

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Heeney, Backhouse and Nakatsuru JJ.

BETWEEN:)
)
WATERLOO NORTH CONDOMINIUM) *Michael Ruhl and Jamie Cockburn, for the*
CORPORATION NO. 37) Appellant
)
Appellant)
)
– and –)
)
ANTOANETA CLAUDIA BAHA) *Jarvis Postnikoff, for the Respondent and*
) Intervenor
Respondent)
)
– and –)
)
JOSEPH MURPHY)
Intervenor) **HEARD at Hamilton:** June 4, 2025

BACKHOUSE J.

REASONS FOR JUDGMENT

- [1] The appellant, the Waterloo North Condominium Corporation No. 37 (“WNCC 37”), appeals the August 26, 2024 decision (the Decision”) of the Condominium Authority Tribunal (“CAT” or the “Tribunal”) dismissing its request to have a dog removed from Ms. Basra’s unit. WNCC 37 sought to have the dog removed on the basis that its presence in the unit was contrary to the one dog rule in WNCC 37’s Rules, the resultant unreasonable noise and the fact that Ms. Baha and Mr. Murphy had not established entitlement to accommodation pursuant to the *Human Rights Code*, R.S.O., c. H.19 (the “Code”).
- [2] WNCC 37 argues that the CAT erred in law with respect to the applicable framework for determining eligibility for accommodation and prejudged the accommodation issue. It

further argues that the CAT breached its right to procedural fairness by ordering a damages award and by granting Ms. Baha and Mr. Murphy an exception to paying common expenses in relation to the costs incurred in the underlying application.

[3] I would dismiss the appeal for the reasons set out below.

Background

[4] The facts are not in dispute. Ms. Baha and her partner, Mr. Murphy, moved into her unit in WNCC 37 on January 9, 2023. Both had dogs at the time.

[5] Shortly after Ms. Baha and Mr. Murphy moved into the unit, Mr. Bohnert, the president of the WNCC 37's board of directors and resident in the unit below Ms. Baha's began making noise complaints about dogs barking. The CAT found that Mr. Bohnert was the only resident to complain.

[6] On March 20, 2023, the condominium manager circulated a notice to all owners and occupants that stated that "there are quite a few owners who have more than one pet in their unit" and directing people to Rule 7.01 as well as Rule 7.12 which states that guests/visitors are not permitted to bring their pets to the property. On that same day, Ms. Baha emailed the condominium manager to notify her that both she and her partner have service dogs and that both dogs had appropriate documentation as required by the *Accessibility for Ontarians with Disabilities Act* and the *Code*. Management responded to this email stating that Ms. Baha's partner was "not an owner and therefore could not bring a pet onto the property, service animal or not," and that, regarding Ms. Baha's claim for a service animal, they needed proper medical documentation and the doctor's letter was not sufficient. As CAT noted in its Decision, this latter point seemed redundant given that Ms. Baha as an owner was permitted to have a dog in her unit in any event.

[7] On May 4, 2023, the first of several letters from WNCC 37's legal counsel was sent to Ms. Baha. In that letter, counsel stated that it was WNCC 37's understanding that there were three (and potentially four) dogs being kept in the unit and descriptions of the dogs were provided. This appeared to be based on photos that had been taken of Ms. Baha, copies of which were attached to the letter. Regarding Mr. Murphy's dog, if an accommodation was required under the *Code*, documentation was requested. Counsel noted that numerous complaints had been received regarding excessive barking which was causing a nuisance –no less than 12 occasions over the preceding three months. Finally, counsel alluded to a rule requiring that all dogs had to be of a weight to allow them to be easily carried.

[8] The CAT found that there does not appear to be any rule of this condominium restricting the weight or size of dogs.

[9] On May 24, 2023, Ms. Baha responded to this letter advising, among other things, that there were two service dogs in the unit and attached a note dated January 16, 2023 from Mr. Murphy's psychiatrist supporting his request for a service dog.

