

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 6, 2024

CASE: 2024-00226R

Citation: Vosper v. Peel Condominium Corporation No. 521, 2024 ONCAT 164

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

Member: Nasser Chahbar, Member

The Applicant,

Cory Vosper

Self-Represented

The Respondent,

Peel Condominium Corporation No. 521

Represented by Vadim Koyen, Agent

Hearing: Written Online Hearing – August 20, 2024 to October 2, 2024

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant is a unit owner in Peel Condominium Corporation No. 521 (“PCC 521”). On March 16, 2024, the Applicant submitted a records request for all board meeting minutes for the last 12 months and the current plan for future funding of the reserve fund.
- [2] On April 17, 2024, the Respondent provided the Applicant with the requested meeting minutes by email, but did not use the mandatory Board Response form. The Respondent also stated in their response to the Applicant that the current plan for the future funding of the reserve fund would be provided to the Applicant once it was approved by the board.

- [3] The Applicant alleges that PCC 521 has not provided them with all the board meeting minutes for the last 12 months. The Applicant further claimed that if all the existing minutes were provided, then they are not adequate because there were “at least two instances of significant expenditures made by PCC 521’s Board of Directors which were not documented in the meeting minutes”. The Applicant here refers to the Respondent’s ordering of an additional reserve fund study and hiring of a new property manager (the “two decisions”).
- [4] The Respondent joined the case but did not participate in Stage 2- Mediation. They also did not participate during the hearing. They did not respond to any of my messages, nor did they provide any evidence.
- [5] The Applicant seeks an order requiring that the Respondent’s board members retake the mandatory director training course provided by the Condominium Authority of Ontario. The Applicant also seeks costs in the amount of \$200 for their Tribunal application fees and that the Respondent pay a penalty under s. 1.44 (1) 6 of the *Condominium Act, 1998* (the “Act”).
- [6] For the reasons set out below, I find that the Respondent has provided the Applicant with all the records to which they are entitled, and that the board meeting minutes submitted by the Applicant are adequate. Even though the Respondent did not use the mandatory Board Response form and was two days late in providing the records, they did not refuse to provide the records without a reasonable excuse. As a result, I find that imposing a penalty against the Respondent is not warranted and no order will be made to require the Respondent’s Board members to retake the mandatory director training. Since the Applicant is unsuccessful, I make no order for costs.

B. ISSUES & ANALYSIS

- [7] The issues to be addressed in this hearing are:
1. Has the Respondent refused to provide records to the Applicant without a reasonable excuse, either because the Board Response form has not been provided or because the records were provided late? If so, is a penalty warranted under s. 1.44 (1) 6 of the Act?
 2. Are the records provided adequate? If not, what is the appropriate remedy?
 3. Should the Applicant be awarded any costs?

Issue #1: Has the Respondent refused to provide records to the Applicant without a reasonable excuse, either because the Board Response form has not been provided or because the records were provided late? If so, is a penalty warranted under s. 1.44 (1) 6 of the Act?

- [8] The Applicant submitted their records request on March 16, 2024. The Respondent must respond to the Applicant's request within 30 days. The Respondent emailed the Applicant all board meeting minutes on April 17, 2024, making their response at most two days late.
- [9] Under s. 1.44 (1) 6 of the Act, the Tribunal may make an order directing a condominium corporation "to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under section 55 (3) if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection."
- [10] Based on the evidence before me, all the meeting minutes were provided on April 17, 2024. The plan for the future funding of the reserve study was not provided at that time because it had not yet been approved by the board, which was communicated to the Applicant. The facts here do not support a finding of a refusal to provide the records without a reasonable excuse. Therefore, there is no basis for an award of a penalty.
- [11] Furthermore, I note that in a March 2024 newsletter provided by the board to unit owners, it clearly states that the board members recently completed the mandatory directory training after becoming new board members. After considering the nature of the breaches and the board members' recent completion of the training, I do not find that an order is warranted to require the Respondent's board members to retake the director training.

Issue #2: Are the records provided adequate? If not, what is the appropriate remedy?

- [12] The Applicant was not satisfied with the adequacy of the meeting minutes because they allege that the two decisions described in the Respondent's monthly newsletters were not documented in the minutes. The Applicant submitted these monthly newsletters as evidence.
- [13] In March 2024, the board sent out a newsletter informing owners of their decision and reasons for hiring a new property manager, whose employment would begin on June 1, 2024. They also stated that further details regarding the new property manager would be communicated with owners as they become finalized.

