CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 28, 2023
CASE: 2023-00005R
Citation: Jackson v. Simcoe Condominium Corporation No. 69, 2023 ONCAT 203

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

Member: Marisa Victor, Member

The Applicant,
Elizabeth Jackson
Self-Represented

The Respondent,
Simcoe Condominium Corporation No. 69
Represented by Jessica Laker, Agent and Victor Yee, Counsel

Hearing: Written Online Hearing – May 29, 2023 to November 27, 2023

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Elizabeth Jackson, is the owner of a unit of the Respondent, Simcoe Condominium Corporation No. 69. On September 8 and 9, 2022 the Applicant submitted four Requests for Records for a number of different records including both core and non-core records (the "Requests").

[2] The Applicant's position is that a number of the records have been refused without a reasonable excuse. In addition, she asks for certain records she was given to be provided to her without redactions.

[3] The Respondent's position is that the application should be dismissed. It says that it has provided all the records it has in its possession, albeit with some delays, except those that are exempt under the *Condominium Act, 1998* (the "Act").

B. RESULT

[4] For the reasons set out below, I find that the Respondent has refused to provide one record in its entirety without a reasonable excuse. In addition, I find that the

Applicant's unit file was refused in its entirety due to an exemption, but instead must be provided and redacted as necessary. The Respondent shall pay a penalty of $100. The Applicant is granted her costs.

C. BACKGROUND

The Incident that caused animosity between the Parties

[5] The Applicant states that on January 7, 2021, her unit was under renovation. On that date, a fire alarm went off inside her unit. No one was present in the unit at the time. One of the board members directed the Orillia Fire Department to enter the unit. The firefighter caused damage to the front door of the Applicant's unit when they entered (the "Incident"). This Incident was the start of the animosity between the Parties as they argued over who was liable for the damage and ensuing repairs.

[6] When this hearing began, the Parties informed me that at the same time as this hearing was taking place, the Applicant had already begun a parallel Small Claims Court action on December 12, 2022 (the "Claim"). In her Claim, the Applicant seeks compensation for general and special damages, and repair costs related to the Incident.

[7] The Applicant's Claim also included a request for records and a penalty under the Act for failure to provide those records. This is an issue over which only the CAT has authority. The Applicant advised me at the start of the hearing that she now understood the division of jurisdiction and she would be discontinuing her Claim regarding the issues over which the CAT has authority.

[8] Two months into the hearing, in July 2023, the Parties advised me that the Applicant had started a second Small Claims Court case (the "Second Claim") against the Respondent for defamation.

[9] It is plain to see that there is significant animosity between the Parties that pre-dates the Requests.

Motion for Adjournment and other delays

[10] On July 18, 2023, the Respondent, represented by Jessica Laker, condominium manager, brought a motion to suspend this CAT case until the resolution of the Claim and the Second Claim. This was in the middle of cross-examinations in this case.

[11] On September 8, 2023, I issued my decision denying the Respondent's motion.[1] In that motion decision I cautioned both Parties. I advised the Applicant that it appeared her case before the CAT may be for an improper purpose – as a way to further her Small Claims Court cases. I also advised the Respondent that it had caused significant delays in the process. Both Parties were warned that there could be cost consequences.

[12] In October 2023, the Respondent was denied a further adjournment request brought after another deadline had passed and without providing supporting documentation. As a result of that denial, the Respondent retained Victor Yee as counsel ("Mr. Yee"). Mr. Yee represented the Respondent from the start of October 2023 through to the end of the hearing.

D. INFORMATION SUBJECT TO A CONFIDENTIALITY ORDER

[13] In *Sherman Estate v. Donovan*, 2021 SCC 25 ("Sherman"), the Supreme Court held that personal information disseminated in open court can be more than a source of discomfort and may result in an affront to a person's dignity. At paragraph 33 of its decision, the Court stated:

> …A court can make an exception to the open court principle, notwithstanding the strong presumption in its favour, if the interest in protecting core aspects of individuals' personal lives that bear on their dignity is at serious risk by reason of the dissemination of sufficiently sensitive information. The question is not whether the information is "personal" to the individual concerned, but whether, because of its highly sensitive character, its dissemination would occasion an affront to their dignity that society as a whole has a stake in protecting.

