CONDOMINIUM AUTHORITY TRIBUNAL

DATE: December 8, 2022
CASE: 2021-00307R
Citation: Chai v. Toronto Standard Condominium Corporation No. 2431, 2022 ONCAT 142

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

Member: Keegan Ferreira, Vice-Chair

The Applicant,
Somkith Chai
Self-Represented

The Respondent,
Toronto Standard Condominium Corporation No. 2431
Represented by Bharat Kapoor, Counsel

Hearing: Written Online Hearing – May 3, 2022, to September 21, 2022

REASONS FOR DECISION

A. INTRODUCTION

[1] Somkith Chai (the Applicant) is an owner in Toronto Standard Condominium Corporation No. 2431 (the Respondent). This case stems in part from a Request for Records submitted by the Applicant on July 23, 2021, and also deals with the adequacy of other records that the Applicant has received that were not part of that request. The Applicant argued that he has not received some of the records he requested in July 2021, and that some of the records he has received are inaccurate and inadequate. The Applicant's concerns relate to six categories of records, including the most recently approved financial statements and auditor's report, information certificates, the record of notices of leased units, the record of owners and mortgagees, and the Respondent's board meeting minutes. The Applicant argued that the Respondent had refused to provide records without a reasonable excuse, and that a penalty is warranted.

[2] This was a complex case that involved many issues with several different records. The parties provided voluminous evidence and submissions, and while I have read and considered them all, I will only refer only to those necessary to determine the

questions before me.

[3] Based on the evidence before me and for the reasons set out below, I find that there were minor issues with the Respondent's information certificates, that the Respondent refused to provide the correct audited financial statements and auditor's report, that the record of notices of leased units does not include the information required under the *Condominium Act, 1998* (the Act), and that the Respondent excessively redacted and effectively refused to provide board meeting minutes without a reasonable excuse. I order the Respondent to review and update its record of notices of leased units, to review and update its record of owners and mortgagees, to review and appropriately redact some board meeting minutes, and to provide the Applicant with updated copies of all these records within 30 days. I also order the Respondent to pay a penalty of $750 and to reimburse the Applicant $200 for his CAT fees.

B. ISSUES & ANALYSIS

Part 1: The most recently approved financial statements & auditor's report

[4] The Applicant submitted his request for records on July 23, 2021. In his request, he asked for a copy of the most recently approved financial statements and the auditor's report. In response, the Respondent provided the Applicant with a copy of the 2019-2020 financial statements and auditor's report.

[5] The Applicant argued that he was not provided with the correct records. The Applicant contended that he should have been provided with the 2020-2021 financial statements and auditor's report since the Respondent had approved the 2020-2021 financial statements and had received the auditor's report on July 19, 2021 (which the Respondent acknowledges).

[6] Subsection 1(1) of Ontario Regulation 48/01 (O. Reg. 48/01) lists ten types of records that constitute "core records" for the purposes of section 55 of the Act, including the following:

> 4. The most recent financial statements that the board has approved under subsection 66(3) of the Act.
>
> 5. The most recent auditor's report presented to the audit committee or to the board under subsection 67(6) of the Act.

[7] The Respondent argued that it was correct in providing the 2019-2020 financial statements and auditor's report, citing *Mellon v. Halton Condominium Corporation No. 70*, 2019 ONCAT 2 ("Mellon"). The Respondent argued that Mellon clarified

that the “most recent approved financial statements” refers only to the most recent audited financial statements that are presented to the unit owners at the annual general meeting (AGM).

[8] The Respondent’s argument is that providing these records to the owners as part of the AGM package is a necessary precondition to them being considered to be “the most recent financial statements that the board has approved under subsection 66 (3) of the Act” or “the most recent auditor’s report presented to the audit committee or to the board under subsection 67 (6) of the Act.” Therefore, the Respondent’s position is that these records are not required to be provided on request until they are provided to the owners as part of the AGM package.

[9] Contrary to the Respondent’s interpretation, I find that Mellon does not establish that the most recently approved financial statements only attain that status after they have already been provided to the owners as part of the AGM package. In paragraph 6 of Mellon, the Tribunal found that the phrase: “most recent approved financial statements” refers to “the most recent audited financial statements approved by the board for delivery to an annual general meeting of the condominium corporation.” Mellon does not establish that the record referred to in the Act is the one that has been presented to the owners at the AGM, but one that has been approved by the board and **will be** presented at the AGM.

[10] While the Applicant acknowledges that he eventually received the 2020-2021 financial statements and auditor’s report as part of the AGM package, he argued that he was denied access to records that he was entitled to receive at the time of the request. I concur with the Applicant.

[11] At the time of the delivery of records, the 2020-2021 financial statements had been approved by the Respondent’s board of directors and the auditor’s report had been presented to the board. While I acknowledge the impact was minimal, these were records to which owners had a right of access and they are the records which should have been provided in response to the Applicant’s request. There is nothing in either Mellon, the Act, or O. Reg. 48/01 that suggests that the Respondent had no obligation to provide these records on request until they were sent to all owners as part of the AGM package.

Part 2: Information Certificates

[12] The Applicant raised a number of issues with the Respondent’s information certificates, including that one of the periodic information certificates (PICs) the Applicant had requested was provided late, that the Respondent did not provide him with two information certificate updates (ICUs), that owners were not sent

PICs as required, that the PICs provided by the Respondent are not accurate as of the correct date, that the Respondent failed to include director disclosure information, that the PICs include inaccurate corporate officer information, that the Respondent had failed to properly indicate whether mandatory director training was outstanding, and that the PICs contain inaccurate financial information. I will deal with each of these issues in sequence below.

2.1 Did the Respondent provide the Q3 2020 PIC late?

[13] The Applicant's request for records included a request for all information certificates from the prior year. The Respondent provided the Q1 2020 and Q1 2021 PICs but did not provide the Q3 2020 PIC. The Applicant brought this to the Respondent's attention, and it was provided to the Applicant on August 27, 2021.

[14] As set out under s. 13.4 of O. Reg. 48/01, core records such as PICs are required to be provided within seven days of receiving the requester's response. It is clear, and the Respondent concedes, that the Q3 2020 PIC was provided outside of this timeframe. However, I find that this was a minor oversight which was quickly corrected once brought to the Respondent's attention and find no further order is warranted.

