



Viewpoint

The True Cost of Record Requests

In recent months there has been a disturbing trend with some decisions released by the Condominium Authority Tribunal (CAT) regarding the allowances for property management's time allocated to responding to records requests from unit owners.



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I want to start by saying that I am 100% in favour of unit owners being entitled to access these records. I had the privilege of working on the stakeholder group which made recommendations to the Ministry of Government and Consumer Services on this very topic. The development of a list of items that would form "core records" came from those discussions. I believe that both the stakeholders and the ministry representing the government did an excellent job balancing the rights of owners to access their records. Steps were needed to protect unit owners and management from condominium owners who were weaponizing their rights under the condominium act to dominate property management time, simply because they could.

One of the critical protections written into the *Condominium Management Services Act* regulations is the specification that Limited Licensees are restricted from responding to any records request under the Act. The inference from this regulation is that the individual representing the property management firm must be a General Licensee.

The great contradiction we see in these CAT decisions pertains to the allowance of up to \$30 per hour for the review, redaction and production of records requested. The CAT has referred to this work as "administrative," however the *Condominium Management Services Act* does not share the same view by virtue of requiring a General Licensee to be responsible for the records provided.

Try as I might, I have been unable to reconcile how condominium legislation and the decisions of the CAT can be so contradictory on this matter. I am unable to find an explanation for the thought process of the CAT adjudicators, so I am left with these assumptions:

1. The CAT believes that the annual value of a full-time property manager, including overhead support in profit for the property management company, is \$62,400 per year. This is calculated based on a 40-hour work week times 52 weeks per year times \$30 per hour; or

2. The CAT does not believe that records requests need to be responded to by a General Licensee and just calling the review and redaction of legal documents such as minutes, proxies and ballots administrative work that does not require the knowledge or experience of a General Licensee; or

3. The CAT believes that it is the responsibility of other unit owners to subsidize the record requests by not allowing the corporation to recapture the funds spent on property management to produce these records.

In a recent case before the CAT, on behalf of our client, I proposed that the hourly fee for the production of records should be calculated based on the total cost of the management contract and the amount of time required to produce them. This position would reimburse the unit owners for the time taken to assemble and redact the proxies and ballots. The adjudicator disagreed, and the CAT set an arbitrary amount of \$30 per hour. This means that in this case, the unit owners of the other 100 units will be subsidizing the records request at approximately \$37 per hour.

As condominium managers, it will be increasingly difficult to maintain a professional reputation based on knowledge and experience when we are uncertain about how the Condo Act is interpreted. The administrative authority does not consistently exercise the direction from the government, and the rationale for CAT decisions is not communicated in a manner that allows us to understand the expectations and advise our clients accordingly. ■

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