[14] Under Rule 21.4 of the Tribunal's Rules of Practice (the "Rules"), any person may request that all or part of a case be restricted to public access. Under Rule 21.5 of the Rules, after receiving a request from a Party, the Tribunal may take any steps and make any directions or Orders needed to protect the confidentiality of personal information.

[15] The Respondent's Agent, Jessica Laker (Ms. Laker), requested that some of the health information she shared on the message board be made confidential. I have reviewed the material, and there is some information that meets the test in Sherman*.* Therefore*,* pursuant to Ms. Laker's request made on September 27, 2023, I order as follows: That the specifics of the health information in the messages posted by Ms. Laker in the CAT-ODR message board on September

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[1] 2023 ONCAT 128

22, 2023 and September 27, 2023 shall be treated as strictly confidential and removed from the public record in this matter.

E. ISSUES AND ANALYSIS

Records in Dispute

[16] At the start of the hearing, the following records remained in dispute:

1. The Applicant's unit file for the period from October 1, 2020 to September 8, 2022.

2. Any correspondence for the period from October 1, 2020 to September 8, 2022 relating to Applicant's unit between the board members, condominium manager, and the corporation's lawyer.

3. Any correspondence for the period from January 1, 2021 to September 9, 2022 relating to Applicant's unit between the condominium management provider and vendors.

4. Minutes of board meetings and the AGM held from October 1, 2020 up to, and including, February 9, 2022.

5. Missing minutes from May 24, 2022 to August 29 2022.

6. Periodic Information Certificate due on April 1, 2022.

7. The Management contract.

8. Notice packages accompanying changes to the Corporation's rules from October 2002 to September 8, 2022.

Issues

[17] After having reviewed the Stage 2 Summary and Order, the issues to be decided are:

1. Is the Applicant pursuing this case for an improper purpose?

2. If the Applicant is entitled to records, are any of the records subject to the exemption set out in section 55 (4) of the Act?

3. Is the Applicant entitled to any remaining records?

4. Is the Respondent required to pay a penalty, and if so, in what amount?

5. Should the Applicant or Respondent be awarded any costs?

[18] The Tribunal hearing began on May 29, 2023. I asked the Parties to confirm the issues in the Stage 2 Summary and Order. The Applicant confirmed these issues. The Respondent did not object to the issues.

Is the Applicant pursuing this case for an improper purpose?

[19] For the reasons set out below, I find that the Applicant's application before the CAT was not made for an improper purpose.

[20] 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 (3) 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.

[21] The Applicant denies that she brought this CAT application for an improper purpose. She stated the following in her closing submissions: [2]

1. She lost all her emails from 2007 to December 6, 2021, and is therefore looking to update her own records through these requests.

2. She wants to assert her legitimate rights and wants to have all the records that she is entitled to as an owner.

3. She is attempting to hold the Respondent accountable for not providing records that were requested, Board approved, but never delivered.

4. She wanted to do her due diligence before running for the board.

5. She believes her causes of action against the Respondent at the CAT and at the Small Claims Court are separate and distinct.

6. She does not need the requested records for the actions she has brought

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[2] The Applicant had two witnesses testify; however, she did not provide a witness statement for herself. Therefore, I must rely on her opening and closing submissions for evidence of her own intentions. None of these statements were subject to cross-examination.

before the Small Claims Court.

[22] The Respondent states that the Applicant has brought this application for an improper purpose, namely, to assist her case before the Small Claims Court. The Respondent relies on the Applicant's opening statement where she stated that the Respondent "is hiding incriminating correspondence and information from the Applicant germane to the Applicant's action in Small Claims Court." The Respondent also relies in the Applicant's closing submissions where she stated that she needed the documents because "there are allegations of wrongdoing and …important evidence may be concealed."

