

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** December 7, 2023

**CASE:** 2022-00660R

**Citation:** Luclucan v. Peel Condominium Corporation No. 631, 2023 ONCAT 192

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

**Member:** Dawn Wickett, Member

**The Applicant,**

Glenn Luclucan

Self-Represented

**The Respondent,**

Peel Condominium Corporation No. 631

Represented by Natalia Polis, Counsel

**Hearing:** Written Online Hearing – February 17, 2023 to November 13, 2023

### **REASONS FOR DECISION**

**A. PROCEDURAL INFORMATION**

[1] The hearing occurred February 17, 2023, to June 28, 2023. The Member initially assigned to hear the matter completed the hearing, however, due to unforeseen circumstances, the Member was not able to issue a decision. Subsequently, on November 13, 2023, I was assigned as the new Member to issue a decision. The parties were advised that I was assigned as the new Member for the purpose of making a decision and issuing an order. Neither party expressed objections. As this was a written hearing, I was able to fulsomely review the messages, evidence and submissions of both parties in the same capacity as I would have if I had I been the original Member assigned.

**B. INTRODUCTION**

[2] The Applicant is a unit owner in the Respondent, Peel Condominium Corporation No. 631 (“PCC 631”). The Applicant filed this application alleging PCC 631 failed to provide him with all the records he is entitled to receive in relation to his August 22, 2022, request for records. The Applicant further alleges that the records he did

receive are inadequate pursuant to subsection 55 (1) of the *Condominium Act, 1998* (the “Act”).

[3] The Applicant submits that because he did not receive all the records to which he is entitled, a penalty should be ordered against PCC 631. The Applicant also seeks an order requiring PCC 631 reimburse him the cost for filing this application.

[4] PCC 631 submits that this matter is not properly before the Tribunal because the Applicant did not make his request for records using the mandatory request for records form as required by section 13.3 (3) of Ontario Regulation 48/01 (“O. Reg 48/01”). Section 13.3. (3) of O. Reg 48/01 states:

A request to examine or obtain copies of records under subsection 55 (3) of the Act shall be in a form specified in the Table to section 16.1. O. Reg. 428/19, s. 12 (1).

[5] Regarding the Applicant’s allegations that PCC 631’s records are not adequate, it submits that they are adequate pursuant to subsection 55 (1) of the Act. PCC 631 further submits that it is aware of its responsibilities under the Act to provide access to records and as such a penalty is not warranted. Regarding the issue of costs, PCC 631 submits that an order should be made in its favor because the Applicant “frivolously” moved this application to Stage 3-Tribunal Decision.

[6] For the reasons that follow, I find the Applicant has received the records for which he is entitled. I further find that PCC 631’s records are adequate pursuant to subsection 55 (1) of the Act. I will order that this application be dismissed with no costs awarded to either party.

[7] The parties submitted voluminous evidence and made lengthy submissions. In making my decision, I relied on the evidence and submissions relevant to the issues in dispute.

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

**Issue No. 1 - Has the Respondent provided the Applicant with all the requested records that he is entitled to receive pursuant to his request for records?**

Is the Applicant’s August 22, 2022, request for records valid?

[8] PCC 631 identified several issues with the form the Applicant used to make his August 22, 2022, request for records. PCC 631 submits that because of the issues identified, the Applicant’s request for records is not valid, and therefore not

properly before the Tribunal. PCC 631 identified the following issues with the Applicant's request for records:

- a. The form was converted from fillable/non-fillable PDF file to a Word document.
- b. Some of the standardized prescribed language and content of the form has been tampered and changed and contains typographical errors. For example, the Applicant changed the prescribed wording of "Minutes of meeting held within the last 12 months" to "Minutes of meetings held within the last 6 months" and added "To show all expensive discussed and approved. Transparent on what criteria were used to award contracts and expenses."
- c. The Applicant did not check the box identifying who he is in relation to the request (a unit owner, mortgagee or purchaser of a unit or a common interest in the corporation).
- d. The Applicant did not complete the mandatory affirmation stating his request was related to his interest as an owner, mortgagee or a purchaser having regard to the purposes of the Act.
- e. The Applicant did not check all the boxes relating to the records he was seeking to obtain.
- f. Regarding the Applicant's written indication that he would like to receive copies of "all the contracts in force," he did not indicate how he would like to receive the copies, either electronic or paper.

