

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: March 15, 2024

CASE: 2023-00390R

Citation: McCoy v. Simcoe Condominium Corporation No. 119, 2024 ONCAT 41

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

Member: Mary Ann Spencer, Member

The Applicant,
Margo McCoy
Self-Represented

The Respondent,
Simcoe Condominium Corporation No. 119
Represented by Robert Bosshard, Agent

Hearing: Written Online Hearing – December 20, 2023 to February 29, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] Margo McCoy (the “Applicant”) is the owner of a unit of Simcoe Condominium Corporation No. 119 (“SCC 119” or the “Respondent”). On April 20, 2023, she submitted a Request for Records. She alleges that SCC 119 put barriers in place to frustrate her access to those records thereby effectively refusing to provide them and requests that the Tribunal order SCC 119 to pay a penalty. She also alleges that the fee the corporation estimated for the provision of the records was unreasonable. She further alleges that SCC 119 is not keeping adequate records as required by section 55 (1) of the *Condominium Act, 1998* (the “Act”) and requests the Tribunal order it to form a team of owners and board members to assess its record-keeping practices. Finally, she requests costs of \$6,344.27, comprised of \$200 paid in Tribunal fees and \$6,144.27 in legal fees.

[2] SCC 119 submits that Ms. McCoy’s application should be dismissed on the basis that at no time did it refuse to provide the requested records. Rather, its position is that it has provided the records responsive to Ms. McCoy’s request and has fully refunded the fee she paid. It submits that the Request for Records required some judgment to determine which records she was seeking and that the corporation has demonstrated that it was prepared to work with her to provide any additional

records it may have overlooked.

- [3] For the reasons set out below, I find that SCC 119's initial response to Ms. McCoy's Request for Records was not in accordance with the prescribed requirements but that it did not amount to a refusal to provide records without reasonable excuse. Therefore, I order no penalty in this matter. However, while I acknowledge that SCC 119 has provided Ms. McCoy with multiple records, I also find that it may have certain additional records responsive to her request and I order it, within 30 days of the date of this decision, either to provide her copies of those records or a written confirmation that they do not exist. I find that the fee estimated by the corporation for access to the records was not reasonable but, because the fees have been refunded, I make no order in this regard. I make no finding with respect to the adequacy of its records. Finally, I order SCC 119 to reimburse Ms. McCoy \$200, the amount of the Tribunal fees she paid.

B. BACKGROUND

- [4] SCC 119 is a 31-unit townhouse community. The condominium corporation was registered in 1990. In 2020, following engineering assessments, SCC 119 decided to undertake a building envelope repair project which included modification of the front elevations of the units. In 2021, SCC 119 tendered the project and awarded the contract. To pay for the work, the corporation levied a special assessment of approximately \$3.86 million dollars.
- [5] On April 20, 2023, Ms. McCoy submitted a Request for Records to SCC 119. She requested 18 different sets of records, the majority of which relate to the building envelope project and/or to repairs of leaks in her unit. She requested that the records be delivered electronically, or, if they were not kept in electronic format, as paper copies.
- [6] On April 27, 2023, Robert Bosshard, a member of SCC 119's board of directors and the Respondent's representative in this matter, e-mailed Ms. McCoy and advised that he would be her principal "interface" with respect to any questions relating to the request. He wrote that he would make sure that the outcome was "less frustrating than your previous experiences." Ms. McCoy had previously submitted four requests for records to the corporation, including, in 2022, a request about which she filed an application with the Tribunal. On June 6, 2023, that application was dismissed by the Tribunal because Ms. McCoy had not met the prescribed timeframes for response to the corporation.
- [7] On May 19, 2023, condominium manager Shelby Wyville e-mailed the Board's Response to Request for Records form to Ms. McCoy. The response indicated

that the corporation would provide the requested records upon payment of the estimated fee of \$481.38. Electronic copies of records would be provided for those records the corporation maintains in electronic form. For the records maintained in paper form, the corporation required Ms. McCoy to examine them at the condominium management office. In her accompanying e-mail, Ms. Wyville noted that Ms. McCoy's affirmation that her Request for Records was solely related to her interests as an owner meant that she would not be permitted to "distribute, release, reproduce or publish" the records.

- [8] On May 22, 2023, Mr. Bosshard e-mailed Ms. McCoy, advised he was aware she had been sent the Board's Response to Request for Records, reminded her of the date payment would be due and enclosed a tracking sheet which he indicated would allow them to both track the records provided and address any questions that arose.
- [9] On June 13, 2023, Ms. McCoy e-mailed Mr. Bosshard and asked why the estimated fee had increased from the fee estimated for her 2022 Request and why she had to attend at the corporation's management office to examine the records when she had requested paper copies. Mr. Bosshard's June 14, 2023 response was that the fee had increased due to inflation and that she was required to attend because the corporation kept the records in paper form.
- [10] On July 10, 2023, Ms. McCoy e-mailed Mr. Bosshard and wrote that it appeared she would have to "go through the Tribunal process again" as she did not accept "the form of viewing records" but she was too busy to do so during the summer. On July 11th, condominium manager Brian Schryver e-mailed Ms. McCoy asking her to confirm she was abandoning her request. On July 12th she replied and advised that she had filed an application with the Tribunal.
- [11] During the earlier stages in this matter, the parties reached agreement for Ms. McCoy to examine the records at SCC 119's management office. On November 14, 2023, she paid the estimated fee in full. Arrangements were made for her, accompanied by her brother, to attend the office on November 23, 2023. Both parties provided evidence and witness statements about this examination. Ms. McCoy testified that not only was she was not able to view all of the records in the allocated time but that condominium management staff was uncooperative. No arrangements were made for further appointments.
- [12] Ms. McCoy provided detailed testimony about the balance of the mediation process, including her reasons for not accepting an offer made by the corporation on December 4, 2023. Mr. Bosshard also testified about that offer which was to provide the records in electronic form and to refund the fee Ms. McCoy had paid. I