2.2 Did the Respondent refuse to provide ICUs?

[15] When the Respondent provided the requested records, it included the two PICs referred to above but did not include any of the information certificate updates. The Applicant wrote an email to the Respondent on August 27, 2021, asking if he would also be given the ICUs and if they were required to be included, to which Carol Wang, the Respondent's condominium manager, answered "No."

[16] The Respondent posted a message during the hearing stating that it acknowledged that ICUs are required to be provided with the PICs, and that both are core records. I find, however, that this is actually not the case. Section 1 of O. Reg. 48/01 enumerates all of the types of records classified as core records. Paragraph 8 of that section includes:

> All periodic information certificates that the corporation, within the 12-month period before receiving a request for records or a requester's response, sent to the owners under section 26.3 of the Act or was required by that section to send to the owners.

[17] This section establishes that the PICs are core records but does not establish that ICUs are core records. A review of the mandatory Request for Records form further supports that ICUs are not core records. The list of core records that one

may request on the form includes “Periodic information certificates from the past 12 months.” This is the box the Applicant selected. There is no mention of ICUs in either O. Reg. 48/01 or in the core records portion of the Request for Records form. I conclude then that when a requester checks this box, they are requesting only the PICs.

[18] I conclude therefore that the Applicant did not request the ICUs when he submitted his request in July 2021, and that the Respondent has not refused to provide them.

2.3 Are the Respondent’s PICs accurate as of the correct date?

[19] Condominium corporations are required to send two PICs to the owners annually. One is required to be sent within 60 days of the conclusion of the first quarter of the corporation’s fiscal year, with the other to be sent within 60 days of the conclusion of the third quarter. The Respondent’s fiscal year runs from March 1 to the last day of February, and can be divided into the following four quarters:

- Q1: March to May
- Q2: June to August
- Q3: September to November
- Q4: December to February.

[20] The Applicant raised concerns about the accuracy of the Respondent’s 2021 Q3 PIC, and its 2022 Q1 PIC. In both instances, the Applicant argued that the PICs are inaccurate because they are required under O. Reg. 48/01 to be accurate as of the last day of the quarter but are instead accurate as of the date of issuance.

[21] With respect to the 2021-22 Q3 PIC issued in January 2021, the Applicant noted that it included a certificate of insurance for the period from January to December 2021. The Applicant argued that this was incorrect, and it should have included the certificate of insurance for the period from January to December 2020 instead, as the PIC ought to have been accurate as of the last day of Q3 (i.e., November 30).

[22] With respect to the 2022-23 Q1 PIC issued in July 2022, the Applicant argued that it is incorrect as it does not list Billy Lam as a Director. As noted above, Billy Lam resigned from the board on July 19, 2021, but was still on the board as of the last day of the quarter on May 31.

[23] The Respondent argued that its PICs are accurate as of the date of delivery. The Respondent argued that the PICs are both accurate and adequate and that s. 11.1

of O. Reg. 48/01 does not specify whether PICs are required to be accurate as of the last day of the quarter or of the date of delivery.

[24] The Respondent is mistaken. As the Applicant pointed out, s. 11.1 (6) of O. Reg. 48/01 specifically requires that PICs be accurate as of the last day of the quarter to which they relate, and not the date of issuance:

> (6) The material that a periodic information certificate is required to contain shall be current as of the following dates:
>
> 1. If the certificate is sent to the owners at the time period described in paragraph 1 or 2 of subsection (4), the last day of the quarter described in the applicable paragraph.

[25] Accordingly, I find that the Respondent's 2021 Q3 PIC and 2022 Q1 PICs do not comply with the requirements of O. Reg. 48/01. I note that the impact of this issue is relatively minor and easily remedied for future PICs, but use this opportunity to recommend that the Respondent should make an effort to be more precise in its compliance with the requirements going forward.

2.4 Did the Respondent fail to include director disclosure information in the PICs?

[26] The Applicant argued that the PICs are inadequate because they did not include the director disclosure information required to be included under s. 11.1(1) (i) of O. Reg. 48/01:

> 11.1 (1) In addition to the material specified in clause 26.3 (a) of the Act, a periodic information certificate of a corporation shall contain,
>
> (i) a copy of the statements and information provided to the board during the current fiscal year in accordance with the disclosure obligation described in section 11.10

[27] The Applicant cited a portion of the board meeting minutes of March 29, 2021, which reads, "Disclosure form was completed by new candidate and presented to the Board for review," as evidence that the PIC should have included this disclosure information pursuant to 11.1 (1) (j) of O. Reg. 48/01.

[28] The Applicant is not correct in this regard. Section 11.10 of the regulation governs disclosure obligations for persons already appointed or elected to the board, not for candidates who are seeking election, which are governed by s. 11.6 of the regulation. The minutes refer to a disclosure form provided by a "new candidate," and therefore it is not the disclosure that is referred to in section 11.1(1)(j). Although new candidates' disclosure forms are to be sent to owners with their

AGM packages, they are not required to also be included in a PIC. Accordingly, I conclude that the Respondent has not failed to include candidate disclosures in its PICs.

2.5 Did the Respondent's PICs include inaccurate corporate officer information?

[29] The Applicant argued that PICs do not include accurate information about the officer positions approved for the board members. As discussed above, at the May 31, 2021, board meeting, Steve Chang was approved as the corporation's President, Billy Lam was approved as the Secretary, and Nevin Thomas was approved as the Treasurer.

[30] While the 2022 Q1 PIC indicates that Nevin is the Treasurer, it does not indicate that Steve Chang is the President, and Billy Lam's name is entirely absent, though there is no dispute that he was a director at the time and until his resignation in July. Consequently, I find that the PICs do include inaccurate information about the Respondent's officers.

2.6 Did the Respondent fail to properly indicate whether mandatory director training was outstanding?

[31] For each director listed on the PIC, there is a box that reads as follows:

> [ ] d. has not completed the prescribed training within the prescribed time under clause 29 (2) (e) of the Act.