- [10] On June 16, 2023, counsel for WNCC 37 wrote again to Ms. Baha, acknowledging that there were two, not three or four dogs in the unit. Further, counsel stated in the letter that the psychiatrist's letter was not evidence to establish the existence and nature of the disability as enumerated by the *Code*, the medical need to be accommodated, and the nexus between the disability and the requested accommodation.
- [11] Ms. Baha responded on June 20, 2023. She questioned WNCC 37's enforcement of the one-pet rule in that they had become aware, through conversations with various residents, that others had multiple pets in their units, with knowledge of the board. She also requested that Mr. Bohnert recuse himself from any decision-making process in relation to her and Mr. Murphy as he "seems to have embarked on a personal vendetta against us ... he is the person who took the two pictures ..." and was the only person who has complained about their dogs. In an email to Ms. Baha on July 14, 2023, counsel for WNCC 37 provided Ms. Baha with board minutes from January to May 2023, noting that Mr. Bohnert had recused himself.
- [12] On July 13, 2023, Ms. Baha provided another letter dated July 12, 2023 from Mr. Murphy's psychiatrist, Dr. Patelis-Siotis, who advised that Mr. Murphy had been under her care for several years and that he met the definition of disability under the *Code* and the *Accessibility for Ontarians with Disabilities Act*. Dr. Patelis-Siotis further stated that "Due to his disability he has certain limitations and the presence of his service dog is necessary to alleviate his symptoms and to help him live an independent life."
- [13] This letter was not accepted as sufficient by WNCC 37. In its letter of August 9, 2023, counsel advised that Dr. Patelis-Soulis' letter did not provide the information requested in their letter of June 16, 2023, and requested that Mr. Murphy "provide medical documentation indicating the nature of the disability, and the medical **need** rather than the **preference** for the animal" (emphasis in the original). Counsel requested this documentation by August 25, 2023, failing which WNCC 37 would be considering commencing an application to the CAT seeking orders for compliance.
- [14] WNCC 37 filed an application at the CAT on October 17, 2023 to have a dog removed from Ms. Baha's unit. On February 13, 2024, counsel for WNCC 37 advised Ms. Baha and Mr. Murphy that it was no longer disputing that Mr. Murphy has a disability, but that the previously requested documentation required the specific symptoms, conditions and/or needs which may require an accommodation to be included. Counsel stated, "In other words, **please advise why a second dog at the Unit is needed to accommodate Mr. Murphy's medically related needs arising from his disability, rather than any other method of accommodation**" (emphasis in the original). Counsel also referred to numerous complaints of excessive noise emanating from the unit – dog barking – causing a nuisance.
- [15] A further medical letter dated April 15, 2024 was submitted to WNCC 37 from Dr. Amit Misra, Mr. Murphy's doctor, who wrote about the exacerbation of Mr. Murphy's mental health. He opined that Mr. Murphy had experienced a notable deterioration in his mental health since the initiation of the dispute including a documented increase in daily anxiety symptoms as well as heightened irritability. He noted that Mr. Murphy reported feeling

under constant pressure and stress. Dr. Misra opined that the increased mental health symptoms are having a negative impact on Mr. Murphy's day to day functioning including his ability to sleep. Mr. Murphy was reported as having increased relational difficulties with his partner due to the added stressors both are experiencing. Dr. Misra further opined that the uncertainty surrounding their housing situation has served as a significant stressor, further exacerbating mental health symptoms and an escalation of frequency of visits to his clinic to manage acute anxiety episodes.

- [16] WNCC 37 acknowledges that where a condominium has enacted pet or animal restrictions in the governing documents of the corporation: (a) the *Code* — which has primacy over the *Condominium Act*, 19982 — may require the condominium corporation to provide an exemption from the pet or animal restrictions as a form of 'accommodation;' (b) the CAT has adjudicative decision-making authority with respect to disputes concerning pet or animal-related accommodation in the condominium context.

