

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 22, 2025

CASE: 2025-00063R

Citation: Gergely v. Simcoe Standard Condominium Corporation No. 278, 2025 ONCAT 82

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

Member: Laurie Sanford, Member

The Applicant,

Richard Gergely

Self-Represented

The Respondent,

Simcoe Standard Condominium Corporation No. 278

Represented by Karen Evans, Agent

Hearing: Written Online Hearing – March 11, 2025, to April 22, 2025

REASONS FOR DECISION

A. INTRODUCTION

[1] This should have been a straightforward records request. Richard Gergely co-owns a unit with his mother in the small, nine-unit Simcoe Standard Condominium Corporation No. 278 (“SSCC 278”). In October 2024, he requested a range of records from SSCC 278. After some initial missteps, SSCC 278 used good faith efforts to find the requested records, including canvassing members and former members of the board of directors for copies of records which may have been destroyed in a flood. By early in this hearing, SSCC 278 had produced all but two of the records Mr. Gergely had requested. One of these records is the audit for the 2024 fiscal year, which SSCC 278 advises was never prepared. The other is the minutes of the board of director’s meeting in 2008, which SSCC 278 was unable to trace and the existence of which SSCC 278 questions. At that point, the hearing might have narrowed to the questions of whether SSCC 278 was keeping adequate records and whether a penalty ought to be imposed.

[2] However, Mr. Gergely has a grievance which extends beyond the records he

requested. While this grievance is not among the issues to be determined in this hearing, it does provide important context for Mr. Gergely's position and for the remedies he is seeking. For many years, Mr. Gergely used an outdoor parking space, apparently without incident. However, recently, his parking spot was taken from him, and he was allotted a space which he considers less desirable. SSCC 278 advised him that the change was necessary to bring SSCC 278 into compliance with the Declaration, which, SSCC 278 alleges, assigns Mr. Gergely's current parking space to his unit. Mr. Gergely challenges this interpretation of the Declaration; he suspects chicanery. His sense of the unfairness of this exchange, and what he sees as an inadequate response, has left him feeling insulted and dismissed. It has certainly caused his relationship with the board of SSCC 278 to spiral. Mr. Gergely requested a financial penalty be imposed on SSCC 278 and that it be directed to keep adequate records. During the hearing, Mr. Gergely added to the remedies that he is seeking. Mr. Gergely is now also requesting the Tribunal to order a court-appointed auditor and an amendment to the Declaration. The president of the board of SSCC 278, who now parks in Mr. Gergely's former space, has offered to exchange parking spaces and give him back his former place, but Mr. Gergely rejects this as no longer sufficient.

- [3] For the reasons set out below, I find that SSCC 278 is not obliged to produce the two remaining records, the 2024 audit and the 2008 minutes, as these either never existed or have been destroyed. Mr. Gergely has not demonstrated that SSCC 278 is keeping inadequate records. He has not demonstrated that SSCC 278 is yet in default of its obligation to produce the audit for the 2024 fiscal year in accordance with the *Condominium Act, 1998* (the "Act"). This is not an appropriate case for a financial penalty. I am awarding Mr. Gergely a reimbursement of his costs of filing this application because he had to pursue this matter to the Tribunal to obtain records he was entitled to. However, I am cautioning him against using the Tribunal to extract retribution on SSCC 278, as he has apparently threatened.

B. ISSUES & ANALYSIS

- [4] As noted above, there are two records that remain at issue in this hearing. The first is the 2008 minutes of the board and the second is the 2024 audit. SSCC 278 acknowledges that Mr. Gergely would be entitled to these, if they existed. Therefore, the remaining issues in this matter may be summarised as follows:

1. Has SSCC 278 refused to provide the requested records without a reasonable excuse?
2. Is SSCC 278 keeping adequate records as required by the Act?

3. Should SSCC 278 be assessed a penalty under subsection 1.44(1)6 of the Act for a refusal to provide records without a reasonable excuse?
4. Should Mr. Gergely be awarded any costs?
5. What other orders, if any, should the Tribunal make?

Issue 1 - Has SSCC 278 refused to provide the requested records without a reasonable excuse?