[32] The Applicant argues that the PICs contained errors and omissions because this box ought to have been checked for Rita in the 2021 Q3 PIC, and for Stephen and Billy in the 2022 Q1 PIC as they had not yet completed their training by the time the PICs were issued. That these directors had not completed their training by the date of issuance was not contested by the Respondent.

[33] The Respondent argues that the box should not be checked if the director has not yet completed the training, but still has time to do so. The Respondent noted that "the box states that the director has not completed the prescribed training within the prescribed time. It does not state that the director has not 'yet' completed the training."

[34] The Condominium Authority of Ontario provides mandatory director training that all directors elected or appointed are required to complete. Directors who have not completed the training within the preceding seven years are required to complete it within six months of their election or appointment under s. 11.7 (4) of O. Reg. 48/01. If they do not complete the training within that six-month period, then the

person immediately and automatically ceases to be a director under s. 29 (2) of the Act.

[35] The requirement to check the box in question is set out under s. 11.1 (1) (d) of O. Reg. 48/01, and it requires that the PIC shall include:

> (d) a statement identifying any person who is a director of the corporation in office, or who has ceased to be a director of the corporation but has continued to so act, if the person,
>
> (i) is a party to any legal action to which the corporation is a party,
>
> (ii) was a party to any legal action described in subclause (i) that resulted in a judgment that is against the corporation or the person and that is outstanding,
>
> (iii) has contributions to the common expenses payable for any units that the person owns in the corporation, if the contributions are in arrears for 60 days or more, or
>
> (iv) has not completed the prescribed training within the prescribed time under clause 29 (2) (e) of the Act;

[36] Per that requirement, PICs are required to identify all persons who are currently directors, and also those who have ceased to be directors but have continued to act as directors.

[37] It would seem then that the purpose of the box is to indicate whether an individual who is no longer a director (but who continues acting as a director) failed to complete the mandatory training within the six-month deadline. A plain reading of both the text of the form and of O. Reg. 48/01 suggests that the box is only to be checked once the timeline for completing the training has elapsed. Accordingly, I find that the Respondent has not failed to properly indicate whether director training was outstanding.

2.7 Do the PICs contain inaccurate financial information?

[38] The Applicant argued that the PICs included inaccurate financial information. Under s. 11.1 (1) (l) of O. Reg. 48/01, a PIC is required to include**:**

> (l) a statement whether the corporation's budget for the current fiscal year may result in a surplus or deficit and the amount of the projected surplus or deficit;

[39] The Applicant submitted that all of the PICS delivered to him indicate that the budget is accurate and may result in neither a surplus nor a deficit. The Applicant

argued that this is contradicted by the corporation's board meeting minutes. An excerpt from the January 11, 2022, board meeting minutes reads as follows:

> The Board of Directors has received and reviewed the financial statements for the month of November 2020. This is the ninth month of the fiscal year. The prior year surplus is $22,405 and the current year surplus is $1,272. The Reserve Fund balance is $247,588 and Operating Fund balance is $67,459.

[40] Consequently, the Applicant argued that the Q3 2021 PIC, which is required to be current as of the end of November 2020, should show a surplus of $1,272.

[41] The Applicant raised a similar issue with the Q1 2022 PIC, which is required to be current as of the end of May 2021. On this PIC, the Respondent had indicated the budget may result in neither a surplus nor a deficit. An excerpt from the June 28, 2022, board meeting minutes reads as follows:

> The Board of Directors have received and reviewed the financial statements for the month of May 2021. This is the third month of the new fiscal year. The prior year surplus is $24,599 and the current year surplus is $10,961. The Reserve Fund balance is $280,849 and Operating Fund balance is $19,897.

[42] Consequently, the Applicant argued that this PIC should show a surplus of $10,961.

[43] While these statements from the minutes indicate that there was a surplus as of when the PICs were required to be issued, that is not the information that is required to be included in the PICs. O. Reg. 48/01 does not require that the PICs indicate whether there is currently a surplus or deficit, but whether it is projected that there will be a surplus or deficit at year-end. Consequently, if the Respondent anticipated that the surplus would be spent by the end of the year, then it was correct to have completed the form the way it did. With that in mind and based on the evidence before me, I cannot conclude that the Respondent has included inaccurate financial information in its PICs.

2.8 Do these issues render the Respondent's periodic information certificates inadequate?

[44] I have found that the Respondent's PICs include information for the wrong period and that they include inaccurate corporate officer information. I find that these issues are relatively minor and should be easy to remedy going forward. I find that they do not render the Respondent's PICs inadequate.

2.9 Were information certificate updates sent to owners as required?

[45] The Applicant also raised concerns about the failure of the Respondent to deliver the ICUs to owners within the timeframes required under the Regulations. Although the timeliness of such deliveries is an important issue that the corporation should strive to get right, this is not a matter within the Tribunal's jurisdiction.

Part 3. Record of Notices of Leased Units

3.1 Is the record of notices of leased units accurate and adequate?

[46] Under s. 83 (1) of the Act, owners of units who lease or renew a lease to their unit are required to notify their condominium corporation that the unit has been leased, and to provide the corporation with the lessee's name, the owner's address and a copy of the lease or renewal, or a summary. Under s. 83 (2), owners are also required to provide a notice to their condominium corporation when a lease of their unit is terminated. S. 83 (3) requires that condominium corporations keep a record of the notices it has received under ss. 83(1) and (2).

[47] The Applicant argued that the record of notices of leased units that he received is not accurate. The record of notices of leased units the Applicant received contains 50 rows of units and addresses. The Applicant argued that there are only 30 unique rows, and that the other 20 were duplicates, which he contended renders the record inadequate.

[48] On the issue of the duplicate rows, the Respondent submitted that the 20 apparently duplicate rows indicate where a unit has more than one tenant (i.e., if it has two tenants, there are two rows in the record). This is a reasonable explanation which I accept.

[49] Aside from this minor issue, the Applicant raised a larger issue about what the record of notices of leased units is required to include under the Act and its regulations. The Applicant argued that the record should not merely indicate which units are currently leased (as the record he has received does), but that it should instead be a historical record containing a list of all notices of lease, renewal, and termination that the corporation has received since its creation.

