

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** December 14, 2023

**CASE:** 2023-00029R

**Citation:** He v. Metropolitan Toronto Condominium Corporation No. 952, 2023 ONCAT 196

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

**Member:** Marisa Victor, Member

**The Applicant,**

Yunhong He

Self-Represented

**The Respondent,**

Metropolitan Toronto Condominium Corporation No. 952

Represented by Carol Dirks, Counsel

**Hearing:** Written Online Hearing – June 5, 2023 to November 17, 2023

### **REASONS FOR DECISION**

**A. INTRODUCTION**

[1] Yunhong He (the “Applicant”) is the owner of a unit of Metropolitan Toronto Condominium Corporation No. 952 (the “Respondent”). On December 5, 2022, the Applicant submitted a Request for Records for a number of different types of records. It is her position that there is an ongoing issue with access to corporate records, entitlement to corporate records, adequacy of records and retention of corporate records. Underlying this record request is a history of several Condominium Authority Tribunal (“CAT”) cases and an action in Small Claims Court involving both parties.

[2] The Respondent’s position is that the application should be dismissed. It says that it has not refused to provide the requested records without a reasonable excuse. It says that most of the documents were provided to the Applicant on January 4, 2023. It says the remaining documents were provided on January 27, 2023, during Stage 1 of the CAT process. Any remaining records do not exist.

[3] This was a complex case that involved many different records and voluminous

evidence and submissions. While I have read and considered them all, I will only refer to those necessary to determine the questions before me.

[4] The application is dismissed with costs to the Respondent.

**B. BACKGROUND**

[5] The Applicant filed a defamation claim in Small Claims Court. She claims that allegedly defamatory statements were posted throughout the condominium building in October 2020. The Applicant states that those statements accuse her of costing the condominium corporation tens of thousands of dollars in legal fees. The Applicant states that those statements damaged her reputation and prevented her from being elected as a director of the condominium. If she had been elected, the Applicant states she would have replaced the Respondent's current property management provider. The Respondent is a defendant to the claim.

[6] There is a second Small Claims Court case for alleged harassment, brought by the Applicant against a past board member. That case relates to events that took place in the condominium building in April 2022.

[7] In order to further the Applicant's search for records to support her litigation as well as her position that the condominium corporation is poorly run, the Applicant submitted a Request for Records. This case deals with that request.

[8] On December 5, 2022, the Applicant submitted the Request for Records requesting 12 categories of core records and 5 categories of non-core records.

[9] On January 4, 2023, the Respondent provided the Board's Response to Records with 32 attachments. On January 5, 2023, the Respondent provided an updated Board's Response to Records that indicated some records were denied because they were exempt under section 55(4) of the *Condominium Act, 1998*, (the "Act"). The Respondent provided a further written document on January 9, 2023, explaining the reasons for the redaction of certain portions of the records provided.

[10] The Appellant filed a case with the Tribunal. In her problem description she stated that she did not have access to:

1. Records of Owners and Mortgagees
2. Records of Notices of Leased Units

[11] The Applicant also stated that there were numerous records provided to her where content was redacted. She submitted that she was entitled to see the records if the

blacked-out content was related to her, unless there was existing or potential litigation.

- [12] The Applicant also stated that she was requesting security video footage related to “a serious defamation case” and that these videos should have been kept by the corporation for at least seven years.
- [13] The Tribunal’s Stage 2 Mediation process ended on May 12, 2023. The Stage 2 Summary and Order stated that many of the issues were resolved in mediation. The only remaining issues were the Applicant’s entitlement to security video footage and whether the related retention policies were reasonable. The Stage 2 Summary and Order concluded by saying that the Applicant had rescinded any agreement to that resolution and that “many issues that the Respondent and Mediator believed had been resolved have not been resolved.”
- [14] The Tribunal hearing began on June 5, 2023. I asked the parties to provide me with their understanding of the issues in dispute. Following their submissions, it was agreed that the following issues from the Request for Records remained in dispute. This included two new issues that were on the original Request for Records, but the Applicant had not raised them as issues in dispute at any of the earlier stages of the case. The final list of issues in dispute were as follows:
1. Record of Owners and Mortgagees
  2. Record of Notices of Leased Units
  3. Periodic Information Certificate\*
  4. Budget for the corporation’s current fiscal year\*
  5. Minutes of Meetings within the Last Twelve Months
  6. Video Security Footage for the building lobby, rental area, mailing room, floors 4-10 and elevators, and P3 parking lot from October 11, 2020 to October 21, 2020.
  7. Video Security Footage for the building elevators, entrance, 7<sup>th</sup> floor and lobby on April 11, 2022 from 1pm to 7pm.
  8. Board Meeting Minutes and Audio Recordings May 1, 2020 – December 31, 2021
  9. Audio recording files for Unit Owner’s meeting held September 10, 2020

