CONDOMINIUM AUTHORITY TRIBUNAL

DATE: August 11, 2025
CASE: 2023-00548N
Citation: Zolis v. Wentworth Common Elements Condominium Corporation No. 519, 2025 ONCAT 131

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

Member: Michael Clifton, Vice-Chair

The Applicant,
Sophie Zolis
Self-Represented

The Respondent,
Wentworth Common Elements Condominium Corporation No. 519
Represented by Kevin Mitchell and Aarij Ahmed, Counsel

Hearing: Written Online Hearing – June 28, 2024 to June 13, 2025

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant commenced two cases against the Respondent:

1. Case No. 2023-00548N related to the validity of the Respondent's parking-related provisions in its governing documents, and the manner in which the Respondent sought to enforce them against the Applicant, including the Respondent's chargeback against the Applicant for legal expenses with interest accruing at a rate of 18% per annum.

2. Case No. 2024-00315R concerned the Applicant's two requests for records made in October 2023 and February 2024 (together, the "Requests for Records"). The Applicant claimed that not all the requested records were given, although in this case the issue she primarily addresses is that the directors of the Respondent did not follow appropriate record retention practices. The Applicant provided evidence of a further request for records in May 2024 which, though referred to, is not the subject matter of this case.

[2] Although the Respondent joined Case No. 2023-00548N, it did not join Case No. 2024-00315R. In addition, initially the Respondent was not represented by legal counsel, but by different members of its board of directors from time to time. Eventually, legal counsel was engaged by them to complete these proceedings.

[3] The Requests for Records relate to the matters at issue in Case No. 2023-00548N; therefore, the parties agreed to the merger of both cases under this case number. The motion order merging the cases can be found on the Tribunal's website.[1]

[4] The Applicant stated that although her original purposes in bringing Case No. 2023-00548N were "personal", she became determined to address more generally what she described as the "authoritarian regime" of the Respondent's board, which she alleged consists of "harassment, breach of privacy, vexatious civil claims, [and] oppression … in breach of their duty and with little standard of care" affecting unit owners other than just the Applicant. However, this case concerns only the issues and facts relevant to the Applicant's own circumstances.

[5] The case is not decided in the Applicant's favour. Costs are awarded to the Respondent.

B. BACKGROUND

[6] The Respondent is a Common Elements Condominium. This means that it contains no units and consists solely of common elements. Ownership interest in the common elements is possessed by the owners of related properties, referred to in the *Condominium Act, 1998*, (the "Act") as "parcels of tied land" – more typically referred to using the abbreviation "POTL" (or "Potl" as set out in the Respondent's declaration), which I will also use in this case. The Applicant is the resident and owner of a POTL associated with the Respondent.

[7] The common elements of the Respondent include parking areas that are used by the POTL owners. On August 23, 2023, the Respondent's legal counsel wrote to the Applicant stating that:

> In August 2023, including on or about August 3, 2023, you, or occupants of your POTL, have continued to park upon the visitor parking spaces.

The letter noted that this same issue had been the subject of previous notices to

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[1] *Zolis v. Wentworth Common Elements Condominium Corporation No. 519*, 2024 ONCAT 101

the Applicant sent in early 2022.

[8] Article 3.4 of the Respondent's declaration provides:

> Each visitor's parking space comprising part of the Common Elements shall be used only by the visitors and guests of the Owners, residents and tenants of the Potls.

The same article further states that:

> None of the visitor parking spaces shall be assigned, leased or sold to any Owner.

[9] Respondent's counsel's letter of August 23, 2023 demanded that the Applicant and other occupants of her POTL "cease and desist" from parking on the common element visitor parking spaces, warning the Applicant that if such use continued the Respondent would commence an application before this Tribunal. The letter further warned that the Applicant would be required to indemnify the Respondent fully under articles 2.2 and 5.5 of its declaration, in respect of which a lien could become registered against title to her POTL.

[10] The evidence in this case is that such parking continued unabated.

