

Corrected Decision

This decision was amended to provide clarification in paragraphs 43, 48.1.a, 48.1.e, 48.2 and 48.3 in accordance with Rule 46 of the CAT's Rules of Practice.

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 5, 2024

CASE: 2024-00401SA

Citation: Chai v. Toronto Standard Condominium Corporation No. 2431, 2024 ONCAT 161

Order under section 1.47 of the *Condominium Act, 1998*.

Member: Patricia McQuaid, Vice-Chair

The Applicant,

Somkith Chai

Self-Represented

The Respondent,

Toronto Standard Condominium Corporation No. 2431

Represented by Giancarlo Mosca, Agent

Hearing: Written Online Hearing – August 10, 2024, to October 23, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Somkith Chai, is the owner of a unit in Toronto Standard Condominium Corporation No. 2431 ("TSCC 2431"). The parties have been before the Tribunal previously - this is their sixth case since 2019, and all have been disputes about records. Their last case before the Tribunal (2023-00525R) was resolved by the Settlement Agreement (the "SA") dated February 1, 2024, in Stage 2 – Mediation.

[2] Mr. Chai filed this application on July 25, 2024, because he believes that TSCC 2431 has not complied with terms of the SA. Under s. 1.47(3) of the *Condominium Act, 1998* (the "Act"), a party to a settlement agreement who believes that the

other party has contravened that agreement may make an application to the Tribunal for an order to remedy the contravention.

- [3] Mr. Chai is well versed about the requirements for records as set out in the Act. The same cannot be said for TSCC 2431, which is, perhaps, why this is the parties' sixth case. The comments made by the Tribunal in an earlier case¹, at paragraph 118, provide a fairly accurate characterization of the parties:

I also find that the Applicant raised a great number of issues in this case, many of which were both technical and relatively minor in their impact, and not all of which were accurate. Many of these issues appear to arise from a desire for perfection in the Respondent's records. While the Respondent could certainly be more conscientious of and attentive to its obligations, it is not reasonable to hold it to a standard of perfection for every record it has created. ...

B. BACKGROUND

- [4] Giancarlo Mosca, the condominium manager, represented TSCC 2431 in this matter and in case 2023-00525R. I note that TSCC 2431 has been represented in previous cases by legal counsel, in another by an articling student, and in one case did not participate at all. This lack of continuity in representation may explain, in part, why these cases continue to occur; however, the ultimate responsibility in these cases lies with the board. The SA is a lengthy one and appeared to be an attempt to resolve the recurring issues of previous cases. As stated in the preamble to the SA, the parties have had an extensive history of challenges relating to records requests, but "the parties now wish to move forward from past circumstance..." Clearly an optimistic statement. The wide range of matters addressed in the SA included in effect, terms related to compliance with orders made in two previous cases in particular², and while commendable, I do note that the avenue for enforcement of Tribunal orders is the Superior Court of Justice.
- [5] In the course of this hearing, which is strictly about one issue – has TSCC 2431 contravened any of the terms of the SA – both parties attempted to re-argue and take issue with matters (including submitting their interpretations of previous Tribunal findings) that arose in the 2022 and 2023 decisions. On several occasions I reminded the parties that this case was not the forum for such

¹ *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2022 ONCAT 142 (CanLII)

² These are the case cited above which will be referred to as the "2022 decision" and *Chai v. Toronto Standard condominium Corporation No. 2431*, 2023 ONCAT 14 (CanLII) which will be referred to as the "2023 decision".

arguments. The parties had their opportunity, as set out in s. 1.46(2) of the Act, to appeal the Tribunal orders in the 2022 and 2023 decisions to the Divisional Court and they did not do so.

- [6] Further, before I address the alleged contraventions of the SA, I wish to stress to the parties, and to TSCC 2431 particularly, that when a party reaches a settlement agreement, it is crucial that they do so with a full understanding that they are agreeing to fulfill those terms. It is not open to them to subsequently question whether the other party is entitled to the records, or whether, as alleged here, the Applicant is on a “fishing expedition”. The time to pursue those issues passed with the completion of the SA. Such arguments will be given no weight now.

