

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** June 10, 2024

**CASE:** 2023-00572N

**Citation:** Peel Condominium Corporation No. 415 v. Vokrri et al., 2024 ONCAT 78

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

**Member:** Nicole Aylwin, Member

### **The Applicant,**

Peel Condominium Corporation No. 415

Represented by Jessica Hoffman, Counsel

### **The Respondents,**

Suzana Vokrri

Represented by Rachelle Samsoundar, Counsel

Elton Vokrri

Represented by Rachelle Samsoundar, Counsel

**Hearing:** Written Online Hearing – January 1, 2024 to June 3, 2024

## **REASONS FOR DECISION**

### **A. INTRODUCTION**

- [1] The Applicant, Peel Condominium Corporation No. 415 (“PCC 415”), has provisions in its declaration and rules that prohibit dogs over 25 pounds from living in the building (“the Pet Provisions”).
- [2] There are two Respondents in this case. Suzana Vokrri is the owner of the unit and her adult son Elton Vokrri lives with her in the unit (“the Respondents”). Both Ms. Vokrri and Mr. Vokrri were represented by the same counsel, who provided joint submissions on their behalf.
- [3] The parties do not dispute PCC 415’s Pet Provisions. Nor do they dispute the fact that Mr. Vokrri’s American Bulldog “Broly” is over 25 lbs. Rather, the dispute is over whether Mr. Vokrri should be allowed to keep his dog in the unit as an accommodation under the Ontario Human Rights Code (the “Code”) or whether he should be ordered to comply with PCC 415’s Pet Provisions.

- [4] PCC 415 takes the position that Mr. Vokrri is not entitled to an accommodation and seeks the enforcement of its rules and declaration. It has asked that the Tribunal order that Broly be removed from the condominium property permanently. It also seeks an order for the indemnification of its costs incurred in seeking compliance with the governing documents and its legal costs.
- [5] The Respondents state that Mr. Vokrri is entitled to an accommodation under the Code. They submit that the appropriate accommodation is that Broly be allowed to remain in the unit with the Respondents. The Respondents have also requested costs to cover their legal fees, the medical letters and therapy sessions attended to support the request for accommodation, and costs related to the emotional distress endured due to this proceeding.
- [6] Based on the evidence and submissions before me, I find that the Respondent is entitled to the requested accommodation. However, I also find that prior to this Stage 3 – Adjudication, the Respondents failed to engage in any discussion or accommodation process with PCC 415, but rather seemingly only asserted a right to keep Broly due to a disability. A request for an accommodation process creates obligations for both parties and because the Respondents failed in meeting their obligations in this regard, PCC 415 had no choice but to take steps to enforce their governing documents, which included sending legal letters requesting compliance to the Respondents and filing this application. Thus, I will order the Respondents to pay \$1746.00 to the Applicant for compensation for damages as a result of an act of non-compliance under s. 1.44 (1) 3. of the *Condominium Act, 1998* (the “Act”) and under s. 1.44 (1) 4 of the Act costs in the amount of \$150 to reimburse PCC 415 for its Tribunal fees in accordance with the Tribunal’s Rules of Practice. I award no other costs to any party.

## **B. ISSUES & ANALYSIS**

### **Issue No. 1: Should Mr. Vokrri be required to comply with PCC 415’s pet provisions, which restrict dogs to under 25lbs or is he entitled to an accommodation under the Code?**

- [7] Early in July 2023, the Respondents moved into the unit owned by Ms. Vokrri. This unit was previously occupied by Ms. Vokrri’s daughter, Mirsanda Vokrri.
- [8] The condominium manager for PCC 415 testified that around the time the Respondents were set to move into the unit, the management office received a call from a resident reporting an oversized dog on the common elements. After checking the surveillance footage, they were able to identify Ms. Vokrri and her son Mr. Vokrri bringing a large dog into the building covered in coats/blankets.

