

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: July 29, 2022

CASE: 2021-00265R

Citation: King v. York Region Condominium Corporation No. 692, 2022 ONCAT 80

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

Member: Patricia McQuaid, Vice-Chair

The Applicant,

Malcolm King

Self-Represented

The Respondent,

York Region Condominium Corporation No. 692

Represented by Misbah Raja, Agent

Hearing: Written Online Hearing – May 6, 2022 to July 14, 2022

REASONS FOR DECISION

A. INTRODUCTION

- [1] Malcolm King (the “Applicant”) is a unit owner in York Region Condominium Corporation No. 692 (“YRCC 692”), the Respondent. The Applicant has submitted two requests for records to YRCC 692, dated August 10, 2021, (Request 1) and November 10, 2021 (Request 2). Both requests relate to minutes of annual general meetings (“AGM”). In Request 1, the Applicant seeks the minutes of the October 22, 2020 AGM and the GetQuorum audio recording of the meeting and in Request 2, the Applicant seeks the draft minutes and GetQuorum audio recording of the May 6, 2021 AGM. In addition to these two formal requests, the Applicant had also requested, though not on the prescribed request for records form, the ‘original’ draft minutes of the May 9, 2019, AGM. The parties agreed that this ‘informal’ request should be dealt with in this hearing given that the issues arising from all three requests are the same.
- [2] The Applicant has acknowledged that he has received the draft minutes in advance of the AGMs in each of 2019, 2020 and 2021. It is at the AGM that owners are given the opportunity to approve the draft minutes of the previous year,

subject to any amendments. The parties clarified that what the Applicant is actually seeking are the “original” draft minutes of the recording secretary (MinuteTakers Inc.) from which the draft minutes that were circulated to unit owners with the notice of meeting are composed (these will be referred to as the original draft minutes in this decision), as well as the audio recording for each of the 2020 and 2021 AGMs. YRCC 692 has refused to provide the original draft minutes and the audio recordings on the basis that they are not records of the corporation.

- [3] At the crux of this case is the Applicant’s dispute about the accuracy and integrity of the draft and signed minutes from each of the AGMs, and in particular, statements made by the former board president, Lawrence Chandler, at each of those meetings. He believes that the original draft minutes of MinuteTakers Inc. and the GetQuorum audio recordings of the 2020 and 2021 AGMs (there was no audio recording of the 2019 AGM as it was held in person) are important to show exactly what was said at the meetings and would be evidence of “unauthorized changes, deletions and/or additions to the draft and signed minutes” of the three AGMs.
- [4] I note that the Applicant did consider requesting a summons to representatives of both Minutetakers Inc. and GetQuorum for them to produce the original draft minutes and the audio recordings, as they should be produced to both him and to me as the adjudicator. In response, I advised the Applicant that those documents are the very documents in issue for which I would be determining entitlement under the *Condominium Act, 1998* (the “Act”) and therefore a summons and order for production was not appropriate. The Applicant accepted this explanation.
- [5] The issues to be decided by me in this hearing are as follows:
1. Are the original draft minutes of the 2019, 2020 and 2021 AGMs records of YRCC 692 which the Applicant is entitled to examine or obtain a copy?
 2. Are the audio recordings of the 2020 and 2021 AGMs records of YRCC 692 which the Applicant is entitled to obtain a copy?
 3. If the Applicant is entitled to either or both of the original draft minutes and the audio recordings, has YRCC 692 refused to provide these without a reasonable excuse? Further, if there has been such a refusal, should a penalty be awarded and if so, in what amount?
 4. Should costs be awarded?

B. RESULT

[6] For the reasons set out below, I find that the original draft minutes are not records of the corporation pursuant to the Act and therefore the Applicant is not entitled to examine or obtain a copy of them. Regarding the audio recordings, I find that these are not records to which the Applicant is entitled having regard to the purpose of the Act. As there is no entitlement, the refusals were not without reasonable excuse and therefore s. 1.44(1)6 of the Act, regarding penalty, is not applicable. Finally, as the Applicant was not successful, no costs shall be awarded to him. YRCC 692 has not requested any costs and none are awarded to it.

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. I commend the parties for their thorough and well-organized submissions in this case. The Applicant's attention to detail was significant.