C. ANALYSIS

- [7] As mentioned above, the SA is lengthy. Paragraph [6] of the SA states that “The Respondent acknowledges and agrees it is required to fulfill all outstanding orders previously issued against it by this Tribunal, and promises to do so, without exception, within 30 days of acceptance of this Agreement...” Some of the terms have been met by the agreed deadline. Others not at all. For some of the terms, there has been compliance, though less than perfect. I will address each of the terms which Mr. Chai alleges have not been complied with. I have ordered a remedy in some instances where I find a contravention, but not in every instance for the reasons set out below. The first five of the alleged contraventions relate to outstanding items from the 2023 decision, which was the case in which TSCC 2431 did not participate. These SA terms exactly replicate terms in the 2023 decision.

Term [6] 1 i – to provide a copy of By-law 3

- [8] Mr. Mosca submits that this has not been provided because By-law 3 does not exist. He states that the purported subject matter of that by-law – the permission for the board to hold electronic meetings – is in fact encompassed by By-law 2 which has been provided to Mr. Chai. I have reviewed By-law 2, and I agree with TSCC 2431; it does set out the parameters for electronic meetings. There appeared to have been some confusion on this issue in the 2023 decision and while I question why TSCC 2431’s representative, Mr. Mosca, did not raise this point in case 2023-00525R when he had the opportunity to do as the SA was being negotiated and agreed to, the fact is that TSCC 2431 cannot provide a record that does not exist. There is, therefore, no contravention of this term of the SA.

- [9] Mr. Chai acknowledges that he has received By-law 2; in fact, he has received two copies of it, of different sizes, and queries what accounts for the two different sizes and asserts that in any event only one copy of a core record should be maintained. This submission is indicative of Mr. Chai's technical approach to issues, which are, as noted by the Tribunal in the 2022 decision, issues which are often relatively minor and technical, and ought not to be brought to the Tribunal. At the same time, this issue about By-law 3 (and By-law 2) highlights the persistent tendency of TSCC 2431's lack of attention to detail.

Term [6] 1 ii – to provide a copy of the minutes of the board meeting held on April 26, 2021, amended to indicate the exact date that Steve Chang was appointed to the board

- [10] As Mr. Chai noted in his submissions, there seemed to be some confusion about whether the adjudicator in the 2023 decision intended that the April 26, 2021 (as ordered), or the March 29, 2021, minutes required amendment to show the exact date that Steve Chang was appointed to the board. TSCC 2431 submits that the April 26, 2021, minutes were provided, but did not require amendment because they are not germane on this point – Mr. Chang was appointed on March 29, 2021. The relevant paragraphs of the 2023 decision (which probably have caused some confusion) referred to by Mr. Chai, are as follows:

[28] Board meeting minutes of March 29, 2021 indicate three directors were present. S. Chang is noted to be attendance but not listed as a board member. Redaction prevents a complete understanding of the minutes; however, it is clear that S. Chang is not listed as a board member at that meeting. However, minutes of board meetings held between April 26, 2021 and March 1, 2022, each show Steve Chang as a member of the board.

[29] The exact date of the appointment of Steve Chang is not in the minutes. However, the reasonable inference from the evidence before me is that Steve Chang was appointed at the March 29, 2021 meeting. Since the minutes do not show a resolution of the board to appoint Steve Chang, I find that the omission indicates an inadequate record of the appointment and thus the March 29, 2021 minutes are inadequate in that regard.

- [11] So, while strictly speaking, TSCC 2431 has not complied with the term in the SA (which was, as noted above, a term in the 2023 decision) whereby it agreed to provide amended April 26, 2021 minutes, I will not order that those be amended or that the March 29, 2021 minutes be amended to reflect Mr. Chang's appointment, as suggested by Mr. Chai. There is no dispute that Mr. Chang was a director at the material times. To go back in time now, over three years since these meetings were held, is nonsensical. Mr. Chai's exacting attention to detail is noteworthy, but at a certain point, some matters become too trivial to pursue.

