

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: February 2, 2022

CASE: 2021-00056R

Citation: Sakala v. York Condominium Corporation No. 344, 2022 ONCAT 11

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

Member: Nicole Aylwin, Member

The Applicant,

Helene Sakala

Self-Represented

The Respondent,

York Condominium Corporation No. 344

Represented by Justin McLarty, Counsel

Hearing: Written Online Hearing – October 19, 2021 to January 12, 2022

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant Helene Sakala is a unit owner of York Condominium Corporation No. 344 (“YCC 344”), the Respondent. Shortly after the Annual General Meeting (“AGM”) of November 23, 2020, Ms. Sakala submitted a request for records, on the mandated form, to YCC 344, for all instruments appointing a proxy or ballot for the 2020 AGM. She specified that she wanted both “paper and virtual” instruments. During the hearing Ms. Sakala clarified that she believed her request included a request for a copy of “the summary excel spreadsheet” used to record information provided on the paper proxies. Ms. Sakala also clarified she was seeking unredacted copies of the proxy forms, which she submits she is entitled to because she has collected consent forms from other unit owners giving her permission to do so. Finally, Ms. Sakala disputes the estimated fee that YCC 344 is proposing to charge to prepare the requested records for examination.

[2] It is YCC 344’s position that Ms. Sakala is entitled to the proxy forms she requests but that information identifying units or owners other than Ms. Sakala would have to be redacted, regardless of any existing consent forms. Further, it argues that the *Condominium Act, 1998* (the “Act”), is clear in its definition of what constitutes an

“instrument appointing a proxy” and that the excel spreadsheet requested is not included in this definition. Thus, it did not contemplate providing this record to Ms. Sakala in its response to her records request as it was not asked for specifically. YCC 344 therefore submits that it has not denied Ms. Sakala this record without a reasonable excuse. Finally, YCC 344 provides that the estimated cost to prepare the records to be obtained by Ms. Sakala is reasonable and in line with other Tribunal decisions that have addressed the question of fees.

- [3] Ms. Sakala requests an order from this Tribunal directing YCC 344 to provide unredacted copies of the proxy forms, an unredacted copy of the summary excel spreadsheet and damages in the amount of \$25000 and costs in the amount of \$691.
- [4] I find that Ms. Sakala is not entitled to receive unredacted copies of the proxy forms. Sections 55(4)(d) of the Act and s.13.11(2)4 of *Ontario Regulation 48/01* (“O. Reg 48/01”) specifically exclude personal information of owners on proxy forms from the records an owner is entitled to examine. I further find that the summary excel spreadsheet does not constitute an instrument appointing a proxy and that Ms. Sakala must make a separate request for this record to YCC 344. Finally, I find that the fee estimate provided by YCC 344 for producing the requested records is reasonable and must be paid by Ms. Sakala if she wishes to receive requested records. No costs or penalties are awarded to either party.
- [5] Finally, before setting out the reasons for my decision, some background is helpful. The records request made by Ms. Sakala is an action borne out of her concern that the voting at the 2020 AGM meeting, which was held virtually using the platform GetQuorum, was subject to error. She maintains that there were voting inaccuracies and mistakes made in the way in which the proxy forms were handled at the meeting, among other voting issues. She submits that these concerns are the reason for her request for the unredacted copies of the proxies and the summary excel spreadsheet. In addition to these concerns, Ms. Sakala also made several accusations of wrongdoing against various people involved in conducting the AGM and raised as an issue YCC 344’s apparent intent to destroy the proxies after the election (an action that was not undertaken). While I recognize that Ms. Sakala’s concerns are very real to her, issues related to the conduct of the meeting, the way voting took place and disputes over the results of the election are not issues within the Tribunal’s jurisdiction. Despite being advised of this on several occasions, significant allegations and submissions were made about these issues. While I have reviewed all the submissions made, submissions about issues that are not before me have not been considered in this decision, nor I have referred in my reasons to each and every submission provided.

B. ISSUES & ANALYSIS

Issue no 1: Is Ms. Sakala entitled to examine or obtain unredacted copies of some or all the proxies and ballots from the November 23, 2020 AGM?

