

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: October 25, 2022

CASE: 2022-00201R

Citation: Comtois v. Ottawa-Carlton Standard Condominium Corporation No. 783. 2022 ONCAT 114

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

Member: Susan Sapin, Member

The Applicant,
Christine Comtois
Self-represented

The Respondent,
Ottawa-Carlton Standard Condominium Corporation No. 783
Represented by Emily Deng, Counsel

Hearing: Bilingual Written Online Hearing – June 12, 2021 to July 27, 2022

REASONS FOR DECISION

A. INTRODUCTION

[1] The Applicant, Ms. Christine Comtois, is a unit owner of Ottawa-Carlton Standard Condominium Corporation No. 783 (“OCSCC 783” or the “corporation”).

[2] Ms. Comtois submitted a Request for Records (“R1”) on the proper form February 15, 2022, for electronic copies of core and non-core records. This is the list as it appears on R1, except for my clarification of items 13, 20 and 21:

Core records:

1. Condominium Corporation Declaration
2. Condominium by-laws
3. Condominium rules
4. The record of owners and mortgagees
5. The record of notices relating to leases
6. Periodic Information Certificates (“PICs”) for the previous 12 months

7. Budget for the current fiscal year, plus any amendments
8. The most recent approved financial statements
9. The most recent auditor's report
10. The current plan for the future financing of the reserve fund
11. Mutual use agreements
12. Minutes of board meetings held within the last twelve months

Non-core records between 2013 and February 15, 2022:

13. All contracts, invoices, "PO," (meaning purchase orders), all other contractual agreements including "CMG" (CMG, "Condominium Management Group," is OCSCC 783's property management company)
14. Contracts all
15. Invoices - all
16. Financial statements - all
17. "Lawsuites" [sic] and all contracts with the law firms
18. Purchase orders / work orders any and all
19. City of Ottawa orders any and all
20. CMRAO (Condominium Management Regulatory Authority of Ontario) - ORDERS AND EMAILS - ANY AND ALL (EMAILS)
21. CAO (Condominium Authority of Ontario) - ORDERS AND EMAILS - ANY AND ALL (EMAILS)
22. All notices to owners of corporation 783
23. Any and all rules and regulations of corporation 783

[3] OCSCC 783 does not dispute that Ms. Comtois is entitled to the core records she has asked for but submits that it has provided them. As for the non-core records (items 13 - 23), OCSCC 783 submits it has provided all of the ones she is entitled to. For those not provided (items 20 and 21 - orders and emails from the CMRAO and the CAO), it submits that these are not records the corporation is required by law to keep, and so Ms. Comtois is not entitled to them.

[4] For the reasons set out below, I find that the corporation has provided Ms. Comtois with all of the core records she is entitled to, as well as many of the non-core

records, although not all of the records were provided within the time limits prescribed by law. Some were only provided during the Stage 2 mediation which ended on May 12, 2022. Others were not provided until this hearing. However, I note that Ms. Comtois' request for records dating back nine years to 2013 was very broad. I do not find the fact that the records were provided late amounts to a refusal to provide the records in this case, and so I have not assessed a penalty against OCSCC 783.

- [5] This was a bilingual written hearing, with each party participating in their choice of English or French. I communicated with the parties in both languages. The Tribunal provided translation during the hearing where requested. The Tribunal decision is being issued in French and English at the same time.
- [6] In the hearing, Ms. Comtois submitted that Ms. Tammy Zollinger, the CMG condominium manager was not living up to her contractual duties regarding adequate record-keeping and focussed on this issue in her cross-examination questions for Ms. Zollinger and in some of the documents she submitted. I have carefully considered all of the evidence and submissions presented by Ms. Comtois. However, how the corporation is managed is not within the jurisdiction of the Tribunal. Accordingly, I have only addressed the evidence that is relevant to the issues to be decided about her Request for Records and OCSSC 783's response to it.
- [7] The issues to be decided in this case are as follows:
1. Does Ms. Comtois have the right to receive the requested records that OCSSC 783 has not provided?
 2. Are the following documents records that OCSCC 783 is required to keep under the *Condominium Act 1998* (the "Act") or its regulations:
 - i. Lawsuits
 - ii. CMRAO and CAO orders and emails between 2013 and 2022-02-15
 - iii. Notices to owners between 2013 and 2022-02-15
 3. Is OCSCC 783 entitled to charge Ms. Comtois fees to produce the records?
 4. Is OCSCC 783 maintaining adequate records, in accordance with s. 55(1) of the Act?
 5. Should OCSCC 783 be required to pay a penalty under s. 1.44 (1) 6 of the Act, for failure to provide the requested records without reasonable excuse?
 6. Is either party entitled to their costs of this proceeding?