The Decision

- [17] The CAT held that WNCC 37 failed to meet its onus to establish, on a balance of probabilities, that the noise from the dogs' barking is unreasonable and creating a nuisance.
- [18] The Panel notes that Mr. Murphy was present in court during the hearing with his service dog and there was no barking or disturbance.
- [19] The CAT dismissed the application, and determined that: (a) WNCC 37 was not entitled to demand details regarding Mr. Murphy's disability and related needs: i.e., following *Vokrii et al*, 2024 ONCAT 78, it held that where opinions provided by qualified medical professionals support the position that the particular animal is the appropriate accommodation, it is not appropriate for the condominium's board or counsel, or the Tribunal, to disregard those opinions and assume that some other animal would suffice. In this case, Mr. Murphy's physicians clearly identified his dog, Rylie, as the appropriate accommodation to meet his needs. The CAT rejected WNCC 37's position that additional information was needed for it to propose other potential accommodations, and to determine whether one dog for both Ms. Baha and Mr. Murphy may be sufficient.
- [20] The CAT found that there was no compelling evidence that allowing Rylie to remain in the unit, as the second dog in the unit, would cause any undue hardship to WNCC 37.
- [21] On the issue of damages, the CAT cited s. [1.44](#) of the *Condominium Act*, 1998, S.O. 1998, c. 19 which grants the Tribunal the authority to make an order for compensation for damages up to \$25,000 as a result of an act of non-compliance and/or directing any other relief it considers to be fair in the circumstances.
- [22] The WNCC 37 argued that the claim for damages was a new issue raised in closing submissions and thus it ought not to be considered and that in any case, there was no compelling or causal evidence of the damages.

- [23] The CAT held that while the exact nature of the damages had not been articulated by Ms. Baha and Mr. Murphy, a claim for damages was a significant factor for Ms. Baha, when she sought a stay of the CAT proceeding in favour of the HRTO case between the parties (which stay was denied). The CAT held that it was clear on the record that such an award was sought and could not have been a surprise to WNCC 37.
- [24] The CAT noted that s. 1.44(1) 3 does not require that the damages be a direct result of an act of non-compliance, although there should be a nexus. It found that the evidence established that, as a result of the WNCC 37's unreasonable stance on the accommodation request, contrary to rr. 7.06 and 7.08, Ms. Baha and Mr. Murphy suffered discriminatory treatment, injury to their dignity, feelings and self-respect and had to leave their home. Noting that this case was unusual given the subsequent departure of Ms. Baha and Mr. Murphy from the home, the CAT held it was fair and reasonable to award damages in the amount of \$15,000, being the costs associated with ownership of the unit while they have been living elsewhere.
- [25] The CAT held that Ms. Baha and Mr. Murphy were entitled to a common expense credit to ensure that they would not have to pay any portion of the damages award, or the legal costs incurred by WNCC 37 in the course of prosecuting the CAT claim. The Panel was advised that this credit amounted to less than \$100.

Legal Framework

- [26] The WNCC 37 Rules provide as follows:
- Rule 7.06 of the Rules provides for exceptions to the restrictions, rules and prohibitions respecting pets for medical reasons, made at the discretion of the board reasonably exercised, on receipt of adequate documentation evidencing that a prohibited pet is a trained service animal.
 - Rule 7.08 of the Rules provides that the board has discretion but not the obligation to permit other pets that might otherwise be prohibited, if the need for them is established by sufficient medical evidence of a licensed Ontario physician.
 - Section [117\(2\)](#) of the *Condominium Act* prohibits activities in a unit, the common elements or the assets that results in the creation or continuation of unreasonable noise that is a nuisance or any other prescribed nuisance, annoyance or disruption to an individual in a unit.

Jurisdiction

- [27] This court has jurisdiction to hear the appeal pursuant to s. [1.46](#) of the *Condominium Act*, which provides that a party to a proceeding before the CAT may appeal the order to the Divisional Court on a question of law.

Standard of Review

[28] The appellate standards of review apply to statutory appeals. The standard of review on questions of law is correctness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019 SCC 65](#), [2019] 4 S.C.R. 653, at para. 37. The same standard applies to questions of procedural fairness in statutory appeals: *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, at para.27.

Issues

[29] The issues in this proceeding are as follows:

[1] Did the CAT err in law with respect to the applicable framework for determining eligibility for accommodations and finding that Ms. Baha and Mr. Murphy are permitted to keep the second dog in the unit?