- [6] It is Ms. Sakala’s position that she is entitled to obtain unredacted copies of at least some of the proxies and ballots from the 2020 AGM. While Ms. Sakala recognizes the Act sets out some exclusions to an owner’s right to examine or obtain copies of records, with one such exclusion being information which may identify specific units or owners, she argues that in this case there are two reasons this exclusion should not apply. First, she contends that viewing of unredacted proxies is necessary for determining if voting errors were made and second, she argues that she has received consent forms from various owners which authorize her to see their unredacted proxies. None of these consent forms were disclosed as evidence in this hearing.
- [7] It is YCC 344’s position that Ms. Sakala may only examine or obtain the unredacted copy of the proxy or ballot submitted for her own unit. It maintains that all other proxies and ballots submitted at the AGM by other unit owners must be redacted in accordance with the Act.
- [8] There are several sections of the Act relevant for determining this issue. Section 55(1) requires a condominium corporation to keep adequate records and sets out a list of those records, which includes “all instruments appointing a proxy or ballots for a meeting of owners that are submitted at the meeting.”
- [9] Section 55(3), determines the right of an owner to examine or obtain copies of the corporation’s records, it reads:
- The corporation shall permit an owner, a purchaser or a mortgagee of a unit or an agent of one of them duly authorized in writing, to examine or obtain copies of the records of the corporation in accordance with the regulations, except those records described in subsection (4).
- [10] Section 55(4) of the Act, sets out exclusions to an owner’s right to examine or obtain copies of records states:
- The right to examine or obtain copies of records under subsection (3) does not apply to...
- (d) any prescribed records.
- [11] And finally, s.13.11(2) of O. Reg 48/01 sets out the records prescribed for

purposes of s. 55(4)(d) of the Act and states:

(2) The following are prescribed records for the purpose of clause 55 (4) (d) of the Act...

4. Any portion of a ballot or proxy form that identifies specific units in a corporation or owners in a corporation, unless a by-law of the corporation provides otherwise. O. Reg. 180/17, s. 17 (1).

(3) A corporation may disclose a record described in paragraph 1 of subsection (2) if the owner or mortgagee, as the case may be, in respect of whom the record relates has provided written consent to the corporation to allow a copy of the record to be made available for examination or for delivery by the corporation for the purpose of section 55 of the Act. O. Reg. 180/17, s. 17 (1).

(4) A corporation may disclose a record described in paragraph 2 or 3 of subsection (2) but, subject to subsection (5), shall not disclose any portion of the record that identifies specific units or owners in the corporation. O. Reg. 180/17, s. 17 (1).

[12] The provisions of the Act and O. Reg. 48/01 as set out above are very clear. While a corporation may provide proxy and ballots for examination, they shall not disclose any portion of the record that identifies specific units or owners in the corporation, unless a by-law of the corporation permits this. There is no evidence before me that YCC 344 has such a by-law.

[13] There is also no evidence before me to indicate that, in this case, a signed consent form would entitle Ms. Sakala to view unredacted copies of other unit's proxy forms. I note that Ms. Sakala has disclosed no such consent forms as evidence in this hearing, nor, by her own admission, has she provided any of these forms to YCC 344 for examination. And, while it is Ms. Sakala's position that she undertook the process of attempting to obtain consent forms because she received advice from a legal professional indicating that consent forms should be "treated as if the owner had him or herself requested a copy of his or her proxy", ultimately the Act determines entitlement. In this case, it has not been demonstrated that the Act would allow Ms. Sakala to receive unredacted copies of proxies for those units for which she claims to have consent forms.

[14] Therefore, I find that the Applicant is not entitled to receive unredacted copies of the proxy forms of other unit owners submitted for YCC 344's November 23, 2020 AGM. The proxy forms must be redacted for information which identifies specific units or owners of YCC 344.

Issue no 2: Is Ms. Sakala entitled to examine or obtain a copy of the excel summary sheet sent to GetQuorum as part of the November 23, 2020 AGM? If so, is Ms. Sakala entitled to obtain an unredacted copy of this record?

- [15] On her Request for Records form, Ms. Sakala asked for “all instruments appointing a proxy or ballots for a meeting of owners that are submitted at the meeting”. The request specified that she would like “paper and virtual”. At the outset of this hearing Ms. Sakala clarified that she believed her request included a request for a copy of “the summary excel spreadsheet” used to record the paper proxy information received by YCC 344. According to Ms. Sakala, this spreadsheet was prepared by the condominium manager, who manually transcribed the information contained on paper proxies into this summary document, which was then submitted to GetQuorum, the platform used to host the virtual meeting and vote at the AGM. According to Ms. Sakala, once received by GetQuorum, this spreadsheet was used to assist in totaling all the votes that were to be counted in the GetQuorum system. Because this spreadsheet provided a summary of proxy information provided to YCC 344 and was used to tally AGM votes, Ms. Sakala takes the position that this spreadsheet constitutes an instrument appointing a proxy or a ballot and that it should have been provided to her upon her request.
- [16] YCC 344 disagrees. They argue that the definition of what constitutes a “instrument appointing a proxy or ballot”, is clearly defined in s. 52(4) of the Act and that the spreadsheet constitutes a work product not an instrument appointing a proxy or ballot. YCC 344 also argues that because the definition of an instrument appointing a proxy or ballot is clearly defined in the Act, they had no way of knowing that Ms. Sakala’s request included a request for the excel summary sheet since it was not asked for explicitly. Therefore, they submit that they have not refused to allow Ms. Sakala to obtain or examine a copy of this record without a reasonable excuse. They also maintain that a separate request should be made to YCC 344 for this document should Ms. Sakala wish to receive it.
- [17] Section 52(4) of the Act reads:
- (4) An instrument appointing a proxy shall be in writing under the hand of the appointer or the appointer’s attorney, shall be for one or more particular meetings of owners, shall comply with the regulations and shall be in the prescribed form.
- [18] The wording of the Act is clear. To be an instrument appointing a proxy, the instrument must be in writing under the hand of the appointer or the appointers attorney and it must be on the prescribed form. The spreadsheet does not meet these criteria. In fact, the spreadsheet itself, part of which was submitted as

