

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 21, 2023

CASE: 2022-00714R

Citation: Kowalchuk v. Metropolitan Toronto Condominium Corporation No. 983, 2023 ONCAT 84

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,
Stella Kowalchuk
Self-Represented

The Respondent,
Metropolitan Toronto Condominium Corporation No. 983
Represented by Temesgen Tirfe, Agent

Hearing: Written Online Hearing – April 5, 2023 to June 16, 2023

REASONS FOR DECISION

A. INTRODUCTION

- [1] Stella Kowalchuk (the “Applicant”) is a unit owner in Metropolitan Toronto Condominium Corporation No. 983 (“MTCC 983”). The Applicant submitted 10 requests for records to MTCC 983 between April 1, 2021, and February 27, 2023 (which was several days after this case was filed with the Tribunal). The Applicant alleges that MTCC 983 has repeatedly failed to respond to her requests on the mandatory prescribed form, has unnecessarily delayed providing some records and/or provided inadequate records and has refused without a reasonable excuse to provide other records. She also asserts that the fees proposed for providing some records are “unreasonable and not affordable with no guarantee that records will be adequate”.
- [2] The Applicant asks that the Tribunal order MTCC 983 to provide the properly completed Board Response forms and the outstanding records she has not been provided with or to correct those which are inadequate. She is also seeking various penalties: a penalty in the amount of \$1000 for MTCC 983’s failure to respond to her requests or within the prescribed time and in the prescribed format, a penalty in the amount of \$500 for the board’s failure to comply with the Condominium Authority of Ontario’s (“CAO”) mandatory training, and a penalty of \$1000 for the board’s refusal to provide records without a reasonable excuse

pursuant to s. 1.44(1)6 of the *Condominium Act, 1998* (the “Act”). In addition, she seeks reimbursement of her Tribunal fees in the amount of \$150.

- [3] MTCC 983 did not participate in Stage 2 or Stage 3 of the Tribunal’s process though Tribunal staff communicated with its manager who indicated on several occasions that they intended to join the case and was assisted by Tribunal staff in their efforts to do so. When they still did not join the case, I requested that Tribunal staff again reach out to them; the manager advised staff on May 3 that they were experiencing technical difficulties. Once more, Tribunal staff offered to assist, but MTCC 983 did not join the case. As a result, the case ultimately proceeded without their participation, with the result that the Tribunal must decide the case based on the evidence provided by the Applicant.
- [4] For the reasons set out below, I will order that MTCC 983 provide some of the records requested. I have also found, in some instances, that the records provided are adequate despite the Applicant’s submissions to the contrary. I have also found that some of the Records requests are deemed abandoned pursuant to s. 13.10 of Ontario Regulation 48/01 under the Act (the “O. Reg”) because the application to the Tribunal was made late. MTCC 983 is entitled to charge a fee for the non-core records which must be provided. The Applicant is entitled to a penalty payable by MTCC 983 in the amount of \$1000 pursuant to s. 1.44(1)6 of the Act and her costs of \$150. Under subsection 1.44 (1) 7 of the Act, I am ordering that each of the current board members takes or retakes the mandatory director training prescribed under s. 29 (2) (e) of the Act within 30 days of the date of this decision. I have provided detailed direction in my order, with the expectation that with this, the parties have a clear understanding of what is required.

B. BACKGROUND

- [5] The Applicant has been a unit owner of MTCC 983 for approximately 30 years. It is clear from her submissions that she is very concerned about the responsible fiscal management of MTCC 983 and the potential impact on the value of her home as a result of the board’s management of the corporation’s business. Attention to detail is important to her as is compliance with the requirements set out in the Act and its regulations. Though not a director, she has completed the CAO director training modules and has reviewed the Director’s Code of Ethics. She expects a standard of care and diligence from MTCC 983’s board and management and she has correctly pointed out that it is the corporation through its board that is responsible for properly responding to records requests.
- [6] It is also clear from the evidence before me that MTCC 983 frequently has not fully adhered to its obligations under the Act. Although MTCC 983’s attention to detail falls far short of the Applicant’s, hers is not the standard that MTCC 983, is necessarily required to meet. What is required of a condominium corporation is determined by the Act and its regulations. One of the issues for me to consider as I reviewed the evidence was the materiality of some of its shortcomings.