[11] In October 2023 and February 2024, the Applicant submitted the Requests for Records. The first sought board meeting minutes and all forms of documents, including photographs, relating to parking violations reported with respect to the Applicant. In the second, the Applicant again asked for all correspondence, videos, and other documents relating to the alleged parking violations, particularly in relation to three vehicles – a Mazda Tribute, a BMW X1, and a GMC Sierra 1500. As noted earlier, the Applicant made a third request for records in May 2024. Though not the subject matter of this case, I note that in it the Applicant requested the same records again and added a request for documents relating to director training for the condominium's three directors.

[12] The Respondent did not respond to the Requests for Records using the correct statutory form nor provide any of the accompanying statements required by the regulations under the Act. However, the Applicant advises she received the board meeting minutes within one week of the October 2023 request. She received none of the other requested records. She received copies of some violation-related emails in response to her February 2024 request. The Applicant then commenced Tribunal Case No. 2024-00315R in May 2024. During the Tribunal proceedings, the Respondent appeared to have uploaded to the online dispute resolution system the balance of the requested records, including photographs of the alleged

parking violations.

[13] In this merged case, the Applicant submits that the provisions of the Respondent's declaration are "skeletal" and challenges the reasonableness and consistency of the declaration provisions and the Respondent's rules. The Applicant further challenges the reasonableness of the Respondent's enforcement processes, including the chargeback against her, and questions the Respondent's record management or retention practices. She seeks both costs and a form of compensation in relation to the chargeback from the Respondent.

C. ISSUES & ANALYSIS

[14] The issues in this case are:

1. Are the visitor parking restrictions in the declaration and/or rules of the Respondent unreasonable, inconsistent, or otherwise unenforceable?

2. Is or was the Applicant in violation of the visitor parking restrictions in the declaration or rules?

3. Are the Respondent's enforcement practices relating to the Applicant – including the lawyer's letter and chargeback – unreasonable?

4. Has the Respondent provided the Applicant with all records requested by her?

5. Are the Respondent's records management or retention practices deficient?

6. Is either party entitled to costs or compensation on account of the circumstances of this case or these proceedings?

[15] Based on the evidence and submissions of the parties:

1. I find in favour of the Respondent with respect to issues 1, 2, and 3. Provisions in its declaration and rules relating to visitor parking are not unreasonable, and I find that the Applicant has breached them. The Respondent's enforcement has for the most part been reasonable.

2. Regarding issue 4, I find that the Applicant is not entitled to the requested records.

3. In regard to issue 5, the Applicant raises reasonable but speculative concerns. There may be some deficiencies, but I accept the Respondent's statement that they are committed to improvement.

4. In regard to issue 6, I conclude the Applicant is not entitled to either the costs or the compensation awards she requests, and that she is obligated to pay a portion of the Respondent's costs.

[16] Since the Applicant states they have ceased to breach the visitor parking provisions of the declaration and rules, I order that they remain in compliance with the same. No order is required with respect to the Respondent's effort to ensure its record retention practices comply with the requirements of the Act, nor do I order the Respondent to provide the Applicant with any further records requested in the Requests for Records. The Applicant is ordered to pay the Respondent a costs award of $2,600.

Preliminary Issues

[17] In addition to the motion under which the Applicant's two cases were merged, there were also two other matters addressed by motions in this case, one under s. 1.43 of the Act and the other under Rule 4.3 of the Tribunal's Rules of Practice. After reviewing the parties' respective submissions on each motion, I provided a decision and reasons which are set out in the record of proceedings. I only summarize them here.

Motion No. 1: Motion under s. 1.43 of the Act

[18] Section 1.43 of the Act provides:

> On the request of a party to a proceeding before the Tribunal, the Tribunal may make an order for the detention, preservation or inspection of property and documents that are the subject of the application in the proceeding or as to which a question may arise in the proceeding, and may order a party to provide security in that connection.

[19] The Applicant brought a motion requesting that the Tribunal order both the Respondent and its condominium management provider to allow the Applicant to inspect the following records:

1. Any and all emails between the condominium management provider and the Respondent's board of directors related to the notices and management of the Case No. 2024-00315R.

2. Any and all written notes, letters, documents, electronic notes, details or logs (including phone logs) in the care and control of the condominium management provider made and kept for the purpose of providing condominium management services.

The request was denied.

