

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 13, 2024

CASE: 2023-00125R

Citation: Schwartz v. Toronto Standard Condominium Corporation No. 1443, 2024 ONCAT 39

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

Member: Elisha Turney Foss, Member

The Applicant,

Alyssa Schwartz
Self-Represented

The Respondent,

Toronto Standard Condominium Corporation No. 1443
Represented by Justin McLarty, Counsel

Hearing: Written Online Hearing – October 9, 2023 to January 20, 2024

REASONS FOR DECISION

A. BACKGROUND

[1] The Applicant, Alyssa Schwartz, is a unit owner of the Respondent, Toronto Standard Condominium Corporation No. 1443 (“TSCC 1443”), the Respondent.

[2] The Applicant made a request for records on January 11, 2023. She requested access to core records and non-core records.

[3] The Applicant requested the minutes of board meeting from January 11, 2022, to January 11, 2023. These were provided to her by TSCC 1443 at no cost as they are core records.

[4] The Applicant also requested the following non-core records:

1. Dates of inspections and all related inspection reports of ventilation system between January 2017 to January 2023,
2. All correspondence related to smoke and cooking smells entering individual units from January 2020 to present,

3. Request for Proposal (“RFP”) and/or correspondence with board and vendors regarding the termination of GTS Services and the hiring of Ainsworth, in 2018 to 2019,
 4. GTS Services' proposal, quotes, and assessments re: any required or recommended updates, maintenance, or other work on the ventilation system, 2018,
 5. Ainsworth's proposal, quote, and contracts for ventilation maintenance, from 2018 to January 2023
- [5] TSSC 1443 responded advising that no records exist for the first and second records listed above. They granted access to the remaining records and requested a fee of \$360.00 plus HST (\$46.80) for a total of \$406.80.
- [6] The Applicant then submitted another request for core records on March 2, 2023. These records included board minutes from December 13, 2022, to March 2, 2023, including the AGM.
- [7] The Applicant disputes that TSSC 1443 provided access to all the requested records and asserts that the records that were received were not adequate. She also disputes the fee charged for the requested non-core records.
- [8] For the reasons set out below, I find there was no evidence to support a finding that the records provided by TSSC 1443 were inadequate. I also find that the Respondent’s time estimates charged to the Applicant was unreasonable and should be modified from 8 hours for the work to 6 hours.
- [9] I award no Tribunal fees in this case.

B. ISSUES & ANALYSIS

- [10] The parties confirmed that the issues before me in this case are as follows:
1. Did TSSC 1443 provide all the records requested by the Applicant?
 2. Are the records “adequate” within the meaning of s. 55(1) of the *Condominium Act, 1998* (the “Act”)?
 3. If the records are inadequate, what is an appropriate remedy?

4. Is TSCC 1443 entitled to charge a fee to produce the records and if so, in what amount?
5. Should TSCC 1443 pay a penalty under s. 1.44(1) 6 of the Act?
6. Is the Applicant entitled to an order for costs?

Issue 1: Did TSCC 1443 provide all the records requested by the Applicant?

- [11] The Applicant argued that TSCC 1443 failed to provide records relating to the smoke and smell complaints made to it.
- [12] The Applicant explained that TSCC 1443 periodically posts on its website messages about smells and odours leaking out from individual units. The Applicant believes that there has been correspondence from the unit owners to the Respondent regarding this issue.
- [13] TSCC 1443 stated that they do not have any written complaints relating to smoke and cooking smells entering individual units however, they do acknowledge that they post general notices and reminders throughout the building about common concerns and do receive verbal complaints from owners and residents.
- [14] I accept the evidence of TSCC 1443 that there were no written complaints, but that they have responded to verbal complaints received and issued reminders on their website.

Issue 2: Are the records provided “adequate” within the meaning of s. 55(1) of the Act?

Board Minutes

- [15] The Applicant acknowledged in her submissions that she received board meeting minutes for January 11, 2022, March 3, 2022, April 28, 2022, May 12, 2022, June 14, 2022, October 27, 2022, December 13, 2022, February 7, 2023, and January 24, 2023 (AGM).
- [16] The Applicant submits that minutes that were provided do not capture all discussions and scope of the business that occurred during the meeting as to create an “open book” for the reader. The Applicant indicated that in the October 27, 2022, minutes, it notes that discussions about residents' concerns and requests were conducted in-camera and in the December 13, 2022, meeting it states that “resident’s requests were discussed”. The Applicant submits that some

of the meeting minutes contain no notes about individual units concerns and issues.