C. ISSUES AND ANALYSIS

- [7] As noted above, there are 10 records requests. There is some repetition in those requests. Where feasible, I will address the issue related to a particular record, such as, for example the record of owners and mortgagees, referencing the particular requests where it was in issue. In almost every request, the Applicant has recurring concerns about whether MTCC 983 complied with the relevant provisions of the O. Reg and adequacy of the board response and/or records provided.
- [8] Further, as I reviewed the various Requests, it was clear that some of them bear dates that result in a conclusion, pursuant to s. 13.10 of the O. Reg, that they have been abandoned. Specifically, s. 13.10(1) states that a request for records **shall** be deemed abandoned and have no force and effect if, within 60 days of receiving the board response, the requester does not apply to the Tribunal for resolution of the requests as a matter in dispute.¹ Section 13.10(2) states that where there is no board response, the request **shall** be deemed abandoned if, within six months of delivery of the request, the requester does not file a dispute with the Tribunal. I have added the emphasis to the word “shall”, to highlight that there is no discretion available to me on this issue. I will address the issue of ‘abandonment’ where applicable in relation to the particular records requested. I recognize that this is likely a disappointing outcome for the Applicant. However, to provide clarity to her in the event of any requests in the future, I will address her concerns in relation to various of the records received.

ISSUE: Has MTCC 983 failed to provide the Board Response forms and if so, what is the appropriate remedy?

- [9] Before considering the various records requested, I will address this issue due to its prevalence across all of the records requests. The Applicant submitted her first request on April 1, 2021. She was, however, unable to locate the physical Request for Records form. She states she did not receive the Board Response form for that request. In most instances, I might question whether such a request was made at all.² However, given the number of requests and the detail that the Applicant provided in her evidence and submissions, I accept her statement that a request was submitted on this date and that no board response was forthcoming. That conclusion, about the lack of a response, is strengthened by the fact that providing a response was, in terms of MTCC 983’s practice, the exception rather than the rule. MTCC 983 provided the Response Form in answer to the Requests for Records dated August 30, 2022, and November 1, 2022 – in relation to just two of the 10 requests.

¹ See the recent Tribunal decision in *McCoy v. Simcoe Condominium Corporation No.119 2023 ONCAT 76 (CanLII)*

² As noted in paragraph 1, the last records request was submitted after the application was made to the Tribunal. I am addressing it in this decision both for efficiency and because it relates to records that have been ongoing issues such as record of owners and mortgagees, and board minutes.

- [10] From the Applicant's evidence, it appears that between April 2021 and February 2023 there were three different condominium management providers, which might, provide some explanation for the noncompliance with the O. Reg, but, as submitted by the Applicant, it is ultimately the board's responsibility to answer records requests. Regarding the Board Response that was provided on November 2, 2022, the Applicant asserts that it was "not adequate" because the record of notices of leases under s.83 of the Act, which MTCC 983 stated it would provide, was not delivered. The failure to follow through with its undertaking to provide the record is problematic, but it does not render the Board Response form itself 'inadequate'.
- [11] Despite the fact that it rarely provided the Board response form, MTCC 983 did provide some of the records that were requested (and, on occasion, within 30 days), but the consistent failure to provide the Board Response forms exacerbated the Applicant's concerns. Had MTCC 983 completed the forms and explained, for example, why certain minutes were missing or why redactions were done, some of the Applicant's valid concerns may have been resolved. Section 13.3(6) of the O. Reg clearly states that when a corporation receives a request for records it shall respond within 30 days using the prescribed form. Section 13.8(1) of the O. Reg states that a record that is redacted shall be accompanied by a separate written document setting out the board's reasons for the redaction. The Respondent provided some of the records, but it did not comply with the requirements set out in s. 13.8 of the O. Reg.
- [12] There is no provision in the Act for the Tribunal to assess a penalty for the failure to comply with the O. Reg in and of itself, and provision of the Board Response forms is moot at this point given the passage of time (though when dealing with some of the records later in this decision, I will be ordering that MTCC 983 provide some explanatory statements to the Applicant).
- [13] While I am not ordering a penalty for the failure to provide Board response forms, based on the evidence I will make an order under s. 1.44 (1) 7 of the Act. This section allows the Tribunal to address underlying issues that have likely given rise, at least in part, to this application. In this case, there appears a lack of understanding by MTCC 983 of the requirements of the corporation under both the Act and the O. Reg. It appears not to be in the practice of completing the Board Response form, yet it is obliged to do so, whether or not it is providing the record. There is an expectation that all directors have a basic level of understanding of the Act and its regulations and to that end, they are required under the Act to complete mandatory training courses provided by the CAO. Based on the evidence before me, it appears that this board needs a refresher which will, hopefully, assist it in more diligently responding to records requests so that responses are timely and complete. Therefore, under subsection 1.44 (1) 7 of the Act, I am ordering that each of the current board members takes or retakes the mandatory director training prescribed under section 29 (2) (e) of the Act within 30 days of the date of this decision and provide the Applicant with an attestation confirming completion. I note here that the Tribunal has no jurisdiction over condominium managers and

therefore this order for remedial training only applies to the board.

ISSUE: Has the record of owners and mortgagees been provided when requested, and if so, is it adequate? Has there been a refusal to provide this record?