[23] The Respondent relies on this Tribunal's decision in *Mara Bossio v. Metro Toronto Condominium Corporation 965*, 2018 ONCAT 6 ("Bossio")[3] where it was held that when making a request for records the request must be "solely related to that person's interests as owner…having regard to the purposes of the Act." In that case, the applicant alleged that the condominium corporation improperly removed terrace windows thereby lowering the value of her unit. The applicant brought an action in court for damages related to her windows, privacy breach, contravention of the Act and legal fees. At the CAT, she was seeking a report and board meeting minutes. The CAT held that the applicant's purpose was to obtain evidence to support her claim against the condominium corporation and was, therefore, dismissed.

[24] I find that the Applicant's overall purpose for filing this application was not for an improper purpose as explained below, though I do find that some of the requests are for an improper purpose.

[25] Based on the Applicant's submissions, I do not believe that the Applicant made this application in bad faith. I accept that the Applicant believed that she had a valid request for records that the Respondent did not comply with.

[26] In addition, although the Applicant submitted her Requests prior to filing her Claim, she has filed the actual unredacted board minutes as exhibits to her Second Claim. These are the same documents she is seeking here at the CAT. Therefore, she does not need the CAT for the purposes of discovery with regard to at least that record.

[27] I agree that the facts in Bossio are similar. In that case, the CAT denied Bossio's application for records on the basis that there was contemplated litigation and

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[3] 2018 ONCAT 6 (CanLII) at paras. 25-27

because Bossio's request was not solely related to her interest as an owner having regard to the purposes of the Act.[4] Although I am not bound by Bossio, I note that the records sought were in fact exempt under section 55 (4) of the Act. I find that, in this case, that is the appropriate section to deal with the records.

Are the Applicant's requests exempt because there is actual or contemplated litigation?

[28] For the reasons set out below, the following records should be redacted due to actual or contemplated litigation:

1. Applicant's unit file for the period from October 1, 2020 to September 8, 2022.

2. Any correspondence for the period from October 1, 2020 to September 8, 2022 relating to Applicant's unit between various board members, the condominium manager and the corporation's lawyer.

3. Any correspondence for the period from January 1, 2021 to September 9, 2022 relating to Applicant's unit between the condominium management provider and vendors.

[29] The right to examine records is set out in section 55 (3) of the Act:

> 55(3) The corporation shall permit an owner, a purchaser or a mortgagee of a unit or an agent of one of them duly authorized in writing, to examine or obtain copies of the records of the corporation in accordance with the regulations, except those records described in subsection (4).

[30] However, that right is not without limits. Records relating to "actual or contemplated litigation" fall into one of the exemptions. This exemption is set out in section 55 (4) of the Act:

> 55(4) The right to examine or obtain copies of records under subsection (3) does not apply to,
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> …
>
> (b) records relating to actual or contemplated litigation, as determined by the regulations, or insurance investigations involving the corporation;

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[4] 2018 ONCAT 6 (CanLII) at para. 25.

Evidence

[31] The Applicant states that there was no actual or contemplated litigation at the time she submitted her Requests. This is because her Requests were made on September 8 and 9, 2022, the Board Response was on October 7 and 11, 2022, and the Claim was not issued until December 12, 2022.

[32] The Applicant submits that although she had warned the Respondent that she was pursuing all avenues and the possibility of legal consequences, this does not amount to "contemplated litigation." She also states that she used the word "litigation" in her emails to the Respondent purely in response to its correspondence and actions.

[33] The Respondent states that it was reasonable to assume the Applicant was contemplating litigation dating back to the Respondent's entry into the Applicant's unit in January 2021. The Parties agree that the Incident was the genesis of the subsequent conflicts between the two Parties.

