

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 7, 2024

CASE: 2023-00573R

Citation: Richards v. Peel Condominium Corporation No. 27, 2024 ONCAT 62

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

Member: Nicole Aylwin Member

The Applicant,
Anne Richards
Self-Represented

The Respondent,
Peel Condominium Corporation No. 27
Represented by Jessica Hoffman, Counsel

Hearing: Written Online Hearing – December 12, 2023 to April 9, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Anne Richards, is a unit owner in the Respondent, Peel Condominium Corporation No. 27 (“PCC 27”). On June 3, 2023, Ms. Richards submitted a request for records to PCC 27. According to Ms. Richards, PCC 27 did not respond to her within the 30 days required by the *Condominium Act, 1998* (“the Act”), and did not provide her with the records she requested. She submits that this is due, in part, to the fact that PCC 27 is not maintaining adequate records as required by the Act and thus cannot provide the records requested. Ms. Richards has asked the Tribunal to order a penalty in the amount of \$5000 against PCC 27 for the refusal to provide records without a reasonable excuse and to reimburse her for her Tribunal fees in the amount of \$200.
- [2] The parties agree that PCC 27 did not provide the records requested by Ms. Richards when requested. However, PCC 27 submits that they have a reasonable excuse for not providing the records. First, they submit that PCC 27’s property manager inadvertently responded to the wrong request and, second, that Ms. Richards request was confusing and unclear, making it difficult to determine what records Ms. Richards wanted. In any event, they assert that all the existing requested records have now either been provided or offered to Ms. Richards.
- [3] For the reasons set out below, I conclude that Ms. Richards has not yet received

all the records requested and I make various orders regarding the production of the outstanding records. I further find that PCC 27 has refused to provide Ms. Richards with the records she requested without a reasonable excuse. However, I find no evidence to suggest that PCC 27 is not keeping adequate records. I order that PCC reimburse Ms. Richards in the amount of \$200 for her Tribunal filing fees and pay a penalty of \$450.

B. BACKGROUND & PRELIMINARY MATTERS

[4] At the outset of this hearing, the issues in this case were confirmed by the parties as follows:

1. Has Ms. Richards received the records to which she is entitled?
2. Did PCC 27 fail to use the mandatory board response form?
3. Is PCC 27 maintaining adequate records as required by the *Condominium Act, 1998*?
4. Should a penalty be ordered against PCC 27 for refusing to provide the records without a reasonable excuse?
5. Should costs be awarded?

[5] However, while the parties agreed on the issues, it was not clear from Ms. Richards opening statements what records she was seeking; she indicated that the records in dispute set out by the Mediator in the Stage 2 – Summary and Order, were not correct. That order listed the records as they appeared on Ms. Richards request form of June 3, 2023.

[6] In response, I convened a case conference with the parties to clarify the records that were at issue. After significant discussion, Ms. Richards confirmed the records she was seeking. These records are as follows and it is these records that are addressed in this decision:

1. Board meeting minutes for the period of January 2021 - December 2021 and January 2022 - December 2022.
2. Registrations of the extended board members' driveways with the City of Brampton and the removal of the fire route beside unit 353 for the period of 2018 - present.
3. The most recent auditor's report.
4. The current plan for the future funding of the reserve fund.
5. Records related to the pool expenses of \$6000 reported at the 2022 AGM, specifically the contracts for the pool for 2020, 2021, 2022 and 2023.

6. Financial invoices and cheques for the period of 2020 - 2023 (to be reviewed in person).
- [7] Finally, I note that this is the third application brought by Ms. Richards against PCC 27 and I accept that she is frustrated and mistrustful of PCC 27. However, much of this mistrust and animosity appears to be rooted in issues that are outside of the scope of this Tribunal to address but were exacerbated by issues related to her request for records. Ms. Richards' evidence and submissions make clear that she takes issue with the governance of PCC 27 generally, and more specifically, with certain board decisions she believes were made. However, as explained at several points throughout the hearing, issues of governance are not within the Tribunal's jurisdiction, and while I acknowledge Ms. Richards is frustrated, the Tribunal is not the place where the underlying conflict between the parties can be resolved. In deciding this case, I have reviewed all the evidence and submissions before me, however, I refer only to the evidence and arguments that relate directly to the issues I must decide.