[20] The Applicant stated she brought this motion to help her "determine the cause" for the Respondent not joining Case No. 2024-00315R. Her motion materials indicated she primarily wished to know whether the condominium management provider informed the Respondent's board about the case. I concluded that the question of why the Respondent did not participate in Case No. 2024-00315R is not germane to the issues in this case, and that, to the extent that the Applicant was seeking an order in relation to the condominium management provider and its records, the motion was outside of the jurisdiction of the Tribunal.

Motion No. 2: Motion under Rule 4.3 of the Tribunal's Rules of Practice

[21] Rule 4.3 of the Tribunal's Rules of Practice provides that "The CAT may make an Order directing a Party to take an action or refrain from taking an action while a Case is ongoing." This rule is supported by s. 1.44 (1) 2 of the Act, which states that the Tribunal may make "An order prohibiting a party to the proceeding from taking a particular action or requiring a party to the proceeding to take a particular action."

[22] The Applicant noted that she had received notice from the Respondent's condominium management provider while these proceedings were ongoing that it intended to register a lien against the Applicant's unit with respect to its chargeback of costs relating to enforcement of compliance with the parking allegations at issue in this case based on Articles 2.2 and 5.5 of the Respondent's declaration – which require POTL owners to indemnify the condominium for its costs of enforcing compliance. The Applicant requested an order prohibiting the Respondent from doing so prior to the conclusion of the case.

[23] I determined the Applicant's request was reasonable and that it was inappropriate during these proceedings for the Respondent to seek to enforce collection of a chargeback or indemnification amount that is at issue in these proceedings. I noted that the now well-supported case of *Amlani v. York Condominium Corporation No. 473*, 2020 ONSC 194 ("Amlani")[2] indicates that no lien action should be taken for collection of compliance costs in the absence of an order from a court or Tribunal supporting the same.

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[2] Which was upheld in *Amlani v. YYC 473*, 2020 ONSC 5090 (CanLII), and has been cited in other cases at this Tribunal and various levels of court. Amlani is cited in various submissions by the Applicant in this case.

[24] The Respondent – which, by the time this motion was made, was represented by legal counsel – answered that it in fact had no intention of registering a lien on the Applicant's property with respect to the chargeback in dispute until such time as a decision has been made in this case, and offered that the Respondent "has no objection to an order … directing the Condominium not to register a lien with respect to the amount of the chargeback, and the interest thereon, which are in dispute in this matter, until such time as this a decision in this application is made."

[25] I therefore ordered "that the Respondent shall not register or threaten to register any lien with respect to any amounts that are or may be the subject of dispute in these proceedings, including any amounts purported to be for indemnification of enforcement/compliance costs, or the costs of participating in these proceedings. The Respondent is further hereby ordered to provide the Applicant with notification in writing rescinding the communication that prompted this motion."

[26] The order did not prohibit the Respondent from collections activities relating to the Applicant's regular contributions to the common expenses if the Applicant was found to be in arrears with respect to the same; however, the Respondent was ordered to withhold such action "till the latest possible time" and also not to issue or enforce any special assessment(s) of common expenses that may include expenses relating to these proceedings, in order to avoid interfering with the fair and efficient process of this case.

Issue No. 1: Are the visitor parking restrictions in the declaration and/or rules of the Respondent unreasonable, inconsistent, or otherwise unenforceable?

[27] As noted earlier in this decision, Article 3.4 of the Respondent's declaration provides that "Each visitor's parking space comprising part of the Common Elements shall be used only by the visitors and guests of the Owners, residents and tenants of the Potls," and further states that "None of the visitor parking spaces shall be assigned, leased or sold to any Owner."

[28] In addition, since August 2022, Rule 12 of the Respondent's rules has expressly stated that "No owner/tenant shall park their vehicles in the Visitor Parking for any reason," and sets out that violation of this rule will be addressed by, first, up to two "compliance letters" after which "strong actions will be taken which may include ticketing and/or towing and/or legal enforcement via the Corporation's solicitor, all at the sole expense of the vehicle owner."

[29] Rule 12 includes various detailed procedures relating to "bona fide" visitor parking privileges, including that use of visitor parking for more than three overnight stays (specified as occurring between the hours of 9 p.m. and 7 a.m.) in a seven-day

period requires board approval. The rules define certain persons – such as students who are children of residents and "come home" over seasonal break periods (such as Christmas or summer vacation), as well as spouses or partners of residents who stay for more than "three nights per 7-day period" – as POTL residents rather than visitors.

