

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 17, 2025

CASE: 2024-00570R

Citation: Jackson v. Simcoe Condominium Corporation No. 69, 2025 ONCAT 56

Order under Rule 19 of the Condominium Authority Tribunal's Rules of Practice.

Member: Mary Ann Spencer, Member

The Applicant,

Elizabeth Jackson

Self-Represented

The Respondent,

Simcoe Condominium Corporation No. 69

Represented by Tony Bui, Counsel

Submission Dates: March 21, 2025, to April 7, 2025

DISMISSAL ORDER

A. BACKGROUND

- [1] The Stage 3 – Tribunal Decision proceeding in this matter commenced on March 17, 2025. The Applicant, Elizabeth Jackson, is the owner of a unit of the Respondent, Simcoe Condominium Corporation No. 69 (“SCC 69” or “the corporation”). Ms. Jackson alleges that SCC 69 has failed to keep adequate records, contrary to s. 55 (1) of the *Condominium Act, 1998* (the “Act”) and has failed to comply with its obligations, indicating that it either failed to produce certain documents required by the Act or failed to produce them within the prescribed time period. These allegations are made independent of any Request for Records made by Ms. Jackson.
- [2] As a preliminary matter, Counsel for SCC 69 advised that the corporation wished to file a motion to dismiss this case on the basis that the Tribunal does not have jurisdiction to hear this matter and/or that the issues are so minor that it would be unfair to require the Respondent to participate in the Stage 3 – Tribunal Decision process in order to address them.

- [3] Rule 19 of the Tribunal's Rules of Practice dated January 1, 2022, states that the Tribunal may dismiss a case at any time in certain situations, including:
- a) Where a case is about issues that are so minor that it would be unfair to make the Respondent(s) go through the CAT process to respond to the applicant(s)'s concerns;
 - b) Where a case has no reasonable prospect of success;
 - c) Where a case is about issues that the CAT has no legal power to hear or decide;
 - d) Where the Applicant(s) is using the CAT for an improper purpose (e.g., filing vexatious Applications).
- [4] The Stage 2 Summary and Order prepared by the Tribunal member who mediated in this matter sets out that the issues to be addressed, should it proceed to a full hearing, are (1) whether the corporation has failed to keep adequate records, (2) what remedy should be ordered if it is found that it has failed to do so, and (3) whether the Applicant is entitled to a penalty, costs or other monetary compensation.
- [5] In summary, the Applicant's concerns as set out in the Stage 2 Summary and Order are:
1. The Periodic Information Certificate ("PIC") delivered September 28, 2023, contained errors that the Respondent's condominium manager refused to correct.
 2. An Information Certificate Update ("ICU") confirming the corporation's new Board of Directors and Officers was not received after the October 26, 2023, Annual General Meeting ("AGM").
 3. The PIC due April 2, 2024, was not received.
 4. The Respondent did not issue an ICU when its condominium manager relocated on August 1, 2024. It also failed to update the Condominium Authority of Ontario's Public Registry.
 5. The section 4 (d) box (re: removal and appointment of auditors) was left blank on the Preliminary Notice of Meeting of Owners (in respect of the October 9, 2024, AGM) delivered on September 5, 2024. No PIC was included with the package.
 6. The PIC due September 30, 2024, was not delivered until November 28, 2024, and contained errors.

7. There were two instances when a New Owner Information Certificate (“NOIC”) was not delivered.
- [6] Only Items 1 through 5 listed above were included in Ms. Jackson’s application to the Tribunal. The Stage 2 Summary and Order indicates the Respondent took the position that it would be procedurally unfair to add items to this matter. Counsel for the Respondent did not address Items 6 and 7 in the Respondent’s motion submission. However, given these were clearly raised during the earlier Tribunal proceedings, I am addressing them in this decision.

B. ANALYSIS

- [7] Counsel for the Respondent submits that the Tribunal does not have jurisdiction to hear or decide the corporation’s alleged failure to deliver and/or its late delivery of PICs and ICUs or the errors contained in the PICs and the Preliminary Notice of Meeting of Owners. He also submits that the errors in these documents are minor and therefore do not warrant the time and expense of a Tribunal hearing.
- [8] Ms. Jackson submits that the Respondent’s motion to dismiss this matter should be denied because “ultimately, SCC 69 must be held accountable for their failure to comply with their statutory obligation to provide Information Certificates for over a year; and their failure to ensure documents that were delivered to its owners were materially accurate such that they could be relied upon with confidence.”
- [9] I address each of the items listed in the Summary and Order separately below. I address the question of jurisdiction first.