C. ISSUES & ANALYSIS

Has the Applicant received the records to which she is entitled?

Board Meeting Minutes for the period of: January 2021 - December 2021 and January 2022 - December 2022.

- [8] There is no dispute over entitlement to these records. What is in dispute is whether these minutes have been provided and whether PCC 27 can charge a fee for producing any of these minutes.
- [9] During the hearing, PCC 27 uploaded the minutes of September 13, 2022, October 5, 2022, and December 8, 2022 to the Tribunal's online platform. PCC 27 claims these are all the minutes for the 12 months preceding Ms. Richards request, i.e. the minutes which are considered 'core-records' under s. 1 (1) of Ontario Regulation 48/01 ("O.Reg 48/01")
- [10] According to PCC 27, the remaining minutes of January 2021- December 2021 and January 2022 - June 3, 2022, have not been provided to Ms. Richards because they are considered non-core records, which means that PCC 27 is entitled to charge a fee to provide these records as per s.13. 3 (8) of O. Reg 48/01, which outlines the fees payable for a request. PCC argues that it does not need to provide these records until the fee is paid.
- [11] Based on the evidence before me, I find that Ms. Richards is now in possession of the minutes for the period of June 3, 2022 - June 3, 2023, thus, I will not order these minutes be provided.
- [12] Regarding the minutes of January 2021 - December 2021 and January 2022 - June 3, 2022, while PCC 27 is entitled to charge a fee for the production of non-core records, for the following reasons I will be ordering PCC 27 to provide these

minutes to Ms. Richards for no-fee.

- [13] As noted, at the outset of this hearing the records at issue were clarified. As part of its submissions package, PCC 27 uploaded a Response to Records Request form that “responded” to this clarified request. In that response form it set out the fees it would charge to provide the various records. This response form did not cite any fee to produce the non-core minutes. Additionally, while PCC 27 did, in its opening statement, outline the fees it wished to charge for some of the other records requested, i.e. records relating the pool and financial invoices, it did not set out any fee to produce non-core minutes.
- [14] Late in the hearing, PCC 27 made a request to submit a new document. This document was described as a ‘corrected’ Board’s Response to Request for Records form. PCC 27 indicated it had made a mistake on the one previously submitted. The mistake was that they had failed to indicate the amount they now wanted charge Ms. Richards to provide the non-core minutes. I denied this request for reasons of fairness, as Ms. Richards would not have had a fair opportunity to respond to what was essentially a new piece of evidence, and the fact that the document was of limited value at this stage in the hearing (given the initial request was made in June 2023). A new Board’s Response to Request for Records form cannot be provided at the hearing to support the corporation's submissions but is a form that is to be used to respond to a request for records at the time of the request.
- [15] To determine, what fees if any are appropriate in this case, I have relied on the actual submissions made by PCC 27 regarding the issue of fees, submissions which it had plenty of opportunity to provide. Given the very late request to charge a fee for these records, I find that it is neither fair or appropriate to order that a fee be paid. I will order them to be produced at no charge to Ms. Richards.

Registrations of the extended board members’ driveways with the City of Brampton and the removal of the fire route beside unit 353, 2018 - present.

- [16] Ms. Richards claims that PCC 27’s board has removed the condominium’s fire route and extended some of the board members driveways in ways that are not consistent with its governing documents. As was explained to Ms. Richards at several points throughout the hearing, claims regarding how the corporation is being governed and the decisions (if any) made by the board about driveways or fire routes are outside the scope of this hearing and the jurisdiction of the Tribunal. I make no determination on the validity of these claims.
- [17] The only question properly in front of me is whether Mr. Richards is entitled to examine or obtain a copy of the records requested.
- [18] PCC 27 claims they cannot provide these records to Ms. Richards as they do not exist. Ms. Richards believes that they do or ought to exist.
- [19] To support her claim that the records exist, Ms. Richards provided pictures of

driveways and the condominium's fire route. However, these pictures are of little probative value – they do not provide evidence that PCC 27 should or does have records in the form of registrations for extended driveways (filed at the City of Brampton), or records related to the removal of the fire route.