[8] Before I address the issues, I note first that the Applicant's ongoing dispute about the wording of the various AGM minutes appears to be indicative of a distrust and lack of confidence in the current board of YRCC 692. The Applicant is a former board member and former board president. The Tribunal has commented in previous decisions that record disputes are often just one facet or symptom of other contentious issues between an owner and board. This case is no exception. And as stated in the past, board governance disputes are not within the Tribunal's jurisdiction, even if framed as a records dispute.

Background of this dispute

[9] The context for the requests and the specific errors described by the Applicant are necessary for an understanding of what the Applicant is seeking and the findings that follow. Therefore, I will review, in some detail, the genesis of this dispute.

[10] Prior to submitting the records requests, the Applicant wrote four letters to the board; the first was dated April 26, 2021¹. In that letter he pointed out what he described as serious errors in the signed and draft minutes of the May 9, 2019, AGM. He proposed several amendments:

1. The first was to add a sentence which he asserted was omitted from the draft minutes, the statement being: "The president stated that the information meeting held on November 14, 2018 was unconfrontational and

¹ Exhibit 6

professional.”

2. Remove: “Response: The board is not planning to conduct repairs on the exclusive use common element terraces in 2019 or 2020 as the balcony project is still ongoing.” And replace it with: “Response: The President replied that the Board has no plans to make repairs to terraces over the coming year.”
3. Remove the following phrase relating to the Reserve Fund Study: ‘...although it was received by the Board on November 27, 2019.’ As it should be 2018 and replace with : ...although it was received by the board attached to a letter from Belanger Engineering dated November 27, 2018”.
4. A correction to the statement: “The President advised that the budget package was sent out in early January 2019 along with a Form 15.” Because the date was incorrect, the Applicant proposed it be changed to: “The President advised that the budget package was sent out attached to a letter dated November 23, 2018 along with a Form 15.”

[11] In this letter, the Applicant stated that moving forward, the “Board should adopt a formal ‘approval and control policy’ on all communications to owners to ensure the veracity of those communications before issuing any documents to owners.” The Applicant reiterated his request for these changes in letters to the board dated June 17, July 9, and July 26, 2021. He noted that amendments that he moved (and which he states were approved) at the 2020 AGM to reflect these requested changes were not inserted into the minutes, and that this was a serious departure from proper governance practices and breaches of the Code of Ethics.² The YRCC 692 board, in a June 24, 2021 response to the Applicant, took the position that these matters were resolved at the May 6, 2021 AGM. The Applicant strongly disagreed and stated that if the board chose to maintain its position, he would proceed to file an application with the CAT.

[12] In his evidence, the Applicant indicated that though his issues with the 2019 draft and signed minutes were the focus of his letters, he also had issues with the “misrepresentations and fabrications contained in the 2020 Draft Minutes sent to owners in advance of the May 6, 2021 AGM.” These related to an exchange between the Applicant and Mr. Chandler on the cost of the \$2.1 million renovation project. The Applicant believes that the original draft minutes and the GetQuorum recording will confirm his actual questions to Mr. Chandler and the actual

² Exhibit 7

responses.

- [13] Regarding Request 2, the request for the original draft minutes and the audio recording of the May 6, 2021, AGM, the Applicant states that his purpose was to ensure that another owner's (Gary Grierson) amendments made at the May 6, 2021 AGM were properly and accurately noted. These amendments were ones which that owner stated were required to strike out misrepresentations in the 2020 draft AGM minutes relating to the \$2.1 million renovation project. And again, these amendments dealt with statements attributed to Mr. Chandler.
- [14] Based on the evidence, it seems clear that the Applicant is not alleging that he is unable to ascertain from the AGM minutes what and how the business of the board is transacted. Rather, he asserts that the minutes contain errors in dates, or that exchanges in the meetings were not written in a manner which he believes accurately reflect what was said. Some of the corrections he has pursued amount to wordsmithing.
- [15] The board did respond to make some corrections. On April 14, 2022, it notified owners of three motions to be presented at the May 5, 2022 AGM.³ The first correction involved striking out the phrase which was the second requested change by the Applicant in paragraph 10, above. The second motion proposed to delete the sentence which the Applicant pointed out was incorrect in the fourth requested change in paragraph 10. The third motion appeared to relate to Mr. Grierson's amendments at the May 6, 2021 AGM. The three motions were approved at the 2022 AGM. I do not infer, as suggested by the Applicant that the fact that the motions were proposed by the board is effectively an admission by the board that the AGM minutes had been "tampered with"; rather, a more plausible inference is that the board was seeking to bring the issues raised by the Applicant since April 2021 to a reasonable conclusion.
- [16] In his evidence, the Applicant stated that due to technical difficulties in the GetQuorum virtual meeting, he was unable to participate in much of the 2022 AGM including the discussions and voting on the three motions. He stated that he would have moved that a phrase or sentence be added, consistent with his earlier proposed changes and that of Mr. Grierson.
- [17] What became clear through this evidence is that attention to detail is very important to the Applicant. However, the purpose of meeting minutes must be

