

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** November 8, 2023

**CASE:** 2023-00218R

**Citation:** Lafortune v. Carleton Condominium Corporation No. 37, 2023 ONCAT 168

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

**Member:** Mary Ann Spencer, Member

**The Applicant,**  
Susan Lafortune  
Self-Represented

**The Respondent,**  
Carleton Condominium Corporation No. 37  
Represented by Graeme Macpherson, Counsel

**Hearing:** Written Online Hearing – August 14, 2023 to October 18, 2023

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] Susan Lafortune (the “Applicant”) is the owner of a unit of Carleton Condominium Corporation No. 37 (“CCC37” or the “Respondent”). In October 2022, she submitted a Request for Records to CCC37 in which she asked for a copy of the corporation’s rules. It is her position that the records she received in response to that request are not “adequate, accurate, current or complete.” She requests that the Tribunal order CCC37 to (a) commit to drafting a set of adequate, current and complete rules, (b) require its directors to take additional training, and (c) pay a penalty. She also requests reimbursement of the fees she paid to the Tribunal.
- [2] A further issue raised in Ms. Lafortune’s application to the Tribunal is her contention that CCC37 should not be redacting directors’ names in its board meeting minutes. She requests that the Tribunal order CCC37 to cease this practice.
- [3] CCC37’s position is that Ms. Lafortune’s application should be dismissed; it has provided the requested rules and unredacted copies of the minutes of its board meetings and has ceased its practice of redacting directors’ names in its meeting minutes. It submits that Ms. Lafortune’s case is about the governance of the corporation over which the Tribunal has no jurisdiction. CCC37 requests its costs

in this matter.

- [4] I find that CCC37 has provided Ms. Lafortune with the records of its rules which it possesses. I also find that it has failed to keep adequate records of its rules as required by s. 55 (1) of the *Condominium Act, 1998* (the “Act”); however, for the reasons set out below, I make no order in this regard. The issue of redaction of directors’ names in CCC37’s board meeting minutes has been resolved and I make no order with respect to this issue. Finally, I order no penalty or costs in this matter. Therefore, the application is dismissed without costs.

## **B. BACKGROUND**

- [5] On October 20, 2022, Ms. Lafortune submitted a Request for Records, asking for a copy of CCC37’s rules, by e-mail sent to Melissa Covey, its former condominium manager. By e-mail of the same date, Ms. Covey responded by sending an electronic link to CCC37’s Residents’ Handbook. Ms. Lafortune replied that she had the handbook and had seen a copy of a 2018 smoking rule but was seeking a document that contained all of the corporation’s rules. She sent follow-up e-mails to Ms. Covey on November 1 and 24, 2022 in which she noted that she had yet to receive either the comprehensive record she was seeking or a Board Response to Request for Records form. There is no evidence of any response to these follow-ups.
- [6] Effective April 1, 2023, CCC37 retained a new condominium management provider. On April 7, 2023, Ms. Lafortune sent an e-mail forwarding her past correspondence with Ms. Covey to new manager, Tammy Zollinger, “for her attention.” She sent a second e-mail to Ms. Zollinger on April 12, 2023, and inquired about the status of her request. Ms. Zollinger’s same-day reply was that the board was in the process of revising its rules.
- [7] On April 16, 2023, Ms. Lafortune filed her application to the Tribunal. I note that Counsel for the Respondent submitted that this case should be dismissed because it was filed on May 5, 2023, and therefore is out of time. Setting aside that this submission was not made until September 6, 2023, even though Counsel represented the Respondent in the Stage 2 - Mediation process, I have confirmed that the application was filed on April 16, 2023.
- [8] Ms. Lafortune’s application was with respect to the October 20, 2022, request and a March 9, 2023, Request for Records. She also raised an issue about the redaction of directors’ names in board meeting minutes. Board meeting minutes were not requested in either of Ms. Lafortune’s Requests for Records; rather, she obtained copies of the minutes pursuant to the terms of a Consent Order of the

Tribunal dated November 11, 2022 which resolved a previous case she filed.

- [9] Ms. Lafortune's contention is that the names of directors were inappropriately redacted and/or removed from the board meeting minutes she received. The Tribunal does not have the authority to enforce its Consent Orders; in this case, the redaction of directors' names was addressed in the Stage 2 - Mediation and brought forward to this Stage 3 - Tribunal Decision proceeding on the basis that the terms of the Consent Order were not at issue.