Item 6: The PIC due September 30, 2024, was not delivered until November 28, 2024

- [10] The jurisdiction of the Tribunal is limited to the disputes set out in Ontario Regulation 179/17. The requirements for a condominium corporation to send PICs, ICUs and NOICs are set out in section 26.3 of the Act. Counsel for the Respondent correctly notes that the Tribunal does not have jurisdiction over this section of the Act and submits that Ms. Jackson’s application should therefore be dismissed. In this regard, he referred me to the Tribunal’s decision in *Yeung v. Metropolitan Toronto Condominium Corporation No. 1136*, 2020 ONCAT 28 (CanLII), (“Yeung 1”) a case in which the applicant alleged that the respondent corporation had failed to produce PICs in a timely manner and that the PICs it did produce contained errors. The Tribunal dismissed the application on the basis that it did not have jurisdiction. At paragraph 7, the Tribunal wrote:

In this case there is no dispute that the January 2020 PIC was delivered outside of the timelines established in the Regulation. Information certificates

are identified in s.55 of the Act as records that a corporation must maintain and are subject to request from owners. This is not a dispute about entitlement to a record, or record retention. Section 55 does not provide for a mechanism for disputes over the timing of the certificates. Therefore, this issue falls outside of the jurisdiction of the Tribunal.

I find that the decision in Yeung 1 clearly applies to Item 6, the late delivery of the PIC due September 30, 2024. The Tribunal does not have jurisdiction to hear this item with respect to late delivery. (I address the issue of errors separately below in paragraph 19.) However, Yeung 1 does not address a situation where a corporation failed to produce the required information certificates.

- [11] Items 2, 3, 4, and 7 set out above in paragraph 5 are all instances of a failure by SCC 69 to produce information certifications. That failure is clearly a breach of its obligations under s. 26.3 of the Act and therefore a governance-related matter. However, the question before me becomes whether it is also a failure to keep adequate records under s. 55 (1) of the Act over which the Tribunal does have jurisdiction.

Item 3: The PIC due April 2, 2024, was not received

- [12] Section 55 (1) of the Act states that a corporation is required to keep adequate records and contains a list of those records a corporation is required to maintain. Further records which must be kept are prescribed in s. 13.1 (1) of Ontario Regulation 48/01 ("O. Reg. 48/01"). Information certificates are not listed among these prescribed records. However, s. 1 (1) O. Reg. 48/01 defines the following as a core record of a corporation:

All periodic information certificates that the corporation, within the 12-month period before receiving a request for records or a requester's response, sent to the owners under section 26.3 of the Act or was required by that section to send to the owners.

Section 55 (3) of the Act states that owners are entitled to examine or obtain copies of a corporation's records and PICs "from the past 12 months" are included as a core record on the prescribed Request for Records form. Therefore, it stands to reason that a corporation is required to keep adequate records of its PICs for at least 12 months.

- [13] Item 3 of the Applicant's concerns is the failure of the corporation to produce a PIC due April 2, 2024. Notwithstanding that the Applicant did not submit a Request for Records, arguably, this case could proceed to a hearing with respect to the adequacy of that record. With respect to the three issues identified as those to be

addressed should this matter proceed to hearing, the Tribunal could potentially find that the corporation was failing to keep an adequate record at the time Ms. Jackson submitted her application. However, what remedy could the Tribunal order? Given 12 months have passed, the April 2, 2024, PIC is longer a core record that the corporation is required to keep. And there is no provision in the Act for penalty if a corporation has failed to keep adequate records. Section 1.44 (1) 6 only provides for a penalty to be ordered if a corporation has refused without reasonable excuse to permit an owner to examine or obtain copies of records requested under s. 55 (3) of the Act. Finally, the corporation has no jurisdiction to order the corporation to comply with s. 26.3 of the Act.

[14] I find that there is no reasonable prospect of success with respect to the failure to deliver the PIC due on April 2, 2024, and therefore I dismiss this case with respect to this item.

Item 2: An ICU confirming the corporation's new Board of Directors and Officers was not received after the October 26, 2023, Annual General Meeting ("AGM");

Item 4: The Respondent did not issue an ICU when its condominium manager relocated on August 1, 2024; and

Item 7: Two instances when a NOIC was not delivered.