³ Exhibit 15

considered. The Applicant submitted that it is the board's responsibility to ensure the records of the corporation are accurate, and cites *Yeung v. Metropolitan Toronto Condominium Corporation No. 1136* where the Tribunal states at paragraph 15⁴:

Considering the scheme and provisions of the Act and the submissions of both parties in this case, I have no hesitation in affirming that accuracy is a component of adequacy in respect of condominium records. I also find that the use of the word "adequate" in the legislation suggests, in and of itself, tolerance for a degree of imperfection. The question is just how much inaccuracy may be tolerated before a record is rendered inadequate to, as Cavarzan J. stated, "permit [the condominium corporation] to fulfill its duties and obligations."

[18] In *Yeung*, the Tribunal stated that while board minutes call for a reasonably high standard and expectation of accuracy, it is not a standard of perfection. At paragraph 21, the Tribunal stated:

Owners should be entitled, therefore, to expect that the minutes correctly describe the procedures followed by the board of directors when transacting the business of the corporation.

However, the Tribunal also found that where an error is minor it cannot be said to undermine the purpose of minutes. In matters before the Tribunal, we see a wide variety of minutes in terms of form and detail. Issues about the adequacy and accuracy of minutes arise frequently. It is well settled law at this point that the purpose of minutes is to document a board's business transactions and to show how the corporation's affairs are controlled, managed and administered. Minutes may not contain details to a level a particular owner may prefer, but there is no need for granular detail. Minutes are not required to be a verbatim account of a meeting.⁵

[19] Based on the evidence and the jurisprudence, I find that there no basis to conclude that any inaccuracies alleged by the Applicant would render the minutes inadequate. There is no assertion that the minutes do not show how the corporation's affairs are controlled, managed and administered. Instead, the Applicant's focus is at a level of granular detail. He contends that the board should be required to provide the requested original draft minutes and the audio recording to allow owners who believe that accuracy has been impugned in the draft and

⁴ 2020ONCAT 33(CanLII)

⁵ See *Tanner-Kaplash v. Middlesex Standard Condominium Corporation No. 776* 2022 ONCAT 33(CanLII)

signed minutes to investigate for themselves whether the wording on those points outlined above is correct.

[20] The reason and purpose for these requests has been reviewed at length because the Applicant has placed his purpose as the core of this dispute, and as I stated above, it is important background to understand the Applicant's position. With this, I turn to the specific records.

Issue 1: Are the original draft minutes of the 2019, 2020 and 2021 AGMs records of YRCC 692 which the Applicant is entitled to examine or obtain a copy?

[21] The Applicant has the draft minutes for each AGM. Each owner is provided a copy of these before the following year's AGM. The precursor to these original draft minutes are made by MinuteTakers Inc. The evidence is that the person employed by Minutetakers Inc. attends the meetings, summarizes what occurs and prepares draft minutes. The jurisprudence on the draft notes of a minute taker is well settled: the notes of note-takers are a work product and not a record.⁶

[22] Also relevant to consider is the Tribunal's jurisprudence on draft minutes. In *Lagan v. Carleton Condominium Corporation No. 331*,⁷(Lagan) at paragraph 26, the Tribunal stated:

.....While the Applicant requested and may have preferred an electronic version, he received a paper copy of the draft meeting minutes on October 15, 2019, within the required 30-day time frame for responses to records requests set out in section 13 of Ontario Regulation 48/01. However, draft minutes of meetings do not form part of a corporation's records. Because the owners' meeting minutes had not yet been approved by the owners, it was not a corporation record and the Respondent was not required to provide any copy to the Applicant.

[23] Therefore, I find that the Applicant is not entitled to the original draft minutes requested given that they are a work product, but further, even if, arguably, they are not, these would fall within the category of draft minutes described in Lagan.

Issue 2: Are the audio recordings of the 2020 and 2021 AGMs records of YRCC 692 which the Applicant is entitled to obtain a copy?

