

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 17, 2022

CASE: 2022-00348R

Citation: Boodram v. Peel Standard Condominium Corporation No. 843, 2022 ONCAT 126

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,

Kavita Boodram
Self-Represented

The Respondent,

Peel Standard Condominium Corporation No.843
Represented by Djordje Todorovic, Agent

Hearing: Written Online Hearing – August 23, 2022 to November 1, 2022

REASONS FOR DECISION

A. INTRODUCTION

- [1] Kavita Boodram (the “Applicant”) is a unit owner in Peel Standard Condominium Corporation No.843 (the “Respondent” or “PSCC 843”). The Applicant submitted two records requests on January 17, 2022, and a third request on April 22, 2022. PSCC 843 never provided the Applicant with the mandated Board Response form; however, all of the records have now been provided, though several were not provided within the time prescribed by Regulation 48/01 of the *Condominium Act, 1998* (the “Act”).
- [2] The Applicant asserts that the Respondent’s failure to provide the Board Response forms is in effect a refusal to provide records and a penalty is warranted. In addition, she asserts that the failure to provide records within the prescribed period also constitutes a refusal. Regarding the record of owners and mortgagees and the record of notices related to leases provided to her in response to her April 22 request, she alleges that these are not adequate. The Applicant asks that the Respondent be ordered to complete the Board Response forms, and to provide a statement of its reason for the redaction of some board minutes, and that a penalty of \$5000 and her Tribunal filing fee be awarded.

- [3] The Respondent, represented by its condominium manager Djordje Todorovic at this hearing, states that all requested records have been provided and that it has responded to all questions posed about the documents, including the reasons for redaction. It acknowledges that it did not complete and send a Board Response form but submits that it should be unnecessary to do so now. Therefore, the only issue remaining, in its submission, is whether a penalty is warranted.
- [4] What became clear through this hearing is that the Applicant is well informed about both her entitlement to records under the Act and what is required of a condominium corporation in terms of its record keeping and when responding to a request for records. The fact that the Respondent appeared to fall short of those requirements is of significant concern to her and she submits that the Respondent needs a reminder (by way of a penalty) that it needs to exercise more care and diligence fulfilling its obligations under the Act.
- [5] The issues to be decided by me in this hearing are as follows:
1. Has the Respondent refused to provide records to the Applicant without a reasonable excuse, either because the Board Response form has not been provided or because records were provided late? If so, is a penalty warranted under s. 1.44 (1) 6 of the Act, and in what amount?
 2. Are the records provided adequate? And if not, what is the appropriate remedy?
 3. Should costs be awarded?

B. RESULT

- [6] For the reasons set out below, I find that a penalty is not warranted. The current board of the Respondent shall be required to take, or re-take, as the case may be, the mandatory training courses provided by the Condominium Authority of Ontario (the "CAO"). The Respondent is required to provide the record of owners and mortgagees and the record of notices of leases in accordance with the Act. The Applicant is awarded her costs of \$200.

C. ISSUES & ANALYSIS

- [7] In this decision, I will not refer to all submissions before me; I will only address the evidence and submissions relevant to my analysis and the issues to be decided by me. Before addressing each specific issue, the chronology of the records requests is set out to provide important context for the dispute.

- [8] The Applicant submitted two Request for Records forms on January 17, 2022. In one of these, she requested minutes of a reconvened AGM held in November 2021. In the second, she requested board meeting minutes of October, November, and December 2021, and January 2022.
- [9] As noted above, PSCC 843 did not respond to the request on the prescribed form. On February 17, 2022, the Applicant sent an email to the Respondent noting that 30 days had passed since her request. There was no response, so she sent another email on February 22. On that day, PSCC 843 responded, indicating that her request “is being handled” and explaining that they were in the midst of a management change and the temporary manager was trying to “get on top of things.” On February 28, Mr. Todorovic sent an email to the Applicant, introducing himself to her as the new condominium manager and acknowledged receipt of her records requests. He stated that he would need some additional time to retrieve the records. On March 1, Mr. Todorovic emailed the minutes for the October 13 and December 6, 2021, board meetings and the 2020 AGM minutes.
- [10] The Applicant responded on March 2 stating that the records were incomplete, as well as late, and that the Board Response form had still not been provided. Mr. Todorovic replied on March 3 that the transfer of documents from the previous condominium manager was taking some time, and further that the minutes of the January 10, 2022, board meeting had not been approved by the board yet. The next board meeting was scheduled for March 10, 2022. On March 3, Mr. Todorovic advised the Applicant that he had received the November 2021 AGM minutes from the minute taker and provided these to her.
- [11] Several emails were exchanged between the Applicant and Mr. Todorovic on March 3 and 4. The Applicant continued to remind him that she was supposed to receive a Board Response form, and that not all the requested documents were provided. She reiterated that the delay was not justified.
- [12] On March 10, 2022, the Respondent provided board minutes for a meeting held on October 28, 2021. On April 22, 2022, the Applicant submitted another Request for Records for the declaration, by-laws, rules, the record of owners and mortgagees, the record of notices of leases of units under s. 83 of the Act and the board minutes for the meetings held from January to March 2022. The Applicant then sent an email to the Respondent on April 23, 2022, pointing out that she still had not received the minutes from the January board meeting or the Board Response forms from the previous requests and repeated that the board was not following the appropriate steps.
- [13] The Respondent replied on April 25, confirming receipt of the latest request and

