

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** June 16, 2025

**CASE:** 2024-00639N

**Citation:** Ontario Condominium Corporation No. 10 v. Carter, 2025 ONCAT 101

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

**Member:** Susan Sapin, Member

**The Applicant,**

Ontario Condominium Corporation No. 10

Represented by Darlene Mezzabotta, Paralegal

**The Respondent,**

Karen Carter

Represented by Amanda Rourke, Agent

**Hearing:** Written Online Hearing – October 9, 2024 to June 16, 2025

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] The Applicant, Ontario Condominium Corporation No. 10 (“OCC 10”), is a non-profit 68-unit mid-rise residential building complex. Under rules about pets in its governing documents, the “pet provisions,” unit owners may only keep one dog in their unit weighing less than 10 kg, unless the dog is “for therapeutic use that has been previously proven by a medical doctor.”
- [2] OCC 10 seeks an order requiring the Respondent unit owner, Karen Carter, to comply with its pet provisions and immediately and permanently remove from the premises her dog Murphy, a mixed-breed Labrador weighing 28.80 kg. It also seeks an order prohibiting her from having other dogs over 10 kg residing in her unit, and an order for costs.
- [3] The Respondent asserts that she is entitled to keep Murphy as an accommodation under the Ontario Human Rights Code (the “Code”) and that the rules do not prohibit visiting dogs.
- [4] For the reasons set out below, I find that Ms. Carter has breached OCC 10’s pet

provisions by bringing other large dogs onto the property and keeping them in her unit, and this must stop. However, I find that Ms. Carter is entitled to keep Murphy as an accommodation under the Code, as she has established on a balance of probabilities that she does have a disability as defined by the Code, and that Murphy is the accommodation recommended by her family doctor. I further conclude that there is no evidence before me to suggest that allowing Murphy to remain would cause any undue hardship to OCC 10.

- [5] I award costs of \$200 to OCC 10 for the Tribunal fees, damages of \$500 for the cost of an enforcement letter, and the amount of \$2,300 for legal fees
- [6] During the hearing I made decisions and rulings consistent with the CAT Practice Direction on Active Adjudication. This included adapting the hearing format and identifying questions for each party. I will not restate the decisions here, but the intention was to ensure that all parties could fully and fairly participate in the hearing. These decisions and rulings are part of the Record of Proceedings.
- [7] In making this decision, I have reviewed all of the evidence and submissions before me; however, I only refer to the evidence and arguments directly relevant to the issues I have to decide. General complaints about how the condominium is managed do not fall within the Tribunal's jurisdiction.

## **B. BACKGROUND**

- [8] The events preceding this application provide helpful context for the issues before me, and for understanding why, from the outset, OCC 10 has been suspicious of Ms. Carter's claim that she is entitled to an accommodation.
- [9] Ms. Carter moved into her unit on April 30, 2024. Her evidence was that the purchase was a hasty one and that she was in difficult personal circumstances at the time due to a high conflict divorce, and so did not review the governing documents. She stated that as a first-time condominium owner, she was unaware that there could be restrictions regarding pets, including size limitations. She had visited the property before buying her unit and had noticed "many dogs of all sizes throughout the community." She also knew another owner who had been allowed to keep two overweight dogs, not on medical grounds, and another owner who had an overweight dog as an accommodation due to disability under the Code. She concluded that Murphy could live with her and that she could bring other dogs onto the property.
- [10] On May 16, 2024, just over two weeks after Ms. Carter moved into her unit, Patricia Herman, the condominium manager, sent her an email stating in part, "I'm just

following up on the condo rules regarding the dog that has been seen with you inside the building. OCC10 has rules regarding dogs over 22lbs are not allowed inside the building, including visiting [sic].”