[14] The Applicant requested the record of owners and mortgagees in her requests dated April 1, 2021, March 1, 2022, August 30, 2022, and February 27, 2023. The record was provided in response to all but the February 27, 2023 request. Given that MTCC 983 did not provide a response to the February 2023 request, there is no explanation, whether reasonable or not, for the failure, or refusal to provide it. However, regarding the records that were received (on one occasion late), the Applicant asserts they were not adequate. Though all but the February 27, 2023 request are deemed abandoned as per s. 13.10 of the O. Reg, as indicated above, I will address the Applicant's concerns about the records previously provided so as to give both parties insight regarding the requirements for any future requests..

[15] There is no question that the record of owners and mortgagees, as a core record, is one to which the Applicant is entitled. The requirement to maintain the record of owners and mortgagees is established in section 46.1 of the Act. Section 46.1(2) states:

As soon as reasonably possible upon becoming an owner in a corporation and, in any event, no later than 30 days after becoming an owner in a corporation, the owner shall give notice to the corporation in writing, setting out the owner's name and, in accordance with the regulations, identifying the owner's unit.

And s. 46.1(3) states that the record shall contain:

(a) the owner's name and the identification of the unit, if an owner, at any time, gives notice to the corporation in writing, setting out the owner's name and, in accordance with the regulations, identifying the owner's unit;

(b) the owner's address for service if,

(i) an owner who has given the notice described in clause (a), notifies the corporation in writing, at any time, of the owner's name and address for service, including any change in the address for service, and

(ii) the owner's address for service is in Ontario...

[16] It is important to note that the corporation is dependent upon receipt of information set out in s. 46.1(3). This is not information that the corporation independently generates. Further, any updates to the information are also the responsibility of the owner to provide, after which the corporation must update the record, as set out in s. 46.1(4) of the Act.

[17] The Applicant has several concerns with the records of owners and mortgagees that were provided, principal among them was that she is aware that one owner

listed on the records was deceased in 2019 yet their name still appeared on the record. It had not been updated. In submissions, she stated that the occupant of the unit had advised the corporation of the death, yet the record was not updated. I have no evidence before me that information was in fact provided. That the corporation may have been aware of the death may be true, but the responsibility is upon the owner's representative in such a situation to formally provide the information. I cannot find that this discrepancy in the record is due to a failure of the MTCC 983 to update the record with information that may or may not have been received by it.

- [18] The Applicant states that when she received the record in response to her April 2021 request, it was not dated. That does not equate to inadequacy, given the requirements for the record as set out in s.46.1. She does, however, state that it was redacted as was the record that she received in April 2022. Although section 55(4)(c) allows corporations to redact "records relating to specific units or owners," section 55(5) states that clause 55(4)(c) does not prevent "an owner, ... from examining or obtaining copies of the record that section 46.1 requires the corporation to maintain." Stated more directly - the Act specifically exempts the owners' list from the redaction requirements related to information about specific units or owners. The Applicant is entitled to an unredacted copy of the document.
- [19] The Applicant also states that she has received several copies of the record which creates "uncertainty as to which copy is adopted by the board". She did not point to any discrepancy among those versions. I do not find that this is a valid concern regarding this record. Finally, the Applicant states that the record received in April 2021 did not contain an owner's address for service. That is information that must be contained in the record, if it in turn was provided by an owner as stated in s. 46.1(3)(b).
- [20] To summarize my findings in relation to the record of owners and mortgagees which was requested on four occasions, to the extent that the records were redacted, this is contrary to s. 55(5)(c) I do not find that the information that the Applicant alleges was missing or not updated rendered the record inadequate, based on the evidence before me. I do find that the failure to provide the record in response to the February 27, 2023, Request is a refusal without a reasonable excuse. I will order that the record of owners and mortgagees effective as of February 27, 2023, be provided to the Applicant, without redactions.

ISSUE: Have the record of notices of notices relating to leases of units under s. 83 of the Act been provided and if not, has MTCC 983 refused to provide it?

- [21] These records were listed in the April 12, 2021, and November 1, 2022, Requests for Records. The Applicant states that these were not provided to her even though MTCC 983 indicated in its response to the November request that it would be. This is another core record to which the Applicant is entitled, and I will order, in the circumstances, that it be provided. In the absence of any evidence from MTCC

983, I also find in the circumstances here that there has been a refusal to provide the record, without a reasonable excuse.

ISSUE: Have the requested minutes of board meetings been provided and if so, are they adequate?

