

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: January 22, 2025

CASE: 2024-00555R

Citation: Kent v. Carleton Condominium Corporation No. 268, 2025 ONCAT 12

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

Member: Nicole Aylwin, Member

The Applicant,

Darrel Kent

Self-Represented

The Respondent,

Carleton Condominium Corporation No. 268

Represented by Graeme Macpherson, Counsel

Hearing: Written Online Hearing – October 18, 2024, to January 17, 2025

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Darrel Kent, is the owner of a unit of the Respondent, Carleton Condominium Corporation No. 268 (“CCC 268”). Mr. Kent alleges that three Periodic Information Certificates (“PICs”) and one set of financial statements that he received in response to a request for records are inadequate as per the *Condominium Act, 1998* (“the Act”).
- [2] CCC 268 maintains that these records are adequate for the purposes of the Act and that the errors Mr. Kent complains of are *de minimis*, incorrect, and often beyond the scope of this application. It asserts that Mr. Kent’s complaints are more about questioning the financial governance of CCC 268 than the adequacy of records.
- [3] For the reasons set out below, I find the records are adequate. I dismiss this application without costs to either party.
- [4] Finally, despite confirming the issues and the records at issue at the outset of the hearing, the submissions, particularly of Mr. Kent, sought to address issues and

records that were not properly before me. I have not addressed such issues or records in this decision.

- [5] Both parties also provided extensive and detailed submissions on the records, particularly the financial records of the corporation. I have reviewed all the submissions and evidence provided to me, but I refer only to that which are relevant and necessary to making my decision.

B. ISSUES & ANALYSIS

Issue No. 1: Has the Respondent failed to keep adequate records as per the *Condominium Act, 1998*.

- [6] On July 14, 2024, Mr. Kent made a request for records. He requested PICs from the last twelve months and the most recent approved financial statements. There is no dispute over whether Mr. Kent received the records he requested; he confirmed he had at the outset of this proceeding. Rather, Mr. Kent alleges that four of the records he received were inadequate, specifically:

1. The PIC dated November 28, 2023
2. The PIC dated May 7, 2024
3. The PIC dated July 15, 2024
4. The financial statements dated June 11, 2024.

Periodic Information Certificates

- [7] Condominiums are required to issue a PIC twice a year, within 60 days of the end of the condominium's first and third quarters. This certificate provides owners with information about the corporation's board of directors, finances, insurance policies and legal proceedings, among other pieces of information.
- [8] Mr. Kent's concerns with the PICs at issue in this application range from concerns over the presentation of the information in the PICs, to more significant concerns over the accuracy of the information provided and the correctness of the budget, which as explained further below, is beyond the scope of this case.
- [9] Mr. Kent presented a lengthy and somewhat complex analysis of some of CCC 268's records, including board meeting minutes, reserve fund studies, PICs, financial statements, audits, and notices of future funding of the reserve fund, to demonstrate that there are numerous inaccuracies and errors that render the PICs

inadequate as per of the Act.

- [10] I do not set out the full details of his all his allegations, but I confirm that I have carefully read and considered the various examples of alleged errors and inadequacies that he has presented and reviewed both his analysis and the documents themselves.
- [11] One reason I do not detail every instance of Mr. Kent's alleged inaccuracies, is that some are of a minor or technical nature that do not rise to the level of inadequacy. For instance, in one typifying example, Mr. Kent argued the July 2024 PIC lists several line items detailing the anticipated expenditures to be made from the reserve fund in the current fiscal year but fails to add up these line items to produce a total. Notwithstanding the fact that the mandatory form does not have a box requiring these amounts to be totaled, they could easily be added up by an owner produce a total. Failing to provide a total does not render the PIC inadequate, but rather simply suggests that Mr. Kent, to a certain degree is intent on holding CCC 268 to his own personally defined standards of adequacy, which as discussed below is not the standard on which adequacy is determined.
- [12] Additionally, several of Mr. Kent's concerns about the records are not about the adequacy of the PICs at all, but about the adequacy of governance – which is not within the Tribunal's jurisdiction. Mr. Kent takes significant issue with the accounting practices of CCC 268. The evidence shows that Mr. Kent has had several lengthy email exchanges with the board about his concerns and has "suggested" various ways in which "internal adjustments" and other accounting practices should be done. In many instances, Mr. Kent's dissatisfaction with the records at issue in this case, appear to stem from his disagreement with the board over accounting principles and his personal views on how CCC 268 ought to be presenting its budgets and other financial documents. Such concerns are not about the adequacy of the PICs.
- [13] In determining whether the PICs are adequate, I am guided by the standard of adequacy as set out 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. [...]

