

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** August 6, 2024

**CASE:** 2024-00068R

**Citation:** Richards v. Peel Condominium Corporation No. 27, 2024 ONCAT 119

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

**Member:** Ian Darling, Chair

**The Applicant,**

Anne Richards

Self-Represented

**The Respondent,**

Peel Condominium Corporation No. 27

Represented by Jessica Hoffman, Counsel

**Hearing:** Written Online Hearing – April 11, 2024 – August 1, 2024

### **REASONS FOR DECISION**

**A. INTRODUCTION**

- [1] The issue before the tribunal in this case is whether Peel Condominium Corporation No. 27 is required to provide a record related to changes in common elements to the Applicant, as well as the fee that may be charged to provide certain contracts. In deciding these issues, I have also determined that there has been no refusal to provide the records and therefore no penalty is warranted.
- [2] During the case, the Applicant raised several concerns that extend beyond what the Tribunal has the authority to decide. These included concerns with how the Tribunal decided prior cases, allegations that the corporation had lied in prior cases, and issues related to how the corporation is governed. While I recognize that these issues are important to the Applicant, this decision only refers to issues that can be decided in the scope of this case.
- [3] The parties agreed that the issues to be decided in this case were:
1. Issue 1: Are the records related to the changes to the common areas

adequate?

2. Issue 2: What are the reasonable fees for labour associated with processing the record request for the contracts relating to the Rogers Communications services from 2014-2018?
3. Issue 3: Is the corporation required to maintain an electronic version of those contracts?
4. Issue 4. Has the Respondent refused to provide records without a reasonable excuse? And, if so, should the Tribunal impose a penalty.
5. Issue 5: Is either party entitled to costs?

## **B. ISSUES & ANALYSIS**

### **Preliminary issue: Request to remove Adjudicator**

- [4] On April 26, 2024, the Applicant submitted a request that I, as the adjudicator be removed. The basis for the request was that I made a decision in a previous CAT case that was not in the Applicant's favour.
- [5] When parties raise concerns about adjudicator bias, the adjudicator needs to hear and decide the request. The Supreme Court of Canada has established the test for reasonable apprehension of bias in *Committee for Justice and Liberty et al. v. National Energy Board et al.*, 1976 CanLII 2 (SCC) at p. 394. The test is “what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would [they] think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.”
- [6] I provided the Applicant with an opportunity to make additional submissions to further explain the request. The Applicant stated that she does not believe that I can be "reasonable and fair" due to the prior case. After reviewing the submissions, I denied the Applicant's request.
- [7] As I identified when issuing the ruling on the motion, the test for reasonable apprehension of bias is inherently contextual and fact-specific. There is a strong presumption of adjudicator impartiality, which is not easily displaced without serious grounds. The question is whether an informed person, viewing the matter realistically, would conclude that the decision-maker would not decide fairly.
- [8] The CAT has limited jurisdiction, and a relatively small roster of members to

conduct mediation and adjudication. It is not appropriate or realistic to have a different member for every case – particularly in instances where parties have appeared before the Tribunal several times. The mere fact that a Tribunal member has conducted another proceeding involving the same party (or parties) does not automatically undermine the member's impartiality. Context matters, and each case must be evaluated individually.

[9] The prior case<sup>1</sup> was over two years ago. The parties are the same - however the circumstances of the request are different. This case is about a different records request. In the prior case, I acted as the Mediator. I dismissed the case at the end of mediation because there were no outstanding issues from the records request that was the basis for the case, and it would have been unfair to allow the case to proceed to adjudication.

[10] The issues in this case differ, and my role is different. After considering the applicant's submissions, I have determined that there is no basis to find that a reasonably informed person would conclude that I cannot decide the issues fairly.

[11] After issuing the ruling in the case, I proceeded to receive the parties evidence and submissions in order to decide the issues in dispute.

**Issue 1: Are the records related to the changes to the common areas adequate?**

[12] The Applicant requested records related to changes to the common elements between two specific units. The Respondent submitted that there are no such records because the common elements have not been changed. The Respondent provided a photo of the area, and the original plans to support their position. The Applicant has not provided any information to substantiate that there were changes to the common elements, or any related records of any such changes. I am satisfied that there are no relevant records related to this request.

**Issue 2: What are the reasonable costs for labour associated with processing the record request pertaining to the contracts relating to services retained from Rogers Communications from 2014-2018?**

[13] The Respondent proposed an hourly rate of \$30 to produce the records. The Applicant felt that the rate was too high because she had previously been charged \$15 per hour for records-related work. Ontario Regulation 48/01 allows the corporation to recoup reasonable costs to produce the records. The Respondent successfully established that the rate to produce records is \$30 per hour, so they

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<sup>1</sup> *Richards v. Peel Condominium Corporation No. 27*, 2022 ONCAT 12

are entitled to charge that rate for the work. I am satisfied that the \$30 per hour rate is consistent with other CAT cases and is reasonable considering the work required to locate and compile the records.

