

## Corrected Decision

This Decision includes a correction of the case citation *Shayan Zahedi v. Toronto Standard Condominium Corporation No. 2503*, 2020 ONCAT 5, in paragraph 7.

### CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** November 26, 2025

**CASE:** 2025-00188R

**Citation:** Borg v. Middlesex Condominium Corporation No. 173, 2025 ONCAT 189

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

**Member:** Roger Bilodeau, Member

**The Applicant,**

Christina Borg

Self-Represented

**The Respondent,**

Middlesex Condominium Corporation No. 173

Represented by Laura Gurr, Counsel

**Hearing:** Written Online Hearing – June 16, 2025 to November 3, 2025

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] Christina Borg is a unit owner of the Respondent, Middlesex Condominium Corporation No. 173 (“Middlesex 173”). A flood occurred on the condominium property on or about November 2023 and Ms. Borg claims that her unit was damaged as a result of that incident. Middlesex 173 denies that her unit was damaged by that flood incident.
- [2] As part of the steps taken by Ms. Borg to address the alleged damage to her unit by the flood incident, she submitted three separate Request for Records to Middlesex 173 on or about November 22, 2024, for various records. Another step taken by her in the period following the flood incident consisted of obtaining a mold inspection and report for her unit, as a means of showing to Middlesex 173 that

her unit had been damaged by that flood incident.

- [3] In one of the three Requests for Records, Ms. Borg included a request for documents related to a denial of insurance coverage for alleged damage to her unit, among other items (the “insurance denial request”). The insurance denial request was unsigned and undated and due to some unexplained confusion or misunderstanding, Middlesex 173 only addressed it during Stage 2 – Mediation. For clarity, that is not the issue in this application and for the purposes of this matter, the insurance denial request is deemed to have been submitted on April 17, 2025.
- [4] Middlesex 173 provided its response to Ms. Borg’s insurance denial request on May 16, 2025 and at the conclusion of Stage 2 – Mediation in this case, the parties agreed that all issues related to the insurance denial request had been resolved, except for the following:
  1. Has Middlesex 173 denied the following record without a reasonable excuse:
    - 03. “22 Nov 24 REQ4REC Insurance denial letter and related reports referenced in the November 12, 2024, letter. Date Range: November 12, 2023, to November 12, 2024” (“Record 03”); and
  2. Should there be an order for costs incurred by Ms. Borg, for her filing fees and a penalty? If so, in what amount(s)?
- [5] Ms. Borg submits that Middlesex 173 has refused to provide her with Record 03 without a reasonable excuse, as per the *Condominium Act, 1998* (the “Act”). She requests that Middlesex 173 be ordered to produce the requested record and that it be ordered to pay an appropriate penalty under ss. 1.44(1)6 and 55(8) of the Act, as well as to reimburse her for the cost of the mold inspection of her unit and her Tribunal filing fees.
- [6] For the reasons set out below, I find that Middlesex 173 does have a reasonable excuse for not providing Record 03. As a result, there are no grounds for a penalty nor for Ms. Borg’s claim for the cost of a mold inspection report in relation to her unit. No costs are awarded to either party.

## **B. ISSUES & ANALYSIS**

**Issue no 1: Has Middlesex 173 denied the following record without a reasonable excuse: 03 – “22 Nov 24 REQ4REC Insurance denial letter and related reports referenced in the November 12, 2024, letter. Date Range: November 12, 2023, to November 12, 2024”.**

- [7] Ms. Borg relies on prior decisions of this Tribunal in support of her claim in relation to Record 03: see *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2023 ONCAT 14; and *Shayan Zahedi v. Toronto Standard Condominium Corporation No. 2503*, 2020 ONCAT 5. In her view, these cases support the Tribunal's authority to require the full and complete disclosure of records and in particular, the Zahedi decision confirms the right to access post-flood documentation.
- [8] Middlesex 173 submits that Ms. Borg claimed damage to her unit as a result of flooding in other units which constitutes the basis for a loss that it is managing with its insurance broker and its insurance company ("the insured loss"). It also adds that its insurance company retained two independent contractors to attend Ms. Borg's unit and that each of them determined that the damage to Ms. Borg's unit was not a result of the insured loss, of which Ms. Borg was duly informed, including by way of its letter of November 12, 2024 to Ms. Borg – and referred to as part of Record 03.
- [9] Middlesex 173 further adds that it has disclosed to Ms. Borg an email correspondence from its insurance broker. The relevant portion of that email reads as follows in regard to the refusal to provide a denial letter:

In my review it does look like 2 independent contractors came to the scene and completed their inspections which determined the damage is not related to the water loss of the neighbouring unit. Janay on our claims team at Gallagher has gone over and above what would be expected in the normal claim process to advocate on behalf of this resident as best as possible. At this time, however, there is nothing further that can be done through the condo insurance policy. Christina will have to proceed through her own insurance for this item.

