

MEMORANDUM OF UNDERSTANDING

between

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

and

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

and

THE CHIEF EXECUTIVE OFFICER OF THE CONDOMINIUM AUTHORITY OF ONTARIO
(CEO)

Dated: July 29, 2020

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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 and the CEO as it relates to the roles of the CAO and Tribunal set out in the Act Part 1.2 *Condominium Authority Tribunal*, which Part 1.2 *Condominium Authority Tribunal* (sections 1.31 to 1.48) is incorporated herein by reference. 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 CAO with respect to dispute resolution and adjudicative decision-making and supports the Tribunal and the CAO to fulfill their respective mandates.

1.2 The CAO is an Administrative Authority that has been designated by the Minister of Government and Consumer Services (**Minister**) to administer delegated provisions of the *Condominium Act, 1998*, as amended (**Act**) and associated regulations.

The CAO supports consumer protection and condominium owners, as such term is defined in the Act section 1, and communities by providing services and resources for condominium buyers, owners, residents and directors across Ontario.

Its mission is to protect condominium owners with information, education, resources and, through the Tribunal, dispute resolution, consistent with the public interest. It indirectly supports good governance of condominiums.

The relationship between the CAO and the Minister is further outlined in a separate Administrative Agreement.

1.3 The MOU supports the adjudicative 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.

1.4 The Tribunal is responsible for (a) adjudicative decisions, resolution of disputes and case management within its statutory mandate, (b) the assessment and management of Tribunal Members and its relationships, dealings and communications with Tribunal users and persons affected by its services, and (c) promoting Tribunal excellence.

- 1.5 The MOU does not affect, modify, limit or interfere with any of the responsibilities of the Board, the CEO or the Tribunal or its Members established by law or set out in the administrative agreement between the Minister and the CAO, as amended and restated from time to time (**Administrative Agreement**). In the event of a conflict between the MOU and any act or regulation, the Act or regulation prevails. In the event of a conflict between the MOU and the Administrative Agreement, the Administrative Agreement prevails.

2. Definitions

2.1 In this MOU:

- i. **“Act”** means The Condominium Act, 1998, as amended;
- ii. **“Administrative Agreement”** means the administrative agreement between the Minister and the CAO, as amended and restated from time to time;
- iii. **“Board”** means the Board of Directors of the Condominium Authority of Ontario;
- iv. **“Board Chair”** means the Chair of the Board of Directors of the Condominium Authority of Ontario;
- v. **“CAO”** means the Condominium Authority of Ontario;
- vi. **“CAT”** or **“Tribunal”** means the administrative Condominium Authority Tribunal of the CAO that is assigned the power to conduct hearings under the Act;
- vii. **“CEO”** means the Condominium Authority Tribunal of the CAO;
- viii. **“Director, Tribunal Operations”** means the Director of Tribunal Operations of the Tribunal;
- ix. **“Minister”** means Minister of Government and Consumer Services or such other person who may be designated from time to time as the Minister responsible for the Act in accordance with the Executive Council Act;
- x. **“MOU”** means this Memorandum of Understanding, signed by the Board Chair, the Tribunal Chair and the CEO of the CAO;
- xi. **“Original Effective Date”** means the date this MOU becomes effective on the date it is signed by the Board Chair as the last party to execute;
- xii. **“Owner”** means owner as defined in subsection 1(1) of the Act;
- xiii. **“Parties”** means the parties to this MOU;
- xiv. **“Tribunal Chair”** means the Chair of the Tribunal of the Condominium Authority Tribunal;
- xv. **“Tribunal Vice-Chair”** one or more of the Tribunal Vice Chairs of the Tribunal; and

- xvi. **“Tribunal User”** means the “Users” as define in the CAT Tribunal Rules of Practice.

3. Legal Authority and Mandate

- 3.1 The Condominium Authority is established under *The Condominium Act, 1998, as amended (Act)*. The CAO has authority under the Act section 1.4, which says: “In carrying out its powers and duties under this Act or the regulations, the condominium authority shall comply with the administrative agreement, this Act, the regulations and other applicable law.”
- 3.2 In accordance with the Administrative Agreement, the CAO shall do so with the purpose of ensuring the independence of the Tribunal and the Tribunal Members in rendering adjudicative decisions or in resolving disputes and in determining all questions of fact or law that arise in any proceeding before it, consistent with the legislation, common law and principles of natural justice.
- 3.3 The Tribunal is established under the Act section 1.32, which designates the condominium authority’s English name as the “*Condominium Authority Tribunal*” and the French name as the “*tribunal de l’autorité du secteur des condominiums*”. The Tribunal has powers under the Act Part I.2 to resolve any type of dispute that is prescribed by regulation. The Lieutenant Governor in Council made such designations in O. Reg. 181/17: *Designation of Condominium Authority*.
- 3.4 The Tribunal also exercises powers and authority granted under the *Statutory Powers Procedure Act*.
- 3.5 The authority for the Tribunal is further set out in the Administrative Agreement between the Ministry and the CAO, and the CAO By-laws.

