

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: August 2, 2024

CASE: 2023-00627R

Citation: Sharma v. Toronto Standard Condominium Corporation No. 2510, 2024 ONCAT 118

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

Member: Nicole Aylwin, Member

The Applicant,

Rajat Sharma
Self-Represented

The Respondent,

Toronto Standard Condominium Corporation No. 2510
Represented by Bharat Kapoor, Counsel

Hearing: Written Online Hearing – April 24, 2024 to July 8, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Rajat Sharma, is the owner of a unit of Toronto Standard Condominium Corporation No. 2510 (“TSCC 2510”). On October 5, 2023, he submitted a Request for Records to TSCC 2510 in which he requested multiple records.
- [2] Mr. Sharma alleges that TSCC 2510 failed to provide several of the records he requested within the timeframes provided by the *Condominium Act, 1998* (“the Act”). He further submits that many of the records he did receive are inaccurate and inadequate. Finally, he disputes the fee that TSCC 2510 charged him to produce a non-core record, arguing that it was not reasonable.
- [3] TSCC 2510 submits it never refused to provide Mr. Sharma with the requested records, and that they have provided or offered to provide all the requested records. TSCC 2510 maintains that the records of the corporation are adequate as per the Act. They further argue that Mr. Sharma is using this application (and others) as “fishing expeditions” in an attempt to find wrongdoing

by TSCC 2510.

B. ISSUES

- [4] At the outset of the hearing, I confirmed the issues to be addressed with the parties. These issues are:
1. Has the Applicant received all the requested records that he is entitled to pursuant to the Act?
 2. Were the fees requested by the Respondent to produce the requested records reasonable as per the Act?
 3. Are the records that the Applicant received from the Respondent adequate within the meaning of s. 55(1) of the Act?
 4. Did the Respondent refuse to provide records to the Applicant without a reasonable excuse? If so, should a penalty be awarded and in what amount?
 5. Is any party entitled to costs? If so, in what amount?
- [5] In addition to these issues, Mr. Sharma sought to raise several others including issues related to how the Annual General Meeting (“AGM”) was conducted and/or overseen and who is/should be granted access to the IT systems and corporate record keeping system of the corporation. I explained that issues which are matters of governance – were not issues that would be addressed here as they fall outside of the Tribunal’s jurisdiction. Ontario Regulation 179/17 (O. Reg 179/17) establishes the Tribunal’s jurisdiction as it relates to records, and it is limited to the sections of the Act and of Ontario Regulation 48/01 (O. Reg. 48/01) which relate to the requirement that a corporation keep adequate records and permit an owner to examine or obtain copies of those records.
- [6] Despite, this Mr. Sharma made several submissions about his concerns regarding how TSCC 2510 conducted its AGM and the election process and made several requests for orders related to these issues. Though I have reviewed all the submissions and evidence provided to me. I address only those that are relevant to the issues properly before me.

C. DECISION

- [7] For the reasons set out below, I find that, save for a single record, Mr. Sharma has been provided with all the records he requested, these records are adequate as per the Act, and no record was refused without a reasonable excuse. In its

submissions, TSCC 2510 acknowledged the fee it charged Mr. Sharma for the non-core record was unreasonable, thus I order this fee to be reimbursed to him. Finally, I find, given the facts of this case, no award of costs or a penalty is appropriate.

D. ANALYSIS

Issue No. 1: Has the Applicant received all the requested records that he is entitled to pursuant to the Act?

[8] In his records request of October 5, 2023, Mr. Sharma requested the following records:

1. Record of owners and mortgagees
2. Minutes of meetings from October 6, 2022, to October 5, 2023
3. Number of votes received by each candidate in the AGM elections held in September 2023
4. List of units that were eligible to vote for the owner-occupied position in the AGM elections held in September 2023
5. The units who registered to attend/participate in the virtual AGM and a list of units who logged in at the AGM.
6. All current employment contracts of all the employees of the corporation

[9] While the evidence demonstrates that not all these records were provided to Mr. Sharma in accordance with the timelines set out in the Act (an issue I will address when determining the question of whether a penalty is appropriate in this case), during the hearing it was confirmed by Mr. Sharma that he had received all the records requested save for one: the employment contract for the employee Robert Buckler.

[10] TSCC 2510 acknowledges that it did not provide this contract to Mr. Sharma at the time of the request, nor has it been provided since that time. However, they note they have no objection to providing this contract to Mr. Sharma for his review. Thus, I will order that they provide this contract to Mr. Sharma within 30 days of this decision.

Issue No. 2: Were the fees requested by TSCC 2510 to produce the requested records reasonable as per the Act?