B. ISSUES & ANALYSIS

Issue 1: Does Ms. Comtois have the right to receive the requested records that OCSSC 783 has not provided?

I find that Ms. Comtois has the right to receive, and has received, all of the core records to which she is entitled. As explained below, Ms. Comtois has not received all of the non-core records to which she is entitled.

Core records:

- [8] OCSCC 783's March 15, 2022, Response to Ms. Comtois' request included an accompanying cover letter and an 85-page package of documents. In its letter OCSCC 783 explained that it would not provide the core records listed as items 1, 2 – 7 and 9 – 12, above, because it had previously provided them in response to two prior Requests for Records submitted by Ms. Comtois a year earlier (February 16 and May 10, 2021), and in compliance with the Tribunal's decision dealing with those earlier requests, *Comtois v. Ottawa-Carlton Standard Condominium Corporation No. 783*, 2021 ONCAT 100, ("the CAT decision") issued on October 28, 2021. At paragraph [13] of that decision, the Member wrote that Ms. Comtois confirmed at the hearing that she had received electronic copies of all of the core records listed as items 1, 2-7 and 9-11 in the list above.
- [9] Ms. Comtois testified that she asked for the same core records again in February 2022 because there had been many changes since the Tribunal's October 28, 2021, decision, including a complete changeover in board members. OCSCC 783 submitted that there were no new core records created since October 28, 2021, except for By-law #5, passed on June 8, 2020, which deals with electronic attendance and voting at meetings of owners. It provided the by-law in its March 15 response, as well as draft minutes of a budget meeting held February 21, 2022.
- [10] OCSCC 783's submission that it refused to provide core records previously requested because it had already provided them is somewhat misleading, given that its fiscal year-end is January 31. I accept that governing documents such as the declaration, by-laws and rules might not have changed in the year between Ms. Comtois' previous February and May 2021 requests that were the subject of the CAT hearing and her February 15, 2022, request at issue in this hearing. However, one would expect there would be other new or updated core records such as minutes and financial records created during the 2021-2022 fiscal year. As her request in this application is dated February 15, 2022, Ms. Comtois is entitled to any new or updated core records, including minutes and financial records, for the fiscal year ending January 31, 2022.
- [11] These records in fact exist. According to the Stage 2 Summary and Order dated May 16, 2022, during the mediation OCSCC 783 provided board minutes for the twelve months up to Ms. Comtois' February 15, 2022, request, i.e., board meeting minutes for February 11, 2021, November 27, 2021, December 21, 2021, and February 21, 2022, as well as owners' meeting minutes for December 16, 2021, and February 2, 2022. I note that the February 11, 2021, minutes were not

provided to Ms. Comtois in the corporation's package of documents it sent her in compliance with the CAT decision on November 16, 2021, (Exhibit 4). The records provided at Stage 2 also included an updated record of owners and mortgagees; a redacted record of notices relating to leases; periodic information certificates for the twelve months previous to February 15, 2022; the budget for the corporation's current fiscal year; and the most recent approved financial statements (item 8, above). At Ms. Comtois' request, all of the documents provided to her at Stage 2 were uploaded to the Documents tab for Stage 3. OCSCC 783 also uploaded the following core records on June 16, 2022, during Stage 3: unaudited financial statements dated February 3, 2022, for the fiscal year ending January 31, 2022; PIC February 3, 2022; various notices of lease; an updated list of owners and mortgagees dated April 28, 2022; draft minutes of a February 21, 2022, budget meeting; and the 2022-2023 budget dated February 22, 2022. Based on the evidence before me, I find Ms. Comtois has received these documents.