[50] Under s. 83 (3), a corporation is required to "maintain a record of the notices that it receives under this section." I understand that it is a common practice among condominium corporations to only maintain a list of the currently leased units, and that there would appear to be very few occasions in which a historical record of the leasing of units is of relevance or interest to the condominium corporation and its owners. Nevertheless, the plain language of the Act says that condominium

corporations are required not only to maintain and provide a list of currently leased units, but of all notices that the corporation has received from the owners under s. 83.

[51] Based on the plain language of the requirements of s. 83, I conclude that an adequate record of notices of leased units should include the following information, at a minimum:

1. A list of each unit in the corporation for which one or more notices under s. 83 has been received.

2. For each unit in that list, an indication of:

    i. The type of each notice received (i.e., a notice of lease, of renewal, or termination), and

    ii. The date on which each notice was received.

I also conclude that this record should not include only units that are currently leased but should rather include all units for which one or more notices have ever been received.

[52] As the record that the Applicant has received does not contain this information, I find that it is inadequate and will order the Respondent to review the notices it has received under s. 83, to compile a version including the information set out above, and to provide the Applicant with a copy of the revised record.

Part 4: Record of Owners and Mortgagees

[53] The Applicant raised a number of concerns about the accuracy, completeness and adequacy of the record of owners and mortgagees that he received from the Respondent. I will deal with each of these issues in sequence below.

4.1 Did the Respondent fail to include non-voting units in the record of owners and mortgagees?

[54] The first issue is the total number of units included in the record. The Record that the Respondent provided includes a list of 170 units, and for each unit, there is a name and a mailing address.

[55] The Applicant argued that the record is incomplete, as it appears to only include the corporation's voting units (of which there are 161) and nine other units: six that are owned by the declarant, and three which are duplicates (I will address these

nine units separately below). The Applicant argued that the record should include all 418 units, not just the 161 voting units, and argued that the Act does not require that only voting units be listed.

[56] In response, the Respondent argued that there is a distinction between voting and non-voting units in the Act, citing s. 49 (3), which reads as follows:

> Parking or storage unit
>
> (3) No owner shall vote in respect of a unit that is intended for parking or storage purposes or for the purpose of providing space for services or facilities or mechanical installations unless all the units in the corporation are used for one or more of those purposes.

[57] While that is certainly true, this provision of the Act speaks only to voting rights and is of little relevance in determining what the record of owners and mortgagees is required to include.

[58] The record of owners and mortgagees is required to be maintained under s. 46.1 (3) of the Act. Under s. 46.1 (2), owners are required to provide their condominium corporation with a notice within 30 days of becoming an owner. That notice is required to include the owner's name and an identification of their unit. The record of owners and mortgagees is required to include the following information from the notices the corporation has received:

1. The owner's name and the identification of the unit.

2. The owner's address for service, but only if the owner has notified the corporation that their address for service is different than their unit address and only if the address for service is in Ontario.

3. The mortgagee's name, an identification of the unit and the mortgagee's address for service, but only if the mortgagee has given the condominium corporation a notice under s. 46.1 (3) (c).

4. If an owner or mortgagee agrees in writing to a method of electronic communication under s. 47 (4) (c) and 47 (5) (c), respectively, the name of the owner or mortgagee and a statement of the method.

[59] There is nothing in s. 46.1 to suggest that owners are only required to provide notices to their condominium corporation if the unit they own is a voting unit, or to suggest that the record of owners and mortgagees should only include voting units. Section 46.1 uses only the term "unit," which includes residential units as

well as both parking and storage units (and any other type of non-voting unit besides). I also note that section 46.1 is not one of the sections of the Act referred to in section 1.1 of O. Reg. 48/01, which specifies various provisions of the Act in which "unit" should be understood to mean only the voting units. Accordingly, I conclude that the record of owners and mortgagees should include all units for which a notice has been received.

[60] The Respondent argued that what the Applicant is seeking is not the record of owners and mortgagees, but rather a “correlation chart,” which he did not request. I find that is not the case, and that the information the Applicant seeks ought to be included in the record of owners and mortgagees as it is required to be kept under s. 46.1 (3). That said, there is no evidence before me that the Respondent has ever received any notices under s. 46.1 (2) for non-voting units, and it may well be that owners have only ever submitted a notice for their voting units. However, given the position taken by the Respondent in this case, I also cannot be confident that this is the only reason that non-voting units generally do not appear in the record. Therefore, to ensure that the Applicant receives a complete version of the record as required to be kept under the Act, I will order the Respondent to review the notices it has received from owners to date, to update the record to include non-voting units accordingly, and to provide a copy of that updated record to the Applicant.

4.2 Did the Respondent fail to include the addresses of some units?

[61] The Applicant argued that the record of owners and mortgagees is required to include three pieces of information: the owner’s name, an identification of the unit, and the owner’s address for service. As noted above, the owner’s name and an identification of the unit are required to be included in all instances, but the address for service is only required to be included if it is different than their unit address and is provided to the condominium by the owner.

[62] The Applicant argued that the record provided by the Respondent only includes two pieces of information for two individual unit owners: it includes the owner’s name and the owner’s address for service but does not include an indication of the unit. While this is certainly a minor issue in that it affects only two of the owners listed, I agree with the Applicant that in the two instances identified (i.e., Page 4, row 10, column 3, and Page 5, Row 9, Column 2), the record does not include the requisite identification of the unit. I will order the Respondent to add the missing information to the updated version they will provide to the Applicant.

[63] The Applicant also argued that the record should clearly distinguish between the unit and the address for service. I find that it is obvious in the record provided by

the Respondent which is which. Where the address listed is different from the unit address, it is clearly the address for service, and in all instances save the two identified above, both the unit address and the address for service have been provided.

[64] Likewise, the Applicant argued that the record should clearly distinguish between owners and mortgagees. There is no evidence before me that the record fails to include information from any entity from which the Respondent has received a notice under s. 46.1 (2). It may well be that the Respondent has never received a notice from a mortgagee, and that consequently the record only includes the names of unit owners.