### **C. ISSUES & ANALYSIS**

- [10] Some of the issues raised in Ms. Lafortune's application to the Tribunal were withdrawn and/or resolved during the Stage 2 – Mediation in this matter. The issues brought forward to Stage 3 – Tribunal Decision relate only to the minutes of board meetings that Ms. Lafortune received pursuant to the November 11, 2022, Consent Order and to the request for a copy of CCC37's rules contained in her October 20, 2022, Request for Records. The issues set out in the Stage 2 Summary and Order are:

1. Has the Respondent provided all of the requested records?
2. Does the Tribunal have jurisdiction to order the Condominium Corporation to adopt new rules to replace the Residents' Handbook?
3. What remedies if any should be directed in this case and to whom?
4. Should the Tribunal award any costs?

An additional issue became evident during the course of this proceeding; that is whether or not the corporation is keeping adequate records of its rules. I address the issues separately below, including, where applicable, the remedy.

#### **Has the Respondent provided all of the requested records?**

##### The Board Meeting Minutes

- [11] Ms. Lafortune submits that the minutes she received pursuant to the November 11, 2022 Consent Order were inappropriately redacted. The evidence she submitted indicates that the names of the directors who made and seconded motions were redacted in the copies of the minutes of CCC37's January 23 and February 13, 2023 board meetings which she initially received. In the minutes of the April 17, 2023 meeting, the abbreviation "BoM" was substituted for the directors' names.

[12] At the outset of this Stage 3 – Tribunal Decision proceeding, while preliminary matters were being addressed, CCC37’s counsel advised that the corporation was prepared to provide Ms. Lafortune with minutes which would be redacted only in accordance with the requirements of s. 55 (4) of the Act. These were uploaded to the CAT-ODR system on August 26, 2023. Counsel advised, as witness Rob Kirwan, a member of CCC37’s board of directors, also later testified, that the corporation had ceased its practice of redacting board members’ names in its meeting minutes. Mr. Kirwan explained that this practice had been adopted on the recommendation of its new condominium manager who had instituted it at other corporations after the well-publicized, tragic incident of a condominium owner shooting board members.

[13] Ms. Lafortune disputes that the corporation has now provided her with unredacted copies of all of the minutes. Specifically, she notes that the minutes of the March 13, 2023 meeting do not include any directors’ names and submits “assuming the ordinary meaning of redacting is censoring or omitting information, then these minutes still contain redactions with no rationale given.” CCC37 denies that the minutes have been redacted.

[14] I have reviewed the March 13, 2023 minutes and find that they have not been redacted. Rather, for the two items of business addressed, the approval of the previous meeting’s minutes and the scheduling of the AGM, they state “a motion was put forward to...” without naming any director and then state the motions were unanimously approved. Ms. Lafortune’s concern appears to be that the minutes are not sufficiently detailed because they do not include the names of the directors who made the two motions. This is a concern about content. The November 11, 2022 Consent Order addresses the content required in the minutes of CCC37’s meetings of its board of directors. Term 2 of the Order states:

The Corporation agrees that the minutes recorded during these said meetings shall be detailed, organized and sufficient to allow the owners to understand what decisions have been made and the rationale behind these decisions, when decisions are made and what the financial basis is for the decisions (where applicable).

While Ms. Lafortune’s issue appears to be *de minimis*, if she wishes to pursue it, she will need to do so in a different venue. The Tribunal does not have the authority to enforce its Consent Orders; these are enforceable by the Superior Court of Justice.

[15] The corporation has provided Ms. Lafortune with copies of the minutes of its board meetings without the redaction of directors’ names. Therefore, I make no order

with respect to these records.

### The Rules of the Corporation

[16] The evidence is that Ms. Lafortune was provided with electronic access to a copy of CCC37's Residents' Handbook (updated September 2020) the same day she submitted her request for a copy of the corporation's rules. Section 6 of the Handbook is entitled "CCC37 Standards and Specifications". However, as her e-mail reply to Ms. Covey indicates, Ms. Lafortune believes the Handbook is not responsive to her request:

I was looking for our official, legal Corporation Rules and Regulations. I have the Handbook but that's just an information booklet that's in a simplified format. I remember seeing the Smoking Rule that became effective in 2018 but I was looking for the rest of them. I don't see the Smoking Rule in the Handbook but I assume there's a legal document somewhere that contains all of our Rules.