10. Penalty and costs.

(\* new issues)

[15] During the proceeding, I also asked the parties for a list of the documents that they intended to rely on as evidence. The Applicant had already uploaded a number of documents to the system at the start of the hearing. I reviewed the list of disclosure from both parties and allowed only those documents relevant to the issues I had to decide. Only those documents that I allowed were marked as exhibits.

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

[16] A Request for Records must relate to the Applicant's interest "as an owner." Section 13.3(1)(a) of Ontario Regulation 48/01 (O. Reg. 48/01), states that the right to examine or obtain a copy of a record under subsection 55(1) of the Act does not apply unless:

[A]n owner, a purchaser or a mortgagee of a unit requests to examine or obtain the copy and the request is solely related to that person's interests as an owner, a purchaser or a mortgagee of a unit, as the case may be, having regard to the purposes of the Act.

[17] As was found in *Kamyshan v. York Condominium Corporation No. 465*,<sup>1</sup> requests for records that are not for the sole purpose of the Applicant's interest as an owner are improper. In addition, under the CAT Rules, this is also an "improper purpose."

[18] The Applicant has submitted, and I agree, that the overall purpose of her request for records was not related to her interest as an owner but because of her defamation claim involving the Respondent. As a result, I find that the Applicant's case should be dismissed because she did not submit her request solely related to her interests as an owner.

[19] Nevertheless, I have provided my description and analysis of all the items in dispute because there are some issues where the Applicant's concerns were valid even if no remedy was granted.

### **Issue 1: Record of Owners and Mortgagees**

#### Applicant's Evidence and Submission

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<sup>1</sup> 2020 ONCAT 46

- [20] The Applicant submits that the Respondent initially failed to allow her access to this record. She states that this was the same mistake made by the property management provider and legal counsel in a previous CAT case between the parties. She states that she finally received the record on January 27, 2023, which was 53 days after the request was made, being 23 days beyond the 30-day deadline provided for in the Act.
- [21] The Applicant further states that the Respondent failed to provide information about methods of electronic communication for the unit owners in contravention of section 46.1(3)(d) of the Act and section 12.6.1(1) of O.Reg. 48/01.
- [22] The Applicant states she wanted the record to show that an individual who was the president of the condominium was not listed on the record as a unit owner but was permitted to attend the unit owner's meeting held in 2020. She further states that she was defamed by the individual at that meeting.

#### Respondent's Evidence and Submission

- [23] The Respondent agrees that initially, within the 30-day period, it failed to provide the Applicant with the requested record. The Respondent believed that this document was subject to the exemption in section 55(4) of the Act as "records relating to specific units or owners." This error was discovered and then corrected when the document was provided to the Applicant during Stage 1 of the CAT proceeding on January 27, 2023.
- [24] The Respondent argues that the first time the Applicant raised the issue of the method of electronic communication for the unit owner was in the Applicant's closing submissions. In response, the Respondent said that such a statement can be provided to the Applicant upon her request. Further, it would have provided such a statement had the Applicant raised it at an earlier time.

#### Analysis

- [25] I am dismissing this issue related to the record of owners and mortgagees for the reasons that follow.
- [26] The parties agree that this record was provided 23 days late. I accept this evidence and concur. The Respondent should have known that these documents do not fall under that exemption. Nevertheless, the issue has been remedied. The Applicant now has the document she requested.
- [27] The Applicant only raised the issue of the method of electronic communication in her closing submissions. Therefore, I decline to make an order in this regard. In

any event, I note that the Respondent has agreed to provide this information to the Applicant on request.