Term [6] 1 iii – to provide the Applicant the board's reasons for redaction of each redacted record provide to the Applicant

[12] This term also relates to the 2023 decision which dealt with the records requests of April 13 and August 2022. TSCC 2431 provided a simple answer – the reason for redaction was the removal of personal information. That reason may encompass every redaction and may well be correct. However, it does not satisfy the requirements set out in s. 13.8(1)(b) of Ontario Regulation 48/01 ("O. Reg. 48/01"), which was specifically referred to in paragraph 40 of the 2023 decision when this issue was addressed. That section of the regulation states in part:

(b) if the board has determined that the corporation will redact the record to remove any part that the board has determined that the corporation will not allow the requester to examine or of which it will not allow the requester to obtain a copy, a written statement of the board's reason for its determination and an indication on which provision of section 55 of the Act or this Regulation the board bases its reason;

[13] No such statement has been provided pursuant to the terms of the SA. Unfortunately, this seems to reflect TSCC 2431's failure to carefully read the Tribunal decision when issued, and a failure to properly inform itself about its obligations under the Act. The simple assertion made by Mr. Mosca about removal of personal information misses the point. Is preparation of a statement in accordance with s. 13.8(1)(b) an onerous task at this time? Perhaps. But having agreed to do so by the terms of the SA, it should have been provided. And I could order that it be delivered now. I will not. These records pre-date August 2022. Mr. Chai is determined, as these cases show, to hold TSCC 2431 to account for compliance with the Act on every detail in every record. There is a time and place for that. But in the context of this current case, that time has passed.

Term [6] 1 iv – to provide the Applicant with a reconciliation of costs against fees paid for records requested on April 13, 2022, and August 3, 2022, and that the corporation and Applicant shall comply with refund requirements as per O. Reg. 48/01, s. 13.8(1)(c) or s. 13.8(2), as applicable

[14] The specific regulation is also set out in the 2023 decision at paragraph 47. TSCC 2431 has not given any meaningful response on this point. TSCC 2431 has reiterated in the hearing that Mr. Chai has been paid the costs and penalties awarded to him, but this is not responsive to this term. I urge TSCC 2431 to read paragraphs 43-48 of the 2023 decision to acquaint themselves about what is required. I will order that this reconciliation statement be provided within 30 days of the date of this decision. If TSCC 2431 is unable to comply because of the

historical nature of the charges, TSCC 2431 is to provide a letter to that effect to Mr. Chai within that 30-day time period.

- [15] I note here that compliance with this term (which stems from the Tribunal order in the 2023 decision) should not form part of any future settlement agreement. This pursuit of compliance with previous Tribunal orders at the Tribunal must come to an end.

Term [6] 1 v – to provide reasons to the Applicant in accordance with s. 13.12(2)(4)(iii) of O. Reg. 48/01 for not providing non-core records requested in the August 3, 2022, request

- [16] No statement was provided by TSCC 2431 that is responsive to this term. However, on reading this term, it is unclear to what this might refer since the section of O. Reg. 48/01 cited is not applicable to a request made by an owner to the corporation. Inexplicably, TSCC 2431 seemed to provide minutes of a board meeting dated August 15, 2022, in response to this term. The term is confusing, and that confusion was perhaps caused in part by the Tribunal in its 2023 decision.
- [17] Due to the confusion in the term and given that what seems to be in issue are the reasons for a refusal to provide some non-core records requested on August 3, 2022, I will not order that this be provided at this time because, with the passage of time, these issues become quite minor in nature.
- [18] While I am troubled by the fact that TSCC 2431 clearly again, did not pay careful attention to what it agreed to in February 2024, I am balancing both efficiency and impact for these parties. The issue around the lack of reasons given for the refusal of records requested in August 2022 was given a hearing before this Tribunal already, resulting in the 2023 decision (issued in January 2023). For TSCC 2431 to incur more time and expenses to respond to this term (when there are likely more pressing issues to be dealt with within this condominium community) seems fruitless. I will, however, order an alternate remedy to address the apparent lack of awareness of the Act and its regulations by the TSCC 2431 board, which will be described below in paragraph 43.

Terms [6] 1 ix and x – to provide updated versions of the record of notices of leased units under s. 83 of the Act and an updated version of the notices received under s. 46.1(2) of the Act.

- [19] These records are also referenced in terms [6] 4 i and ii of the SA which provide that the records will be in their most current form. That agreement by TSCC 2431 makes eminent sense – copies of the records that predate the July 2021 records

request (which was the subject of the 2022 decision) would be of limited value over three years later.

