CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 28, 2025
CASE: 2024-00534R
Citation: de Francesco v. Ottawa Carleton Leasehold Condominium Corporation No. 973, 2025 ONCAT 84

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,
Gianni de Francesco
Self-represented

The Respondent,
Ottawa Carleton Leasehold Condominium Corporation No. 973
Represented by Rod Escayola, Counsel

Hearing: Written Online Hearing – November 25, 2024 to May 1, 2025

REASONS FOR DECISION

A. INTRODUCTION

[1] Gianni de Francesco (the "Applicant") is a unit owner in Ottawa Carleton Leasehold Condominium Corporation No. 973 (the "Respondent"). He submitted a Request for Records (the "Request") to the Respondent on July 16, 2024, in which he requested five core records and ten non-core records. Having received no response within the prescribed time, the Applicant had filed his application with the Tribunal in August 2024. The Respondent provided its board of director's response on the prescribed form on September 23, 2024.

[2] During Stage 2 – Mediation and Stage 3 – Tribunal Decision, the Respondent provided many of the requested records; however, six of them remained in dispute. The Respondent asserts that it has provided all of the records that it has which are responsive to the Request. Further, during the hearing, the Respondent took the position that the Applicant is engaged in a fishing expedition.

[3] For the reasons set out below, I find that the Respondent has complied with its obligation to provide records; there are no further records to which the Applicant is

entitled. I do not find, based on the evidence before me that the Applicant embarked on a fishing expedition. The Applicant shall be reimbursed his Tribunal fees of $200. No other costs are awarded to either party.

B. BACKGROUND

[4] In this case, as in many records disputes, there was a catalyst for this Request. Here, it appears to have been work on the underground garage which was initially estimated to cost approximately $15,000 (plus materials) in April 2023 which grew to approximately $400,000 by January 2024, a project that, for various reasons, did not go to tender. The board president, Sharon Phillips, stated in her evidence that there is "a certain level of unrest among some owners" such that their frustration led them to demand greater control over the corporation's finances and governance. The Applicant is clearly among the group feeling considerable unrest with how matters have evolved. It is against this backdrop that the Respondent's characterization of the Request being a fishing expedition has arisen.

[5] These concerns led the Applicant to file his Request, and as noted above, the Respondent did not provide a response until September 23, after this case was filed with the Tribunal. Ms. Phillips acknowledged that this was outside the prescribed 30-day period, stating that it was an oversight on their part. The response did not exactly correlate with the listed records in the Request and the records that the Respondent agreed to provide were not immediately sent to the Applicant, but were provided at intervals between September 2024 and December 2024. By January 2025, the records in dispute, as agreed by the parties, were narrowed to the following noncore records, as described on the Request:

1. Records of advice and records of decision related to matters such as increases to condominium fees and expenditures (including but not limited to work on garage membrane, refinishing of lobby floor, townhouse doors etc.).

2. Any and all agreements for joint use including but not limited to those with Christ Church Cathedral and its divisions and subsidiaries as well as individuals.

3. Any and all contracts for services/work as well as records of decisions on how contractors were invited to bid, how they were selected, the professional engineers used in the management of the work, the initial estimated value etc.

4. Any and all records related to discussions between the property manager, the board and the contractor related to the garage membrane work.

5. Any and all records related to the “borrowing” or use of the reserve fund including discussions between the board and any and all others on the subject and advice provided by the property manager.

6. Any and all emails and other correspondence related to decisions on expenditures including awarding of contracts, agreement to pay for services etc. where those records were not part of minutes of board meetings.

[6] Flowing from this, the issues for me to decide in this hearing are:

1. Is the Applicant engaged in a fishing expedition?

2. Has the Applicant been provided with all the records responsive to his Request and if not, is he entitled to any of the records set out in paragraph 5?

3. Should costs be awarded to either party?

C. ISSUES & ANALYSIS

Issue 1: Is the Applicant engaged in a fishing expedition?

[7] As alluded to above and referred to extensively by Ms. Phillips in her witness statement, the board, perhaps in response to unrest within the condominium community, set up some committees in the fall of 2023, one of which was a building services committee to assist the board in an “advisory” role. The Applicant was one of several owners on this committee. The board ultimately decided that the committee “quickly assumed an overseeing authority that was neither granted nor appropriate” and therefore dissolved the committee in early 2025. The Respondent states that this is important context for what it describes as an extensive request for records which is a fishing expedition.

[8] The evidence before me indicates though that a substantial portion of the Request relates to records to which the Applicant was entitled. That entitlement has been acknowledged by the Respondent (in particular after its counsel became involved in the case) through its provision of all the core and some of the non-core records. The challenge to governance as described by Ms. Phillips, did not disentitle the Applicant to records, but it may have led him to describe some of the requested records in very broad terms. In some situations that casting of a wide net may be characterized as a fishing expedition; in this instance, it may be the result of a degree of frustration at a perceived lack of transparency in a board’s decision making – a sense that surely there must be more documentation to support its significant decisions on which they acted. The totality of the evidence, both that of the Applicant in his explanations for his various requests and that of Ms. Phillips,

supports my conclusion that this is what occurred here.