[17] Under the title "Welcome Home", the Residents' Handbook contains the following introductory paragraph:

This booklet was prepared by your Board of Directors to inform you about some of the important matters which affect you as an owner and member-shareholder in your Corporation. For more details, please refer to the Condominium Declaration, By-laws, and Rules and Regulations of the Corporation. Your lawyer should have provided you with complete copies of these when you purchased your unit.

While the above paragraph implies that the corporation has a separate record of "rules and regulations", Mr. Kirwan testified that the Residents' Handbook has been "universally regarded and treated as the binding and enforceable rules" of the corporation. He explained that CCC37's smoking rule is not included in the Handbook because it was passed as a stand-alone rule in 2018. He further testified that "the Board has done a search of its records, both physical and online, in order to locate any other or further rules. No further rules exist." I note that during this proceeding both Ms. Lafortune and Mr. Kirwan referred to pool rules which were adopted in June 2023. However, because these post-date Ms. Lafortune's Request for Records, they are not at issue in this matter.

[18] Mr. Kirwan testified that he understood that a copy of the 2018 smoking rule had been provided to Ms. Lafortune when Ms. Covey responded to the Request for Records on October 20, 2022. He further testified that all of the rules and the Board Response to Request for Records form were provided on June 26, 2023,

during the mediation in this matter. It is Ms. Lafortune's testimony that she did not receive a copy of the smoking rule until it was uploaded to the CAT-ODR system on August 26, 2023.

- [19] Ms. Lafortune disputes that she has received all of CCC37's rules because she has not received a consolidated copy of the "official condominium rules and regulations." Further, she testified that she has not received copies of what she refers to as rules about snow accumulation around vehicles and exhaust fans which were set out in the corporation's 2022 Fall/Winter newsletter, and about a requirement relating to parking passes contained in a notice sent to owners in November 2022. She submits that the above-noted requirements have not been made in accordance with s. 58 of the Act which sets out the process a corporation must follow to make, amend, or repeal rules; further, if they are not rules then they should not have been presented as such to the owners.
- [20] I have reviewed the 2022 Fall/Winter newsletter and the November 2022 notice sent to owners. Neither state that the requirements highlighted by Ms. Lafortune are rules. In fact, the 2022 Fall/Winter newsletter refers owners back to the Residents' Handbook if they require information about "what is or is not permitted in the community." For example, the snow accumulation requirement which Ms. Lafortune cites as an example of a new rule she has not received requires an owner to clear snow around their vehicle within "1 overnight" or risk having the vehicle towed. The newsletter goes on to refer owners back to the parking rules contained in Appendix C to the Residents' Handbook.
- [21] Ms. Lafortune also compared the wording of the September 2020 version of the Residents' Handbook to the 2014 version and provided a detailed submission which highlighted the areas where the content has been changed. Only the "Standards and Specifications" section is relevant to the issue before me. She submits that the changes to that section were not made in accordance with s. 58 of the Act. However, while this may be the case, Ms. Lafortune's argument is about corporate governance; whether the corporation has amended its rules without following the legislated requirements is not relevant to the question of whether the corporation has provided all the records responsive to her October 20, 2022, Request for Records.
- [22] I accept Mr. Kirwan's testimony that the corporation has provided Ms. Lafortune with the only records of its rules that it possesses, that is, copies of the Residents' Handbook and the 2018 smoking rules, responsive to the October 20, 2022, Request for Records. There is no legislated requirement that rules be consolidated in one "legal document" as Ms. Lafortune assumes. Therefore, I find that CCC37

has provided Ms. Lafortune with the records she requested.