[30] Rule 12 also states that where "the same visiting vehicle" is parked "often", the resident whose home they are visiting "may be required to verify that they are indeed Visitors" and that where a household has need of additional parking outside of their own POTL's driveway and garage, such additional vehicles "must be parked offsite".

[31] The Applicant submits that Rule 12 is unreasonable. She relies in part on the Tribunal case *Douglas v. Simcoe Condominium Corporation No. 148*, 2022 ONCAT 20, which states in paragraph 10 that "Ambiguity undermines reasonableness," and that "deference cannot be relied upon to allow enforcement that is based on arbitrary interpretations of ambiguous wording in their rules."

[32] The Applicant submits the ambiguity in question is created by the Respondent's "conflicting policies and communications" relating to the manner in which time is calculated in respect of the visitor parking. She cites various communications in which there appear to be different interpretations of the rules by the Respondent's board and/or manager, including a tendency to interpret three overnight stays as "no more than 72 hours in a 7-day period."

[33] This interpretation of Rule 12 is expressly set out in a "Visitors Parking Policy" issued in early 2024 by the Respondent's condominium management provider, in which it states that "as visitor parking violations continue to happen," the board of directors adopted various new policies, including reducing the number of compliance letters that would be sent to residents from two to one, and that "Visitors are bound by 72-hour total overnight parking restrictions per 7-day period".

[34] I agree with the Applicant that these interpretations are somewhat inconsistent with the plain wording of the rule, and that a condominium cannot alter its rules by making policies. If a board wishes to change its rules, it must do so in the manner set out in s. 58 of the Act. This is dealt with somewhat more in my reasons below relating to issue 3; however, for the purposes of this analysis, I find that despite the Respondent's policies and communications, the provisions of Rule 12 itself are not therefore unreasonable, inconsistent, or unenforceable. Further, even if the rule was unreasonable, this would not undermine the effectiveness and enforceability of section 3.4 of the declaration.

[35] The Applicant also suggested that the provision in the rules which states that enforcement of the rules would be "all at the sole expense of the vehicle owner" is contrary to the principles in Amlani. However, the rule itself does not state that such expenses are collectible under the lien provisions of the Act and therefore merely sets out an obligation to indemnify the condominium. This is not contrary to Amlani, which prohibits collection of enforcement costs by lien without an order of the court or Tribunal but does not generally prohibit indemnity clauses in condominiums' governing documents.

[36] The Applicant also cited some other technical concerns as potentially impacting the validity of Rule 12, including legibility of the signature on the notice of the rule issued by the Respondent, a question of whether the board minutes adequately record the board's discussions about the rule, and uncertainty as to the date on which the rules were approved by the Respondent's board.

[37] Illegibility of signatures on a notice of new rules is not a sufficient basis on which to negate the notice. Absence of a recorded resolution in the board's minutes may be evidence of an inadequacy of the minutes, but not of the invalidity of the rule, which possibility appears not to have been considered by the Applicant. Lastly, I note that the board has, since enactment, diligently sought to enforce Rule 12, which supports the view that it is the product of their formal resolution, regardless of the lack of a clear record and uncertainty as to the specific date on which their decision was made.

[38] Based on the evidence before me, I find no reason to doubt that the rule was validly made. I agree with the submissions of the Respondent's counsel that Rule 12 is "not ambiguous" and serves to "promote the safety, security and/or welfare of the property," insofar as it "clearly outlines what use the Visitor Parking can and cannot be put to," consistent with the purposes for condominium rules as set out in s. 58 of the Act. The declaration is likewise clear, unequivocal, and enforceable, and Rule 12 is consistent with it.

Issue No. 2: Is or was the Applicant in violation of the visitor parking restrictions in the declaration or rules?

[39] As noted above, on August 23, 2023, the Respondent's legal counsel at the time wrote to the Applicant stating that,

> In August 2023, including on or about August 3, 2023, you, or occupants of your POTL, have continued to park upon the visitor parking spaces.

and noted that this same issue had been ongoing since 2022. Letters from the

Respondent's prior condominium manager sent to the Applicant in February and March 2022 were included in evidence. The evidence also suggests the alleged uses of visitor parking by the Applicant or members of her household were occurring as early as December 2021.

