

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 23, 2024

CASE: 2024-00196R

Citation: Taylor v. London Condominium Corporation No. 51, 2024 ONCAT 69

Order under Rule 4 of the Condominium Authority Tribunal's Rules of Practice.

Member: Ian Darling, Chair

The Applicant,

Jack Taylor

Self-Represented

The Respondent,

London Condominium Corporation No. 51

Represented by Megan Alexander, Counsel

Submission Dates: May 3, 2024 to May 10, 2024

MOTION ORDER

- [1] The Applicant has an active records case in Stage 1 – Negotiation. The issue in dispute appears related to getting access to records related to repairs. Once the case proceeded to Stage 1 – Negotiation, the Applicant contacted the Tribunal and asked to submit a motion to remove the Respondent's counsel. This motion order explains why the Tribunal is dismissing the motion.
- [2] Upon receipt of the initial request to remove counsel, the CAT advised the Applicant of a recent CAT case that dealt with the same issue. The CAT invited the Applicant to make submissions, and to consider the relevance of those cases to this request. The Applicant advised that he wanted to proceed with the request to remove Ms. Alexander as the Respondent's lawyer.
- [3] The CAT has considered this issue previously¹, and adopted the standard in the seminal decision on removing a lawyer². The decision establishes the factors to consider. These are:

¹ *Rahman v. Peel Standard Condominium Corporation No. 779*, 2023 ONCAT 9 & *Rahman v. Peel Condominium Corporation No. 779*, 2023 ONCAT 10

² *MacDonald Estate v Martin*, 1990 CanLII 32 (SCC)

1. Whether a fair-minded, reasonably informed member of the public would conclude that the proper administration of justice requires the removal of the lawyer;
2. The right of a party to choose their own counsel, which they should not be deprived of without good cause; and
3. The maintenance of high standards of the legal profession and the integrity of our system of justice.

[4] The Applicant provided the following justification:

- “A lawyer may be disqualified if they or someone from their firm is a witness in the proceedings”. In this case Ms. Gurr corporate lawyer for LCC 51 and lawyer for Cohen Highley will be called as a witness by the Applicant in these proceedings.
- “Disqualified if they are in conflict of interest, or if there is the appearance of a conflict of interest. “ Their clearly is an appearance of conflict of interest as Ms. Alexander and Ms. Gurr work for same law firm.
- I the applicant understand Respondent has right to legal counsel. I do not agree that counsel is from same law firm – Cohen Highley as Ms. Gurr – corporate lawyer for LCC 51 who has had extensive contact with Respondent in regard to these issues of release of records and seeks and follows Ms. Gurr’s legal advise.
- If Respondent wishes to seek legal counsel it must be from someone who has no association with Ms. Gurr or law firm of Cohen Highley in order to have a fair and unbiased hearing.

[5] The Tribunal did not seek submissions from the Respondent because the Applicant’s motion failed to establish the basis for removal.

[6] While the Applicant suggests that he will propose someone from the same law firm as a witness, it is premature to make that determination. The Case is currently in Stage 1 – Negotiation. Approximately two-thirds of CAT cases are resolved in Negotiation or Mediation stages where no witnesses are involved. The parties can resolve the case without requiring Adjudication.

[7] If the case were to proceed to the Adjudication stage, the Applicant can propose witnesses. In their motion, the Applicant did not provide any information to substantiate how Ms. Gurr could provide any evidence that would be relevant to the issue before the Tribunal. This is a records case, related to the right of an owner to access records. It is not clear how a colleague of Counsel would have

any relevant evidence related to the issues in dispute. If the case proceeds to Stage 3 – Adjudication, evidence must be both material and relevant. The Member conducting the case has the authority to determine if the proposed witness evidence is material to the case, and the form of testimony. It would be premature to make a ruling on witnesses before the parties have a chance to resolve the case through Negotiation or Mediation.

- [8] While the Applicant has asserted that there is a conflict of interest, he has provided no evidence of such a conflict – beyond re-stating that counsel is involved in the same firm. The mere assertion of a conflict does not create one.
- [9] I do not find that a reasonably fair-minded person would disqualify Ms. Alexander from acting as counsel for the Respondent simply for being associated with another lawyer or firm that has provided legal services for the Respondent in the past.
- [10] I do not find that Ms. Alexander's continued participation in this case would impugn the maintenance of high standards of the legal profession and the integrity of our system of justice.
- [11] I do not find any compelling reason to deny the Respondent their right to choose counsel.

ORDER

- [12] The motion is dismissed.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: May 23, 2024