- [12] No explanation was given for why core records dated within the twelve months before Ms. Comtois' February 15, 2022, records request, and to which she is entitled, were not included in OCSCC 783's March 15, 2022, response. Despite this, and because some of the records post-date the request, I find the corporation has demonstrated an ongoing willingness to provide records Ms. Comtois has requested, and I do not find there has been a refusal without reasonable excuse to provide core records to which Ms. Comtois is entitled.
- [13] Regarding the non-core records requested, I find that Ms. Comtois has received all of the records she is entitled to, with the exception of CMRAO and CAO records, which OCSCC 783 submitted it is not required to keep.

Non-core records between 2013 and February 15, 2022

- **Items 13-15 and 18: All contracts, invoices, "PO," (meaning purchase orders), all other contractual agreements including CMG; Any and all purchase orders and work orders:**

- [14] Ms. Comtois submits that OCSCC 783 failed to provide her with all existing contracts and work/purchase orders in its March 15, 2022, response to her records request. She submits that missing in particular were contracts for "DLG," "Mr. Foundation," and "Paul Davis," and a report by Keller Engineering about work completed for Ms. Comtois' unit stairs. OCSCC 783 submits that the first three items do not exist in its records; rather, work done by these companies was carried out pursuant to purchase orders, not contracts. I note that the Keller engineering report dated 2021 09 07 was included in the corporation's March 15, 2022, response. (Exhibit 4.)
- [15] OCSCC 783 submits that it provided all the contracts and purchase orders that existed at the time of Ms. Comtois' records request, attached to its letter of the same date accompanying its March 15, 2022, Response to Records Request form (Exhibit 3), and emailed to Ms. Comtois. It further submitted that contracts finalized

following its March 15, 2022, response were uploaded during Stage 2 and again at the start of Stage 3.

- [16] In the Stage 2 Summary and Order, the Member notes that the Keller Engineering Stair Review and Mr. Foundation Work Order and Warranty were uploaded, as well as the CMG contracts of November 2010 and November 2017. I note that the Mr. Foundation purchase order was provided to Ms. Comtois during the previous CAT decision, in which the Member also dismissed her argument that a purchase order was not the same as a contract, finding the difference was not material in the circumstances. I agree with that finding.
- [17] The twenty-seven records uploaded at Stage 3 and identified as Exhibit 14 include a CMG contract for 2022-2024, summer and winter maintenance contracts 2021-2023, cleaning contracts, garbage removal contracts and a Mr. Foundation warranty. I find that OCSSC 783 has fulfilled this aspect of Ms. Comtois' request for non-core records and that the corporation has provided all of the contracts/purchase orders to which Ms. Comtois is entitled.
- [18] With regard to the timeframe for the requested records, 2013 to February 2022, the corporation submitted it was only required to provide records within the 7-year retention period set out at s. 13.2 of Ontario Regulation 48/01 ("O. Reg. 48/1"). Given the difficulty the corporation appears to have had in retrieving and providing historic records, I find the time and expense that would be required to retrieve records going back more than seven years is not reasonable.
- [19] It is important to note that Ms. Comtois' records request was broad, vaguely worded and covered a substantial period of time, and that despite this, the evidence before me indicates the corporation has provided her with a great many records in an attempt to satisfy her request.

Issue 2. Are the following documents records that OCSSC 783 is required to keep under the Act or its regulations:

- **Item 17 – Lawsuits and all contracts with law firms**

- [20] I find that this request has been satisfied. OCSSC 783 submitted that it did not provide contracts with law firms in its March 15, 2022, response to Ms. Comtois' records request, because such documents do not exist. It stated categorically that no contracts between it and any law firm exist. Instead, at the hearing, it uploaded a copy of its draft board meeting minutes documenting the board's decision to retain Davidson Houle Allen LLP ("DHA") as its law firm, and a copy of DHA's New Client Package 2022 that provides further information about the law firm and its standard fees (Exhibit 14-14).
- [21] Regarding the request for "lawsuits," OCSSC 783's March 15, 2022, response package at Exhibit 4 includes a July 10, 2017 "Notice to Owners Re: Legal Action Against the Condominium Corporation" that explains the lawsuit filed against it by

CM Callow, its former winter maintenance contractor, because the board cancelled the company's contract. This case, *C.M. Callow Inc. v. Zollinger* 2020 SCC 45, was litigated to the Supreme Court of Canada. The condominium lost. Although the notice was sent just before the Supreme Court hearing, it advises the owners that if the condominium lost the case, it would incur legal fees of \$271,742, or \$1,400 per unit.