- [11] Ms. Carter replied the same day, stating, “I will get supporting paperwork for Murphy, as he’s an emotional support dog, I co-own with my Mom/Dad. My Dad is in Stirling Nursing Home.” Ms. Herman wrote back that she should keep the dog out of the building until she had doctor’s documents proving Murphy was an emotional support dog.
- [12] Ms. Carter emailed Ms. Herman a note from her doctor, Dr. S. Qadeer, on May 23, 2024. In the same email, she stated, “Not sure if the current condo rules are the best and conducive to the lifestyle, I want . . . . Size limits are less important versus Nuisance [sic], there is a barking dogs [sic] that are a problem in the building.”
- [13] Although the date is not entirely clear from the email chain submitted as evidence, it appears Ms. Herman replied to Ms. Carter stating, “The condo will require an official doctor’s letter by June 12<sup>th</sup>, describing your need for the dog and their official stamp of approval. Only then will the dog be allowed on the property. Until then, please have the dog removed, otherwise the condo may seek legal action as you continue to breach the condo rules. . . .”
- [14] It quickly became clear that Murphy was not OCC 10’s only concern; Ms. Carter was also keeping a second large dog in her unit, a golden retriever. Ms. Herman sent several emails to Ms. Carter (June 3, 12 and 19 and July 5, 2024) advising her that two dogs over 22 pounds were not allowed, that the golden retriever was not allowed to visit, and that she had to permanently remove it.
- [15] Ms. Carter testified that she occasionally had friends visit with their dogs for playdates with Murphy, but that she did not “see this as an issue,” because she did not own those dogs nor did they reside permanently in her unit. OCC 10 took the position that Ms. Carter was wilfully defying its rules.
- [16] There is no dispute that Ms. Carter operated a dog-walking and dog-sitting business from her unit as late as January 10, 2025. She sent an email to condominium management to that effect on that date. Ms. Carter’s testimony confirmed that she had commitments for a dog walking business when she moved into her unit. Still photographs taken from OCC 10’s surveillance cameras show Ms. Carter and family members walking large dogs on the common elements.
- [17] Ms. Carter’s email above was a response to the legal demand letter that OCC 10 eventually sent her on August 8, 2024. In it, OCC 10’s lawyer advised her that her

doctor's note was insufficient, that it required more information, that she had told other owners that she was fostering dogs in her unit, and that by doing so she was "flagrantly disregarding the maximum number of permitted dogs in your Unit, irrespective of their weight." OCC 10's letter also requested further medical information to support the claim for accommodation and set out the corporation's bylaws and rules. The letter further stated that if Ms. Carter failed or refused to comply and the corporation was forced to take further action, she could be liable for costs that could "quickly exceed \$20,000."

- [18] Throughout this proceeding, OCC 10 has maintained its position that Ms. Carter was "more interested in flouting the Corporation's rules to achieve her lifestyle preferences, rather than substantiating a genuine disability-related accommodation request," going so far as to submit that she attempted to "weaponize sympathy to distract from the real issue, which is whether she is entitled to an accommodation based on the medical information presented to the Corporation at the time this Application was made, and to take the emphasis off of her glaring credibility issues."
- [19] For her part, Ms. Carter maintained that her May 23, 2024, doctor's note was sufficient, that the governing documents did not preclude her from bringing other dogs, including large dogs, onto the property to visit, and that the rules have been inconsistently applied and selectively enforced against her, and that she has been the victim of unfair treatment and discrimination.
- [20] These entrenched positions have prevented both parties from working together cooperatively to resolve a key issue in dispute between them, which is whether Ms. Carter made a good faith application to the Corporation for an accommodation under the Code, and whether OCC 10 responded appropriately.

### **C. ISSUES AND ANALYSIS**

#### **Issue 1: Is the Respondent in breach of Rule 1 (d) and (e) of the 10 kg weight restriction regarding Murphy and any other dogs?**

- [21] Article XIII, section (d) of OCC 10's 1974 By-law No. 1 states that, "in addition to the provisions of the Declaration, the use and occupation of the units shall be in accordance with the following restrictions and stipulations: No animal, livestock, or fowl of any kind, other than one dog...shall be kept in any unit."
- [22] In 2011, OCC 10 revised and implemented new rules. The relevant portions read as follows:

1 (d) No animal, which is deemed, by the Board or the property manager, in their absolute discretion, to be a nuisance shall be kept by any Owner in any Unit. Such Owner shall, within two (2) weeks of receipt of a written notice from the Board requesting the removal of such animal, permanently remove such animal from the Property. Notwithstanding the generality of the foregoing, no attack dogs shall be allowed in any Unit. No breeding of animals for sale shall be carried on, in or around any Unit.

