

Condominium Authority Tribunal

DATE: March 3, 2026

CASE: 2024-00464N

Citation: Simcoe Condominium Corporation No. 28 v. Cole, 2026 ONCAT 36

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

Member: Michael Clifton, Vice-Chair

The Applicant,

Simcoe Condominium Corporation No. 28

Represented by Joy Sinclair, Agent

The Respondent,

Russell Cole

Self-Represented

DISMISSAL ORDER

- [1] The Applicant, Simcoe Condominium Corporation No. 28, filed an application against the Respondent, Russell Cole, based on complaints by his neighbours, Joy and David Sinclair, regarding alleged unreasonable noise coming from his unit. The case proceeded to Stage 3 – Tribunal Decision (“Stage 3”) on July 14, 2025.
- [2] Although the Applicant was represented during Stage 1 – Negotiation (“Stage 1”) and Stage 2 – Mediation (“Stage 2”) by its condominium manager, Danielle Shannahan, Mrs. Sinclair – who I was informed is a member of the Applicant’s board of directors as well as the complainant regarding the noise – took on that role for Stage 3.
- [3] Before reaching Stage 3, Mr. Cole believes that he had already taken substantial and sufficient steps to remediate any basis for the noise complaints. Mrs. Sinclair also advised that while the case was ongoing, the noise issues were substantially reduced. However, the merits of each party’s position remain untested since the case is dismissed.
- [4] I dismiss and close this case under Rules 19.1 (f) and 43.1 (f) of the Tribunal’s Rules of Practice, which provide that the Tribunal may dismiss and close a case where the Applicant no longer wants to continue or is no longer actively involved in

the case.

BACKGROUND

- [5] The application was filed on behalf of the Applicant by Ms. Shannahan. As noted, she represented the condominium throughout Stages 1 and 2, during which the dispute remained unresolved. Also, during Stage 2, Mrs. Sinclair was registered as an observer of the case and upon the commencement of Stage 3, she was identified as the Applicant's new representative.
- [6] This change, and the fact that Mr. and Mrs. Sinclair were the only source of the noise complaints in this case, prompted the Respondent to question her appointment. While those facts, in and of themselves, do not raise significant concerns about her ability to represent the condominium, on some further simple questioning by me, it was soon evident that the Applicant's board of directors did not, in fact, consider the condominium to be the actual Applicant in the case and had decided that the condominium should not have any further participation in it.
- [7] Uncertainty about this first arose due to a statement submitted from the president of the condominium, Denis Coulterman, stating both that the Sinclairs had authority to act "on behalf of the Corporation in order to continue the case," and that, "The Board resolves that the tribunal case is Joy and David Sinclair's case."
- [8] While this matter was under discussion, a copy of an email from Mr. Coulterman to Ms. Shannahan, which had been delivered to her during the Stage 2 proceedings, was submitted into evidence. In it, Mr. Coulterman stated that "The tribunal case is not between Simcoe Condominium 28 and Russell Cole ... The tribunal case is between Joy and David Sinclair ... and Russell Cole." I presume that, in part, this is the conversation that led to Ms. Shannahan withdrawing and Mrs. Sinclair becoming the Applicant's representative for Stage 3.
- [9] A later email exchange between Ms. Shannahan and Mrs. Sinclair was also uploaded to evidence, in which Ms. Shannahan suggested that she ought to have originally submitted the application to the Tribunal showing the Sinclairs as applicants. No explanation was given as to why this had not been done, or why Ms. Shannahan then proceeded to represent the condominium as the Applicant throughout Stages 1 and 2.
- [10] Given this information, I sought to confirm whether the condominium board both understood and accepted that the corporation was the named Applicant in this case, not the Sinclairs, and that it is the corporation that would therefore be subject to whatever orders resulted from the case. In response, Mrs. Sinclair ultimately affirmed that "the Applicant no longer wants to continue or is no longer actively

involved in the Case.”

- [11] Shortly after that, I was also provided with a formal written statement from the corporation’s board, signed again by Mr. Coulterman, that the board “rejects the idea of taking over this tribunal case and proceeding as applicant,” and requesting that the case be dismissed without costs and without prejudice as they wished to reserve the right to address “any further matters of non-compliance or complaints”. In that statement, Mr. Coulterman acknowledged on behalf of the board that noise issues had ceased and expressed the board’s hope that this would remain the case for the future.
- [12] In response to that statement, Mr. Cole requested that the dismissal be made on the basis that “any future proceeding must be based on new facts or materially different circumstances, and not a re-litigation of the same allegations already addressed in this matter.” Mr. Cole also requested costs, which I discuss below.
- [13] I note that the Respondent had uploaded numerous documents in support of his defense. However, given the reasons for dismissal, none of those have been entered into evidence or form part of the record of this case other than those that are relevant to the Respondent’s claim for costs.

DISMISSAL

- [14] Having been provided with clear evidence that the Applicant no longer wants to continue in this case as Applicant, and is not actively involved in the case, the case is dismissed pursuant to Rule 19.1 (f) of the Tribunal’s Rules of Practice and the proceedings are closed pursuant to Rule 43.1 (f).
- [15] I realize this decision might be regrettable for the Sinclairs who, I believe, genuinely hoped this case might bring a resolution to their concerns about the alleged noise. Although both Mrs. Sinclair and Mr. Coulterman affirmed the noise had abated since the case was started, Mrs. Sinclair expressed concern that after dismissal the noise might simply resume.
- [16] I also note, however, that Mr. Cole submitted that he had taken substantive steps to address possible noise transmission, and appeared well prepared to provide evidence of this. It is therefore plausible, and it is to be hoped, that the complaints on which this case is based have, in practical terms, been resolved. Regardless, I neither can nor do make any findings in this regard.
- [17] No explanation was ever provided as to why Ms. Shannahan originally filed the application identifying the condominium, rather than the Sinclairs, as applicant, or why, if the case was intended to be theirs from the outset, she would have been tasked with doing so. It appears most likely that Ms. Shannahan was under

instructions from the board to file the application and sincerely understood the corporation to be the intended applicant, which would be consistent with the usual pattern of Tribunal cases about matters such as alleged unreasonable noise.