note that Rule 5.1 of the Tribunal's Rules of Practice states that settlement offers made during mediation are not to be brought forward to Stage 3 – Tribunal Decision without the parties' agreement and the member's permission, which I was not asked for. Ms. McCoy's testimony is that she chose to move this matter forward to Stage 3 – Tribunal Decision because the corporation's offer was only to provide records to the date of her Request for Records and because the time the corporation indicated it needed to produce them was unacceptable.

[13] On January 30, 2024, while the parties were preparing their combined witness statements/submissions in this matter, Mr. Bosshard advised that the corporation had provided Ms. McCoy with electronic copies of the requested records "in accordance with a commitment made in December 2023." He also advised that the corporation would be refunding the fee Ms. McCoy had paid. Ms. McCoy confirmed she had received e-mails which attached over 2,000 pages of documents. I extended the deadline for submissions given the impact the provision of the records potentially had on the parties' positions. On February 12, 2024, Mr. Bosshard advised that the corporation had issued a cheque to Ms. McCoy refunding the fees she paid on November 14, 2023.

C. ISSUES & ANALYSIS

[14] The issues to be decided in this matter are:

1. Is the Applicant entitled to review the records she requested?
2. Is the Respondent keeping adequate records?
3. Did the Respondent refuse to provide records without reasonable excuse and, if it is found that it did, should the Tribunal order a penalty?
4. Were the fees charged by the Respondent reasonable?
5. Should the Tribunal order costs and/or compensation for damages in this matter?

Issue 1: Is the Applicant entitled to review the records she requested?

[15] Section 55 (1) of the *Condominium Act, 1998* (the "Act") states that a corporation is required to keep adequate records and sets out a list of those records it must keep. Section 55 (3) sets out the entitlement of an owner to examine or obtain copies of those records. Early in this proceeding, it became evident that there is no dispute between the parties about Ms. McCoy's entitlement to examine or receive copies of the records she requested; rather, the issue is about the completeness of the records SCC 119 has provided. Further, some of Ms.

McCoy's requests were broadly written which raised the question of what specific documents she is seeking and whether all of them are records which the Act requires SCC 119 to keep.

- [16] In *McKay v. Waterloo North Condominium Corp. No. 23*, 1992 CanLII 7501 (ON SC) ("McKay"), a case which addressed the entitlement of owners to access corporation records, Cavarzan J. set out the principle that the affairs of a condominium corporation are an "open book":

The Act embodies a legislative scheme of individual rights and mutual obligations whereby condominium units are separately owned and the common elements of the condominium complex are co-operatively owned, managed and financed. In the interest of administrative efficiency an elected board of directors is authorized to make decisions on behalf of the collectively organized as a condominium corporation, on condition that the affairs and dealings of the corporation and its board of directors are an open book to the members of the corporation, the unit owners.

However, the "open book" principle does not mean that an owner is entitled to receive copies of all documents in a corporation's possession; the Tribunal has, in past decisions, affirmed that not every document a corporation receives or produces must be kept as a record.

- [17] I have reviewed Ms. McCoy's Request for Records and find that with one exception, she is entitled to receive copies of the records she requested. That exception is the non-core Request No. 8 for "Information about who is ordering and paying for the materials used for the duration of the Building Envelope Project." A request for information is not a request for a specific record and the corporation is not required to respond to it; the Act provides owners with other opportunities, such as the corporation's Annual General Meeting, to ask for information.
- [18] In its May 19, 2023 Board Response to Request for Records, SCC 119 indicated that it was prepared to provide copies of and/or allow the examination of all the records Ms. McCoy requested although in some cases it refused a request because the requested records formed part of those which would be provided in response to another of the requests. SCC 119 did refuse Ms. McCoy's non-core Request No. 7, for directors' conflict-of-interest declarations, on the basis that none exist. And, it did not provide a response to non-core Request No. 6, for records of remuneration paid to directors. With respect to the conflict-of-interest declarations, Ms. McCoy suggested that the fact a director, who was selling his unit, was aware of the special assessment before it was announced to owners

may have exposed the corporation to potential legal action. This is not a question of conflict; rather it relates to the disclosure required in status certificates. With respect to director remuneration, Mr. Bosshard advised that no directors have received any remuneration and noted that this information is included in the audited financial statements of the corporation.

[19] Ms. McCoy disputes that the corporation has provided all of the records which she believes it either does or should possess which she is entitled to receive. She indicated that a number of records were “incomplete” although I note she made this submission with respect to the issue of the adequacy of the corporation’s records. Because her testimony did not always specify what records she was alleging were missing, I asked her what she believed was outstanding. She indicated that the following requests, which are set out using the numbering in the April 20, 2023 Request for Records, were incomplete. I have not included requests which she indicated were incomplete only because the dates of the records SCC 119 provided did not extend beyond April 20, 2023, as I had advised her that this hearing would only address records up to the date of her Request for Records.

Core Request 1: Minutes of board meetings held within the last 12 months.