### **Is CCC37 keeping adequate records of its rules?**

[23] Section 55 (1) of the Act requires a corporation to keep adequate records, including copies of its declaration, by-laws, and rules. The word “adequate” is not defined in the Act. In *McKay v. Waterloo North Condominium Corp. No. 23*, 1992 CanLII 7501 (ON SC), Cavarzan J. provides some guidance:

The Act obliges the corporation to keep adequate records. One is impelled to ask – adequate for what? An examination of the Act provides some answers. The objects of the corporation are to manage the property and any assets of the corporation (s. 12 (1)). It has a duty to control, manage and administer the common elements and the assets of the corporation (s. 12 (2)). It has a duty to effect compliance by the owners with the Act, the declaration, the by-laws and the rules (s. 12 (3)). Each owner enjoys the correlative right to the performance of any duty of the corporation specified by the Act, the declaration, the by-laws and the rules. The records of the corporation must be adequate, therefore, to permit it to fulfil its duties and obligations.

[24] Ms. Lafortune submits that CCC37’s rules are inadequate. As noted above in paragraph 21, she highlighted multiple areas in the “Standards and Specifications” section of the 2020 version of the Residents’ Handbook which have been changed from the 2014 version, suggested they were not made in accordance with s. 58 of the Act and therefore questions their validity and enforceability. For example, the 2020 version includes a provision that application to and approval by the board of directors is required before owners may plant trees in their exclusive use backyards. This provision is not in the 2014 version. She also highlighted areas which she suggested only provide information or advice; for example, the section relating to furnaces states that owners are responsible for the maintenance of their furnaces but also advises owners that it is a safe practice to have their furnaces serviced each year. She further submits that some of the content conflicts with the by-laws of the corporation. Finally, she noted that the language is not “mandatory” in nature, that is, does not include the words “must” or “shall.” Her position is that these alleged deficiencies render the rules inadequate.

[25] Counsel for the Respondent submits that the rules are adequate and “even if the rules in the Residents’ Handbook are lacking some detail in terms of their initial enactment, that does not invalidate them or render them inadequate.” He referred me to the Tribunal’s decision in *Rahman v. Peel Standard Condominium Corporation No. 779*, 2021 ONCAT 32 (CanLII), a case in which the Tribunal found that the corporation’s rules were adequate notwithstanding that they lacked details.

He noted that, as in *Rahman*, CCC37's rules "have been in place for 25 years and provide all owners and residents with a guide for behaviour with respect to the units and common elements."

[26] The introductory paragraph to the "CCC37 Standards and Specifications" section of the Residents' Handbook states:

The following items in alphabetical order are drawn mainly from legal documents that regulate how the condominium is run. A few of them are requirements of the law, but most of them result from bylaws, rules or decisions made by the condominium over the years.

The Handbook does not indicate which of the "standards and specifications" are drawn from the Act or the corporation's declaration and by-laws, which are rules adopted by the corporation, or which might only represent the corporation's "decisions." Mr. Kirwan's testimony is that the corporation regards all the provisions as its enforceable rules. He testified that no one had questioned this before Ms. Lafortune filed her application with the Tribunal.

[27] One of the obligations of the corporation, as set out in s. 119 (3) of the Act, is to enforce compliance with its governing documents. Ms. Lafortune questioned Mr. Kirwan about whether certain specific provisions in the Handbook had been made in accordance with s. 58 of the Act. Mr. Kirwan's response was that the corporation "does not have evidence with respect to the procedures that were followed to circulate and adopt the rules in the handbook." He further testified that "much of the handbook is comprised of a restatement of the mandates and requirements set out in the corporation's declaration and by-laws." Notwithstanding Mr. Kirwan's testimony that the handbook has not been questioned before this case arose, CCC37 may be challenged to meet its enforcement obligation if it has no record of which of the standards and specifications are in fact rules that were made in accordance with the legislated requirements in place at the time they were adopted.

[28] Another legislated responsibility of the corporation is to respond to owners' requests for records. As set out above in paragraph 17, Mr. Kirwan testified that the corporation conducted a search of its physical and online records for its rules and found nothing other than the Handbook and the 2018 smoking and the 2023 pool rules. The fact that a search for rules was undertaken alone suggests that the corporation is not keeping adequate records.