(e) No dog more than 10 kilograms that is not for therapeutic use that has been previously proven by a medical doctor, may be kept in any unit or on any part of the common elements.

- [23] I find Ms. Carter is in breach of the rules because the undisputed evidence is that she has kept more than one dog in her unit and brought large dogs onto the common elements as part of her dog walking service.
- [24] Ms. Carter submits that the rules prohibiting visiting dogs or dogs greater than 10 kg are not valid and should not be enforceable because they are inconsistent with the bylaw, which only restricts owners to one dog per unit and is silent about visiting dogs and dogs greater than 10 kg. I reject this argument. "Silent" is not the same as "inconsistent." By-law No. 1 is not silent regarding dogs, it specifically refers to a limit of one dog per unit; for a condominium corporation to create a rule that elaborates on that provision is not an inconsistency. Corporations are entitled to make rules governing condominium life and there is no evidence before me that the rules were not properly adopted in this case.
- [25] Ms. Carter further submits that visiting dogs should not be prohibited, because Rule 1 (e) states only that no dog greater than 10kg may be "kept" in any unit or on any part of the common elements, and it cannot be said that a visiting animal is being "kept." Without citing any authority, Ms. Carter maintains that the word "kept" in the rule clearly refers to "the ongoing permanent presence of a dog in the unit or on the common elements, and that the term implies ownership, control, and regular care – such as feeding, housing and exercising the dog- not the temporary presence of being "kept" in a unit."
- [26] This interpretation is stretching the word "kept" well beyond its ordinary meaning, which the Merriam-Webster online dictionary defines, variously, as "to retain in one's possession or power" or "to take care of." None of the many definitions of the word imply permanence. Ms. Carter's interpretation would mean a condominium would not be able to rely on the rule to prevent owners or occupants from fostering dogs or operating dog walking services on the premises. This would completely defeat the purpose of the rule, which is to restrict the presence of dogs to one dog per unit and no dogs greater than 10 kg in a unit or on the common elements. In her testimony,

Ms. Herman confirmed that Ms. Carter was “welcome to have a dog walking business,” but that the condominium did not want large dogs on the property. The rule is not unreasonable.

[27] Ms. Carter must immediately cease fostering dogs or bringing large dogs onto the property.

**Issue 2: Is the Respondent entitled to an accommodation for Murphy from the application of Rule 1 (e) limiting dogs to less than 10 kg?**

[28] Ms. Carter bears the onus to establish, on a balance of probabilities, that she is entitled to an accommodation on the basis of disability.

[29] Article 8 of the Ontario Human Rights Commission’s Policy on Ableism and Discrimination Based on Disability (the “ableism policy”), entitled “Duty to Accommodate,” sets out the type of information that accommodation seekers may generally be expected to provide to support a request for accommodation. This information includes:

- that the person has a disability
- the limitations or needs associated with the disability
- whether the person can perform the essential duties or requirements of the job, of being a tenant, or of being a service user, with or without accommodation
- the type of accommodation(s) that may be needed to allow the person to fulfill the essential duties or requirements of the job, of being a tenant, or of being a service user, *etc.*

[30] Ms. Carter provided a doctor’s note from her family physician, Dr. S. Qadeer, on May 23, 2024. The relevant portions read:

This is to state that Ms. Carter is under my care and is being treated for anxiety. She has a dog for emotional support which has largely helped her for the last several years. I therefore request that she is allowed to keep her dog with her in her condo for her mental health and wellbeing.

[31] OCC 10’s position is that this medical note is not sufficient to support a claim for accommodation. At some point after Ms. Carter submitted Dr. Qadeer’s note (the date is unclear in the documentary evidence), Ms. Herman sent her an email stating, “the condo will require an official doctor’s letter by June 12th, describing

your need for the dog and their official stamp of approval.”