4.3 Did the Respondent fail to include information about methods of electronic communication?

[65] The record provided by the Respondent does not contain any indication that any owner has agreed to communicate with the condominium corporation electronically. The Applicant submitted, and the Respondent did not rebut, that he himself had entered into such an agreement, but the record itself provides no indication that is the case, either for the Applicant or for any other unit owner.

[66] I conclude that the Respondent has failed to include a statement of the method of the electronic communication agreed to by the Applicant, and I surmise that this may also be the case for other unit owners. Accordingly, I will order the Respondent to review the agreements it has entered into with owners, and to include this information for all unit owners that have such an agreement in the updated version they will provide to the Applicant.

4.4 Did the Respondent fail to include proper service addresses for some units?

[67] The Applicant argued that the record includes improper service addresses for some units. The Applicant cross-referenced the record of notices of leased units with the record of owners and mortgagees and noted that there are currently 11 owners who are leasing their units, but who still have the unit address listed as their address of service.

[68] There was no direct evidence provided by the parties as to whether these service addresses were correct or not. I conclude that there are three possible explanations for their inclusion in the record of owners and mortgagees:

1. The unit owners did not provide a notice to the corporation under s. 46.1 (2) of the Act to update their address for service.

2. The unit owners deliberately chose not to provide a notice to the corporation under s. 46.1 (2) of the Act. I would note that there is nothing in the Act that requires that a unit owner who leases out their unit must have a different address for service.

3. The Respondent has received a notice from one or more of these owners but has not properly updated the record of owners and mortgagees.

[69] Based on the evidence before me, I cannot conclude which of the three scenarios above is the case in this instance and cannot conclude that the Respondent has failed to include the proper service addresses for some units.

4.5 What is to be made of the nine additional units listed?

[70] As mentioned earlier, the record of owners and mortgagees includes - in addition to entries for the condominium's 161 voting units - nine additional entries. I have determined that three of those are duplicates relating to units already included in the other 161 entries. Those duplicates should be deleted. The other six additional entries are non-voting units. These six units are all owned by Menkes Developments Ltd., the developer of the condominium. It is not clear to me why these six non-voting units merited inclusion in the record, contrary to the Respondent's stated usual practice of not including records of non-voting units, but, as I determined above that non-voting units ought to be included in this record, it is appropriate that they are included and they should remain in the record. There is no further issue or order to be made respecting these additional entries or this record.

Part 5: Board Meeting Minutes Issues

[71] The Applicant raised a number of concerns about the adequacy, accuracy, and redactions made to the Respondent’s board meeting minutes. I deal with each of these issues in sequence below.

5.1 Has the Respondent failed to keep adequate minutes of board meetings?

[72] The Applicant raised concerns that the board has been conducting business and has approved decisions by phone and by email. The minutes from board meetings and the submissions from the Respondent indicate that a decision was made at an informal board meeting and was subsequently ratified at later board meetings. The Applicant focused in particular on an informal meeting that was held by phone on July 7, 2020, to approve a planting project. The meeting minutes from the board meeting on July 27, 2020, subsequently ratified the verbal approval of this project.

[73] I note that the issue of whether board business was being conducted outside of formal board meetings was also an issue in a previous case involving the Applicant and Respondent which resulted in a CAT Decision[1]. In that decision, the Tribunal noted that s. 32 of the Act provides that a board of a corporation shall not transact any business of the corporation except at a meeting of directors at which a quorum of the board is present. The decision also notes that "whether or not the practices of the Respondent's board in this regard are appropriate is not within the jurisdiction of the Tribunal to determine at this time, so I will not make any finding in this regard." This is still the case and the issue of the appropriateness of the Respondent's board meeting practices remains outside of the jurisdiction of this Tribunal.

[74] That said, condominium corporations are required to keep adequate minutes of board meetings and to provide them to owners on request. This requirement has been discussed in a litany of previous CAT decisions, including in Mawji v. York Condominium Corporation No. 415 (2021 ONCAT 72), where the Tribunal summarized the adequacy principles outlined in recent CAT cases, stating that:

> These decisions establish that an adequate record of a board meeting is a document with sufficient detail to allow the owners to understand what is going on in their corporation, how decisions are being made, when the decisions are made and what the financial basis is for the decisions.

[75] The board meeting minutes from July 27, 2020, contain a comprehensive summary of the planting project topic, including the board's considerations, information on how the work is to be done, and the financial implications. Accordingly, I find that those meeting minutes are adequate.

[76] A very similar scenario occurred in another CAT case, *Harder v. Metropolitan Toronto Condominium Corporation No. 905* (2022 ONCAT 18). In that case, the Respondent's board held "informal meetings" for which no minutes were created. In the decision for that case, the Tribunal wrote:

> While the Respondent has characterized some meetings as being informal, it seems that what the Respondent is actually describing are informal communications between board members occurring between the times that meetings are held, sometimes resulting in decisions that are acted upon. The Respondent further states that where decisions are made between meetings, then the board ensures they are ratified at the next meeting and recorded in

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[1] *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2021 ONCAT 116

> that meeting's minutes. Whether or not this is appropriate condominium governance is outside the scope of this case and the CAT's current jurisdiction to assess; however, I can and do find that the practice as it relates to the keeping of minutes is acceptable and satisfies the requirement for adequacy of the corporation's records.

[77] The circumstances in this case are fundamentally identical. The Respondent has a practice of board members communicating between meetings and discussing issues that are subsequently ratified at a formal meeting, which is documented in the minutes. The issue of the appropriateness of this practice falls outside of the Tribunal's jurisdiction. Since the July 27, 2020, board meeting minutes provide detailed information about the planting project and the relevant considerations, I find that the practice satisfies the requirement for adequacy of the corporation's records.

5.2 Did the Respondent fail to include reference to or to provide "private minutes"?

[78] The Applicant also raised issues with what he characterizes as the corporation's "private minutes." The Respondent separates its minutes into two sections: one which includes general matters, and another which includes information about topics that cannot be released to unit owners without review and redaction as they include information that is prohibited from being released under s. 55 (4) of the Act, such as information related to individual units or unit owners. I use the term "private minutes" in this decision for convenience's sake as that is the term used by the parties.