[34] The Respondent also supports its submission by relying on statements made by the Applicant in her submissions and by her witness. Both refer to the knowledge that they had two years within which to start a civil claim relating to the Incident. The Respondent also bases its submission on various email correspondences between the Parties submitted as evidence where litigation was raised.

[35] The Respondent states that for two years the Applicant threatened legal action. It agrees it did not know what the Applicant was contemplating, but that it was reasonable to rely on her correspondences. It states that the Applicant's contemplated litigation became a reality in December 2022, further proving its point.

[36] The Respondent also states that it was contemplating legal action against the Applicant. It also relies on the Applicant's witness who stated in an email correspondence in July 2021 that he was aware that the Respondent had threatened legal action. Further, on August 10, 2021, the Respondent's counsel sent a legal enforcement letter to the Applicant stating that the Respondent was considering potential legal action to enforce compliance with regard to an issue related to the Incident.

[37] The Respondent says that the unit file is often requested in order to see what the Board was discussing in relation to a unit. It says it should be exempt as a result. Further, it says that the correspondence should fall under the same exemption, and in the alternative, that the correspondence requested are not records that the

Respondent is required to keep.

[38] The Respondent relies on *Zamfir v. York Condominium Corporation No. 238*, 2021 ONCAT 118 ("Zamfir").[5] In that case, the Tribunal found that section 55 (4) (b) of the Act provides a broader exemption than solicitor-client privilege. It extends to records that relate to actual or contemplated litigation and can encompass more than communications between client and counsel. Zamfir held that the records need only contain information that relates to contemplated or actual litigation. I agree with this interpretation.

Analysis

[39] For the reasons that follow, I find that the evidence supports that there was contemplated litigation by both Parties as of January 2021, and that the Applicant began actual litigation as of December 2022. In the end, whether or not there was contemplated litigation at the time of the Requests is now a moot issue because there is actual litigation now.

[40] In Zamfir, the CAT ordered that the Applicant was entitled to records but that any part of them containing information related to actual or contemplated litigation should be redacted with an accompanying statement showing the reason for the redaction. I agree with and adopt that interpretation of the Act here.

[41] With regard to the unit file, the evidence before me was that neither Ms. Laker nor Mr. Yee had actually reviewed the file. The submissions before me were that it was assumed to contain information that would be exempt according to the Act.

[42] I find that this was a refusal. However, I also find that there was a reasonable excuse as the time period requested means that much of the record will likely be exempt under section 55 (4) of the Act. Therefore, I find the reason for the refusal to be reasonable. Nevertheless, more could be done. I will order the Respondent to review the file and provide to the Applicant a copy of the file, redacted as necessary according to the Act. No penalty will be awarded.

[43] With regard to the correspondence requested, I find that the Applicant is not entitled to those records for the reasons that follow.

[44] In *Martynenko v. Peel Standard Condominium Corporation No. 935*, 2021 ONCAT 125 ("Martynenko"), [6] the Tribunal discussed the term "fishing expedition." It is

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[5] 2021 ONCAT 118 (CanLII)
[6] 2021 ONCAT 125 at para. 31.

worth repeating here:

> The term “fishing expedition” is used in law to describe a search or investigation, including demands for records or information, undertaken for the purpose of discovering facts that might be disparaging to the other party or form the basis for some legal claim against them, that the seeker merely hopes or imagines exist. Most cases where the term is used appropriately involve a person casting a wide net, as it were – such as requesting records that cover a broad period of time and/or wide range of topics – in the hopes of acquiring some fact or detail that could satisfy what is essentially an unfocussed vindictiveness or dislike for the other party.