- [9] Having identified Ms. Vokrri as the person with the dog, the management office exchanged emails with Mirsanda Vokrri, who was moving out of the unit, but remained the occupant at that time, to inquire about the dog and remind her of the pet provisions. In response, Mirsanda Vokrri replied that her mother (Ms. Vokrri) had only brought the dog up for a few hours because they had driven in from British Columbia and couldn't find someone to look after the dog. She reported that the dog (who was later determined to be Broly) had left that same evening and wouldn't be back.
- [10] However, this turned out not to be the case. On July 17, 2023, after the Respondents had fully moved into the unit, they submitted a request for an accommodation to PCC 415. They requested that Mr. Vokrri's dog, Broly, be allowed to remain in the building as he was a "therapy dog". As previously mentioned.
- [11] According to PCC 415, although the accommodation request noted that Broly had been registered as a therapy dog online, it provided no information about why Mr. Vokrri required an accommodation (i.e., no evidence of a disability) or the need for a dog of Broly's size to address his disability related needs. Thus, on July 31, 2023, PCC 415 wrote back to the Respondents to request more information about Mr. Vokrri's need for an accommodation. In this correspondence, PCC 415 asked for more specific information about the nature of Mr. Vokrri's disability and his disability related needs.
- [12] No further information was provided by the Respondents in response to this letter, nor in response to a letter sent by management on August 16, 2023. On September 20, 2023, PCC 415's legal counsel sent another letter. Each of the letters reiterated that the board required more information to properly consider the accommodation request.
- [13] On September 28, 2023, the Respondents provided a letter to PCC 415 from a registered psychotherapist. The letter indicated that Mr. Vokrri was experiencing stress and anxiety about the fact that Broly may not be allowed to stay in his unit. It also indicated that Mr. Vokrri had self-reported that Broly, "helps with his anxiety and depressed mood", "distracts him from worrying and catastrophizing", "gives him a sense of purpose and responsibility", and "...brings him joy."
- [14] The board of PCC 415 considered the letter but was not satisfied that Mr. Vokrri was entitled to an accommodation based on the letter. On October 17, 2023, PCC 415 sent another letter via its counsel to the Respondents explaining why it believed that the letter from the psychotherapist was not sufficient, i.e., the psychotherapist's letter did not confirm that Mr. Vokrri had a disability (only that the

thought of losing the dog had produced anxiety and stress) and did not confirm that keeping a dog over 25 lbs was medically necessary to treat that disability. The letter also indicated it would be commencing an application with the Tribunal.

- [15] After this application was filed, and as evidence in this hearing, the Respondents provided two additional letters from a different registered psychotherapist, Ms. Laurie Ponsford-Hill, who also testified on the Respondents' behalf. In the first letter of January 24, 2024, Ms. Ponsford-Hill identifies Mr. Vokrri's mental health condition and indicates that she has prescribed Mr. Vokrri an emotional support animal. She further notes that Broly's presence alleviates Mr. Vokrri's disability related symptoms.
- [16] In the second letter dated January 26, 2024, Ms. Ponsford-Hill, elaborates on why Mr. Vokrri needs Broly, specifically, as his emotional support animal. The letter states that Broly,
- "...being a purebred American Bulldog, is formally trained, attentive, and obedient, tailored to Mr. Vokrri's long-term mental health condition. Broly has been a part of Mr. Vokrri's therapeutic wellness plan for the past two years and has been a companion *since Broly was 8 weeks old and as such not replaceable*. Service dogs are most often breeds that exceed 25 pounds such as Labrador Retrievers." [emphasis added]
- [17] PCC 415 takes the position that these letters, and Ms. Ponsford-Hill's testimony do not support Mr. Vokrri's request for accommodation under the Code. Specifically, they argue that Ms. Ponsford-Hill is not a medical doctor and cannot "diagnose" mental illness, and that Ms. Ponsford-Hill is not qualified to assess the benefits of a particular breed of dog. Further they do not believe that her letters provided evidence of a disability or prove that Mr. Vokrri requires a dog of over 25 pounds to "treat" his disability.
- [18] Counsel for PCC 415 provided several cases that she submits support the position that condominiums are entitled to have and enforce weight restrictions on pets and that condominiums have a duty to take all reasonable steps to ensure compliance with their governing documents under s. 17 (3) of the Act.
- [19] Counsel for the Respondents provided various cases in support of the Respondents' position that a person with a disability is entitled under the Code to accommodation. She further argued that the medical evidence provided is more than sufficient to establish that Mr. Vokrri is both entitled to an accommodation and that the accommodation should be that Broly be allowed to remain in the unit.
- [20] While I have reviewed all the cases referred to me and the evidence in front of me,

in these reasons I refer only to those that are relevant and necessary to explain my decision.