evidence, makes clear that it is being used to summarize information contained in the paper proxies. The instructions at the top of the spreadsheet read:

“The Corporation must summarize the votes by paper proxy. These paper proxy numbers will be added to our final results; This summary must only include valid paper proxies that are going to be counted...”

[19] Thus, I find that in this case, the summary excel spreadsheet does not meet the criteria that would make it an instrument appointing a proxy or a ballot. If Ms. Sakala would like summary excel sheet, she must make a separate request for it, on the required form, so that YCC 344 may have the mandated 30 days to respond. I also find that YCC 344 did not refuse this record to Ms. Sakala. Based on the wording of Ms. Sakala’s request, I agree with YCC 344 that it was reasonable to assume that what Ms. Sakala was requesting was only the proxies and ballots associated with the AGM.

Issue no 3: Is YCC 344 entitled to charge a fee for the photocopying and labour related to this request and if so, what is an appropriate amount?

- [20] Having established that Ms. Sakala is not entitled to unredacted copies of the proxies and ballots for the 2020 AGM, I must decide if YCC 344 is entitled to charge a fee for the photocopying and labor associated with producing redacted copies of the proxies and if the fee proposed by YCC 344 is reasonable.
- [21] Proxies are not considered a core-record as defined by the Act and thus O.Reg 48/01 s. 13(3)(8) allows YCC 344 to charge a fee for the actual labour and delivery costs it incurs for making the records requested available.
- [22] In its response to Ms. Sakala’s request for records, YCC 344 estimated the cost of providing the records to Ms. Sakala for examination to be a total of \$326.40. A total of \$176.40 was requested for the printing of 882 pages at the cost of \$0.20 per page, and \$150.00 was requested for five hours of labour, at a rate of \$30.00 per hour, to make copies of the proxies and ballots, and make appropriate redactions.
- [23] YCC 344 submits that there are a total of 147 proxies and ballots subject to Ms. Sakala’s request, totalling 441 double sided pages. They argue that as the original proxies and ballots cannot be redacted, they must be copied to preserve the originals and produce redacted versions. They submit that this amounts to 882 pages of printing.
- [24] Ms. Sakala submits that these costs are not reasonable and are being charged because of what she considers to be an error on the part of YCC 344. It is Ms.

Sakala's position that YCC 344 mistakenly provided some owners with double-sided copies of the proxy forms when the proxy forms should have been printed single-sided. She maintains that had all the proxy forms been printed single sided it would be easier to remove owner information and the number of pages that would need to be printed would be cut in half, thus cutting the cost of printing in half as well. She argues that the proxy form itself clearly reads that the form must be printed one-sided for ease of redaction.

- [25] YCC 344 disputes this, arguing that while the prescribed proxy form indicates that it can be printed single-sided it is not required. YCC 344 submits that a corporation may still choose to print forms double sided to save on printing and mailing costs. They also note that owners can choose to print their own proxy form and may choose to print these double sided.
- [26] I do not need to decide whether the mandated proxy form must be distributed to owners as a single- or double-sided document. Regardless of how the proxies were initially printed, the original proxy forms will need to be copied to be redacted. The question before me is what is a reasonable cost for printing and redacting copies of these forms. Whether the forms were provided to unit owners single or double sided, does not change the number of pages that will need to be copied by YCC 344 to meet Ms. Sakala's request.
- [27] Based on the proxy form submitted into evidence, each proxy form is three pages. If there are 147 proxies and ballots to be reprinted at three pages each this amount to 441 pages. However, YCC 344 has claimed that it will need to print 882 pages. It has not provided sufficient justification as to why. Therefore, I find that to reproduce the proxies and ballots for redaction YCC 344 will need to copy 441 pages – that is 147 proxies at three pages per proxy. YCC 344 may charge Ms. Sakala no more than the allowed \$0.20 per page for printing 441 pages, amounting to a total of \$88.20.
- [28] YCC 344 estimates five hours of labour to complete the copying and redaction work. It submits that this is a reasonable estimate considering the number of proxies and ballots to be copied and redacted. YCC 344 argues its estimate is consistent with other Tribunal decisions, such as *North York Medicare Centre v. Toronto Standard Condominium Corporation No. 2519*¹, where it was found that two minutes per page was a reasonable estimate to be used for calculating the labour hours needed for redacting records. In this case, I agree that five hours of