[20] Additionally, Ms. Richards argued that because the board member testifying on PCC 27's behalf incorrectly testified that his year of appointment to the board was 2019 instead of 2018 (a fact that was clarified on cross-examination) he is not credible and thus must be 'lying' about the records the condominium holds. A credible witness may still make an honest mistake, and in this case this mistake was about a non-determinative fact. I find the witness was credible and Ms. Richards general assertions that the board member was lying is not evidence that the record she seeks should exist.

[21] Ms. Richards offered no other evidence that these records should or do exist, other than her own assertions.

[22] As there is no evidence before me that allows me to conclude that PCC 27 has or ought to have registrations (filed with the City of Brampton) regarding extension to board members driveways or registrations regarding a change to the fire route, I find Ms. Richards is not entitled to these records as they do not exist. I will not order that they be provided.

Most recent auditor's report and the current plan for the future funding of the reserve fund.

[23] In her June 3, 2023, request for records, Ms. Richards requested the most recent auditor's report and the plan for the future funding of the reserve fund. While, not provided in response to her initial request, Ms. Richards now has these records. She testified that she received them when PCC 27 sent out the documents for the AGM in December of 2023. As Ms. Richards has this document, I will not order it to be provided.

Records related to the pool expenses of \$6000 reported at the 2022 AGM, specifically the contracts for the pool for 2020, 2021, 2022 and 2023.

[24] To date, Ms. Richards has not received these records. Ms. Richards believes these records do not exist, which is why they have not been provided. However, PCC 27 submits they are willing to provide the records to Ms. Richards for a total cost of \$15, since they estimate it will take 30 minutes of labour to produce the records at a cost of \$30/hour. Based on the evidence before me (including Ms. Richards claim that "dollars have been spent" on the pool even while closed), there are likely records related to pool expenses that do exist, and the fee proposed by PCC 27 to produce those records is reasonable and in accordance with the Act. Thus, I will order that PCC 27 provide Mr. Richards with these records, after she pays the \$15 fee. If Ms. Richards chooses not to pay the fee, PCC 27 does not need to provide the records.

Financial invoices and cheques 2020 -2023

[25] PCC 27 agrees that Ms. Richards is entitled to examine a copy of the financial invoices and cheques for the period of 2020-2023 and they agree she may examine the records in person, as she requested. Again, however, they submit they are entitled to charge a fee to prepare these records for examination. It estimates a total cost of \$300 to produce and prepare the records for examination. This fee is based on an estimated 10 hours of labor to locate, review, assemble and organize and provide time for review (8 hours for preparation of the records; 2 hours for review). Given the period for which records requested (three years' worth) and the likely number of invoices and cheques generated over such a long period of time, I find PCC 27's estimate reasonable and in line with the Act.

Is PCC 27 maintaining adequate records as required by the Condominium Act, 1998?

[26] While Ms. Richards made several general claims regarding what she believes is PCC 27's failure to maintain adequate records, her submissions on adequacy largely focused on records related to board member driveways and the fire route, and her belief that the reason PCC 27 refused to provide these records is because they do not exist. She asserts that the absence of such records amounts to inadequate record keeping. Having already determined that there is no evidence that the records Ms. Richard seeks do or ought to exist, there is no basis for me to conclude that because PCC 27 does not have these records, they are failing to keep adequate records as per s. 55(1) of the Act.