4. Guiding Principles

- 4.1 The Board and the CAO recognize that the Tribunal exercises powers and performs duties in accordance with its legal mandate. It is independent of the CAO in (1) resolving disputes, (2) rendering adjudicative decisions, and (3) in determining all questions of fact or law that arise in any proceeding before it, consistent with the legislation, common law and principles of natural justice. This includes the assessment and management of Tribunal Members, and in its relationships, dealings and communications with Tribunal users and persons affected by the mediation and adjudication processes. Board members and the CEO will have no involvement in individual cases.
- 4.2 The Tribunal, Board, CAO and CEO are committed to service excellence, and dispute resolution and adjudicative excellence.
- 4.3 The Tribunal, Board, CAO and CEO are committed to sharing information to promote effective operation of the CAO and the Tribunal, and to meet the objectives of the CAO and the Tribunal.
- 4.4 The Tribunal, Board, CAO and CEO acknowledge that the Tribunal delivers an important service as part of the CAO and the CAO and the Tribunal agree to consult each other

regularly, as appropriate, on the development of, or proposed amendments to, legislation, the Administrative Agreement, policies and services that may affect the other party.

- 4.5 The Tribunal and the Board acknowledge that the Board, through the CEO, is responsible for effective management of the Tribunal's operations, including providing services, such as case management, communications, client services and information technology systems.
- 4.6 The Tribunal and CAO are committed to customer service excellence and fostering a user-centric approach, including supporting accessibility, diversity and inclusion.
- 4.7 The Tribunal and CAO will work collaboratively and will avoid duplication of services, wherever appropriate and subject to ensuring the Tribunal's independence within the CAO with respect to dispute resolution and adjudicative decision making.
- 4.8 The Tribunal and the CAO acknowledge that sound financial management and accountability are fundamental principles to be observed in the fulfilment of their mandates.

5. Accountability Relationships

5.1 The Board and Board Chair

- 5.1.1 The Board, through the Board Chair, is accountable to the Minister and Owners for the fulfilment of the CAO's mandate including the mandate of the CAT.
- 5.1.2 The Board is responsible for appointing or declining to appoint as Members of the Tribunal individuals who have been evaluated through the competitive, merit-based evaluation process (see MOU section 6.2.4 iv below), taking into consideration the results of their evaluation and the recommendations of the Tribunal Chair and Board Chair.
- 5.1.3 The Board is responsible for re-appointing, declining to re-appoint or revoking the appointment of existing Tribunal Members, taking into consideration the results of their performance reviews (see MOU section 6.2.4 iv below) and the recommendations of the Tribunal Chair and Board Chair.

5.2 Tribunal Chair

- 5.2.1 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 Tribunal Chair by the Act, the Board, and this MOU.
- 5.2.2 The Tribunal is an independent tribunal within the CAO. The Tribunal Chair holds no other position within the CAO which might compromise his/her independence. The Tribunal Chair cannot have membership in any consumer advocacy, condominium board, or condominium industry organizations.
- 5.2.3 Functionally, the Tribunal Chair reports to the Board Chair on behalf of the Board. For administrative purposes, the Tribunal Chair reports to the CEO. The Board will be responsible for the Tribunal Chair's performance planning process. The

Tribunal Chair will have direct access to the Board and can request meetings with the Board.

5.2.4 The Tribunal Chair will inform the Board of any situations that may affect the independent dispute resolution or decision-making role of the Tribunal.

5.2.5 The Tribunal Chair is responsible for keeping the Board informed of upcoming Tribunal member vacancies and recommending candidates for appointment, re-appointment or revocation to the Tribunal.

5.3 CEO, Condominium Authority of Ontario

5.3.1 The CEO is accountable to the Board for (1) the performance of the CAO in managing and overseeing the operations of the Tribunal, and (2) carrying out the roles and responsibilities assigned to the CEO by the Board, and this MOU.

