

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** December 12, 2024

**CASE:** 2024-00281SA

**Citation:** Clegg v. Carleton Condominium Corporation No. 382, 2024 ONCAT 186

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

**Member:** Nicole Aylwin, Member

**The Applicant,**

Jeff Clegg

Self-represented

**The Respondent,**

Carleton Condominium Corporation No. 382

Represented by Nancy Houle, Counsel

**Hearing:** Written Online Hearing – July 10, 2024, to December 6, 2024

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] The Applicant, Jeff Clegg, is a unit owner in the Respondent, Carleton Condominium Corporation No. 382 (“CCC 382” or “Respondent”).
- [2] In July 2024, Mr. Clegg filed an application with the Tribunal alleging that CCC 382 breached several terms of a Settlement Agreement that had resolved a previous case before the Tribunal (Case No. 2023-00591R). This Settlement Agreement addressed several disputes between the parties about entitlement and adequacy of records.
- [3] Also in July 2024, Mr. Clegg advanced another case about records, Case No. 2024-00296R, to Stage 3 – Tribunal Decision. This case represented the merger of two records cases (2024-00296R and 2024-00384R). The issues in this case dealt with six records requests made by Mr. Clegg between March 2024 and June 2024. In this case, Mr. Clegg alleged that CCC 382 had refused to provide him records to which he was entitled without a reasonable excuse, had not properly redacted records and had failed to keep adequate records as per the

*Condominium Act, 1998* (“the Act”). He also alleged that CCC 382 had breached confidentiality during mediation. Mr. Clegg requested that CCC 382 pay him a penalty for failing to provide records, costs, and damages resulting from an act of non-compliance.

[4] At the outset of this proceeding, CCC 382 made a motion to merge the Settlement Agreement case and the records case on the grounds that the issues were intertwined and, as such, it would be both fair and efficient to merge the cases. Mr. Clegg opposed the merging of the cases. I provided both parties the opportunity to provide submissions on the motion and for the reasons set out in my Motion Order, *Clegg v. Carleton Condominium Corporation No. 382*, 2024 ONCAT 115, I decided that the cases should be merged and ordered so.

[5] As such, the issues in this case, as confirmed with the parties, are as follows:

1. Has CCC 382 breached paragraphs 5, 7 and 8 of the Settlement Agreement which resolved case 2023-00591R? If so, what remedies are appropriate?
2. Has the CCC 382 refused to provide the Applicant with records to which he is entitled without a reasonable excuse?
3. Has CCC 382 redacted certain records in accordance with the Act?
4. Is CCC 382 keeping adequate records as per the Act?
5. Was there a breach of confidentiality during Stage 2 – Mediation, and if so, should the Tribunal make any orders?
6. Is a penalty warranted against the Respondent in accordance with Section 1.44 (1) 6. of the Act?
7. Is Mr. Clegg entitled to compensation for damages as a result of an act of non-compliance in accordance with s. 1.44 (1) 3. of the Act?
8. Is either party entitled to costs? If so, in what amount?

[6] For the reasons set out below, I find that there has been no breach of the Settlement Agreement, that CCC 382 is keeping adequate records as per the Act, that no records have been refused to Mr. Clegg without a reasonable excuse, and that the records have been properly redacted. Finally, I do not find that there has been any breach of confidentiality, nor is an award of compensation for damages warranted. I do, find, however, that based on the evidence, a costs award in CCC 382’s favor is appropriate. I order Mr. Clegg to pay CCC 382 \$1,500 within 30 days

of the date of this decision.

- [7] Finally, while I have reviewed all of the evidence and submissions provided to me, I will only address those relevant to my analysis and issues to be decided.
- [8] Before I address those issues, I wish to note that the evidence shows that Mr. Clegg feels very strongly that both the condominium manager and the board of directors have a vendetta against him. Many of the submissions before me seek to demonstrate this via arguments about records. However, I wish to remind Mr. Clegg, the Tribunal should not be seen as a place to pursue such disputes, even if framed as a records dispute.

## **B. ISSUES & ANALYSIS**

**Issue No. 1 & Issue No. 4: Has CCC 382 breached paragraphs 5, 7 and 8 of the Settlement Agreement which resolved case 2023-00591R? If so, what remedies are appropriate? Is CCC 382 keeping adequate records as per the Act?**

- [9] Mr. Clegg claims that CCC 382 has breached paragraphs 5, 7 and 8 the Settlement Agreement dated February 16, 2024, which resolved case the Tribunal Case No. 2023-00591. I will address each of the terms independently.

### Paragraph 5

- [10] Paragraph 5 of the Settlement Agreement reads:

5. Both parties recognize that the standard for board meeting minutes is not “perfection”. From the date of this settlement agreement and going forward, CCC 382 commits to ensuring its board meeting minutes are reasonable and contain adequate details in accordance with its obligations under section 55 (1) of the Condominium Act, 1998 (the “Act”). The Applicant agrees that if he believes CCC 382 breached this obligation, he will, within 15 days of receiving a copy of the alleged inadequate board meeting minutes, notify CCC 382 of his concerns. Before the Applicant files an application with CAT alleging CCC 382 breached term 4, the parties shall have 30 days from the date the concerns were brought to CCC 382’s attention to try and resolve the issues. If after 30 days the parties cannot resolve the issues, and the Applicant maintains that CCC 382 breached term 4, he may file an application with the CAT for resolution.

- [11] According to Mr. Clegg, the terms in this paragraph have been breached in two ways: first he alleges that several sets of minutes do not contain “adequate details as per the Act”; and second that CCC 382 was unresponsive and failed to discuss or communicate with him about his concerns over the minutes of February, March,

April and May of 2024.

