes pertaining to the Respondent's balcony project, without redaction. I find that the Applicant received the private and confidential minutes that relate to that matter during the Stage 2 Mediation, with redaction as provided for by the Act, i.e. redacting only the names and unit numbers of owners because that project pertains to exclusive use common elements.

[20] I now turn to the question of whether the Applicant is entitled to the other outstanding non-core records.

Non-core records related to actual or contemplated litigation

[21] In regard to this item, the Applicant made a general request – without any additional details - for "records relating to actual or contemplated litigation" that the Respondent has created or received. Notwithstanding the Applicant's submissions to the contrary, I agree with the Respondent that there is no requirement for it to provide any such records to the Applicant. The combined effect of section 55(4)(b) of the Act and of section 13.1 of Ontario Regulation 48/01 ('Regulation') is clear in that regard.

Fishing expedition

[22] Moving on to all other outstanding records, the Respondent submits that the Request does not solely relate to the Applicant's interests as a unit owner, having regard to the purposes of the Act, and that he is otherwise not entitled to any further records. In other words, the Respondent is of the view that the Applicant is on a "fishing expedition".

[23] In a somewhat similar fashion as in the Tribunal decision in *Martynenko v. Peel Standard Condominium Corporation No. 935*, 2021 ONCAT 125 ('Martynenko'), the Respondent submits that the Applicant has cast a "wide net" with his Request, in that the requested records cover (i) a broad period spanning seven (7) years, and (ii) a wide range of topics. The Respondent is of the view that the Applicant has submitted his Request in the hope of acquiring facts or details that could satisfy his alleged vindictiveness or dislike towards the board of the Respondent.

[24] In considering this matter, I find myself in full agreement with the reasoning in paragraphs 20 to 22 of the Tribunal decision in Shoom v York Region Standard Condominium Corporation No. 1090, 2022 ONCAT 145, reproduced below and which in my view applies equally well to the facts of this case:

> [20] There may as well be an element of fishing which stems from the relationship between the two parties. The *Martynenko* case begins with the following:
>
> > It would be an unusual case where a condominium unit owner's request for records under the *Condominium Act, 1998* (the "Act") is not motivated by dissatisfaction with issues related to the governance or management of the condominium or some other ongoing dispute or antagonistic relationship with the condominium's board or management.
>
> [21] In the *Martynenko* case, the Tribunal found that while there were numerous records requests, each was "reasonably specific". While some of the records requests were broadly framed and covered multiple years, the Tribunal found that "sometimes, genuine and legitimate concerns may actually cover a broad set of records, subject matters and/or spans of time". The Tribunal concluded that the requests were not "unfocussed or unreasonably broad". By contrast, in *Emerald PG Holdings Ltd.* a request for six years of broadly framed email exchanges was found to be overly broad and to lack specificity.
>
> [22] In deciding whether one or more records requests, alone or together, constitute a fishing expedition, it may be a question of the degree to which a records request demonstrates a characteristic of fishing, rather than (kind or) kinds of characteristics that are found. Having one or more characteristics of a fishing expedition will not necessarily be determinative. It is the totality of the

request, in the context of the other facts in a particular case, which must be considered.

[25] Considering the Applicant's Request in this case, I find that it is in many ways quite similar to the combined requests for records in the Martynenko case. In my view, it seeks to obtain specific records and considering the totality of the Request, I conclude that the Respondent has not demonstrated, on a balance of probabilities, that the Applicant was on a fishing expedition. In addition to the above, I also find relevant that the Applicant was self-represented and that his lack of familiarity with the terminology of the legislation and of tribunal proceedings most likely affected his ability to formulate his interest in the sought after records when he completed the Request or in presenting his claim to the Tribunal. I therefore grant him the benefit of the doubt in that regard and he is accordingly entitled to the outstanding records which are not otherwise excluded.

[26] I also note that in his written submissions, the Applicant has now proposed to reduce the time span of the invoices for legal fees that he is seeking from that of 2016/01/01 to 2022/05/06 to that of 2021/06/01 to 2022/05/06. In light of the Respondent's agreement on that point, I shall proceed on that basis in regard to those records.

Issue 2: If the answer to Issue 1 is no, what additional documents must the Respondent provide to the Applicant, and under what conditions (such as fees payable)?