- [22] The Applicant has requested board minutes in her Requests for Records dated October 5, 2021, March 1, 2022, August 30, 2022, November 1, 2022, January 13, 2023, and February 27, 2023. Some of those requests refer to the same minutes, or there is overlap in the records requested. The Applicant alleges that she did not receive board minutes for the month of April 2020. That may be, but those minutes do not appear to be included within any of the above noted requests.
- [23] The majority of minutes requested have been received, though many of these were in “draft” form. As the Applicant notes, draft minutes are not records of the corporation because they have not been approved by the board. The Applicant has not taken issue so much with the fact that minutes appeared to remain as “draft” minutes for months, but that they were not signed, or multiple copies were received leading to “uncertainty” as to which were approved. In some instances, for example, when the Applicant requested October 2022 board minutes in her November 1, 2022, request, it is likely that final approved minutes would not have been available when the request was made.
- [24] While it is somewhat concerning that draft minutes were provided because some months later they had not yet been approved by the directors, that speaks to a board governance issue that is beyond the Tribunal’s jurisdiction. However, it does highlight that the director training refresher which I have ordered is likely needed.
- [25] The various minutes, when requested by the Applicant, were all core records; that is, they were minutes from meetings held within the previous 12 months of the particular request. Though, in reviewing the requests and assessing, based on the evidence, what has or has not been provided in approved form, I would have otherwise found it appropriate that MTCC 983 be ordered to provide the minutes of board meetings between July 2021 and February 27, 2023, the requests for minutes that pre-date the January 13, 2023 Request are deemed abandoned pursuant to s. 13.10(1) or (2). The requests for minutes contained within the January 13 and February 27, 2023 Requests remain. Therefore, I will order that the board minutes for the period of July 1, 2022 to February 27, 2023 (as listed in the 2023 requests) be provided. There shall be no fee charged for any of these minutes. Where there are redactions, MTCC 983 shall provide an accompanying statement pursuant to s. 13.8(1) of the O. Reg. If any of the minutes are still in draft form, MTCC 983 shall also provide a statement explaining why that is so.
- [26] I have made the order above with the expectation that this will resolve any outstanding concerns/uncertainty about the minutes. However, I also caution the Applicant. Making repeated requests for the same minutes does not generally aid in the provision of those documents. As well, it is important to keep in mind what

'accuracy' means in the context of board minutes. It is not a standard of perfection. Though attention to detail is very important to the Applicant, I urge her to consider prior relevant statements from the Tribunal decision in *King v. York Region Condominium Corporation No.692* 2022 ONCAT 80 (CanLII) at paragraphs 17-18:

....However, the purpose of meeting minutes must be considered. The Applicant submitted that it is the board's responsibility to ensure the records of the corporation are accurate, and cites *Yeung v. Metropolitan Toronto Condominium Corporation No. 1136* where the Tribunal states at paragraph 15:

Considering the scheme and provisions of the Act and the submissions of both parties in this case, I have no hesitation in affirming that accuracy is a component of adequacy in respect of condominium records. I also find that the use of the word "adequate" in the legislation suggests, in and of itself, tolerance for a degree of imperfection. The question is just how much inaccuracy may be tolerated before a record is rendered inadequate to, as Cavarzan J. stated, "permit [the condominium corporation] to fulfill its duties and obligations."

In *Yeung*, the Tribunal stated that while board minutes call for a reasonably high standard and expectation of accuracy, it is not a standard of perfection. At paragraph 21, the Tribunal stated:

Owners should be entitled, therefore, to expect that the minutes correctly describe the procedures followed by the board of directors when transacting the business of the corporation.

However, the Tribunal also found that where an error is minor it cannot be said to undermine the purpose of minutes. In matters before the Tribunal, we see a wide variety of minutes in terms of form and detail. Issues about the adequacy and accuracy of minutes arise frequently. It is well settled law at this point that the purpose of minutes is to document a board's business transactions and to show how the corporation's affairs are controlled, managed and administered. Minutes may not contain details to a level a particular owner may prefer, but there is no need for granular detail. Minutes are not required to be a verbatim account of a meeting.

ISSUE: Have the most recently approved financial statements and budget for the current fiscal year been provided?

[27] In her August 30, 2022, Request, the Applicant sought the "most recent approved" financial statements, a core record. In its Response on September 29, 2022, the board agreed to provide this record. There is no evidence before me that this record was not provided; however, the Applicant submits that the monthly financial statements (which are not core records³) for the period of September 1, 2021-August 30, 2022 were not provided. That may be. They were not requested.

[28] The source of this confusion may be the Board Response to the November 1,

³ See *Mellon v. Halton Condominium Corporation No.70* 2019ONCAT 2 (CanLII)

2022 request for the “current budget”, also a core record. The board responded: “The monthly financial statements have not been approved by the Board”. The cause for this disconnect between the actual stated request and the response, and perhaps what the Applicant thought she ought to receive, is not at all clear. However, based on the evidence before me, it does appear that the requested (as of November 1, 2022) ‘current budget’ was subsequently provided to the Applicant..