- [12] In his submissions Mr. Clegg addresses the inadequacy he believes are contained within the minutes at issue in the Settlement Agreement case, but also more generally Mr. Clegg sets out numerous detailed instances of what he alleges are deficiencies in several sets of minutes. In fact, he identifies alleged deficiencies with every set of board meeting minutes between April 2023 – May 2024, all of which he claims are inadequate due to these deficiencies.
- [13] In assessing Mr. Clegg’s submissions regarding the adequacy of CCC 382’s records, I have relied on the analysis of adequacy as set out in *MacKay v, Waterloo North Condominium Corporation No. 23*, 1992 CanLII7501 (ONSC) (“MacKay”) and several of the other Tribunal decisions referred to me by the parties<sup>1</sup>. While in each of these cases there are unique facts pertaining to the specific records at issue that led to different determinations regarding the adequacy of the records, the principles by which adequacy is assessed are consistent. They are, namely, that the records of a corporation must fulfill two basic purposes: (1) to assist the corporation in fulfilling its duties and obligations, and (2) to provide insight or information for unit owners who wish to confirm that such duties and obligations have been duly fulfilled. Regarding minutes in particular, they will be considered adequate if they provide sufficient detail to allow the owners to know when and how decisions are made and their financial basis, when that is relevant. There is no expectation of perfection.<sup>2</sup>
- [14] While I have reviewed all of Mr. Clegg’s detailed submissions on the minutes and the minutes themselves, and have carefully considered the various examples he provided, I will not address each alleged inadequacy. One reason for this is that several of Mr. Clegg’s examples of inadequacy appear to be concerns over how he has been portrayed or referred to in minutes that document the various Tribunal cases he has initiated and actions the board had taken in relation to those cases. For instance, he takes issue with the “one sided embellishments” present in some

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<sup>1</sup> E.g. *Yeung v. Metropolitan Toronto Condominium Corporation No. 1136*, 2020 ONCAT 33; *Nash v. Oxford Standard Condominium Corporation No. 142*, 2024 ONCAT 3; *Nash v. Oxford Standard Condominium Corporation No. 142*, 2024 ONCAT 3; *Mawji v. York Condominium Corporation No. 415*, 2021 ONCAT 72.

<sup>2</sup> See *Rahman v. Peel Standard Condominium Corporation No. 779*, 2021 ONCAT 32; *Rahman v. Peel Standard Condominium Corporation No. 779*, 2021 ONCAT 32; *Yeung v. Metropolitan Toronto Condominium Corporation No. 1136*, 2020 ONCAT 33; *Nash v. Oxford Standard Condominium Corporation No. 142*, 2024 ONCAT 3; *Nash v. Oxford Standard Condominium Corporation No. 142*, 2024 ONCAT 3.

of the board minutes and/or the report of the condominium manager, Kate Flanagan, that accompanies the minutes, and claims that these are attempts to embarrass him, “weaponize” the minutes against him, and are not adequate because they are overly detailed to the point that they go beyond providing sufficient detail to having a prejudicial effect on him<sup>3</sup>.

- [15] I do not share Mr. Clegg’s conclusions regarding these minutes. The examples provided by Mr. Clegg demonstrate that his complaints in this regard are not about adequacy of records at all but rather an attempt to control how the board represents his interactions with them in not only the minutes but also in the condominium manager’s reports, which CCC 382 typically provides along with the minutes. For instance, Mr. Clegg takes issue with such sentences as “[t]he owner has requested the Board to reply to two lengthy emails” (he does not believe his emails were lengthy) and a sentence in the condominium manager’s report that requests the board to “seek legal advice to address an owner who is requiring an enormous amount of her [condominium manager’s] time.” These are not examples of inadequacy and framing them as such, in this case, is not an appropriate use of the Tribunal. Adequacy is not impacted by stylistic elements in writing. Provided the records satisfy the essential purposes as set out above (see paragraph 13) they will be deemed adequate whether they use excessive or plain adjectives and even if they contain descriptions of a person with which that person disagrees. Potential defamatory content may be an actionable concern, but it is not an issue related to adequacy or within the jurisdiction of the Tribunal.
- [16] Nor is it appropriate to use a claim of adequacy to mask a complaint over governance and thereby attempt to have the Tribunal address board governance issues. For example, in Mr. Clegg’s claims about the April 2024, minutes he details his concerns over the fact that what was in the minutes constitutes a breach of the board’s Code of Ethics. Whether or not the board has breached the Code of Ethics is not an issue for me to decide in this case.
- [17] More relevant are Mr. Clegg’s concerns over whether the minutes meet the level of accuracy that constitute them as adequate and whether the failure to specifically record decisions as ‘motions’ in the minutes amounts to inadequacy.
- [18] On the question of accuracy, a significant number of Mr. Clegg’s examples of “errors” in the minutes relate to the condominium manager’s report which is

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<sup>3</sup> I note that in this Decision I use the term condominium manager to refer to Kate Flanagan as this is the appropriate designation. However, both parties used the term property manager to refer to Ms. Flanagan as do various records (such as the minutes). Where the records have used this term, I have left the reference in its original.

attached to the minutes – not the minutes themselves. For example, he notes that a line item in the report indicates that the legal expenses for dealing with Mr. Clegg’s application(s) to the Tribunal were (at that date) “approximately \$10,000”. Whereas, based on the legal invoices Mr. Clegg has obtained from CCC 382, he estimates the costs was just over \$6,000. He alleges this makes the report inaccurate. He takes this position even though the report uses the word “approximately” to describe the cost. He also alleges that in one instance the board report says that a lawyer was “required” to handle the Tribunal case, whereas he believes that the board “chose” to have a lawyer handling the case. Mr. Clegg may not agree with the contents of the report provided to the board, or the language used by the condominium manager in her report, but this is not the standard by which adequacy is determined. The report is not a record generated by the condominium but by the manager and reflects what the board was told in relation to the business discussed at the meeting. As a record, the minutes are adequate if it contains the unaltered report that the manager provided, which in this case it does.

