

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 15, 2024

CASE: 2024-00025R

Citation: Cho v. Toronto Standard Condominium Corporation No. 1644, 2024 ONCAT 156

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

Member: Ian Darling, Chair

The Applicant,

Patsy Cho
Self-Represented

The Respondent,

Toronto Standard Condominium Corporation No. 1644
Represented by Alex Chan, Agent.

Hearing: Written Online Hearing – May 10, 2024 to October 4, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] The records requested in this case relate to how the Respondent applies a by-law. The Respondent is a commercial condominium corporation. Its By-law No. 5 creates a mechanism to impose financial penalties on owners in the form of a “daily administrative fee for each day a unit is deemed not to be continuously used, occupied, operating and open during mall hours”. The Applicant expressed concern about the fair application of the By-law and explained that the records request was to support her efforts to address her concerns.
- [2] The Applicant’s request related to the enforcement – and exemptions – of the By-law. The Applicant is concerned that her business model results in having to pay approximately \$230 per month in extra fees.
- [3] At the end of the mediation, the parties agreed that the only issue to be decided in the hearing was whether the Respondent refused to provide records without a reasonable excuse. At the beginning of this hearing, the parties clarified that

issues also included whether the costs related to the redaction and production of the records were appropriate and whether the redaction and records retention policies of the Respondent render the By-law No. 5 invoices and waiver/approval of records inadequate.

[4] In her opening statement, the Applicant stated that “from a management control, efficiency, accountability, and monitoring perspective, it is in the interest of the Corporation and the benefit of owners to create a record that deals specifically with the administration of By-law No. 5 and its associated Daily Administration Fee.” Aspects of this case relate to whether the records are adequate. However, fundamentally, the Applicant is requesting that the Tribunal order the Respondent to change how it implements the By-law and related record-keeping practices.

[5] This decision is restricted to issues within the Tribunal’s jurisdiction relating to records disputes related to section 55 of the *Condominium Act, 1998* (the “Act”). Disputes about how the corporation is managed and disputes related to the information contained in the records are not within the Tribunal’s jurisdiction. This decision does not address the appropriateness or application of the By-law. At the preliminary stage, I clarified that the following aspects of the Applicant’s concerns were outside of the scope of the hearing:

- Operational decisions of the board.
- If chargebacks related to By-law No. 5 are valid under the Act.
- Relitigating or enforcing aspects of the prior CAT case involving these parties.¹
- Requests for a “penalty” for behaviour other than whether the corporation refused to provide a record without a reasonable excuse.
- A request to order the Respondent to provide explanations to the Applicant regarding the information contained in the records.

[6] The Applicant asserts that the principle that the corporation’s records should be an open book, extends beyond the requirement to keep adequate records and provide access to owners. The Applicant asserts that this obligation creates a requirement that the corporation creates records specifically to address owner requests for information. The Applicant misinterprets the intent of the Act. I recognize that the records may be inadequate for the Applicant’s purposes, but

¹ *Cho v. Toronto Standard Condominium Corporation No. 1644*, 2020 ONCAT 42

they are adequate to allow the corporation to operate, which is adequate for the purposes of the Act.

B. ISSUES & ANALYSIS

Issue No. 1: Has the Respondent refused to provide records without a reasonable excuse?

- [7] The Stage 2 Summary and Order indicated that all the records were provided before the end of the mediation. However, the Applicant requested adjudication to determine whether the Respondent refused to provide the records without a reasonable excuse related to how they responded to the request. During the case it became apparent that the question of refusal without a reasonable excuse included concerns that the costs for redaction were unreasonable and that the redaction and retention policies of the Respondent created a refusal to provide the records.
- [8] The Applicant requested management agreements the corporation entered into within the last five years. The corporation refused because the agreements contained non-disclosure terms. The terms protect the commercial interests of the service provider. The Respondent provided redacted agreements (at a cost to the Applicant). Section 55 (4) of the Act limits the right to access records in specific circumstances.² As set out in section 55 (1) 8 of the Act, owners have the right to access agreements entered into by or on behalf of the condominium corporation. The Respondent was unable to identify any provision of the Act that exempted these records from the established right to access. To be clear, protecting the commercial interests of a service provider is not a valid reason to refuse to provide a record when the records request is solely related to their interests as an owner. The Applicant paid a fee to the Respondent to redact the records. Although she received the records, I find that in this circumstance imposing a fee to redact records that do not require redaction is a refusal without a reasonable excuse. I will further order the Respondent to provide unredacted copies of the contracts at