- [32] There is no evidence that OCC 10 explained to Ms. Carter why or how her doctor’s note was insufficient and what further information it required until it sent its compliance letter on August 8, 2024, explaining:

Unfortunately, Dr. Qadeer’s note is insufficient: it does not confirm Murphy is an emotional support animal as you claimed, and more importantly, it does not state that you need Murphy to treat your disability respectfully; there appears to be a conflation between “needs” and “preferences.”[sic]

The Corporation requires further information to assess your accommodation request. Therefore, and per Article 8.7 of the Ontario Human Rights Commission's Policy on Ableism and Discrimination based on Disability, please provide medical documentation indicating:

- The limitations or needs associated with your disability; and
- The type of accommodations you require from the Dog Provisions and how these accommodations assist you in performing the essential duties and requirements of a condominium resident. The medical documentation should indicate whether you are able to perform these duties and requirements (a) without Murphy or (b) without multiple dogs.

- [33] The question to be answered is whether there is reasonable and sufficient information in Dr. Qadeer’s note to support a claim for accommodation.
- [34] I find that on the face of it, there is. I note that OCC 10’s letter does not dispute that Ms. Carter has a disability. What OCC 10 disputes is that the medical note does not “confirm” Murphy is an emotional support animal, and it does not state that she needs Murphy to treat her disability.
- [35] I disagree and find that Ms. Carter has provided reasonable and sufficient information to establish that she has a disability under the Code and requires accommodation, for a number of reasons. First, sections 10(1)(b) and (d) of the Code state that “disability” means (b) a condition of mental impairment and (d) a mental disorder. It is well established that anxiety meets the definition of a mental impairment, particularly when it is being treated by a medical practitioner, as is the case here. I find that the note establishes that Ms. Carter has a disability. Ms. Carter’s uncontradicted evidence is that she takes medication for her anxiety, and that her medication was increased due to increased symptoms which she attributed to the stress of possibly not being able to keep Murphy.
- [36] Second, Dr. Quadeer’s note states that Ms. Carter “has a dog for emotional support”

and that she be allowed to keep it with her in the condo for her mental health and well-being. OCC 10's contention that the note does not "confirm" Murphy is an emotional support animal is incorrect given the plain language of the note. I further find that the dog that Ms. Carter "has" is Murphy.

- [37] Third, Article 8.7 of the Ontario Human Rights Commission's Policy on Ableism and Discrimination based on Disability ("the ableism policy") states that information should be provided that indicates, "the limitations **or** needs associated with the disability." I find that this means either one can suffice. In this case, Dr. Qadeer's note states that Ms. Carter's dog has helped her with anxiety for the past several years. I find this indicates Dr. Qadeer's opinion that the dog has fulfilled Ms. Carter's **need** for emotional support due to her disability. I further find that it is Dr. Qadeer's opinion that Ms. Carter should be allowed to keep "her dog" with her in her condo for her mental health and wellbeing, and the fact that Dr. Qadeer has phrased this as a request does not change the fact that it is her opinion and that it confirms a need.
- [38] Fourth, OCC 10 asked for medical information indicating "The type of accommodations you require from the Dog Provisions and how these accommodations assist you in performing the essential duties and requirements of a condominium resident," and specified that, "The medical documentation should indicate whether you are able to perform these duties and requirements (a) without Murphy or (b) without multiple dogs."
- [39] OCC 10 did not provide any submissions about what the essential duties and requirements of a condominium resident would be. Apart from the duty to comply with the requirements of the *Condominium Act, 1998* (the "Act") and the corporation's governing documents, and to respect the quiet enjoyment of other condominium residents, I do not know what other essential duties there would be that would be relevant to this dispute. Article 8.3.1 of the ableism policy provides some assistance where it explains the duties and requirements of a tenant, which "may include paying rent, maintaining one's unit so it does not violate health and safety laws, and allowing other people to reasonably enjoy their premises." The last requirement, to allow other residents quiet enjoyment, is particularly relevant to condominiums and to Ms. Carter's compliance with the governing documents by not bringing other large dogs onto the property, but I do not find it or the other factors to be relevant to the dispute about accommodation in this case. I find that the information requested by OCC 10 about how an emotional support animal would assist with these duties is unnecessary for it to be able to properly assess Ms. Carter's request for accommodation.
- [40] Lastly, I reject OCC 10's position that Dr. Qadeer's note fails to state that Ms. Carter