[22] I note that in the previous CAT decision, the Member found that Ms. Comtois had received a letter dated February 2, 2021, from OCSSC 783 advising that because they lost the case, a special assessment would be levied against all owners. Attached to the letter was a confidential report from the corporation's lawyers about the legal case. The special assessment letter was provided to Ms. Comtois on June 1, 2021, in response to her earlier records request (at paragraphs 31 and 32 of the previous CAT decision). I find that Ms. Comtois' request regarding lawsuits has been satisfied.

- **Item 20: All CMRAO orders and emails between 2013 and February 15, 2022**

[23] OCSSC783 submitted that it refuses to provide these records because they do not form part of the records that the corporation is required to keep under s.55 of the Act and its regulations.

[24] With respect to the CMRAO records and emails, OCSSC 783 submits that the CMRAO regulates the management industry and does not regulate the activities of condominium corporations or boards of directors. Accordingly, any orders which may be issued by the CMRAO would relate to a manager and/or management service provider and would not be against a condominium corporation. OCSSC 783 asserts that it has not filed any complaints with the CMRAO about CMG, so is not a party to any CMRAO proceeding or order, and even if it were aware of any third-party complaints, or of any orders issued due to third party complaints, any related documentation, including emails, would not form part of the records the corporation is required to keep.

[25] I reject this argument. According to the CMRAO's website, anyone with a concern about the conduct of a management company may make a complaint to the CMRAO. The CMRAO will investigate and has the authority to lay charges against management companies under the *Condominium Management Services Act*. The CMRAO makes information about charges and disciplinary action available to the public on its website. As condominium corporations are responsible for the management of condominiums, and management companies operate under the authority of condominium boards, it is disingenuous of OCSSC 783 to maintain that it is not required to keep records of any complaints to or orders issued by the CMRAO relating to its condominium management company. Furthermore, as the condominium manager acts as an agent for the corporation, I find it would have an obligation to advise the board if the CMRAO issued an order against it due to a third-party complaint, in particular a complaint from a unit owner, and a record of

this should be retained by the condominium.

- [26] Accordingly, I find CMRAO orders are records a condominium corporation is required to keep, and OCSSC 783 must advise Ms. Comtois if any such records exist and must provide them to her if so.
- [27] In support of its submission that emails are not records it is required to keep, OCSSC 783 cited the decision in *Kai Sin Yeung v. Metropolitan Toronto Condominium Corporation No. 1136*, 2019 ONCAT 11, where the Member found that the requirement under s.55(1)2 of the *Act* for condominium boards to keep minutes of their meetings did not “require a condominium corporation to keep a transcript of discussions (oral or by email) between directors within or beyond duly constituted Board meetings.” In that case, the board minutes contained references to email correspondence relating to the renewal of a gas contract that had been previously approved by email.
- [28] I find that decision is confined to its facts and is distinguished from the case before me, which does not deal with whether any board minutes refer to emails. The decision does not stand for a blanket proposition that emails can never be records a condominium corporation is required to keep under s. 55. It is outweighed by the general principle underlying s. 55 of the *Act* and its related regulations, that the affairs of the corporation should be an open book to unit owners, and they are entitled to know how the condominium is being managed. Whether there are complaints against a management company, and how the board chooses to deal with that issue, is information unit owners are entitled to and is consistent with the principles of transparency underlying the *Act*.
- [29] Based on the circumstances of this case, I find that CMRAO orders resulting from complaints involving CMG and OCSCC 783, and emails to CMG or board members about any such orders are records that a condominium corporation is required to keep, and that Ms. Comtois is entitled to if they exist. OCSCC 783 shall advise Ms. Comtois if any such orders exist and provide them to her.

