

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** February 20, 2025

**CASE:** 2024-00551R

**Citation:** Wilson v. Peel Condominium Corporation No. 352, 2025 ONCAT 29

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

**Member:** Nicole Aylwin, Member

**The Applicant,**

David Wilson

Represented by Yulia Pesin, Counsel

**The Respondent,**

Peel Condominium Corporation No. 352

Represented by Angad Singh, Counsel

**Hearing:** Written Online Hearing – November 11, 2024 to February 12, 2025

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] The Applicant, David Wilson (the “Applicant”), is the owner of a unit of Peel Condominium Corporation No. 352 (the “Respondent”). The Applicant alleges that the Respondent has refused to provide him records without a reasonable excuse and has failed to keep adequate records as per the *Condominium Act, 1998* (the “Act”). He has asked the Tribunal to order the Respondent to pay a penalty pursuant to s. 1.44 (1) 6 of the Act and award him costs for his legal fees and Tribunal fees.
- [2] The Respondent submits that it has attempted in good faith to provide all the records requested by the Applicant and asks that this case be dismissed without costs to any party.
- [3] The Respondent does not dispute entitlement to the records requested by the Applicant. Accordingly, I have limited my decision to the question of whether the Respondent refused to provide the records without a reasonable excuse.
- [4] For the reasons set out below, I find that the Respondent has refused to provide

some records to the Applicant without a reasonable excuse and find a penalty of \$750 is appropriate in this case. I do not find that the Respondent has failed to keep adequate records as per the Act. Finally, I award the Applicant costs in the amount of \$1500 and order the Respondent to also reimburse the Applicant for his Tribunal filing fees in the amount of \$200.

## **B. ISSUES & ANALYSIS**

### **Issue No. 1: Has the Respondent refused to provide records to the Applicant without a reasonable excuse? If so, should a penalty be imposed and in what amount?**

- [5] On June 17, 2024, the Applicant submitted a Request for Records in which he requested 15 non-core records. The records requested included:
  - 1. All legal invoices billed to the Respondent in respect of the Small Claims Court case bearing file number SC 22-00002381-0000; and
  - 2. Reconciliation and backup documents with respect to 14 different cheques issued by the Respondent.
- [6] Regarding the latter request, the Applicant was seeking a copy of the cheques, the cheque requisition forms, and the invoices and receipts related to each cheque.
- [7] The Respondent acknowledges that it received the request and in response requested payment of \$183 to provide all the requested non-core records. On July 22, 2024, the Respondent received payment from the Applicant to produce the records.
- [8] Section 13.7 (1) of Ontario Regulation 48/01 ("O. Reg. 48/01") provides that within 30 days of receiving a requester's response and the fee payable for the request, the corporation must deliver a copy of the record.
- [9] The parties agree that this did not happen.
- [10] On August 22, 2024, the Respondent's condominium manager sent the Applicant's counsel an email containing the "backup" documents requested. However, the evidence shows that only some of the records requested were provided in this email. No further records were provided until the parties engaged in the Tribunal's Stage 2 – Mediation, where the parties agree that several more, but not all, of the requested records were provided by the Respondent. Finally, during this hearing the Respondent provided several more records. However, the Applicant submits that, by when the closing submissions were made, the Respondent had still not

provided all the legal invoices in relation to the Small Claims matter and a backup invoice in the amount of \$1285.49 in relation to cheque #648, the latter of which was provided along with the Respondent's closing submissions.

[11] According to the Respondent, the delay in providing some of the records was due to "logistical constraints." These being that the auditor was in possession of some of the requested invoices and receipts, and in the case of one legal invoice, the Respondent's former counsel "misfiled" one of the requested invoices delaying its production. In the case of at least one cheque, the Respondent indicated that it could not be located, so instead provided a bank statement in lieu of the actual cheque.