[45] The Applicant has requested two years of emails to a large number of persons and companies, with the explicit intent to identify wrongdoing by the corporation. I find, as in Martynenko, that the request covers a broad time period and a wide range of records and is therefore characteristic of a “fishing expedition.” Further, the Applicant has clearly articulated that her intent is to uncover wrongdoing which appears to be related to her actions in Small Claims Court. Unlike the request for her unit file, this request for two years of communication with a wide number of people and companies is overly broad, lacks specificity, is focussed on finding wrongdoing, and meets the general definition of a “fishing expedition” as outlined above.

[46] Further, the basis of this request relates to alleged wrongdoing by the Respondent. The circumstances of this case lead me to conclude that the request is being made for an improper purpose. Having considered the time period for the requested records, the Applicant’s stated intent, and the litigation between the Parties, I conclude that the request is not consistent with the Applicant’s interests as an owner. Therefore, this request is dismissed.

Is the Applicant entitled to the remaining records?

[47] I will now consider whether the Applicant is entitled to any of the remaining records.

<u>Minutes of board meetings and AGM held from October 1, 2020 up to, and including, February 9, 2022</u>

[48] The Applicant’s Requests included a request for the unredacted minutes of board meetings held from October 1, 2020 up to, and including, February 9, 2022. The Applicant states that she is already in possession of the unredacted minutes which she filed as exhibits in her action before Small Claims Court. The Applicant states she wants a ruling on whether she was entitled to the unredacted minutes.

[49] As the Applicant already has these records, the issue is moot.

Missing minutes from May 24, 2022 to August 29, 2022

[50] The Applicant believes that some minutes are missing, specifically board meetings in June and July 2022. The Respondent states that there are no missing minutes because there were no board meetings in those months. In her submissions, the Applicant stated that she had been advised by the condominium manager that no meetings had taken place.

[51] There is no evidence before me that the Respondent has failed to provide minutes from the requested time period in accordance with its responsibilities under the Act.

Management Contract

[52] Entitlement to this record was not in dispute. The Respondent submitted that it provided the document to the Applicant on October 20, 2022. There was no evidence filed to support this. Both Parties agree that the record was uploaded to the CAT system on January 24, 2023. The Applicant contested the statement that the record was delivered earlier. The evidence before me only shows that the document was delivered on January 24, 2023. The Applicant has the document; therefore, no remedy will be ordered.

Periodic Information Certificate due on April 1, 2022

[53] The Applicant requested the Periodic Information Certificates ("PIC") for the last 12 months. The Stage 2 Summary and Order stated that the only PIC still at issue was the one due on April 1, 2022.

[54] In the Applicant's closing submissions, she requested for the PICs due both on September 30, 2021 and April 1, 2022. She said she agreed at the Stage 2 Mediation that she was no longer seeking the September 30, 2021 PIC; however, she changed her position and was now also seeking the September 30, 2021 PIC.

[55] The Respondent's closing submissions state that the April 1, 2022 PIC was delivered on October 20, 2022. However, the Respondent then conceded that it was never delivered to the Applicant. The Respondent states that there was some confusion during the change from one property management company to another.

[56] Further, the Respondent opposes the inclusion of the September 30, 2021 PIC as a record still at issue, given it was removed at Stage 2.

[57] The April 1, 2022 PIC was listed as an issue in the Stage 2 Summary and Order and the Parties agreed to these issues at the start of the hearing. The Parties now agree that this document has not been provided. The Respondent's explanation for not providing it is that there was confusion due to a change in the condominium manager.

[58] I find that the Respondent has refused to provide this record and that it has done so without a reasonable excuse. In its response to the Requests, the Respondent agreed to provide this record. I understand that the reason for the missing record is due to the change in the condominium manager. However, this Tribunal has previously held that the failure of a past condominium management provider to properly handle records and record requests will not typically be a reasonable excuse for a condominium not to provide requested records. I agree with that reasoning here.

[59] As a result, a penalty will be awarded.

[60] On the issue of the September 30, 2021 PIC, I decline to consider this issue, given that the Parties agreed it was not at issue and I do not have evidence relating to this record filed before me.