5.4 Director, Tribunal Operations and Tribunal Vice-Chair

5.4.1 Director, Tribunal Operations and Tribunal Vice-Chair (Director/Vice Chair) has a shared accountability to both the CEO and Tribunal Chair.

(a) As Director, the position is responsible for the effective management of Tribunal's operations, the online dispute resolution platform (CAT-ODR), and the management and supervision of Tribunal staff.

(b) As Tribunal Vice Chair, the position is responsible for liaising with the Tribunal Chair on the development and implementation of adjudicative policies and processes, supporting CAT Members, assisting in decision review and conducting mediations and adjudications in an online forum.

6. Roles and Responsibilities

6.1 Role of the Board – The Board is responsible for:

6.1.1 Ensuring the Tribunal fulfils its mandate.

6.1.2 Ensuring the independence of the Tribunal in rendering adjudicative decisions and in resolving disputes. In so doing, the Board will refrain from any involvement in disputes before the Tribunal. (See also MOU section 2.2)

6.1.3 Making reasonable efforts to ensure that that the Tribunal has sufficient resources and administrative and operational support to fulfil its mandate.

6.1.4 Ensuring the Tribunal Chair conducts a Board-approved competitive and merit-based recruitment and performance review process for Members, having regard to the CAT's Member composition matrix.

6.1.5 Appointing, reappointing and revoking members of the Tribunal, or declining to do so, as described in MOU sections 5.1.2 and 5.1.3 above.

6.1.6 Overseeing Tribunal policies, practices and procedures relating to the discharge of the Tribunal's function to promote the conduct of proceedings in a fair,

independent and transparent manner, and the bringing of matters before the Tribunal in a timely fashion, including by

- (a) approving and overseeing the Tribunal's service standards, accountability and governance policies including those identified in the Appendix as well as any additional policies as approved by the MOU signatories from time to time;
- (b) approving the Tribunal's Rules of Practice;
- (c) ensuring the Tribunal establishes service standards for the timely release and publication of orders and decisions;
- (d) approving policies that ensure the independence of all Tribunal Members acting within the scope of their adjudicative function; and
- (e) approving the position descriptions for the Tribunal Chair, Tribunal Vice Chairs and members, and the member competency framework.

6.1.7 Consulting with the Tribunal Chair regarding new directions, legislative or policy changes.

6.1.8 Recommending to the Minister the powers to be given to the Tribunal when a change in the Tribunal's mandate is being proposed.

6.1.9 Evaluating the Tribunal Chair's performance.

6.1.10 Developing the MOU between the Board and the Tribunal Chair and signing it into effect.

6.1.11 The Board Chair acts as the Ethics Executive for the Tribunal Chair, as set out in the CAT's Conflict of Interest Policy.

6.2 Role of the Tribunal Chair – The Tribunal Chair is responsible for:

6.2.1 Setting the goals, objectives, processes, and strategic directions for the Tribunal in light of its mandate, accountability requirements and this MOU.

6.2.2 Protecting the independence of the Tribunal's dispute resolution and adjudicative process.

6.2.3 Meeting with the CEO regularly to discuss matters of mutual importance to the Tribunal and CAO, such as the administrative and operational services provided by the CAO.

6.2.4 Developing and implementing approaches to support Tribunal Excellence, including by:

- i. Developing Tribunal Rules of Practice; Tribunal Practice Guidelines; and collaboration by Tribunal Members;
- ii. Ensuring the Tribunal remains fair and user-focused in the delivery of its mandate;

- iii. Developing and recommending Tribunal structure changes to the Board as the caseload for the Tribunal changes and develops;
- iv. Subject to section 5.2, developing and implementing a competitive, merit-based recruitment, appointment and performance review process having regard to the CAT's Member composition matrix;
- v. Recommending Tribunal Member appointments, reappointments and revocations to the Board;
- vi. Conducting Tribunal Member performance appraisals and ensuring that an appropriate framework is in place for Members to receive adequate orientation and ongoing professional development;
- vii. 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;
- viii. 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;
- ix. 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 report;
- x. Reviewing and handling any public complaints against Members under the Tribunal's Complaints Policy;
- xi. Acting as the spokesperson for the Tribunal on Adjudicative matters; and
- xii. Acting as the Ethics Executive for Members as further set out in the MOU section 8.