- [21] PCC 415 is correct about the fact that this Tribunal and the courts have consistently found that condominiums may have provisions in their governing documents that restrict the weight of pets and that condominiums are required to enforce their governing documents.<sup>1</sup> However, these are not the issues in dispute. The issue here is whether Mr. Vokrri is entitled to an accommodation which would allow him to keep Broly, despite these provisions.
- [22] Based on the evidence before me, I conclude that PCC 415 has taken a very narrow approach to assessing Mr. Vokrri's request for accommodation. PCC 415's position that Mr. Vokrri does not qualify as having a disability because there is no evidence that a medical doctor had diagnosed him with a mental disability as defined by the Diagnostic Statistical Manual of Mental Disorders – 5 ("DSM-5") amounts to what the Tribunal noted in *Metropolitan Toronto Condominium Corporation No. 584 v. Kakish, 2023 ONCAT 201* ("Kakish") is "quibbling over semantics." Section 10 (1) (b) and (d) of the Code state:
- "disability" means,
- (b) a condition of mental impairment or a developmental disability,...
- (d) a mental disorder, or...
- [23] While Ms. Ponsford-Hill is not a medical doctor and did not claim in any of her testimony to offer a formal diagnosis, she is a regulated healthcare professional registered with her governing body, and is considered qualified to treat symptoms associated with mental health conditions. It is in this capacity that she has provided detailed information about the nature of Mr. Vokrri's mental health conditions, which she describes as "generalized anxiety, depression and stress..." A formal diagnosis from a medical doctor is not necessarily required to establish the presence of a disability or the need for an accommodation.
- [24] As noted in *Kakish*, it is common understanding that anxiety, depression and mental health disorders are, at the very least, mental health impediments which can impact a person's functioning.<sup>2</sup> The Code is clear that a disability and its related needs are defined by numerous factors, and I accept that Ms. Ponsford-Hill

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<sup>1</sup> See for e.g. *Peel Condominium Corporation No. 96 v. Psofimis, 2021 ONCAT 48*, and *Durham Condominium Corporation No. 136 v. Crowther, 2023 ONCAT 159*

<sup>2</sup> At para. 21

is qualified to provide her opinion as a mental healthcare professional about those factors. I find she has provided compelling evidence, in line with her expertise, which reasonably demonstrate that for the purposes of section 10 (1) of the Code, that Mr. Vokrri has a disability.

- [25] Regarding PCC 415's argument that Mr. Vokrri has not provided enough information to prove he requires a dog over 25 lbs to meet his disability related needs, I agree. However, I am not persuaded that this means that Broly, specifically, is simply Mr. Vokrri's preferred accommodation and is not necessary to meet Mr. Vokrri's disability related needs.
- [26] The Ontario Human Rights Commission's "Policy on ableism and discrimination based on disability" sets out that one of the principles of accommodation is individualization. The Policy states "There is no set formula for accommodating people identified by Code grounds. Each person's needs are unique and must be considered afresh when an accommodation request is made."
- [27] Dogs are not widgets. While in some cases it may be that a dog that exceeds the weight limit is merely a preference, to suggest that Broly, whom Mr. Vokrri has had since he was a puppy, could be swapped out with a smaller dog to the same or similar effect, is not a persuasive argument in this case.
- [28] Ms. Ponsford-Hill's letters and testimony provide specific details about how Broly alleviates Mr. Vokrri's symptoms and according to Ms. Ponsford-Hill's professional opinion, much of Broly's therapeutic effect comes from the fact that Mr. Vokrri has had Broly since he was a puppy, which has resulted in the development of a therapeutic bond. It is her opinion, that at this point in time, substituting Broly for another dog (of any weight) would not meet Mr. Vokrri's disability related need.
- [29] In line with other Tribunal decisions, such as *York Region Standard Condominium Corporation No. 1375 v. Sousa, 2022 ONCAT 11*, I am not willing to substitute my or PCC 415's opinion, with Ms. Ponsford-Hill's professional opinion that Broly addresses Mr. Vokrri's specific needs. I accept that in these circumstances, allowing Broly to remain in the unit with Mr. Vokkri is an accommodation that directly responds to Mr. Vokrri's disability related needs.
- [30] Finally, there is no evidence before me to suggest that allowing Broly to remain in the condominium would cause any undue hardship to PCC 415.
- [31] Thus, for all the reasons above, I find that Mr. Vokrri is entitled to keep Broly in his unit as an accommodation under the Code. However, I note that this accommodation is specific to Broly only, as it is granted in large part due to the

evidence that Broly's previously established therapeutic connection to Mr. Vokrri is central to meeting Mr. Vokrri's needs. Should Mr. Vokrri ever require a new dog, unless he can provide compelling evidence to the corporation that he requires a dog over 25 lbs, he should choose a dog that complies with the corporations' rules. The Respondents should also ensure that Broly is kept and managed in the unit and on condominium property in such a way that adheres to the other provisions in PCC 415's governing documents.