- [19] Finally, in one instance, Mr. Clegg notes a discrepancy between a copy of the May 21, 2024, minutes posted online and the copy of the May 21, 2024, minutes sent to him on request. I have reviewed both sets of minutes, and while there are differences between the copies, I find these are minor in nature and are not enough on their own to render these minutes inadequate for the purpose of the Act. Nonetheless I encourage CCC 382 to ensure that the minutes they post for owners and the minutes in the official record book are the same.
- [20] Regarding the recording of motions, Mr. Clegg provides numerous examples where he alleges the board has not recorded the decisions of the board using motions or resolutions. For instance, he indicates that in the October 23, 2023, meeting minutes the board made decisions about a landscaping contract and the delaying of maintenance but there was no official resolution recorded in any minutes to reflect this. In another example, he submits that there is no formal resolution recorded regarding the board decision to engage the corporation’s lawyer to deal with his Tribunal case. These are just two of many examples provided by Mr. Clegg.
- [21] As noted above, minutes need to provide sufficient detail to allow the owners to understand how decisions are made, when the decisions are made and what the financial basis is for the decisions. In this case, having reviewed all the minutes and examples offered by Mr. Clegg, I find they meet this standard. For instance, using Mr. Clegg’s landscaping example, the August 2023 minutes do show a formal resolution to approve a landscaping contract; there is also a line item in the

March 2024 meeting minutes making reference to actions related to a landscaping contract, and the May 2024 condominium manager's report attached to the minutes provides specific details about a landscaping contract (including details on costs and terms) and notes the board has accepted the contract. Given this, it difficult to conclude that the owners would not understand the board's actions and decisions related to landscaping contracts.

[22] In summary, the minutes entered into evidence clearly list who was at the meeting (i.e. establish quorum), the topics discussed, and actions taken regarding the topic. Additionally, there is often further details about these items listed in the condominium manger's report which is attached to every set of minutes. While not every decision is listed as a "motion" the minutes make it clear when action is being taken by the board. I find the minutes are adequate to fulfill their purpose under the Act. Thus, I do not find that CCC 382 breached this term regarding its commitment to ensure its minutes contain adequate details as per the Act. Nor do I find that when taken on the whole, the minutes at issue in this case are inadequate as per the requirements of the Act.

[23] Mr. Clegg also argues that CCC 382 breached paragraph 5 of the Settlement Agreement because it was unresponsive and failed to discuss or communicate with him about his concerns over the minutes of February, March, April and May of 2024. This part of the term over which Mr. Clegg has concerns reads:

The Applicant agrees that if he believes CCC 382 breached this obligation, he will, within 15 days of receiving a copy of the alleged inadequate board meeting minutes, notify CCC 382 of his concerns. Before the Applicant files an application with CAT alleging CCC 382 breached term 4, the parties shall have 30 days from the date the concerns were brought to CCC 382's attention to try and resolve the issues. If after 30 days the parties cannot resolve the issues, and the Applicant maintains that CCC 382 breached term 4, he may file an application with the CAT for resolution.

[24] Mr. Clegg alleges that while he has met his responsibility under this section, CCC 382 has not. He argues that he wrote to CCC 382 about his concerns regarding the February, March, April and May 2024 minutes and he received only one response back which said: "The corporation respectfully disagrees with your opinion".

[25] I do not find that this amounts to a breach of the term. The terms says only that the parties will have 30 days from the date of being notified about the concerns to try to find a resolution. It does not commit any party to taking any particular action to resolve the dispute in any way specific way. CCC 382's response may have been

brief, but I do not find it is a breach of this term.

#### Paragraph 7

[26] Paragraph 7 of the Settlement Agreement reads:

CCC 382 will only include an in-camera item in its monthly board meeting or annual general meeting (AGM) minutes when there has been a need to discuss business that is specific to units, unit owners, employees and actual or contemplated litigation pursuant to section 55 (4) of the Act. If an in-camera session transpires as part of a board meeting or the AGM, CCC 382 will ensure to record adequate minutes that capture discussions, decisions, motions, or resolutions. If an in-camera session doesn't transpire as part of a board meeting or the AGM, the minutes will include 'no in-camera session held' or something similar.

[27] Mr. Clegg alleges that CCC 382 breached this term in several sets of minutes by using the term "Discussion without PM [property manager] present". He argues that this term is not "something similar" and demonstrates a fundamental misunderstanding by the board's secretary of what the part of an in-camera meeting is for and means. While the use of the term "Discussion without PM present" instead of "in camera" may not be perfect compliance, it is trivial and therefore I do not find a breach. I would further note that in the June 2024 minutes the corporation does appear to adopt the term "In Camera/ Discussions without PM present", which is closer to what Mr. Clegg would like to see. Mr. Clegg also contends that it is "beyond belief" that no in-camera sessions have been held since February 2024, which is what the minutes show. However, Mr. Clegg provides no evidence that there were discussions that happened that were not recorded, only that he believes there should have been. Additionally, in reviewing the minutes, I observe that it appears to be common practice for CCC 382 to record items having to do with individual units without recording specific unit details. There are often entries that read, for example, something similar to "An owner requests..." or "An owner has...". This may partially explain why there are not regular "in-camera" discussions recorded as these items are being included as part of the regular course of minuting the meetings. With no evidence before me to suggest that CCC 382 has not "recorded adequate minutes that capture discussions, decisions, motions, or resolutions" or an in-camera sessions, I cannot conclude this CCC 382 has breached this term.

#### Paragraph 8

[28] Finally, Mr. Clegg argues that CCC 382 has breached paragraph 8. Paragraph 8 reads:



CCC 382 will record actions that have been taken, actions that need to be taken, and/or actions that have been completed under the appropriate items of business within the board meeting minutes.