[9] PCC 631 submits that because of the above issues, the Applicant's request for records was "illegible and "incoherent". PCC 631 initially was going to reject the Applicant's request for records as it was not in the proper format or on the mandatory form but decided as a "good faith gesture" it would respond.

[10] The Applicant does not dispute that he submitted his request for records in a Word document, and not in the standardized PDF format. He did not provide an explanation for having converted the format. The Applicant submits that if PCC 631 had issues with his request for records, they should have brought it to his attention within thirty days of receiving it. PCC 631 did advise him of the issues with his request for records on October 5, 2022, when he emailed PCC 631 about his concerns that its response to his request was inadequate. The Applicant further submits that because PCC 631 did provide him with a response to his request, it

indicates that it “understood and agreed to the request”.

[11] While section 13.3 (3) of O. Reg 48/01 states that a record request shall be made on the specified form, section 84 of the *Legislation Act, 2006* (“Legislation Act”) permits people to deviate from a statutory form as long as "they do not affect the substance and are unlikely to mislead" and "the form is organized in the same or substantially the same way as the form whose use is required".

[12] Having reviewed the evidence before me, I find the Applicant’s August 22, 2022, request for records is valid. In making this finding I considered the provisions of the O. Reg 48/01 and the Legislation Act in conjunction with the Applicant’s request for records, and I find that his altered Word form is substantively compliant with the requirements set out in the governing legislation. Further, in making my determination I considered the fact PCC 631 treated the Applicant’s request for records as a valid request given it responded using the mandatory board response form and provided the Applicant with some of the records he requested.

Did the Applicant receive the records he requested?

[13] In his August 22, 2022, request for records, the Applicant requested the following:

1. Board meeting minutes for the last six months.
2. The periodic information certificates for the last six months.
3. Most recent financial statements for August 2022.
4. Current plan for future funding of the reserve fund and cash flow used for the summer of 2022.
5. All contracts in force for fence repairs and replacements, including quotes.
6. Quotes for roof repairs.

[14] The evidence adduced during hearing demonstrates that PCC 631 provided the Applicant with the following:

1. Board meeting minutes for the last six months. (March, May, June and August 2022 are unapproved)
2. PCC 631’s declaration, by-laws and rules.
3. The periodic information certificates for the last six months.

4. Most recent financial statements for August 2022.
5. Current plan for future funding of the reserve fund.
6. All contracts in force for fence repairs and replacements, including quotes.
7. Minutes of the Annual General Meeting of Owners for April 26, 2022.
8. Quotes for roof repairs.

[15] PCC 631 did not provide all the above records within thirty days of having received the Applicant's request for records. Some were provided within thirty days, while others were provided during Stage 2-Medation and others during this hearing. PCC 631 contends that it did not fully understand what records the Applicant was seeking to receive until it was revealed during the Tribunal proceeding. PCC 631 claims the incoherence of the Applicant's request for records is why it could not provide all the requested records within thirty days.

[16] The Applicant does not dispute that he received the above noted records from PCC 631. However, he submits that PCC 631 has not fulfilled his request as it has not provided him with the roof repair contracts. PCC 631 submits that the Applicant's request for records did not state he wanted copies of the roof repair contracts and that he only requested the quotes.

[17] I have reviewed the Applicant's August 22, 2022, request for records and I find that the Applicant requested the roof repair quotes and not the roof repair contracts. In making my finding, I relied on the details set out in the request for records which states "Roof repairs including quotes." There is no mention that the Applicant wanted copies of the roof repair contracts. Given my finding, I am satisfied that PCC 631 has provided the Applicant with all the records he is entitled as set out in his August 22, 2022, request for records.