[40] Joe Lacorte, a member of the Respondent's board of directors, provided an affidavit affirming that he has witnessed the Applicant's son frequently parking a particular Mazda SUV for "a day or days on end." Mr. Lacorte specifies that the vehicle remains in visitor parking for multiple consecutive overnight periods. Photographs were also submitted into evidence in support of these allegations, which Mr. Lacorte affirmed he had taken.

[41] Throughout her submissions, the Applicant took the position that the Respondent could not confirm the ownership of the Mazda SUV and that this negated their enforcement efforts and attempted recovery of legal costs. Eventually, the Applicant admitted that the Mazda SUV is owned by her.

[42] The Applicant also argued that the Respondent could not enforce its prohibitions on visitor parking because it lacked a definition of "visitor" and could not correctly identify the drivers of the vehicle from time to time. Thus, the Applicant did not deny the Mazda SUV was parked in visitor parking at the times alleged, but argued that "Other people, not residents of the Applicant's POTL … often borrowed the Mazda SUV," and that "Quite probably, someone other than an occupant of the POTL parked the Mazda without knowing the issues surrounding visitor parking."

[43] The lack of a specific definition of "visitor" in the governing documents is not relevant. The Respondent reasonably cited *Simcoe Common Elements Condominium Corporation No. 363 v. Todd*, 2023 ONCAT 160, ("Todd") as evidence of the proposition that a common accepted definition of a term is sufficient to ground enforcement. In fact, in Todd, the word in question was also "visitor," in respect of which the Tribunal concluded in paragraph 8:

> … A visitor may be a person who visits for any number of reasons - social or business. A visitor denotes someone who attends for a short period of time, as opposed to a tenant or resident. …

[44] Furthermore, an owner cannot avoid being found in breach of a visitor parking prohibition simply by allowing another person to drive and park their vehicle from time to time. If the situation was as the Applicant described, then the conclusion is not that there was no violation, but simply that the Applicant was careless as to whether or not there was.

[45] I find no reasonable basis for doubt that the Applicant's vehicle was frequently parked in visitor parking in direct violation of both Article 3.4 of the Respondent's declaration and (once it was in force) Rule 12.

[46] The Applicant stated that currently her vehicle is only parked on the public street and is no longer parked in visitor parking. Whether or not this is and remains so, I have found there was non-compliance and only need an order that there be present and future compliance. I will therefore order that the Applicant ensure that she, and any other occupant of her unit and user of her vehicle(s) from time to time, be and remain in compliance with the Respondent's visitor parking restrictions in its declaration and rules.

Issue No. 3: Are the Respondent's enforcement practices relating to the Applicant – including the lawyer's letter and chargeback – unreasonable?

[47] The Applicant submitted that the Respondent has sought to enforce its visitor parking provisions in ways that are unreasonable and more "oppressive" than is necessary. She stated that the board:

> … has other less oppressive tools at their disposal to enforce parking, such as ticketing and towing of offending vehicles. However, the Board defaults directly to civil process (by way of lawyer chargeback) using "evidence" that, in some cases, not only breaches individual privacy but also lacks credibility and/or reliability.

[48] The Applicant submitted that the Respondent's threat to enforce the chargeback of legal expenses by lien was contrary to law. She also cited the board's attempts to alter and reinterpret its rules by issuing "policies" as creating confusion that rendered their attempted enforcement unreasonable.

[49] Lastly, the Applicant complained that the Respondent's directors "conduct surveillance and photograph visitors and owners off the [condominium] property," including photographs of her vehicle and license plate number taken while it was parked on an adjacent public street. This claim is only relevant to this case insofar as it relates to the Applicant or her own vehicle, and not to any other owners, visitors, or property. Though there was no evidence the Respondent relied on such alleged surveillance for enforcement of parking restrictions on the common elements, the Applicant alleged it had that purpose; however, her only substantive complaint was that it breached her privacy rights.