- [11] TSCC 2510 requested a fee to produce one of the non-core records requested by Mr. Sharma: the record of the number of votes received by each candidate in the September 2023 AGM election. TSCC 2510 asked Mr. Sharma to pay a total fee of \$80 to produce this record - \$40 dollars for the labour to produce the record and \$40 for delivery.
- [12] Although, Mr. Sharma immediately expressed his concern to TSCC 2510 that this fee was not reasonable as per the Act, he paid the fee to receive the record.
- [13] In its submissions, TSCC 2510 “conceded” that they should not have charged Mr. Sharma \$80 for the record, however no alternative fee was proposed nor was any reason offered as to why they believe they should not have charged this fee in the first place. Given that TSCC 2510 has conceded that a fee in this amount should not have been charged, there is no need for me to determine if the fee charged was reasonable. In the absence of any proposed alternative fee, I will order that TSCC 2510 pay Mr. Sharma \$80 within 30 days of this order to reimburse him for the full fee paid for this record.

Issue No. 3: Are the records that the Mr. Sharma received from TSCC 2510 adequate within the meaning of s. 55(1) of the Act?

- [14] According to Mr. Sharma, TSCC 2510 is not keeping adequate records as per s. 55 (1) of the Act. The question of what constitutes an adequate record has been considered in several court and Tribunal decisions. In *McKay v Waterloo North Condominium Corp. No. 23*, 1992 CANLII 7501 (ONSC), (“McKay”) the Court states:

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.

- [15] Although Mr. Sharma does not reference McKay directly, his arguments about adequacy strongly correlate with the wording in McKay. He argues that “the objects of the corporation are to manage the property and assesses to the corporation” and therefore the records of the corporation must be “adequate to permit it to fulfill its duties and obligations”. In short, he argues that the records he

received are not adequate because they do not meet the standard of adequacy outlined in *McKay*.

- [16] I will consider whether adequate records are being kept in relation to each record Mr. Sharma claims is inadequate.

Record of owners and mortgagees

- [17] Mr. Sharma asserts that the record of owners and mortgagees contains multiple errors and inaccuracies that should render it inadequate. These errors include approximately a dozen addresses that list an owner as living on the second floor of one of the corporations' buildings which does not have residential units on the second floor. Mr. Sharma also highlighted other addresses he believed to be incorrect, although he did not further explain why he believed these to be so. In total, Mr. Sharma identified approximately 70 units out of 1343 units that he believed contained incorrect addresses. Mr. Sharma also referred me to a previous case between the parties¹ that addressed this record to suggest an ongoing pattern of conduct, that should, in Mr. Sharma's opinion, be penalized.
- [18] TSCC 2510 disputes that all these addresses identified by are incorrect. They assert that several of the addresses highlighted by Mr. Sharma are accurate, but nonetheless they submit that even if all of them are incorrect this would still only be about five percent of the total units in the building, which make up a small percentage of the overall record.
- [19] I accept that there are some errors in this record (addresses that list the unit owner as living on the 2nd floor). However, the standard on which adequacy is judged is not perfection, and I am not persuaded that these errors make the record, overall, inadequate. There are only a few substantiated errors, and there is no evidence in this case that these few and minor errors, render the document so inadequate such that it would interfere with the corporation's ability to fulfil its duties and obligations.
- [20] However, I do acknowledge Mr. Sharma's concern that this is not the first-time issues regarding errors in this record have come before the Tribunal. And, although the errors identified in this case appear to be far fewer in number and not as substantial as noted in the previous case between the parties, I would encourage TSCC 2510 to follow through on the offer it made in its submissions to

¹ Sharma v. Toronto Standard Condominium Corporation No. 2510, 2022 ONCAT 3

review the units highlighted by Mr. Sharma to ensure their accuracy.

Minutes of meetings from October 6, 2022 to October 5, 2023

[21] Mr. Sharma submits that the meeting minutes from October 6, 2022, to October 5, 2023, are inadequate as they do not record critical board discussions. More particularly, they do not contain “details of concerns raised by individual directors who opposed the majority of the board”. He argues that these omissions do not “present a complete picture” of meetings for those requesting the minutes. He has asked the Tribunal to order that in addition to the written minutes, TSCC 2510 distribute audio recordings of the board meetings to those that request the minutes.

[22] TSCC 2510 argues that meeting minutes are not intended to be verbatim account of discussions held at a meeting, nor is there a requirement that a corporation capture every aspect of a discussion in the minutes. TSCC 2510 referred me to *Rahman v. Peel Standard Condominium Corporation No. 779*, (2021 ONCAT 32) where the Tribunal noted 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. Minutes are not required to be a verbatim account of a meeting.