[29] I find that the corporation is not keeping adequate records of its rules as required by s. 55 (1) of the Act. I reject Counsel for the Respondent's comparison to the



decision in *Rahman*; while the Tribunal did not find that the lack of details rendered the corporation's rules inadequate in that case, I note it also found "the Applicant provided no evidence which would suggest that the rules were not enacted as required by the Act, which are the only formal requirements that are relevant in this instance." Notwithstanding Mr. Kirwan's testimony that the corporation regards all of the provisions in the Residents' Handbook as enforceable rules, the fact the handbook indicates the "standards and specifications" are drawn from various sources but does not identify which provision comes from which source, coupled with Mr. Kirwan's testimony that the corporation has no evidence as to how the "rules in the handbook" were adopted, persuades me that the corporation's records are not adequate to allow it to fulfill its duties and obligations. I note this finding is not based on whether the corporation did or did not follow the legislated process for approving rules; it is based on the testimony that the corporation has no record of the process it did follow.

[30] CCC37 was registered in June 1974. At that time, the former *Condominium Act* required a corporation to keep adequate records but did not specify which records must be kept. It was not until the current Act became law that a list of the records that a corporation "shall keep" was set out. The minimum records retention periods currently set out in section 55 (2) of the Act and in section 13.1 (2) of Ontario Regulation 48/01 (O. Reg 48/01) became law on November 1, 2017. Before that date, the only retention periods specified were for financial records and status certificates. Section 13.1 (2) 2 of O. Reg. 48/01 now requires the corporation to keep records of its rules "at all times."

[31] The Act does not specify what comprises an adequate record of rules. However, given a corporation's obligation to enforce compliance with the Act and its governing documents, it stands to reason that it should keep a record not only of the rules themselves but also of the process it followed to adopt those rules as documentation of their validity. Given the age of CCC37, I recognize that it may not have complete records particularly if any of the "standards and specifications" were adopted before the records retention requirements came into effect. Therefore, I am not ordering CCC37 to attempt to create a more complete record of its existing rules. I do advise the corporation to keep a comprehensive record of all future rules it makes, amends or repeals. I make no order in this regard as s. 55 (1) of the Act requires a corporation to keep adequate records and the evidence is that CCC37 has done so with respect to its 2018 smoking rule.

**Does the Tribunal have jurisdiction to order the Condominium Corporation adopt new rules to replace the Residents' Handbook?**

- [32] Ms. Lafortune requests that the Tribunal order CCC37 to commit to drafting a set of “adequate, current and complete” rules.
- [33] The jurisdiction of the Tribunal is established in Ontario Regulation 179/17 (O. Reg 179/17). That jurisdiction is limited to specific disputes with respect to records and to provisions of the governing documents that prohibit, restrict or otherwise govern pets, vehicles, parking and storage, and to disputes about nuisance, annoyance or disruption to an individual. O. Reg. 179/17 does not provide the Tribunal with jurisdiction over s. 58 of the Act which establishes the rule-making authority of a corporation as well as the process it must follow to make, amend or repeal rules.
- [34] In arguing that Ms. Lafortune’s case should be dismissed, Counsel for the Respondent referred me to the Tribunal’s decision in *Calderon v. York Condominium Corporation No. 274*, 2021 ONCAT 80 (CanLII), a case which the Tribunal dismissed at the time the Applicant requested it be moved to Stage 3 – Tribunal Decision. The Applicant had two copies of the rules of the corporation and asserted that the rules were inadequate and that differences between the two sets indicated that the corporation was out of compliance with the Act. At paragraph 6, the Tribunal wrote:
- The Applicant has further asserted that the Corporation has not followed the correct process to amend the rules. Disputes over the process for approving condominium rules are generally outside of the current jurisdiction of the CAT. This issue, as described by the Applicant is outside of the Tribunal’s jurisdiction as set out in Ontario Regulation 179/17.
- [35] While the Tribunal does hear cases which involve determining whether a rule was made in accordance with the legislated requirements, those cases are in the context of a specific dispute which O. Reg. 179/17 provides it with the jurisdiction to hear. For example, a corporation might file a case seeking an order that an owner permanently remove their dog from its premises because the dog’s weight exceeds the weight limit set out in its rules. The Tribunal might find that the relevant rule is not ‘reasonable’ as required by s. 58 (2) of the Act. However, the Tribunal does not have the authority to order a corporation to amend a rule it finds was not made in accordance with the Act. That is a governance decision of the corporation.
- [36] As in *Calderon*, Ms. Lafortune has challenged whether CCC37’s rules were made in accordance with the legislated requirements. She also challenges that they are complete or current. While she asks only that the Tribunal order the corporation to commit to drafting a set of rules, rule-making, whether those rules are in draft or final form with an intent to formalize them, is a governance responsibility of the

corporation over which the Tribunal has no jurisdiction.

