

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** April 3, 2025

**CASE:** 2024-00544R

**Citation:** Russell v. Simcoe Condominium Corporation No. 8, 2025 ONCAT 51

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

**Member:** Mary Ann Spencer, Member

**The Applicant,**

James Russell

Self-Represented

**The Respondent,**

Simcoe Condominium Corporation No. 8

Represented by Sonja Hodis, Counsel

**Hearing:** Written Online Hearing – January 21, 2025 to March 31, 2025

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] The Applicant, James Russell, is the owner of a unit of the Respondent, Simcoe Condominium Corporation No. 8 (“SCC 8” or “the corporation”). On October 9, 2024, Mr. Russell submitted a Request for Records to the corporation. On November 11, 2024, he filed his application with the Tribunal indicating he had received no response to that Request.
- [2] The records Mr. Russell requested were minutes of owners’ meetings held in November and December 2023, updates to the corporation’s rules respecting patios, and minutes of board meetings dated from March to November 2022. The corporation’s position is that on October 22, 2024, it sent a Board Response to Request for Records to Mr. Russell in which it indicated that there was no owners’ meeting in November 2023 and that the meeting in December 2023 was an information meeting which had not been minuted. The Response further indicated that the corporation would provide a copy of its rules and, upon payment of the estimated fee for their production, the requested board meeting minutes. During the Stage 2 – Mediation in this matter, SCC 8 provided a copy of the current rules of the corporation. It also provided redacted copies of the board meeting minutes

at no cost.

- [3] Mr. Russell brought this matter forward to Stage 3 – Tribunal Decision alleging that with respect to the December 2023 meeting and the corporation rules, SCC 8 is failing to keep adequate records contrary to s. 55 (1) of the *Condominium Act, 1998* (the “Act”). He also alleges that the minutes of a board meeting which he received were overly redacted. He requests the Tribunal order the corporation to provide owners with updated rules within 60 days, to provide him with unredacted copies of the board minutes he received, and to comply with the record-keeping requirements of the Act particularly with respect to rules and meeting minutes. He also requests that a penalty be assessed to the corporation.
- [4] SCC 8’s position is that this case should be dismissed with costs.
- [5] For the reasons set out below, I find that SCC 8 has provided Mr. Russell with all of the records responsive to his request and that it is not failing to keep adequate records. I also find that the board meeting minutes Mr. Russell received were not improperly redacted. I dismiss this matter and order Mr. Russell to pay \$1,000 in costs to SCC 8.

## **B. ISSUES AND ANALYSIS**

- [6] At the outset of the Stage 3 – Tribunal Decision proceeding, I asked Mr. Russell to confirm the specific records at issue. He provided background information about his reasons for submitting the Request for Records and a list of records he was seeking. However, that list included a number of records relating to unit patios that he had not requested in the October 9, 2024 Request for Records. I advised him that this proceeding would only deal with the records contained in that Request. He also raised a number of concerns/questions about the governance of the corporation, particularly related to the size and cost of replacement of patios. However, he himself noted that these were governance-related, and I confirmed that they did not fall within the Tribunal’s jurisdiction and would not be addressed. Similarly, Mr. Russell submitted a number of proposed cross-examination questions which were unrelated to the records issues to be decided. I did not allow these questions.
- [7] The following issues were confirmed as those to be addressed in this proceeding:
1. Has the Respondent provided all of the records requested in the October 9, 2024 Request for Records which the Applicant is entitled to receive?
  2. Is the Respondent keeping adequate records in accordance with s. 55 (1) of

the Act?

3. Has the Respondent failed to provide records without reasonable excuse and, if so, should a penalty be assessed?
4. Should an award of costs be assessed?

Because the issues of receipt and adequacy of the records are directly related in this matter, I am addressing Issues 1 and 2 together in this decision.

**Issues 1 and 2: Has the Respondent provided all of the records requested in the October 9, 2024 Request for Records which the Applicant is entitled to receive? Is the Respondent keeping adequate records in accordance with s. 55 (1) of the Act?**