6.3 Role of the CEO – The CEO is responsible for:

- 6.3.1 Setting the goals, objectives, processes, and strategic directions for the CAO in light of its mandate, accountability requirements and this MOU.
- 6.3.2 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.
- 6.3.3 Ensuring that the business plan for the CAO addresses the Tribunal operations.
- 6.3.4 Meeting with the Tribunal Chair regularly to discuss matters of mutual importance to the Tribunal and CAO, such as the administrative and operational services provided by the CAO.
- 6.3.5 Consulting with the Tribunal Chair on the financial and administrative, human resources, corporate and other policies of the CAO that apply to Tribunal, as well as in the development of Board Meeting agendas.

6.3.6 Ensuring annually, that the Director, Tribunal Operations, has a performance management plan that reflects (a) the role's obligations to provide operational support to the Tribunal, the Tribunal Chair and the CEO, and (b) the standards to be met in carrying out those responsibilities and obligations. The evaluation of the Director's performance will be done jointly by the CEO and the Tribunal Chair.

7. Tribunal Excellence

- 7.1 The Tribunal is committed to service excellence, and dispute resolution and adjudicative excellence.
- 7.2 The Tribunal is committed to being client-centred, proactive, culturally competent, and to providing access to justice.
- 7.3 The Tribunal will ensure it offers a fair process, considering procedural, substantive and relational fairness.
- 7.4 The Tribunal members will be trained in both condominium subject matter expertise and resolution of disputes.
- 7.5 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.

8. Ethical Framework

- 8.1 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 Tribunal's Ethical Framework which includes the CAT Member Code of Conduct, the CAT Member Conflict of Interest Policy, the CAO access & Privacy Policy, and the CAO Public Complaints Policy.

9. Public and Governance Accountability Reporting and Information Sharing Arrangements

- 9.1 The Tribunal governance and accountability policies are set out in Appendix "A".
- 9.2 The Tribunal's mandate, mission, business plan and annual reporting obligations are integrated within the CAO's mandate, mission, business plan and annual report.
- 9.3 The Board Chair and the CEO will work collaboratively, 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 Board Chair and the Minister.
- 9.4 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.
- 9.5 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.

- 9.6 The Tribunal may develop additional reports, in consultation with the CEO of the CAO, and may publish any such reports that have been reviewed by, and if appropriate, approved by, the Board.
- 9.7 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 preserve (a) the integrity of the dispute resolution and adjudicative processes or (b) natural justice rights of the parties.
- 9.8 At the request of the Tribunal Chair, the CAO will provide information the Tribunal may require from time to time, subject to confidentiality, protection of privacy and operational considerations.
- 9.9 Pursuant to the CAO Access and Privacy Policy, the Tribunal will make adjudicative records available upon request, unless the record is subject to a confidentiality order.

10. Financial Arrangements

- 10.1 The Tribunal's adjudicative budget and the CAO's tribunal operations budget will be prepared and submitted to the Board as part of the CAO's business planning process.
- 10.2 The Tribunal will comply with the financial policies, including procurement policies, of the CAO.
- 10.3 The Tribunal Chair will have the accountability and independence to administer the Tribunal budget allocation within CAO procurement and expenditure management policies.
- 10.4 The Tribunal's financial reporting will be part of the CAO financial reporting process, which includes the requirement for audited financial statements.
- 10.5 The Board will make reasonable efforts to ensure that the Tribunal has a sufficient budget to fulfil its mandate.
- 10.6 The Tribunal Chair is required to report to the Board any financial impact that affects the ability of the Tribunal to fulfil its mandate.

11. Administrative and Legal Arrangements

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

12. Appointments, Remuneration and Staffing

- 12.1 The Tribunal Chair will recommend, to the Board: Tribunal Vice-Chair and Member appointments, reappointments, revocations and the length of the terms.

12.2 The Board will address appointments in accordance with the MOU sections 5.1.2, 5.1.3 and 6.1.5

12.3 The Tribunal will develop and implement a Remuneration Policy for Members. The policy will inform the budgeting and planning process for the Tribunal.

12.4 The CAO will provide administrative support for the recruitment of Tribunal Members.

13. Intellectual Property

13.1 Intellectual property developed for the Tribunal will remain the property of the CAO.

14. Access to Information

14.1 The CAO Privacy and Access Policy, which forms Schedule J to the Administrative Agreement, will apply to the Tribunal, and the Tribunal Chair will be consulted in the development or review of the policy.

15. Risk Management and Indemnification

15.1 The Tribunal falls under the CAO risk management practices.

15.2 The Tribunal Chair will be consulted on the development and review of the risk management practices that affect the Tribunal.

