

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: August 9, 2024

CASE: 2024-00107R

Citation: Kamhi v. Toronto Standard Condominium Corporation No. 2956, 2024 ONCAT 123

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,

Alex Kamhi

Self-Represented

The Respondent,

Toronto Standard Condominium Corporation No. 2956

Represented by Gisele Garcia, Agent

Hearing: Written Online Hearing – June 3, 2024 to August 6, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] Alex Kamhi (the “Applicant”) is a non-resident unit owner in Toronto Standard Condominium Corporation No. 2956 (“TSCC 2956”). The Applicant submitted a Request for Records (the “Request”) to TSCC 2956 on December 12, 2023, in which he requested minutes of board meetings held within the last 12 months and “notices regarding parcel disposal not addressed to a tenant as per lease agreement, form of distribution, .e.g. email and date of each” (the “Notice”). The Applicant states that TSCC 2956 did not provide the mandatory Board Response form and did not provide the records within the prescribed time. The Applicant seeks a penalty under s. 1.44(1)6 of the *Condominium Act 1998* (the “Act”) and costs.

[2] It is not disputed that TSCC 2956 did not respond on the prescribed form as required by s. 13.3 (6) of Ontario Regulation 48/01 (“O. Reg 48/01”). This noncompliance is a matter of significant concern to the Applicant. Nor is it disputed that the Applicant is entitled to the minutes requested and that records have now been received. The requested minutes were provided to the Applicant, by email on

June 28, 2024, after this Stage 3 hearing commenced. He received the Notice on January 8, 2024.

- [3] Based on the evidence before me, which I will address below in relation to each of the requested records, it appears that it was TSCC 2956's new policy, implemented in December 2023, related to parcel delivery and disposal that instigated the records request. For example, in his submissions, the Applicant stated that he would like to address the method of implementing the change to the parcel delivery disposal policy, asserting that the delivery of the notice was not properly handled. In relation to the minutes, he specifically wanted the minutes where the board approved the notice regarding disposing of parcels. While I appreciate that the method of implementing and advising owners (the Notice was only sent to onsite owners) and tenants was of concern to the Applicant, this is a dispute about access to records. I advised the Applicant that how the board addresses issues related to policy changes is not within the Tribunal's jurisdiction.
- [4] For the reasons set out below, I do not find that the Respondent has refused to provide the records requested and therefore no penalty is warranted. However, I will order that the TSCC 2956 board of directors take, or re-take, the Condominium Authority of Ontario ("CAO") director training course. I further award costs to the Applicant in the amount of \$200.

B. ISSUES AND ANALYSIS

Issue: Delivery of the minutes of meetings held within the last 12 months (December 2022-November 2023)

- [5] Given that entitlement to the minutes is not in issue and they have now been provided to the Applicant, the only issue is whether the late delivery of the minutes amounts to a refusal to provide the minutes without a reasonable excuse, warranting a penalty under s. 1.44(1)6 of the Act.
- [6] It is of some relevance that TSCC 2956 was only registered in November 2022. This was a new board. It appears that board meetings were not held monthly. TSCC 2956 posted board minutes on the building website when approved, which it appears was often several months after the board meeting was held. For example, the August 9, 2023 board minutes were posted to the website on January 18, 2024 though board meetings were held in September and November 2023.
- [7] Posting board meeting minutes to the condominium's website is a means to ensure ready access to owners and residents, but it does not satisfy the

requirements of the Act relating to records requests, and more specifically as set out in s.13.3 of O.Reg 48/01, though this appeared to be the position that TSCC 2956 took in relation to the Applicant's records request. The minutes requested ought to have been provided, with the prescribed Board Response form, by January 21, 2024. They were not provided to the Applicant (regardless of whether they were available on a website) until June 28, 2024.

- [8] TSCC 2956's submission at the hearing that the Applicant has access to the website reflects a lack of understanding by either or both of the board and Ms. Garcia, the condominium manager, of their obligations under the Act. In some cases that have come before the Tribunal, a failure to provide the records was deemed to be a refusal without a reasonable excuse. I do not conclude that here where, though misguided, the TSCC 2956 board appeared to believe that access they provided to owners through the website was sufficient to fulfill their obligations.
- [9] While I am not finding that TSCC 2956 refused to provide the records, based on the evidence I will make an order under s. 1.44 (1) 7 of the Act. This section allows the Tribunal to address underlying issues that have likely given rise to the application. In this case, the TSCC 2956's submissions reveal a lack of understanding of the requirements of the corporation under both the Act and O.Reg. 48/01. It appears that the TSCC 2956 seemed unaware of the requirement to complete the prescribed Board Response form, yet it is obliged to do so, whether or not it is providing the record.
- [10] There is an expectation that all directors have a basic level of understanding of the Act and its regulations and to that end, they are required under the Act to complete mandatory training courses provided by the CAO. Based on the evidence before me, it appears that this board needs a refresher which will, hopefully, assist it in more diligently responding to records requests so that responses are timely and complete. Therefore, under subsection 1.44 (1) 7 of the Act, I am ordering that each of the current board members takes or retakes the mandatory director training prescribed under section 29 (2) (e) of the Act within 30 days of the date of this decision and provide the Applicant with an attestation confirming completion. I note here that the Tribunal has no jurisdiction over condominium managers and therefore this order for remedial training only applies to the board. I do, however, strongly encourage Ms. Garcia to more fully educate herself about the requirements of the Act.
- [11] Before dealing with the Notice, I will address two of the Applicant's additional submissions. The first is that the minutes provided lack dates and signatures. I do

