

MEMORANDUM OF UNDERSTANDING

between

THE BOARD OF DIRECTORS OF THE CONDOMINIUM AUTHORITY OF ONTARIO
("Board")

and

THE CHAIR OF THE CONDOMINIUM AUTHORITY TRIBUNAL
("Tribunal Chair")

1. Purpose

- 1.1. The purpose of this Memorandum of Understanding (MOU) is to set out the accountability relationship between the Board and the Tribunal Chair. It sets out the working relationships that support the accountability and governance requirements. It establishes a framework that recognizes the independence of the Tribunal within the Condominium Authority of Ontario (CAO) with respect to dispute resolution and adjudication of individual cases, and supports the Tribunal and the CAO to fulfill their respective mandates. Further, the MOU supports the independence of the Tribunal and the Tribunal Members in rendering adjudicative decisions and in resolving disputes, consistent with the legislation, common law and principles of natural justice.
- 1.2. The CAO is an Administrative Authority that has been designated by the Minister of Government and Consumer Services (the Minister) to administer delegated provisions of the Condominium Act, 1998 (Act). The CAO is focused on consumer protection and supporting healthy condominium communities across Ontario through the provision of information, training and, through the Tribunal, dispute resolution. The relationship between the CAO and the Minister is outlined in a separate Administrative Agreement.
- 1.3.
- 1.4. The Tribunal is responsible for adjudicative decisions, resolution of disputes and case management within its statutory mandate, and for the assessment and management of Tribunal Members and its relationships, dealings and communications with Tribunal users and persons affected by its services.
- 1.5. The MOU does not affect, modify, limit or interfere with any of the responsibilities of the Board or the Tribunal or its Members established by law or set out in the Administrative Agreement. In the event of a conflict between the MOU and any act or regulation or Administrative Agreement, the Act or regulation prevails.

2. Legal Authority and Mandate

- 2.1. The Tribunal is established under the *Condominium Act, 1998* (the Act). The Tribunal has powers under Part I.2 of the Act to resolve any type of dispute that is prescribed by regulation.

- 2.2. The Tribunal also exercises powers and authority granted under the *Statutory Powers Procedure Act*.
- 2.3. The authority for the Tribunal is further set out in the Administrative Agreement between the Ministry and the CAO, and the CAO By-laws.

3. Guiding Principles

- 3.1 The Board recognizes that the Tribunal exercises powers and performs duties in accordance with its legal mandate. It is independent of the CAO in all matters affecting adjudication and the resolution of disputes that come before it, in the assessment and management of Tribunal Members, and in its relationships, dealings and communications with Tribunal users and persons affected by its services. Board members will have no involvement in individual cases.
- 3.2 The Tribunal, the Board and the CAO are committed to service excellence, and dispute resolution and adjudicative excellence.
- 3.3 The Tribunal, the Board and the CAO are committed to sharing information to promote effective operation, and to meet the objectives of the CAO and the Tribunal.
- 3.4 The Tribunal and the Board acknowledge that the Tribunal delivers an important service as part of the CAO and the CAO and the Tribunal agree to consult each other, as appropriate, on the development of, or proposed amendments to, policies and services that may affect the other party.
- 3.5 The Tribunal and the Board acknowledge that the Board, through the Executive Director/Registrar, is responsible for effective management of the Tribunal's operations, including providing services, such as case management, communications, customer care and information technology systems.
- 3.6 The Tribunal and CAO are committed to customer service excellence and fostering a user-centric approach, including supporting accessibility, diversity and inclusion.
- 3.7 The Tribunal and CAO will work collaboratively and will avoid duplication of services, wherever appropriate and subject to ensuring the Tribunal's adjudicative and dispute resolution independence.
- 3.8 The Tribunal and the CAO acknowledge that sound financial management and accountability are fundamental principles to be observed in the fulfilment of their mandates.

4 Accountability Relationships

4.1 The Board

- 4.1.1 The Board, through the Chair of the Board, is accountable to the Minister for the fulfilment of the CAO mandate, and the Tribunal.