**Issue No. 2: Is any party entitled to costs? If so in what amount?**

[32] The authority of the Tribunal to make orders for costs is set out in s. 1.44 of the Act.

[33] Section 1.44 (1) 3 of the Act states that the Tribunal may make an order "directing a party to the proceeding to pay compensation for damages incurred by another party to the proceeding as a result of an act of non-compliance up to the greater of \$25,000 or the amount, if any, that is prescribed."

[34] Section 1.44 (1) 4 of the Act states that the Tribunal may make "an order directing another party to the proceeding to pay the costs of another party to the proceeding."

[35] Section 1.44 (2) of the Act states that an order for costs "shall be determined ... in accordance with the rules of the Tribunal".

[36] 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.

[37] The Tribunal's "Practice Direction: Approach to Ordering Costs" provides guidance regarding the awarding of costs. Among the factors to be considered are whether a party or representative's conduct was unreasonable, for an improper purpose, or caused a delay or expense; whether the case was filed in bad faith or for an

improper purpose; the conduct of all parties and representatives; the potential impact an order for costs would have on the parties; the indemnification provisions in a corporations governing documents and whether the parties attempted to resolve the issues in dispute before the CAT case was filed.

[38] Typically, an unsuccessful party would not be entitled to a costs order. However, in determining whether to award costs the Tribunal can consider facts such as those set out above.

[39] PCC 415 is seeking \$1746.00 in costs related to enforcing compliance prior to the filing of this application (“pre-CAT” costs) and \$14 906.50 in legal costs.

[40] The Respondents seek costs in the total amount \$18 839.00. They seek \$15 150.00 for legal fees, and costs more rightly considered compensation for damages in the amount of \$1689.00 for costs associated with obtaining the medical documentation required to support Mr. Vokrri’s accommodation request, and \$2000 for emotional distress incurred because of this case.

[41] The “pre-CAT” costs claimed by PCC 415 are for two letters sent by its counsel to the Respondents to enforce compliance. These letters were only sent after previous letters from management (sent at no cost), requesting either more information from the Respondents about their accommodation request or compliance with the rules, went unanswered. The letters sent by counsel clearly set out the Pet Provisions that were to be complied with, provided an explanation as to the steps that needed to be taken to come into compliance (i.e. either provide additional information or remove the dog) and ramifications of continued non-compliance (i.e. the incurring of costs and the filing of a Tribunal application).

[42] In this case, I accept that when the Respondents failed to engage with PCC 415 about their accommodation request (in so far as they failed to respond to several requests for more information about the accommodation), PCC 415 was obligated to enforce its governing documents as, without an accommodation, the Respondents were non-compliant with the Pet Provisions. I find PCC 415 acted reasonably when it incurred the costs associated with these two letters and order the Respondents to pay PCC 415 \$1746.00 under s. 1.44 (3) of the Act.

[43] I decline to award any costs for compensation under s. 1.44 (3) of the Act to the Respondents. While I have found that Mr. Vokrri is entitled to an accommodation, as discussed above, the Respondents did not attempt in any meaningful way to resolve this dispute prior to a full hearing, and some of their behavior resulted in PCC 415 reasonably questioning their request for accommodation (and the related documentation), which lead to this proceeding and a need for the Respondents to



produce additional documentation to support the accommodation.