note that TSCC 2956 has stated that minutes are not posted to the website until they are dated and signed, but regardless, while I agree that not including the dates creates some uncertainty and that a best practice would include signed minutes as suggested in *Wei v. Toronto Standard Condominium Corporation No. 2297* ([2021 ONCAT 8](#)) these defects in and of themselves may not affect the adequacy of the minutes. Unsigned minutes are not akin to having an unsigned contract as the Applicant suggests.

- [12] The second submission relates to the noncompliance with the Act and O.Reg 48/01. Specifically, he seeks a penalty for the failure to provide the minutes within the prescribed timeline, for the failure to provide the Board Response form and an explanation for TSCC 2956's noncompliance. Section 1.44(1)6 of the Act allows the Tribunal to award a penalty if there has been a refusal to provide the record without a reasonable excuse. As noted above, the fact that this is a new board is of some relevance; in this instance, I am prepared to consider this a mitigating factor. While it is incumbent on a board to know and understand its obligations under the Act, in this instance I find that this situation was not a refusal per se, but indicative of a lack of a fulsome understanding of the Act. I have addressed this through the order I am making requiring board training.
- [13] I point out here that, in relation to the failure to deliver the Board Response form, there is no provision in the Act for the Tribunal to assess a penalty for that failure to comply with O. Reg. 48/01. And regarding the request for an explanation for the noncompliance, it is not necessary nor helpful to so order. What matters is that going forward, TSCC 2956 and its condominium managers are aware of and meet their obligations.

Issue: Delivery of the Notice

- [14] For context, and to some extent, the genesis for the records request itself, the evidence is that the direction from the board about parcels was posted for onsite owners and tenants on December 1, 2023. The Notice was not sent to off site owners. A registered tenant in the Applicant's unit contacted the management office about a parcel for another person in the unit which had been delivered and disposed of by the concierge desk, resulting in a complaint.
- [15] After the records request was received by TSCC 2956, the Notice was delivered to the Applicant, on January 8, 2024, without the Board Response form but within the prescribed time period for delivery of noncore records set out in O.Reg 48/01. As noted above, there is no provision in the Act for the Tribunal to assess a penalty for noncompliance with the requirement to provide the Board Response form as

set out in O. Reg. 48/01.

[16] The Applicant has the Notice, but it appears he wants more, such as the details of how the Notice was distributed and how and when the board approved the direction to management. These may be reasonable questions, but what he is seeking is an explanation, not a record. The Applicant wants proof in the minutes that show the board's approval for the direction. Whether that direction is reflected in the minutes is not an issue for the Tribunal to determine. The Applicant now has the minutes to make that determination himself. The Applicant expressed a concern that Ms. Garcia as condominium manager may have instituted the policy on her own without board approval. While this seems to be speculation, I also note that it is not an issue for this Tribunal, but a matter of board governance.

Issue: Costs and Penalty

[17] As indicated above, I have not found that there was a refusal to provide the requested records, therefore there is no basis upon which to award a penalty.

[18] Rule 48.1 of the Tribunal's Rules of Practice states that if a matter is not resolved by Settlement Agreement or Consent Order and the adjudicator makes a final decision, the unsuccessful party will be required to pay the successful party's Tribunal fees unless the adjudicator decides otherwise. Costs are discretionary. In this matter, the Applicant raised a reasonable concern about the failure to provide the Board Response form and the late delivery of minutes. I have made an order related to that issue. In the circumstances, it is appropriate that the Applicant be reimbursed the Tribunal fee of \$200.

[19] The Applicant was self-represented. No legal costs were incurred though he indicated that he did seek some legal advice. He has requested that he be reimbursed for his time. It is rare for compensation of that kind to be awarded to a self represented party; this was a straightforward matter. The circumstances do not warrant a costs award to compensate the Applicant for his time.

C. ORDER

[20] The Tribunal Orders that:

1. Under s. 1.44 (1) 7 of the Act, and within 30 days of the date of this decision, each of the current directors of the Respondent shall take or retake, as the case may be, the mandatory director training course provided by the CAO as prescribed pursuant to s. 29 (2) (e) of the Act. The Respondent shall provide

the Applicant with an attestation confirming the directors' completion of the courses within 10 days of the course completion.

2. Under s. 1.44 (1) 4 of the Act, within 30 days of the date of this decision, the Respondent shall pay the Applicant costs in the amount of \$200 as reimbursement of his Tribunal fees.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: August 9, 2024