[14] The board sent out another newsletter in April 2024 which spoke about the Board's decision to order a new reserve fund study. This newsletter, titled: "Requisition Meeting- A Chance to Clear the Air", summarized an owner-requisition meeting held on April 8, 2024. In this newsletter, they clearly state that the current draft of the reserve fund study had not yet been approved. The Applicant does not reference this meeting in their submissions or whether it served to clarify any of the Applicant's issues.

[15] The Applicant submitted the February 2024 and March 2024 meeting minutes they received and claims that the decisions referenced in the newsletters should have been documented in these minutes, and if not, that the Respondent is not keeping adequate records. The Applicant further states:

I am deeply concerned that the Corporation in which I live is not abiding by the Act. I have knowledge and evidence of at least two instances of significant expenditures made by PCC 521's Board of Directors which were not documented in the meeting minutes provided to me in response to my Request for Records dated March 16, 2024.

[16] The Applicant references s. 32 (1) and 37 (1) of the Act, which speak to the way business of the corporation should be conducted and the standard of care owed by officers and directors of the corporation. The Applicant also references s. 55 (1), (3), (8), (9) and (10) of the Act, which speak about the corporation's duty to keep adequate records and an owner's right to access these records.

[17] The Tribunal has adopted the standard 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. ...

[18] The Tribunal also found in *Rahman v. Peel Standard Condominium Corporation No. 779*, 2021 ONCAT 32 (“Rahman”) that:

In matters before the Tribunal, we see a wide variety of minutes in terms of form and detail. Issues about the adequacy of minutes arise frequently. It is well settled law at this point 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.

[19] In *Mawji v. York Condominium Corporation No. 415*, 2021 ONCAT 72, the Tribunal summarized the principles outlined in McKay and Rahman, stating that:

These decisions establish that an adequate record of a board meeting is a document with sufficient detail to allow the owners to understand what is going on in their corporation, how decisions are being made, when the decisions are made and what the financial basis is for the decisions.

[20] Based on the standard mentioned in the above case law, I find that the February 2024 and March 2024 board meeting minutes are adequate. They include sufficient detail to allow owners to understand what is going on in the corporation. In addition, contrary to the Applicant’s submissions, the minutes document the board’s discussions on ordering a new reserve fund study which had not yet been approved, as confirmed in the April 2024 newsletter.

[21] The decision to hire a new property manager was not documented in the February and March minutes. I cannot conclude that this decision should have been documented in these particular minutes and that because they are not, the minutes are rendered inadequate. There is no evidence before me to suggest that the issue of hiring a new property manager was discussed during those meetings and that the Board failed to document them. The minutes themselves may very well reflect the record of everything discussed at those meetings.

[22] The Applicant further submitted that the decision to hire a new property manager was made via email and that:

I cannot confirm whether meetings were held, or if they were held and minutes not taken, or if no meetings were held and decisions are being made without duly called Board meetings. I suspect they are making undocumented decisions without having meetings and neither of the two decisions were ratified in any of the minutes I was provided.

[23] The Applicant speculates that the Respondent made some decisions outside of board meetings and were not documented. However, the decision to hire a new property manager could have been ratified during subsequent board meetings in April and beyond. The minutes of any further meetings were not a part of the Applicant's case. Therefore, I do not have enough evidence to conclude that the Respondent is not keeping adequate records.

[24] I understand the Applicant's position and do not downplay their concern for proper record keeping by the corporation. Therefore, I take this opportunity to caution the Respondent to ensure that it complies with s. 55 of the Act and the provisions related to conducting business and handling the affairs of the corporation.

Issue #3: Should the Applicant be awarded any costs?

[25] The Applicant requested \$200 in costs for their Tribunal application fees.

[26] Rule 48.1 of the Tribunal's Rules of Practice states:

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.

[27] The Applicant in this case was unsuccessful. Therefore, I find that they are not entitled to any costs.

C. ORDER

[28] The Tribunal Orders that:

1. The Applicant's case is dismissed.

Nasser Chahbar
Member, Condominium Authority Tribunal

Released on: November 6, 2024