- [14] The Tribunal has also further confirmed that a determination of adequacy will depend on the nature and purposes of the record in question. In this case, the Tribunal decision, *Nicholls v. Niagara South Condominium Corporation No. 12*. 2022 ONCAT 148 referred to me by both parties is instructive. In commenting on the intent of the PIC, the Tribunal states:

The intent of the PIC is to provide owners with information about the condominium at set points in the fiscal year. The challenge in assessing the adequacy of the PIC is that they are intended to capture information at a specific time, and involve forecasting the financial condition of the corporation... The PICs are intended to reflect the information available at the time, and boards should ensure the financial projections are accurate.

- [15] Thus, when read along with the principles for adequacy as set out in McKay, determining the adequacy of the PIC involves considering whether the PIC provides an accurate statement of the information at the time it is provided, whether it provides unit owners with sufficient information to determine whether the condominium is fulfilling its duties, is in compliance with the Act and its Regulations, which set out the requirements of the PIC.
- [16] Mr. Kent's suggests that the PICs fails to meet the standard of adequacy in two ways. First, he alleges they fail to meet the requirements as set out in Ontario Regulation 48/01 ("O. Reg 48/01") the Act, rendering them inadequate. Second, he suggests that due to errors and inaccuracies in the content of the PICs they are inadequate.
- [17] Out of the three PICs at issue, Mr. Kent claims two of them, the May and July 2024 PICs, fail to meet the requirements of the Act, as they are not presented on the mandatory form as approved by the Minister.
- [18] Of note is the fact that both the May 2024 PIC and the July 2024 are for the first quarter. This is because the first quarter PIC dated May 7, 2024 was revised after the board undertook a review of the 2023 audit report and 2024 month-end statements submitted by its management. On review of these financial documents, the board determined that some adjustments were needed to the financial reporting and the board decided to reissue the PIC along with a communique about its financial review. It did so in July 2024. On July 18, 2024, CCC 268 sent a communique to owners along with a revised first quarter PIC, dated July 15, 2024. The difference between the May 2024 PIC and the July PIC is that the May PIC

indicated that the corporation was considering the possibility of a special assessment. The July PIC indicates that the board is no longer considering this and directs the members to review the communique attached for an explanation.

- [19] Mr. Kent raised no issue about the fact that the PIC was reissued. His concerns are primarily with the content of the revised PIC dated July 2024, which other than the difference noted above is the same as that issued in May.
- [20] O. Reg 48/01 s. 11(7) sets out that the PIC “shall be in a form specified in the Table to section 16.1.” Section 16.1 of O. Reg 48/01 sets out the Table/form must be English or French, have the title set out in the Table and be in the form specified by the condominium authority and approved by the Minister.
- [21] Both the May 2024 and July 2024 PIC sent to owners reproduces the mandated form on CCC 268’s letterhead. It does not use the statutory form. Mr. Kent takes the position that CCC 268’s failure to use the form, i.e., the “customization” of the form renders the record inadequate as it means owners will be left unaware that there is a mandatory form. He also asserts that the communique attached to the first page of the revised PIC issued in July 2024 contains inaccurate information about transfers made from CCC 268’s operating account to its reserve account.
- [22] CCC 268 submits that while the statutory form was not used, what was sent to owners contains all the information set out in it. CCC 268 referred me *Lenny Chiro v. Toronto Standard Condominium Corporation No. 1615*, 2019 ONCAT 6, where the Tribunal concluded that even though a board’s response to an owner’s records request for records was not delivered on the mandated form, the corporation had met the regulatory requirements because its response contained all the information required by the form.
- [23] I draw the same conclusion here. I have reviewed the May and July 2024 PICs. Both documents are clearly titled as PICs and indicate the quarter they are reporting on. They use the same sub-headings as the mandated form, the same language for descriptions in each section, contain all nine sections and are clearly dated. The only difference between the documents sent to owners and mandated form is that it has been transposed on to the CCC 268’s letterhead. While CCC 268 did not offer an explanation as to why it chose to reproduce the form on its letterhead rather than use the statutory form, the document contains all the information as set out in the mandated form and I find it to be adequate.
- [24] I further note that the purpose of the PIC is to provide owners with information about the corporation, it is not to educate them on the existence of ministry forms. To suggest as Mr. Kent does in this case, that a document that provides all the