[20] Ms. McCoy advised that minutes for the months of November and December, 2022 were not among the records SCC 119 e-mailed on January 30, 2024. She also noted that she did not receive copies of the Zoom recordings of the board meetings. On February 28, 2024, Mr. Bosshard forwarded a copy of the December minutes directly to her. However, due to the absence of the condominium manager, he was unable to confirm whether approved minutes for the November meeting exist. Therefore, I am ordering SCC 119 to provide Ms. McCoy a copy of the approved minutes for the November, 2022 meeting or a written confirmation that they do not exist. With respect to the recordings of the meetings, Ms. McCoy did not include a request for these in her Request for Records.

Non-Core Request 1: Minutes for all meetings held in reference to the building envelope project Dockside Village Collingwood ON SCC 99 and SCC 119 Siding Replacement and Exterior Upgrades project. (2020 to present)

[21] SCC 119 provided copies of minutes of board meetings at which the building envelope project was discussed. Ms. McCoy advised that she considered this response to be incomplete because there were significant gaps in the dates of the minutes provided and she believes the project would or should have been discussed during those gaps. She provided no evidence to indicate that the corporation did not provide all of the minutes responsive to her request. Ms. McCoy also noted that no minutes of meetings SCC 119 may have had with the

engineering or construction project managers were provided. Mr. Bosshard confirmed that the corporation has no minutes of these latter meetings and explained that the engineers and construction managers conducted weekly site walk-throughs but these were not minuted. Therefore, I find Ms. McCoy has received the records she requested.

Non-Core Request 2: Stipulated Price Contract Dockside Village Collingwood ON, SCC No. 99 and SCC No. 119 Siding Replacement and Exterior. (2020 to present)

Non-Core Request 3: Contracts with RJ Burnside. (2019 to present)

[22] On January 30, 2024, SCC 119 e-mailed Ms. McCoy copies of the initial contracts it signed with NuEra, (the stipulated price contract) and with engineers RJ Burnside. However, Ms. McCoy advised that she was not sent any approved change requests although she had been given copies of these to examine on November 23, 2023. When I asked Mr. Bosshard to confirm whether there were change requests approved before April 20, 2023, he responded that there were three with respect to the building envelope work and six with respect to other work such as the modification of the front elevation of the units. He forwarded copies of all of these change requests directly to Ms. McCoy on February 28, 2024.

[23] Ms. McCoy also noted that she received no appendices to the stipulated price contract although the contract contains blank pages labelled as Appendix A and B. Mr. Bosshard explained that these are pro-forma pages included in the contract and that there are no appendices. Therefore I find these are not missing and that, with the provision of the change requests, Requests 2 and 3 have been fulfilled.

Non-Core Request 4: Invoices paid to date for the building envelope siding replacement and exterior upgrades project. (2020 to present)

[24] Ms. McCoy testified that she received the requested invoices but that they were incomplete because some of the claims for payment by NuEra, the stipulated price contractor, do not include sufficient back-up information and at least one contains a claim for work for an unrelated entity. She set out a lengthy detailed table listing the contents of each record. That SCC 119 may have paid for work incorrectly billed to it is an issue for the corporation's auditor. Similarly, that it may have paid invoices which Ms. McCoy believes contain inadequate detail relates to the administrative controls and practices of the corporation. Ms. McCoy has received the records she requested.

Non-Core Request 5: All contracts with contractors and subcontractors whose work relates to the building envelope siding replacement and exterior upgrade project. (2018

to present)

[25] Ms. McCoy testified that she received no documents with respect to this request. She advised that some board meeting minutes refer to the board's approval of subcontractors but did not refer me to a specific meeting. She submitted that the names of subcontractors are required so that owners can assure themselves that the corporation is not paying for work that may not have been performed. She further indicated that she wished to review the warranties provided by the subcontractors.

[26] It may be that approval of subcontractors by SCC 119 is a term of the stipulated price contract but this does not mean that their contracts are records of the corporation. Mr. Bosshard confirmed that all subcontractors are employed by the project contractor. Section 55 (1) 8 of the Act requires a corporation to keep "a copy of all agreements entered into by or on behalf of the corporation." As a non-signatory to subcontractor contracts, SCC 119 is not required to keep copies of them. However, if the board minutes refer to reports from the contractor and/or engineering firm which the board had before when/if it approved the subcontractors, those reports are records which the corporation is required to keep and which Ms. McCoy is entitled to receive. I will order SCC 119 to provide these or to provide written confirmation that they do not exist.

[27] Ms. McCoy also testified that two contractors – BP Aluminum Railings and Premium Door Systems - performed building envelope project-related work outside of the stipulated price contract. If SCC 119 entered into contracts with these firms, s. 55 (1) 8 of the Act requires it to keep those as records and Ms. McCoy is entitled to receive copies of them. I will order SCC 119 to provide the contracts with these two companies or to provide written confirmation that they do not exist.

Non-Core Request 11: Engineering records, reports and drawings construction plans related to the building envelope siding replacement and upgrade exterior. (2018 to present)

[28] In the Board Response to Ms. McCoy's Request for Records, SCC 119 indicated that this request would be fulfilled by the provision of the stipulated price contract, which Ms. McCoy did receive in response to her Non-Core Request 2. When I asked her what records she believed were missing, she provided a screen shot of an engineering elevation dated some months after the date of the stipulated price contract which she had taken during a presentation to owners. Mr. Bosshard advised that this document was included in the change orders he sent to Ms. McCoy on February 28, 2024.