**What remedies if any should be directed in this case and to whom?**

[37] Ms. Lafortune requests that in addition to ordering CCC37 to draft a set of rules, that I order the corporation to pay a penalty and its directors to take additional training.

Penalty

[38] Ms. Lafortune requested that the Tribunal order a “substantial” penalty on the basis that this would remind the CCC37’s board of directors to apply “more care and diligence” and be “more mindful of its legal obligations with respect to records.” She supported this request with a number of examples of what she alleges are lapses of the board, some of which fall outside of the scope of the issues before me; for example, that it was 30 days before the name of its condominium management provider was updated on the Condominium Authority of Ontario’s registry.

[39] The Act only provides for penalty if a corporation has refused to provide requested records without reasonable excuse. Section 1.44 (1) 6 of the Act states:

An order directing a corporation that is a party to a proceeding with respect to a dispute under subsection 55 (3) to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under that subsection if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection.

[40] CCC37’s former condominium manager provided Ms. Lafortune with an electronic link to the Residents’ Handbook the same day Ms. Lafortune submitted her Request for Records. However, Ms. Lafortune did not receive the smoking rule or the Board Response to Request for Records form until this case was in progress. Section 13.3 (6) of O. Reg 48/01 states that a board must provide a response to a Request for Records within 30 days of its receipt. In past decisions, the Tribunal has found a significant delay in providing records to be an effective refusal to provide records. I note that there is no penalty for failure to provide a Board Response to Request for Records form.

[41] One of the purposes of a penalty is to serve as an incentive for a corporation to meet its obligations under s. 55 of the Act. It is the responsibility of a corporation’s board of directors to ensure not only that a process is in place to respond to

Requests for Records but also that the process is followed. Mr. Kirwan testified that CCC37's board of directors was unaware of Ms. Lafortune's Request for Records until it received notification of her application to the Tribunal. While this clearly speaks to a process failure, Mr. Kirwan also testified that "around the time" of Ms. Lafortune's request, the board of directors had become concerned that it was not receiving regular or full updates from its condominium manager.

- [42] The evidence supports that CCC37 was not being kept apprised of owners' requests and that CCC37 was making efforts to obtain them in order to meet its obligations. A January 23, 2023 e-mail from CCC37 president Vicki Tait was sent to its condominium management provider in which she expressed the board's concern and asked that a list of owners' requests be provided to her. She specifically raised her concern about Requests for Records and the corporation's potential liability if these were not dealt with. The provider's response was that there were no new Requests for Records. The minutes of the January 23, 2023 board meeting indicate that the board discussed its concerns about the level of management services being provided. The February 13, 2023 minutes record that the board reviewed proposals for new providers which individual members had obtained over the previous two months and then approved the termination of its existing provider's contract.
- [43] I recognize that Ms. Zollinger also did not provide additional records when Ms. Lafortune e-mailed her on April 12, 2023 and advised that she was seeking the "legal, official" rules and had yet to receive a Board Response to Request for Records form. Rather, Ms. Zollinger replied that she had been informed the board was working on a draft of its rules, presumably understanding Ms. Lafortune's request to be for a consolidated record. I find this response was not unreasonable given the correspondence Ms. Lafortune forwarded on April 7, 2023 indicates that she had the Residents' Handbook and had seen the smoking rule. Rather than following up with Ms. Zollinger, who I note began her employment with CCC37 only on April 1, 2023, Ms. Lafortune filed her application with the Tribunal.
- [44] Lack of awareness of a Request for Records is not in itself a reasonable excuse for failing to provide records; a board of directors is responsible for oversight of its condominium manager. However, in this case, the corporation was taking action to address what it ultimately decided was unacceptable service from its condominium management provider. Further, Ms. Lafortune's request had been largely met the day she submitted it. In the specific circumstances of this case, I award no penalty.

#### Directors' Training

- [45] For the same reasons she provided to support her request for penalty, Ms.

Lafortune submitted that the board requires training with respect to not only records but also to the Act in general and requested the Tribunal so order.