- [28] The arguments raised regarding this issue highlights the major problem with the Applicant's case. The Applicant's main concern is that a past president of the condominium attended a unit owner's meeting in 2020 and defamed her at that meeting. Defamation is beyond the jurisdiction of this Tribunal. Further, the Applicant is currently pursuing this matter before Small Claims Court.

## **Issue 2: Record of Notices of Leased Units**

### Applicant's Evidence and Submission

- [29] Similar to the issue above, the Applicant states that initially the document was denied on the basis that the Respondent believed that this record was subject to the exemption as a record "relating to specific units or owners." This error was corrected when the document was provided to the Applicant during Stage 1 of the CAT proceeding on January 27, 2023.
- [30] However, the Applicant states the adequacy of the record continues to be a problem. She says the July 4, 2022, Periodic Information Certificate ("PIC") shows that there were three rented units as of July 4, 2022. In contrast, the Record of Notices only indicates two leased units.
- [31] The Applicant submits that there are many more units with tenants in them than is listed in this Record. She supports her statement with an affidavit. In that affidavit she states that in June 2023, she had a conversation with the Superintendent who said that he estimated that 25% of the units in the building were rented out. The Applicant also submitted an affidavit where she stated that in June 2023 a John Ng told her that he had submitted a notice to the Respondent for his unit, which was rented out. He also stated that he later sold his unit.
- [32] The Applicant relied on the cross-examination of the Respondent's witness, Phoenix Chen, condominium manager, that no notice was received from John Ng. She submits that this shows the Respondent is not maintaining adequate records.
- [33] The Applicant relies on *Chai v. Toronto Standard Condominium Corporation No. 2431* ("Chai 2022")<sup>2</sup> for the proposition that the record is inadequate because it does not contain a historical list of all the notices it has received, not just those that

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<sup>2</sup> 2022 ONCAT 142, para. 46-52.

are currently leased.

### Respondent's Evidence and Submission

- [34] The Respondent agrees that initially, within the 30-day period, it failed to provide the Applicant with the Record of Notices of Leased Units. The Respondent believed that this document was subject to the exemption in section 55(4) of the Act. This error was corrected when the document was provided to the Applicant during Stage 1 of the Tribunal proceeding on January 27, 2023.
- [35] The Respondent agrees that the list of units in the document provided contains only two units. It submits that the Applicant's complaint is that the number of leased units does not match her understanding of the rented units.
- [36] The Respondent states that it has already provided an explanation to the Applicant. Namely, that one of the leased units was sold later in 2022 and the new owner did not provide notice to the Respondent that the unit was being leased. The Respondent's witness testified that:

Shiu Pong Management Limited maintains a record of the units which are leased when it receives written notification from the unit owner that their unit has been leased and provides a summary of the lease or the lease itself pursuant to Section 83 of the *Condominium Act*. It is certainly possible that there are more units that are being leased than appears on the record of leased units maintained by MTCC 952. However, unless there is an issue with a particular unit and we determine that the unit is in fact leased (and has not been reported to MTCC 952), we would have no way to know or to make changes to the record of leased units.

- [37] The Respondent submits that the record it provided was adequate.<sup>3</sup> It relied on *Chai v. Toronto Standard Condominium Corporation No. 2431*, ("Chai 2019") to support its position that the condominium corporation had satisfied the requirements of Section 83(3) of the Act by providing its record and that there was no duty owed by the condominium to canvass owners in order to update its records.

### Analysis

- [38] Under section 83(1) of the Act, unit owners who lease their unit are required to notify their condominium corporation. They are to provide information related to the lease of that unit. Under section 83(2) of the Act, owners are also required to

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<sup>3</sup> 2019 ONCAT 45 (CanLII) at paragraphs 37- 39.

provide a notice to their condominium corporation when a lease of their unit is terminated. Section 83(3) of the Act requires that condominium corporations keep a record of the notices it has received under sections 83(1) and (2) of the Act.

[39] I find that the Respondent is not at fault if unit owners have failed to inform it that they are leasing their units. This means that unit owners have not met their obligations under the Act, it does not mean the Respondent has failed to meet its obligations under the Act. The Respondent is only responsible for the notices that it does receive.