[29] Ms. McCoy explained that the design set out in the screen shot would not work with her unit because of its unique site conditions. It is unclear whether engineering drawings specific to Ms. McCoy's location exist or if they may be contained in the change orders she received. Section 13.1 (1) 10. of Ontario Regulation 48/01 ("O. Reg. 48/01") requires the corporation to keep "All drawings and plans that the corporation receives and that relate to physical features of the property ...". Therefore, I will order the corporation to provide Ms. McCoy with a copy of any engineering reports, drawings and/or construction plans that specifically refer to the unique site conditions at her unit or to provide a written confirmation that they do not exist.

Non-Core Request 12: Any and all engineering reports contractor reports and all invoices related to the leak in the basement of [Ms. McCoy's unit] (inside and exterior causes investigation). (June 2022 to present)

[30] Of particular concern to Ms. McCoy is the fact that she received only a September 27, 2023 engineering report relating to a leak in the basement of her unit. She testified that although SCC 119 had two contractors attend at her unit, Ms. Wycliffe advised her that the engineering report was the only record SCC 119 possessed.

[31] After she experienced some frustration with the way in which the leak was being addressed by SCC 119, Ms. McCoy retained counsel to assist with resolution of this issue. A November 8, 2022 letter from SCC 119's counsel to Ms. McCoy's counsel details the steps the corporation took to address the leak. That letter confirms that contractors PackLeader and Reliabuild were both called in and performed work, which included a water test, before SCC 119 referred the issue to the engineers. Ms. McCoy's request was for "all" reports, work orders and invoices related to the water leak. Therefore, I will order SCC 119 to provide copies of any contracts, work orders or invoices for the work performed by contractors PackLeader and Reliabuild that it possesses. While I note that the November 8, 2022 letter suggests that these firms may have been engaged by telephone, I would expect SCC 119, at minimum, to have invoices for the work they performed.

Non-Core Request 13: All communications with RJ Burnside, NuEra, Miscellaneous Contracts regarding the progression and issues of the Siding Replacement and Exterior Upgrade Project. (2021 to present)

[32] The Board Response to Request for Records indicates that this request was refused because the requested records were contained in the stipulated price contract. The implication of the refusal is that the board has no records of any

progress reports from the project engineers or contractors.

[33] Ms. McCoy's testimony with respect to this item was that she had not received any minutes of meetings between the board and the engineers and she cited the fact that weekly project walk-throughs take place as an example of these meetings. As noted above in para. 21, Mr. Bosshard advised that these walk-throughs are not minuted.

[34] Ms. McCoy also advised that she had not received any project deficiency reports but that a director had indicated at the corporation's recent Annual General Meeting that the corporation had a "running" list of deficiencies. Mr. Bosshard advised the deficiency list is a "work product" produced by and belonging to the engineers. If this is the case, then the document would not be a record of the corporation. However, even if it was created by the corporation, or copies of it are provided to the corporation, its description suggests that it is a working document used to manage the project and I find no requirement in the Act or O. Reg. 48/01 which would require the corporation to maintain this as a record. Similarly, s. 55 (1) of the Act does not require a corporation to keep its correspondence as records. However, s.13.1 (1) 9. of O. Reg. 48/01 does require a corporation to keep:

All reports and opinions of an architect, engineer, or other person whose profession lends credibility to the report or opinion, that the corporation receives and that relate to physical features of the property or of any real or personal property that the corporation owns or that is the subject of an agreement mentioned in section 113 or subsection 154 (5) of the Act entered into by or on behalf of the corporation.

At para. 17 in its decision in *Crabbe v. Toronto Standard Condominium Corporation No. 2150*, 2022 ONCAT 105 (CanLII), the Tribunal noted that in addition to standalone reports, e-mails or other correspondence that the corporation receives that contain reports or opinions must be kept as records. In this case, it is unclear what the corporation may possess. Therefore, I will order it to provide Ms. McCoy with copies of any project progress or issue assessment reports and any correspondence that contains such reports that it has received from the supervising engineers or a written statement confirming they do not exist.

Non-Core Request 14: Any and all contracts, work orders, contractor reports and all invoices related to the chimney work and leak at [Ms. McCoy's unit]. (2022 to present)

[35] Ms. McCoy testified that while she did receive a copy of an invoice for work done to address the chimney leak by a contractor in November, 2022, her chimney was

not actually repaired until work was performed by contractor Sunrise on or about January 6, 2023. She is requesting a copy of the report and/or invoice from Sunrise. I will order SCC 119 to provide her with these records and/or to confirm that they do not exist.

Non-Core Request 16: Invoices paid during the fiscal year ended Aug 31, 2022 for the following: Clubhouse Exterior; electrical repairs, Pool and Recreation Centre.

[36] Ms. McCoy testified that she did not receive the requested invoices and that the e-mail which accompanied the records sent to her on January 30, 2024 indicated that there were none; rather, apparently in reference to some past communication between the parties, it indicated that an expenditure had been allocated to the Clubhouse in error and had subsequently been corrected. Ms. McCoy did not dispute this. Rather, during cross-examination, she indicated she was seeking additional records including final financial statements for the 2022 fiscal year, a breakdown of electrical expenses “around the community” and a breakdown of all clubhouse and pool-related expenses. SCC 119 did not interpret Ms. McCoy’s request this broadly; I note that it is not entirely clear from the punctuation in the request that she was seeking a copy of invoices for all electrical repairs or all invoices expensed to the Pool and Recreation Centre. However, she is entitled to receive these records and I will order the corporation to provide them. She did not request the 2022 financial statements in her Request for Records. While the corporation may well be prepared to provide the statements to her, I will not order it to do so.