[2] Did the CAT breach WNCC 37's right to procedural fairness by prejudging the accommodation issue?

[3] Did the CAT breach WNCC 37's right to procedural fairness by ordering the damages award?

[4] Did the CAT Member err in law by granting Ms. Baha and Mr. Murphy an exception to the common expenses payable in relation to the costs incurred in the underlying application?

Analysis

Issue 1: The CAT did not err in law with respect to the applicable framework for determining eligibility for accommodations and finding that Ms. Baha and Mr. Murphy are permitted to keep the second dog in the unit

[30] WNCC 37 submits that the CAT failed to apply the correct framework applicable to accommodations requests and unlawfully delegated its decision-making authority in concluding that a recommendation from a qualified medical professional for a specific support animal was determinative of the accommodation analysis. It submitted that there was a complete absence of evidence of Mr. Murphy's needs arising from his disability and the need to be accommodated by his service dog.

[31] WNCC 37 disputed that Mr. Murphy had a disability in its application. It eventually conceded that he had a disability but maintained the position that he had refused to provide the required information to establish that his requested form of accommodation (a second dog) was appropriate and necessary, rather than any other form of accommodation.

[32] I disagree with WNCC 37's submission that there was an absence of evidence of Mr. Murphy's needs arising from his disability and the need to be accommodated by his service dog. The medical evidence before the CAT, which it accepted, was that Mr. Murphy suffered from a disability and that his service dog, Rylie, was necessary to alleviate his symptoms. The CAT found at para. 25 of the Decision:

[25] A person seeking accommodation must provide a reasonable and sufficient amount of information about their disability-related needs. I find that Mr. Murphy has done so. Mr. Murphy testified that in the spring of 2020 his specialist prescribed a service dog to alleviate his symptoms. He acquired his dog (“Rylie”) in February 2021. This evidence was not challenged by WNCC 37, although whether the dog was appropriately trained seemed to become a matter of contention for WNCC 37 at the hearing. He has provided two letters from his treating psychiatrist, the last one being in July 2023 at which time the psychiatrist wrote that the presence of his service dog is necessary to alleviate his symptoms. In addition, Mr. Murphy provided a letter dated April 15, 2024, from another of his treating physicians describing daily anxiety symptoms exacerbated, in the physician’s assessment, by the dispute about the presence of Rylie in the unit. Whether or not this dispute has worsened his symptoms, the letter does indicate that another of Mr. Murphy’s treating physicians has linked the presence of Rylie to a medically-related need arising from his disability.

[33] There is no merit to WNCC 37’s submission that the CAT discounted relevant authorities. Rather, the CAT found that context is important and distinguished the authorities relating to accommodation in the employment context and earlier authorities upon which WNCC 37 relied in favour of *Peel Condominium Corporation No. 415 v. Vokrri*, 2024 ONCAT 78 (“*Vokrri*”) at paras. 25-27. The CAT made the following findings of fact and law in the Decision:

[29]...As *Vokrri* indicates, where opinions provided by qualified medical professionals support the position that the particular animal is the appropriate accommodation, it is not appropriate for the condominium’s board or counsel, or the Tribunal, to disregard those opinions and assume that some other animal would suffice.

[30] Mr. Murphy’s physicians have clearly identified Rylie, his existing service dog, as the appropriate accommodation to meet his specific needs. Nevertheless, WNCC 37 submits that it needs further information to be able to propose other potential accommodation methods – in other words, to substitute its opinion for that of the medical professionals, as alluded to in WNCC 37’s counsel’s letter of February 13, 2024. One such proposal made in submissions was that one dog may be sufficient – that is, that Ms. Baha and Mr. Murphy share a service dog, thereby bringing themselves into compliance with the one-pet rule. As stated in *Vokrri*, dogs are not widgets, and even less so when considering service dogs which serve an individual’s specific needs.