- [5] Karen Evans, the president of SSCC 278, did not make an affirmed statement but she did make multiple submissions in which she laid out the position of SSCC 278. She advised that, as noted above, SSCC 278 is a very small condominium with only nine units. She purchased her unit in 2018 and, apparently shortly thereafter, began maintaining the minutes of SSCC 278, initially as secretary and subsequently as president. She continues to do that now and has undertaken to ensure this practice continues after her term ends. In October 2024, Mr. Gergely requested a range of records. Neither Ms. Evans nor any of the other board members could open the PDF that Mr. Gergely had used. Therefore, Ms. Evans said, the board did not know what exactly Mr. Gergely was requesting and by when they were supposed to reply. Mr. Gergely says that he sent a follow-up e-mail offering to discuss his request, but Ms. Evans said she did not receive it. SSCC 278 apparently decided to do nothing about the records request.
- [6] Section 13 of Ontario Regulation 48/01 (the “Regulation”) to the Act sets out the detailed requirements for making a record request and replying to one. Subsection 13.3(6) of the Regulation requires a condominium corporation to respond to a properly made records request within 30 days. SSCC 278 missed this deadline. Eventually, Mr. Gergely brought this application.
- [7] Once SSCC 278 was aware of which records were being sought, it made efforts to locate them. One set of those records were the SSCC 278 board of directors’ minutes for the years 2004 to 2008. It appears that SSCC 278 has only one board meeting a year, conducted in preparation for the annual general meeting. Ms. Evans said that she went through all the documents she received when she became president and the minutes for the years 2004 to 2008 were not among them. All the people, other than Mr. Gergely and his mother, who had been unit owners during that period had left. Ms. Evans became aware that old records were stored in the utility room of SSCC 278 and that there had been a sewage leak there. She speculates that the minutes might have been destroyed in the flood. However, she was able to obtain copies of the minutes from 2004 to 2007 from a previous president and treasurer of the board, and she provided those. She was

also able to obtain a copy of the agenda for the 2008 meeting, and she provided that. She cannot say if the 2008 board meeting ever took place.

- [8] Concerning the auditor's report for 2024, Ms. Evans says SSCC 278 routinely obtains a waiver from the requirement to obtain an audit. Ms. Evans stated that SSCC 278 forgot to obtain that waiver at their 2024 annual general meeting and when they circulated the waiver after the meeting, Mr. Gergely declined to sign. SSCC 278 has chosen to do nothing about this situation, pending the results of this hearing.
- [9] SSCC 278 might be a small condominium corporation without a professional manager, but the board members ought to have determined what their obligations were when they received Mr. Gergely's records request. They might have contacted him directly and explained that they could not open his PDF. At the hearing, when the same problem arose, Mr. Gergely was able to provide a photograph of the records request form. There is no excuse for SSCC 278's failure to respond to Mr. Gergely's request for records in a timely way.
- [10] Once SSCC 278 became aware of what records were being requested, it did make good faith efforts to find and provide the records, including approaching former board members to see if they had copies of the missing minutes. In the Stage 2 – Mediation of this case, SSCC 278 was able to provide some of the records, and, by the early stages of this hearing, it had provided all except the 2008 minutes and the 2024 audit. I conclude that after the initial missteps, SSCC 278 made good faith efforts to locate and provide the records that Mr. Gergely sought.
- [11] Concerning the 2008 minutes, given that the minutes cannot be found and might have been destroyed or might never have been created, I find that SSCC 278 has a reasonable excuse for not providing them. I note that Ms. Evans was able to track down the agenda for the meeting, which sets out routine matters such as approval of prior minutes and of the financial records.
- [12] The creation and provision of the 2024 audit raises some issues, which will be discussed below. However, for the purposes of considering whether SSCC 278 has refused to provide it to Mr. Gergely, because the 2024 audit does not exist, SSCC 278 cannot provide it to Mr. Gergely.
- [13] I conclude that SSCC 278 acted in violation of the requirement to reply to Mr. Gergely's request for records by the 30-day deadline set out in the Regulation. However, it did go to some lengths to provide Mr. Gergely with the records he requested once it understood what those records were. SSCC 278 has now provided all the records which exist. I find that SSCC 278 has not refused to

provide the requested records without a reasonable excuse.

Issue 2 - Is SSCC 278 keeping adequate records as required by the Act?

