

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: November 6, 2025

CASE: 2025-00460N

Citation: Leeds Condominium Corporation No. 14 v. Favron, 2025 ONCAT 185

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

Member: Roger Bilodeau, Member

The Applicant,

Leeds Condominium Corporation No. 14

Represented by Sophie Ryder, Counsel

The Respondent,

Christopher Favron

Not participating

Hearing: Written Online Hearing – August 18, 2025 to October 17, 2025

REASONS FOR DECISION

A. INTRODUCTION

- [1] The Applicant, Leeds Condominium Corporation No. 14 (“LCC 14”), filed an application with the Tribunal seeking an order requiring the Respondent, Christopher Favron, to comply with the provisions of its governing documents in relation to smoking and with s. 117(2)(b) of the Condominium Act, 1998 (the “Act”) which prohibits the creation or continuation of an activity that causes unreasonable smoke and/or odour that is a nuisance. The Respondent owns and resides in a unit in LCC 14.
- [2] LCC 14 is also requesting an order that the Respondent must reimburse it for the costs that it has incurred to enforce the relevant provisions of its governing documents and of the Act, in addition to its costs to pursue this Tribunal application, on a full indemnity basis. In the alternative, LCC 14 submits that it is entitled to its costs on a substantial indemnity basis.
- [3] The Respondent joined this case but did not participate. Despite several messages from myself and Tribunal staff encouraging him to participate at various

points in the proceeding, he provided no evidence or submissions. I am satisfied that the Respondent received notice of the case, that he was aware of this hearing and that he chose not to participate. This matter therefore proceeded as a default hearing.

- [4] For the reasons that follow, I order the Respondent to immediately cease smoking in his unit and on the common elements of LCC 14, in compliance with LCC 14's governing documents and s. 117(2)(b) of the Act. I also order the Respondent to pay to LCC 14 compensation for damages in the amount of \$1,387,02, legal costs in the amount of \$3,955.00 and \$261.47 in disbursements and filing fees, all within 60 days of the date of this decision.

B. ISSUES & ANALYSIS

Issue no 1: Has the Respondent breached LCC 14's no smoking rule and s. 117(2)(b) of the Act?

- [5] LCC 14 submits that the Respondent has been smoking inside his unit and on the common elements, contrary to its no smoking rule which prohibits all forms of smoking on its property, including in the units, on patios or balconies and on the common elements.
- [6] LCC 14 adds that its no smoking rule came into effect on October 31, 2022. The rule allowed for existing smokers to be legacied for a limited period of time. The Respondent did not register for the legacy provision in the time that was allowed to do so following the coming into force of the rule
- [7] LCC 14 further submits that the Respondent has breached s. 117(2)(b) of the Act which states:

“No person shall carry on an activity or permit an activity to be carried on in a unit, the common elements or the assets, if any, of the corporation if the activity results in the creation of or continuation of,

...

(b) any other prescribed nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation.”

- [8] The other prescribed nuisances, annoyances, and disruptions which are referred to in s. 117(2)(b) are set out in s. 26 of Ontario Regulation 48/01 (“O. Reg. 48/01”) and include smoke and odour.
- [9] Since at least August 2024, LCC 14 has received numerous complaints from other

residents that smoke, and smoke odours, have been transferring from the Respondent's unit to the common elements and other units.