attaching the declaration, by-laws and rules and the January 10, 2022 minutes which had been approved at the March 10 board meeting; the minutes for the March meeting were also provided. The Applicant noted that the 'smoke free' rule was missing from the documents provided. This was ultimately provided in Stage 2 - Mediation. There is no evidence of an intention not to provide this rule, but rather it appears to have been omitted through oversight. The Respondent did not send a Board Response form with these documents, a continuing issue for the Applicant. In addition, the Applicant noted that some of the minutes had been redacted with no explanation provided.

[14] Over the next few weeks, and within the prescribed 30-day period, the Respondent provided a list of owners and mortgagees. It is unclear from the evidence whether the record of notices of leases of units under s. 83 of the Act was provided though the Respondent appeared agreeable to provide lease agreements.

Issue 1: Has the Respondent refused to provide records to the Applicant without a reasonable excuse, either because the Board Response form has not been provided or because records were provided late? If so, is a penalty warranted under s. 1.44(1)6 of the Act, and in what amount?

[15] Section 1.44(1)6 of the Act states that the Tribunal may order a penalty to be paid to an applicant if it finds that the corporation has, without reasonable excuse, refused to permit a person to examine or obtain records. The maximum penalty payable is \$5000 and the Applicant is seeking that amount.

[16] In this case, for the reasons set out below, I find that the Respondent did not refuse to provide the records without reasonable excuse and therefore I award no penalty.

[17] Based on the evidence, I accept that some of the records, in particular those requested in January 2022, were provided late. In some previous cases before it, the Tribunal has concluded that late provision of records is an effective refusal; however, each case must be decided on its particular facts. Here, the Applicant was advised on February 22, approximately 36 days after the request was made that the Respondent was working on the request, but that they were undergoing a management change and hence there were delays. While the obligation to provide records rests on the corporation, not the condominium manager, the reasonableness of the corporation's actions, or reason for inaction, must be considered. By February 28, Mr. Todorovic was communicating with the Applicant and continued to keep her informed as he endeavoured to provide the requested records. There was no refusal to provide records, but rather a delay, though not lengthy, in providing them. I find that the Respondent provided a reasonable

excuse for that delay.

- [18] What seemed to rankle the Applicant more is the failure to provide the Board Response form. I do agree that had the Respondent completed the form and provided an additional document which explained why certain minutes were missing or why redactions were done, some of the Applicant's valid concerns may have been resolved. Section 13.3(6) of Ontario Regulation 48/01 ("O. Reg. 48/01") clearly states that when a corporation receives a request for records it shall respond within 30 days using the prescribed form. Section 13.8(1) of O. Reg. 48/01 states that a record that is redacted shall be accompanied by a separate written document setting out the board's reasons for the redaction. The Respondent provided the records, but it did not comply with the requirements set out in s. 13 of O. Reg. 48/01. However, there is no provision in the Act for the Tribunal to assess a penalty for that failure to comply with O. Reg. 48/01.
- [19] In addition to the penalty, the Applicant requested in the hearing that I order that the Board Response forms be completed and that the Respondent provide a statement outlining the reasons for the redaction. I will not do so. Provision of these documents is moot at this point. In April, through emails, the Respondent advised that minutes were redacted because certain parts related to a parking issue and a specific owner. Missing pages from some minutes (one page for each of the five sets of board minutes provided) were mistakenly omitted because of Mr. Todorovic's confusion about whether in-camera minutes had to be disclosed. These pages, redacted, were provided in Stage 2 – Mediation. Further, the parties advised that the Stage 2 member had reviewed the redacted minutes and concluded that they were properly redacted.
- [20] While I am not ordering a penalty, based on the evidence I will make an order under s. 1.44 (1) 7 of the Act. This section allows the Tribunal to address underlying issues that have likely given rise to the particular application. In this case, the Respondent's submissions reveal a lack of understanding of the requirements of the corporation under both the Act and the O. Reg. 48/01. It appears that the Respondent is simply not in the practice of completing the Board Response form, yet it is obliged to do so, whether or not it is providing the record. Further, as will be addressed below when dealing with the issue of adequacy, the corporation, whether the board or management, or both, seems to be lacking in understanding of how some records must be kept, which only highlights the need for education.
- [21] There is an expectation that all directors have a basic level of understanding of the Act and its regulations and to that end, they are required under the Act to complete

mandatory training courses provided by the CAO. Based on the evidence before me, it appears that this board needs a refresher which will, hopefully, assist it in more diligently responding to records requests so that responses are timely and complete. Therefore, under subsection 1.44 (1) 7 of the Act, I am ordering that each of the current board members takes or retakes the mandatory director training prescribed under section 29 (2) (e) of the Act within 30 days of the date of this decision and provide the Applicant with an attestation confirming completion. I note here that the Tribunal has no jurisdiction over condominium managers and therefore this order for remedial training only applies to the board. I do, however, strongly encourage Mr. Todorovic to more fully educate himself about the requirements of the Act.