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labour is a reasonable estimate for reprinting and redacting a total of 441 pages. This estimate amounts to less than two minutes per page. I also find that \$30 per hour is reasonable hourly rate given the nature of the work required.

- [29] Therefore, I will order that YCC 344 is to provide the redacted records to Ms. Sakala in paper format within 30 days of the date it receives payment of \$232.20 from Ms. Sakala (\$88.20 for printing and \$150 for labour). If YCC 344's actual printing and labour costs are less than \$232.20, it shall reimburse the difference to Ms. Sakala, as per s.13.8(1)(d) of O. Reg 48/01.

Issue no 4: Should YCC 344 be required to pay damages under s.144(1)3 of the Act or a penalty under s.1.44(1)6 of the Act for refusing to provide requested records without a reasonable excuse, and if so, in what amount?

- [30] Ms. Sakala asks the Tribunal to award her \$25000 in damages for having to incur what she characterizes as the 'bad behavior' of the YCC 344 and its alleged attempts to prevent her from obtaining consent forms from unit owners, consent forms that she believed would allow her to obtain unredacted copies of their proxies. It is her position that board members, condominium management and legal counsel all breached the duty to act honestly and submits that several directors have contravened s.37(1) of the Act which deals with standards of care.
- [31] Section 1.44(1)3 of the Act states that this Tribunal may order "compensation for damages incurred by another party to the proceeding as a result of an act of non-compliance up to the greater of \$25,000 or the amount, if any, that is prescribed." While Ms. Sakala has provided submissions regarding damages that she maintains she has incurred because of alleged bad behavior by YCC 344 she has not offered any compelling evidence that convinces me she incurred any damages resulting directly from YCC 344's refusal to provide the records requested or from an act of non-compliance related to this Tribunal's jurisdiction. Questions of damages related to alleged misconduct that fall outside of the jurisdiction of the Tribunal are not for me to address.
- [32] The Tribunal also has the authority to order a penalty as set out in s.1.44(1)6 of the Act, if the Tribunal finds that the condominium corporation has without reasonable excuse refused to permit the person to examine or obtain copies of records under s.55(3) of the Act. In this case I have made no such finding. YCC 344 provided a timely response to Ms. Sakala's request for records and provided a reasonable cost estimate to produce redacted copies of records. While they did refuse to provide Ms. Sakala unredacted copies of the proxies, I have found that they were right to do so. I have also found that based on Ms. Sakala's original request, there was no way that YCC 344 could have known she also sought the

summary excel spreadsheet and thus did not refuse that record without a reasonable excuse. Therefore, I do not find a penalty is appropriate in this case.

Issue no 5: Should there be an award of costs in this case?

- [33] Ms. Sakala has requested that the Tribunal award her costs in the amount of \$691. She has requested \$200 in Tribunal filing fees, and various costs related to the printing and distributing of the consent forms she sent to unit owners. These costs include: \$16 for paper, \$20 for envelopes, \$418 for stamps and \$237 for ink cartridges.
- [34] 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.
- [35] Under Rule 48.1, if a case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final decision, the unsuccessful User may be required to pay the successful User's CAT fees and reasonable dispute-related expenses. In this case, I find that the Ms. Sakala is not entitled to recover her filing fees because she was not successful in her claims.
- [36] The other costs Ms. Sakala requests are not related to her participation in this Tribunal process, but rather expenses she incurred to solicit consent forms from unit owners. I find that in this case these costs do not constitute a reasonable dispute related expense and will not be awarded.

C. ORDER

- [37] The Tribunal Orders that:
1. Ms. Sakala shall pay to YCC 344 a fee of \$232.20 for the printing and labour costs associated with the redaction of all instruments appointing a proxy or ballots for the November 23, 2020 Annual General Meeting.
 2. YCC 344 shall provide the redacted records, as described in paragraph 1 above, to Ms. Sakala in paper format within 30 days of its receipt of the fee of \$232.20. If YCC 344's actual printing and labour costs are less than \$232.20, it shall reimburse the difference to Ms. Sakala.
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Nicole Aylwin
Member, Condominium Authority Tribunal

Released on: February 2, 2022