[79] The Applicant argued that the Respondent has failed to include reference to the private minutes in the general minutes. The Applicant noted that the minutes from the July 27, 2020, meeting refer to the fact that there are related private minutes, but that other minutes do not, even where private minutes did exist, citing as examples the minutes from August 31, 2020, September 28, 2020, October 26, 2020, November 30, 2020, and March 29, 2021.

[80] The Applicant also argued that the Respondent had failed to provide private minutes for meetings on January 11, 2021, February 22, 2021, April 26, 2021, May 31, 2021, and June 28, 2021. The Applicant's argument is that since the regular minutes do not consistently include reference to private minutes, it cannot be ruled out that these records do exist and should have been provided. The Applicant provided no direct evidence to demonstrate that these private minutes exist.

[81] The Respondent argued that there is no requirement that the regular minutes include a reference to the private minutes, and that all private minutes have been

provided.

[82] I take this opportunity to note that the Tribunal has previously dealt with issues related to private or “in camera” minutes and has noted that separating the minutes into two portions is not a best practice.[2] That said, based on the evidence before me, I find that the Respondent has been inconsistent with its approach to including reference to the private minutes but cannot conclude that the Respondent has failed to provide private minutes as requested and required.

5.3 Did the Respondent fail to indicate that minutes have been amended?

[83] The Applicant argued that the Respondent had failed to properly indicate when meeting minutes were amended because it is not clear whether it was the regular minutes or the private minutes that were amended. The Applicant cited the July 27, 2020, minutes as an example; these minutes consist of both regular and private minutes and were amended, but it is not clear which portion.

[84] The Act includes no requirement that a notation that the minutes were amended identify the specific amendments. I conclude that the lack of specific reference to the amendments does not render the records inadequate.

5.4 Did the Respondent fail to provide amended copies of minutes?

[85] The Applicant argued that he was not provided with the amended copies of minutes. The Applicant noted that in the past, when minutes were amended, there would be a mention included specifying what had been amended. The Applicant argued that this is no longer being done, and so has no way of determining what was amended or if he had been given the amended copy.

[86] The Applicant provided no direct evidence that he had not received the amended versions of these minutes. I also note that there is no specific requirement in the Act that minutes that are amended include an indication of what was amended. Based on the evidence before me, I cannot conclude that the Respondent has failed to provide amended copies of minutes.

5.5 Has the Respondent excessively or improperly redacted minutes?

[87] The Applicant argued that the Respondent had been inconsistent with its approach to redacting its minutes, that its redactions had not properly been done, and that

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[2] *Russell v. York Condominium Corporation No. 50*, 2021 ONCAT 103, at para. 31

the minutes were excessively redacted.

[88] Regarding the alleged inconsistencies, the Applicant cited the minutes from July 27, 2020, and August 31, 2020. These two records were provided to the Applicant in respect of his request that is the subject of this case – but they had also previously been provided to him with all of the unit numbers redacted, and they were the subject of the previous Tribunal case between these parties. The Applicant noted that when the Respondent had previously redacted all the unit numbers, the Respondent had argued that was required to be done pursuant to s. 55 (4) (c), which prohibits the release of records that relate to individual unit owners and/or to individual units. Now, however, the Respondent is arguing that the unit numbers do not require redaction.

[89] The July 27, 2020, meeting minutes include three references to individual units – one portion indicates that a unit has entered into a new s. 98 agreement, another portion notes that a repair to damage caused by a water leak was made to a single unit, and a third portion notes that interlocking stone had been repaired for seven units. All the unit numbers are listed.

[90] The August 31, 2020, meeting minutes likewise include reference to two specific units – one portion indicates that a unit has entered into a new s. 98 agreement, and another portion notes that the corporation has received a request for an electric vehicle charging station (EVCS) from an owner. The unit numbers are listed in both instances.

[91] In response, the Respondent argued that the s. 98 agreement forms part of the status certificate and are registered on the title, and since anyone could potentially access this information through the Land Registry Office, no redaction is required. The Respondent also argued that the water leak and interlocking stone repairs are operational expenses for the corporation and that the disclosure of the unit numbers does not breach the privacy of the owners. The Respondent did not explain why they believed the unit number for the EVCS applicant ought to have been identified.

[92] It is worth noting that while the Respondent provided these arguments during the hearing, a review of other meeting minutes shows that it has not consistently adhered to this approach. In the meeting minutes from March 29, 2021, for instance, there are a few entries worth noting. First, there are several notations referring to repairs and replacements made to units, but in each instance the unit number is redacted. Second, there is a notation that the corporation entered into a new s. 98 agreement with a unit owner, and that unit number is redacted. Why the Respondent argued that it was appropriate to redact the unit numbers in the March

29, 2021, minutes but not in the July 27, 2020, or August 31, 2020, minutes is unclear.

[93] Under the Act, there are some records that condominium corporations are not required to provide to owners on request. These exceptions to an owner's right to access the corporation's records are set out in s. 55 (4) of the Act, which states:

> (4) The right to examine or obtain copies of records under subsection (3) does not apply to,
>
> (a) records relating to employees of the corporation, except for contracts of employment between any of the employees and the corporation;
>
> (b) records relating to actual or contemplated litigation, as determined by the regulations, or insurance investigations involving the corporation;
>
> (c) subject to subsection (5), records relating to specific units or owners; or
>
> (d) any prescribed records. 1998, c. 19, s. 55 (4); 2015, c. 28, Sched. 1, s. 51 (5-7).

[94] In Robinson v. Durham Condominium Corporation No. 139, 2021 ONCAT 81, the Tribunal dealt with the appropriateness of redactions in board meeting minutes, and found that references to individual unit numbers fall under s. 55 (4) (c) exemption and ought to be redacted:

> I find that eight sets of the 'in camera' minutes are minimally redacted. For example, the word 'unit' appears and the number beside it is blacked out and it is clear on the face of the record that these redactions were made to protect the privacy of unit owners. (…) It is readily apparent that they are permitted exemptions pursuant to s. 55 (4) of the Act, indicated by the statement at the top of each set of 'in camera' minutes. The Applicant would not be entitled to the information.