[12] The Applicant maintains that these are not reasonable excuses for several reasons. First, he submits that the Respondent agreed to provide and took payment to provide all the records requested. It then not only failed to provide the documents but also failed to provide the Applicant with any reason as to why they were not until after the Applicant had engaged counsel and filed this application. He submits the delay in providing reasons for the failure to produce the records undermines the credibility of the excuses. Second, the Applicant asserts that it is unlikely that the auditor retained only some of the receipts requested and, in any event, if this was the case, the Respondent should have still been able to access them by contacting and retrieving copies from the auditor. Finally, the Applicant argues that it is not a reasonable excuse to blame the former counsel for poor record keeping.

#### Financial Invoices and Receipts

[13] The Applicant made his request for the backup financial invoices and receipts in June 2024. However, it wasn't until October 2024 that the Respondent advised that the receipts were with the auditor, temporarily limiting access to them. The Respondent provided no evidence as to when the receipts were given to the auditor for the purposes of the annual audit, nor did it specify exactly which receipts were with the auditor and which were not. The Respondent supplied only vague submissions on the fact that "external factors" such as the auditor's retention of the invoices and receipts were responsible for the delay.

- [14] Even if I accept this to be true, in this case I do not accept it as a reasonable excuse. If the invoices and receipts were with the auditor when the Respondent replied to the Applicant's request in July 2024 it means that the Respondent should have known far earlier than October 2024 (when they finally provided some of the records) that they did not have immediate access to the receipts and invoices and could not provide them within the 30 days required. Yet, it did not alert the Applicant to such a scenario, did not offer a date for when the records would be available for production, and/or offer to refund him the fee or any part of the fee he had paid to have the Respondent produce all these records, which s. 13.8 (1) (d) of O. Reg. 48/01 provides a corporation must do if the actual cost of producing the records is less than the fee that the requester paid for the request. Rather, the Respondent accepted the Applicant's money, did not provide the records it said it would and provided no excuse as to why, nor did it provide the records until after the commencement of this Application.
- [15] Additionally, although the Respondent did provide several invoices, receipts and cheques during the mediation it did not provide all of them. At least one – an invoice from Masons Masonry in the amount of \$1285.49 in relation to cheque #648 – was not provided until very late in the hearing (after all submissions had been made). This invoice is particularly contentious. Upon receiving this invoice late in the hearing, the Applicant alleged that it was not a true copy of an invoice provided by the vendor. The Applicant alleged the Respondent had engaged in fraud by creating an invoice from this vendor. I declined to hear evidence on this allegation as determining the authenticity of a third-party receipt and deciding claims of fraud were beyond the scope of the hearing. For the purposes of determining the issue properly before me (i.e. whether the records were refused without a reasonable excuse), the provision of the record during the hearing does not change the fact that this record was not provided in accordance with the Act and that no reasonable excuse was communicated as to why this receipt remained outstanding long after the others had been provided. It is more likely that all receipts that were with the auditor would have been retrieved at the same time.
- [16] Based on the above facts, I find that the Respondent did not provide the Applicant with the receipts and invoices requested as per the timeline set out in s. 13.7 (1) of O. Reg. 48/01 and it had no reasonable excuse for failing to do so. I also acknowledge there was no outright refusal to provide the records. However, in this case, consistent with other decisions of the Tribunal<sup>1</sup> that have found that a delay

---

<sup>1</sup> See for example: *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2019 ONCAT 45, *Maureen Moloney v. Durham Condominium Corporation No. 124*, 2020 ONCAT 3, and *Lagan v. Carleton Condominium Corporation No. 331*, 2020 ONCAT 30

in the provision of records may, in some circumstances, be deemed to be a refusal, I find the delay in the provision of the records – which in this case was several months – a refusal without a reasonable excuse.