• **Item 21: CAO orders and emails between 2013 and 2022-02-15:**

- [30] Under the s. 9 of the *Act*, the Registrar of the CAO keeps an electronic data base of information contained in the annual returns of condominium corporations and has the authority to issue a Registrar’s Certificate under s. 9.9, and also compliance orders under s. 134.1. The CAO informs boards when they have not provided filings, when they have not paid fees, and when board members are disqualified for having failed to take the mandatory training. I find CAO compliance orders are important records that provide transparency about how a condominium corporation is managed. I find they are records a condominium is required to keep, and which a unit owner is entitled to request and receive. OCCSC 783 shall advise Ms. Comtois if any of these records exist, and if so, shall provide them to her.

• **Item 22: All notices to owners of corporation 783**

[31] The package of documents provided to Ms. Comtois on March 15, 2022, as part of OCCSC 783's response to her records request (Exhibit 4) includes a variety of notices to owners dating as far back as 2015 and dealing mostly with housekeeping matters. There is no evidence that any notices are missing. Given the lack of specificity of this particular request, I accept the corporation's argument that given the age of the documents requested, searching for and retrieving these documents would require significant time and expense. I find this request has been satisfied.

Issue 3: Is OCSCC 783 entitled to charge Ms. Comtois fees to produce the records?

[32] In her witness statement, Ms. Zollinger stated that the corporation was prepared to provide Ms. Comtois with copies of all purchase orders between 2015 and February 15, 2022, for a fee of \$210 for her time to retrieve the records (\$30 per hour for 7 hours), as allowed under s. 13.3(7)4 of Ontario Regulation 48/1. As noted above, electronic copies of several purchase orders have already been provided.

[33] I note that in the previous CAT decision, the Member ordered OCSCC 783 to provide Ms. Comtois with a list of all contracts from 2015 to 2021 in electronic form within fifteen days of the decision, and Ms. Comtois was to advise it within 30 days of receiving the list, which contracts she wished to access. The corporation was then to provide her with the contracts she requested in electronic format within 30 days at no cost to her.

[34] In her November 16, 2021, email sent in compliance with the CAT order to provide a list of all contracts from 2015 – 2021, Ms. Zollinger listed the following:

1. Snow – 2017-present
2. Summer – 2018 – present
3. Garbage contract 2018

[35] As noted above, these three contracts were provided during Stages 2 and 3 of this proceeding. Given that the previous CAT decision ordered OCSCC 783 to provide the contracts at no charge to Ms. Comtois, and the fact that it did not provide an estimate of the fee for providing access to the records or the estimated cost of printing or copying these records on its March 15, 2022, Board's Response to Request for Records form, I find that under the circumstances, OCSCC 783 is not entitled to charge Ms. Comtois fees to produce the records.

Issue 4: Is OCSCC 783 maintaining adequate records, in accordance with s. 55(1) of the Act?

[36] Ms. Comtois' submission that the corporation is not keeping adequate records appears to be based on her belief that the special assessment levied against

owners to pay for the legal fees incurred as a result of the CM Callow legal case mentioned above was not allocated under the correct headings in the corporation's financial statements or budget. As noted in paragraph 9, above, Ms. Comtois confirmed in her previous CAT hearing that she had received electronic copies of all of the core records listed as items 1, 2-7 and 9-11 in the list above, for the 2020 – 2021 fiscal year, which included the budget for that fiscal year (item 7), the most recent approved financial statements (item 8) and a copy of the most recent auditor's report available at that time (item 9).

[37] As noted in paragraph 11, above, Ms. Comtois has received copies of the unaudited financial statements dated February 3, 2021, the budget for the fiscal year ending January 31, 2022; draft minutes of a February 21, 2022, budget meeting; and the 2022-2023 budget dated February 22, 2022.

[38] Ms. Comtois raised the issue that certain items were not entered in the correct lines in the budget in the previous CAT decision. The Member found that it was "evident that the Applicant disputes the decisions reflected in the budget and the resulting deficit. She has not, however, established that the budget is an inadequate record of the board's financial decisions." I agree with this decision and find that the same finding applies to the records Ms. Comtois received for the fiscal year January 31, 2021, to January 31, 2022.