ISSUE: Has the Applicant received the current plan for the future funding of the Reserve Fund and the Reserve Fund Study dated July 28, 2021, and if so, were they adequate? Has the Applicant received Class 2 Fund studies requested?

- [29] The Applicant requested the current plan for the future funding of the reserve fund in her April 12, 2021, request, which she received. However, she states it is not adequate because it included two pages dated September 2017. Similar to her concerns about board minutes, this reflects her attention to detail. While I do not fault her for that, issues of this nature do not usually make the record inadequate.
- [30] In her March 3, 2022 request, the Applicant sought the July 28, 2021, Reserve Fund Study report. She received this, but again, states it was not adequate for several reasons: it was a draft copy, a Form 15 and Appendix D were incomplete or missing information and it was not signed and dated by the board. Section 29 of O. Reg 48/01 outlines the required contents of a reserve fund study. In highlighting these concerns about the record, the Applicant appears focussed on form and again, because of her attention to detail, MTCC 983’s potential lack of attention is frustrating, and perhaps suggests to her that there are deeper problems with the board’s governance. The question to ask of a reserve fund study and the current plan for future funding of the reserve fund is whether they together provide an analysis by which to determine whether the amount of money in the reserve fund and the contributions to the funds collected by the corporation are adequate to provide for the expected costs of repair and replacement over time. Missing signatures are not going to cause the record to be inadequate for its purpose.
- [31] In addition to these two records, the Applicant requested various Class 2 Reserve Fund Studies which are updated studies – with a site inspection, which are non-core records, specifically:
1. Class 2 Study from Remy Engineering used by MTCC 983 in its financial report of August 31, 2020 (August 3, 2021 Request). The Applicant states that this was not provided.
 2. Class 2 Study of the fan coil unit - inspection reports and replacement recommendations of Remy Engineering and Enerplan Building Consultants – June 2015 to present (August 30, 2022 Request).
 3. Class 2 Study of the underground parking garage inspection reports and

recommendations including the P3 stairwell – June 1, 2017 to present (August 30, 2022 Request).

4. Enerplan Building Consultants – reserve fund study – site reviews and condition assessments January 1, 2014 to December 31, 2020. (November 1, 2022 Request).
5. Remy Consulting Class 2 Study dated July 13, 2018 and all site reviews and condition assessments January 1, 2018 to present. (November 1, 2022 and January 13, 2023 Requests).

[32] With the exception of the first listed study, MTCC 983 responded (through the Board Response form), that it agreed to provide each of these. It did, as required, indicate a cost estimate for each of these records. The Applicant submits that these records were not provided, and to a certain extent that is correct. But the reason that records 2-5 listed above have not been provided is because the Applicant did not pay the requested fees, and in the case of record 5, the Applicant made the same request twice, two months apart. Again, because of the effect of s. 13.10(1), all but the record requested in January 2023 (number 5 above) are deemed abandoned. I will order that particular record be provided. The hourly fee quoted of \$45/hour is, in the Applicant's view, unreasonable and not affordable, and further, she submits that there is no guarantee that they will be accurate. I will address the issue of fees later in this decision but do want to note that s. 13 of the O. Reg states clearly that an estimate is to be provided by the board, which MTCC 983 has done, and that payment shall be made, prior to delivery of the record.⁴ The requirement to pay a fee for the record is not contingent upon the requestor's assessment of accuracy.

ISSUE: Is the Applicant entitled to the other non-core records requested? Has she been provided with some of those records, and if so, are they adequate?

[33] Given that there are a variety of other records requested, I will address them below, by record type for efficiency.

Maintenance contracts, invoices, quotations, and inspection reports

[34] In her April 12, 2021 Request, the Applicant asked for mould inspection reports relating to the fan coil unit (January 2015- April 2021) and maintenance contracts for the fan coil unit, for the same time period. She states that she received one of the maintenance contracts, dated in 2020. While these are records to which the Applicant would be entitled, under s. 55 of the Act, for a fee, the request is deemed abandoned pursuant to s.13.10(2) of the Act.

[35] In her August 3, 2021 Request, the Applicant requested invoices and quotations

⁴ See s. 13.3(7)-(11) and s. 13.8

for building sealant and asphalt pavement replacement projects for the period of October 1, 2017 to August 2019. The Tribunal has confirmed entitlement to such records.⁵ However, the request for these records, as well as the copy of the contract with Brada Construction and the payments made between January 1, 2017 and December 2020 which was also requested on August 3, 2021 are deemed abandoned pursuant to s. 13.10(2) of the Act.

