

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 25, 2025

CASE: 2024-00754R

Citation: Khan v. Peel Condominium Corporation No. 409, 2025 ONCAT 67

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,

Sharaf Khan

Represented by Seema Ahmad, Agent

The Respondent,

Peel Condominium Corporation No. 409

Represented by Angad Singh, Counsel

Hearing: Written Online Hearing – February 21, 2025, to April 17, 2025

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Tribunal has noted in many of its decisions that often a records case is less about a dispute over records, but rather, is a dispute which is symptomatic of and generated by other contentious issues between the parties. This is such a case.
- [2] Sharaf Khan (the “Applicant”) is a unit owner of Peel Condominium Corporation No. 409 (“PCC 409”). He submitted two requests for records. In the first, dated September 17, 2024, (the “first request”) he requested 16 records. All but three records were provided by the time this hearing commenced, with five having been provided in the Stage 2 – Mediation. In the second request for records dated October 26, 2024, (the “second request”) the Applicant requested two records, one of which remains outstanding.
- [3] This is the second records dispute between these parties in the last 12 months. In their previous case¹, the Tribunal noted that some of the evidence and

¹ Khan v. Peel Condominium Corporation No. 409, 2024 ONCAT 126 (CanLII)

submissions did not relate to issues before it. Though the Tribunal dismissed the application, the Member concluded that PCC 409's explanations for not providing records caused some confusion for the Applicant and therefore did not order costs against him. In this case, for the reasons set out below, I find that the Applicant was neither entitled to nor refused the records in issue before me, I do award him costs in the amount of \$75. There will be no order of costs to PCC 409.

B. ISSUES AND ANALYSIS

[4] The issues for me to decide in this hearing, about which the parties were reminded on several occasions, are as follows.

1. Is the Applicant entitled to the following records:
 - a. the video recordings of the 2022 and 2023 Annual General Meetings ("AGM")
 - b. the application for rebate for the LED lighting retrofit at PCC 409
 - c. the video recording, with audio, from October 25, 2024, at the PCC 409 management office, of the verbal exchange between the Applicant and Zekirija Alievski, the condominium manager.
2. If the Applicant is entitled to any of the above records, whether PCC 409 refused to provide them without a reasonable excuse and if so, whether a penalty is warranted.
3. Should costs be awarded to either party?

[5] Given the evidence in this case, it became clear that the first two issues are closely intertwined, therefore, I will address both together. I will also address an issue raised by the Applicant in closing submissions in relation to the record of owners and mortgagees which had been provided to him as part of the first request.

Issues 1 and 2: Entitlement to the records, whether there was a refusal to provide records without a reasonable excuse

The video recordings of the 2022 and 2023 AGMs

[6] On the board response form to the first request, PCC 409 stated it did not possess these two records. The Applicant did not accept that as an answer given that he has video recordings of the 2021 and 2024 AGM and queries why the AGMs of 2022 and 2023 would not have been recorded. However, the evidence before me

is that the 2022 and 2023 AGMs were not recorded by PCC 409. There is no requirement that a condominium corporation create a recording, nor any requirement to explain why they did not. While it may be possible that a recording was made by the minute taker tasked to draft the AGM minutes as an aid to them in drafting minutes, the law is clear – a recording made by the minute taker for that purpose is equivalent to their personal notes, and are not records of the corporation under s. 55 of the *Condominium Act, 1998* (the “Act”)².

- [7] There is no evidence of recordings of the 2022 and 2023 AGMs to which the Applicant might be entitled under the Act and therefore there has been no refusal to provide those records.

The application for rebate for an LED lighting retrofit

- [8] In replying to the request for this document (in the first request), PCC 409 stated that the “corporation does not possess the record as this was done through a third party”. The evidence provided to me relating to this document reveals, quite starkly, the underlying distrust between the parties, which has, to a great extent, fuelled this dispute.
- [9] The evidence clearly shows that PCC 409 did not file the application for rebate; it appears that its third-party contractor, Eduart Toplini of B Happy Prosound, submitted it on behalf of PCC 409 to Save On Energy in or about October 2023. Mr. Alievski stated that he requested a copy of the application from Mr. Toplini but Mr. Toplini did not keep a copy of the application though he did have the file number which was subsequently provided to the Applicant. Indeed, with that application number, the Applicant was able to gain significant information about the application from Save on Energy.
- [10] The Applicant submits that based on information he received from Save On Energy, PCC 409 was required to submit the application, not a third party on its behalf which he had been told by PCC 409 was the required procedure. The rebate of approximately \$70,000 (on an approximate \$335,000 project) was not received. According to the Applicant – again, based on information he received from a Save On Energy representative – there were errors on the application which were not rectified, which resulted in the cancellation of the application for rebate by Save On Energy. This failed application seems to be at least one of the Applicant’s concerns about the fiscal management of the corporation and about the actions of Mr. Alievski in his role as condominium manager. However, as I indicated to the Applicant during the hearing, whether PCC 409 followed the

² *King v. York Region Condominium Corporation No. 692*, 2022 ONCAT 80 (CanLII)

proper process in making the application or whether its condominium manager or contractor competently handled this application are not issues for me to determine.