[95] I conclude that the references in the Respondent's minutes above are very obviously references to individual units and so should have been redacted pursuant to s. 55 (4) (c) of the Act. Accordingly, I find that the Respondent has failed to adequately redact these two sets of meeting minutes.

[96] The Applicant also argued that the Respondent had not properly done the redactions, such that the Applicant was able to copy and paste the redacted elements of the October 26, 2020, minutes to reveal the information intended to be redacted. I note that this was also an issue raised in the second Tribunal case between these parties. In the decision for that case, the Tribunal noted that the

"process by which these redactions are made is not adequate to protect the private information that is supposed to be redacted."[3] I concur that this approach is not sufficient and should be immediately discontinued, and that minutes prepared using this method should be remedied before they are provided to other unit owners.

[97] The Applicant also argued that several other meeting minutes had been excessively redacted. The Applicant cited issues with the November 30, 2020, January 11, 2021, February 22, 2021, March 29, 2021, April 26, 2021, May 31, and June 28 meeting minutes. I will provide a few illustrative examples of the redaction issues with these records but will not cite them all.

[98] In the November 30, 2020, meeting minutes, for example, the Respondent redacted the name of a firm from whom the corporation had received a quote to conduct a reserve fund study. The Respondent also redacted the name of a firm that had presented to conduct generator testing, and the amount quoted to do the testing. The Respondent also redacted the amount quoted to perform a pump repair.

[99] The January 11, 2021, meeting minutes indicate that the Respondent had received a quotation from two engineering firms to conduct a reserve fund study, and these quoted amounts are redacted. The minutes also indicate that the board approved semi-annual generator testing, but the cost of this testing has been redacted.

[100] The February 22, 2021, meeting minutes include the following text:

> The prior year surplus is [REDACTED] and the current year surplus is [REDACTED]
>
> The Reserve Fund balance is [REDACTED] and the Operating Fund balance is [REDACTED]

[101] Curiously, this same information is not redacted in other minutes. For instance, the minutes from the June 28, 2021, include all these figures without redaction.

[102] There is no basis for these redactions. None of the information redacted in these minutes appears to fall under any of the s. 55 (4) exemptions, and the Respondent did not provide any reasons for why these redactions were made.

[103] When a condominium corporation provides an owner with a record, it is required to

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[3] *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2021 ONCAT 116, at para. 34.

also provide the accompanying statements required by s. 13.8 (1) of O. Reg. 48/01:

> 13.8 (1) Each copy of a record that the corporation makes available for examination or delivers under any of sections 13.4 to 13.7 shall be accompanied by,
>
> (a) a separate written document that is addressed to the requester and that clearly identifies the record that is being made available or delivered, as the case may be.
>
> (b) if the board has determined that the corporation will redact the record to remove any part that the board has determined that the corporation will not allow the requester to examine or of which it will not allow the requester to obtain a copy, a written statement of the board's reason for its determination and an indication on which provision of section 55 of the Act or this Regulation the board bases its reason.

[104] When the Respondent provided these minutes to the Applicant, they did not provide individual statements for each redaction, and instead provided a single blanket statement which reads, "The Board Meeting Minutes have been redacted in order to maintain the privacy of other units and owners as per the Condominium Act, 1998, S.O. 1998, c. 19, s. 55 (4) (c)." The Respondent provided no other reasons for any of the redactions to any of the board meeting minutes – however, it is clear that several of the redactions could not have been made for this purpose.

[105] The Respondent conceded during the hearing that there appear to be excessive redactions in the minutes. The Respondent noted that it had requested the corporation's condominium manager to review these minutes again and to correct any issues with the redactions, but this was not completed during the hearing.

[106] For the reasons above, I find that the November 30, 2020, January 11, 2021, February 22, 2021, April 26, 2021, and May 31, 2021, board meeting minutes all contain inappropriate and excessive redactions. I will order the Respondent to review these records again, to redact them properly, and to provide updated copies to the Applicant at no cost. These copies are to be accompanied by a separate document setting out the reason for each individual redaction, and each reason should refer to a specific exemption set out under the Act, its regulations, or another recognized category of legal privilege, as is required under the Act.

[107] The Applicant also argued that business and decisions related to his previous Tribunal case are not captured in the minutes. The Applicant pointed to an absence of a resolution for either Carol Wang, the Respondent's condominium

manager, or Mr. Kapoor, its counsel, to act as the Respondent's representative in that case. The Applicant also noted that there was no record of the Respondent considering a settlement offer made during that case, which was reviewed by the board and which they declined to accept. The Respondent did not make any submissions on this point or provide any explanation for the missing information. I find that the corporation's board meeting minutes do not include this information, and that a person reviewing the minutes would have no ability to understand what decisions were made regarding this case, or the basis for those decisions.

[108] Finally, the Applicant raised issues with characterizations in the board meeting minutes that relate to him and his unit. He cites, as examples, that the October 2020 meeting minutes suggest that he refused to have a phone conversation with the board (which he denies), and other issues from the November 2020, March 2021, and June 2021 meeting minutes related to his CAT case and repairs to his unit, which he argues are inaccurate. While I appreciate that the Applicant disagrees with the characterizations included in those minutes, I find that these concerns do not relate to the adequacy of the records.

Part 6: Penalty and Costs

Has the Respondent refused to provide records without reasonable excuse? If so, should the Applicant be awarded a penalty under s. 1.44 (1) 6 of the Act?

[109] The Tribunal has the authority to make an order for a penalty if the Tribunal finds that a corporation has refused to provide requested records without a reasonable excuse. Therefore, the two questions for me to consider are whether the Respondent refused to provide the requested records to the Applicant, and, if so, whether there was a reasonable excuse for such refusal.

[110] Of the records requested by the Applicant, I have found that the Respondent only refused to provide the most recently approved financial statements and auditor's report.

[111] I have also found that the Respondent's information certificates contain some minor errors, that the record of notices of leased units does not include the information required under the Act, and that board meeting minutes were excessively redacted. While the issues with the information certificates were relatively minor and I understand why the Respondent included the information it did with respect to the record of notices of leased units, the redactions to the board meeting minutes are without reasonable explanation. The impact of these redactions was to deprive the Applicant of information that he would have been entitled to if these records were appropriately redacted. Accordingly, I find that the

Respondent has effectively refused to provide these records without a reasonable excuse.