[39] Under s. 66 (1) of the *Act*, a corporation is required to have its financial statements prepared "in the prescribed manner and in accordance with generally accepted accounting principles as are prescribed." In this case, I find there is no persuasive or compelling evidence before me to determine if OCSCC 783 has failed to properly prepare or approve the financial statements or budget as required by law. I therefore cannot conclude it is not keeping adequate records.

Issue 5: Should OCSCC 783 be required to pay a penalty under s. 1.44 (1) 6 of the Act, for failure to provide the requested records without reasonable excuse?

[40] Ms. Comtois submits that OCSCC 783 should be required to pay a penalty of \$5,000 because it has failed to provide her with the records she asked for without reasonable excuse. Under s. 1.44 (1) 6 of the *Act*, the awarding of a penalty is at the Tribunal's discretion, where certain conditions are met. The purpose is to impress upon a condominium corporation the seriousness of its obligations with respect to the provision of records, and to provide unit owners with a remedy when it fails in these obligations. The maximum award of \$5,000 is reserved for the most egregious cases of non-compliance.

[41] Based on my review of the facts, I do not find a penalty is warranted in this case. I acknowledge, as explained above, that OCSCC 783 did not initially provide Ms. Comtois with many of the records she requested, in its March 15, 2022, response, without any explanation for the delay, and that it refused to provide CMRAO or CAO orders. However, it was not unreasonable for OCSCC 783 to challenge Ms. Comtois' request about her entitlement to CMRAO and CAO records, as this is a

novel issue. Furthermore, I find Ms. Comtois' records request was very broad, and the nine-year time period of 2013 – 2022 is not reasonable in the circumstances. As OCSCC 783 eventually provided Ms. Comtois with the records she is entitled to, I do not find this is a situation where the corporation has failed to take seriously its obligations to keep and provide records, or that it has failed in that obligation. For these reasons, I find not penalty is warranted in this case by s. 13.3(6) of O. Reg. 48.

Issue 6: Is either party entitled to their costs of this proceeding?

- [42] Rule 48.1 of the Tribunal's *Rules of Practice* provides that the unsuccessful party at Stage 3 shall pay the successful party their CAT fees, unless the Member decides otherwise. OCSCC 783 submits that the issues in dispute could have been resolved at Stage 2, where many of the records Ms. Comtois requested were provided. However, I note that Ms. Comtois did not receive some records until Stage 3. I find that it was reasonable for her to initiate her CAT application and she was successful. Accordingly, I find she is entitled to be reimbursed the \$200 CAT fees she has paid.
- [43] Under Rule 48.2, the Tribunal generally will not order one party to reimburse another party for legal fees or disbursements ("costs") incurred in the course of a Stage 3 proceeding, unless a party incurred costs because the other party's behaviour was unreasonable, undertaken for an improper purpose, or caused delay or additional expense.
- [44] Although the issue of costs was included as an issue in dispute in the Stage 2 Summary and Order and again confirmed as an issue at the beginning of the hearing, neither party claimed costs nor made submissions about why they should be entitled to their costs. Accordingly, I make no award of costs in this proceeding.

C. CONCLUSION

- [45] In conclusion, I find Ms. Comtois has received all of the core records she has requested, as well as most of the non-core records, although not within the time frames prescribed. I have also found that CMRAO and CAO orders and emails are records the condominium is required to keep, and if these exist, Ms. Comtois is entitled to request and receive them. I did not find a penalty was warranted in this case.

D. ORDER

- [46] The Tribunal Orders that:

1. OCSCC No. 783 shall provide to Ms. Comtois copies of any orders issued by the Condominium Management Regulatory Authority of Ontario against CMG between 2015 and 2022, as well as any emails from the CMRAO to the board about complaints to the CMRAO about CMG within 30 days of this

decision. If no such orders or emails exist, OCSCC No. 783 shall confirm this to Ms. Comtois within 30 days of this decision.

2. OCSCC No. 783 shall provide to Ms. Comtois any compliance orders issued to it by the CAO under s. 134.1 of the Condominium Act and any emails from the CAO to the corporation regarding filings, fees and whether directors have failed to take mandatory director training within 30 days of this decision.
3. OCSCC No. 783 reimburse Ms. Comtois her CAT fees of \$200 within 30 days of this decision.

Susan Sapin
Member, Condominium Authority Tribunal

Released on: October 25, 2022