[40] In Chai 2022 the Tribunal found that section 83 of the Act requires the corporation to include in the record all units for which one or more notices have ever been received. It is clear that the record filed by the Respondent only includes the records of current leases. This would not meet the requirements as set out in section 83 of the Act as described in Chai 2022.

[41] I am not bound by the decision in Chai 2022. Even in Chai 2022, the Tribunal acknowledged that it is common practice to only maintain the current listing of leases. I also accept that a current listing of leases is enough to satisfy the intent of the Act – to control, manage and administer the common elements of the corporation.<sup>4</sup> It is hard to see what use could be made of past records of leases which are no longer in place.

[42] Further, I am concerned that what the Applicant is doing here is a “fishing expedition” for the purpose of finding some wrongdoing on the part of the corporation. I am guided here by the decision of this Tribunal in *Emerald PG Holdings Ltd. v. Toronto Standard Condominium Corporation No. 2519*,<sup>5</sup> where it was noted that “fishing expeditions” are when a large number of requests are made with the intent to find some fact or detail that could satisfy “what is essentially an unfocused vindictiveness or dislike for the other party”.

[43] In addition, it is abundantly clear that the Applicant’s case, as I have said above, is for the purpose of furthering her defamation case and not solely related to her interest as an owner.

[44] Finally, the Applicant has already received the document she requested.

[45] For these reasons, I dismiss this request.

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<sup>4</sup> ON SC).

<sup>5</sup> 2022 ONCAT 89 at para. 34.



### Issue 3 & 4: Periodic Information Certificate and Budget

#### Applicant's Evidence and Submission

- [46] The Applicant states that the PIC dated July 6, 2022, for the period ending May 30, 2022, is not accurate. The Applicant submits that the Respondent is not keeping accurate records because the PIC should have indicated "surplus."
- [47] The Applicant states that the PIC stated that there was "neither a surplus or deficit" in the budget. She states that the total budgeted income for the fiscal year was \$1,214,909 and the total budgeted expense for the fiscal year was \$1,214,905. This means the PIC should have indicated a \$4 surplus in the budget.
- [48] The Applicant raised the issue with the budget for the first time at Stage 3 in this proceeding. She disputes whether the record is accurate because the final line should have stated that the total expenses were \$1,214,905 not \$1,214,909. The Applicant states that this mistake is in breach of the Respondent's obligation to keep adequate financial records of the corporation.<sup>6</sup>
- [49] The Applicant states that attention to detail is important to her and that she is concerned about the financial management of the Respondent and its potential impact on the value of her unit.

#### Respondent's Evidence and Submission

- [50] The Respondent submits that the PIC and Budget contained accurate information.
- [51] The Respondent submits that a \$4 surplus in the annual budget is *de minimus*, and it was reasonable that the Respondent would anticipate no surplus or deficit at the end of the year. It states that it is not held to a standard of perfection.<sup>7</sup> And that furthermore, if there was an error, the error was minor and therefore does not undermine the purpose of the record.<sup>8</sup>
- [52] Further, it submits that O. Reg. 48/01 does not require that the PIC indicate whether there is currently a surplus or deficit, but whether it is projected that there will be a surplus or deficit at year-end.<sup>9</sup> On that basis, the PIC was accurate

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<sup>6</sup> See Section 55(1) of the Act.

<sup>7</sup> See *Yeung v. Metropolitan Toronto Condominium Corporation No. 1136*, 2020 ONCAT 33 (CanLII) at paragraph 15.

<sup>8</sup> See *Tanner-Kaplash v. Middlesex Standard Condominium Corporation No. 776*, 2022 ONCAT 33(CanLII).

<sup>9</sup> See *Chai v. Toronto Standard Corporation No. 2431*, 2022 ONCAT 142 at para 43.

because the Respondent did not anticipate a surplus.

[53] The Respondent's witness stated that:

The Budget for the fiscal year ending February 28, 2023 included a projected deficit of \$12,059.00 in terms of revenue. This was included in the event that there were some outstanding common expenses which were uncollected.

...

The existence a line item in the annual budget which projected a deficit of \$12,059 does not mean that such a deficit would actually occur, and in fact did not.