[50] In support of her overall position, the Applicant referenced a notice allegedly sent to the POTL owners by a previous condominium management provider of the Respondent (at the time the management provider in question was terminating

their contract with the condominium) that allegedly stated the Respondent's board was acting "against professional advice" and was "overzealous and unreasonable in their actions". The Applicant offered to upload this letter into evidence. I did not allow her to do so. Such letter, even if stating what the Applicant suggested, has little or no value or relevance to the issues to be determined by me.

[51] The Applicant concluded that "a reasonable person, when presented with everything the Directors have and continue to do to POTL owners and residents, would find the Directors' conduct harassing and oppressive." I do not find this to be the case.

[52] The Respondent's board possesses broad discretion to determine appropriate enforcement actions for each situation, including but not limited to the enforcement actions set out in Rule 12 and its Visitor Parking Policy. The Respondent is also entitled to deference by this Tribunal where its conduct is not unreasonable.

[53] As noted previously, the Respondent has sought to enforce the visitor parking provisions of its declaration and Rule 12 by the following steps:

1. Sending at least two compliance letters from the condominium manager.

2. Engaging its legal counsel to write a compliance letter.

3. Charging back to the Applicant its legal fees associated with the lawyer's compliance letter, and stating it would collect these amounts by condominium lien.

The Respondent's board members and/or management have also frequently taken pictures of the Applicant's vehicle when parked in visitor parking spaces as a means of recording and providing evidence of violations – which photographs were included in evidence.

[54] I agree with the Applicant that the Respondent ought not to have attempted to enforce its right to be indemnified during the course of these proceedings. However, as noted, once its legal counsel was engaged, the Respondent readily retracted its demand, and this matter was therefore resolved.

[55] Regarding her objection that photographs of her vehicle taken by the Respondent on a public road constitute a breach of her privacy rights, the Applicant provided lengthy submissions relating to the *Personal Information Protection and Electronic Documents Act* ("PIPEDA") and privacy law generally, to which the Respondent's counsel felt it was necessary to respond in kind. The parties' detailed submissions, taken together, demonstrate that PIPEDA would not apply in this case, and that, in

any case, such photographs would not constitute a breach of privacy.

[56] Other than its short-lived misstep seeking to enforce indemnification, none of the Respondent's enforcement activities appears to be unusual, excessive, or otherwise inappropriate. I also find that none of the evidence supports the Applicant's characterization of the Respondent's enforcement activities as "harassing and oppressive." I do not find the Respondent's activities to be unreasonable.

Issue No. 4: Has the Respondent provided the Applicant with all records requested by her?

[57] This issue took on diminished importance and focus of the parties as the case proceeded, and relatively few submissions were made by either party. In any event, there is no dispute that initially not every record requested by the Applicant was provided. Though it appeared the balance of records may have been provided during Tribunal proceedings, this was not conclusively determined.

[58] The Respondent's submissions indicate that its board viewed its management provider as ultimately responsible for the preservation and production of its records, and due to a dispute with them, it was unable to provide them. In this regard, the Respondent's board members (at a time when the Respondent was unrepresented by legal counsel) submitted that:

> WCECC 519 Board of Directors are unable to provide the aforementioned records, due to our former management company's … lack of cooperation in regards to the request of records, which they should have on file. … In so far as, the accusations that the Board did not use the proper response forms, or were not used, this is a matter that should be addressed by [the condominium management provider], since all correspondence is under their direction as to how responses, should be handled.

[59] Respondent's counsel noted that delegation of record keeping to a condominium management provider is neither unusual nor improper. This is correct; however, it cannot serve to remove ultimate responsibility for its records from the condominium and its board. Despite this, I do not order that the Respondent provide any further records to the Applicant in response to the Requests for Records, if any remain outstanding.

[60] Having reviewed the Applicant's submissions, I find that the principal motivation for the Requests for Records was to challenge and deflect the Respondent's enforcement of its visitor parking rules, which I have already determined was both justified and reasonable. Section 13.3 (1) (a) of Ontario Regulation 48/01

("O. Reg. 48/01") sets out that an owner's entitlement to examine records is subject to the proviso that "the request is solely related to that person's interests as an owner … having regard to the purposes of the Act." Avoiding or preventing enforcement of rules, even against oneself, is not in an owner's interest having regard to the purposes of the Act. Accordingly, I find that the Applicant is not entitled to the records requested in the Requests for Records.