[18] It is also evident that it was not until sometime during Stage 2 that the board, as suggested by Mr. Coulterman's email to Ms. Shannahan, took or expressed the position that the case did not belong to the condominium. When pressed during these proceedings to affirm that the corporation would, as the Applicant, nevertheless remain responsible for and interested in the case in order for it to proceed, including to accept responsibility for whatever order(s) might come of it, the board expressly declined to do so. Therefore, the situation is clearly one in which the Applicant no longer wants to continue and is no longer actively involved in the case, and it would be unjust to require them to do so.

[19] I also acknowledge the Respondent, Mr. Cole, would also appreciate some finality in this case. Given the submissions by Mrs. Sinclair and Mr. Coulterman that the noise formerly complained of has been abated, and recognizing there is sufficient evidence presented that Mr. Cole has taken some substantive steps at his own cost to address the transmission of noise (though I make no finding as to their completion, appropriateness, or success), I find it fair and reasonable to make this dismissal on a "with prejudice" basis in regard to all previous noise complaints made by the Sinclairs about the Respondent or the Respondent's unit. No further application is to be made regarding them. I clarify, however, that this does not prevent the corporation or Sinclairs from bringing a new case in the future in relation to new noise related incidents arising hereafter, if there are any.

COSTS

[20] Mr. Cole cited various reasons for seeking costs, including his efforts in undertaking noise mitigation measures, commissioning a sound study, and preparing both written submissions and documentary evidence, including statements from potential witnesses, and the commissioning of a sound study. He also noted that, "The present dismissal arises not from abandonment by the Respondent, but from the Applicant's internal failure to properly structure and stand behind its own proceeding." Despite these various bases for seeking costs, Mr. Cole limited his request to just \$150, an amount equal to the costs of the sound study.

[21] The Applicant submitted a responding statement from Mr. Coulterman which did not answer all of Mr. Cole's reasons for seeking costs, but only asserted that it had not requested the sound study and questioned the sufficiency of that study to address the noise issues in this case. However, whether the study was necessary, justified, or adequate are not at issue.

[22] A request to obtain reimbursement for the sound study in particular would properly be characterized as a claim for compensation under paragraph 1.44 (1) 3 of the *Condominium Act, 1998*, (the “Act”) not costs of the proceedings under paragraph 1.44 (1) 4. Since the substantive merits of the case have not been subject to examination in these proceedings, I am in no position to assess a request for compensation and do not approach Mr. Cole’s request for costs in that manner. Rather, I refer to the Tribunal’s Rules of Practice and Practice Direction relating to costs.

[23] Rule 48.1 provides that if a case is not resolved by settlement agreement or consent order, and a final decision is issued, the unsuccessful party will pay costs to the successful party. This is not applicable in this case.

[24] Rule 48.2 does apply. It provides that “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.”

[25] Rule 49.1 advises that “The CAT generally will not order one Party to pay another Party compensation for time spent related to the CAT proceeding.”

[26] The Tribunal’s Practice Direction relating to costs states that the Tribunal may consider the following factors (amongst others) when determining whether to award costs to a party:

1. whether a party or representative’s conduct was unreasonable, for an improper purpose, or caused a delay or expense;
2. whether the Case was filed in bad faith or for an improper purpose;
3. the conduct of all parties and representatives, including the party requesting costs;
4. the potential impact an order for costs would have on the parties; and
5. whether the parties attempted to resolve the issues in dispute before the CAT Case was filed.

[27] I agree with Mr. Cole that the dismissal arises “not from abandonment by the Respondent, but from the Applicant’s internal failure to properly structure and stand behind its own proceeding.” Considering that fact and all the foregoing factors, the submissions of the parties, their conduct in and in relation to this case,

and the reasons for dismissal, I find it fair and just to award costs to Mr. Cole in the reasonable amount that he requested. As such, the Applicant shall be ordered to pay Mr. Cole \$150, as costs of these proceedings under paragraph 1.44 (1) 4 of the Act, within 30 days of issuance of this decision.

[28] To be clear, this is not an order against Mr. and Mrs. Sinclair, who I believe are also disadvantaged by the Applicant's failure to stand behind its proceeding. It is the condominium corporation, named as Applicant in this case, which is required to pay costs to Mr. Cole.

ORDER

[29] The Tribunal orders that:

1. This case is dismissed and closed in Stage 3 – Tribunal Decision pursuant to Rules 19.1 (f) and 43.1 (f) of the Tribunal's Rules of Practice.
2. This dismissal is made with prejudice as to noise complaints relating to the Respondent or Respondent's unit and arising from incidents occurring prior to the date of issuance of this order, but without prejudice as to claims relating to future noise-related incidents, if any occur.
3. The Applicant shall pay the Respondent \$150 as costs pursuant to paragraph 1.44 (1) 4 of the Condominium Act, 1998, within 30 days of the date of issuance of this order.

Michael H. Clifton
Vice-Chair, Condominium Authority Tribunal

Released on: March 3, 2026