### Analysis

[54] On these two issues, the Applicant's stated purpose appeared to be solely connected to her position as an owner.

[55] Nevertheless, I find that the Respondent has met its obligations under the Act. I accept that the Respondent did not anticipate a surplus at then end of the year and therefore it was correct to have completed the PIC form the way it did.

[56] With regard to the Budget, I find that the record is accurate. There was no evidence before me that the record was not an accurate representation of the Respondent's Budget at the time it was made. Even if there was a \$4 error, it was *de minimus* on a \$1.2 million budget.

[57] These issues are dismissed.

### **Issue 5: Minutes of Meetings held within the last 12 months**

#### Applicant's Evidence and Submission

[58] The Applicant believes that the minutes were redacted and that there was no accompanying statement explaining the redactions.

[59] The Applicant has also stated, in her closing submissions, that she is involved in litigation against the Respondent and that the minutes fail to refer to that litigation. As a result, she assumes that the minutes are missing the following resolutions:

1. The board's decision to appoint counsel to act as a legal representative to attend settlement conference at the small claims court;
2. The board's decision to approve the Plaintiff's Brief of Documents for the

- small claims court litigation;
3. The board's decision to offer a settlement at small claims court;
  4. The board's decision to appoint counsel to represent the seven named individual defendants in the small claims court litigation; and
  5. The board's decision to approve counsel's defence document.

#### Respondent's Evidence and Submission

[60] The Respondent states that all the board minutes were provided to the Applicant, with some redactions, pursuant to section 55(4) of the Act.

[61] The Respondent states that the Applicant has raised issues in her closing submissions that she did not raise previously with regard to her ongoing Small Claims Court action against the Respondent.

[62] Nevertheless, it states that the Applicant has been provided with all the approved board minutes for the time period requested, with some redactions on the basis of section 55(4) of the Act. It says it properly redacted the minutes where they addressed individual unit owners and the ongoing litigation.

[63] The Respondent states that there was one set of board minutes for the board meeting held on November 15, 2022, which were still in draft form as of the Applicant's Request and the Board's Response on January 4, 2023. Since the response, those minutes have been approved and a copy provided to the Applicant.

[64] In reference to the redactions, the Respondent submits that it provided reasons for the redactions on January 5, 2023. The Respondent then reviewed the redactions and provided updated copies with fewer redaction. These amendments left headings where appropriate and only removed information identifying a particular unit or unit owner. These revised redactions were sent to the Applicant during Stage 1 of this proceeding.

[65] The Respondent states that the Applicant's submissions relate to the original redactions and do not take into account the revised redactions.

[66] Further, the Respondent states that the Applicant wrongfully takes the position that her legal action and the board's instructions to legal counsel would be referred to in the minutes. In addition, the Respondent points out that even if these were referred to in the minutes, the Applicant would not be entitled to them because the

Respondent is exempt from providing documents related to ongoing litigation pursuant to section 55(4) of the Act.

### Analysis

- [67] The Respondent has complied with its obligations under the Act. It has provided the requested minutes, including those that are now no longer in draft form. Further it has appropriately redacted those documents where necessary and provided an explanation to the Applicant.
- [68] The Applicant believes there are missing board resolutions because she expects that her litigation would be the subject of such board resolutions. There is no evidence that other board minutes exist or that there are resolutions that the Applicant is entitled to that have not been provided. Even if they did exist, she would not be entitled to them by virtue of section 55(4) of the Act which exempts the Respondent from providing documents related to contemplated or ongoing litigation.
- [69] In *Chai v. Toronto Standard Condominium Corporation No. 2431* (Chai 2021)<sup>10</sup> the Tribunal found that the minutes did not refer to a resolution considering a settlement offer and that therefore an owner reviewing the minutes would have no ability to understand the decision made regarding the case. The Applicant is correct that this is applicable to the case before me. If the board has made decisions outside of board meetings, or simply delegated authority to the manager without a resolution stating this, it may have governed itself improperly. However, that is a governance issue over which I do not have jurisdiction. I note that in Chai 2021, the Tribunal did not order that the minutes be revised to include such resolutions. I too decline to make such an order.
- [70] What is most relevant about the Chai 2021 case, however, is that the Tribunal found that the Applicant was overly focused on perfection. But perfection is not the standard that the condominium corporation is held to. I adopt the following words in Chai 2021 as they are also applicable here:

The Applicant raised a great number of issues in this case, many of which were both technical and relatively minor in their impact, and not all of which were accurate. Many of these issues appear to arise from a desire for perfection in the Respondent's records. While the Respondent could certainly be more conscientious of and attentive to its obligations, it is not reasonable to

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<sup>10</sup> 2021 ONCAT 142 (CanLII).

hold it to a standard of perfection for every record it has created.