Issue No. 5: Are the Respondent's records management or retention practices deficient?

[61] The Applicant's more substantive arguments relate to her complaints about the Respondent's record retention practices. In particular, she notes the use by its board members of personal electronic devices to produce and retain such records as images of parking violations. In her initial description of Case No. 2023-00315R, she wrote:

> The Board is keeping essential records (such as documents used as evidence) on personal digital devices and in an unsecure, disjointed and reckless manner. These documents are exceptionally important documents considering the Board relies on "lawyer chargebacks" and initiated civil claims as an extreme enforcement tool against suspected violating unit owners.

[62] The evidence in this case does support these allegations.

[63] Counsel for the Respondent submitted that nothing in the Act or its regulations appears to prohibit the use of personal devices for this purpose but they "simply require" that the records stored on them are "producible upon demand (assuming such demands are in accordance with the terms of the Act and its regulations)." This is not an entirely correct statement.

[64] While the Act and regulations do not address the specific devices, in fact, s 13.2 (2) of O. Reg. 48/01 requires more than just reproducibility with respect to the retention of condominium records. It also requires that the system or device on which the records are stored "includes a password or other reasonable methods of protecting against unauthorized access," and that it "automatically backs up files and allows the recovery of backed-up files or otherwise provides reasonable protection against loss of, damage to and inaccessibility of information."

[65] The Applicant cites what she believes are risks arising due to board members simply retaining records on their personal electronic devices, including:

1. Data fragmentation, due to each director "storing small pieces of information on a number of devices".

2. Interruption to business continuity, such as where other directors cannot access records on an incapacitated director's device, or where a device may not be rendered accessible after a board member's departure from the board.

3. Other inability to access a device due to password lockout, hacking, destruction or catastrophic failure of a device.

4. The mixture of the director's personal/private information with corporate records.

[66] She also cited the risk that directors might not keep up appropriate levels of security on their devices including anti-virus, anti-hacking, and routine updates and patches, as well as routine backups to a secure system or site.

[67] While none of the Applicant's concerns appears to be either unreasonable or excessive, they are all a matter of conjecture. None of the evidence indicates that such risks are, in fact, realized in this case. I cannot find that the Respondent has necessarily fallen short of its record retention responsibilities simply based on the Applicant's speculative expressions of concern.

[68] In any event, the Respondent's counsel noted that the condominium has "demonstrated an intention" to move away from its former practices by, amongst other things, setting up single email address for all correspondence relating to the condominium, though it reaffirms its intention to "utilize its property manager for centralizing the retention of records."

[69] I take from such statements that the Respondent is aware of any deficiencies that might exist in their record retention practices (which might or might not include those cited as potential concerns by the Applicant) and is committed to seeking ways to improve that. Given the Respondent's proactive efforts and the lack of evidence that any of the risks cited by the Applicant applies to the Respondent's methods of record keeping, I find there is no basis for me to issue any order on this issue.

Issue No. 6: Is either party entitled to costs or compensation on account of the circumstances of this case or these proceedings?

[70] The Applicant requested that she be reimbursed for her Tribunal application fees for each of the cases she commenced, and, in addition, requested reimbursement for 39 hours of her own time spent working on her case, at $110 per hour, plus $26.40 for travel expenses to deliver notices to the condominium manager's office.

[71] Rule 49.1 of the Tribunal's Rules of Practice states that:

> The CAT generally will not order one Party to pay another Party compensation for time spent related to the CAT proceeding.

As such, a party to a Tribunal proceeding is typically not entitled to a costs award for their personal time and effort spent in preparation for or participation in the case. In any event, any entitlement to costs will not arise except where an applicant has been successful in their case. The Applicant was not successful in this case.

[72] The Applicant submits that the case might have been settled earlier, but for the attitudes and conduct of the Respondent's board during Stage 2 – Mediation. She identifies the threatened chargeback and lien as a part of the Respondent's conduct that made settlement difficult. It is clear that the parties took very opposite positions on key issues in the cases before them and that adjudication was likely necessary to resolve them.

[73] I find no basis for an award in costs in favour of the Applicant under s. 1.44 (1) 4 of the Act.