- [10] In response to these complaints, LCC 14 sent various warnings by way of notices of violation and emails to the Respondent to advise him to take steps to rectify the issue, as well as to remind him that as of October 31, 2022, the building is a smoke-free building (with legaced residents as the only exception) and that he must refrain from smoking in his unit or on the common elements. Despite LCC 14's warnings and letters to the Respondent, it has continued to receive complaints of smoke and smoke odour migration from his unit to the common elements and other units.
- [11] LCC 14 has filed in evidence the details of complaints regarding smoke and odour migration from the Respondent's unit to the common elements and other units, as set out in the sworn statements provided by Sheila McCrady (owner of a unit and member of its board of directors) and Dean Burgoon (condominium manager), as well as in copies of email messages from various owners\residents which were addressed to its board or to Mr. Burgoon. Between August 2024 and March 2025, a minimum of seven complaints were lodged with either Ms. McCrady or Mr. Burgoon. In addition, Ms. McCrady and another unit owner both personally witnessed the Respondent while smoking in the lobby or within inches of the entrance doorway. The evidence also confirms that the Respondent is the only known person to smoke on his floor.
- [12] In a final attempt to get the Respondent to comply with the no smoking rule, legal counsel for LCC 14 sent a compliance letter to the Respondent on May 29, 2025. That letter sets out the full details of the complaints received between October 2024 and March 2025, as well as of the notices of violation and emails which were addressed to the Respondent by LCC 14 as of August 2024. It also contains a copy of all relevant provisions of LCC 14's governing documents and of the Act. LCC 14 has continued to receive complaints of smoke and odour since that letter of May 29, 2025.
- [13] I have reviewed all the evidence submitted by LCC 14 and as a result, I find that the Respondent has failed to comply with LCC 14's no smoking rule and that he has created or allowed the creation of unreasonable smoke and odour that is a nuisance, contrary to s. 117(2)(b) of the Act. I therefore order that he immediately refrain from smoking in the unit or on the common elements, in compliance with LCC 14's no smoking rule.

Issue no 2: Should LCC 14 be awarded costs and fees? If so, in what amount?

[14] LCC 14 submits that it is entitled to its costs on a full indemnity basis or in the alternative, on a substantial indemnity basis. In support of its position, LCC 14 submits that despite its requests for compliance, the Respondent has demonstrated a persistent breach of LCC 14's no smoking rule and that he has disregarded his obligations under its governing documents and the Act. LCC 14 also adds that the Respondent has shown no respect for other owners' residents and that he has failed to respect its efforts to resolve this matter.

[15] LCC 14 has submitted a Bill of Costs (which includes all legal fees and disbursements) in the total amount of \$6,557.28, which is arrived at as follows:

1. \$1,227.45 in legal fees to seek compliance with its no smoking rule ("pre-CAT costs");
2. \$4,344.07 in legal fees to prepare and participate in this proceeding ("CAT costs");
3. \$724.29 for the Harmonized Sales Tax (HST) on its total legal fees of \$5,571.52; and
4. \$261.47 for disbursements, which include the Tribunal filing fees.

[16] LCC 14 claims its pre-CAT costs under s. 1.44(1) 3 of the Act, which allows the Tribunal to make

"[a]n order directing a party to the proceeding to pay compensation for damages incurred by another party to the proceeding as a result of an act of noncompliance up to the greater of \$25,000 or the amount, if any, that is prescribed."

[17] There is no doubt that LCC 14 investigated the complaints it received and made several attempts to gain compliance before incurring any costs. It only escalated the matter and incurred the cost of a legal letter and of assessing with its legal counsel the steps required to initiate this application when these attempts failed. Based on the evidence, I find that LCC 14 incurred these costs reasonably and that it is entitled under article 4 of its Declaration to be indemnified for these costs. I therefore order the Respondent to pay to LCC 14 the amount of \$1,227.45 (plus HST at 13% of that amount) for damages incurred as a result of his noncompliance with the no smoking rule.

[18] LCC 14 has also requested from the Respondent the sum of \$4,344.07 for its legal costs, plus HST for its participation in this proceeding, as well as \$261.47 in disbursements and Tribunal filing fees.

[19] S. 1.44(1) 4 of the Act states that the Tribunal may make

“[a]n order directing a party to the proceeding to pay the costs of another party to the proceeding.” For its part, s. 1.44(2) of the Act provides that an order for costs “shall be determined in accordance with the rules of the Tribunal”.

[20] In addition, the relevant rules of the Tribunal’s Rules of Practice in regard to determining costs read as follows:

“48.1 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.

48.2 The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements (“costs”) incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party’s behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.”