[37] I am ordering SCC 119 to either provide certain records to Ms. McCoy or, in some cases where it is unclear whether the corporation has the records, to provide her with a written statement confirming that they do not exist. It is unfortunate that Ms. McCoy did not take up Mr. Bosshard’s May 22, 2023 offer to work with her to track the records she had received and to address any questions that arose as this might have clarified the records she was seeking and resolved some of the issues which came before me.

[38] After final submissions and answers to my clarification questions had been received, Mr. Bosshard proposed that the hearing be adjourned to allow him to work with Ms. McCoy to review the records she received on January 30, 2024 and to address any outstanding questions she had and/or to clarify what further specific records she was requesting. He proposed that any issues the parties did not resolve would then be brought back to the Tribunal. Because Ms. McCoy did not agree with this proposal, I concluded the hearing. It may well be that Ms. McCoy will submit a further request for records dated after April 20, 2023. Should

she do so, I advise her to be very specific in her requests to avoid any confusion that may result from their interpretation.

Issue 2: Is the Respondent keeping adequate records in accordance with s. 55 (1) of the Act?

[39] Ms. McCoy alleges that SCC 119 is not keeping adequate records as required by s. 55 (1) of the Act. The word “adequate” is not defined in the Act. Some guidance is provided in *McKay*:

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

The Tribunal has also determined that accuracy of a record is a component of adequacy. At para. 15 of *Yeung v. Metropolitan Toronto Condominium Corporation No. 1136*, 2020 ONCAT 33, a case addressing the accuracy of the minutes of a board meeting, the Tribunal wrote:

Considering the scheme and provisions of the Act and the submissions of both parties in this case, I have no hesitation in affirming that accuracy is a component of adequacy in respect of condominium records. I also find that the use of the word “adequate” in the legislation suggests, in and of itself, tolerance for a degree of imperfection. The question is just how much inaccuracy may be tolerated before a record is rendered inadequate to, as Cavarzan J. stated, “permit [the condominium corporation] to fulfill its duties and obligations.”

[40] Ms. McCoy alleged that the minutes of the meetings of SCC 119’s board of directors are inadequate because there were gaps in the dates of the minutes she received which referred to the building envelope project. However, other than Ms. McCoy’s belief that further minutes should exist, there is no evidence before me to indicate that the board failed to record any decisions it may have made with respect to the project during those gaps. Ms. McCoy’s concern appears to be with the board’s overall management of this major project rather than with its record-keeping. She advised that the original project timeline has been exceeded and that additional engineering fees are being accrued. She made her concern clear in

her message responding to Mr. Bosshard's proposal to adjourn the hearing:

Furthermore, I would like to highlight the urgency of addressing the governance issues surrounding the Building Envelope project, which is nearing completion and has significant financial implications for the community.

[41] Ms. McCoy also submitted that there are omissions in the board meeting minutes she did receive. At para. 20 in its decision *Rahman v. Peel Standard Condominium Corporation No. 779*, 2021 ONCAT 32 (CanLII), the Tribunal wrote:

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.

Ms. McCoy highlighted that the board meeting minutes do not mention a work stoppage which occurred when an owner allegedly interfered with a contractor and she provided a July 14, 2022 e-mail from Ms. Wyville which was sent to a block of owners as evidence of the incident. That e-mail, sent a week after the incident, indicates that the board addressed the issue by asking owners to stop interfering with the contractors and by arranging for the work to re-commence. Ms. McCoy also raised that there are no minutes which refer to the leak in her basement although leaks in other units are referenced. The evidence is that two contractors and the project engineer were called in to address the issue and that the first contractor attended two days after Ms. McCoy reported the leak. While Ms. McCoy submitted that these items should have been documented in board meeting minutes, it appears that they were addressed by the condominium manager and the board when they occurred as part of their ongoing responsibility to manage the affairs of the corporation. Therefore, I do not find that the omission of these items renders the board minutes inadequate.

[42] Ms. McCoy also submitted that the fact the minutes of the June 4, 2023 board meeting contain an information item about a replacement for a misplaced owner's bank draft is evidence that the corporation is not keeping adequate records. However, the fact that a document may have been misplaced in the management office is not evidence that the corporation is failing to keep adequate financial records.

[43] Other arguments which Ms. McCoy made with respect to the adequacy of records are related to the corporation's management practices. As noted above in para. 24, she parsed each of the requests for payment the stipulated price contractor

submitted to the corporation and suggested that a number of them did not contain sufficient back-up information. She also requested and received copies of the invoices the corporation paid to its counsel from 2018 to the date of her Request for Records. She submitted that she did not find reference to approval of some of the expenditures in the minutes of board meetings and questioned that the corporation needed to retain counsel for some of the invoiced work. Section 55 (1) of the Act requires the corporation to keep its financial records and the fact Ms. McCoy received copies of the invoices she requested is evidence that it has done so. That she assesses the information submitted by vendors to be inadequate or questions the corporation's decision to make certain expenditures is not related to the corporation's obligation to keep adequate records. Rather, Ms. McCoy is questioning the corporation's management of its finances; this is a governance issue.

