

Access to Condo Records – No Fishing Expeditions

In a [prior blog post](#) published several years ago, we reported about a condominium unit owner, Mr. Lahrkamp, who successfully obtained a court order requiring his condominium corporation to provide him with redacted copies of board minutes and proxies.

Since that time, Mr. Lahrkamp has been engaged in numerous legal proceedings (more than a dozen) against his condominium corporation. Most recently, after a 12-day trial, the Superior Court of Justice Toronto Small Claims Court released its decision in three actions commenced by Mr. Lahrkamp, who was seeking the production of various condominium records for the period from 2007 to 2015 inclusive, plus damages of \$500 pursuant to Section 55 of the *Condominium Act, 1998* (the “Act”) for the corporation’s refusal to provide those records. The records requested included accounts receivable ledgers, general ledgers, bank statements, proxies, owner lists, board minutes, portfolio valuation summaries and details and transaction summaries.

The corporation’s position was that:

- the corporation had numerous reasonable excuses not to produce such records;
- many of the requests were barred by the two-year limitation period set out in the Limitations Act or res judicata (i.e. previously litigated and decided by the court);
- the proceedings were vexatious and an abuse of process;
- Lahrkamp was on a fishing expedition;
- Lahrkamp was litigating for sport and was not exercising his statutory rights reasonably.

Section 55 of the Act, provides some guidance as to what constitutes a “record” and what records owners do not have the right to examine. This section also provides that requests to examine the records shall be made in writing and the examination shall be at a reasonable time for all purposes “reasonably related to the purposes of the Act.” In addition, the person requesting copies of the records is required to pay a reasonable fee to compensate the corporation for labour and copying charges.

In its decision, the Court found the following:

- While the Act favours transparency, openness and disclosure for the unit owner, this “*Transparency Principle*” does not give an owner carte blanche to make unreasonable demands for records or to go on a crusade or to go on a fishing expedition...”
- The board of directors is the gatekeeper of the corporation’s records and must balance the competing private and communal interests of the unit owner and the corporation. In balancing these interests, the corporation can refuse access to a record if: access would infringe on privacy, privilege or strictly personal matters; the burden and expense to produce the records is an issue; or the reason for the request is not reasonably related to the purposes of the Act.
- The legislation does not specifically require a reason for every request or a reason for every refusal of a record. The purpose of a request may be self-evident from the surrounding facts or may be reasonably inferred from the nature of the record requested.

- With respect to many of the records requested, Mr. Lahrkamp was on a fishing expedition without a focus and without any credible evidence to support any impropriety and without presenting any reason for the request reasonably related to the purposes of the Act.
- The request to inspect the owner list was vague and infringed on the privacy rights of other owners.
- The corporation was ordered to produce redacted copies of proxies and board minutes for the years 2012, 2013, 2014 and 2015 (which the corporation had indicated that it was willing to provide) and entitled to charge \$1 per redacted page for photocopying charges and \$1.00 per proxy/set of minutes for the labour charge to make the redactions. If Mr. Lahrkamp fails to pay these charges in advance or fails to pick up the copies within 60 days after being advised that they were available, then Mr. Lahrkamp will forfeit all rights to examine those records. The Court did NOT award Mr. Lahrkamp damages of \$500, as he had failed to pick up and pay for copies of minutes and proxies that had been made available to him in 2012.

The litigation was described as “*a long, tortuous, labyrinthine and costly litigation saga*” that could have been avoided if the parties had “*engaged in a reasonable, rational, open and sympathetic dialogue.*”

NOTE: Section 55 of the Act will be amended with the enactment of the Protecting Condominium Owners Act, 2015. Changes are anticipated to come into effect in the fall of 2017. Stay tuned for an upcoming blog post on the changes regarding access to records.