Minutes of Owners' Meetings – November and December 2023

- [8] On November 23, 2023, at the request of SCC 8's Board of Directors, Counsel for the Respondent sent a letter to all owners to address "information regarding the recent correspondence sent by two owners in the condominium to all owners." The letter explains that the Board, concerned about misinformation in that correspondence, had asked Counsel to provide information about the Act to the owners. The letter advised that Counsel would answer questions at a Zoom meeting to be held on December 6, 2023. Mr. Russell was unable to attend that meeting. His request for minutes of owners' meetings held in November and December 2023 is for minutes of that Zoom meeting. There is no dispute that there was no meeting in November.
- [9] SCC 8's response to Mr. Russell's request for minutes of the December 6, 2023 meeting was to refuse it on the basis that no minutes were taken because the meeting was an information meeting. Mr. Russell maintains that SCC 8 has failed to keep an adequate record of an owners' meeting.
- [10] To support his position, Mr. Russell submitted a copy of an e-mail sent from the address of SCC 8's Board of Directors on December 1, 2023, the subject of which is "Owners' Meeting – December 6<sup>th</sup>." The e-mail reminds owners to register for the Zoom session and instructs them on how use the recently introduced Condo Control portal.
- [11] Mr. Russell also referred me to the Tribunal's decision in *Rafael Barreto-Rivera v. Metropolitan Toronto Condominium Corporation No. 704*, 2018 ONCAT 11 (CanLII) ("Barreto-Rivera"), a case in which the applicant had requested minutes of an owners' meeting. The corporation's position was that no minutes were taken

because the subject meeting was only an information meeting. Based on the evidence that the corporation had referred to the meeting as an “owners’ meeting” in its correspondence to owners and on the evidence of the subject matter discussed, the Tribunal found that the meeting was an owners’ meeting, and that the corporation had failed to keep minutes as required by s. 55 (1) of the Act.

- [12] Barreto-Rivera can be distinguished from the case before me which is not a case where the corporation consistently identified the meeting as an owners’ meeting. While the December 1, 2023 e-mail sent by SCC 8’s Board of Directors does use the wording “Owners’ Meeting”, Counsel’s November 23, 2003 letter to owners and a Condo Control reminder are clear that the meeting was a town hall meeting.
- [13] The subject of the November 23, 2023 letter announcing the meeting is “Owners Town Hall Meeting – December 6th, 2023 via Zoom; Clarification and Correction of Information Sent by Owners.” The letter goes on to refer to the meeting as a “town hall.” Similarly, a reminder sent to owners on the corporation’s Condo Control portal on November 30, 2023 refers to the meeting as an “information session” and advises owners to register in order to obtain the ID information/link required to join the meeting.
- [14] Section 45 (4) of the Act states “The board may at any time call a meeting of owners for the transaction of any business, and the notice of the meeting shall specify the nature of the business.” Section 45 also sets out the requirements for formal notices of such meetings to be sent to owners. Crystal Moore, SCC 8’s condominium manager, testified that no corporation business was conducted at the December 6, 2023 meeting. No notices of meeting other than Counsel’s letter and the reminders to register for the Zoom session were sent.
- [15] In its decision in *Rahman v. Peel Standard Condominium Corporation No. 779*, 2021 ONCAT 32 (CanLII), the Tribunal wrote (p. 20):

... It is well settled law at this point that the purpose of minutes is to document a board’s business transactions and to show how the corporation’s affairs are controlled, managed and administered. ...

The evidence is that the December 6, 2023 meeting was not an owners’ meeting called for the purpose of conducting business. Rather, Counsel’s November 23, 2023 letter clearly states it was a question and answer session. While it would have been a courtesy had SCC 8 produced a summary of the discussion for the benefit of owners who were unable to attend, I find that the corporation was not required to take minutes and therefore it has not failed to keep adequate records.

Update to rules respecting the use of common elements and units for SCC 8, in particular rules 8.02 (patios) pertaining to if 14 ft increased size from the patio is permitted; and Update to rules respecting the use of common elements and units for SCC 8, 8.03 (patios) that the patio constructions are done and funded by the corporation

[16] Mr. Russell submits that the corporation is failing to keep adequate records of its rules. His testimony is that SCC 8 has approved extension of the units' exclusive-use common element patios to 14 feet and has decided that the corporation will fund 100% of the related costs.

[17] In response to Mr. Russell's Request for Records, SCC 8 provided what Ms. Moore testified are its complete current rules. The corporation's position is that Rules 8.02 and 8.03, which are dated April 2001, have not been updated. These state that patios may extend to a maximum of 12 feet and that board approval is required prior to construction of a replacement or extension of an existing patio.

[18] To support his position that the corporation is not keeping adequate records of its rules, Mr. Russell submitted a copy of an August 25, 2015 notice sent to owners in accordance with s. 58 (6) of the Act in which SCC 8 proposed a rule related to short-term rentals. This rule was not among those which the corporation provided in response to his Request for Records. It is unclear whether this rule was in fact enacted; SCC 8's position is that the rules it provided to Mr. Russell are the current ones. Further, Mr. Russell made it very clear in his messages and submissions that he was seeking updates to Rules 8.02 and 8.03 in his Request for Records. While the first of Mr. Russell's two requests for rule updates could potentially be read as a request for all rules, the fact that he posted a lengthy list of patio-related records in response to my request for the specific records at issue and presented a detailed submission on patio-related issues supports that updates to Rules 8.02 and 8.03 were the records he was in fact seeking.

