

**CONDOMINIUM RECORDS:
A brief and incomplete history of judicial consideration**

One of the most frequently raised issues in a condominium context is that having to do with records, and particularly with access to those records. As nearly everyone knows (or ought to know), condominium corporations are required by the *Condominium Act, 1998* (the “**Act**”) to keep certain records, and are further required to permit unit owners and certain others to examine those records upon request. However, conflict sometimes arises when a board, manager, owner, or all of the above are unsure or disagree about the scope of this right.

One such conflict arose in the 1992 case of *McKay v. Waterloo North Condominium Corp. No. 23*. This case, which was decided under the previous condominium legislation, involved a unit owner who sought to examine the records of the corporation, and further sought to obtain photocopies of those records. The corporation had restricted the owner’s right to examine the records and had refused to provide photocopies regardless of whether the owner was prepared to pay for same. The owner consequently brought an application for an order requiring the corporation to grant him wider access to the records, and further requiring the corporation to provide him with photocopies of the records.

The court held, in what would become an oft-quoted decision, that the “affairs and dealings of the corporation and its board of directors are an open book to the members of the corporation, the unit owners”. It accordingly ordered the corporation to grant the applicant the requested access, and to provide him with photocopies of the records at his own expense. This “open book” principle was reinforced by the court in *Rohoman v. York Condominium Corp. No. 141*, a 2000 decision that followed *McKay* in holding that the corporation could not unreasonably restrict unit owner access to the records.

When the Act was enacted in 2001, the provisions dealing with records were strengthened as compared to the previous version of the *Condominium Act*, and principles such as the right to obtain copies were enshrined in the legislation. The right to examine the records was continued in the Act in subsection 55(3). However, this subsection contained new language: “Upon receiving a written

request and reasonable notice, the corporation shall permit an owner...to examine the records of the corporation...at a reasonable time *for all purposes reasonably related to the purposes of this Act*" [emphasis added].

This latter portion of the subsection was considered by the court in its 2006 decision in *Metropolitan Toronto Condominium Corp. No. 551 v. Adam*. In this case, a unit owner who sought to examine the records of the corporation refused to provide the property manager with the owner's motive or purpose in seeking to examine the records. The manager then refused to provide the unit owner with access to the records, and the unit owner brought an application for an order permitting such access. Despite the seemingly clear language of subsection 55(3) of the Act, the court held that the property manager "was in error" in requiring Mr. Adam to disclose his reasons for wanting to examine the records, and was wrong to have denied Mr. Adam access to same.

However, although it is clear from the Act and the case law that unit owners are to have very free access to examine the records of the condominium corporation, such access is not entirely unfettered. For one, subsections 55(4) and (5) of the Act set out exceptions to the unit owner's right to examine the records: records relating to employees of the corporation, except for contracts of employment between any of the employees and the corporation; records relating to actual or pending litigation or insurance investigations involving the corporation; and records relating to specific units or owners, except where the record relates to the unit owner making the request.

These subsections, and particularly subsection 55(4), were considered in *Fisher v. Metropolitan Toronto Condominium Corp. No. 596*, a 2004 decision. In this case, the Divisional Court heard an appeal from a decision of the Small Claims Court in which the latter awarded the plaintiff unit owner the \$500 penalty specified by subsection 55(8) for failure to permit the unit owner to examine the records. The corporation had relied on the exception in subsection 55(4) with respect to records relating to actual or pending litigation to deny the unit owner the right to examine certain records. The Small Claims Court had held that the unit owner's request to examine the records was not subject to this exception, but the Divisional Court disagreed, stating that it was clear that the unit owner had been contemplating litigation at the time that the records were requested.

Just as there are some exceptions to a unit owner's right to examine the records of the corporation, so too are there limits to the degree to which a condominium corporation is obligated to provide information to a unit owner. One such limit was explored by the court in *York Condominium Corp. No. 60 v. Brown*, a 2001 case. In that case, the unit owner had made numerous requests to examine the records of the corporation, which requests had been complied with by the corporation. The unit owner then demanded further information that was not contained in the records. The court held that the unit owner was indeed entitled to access to records, but that she was "not entitled to engage in an investigation and demand responses from Directors, Officers or managers. The unit owner's rights do not include the right to make written interrogatories and then complain when answers are not provided or not provided in what the unit owner considers a timely manner. To the extent that [the unit owner] has demanded access to information (as opposed to access to records), she has exceeded any right under the Act, Declaration or rules".

Finally, in some cases, the court will place restrictions on a unit owner's right to access records if the court determines that that unit owner has been abusing that right or has been harassing the board and management in the course of exercise that right. In *Metropolitan Toronto Condominium Corp. No. 932 v. Lahrkamp*, a 2009 decision, the Court of Appeal considered the case of a unit owner who, the corporation alleged, had abused his right to access the records of the corporation and, in the course of so doing, had harassed the board and management. The court held that the unit owner's behaviour, while objectionable, did not amount to actionable harassment. The court ordered that the unit owner was to only request records or copies thereof in writing (and not in person), that he was to not make more than one request with respect to the same record, and that he was to prepay the cost of any photocopies. The court also intimated that, had it found that the unit owner's conduct had amounted to actionable harassment, further restrictions – such as a blanket prohibition on the unit owner's right to attend to review the records in advance of their production to him – could have been warranted.

A summary of principles set out by the courts with respect to unit owner access to and examination of records of a condominium corporation is as follows:

Summary of Principles Respecting Unit Owners' Access to and Examination of Records:

- The records of a condominium corporation reflect the affairs of the corporation and of its board of directors and, as such, should be regarded as an “open book”
- The right of a unit owner to examine the records cannot be unreasonably restricted
- A unit owner's motive in wanting to examine the records of the corporation are irrelevant
- There are certain exceptions set out in the Act with respect to a unit owner's right to access and examine the records of the corporation
- The unit owner's right to access the records of the corporation does not extend to permit that unit owner to interrogate the board or management with respect to those records or information not contained therein
- A court may place restrictions on a unit owner's right to examine the records of the corporation if warranted by the unit owner's behaviour

Records are a frequent battleground for condominium corporations and unit owners.

Knowledge of these, and other, principles relating to records can help make that battle a winning one.