Notices of the amendments to the Corporation's rules from October, 2002 to September 8, 2022

[61] The Applicant has requested the record of the notices sent to owners regarding any changes to the Corporation's rules. The Applicant states she received the Respondent's rules, dated 2002, on October 20, 2022. The Applicant seeks confirmation from the Respondent that no rules have been amended, created, or deleted since that time. She says that the 2002 rules show that there was an amendment on August 12, 2011 to rules 3 and 29 and she wishes to know whether those amendments are valid.

[62] The specific request made on September 8, 2022 by the Applicant was for:

> The packages that were sent to owners for any rules that were amended, created, or deleted since the time of the Corporation's Registration: October, 2002 to September 8, 2022.

[63] The Respondent's response to the request, on October 7, 2022, was that the request was too vague, and that the Applicant needed to be more specific. Further, that records are not required to be kept beyond seven years.

[64] In its submissions, the Respondent states that it has provided the current rules to

the Applicant and that she is not entitled to information to help her understand the rules she has been given. It says that, in any event, there is no requirement for the Corporation to keep cover letters or any other part of the notice package under section 58 (6) of the Act.

[65] The request at issue relates to the notices accompanying changes to the rules, not the rules provided. The Applicant has not pointed to any section of the Act or Regulations that would require the Respondent to keep copies of these notice packages. There is no evidence before me that these are records that the Corporation was obliged to keep, particularly for a period that exceeds seven years.

[66] Therefore, there is no evidence before me that shows that the Respondent has failed to meet its responsibilities under the Act with regard to the request for the notice packages. As there is no evidence before me that these are records the Respondent was required to keep, the Applicant is not entitled to these records.

Should the Respondent be required to pay a penalty?

[67] Section 1.44 (1) 6 of the Act states that the Tribunal may order a penalty to be paid to an applicant if it finds that the corporation has, without reasonable excuse, refused to permit a person to examine or obtain records. The maximum penalty payable is $5,000, and the Applicant is seeking that amount.

[68] The Applicant is also seeking $1,000 for “wrongful denial of correspondence records between the Parties in each instance.” She is also seeking a further $5,000 for wrongful denial of her unit file.

[69] In some previous cases, the Tribunal has concluded that late provision of records may be an effective refusal; however, each case must be decided on its particular facts. The obligation to provide records rests on the corporation, not the condominium manager, and the reasonableness of the corporation’s actions, or reason for inaction, must be considered.

[70] Here, the Applicant was told that the Respondent was working on the Requests within 30 days of their receipt. The Respondent then advised about certain delays, including its requirement to consult counsel, illness, long weekend, inadvertent error, and attempting to get documents from the previous condominium manager.

[71] The Respondent also submitted that it had a new condominium manager who was educating the board about its responsibilities regarding records.

[72] The Respondent was late with a few of the records. It is required to provide the

records within the statutory time period even if its condominium management company has changed. However, I do not find in this case that the late delivery of documents was a refusal. Therefore, the late delivery of any of the documents will not result in a penalty.

[73] With regard to the refusal to provide the April 1, 2022 PIC without reasonable excuse, I find that a penalty in the amount of $100 is reasonable. In determining the appropriate amount of the penalty, I have considered the Respondent's refusal to meet its responsibilities under the Act, and the fact that only one document was not provided. I also considered the reason for that refusal, which is due to confusion during the changeover between condominium management providers.

[74] I find that a penalty in the amount of $100 is appropriate given the nature of the refusal.

Should the Applicant or Respondent be awarded any costs?

[75] Under section 1.44 (1) 4 of the Act and Rules 48 and 49 of the Rules, the CAT has discretion to order a party to pay another party's reasonable expenses related to the use of the Tribunal, including fees paid to the Tribunal. The Parties both made submissions on costs.

[76] Rule 48.1 of the Rules 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.

[77] Rule 48.2 of the Rules states:

> 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.