[74] The Applicant also requested an order that would amount to compensation under s. 1.44 (1) 3 of the Act, requiring the Respondent to pay "all 'chargeback' costs, including interest accrued, related to the legal letter from [the Respondent's counsel] on August 23, 2023." On November 13, 2024, the Respondent's management provider informed the Applicant this amounted to $964.94. I decline to make the requested order.

[75] The Applicant was clearly in breach of the visitor parking provisions in the Respondent's governing documents. Articles 2.2 and 5.5 of the Respondent's declaration, which respectively state that:

> Any losses, costs including legal fees on a solicitor and client basis and disbursements or damages incurred by the Corporation by reason of a breach of the Act, the Declaration, the By-laws and any Rules and regulations of the Corporation in force from time to time, by any Owner, or by members of his or her family and/or their respective tenants … shall be borne and paid for by such Owner …

And:

> … all costs and expenses (including legal fees on a solicitor and his or her own client basis, as well as all applicable disbursements) incurred by the Corporation by reason of a breach of the Act, this Declaration, any By-laws and Rules of the Corporation in force from time to time … committed by any

> Owner or by any resident of such Owner's Potl, and/or by said Owner's respect tenants, invitees or licensees, shall be fully borne and paid for by … such Owner …

These articles obligate the Applicant to indemnify the Respondent for its costs relating to her breach of the declaration and rules.

[76] In that regard, the Respondent requested costs in the amount of $8,000 (which it stated is not the entirety of its costs, though no bill of costs was provided), in the event that the Applicant's claims were unsuccessful. An award of costs is discretionary and will not be granted solely based upon a duty to indemnify that is set out in a condominium's governing documents or solely based on the extent of a party's success in a case.

[77] The Respondent cites that it was put to extra work on account of the two preliminary motions brought by the Applicant. However, I note that one of those motions was appropriately required to address the improper attempt by the Respondent to enforce its right to indemnification during the course of these proceedings. Thus, not all of the Respondent's costs of these proceedings were incurred on account of the Applicant's non-compliance and therefore do not justify an expectation for full indemnification.

[78] The Respondent also submitted that the Applicant's case was brought for an improper purpose:

> Specifically the Applicant received three Parking Infraction Notices but did not take any steps to dispute any of them. It was only after she was issued a charge back notice that she commenced this Application. As such the Respondent submits that this Application was the Applicant's attempt to avoid having to pay the charge back.

However, an application to the Tribunal is not improper simply because the owner makes their application only after, and because, they have become subject to a claim for indemnity (a chargeback) by their condominium.

[79] Further, the Respondent noted that the Applicant:

> … made unfounded allegations that the Respondent had breached the Applicant's Privacy, and had stored documentation in breach of the Personal Information Protection and Electronic Documents Act. The Applicant's arguments included the unsupported allegation that taking photographs of a license plate constituted a collection of the biographical core of personal information, that license plates constituted confidential information and that the

Condominium was obligated to comply with the Personal Information Protection and Electronic Documents Act ("PIPEDA").

As a result, the Respondent's counsel claimed the Respondent had no choice but to defend, including making "an exhaustive review of the relevant caselaw and legislation as well as those decisions relied upon by the Applicant all for the purpose of demonstrating that these allegations were without merit."

[80] Although the Applicant's extensive submissions appeared at times disproportionate in relation to the issues and considering the relatively small amount of the chargeback she was challenging, and although the Applicant occasionally raised questionable and ultimately inaccurate or unpersuasive legal arguments, she was entitled to do so. It is not typically the quality or correctness of a self-represented party's legal analysis that justifies an award in costs.

[81] As noted above, an award of costs is discretionary. Considering all of the foregoing, I find that the Respondent is entitled to a partial award of costs in the amount of $2,600.

D. ORDER

[82] The Tribunal orders that:

1. The Applicant ensure that she and any other occupant of her unit and user of her own vehicle(s) be and remain in compliance with the visitor parking provisions in the Respondent's declaration and rules.

2. The Applicant shall pay the Respondent the amount of $2,600 as costs under s. 1.44 (1) 4 of the Act within 30 days of the date of issuance of this order.

Michael Clifton
Vice-Chair, Condominium Authority Tribunal

Released on: August 11, 2025