

Condominium Authority Tribunal Practice Direction: Approach to Ordering Costs

Effective: January 1, 2022

Practice directions help parties understand the rules. They provide guidance about what the Tribunal expects of the parties and what the parties can expect of the Tribunal.

1. Introduction

The Condominium Authority Tribunal (CAT) is committed to providing fair, efficient, accessible and cost-effective dispute resolution services to Ontario's condominium communities. The CAT recognizes that clear and easy to understand Rules of Practice are essential to ensure parties can understand and fully participate in the dispute resolution process.

The CAT's Rules of Practice were updated effective January 1, 2022. The Rules of Practice set out the CAT's ability to order one party to reimburse another party for the legal fees and/or disbursements (collectively referred to as "costs") they have incurred if the costs are the result of "behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense." This Practice Direction provides additional clarity on the criteria the CAT might consider when deciding whether to order costs, and, if so, the amount of costs to be ordered.

The CAT's Rules of Practice address the topic of costs in Rules 48 and 49:

48. Recovery of Fees and Expenses

Reimbursement of CAT Fees Following a Final Decision

48.1 If a Case is not resolved by Settlement Agreement or Consent Order and a Tribunal Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the Tribunal Member decides otherwise.

Reimbursement of Legal Costs and Disbursements at any stage

48.2 The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements ("costs") incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party

all or part of their costs, including costs that were directly related to a Party's behaviour that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

48.3 A Party who fails to pay any amounts ordered to be paid to the CAT may not file a new Application until all outstanding amounts have been paid.

49. Compensation for Time Generally Not Recoverable

49.1 The CAT generally will not order one Party to pay another Party compensation for time spent related to the CAT proceeding.

2. Statutory Authority

The CAT's statutory authority is set out under the Condominium Act, 1998 (the Condo Act). The CAT has the authority to issue orders in accordance with section 1.44 of the Condo Act, which includes:

1. An order directing one or more parties to the proceeding to comply with anything for which a person may make an application to the Tribunal.
2. An order prohibiting a party to the proceeding from taking a particular action or requiring a party to the proceeding to take a particular action.
3. An order directing a party to the proceeding to pay compensation for damages incurred by another party to the proceeding as a result of an act of non-compliance up to the greater of \$25,000 or the amount, if any, that is prescribed.
4. An order directing a party to the proceeding to pay the costs of another party to the proceeding.
5. An order directing a party to the proceeding to pay the costs of the Tribunal.
6. An order directing a corporation that is a party to a proceeding with respect to a dispute under subsection 55 (3) to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies under that subsection if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection.
7. An order directing whatever other relief the Tribunal considers fair in the circumstances.

The Condo Act also states that an order for costs (i.e., an order for #4 and/or #5 above) shall be determined in accordance with the CAT's Rules of Practice.

3. Factors Relevant to Deciding whether to Order Costs

When deciding whether to order a party to reimburse another party's costs under Rule 48 and/or 49, the CAT will balance the parties' rights and interests to arrive at a fair decision. Some of the factors that the Tribunal may consider include:

- (a) Whether a party or representative's conduct was unreasonable, for an improper purpose, or caused a delay or expense;
 - If the CAT determines that a party or representative's conduct was unreasonable, for an improper purpose, or directly caused or contributed to a delay or expense for other parties, the CAT may order that party to pay some or all of the other parties' costs.
- (b) Whether the Case was filed in bad faith or for an improper purpose;
 - If the CAT determines that the case was filed in bad faith or for an improper purpose (e.g., the case was filed to annoy or frustrate other parties), the CAT may order the party who acted in bad faith or for an improper purpose to pay some or all of the other parties' costs.
- (c) The conduct of all parties and representatives, including the party requesting costs;
 - The CAT may look at the conduct of all parties and their representatives when determining whether to make an order for costs.
- (d) The potential impact an order for costs would have on the parties;
 - The CAT may consider whether an order for costs would have a disproportionate impact on the parties.
- (e) Whether the parties attempted to resolve the issues in dispute before the CAT Case was filed;
 - The CAT may consider whether / how the parties attempted to resolve the issues in dispute before the case was filed and before costs were incurred.
- (f) Whether a Party has failed to follow or comply with a previous order or direction of the CAT;

(g) The provisions of the condominium corporation's declaration, by-laws and rules (collectively referred to as the condominium corporation's "governing documents");

- The CAT may consider the provisions of the condominium corporation's governing documents. While the provisions of the governing documents are not the only consideration or ultimately determinative, the CAT may consider the provisions of the governing documents and whether the parties had clear understanding of their requirements and/or the potential consequences for contravening them.

(h) Any other factors the CAT considers relevant.

4. Factors Relevant to Deciding Amount of Costs

If the CAT decides that an order for costs is appropriate, the CAT will also have to decide on the appropriate amount. Some of the factors that the tribunal may consider include:

(a) Some or all of the factors listed above.

(b) The nature and complexity of the issues in dispute in the case.

- The CAT may consider whether the costs incurred by the parties are appropriate and proportional to the nature and complexity of the issues in dispute.

(c) Whether the costs are reasonable and were reasonably incurred.

- The CAT may consider whether the costs themselves are reasonable, and/or consider the circumstances in which they were incurred (e.g., was there a good reason or legitimate need to incur the cost?).