[19] Section 55 (1) of the Act requires the corporation to keep adequate records of its rules. There is no evidence before me that Rules 8.02 and 8.03 have been amended. That some patios may have been extended to 14 feet is not evidence that the rules have been updated. Therefore, I find that the corporation is keeping adequate records of its rules relating to patios. I make no finding with respect to other rules.

#### Minutes of board meetings – March 2022 to November 2022

[20] In 2022, Mr. Russell's unit was damaged as a result of sewer back-ups. The correspondence submitted in this case indicates that the best approach to restore

his unit and the involvement of his insurance company have been matters of some contention. Mr. Russell explained that in requesting the minutes of board meetings held between March and November 2022, he was seeking minutes of meetings where the board discussed the issues relating to his unit.

- [21] During the Stage 2 – Mediation in this matter, the corporation provided redacted copies of the requested minutes to Mr. Russell along with a written explanation of the reasons for the redactions. What is at issue is whether the minutes of the November 14, 2022 board meeting have been improperly redacted.
- [22] On November 13, 2022, Mr. Russell e-mailed what he refers to as an “offer to settle” to the condominium manager who forwarded it to the board the morning of November 14, 2022. The e-mail proposed specific repairs to his unit. The November 14, 2022 board meeting took place at 5 p.m. In addition to the redaction of the minutes of that meeting, Mr. Russell expressed concern that the minutes he received do not indicate that this offer had been addressed and that he has received no formal response to it. He submitted “So even if it was redacted legally, I was entitled to a response of how the Board handled my offer to settle, and it should have been recorded.”
- [23] Item 2 of the minutes of the November 14, 2022 board meeting does not make specific reference to Mr. Russell’s e-mail but indicates that the board discussed the issues arising from the “waste pipe failure” at his unit and reviewed his “view on remedies.” A portion of the minutes is then redacted. They continue with a chronology of the “plumbing issues” at Mr. Russell’s unit. Ms. Moore testified that “the parts that are redacted are the Board’s internal discussion and assessment about the insurance investigation and/or potential litigation and the corporation’s legal obligations and rights in respect thereto.”
- [24] SCC 8’s position is that the redacted portion of the minutes is in accordance with s. 55 (4) (b) of the Act which states that an exception to an owner’s right to obtain copies of records are those “relating to actual or contemplated litigation, as determined by the regulations, or insurance investigations involving the corporation.” Section 1 (2) of Ontario Regulation 48/01 defines “contemplated litigation” as “any matter that might reasonably be expected to become actual litigation based on information that is within a corporation’s knowledge or control.”
- [25] While Mr. Russell described his November 13, 2022 e-mail as an “offer to settle”, he disputes that he was contemplating litigation. That e-mail states “Currently, at the very minimum (which could get much more involved if necessary), I would settle now” and goes on to set out his proposed remedy. While the threat of litigation may be somewhat veiled in the e-mail, in an explanatory message he

posted during this proceeding he wrote “I would like to state that there was no litigation threat regarding my unit issues, unless the board did not respond to my offer.” Based on Mr. Russell’s own explanation, I find that SCC 8 did have reason to expect that the issues related to his unit could become litigation and therefore I find that the redactions to the minutes were not improper. Finally, I note that whether the Board of Directors responded formally to Mr. Russell’s offer is a governance-related issue that is not within the Tribunal’s jurisdiction to address.

**Issue 3: Has the Respondent failed to provide records without reasonable excuse and, if so, should a penalty be assessed?**

- [26] Section 1.44 (1) 6 of the Act provides that the Tribunal may order a penalty to be paid if it finds that a corporation has, without reasonable excuse, refused to permit an owner to examine or obtain copies of records. Mr. Russell requested \$1,076.39 in penalties; an amount he calculated based partially on the quantum of the Respondent’s cost submission.
- [27] Mr. Russell filed his application with the Tribunal on November 11, 2024 indicating he had received no response to his October 9, 2024 Request for Records. The records were provided during the Stage 2 – Mediation. In certain circumstances, the Tribunal has found a delay in the provision of records to be an effective refusal. In this case, the documentary evidence is that SCC 8 e-mailed the Board Response to Request for Records to Mr. Russell on October 22, 2024, well within the required 30-day response time. Ms. Moore testified that she received no response from Mr. Russell and therefore she assumed that he did not wish to pay the \$70 fee estimated for the provision of the minutes of the board meetings held in 2022. She also testified that she received no notice of a failed delivery.
- [28] Mr. Russell advised that he did not receive Ms. Moore’s initial e-mail, and he questioned why she used this method of communication. However, the evidence is that he indicated on his Request for Records that he wished to receive correspondence by e-mail at the address Ms. Moore used.
- [29] This is a case where there was no delay in the corporation’s response. Rather, SCC 8’s response either went astray or was perhaps inadvertently overlooked. This was remedied on December 6, 2024 when Ms. Moore sent another copy of the response after being advised Mr. Russell had not received it. The records were provided during the Stage 2 – Mediation. Therefore, I find there was no refusal to provide records and assess no penalty.