- [11] The evidence shows that the application was not filed by PCC 409 but by its contractor. PCC 409 was not provided with a copy of the application when it was submitted, and its contractor did not keep a copy of it. Whether any of that was a correct or prudent process does not detract from the fact that the application has never been in the possession of PCC 409. There was a record of the application number and that has been provided to the Applicant, as noted above. There has been no refusal to provide the application.
- [12] It may be, as the Applicant suggests that a copy of the application would be provided to PCC 409 if a request was made by it to Save On Energy; however, I will not order that it do so. Concerns that the Applicant has raised about the LED retrofit project and how it was handled may be valid governance issues, but his pursuit of information about the rebate process must be pursued elsewhere; these are not issues for the Tribunal to assess as part of this records request.
- [13] Before I address the outstanding record from the second request, I will comment on the point raised by the Applicant in closing submissions about one of the records he did receive pursuant to the first request - the record of owners and mortgagees. The information in the record is presented in columns, likely in Excel spreadsheet form. Where it appears that two unit owners are listed, the full name of the second owner is sometimes cut off. I will not order that a new version of the record be provided, but as an act of goodwill, I suggest that PCC 409 provide another copy and ensure that the full names in the column are visible. The Applicant also states that the record is not accurate because, for example, he suggests that one individual appears to live in both of the units he owns. While PCC 409 is required to maintain a record of owners and mortgagees, it is incumbent upon owners to provide the correct information to the corporation – both their name and their address for service, as set out in s. 46.1 of the Act. A condominium is not required to verify the information provided or to pursue an owner for that information. On the facts before me, I do not find that the record of owners and mortgagees is not adequate as per s. 55 of the Act.

The video recording, with audio, from October 25, 2024, at the PCC 409 management office of the verbal exchange between the Applicant and Zekirija Alievski

- [14] It appears that on October 25, 2024, there was a heated verbal exchange between the Applicant and Mr. Alievski. An incident report was created and was one of the records that the Applicant requested in his second request. He received this report with the board response sent to him by email on November 25, 2024. Regarding

the video recording, PCC 409 stated that the Applicant could not obtain a copy because “as per the technician, the said recording does not exist as same is automatically overwritten/deleted shortly after due to limited storage space”. Mr. Alievski testified that he contacted the technician on November 25, 2024, regarding the availability of the video footage. Mr. Alievski also asserted that only the party responsible for the security cameras (B Happy Prosound) has the authority to save or delete any footage.

- [15] The evidence before me is that the recordings in the management office are kept for 10 days before being overwritten, unlike the security camera recordings in the rest of the building which are kept for 30 days. Therefore, when PCC 409 responded on November 25 that it could not provide the video recording, it was a correct response in that the video recording did not exist at that time. Therefore, I conclude that there has been no refusal to provide the record.
- [16] That being said, I do understand why the Applicant’s distrust of the board and of Mr. Alievski was elevated upon receipt of this response (and as emails between PCC 409 and the Applicant indicate, there was already considerable animosity). The Applicant sent an email to board members on October 26 stating that he was making a formal complaint about Mr. Alievski’s conduct and that he had submitted a records request for a copy of the incident report and the video footage. The president of the board responded by email that same day stating that “all evidence and documents regarding the incident will be preserved and be made available as required by relevant authorities”. It appears that it was not preserved and that the board gave no direction to B Happy Prosound that it be. Further, Mr. Alievski stated that he reviewed the Applicant’s records requests within a few days of its receipt “subject to my workload and availability”. Therefore, he too was aware that the Applicant was seeking the videorecording. Mr. Alievski also stated that the board president never conveyed to him that he was to have the video recording preserved.
- [17] It is true, as PCC 409 pointed out, that its response to the Applicant’s request was issued within the 30-day timeline set out in s. 13.3 (6) of Ontario Regulation 48/01. So, while PCC 409 has complied with its technical obligations as set out in that regulation, its response, given the evidence as set out in the paragraph above is somewhat disingenuous.
- [18] To conclude, given that I have found that the records requested by the Applicant are either not records of the corporation, or do not exist, there is no refusal under s. 1.44 (1) 6 of the Act and therefore no penalty is warranted, though the conduct of the PCC 409 set out in paragraph 16 does give me pause. The board ought to have been more diligent in ensuring that the recording was preserved given that

the records request had been submitted the day after the incident. Should a similar situation occur in the future, there may well be a basis for finding of a refusal without a reasonable excuse.

Issue 3: Should costs be awarded to either party

- [19] The Applicant has not been successful at this hearing; however, some of the records from the first request were not provided to him until the Stage 2 – Mediation. Therefore, I order, pursuant to s. 1.44 (1) 4 of the Act, that PCC 409 reimburse him \$75, being the Tribunal fees for the first two stages of this case.
- [20] PCC 409 submits that costs should be awarded to it because of the frivolous and vexatious nature of this application. PCC 409 was given the opportunity to state the amount it is seeking in legal costs, but did not articulate an amount. Regardless of that omission, I exercise my discretion not to award costs to it. While it is abundantly clear that the Applicant questions the competence and integrity of the board, matters which should not be pursued at this Tribunal, he was entitled to submit records requests and indeed was entitled to many of those records, some of which were not provided until Stage 2 – Mediation. The application was, therefore, not entirely without merit as suggested by PCC 409. Further, PCC 409 might be seen as exacerbating the issues of distrust which led to this application being filed by its handling of the second request (creating some confusion similar to what occurred in the previous case between the parties).
- [21] This case is another example of where both an owner and a board/management need to moderate their language and reactions to each other, being mindful of the limits of this Tribunal's jurisdiction and that cost consequences are a possibility should another similar case be brought before the Tribunal. There appears to be a level of dysfunction within this condominium community which needs to be addressed, and the avenue for addressing such issues, which are currently outside the Tribunal's jurisdiction, is not through records related disputes brought before this Tribunal.

C. ORDER

[22] The Tribunal Orders that:

1. Under s. 1.44 (1) 4 of the Act, and within 30 days of the date of this decision, the Respondent shall pay costs to the Applicant in the amount of \$75.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: April 25, 2025