[71] This issue is dismissed.

## **Issues 6 and 7: Security Footage**

### Applicant's Evidence and Submission

[72] The Applicant seeks security footage recordings from the condominium building for the purpose of her two Small Claims Court actions. She asked for these recordings through the Request for Records on December 5, 2022. The security footage she requests encompasses two time periods – October 11 – 31, 2020 and April 11, 2022.

[73] The Applicant states that there were defamatory comments posted about her throughout the condominium building. She also states that the April date captures “harassment” of the Applicant by an individual trying to serve her with court papers. She believes the Respondent should have retained the security footage for seven years because it relates to litigation.

[74] The Applicant also filed as evidence her emails to the condominium manager on the dates of these incidents in which she sought to obtain these recordings.

### Respondent's Evidence and Submissions

[75] The Respondent states that security video footage is not a record the corporation is expressly required to keep pursuant to the Act.

[76] The Respondent states that the facts alleged in the Applicant's closing submission are not within the evidence filed by the Applicant in this proceeding. As such, the Respondent has not previously had a chance to respond to the allegations. It also has not had the opportunity to object to the consideration of such evidence.

[77] The Respondent submits that the Applicant's request for security footage was not timely and is overly broad. The Respondent also submits that it would have no knowledge that the Applicant intended to bring an action against any party one or two years after the alleged incidents. It had no reason to take action to retain the video footage for litigation purposes. As a result, the Respondent states that the video footage was not retained, as indicated by the affidavit of Phoenix Chen.

[78] Finally, the Respondent states that even if the security footage was retained, there are privacy restrictions that would have prevented disclosure in any event.

## Analysis

[79] The Applicant made statements about the alleged defamation in her closing submissions. These included that the Respondent and the Respondent's condominium manager, were engaged in a cover-up and acted dishonestly in their failure to preserve the security video footage. These allegations were not in her affidavit and the Respondent had no opportunity to challenge the Applicant's description of the events. I place no weight on what the Applicant alleges transpired. I also note that the issue of retention of "evidence" related to the Applicant's Small Claims cases should be dealt with before the court where she is seeking redress.

[80] The Applicant's evidence included emails to the condominium manager requesting the security video footage. She sent those emails on October 14-16, 2020, and April 11, 2022, respectively. However, I only have jurisdiction to decide the Applicant's December 5, 2022 request for security video footage.

[81] I find that this request for records clearly does not relate to the Applicant's interest "as an owner." The Applicant here is requesting security videos for the purpose of furthering her claims in Small Claims Court. She is using the CAT process for discovery. The only connection to her role as an owner is that she feels the alleged defamation undermined her ability to be elected to the Board.

[82] While these may be her reasons for wanting this video footage, it does not follow that these would be records she could request pursuant to the Act.

[83] As a result, this issue is dismissed.

## **Issues 8 and 9: Board Meetings and Audio Recordings**

### Applicant's Evidence and Submissions

[84] The Applicant requested copies of board minutes she believes are missing from the period May 1, 2020 to December 31, 2021.

[85] The Applicant also made a request for audio recording of the board meetings held between May 1, 2020 to December 31, 2021 and for the owners meeting held on September 10, 2020.

[86] In her closing submissions, the Applicant states that she is seeking the minutes and recordings to obtain records of the following board resolutions:

1. To instruct the lawyer to write a letter to her to "harass" her regarding

numerous alleged infractions in an attempt “to shut her up”.

2. To instruct the lawyer to file a claim against her and to approve the claim.

[87] She further says that if the records and recordings do not exist, then there is a record adequacy issue.