- [14] Mr. Gergely raised a number of concerns about the storage of SSCC 278 records and about the management of SSCC 278 generally. His concerns about the adequacy of records relate to the financial records. He is unable to identify any specific inadequacy although he believes the profit and loss statements are not reported in accordance with the Condominium Authority of Ontario (“CAO”) guidelines. His greater concern is that he believes that no audit of the SSCC 278 financial records has been done since he became an owner in 2004.
- [15] As noted above, SSCC 278 is a small condominium corporation with nine units. Subsection 60(5) of the Act provides an exception to the requirement for an annual audit where there are fewer than 25 units and, as of the date of the annual general meeting, all owners consent in writing to dispense with the audit. Mr. Gergely says that he had never previously been asked to dispense with, or waive, the requirement for an audit. However, SSCC 278 produced an earlier waiver which he had signed. I conclude that it is more probable than not that Mr. Gergely has previously waived the requirement for an audit. However, he has not waived the requirement for a 2024 audit.
- [16] Given that, SSCC 278 would not be keeping adequate records if it was in default of the requirement for an audit of the 2024 fiscal year. An audit occurs after the fiscal year-end of a condominium corporation. Mr. Gergely has provided no evidence as to when SSCC 278’s fiscal year-end is. Determining when the audit of the 2024 fiscal year is to be conducted will depend on when the 2024 fiscal year of SSCC 278 ended. Based on the evidence before me, it is not possible to determine whether SSCC 278 is currently in default of its requirement to conduct an audit of the 2024 fiscal year. I conclude that Mr. Gergely has not demonstrated that SSCC 278 is keeping inadequate records at present.

Issue 3 - Should SSCC 278 be assessed a penalty under subsection 1.44(1)6 of the Act for a failure to provide records without a reasonable excuse?

- [17] Mr. Gergely is requesting the maximum penalty of \$5,000 be assessed against SSCC 278 for its delay in providing most of the records and its inability to provide the remaining records. Under subparagraph 1.44(1)6 of the Act, a penalty may be imposed on a condominium corporation where the Tribunal considers that it has without reasonable excuse refused to permit a person entitled to the record under the Act to examine or obtain copies of the record. This is not a case in which SSCC 278 has refused to provide the records. This is a case of delay in providing

records which does not amount to a refusal.

Issue 4 - Should Mr. Gergely be awarded any costs?

- [18] Mr. Gergely was obliged to bring this application to obtain records he was entitled to. He should have the amount he paid to the Tribunal reimbursed by SSCC 278. Subparagraph 1.44(1)4 of the Act and Section 48.1 of the Tribunal's Rules of Practice allow for this. I will direct SSCC 278 to pay him the amount of \$200 for those fees.

Issue 5 - What other orders, if any, should the Tribunal make?

- [19] Mr. Gergely is requesting the appointment of a court-ordered auditor with a requirement for a mandatory audit every five years. It is beyond the jurisdiction of this Tribunal to direct a court-ordered auditor. Concerning a five-year audit, Mr. Gergely can determine when an audit is performed by withholding his waiver to the requirement.
- [20] Mr. Gergely also requested that I direct an amendment to the Declaration to address some of his concerns. This remedy is outside the scope of this hearing and the Tribunal has no jurisdiction to order a condominium corporation to amend its Declaration.

Other Considerations

- [21] SSCC 278 submitted that it forgot to obtain the unit owners' waiver of the audit requirement at its annual general meeting but that it did circulate a form of waiver after the meeting. It also submitted that it had contacted an auditor and that the estimated cost of the audit was \$10,000. SSCC 278 submitted that one option it had to pay for the audit was to take the money from its reserve fund. There are problems with each of these statements. It is the unit owners who appoint an auditor at the annual general meeting. The same unit owners may dispense with the requirement for an audit as of the date of the annual general meeting. There are specific permitted uses and restrictions on the use of funds in the reserve fund. Money from the reserve fund cannot be used to pay for an audit. SSCC 278 would be well-advised to consult a lawyer before determining what course of action it wishes to take concerning the audit of the 2024 fiscal year.
- [22] Mr. Gergely, introduced as part of his case, an e-mail dated March 29, 2025, sent to Ms. Evans. The e-mail raises Mr. Gergely's concern that the Declaration of SSCC 278 is "faulty". He refers to obtaining legal replies on this subject from two lawyers, although he does not share their replies. Instead, he requests SSCC 278

to retain their own lawyers to provide him with an opinion that the Declaration is not faulty. Although Mr. Gergely tells Ms. Evans not to feel threatened by this e-mail, it is difficult to read it in any way other than threatening. For example, Mr. Gergely advised Ms. Evans that he is “doing my best not to collapse the corporation. Literally collapse it financially and structurally, with an option to sue personally an individual, or two.” The clear implication is that Mr. Gergely believes he has the power to bring financial collapse to SSCC 278. He appears to be threatening further legal action before the Superior Court of Justice, the Human Rights Tribunal and/or the Tribunal, although he says he is “bending over backwards not having to do that”. I would caution Mr. Gergely against using the Tribunal to extract retribution on SSCC 278, as he appears to be threatening.

C. ORDER

1. The Tribunal Orders that by June 30, 2025, SSCC 278 will reimburse Mr. Gergely the amount of \$200 for the amount he paid the Tribunal to bring this application.

Laurie Sanford
Member, Condominium Authority Tribunal

Released on: May 22, 2025