#### Legal invoices

- [17] Initially, the Respondent did not provide any legal invoices pertaining to the Small Claims Court action as requested by the Applicant. During mediation, the Respondent provided two invoices dated August 15, 2022, and October 18, 2023. During the hearing, the Respondent produced another invoice dated August 11, 2023.
- [18] The Respondent submits that they have now provided all the invoices they have in relation to the Applicant's request. The Applicant disputes this claim arguing that there were legal expenses incurred on the Small Claims Court file in 2024 for which invoices should have been produced. The Respondent does not deny work was carried out on the file, but they maintain they have not yet been billed for that work and thus have no further invoices to provide. I find this plausible and have no evidence to indicate otherwise.
- [19] The Respondent has offered to provide the Applicant with an up-to-date client ledger outlining the work that has not been billed yet. If the Respondent would like to provide the Applicant with the client ledger, that is its decision to make, however, I will not require it to do so. The client ledger was not a record requested by the Applicant and I am not prepared to order the Respondent to provide a document for which no evidence of entitlement has been presented to me. I accept that the Respondent has now provided the invoices that the Applicant requested.
- [20] Nonetheless, I still must decide whether the delay in providing the legal invoices amounts to a refusal without a reasonable excuse. The Respondent has offered no explanation as to why the production of two invoices was delayed until the mediation in October 2024. They submit that the provision of the third invoice, which was not provided until November 13, 2024, was delayed because the Respondent's previous counsel has "misfiled" it. The Respondent did not make clear how its counsel's misfiling of the invoice affected its own ability to provide the record. Presumably, if it has been invoiced for the work, it would have had its own copy of the invoice. In any event, the Respondent did not provide the invoices requested until several months after they said they would provide them and then failed to do so without any explanation as to why until after this application had commenced. Even then, they only provided an excuse for the delay in providing a single invoice. Based on the above, I find that the several month delay in providing the legal invoices amounts to a refusal without a reasonable excuse.

Is a penalty appropriate? If so, in what amount?

- [21] Having found that the Respondent has refused to provide records without a reasonable excuse, I must determine if a penalty is appropriate in this case.
- [22] Section 1.44 (1) 6 of the Act states that the Tribunal may order the Respondent to:
- ... pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under [subsection 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.
- [23] Under s. 1.44 (3) of the Act, the Tribunal may award a penalty up to \$5000. The Applicant has requested that I order the Respondent to pay the maximum amount.
- [24] In this case, I find a penalty to be appropriate as records were refused without a reasonable excuse.
- [25] One of the purposes of assessing a penalty is to deter future similar action. In this case, there was no dispute over entitlement, the Respondent told the Applicant it would provide the records, charged him for them and then simply did not provide the records as per the Act. They offered no explanation as to why until after they were required to defend this application. These are actions that should not be repeated.
- [26] However, I do not find that this case warrants that the maximum penalty. The Tribunal has reserved the maximum penalty for instances where, among other factors, there was an outright refusal of a significant number of records to which entitlement is clear, the Tribunal had to order the records be provided, and more generally the refusal was found to be particularly egregious and demonstrated a complete disregard for the corporation's obligations under the Act. In this case, while the Respondent did not meet its obligations, they did provide the records, albeit late, of their own volition. And, while I have not found their excuses for refusal to be reasonable, there is no indication that the Respondent sought to mislead or purposefully withhold records from the Applicant.
- [27] The imposition of a penalty is discretionary as is the amount. Based on the facts before me in this case, I find a moderate penalty of \$750 to be appropriate to encourage the Respondent to meet its obligations going forward.

**Issue No. 2: Is the Respondent keeping adequate records as per the Act?**

- [28] The Applicant alleges that the Respondent has failed to keep adequate records

insofar as it has failed to retain all records relating to litigation (i.e. the legal invoices) and all financial records.