[24] In the current environment of virtual meetings, it is not surprising that requests such as the Applicant's will be made. YRCC 692 asserts that the audio recording

⁶ *Stewart v. Toronto Standard Condominium Corporation No. 1591* 2012 CarswellOnt 10003

⁷ 2020 ONCAT 30 (CanLII)

made by GetQuorum, the meeting provider, has the same purpose as personal notes in that a minute taker can review it later to draft the AGM minutes. It can be used as an aid for the minute taker. When asked for clarification on the role of GetQuorum, YRCC 692 responded that GetQuorum does not review the recording, but just gives it to property management.

[25] That response does suggest that the audio recording may be akin to the original draft minutes – a work product and not a record as the Act, although there is no evidence before me that MinuteTaker Inc. does, in fact, refer to it when drafting minutes. The response also suggests that the audio recording is kept on behalf of YRCC 692, which could, potentially, cause it to become a record of the corporation to which an owner is entitled. And there may be fact circumstances in which the Tribunal would make that finding. YRCC 692 submits that owners, even if they knowingly participated in a recorded meeting, may not mean that they would have consented to that recording being shared with other owners who could use that recording for any purpose, and therefore, there may be privacy reasons why an audio recording should not be disclosed.

[26] On the facts before me, I find that the Applicant is disentitled from receiving the audio recording, not for privacy reasons, but because, as the facts, reviewed in detail, show, the basic ‘test’ underpinning the right to examine or obtain a copy of a record under s. 55 of the Act has not been met. Section 13.3(1) of Ontario Regulation 48/01 (O.Reg 48/01) states: (my emphasis added)

(1) The right to examine or obtain a copy of a record under subsection 55 (3) of the Act does not apply unless,

(a) an owner, a purchaser or a mortgagee of a unit requests to examine or obtain the copy and the request is solely related to that person’s interests as an owner, a purchaser or a mortgagee of a unit, as the case may be, **having regard to the purposes of the Act;**

As stated in *Kore v. Niagara South Condominium Corporation No. 12*,⁸ at paragraph 21: "... while 'the affairs and dealings of the corporation and its board of directors are [to be] an open book', this concept has its necessary and appropriate limits," and s. 13.3(1)(a) of O.Reg 48/01 reflects that. An owner does have a legitimate interest in the management of the corporation and is entitled to records in order to understand how decisions are made and to ensure that decisions are made according to the duties and obligations set out in the Act. But this case is not

⁸ 2022 ONCAT 19 (CanLII)

about that.

[27] The Applicant is seeking the audio recording to 'prove' the discrepancy between the AGM minutes and his own record of what was said, in exact words, by one person, even after recent amendments, approved by owners at the 2022 AGM. The evidence before me reveals that the interest engaged here is the Applicant's personal interest in seeing his own preferred wording reflected in the AGM minutes, despite the fact that the minutes contain an adequate record of the business transacted at the AGM. An owner is not entitled to insist that the wording of board or AGM minutes reflect how they believe it should be drafted. Requesting this record to "prove" what the Applicant believes to be the correct wording on about effectively minor details is not a request made by an owner having regard to the purposes of the Act.

Issue 3: If the Applicant is entitled to either or both of the original draft minutes and the audio recordings, has YRCC 692 refused to provide these without a reasonable excuse? Further, if there has been such a refusal, should a penalty be awarded and if so, in what amount?

[28] Given my findings that the Applicant is not entitled to the original draft minutes and the audio recording, YRCC's refusal was appropriate and therefore no penalty is applicable.

Issue 4: Should costs be awarded?

[29] The Applicant is seeking reimbursement of his 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.

[30] In this case, the Applicant was not successful and therefore shall not be awarded his costs to file this application.

D. CONCLUSION

[31] While I have concluded that the Applicant is not entitled to the original draft minutes and the audio recordings, my conclusion about the latter is based on the particular facts before me and is not a finding that an audio recording is not or

could not be a record per se. However, I note here that the Applicant indicated in this hearing that he intends to submit a records request for the audio recording of the May 5, 2022 AGM. As discussed at the hearing, the presumption was that entitlement to that audio recording would follow from my determination from entitlement the 2020 and 2021 AGM audio recordings given that his purpose for that request would be to review what transpired at that meeting in relation to the three motions to amend the 2019 and 2020 AGM minutes. It is hoped that this decision will resolve that possible request and that the 'intransigence' that each party seems to impute to the other regarding these AGMs no longer dominates their interactions.

[32] I order that this application be dismissed without costs.

Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: July 29, 2022