4.2 Tribunal Chair

- 4.2.1 The Tribunal Chair is accountable to the Board for the performance of the Tribunal in fulfilling its mandate and for carrying out the roles and responsibilities assigned to the Chair by the Act, the Board, and this MOU. The Tribunal is an independent tribunal within the CAO. The Chair holds no other position within the CAO which might

compromise his/her independence. The Chair cannot have membership in any consumer advocacy, condominium board, or condominium industry organizations.

- 4.2.2 For administrative purposes, the Chair reports to the Executive Director.
- 4.2.3 The Chair will have direct access to the Board and can request meetings with the Board. Discussions with the Board will be about the administration of the Tribunal, and not individual cases or disputes before the Tribunal.
- 4.2.4 The Chair will inform the Board of any situations that may affect the independent dispute resolution or decision-making role of the Tribunal.

4.3 Executive Director/Registrar, Condominium Authority of Ontario

- 4.3.1 The Executive Director is accountable to the Board for the performance of the CAO, in providing administrative and operational support to the Tribunal and for carrying out the roles and responsibilities assigned to him or her by the Board, and this MOU.

4.4 Director, Tribunal Operations and Deputy Registrar

- 4.4.1 The Director, Tribunal Operations and Deputy Registrar (the Director) is accountable to the Executive Director to implement policies and operational decisions, and works day to day with the Chair to provide operational support to the Chair and the Tribunal, and is accountable to the Executive Director for the effective management of Tribunal's operations and the management and supervision of Tribunal staff.

5 Roles and Responsibilities

5.1 Role of the Board

The Board is responsible for:

- 5.1.1 Ensuring the Tribunal fulfils its mandate.
- 5.1.2 Ensuring the independence of the Tribunal in rendering adjudicative decisions and in resolving disputes, including refraining from any involvement in disputes before the Tribunal.
- 5.1.3 Making reasonable efforts to ensure that that the Tribunal has sufficient resources and administrative and operational support to fulfil its mandate.
- 5.1.4 Appointing members of the Tribunal, on recommendation of the Chair.
- 5.1.5 Approving the Tribunal's service standards, accountability and governance policies.
- 5.1.6 Consulting with the Chair regarding new directions, legislative or policy changes.
- 5.1.7 Recommending to the Minister the powers to be given to the Tribunal when a change in the Tribunal's mandate is being proposed.
- 5.1.8 Evaluating the Chair's performance.
- 5.1.9 Developing the MOU between the Board and the Tribunal Chair and signing it into effect.
- 5.1.10 Appointing the Board Chair to act as the Ethics Executive for the Tribunal Chair under the Tribunal's Conflict of Interest Policy.

5.2 Role of the Tribunal Chair

The Tribunal Chair is responsible for:

CONDOMINIUM AUTHORITY TRIBUNAL - MEMORANDUM OF UNDERSTANDING

- 5.2.1 Setting the goals, objectives, processes, and strategic directions for the Tribunal in light of its mandate, accountability requirements and this MOU.
- 5.2.2 Protecting the independence of the Tribunal's dispute resolution and adjudicative process.
- 5.2.3 Ensuring the Tribunal remains fair and user-focussed in the delivery of its mandate.
- 5.2.4 Recommending Tribunal Member appointments and reappointments to the Board.
- 5.2.5 Conducting Tribunal Member performance appraisals and ensuring that an appropriate framework is in place for Members to receive adequate orientation and ongoing professional development.
- 5.2.6 Ensuring the development of the required accountability and governance documents, including an effective performance measurement and management system for assessing the performance of the Tribunal.
- 5.2.7 Ensuring that funds are used with integrity and honesty and that the Tribunal complies with management principles and operates within its approved funding allocation in the fulfillment of its mandate.
- 5.2.8 Reviewing and approving the content relating to the Tribunal's mandate/performance for inclusion in the CAO's Business Plan, budget, Annual Report and financial reports.
- 5.2.9 Reviewing and handling any public complaints against Members under the Tribunal's Complaints Policy.
- 5.2.10 Acting as the Ethics Executive for Members as further set out in Section 7 of this MOU.