[27] Having concluded that the Applicant is entitled to additional documents, I now proceed to determine the relevant conditions for the Applicant to access them.

[28] As a starting, the Respondent has advised that copies of its legal invoices are for the most part maintained in hard copy and that, as indicated above, they are subject to redaction in accordance with the Act. The Respondent also submits that if any of the outstanding records were not included in its initial disclosure in response to the Request, that is solely because they are in hard copy format at the ACE head office or, in the alternative, that they do not exist. The Respondent therefore submits that the production of the outstanding records is subject to a reasonable fee for time and labour.

<u>Fees for the outstanding non-core records</u>

[29] I now turn to the issue of the appropriate cost of producing the outstanding non-core records, on which the parties disagree. In his submissions, the Applicant disputes the Respondent's proposed rate of $75 per hour on the grounds that it is

excessive and that previous Tribunal decisions have allowed $25-$30 per hour for the cost of producing non-core records.

[30] The Respondent submits that a condominium corporation is authorized to set a fee for a unit owner to examine or obtain copies of records. Subsections 13.3 (8) and 13.3 (9) of the Regulation set out the conditions and factors to be considered by a condominium corporation when setting such a fee. In that regard, paragraph 1 of subsection 13.3 (8) of the Regulation states that such a fee:

> … shall be a reasonable estimate of the amount required to reimburse the corporation for the actual labour and delivery costs that the corporation incurs for making the record requested available for examination or for delivering a copy of the record, which costs shall include the printing and photocopying charges established under paragraph 3 and the actual labour costs that the corporation incurs during the examination.

[31] The Respondent goes on to remind us that the Tribunal has interpreted the relevant provisions of the Act and Regulation such that a condominium corporation is "entitled to charge, and the Applicant can be required to pay, a fee for the labour involved in providing copies of records to the Applicant.": see *Shaheed Mohamed v York Condominium Corporation No 414*, 2018 ONCAT 3 at paragraph 28 (*Mohamed*).

[32] The Respondent further submits that paragraphs 4 and 5 of subsection 13.3 (9) of the Regulation specify the following as factors to be considered with respect to variability of the fee:

> 4. Whether the corporation is required to redact the record requested to remove any part that it has determined that it will not allow the requester to examine or of which it will not allow the requester to obtain a copy.
>
> 5. The time that the board estimates spending on responding to the request.

[33] The Respondent goes on to state that it has advised the Applicant that it was prepared to search through its extensive collection of physical archives, to prepare the outstanding non-core records, to have them redacted as necessary in accordance with the Act and to produce the redacted versions to the Applicant at a rate of $75 per hour for an estimated four (4) to six (6) hours of labour, for a total cost to the Applicant in the range of $300 to $450. In arriving at that fee estimate, the Respondent submits that it took the following into consideration:

1. Reasonable costs for after-hours/overtime labour by ACE agents to attend at the physical archives at its head office because the Respondent is not able to

free up the ACE manager to do so during regular hours;

2. Reasonable costs for an additional (after hours) agent of ACE to assist with organizing and searching through the physical archives at its head office;

3. Reimbursement of ACE agents for their costs to travel between the Respondent's property and ACE head office, as necessary;

4. Costs for digitization, preparation, and compilation of the physical records;

5. Possible costs for professional review and redaction services ahead of record compilation;

6. Any other possible disbursements incurred by the Respondent on the Applicant's behalf in tending to and fulfilling the request.

[34] The Respondent adds that it did not receive at any time confirmation from the Applicant that it could proceed with the Request for the above mentioned non-core records on the basis of the fees quoted above and as a result, it has not yet done so.

[35] The Respondent further submits that although the Tribunal has held in prior cases that an hourly rate of $25-$30 was reasonable in the circumstances specific to those cases, such cases related to circumstances where the labour often consisted of "basic clerical functions" for records that were more readily available. It also adds that in the Mohamed case, the Tribunal defined redaction as a type of "substantive work requiring specialized knowledge" that may therefore call for higher labour fees. It also adds that in *Harder v. Metropolitan Toronto Condominium Corporation No. 905, 2022 ONCAT 58*, the Tribunal found that "it is conceivable that work related to a request for records, where redactions are required or multiple inquiries are made, may necessitate the skills and consultation of individuals other than the administrative assistant."