[44] Ms. McCoy is also concerned about the communication practices of the corporation. She submitted that the corporation's failure to promptly post the minutes of its board meetings on Condo Control as an example of a failure to keep adequate records. While posting approved minutes for owners' information may be a best practice, SCC 119 has no legal obligation to do so. I do acknowledge that, in an October 14, 2022 letter sent to Ms. McCoy in response to her 2022 Request for Records, SCC 119's counsel advised that no board meetings were held in the months of September, October and November, 2021. Ms. McCoy provided evidence that minutes of these meetings were subsequently posted to Condo Control. She suggested that these minutes were "possibly fabricated." I find it more likely that counsel was misinformed by the corporation. Further, I note these records are not among those requested in the Request for Records before me and therefore are not at issue in this matter.

[45] Ms. McCoy also stated that the board of directors was not being given what she described as "critical updates" about the status of this case and that updates were not included in its minutes. Her witness, director Giselle Briden, testified that while she was aware that this case had moved to Stage 3 – Tribunal Decision, she had not been kept informed as the case moved through previous stages. And, she was aware that arrangements were made for Ms. McCoy to examine the records on November 23, 2023 but unaware that the examination proved to be problematic. I note that Mr. Bosshard, in his e-mail sent to Ms. McCoy on April 27, 2023, advised that the board had given him full delegated authority to deal with her Request for Records. And, on cross-examination, Ms. Briden agreed that Mr. Bosshard had advised the board about the November 23, 2023 review. That an information item may not have been included in the board's minutes does not mean they are inadequate. Ms. McCoy's expressed concern about communication relates to

corporate governance.

[46] Ms. McCoy's specific submissions do not persuade me that the corporation is failing to keep adequate records. However, because I am ordering the corporation to provide certain records which were not among those provided and which it is unclear that the corporation possesses, I make no finding with respect to the adequacy of SCC 119's records.

[47] In her closing submission, Ms. McCoy requested the following:

In light of the challenges and discrepancies identified regarding record-keeping and governance practices within the condominium community, I am respectfully requesting the establishment of a dedicated team or focus group to comprehensively assess the entirety of records, systems of organization, and to facilitate a reset of the current state of affairs.

She requested that she, Ms. Briden, Mr. Bosshard and another director be members of this team. I have made no finding with respect to the adequacy of the corporation's records. And, while Ms. McCoy made it clear that she has concerns about the governance of the corporation, the jurisdiction of this Tribunal, which is set out in Ontario Regulation 179/17, does not extend to governance issues. Therefore, I am not making the requested order.

Issue 3: Did the Respondent refuse to provide records without reasonable excuse and, if it is found that it did, should the Tribunal order a penalty?

[48] Ms. McCoy is requesting the Tribunal order SCC 119 to pay the maximum penalty of \$5,000 for refusing to provide records without reasonable excuse. She alleges that the corporation set barriers in place designed to frustrate her access to the records she requested in her April 20, 2023 request. While she also referred to her previous requests for records and presented evidence related to those, I am only considering whether the April 20, 2023 request was unreasonably refused. Mr. Bosshard submitted that at no time did the corporation refuse to provide records.

[49] The Board Response to Records sent to Ms. McCoy indicates that the only records the corporation refused were ones that either did not exist (directors' declarations of conflict-of-interest) or ones which would be fulfilled by its response to other requests (requests for subcontractor contracts related to the building envelope project). However, the corporation's response indicated that it would provide access to the non-core records that it did not have in electronic form by allowing Ms. McCoy to examine the records at the condominium management office rather than by providing the paper copies as Ms. McCoy requested. And, it indicated that the electronic copies of board meetings held within the last 12

months would be provided through Condo Control rather than directly to her.

[50] Mr. Bosshard submitted that SCC 119's response was in accordance with the requirements of s. 13.3 (6) of O. Reg. 48/01 which states:

When the corporation receives a request for records in accordance with this section, the board shall determine whether the corporation will allow the requester to examine or obtain a copy of the record that the requester has requested and shall respond to the requester within 30 days in a form specified in the Table to section 16.1.

SCC 119 has misunderstood the regulatory requirement. It is the owner and not the corporation who has the choice whether to examine or to obtain copies of records. This is made clear in the sections of the regulation which follow 13.3 (6) and which address various scenarios. Section 13.3 (9) sets out factors that affect the fee payable for a request. Among those is "whether the request is to examine a copy of the record requested or to obtain a copy of it." Section 13.7 (2) states that if the requester has requested copies of records that the corporation does not keep in electronic form, that it shall deliver paper copies of the records:

If the request for records or the requester's response provides that the requester wishes to obtain a copy of a record that is not a core record, if subsection 13.3 (11) applies to the requester and the requester has complied with it and if the corporation does not keep the record in electronic form, the corporation shall deliver a copy of the record in paper form to the requester in the manner described in any of clauses 13.6 (5) (a) to (d) within 30 days of receiving the requester's response and payment of the fee payable for the request.

Thus, when Ms. McCoy questioned Mr. Bosshard about why she had to attend at the corporation to examine the records, his response that it was because the corporation maintained them in paper form was incorrect.

[51] In his closing submission, Mr. Bosshard submitted that the fee for paper copies would have exceeded the fee the corporation estimated for their examination. While this might well be true, the corporation was required to estimate the fee for the provision of the paper copies Ms. McCoy requested. Then, as a courtesy, SCC 119 could have advised her that the fee would be lower if she was prepared to examine the records and given her the option to decide how she wished to proceed.