² As per section 55 (4) of the Act:

Exception

- (4) The right to examine or obtain copies of records under subsection (3) does not apply to,
- (a) records relating to employees of the corporation, except for contracts of employment between any of the employees and the corporation;
 - (b) records relating to actual or contemplated litigation, as determined by the regulations, or insurance investigations involving the corporation;
 - (c) subject to subsection (5), records relating to specific units or owners; or
 - (d) any prescribed records.

no cost to the Applicant.

- [9] The Applicant also asserted that the Respondent refused to provide a record because she received unsigned copies of minutes. There is no requirement under the Act for the minutes to be signed. This is not a refusal.
- [10] The Applicant requested records specifically related to By-law No. 5 – including board minutes related to By-law waiver requests for specific units; occupancy records; records related to invoices; waiver requests and decisions. The Respondent redacted information in an effort to respond to the request without providing information related to specific units. This was consistent with the Act. Section 55 (4) (c) states that “the right to examine or obtain copies of records ... does not apply to ... records relating to specific units or owners.” There is no basis to find a refusal related to these records.
- [11] During the case there was discussion whether certain records related to the waiver requests were lost. The Respondent created an electronic database of the waiver requests and responses. Once complete, the original paper copies were destroyed. The Applicant sought the originals, stating that:

By-law No. 5 Waive Request Form that contains handwritten private and confidential information disclosed by the applicant owner. The original record is also a part of the due process governing By-law No. 5 waivers + approvals which would have assisted the Applicant in understanding how the Board applies reasonable discretion in granting exemptions, provides corroborating evidence to support By-law No. 5 decisions made at board meetings, and provides audit evidence to support the annual financial audit and tax filings.

The information that the Applicant seeks is protected under section 55 (4) (c) of the Act. If the corporation retained the records, the Applicant would have received redacted records that did not contain the confidential information.

- [12] Section 13.1 (2) 23 of Ontario Regulation 48/01 (“O.Reg. 48/01”) establishes the retention period for records that are not specified in section 55 (2) of the Act or section 13.1 (1) of O.Reg. 48/01. It states that the record should be retained for “the period of time that the board determines is necessary for the corporation to perform its objects and duties or to exercise its powers.”
- [13] The corporation stated that they were aware of the request for the records, and only proceeded to destroy the records after not hearing back from the Applicant after the board provided their response to the records request.
- [14] In these circumstances, I do not find that this was a refusal to provide the records

without a reasonable excuse.

- [15] Although I have found that the Respondent refused to provide some records without a reasonable excuse, I decline to assign a penalty because, in this case, I find that the Applicant's requests for records extended beyond the intent of the records request process.

Issue No. 2: Are the records provided by the Respondent adequate?