- [44] Regarding the Respondents claim for compensation for emotional distress. I have no doubt that this proceeding has caused the Respondents additional stress, however there is no evidence before me that the Respondents have endured any stress beyond that which may be reasonably associated with such a legal proceeding, which is stress that may have been avoided by providing proper evidence of entitlement to an accommodation and dialoguing effectively with PCC 415 in the first place.
- [45] The balance of costs claimed by the parties are for legal fees related to this proceeding. The parties are claiming similar amounts. PCC 415 is claiming \$14 906.50 (including filing fees) and the Respondents \$15 150.00.
- [46] PCC 415 submits it attempted to resolve the issues prior to filing this application by engaging in the accommodation process in good faith but had no choice but to filing this application to enforce its rules when the Respondents failed to do the same. It submits that pursuant to the indemnification provisions of its declaration, it is entitled to full legal costs regardless of the outcome of the case.
- [47] The Respondents submit that they made “diligent efforts” to comply with the requirements under the Code and the requests from PCC 415. They submit they have provided substantial evidence of Mr. Vokri’s need for an accommodation and PCC 415’s “refusal to accommodate” resulted in the need for them to incur the legal costs associated with this proceeding.
- [48] Regarding PCC 415’s governing documents, it does contain clear indemnification provisions.<sup>3</sup> However, it is also well-established law that an award of costs is discretionary, and it is rare that full indemnity for legal costs is awarded.
- [49] A need or request or accommodation creates obligations on both parties to engage and cooperate in a process to explore the nature of the accommodation request and reasonable accommodations. Despite having made the request for accommodation in July 2023, and despite PCC 415’s repeated request for more information, there is no evidence before me to suggest that the Respondents communicated with PCC 415 at all about their request until the end of September

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<sup>3</sup> By-law 10.4 ( c ) states that “each owner shall indemnify and save the Corporation harmless from and against any and all damages, loss and or cost, which the Corporation may suffer or incur resulting from, or caused by an owner, or any person, thing or animal for whom or for which the owner is responsible including, but not limited to: all legal costs and disbursements incurred by the Corporation ...”

2023, several months after making their request.

- [50] Additionally, even though PCC 415 received some information from the Respondents at the end of September 2023, I am persuaded that there were several events which occurred prior to the filing of this application that reasonably caused the condominium to question whether Broly was, indeed, a support animal. These events include having been told that Broly would not be residing in the building permanently, the way in which Broly was brought into the building (i.e. under blankets and coats as if to conceal him), the vague nature of the initial online certificate provided as evidence that Broly was a therapy dog, and the lack of response to several requests for additional information.
- [51] Based on the events and information PCC 415 had before it at the time, I accept that they acted reasonably in filing this application to enforce their governing documents as they are required to do under s. 17 (3) of the Act. Thus, in this case I find it appropriate that the Respondents pay \$150 to PCC 415 for Tribunal fees<sup>4</sup>, since the Respondents non-compliance did lead to the need for PCC 415 to file this case.
- [52] Regarding the legal costs associated with the actual proceeding, relatively near to the outset of this proceeding, i.e. less than one month after its commencement in January 2024, the Respondents provided additional medical documentation, that, as discussed in this decision, provided ample evidence of disability related needs and the need for Broly. Considering this information, PCC 415 could have chosen to discontinue their application at this point and reassess the accommodation request, however they chose to remain steadfast in its position that the notes provided were not sufficient to establish a need for an accommodation and that Broly was not an acceptable accommodation. A position that has been found to be mistaken in this case.
- [53] At the same time, the evidence before me also demonstrates that the Respondents did not make 'diligent efforts' to comply or engage with PCC 415 prior to the filing of this application and that it was only because of the filing of this Tribunal application that the Respondents provided compelling evidence that Broly is an emotional support animal.
- [54] Given that at different times, both parties acted in ways that resulted in the need for an adjudicated decision I find it appropriate in this case that both sides should

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<sup>4</sup> This case proceeded to Stage 3 – Adjudication in default, thus PCC 415 only paid \$150 in Tribunal fees rather than the \$200 typically paid to advance through the full 3 stages of the Tribunal process.

bear their own legal costs, which are similar in their amount, and I award no legal fees to any party.

**C. ORDER**

[55] The Tribunal Orders that:

1. Under s. 1.44 (1) 2 of the Act, PCC 415 permit Broly to reside on the property with the Respondents as a matter of accommodation under the Code.
2. Under s. 1.44 (1) 3 of the Act, within 30 days of the date of this decision, the Respondents pay PCC 415 \$1746.00 for compensation for damages incurred as a result of an act of non-compliance.
3. Under s. 1. 44 (1) 4 of the Act, and the Tribunal's Rules of Practice, the Respondents pay PCC 415, \$150, for Tribunal filing fees.

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Nicole Aylwin  
Member, Condominium Authority Tribunal

Released on: June 10, 2024