[27] Ms. Richards also claims that PCC 27 has failed to document decisions they made regarding the driveways and fire route in the minutes. However, part of her request is for the very minutes she alleges are incorrect and which, as noted above, she has not yet received in full. She takes the position that the board has made incorrect decisions and refused to document them, so the minutes are likely to be inadequate. Ms. Richards expects to find fault with the minutes based on a theory she holds regarding the actions of the board. However, the jurisdiction of the Tribunal with respect to s. 55 (1) of the Act does not extend to determining the correctness of a corporation's actions or decisions, and Ms. Richards is effectively asking the Tribunal to make a finding regarding adequacy before seeing the minutes. Thus, I cannot make a finding with respect to the adequacy of PCC 27's minutes.

Should a penalty be ordered against PCC 27 for refusing to provide the records without a reasonable excuse? Did the Respondent fail to use the mandatory board response form?

[28] Ms. Richards has asked the Tribunal to award her a penalty of \$5000 because PCC 27 refused to provide the records she requested without a reasonable excuse and failed to respond on the mandated form.

- [29] Ms. Richards notes that the Act establishes a process and a timetable for how requests for records are to be dealt with by the condominium corporation. Specifically, s. 13.3(6) of O.Reg 48/01 states that upon receiving a request to examine records, the board of the corporation shall determine if the corporation will allow the requester to examine or obtain copies of the records requested and respond to the request within 30 days on the mandated form.
- [30] In this case, both parties agree that this did not happen. PCC 27 did not properly respond to Ms. Richards June 3, 2023, request for records, nor did they provide Ms. Richards with the records requested within the timeframe specified by the regulations.
- [31] Section 1.44 (1) 6 of the Act sets out the reasons for which a penalty can be ordered. It states that the Tribunal may order a penalty to be paid if it finds that the corporation has, without reasonable excuse, refused to permit an owner to examine or obtain records to which they are entitled.
- [32] So, while PCC 27 did not use the required form, this is not a basis on which to award a penalty. However, if PCC 27 has refused to provide Ms. Richards with records to which she is entitled, without a reasonable excuse, a penalty can be awarded.
- [33] PCC 27 argues it never refused to provide Ms. Richards the records she requested. Rather, they submit that its condominium manager did respond to Ms. Richards request on July 24, 2023, however, she mistakenly sent a response to a previous records request made by Ms. Richards (as Ms. Richards had made several requests). PCC 27 notes that upon learning of its mistake and getting clarification of what records Ms. Richards was seeking, it offered to provide all the records that existed to which Ms. Richards was entitled. They further submit that Ms. Richards' request was not clear, thus delaying their response.
- [34] While I accept that PCC 27's condominium manager made a genuine mistake in replying to Ms. Richards' June 3, 2023 request for records, in this case such a mistake does amount to a refusal.
- [35] Although, PCC 27 referred me facts to *Missal v. York Condominium Corporation No. 504*, 2022 ONCAT 2, wherein the Tribunal found that "inadvertence" did not amount to an effective refusal to provide records, I cannot draw the same conclusion in this case. In *Missal*, inadvertence was accepted as a reasonable excuse for failing to provide a single record (among a request for a significant number of records) and the mistake was rectified quite quickly. In this case, the condominium manager failed to respond to the entire request, and beyond indicating that this mistake was made because Mr. Richards had made a number of previous requests, little evidence has been provided which would allow me to conclude that there was a valid reason for the error. In fact, one might assume that given the history of records disputes between the parties (at least three of which have ended up before this Tribunal), careful attention to the administrative

handling of Ms. Richards' requests would have been paramount. Additionally, even the response to the wrong request was late. The request was made on June 3, 2023 and a response was not sent until July 24, 2023.