[20] TSCC 2431 has purported to provide these records. Mr. Chai's point is that they are confusing and do not meet the requirements set out in the SA (which re-stated the terms of the 2022 decision regarding requirements for these records). He is not wrong. An owner should be able to readily understand the documents without asking questions for clarification. Sections 46.1 and 83 of the Act provide clear guidance on what is required. I urge both the TSCC 2431 board and the management to carefully review those requirements. The fact that these records have been a recurring issue is telling. TSCC 2431 may be frustrated that Mr. Chai regularly asks for these records, and may question his purpose in doing so, but these are core records that a corporation should be able to generate in a comprehensible manner. At this point in their history, TSCC 2431 must be acutely aware of Mr. Chai's attention to detail (and if they are not, that is indicative of wilful unawareness); it would be a more efficient use of everyone's time and resources to be much more diligent, and less dismissive, in their responses to Mr. Chai.

[21] I will order that updated and current forms of these two records be provided in accordance term [6] 4 i and ii of the SA. This is now an order of the Tribunal and should TSCC 2431 not comply, Mr. Chai will be required to seek enforcement through the courts.

Term [6] 1 xi – to review minutes between November 2020 and May 2021 (as listed) and redact them properly and provide copies to the Applicant accompanied by a separate document setting out the reasons for each individual redaction.

[22] This was a term of the 2022 decision. It appears that no statement was provided; again, Mr. Mosca stated that redactions were made for personal information. Mr. Chai submits that redactions were incorrectly done. He submits that in some instances, names and unit numbers are still shown, details are still partially visible or details that ought not to be redacted, were. In other words, redaction was done as per this term – there was compliance, though not perfectly executed. I will not order that the redactions be re-done. The statement should have been provided, but for the reasons set out by me in paragraph 13 above, I will not order that it now be provided.

[23] A very similar term was also set out in term [6] 4 iii of the SA. My reasons set out in paragraphs 13 and 22 apply to this term as well. Mr. Chai, as he clearly states, may not find some of the general statements and answers provided by TSCC 2431 to be acceptable in relation to these particular terms, but his assessment of acceptability is not determinative of what is reasonable.

Term [6] 2 i – to provide copies of so-called “private” or “in-camera” board minutes from meetings held between the dates of June 21, 2022 and August 7, 2023 and on or about April 4, 2016, March 21, 2017, May 2, 2017, June 13, 2017, July 26, 2017, October 30, 2017 and January 8, 2018, or in respect of any that do not exist, a written statement to that effect.

Term [6] 2 ii – to provide copies of all non-private or non-in-camera minutes of board meetings occurring between the dates of June 21, 2022, and August 7, 2023, or, if there were no meetings or meeting minutes kept during this time period, a written statement to that effect

[24] Clearly some of these minutes, if they do exist, are dated, causing one to question their intrinsic value to any owner at this time. If they do not exist, I order that TSCC 2431 provide a written statement to that effect, as it agreed to do. Mr. Chai stated that he received August 15, 2022, minutes, but no others. I also note that Mr. Chai stated that he specifically requested most of those minutes in order to review them prior to the AGM that was ultimately held in January 2024. That being his stated purpose and the AGM having occurred nine months ago, provision of the minutes may be moot.

[25] However, I also note that Mr. Mosca responded that TSCC 2431 can provide other minutes as it may have overlooked some. Therefore, I will order that TSCC 2431 comply with this term by reviewing their minutes and provide any of those listed in the terms above.

Term [6] 2 iii – to provide copies of all Periodic Information Certificates (“PIC”) and Information Certificate Updates (“ICU”) issued by TSCC 2431 during the period beginning August 7, 2022, and ending August 7, 2023 (particularly, but without limiting the generality of the foregoing, the PIC issued for the first quarter in 2023, if any).

[26] Mr. Chai submits that these have yet to be fully or correctly provided and that TSCC 2431 has not been creating and delivering PICs correctly to owners since Mr. Mosca assumed management. Whether or not that is true is not for me to determine in the context of this hearing. Mr. Chai has been provided with a PIC dated October 31, 2023, which he submits does not accord with any of the corporation’s fiscal quarters as well as an ICU dated April 1, 2023. Mr. Mosca submits that TSCC 2431 has provided all that they have.

[27] Given Mr. Chai’s submissions about TSCC 2431’s confusion about these requirements for PICs and ICUs, I find that it is likely that there may be no other documents than the one provided already. Again, imperfect compliance. Would good governance demand that there be more? Yes. But that is not a question

before me. I will not order that TSCC 2431 create a record that does not appear to exist.