- [34] Section [8.7](#) of the Ontario Human Right Commission’s policy on ableism and discrimination based on disability sets out that an accommodation provider is not entitled to substitute its own opinion for that of a doctor’s documentation. Where more information about a person’s disability is needed, the information requested must be the least intrusive of the person’s privacy while still giving the accommodation provider enough information to make the accommodation. It is also a violation of the *Code* to require a person with a mental disability to divulge private medical information as a condition of maintaining his or her accommodation: *Eagleson Co-Operative Homes Inc. v. Théberge*, [\[2006\] O.J. No 4585](#), at para. [26](#).
- [35] There is no merit to WNCC 37’s submission that CAT delegated its decision-making authority to any other entity or individual. I find that the Decision was made on the evidence, including the medical evidence of Mr. Murphy’s treating physicians that was before it, that Mr. Murphy suffers from anxiety and requires the accommodation of the presence of his service dog to live an independent life.
- [36] This ground of appeal is dismissed.

Issue 2: The CAT did not breach WNCC 37’s right to procedural fairness by prejudging the accommodation issue

- [37] WNCC 37 submits that it was denied procedural fairness when the CAT precluded it from asking questions regarding the dog’s background and details regarding Mr. Murphy’s condition.
- [38] The CAT also disallowed certain questions the respondents sought to ask. Deference is owed to procedural rulings made by a tribunal which has authority to control its own process.
- [39] There was nothing procedurally unfair about the CAT’s ruling that the questions regarding the dog’s background were irrelevant and that the *Code* did not require a person seeking accommodation to disclose a diagnosis or symptoms.
- [40] This ground of appeal is dismissed.

Issue 3: The CAT did not breach WNCC 37’s right to procedural fairness by ordering the damages award

- [41] WNCC 37 submits that it was denied procedural fairness because Ms. Baha and Mr. Murphy did not make a claim for damages at the outset of the proceeding and did not call evidence to prove their damages, depriving WNCC 37 of the opportunity to respond fulsomely.
- [42] WNCC 37 was aware from Stage 2 of the proceedings and the February 27, 2024 Summary and Order which followed that Ms. Baha and Mr. Murphy were asserting that WNCC 37’s approach has been discriminatory, that they had been unnecessarily harassed and that they may seek damages on this basis.

[43] Sections 1.44 (1) 3 and 1.44 (1) 7 of the *Condominium Act* state, respectively, that the Tribunal may make an order for compensation for damage as a result of an act of non-compliance up to \$25,000 and/or an order directing whatever other relief the Tribunal considers fair in the circumstances.

[44] At paras. 40-42 of the Decision, the CAT held:

[40] ...In the case of *Rahman v. Peel Standard Condominium Corporation No. 779* (“*Rahman*”), the Tribunal awarded Mr. Rahman \$1,500 pursuant to s. 1.44 (1) 3 of the *Act*, having found an act of non-compliance with the *Act* and the condominium’s declaration in that the condominium denied him access to accessible parking spaces provided under the declaration.

[41] The *Rahman* decision was appealed by the condominium corporation to the Divisional Court. At paragraph 33 of the decision, upholding the damage award, the Divisional Court stated: “It was clear on the record that Mr. Rahman was seeking such an award, and in my view it would have been open to the Tribunal to make such an award even in the absence of an express request for it: part of the role of the Tribunal is to oversee the conduct of condominium corporations.”

[42] WNCC 37 asserted, in response to the claim for damages, that this was a new issue raised by the Respondent and Intervenor in closing submissions and ought not to be considered. However, though the exact nature of damages had not been articulated by them, a claim for damages was a significant factor for the Respondent when she sought a stay of this proceeding in favour of the HRTO case. As in *Rahman*, it was clear on the record that such an award was sought. It could not have been a surprise to WNCC 37, given this and the evidence submitted, that a claim for damages would be made.

[45] At para. 37 of the Decision the CAT held:

...It appears to me that in its handling of this case, WNCC 37 became too entrenched in its position, too focussed on enforcement of the strict letter of its rules without due regard to the *Code* accommodation principles. The result was that the matter was propelled forward when a resolution ought to have been achieved. Its flawed perception of this case is highlighted in WNCC 37’s closing submission that the Respondent and Intervenor “have not provided adequate evidence to justify preferencing their private interests over that of the entire community by providing them with an exemption to the Condominium’s Rules to keep *two* dogs in their

Unit.”(emphasis in the original) It is a significant mischaracterization of a request for accommodation due to disability to describe it as a “private interest”. Indeed, to the contrary, it is in the interest of all owners and residents of a condominium community that individuals with disabilities are not subjected to discriminatory treatment under their rules.