- [36] The Tribunal has consistently found that administrative error can result in the finding of a refusal without a reasonable excuse, even if there is no 'intent' to refuse. And in this case, I find that the failure to respond to Ms. Richards request accurately and with the records she requested on June 3, 2023, does amount to refusal without a reasonable excuse.
- [37] Regarding PCC 27's claim that when it did realize its mistake, its response was delayed by the fact that the records requested by Ms. Richards was unclear, I find this argument only partially persuasive. While some of the requests by Ms. Richards required a case-conference to clarify, others are quite straightforward, i.e. request for the most recent auditors' report and the request for future reserve fund. So, while I find PCC 27 was likely legitimately confused by some of the requests, others should have provided with no pause or delay. Thus, I cannot conclude that Ms. Richards request, overall, was so unclear as to provide a reasonable excuse for refusal.
- [38] Having found there was no reasonable excuse for PCC 27's refusal of the records, the question becomes should a penalty be awarded and, if so, in what amount?
- [39] The imposition of a penalty is discretionary. I am not persuaded that a large penalty is warranted here. While the refusal of records cannot be condoned, the evidence and submissions in this case make it abundantly clear the dispute around this records request has taken place in the context of what appears to be an escalating conflict between the parties that is rooted in issues that have little to do with the refusal to provide a record, but rather issues that are not within the jurisdiction of the Tribunal to address. This context has clearly hindered the possibility of fruitful communication between the parties and led to, at times, an overly adversarial approach. A large penalty is likely to exacerbate rather than improve this situation. Additionally, while PCC 27s mistakes cannot be excused, in this case its conduct was not so egregious as to warrant a significant penalty. PCC 27's conduct must be balanced against the larger goals of the Tribunal to resolve disputes in a way that is fair, efficient and promotes healthy condominium communities. Thus, I find a penalty of \$450 appropriate in this case.

Should costs be awarded?

- [40] The Tribunal's authority to make cost-related orders is set out in s. 1.44 (1) 4 of the Act. Section 1.44 (2) of the Act further states that an order for costs "shall be determined in accordance with the rules of the Tribunal."
- [41] The cost 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.

- [42] In her submissions, Ms. Richards requested that PCC 27 reimburse her for her Tribunal filing fees in the amount of \$200 related to this application.
- [43] PCC 27 asserts that Ms. Richards should not be awarded costs as she filed this application for an improper purpose and that Ms. Richards engaged in behaviour during the hearing that unnecessarily complicated and lengthened the proceeding, behavior such as failing to follow instructions and bringing unnecessary motions. While Ms. Richards did require some direction and reminders regarding conduct, I do not find that her behaviour, overall, added such time and expense to the hearing as to disentitle her from her Tribunal filing fees.
- [44] I also do not find that Ms. Richards filed this application for an improper purpose. I have already noted, the evidence and submissions in this case make it abundantly clear the dispute around this records request has been exacerbated by a conflict that has little to do with the refusal to provide records; however, the fact remains that the catalyst for this application was PCC 27's failure to provide a timely and appropriate response to Ms. Richards' request and Ms. Richards was within her rights to file an application when she did not receive the records she requested.
- [45] Having found no evidence that there was no improper purpose or unreasonable behavior that may diminish a cost award, I find Ms. Richards is entitled to costs of \$200 for her Tribunal filing fees.

D. ORDER

- [46] The Tribunal Orders that:
1. Within 30 days of this order, PCC 27 will provide Ms. Richards with the board meeting minutes of January 2021- December 2021 and January 2022 – June 3, 2022, at no cost.
 2. PCC 27 may charge Mr. Richards \$15 dollars to provide her with the pool contracts for 2020, 2021, 2022 and 2023. PCC 27 shall provide Ms. Richards with the pool contracts within 30 days of receiving her payment. If Ms. Richards does not pay the fee, PCC 27 does not have to provide her with the records.

3. PCC 27 may charge Mr. Richards \$300 to prepare financial invoices and cheques for the period of 2020 - 2023 for examination and in person review. PCC 27 should make these records available for examination within 30 days of receiving payment from Ms. Richards. If Ms. Richards does not pay the fee, PCC 27 does not need to provide the records for examination.
4. Within 30 days of this order, PCC 27 will pay Ms. Richards a penalty of \$450.
5. Within 30 days of this order, PCC 27 will pay Ms. Richards \$200 as reimbursement of the Tribunal fees.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: May 7, 2024