[46] I am not making this order; while I have found that the corporation is not keeping adequate records of its rules, that inadequacy appears to relate to its historical practices. The evidence is that the corporation has adequate records of its more recently adopted rules. Nor is there any evidence of a systemic lack of understanding of the regulated requirements with respect to owners' Requests for Records. Rather, I have found that CCC37's failure to fully respond to Ms. Lafortune's Request for Records relates directly to issues with the corporation's previous condominium management provider which the corporation has addressed.

### **Should the Tribunal award any costs?**

[47] Ms. Lafortune is requesting reimbursement of the \$125 in Tribunal fees she paid to move this matter from Stage 2 – Mediation to Stage 3 – Tribunal Decision. CCC37 requests costs of \$11,974.55 comprised of legal fees and disbursements.

[48] Rule 48.1 and 48.2 of the Tribunal's Rules of Practice state:

48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.

48.2 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.

[49] CCC37 submits that its legal costs should be reimbursed because Ms. Lafortune used the Tribunal's process for an improper purpose; it argues that "under the guise of a request for records, Ms. Lafortune is effectively attempting to force the Corporation to adopt new rules and re-argue a prior matter that has already been settled by a consent order." Counsel for CCC37 submits that there was no need for Ms. Lafortune to move this matter to adjudication as the issues she raised in her application had either been withdrawn or addressed in the Stage 2— Mediation, including that she had received the records she requested in the two Requests for Records that were the subject of her application to the Tribunal.

[50] Some of the case Ms. Lafortune presented was about corporate governance

issues over which this Tribunal has no jurisdiction; for example, whether the corporation had made new rules without following the legislated requirements. Notwithstanding that she disputed that she had received the 2018 smoking rule until disclosure in the Stage 3 – Tribunal Decision proceeding, her arguments about the alleged failure of the corporation to provide her with the records she requested were largely about what those records did or did not contain, as were her arguments about their adequacy. Her requests for penalty and training included reasons that were outside of the records issues before me. Further, as Counsel for the Respondent also noted, many of her proposed cross-examination questions for the corporation’s witness were not relevant to the issues to be decided.

- [51] Ms. Lafortune’s submissions were lengthier than necessary and did require both the corporation and the Tribunal to spend more time to review, and, in CCC37’s case, to respond to, than they would have had she focused on the specific records-related issues. Counsel for CCC37 submits that Ms. Lafortune was “warned numerous times that pursuing these irrelevant lines of argument would result in costs being sought against her.” It is possible that these warnings took place during the Stage 2 – Mediation, of which I necessarily have no knowledge. However, I did explain the difference between s. 55 (1) of the Act and s. 58 (2) of the Act to Ms. Lafortune and I requested that her submission focus on the issues to be decided in this matter.
- [52] Notwithstanding that Ms. Lafortune’s focus was primarily on an issue outside of the jurisdiction of this Tribunal, that is her request that the corporation re-write its rules, I have found, if not for all of the reasons presented by the Applicant, that CCC37 is not keeping adequate records of its rules. While I am not making any order in this regard, it is arguable that Ms. Lafortune was partially successful in her application. However, for the reasons set out in the two preceding paragraphs, I am exercising my discretion and am not ordering the reimbursement of Ms. Lafortune’s fees.
- [53] I also award no costs to the Respondent. I recognize that CCC37 has incurred considerable legal fees in responding to this case, some of which were likely unnecessary, including what was undoubtedly some extra time required for Counsel’s review of Ms. Lafortune’s proposed cross-examination questions. However, I do not find that time was significant enough to warrant an award of costs. I also do not find that Ms. Lafortune filed this case for an improper purpose. While her submissions make it abundantly clear that she has concerns about the governance of the corporation, the issue of the adequacy of the records of the rules was legitimately before me as was the question of a penalty given the 2018 smoking rule was not provided to her within the regulated time period.

[54] Ms. Lafortune represented herself in this matter; while her submissions strayed into governance issues, this is somewhat understandable given she is not a legal professional. I recognize that the legal fees CCC37 incurred will ultimately be borne by all of its owners, including Ms. Lafortune. She might wish to bear this in mind should she consider filing further cases with the Tribunal.

**D. ORDER**

[55] The Tribunal orders that the application is dismissed without costs.

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Mary Ann Spencer  
Member, Condominium Authority Tribunal

Released on: November 8, 2023