needs Murphy to treat her disability, and that “there appears to be a conflation between “needs” and “preferences.” Dr. Qadeer’s note states “she **has a dog** for emotional support” and requests that she be allowed to keep “**her dog**.” I find that dog would be Murphy. I find Dr. Qadeer’s note meets the criteria set out in the Code.

- [41] OCC 10 submitted that I should apply the rationale in the decision in *Norfolk Condominium Corporation No. 7 v. Vogl*, 2024 ONCAT 165 (“Vogl”), to this case. I find that Vogl is distinguishable from this one. In Vogl, the Respondent claimed an accommodation on the basis of a doctor’s note that stated simply, “Patient has a history of Generalized Anxiety Disorder. His [sic] is requesting his dogs to be placed as emotional support animals, his dogs are Australian Shepards (Oliver and Lexi). Thank you for the accommodations.” The Tribunal found that it was not clear from the note if Mr. Vogl had a disability as per the Code, or that his dogs provided necessary assistance in managing a disability and therefore could not conclude that he was entitled to an accommodation under the Code.
- [42] In the case before me, it is Dr. Qadeer who is directly requesting on behalf of Ms. Carter as her treating medical practitioner, that Ms. Carter be allowed to keep her dog for her mental health and wellbeing, on the basis that she is being treated for anxiety, and her dog has provided emotional support that has “largely helped her for the last several years.”

### Credibility

- [43] As noted, OCC 10 expressed considerable concerns about Ms. Carter’s credibility, alleging that she obstinately refused to provide sufficient medical information to permit it to consider an accommodation request, that she abused the Tribunal process by seeking to procure and submit documentary evidence during the hearing to bolster her case after cross-examination of herself and Ms. Herman (a second note from Dr. Qadeer dated March 10, 2025 and a veterinary certificate dated April 1, 2025 attesting to Murphy’s age) and that nowhere in her evidence did she detail her alleged disability-related requirement for Murphy, and that she relied on Murphy. OCC 10 submits that I should draw a negative inference against Ms. Carter and recognize that she is inappropriately using an accommodation request to avoid compliance with the rules.
- [44] Regarding the providing of sufficient medical information, I have found that Dr. Qadeer’s May 23, 2024, letter is adequate. I note that shortly after QCC 10 sent its August 8, 2024, demand letter, Ms. Carter responded by email on August 15, stating:

Happy to comply with you, here is what I have figured out. I have been in contact with my Family Doctor this morning – Dr Quadeer 905.404-9666. I spoke to Jennifer today she works in the office for the doctor and asked the doctor about this today. I would need to sign a disclosure to get you my own personal information, regarding my personal health. This would be at the lawyer expense, they are familiar with this process. Please contact my doctor directly If you wish to persue.[sic]