[112] The Applicant argued for a significant penalty, citing a number of prior Tribunal decisions. The most helpful and relevant of these is *McLaughlin v. Brant Standard Condominium Corporation No. 75*, 2022 ONCAT 16, in which the Tribunal wrote:

> In determining the amount of the penalty in this case, I follow the reasoning in previous Tribunal cases that a penalty should be "substantial enough to act as a reminder to the Respondent to apply more care and diligence, and especially to be more mindful of its legal obligations, when responding to unit owners' requests for records." Tribunal decisions have established that penalties are proportional, taking into consideration the nature of the records requested, and conduct of the Respondent which led to the refusal.

[113] I also note that this is the third case between these two parties. In the first, *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2019 ONCAT 45, the Tribunal found that the Respondent had temporarily failed to provide requested records, and that this delay was an effective refusal to provide records without a reasonable excuse. The Tribunal ordered a penalty of $200. In the second, *Chai v. Toronto Standard Condominium Corporation No. 2431*, 2021 ONCAT 116, the Tribunal found that some minutes had not been properly redacted and ordered them to be reviewed and updated versions provided.

[114] I conclude that the penalty ordered in the first case did not have the intended effect of reminding the Respondent to apply more care and diligence to its handling of its records. Accordingly, I find that an elevated award is appropriate, with the goal of impressing upon the Respondent the need to take these responsibilities seriously. Taking into consideration the nature of the records at issue, the severity of the issues found, and the fact that the Applicant raised many of these same issues with the Respondent both before the case was filed and during the hearing to no avail, I find that a penalty of $750 is appropriate. In setting this penalty, is my sincere hope that the Respondent will heed its obligations and be more diligent and conscientious in managing and providing its records going forward.

[115] The Applicant also seeks reimbursement for his personal time spent in this case. Under Rule 49.1 of the Tribunal's Rules of Practice, the Tribunal will not generally order one party to pay another party compensation for their time participating in a Tribunal proceeding:

> 49.1 The CAT generally will not order one Party to pay another Party compensation for time spent related to the CAT proceeding.

[116] That said, the Tribunal can order such reimbursement in exceptional circumstances. The Applicant argues that this case presents exceptional circumstances and that an order is warranted. The Tribunal has issued a practice direction that provides guidance on what factors the Tribunal will consider when determining whether to make an order for costs, and for determining the appropriate quantum. The Applicant cited the following considerations from the Practice Direction:

- The conduct of all parties and representatives, including the party requesting costs
- Whether the parties attempted to resolve the issues in dispute before the CAT Case was filed
- The nature and complexity of the issues in dispute in the case
- Whether the costs are reasonable and were reasonably incurred

[117] I have considered the submissions of both parties, and based on the evidence before me, I find that the Respondent could have made more meaningful efforts to resolve some of the issues I have found with the records. The Applicant raised issues with the records he had received (and failed to receive) by email several times before the case was filed. For example, the Applicant raised issue with the fact that the PICs are required to be accurate as of the last date in the quarter to which they relate, and the Respondent advised him, and argued in this Stage 3 proceeding, that there was no such requirement, which is clearly contrary to what O. Reg. 48/01 states. The Applicant also raised concerns about the extent and appropriateness of the redactions made to the board meeting minutes, to which the Respondent replied with a blanket statement that all records had been appropriately redacted.

[118] I also find that the Applicant raised a great number of issues in this case, many of which were both technical and relatively minor in their impact, and not all of which were accurate. Many of these issues appear to arise from a desire for perfection in the Respondent's records. While the Respondent could certainly be more conscientious of and attentive to its obligations, it is not reasonable to hold it to a standard of perfection for every record it has created. The Applicant spent time providing voluminous and detailed submissions on what were ultimately minor points, and while I have found that he was successful in some instances, he was not successful in all.

[119] Accordingly, I do not find that an order for reimbursement for the Applicant's time

is appropriate in this case. I would encourage both the Applicant and the Respondent to learn from this case and to strive to resolve their records issues collaboratively in the future.

[120] Finally, the Applicant seeks reimbursement of his Tribunal fees. Rule 48.1 of the Tribunal's Rules of Practice states that if a Tribunal 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. The Applicant has been partly successful in this case. Accordingly, I order the Respondent to reimburse him $200 for his CAT fees.

B. ORDER

[121] The Tribunal orders that:

1. The Respondent review the notices it has received under s. 83 of the Act, and to compile an updated version of the record of notices of leased units required to be maintained under s. 83 (3) of the Act. The Respondent is to provide the Applicant with a copy of the updated record within 30 days of this decision. The updated version shall include, at a minimum:

    a. A list of each unit in the corporation for which one or more notices under s. 83 has been received.

    b. For each unit in that list, an indication of:

        i. The type of each notice received (i.e., a notice of lease, of renewal, or termination), and

        ii. The date on which each notice was received.

2. The Respondent review the notices it has received under s. 46.1 (2) of the Act, and to compile an updated version of the record required to be kept under s. 46.1 (3), including any non-voting units for which notices have been received. The Respondent will also ensure that a statement of the method of the electronic communication is included for all owners who have an agreement for electronic communication. The Respondent is to provide the Applicant with a copy of this updated record within 30 days of this decision.

3. The Respondent review its November 30, 2020, January 11, 2021, February 22, 2021, April 26, 2021, and May 31, 2021, and redact them properly. The Respondent will provide updated copies to the Applicant within 30 days of this decision. These records are to be accompanied by a separate document

setting out the reason for each individual redaction, and each reason should refer to a specific exemption set out under the Act, its regulations, or another recognized category of legal privilege.

4. The Respondent will pay the Applicant a total of $950 no later than December 31, 2022. This amount includes:

    a. A $750 penalty for refusing to provide records without a reasonable excuse under s. 1.44 (1) 6 of the Act.

    b. $200 for the Applicant's Tribunal fees.

Keegan Ferreira
Vice-Chair, Condominium Authority Tribunal

Released on: December 8, 2022