information required by the form, in a nearly identical format is inadequate, suggests that Mr. Kent's concern over the failure to use the form may be more about holding CCC 268 to a standard of technical perfection than it is about adequacy as per the principles set out in McKay.

- [25] Mr. Kent's also raises a concern with the communique included with the July 2024 PIC. This communique is on a separate page from the substantive PIC information and is clearly meant as memo to owners. As noted, this communique provided owners with an explanation as to why CCC 268 is reissuing the first quarter PIC and provides some context about the financial information found in the PIC document. While Mr. Kent may take issue with the accuracy of the financial information cited and what is communicated to owners in the memo, this communique does not form part of the PIC, and its inclusion with the PIC does not impact the PIC's adequacy in this case.
- [26] Finally, Mr. Kent submits that CCC 268 failed to include its annual budget with all three of the PICs at issue (May, July and November) as is required by O. Reg 48/01 s. 11(1)(k). The evidence indicates that CCC 268 did provide a budget table with the PICs. However, this budget was only for the operating fund, not the reserve fund. Mr. Kent submits that the omission of the reserve fund budget makes the PIC inadequate.
- [27] CCC 268 acknowledges that it did not provide the reserve fund budget with the PICs. However, it notes that a few months prior to the issuing of May 2024 PIC, a full budget that included the reserve fund budget was sent to all owners. It further notes that the statutory form does not indicate that a budget should be attached.
- [28] I give little weight to this argument because while that may be the case, it is the Act that sets out the requirements of the PIC, not the form. It is incumbent upon CCC 268 to know and fulfill its obligations under the Act.
- [29] In failing to provide the reserve fund budget, CCC 268 did not strictly adhere to the requirements of the Act. However, I do not find that the failure to include the reserve fund budget with the PICs, in this case, renders the PIC inadequate to the point that it fails to provide owners with sufficient information to identify or determine whether the condominium is fulfilling those duties and obligations. The budget that was provided with the PIC clearly sets out the anticipated reserve fund contribution in the context of CCC 268's operating budget and the PIC itself contains detailed information regarding the reserve fund. As required, CCC 268 sets out the anticipated projects and expenses to be drawn from the reserve fund, the balance of the reserve fund, the balance of the reserve fund at the outset of the current fiscal year and the estimated contribution to the reserve fund for the

current fiscal year. Had an owner needed or wanted to confirm the numbers in the PIC against the reserve fund budget, this budget could easily have been requested. None of the evidence before me suggests that CCC 268 sought to willingly withhold any material information about the budgets from owners. I am satisfied that its failure to include the budget was simply a mistake and does not render the record inadequate.