- [10] Middlesex 173 also states that its insurance broker and its insurer - who conducted the investigation - declined to provide that information in a formal letter to Ms. Borg. Similarly, the insurer for the neighbouring unit involved in the insured loss also declined to do so.
- [11] Middlesex 173 therefore submits that the insurance denial letter and any related reports or documents referred to as Record 03 regarding the determination of the denial of coverage which were requested by Ms. Borg, and which are the subject of her insurance denial request, do not exist.
- [12] Middlesex 173 further adds that any documents or reports which are related to the insured loss (and which are not related to Ms. Borg's unit) are in its care and control or that of the insurance companies that are handling that loss. It also

argues that these documents relate to insurance investigations and are properly exempt pursuant to s. 55(4)(b) of the Act, or contain information regarding other unit owners (i.e. the units that fall under the insured loss), which is properly exempt pursuant to s. 55(4)(c) of the Act. Middlesex 173 therefore submits that the records which do exist are not records to which Ms. Borg has any entitlement and that Record 03 does not exist.

- [13] In sum, Middlesex 173 submits that it has not denied Record 03 without a reasonable excuse because:
  - a) the right to examine or obtain copies of records under s. 55(3) of the Act does not apply to records relating to actual or contemplated litigation, or insurance investigations involving the corporation, nor to records relating to another unit owner, as provided for by s. 55(4) of the Act; and
  - b) Record 03 is not in its control.
- [14] As a final point, Middlesex 173 submits that Ms. Borg's request for the reimbursement of a mold inspection report is outside the scope of this application and of the Tribunal's jurisdiction. It also submits that there should be no penalty or fees charged to it since it does have a reasonable excuse for not producing Record 03.
- [15] Based on the evidence before me, I find that Middlesex 173 has shown that it had a reasonable excuse for not providing Record 03. The correspondence between counsel for Middlesex 173 to Ms. Borg or her counsel at various points in time since the fall of 2023, as well as the evidence filed by Middlesex 173, including the sworn statements of its then president (Ms. Roberta Fox) and of a representative of its insurance broker (Mr. Matt Wilford), all confirm that Middlesex 173 does not have Record 03.
- [16] Since the flooding incident in the fall of 2023, Ms. Borg has been consistently advised by Middlesex 173 and its counsel that Middlesex 173's insurance broker and insurance company could not provide a denial of coverage letter. An email from Mr. Wilford to Ms. Fox dated October 3, 2024 states that fact clearly. That position is supported by the relevant segment of the minutes of a board meeting of Middlesex 173 held on October, 29, 2024.
- [17] In addition, the evidence shows that Middlesex 173 did ask its insurance broker for a letter to be provided to Ms. Borg in regard to their investigation. The insurance broker responded that both his company and the insurance company could not do so because there is no formal link or contractual relationship between either of

them and Ms. Borg. As a result, the requested Record 03 does not exist and I agree with Middlesex 173 that it cannot provide a record that it does not have.

- [18] I have also taken note of the prior decisions of this Tribunal which were referred to by the Applicant. As a starting point, the Tribunal is not bound by prior decisions and must assess each case on its merits, based on the evidence and the applicable law. In any event, this case is different from the cases cited by the Applicant in that in this case, the requested Record 03 does not exist and I agree with Middlesex 173 that it cannot provide a record that it does not have.
- [19] I also find that Middlesex 173 has been transparent vis-à-vis the Applicant and has provided comprehensive disclosure of the records in its control, including relevant minutes of a meeting of its board of directors, the email chain wherein its request for the insurance denial letter was denied by the insurance broker and, as part of this proceeding, the sworn statement from a representative of its insurance broker to explain the situation.
- [20] As a final point, I note that during this proceeding, Ms. Borg herself wrote as follows when she objected to Ms. Fox and to a representative of Middlesex 173's insurance broker as proposed witnesses on behalf of Middlesex 173:

More appropriate witnesses would be the claims adjusters or insurance representatives who actually handled the file and would have custody of the records requested.

- [21] As a result, I can reasonably infer from that statement that Ms. Borg acknowledges that the record which she is seeking is not in Middlesex 173's custody and control.

**Issue no 2: Should there be an order for costs and filing fees incurred by Ms. Borg? And if so, in what amount?**

- [22] Ms. Borg has requested costs in the amount of \$200 for her Tribunal fees. Middlesex 173 has not requested any costs.
- [23] Section 1.44(1)4 of the Act states that the Tribunal may make an order directing a party to the proceeding to pay the costs of another party to the proceeding.
- [24] Section 1.44(2) of the Act states that an order for costs shall be determined in accordance with the rules of the Tribunal.
- [25] The cost-related rule of the Tribunal's Rules of Practice which is relevant to this case reads as follows:

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.

- [26] Since Ms. Borg was not successful in this case, she is not entitled to any costs or fees. I therefore make no order in that regard.
- [27] In regard to the separate topic of Ms. Borg's claim for the cost of the mold inspection report, I wish to add that without deciding whether, had she been successful in this case, there might be a valid claim for damages in that regard, I have determined that there was no act of non-compliance by Middlesex 173 as per s. 1.44(1)3 of the Act that could potentially give rise to such a claim. As a result, there are no grounds for her claim for damages under s. 1.44(1)3.

### **C. ORDER**

- [28] The Tribunal orders that:

1. This case is dismissed with no costs awarded to either party.

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Roger Bilodeau  
Member, Condominium Authority Tribunal

Released on: November 26, 2025