Term [6] 2 iv – to provide copies of all returns and notices of change filed by TSCC 2431 with the CAO

[28] Only one Notice of Change was provided for April 1, 2023. TSCC 2431 states that that is all there is. Mr. Chai submits that this term encompassed all dates prior to the SA. While I question whether it would in fact be that expansive given that this term relates to a records request that appeared to pre-date the SA by several months, regardless, only one has been provided when, as Mr. Chai asserts, there should be years' worth of such notices. He stated that he has "periodically checked the CAO site for our condo and have seen it changed many times for directors and management. So, there should definitely be more than one."

[29] Mr. Chai is correct – there should be more. Section 55(1)3.1 of the Act states that returns and notices that a corporation has filed with the Registrar under Part II.1 of the Act are records that the corporation is required to keep. Section 9.3(1) under that Part states that the corporation shall file a notice of change for every change in the directors elected or appointed to the board. I accept TSCC 2431's submission that there are no other forms. Whether there ought to have been, whether TSCC 2431 filed the required notices with the Registrar, is not for me to decide. That is not an inquiry for the Tribunal to undertake given its jurisdiction. I do not find that the absence of other notices amounts to a contravention of this term. Mr. Chai has suggested that I order TSCC 2431 to authorize the CAO to provide any notices that it may have directly to him. I will not do so. That extends beyond the parameters of the SA.

Term [6] 2 v – to provide evidence of completion by the current directors of the mandatory and advanced director training courses offered by the CAO

[30] Mr. Chai states that TSCC 2431 has provided proof of the mandatory training only. Mr. Mosca submits that mandatory training is required; directors have not taken the advanced training. Mr. Chai submits that the word "and" in the SA term means that both mandatory and advanced training was expected. There may be some ambiguity in the wording of this term; it is not at all clear that the directors were required to take both courses and to provide evidence of completion of both. The directors have provided evidence of the course that they have taken.

Terms [6] 2 vi – to provide copies of any disclosures relating to conflicts of interest that have been received from the current directors of the corporation

Term [6] 2 vii – to provide copies of the Respondent's Directors' Code of Ethics signed by each of the current directors of the Respondent

[31] Mr. Mosca responded, regarding the first term above, that all director disclosure forms were signed by directors. That may well be; however, the agreement was to provide copies of any such disclosures. For clarity on this point, I direct TSCC 2431 to review s. 40 of the Act which sets out the circumstances when that disclosure has to be made, and the process by which those disclosures are to be made. Section 40(1) states:

40 (1) A director of a corporation who has, directly or indirectly, an interest in a contract or transaction to which the corporation is a party or a proposed contract or transaction to which the corporation will be a party, shall disclose in writing to the corporation the nature and extent of the interest.

[32] It may be that the current directors (as of February 2024) have not had to make any such disclosure, though the response to this term by Mr. Mosca suggests otherwise. TSCC 2431 will be ordered to provide a copy of any disclosures, as of February 2024, to Mr. Chai, or alternatively to provide a written statement that no disclosures were made.

[33] Regarding term [6] 2 vii, all copies have been provided, though a few days after the deadline set out in the SA. Mr. Chai states that the form signed by one director is inadequate because she failed to fill in the condominium details at the top and therefore the form should be amended. I will not order that. The error is very minor. There has been substantial compliance with this term.

Term [6] 3 – to upload copies of TSCC 2431's Declaration, all in-force By-laws and its complete and most recent set of Rules to the community folder that is only accessible to owners on its Condo Control website.

[34] This has been done, though not to Mr. Chai's exacting standards. He submits that it is "somewhat correct but cluttered with duplicates and other records". That does not constitute a contravention of this term.

Term [6] 5 – to provide the Applicant with a copy of a document or sheet containing an impression of the Respondent's seal. It shall not be required to provide the Applicant with the actual seal, nor shall it provide the impression on a blank sheet of paper

[35] TSCC 2431 acknowledged that it has not been provided but can be. This is an obvious contravention, and I will order that it be provided.