[36] In addition, the Respondent submits that in *Sakala v. York Condominium Corporation No. 344, 2022 ONCAT 11* ('Sakala'), the Tribunal found that an estimated labour time of at least five (5) hours was reasonable in the circumstances of that case for the professional redaction of records. The Respondent further adds that in *Sakala*, the number of pages in question amounted to 441 pages and that in this case, it would need to review a similar quantity of pages (and possibly more) for the outstanding non-core records spanning the period from 2016 to 2022.

Analysis

[37] At the outset, I believe that it is important to consider that a condominium corporation is not a government office or private sector business offering a service to consumers. For all intents and purposes, it is a trustee that personifies the collective rights and interests of all unit owners. A related factor, as determined by the Tribunal on more than one occasion, is that the obligation to maintain and provide records belongs to the condominium corporation, not the management provider. If the management provider has a manner of keeping records that hinders or complicates matters for the condominium corporation in fulfilling its statutory duties, that is a problem between the management provider and the corporation.

[38] It may be that the management provider is understaffed or has set up its record storage and filing in a manner that impacts how the condominium corporation can respond to a request for records. Whatever the issue and as a general rule, the predicament of the management provider should not be foisted onto the requesting owner.

[39] Having said all of the above, I have also taken into account and accept that in this case, the Respondent was undergoing a change in management which likely had an impact on its capacity to access certain types of records. On a go forward basis, it would likely be in the best interests of all concerned if the agreement between the management provider and the Respondent addresses the management provider's hourly (or other) rate for extraordinary work, such as in this case. What constitutes extraordinary work in a given situation should be set out in the agreement.

[40] The Tribunal has considered on several occasions the amount that is reasonable for a condominium corporation to charge for records. That amount has varied based on the nature of the work to be carried out. In the *Mohamed* case, a proposed hourly labour rate of $63 was reduced to $31.50 for "the basic clerical functions of locating, unstapling, copying, re-stapling and re-filing records".

[41] In *Robert Remillard v Frontenac Condominium Corporation No. 18*, 2018 ONCAT 1, a $130 hourly rate was deemed reasonable based upon the estimated cost of involving an articling student in redacting invoices.

[42] In *Emerald PG Holdings Ltd. v Metro Toronto Condominium Corporation No. 2519*, 2019 ONCAT 5, an hourly fee of $60 was accepted as a reasonable fee to be charged by a condominium manager to provide non-core records.

[43] In *Chai v Toronto Standard Condominium Corporation No. 2431*, 2019 ONCAT 45, a $60 hourly rate was again accepted as a reasonable fee for a condominium

manager's involvement in preparing non-core records.

[44] It should also be noted that an hourly rate on its own does not provide a full equation. I must also consider that the amount of time required to carry out a task impacts the total fee. My concern is whether the proposed fee is reasonable for the nature of the work, not solely if an hourly rate amount is generally appropriate. I must make that determination in respect to this particular case and the unique sets of facts before me. I must also add that a variety of circumstances and markets within the province have a bearing on what is reasonable, together with the capabilities of the condominium manager and the nature of the work to be carried out.

[45] In sum, past Tribunal cases show a difference between the rate which has been allowed in these types of situations, with redaction of certain documents being a factor in that determination.

[46] Based on all of the above and in the circumstances of this case, I therefore find a rate of $75 per hour to be reasonable when redaction is required. As for documents where redaction is not required, I will allow a rate of $60 per hour. In addition, I will allow for an estimated total of four (4) to six (6) hours of labour, for a maximum total cost to the Applicant in the range of $400 to $450. Of course, the total cost should now be lower, given that legal invoices are now only required for a shorter period than was initially requested. To help simplify and expedite matters, the Respondent must therefore provide to the Applicant a breakdown of the cost of providing the outstanding records, showing the number of hours separately for redacted versus unredacted documents. In any case, the total billable amount cannot exceed $400 to $450.

Issue 3: Should any costs and/or penalties be awarded?

Penalty

[47] In view of the fact that the outstanding records to be provided to the Applicant are non-core records for which the Respondent was justified in seeking payment for the labour costs of providing them to the Applicant, there was no refusal to provide the outstanding records. In the circumstances of this case, I therefore find that there is no basis for a penalty to be imposed in that regard vis-à-vis the Respondent.