[18] With respect to the board meeting minutes for the last six months, the Applicant was only entitled to receive copies of the approved meeting minutes, and not the draft/unapproved ones (March, May, June and August 2022). The fact PCC 631 provided the Applicant with copies of the unapproved meeting minutes possibly contributed to the issues about adequacy raised by the Applicant and addressed below. PCC 631 is reminded that only approved meeting minutes form records of the corporation; unapproved minutes do not and are not required to be given to unit owner to fulfill requests for records.

**Issue No. 2 - Are the records that the Applicant received from the Respondent**

**“adequate” within the meaning of s. 55(1) of the Act?**

[19] The Applicant has raised the issue of the adequacy of the records he received from PCC 631.

[20] It is the Applicant’s position that PCC 631’s board meeting minutes for March, May, June and August 2022, the August 2022 financial statements and the fence repair contract are inadequate records pursuant to subsection 55 (1) of the Act.

Board Meeting Minutes

[21] The Applicant submits that the meeting minutes for March, May, June and August 2022, are inadequate records because they are not approved, and they are not signed by two officers/directors. Alternatively, the Applicant asserts that the minutes are not approved because they were not approved by a motion, seconded and recorded at subsequent meetings. The Applicant further alleges that the meeting minutes are inadequate because they do not contain or capture any of his requested information, nor are all expenses discussed and approved.

[22] PCC 631 submits that the meeting minutes are adequate and provide sufficient information regarding why, how and on what grounds decisions were made by the board of directors. PCC 631 further submits that minutes do not need to be signed to be considered approved.

[23] I have reviewed all the board meeting minutes PCC 631 provided to the Applicant. The minutes for March, May, June and August 2022 were not signed, nor were they indicated to be approved at subsequent meetings. Rather, in the August 2022 meeting minutes, it states that the approval of meeting minutes for May, June and January 2022 was deferred and that they would be ratified by way of email. In the June 2022 meeting minutes, it indicates that the May 2022 minutes were not accepted as they were inaccurate and need to be redone. The March 2022 meeting minutes are not signed and there is no mention of their approval in subsequent meeting minutes.

[24] It is clear from the meeting minutes for March to August 2022, that PCC 631’s practice of approving meeting minutes is generally to do so by way of motion at subsequent meetings. Given the meeting minutes were not reviewed and approved at subsequent meetings, I find that the board meeting minutes for March, May, June and August 2022 are not approved and are draft meeting minutes. Draft meeting/unapproved minutes are not records of the corporation.

[25] Challenging the adequacy of the details of unapproved, draft minutes is not an issue that the Tribunal can address. The Tribunal can only deal with allegations that meeting minutes do not contain adequate details once they are approved minutes.

[26] For the reasons set out above, I decline to make a finding about the adequacy of the details contained in March, May, June and August 2022, unapproved board meeting minutes. These minutes are not records of the corporation. As such, I do not have authority to make determinations about the adequacy of the details contained in them.

### August 2022 Financial Statements

[27] The Applicant submits that the August 2022 financial statements are not adequate records of PCC 631 because the statements were not accepted by the Board at the November 2022 board meeting. The Applicant further submits that the record is inadequate because information pertaining to individual unit owners was not redacted prior to it being given to him.

[28] PCC 631 did not make any submissions on the Applicant's allegations that the financial statements were inadequate as they were not accepted at the November 2022 board meeting, nor on the issue of private information of unit owners having been provided to him.

[29] Neither party provided documentary evidence as to whether PCC 631 approved or accepted the August 2022 financial statements. The only evidence in this regard is the Applicant's assertion that it was not accepted at the November 2022 board meeting.

[30] I have reviewed the August 2022 financial statements. There are no signatures, no comments or supporting documentation indicating they have been accepted or approved by the board. As such, I accept the Applicant's unchallenged evidence that PCC 631's August 2022 financial statements have not been accepted or approved. This means the August 2022 financial statements are unapproved. Unapproved financial statements are not records of the corporation within the meaning of subsection 55 (1) of the Act.

[31] Challenging the details of unapproved financial statements is not an issue that the Tribunal can address.

[32] For the reasons set out above, I decline to make a finding about the adequacy of

the details contained in PCC 631's unapproved August 2022 financial statements. These statements are not records of the corporation. As such, I do not have authority to make determinations about the adequacy of the details.