Term [6] 9 – the Respondent will endeavour to act diligently and carefully in accordance

with the Act and its regulations and the CAO training modules and guides to respond to each request on the proper form and within the required timeframe

- [36] The issue relating to this term is that Mr. Chai submitted another records request to TSCC 2431 on June 28, 2024. He requested, among other things, the Record of Owners and Mortgagees, Record of Notices of Leases of Units under s. 83 of the Act, PICs for the last 12 months, and board meeting minutes for the last 12 months. Some of these records may be duplicative, at least in part, of records previously requested and addressed in the SA. Based on Mr. Chai's submissions he has not received a response from TSCC 2431 and therefore will be filing another application with the Tribunal in respect of that records request.
- [37] While I note that this term seems to articulate a 'best efforts' response by TSCC 2431, the evidence before me is that TSCC 2431 did not respond at all. On its face, it is a contravention of the term, but I am making no determination of the entitlement of Mr. Chai to those records, as I ruled against considering that request as part of the SA dispute. Mr. Mosca did express significant frustration with the regular requests made by Mr. Chai, questioning his purpose in making these requests and the effort that it requires to respond to them. That does not support a nonresponse.

D. COSTS

- [38] Mr. Chai is seeking reimbursement of his filing fees of \$125. Though he has been partially successful in this case, many of the issues were minor and technical in nature. Such issues should not be coming to the Tribunal on a recurring basis. I will not award him his costs in these circumstances. Mr. Chai has also requested that he be reimbursed his time at the rate of \$30 per hour. I will not award him those costs. All parties who choose to litigate will suffer a loss of time through their involvement in the Tribunal process. And here, it is clear that Mr. Chai made a clear and conscious decision to pursue this case when he knew, from previous experiences before the Tribunal, what that entailed and how technical and relatively minor issues might be addressed by the Tribunal.
- [39] The veiled disdain with which Mr. Chai seems to regard the competence of the board and management and the frustration (and, as a result, dismissiveness) that the board and management express in relation to Mr. Chai, make for a very testy relationship, and a very unproductive dynamic between them. It impacts an entire community, and they must both do better. This is not a situation where fault lies with only one party.
- [40] The comments made by the Tribunal in the 2023 decision continue to apply:

[54] In his four applications to the Tribunal, the Applicant appears to be blurring the line between the corporation's provision of a record and governance issues within the corporation. The Tribunal has jurisdiction to assess if the provision of a record met the requirements of the Act and regulations. Issues around the governance of the condominium corporation is beyond the purview of the Tribunal.

[55] The Applicant's submissions demonstrate that he is clearly distrustful of the board of directors and management.

[56] The Applicant's ongoing requests for records seems to arise from his personal perception of his entitlements under the Act. The overall tone of his argument, the repeated requests for records, the challenges to his other Tribunal decisions, and requirements that redaction be removed or at least curtailed is mirrored by the corporation's incomplete responses and absence of participation in this hearing. I cannot order that these parties change their approach toward each other, but the time cost and anxiety for both would be substantially lessened if they did.

E. CONCLUSION

[41] As noted above, this was a case which evolved, perhaps inevitably, from an SA in which Mr. Chai sought to, in effect, enforce compliance with previous Tribunal orders. The ready access to the Tribunal is a benefit to all members of a condominium community, but it may have its limits. At a certain point, after numerous cases before the Tribunal on recurring issues, another avenue for dispute resolution, like the courts, may be more appropriate. I caution Mr. Chai that while his intention may be to hold his board to account, that does not mean that every slight departure from his strict reading of their obligations equates to poor governance. And further, filing repeated applications with the Tribunal to prove a point – that the board is lax, at times haphazard, and uninformed about their obligations – is not a good use of Tribunal resources and, more importantly, ceases to be a meaningful endeavour.

[42] There is little question, based on this and previous cases, that TSCC 2431's board and management need to be better informed about their duties under the Act. Their handling of this case was woeful.

[43] 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 s. 1.47(6) of the Act, I am ordering that each of the current board members take the new (as of November 2024) CAO mandatory director training course within 45 days of the date of this decision and provide the Applicant with an attestation confirming completion of this course. 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 Mr. Mosca to more fully educate himself about the requirements of the Act.

[44] I will also make an order that Mr. Mosca, as TSCC 2431's agent in this matter, provide a copy of this decision to each of the current board members and that the board members provide a written statement to Mr. Chai attesting to the fact that they have read this decision. I urge Mr. Mosca, as well, to carefully read it.