5.3 Role of the Executive Director

The Executive Director is responsible for:

- 5.3.1 Day to day operations and performance of the CAO and Tribunal staff, serving as the main link between the Board and the rest of the organization in the delivery of the Tribunal operations.
- 5.3.2 Ensuring that the business plan for the CAO addresses the Tribunal operations.
- 5.3.3 Meeting with the Chair as necessary to discuss matters of mutual importance to the Tribunal and CAO, such as the administrative and operational services provided by the CAO.
- 5.3.4 Consulting with the Tribunal Chair on the financial and administrative, human resources, corporate and other policies of the CAO that apply to Tribunal.
- 5.3.5 Ensuring annually, that the Director, Tribunal Operations' performance management plan reflects his or her operational reporting obligations to the Chair and to the Executive Director, and the standards to be met in carrying out those responsibilities and obligations. The Director, Tribunal Operations' performance management plan will stipulate the obligation to support the Tribunal Chair effectively and forms a part of the Director's performance evaluation which will be completed in consultation with the Tribunal Chair.

6 Tribunal Excellence

- 6.1 The Tribunal is committed to service excellence, and dispute resolution and adjudicative excellence.
- 6.2 The Tribunal is committed to being client centred; proactive; culturally competent and committed to providing access to justice.
- 6.3 The Tribunal will ensure it offers a fair process, considering procedural, substantive and relational fairness.
- 6.4 The Tribunal members will be trained in both condominium subject matter expertise and resolution of disputes.
- 6.5 The Tribunal and CAO are committed to evaluating user experience feedback to ensure that its services continue to be responsive to the needs of its users.

7 Ethical Framework

- 7.1 The Tribunal Chair will act as the Ethics Executive for Members and is responsible for ensuring that the Members are informed of, and comply with, the following Tribunal policies/codes/frameworks:
 - 7.1.1 Ethical framework
 - 7.1.2 Conflict of interest policy
 - 7.1.3 Code of conduct

8 Public Reporting and Information Sharing Arrangements

- 8.1 The Chair and the Executive Director will work collaboratively as needed, while respecting the independence of the Tribunal's mandate, to ensure that the CAO's Annual Report and Business Plan meet the requirements set out in the Administrative Agreement between the Chair of the Board and the Minister.
- 8.2 The Tribunal will provide content related to its activities, objectives and performance goals, including financial considerations and a system of measures to report on the achievement of the objectives, for inclusion in the CAO's annual Business Plan. This content will be provided in a timely fashion to allow for the Board's review and comment.
- 8.3 The Tribunal will provide content related to the performance of its independent mandate for inclusion in the CAO's Annual Report. This content will be provided in a timely fashion to allow for the Board's review and comment.
- 8.4 The Tribunal may develop additional reports, in consultation with the CAO, and may publish any such reports that have been reviewed by, and if appropriate, approved by, the Board.
- 8.5 The Tribunal will provide data and information to the CAO that may be required from time to time by CAO administration, subject to protection of privacy considerations and any other

restrictions which may interfere with preserving the integrity of the dispute resolution and adjudicative processes or natural justice rights of the parties.

8.6 At the request of the Tribunal Chair, the CAO will provide information the Tribunal may require from time to time, subject to protection of privacy and operational considerations.

9 Financial Arrangements

9.1 The Tribunal budget will be prepared and submitted to the Board as part of the CAO business planning process.

9.2 The Tribunal will comply with the financial policies, including procurement policies, of the CAO.

9.3 The Tribunal Chair will have the accountability and independence to administer the Tribunal budget allocation within CAO procurement and expenditure management policies.

9.4 The Tribunal's financial reporting will be part of the CAO financial reporting process, which includes the requirement for audited financial statements.

9.5 The Board will make reasonable efforts to ensure that the Tribunal has sufficient budget to fulfil its mandate.

9.6 The Tribunal Chair is required to report to the Board any financial impact that affects the ability of the Tribunal to fulfil its mandate.

10 Administrative and Legal Arrangements

- 10.1 The CAO will provide administrative and operational support to the Tribunal, including: case management, communication, information technology, human resources and financial services.
- 10.2 The Tribunal will have access to CAO legal counsel.
- 10.3 The Tribunal will have access to independent legal counsel as needed.