- [36] In her March 1, 2022 Request, the Applicant sought the in-suite ventilation and drycleaning service invoices for the period of January 2015 to February 27, 2022. There was a slight variation to this request on November 1, 2022 when she asked for the same record, but from January 1, 2017. In her submissions, the Applicant stated that the last in-suite preventive maintenance schedule for all units was in June 5-16, 2017 by Four Seasons Duct Cleaning. MTCC 983 responded to this request, and provided its fee estimate as per the O. Reg. Again, the Applicant did not file her dispute regarding the fee within the prescribed time and the request is deemed abandoned.
- [37] In her August 30, 2022, Request, the Applicant requested quotations and/or contracts for the underground garage repair for the period of January 2020 to August 29, 2022. The Applicant submits that these were not provided; however, MTCC 983 in its Board Response did state that it would provide this record and provided its fee estimate. The Applicant disputes the fee and hence has not received the record. Because she did not file a dispute with the Tribunal within the prescribed time set out in s. 13.10 this request is also deemed abandoned.
- [38] In both her November 1, 2022, and January 13, 2023, requests, the Applicant sought underground parking garage invoices and maintenance contracts, the provider being Yellow Gates Maintenance, from January 2020 to present. In the Board Response of November 2, 2022, MTCC 983 agreed to provide this, and provided the fee estimate. The Applicant did not pay the fee, the record was not provided, and the request repeated two months later, also for the underground parking garage repairs and P3 stairwell concrete repair – quotations and contracts for the period August 2021 to present. In the circumstances, because of the January 13, 2023 request, I will order that the records be provided, upon payment of the fee.
- [39] Also in the November 1, 2022, Request, the Applicant requested the window cleaning contracts and invoices for the period of January 1, 2019 to present. In its response MTCC 983 stated it would provide the 2019 contract (and provided a fee estimate) and advised that no window cleaning was completed due to construction in the neighbouring building. Again, the Applicant states the records have not been provided, yet she did not file her dispute with the Tribunal within the prescribed 60 days. Further, I have no reason not to accept the board statement that no window cleaning took place.

⁵ See *Tait v. Waterloo Standard Condominium Corporation No. 553 2020ONCAT 1* (CanLII)

- [40] Finally, in the November 30, 2022, Request (repeated in the January 13, 2023, Request), the Applicant sought the fire inspection deficiency reports, the fire safety inspection reports and inspection certificates from September 1, 2020, to the present. MTCC stated in its response that it would provide these, and again provided a fee estimate. The Applicant did not pay the fee and no records were provided to her. Because of the second request on January 13, 2023, I will, in the circumstances, order that these be provided to the Applicant, upon payment of a fee. I do note that, though not specifically requested, the Applicant, as disclosed in her evidence, was provided with a 66-page Fire Safety Plan, apparently in November 2022. She submits that it is not adequate because of its dated approvals and because it lists, as a person requiring special assistance, an owner, who is deceased.
- [41] My detailed review of the records requested in this category reveals a pattern that also occurred in relation to other records requested. MTCC 983 failed to respond to several requests, the records, to which the Applicant is entitled, were not provided, effectively a refusal to provide the record. When MTCC 983 did respond by stating that the record would be provided upon payment of a fee, the Applicant disputed the fee, as she is entitled to do. She did not however, follow through with the required Tribunal application within the prescribed time, and appears to overlook the fact that the record was not provided only because she did not agree to pay the fee. Additionally, in some instances, she repeats the request, perhaps in the belief that the answer may be different.
- [42] Regarding the records for which I have concluded that the request has been abandoned, I note that the Applicant can file a new request with MTCC 983. I do hope that both parties will be guided in their further interactions by my findings in this decision so that another Tribunal application will not be required.

Director's Code of Ethics signed by the Board of Directors

- [43] There are seven directors on the MTCC 983 board. When the Applicant made her request for this record on April 12, 2021, though there was no Board Response form provided, she did receive six of the seven forms. No explanation was provided as to why one was pending. However, on her March 2022 request, the Applicant requested the Code of Ethics for the director who was appointed in February 2022. She received that document, but asserts that it is not adequate because it was missing both the corporation number and the director's unit number. The Code of Ethics is completed by the director and filed as a record with the corporation. Any error in completing the form, such as highlighted by the Applicant here, is an error of the director, but in this instance, the omission is of such a nature that it cannot be said to make it "not adequate".
- [44] Based on the evidence before me, the Applicant seems to have the seven Directors Code of Ethics as of March 2022.

Proxies and electronic votes for the February 2022 election

[45] In her evidence, the Applicant stated that she received this record, but did not receive the election results with the total number of votes for each candidate. While she may wish to have that information, it is not a record she requested. This specific request has been satisfied.

Policies, legal expenses and insurance claims

[46] These various requests were all included within the August 3, 2021 Request, and are all non-core records which the Applicant states she has not been provided with. The Applicant requested the corporate records retention policy up to date as of July 25, 2021. If such a written policy exists as a record of the corporation, then the Applicant would be entitled to have it provided to her. Along the same vein, the Applicant requested the “records disposal procedures” for the period of January 1, 2015, and July 26, 2021. It is not at all clear whether this is a separate policy document kept by MTCC 983 or whether this is simply information that the Applicant is seeking. If the former, then she would be entitled to have a copy of it. However, regarding each request, it is deemed abandoned as the dispute was not filed with the Tribunal within six months.