[52] Condominium manager Shelby Wyville, in her May 19, 2023 e-mail which enclosed the Board Response to Request for Records, referred to the statement on the Request for Records form which, in accordance with s. 13.3 (1) (a) of O. Reg.

48/01, requires requesters to affirm that the request is solely related to their interests as an owner, having regard to the purposes of the Act. Ms. Wyville wrote:

For greater certainty, by providing the affirmations, you cannot distribute, release, reproduce or publish any of the records released (or to be released) in whole or part over any medium, including, but not limited to, on the Facebook page that you administer on your own or together with others.

Ms. McCoy submitted that this restriction is not contained in the Act and presents a barrier to her access to the records. Mr. Bosshard submitted that this statement was required due to Ms. McCoy's past actions using social media and that its wording was recommended by its legal counsel.

- [53] No evidence was provided to me with respect to the circumstances that led to SCC 119's inclusion of the statement restricting Ms. McCoy's use of the records. All owners would be entitled to receive the records Ms. McCoy is entitled to receive. In its decision in *Shelley Dubois v Algoma Condominium Corporation No. 17*, 2019 ONCAT 47 (CanLII), the Tribunal wrote, at para. 68:

As unit owners have a general right to communicate with one another in regard to matters and information of concern relating to their shared property and interests, I find that the Applicant is entitled to share with other unit owners the information she learns upon examination of the requested records.

However, Ms. McCoy was not required to sign the statement as a condition of receiving the records; it did not restrict her access to the records, rather it appears designed to restrict her use or to prevent her misuse of them.

- [54] Much of what Ms. McCoy presented as an effective refusal to provide records was related to her examination of records at the management office on November 23, 2023. The parties' evidence about this examination varies substantially.
- [55] Ms. McCoy testified that she was provided with only one set of records at a time and that it took almost the entire allocated time for examination of the first set, the contract for the building envelope project. Ms. Wyville testified that she gave Ms. McCoy the choice of which record to examine first. Mr. Bosshard and Ms. Wyville both testified this was done to ensure the records were kept in an orderly manner. Ms. McCoy's testimony was that she was advised this was done at the request of the board; Mr. Bosshard's testimony was that no board member gave Ms. Wyville these instructions. Further, Mr. Bosshard submitted that it was understood that more than one appointment would be required given the number of records which had been requested.

- [56] Ms. McCoy also testified that she was required to sign a restrictive agreement, which included a prohibition on photographing any documents, before the examination. Mr. Bosshard's testimony is that the corporation wanted to ensure confidentiality because it had concerns about what capacity Mr. McCoy's brother, who Ms. McCoy requested be allowed to accompany her because she was reluctant to attend alone, was acting in. Ms. McCoy testified that the session was rudely terminated at the end of the business day; Ms. Wyville testified that Ms. McCoy was politely told the time had expired.
- [57] The November 23, 2023 examination took place as the result of a negotiation between the parties while this matter was before the Tribunal. While Ms. McCoy believes that the corporation's restrictions were unreasonable and while the examination clearly did not meet her expectations, she had the option to move the matter to Stage 3 – Tribunal Decision rather than proceed with the meeting. I note it is unclear what role, if any, the Tribunal mediator had in facilitating the examination; the evidence submitted by the parties appears to indicate that they communicated directly with each other to make the arrangements.
- [58] Notwithstanding the corporation's misinterpretation of s. 13.3 (6) of O. Reg. 48/01 and the fact that the November 23, 2023 examination was not entirely successful, I find that these missteps do not amount to a refusal to provide records. The Board Response to Request for Records indicates that the corporation did not refuse to provide access to the records. And, in fact, on January 30, 2024, SCC 119 provided the records and refunded the fee which Ms. McCoy had paid. While I have found that certain specific records may in fact be outstanding and am ordering the corporation to either provide them or confirm that they do not exist, I find that their omission is more likely due to oversight and/or assessment of which records were responsive to a broadly worded request than to any intent to withhold information.
- [59] Section 55 (8) of the Act provides for the payment of a penalty if a corporation refuses to provide copies of records without reasonable excuse. Because I have found that SCC 119 did not refuse to provide records, there is no basis on which to assess a penalty in this matter.

Issue 4: Were the fees charged by the Respondent reasonable?

- [60] Ms. McCoy submitted that the \$481.38 fee (including HST) estimated by the Respondent in its May 19, 2023 response to her Request for records was unreasonable. Mr. Bosshard submitted that the estimated fee was calculated in accordance with the requirements set out in s. 13.3 (8) of O. Reg. 48/01.