[45] I note that in submissions, Mr. Chai has queried how 'future' violations of the SA may be dealt with; for example, if there is another record request which TSCC 2431 does not respond to, might that too be a violation of term [6] 9 of this SA. It is unclear, and I would suggest unlikely, that the SA was intended to have effect into perpetuity as a basis for further applications to the Tribunal. It is, in effect, a statement that TSCC 2431 is required to comply with the Act. Every alleged failure or refusal to respond to a records request would still have to be dealt with on its merits, through the Tribunal processes, regardless of this term. That Mr. Chai is contemplating future violations may not be unfounded given the history between these parties, but again, I urge the parties to re-examine their approaches – there may well be cases that ought to come to the Tribunal, but frivolous applications need to be avoided.

[46] Finally, Mr. Chai has requested that I restrict access to certain records that have been uploaded in this case, including the SA which is the basis for the case. He cites the fact that one of the records contains unredacted information relating to owners' names and unit numbers. I have considered that request and it is, except for the SA, denied. Administrative tribunals operate according to the 'open court' principle. A confidentiality order which would restrict public access is rare and is generally only granted to protect sensitive personal information (for example, sensitive medical information) about a person. The courts have stated that the question is not whether the information is "personal" to the individual concerned, but whether, because of its highly sensitive character, dissemination would cause an affront to their dignity that society as a whole has a stake in protecting. This request does not meet that test.

[47] However, regarding the SA, I will exercise my discretion and grant an exception to

this general principle of openness. A settlement agreement is generally intended to be confidential and not shared with others. The parties here agreed to that. I will preserve that confidentiality for the document as a whole, though of course certain terms are disclosed in the context of this decision. However, should Mr. Chai pursue any other contravention of the SA, based on his interpretation of it, another Tribunal member may decide not to exercise their discretion in the same manner.

F. ORDER

[48] The Tribunal orders that:

1. Having found contraventions of the Settlement Agreement, pursuant to s. 1.47(6) of the Act, and within 30 days of the date of this decision, the Respondent TSCC 2431 shall:
 - a. provide the Applicant with a reconciliation of costs against fees paid for records requested on April 13, 2022, and August 3, 2022. The corporation and the Applicant shall comply with refund requirements as per s. 13.8(1)(c) or s. 13.8(2) of O. Reg. 48/01, as applicable, or, if TSCC 2431 is not able to comply because of the historical nature of the charges, it shall provide a letter to that effect to the Applicant;
 - b. provide the Applicant with updated and current copies of the Record of Owners and Mortgagees as prescribed in s. 46.1(3) of the Act;
 - c. provide the Applicant with an updated and current copy of the Record of Notices of Leases as prescribed by s. 83(3) of the Act;
 - d. review its records and provide, if not already provided, copies of so-called “private” or “in-camera” board minutes from meetings held between the dates of June 21, 2022 and August 7, 2023 and on or about April 4, 2016, March 21, 2017, May 2, 2017, June 13, 2017, July 26, 2017, October 30, 2017, and January 8, 2018, and copies of all non-private or non-in-camera minutes of board meetings occurring between the dates of June 21, 2022, and August 7, 2023. If there were no meetings or meeting minutes kept during this time period or for those dates specified, provide the Applicant a written statement to that effect;
 - e. provide copies of any disclosures, as of February 2024, relating to conflicts of interest as per s. 40 of the Act that have been received from the current directors of the Respondent’s board, or alternatively, provide a written statement that no disclosures were made; and

- f. provide the Applicant with a copy of a document or sheet containing an impression of the Respondent's seal. The Respondent shall not be required to provide the Applicant with the actual seal, nor shall it provide the impression on a blank sheet of paper.
- 2. Pursuant to s. 1.47(6) of the Act and within 45 days of the date of this decision, each of the current board members take the new (as of November 2024) CAO mandatory director training prescribed under s. 29(2)(e) of the Act (and referenced in s. 11.7(4) of O. Reg 48/01) and provide the Applicant with an attestation confirming completion of the course within seven days of their completion.
- 3. Pursuant to s. 1.47(6) of the Act, the Respondent's representative, Mr. Mosca, or another condominium manager in his place, shall provide a copy of this decision to each of the current directors of the Respondent's board for their review within seven days of the date of its release and each of those board members shall provide a written statement to the Applicant, within 21 days of the date of this decision, confirming that they have read the decision.
- 4. The settlement agreement in CAT case 2023-00525R remains confidential and is restricted from public access.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: November 5, 2024