

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** June 13, 2024

**CASE:** 2024-00162R

**Citation:** Bogue v. Carleton Condominium Corporation No. 288, 2024 ONCAT 83

Order under section 19.1 of the Condominium Authority Tribunal's Rules of Practice.

**Member:** Anna Boudria, Member

**The Applicant,**

Margaret Ann Bogue

Represented by Douglas Forsythe, Agent

**The Respondent,**

Carleton Condominium Corporation No. 288

Represented by Gerry Boudreau, Agent

Written Submission Dates: May 13, 2024 – May 22, 2024

### **DISMISSAL ORDER**

- [1] The Applicant filed a case with the Tribunal related to a record request she submitted to the Respondent on January 29, 2024. The claim is that the Respondent failed to provide the following requested records: 2023 meeting minutes, lease related notices and 2020-2022 third-quarter Periodic Information Certificates (PICs).
- [2] In addition, the Applicant disputes the fee that the Respondent proposed to charge for production of the records.
- [3] The case proceeded to Stage 2 - Mediation before me on March 25, 2024. At its core, this dispute is about governance issues within the condominium and other issues outside the Tribunal's jurisdiction.
- [4] The Respondent provided a 'dropbox' link for the Applicant to access the requested documents. Further, the Respondent advised the Applicant that it would reimburse her Tribunal filing fees and issue an apology letter.
- [5] The Applicant was given several opportunities to raise any outstanding issues, but

she chose to focus on her request that the president of the board deliver a personal apology in a meeting attended by other board members and the condominium manager, recorded in the board minutes, and distributed to the owners.

- [6] Given that the records had been provided and the Respondent's agreement to reimburse the Applicant's Tribunal filing fee, I advised the parties that the case could be dismissed under Rule 19.1 (a) of the Tribunal's Rules of Practice which states that a case may be dismissed:
- (a) Where a Case is about issues that are so minor that it would be unfair to make the Respondent(s) go through the CAT process to respond to the applicant(s)'s concerns)
- [7] On May 13, 2024, I issued a Notice of Intent to Dismiss (the "Notice") providing the involved parties with an opportunity to respond.
- [8] I have carefully reviewed the submissions and documents provided by the parties on the CAT-ODR platform. This includes the Records Request Form, the board's response and the 'droplink' from the Respondent, containing the Applicant's requested documents. I will only refer to those that are relevant and necessary to making my decision.
- [9] On January 29, 2024, the Applicant emailed the Records Request Form and requested the following records from the Respondent:
- a. **Core Records:** Records of notices relating to leases of units under s. 83 of the Condominium Act, 1998;
  - b. **Core Records:** Minutes of meeting held within the last 12 months (January 1, 2023 – January 1, 2024)
  - c. **Non-Core Records:** Copies of the third-quarter Periodic Information Certificates (PICs) for 2020, 2021 and 2022, along with applicable covering emails.
- [10] On February 29, 2024, the Applicant received the board's response attached to an email along with a message related to the costs, which is not in dispute between the parties.
- [11] On March 4, 2024, a follow-up message by the Respondent reiterated that the Applicant "had 60 days to respond and confirm....", further advising the Applicant that "Once we receive the signed consent back, we will have seven days to produce the records." The message concluded that "if there are any questions or

concerns, please do not hesitate to contact me.”

- [12] The issues that persist between the parties relate to undated third-quarter PICs, redactions and draft 2023 meeting minutes. The remaining records are undisputed.
- [13] The Applicant points out that the PICs are ambiguous, undated, and requested associated emails with the delivery of the PICs. In response, the Respondent has made efforts to clarify their position, regarding the request for emails used to transmit the PICs, explaining this is not a typical record the corporation would keep and require a cost to produce, research and redact if these records even existed.
- [14] I have reviewed the 2020-2022 third-quarter PICs and associated letters, and found both sets to be dated and specify the timeframe the Applicant requested. The Board was correct to charge a fee, however reflected the fee to the incorrect records on the board’s response form, which contributed to the confusion among the parties. This has been a fact that the Respondent has repeatedly admitted and acknowledged without dispute. Further, the Applicant has not paid. If the Applicant wishes to obtain the emails used to transmit the PICs, she will need to cover the production cost. The Tribunal confirms that the requested records have been provided to the Applicant.
- [15] The second concern the Applicant raises relate to the redaction of meeting minutes, that she believes the corporation is withholding crucial information from her, namely relating to her and her unit. In response, the Respondent argues that the redactions are made in accordance with litigation privilege. The Respondent asserts the decision of [Mellon v. HCC No. 70 \(2019 ONCAT 2\)](#), cited by the Applicant, is not applicable in this case because the Applicant is frequently involved in litigation with the condominium.
- [16] Having reviewed the meeting minutes and section 55(4) of the *Condominium Act*, 1998, I have not been provided specific details other than a quote from the decision the Applicant cites, which does not assist me. However, I do find reviewing the minutes there is various active litigation matters in play between the parties and as a result, neither party have waived their litigation privilege. Importantly, the Applicant has not raised concern of the redactions being excessive or inconsistent with the *Condominium Act*. This absence of concern further reinforces the Respondent’s stance and the adherence to legal principles, that is not necessary to continue addressing this concern.
- [17] Lastly, the Applicant’s assertion of two remaining meeting minutes records in draft form lacks specific details. In response, the Respondent contends that the meeting minutes are not drafts, as they contain sufficient details to support the basis for

board decisions. This stands in contrast to the Applicant's claim, which lacks elaboration and references only the decision in [Kowalchuk v MTCC No. 983](#) (2023 ONCAT 84), focusing on the uncertainty of draft minutes. I have reviewed the meeting minutes and note the discrepancy relates to the electronic naming convention. This would relate to the form of the record, rather than the context. This is a minor issue.

[18] The Tribunal's mandate does not extend over matters related to record naming conventions. While I understand the Applicant's frustration with the board, governance issues fall outside the CAT's jurisdiction. These are not concerns that can be determined by this Tribunal or necessitate the Respondent continue to address the Applicant's concerns through the CAT's process.

[19] I am satisfied that the requested 2023 board minutes, third-quarter PICs for the periods covering 2020, 2021, 2022 and leases have been provided to the Applicant, as set out in her January 29, 2024, request for records.

[20] Accordingly, I order that this case be dismissed.

### **ORDER**

[21] The Tribunal orders that:

1. This case is closed in Stage 2- Mediation under Rule 19.1 of the CAT's Rules of Practice.

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Anna Boudria  
Member, Condominium Authority Tribunal  
Released on: June 13, 2024