15.3 The Tribunal Chair will consult with the CAO on risks that affect the Tribunal.

15.4 The Act section 1.19(1) provides protection against any legal action against (a) the CAO Board, (b) CAO employees, agents or officers or persons whose services the CAO retains, (c) committees of the CAO, (d) Tribunal Members, and (e) individuals who perform functions under the delegated provisions for good faith acts or omissions.

15.5 The CAO will provide indemnification for Tribunal Members.

16. Service Standards/Complaint

16.1 The CAO Complaints Policy outlines the processes for complaints about Tribunal staff and services, as well as complaints about the conduct of Tribunal Members.

16.2 The Tribunal Chair will be consulted in the development and review of the policy.

16.3 The CAO's processes for responding to complaints about the quality of services is separate from and will not interfere with the Tribunals' case-related processes.

16.4 The Tribunal Chair will be responsible for responding to complaints about the conduct of Tribunal Members.

16.5 The Tribunal Chair will develop adjudicative service standards and performance metrics for the Tribunal.

17. Creation, Collection, Maintenance and Disposition of Records.

17.1 The Tribunal will maintain the confidentiality of all non-adjudicative records.

17.2 The Tribunal will maintain a “record of a proceeding” as defined in the Statutory Powers Procedure Act.

17.3 The Tribunal will develop and implement a Records Retention Policy.

18. Consultation, Issues Management and Communications

18.1 The CAO’s spokesperson and Issues Management Policy will outline the roles and responsibilities with respect to communications on behalf of the Tribunal.

18.2 The Tribunal Chair will notify the Board Chair and the CEO of any possible issues management situations while ensuring case-related confidentiality and maintaining the dispute resolution and adjudicative independence of the Tribunal.

18.3 The CEO will inform the Tribunal Chair of possible issues management situations that might affect the Tribunal.

18.4 The Tribunal Chair and the CEO will consult each other regarding owner or Tribunal User engagement strategies, public presentations and statements about the Tribunal.

18.5 The CEO will seek Tribunal User and Owner feedback on operational effectiveness.

18.6 The Tribunal Chair will seek Tribunal User feedback on effectiveness of mediation and adjudication practices, such as the Tribunal’s Rules.

19. Effective Date, Duration and Periodic Review of the MOU

19.1 This MOU becomes effective on the date it is signed by the Board Chair as the last party to execute it (**Original Effective Date**) and continues in effect until it is revoked or replaced by a subsequent MOU signed by the Parties.

19.2 A signed copy of the MOU is to be provided to the Minister within 30 days of execution and a copy is to be posted on the CAO’s publicly available website.

19.3 Upon a change in the Board Chair, Tribunal Chair or CEO, all Parties must affirm by letter that this MOU will continue in force without a review (and attach the signed letter to the MOU); or alternatively, the Parties may agree to revise it and sign a new MOU; within six months of the change.

19.4 A copy of the letter of affirmation or of the new MOU referred to in MOU section 19.3 above must be provided to the Minister within 30 days and posted on the CAO’s publicly available website.

19.5 The Board Chair, the Tribunal Chair or the CEO may initiate a review of this MOU by written notice to the other Parties.

19.6 If any of the parties deems it expedient to amend this MOU, they may do so only in writing. Any amendment shall only be effective after written approval by the Parties.

19.7 A full review and replacement of this MOU will be conducted promptly in the event of a significant change to the CAO’s mandate, powers or governance structure as a result of an amendment to the Act or any other applicable legislation.

19.8 This MOU continues to be in effect until and unless the Parties sign a new MOU.

20. Signatures




Heather Zordel, Chair, Condominium Authority of Ontario
August 10, 2020

Date



Ian Darling, Chair, Condominium Authority Tribunal
August 10, 2020

Date



Robin Dafoe, CEO, Condominium Authority of Ontario
August 10, 2020

Date

APPENDIX “A” – CONDOMINIUM AUTHORITY TRIBUNAL POLICIES

- CAT Ethical Framework**
- CAT Member Code of Conduct**
- CAT Member Conflict of Interest Policy**
- CAT Member Remuneration Policy**
- CAT French Language Services Policy**
- CAT Member Competency Framework**
- CAO Access & Privacy Policy (for access to Tribunal records)**
- CAO Conflict of Interest Policy for the Director, Tribunal Operations & Vice-Chair, Condominium Authority Tribunal**