- [33] I do note that the reasons provided by the Applicant as to why he believes the financial statements are inadequate, describe concerns for inadequacy of procedure and redaction, but not adequacy of PCC 631's record keeping.

### Fence Repair Contract

- [34] The Applicant submits that the fence repair contract is an inadequate record of PCC 631. The Applicant's concerns for the adequacy of this record are based on the fact the contractor's signature is missing.

- [35] PCC 631 did not provide submissions on this issue.

- [36] I have reviewed the fence repair contract and find it is an adequate record of PCC 631. In making this finding I considered the fact there is no requirement that this type of non-core record must contain a signature of the contractor for it to be an adequate record of the corporation. Rather, to be adequate, the record must contain enough information to allow unit owners to understand what is being repaired, and the cost for the repair(s). The fence repair contract is detailed. It contains the breakdown of all the repairs required, the cost (including HST) and PCC 631's signature accepting the contract. Further, this is a third party created record. PCC 631 is not responsible for the details contained within it. This is a record that they are required to keep to ensure compliance with section 55(1) of the Act. I find that the fence repair contract is an adequate record within the meaning of subsection 55 (1) of the Act.

### **Issue No. 3 – Penalty and Costs**

- [37] Under section 1.44 (1) 6 of the Act, the Tribunal may make an order directing a condominium corporation "to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under section 55 (3) if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection." The Applicant has been provided with the records. Some of the records were not provided within thirty days of the request, however, I am satisfied that the delay in providing all the records does not constitute a refusal without reasonable excuse. Rather the delay is attributed to the Applicant's request having been made on a form that is inconsistent with the standardized request for records form, and the



incoherence of some of his requests. As such, I am satisfied that no penalty is warranted in this matter.

[38] The Applicant has requested that PCC 631 reimburse him the cost (\$200) of filing this application.

[39] The Tribunal's Rule 48.1 states:

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.

[40] The Applicant was not successful in this matter. As such, I decline to make an order requiring PCC 631 reimburse him the cost of filing this application.

[41] PCC 631 seeks an order for costs requiring the Applicant reimburse it \$10,621.54 (inclusive of HST) for the legal fees incurred to respond to this application. PCC 631 further submits that the Applicant's conduct was unreasonable during the Tribunal proceeding and that this application was frivolous and made in bad faith.

[42] The Tribunal's Rule 48.2, provides:

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 behavior that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[43] The Tribunal's Practice Direction, "CAT Practice Direction: Approach to Ordering Costs" (the "Practice Direction"), states that a determination of costs, including indemnification, shall consider,

(i) whether a party's conduct was unreasonable, for an improper purpose, or caused a delay or expense;

(ii) the conduct of all parties and representatives requesting costs;

(iii) the potential impact an order for costs would have on the parties;

(iv) whether the parties attempted to resolve the issues in dispute before the CAT case was filed;

(v) the provisions of the condominium corporation's declaration, by-laws and rules, including whether the parties had a clear understanding of their

respective requirements and/or the potential consequences for contravening them; and

(vi) whether the costs are reasonable and were reasonably incurred.

[44] While there is no doubt that the relationship between the two parties is acrimonious at best, I do not believe that the Applicant made this application in bad faith or for frivolous reasons. It appears the Applicant truly believed that he had a valid request for records that he did not think PCC 631 adequately fulfilled. He was entitled to file this application in order to seek resolution to the issue in dispute. Further, there is no indication in this hearing record that the Applicant's behaviour was unreasonable or improper. In fact, his messages were brief and respectful. For these reasons, I do not find that an order for costs against the Applicant is appropriate.

[45] The hearing record demonstrates that the relationship between the parties has broken down and has become acrimonious. This is very unfortunate and does not foster a positive community lifestyle. I encourage both parties to do better going forward and work toward reconciling their differences.

**D. ORDER**

[46] The Tribunal Orders that:

1. The application is dismissed without costs.

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Dawn Wickett  
Member, Condominium Authority Tribunal

Released on: December 7, 2023