[9] In the Tribunal decision in *Martynenko v. Peel Standard Condominium Corporation No. 935* [1] ("Martynenko") cited by the Respondent, the Tribunal stated at paragraph 31:

> The term "fishing expedition" is used in law to describe a search or investigation, including demands for records or information, undertaken for the purpose of discovering facts that might be disparaging to the other party or form the basis for some legal claim against them, that the seeker merely hopes or imagines exist. Most cases where the term is used appropriately involve a person casting a wide net, as it were – such as requesting records that cover a broad period of time and/or wide range of topics – in the hopes of acquiring some fact or detail that could satisfy what is essentially an unfocussed vindictiveness or dislike for the other party.

[10] There is no evidence that persuades me that the Applicant is seeking records, for purposes as described in Martynenko, that is, in the hopes of acquiring some fact or detail that could satisfy an unfocussed vindictiveness or dislike for the Respondent. As the Tribunal noted in Martynenko at paragraph 33:

> … I accept that some of the requests do reflect characteristics of a fishing expedition, covering several years' worth of documents in a broad or general category; however, sometimes, genuine and legitimate concerns may actually cover a broad set of records, subject matters and/or spans of time …

[11] And, as stated in the Tribunal decision in *Shoom v. York Region Standard Condominium Corporation No. 1090*[2] at paragraph 19:

> The term "fishing expedition" is relevant to records requests as a boundary on the otherwise very widely worded entitlement to records. A pure fishing expedition would be evidence that the records request was not solely related to the requestor's interest as an owner, having regard to the purpose of the Act. Having said that, it is important to note that there may be elements of "fishing" in many records requests. This may stem from the information imbalance between the parties. Even the most transparent condominium corporations will have information that is not visible to unit owners. A requestor may not be able to be too specific about when the records were created or

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[1] *Martynenko v. Peel Standard Condominium Corporation No. 935,* 2021 ONCAT 125

[2] *Shoom v. York Region Standard Condominium Corporation No. 1090,* 2022 ONCAT 145

where they may be found.

[12] While the Applicant has stated that in some instances, he has no way of knowing what other documents may exist, and that he understands that his request for "any and all records" may give the appearance of being too broad to satisfy, it was difficult for him to be more specific "because I am having to piece together strands of documents that are in some cases complete, incomplete or absent".

[13] I find that while some of the Applicant's requests are broadly worded and bear some resemblance to a fishing expedition, this is not totally determinative. I have considered the totality of the Request in the context of all the facts in this case. There is no dispute that he was entitled to many of the records listed in the Request. The fact that other requested records lacked specificity and may be more akin to requests for information rather than records, does not diminish the Applicant's genuine and legitimate concerns, especially in light of the costs of the garage membrane project. The character of the Applicant's Request, viewed in its entire context, does not meet the test of a fishing expedition.

Issue 2: Has the Applicant been provided with all the records responsive to his Request and if not, is he entitled to any of the records still in dispute?

[14] As noted at the beginning of this decision, based on the evidence before me, I have decided that there are no further records that the Respondent must provide to the Applicant. I make no comment on whether there ought to be more from a governance perspective or whether the governance concerns raised by the Applicant are valid. I will address each of the disputed requests.

<u>Records of advice and records of decision relate to matters such as increases to condominium fees and expenditures (including but not limited to work on garage membrane, refinishing of lobby floor, townhouse doors etc.)</u>

[15] The Respondent states that it has board minutes, which have been provided, as well as emails related to the garage and lobby floor work. It has highlighted extracts from board meeting packages pertaining to these projects. The quote for the garage membrane work has also been provided as well as quotes for the townhouse door replacement and the engineering report related to the townhouse doors. The Respondent states that it has no further records responsive to this request.

[16] The Applicant notes that the Respondent cites the minutes as the "definitive" source of the records of decisions but submits that these do not contain the details he asks for – they are neither, in his view, extensive, nor do they contain a

discussion of the issues. He cites *McKay v. Waterloo North Condominium Corp. No. 23*[3] ("McKay"), in asserting that as an owner he is owed transparency and access to adequate records. In McKay, the court noted that records kept by the corporation serve two basic purposes: (1) to assist the corporation in fulfilling its duties and obligations, and (2) to provide insight or information for unit owners who wish to confirm that such duties and obligations have been fulfilled. However, this does not mean that a corporation is required to keep as records every document or other source of information to which the board might have referred in reaching a decision[4]. And on the evidence before me, it seems probable that there are no such records in any event, though the Applicant might legitimately believe that there should have been.

Any and all agreements for joint use including but not limited to those with Christ Church Cathedral and its divisions and subsidiaries as well as individuals.