[29] As evidence of a breach of this term, Mr. Clegg cites several items listed in various sets of minutes that he believes should have had actions related to them recorded in future sets of minutes. He cites, for example, items in the April 2024 meeting minutes related to problems with the pool and the drain in the lower garage. Meeting minutes are required to be an accurate recording of what transpired in the meeting. Mr. Clegg has provided no evidence that the board discussed actions related to the examples above in a specific meeting and then failed to properly record those discussions or those actions. Additionally, some of the examples cited by Mr. Clegg as being 'dropped', such as items related to the pool and the lower garage, appear to be followed up on with items related to them recorded in the May 21, 2024, minutes. Accordingly, I do not find there is evidence to conclude that CCC 382 has breached this term.

[30] Having found no breaches of the Settlement Agreement, no remedies are order.

**Issue No. 2: Has the CCC 382 refused to provide the Applicant with records to which he is entitled without a reasonable excuse?**

[31] Mr. Clegg argues the CCC 382 has refused to provide him with the following records without a reasonable excuse:

1. CCC 382's Rules
2. The audio/video recording from the September 21, 2023, AGM
3. The portion of CCC 382's "Corporation's Operations Manual" related to the roles/duties of the PM and the board members – Current Version
4. Legal invoices with respect to Mr. Clegg's Tribunal cases between the period of October 1, 2023 – March 20, 2024.
5. Legal invoices related to Mr. Clegg's Small Claims Court case with CCC 382 for the period of October 1, 2023 – March 20, 2024.
6. Legal invoices for legal fees with respect to Mr. Clegg and his unit for the period of May 1, 2023 - April 30, 2024
7. Record of Owners and Mortgagees
8. Record of board meeting held April 23, 2024

9. Record of the legal advice requested by the condominium manager in her December 13, 2023, Management report
10. Record of the legal advice requested by the board as identified in the April 9, 2024, Board Meeting minutes
11. Record of the legal opinion requested by the board as identified in the April 10, 2024, email from the condominium entitled Request for Records - AGM A/V Recording & Engineering Report
12. The un-redacted version of the May 21, 2024, board minutes

### CCC 382's Rules

- [32] On March 20, 2024, Mr. Clegg submitted a request for records to CCC 382 wherein he requested a copy of CCC 382's Rules. In the email that accompanied his request, he added the following detail: "Please ensure that each rule identifies its history i.e. date circulated to owners and date of approval". On March 21, 2024, the condominium manager sent him the Rules. Mr. Clegg followed up the with an email the same day indicating that the "history of the rules I requested is missing, i.e. date approved by the board, date notice was sent to unit owners, date of any meeting to discuss rule (if required by owners, date rule went into effect)".
- [33] Mr. Clegg argues that in failing to provide this detailed history and a copy of previous versions of the Rules, CCC 382 refused to provide him this record. I do not agree. Mr. Clegg requested a copy of the corporations' Rules and a great deal of information, i.e. "the history" of the Rules. The history of the Rules is not a record, it is information. As noted in MacKay, "an owner has no right...to require further information and explanations" Nevertheless, CCC 382 offered to provide Mr. Clegg with the historical Rules and information they could locate. However, as they consider this request to be for non-core records, they asked for Mr. Clegg to pay a fee to provide these (which they are entitled to request for the production of non-core records). They provided Mr. Clegg with a quote for the labour associated with searching for and compiling these historical Rules. Mr. Clegg never paid that fee. Nonetheless, the CCC 382 located the Rules dating back to 1991, and located copies of minutes where the various Rules and their implementation were discussed. They provided all of this to Mr. Clegg, free of charge. I find that CCC 382 has more than fulfilled Mr. Clegg's request. In fact, there is no obligation for CCC 382 to locate and compile historical documents. The records request function is not intended to turn the board or manager into an owner's research assistant. In this case, CCC 382 went above and beyond by providing him documents that they were not required to provide.

The audio/video recording from the September 21, 2023, AGM

- [34] On April 3, 2024, Mr. Clegg requested a copy of the audio/visual recording from the 2023 AGM meeting. On May 3, 2024, CCC 382 responded to Mr. Clegg about this request. In a detailed letter it refused the request explaining that neither CCC 382's management company nor the corporation's board of directors recorded the meeting and CCC 382 had not contracted CMG Virtual Meeting to record the meeting. Thus, CCC 382 was not in possession of, nor were they ever in possession of a recording of the meeting, and thus it did not form a record of the Corporation.
- [35] In his submissions, Mr. Clegg made the argument that, as per the decision *Bogue v. Carleton Condominium Corporation No. 288*, 2024 ONCAT 15 ("Bogue ONCAT 15"), the recording ought to be considered a record of the corporation that CCC 382 refused to provide. However, during this hearing, the Tribunal released another decision about the status of AGM recordings as records of the corporation, *Bogue v Carleton Condominium Corporation No. 288*, 2024 ONCAT 154 ("Bogue ONCAT 154"). In this case, the parties were the same, however the facts around the recording of the meeting were different and these distinct facts led the Tribunal to find that the recording was not, a record of the corporation to which the applicant was entitled. Given that this decision was relevant to the record and issue here, I asked both parties for submissions on the Bogue ONCAT 154 decision.
- [36] Having reviewed the submissions provided by both parties on both Bogue cases and *Kent v. Carleton Condominium Corporation No. 268*, 2022 ONCAT 128 ("Kent") to which I was referred by Mr. Clegg, I find in this case, the facts most closely resemble those found in Bogue ONCAT 154. In this case, CCC 382 did not request or contract for a recording of the meeting, it did not pay any fee for this service and no recording was ever within their possession. In short, there is no evidence that a recording of the meeting was created or maintained by the corporation for a purpose related to the ongoing management of the corporation. Accordingly, I find in this case the recording of the 2023 AGM meeting is not a record of the corporation, and thus CCC 382 has not refused to provide it.