- [30] Beyond concerns with the presentation of the PIC information, Mr. Kent also raised concerns over the accuracy of the information in the July 2024 PIC specifically.
- [31] However, a great many of Mr. Kent's complaints of errors and inaccuracies refer to the budget attached to the PIC, not the PIC itself. Mr. Kent presented a complex analysis of CCC 268's financials to demonstrate, that in his view, the budget contains errors that make it inadequate. Notwithstanding the fact that CCC 268 disputes all allegations made by Mr. Kent in relation to the budget, the issues raised by Mr. Kent extend beyond the scope of the issues in this case. He has essentially requested that I undertake an audit of CCC 268's financials to determine if the budget is 'correct'. This is not the role of the Tribunal and the budget's adequacy is not an issue before me.
- [32] I will however address Mr. Kent's claim that the PIC is inadequate because it does not accurately report on the anticipated expenditures of the reserve fund. The PIC requires corporations to list anticipated expenditures to be made from the reserve fund in the current fiscal year. Mr. Kent alleges these are incorrect as the amounts provided by CCC 268 in both the May and July 2024 PIC differ from the amounts listed for these projects in the reserve fund study.
- [33] According to CCC 268, the reason for the differences stem from the fact that the reserve fund study was conducted in 2021, and the anticipated cost of many reserve fund projects has increased since then. It submits that the PICs list the actual anticipated expenditures for the projects at the time the PIC was produced and circulated.
- [34] O. Reg 48/01, s. 11(1)(m)(iv) requires that a PIC list "the amount of the anticipated expenditures to be made from the reserve fund in the current fiscal year, calculated in accordance with the budget of the corporation for the current fiscal year." This presumes that the corporation will list the actual anticipated expenditures, not those projected in the last reserve fund study. The fact that there are discrepancies between the numbers reported in the PICs and the reserve fund study does not render the PIC inadequate - in fact in this case it may be the opposite. In reporting its actual anticipated expenses, the PIC seeks to reflect CCC 268's financials at the time the PIC was issued, not those anticipated in an

outdated study.

- [35] Finally, I will address what appears to be Mr. Kent's most significant concern regarding July 2024 PIC, which is that the PIC inaccurately reports the balance of the reserve fund. He argues that the PIC reports an *anticipated* balance of \$1,785,452.32, which reflects the amount that would be in the reserve fund if the required cash was transferred from the operating account to the reserve account, which, he argues had not been done at the time the PIC was issued.
- [36] CCC 268 confirmed that the balance of the reserve fund reported in the July PIC included the amount "due to the reserve", i.e. the amount that needed to be transferred from the operating fund to the reserve fund by the end of the year. They submit that it was reported this way because this is a typical accounting practice. As evidence of this, they note that even the audited financial statements of the corporation report reserve fund balances as including any amounts due to the reserve. They also note that the board provided significant explanation of the reserve fund transfers in the memo sent to owners with the July 2024 PIC.
- [37] According to Mr. Kent, O. Reg 48/01 s. 11(1)(m)(i) requires a corporation to provide the actual balance in the reserve fund as of the last date of the quarter on which it is reporting – not an anticipated amount that considers future transfers.
- [38] Here, I agree with Mr. Kent. A plain reading of the requirement indicates that the PIC should include the balance in the reserve fund as of the last date of the quarter. While I acknowledge CCC 268 reported on its balance in a way that it felt was consistent with generally accepted accounting principles, this is not what the PIC requires. However, I also conclude that in this case, the error is more technical than substantive in its nature. The figure provided by CCC 268 was not incorrect, per se but rather was reported incorrectly based on the requirements of the PIC and an explanation was provided to owners which provided context and information about how to understand the numbers provided.

Financial Statements

- [39] The financial statements at issue are dated June 11, 2024, and are clearly labelled as unaudited. Included in this statement are balance sheets, trial balance sheets, bank reconciliation forms (reserve and operating) and bank account statements for the period of approximately April 30, 2024 – May 30, 2024. There are also income and expense statements for both the reserve and operating fund between January 1, 2024 – May 31, 2024, and a summary of aging receivables as of May 31, 2024. In short, they are extensive and provide significant financial information.