[47] The Applicant requested records of the legal expenses paid in relation to the defamation claim against two directors in Small Claims Court ; specifically the dollar amount of the legal expenses paid between January 2020 and present as well as information regarding the status and outcome of that case.

[48] Regarding an owner’s entitlement to the legal invoices, this issue has been addressed by the Tribunal on several occasions, most recently in *Di Felice v. Wentworth Standard Condominium Corporation No.379*⁶(“Di Felice”). The Tribunal has regularly found that unit owners are entitled to receive redacted copies of legal invoices. In *Di Felice*, the Tribunal referred to the case of *Anderson v Niagara South Condominium Corporation No.12*⁷ regarding the redactions to be made to these records, stating, at paragraphs 26 and 27:

When considering what redactions that should be made to the legal invoices prior to providing them to the Applicant, I agree with the Tribunal’s conclusions about the appropriate scope of redaction as set out in *Anderson*, which at paragraph 24 reads as follows:

I find that the Respondent is required to provide the legal invoices to the Applicant, but that they are entitled to redact description of number of hours billed, the hourly rates, the services provided, the names of specific counsel who provided the services, and the dates of the invoices. The invoices must show the total amount for each. As per s.13.3(3)(8) of Ontario Regulation 48/01 (O. Reg 48/01) NSCC 12 is entitled to charge a fee for the actual labour and delivery costs it incurs for providing these records.

I further direct that the redaction should ensure to redact any identifying information

⁶ 2023ONCAT 77 (CanLII)

⁷ 2022ONCAT 28 (CanLII)

pertinent to the identity of an individual, or any type of communication and narrative descriptions. The invoices provided to the Applicant should only show the total amount billed to, and/or paid by WSCC 379. These redactions will respect the confines of solicitor-client privilege and section 55 (4) of the Act, while also respecting the premise of “open book” and transparency, which is of concern to the Applicant.

- [49] However, again, pursuant to s. 13.10 (2), this record request is deemed abandoned.
- [50] The Applicant also seeks information as to the status/outcome of the court case. It is not clear that this is a record that MTCC 983 is required to maintain. It is though also a record deemed abandoned. I do note that a Periodic Information Certificate, which is a record condominium corporation is required to keep, and provide, pursuant to s. 26.3 of the Act, must include prescribed key information including, among other things, information about legal proceedings.
- [51] The last records requested are the “fan coil flooding insurance claims – the dollar amount each year claimed and the number of units that flooded in each tower each year for the period of January 1, 2015 to August 3, 2021.” On its face, this appears to be information that may not, in fact, constitute a record of the corporation; however, under s. 13.1(1)6 of the O. Reg, a corporation is required to keep “records that relate to insurance claims under an insurance policy in relation to the corporation and that the corporation creates or receives, including insurance investigations involving the corporation”. Again, though, by virtue of s. 13.10(2) this request is deemed abandoned. I note here as well that insurance coverage and claim information is required to be included in the Periodic Information Certificate.

ISSUE: Is MTCC 983 permitted to charge a fee for the records, and if so, what is the appropriate fee?

- [52] No fee is to be charged to the Applicant for the core records that I will order be provided to her; in particular, the record of owners and mortgagees, the record of notices of leases under s. 83 of the Act, the board minutes, and the current budget. The remainder of the records to be provided are non-core records and MTCC 983 is permitted under the O. Reg to charge a fee for the records.
- [53] When MTCC 983 did respond (In August and November, 2022), stating that records would be provided, it did set out its estimated labour costs for the preparation of the records at \$45/ hour with time estimates of 3-4 hours for the various records. The Applicant submits the proposed fees are unreasonable and unaffordable, and payment is no guarantee of an “accurate” record. On the latter point, it may well be that they will not meet the Applicant’s standard, but that does not necessarily mean they are not “adequate”. I urge the Applicant, to consider, when she reviews the records, whether the request has, in all material ways, been fulfilled and not focus on whether or not a document is dated or is missing a signature, for example.

[54] The Act and the O. Reg do not specify an amount a corporation is entitled to charge for the cost of labour to redact records being provided to a unit owner. However, the Regulation does set out factors that need to be considered when ordering fees. Subsections 13.3 (8) and 13.3 (9) state:

13.3 (8) The fee payable for the request shall be calculated in accordance with the manner set out in the board's response, subject to the following conditions:

1. The 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.
2. The fee shall be reasonable.
3. The board shall establish a charge of no more than 20 cents per page for printing or photocopying

...