11 Staffing, Remuneration and Appointments

- 11.1 The CAO will provide administrative support for the recruitment of Tribunal Members.
- 11.2 The Tribunal will develop and implement a Remuneration Policy for Members. The policy will inform the budgeting and planning process for the Tribunal.
- 11.3 The Tribunal Chair will recommend Member appointments and reappointments, and the length of the terms to the Board.
- 11.4 The Tribunal Chair will recommend Vice-Chair appointments and reappointments, and the length of terms to the board.
- 11.5 The Board will appoint the Chair, Vice-Chair(s) and Members.

12 Intellectual Property

- 12.1 Intellectual property developed for the Tribunal will remain the property of the CAO.

13 Access to Information

- 13.1 The CAO Privacy and Access Policy will apply to the Tribunal and Tribunal Chair will be consulted in the development or review of the policy.

14 Risk Management and Indemnification

- 14.1 The Tribunal falls under the CAO risk management practices.
- 14.2 The Tribunal Chair will be consulted on the development and review of the risk management practices that affect the Tribunal.
- 14.3 The Tribunal Chair will consult with the CAO on risks that affect the Tribunal.
- 14.4 Section 1.19(1) of *the Act* provides protection against any legal action against CAO and Tribunal Members, Board, staff, etc. for good faith acts or omissions.
- 14.5** The CAO will provide indemnification for Members.

15 Service Standards/Complaints

- 15.1 The CAO Complaints Policy outlines the processes for complaints about Tribunal staff and services, as well as complaints about the conduct of Tribunal Members.
- 15.2 The Tribunal Chair will be consulted in the development and review of the policy.
- 15.3 CAO processes for responding to complaints about the quality of services is separate from and will not interfere with the Tribunals' case-related processes.
- 15.4 The Tribunal Chair will be responsible for responding to complaints about the conduct of Members.
- 15.5 The Tribunal Chair will develop service standards and performance metrics for the Tribunal.

16 Creation, Collection, Maintenance and Disposition of Records.

- 16.1 The Tribunal will maintain the confidentiality of settlement offers and agreements generated as part of the negotiation and mediation process.
- 16.2 The Tribunal will maintain a “record of a proceeding” as defined in *Statutory Powers Procedure Act*.
- 16.3 The Tribunal will develop and implement a Records Retention Policy.

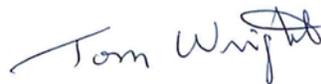
17 Consultation, Issues Management and Communications

- 17.1 The CAO Spokesperson Policy will outline the roles and responsibilities with respect to communications on behalf of the Tribunal.
- 17.2 The Tribunal Chair will notify the Board Chair of any possible issues management situations while ensuring case-related confidentiality and maintaining the dispute resolution and adjudicative independence of the Tribunal.
- 17.3 The Tribunal Chair will inform CAO Executive Director of possible issues management situations, while ensuring case-related confidentiality and maintaining the dispute resolution and adjudicative independence of the Tribunal.
- 17.4 The CAO's Executive Director will inform the Tribunal Chair of possible issues management situations that might affect the Tribunal.
- 17.5 The Tribunal Chair and/or the CAO Executive Director will develop an engagement strategy to seek user and stakeholder feedback on such things as the Tribunal's Rules and operational effectiveness.

18 Duration and Review of the MOU

- 18.1 The MOU will expire two years from its effective date.
- 18.2 The MOU will automatically be reviewed on the appointment of a new Tribunal Chair, or Board Chair; at any time jointly agreed by the parties; or significant change to the mandate or jurisdiction of the Tribunal.
- 18.3 A signed copy of the MOU is to be provided to the Minister within 30 days of execution.

This MOU is effective as of November 1, 2017.



Tom Wright, Chair, Condominium Authority of Ontario



Ian Darling, Chair, Condominium Authority Tribunal

CONDOMINIUM AUTHORITY TRIBUNAL - MEMORANDUM OF UNDERSTANDING