- [46] The CAT found that there was evidence of the required nexus between WNCC 37’s act of non-compliance and Ms. Baha and Mr. Murphy moving out of their home to mitigate the stress they were experiencing in their unit at WNCC 37 as a result of the continuing dispute. The CAT found that the evidence of Ms. Baha and Mr. Murphy was not challenged on this point. The CAT further found that WNCC 37 could have but did not question in its reply the claim of Ms. Baha and Mr. Murphy that \$3000 per month were the costs for interest, taxes and condominium fees associated with ownership of the unit for 5 months while they lived elsewhere, upon which the CAT based the damages claim of \$15,000.
- [47] There was evidence before the CAT of Ms. Baha and Mr. Murphy moving out of their unit on the basis of the recommendation of Mr. Murphy’s doctor. There was also evidence that they had been out of their unit for 5 months. The CAT made a finding of fact that Ms. Baha and Mr. Murphy’s claim for damages could not have been a surprise to WNCC 37.
- [48] WNCC 37 could have sought to have the evidence reopened if it wished to challenge the particulars of Ms. Baha and Mr. Murphy’s damage claim which were not articulated until closing submissions. WNCC 37 had the right of reply and did reply. The CAT explained in its Decision how it quantified the damage award.
- [49] The procedure CAT adopted for this matter was an informal one of a written online hearing. Ms. Baha and Mr. Murphy were not represented by counsel. One of the *Baker* factors to be considered in determining the content of the duty of fairness is the choice of procedure made by the tribunal itself.¹ The informal procedure appropriate to a proceeding where parties may often be representing themselves suggests that something less than the formal notice requirements of a civil action will be sufficient to fulfil the duty of fairness. I find that WNCC 37 was not denied procedural fairness in regard to the damage award.
- [50] The CAT found that this was an unusual case where it was fair and appropriate to award damages, following *Rahman, supra*, where the court found that it would have been open to the Tribunal to make such an award even in the absence of an express request for it as part of the role of the Tribunal to oversee the conduct of condominium corporations. In awarding damages to Ms. Baha and Mr. Murphy, the CAT clearly found that WNCC 37 had fallen far short in its handling of their request for accommodation due to disability and the *Code* accommodation principles. Deference is owed to its finding.

¹ *Baker v. Canada (Minister of Citizenship and Immigration)* 1999 CanLII 699 (SCC) at para.27.

[51] This ground of appeal is dismissed.

Issue 4: Did the CAT err in law by granting Ms. Baha and Mr. Murphy an exception to the common expenses payable in relation to the costs incurred in the underlying application?

[52] Having been advised that the common expense credit the CAT granted Ms. Baha and Mr. Murphy amounted to less than \$100, the *de minimis* rule applies which means that it can be disregarded because of its insignificance.

Conclusion

[53] In the result, the appeal is dismissed.

Costs

[54] In accordance with the parties' agreement, Ms. Baha and Mr. Murphy are entitled to their costs fixed in the partial indemnity all inclusive amount of \$17,500. Without precluding them from making submissions on costs being awarded on a full indemnity basis which they reserved the right to do if successful, our initial impression, without prejudice, is that the costs awarded seem appropriate in the circumstances.

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| | _____ | Backhouse J. |
| I agree | _____ | Heeney J. |
| I agree | _____ | Nakatsuru J. |

Released: June 13, 2025

CITATION: Waterloo North Condominium Corporation No. 37 v. Baha, 2025 ONSC 3486
DIVISIONAL COURT FILE NO.: 320/24
DATE: 20250613

ONTARIO
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BETWEEN:

WATERLOO NORTH CONDOMINIUM
CORPORATION NO. 37

Appellant

– and –

ANTOANETA CLAUDIA BAHA

Respondent

– and –

JOSEPH MURPHY

Intervenor

REASONS FOR JUDGMENT

Backhouse J.

Released: June 13, 2025