- [17] TSCC 1443 submits that meeting minutes are not meant to be a verbatim transcript of what was said at a meeting and there is no requirement to capture all discussion in the minutes.
- [18] Section 55(1) of the Act requires a condominium corporation to keep adequate records. When considering the adequacy of board minutes, the Tribunal decisions have stated that accuracy, not perfection, is the standard.¹ This concept is discussed in *Rahman v. Peel Standard Condominium Corporation No. 779*, (2021 ONCAT 32),

In matters before the Tribunal, we see a wide variety of minutes in terms of form and detail. Issues about the adequacy of minutes arise frequently. It is well settled law at this point that the purpose of minutes is to document a board's business transactions and to show how the corporation's affairs are controlled, managed, and administered. There is an implied requirement that the minutes be accurate, but the Act does not impose a standard of perfection. Minutes are not required to be a verbatim account of a meeting.

- [19] An adequate record of a board meeting is one that allows the reader to understand the issues that were raised and how the decisions were made.
- [20] Based on the parties' submissions and my review of the minutes I find that the minutes appear to offer the detail necessary to understand how TSCC 1443's affairs are controlled, managed and administered. The minutes need not be a verbatim account of the meeting. Based on the above, I find that the meeting minutes are adequate.

Non-Core Records: Dates of inspections and all related inspection reports of ventilation system January 2017 to January 2023

- [21] The Applicant was provided an inspection report from the Condominium staff entitled, "Ainsworth - MUAU Invoice Dec 12-2022.pdf." The Applicant believes that this record is inadequate as the invoice states December 12 but that based on an email received from the Property Manager stating that the HVAC technician was on site November 30, 2022. She believes that there is a discrepancy in dates

¹ See the following cases: *Rahman v. Peel Standard Condominium Corporation No. 779*, (2021 ONCAT 32), *McKay v. Waterloo North Condominium Corporation No.323* 1992 Can LII 781 (ONSC) and *Yeung v. Metropolitan Toronto Condominium Corporation No.1136* 2020ONCAT 33(CanLII)

which has not been explained by the Respondent.

- [22] The Applicant also appeared to submit that there was inconsistency in the redaction process, however, the parties confirmed that this was not an issue in this hearing. TSCC 1443 did acknowledge the Applicant's concern about the redaction process and endeavoured to take greater care in redacting the minutes in the future.
- [23] TSCC 1443 submits that there is no discrepancy in dates. The document from Ainsworth dated December 12, 2022, is in fact an invoice, which sets out the work that was completed. The Respondent referred to the December 2022 email thread provided in evidence by the Applicant between Property Manager and the Applicant which states' "We do not have a report - just the technician's note of what actions he took".
- [24] Based on the evidence, the records were provided. To the extent that the Applicant perceives a discrepancy, I accept the explanation of TSCC 1443. In this instance any discrepancy in dates does not render the record inadequate.

Issue 3: If the records are inadequate, what is an appropriate remedy?

- [25] Given that I have found the records to be adequate, no remedy is required.

Issue 4: Is TSCC 1443 entitled to charge a fee to produce the records and if so, in what amount?

- [26] The Applicant claims that TSCC 1443 is requesting unreasonable fees for the requested non-core records.
- [27] In response to the Applicant's request, TSCC 1443 provided the following estimates for fees to produce the records:
- For the RFP and/or correspondence with board and vendors regarding the termination of GTS Services and hiring of Ainsworth, 2018 to 2019, the labour for providing access to records was 2 hours preparation time at \$45 per hour totalling \$90.
- [28] For GTS Services' proposal, quotes, and assessments re: any required or recommended updates, maintenance, or other work on the ventilation system, 2018, 3 hours preparation at \$45 per hour totalling \$135.
- [29] For Ainsworth's proposal, quote, and contracts for ventilation maintenance, 2018 to January 2023, 3 hours' preparation at \$45 per hour totalling \$135.

[30] Under the Act and the Regulations, a condominium corporation is entitled to charge a fee for the cost of labour to redact records.