[48] On a different but related point, the Respondent has put forward in its written closing submissions and for the first time during these proceedings, that any outstanding non-core records have not yet been provided to the Applicant because

he failed to participate in any meaningful discussion with the Respondent during the Stage 2 Mediation in order to come to an agreement with respect to labour fees for the outstanding non-core records.

[49] Be that as it may, it appears to me that this point was raised 'late in the game'. More importantly, this point was not mentioned by the Tribunal member in the Stage 2 Summary and Order and I will therefore disregard it for the purposes of this Stage 3 proceeding.

Costs

[50] Rule 48.2 of the CAT Rules of Practice ('Rules') reads as follows:

> 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.

[51] Both parties have put forward extensive submissions in support of their respective claims for costs in this matter.

[52] The Applicant was successful in showing that there was an unreasonable delay on the part of the Respondent in responding to his Request and in his claim of being entitled to obtain outstanding non-core records. In addition, he was partially successful in reducing part of the fee proposed by the Respondent for the cost of producing the outstanding non-core records. The Applicant is therefore entitled to his costs for Tribunal fees in these proceedings in the amount of $200. In regard to any other costs in favour of the Applicant, who was self-represented in this matter, I find no basis under the Rules to award him any other such costs.

[53] For its part, the Respondent submits that there are exceptional circumstances in this matter which support an award of costs in its favor.

[54] In the Respondent's view, the Applicant did not reasonably cooperate to try to resolve this dispute before filing his application. More specifically, the Respondent alleges that the Applicant deliberately and repeatedly ignored the Respondent's efforts to settle the dispute, failed to adequately specify which records he was requesting, refused to accept that certain records had been provided to him, and refused to accept that he was not entitled to a certain category of records or that some records could require redaction under the Act or the payment of a fee.

[55] In addition, the Respondent submits that the Applicant caused the Respondent to acknowledge and/or respond to many issues which are not under the purview of the Tribunal or that were otherwise irrelevant to the application. In the Respondent's view, the Applicant continuously complicated these proceedings by failing to follow some of the Tribunal's instructions and directions and by referring to erroneous facts and issues.

[56] Given the Applicant's behaviour and communications both before and during this proceeding, the Respondent submits that it was compelled to appoint a lawyer to assist with this matter and that it was prudent in doing so by choosing to appoint a junior lawyer at a significantly lower billing rate.

[57] The Respondent submits that, on the facts of this case, it would be unfair to all other unit owners to expect that they be fully responsible for costs incurred and which are directly related to the Applicant's conduct and stubbornness. As a result, the Respondent and by extension, other unit owners, have been forced to incur additional and considerable legal charges.

[58] The Respondent further submits that the legislation and rules regarding the role of the Tribunal provide no incentive for an owner to settle a dispute prior to a hearing and that an owner could potentially face no consequence for having refused to attempt to resolve a matter such as this one prior to Stage 3.

[59] The Respondent then goes on to add that in the recent Tribunal decision in *Lochner v. Toronto Standard Condominium Corporation No. 1953, 2023 ONCAT 6* ('Lochner'), the Tribunal awarded the Respondent condominium corporation 80% of their costs in light of the Applicant's conduct. Further, in *Toronto Standard Condominium Corporation No. 2804 v. Micoli et al., 2023 ONCAT 21* ('Micoli'), the Tribunal awarded legal costs to the condominium corporation, with particular emphasis on costs in relation to the time spent in Stage 3.

[60] The Respondent submits that its actual legal charges in this proceeding amount to $31,206.04 (including proceedings at Stages 1 and 2 which are not relevant for the purposes of this proceeding), the bulk of which were incurred at this Stage 3 hearing. In view of all the above, the Respondent seeks its costs on a full indemnity basis or, in the alternative, on a substantial indemnity basis in line with the Tribunal rulings in the Lochner and Micoli cases. At the very least, the Respondent submits that it is entitled to costs on a partial indemnity basis.

[61] In deciding whether to allow costs in favor of the Respondent, I have considered the consumer protection character of the Act and the need to balance the rights of individual owners against the collective interests of the other owners in the

condominium community. I have also applied the criteria set out in the Tribunal's Practice Direction on Assessing Costs.

[62] As previously noted, the Applicant was self-represented and not familiar with Tribunal processes. The Tribunal understands that self-represented parties such as the Applicant may need additional direction in order to ensure a fair process for all concerned.