[15] There is no requirement in the Act for a corporation to keep adequate records of ICUs or NOICs. Unlike PICs, they are not defined as core records. While the failure to deliver the records set out in Items 2, 4 and 7 is a breach of s. 26.3 of the Act, as set out in Yeung 1 with respect to late delivery, there is no mechanism in s. 55 of the Act to address this. The Tribunal does not have jurisdiction over s. 26.3 of the Act. Therefore, I also dismiss this case with respect to Items 2, 4 and 7.

Item 5: The section 4 (d) box (re: removal and appointment of auditors) was left blank on the Preliminary Notice of Meeting of Owners (in respect of the October 9, 2024, AGM) delivered on September 5, 2024. No PIC was included with the package.

[16] I also dismiss this case with respect to Item 5. Ms. Jackson's concerns are that the corporation did not tick box 4 (d) to indicate that one of the purposes of the meeting was to remove or appoint an auditor. Section 55 (1) of the Act does not include preliminary notices of meetings among the list of records which the corporation must maintain. The requirements for the content of preliminary notices are set out in s. 45.1 of the Act and 12.2 of O. Reg 48/01. The Tribunal has no jurisdiction with respect to these provisions.

Item 1: The PIC delivered September 28, 2023, contained errors that the Respondent's condominium manager refused to correct; and

Item 6: The PIC due September 30, 2024, contained errors.

[17] Counsel for the Respondent submits that the errors contained in Items 1 and 6 are not within the Tribunal's jurisdiction to address. In this regard, he referred me to paragraph 6 of Yeung 1:

The Applicant asserts that there are errors in three different sections of the PICs. The Respondent has stated that it is willing to correct certain errors cited by the Applicant. However, whether or not the PICs contain errors based on the Applicant's interpretation of the information required in a PIC is not an issue which the Tribunal has jurisdiction to decide under s. 55 of the Act.

Counsel argues that the case with respect to these items should be dismissed because they involve Ms. Jackson's interpretation of the information required and/or they are so minor that the Tribunal should not subject the Respondent to the time and expense of a hearing in order to respond to them.

[18] Ms. Jackson submits that "it serves as a best practice standard for condominium corporations to ensure correctness of information vital for effective communication between the condominium corporation and its owners - and maintaining transparency with unit owners, facilitating informed decision-making, while upholding the integrity of the corporation's governance processes." Her position is that the PICs are inadequate because they contain errors.

[19] The errors in the PIC delivered September 28, 2023 (Item 1) relate to the section disclosing litigation. However unintentional it may have been, SCC 69 acknowledges that the PIC misstated the status of the litigation by confusing a Small Claims Court action with a Tribunal case.

[20] As noted above in paragraph 5, Counsel for the Respondent did not address Item 6, the PIC delivered November 28, 2024. Ms. Jackson did address it in her reply, stating that the errors the PIC contained were substantive. I asked her to provide more detail. She indicated that the corporation used an outdated version of the required form, that there were small errors in the reserve fund balances reported and that some of the listed expenditures were incorrect although the total itself was not. The corporation also did not attach the required certificate of insurance. Her most substantive comments were about the reported litigation; she expressed her opinion that the corporation should have reported its status in a different manner.

[21] I find that the decision in Yeung 1 does not apply to the majority of the cited errors.

With the exception of the alleged misstatement of the litigation in Item 6, this is not a case where Ms. Jackson has interpreted the information required and then alleged there are errors. However, with respect to the misstatement of the litigation, Ms. Jackson's assertion about what she believes the corporation knew or "ought to have known" is an issue that the Tribunal would not decide, consistent with the decision in *Yeung 1*.

- [22] In *Yeung v. Metropolitan Toronto Condominium Corporation No. 1136*, 2020 ONCAT 33 (CanLII) ("*Yeung 2*"), a case which addressed the accuracy of the minutes of a board meeting, the Tribunal determined that accuracy of a record is a component of adequacy. At paragraph 15, the Tribunal wrote:

Considering the scheme and provisions of the Act and the submissions of both parties in this case, I have no hesitation in affirming that accuracy is a component of adequacy in respect of condominium records. I also find that the use of the word "adequate" in the legislation suggests, in and of itself, tolerance for a degree of imperfection. The question is just how much inaccuracy may be tolerated before a record is rendered inadequate to, as Cavarzan J. stated, "permit [the condominium corporation] to fulfill its duties and obligations."