[78] 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:

> 3. (a) Whether a party or representative's conduct was unreasonable, for an improper purpose, or caused a delay or expense;

…

(c) The conduct of all parties and representatives, including the party requesting costs;

…

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

…

(e) Whether the parties attempted to resolve the issues in dispute before the CAT Case was filed;

…

(g) The provisions of the condominium corporation's declaration, by-laws and rules…

...and whether the parties had clear understanding of their requirements and/or the potential consequences for contravening them.

…

4. (c) Whether the costs are reasonable and were reasonably incurred.

[79] The Applicant requested her filing fees in the amount of $200.

[80] The Applicant was partially successful; however, I find that as a result of her partial success she should be entitled her filing costs.

[81] The Applicant also seeks $956.25 for costs associated with retaining her adviser "TO Condo Consulting". She provided me with a Statement of Account for "TO Condo Consulting" from Andy Bazoian, who was also her witness at this hearing. Mr. Bazoian is not a lawyer, nor was he qualified as an expert witness during this hearing. The services listed are for the request for records and application to the CAT. However, in cross-examination during this hearing, Mr. Bazoian stated multiple times that "I would not say I was advising the Applicant in this CAT case."

[82] Pursuant to Rule 48.2 of the Rules, this request is denied. Mr. Bazoian's fees are not legal fees.

[83] The Respondent seeks $9,908.00 (full indemnity) for its legal costs from October 1, 2023 to the end of the hearing. It calculated substantial indemnity, 80% of the fees, at $7,013.34 and partial indemnity at $4,023.36.

[84] The Respondent seeks an order for costs requiring the Applicant to reimburse it because the application was undertaken for an improper purpose. However, this is not the finding that I have made with regard to the majority of the records

requested.

[85] The Respondent also states that the Applicant's closing submissions exceeded the allowed amount by submitting 20 pages but using extremely narrow margins, single-spacing and small font. The Respondent says that the Applicant accused the condominium manager of acting malevolently and witness tampering in her submissions. I agree with what the Respondent has said here.

[86] Nevertheless, as I previously stated, the Respondent, initially represented by its condominium manager, was at fault for causing a significant amount of delay in this proceeding and failing to meet deadlines. The Respondent was warned about this several times and warned in the motion for adjournment that this could result in costs against it. The Respondent caused further delay after these warnings were issued.

[87] Given the above, I do not find that an order for costs against either Party due to their behaviour is appropriate in this case.

[88] It is evident that the relationship between the two Parties has broken down and that the underlying issues remain unresolved. This is very unfortunate. I encourage both Parties to do better going forward and work toward reconciling their differences.

F. ORDER

[89] The Tribunal Orders that:

1. The specifics of the health information in the messages posted by the Respondent's Agent in the CAT-ODR Message Board on September 22, 2023 and September 27, 2023 shall be treated as strictly confidential and removed from the public record in this matter.

2. Within 30 days of this decision, the Respondent shall review the Applicant's unit file for the time period requested and provide to the Applicant a copy of the unit file, redacted as necessary according to the Act.

3. Within 30 days of the date of this decision, the Respondent shall pay to the Applicant a penalty under paragraph 1.44 (1) 6 of the Act, in the amount of $100 for the failure to provide the April 1, 2022 PIC.

4. Within 30 days of the date of this decision, the Respondent is ordered to pay the Applicant costs of $200.

5. In the event that the full amount of the penalty and costs are not provided to the Applicant within 30 days of this Order, pursuant to section 1.45 (3) of the Act, the Applicant is entitled to set off all remaining amounts due against the common expenses attributable to the Applicant's unit.

6. In order to ensure that the Applicant does not have to pay any portion of the penalty or costs, the Applicant shall also be given a credit towards the common expenses attributable to the applicant's unit in the amount equivalent to the Applicant's proportionate share of the penalty and costs awarded.

Marisa Victor
Member, Condominium Authority Tribunal

Released on: December 28, 2023