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The Last Word

Non-Compliance With CAT Order Costs

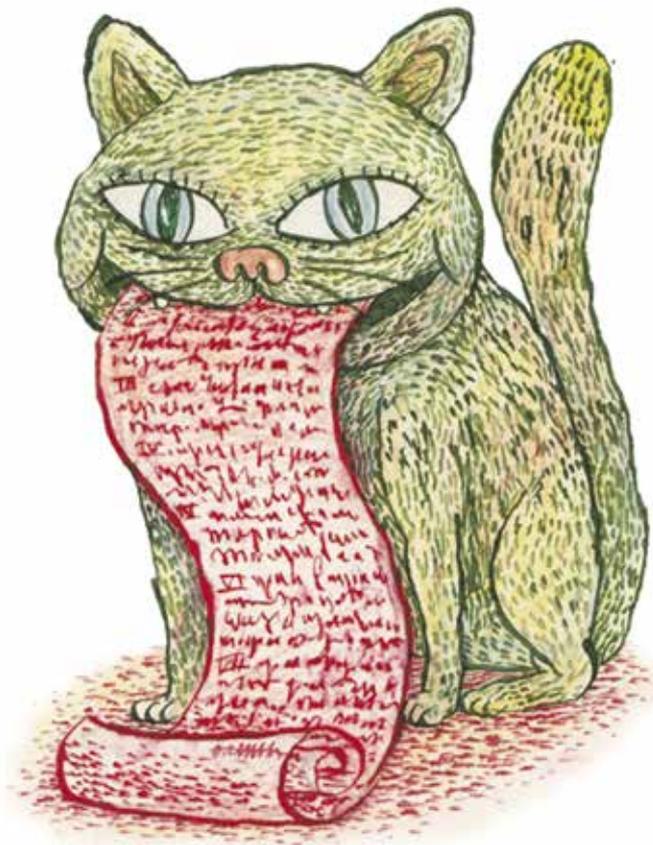
A Condo Corporation is on the Hook for Almost \$47,000 Due to Its Failure to Comply With a CAT Order

In the underlying CAT decision, the unit owner requested 10 core records of the Corporation, including the owners list which the unit owner wished to review in advance of an upcoming AGM.

The records were clearly within the scope of records that owners are entitled to. CAT ordered the production of all of the requested records and a penalty of \$2,000 against the Corporation for its failure to respond to the request for records or participate in the CAT proceeding. The requested records were ordered to be provided within 30 days following the order – by March 21, 2019.

The Corporation failed to provide the records by the deadline. It produced the records in stages, and by August 1, 2019 (over 4 months following the deadline), all records were produced; but not before the unit owner commenced an application in the Ontario Superior Court of Justice for compliance with the CAT order.

In the decision the Court sends a message to other condo corporations that there will be a high price to pay for



non-compliance with a CAT order: “An award of costs on a full indemnity basis makes clear that there are ramifications for failing to comply with the Tribunal’s Order regarding the timing of the delivery of the Records...”

On this basis, the unit owner was awarded legal fees on a full indemnity basis for the period up until the delivery of the records on August 1, and partial indemnity costs thereafter, for a total of almost \$15,000. This was on top of the \$2,000 previously awarded by CAT and the nearly \$30,000 in legal costs incurred by the Corporation responding to the application: a total of \$47,000.

What are the Takeaways?

1. Respond to owners and engage in the CAT process;
2. If CAT orders production of records, its not a recommendation nor is it optional: Corporations are required to comply with the order, within the timeframe;
3. There can be significant cost implications associated with CAT and court proceedings; and
4. If you are struggling to meet a records request deadline (i.e. due to the scope of the request, state of the records, etc.), communicate with the owner in advance. **CV**