- [16] The Applicant asserted that the redaction and records retention policies of the Respondent render the By-law No. 5 invoices and waiver/approval records inadequate. The Applicant stated that the Respondent overly redacted board minutes. She provided an example where the minutes contained the title and date of the meeting, but the entire remainder of the page was redacted with a black box. The Applicant has requested that the Tribunal order unredacted "confidential meeting minutes." I decline to order this, as it would not comply with the requirements of section 55 (4) (c) of the Act. I have reviewed the redacted document and am satisfied that in this context the redaction is appropriate because the entire content related to individual units, and thereby fall under section 55 (4) (c) of the Act. However, I caution the Respondent to ensure that it complies with the Act and the provisions set out in section 13.8 (1) of O.Reg. 48/01 when making redactions.
- [17] The Applicant raised concerns about "mapping documents" created by the Respondent. The documents attempt to help the Applicant understand the records she received. The Respondent attempted to demonstrate that the records were sufficient to provide information about the By-law waivers, while maintaining their obligation to protect the confidentiality of individual unit owners. These documents were created in attempt to respond to the Applicant's desire for information. They were not part of the original request. I do not find these document inadequate records because they were not part of the requested records – they were produced during the CAT case with the purpose of providing context regarding the requested records. I recognize that the "mapping documents" do not meet the Applicant's need for information about the application of the By-law but this case is not about access to adequate information as defined by the Applicant.
- [18] The Applicant's concern with the adequacy of all the records she has received stem from the fact that they are not adequate for the Applicant's specific needs. By-law No. 5 has a significant impact on the Applicant, and she feels that it is not being implemented fairly. Her request is intended to audit the process in order to understand if it is fair and bring about change to the By-law. The Tribunal has adopted the standard for adequacy established in *McKay v. Waterloo North*

Condominium Corp. No. 23, 1992 CanLII 7501 (ON SC), (“McKay”) which found that:

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. ...

[19] The Applicant’s position is that the records do not allow her to address her concerns about the administration of the By-law. Does this render the records inadequate? Is the corporation able to manage and administer the common elements of the corporation? The answer depends on the specific context. In this context, the Applicant has satisfied me that the records are not sufficient for her purposes, but she has not been able to demonstrate that they do not allow the corporation to fulfil its obligations under the Act.

Issue No. 3: Were the fees related to the redaction and production of the records appropriate?

[20] The Applicant stated that she had paid \$287 (including \$268.75 for the By-law No. 5 invoices and \$18.75 for the management and security contracts). I have already determined that it was inappropriate to redact the security contracts. I will order a refund of the \$18.75 fee.

[21] The Applicant claimed the time to produce the By-law No. 5 records was excessive. She provided a video that showed that she could redact the records more quickly than the Respondent. Although I recognize the Applicant’s ingenuity as evidenced by how she developed a faster process, the Applicant’s ability to redact records at a faster speed is not evidence that the time estimated is unreasonable. A single ability or opinion on how quickly redaction can be done is not an objective measure of what is reasonable. I find that the Respondent’s time estimate is reasonable. I decline to reduce the fees to reflect her preference for how the records can be produced

[22] The Applicant objected to the Respondent including paid breaks and lunch for staff completing the records request. The Respondent indicated that the fee included lunch and break time because the duration to complete the records was over eight hours and they are required by the *Employment Standards Act* to allow this time. O.Reg. 48/01 requires that the requester pay the actual cost to produce the records. Paid lunch and break time is not directly related to the cost to produce the records.

[23] The Respondent's fee estimates to produce the records was \$225. The Applicant paid \$43.75 more than the original estimate. I will order the Respondent to reimburse this amount to the Applicant, as it appears to relate to the costs for the breaks and training staff to complete the redactions.

C. COSTS

[24] The Respondent requested to be reimbursed for 100 hours work at \$25 per hour. This is an unreasonable request since the Applicant had to bring a case to the Tribunal in order to receive the records.

[25] The Applicant paid \$200 in Tribunal fees to bring this case to Stage 3. The Applicant had to file the case to get the records which were not provided until Stage 2 – Mediation. I have found that aspects of the fees were incorrect and ordered unredacted records. Since the Applicant was partially successful, I will order the Tribunal fees reimbursed according to Rule 48.1 of the Tribunal's Rules of Practice.

D. ORDER

[26] The Tribunal orders that:

1. Within 30 days of the date of this Order, Toronto Standard Condominium Corporation No. 1644 shall:
 - a. Provide unredacted versions of security and management contracts.
 - b. Reimburse Patsy Cho \$62.50 for an overpayment of fees paid for the production of records, consisting of reimbursement of the fee paid for redactions of security and management contracts in the amount of \$18.75 and reimbursement of \$43.75 of the fee paid to produce the records related to By-law No. 5.
 - c. Reimburse Patsy Cho for \$200 in filing fees paid to the Tribunal.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: October 15, 2024