- [23] I find that the errors in the documents are not significant enough to warrant a hearing in this matter. PICs contain information as of a set date. The PIC delivered on September 28, 2023, has been superseded by the PIC delivered on November 28, 2024. Further, the corporation provided an amended version with its submission in this matter. Ms. Jackson suggested this was done as a tactic to avoid a hearing. That may well be true; regardless of motivation, I question the value of amendments to a PIC that is now 18 months out of date. With respect to the PIC delivered on November 28, 2024, Ms. Jackson herself noted the financial errors as a "minor discrepancy." The fact that the certificate of insurance was not attached or that the incorrect form was used can be rectified when the next PIC is issued.

- [24] For the reasons set out above, I dismiss this case. The Tribunal has no jurisdiction over s. 26.3 of the Act with respect to the timing of the delivery of information certificates. While the Tribunal does have jurisdiction with respect to the adequacy of records, I have found that the Act only requires that PICs be maintained for 12 months and that there is no reasonable chance of success with respect to the corporation's failure to deliver the PIC which was due on April 2, 2024. I have also found that there is no requirement to maintain adequate records of ICUs, NOICs or the Preliminary Notices of Meetings and therefore the Tribunal has no jurisdiction to address the failure of the corporation to deliver these. Finally, I have found that

the issues with respect to errors in the PICs delivered on September 28, 2023, and November 28, 2024, are not significant enough to warrant a hearing.

C. COSTS

[25] 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.

[26] Ms. Jackson was not successful in this matter and therefore I am not awarding her Tribunal fees.

[27] The Respondent requests its legal costs of \$6,987.82 on a full indemnity basis.

[28] The award of costs is discretionary. In considering whether costs should be awarded, I am guided by the "Tribunal's Practice Direction: Approach to Ordering 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.

[29] Counsel for the Respondent submits Ms. Jackson's conduct in filing an application that deals with "minor/trivial" issues was unreasonable. He also submits that the application was not submitted for the proper purpose of obtaining corporation records. He argues that it would be neither reasonable nor fair for other owners to bear the expense if the corporation's legal costs are not awarded.

[30] Both parties in this matter suggested the other had acted in bad faith with respect to this proceeding. I note that this is not the first case before the Tribunal involving these parties and my understanding is that there is also ongoing litigation in another venue. Notwithstanding that there is clearly animosity between the parties, there were no issues with their conduct during this proceeding. Nor were there any

unreasonable delays.

- [31] Counsel for the Respondent submitted that Ms. Jackson's application was filed "improperly to further [her] efforts to dictate how SCC 69 operates." Applications to the Tribunal with respect to the adequacy of records independent of a Request for Records are unusual but not improper.
- [32] Ms. Jackson's submissions state that her application was primarily driven by SCC 69's "failure for over a year to comply with statutory requirements under s. 26.3 of the Act" and "about inaccurate documents concerning material inaccuracies". She also indicated that there were "sub issues" relating to the apparent refusal of the condominium manager to make corrections to a PIC which Ms. Jackson requested and to the fact the board of directors hired that specific condominium management firm.
- [33] Ms. Jackson's submission certainly addressed the governance of the corporation and does indicate that she has exacting standards to which she holds the corporation. That submission also demonstrates that she has a fairly sophisticated knowledge and understanding of the Act and its regulations. The Stage 2 Summary and Order indicates that the question of jurisdiction was clearly discussed during the Stage 2 – Mediation. Ms. Jackson did not address this issue in any detail in her submission. Arguably, the Respondent's costs associated with this motion would have been substantially reduced had it not been required to address this issue. For this reason, I find that Ms. Jackson should pay a portion of the Respondent's costs.
- [34] I recognize that SCC 69 is a small corporation and that the impact of legal expenses will be felt by all owners, including Ms. Jackson. However, I have considered the impact on both parties. I am awarding costs of \$750 to the corporation.

D. ORDER

[35] The Tribunal Orders:

1. The application is dismissed.
2. Within 30 days of the date of release of this Order, Elizabeth Jackson shall pay \$750 to SCC 69.

Mary Ann Spencer
Member, Condominium Authority Tribunal

Released on: April 17, 2025