[21] Finally, the Tribunal’s “Practice Direction: Approach to Ordering Costs” provides guidance regarding the awarding of costs. Among the factors to be considered are whether a party or representative’s conduct was unreasonable, for an improper purpose, or caused a delay or expense; whether the case was filed in bad faith or for an improper purpose; the conduct of all parties and representatives; the potential impact an order for costs would have on the parties; the indemnification provisions in a corporation’s governing documents and whether the parties attempted to resolve the issues in dispute before the CAT case was filed.

[22] LCC 14 submits that the Respondent was sufficiently warned in writing, on at least three occasions, by its condominium manager and legal counsel, that it would seek to recover from him all costs incurred if compliance was not achieved. LCC 14 also submits that it had a statutory obligation under the Act to seek compliance and that its actions were reasonable and necessary. In an effort to resolve the issues promptly and effectively, without needing to incur significant legal costs, LCC 14 adds that it made good faith attempts to resolve this matter in Stages 1 and 2.

[23] LCC 14 therefore maintains that this case (and its associated costs) could have been entirely avoided in the absence of the Respondent’s blatant disregard for the rules, his refusal to take steps to address complaints of smoke migration (since at

least August 2024) and his failure to participate in this proceeding. LCC 14 adds that the Respondent failed to participate in all stages of these proceedings and that in light of all the factors set out above, an order for full indemnity costs is justified. LCC 14 also adds that where an owner breaches the Act and/or its governing documents, it is required to take action pursuant to s. 17(3) of the Act and that its duties under the Act are mandatory. As such, LCC 14 reiterates that it is entitled to be fully indemnified for its costs in this matter.

- [24] Finally, LCC 14 has referred to a previous Tribunal decision in support of its claim for full indemnity costs: see Peel Condominium Corporation No. 96 v Psoufimis, 2021 ONCAT 48, as well as to the following court decision: Chan v Toronto Standard Condominium Corporation No. 1834, 2011 ONSC 108.
- [25] Notwithstanding the abovementioned decisions referred to by LCC 14, costs awards are discretionary and as a general rule, the Tribunal will not award full indemnity costs to a successful party.
- [26] In this case, LCC 14 was wholly successful in showing that there was a clear violation of the no smoking rule. The Respondent was aware of the repeated and ongoing breach of the no smoking rule and was clearly notified that he could be responsible for legal costs if the matter proceeded to the Tribunal. Notwithstanding those factors, he took no steps to comply with the no smoking rule.
- [27] On the other hand, I also find that the legal costs claimed by LCC 14, namely \$4,344.07, for a default proceeding with limited submissions, are somewhat higher than might be expected in cases such as this one. Having considered all of the above factors, I therefore order the Respondent to pay the Applicant \$3,500 for legal fees incurred in the course of these proceedings, plus HST on that amount at the rate of 13%. I also order the Respondent to pay to LCC 14 the amount of \$261.47 for its Tribunal filing fees and disbursements.

C. ORDER

[28] The Tribunal Orders that:

1. The Respondent must immediately cease smoking in his unit and/or on the common elements of LCC 14 and comply with LCC 14's no smoking rule and s. 117(2)(b) of the Act, which requires him to ensure that no activity is taking place in the unit or on the common elements that causes unreasonable smoke or odour that is a nuisance.

2. Pursuant to s. 1.44(1) 3 of the Act, the Respondent shall pay to LCC 14 compensation for damages in the amount of \$1,227.45, plus HST at the rate of 13% for a total of \$1,387,02, within 60 days of the date of this decision.
3. Pursuant to s. 1.44(1) 4 of the Act, the Respondent shall pay to LCC 14 the sum of \$3,500.00, plus HST at the rate of 13% for a total of \$3,955.00, for legal costs related to its participation in this proceeding, as well as the amount of \$261.47 for its Tribunal filing fees and disbursements, within 60 days of the date of this decision.

Roger Bilodeau
Member, Condominium Authority Tribunal

Released on: November 6, 2025