- [29] Section 55 (1) requires the corporation to keep adequate records including the financial records of the corporation and “all other records, if any, that are prescribed”. Section 13.1 of O. Reg. 48/01 sets out these other records, which includes “records that relate to actual or contemplated litigation and that the corporation creates or receives”.
- [30] Section 13.1 (2) of O. Reg. 48/01 sets out how long such records shall be retained for. For both the financial records and those related to actual or contemplated litigation the period of retention is seven years.
- [31] The Applicant argues that, in failing to keep copies of the financial invoices/receipts provided to the auditor, the Respondent failed to keep adequate records as per s. 55 (1) of the Act and s. 13.1 (2) of O. Reg. 48/01. He asserts the same for the legal invoices, arguing that in relying on its counsel to properly file its invoices and in failing to keep its own copy, the Respondent has failed to keep adequate records in accordance with the provisions above.
- [32] The Tribunal has established in several decisions that the requirement to keep adequate records does not equal a requirement to be perfect in its record keeping. Adequacy is measured by considering whether the records of the corporation fulfill two basic purposes as set out in *McKay v. Waterloo North Condominium Corp. No. 23*, 1992 CanLII 7501 (ONSC) (“McKay”). These are: to assist the corporation in fulfilling its duties, and to provide information for unit owners who wish to confirm that those duties are met.
- [33] The Applicant has not shown that the Respondent has failed to keep records in such a way as it would prevent the Respondent from meeting these purposes. In this case, while the financial invoices and receipts the Applicant requested were not immediately available for production in response to a records request, they were still reasonably accessible. Moreover, for the purposes of maintaining financial records and having audits completed, the temporary inaccessibility of these documents does not appear to have caused any problems and therefore doesn’t really amount to anything that interferes with the Respondent’s regular duties relating to such records. In arguing that the Respondent **ought** to have made copies of them before providing them to the auditor suggests that the Applicant takes more of an issue with how the corporation is filing or tracking its records, then the adequacy of the records themselves.
- [34] Regarding the legal invoices, again I am not persuaded that the failure to have in

its possession one legal invoice (that of August 11, 2023) amounts to a failure to keep adequate records. In any event, the Respondent and the Applicant now have this record.

### **Issue No. 3: Is the Applicant entitled to costs?**

[35] The Applicant has requested legal costs in the amount of \$8819.17 and reimbursement of his Tribunal fees in the amount of \$200. The Respondent has not requested any costs.

[36] The authority of the Tribunal to make orders for costs is set out in s. 1.44 of the Act.

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

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

[39] 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.

[40] 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; the indemnification provisions in a corporations governing documents and whether the parties attempted to resolve the issues in dispute before the CAT case was filed.

[41] The Applicant was successful in most of his claims and thus I will order the Respondent to reimburse him for his Tribunal fees in the amount of \$200.



- [42] Regarding legal costs, in this case there was no conduct during the hearing that was unreasonable or delayed the proceedings. This hearing was straightforward and uncomplicated with a limited amount of evidence and no witnesses. I must also consider whether the costs claimed are reasonable and proportionate to the issues in dispute. In this case, the issues were not complex or novel. It is very rare that a party would be awarded costs on a full indemnity basis, and I do not find this case presents circumstances that would warrant a full-indemnity award of costs.
- [43] Costs awards are discretionary, and in considering whether a costs award is appropriate, I have considered the factors above, but I have also given some weight to the Applicant's argument that this case ought to have been resolved without the need for an application to the Tribunal and certainly before a full hearing. The reason for this being that the Applicant submitted a straightforward records request to which the Respondent provided a straightforward response and there was no dispute over entitlement. Nonetheless, the Respondent failed to provide the records requested and failed to provide the Applicant with any information regarding a (potential) delay in providing the records it said it would. This left the Applicant little choice except to file this application and incur the legal costs associated with pursuing it. Had the Respondent done as it said it would, or at the very least communicated with the Applicant about why it couldn't, this dispute may have resolved prior to the filing of this application.
- [44] Having weighed all the factors above, I award legal costs to the Applicant in the amount of \$1500.

**C. ORDER**

[45] The Tribunal Orders that:

1. Under s. 1.44 (6) of the Act, the Respondent shall pay the Applicant \$750 within 30 days of the date of this decision.
2. Under s. 1. 44 (4) of the Act, the Respondent shall pay the Applicant costs in the total amount of \$1700, within 30 days of the date of this decision.

---

Nicole Aylwin  
Member, Condominium Authority Tribunal