[17] The Respondent has provided the Joint Use Maintenance and Cost Sharing Agreement including plans (in December 2024) as well as two relevant licences which included a parking licence document. The Applicant submits that there may be other agreements that ought to be provided such as agreements about garbage, recycling, maintenance of the courtyard and laneway, or use of common elements. The evidence before me is that there are no separate agreements other than what has been provided and that the other matters referred to by the Applicant are dealt with in the Joint Use Maintenance Agreement. I find that this request has been fulfilled.

Any and all contracts for services/work as well as records of decisions on how contractors were invited to bid, how they were selected, the professional engineers used in the management of the work, the initial estimated value etc.

[18] Based on the evidence before me, the Applicant's focus in this request was on the garage membrane project, though the lobby floor work was also an area of concern. The documents described at paragraph 15 are in large measure responsive to this request as well. I also note that the Respondent, through its condominium management provider, produced a document for owners, in June 2024 which described the background, context, and history of the garage membrane replacement project. There was no competitive bid process nor did the Respondent seek the guidance of an engineer. While I understand that the

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[3] *McKay v. Waterloo North Condominium Corp. No. 23,* 1992 (ON SC)

[4] As noted at paragraph 16 of *Sakala v. York Condominium Corporation No. 344*, 2024 ONCAT 162

Applicant is not satisfied with how the project was managed, on the evidence before me, I am satisfied that there are no further records responsive to this request. The Respondent has provided all the records regarding this request to which the Applicant is entitled.

Any and all records related to discussions between the property manager, the board and the contractor related to the garage membrane work.

[19] The Respondent states that it is the minutes that are the record of those discussions. In addition, in October 2024, the Respondent provided a series of emails between the condominium manager and the board that related to the garage membrane work (which may well have been more than the Respondent was required to provide under the the *Condominium Act, 1998* (the "Act")). There is no evidence to suggest that there are any further documents. This request has been fulfilled.

Any and all records related to the "borrowing" or use of the reserve fund including discussions between the board and any and all others on the subject and advice provided by the property manager

[20] Here again, the Respondent submits that the board minutes contain any such discussions and that there is no other record of the corporation to provide in response to this request. Budget and fiscal records have been provided. The Applicant may wish for more information and may be frustrated by a perceived lack of rationale for certain decisions, but the "rationale" requested is essentially a request for information, not a request for records. There is no evidence before me that there are any other records that the corporation is required to keep pursuant to s. 55 of the Act.

Any and all emails and other correspondence related to decisions on expenditures including awarding of contracts, agreement to pay for services etc. where those records were not part of minutes of board meetings

[21] This is, to a large extent, a re-phrasing of the previous requests, though much more broadly worded. The Applicant states that he is only looking for "emails and correspondence that have business value … and where the information is not contained in other records of the corporation". This request, as well as very much lacking specificity, is essentially a request to access information, not a record of the corporation. I am satisfied that there are no additional records that the Respondent is required to provide.

[22] In summary, I find that the Respondent has provided the records responsive to the

Request. It did not, however, comply with the requirements of s. 13.1 of Ontario Regulation 48/01. The board response was delivered after this application was filed and it was not a complete answer to the Request. While admittedly many of the non-core records requested were broad in scope, even the core documents were provided sporadically in September and October 2024. I do caution the Respondent that greater diligence in responding to an owner's requests for records is required.

Issue 3: Should costs be awarded to either party?

[23] The Applicant has not been successful at this hearing in relation to the disputed records; however, the remainder of the records were not provided to him until Stage 2 – Mediation or as late as December 2024 when the case was in Stage 3 – Tribunal Decision. It is reasonable to conclude that the Applicant was required to proceed to Stage 3 – Tribunal Decision to obtain records to which he was entitled. Therefore, I order, pursuant to s. 1.44 (1) 4 of the Act and Rule 48.1 of the Tribunal's Rules of Practice that the Respondent reimburse him the Tribunal fees of $200.

[24] The Respondent submits that costs on a partial indemnity basis in the amount of $10,884.27 should be awarded to it because it has met (and "exceeded" in its view) its requirements under s. 55 of the Act by providing records to which the Applicant was entitled. This glosses over the fact that it did not meet the requirements of the regulation as noted in paragraph 22. Furthermore, while Respondent's counsel did make efforts through this hearing to ensure the records were complete and work with the Applicant to narrow the issues, the Respondent, through Ms. Phillips' evidence, did itself delve into governance issues (and cast aspersions on the motivation of the Applicant) which distracted from the more straightforward and core issue of whether the Applicant was entitled to any further records. In the circumstances, I exercise my discretion not to award costs to the Respondent.

D. ORDER

[25] The Tribunal Orders that:

1. Under s. 1.44 (1) 4 of the Act, and within 30 days of the date of this decision, the Respondent shall pay costs to the Applicant in the amount of $200.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: May 28, 2025