[23] I have reviewed the board minutes provided to Mr. Sharma. While I accept Mr. Sharma’s assertion that the minutes may not match verbatim the audio recordings he has in his possession and understand that they do not meet his expectations, I find the minutes do adequately reflect how the board is managing the business of the corporation. The minutes contain the basic details of the meeting, i.e. date of the meeting and who was present, they list topics and action items, and discussion points are summarized, in some instances in quite a fulsome way. Consequently, I conclude that the minutes are adequate for the purposes of what the Act requires.

The units who registered to attend/participate the virtual AGM and a list of units who logged in at the AGM.

[24] According to Mr. Sharma the list of units who registered for the AGM, includes a “fictitious address”. He asserts that this single error calls the whole record into question, as well as the records related to AGM attendance.

[25] According to TSCC 2510, the error Mr. Sharma points out is not an error made by the corporation, but by the unit owner who filled out the registration form. TSCC

2510 asserts that the unit owner of the “fictitious unit” incorrectly typed in his unit number when registering himself for the meeting. TSCC 2510 submits that when they provided the documents to Mr. Sharma, they provided him with the documents they had without amendments.

- [26] It is worth noting that Mr. Sharma’s two witnesses provided testimony about this document. However, this testimony largely focused on the concern that the election process was not transparent or conducted properly. A central theme also contained in Mr. Sharma’s submissions. The question of whether the voting process was conducted fairly and correctly is not one that is front of me (and is an issue outside of the Tribunal’s jurisdiction) which was indicated to Mr. Sharma on multiple occasions. The only question for me to answer is whether the record provided to Mr. Sharma is adequate for the purposes of the Act.
- [27] Only one error has been identified in this record and I find it plausible that the error is a user error, not an error made by TSCC 2510. Regardless, one error is not evidence that the whole record is inadequate. I am also not willing to assume, as Mr. Sharma does, that an error in the list of those who registered to participate in the AGM, means that list of who actually attended the AGM must also contain errors that make it inadequate.
- [28] Based on the evidence before me, I find both records, i.e. the list of registrants and the list of attendees, are adequate for the purposes of the Act.

Issue No. 4: Did the Respondent refuse to provide records to the Applicant without a reasonable excuse? If so, should a penalty be awarded and in what amount?

- [29] Mr. Sharma asserts that he did not receive the records he requested as per the timelines set out in the Act and that the “deficiencies” in the records he did receive should render them “refused”. He has asked that all the records he requested be found to have been refused to him without a reasonable excuse.
- [30] The Act sets out different timelines and expectations for the delivery of “core” and “non-core records”.
- [31] Section 13.4(1) of O. Reg. 48/01 requires that core records be provided within 30 days of receipt of the request if delivered electronically.
- [32] Mr. Sharma made his records request on October 5, 2023. The two core records requested by Mr. Sharma (record of owners and mortgagees and meeting minutes) were provided to Mr. Sharma by email on November 13, 2023, which is

approximately one week later than the 30 days allowed by the Act. It is incumbent upon TSCC 2510 to ensure that they provide requested records in accordance with the Act, however the delay in providing these records was minor. So, while I find that TSCC 2510 did fail to provide Mr. Sharma these records in accordance with the timeline set out in the Act, I am not persuaded that in this case such a minor delay amounts to a refusal to permit him to examine the records without a reasonable excuse.

- [33] Section 13.7(1) of O. Reg. 48/01 requires that non-core records be provided within 30 days of receiving the requester's response and the fee payable for the requested records.
- [34] Mr. Sharma responded to the board's response (which was delivered to him within the timeframe allowed by the Act) and paid the fee they requested on November 6, 2023. Thirty days later, on December 6, 2023, TSCC 2510 provided Mr. Sharma with the list of votes received by each candidate at the AGM election and the current employee contracts, save for one, that of Robert Buckler. These records were delivered in accordance with the Act, thus there is no reason to consider them to be refused.
- [35] Regarding Mr. Buckler's contract, TSCC 2510 claims they did not provide this contract along with the others because it was terminated on October 23, 2023, which was "around the time the request was made", i.e., when TSCC 2510 responded to Mr. Sharma's request, Mr. Buckler's contract was no longer a contract of a "current employee". While, Mr. Sharma is entitled to this record, in this case, I do not find the excuse for why it was not provided unreasonable. Rather, it appears to be a misinterpretation that stemmed from the timing of Mr. Buckler's termination. In any event, TSCC 2510 has indicated that they will provide this contract to Mr. Sharma, and thus I will order it produced.
- [36] Finally, regarding the last two non-core records: the list of units who registered to attend/participate in the virtual AGM and the list of units who logged in at the AGM, TSCC 2510's initial response to Mr. Sharma's request indicates that they refused to provide these records because s.55 (4) of the Act, which precludes certain records from examination if they are relate to specific units or unit owners. However, these records were eventually provided to Mr. Sharma during Stage 2 – Mediation (in February 2024).
- [37] While TSCC 2510 did not provide this record to Mr. Sharma when requested, I do not find that there has been a refusal without a reasonable excuse. The record does contain reference to other unit owners and specific units, and, while it is not necessary for me to make a finding on the applicability of s. 55 (4) to these records