[31] Section 13.3 (8) of Ontario Regulation 48/01 (“O. Reg 48/01”) sets out what fee may be charged for the records. Part 1 of section 13.3 (8) of O. Reg 48/01 states:

The fee shall be a reasonable estimate of the amount required to reimburse the corporation for the actual labour and delivery costs that the corporation incurs for making the record requested available for examination or for delivering a copy of the record, which costs shall include the printing and photocopying charges established under paragraph 3 and the actual labour costs that the corporation incurs during the examination.

[32] The Applicant argues that the non-core records that she has requested should not require significant work to provide as no information about individual units would be within these records, therefore redaction should not be required. Additionally, the Applicant submits that if records are not being maintained in an organized and easily retrievable manner, it should not be incumbent on an owner to pay any extra labour costs for locating the records.

[33] TSCC 1443 submits that while labour fees of \$30 per hour has been noted in a number of decisions, the rate of \$45 per hour in labour fees has previously been approved in a previous Tribunal case, namely *Kowalchuk v. Metropolitan Toronto Condominium Corporation No. 983* (“Kowalchuk”). Additionally, TSCC 1443 also referred to *Rangan v. Metropolitan Toronto Condominium Corporation No. 996* (“Rangan”) where the Tribunal confirmed a labour fee of \$40 per hour.

[34] Furthermore, TSCC 1443 states that the fee encapsulates the actual work required which included communicating with TSCC 1443’s contractors for copies of inspections and assessment, reviewing the documents provided by the contractors and making redactions to remove references to other units and owners.

[35] I also note, in the Kowalchuk case, the Tribunal referenced the volume and type of records requested was determinative in validating the \$45 per hour rate in labour fees. In Kowalchuk there were ten records requests and the Adjudicator commented on the “wide range of records requested”. This case does differ from Kowalchuk as there was only five records requested of which two did not exist, the scope was not as broad and there was minimal redaction required in the records. TSCC 1443 did not provide evidence of why the labour cost were inline with the Kowalchuk decision other than to say that it was reasonable and inline with this more recent decision.

[36] In reviewing the submissions, it appears that the issue should not be the hourly rate but the time allotted to produce the records. TSCC 1443 submits that they needed to follow up with contractors to obtain inspections, but I doubt that it takes large amounts of time to complete that task. Ultimately, I am not convinced that the amount of time stated is what was required to fulfil this record request. Also, I find that TSCC 1443 did not provide enough evidence to demonstrate that eight hours of labour to produce the documents was reasonable.

[37] Given the above, I do not believe that the fee that TSCC 1443 provided the Applicant is reasonable to reimburse the actual labour costs of producing the records. Originally, TSCC 1443 charged \$45 per hour for eight hours of labour totalling \$360.00 plus HST. I order TSCC 1443 to charge the Applicant at a rate of \$45 per hour at five hours labour totalling \$225 plus HST.

Issue 5: Should TSCC 1443 pay a penalty under s. 1.44(1) 6 of the Act?

[38] Section 1.44 (1) 6 of the Act provides that the Tribunal may order a penalty to be paid if it finds that the corporation has, without reasonable excuse, refused to permit a person to examine or obtain records. The maximum penalty is \$5000. The Tribunal can only consider a penalty if I find that the Respondent has refused records without reasonable excuse.

[39] Based on the evidence, I do not find that TSCC 1443 has refused to provide records to the Applicant.

Issue 6: Is the Applicant entitled to an order for costs?

[40] Rule 48.1 of the Tribunal's Rules of Practice states that if a matter is not resolved by Settlement Agreement or Consent Order and the adjudicator makes a final decision, the unsuccessful party will be required to pay the successful party's Tribunal fees unless the adjudicator decides otherwise.

[41] The Applicant was partially successful; however, I find that as a result of her partial success no Tribunal fees should be awarded.

C. CONCLUSION

[42] Based on the evidence provided in this case, I conclude that the Respondent provided all of the records that they had to the Applicant. I also conclude that the Respondent's labour time of eight hours charged to the Applicant was unreasonable and the Applicant should be charged five hours. Finally, I conclude that no Tribunal fees should be awarded.

D. ORDER

[43] The Tribunal Orders that:

1. The Respondent shall modify their labour time on the fee estimate from eight hours to five hours and modify the fee to \$225 plus HST within 30 days of this decision.

Elisha Turney Foss
Member, Condominium Authority Tribunal

Released on: March 13, 2024