- [61] I have already addressed the fact that SCC 119 erred by requiring Ms. McCoy to attend to examine records which it does not keep electronically when her request was for paper copies if electronic copies were not available. While this error may indeed have resulted in a lower fee, as Mr. Bosshard submitted, I find there are other questions about the way in which the fee was estimated.
- [62] The Board Response to Request for Records indicates that SCC 119 estimated the time required for examination of the records for each set of records and calculated the fee for their provision using a labour rate of \$33.00 per hour. Mr. Bosshard testified that to determine the hourly rate, the corporation relied on the Tribunal's decision in *Shaheed Mohamed v. York Condominium Corporation No. 414*, 2018 ONCAT 3 (CanLII), a decision in which the Tribunal calculated a labour rate because it had no credible evidence before it of the actual contractual labour rate of the condominium management firm.
- [63] Mr. Bosshard testified that, as in *Mohamed*, the corporation "set their rate per hour based on an amount that is equal to approximately twice the current minimum wage, plus H.S.T." Based on the minimum wage of \$15.50 in place when SCC 119 prepared its Board Response to Request for Records, the result would have been \$31.00 plus HST. However, because SCC 119 charged HST on top of the rate of \$33.00, the effective rate was \$37.25. While the overall difference is not significant, it appears that the corporation misunderstood how the Tribunal arrived at the rate in *Mohamed*.
- [64] More significantly, the hours of work SCC 119 estimated for "labour during the examination" appears to be high in the case of some of the requested records. For example, the Board Response to Records estimates that three hours time will be required "during the examination" of the stipulated price contract. While some portion of the time is justified to produce the record for review, SCC 119's estimates suggest the condominium manager will supervise the review. I find it highly unlikely that they would perform no other work on behalf of the corporation during this time.
- [65] There are also errors and anomalies in the Board's Response to Request for Records. For example, no fee is proposed for the production of records responding to Non-Core Request 1 for "minutes of all meetings held in reference to the building envelope project." Ms. McCoy requested records with a date range of "2020 to present" but the Response form incorrectly states these are core records. I recognize that this error is in the Applicant's favour. Other noted anomalies may not be. A total fee of \$63.00 is estimated for Non-Core Request 4, copies of the invoices paid with respect to the building envelope project. The

estimate includes one hour's labour to deliver the records and \$30.00 for copying 150 pages. It is not evident why the corporation would need to copy records it indicates it both keeps and will deliver in electronic format. While records that require redaction may need to be copied, the estimated fee for the legal bills which Ms. McCoy requested, which the corporation keeps in paper form and which are far more likely to require review for potential redaction, includes no estimated copying charges.

[66] I recognize the fee contained in a Board Response to Request for Records is only an estimate. In this case, the fact that the fee was for examination rather than delivery of records, the high number of hours estimated for review "during the examination" combined with the errors and anomalies in the Board Response to Request for Records persuade me that the estimated fee was not reasonable. However, notwithstanding that SCC 119 was entitled to charge a fee for the records, Ms. McCoy confirmed receipt of reimbursement of the \$481.38 in fees which she paid. Therefore I make no order with respect to this issue.

Issue 5: Should the Tribunal order costs and/or compensation for damages in this matter?

[67] Ms. McCoy requests costs of \$6,344.27 comprised of the \$200 she paid as Tribunal fees and \$6,144.27 in legal fees. SCC 119 requested no costs.

[68] The cost-related rules of the Tribunal's Rules of Practice relevant to this case are:

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

48.2 The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[69] Ms. McCoy was partially successful in this matter. While I have found that the corporation did not refuse to provide records, I am ordering the provision of some additional records which the corporation may possess. Further, I have found that the fee charged for records was not reasonable and, in fact, that the corporation erred by requiring her to examine those records it did not keep in electronic format. Therefore, I am ordering SCC 119 to reimburse the \$200 she paid in Tribunal fees.

[70] Ms. McCoy is not entitled to the legal fees she claimed. She was not represented in this matter. Rather, the invoice she provided to substantiate her claim is dated December 22, 2022 and appears to relate to her 2022 Request for Records, a case which the Tribunal dismissed.

[71] In his closing submission, Mr. Bosshard noted that there was “a significant amount of distrust and frustration on both sides in this case.” As I have set out in the “Background” of this decision, shortly after the Board Response to Records was sent to Ms. McCoy, Mr. Bosshard offered to work with her to track the records she received and answer any questions. Had Ms. McCoy agreed, it is conceivable that the issues in this matter with respect to incomplete records would not have arisen. It would be to everyone’s benefit if the parties’ apparent willingness to try to work together were to continue should Ms. McCoy file further requests for records.

D. ORDER

[72] The Tribunal Orders that:

1. Under s. 1.44 (1) 1 of the Act, within 30 days of the date of this decision, SCC 119, at no cost to Margo McCoy, shall provide her with paper copies of the following records or with a written confirmation that the records either do not exist or were contained among the records provided on January 30, 2024:
 - a. the approved minutes of any meeting SCC 119’s board of directors held in November, 2023;
 - b. any engineering reports the board of directors had before it at board meetings held between January 1, 2018 and April 20, 2023 at which it approved subcontractors for the building envelope and exterior upgrade projects;
 - c. contracts related to the building envelope and exterior upgrade projects which SCC 119 signed with BP Aluminum Railings and/or Premium Door Systems Products in the period January 1, 2018 and April 20, 2023;
 - d. engineering reports, drawings and/or construction plans that specifically refer to the unique site conditions at Ms. McCoy’s unit dated between January 1, 2018 to April 20, 2023;
 - e. engineering reports, contractor reports and invoices related to the leak in the basement of Ms. McCoy’s basement which SCC 119 received

from contractors PackLeader and Reliabuild in the period June 1, 2022 to April 20, 2023;

- f. progress or issue assessment reports related to the building envelope and exterior upgrade projects and/or any correspondence that contains such reports that SCC 119 received from the projects' supervising engineers in the period January 1, 2021 to April 20, 2023;
 - g. contracts, reports and/or invoices signed with or received from contractor Sunrise related to work on the chimney of Ms. McCoy's unit in the period January 1, 2022 to April 20, 2023;
 - h. invoices expensed to electrical repairs and invoices expensed to the Pool and Recreation Centre for the fiscal year ended August 31, 2022.
2. Under s. 1.44 (1) 4 of the Act, within 30 days of the date of this decision, SCC 119 shall pay \$200 to Margo McCoy.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: March 15, 2024