- [45] OCC 10's responded stating it was "unclear" what Ms. Carter was suggesting, and if it was that the "Corporation pay for the expense involved with you obtaining your own personal information further to your request for accommodation, then respectfully, that is an unreasonable request and it will not be considered." It strongly recommended that if Ms. Carter had questions about her rights and responsibilities, she should seek legal advice.
- [46] The ableism policy provides that, "Where there is a reasonable basis to question the legitimacy of a person's request for accommodation or the adequacy of the information provided, the accommodation provider may request confirmation or additional information from a qualified health care professional to get the needed information." It also states that the accommodation process is a shared responsibility, and that the provider must pay for the additional information requested.
- [47] OCC 10 did not follow up with Ms. Carter's offer to have them contact her doctor directly. I do not think it is fair to say that Ms. Carter failed or refused to provide additional medical information based on her email.
- [48] I reject OCC 10's submission that "nowhere in the Respondent's evidence does she detail her alleged disability-related requirement for Murphy, and that she relied on Murphy." Ms. Carter testified that her anxiety stemmed from her youth and teenage years and was characterized by racing thoughts and "excessive worries beyond what feels normal." She has been prescribed medication, and she requires an emotional support animal, which has helped her "beyond anything words can describe" and that she relies on him for day-to-day functioning. She emphasized that Murphy gives her a sense of calm "that nothing else can," and that, "According to my doctor's note, Murphy helps alleviate my anxiety." She stated that Murphy was a rescue dog, that he is 13 years old, and that he has been with her since he was two years old. She stated she could not "fathom re-homing him. I am deeply concerned that he would not receive the care he needs, and due to his lifelong bond with me, I fear that separation would negatively impact his health and the mere thought of this happening, has caused my anxiety to increase even more."

- [49] I note that at the start of the hearing, Ms. Carter explained that she was having medical concerns and finding it difficult to participate. She asked for a friend to represent her to “keep track of everything” for her and to “help me focus on this case because I’m really stressed and having trouble keeping up. She [the friend] would ensure I am reading the case and understanding properly and respond based on my directions and words what I tell her.” This request was granted. I find this information is consistent with Ms. Carter’s testimony about her anxiety symptoms and that it is reasonable to infer that they interfere with her ability to function in certain situations.
- [50] Together with the medical evidence, I find that Ms. Carter’s testimony is sufficient, on a balance of probabilities, to support her claim that she suffers from anxiety that is disabling and that she relies on Murphy for emotional support.
- [51] OCC 10 submits that any disability-related dependence on Murphy is not credible because Ms. Carter either did not know Murphy’s age or lied about it. It bases this assertion on the discrepancies between a June 13, 2024, email from Ms. Carter to Ms. Herman stating Murphy was 8 years old; a Facebook post by Ms. Carter stating he was 15; and her witness statement that Murphy is 13 years old.
- [52] First of all, OCC 10’s reference to Murphy being 15 in the Facebook post is incorrect. The post says Murphy is 13, which is consistent with Ms. Carter’s witness statement. I accept Ms. Carter’s explanation that citing Murphy’s age as eight was an honest mistake, and I accept her explanation that she obtained a veterinarian’s certificate attesting to his age during the hearing only because OCC 10 claimed she lied about his age.
- [53] OCC 10 further submits that Ms. Carter was not truthful about Murphy’s age because in cross examination, when she was asked, “In your email to the Corporation on June 13, **2025** [emphasis added], you stated the age as 8 years old, correct?, instead of answering the question, Ms Carter focused on the obvious typo and responded: “Incorrect. I could not have sent an email on June 13, 2025, as that date has not yet occurred.”
- [54] I agree that this answer is evasive. However, I am not prepared to discount Ms. Carter’s entire testimony on that basis.

#### Undue hardship

- [55] There is no evidence before me that OCC 10 would face undue hardship if it allowed Ms. Carter to keep Murphy as an accommodation. Based on the evidence, Murphy appears to be an older gentle and quiet dog.

- [56] Ms. Herman testified that Ms. Carter “allowed her dog to roam the common elements off leash daily, captured on security camera and residents complained about it. She didn’t clean up after her dog’s feces or she left the poop bags at the back door of the building, not disposing of it responsibly.” The surveillance evidence submitted does not show any of these infractions, and no evidence of complaints to corroborate Ms. Herman’s testimony was submitted. It is unclear whether these complaints relate to Murphy or to other dogs Ms. Carter was either keeping in her unit or walking. There is no evidence that Murphy himself is a nuisance, or that his presence imposes undue hardship on OCC 10.