The portion of the Corporation's Operations Manual related to the roles/duties of the PM and the board members – Current Version

- [37] In his records request of April 3, 2024, Mr. Clegg also requested the portion of the Corporation's Operations Manual (the "manual") related to the roles/duties of the condominium manager and the board members. On April 10, 2024, the condominium manager wrote to Mr. Clegg and sent him the relevant excerpts of

the current version of the manual and advised him that the manual was in the process of being revised. Mr. Clegg then wrote back indicating the record sent did not have the information he was looking for as expressed in the February 20, 2024, minutes, which contained the following entry:

#### 8. Secretary's Report

A) Official Duties. The description of the Secretary's duties in the Condo Operations Manual is inappropriate to the expertise and time allotment usually brought to the position by willing but non archivist owner volunteers. A more realistic description will be crafted.

[38] As a result, Mr. Clegg asked to be provided with the "duties of the board members as outlined in the Operations Manual". While the excerpt of the minutes referred to by Mr. Clegg does indicate that the information Mr. Clegg wanted was in the Operations Manual, Ms. Flanagan testified there is a mistake in the minutes. The description of the duties of the board members is to be found in CCC 382's Policy Manual, which is available to all residents through the corporation's website.

[39] I appreciate that this minor mistake in the minutes may have led to Mr. Clegg requesting the wrong record, nevertheless, CCC 382 did provide him with the record he did request, i.e. the Operations Manual. There was no refusal. In any event, the record that contains the information Mr. Clegg is seeking is available to Mr. Clegg, without the necessity of any further request for records, should he wish to access it.

#### Invoices for legal fees

[40] Mr. Clegg's March 20, 2024, records request contained a request for legal invoices for all legal fees with respect to his Tribunal Case No. 2023-00591R and invoices for legal fees with respect to his non-Tribunal case items, including invoices related to the Small Claims Court matter between the parties.

[41] On April 10, 2024, Ms. Flanagan provided Mr. Clegg with invoices dated January and February of 2024, which relate to his Tribunal case. On April 10, 2024, Mr. Clegg followed up by email asking Ms. Flanagan to confirm that there were no relevant invoices for November or December of 2023. Ms. Flanagan responded to Mr. Clegg's email confirming this was the case. However, Ms. Flanagan testified that she made a mistake, and when she realized the mistake the remaining two invoices were redacted and provided to Mr. Clegg during the Tribunal's Stage 2 – Mediation stage. I find her testimony credible.

[42] In this instance, I accept that the failure to provide Mr. Clegg with the November

and December invoices was an honest mistake, and do not find it amounts to a refusal without a reasonable excuse. Regarding the invoices related to his Small Claims Court matter, the evidence shows that CCC 382 did not engage legal counsel for this matter (a fact Mr. Clegg is well aware of), and I have not been provided with any evidence that there are invoices related to this matter that ought to have been provided and were not.

- [43] On May 9, 2024, Mr. Clegg made another request for any legal invoices with respect to him and his unit between May 1, 2023 – April 30, 2024. I note that this request contains some overlap with the previous legal invoices requested. Mr. Clegg asserts that he received no response to this request, and even if, as CCC 382 asserts, it missed this request due to the voluminous number of requests from him, they should have been aware of it based on the case he filled with the Tribunal in June 2024, which specifically listed this request as one that was outstanding.
- [44] I do find that Mr. Clegg has not been provided with the invoices requested in relation to this request. I will order them provided. CCC 382 may redact these invoices pursuant to s. 55 (4) b of the Act and with respect to any privileged information (see paragraphs 65-67 of this decision)
- [45] However, I also find that, based on the unique facts of this case, CCC 382 has a reasonable excuse for not providing these records; namely, the request was missed in error because of the multitude of requests and correspondences about the various requests sent to management by Mr. Clegg. Ms. Flanagan provided a spreadsheet that she keeps of her correspondence with Mr. Clegg. This spreadsheet documents the correspondence received and the actions she took in response. Since February of 2023, Mr. Clegg has made over 181 requests from the condominium manager. Most of these requests relate to various records requests and/or requests for information related to records. In some cases, the chart shows that multiple emails are sent to Ms. Flanagan on the same item or topic. So, while it is the case that it is CCC 382's responsibility to respond to the records requests it receives in accordance with the Act, in this case, I find it is reasonable given the number of emails, requests, and follow-up emails about the requests sent by Mr. Clegg that a single request may have been missed and I find the failure to provide these records to Mr. Clegg does not amount to a refusal.

#### Record of Owners and Mortgagees

- [46] In October of 2023, Mr. Clegg made a request for the Record of Owners and Mortgagees ("October request"). On November 1, 2023, the record was provided to Mr. Clegg. Six months later, in April of 2024 Mr. Clegg wrote to the

condominium manager to tell her the record she had sent six months prior in response to his October request was not acceptable because it did not include a list of owners for the parking units. On May 6, 2024, CCC 382 wrote to him indicating that it had met their obligation to provide the record requested in the October request and declined to provide him with the information he sought regarding the owners of the parking units.

- [47] Mr. Clegg submits that in response, he decided to file another request for the same record, so that he could bring that records request to the Tribunal since due to time limitations he could no longer file a claim about the October request. So, on May 16, 2024, Mr. Clegg filed the same request for a Record of Owners and Mortgagees, including the list of the parking space owners ("May request"). In his submissions he claims he received no response. This is incorrect. CCC 382 sent an email to Mr. Clegg on May 17, 2024, one day after receiving his request, wherein Ms. Flanagan provided Mr. Clegg with a list of parking unit owners. This email was submitted into evidence. I also accept Ms. Flanagan's testimony that she sent this email to him as credible.
- [48] Despite the evidence that Mr. Clegg received both the Record of Owners and Mortgagees and the list of owners of the parking units from CCC 382 prior to commencing this case, Mr. Clegg claims the record of "owners and mortgagees including those for the owned parking units" is outstanding.
- [49] The evidence on the whole shows that CCC 382 was responsive to Mr. Clegg's request for this record. Though CCC 382 was incorrect when they initially declined to provide Mr. Clegg with the record of parking unit owners, as this record should contain a list of owners of all units, including parking spaces, their intent to provide the records to Mr. Clegg is clear. CCC 382 was simply mistaken in their understanding of this record. This mistake was corrected when they provided Mr. Clegg with a list of the parking unit owners in response to his May request. And, while CCC 382 may have only provided a list of parking unit owners when they responded to Mr. Clegg's May request, not the whole record, according to Mr. Clegg's own submissions, the May request was a duplicate request (made because he did not follow up promptly on the first request). I find it to be a reasonable excuse that, as it was a duplicate request, CCC 382 only provided Mr. Clegg with the part of the record that was missing (i.e. the list of parking unit owners), not the whole of the record. I find there was no refusal without a reasonable excuse.

