

TRIALS AND TRIBULATIONS OF A CAT

by Rachel Fielding

Summer came late to Toronto this year, and with it, came an inundation of Condominium Authority Tribunal ("**CAT**" or the "**Tribunal**") matters. After responding to one CAT proceeding after another, a few things became apparent.

Firstly, it is clear that most of the unit owners are unclear as to the limits and jurisdiction of the CAT. While it is expected that CAT's jurisdiction will be expanded at some point in the future, at this present moment, its jurisdiction is limited to access to records only. For example, questions such as "*Was the latest Periodic Information Certificate accurate?*" or "*Did the Board of Directors mismanage corporation assets?*" are simply not within the jurisdiction of the CAT to answer.

In fact, many of the proceedings I participated in as counsel, should never have been brought by the owner before the Tribunal, as the core issues did not relate to records requests. All of these extraneous, and dare I say it, irrelevant disputes to the matter of record production, not only extend the length of the proceeding, but unduly complicate it. Respondents have to produce more documents, witnesses have to respond to more questions, and lawyers stay up later and spend more hours writing submissions to address all these issues.

While this may not seem to be a large problem, the reality is, it takes time and expense to respond to all of the extraneous issues. This leads to my next take away, the incredible costs and time expended by condominium corporations (the "**Corporation**") to respond to CAT proceedings.

While there is no requirement that a Corporation hire a lawyer to represent them in these proceedings, due to the increased complexity of the allegations, many Boards of Directors feel obliged to do so. Most often, it falls to the property manager to try to represent the Corporation before the CAT. However, with the increased complexity of the allegations, many property managers do not feel comfortable representing the Corporation, (and who could blame them - they are not legal professionals), and frankly, the property managers simply do not have the time to spend to participate in these proceedings.

As a result, we are seeing more Corporations make the decision to hire their corporate counsel to handle the Tribunal matters, especially if the matters progress to the Tribunal's Hearing Stage (Stage 3). In one decision of the CAT, the Corporation claimed \$24,000.00 for its legal costs, but no costs were ordered to be paid.

This is unfortunate, as the Corporation has practically no means of recovering their costs spent in defending these proceedings. A review of all of the CAT decisions released to date shows only one instance whereby the Applicant was required to pay money to the Respondent, and in that instance, the Applicant was found to be a vexatious litigant – an exception to the typical situation.

So what is the solution you might ask?

Firstly, the CAT perhaps ought to be much more explicit as to what matters they can address. I am a trained legal professional and it still takes me longer than it should to



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search and find what exactly the jurisdiction of the CAT is. One should not have to jump between multiple sections in the *Condominium Act, 1998* and its regulations in order to ascertain the jurisdiction of the CAT. A document in simple plain wording posted right on the CAT website would go a long way to informing unit owners what grievances they can and cannot bring before the Tribunal.

Secondly, the CAT may need to start being stricter with applicants to dissuade owners from filing applications which raise issues other than the right to receive records. This is not intended to criticize or diminish the effectiveness of the CAT in resolving matters at the early stage and reducing the number of applications that actually get to the adjudication stage. However, in certain types of cases, there ought to be consequences for applicants who complicate and confuse the issues, which serve to drastically lengthen the proceedings, consuming valuable resources both for the Corporation and the Tribunal.

So far none of these things have not happened yet, but I am sure that it is only a matter of time. As the number of proceedings increase, the CAT will have no choice but to crack down on matters that should not be before them.

The ironic thing is, at the end of the day no one is happy. The unit owner has wasted their time and has not obtained the relief they want, and the Corporation has expended thousands of dollars in responding to a misguided application.