**Issue No. 4: Is the Applicant entitled to costs?**

- [57] OCC 10 claims \$2,117.34 for the cost of the legal compliance letter it sent to Ms. Carter before this case was filed, its filing fees of \$200 and its costs, on a full indemnity basis, of \$16,164.66, inclusive of HST.
- [58] The authority of the Tribunal to make orders for costs and compensation is set out in s. 1.44 of the Act.
- [59] Section 1.44(1)4 of the Act states that the Tribunal may make “an order directing another party to the proceeding to pay the costs of another party to the proceeding.” Section 1.44(2) of the Act states that an order for costs “shall be determined in accordance with the rules of the Tribunal”.
- [60] 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.
- [61] 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 corporation’s governing documents and whether the parties attempted to

resolve the issues in dispute before the CAT case was filed.

#### CAT fees

[62] OCC 10 has requested Tribunal filing fees in the amount of \$200. OCC 10 was successful in establishing a breach of its rules, and I find it appropriate to award \$200.

#### Pre-CAT costs

[63] OCC 10 has requested costs of \$2,117.34 incurred before the CAT application to enforce compliance with its governing documents. This presumably involved preparing its August 8, 2024, compliance letter. Expenses of this nature are typically awarded under Section 1.44(1)3 of the Act, which states that the Tribunal may make an order “directing a party to the proceeding to pay compensation for damages incurred by another party to the proceeding as a result of an act of non-compliance up to the greater of \$25,000 or the amount, if any, that is prescribed.”

[64] OCC 10 has a duty to enforce its rules under s. 17(3) of the Act, and Ms. Carter a corresponding duty under s. 119(1) to comply with the rules, which she failed to do by bringing large dogs onto the property. Article XI of OCC 10’s declaration contains indemnity provisions which allow it to recover costs from owners, and OCC 10 informed Ms. Carter of this. Sending the August 8 letter in the circumstances was a reasonable step by OCC 10; however, I question whether a charge of over \$2,000 for one legal letter is fair and reasonable, particularly as the letter also dealt with Ms. Carter’s separate accommodation request. I find an award of \$500 is reasonable in the circumstances.

#### Costs of this proceeding

[65] OCC 10 claims its legal costs of \$16,164.66 on a full indemnity basis. An award of legal costs is appropriate in this case. Ms. Carter failed to comply with the rule limiting owners to one dog per unit by either keeping them in her unit, having them visit, or walking them on the property, despite numerous requests to comply, choosing instead to challenge the rule. This was not a reasonable position to take, and OCC 10 had no choice but to bring this proceeding to obtain compliance.

[66] However, Ms. Carter was successful in her request for accommodation under the Code, and I find OCC 10’s approach to her request was unreasonably narrow.

[67] OCC 10 submitted that no part of the costs claimed, “should be borne by the

Respondent's neighbours, who are blameless in this matter," and referred to a number of cases in support of this proposition. While the principle that it can be unfair for other owners to be called upon to subsidize the costs of enforcing compliance against another owner has been clearly articulated by the courts and this Tribunal, it is also well-established law that an award of costs is discretionary; it must be an amount that is proportional, fair and reasonable in the particular case. An award for full indemnity is relatively unusual and awarded in only very narrow circumstances. The Tribunal has also stated in its jurisprudence that, in effect, the cost associated with the condominium corporation's carrying out its duty to enforce compliance under the Act and its governing documents is reasonably anticipated to be part of the common expenses paid by all owners.

[68] The award of costs is discretionary, and I find under the circumstances as a whole in this case, that an award of \$2,300 for legal costs is appropriate.

#### **D. ORDER**

[69] The Tribunal Orders that:

1. Under s. 1.44(1)1 of the Act, the Respondent shall immediately comply with Rule 1(d) and (e) and cease from keeping more than one dog in her unit or on the common elements.
2. Under s. 1.44 (1) 2 of the Act, OCC 10 shall permit the Respondent's dog Murphy to reside in the Respondent's unit as a matter of accommodation under the Code.
3. Under ss. 1.44(1) 4 and 1.44(1) 3 of the Act, the Respondent shall pay the amount of \$2800 to the Applicant for its legal costs and compensation and \$200 to reimburse it for its Tribunal filing fees, within 90 days of this decision.

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Susan Sapin  
Member, Condominium Authority Tribunal

Released on: June 16, 2025