#### Record of board meeting held April 23, 2024

- [50] On April 23, 2024, Mr. Clegg and three board members attended a meeting for the

purpose of exploring if it was possible to reconcile the increasing conflict between the parties. According to Mr. Clegg, minutes should have been taken at this meeting as there was a quorum of board members. He asserts that because no minutes were taken, the board has not kept adequate records as per the Act and has refused to provide him a record (i.e. the minutes for this meeting) without a reasonable excuse.

[51] It is Mr. Clegg's position that this meeting constituted a board meeting at which minutes should have been taken because he (Mr. Clegg) "opened the meeting [by] calling it a special meeting of the board and indicated during the meeting that minutes needed to be taken." He further asserts that since the board members took notes at the meeting, there must be minutes.

[52] Mr. Clegg declaring a meeting a board meeting does not make it so. Section 35 (1) of the Act indicates a meeting of the board of directors may be called for the purposes of transacting business. All the evidence suggests that the purpose of this meeting was not to transact business, but to have an informal discussion with Mr. Clegg about the ongoing issues between the parties and explore opportunities to resolve them. There is no evidence that any business of the board was transacted at this meeting or that there was any intent to transact business at this meeting. Thus, I do not conclude that this meeting constituted a meeting of the board at which minutes should have been taken. Consequently, I do not find CCC 382 has failed to keep adequate minutes regarding this meeting and there has been no refusal. However, it is worth noting that CCC 382 did minute the contents of this meeting in its meeting minutes of May 21, 2024. A copy of which Mr. Clegg already has in his possession.

#### Records related to legal advice

[53] Mr. Clegg requested copies of the following records related to legal advice:

1. Record of the legal advice requested by the condominium manager in her December 13, 2023, management report.
2. Record of the legal advice requested by the board as identified in the April 9, 2024, board meeting minutes.
3. Record of the legal opinion requested by the board as identified in the April 10, 2024, email from the condominium manager entitled Request for Records - AGM A/V Recording & Engineering Report.

[54] CCC 382 submits that these records were not provided to Mr. Clegg as they relate

to contemplated or ongoing litigation between CCC 382 and Mr. Clegg and thus are exempt from examination as per s. 55 (4) (b) of the Act, which exempts records from examination by an owner if they relate to actual or contemplated litigation.

[55] Mr. Clegg argues that even if these records are exempt from examination, he should have still been offered the opportunity to pay for a redacted copy of them, even though they may have been fully redacted.

[56] Ms. Flanagan, testified to the fact that these records contain legal advice pertaining to Mr. Clegg and Tribunal cases that were either ongoing or contemplated (i.e. further disputes over records requests). I find her testimony credible and accept that these records relate to either contemplated or actual litigation between the parties. Moreover, I further conclude, as argued by CCC 382, that these records, which again, according to Mr. Flanagan's testimony contain legal advice, are subject to solicitor-client privilege and do not need to be provided to Mr. Clegg in any form. Mr. Clegg is not entitled to records that are protected by solicitor-client privilege.

An unredacted copy of the May 21, 2024 minutes

[57] The May 21, 2024 minutes provided to Mr. Clegg upon request and as posted to the condominium's website contained two items listed under the heading of "Meeting with Owner Jeff Clegg/ Commencement of CAT Application".

[58] Other than Mr. Clegg's full name, the entire first paragraph under this heading (listed as 5. A) is redacted. The second paragraph (listed as 5. B) details the fact that Mr. Clegg has commenced another application with the Tribunal and indicates that legal counsel will be representing CCC 382 in the proceeding.

[59] Mr. Clegg asserts that he is entitled to an unredacted copy of these minutes as they contain information related to him and his unit to which he is entitled. I note that Mr. Clegg already has an unredacted copy of these minutes in his possession. However, for completeness, I will nonetheless address his claim he is entitled to an unredacted copy. Mr. Clegg also takes issue with the way in which the minutes have been redacted for the purpose of posting on the CCC 382's website, however, I deal with that issue below in paragraphs 68-74.

[60] Regarding the question of entitlement, CCC 382 submits that Mr. Clegg is not entitled to an unredacted copy of the minutes as the redactions as made originally cover information that is exempt from examination as it relates to actual or contemplated litigation as per s. 55 (4) (b) of the Act. Thus, they did not refuse



these minutes when they initially refused to provide him with the unredacted copy (although they chose to eventually provide him with an unredacted copy).

- [61] Having read the unredacted copy, I find that although CCC 382 did refuse to provide the unredacted record, it had a reasonable excuse for doing so: Mr. Clegg is not entitled to receive an unredacted copy of the minutes because it contains information that relates to actual or contemplated litigation.

