



**Brian Horlick**  
B.Comm., B.C.L., LL.B., ACCI, FCCI.  
Partner  
Horlick Levitt Di Lella LLP



**Bradley Chaplick**  
B.Comm, JD.  
Associate  
Horlick Levitt Di Lella LLP

**Condo Law**

# CAT Case Law Update

Here is What You Need to Know From Recent Selected Condominium Authority Tribunal of Ontario (CAT) Decisions



As of the date of writing this article, in the span of 17 months since its creation on November 1, 2017, CAT had published only 19 case decisions. Due to CAT’s limited jurisdiction, all of its cases deal exclusively with unit owners who have requested records from their condominium corporations.

Here is what you need to know from recent selected CAT decisions:

Note, this article does not summarize all recent CAT decisions.

**Arrowsmith v Peel Condominium Corporation No. 94, 2018 ONCAT 10**

Mr. Arrowsmith had requested copies of the minutes of certain board meetings, as well as records relating to the remediation of mould in the common element sauna and mailroom. The substance of his request was far from controversial, so why did the condominium refuse his request for records?

PCC 94 claimed that Mr. Arrowsmith did not properly complete the Request for Re-

ords form. As a result, PCC 94 took the position that, in the absence of a proper request, the condominium corporation was justified in refusing to provide the records. What did the Tribunal decide? The Tribunal held that an incomplete Request for Records form did not amount to a “reasonable excuse” to deny a unit owner’s request for records so long as the form was filled out sufficiently that the owner’s request was made clear. Furthermore, if the request was unclear, then the condominium ought to have requested clarification from the owner and not simply refused the request for records.

PCC 94 was ordered to provide Mr. Arrowsmith with the records in question without cost and to pay Mr. Arrowsmith’s costs of \$500 and a monetary penalty of \$500 for a total of \$1,000.00.

The takeaway: An incomplete Request for Records form is not a justification for refusing to provide records to a unit owner. Condominium directors and managers should use a “clarity test” to de-

termine if the Request for Records form contains sufficient detail to initiate the request. If the request is not sufficiently detailed, then the condominium corporation should request clarification from the unit owner.

**Barreto-Rivera v Metropolitan Toronto Condominium Corporation No. 704, 2018 ONCAT 11**

MTCC 704 is a small condominium consisting of only eight residential units. The relevant background to this case is that the unit owners had held a meeting to discuss a window repair project with the condominium corporation’s heritage architect. The purpose of the meeting had not been to hold a vote of owners. Rather, it was a meeting in which owners could ask questions about the window project and receive information from the architect. Shortly after the meeting, the board secretary circulated a three-page summary of the meeting, including who was present and the issues that were discussed.

Mr. Barreto-Rivera, upon receiving the

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three-page summary, sent an email to the board of directors setting out what he believed to be relevant omissions from the secretary's three-page summary. He then stated that he looked forward to receiving the official minutes from the meeting.

Thereafter, the board did not prepare any official meeting minutes. Mr. Barreto-Rivera ultimately requested a copy of the official minutes from the meeting, which did not exist. He then commenced an application to CAT, not because of any desire to obtain the meeting minutes, because he felt that meeting minutes ought to have been prepared, and he wanted to make an "important point" about what he felt was a lack of proper record-keeping by the condominium corporation.

What was the condominium corporation's response? MTCC 704 claimed that no formal meeting minutes were produced because the meeting was not a meeting of owners within the meaning of the Condominium Act, 1998. According to MTCC 704, the meeting was an informal "information" meeting as no official agenda had been distributed or voted upon, and no motions were accepted, made or voted upon. As a result, MTCC 704 claimed that it was not required to keep official minutes of the

meeting, and that it was justified in refusing to provide a record that did not exist.

What did the Tribunal decide? The Tribunal held that based on the evidence, including the importance of the subject matter at the meeting, that this was a formal meeting of owners, and that MTCC 704 was required to have created official meeting

## When redacting minutes of board meetings, the condominium must not redact more information than is reasonably necessary and must consider what information may be preserved without disclosing private or personal information

minutes. The Tribunal could not practically order the condominium to create meeting minutes due to the passage of time (the meeting took place in February 2016, but the application was not commenced until April 2018), but nonetheless concluded that the condominium had breached its obligation to keep adequate records.

Recognizing for the most part that the corporation's conduct had been timely and appropriate, legal costs were not awarded, but the Tribunal imposed a \$500.00 monetary penalty because the condominium had made no genuine effort to create official minutes for the meeting even after it was made aware of the unit owner's request back in February 2016 for official minutes shortly after the meeting took place.

The takeaway: Condominium directors and managers should keep official minutes of all meetings of owners, even meetings that the condominium corporation considers to be informal "information" meetings.

### **Mellon v Halton Condominium Corporation No. 70, 2019 ONCAT 2**

Mr. Mellon requested copies of minutes of certain board meetings as well as the most recent approved financial statements.

What was the condominium corporation's response? HCC 70 provided Mr. Mellon with the most recent auditor's report and audited financial statements, as well as redacted copies of the minutes of the board meetings.

Mr. Mellon claimed that the "most recent approved financial statements" included unaudited financial statements, and not just the audited financial statements, and that the redactions of board meeting minutes by the condominium were excessive. What did the Tribunal decide? The Tribunal clarified that within the list of

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“core records” on the Request for Records form, the “most recent approved financial statements” refers only to the most recent audited financial statements that are presented to the unit owners at the Annual General Meeting. Unaudited financial statements are not a core record.

With respect to redacting minutes of board meetings, the Tribunal held that it is appropriate for a condominium corporation to redact information from the minutes of board meetings that is personal, confidential, privileged or otherwise private, including any information that

would serve to identify any other unit or unit owner. However, the condominium corporation’s block redactions of entire paragraphs of the meeting minutes appeared to be more than what was truly necessary to protect privilege and privacy.

The takeaway – tips for properly redacting records: The scope of permitted redaction goes beyond mere names and unit numbers. However, when redacting minutes of board meetings, the condominium must not redact more information than is reasonably necessary and must consider what information may be preserved without dis-

closing private or personal information.

Furthermore, when redacting a record, the condominium must provide a statement in accordance with subsection 13.8(1)(b) of the Regulation indicating the reason for the redaction and specifying which part of section 55 of the Condominium Act, 1998 is relied upon as the basis for the redaction. For example, subsection 55(4)(b) of the Condominium Act, 1998 exempts records relating to actual or contemplated litigation, whereas subsection 55(4)(c) exempts records relating to specific units or unit owners. **CV**



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Business Development Manager

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