- [40] Mr. Kent alleges that these statements are inadequate as they fail to meet several of the criteria in s. 66(2), of the Act which details the required contents of the financial statements.
- [41] CCC 268 argues that Mr. Kent is using the wrong criteria to evaluate the adequacy what was provided to him. It submits that s. 66 only applies the audited financial statements of the corporation. I agree. Failing to meet the specific requirements of s. 66 do not make these unaudited statements inadequate.
- [42] I note that on learning of CCC 268's arguments on this point, Mr. Kent changed his position in relation to these statements. In his final reply, Mr. Kent asserted that he had all along been seeking the audited statements – and that he had been misled by CCC 268 into thinking they had fulfilled his request. I give no weight to this argument. At the outset of this hearing Mr. Kent was asked directly if he had received all the records requested. He confirmed this to be the case. It is also very clear from the financial statements provided to Mr. Kent that they were not audited. The front page of the June 11, 2024, statement says "unaudited". In any event, I note that Mr. Kent has in his possession the audited statements for 2022 and 2023
- [43] Mr. Kent also takes issue with the numbers presented in several of the financial documents provided in statement. As with the PICs he provided a complex, detailed analysis of why, in his view, errors in the statement render the statement inadequate. I have reviewed in detail Mr. Kent's submissions, and those provided by CCC 268 wherein they dispute each alleged error. I have also considered CCC 268's argument that Mr. Kent's allegations amount to an attempt to use the issue of adequacy to impose his own audit on the financials of corporation.
- [44] Based on the evidence before me, I am inclined to agree with CCC 268's assertion that most of Mr. Kent's allegations fall into the category of concerns about fiscal governance, not adequacy of records. For instance, Mr. Kent alleges that CCC 268 did not make the internal account transfers that it ought to have made, thus making the numbers reported incorrect, and the record inadequate. He also alleges that CCC 268 did not provide the auditor with the most recent approved financial statements as required by the Act, and that there was no record of these statements being approved in the minutes. Such allegations are more appropriately considered challenges to the financial practices and decisions made by CCC 268 rather than adequacy of the financial statement.
- [45] I further note that it is clear that Mr. Kent believes the statements are incorrect, based on his own interpretation of a myriad of financial documents that are beyond the scope of this hearing. To truly assess Mr. Kent's allegation that the June 11, 2024, statements contain errors of the nature he describes, would require me to

conduct an in-depth analysis of the financial documents and decisions of the corporation, which extends beyond my jurisdiction from s. 55 of the Act.

- [46] To the extent that Mr. Kent alleges that the records are inadequate due to their presentation, i.e. that budget columns are incorrectly named, that they are ‘unnecessarily confusing’, or ought to present the financial information in a different way, I find that such allegations amount to an attempt by Mr. Kent to impose his own standards on the financial records and this is not the standard on which adequacy is appraised. I find the statements adequate as per the Act.

Issue No. 2: Is Mr. Kent entitled to damages as per s. 1. 44(1)(3) of the Act?

- [47] Mr. Kent has asked that the Tribunal award him damages in the amount of \$198.91, which he calculates is “his share of the deficit identified by the auditor”.
- [48] Section 1.44(1)3 of the Act states that 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.”
- [49] There is no basis for an award of damages in this case. Mr. Kent has not demonstrated that there has been any non-compliance with the Act or that he has incurred any damage as a result of such an act of non-compliance.

Issue No. 3: Is either party entitled to costs?

- [50] Mr. Kent requested costs in the amount of \$200 for his Tribunal fees and has asked for an award of costs in the amount commensurate with his portion of the legal costs spent by CCC 268 in defending this application (which would be a cost borne by all owners, including himself).
- [51] The authority of the Tribunal to make orders for costs is set out in s. 1.44 of the Act.
- [52] 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.”
- [53] Section 1.44(2) of the Act states that an order for costs “shall be determined ...in accordance with the rules of the Tribunal”.
- [54] 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.

[55] Mr. Kent was unsuccessful in his claims and thus I find he is not entitled to any costs.

[56] CCC 268 also indicated it would like to claim costs and asked in its submissions for the opportunity to make costs arguments after my decision was made. Both parties were instructed to address all the issues, including the issue of costs in their submissions. CCC 268 did not do so. I see no reason to provide an additional opportunity to do so now.

[57] Although Mr. Kent was unsuccessful in his claims, this does not automatically result in an award of costs. And, while at times Mr. Kent failed to distinguish correctly between issues of adequacy and his concerns with the board's financial practices or decisions, he was entitled to challenge the adequacy of the records. In any event, cost awards are discretionary, and I will exercise my discretion in this case and not award any costs. However, presumably, this decision will help to clarify for Mr. Kent the limits of the Tribunal's jurisdiction and the principles of adequacy, as another Tribunal member may decide not to exercise their discretion in the same manner.

C. ORDER

1. This case is dismissed without costs to any party.

Nicole Aylwin
Member, Condominium Authority Tribunal