- [14] The Respondent did not propose a per page amount for photocopying, so I will not order those costs included.
- [15] When turning to the proposed time to compile and prepare the records, the Respondent estimated that it would take three hours to prepare the records. They stated that the first task would be to locate the records. The corporation has changed management companies since the records were created. They explained that the records are in storage, and the prior condominium management provider did not label the records when transferred. The records were transferred in a series of un-indexed boxes. The estimated fee included a search through the boxes to find the records, and then to copy them.
- [16] The Applicant stated that it was unfair for her to pay the full costs of retrieving the records because the records were not filed and stored in a way that would allow easy retrieval of the records. The Respondent pointed to *Missal v. York Condominium Corporation No. 504*, 2022 ONCAT 2 (“Missal”), where the CAT found that it was reasonable for an owner to pay the costs associated with retrieving records from storage.
- [17] I have reviewed Missal and find that it is of limited value as a comparison. In that case the CAT found that it was reasonable for the owner to pay the costs to retrieve and transfer the physical records from storage. I can distinguish the two cases because in this case, the majority of the proposed fee is related to searching through various boxes to locate the records. The Respondent’s submissions indicate that the way that the records were stored (without indexing), means that they have to do additional work to locate the requested records.
- [18] I have determined that it would be appropriate for the Applicant to pay for one hour’s work to retrieve and prepare the records. In coming to this conclusion, I have weighed the principle that a requester should pay the actual costs of producing records, against the fact that the time to produce the records would take longer due to the records keeping practices of the Respondent. It is not fair that the Applicant should incur additional costs because it will take longer to retrieve the records as a result of the corporation’s record keeping practices.
- [19] If the Applicant still wishes to have these records, the fee will be \$30 – representing one hour of work.

**Issue 3: Is the corporation required to maintain an electronic version of the contracts relating to Rogers Communications services from 2014-2018?**

[20] The Applicant requested electronic copies of the records. The Applicant stated that she was aware that the corporation had maintained the records electronically. The Respondent stated that if the records were maintained electronically at one point, they no longer have electronic versions of the records.

[21] The *Condominium Act, 1998* (the “Act”) and Regulations establish retention periods for records, and state that records can be maintained in hard copy or electronic format. The Act and Regulations do not require the corporation to keep the records in exclusively one or the other format.

[22] The Respondent has stated that they maintain hard copies of the requested records. The Respondent is prepared to provide access to the records (once they locate them). I conclude that they are meeting the requirements to maintain the records in question.

**Issue 4. Have the Respondents refused to provide records without a reasonable excuse? And, if so, should the Tribunal impose a penalty.**

[23] I have found that the records related to changes in the common elements do not exist. So, there is no refusal related to those records.

[24] For the Rogers contracts, the Respondent agreed to provide the records. The reason they have not been provided is the dispute over the fee to produce the records. Although I have ordered the amount to be varied, they original quote was not sufficiently unreasonable for me to conclude that it constitutes a refusal.

[25] Since I have concluded that there was no refusal to provide the records, there is no basis for a penalty.

**Issue 5: Is either party entitled to costs?**

[26] The Applicant paid \$200 in Tribunal fees. The Applicant was partly successful in getting the fee to produce the records reduced. In accordance with the Tribunal Rules, I order the fee to be reimbursed.

[27] Neither party requested other costs. I order no other costs to be paid.

### **C. CONCLUSION**

[28] The Applicant has made several records requests over the past few years which have resulted in some cases before the Tribunal<sup>2</sup>. When this hearing started, the parties agreed that the Respondent did not follow the mandatory response process. It is incumbent on a condominium corporation to be more diligent in responding to an owner's records request in accordance with the Act.

[29] This case was also complicated by the somewhat vague nature of the Applicant's initial records request. The Applicant is cautioned that the requests should be specific and clear.

[30] Both parties are advised to work together to ensure that the corporation fully understands and responds to the request in a timely manner.

### **D. ORDER**

[31] The Tribunal Orders that:

1. Within 30 days of the Applicant providing payment of \$30 to the Respondent, the Respondent shall provide the Applicant with the contracts relating to services retained from Rogers Communications from 2014-2018.
2. Within 30 days of the date of this decision, the Respondent shall pay costs of \$200 to the Applicant.

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Ian Darling  
Chair, Condominium Authority Tribunal

Released on: August 6, 2024

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<sup>2</sup> *Richards v. Peel Condominium Corporation No. 27*, 2024 ONCAT 62  
*Richards v. Peel Condominium Corporation No. 27*, 2023 ONCAT 146  
*Richards v. Peel Condominium Corporation No. 27*, 2022 ONCAT 12  
*Richards v. Peel Condominium Corporation No. 27*, 2023 ONCAT 132