**Issue 4: Should an award of costs be assessed?**

[30] Mr. Russell made no request for costs. SCC 8 requests costs of \$18,444.43 in respect of its legal fees.

[31] 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.

[32] Mr. Russell was not successful in this Stage 3 – Tribunal Decision proceeding. Therefore, I am not awarding his Tribunal fees.

[33] SCC 8 requests its legal fees of \$18,444.43 be paid on a full indemnity basis. Its position is that Mr. Russell acted unreasonably by moving this matter forward to a hearing after an agreement to resolve the matter had been reached during Stage 2 – Mediation, forcing it to retain counsel to represent it during Stage 3 – Tribunal Decision.

[34] SCC 8's director, Zorana Mladenovic, who represented the corporation during the mediation, testified that the corporation agreed to provide Mr. Russell with the redacted minutes of board meetings at no cost, notwithstanding that it had estimated a fee of \$70 for the provision of these non-core records in the Board Response to Request for Records, on the understanding that this would settle this matter.

[35] Mr. Russell disputes that an agreement was reached in Stage 2 – Mediation. He stated that he had agreed to forego a request for his Tribunal fees in lieu of payment of the fee for the non-core records and this was his understanding of why the corporation waived that fee and posted the records.

[36] I necessarily have no knowledge of what transpired during the Stage 2 – Mediation. It may well be that both parties legitimately had different understandings of the circumstances under which the corporation agreed to produce the non-core records at no cost to Mr. Russell. I cannot conclude that Mr. Russell reneged on a settlement agreement as SCC 8 submitted.



- [37] SCC 8 was not “forced” to retain legal counsel to represent it during the Stage 3 – Tribunal Decision proceeding. Parties are not required to have legal representation in CAT proceedings. In fact, the representative at the outset of this Stage 3 – Tribunal Decision proceeding was Ms. Mladenovic. She then informed me that another board director would be acting as representative. That director then asked for an adjournment in order to retain legal counsel.
- [38] 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; and the potential impact an order for costs would have on the parties.
- [39] SCC 8’s Counsel further submits that Mr. Russell was on a “fishing expedition” in Stage 3 – Tribunal Decision, noting that he raised governance-related matters with respect to the replacement of unit patios and that these formed a significant part of his submissions. She submitted that it would not be reasonable for the owners of SCC 8 to be responsible for legal costs in these circumstances.
- [40] I have reviewed the legal bills submitted by SCC 8 in this matter and find the fees to be disproportionately high relative to the complexity of the issues in this matter. While Mr. Russell did raise governance-related matters such as the replacement of patios and the board’s response to his offer to settle, I had made it clear that I would only deal with the records-related issues and Counsel needed only to respond to those.
- [41] This proceeding was delayed when Mr. Russell requested a time extension to identify the records at issue and when he proposed questions not relevant to the issues to be decided but these actions did not require SCC 8 to incur extensive additional legal costs; I disallowed all but one of Mr. Russell’s proposed cross-examination questions without asking Counsel for her comments. However, Mr. Russell did submit new documents both with his testimony and at the end of the proceeding, requiring Counsel to spend additional time to respond.
- [42] I acknowledge that legal fees not awarded will ultimately be paid by all owners of SCC 8, including Mr. Russell. SCC 8 is a small 32-unit townhouse community, and I recognize that the impact of the fees on the owners could be significant. However, Rule 48.2 of the CAT’s Rules of Practice is clear that the Tribunal will not generally award legal fees. In the circumstances of this case, while the issues I have addressed were legitimately before me, Mr. Russell’s submission of late documents created extra work and cost for the Respondent. Therefore, I am

exercising my discretion and am awarding the nominal amount of \$1,000 in costs to SCC 8.

**C. ORDER**

[43] The Tribunal orders that:

1. Under s. 1.44 (1) 4 of the Act, within 30 days of the date of this Order, James Russell shall pay SCC 8 costs in the amount of \$1,000.

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Mary Ann Spencer  
Member, Condominium Authority Tribunal

Released on: April 3, 2025