[63] It is also true that a number of the Applicant's submissions related to remedies which the Tribunal could not grant and included numerous statements that were more in the nature of formulating criticism of the Respondent rather than providing argument or evidence in support of his positions on the issues in dispute. In addition, there is no doubt that this matter went on longer than necessary, mainly as a result of the Applicant's overall approach to the case

[64] In deciding the Respondent's request for a cost award, I have taken into account that the Applicant was self-represented and that this was his first time as a participant in a Tribunal proceeding. It was also his first request for records in 30 years as a resident and owner of the Respondent. In sum, the Applicant was determined and passionate in putting his case forward and I do not doubt his intentions in trying to contribute to the 'better governance and management' of his condominium corporation.

[65] In addition, I note that during the course of these proceedings, the Applicant offered his apologies on more than one occasion for missteps or erroneous views, to the Respondent or to the Tribunal. As a result, I find that this case is very much different from the situations and conduct of the parties in the Lochner and Micoli cases and much more in the nature of the circumstances which were considered in the Martynenko decision. For all these reasons, I decline to award any costs in favour of the Respondent.

D. CONCLUSION

[66] It is clear from the submissions of the parties that mistrust and frustration abound between them and that there are issues between them which are outside the scope of this hearing. I have no doubt that this conflict has been stressful for all parties, with significant personal and financial costs. I am mindful that this decision will determine the issues in dispute in this case but that it will not resolve the underlying issues or causes of this proceeding. I therefore strongly encourage the parties to move away from a cycle of blame and accusations, to seek different ways to de-escalate the conflict and to recognize that cooperation is key to successful community life.

[67] Going forward, the Respondent should take all reasonable steps to facilitate access to all its records by owners and for making the cost as affordable as possible in the cases where it is allowed to charge a fee for access to some types of records. More importantly, I encourage both parties to learn from this case and to strive to resolve their issues on access to records in a collaborative manner in the future. It is also my sincere hope that this case will serve to guide the Respondent in how it manages its affairs and records, as well as in guiding all owners in what they can expect from the Respondent and its board.

[68] In relation to that topic, the Applicant made a request in his submissions that a copy of this decision should be made available to all unit owners of the Respondent. I agree with the Applicant and direct that a copy of this decision in electronic format should be sent by email to all owners who have email access. In addition, hard copies should be made available to all owners at the office of the condominium manager on the Respondent's premises, on demand and at no charge.

[69] As a final note, I wish to thank the parties and counsel for their submissions and patience during the course of this hearing.

E. ORDER

[70] Under section 1.44 of the Act, the Tribunal orders that:

1. Within 60 days of the date on which the Applicant makes a payment under section 3 of this Order, the Respondent will provide the Applicant with copies of the records which he has requested, more specifically the outstanding non-core records as follows:

    i. Invoices for legal fees charged to York Condominium Corporation No. 78 from 2021/06/01 to 2022/05/06; and

    ii. Any other historical service agreements that may exist only in hard copy and which are stored off-site for the period 2016 to 2022, with the proviso that any reduction of this time span by the Applicant will reduce the total charges payable by the Applicant to the Respondent for copies of those records.

2. The Respondent may redact information that is protected under the Act or the Regulation from any record it provides to the Applicant, as may be the case.

3. The Respondent may charge the following fees for the production of the

outstanding records:

(i) a rate of $75 per hour for documents where redaction is required and a rate of $60 per hour for documents where redaction is not required, for a maximum total cost to the Applicant in the range of $400 to $450; and

(ii) to simplify and expedite matters, the Respondent must provide to the Applicant a breakdown of the cost of providing the outstanding records, showing the number of hours separately for redacted versus unredacted documents. In any case, the total billable amount cannot exceed $400 to $450.

4. The Applicant may either pay the above maximum amount of $450 and receive the records, on the understanding that the Respondent will refund to him any unused portion of that amount, or he may also choose to not pay any amount and to receive no records.

5. The Respondent shall send a copy of this decision in electronic format to all its unit owners who have email access. In addition, hard copies must be made available to all unit owners at the office of the property manager on the Respondent's premises, on demand and at no charge.

6. Within 30 days of the date of this order, the Respondent will pay costs to the Applicant in the amount of $200.

Roger Bilodeau
Member, Condominium Authority Tribunal

Released on: May 2, 2023