[88] The Applicant also repeats her position with regard to the redactions that added to the board minutes she did receive (see issue 5).

### Respondent’s Evidence and Submissions

[89] With regard to the board meeting minutes, the Respondent states that it is not aware of any missing minutes.

[90] Further, on the issue of redactions, it repeats that it provided reasons for the redactions on January 5, 2023, and that it revised and reduced the redactions leaving headings where appropriate and only redacting information that would identify a particular unit or unit owner.

[91] The Respondent submits that the Applicant’s closing submissions relate to the original redactions and not the revised redactions that were sent to her during Stage 1 and 2 of this proceeding.

[92] With regard to the request for audio recordings, the Respondent states that it has no such audio recordings. It submits that even if there were audio recordings, these would be akin to draft minutes and the Tribunal has previously found that they are not subject to production.<sup>11</sup>

### Analysis

[93] Similar to the request for security video footage, I find that this issue does not solely relate to the Applicant’s interest “as an owner.” It is clear that the Applicant’s request relates to her on-going litigation. Since her request does not relate to the overall purpose of the Act, it is dismissed.

[94] In any event, there is no evidence to support the Applicant’s belief that there were additional board meetings for which minutes exist but were not provided. The same is true for the audio recordings.

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<sup>11</sup> See *King v. York Region Condominium Corporation No. 692*, 2022 ONCAT 80 (CanLII))

## **Issue 10: Penalty and Costs**

### Applicant's Submissions

[95] In her submissions, the Applicant requested her CAT costs in the amount of \$200 and a penalty against the Respondent in the amount of \$5,000. She also seeks credit towards her common expenses in an amount equal to any of the unit's proportionate share of costs and/or penalty.

[96] In her reply, the Applicant stated that in order to achieve procedural fairness she needed to set the font size to 8 in order to deal with all her issues. She then added for the first time that she was now also requesting \$5,000 from the Respondent due to its unreasonable conduct and behaviour.

### Respondent Submissions

[97] The Respondent submits that the Applicant should be entitled to \$25 which was the cost of Stage 1 of the CAT process. It was during Stage 1 that the Respondent provided all of the documents requested, with any required explanations. It submits that Stage 2 and Stage 3 were therefore unnecessary.

[98] The Respondent also seeks \$300 in costs plus H.S.T. pursuant to Rule 48.2 and 49.1 of the Tribunals Rules of Practice due to the Applicant's conduct which caused delay and additional expense. It points to the Applicant's lengthy closing submissions which were filed in 8-point font and with no spacing in between paragraphs, creating submissions that were double what was allowed. The Respondent also says the Applicant's closing submissions were difficult to decipher and raised new facts and issues.

### Analysis

[99] The Applicant was not successful in her application, beyond Stage 1. Although she would have been entitled to the \$25 in costs for bringing the matter to Stage 1, I decline to award her those costs for the following reasons.

[100] The Applicant should have discontinued this matter after Stage 1. Instead of narrowing her case through mediation the Applicant expanded her case to add two further records issues which were also unsuccessful.

[101] The Applicant's materials were voluminous. At one point I requested a one-page summary of the issues. The Applicant filed a one-page summary together with a 50 page "appendix." As the Respondent described, it was abundantly obvious that the Applicant doubled her closing submissions by shrinking the font. In addition,



her submissions were difficult to understand and referred to, among other things, confidential settlement discussions. Her overall purpose was to further her Small Claims Court cases as clearly stated in her reply. As I have previously noted, this is an improper purpose of the CAT.

[102] While the Respondent on occasion did not follow my directions, it corrected those issues when asked. The delay as a result was very minor.

[103] Given the above, the Respondent's request for \$300 plus H.S.T. is reasonable and addresses the additional length and delay caused by the Applicant. It also addresses the Applicant's improper purpose for bringing this case.

[104] The Respondent is granted its costs in the amount of \$300 plus H.S.T.

**D. ORDER**

[105] The Tribunal Orders that:

1. The application is dismissed.
2. The Applicant shall pay costs to the Respondent in the amount of \$300 plus H.S.T. within 30 days of this date of this decision.

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Marisa Victor  
Member, Condominium Authority Tribunal

Released on: December 14, 2023