13.3 (9) Subject to subsection (8), the fee payable for the request may vary depending on the following factors: ...

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.

[55] Based on the evidence before me, especially having regard to the wide range of records requested, I find MTCC 983 is entitled to charge the Applicant \$45 an hour, for its actual labour costs. Further, the time estimates given in the Responses to the August 30 and November 1, 2022 appear reasonable.

[56] When the records are provided, MTCC is to ensure that the accompanying statements set out in s. 13.8 of the O. Reg are provided, and in particular the separate written document described in s. 13.8(1)(c) and (d).

ISSUE: Should the Applicant be awarded a penalty, and if so, in what amount?

[57] Section 1.44(1)6 of the Act states that the Tribunal may order a penalty to be paid if it finds that the corporation has, without reasonable excuse, refused to permit a person to examine or obtain records. That is the only basis on which the Tribunal can award a penalty.

[58] As described in paragraph 2 above, the Applicant seeks penalties in addition to the refusal to provide records: a penalty in the amount of \$1000 for MTCC 983's

failure to respond to her requests or within the prescribed time and in the prescribed format and a penalty in the amount of \$500 for the board's failure to comply with the CAO mandatory training. I have no authority to award either penalty.

[59] The evidence before me does show that MTCC 983 has not provided core records, or has provided some late. On other occasions, MTCC 983 has simply not responded in any manner to the Applicant, which has, to some extent, resulted in this application. There was no explanation given, reasonable or otherwise. This leaves me to conclude that there has been a refusal without a reasonable excuse – an outcome that a condominium corporation ought to anticipate when it does not participate in a hearing. The Applicant has requested a penalty in the amount of \$1000 pursuant to s. 1.44(1)6 and find that to be appropriate given the evidence before me.

ISSUE: Is the Applicant entitled to costs?

[60] Rule 48.1 of the Tribunal's Rules of Practice states that if a matter is not resolved by Settlement Agreement or Consent Order and the adjudicator makes a final decision, the unsuccessful party will be required to pay the successful party's Tribunal fees unless the adjudicator decides otherwise. In this matter, the Applicant was successful on many issues. As such, I find it appropriate to order MTCC 983 to reimburse the Applicant for the cost of \$150 for filing this application.

D. ORDER

[61] The Tribunal Orders that:

1. Under s. 1.44 (1) 1 of the Act and within 30 days of the date of this decision, MTCC 983 shall provide the Applicant with electronic copies of the records listed below. If the records are not kept in electronic form, MTCC 983 shall provide paper copies. There shall be no fee charged to the Applicant for the records a through c below:
 - a. Record of owners and mortgagees as of February 27, 2023 in compliance with s. 46.1 of the Act and without redactions.
 - b. Record of notices of leases it received as required by s. 83 (3) of the Act, as of November 1, 2022.
 - c. Minutes of board meetings between July 2022 and February 27, 2023. Where redactions are required pursuant to s. 55(4) of the Act, MTCC 983 shall provide an accompanying statement pursuant to s. 13.8(1) of the O. Reg. If any of the minutes are still in draft form, MTCC 983 shall also provide a statement explaining why that is so.
 - d. Remy Consulting Class 2 Study dated July 13, 2018 and all site reviews and condition assessments January 1, 2018 to January 13, 2023.

- e. Yellow Gates Maintenance contract and invoices for underground parking garage from January 2020 to November 1, 2022.
 - f. Fire inspection deficiency reports, fire safety inspection reports and inspection certificates from September 1, 2020 to January 13, 2023.
2. MTCC 983 may charge a fee for the records listed at d, e, and f above. The hourly rate for labour shall be \$45 per hour. MTCC 983 may charge between two to four hours for production of the records and shall adhere to the estimates provided in its Responses to the August 30 and November 1, 2022 Requests.
 3. MTCC shall provide the accompanying statements as described in s. 13.8 of the O. Reg as required for the records listed at paragraph 1 d, e and f. above, and in particular the separate written document described in s, 13.8(1)(c) and (d).
 4. Within 30 days of this decision, pursuant to s. 1.44(1)6 of the Act, MTCC 983 shall pay a penalty of \$1000 to the Applicant.
 5. Within 30 days of this decision, pursuant to s. 1,44(1)4 and rule 48 of the Tribunal's Rules of Practice, MTCC 983 shall pay costs of \$150 to the Applicant.
 6. Under s. 1.44 (1) 7 of the Act, and within 45 days of the date of this decision, each of the current directors of MTCC 983 shall take or retake, as the case may be, the mandatory director training course provided by the CAO as prescribed pursuant to s. 29 (2) (e) of the Act. MTCC 983 shall provide the Applicant with an attestation confirming the directors' completion of the courses within 45 days of the date of this decision.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: June 21, 2023