**Issue No. 3: Has CCC 382 properly redacted its records in accordance with the Act?**

Redaction of November 2023 & December 2023 legal invoices

- [62] The November and December 2023 invoices Mr. Clegg received from CCC 382 contain redactions. The November 2023 legal invoice contains six line items. In each line item, there is a brief description of the work performed. In one of the six line items, one sentence is redacted. The December 2023 invoices read similarly. The December invoice has ten line items with descriptions; two line items include one sentence redactions.
- [63] Mr. Clegg argues that these invoices have not been properly redacted. He claims that they have been overly redacted and that it is “highly unlikely” that the redaction made covers legal advice. Further, he argues, that even if the redactions do cover legal advice, like in *Jack Gale v Halton Condominium Corporation No. 61*, 2019 ONCAT 46 (“Gale”), CCC 382 waived its privilege when it included details in the minutes regarding the legal costs associated with the claims brought by “one owner”, and when they provided him with unredacted copies of the invoices for January and February of 2024.
- [64] Having reviewed the two redacted invoices, I find that the redactions made are minimal and that when reading the entries contained in the invoices, the parts redacted do appear to likely to pertain to actual or contemplated litigation as per s. 55 (4) (b) of the Act and likely contain either advice or reference to legal advice provided to CCC 382 that would be exempt from examination due to solicitor client privilege.
- [65] Regarding Mr. Clegg’s argument that CCC 382 waived its privilege, first, I do not find the facts here are like *Gale*. In *Gale*, the Tribunal found that privilege was waived due to a very detailed letter that the condominium distributed to all the residents which contained reference not only to the legal fees it paid, but also to detailed and specific information about what legal advice was sought and why. On this very unique set of facts, the Tribunal found that the condominium had waived

its privilege – but only in regard to the very specific information it disclosed in its letter. In this case, while it is true that CCC 382 has disclosed in its minutes’ information related to the legal costs associated with “an owner’s” various legal actions against CCC 382 (information that owners are entitled to), it did not disclose any information regarding confidential communications between itself and legal counsel.

[66] Regarding the argument that privilege was waived when CCC 382 provided unredacted copies of the January and February invoices to Mr. Clegg, according to CCC 382, the January and February invoices were sent without seeking legal advice about necessary or allowable redactions. Having realized this, CCC 382 took steps to ensure future invoices were reviewed and properly redacted. While CCC 382 may have inadvertently disclosed privileged information in the January and February 2024 invoices, in this case inadvertent disclosure does not amount to waiving privilege and it does not require CCC 382 to provide Mr. Clegg with unredacted legal invoices going forward.

[67] In summary, I find there is no evidence to conclude that CCC 382 has improperly redacted the invoices provided to Mr. Clegg.

#### Redaction of May 21, 2024 minutes

[68] As noted earlier in this decision, the May 21, 2024, minutes as posted to the CCC 382’s website contain two items listed under the heading of “Meeting with Owner Jeff Clegg/ Commencement of CAT Application”.

[69] Other than Mr. Clegg’s full name, the entire first paragraph under this heading (listed as 5. A) is redacted. The second paragraph (listed as 5. B) details the fact that Mr. Clegg has commenced another application with the Tribunal and indicates that counsel will be representing CCC 382 in the proceeding.

[70] Mr. Clegg makes two arguments in relation to the redactions of these minutes. First, he argues that by failing to redact his name when they posted the minutes to its website, CCC 382 provided information about him and/or his unit that ought to have been redacted pursuant to s. 55 (4) (c) of the Act which provides that the right to examine or obtain copies of records does not apply to records relating to specific units or owners.

[71] Second, he argues that CCC 382 failed to properly redact the record because as per *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2021 ONCAT 116 (“Chai”) the technical process by which redactions were made were easy to reverse (which, as Mr. Clegg implied, was done with these minutes which is how

he came into possession of an unredacted copy, prior to be provided an unredacted copy by the CCC 382 directly). He argues that because the redactions are easy to remove, there is the potential for this confidential information to become easily accessible to those in possession of the record.

[72] CCC 382 takes the position that because it is required to include information related to Mr. Clegg's Tribunal claims in its Periodic Information Certificate ("PIC") including the applicant's name, the style of cause and brief description of the claim it was not required to redact Mr. Clegg's name in the minutes it posted since this information was already public.

[73] This case is about Mr. Clegg's records requests and whether he has received records to which he is entitled. His issue in this instance, is less about the record he received, but rather concerns about the fact that the same version of the minutes posted to CCC 382's website discloses his name and the fact that he has commenced another Tribunal application, information I note that would have been included in the PIC as CCC 382 suggests. Whether CCC 382 ought to have redacted Mr. Clegg's name in the minutes it posted to its website is not an issue for me to decide in the context of this specific records claim. Thus, I decline to make any finding on this matter.

[74] Regarding the process used for redactions, again, Mr. Clegg's concern over whether CCC 382's process for redacting minutes it posts to its website sufficient, is not an issue before me to decide in the context of this specific records claim. However, given the evidence, I note that it does appear that the process being used to make redactions to documents may allow those redactions to be easily removed, a fact that was likely unknown to CCC 382 prior to someone attempting to remove them. I would encourage CCC 382 to ensure any redaction method used going forward is not easily reversible. I make no orders in this regard.

**Issue No. 5: Was there a breach of confidentiality during Stage 2 – Mediation, and if so, should the Tribunal make any orders?**

[75] Mr. Clegg claims that by posting the above discussed minutes of May 21, 2024 (which were redacted apart from Mr. Clegg's name) CCC 382 violated confidentiality of the Tribunal's Stage 2 – Mediation process. Here he points to the Tribunal's User Guide: Confidentiality, although he is not specific about which aspects of the guide are relevant. I note that the guide Mr. Clegg refers to is a user guide that is intended to help users understand confidentiality at the Tribunal; it is not intended to be read as setting out rules for the parties. This is the function of the Tribunal's Rules of Practice. The rule that applies to confidentiality at Stage 2 – Mediation can be found in the Tribunal's Rules of Practice. Rule 5.1 states that

All messages and settlement offers shared for the purpose of resolving the dispute in Stage 1 - Negotiation or Stage 2 - Mediation are private and confidential. Messages and settlement offers exchanged in these stages cannot be made public or used in Stage 3 - Tribunal Decision, unless the parties agree and the CAT allows it...

