

Ontario Court Makes Significant Ruling on Disclosure of Membership Info – Potential Implications for the Condominium Industry

16 October 2020

A recent Ontario court decision highlights the stark differences between how records requests are treated for non-profit corporations under the *Ontario Corporations Act* versus the *Ontario Condominium Act*.

In *Hemming and JazzFM91inc.*, the Ontario Superior Court of Justice court ruled that not-for-profit corporations must release membership lists, including the email addresses of said members, upon request by a member for the purpose of requisitioning a members' meeting.

The court placed a heavy emphasis on the importance of facilitating open communication between members and how this form of communication encourages democracy. An interesting point that the court relies on is that the members effectively consented to communications from the not-for-profit corporation and other members by way of their membership, and further explicitly consented to communication via email. Therefore, releasing their email addresses to another member would not result in irreparable harm or risk to member privacy.

Applications to Condominiums

The big difference in the condominium context is that there is already specific legislation that addresses calling of meetings and disclosure of information relating to unit owners.

Section 13.3(1) of O.Reg. 48/01 made under the *Condominium Act* stipulates that the right to examine or obtain a copy of a record does not apply unless an owner, purchaser or a mortgagee of a unit or their agent is making such a request and the request is related only to that person's interests as an owner, purchaser or a mortgagee of a unit. In other words, you can only request information from the condo board if you are an owner, purchaser or mortgagee or their agent, and only with respect to your own unit. Further, section 55(4) of the *Condominium Act* excludes the inspection of records with respect to specific units or owners.

Owners are permitted to be served through email and may have consented to such, but if a requisitioner needs to serve them in order to requisition an owner's meeting, they are precluded from accessing such email addresses as that information would fall within the exclusions listed in the *Condominium Act*.

Going Forward

The key question going forward is going to be whether this precedent has any "teeth" as it relates to similar condominium disputes. I am an advocate for information disclosure as it relates to condominium living. If a member of a public charity is entitled a list of email addresses and owner information, then how could someone reasonably argue that an owner in a condominium building shouldn't have access to his or her next door neighbour's email address for a legitimate, proper purpose? These are owners who live with one another and share monthly expenses and services and see one another on a regular basis. If someone uses an email address for solicitation or other inappropriate reasons, then clearly that needs to be addressed. However, that is generally not an issue in the condominium context.

It will be interesting to see how this decision is relied upon the next time a condominium records case is before the Ontario courts or the Condominium Authority Tribunal.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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