since they have been provided to Mr. Sharma, it would not be unreasonable for a corporation, in the first instance, to honestly believe these records were protected by s. 55 (4).

- [38] Finally, regarding Mr. Sharma's more general argument that all the records be considered refused due to the errors and deficiencies contained within them, I have found none of the records provided to Mr. Sharma to be inadequate thus there is no basis for concluding that there has been refusal on these grounds.

Should a penalty be awarded?

- [39] Section 1.44 (1) 6 of the Act, states that the Tribunal may order the Respondent:

to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies ... if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection.

- [40] Mr. Sharma submits that he is "not seeking a penalty against the respondent unless there is no other alternative available to the Tribunal." Mr. Sharma asserts that a penalty would not address the "root issue", as a penalty can simply be paid, and allow for TSCC 2510 to continue their "poor practices". In lieu of a penalty. Mr. Sharma requests several other, "extraordinary" orders from the Tribunal, which he himself acknowledges are outside of the Tribunal's jurisdiction to provide. The Tribunal cannot grant orders outside its jurisdiction even if there were 'extraordinary' circumstances (of which there are none here). Thus, I will not address Mr. Sharma's requests for remedies beyond the penalty.
- [41] TSCC 2510 asserts that a penalty should not be awarded as they have adhered to their obligations under the Act by providing all requested records. They further submit that Mr. Sharma is using his "repeated" records requests and this Tribunal process to engage in a "fishing expedition" that is frivolous.
- [42] I agree with Mr. Sharma that even if a penalty were to be awarded in this case, it would be unlikely to address the root of the problem between these parties. However, the root of the problem, based on the evidence and submissions before me is, not, as Mr. Sharma asserts, exceptionally poor record keeping or a failure to provide records in accordance with the Act, but rather internal strife within the board and tension over how the corporation is governed. And, while, in this case, I do not find that there is sufficient evidence, to support TSCC 2510's claim that Mr. Sharma is using the Tribunal process as a frivolous "fishing expedition" I do note this dispute over records appears to be a symptom of Mr. Sharma's larger dissatisfaction with the board and a means by which to escalate such issues.

These larger issues cannot and will not be addressed through Tribunal records cases (which is a costly and time-consuming conflict resolution mechanism for both parties) or the imposition of any penalty. Thus, I encourage both parties to consider the root of the problem between them and to find ways to address their larger issues in a more productive manner. The use of Tribunal resources to attempt to resolve or pursue or conflicts outside the Tribunal's jurisdiction – such as conflicts about governance, is inappropriate.

- [43] A penalty can only be assessed if a corporation has without a reasonable excuse refused to provide records to which a unit owner is entitled, it cannot be imposed to penalize a corporation generally for, assumed or real, “poor practices.” Since, in this case I have not concluded that TSCC 2510 refused to provide Mr. Sharma with records to which he is entitled without a reasonable excuse, therefore there is no basis to impose a penalty.

Issue No. 5: Should any party be awarded costs? If so, in what amount?

- [44] Section 1.44 (1) 4 of the Act gives the Tribunal discretion to order costs. TSCC 2510 has requested costs in an unspecified amount. They assert they are entitled to these costs as this is a frivolous application. Mr. Sharma has not requested costs.

- [45] Costs are awarded in accordance with the Tribunal's Rules of Practice. The relevant rules are 48.1 and 48.2, which read:

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.

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.

- [46] In this case, I do not find that either party is entitled to costs. Mr. Sharma was not successful in most of his claims, TSCC 2510 has not shown that this application has been undertaken for an improper purpose. Neither party engaged in unreasonable behaviour during this proceeding.

E. ORDER

[47] The Tribunal Orders that:

1. TSCC 2510 provide Mr. Sharma with the employee contract for Robert Buckler, at no charge, within 30 days of the date of this decision.
2. TSCC 2510 pay Mr. Sharma \$80 within 30 days of the date of this decision to reimburse him for the fee paid to produce the record of the number of votes received by each candidate in the AGM elections.

Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: August 2, 2024