- [76] The information provided in the minutes was general information regarding the claim (information that as CCC 382 points out it would be required to provide in its PIC) and I do not find that there is any evidence that CCC 382 shared any message or settlement offers that were exchanged for the purposes of resolving the dispute. There was no breach of confidentiality in this case.

**Issue No. 6: Is a penalty warranted against the Respondent in accordance with s. 1.44 (1) 6. of the Act?**

- [77] Section 1. 44 (6) of the Act allows the Tribunal to award a penalty if the Tribunal finds that a corporation has, without reasonable excuse, refused to permit a person to examine or obtain copies of records to which they are entitled. In this case, I have not found that CCC 382 refused any records without a reasonable excuse so there is no basis on which to award a penalty.

**Issue No. 7: Is Mr. Clegg entitled to compensation for damages as a result of an act of non-compliance in accordance with s. 1.44 (1) 3. of the Act?**

- [78] Mr. Clegg has asked that the Tribunal award him damages in the amount of \$10,000 as per s. 1.44 (1) 3 of the Act which allows the Tribunal may make an order "directing a party to the proceeding to pay compensation for damages incurred by another party to the proceeding as a result of an act of non-compliance up to the greater of \$25,000 or the amount, if any, that is prescribed."
- [79] Mr. Clegg claims that CCC 382 has "deliberately weaponized" an official record of the corporation by publishing fabricated facts and inflammatory information in a campaign to turn other owners against him and such actions have led to other owners emailing him asking about his motivations for pursuing these claims. He submits this has been very stressful for him and his wife. He also asserts that CCC 382 handles his records requests differently than it does others, which is improper.
- [80] I accept that Mr. Clegg has received emails from other owners asking about his motivations for pursuing these claims, however I am not persuaded that Mr. Clegg is entitled to compensation for damages related to an act of non-compliance. Out of the numerous claims made by Mr. Clegg I have found no instances of non-compliance. Claims for alleged damages to Mr. Clegg's reputation is not an issue

to be dealt with at this Tribunal.

[81] Regarding Mr. Clegg's assertion that CCC 382's handling of his requests differently is grounds for an award of damages, I note that they may do so because of the volume of his requests. This is not the basis for an award of damages.

[82] I decline to award any compensation to Mr. Clegg based on the facts in this case.

**Issue No. 8: Is either party entitled to costs and fees? If so, in what amount?**

[83] Both parties requested costs. Mr. Clegg has requested that CCC 382 be ordered to reimburse him for his filing fees. CCC 382 requested costs in an unspecified amount, although they submit they have spent upwards of \$35,000 in legal fees to respond to this claim (which encompasses several merged claims).

[84] CCC 382 argues that it would be unfair for unit owners to have to bear the cost of responding to these claims. They assert that Mr. Clegg has used the Tribunal for an improper purpose, particularly given Mr. Clegg's claims have little to do with entitlement to records or the adequacy of the records being kept by the corporation, but rather that he seeks to use Tribunal cases as a means of punishing the board of directors and the corporation's representatives.

[85] Section 1.44 (1) 4 of the Act states that the Tribunal may make "an order directing another party to the proceeding to pay the costs of another party to the proceeding."

[86] Section 1.44 (2) of the Act states that an order for costs "shall be determined ... in accordance with the rules of the Tribunal".

[87] The cost-related rules of the Tribunal's Rules of Practice relevant to this case are:

48.1 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.

48.2 The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

- [88] The Tribunal's "Practice Direction: Approach to Ordering Costs" provides guidance regarding the awarding of costs. Among the factors to be considered are whether a party or representative's conduct was unreasonable, for an improper purpose, or caused a delay or expense; whether the case was filed in bad faith or for an improper purpose; the conduct of all parties and representatives; the potential impact an order for costs would have on the parties.
- [89] Out of the four distinct applications to the Tribunal (merged at various points in the Tribunal process) and the several claims brought by Mr. Clegg which spanned six different records requests, he was not successful in his claims and thus is not entitled to costs.
- [90] As for CCC 382 claims for costs, I accept that the evidence suggests that this may be a case in which Mr. Clegg, despite agreeing in the Settlement Agreement that the standard for record keeping was not perfection, sought to hold CCC 382 to such a standard and sought to pursue his claims on a point of personal principle, which is not the intended purpose of the Tribunal. This is particularly true of the claims related to adequacy, many of which, as noted in this decision, have more to do with Mr. Clegg's concern over how he is represented rather than the ability of the records to fulfill the purpose for which they are intended under the Act. When put together, the facts in this case do raise questions about whether these requests relate solely to Mr. Clegg's interest as an owner, and I do find that it would not be fair for CCC 382's unit owners bear the full cost of legal fees associated with this case, particularly given Mr. Clegg has not been successful in any of his numerous claims.
- [91] Thus, I find a costs award in favour of CCC 382 is appropriate in this case. Costs awards are discretionary. I will exercise this discretion by awarding nominal costs against Mr. Clegg. He will be ordered to pay CCC 382 costs in the amount of \$1,500. However, I do issue a caution to Mr. Clegg: using records requests (and Tribunal resources) as a tool to pursue issues of governance and/or management practices and/or personal conflict with CCC 382 directors or management is not appropriate and liability for costs could be greater in the future.

### **C. ORDER**

- [92] The Tribunal Orders that:

1. Within 14 days of the date of this Order, CCC 382 will provide Mr. Clegg with any legal invoices respect to Mr. Clegg and his unit for the period of May 1, 2023 – April 30, 2024, which have not already been provided. These invoices

may be redacted pursuant to s. 55 (4) (b) of the Act and with respect to any information protected by solicitor client privilege.

2. Under s. 1.44 (1) 4 of the Act, within 30 days of the date of this Order, Mr. Clegg will pay CCC 382 costs in the amount of \$1,500.

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Nicole Aylwin  
Member, Condominium Authority Tribunal

Released on: December 12, 2024