Issue 2: Are the records provided adequate? And if not, what is the appropriate remedy?

- [22] The issue of adequacy arises in relation to three of the records. The Applicant alleges that the minutes are not complete because the board minutes of November 2021 and February 2022 were not provided though they are referenced in later board minutes. Through his evidence, Mr. Todorovic clarified that there was a typographical error and that he had confirmed with the corporation's solicitor there was no board meeting in November 2021 or February 2022. I accept his evidence. I also note that in his email to the Applicant on March 3, he stated that the January board minutes had not been approved yet which is consistent with no board meeting held in February 2022.
- [23] Though the Respondent purported to provide the record of owners and mortgagees sought by the Applicant in her April 22 request, it is, as pointed out by the Applicant, not compliant with the requirements of s. 46.1 (3) (b) and (d) of the Act. What the Respondent provided is a list of the owners. The list did not include service addresses or whether there was agreement to a method of electronic communication. This record is therefore not adequate. I am ordering that the record of owners and mortgagees, compliant with s. 46.1 (3) (b) and (d) be provided to the Applicant within 10 days of this decision.
- [24] The Applicant also requested the record of notices of leases of units under s. 83 of the Act. As noted above, it is unclear what the Applicant did receive; the Respondent appeared prepared to provide lease agreements. However, this is not what s. 83 of the Act requires (and indeed this may be contrary to what the Act permits in s.55(4)(c)); therefore, such a record would be inadequate. Section 83 (1) requires the owner of a unit who leases the unit to notify the corporation that the unit is leased, within 10 days of doing so. Section 83 (3) requires the

corporation to keep a record of the notices it receives. There is no evidence before me to suggest that this has been provided to the Applicant. I am ordering that it be provided within 10 days of this decision.

- [25] This apparent lack of understanding of what the Act requires for record keeping underlines the need for a refresher as noted above in paragraphs 20 and 21. Whether by management or board, the corporation must be more diligent in its adherence to the Act's requirements of them. The mandatory director training should remedy this issue.

Issue 3: Should costs be awarded?

- [26] The Applicant is seeking reimbursement of her Tribunal fees of \$200. Under s.1.44 (1) 4 of the Act the Tribunal may make an order directing a party to the proceeding to pay the costs of another party to the proceeding. The CAT Rules of Practice and the CAT Practice Direction: Approach to Ordering Costs provide guidelines for the awarding of such costs. Under Rule 48.1 of the CAT's Rules of Practice, if a case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.
- [27] Though I have not awarded a penalty as requested by the Applicant, I have ordered a remedy to address the Applicant's underlying concern about PSCC 843's responses to her records requests and have ordered that certain records, determined to be inadequate, be provided. To that extent, the Applicant was successful and therefore I award her costs of \$200 to file this application.

D. CONCLUSION

- [28] The Applicant's focus in this case was an award of a penalty for the Respondent's lack of diligence in complying with O. Reg. 48/01. I have concluded that the Act does not give the Tribunal authority to award a penalty for a failure to comply with the requirements of s. 13 of O. Reg. 48/01. It can only award a penalty where there has been a refusal, either explicit or deemed, to provide the record without a reasonable excuse. Though the Respondent may not have competently dealt with the Applicant's requests there was, on the evidence, a genuine effort to provide the records. On these facts, the Respondent's shortcomings are better remedied through education and training, not by imposition of a penalty.
- [29] Further, as noted earlier in this decision, the Applicant is very well informed about the Act and her entitlement as an owner, and she is insistent that PSCC 834 adhere to all its obligations. As became apparent through the Respondent's

submissions, it finds her approach to be challenging and difficult to deal with. However, regardless of how “difficult” a condominium corporation perceives an owner to be, their entitlement to records as set out in the Act remains and a corporation’s adherence to the Act and its regulations does not diminish. I do remind the parties that in the context of the ongoing relationship between owner and board, reasonableness and cooperation should be exercised.

E. ORDER

[30] The Tribunal Orders that:

1. Under s. 1.44 (1) 1 of the Act:
 - a. the Respondent shall, within 10 days of the date of this decision, provide to the Applicant the record of owners and mortgagees in compliance with s. 46.1 of the Act.
 - b. the Respondent shall, within 10 days of the date of this decision, provide to the Applicant a record of notices of leases it received as required by s. 83 (3) of the Act.
2. Under s. 1.44 (1) 7 of the Act, and within 30 days of the date of this decision, each of the current directors of the Respondent shall take or retake, as the case may be, the mandatory director training course provided by the CAO as prescribed pursuant to s. 29 (2) (e) of the Act. The Respondent shall provide the Applicant with an attestation confirming the directors’ completion of the courses within 30 days of the date of this decision.
3. Under s. 1.44 (1) 1 of the Act, within 30 days of the date of this decision, the Respondent shall pay the Applicant costs in the amount of \$200.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: November 17, 2022