



CAT Practice Direction: Confidentiality

Effective: March 10, 2025

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. This practice direction provides guidance on confidentiality in Tribunal proceedings.

1. Introduction

As set out in the [CAO's Access and Privacy Policy](#), the Tribunal is guided by the open court principle and is committed to transparency, accountability and accessibility in its decision-making and operations.

The open court principle, embedded in s. 2(b) of the [Canadian Charter of Rights and Freedoms](#), requires that the CAT provide public access to adjudicative records contained in its case files. This access and transparency support the public's understanding of and confidence in the administrative justice system.

The CAT has also issued a [User Guide on Confidentiality](#) which provides an overview of what is and what is not confidential.

2. Stage 1: Negotiation & Stage 2: Mediation

Messages and other communications sent for the purpose of reaching a settlement (including settlement offers) are confidential and cannot be made public or discussed in Stage 3 – Tribunal Decision unless the parties agree and a CAT Member allows it.

This enables the parties to engage in an open discussion about the issues and to work together candidly to explore opportunities to resolve the issues without worrying that any information shared will be used against them if the case proceeds to Stage 3 – Tribunal Decision.

This does not mean, however, that every document shared in Stage 1 or 2 is confidential. Documents that include settlement discussions or offers are confidential, but other documents may not be.

For example, in a case about a dispute involving access to a condominium corporation's records, the Request for Records submitted by the owner and the Board Response

provided to the owner would not be confidential. This is because these documents were not produced for the purpose of settlement in mediation – rather, they form the basis of the dispute. Likewise, in a case involving a dispute about provisions in a condominium corporation’s declaration, by-laws or rules, those documents would not be confidential.

Where a condominium corporation provides corporate records to an owner in the context of a CAT case, those records are not confidential (unless the parties agree that they will be kept confidential).

If the parties are unable to resolve the dispute in Stage 2, the CAT Member will issue a Stage 2 Summary and Order. This order will not disclose any private settlement discussions, or any settlement offers. The order may also provide guidance to the parties about what documents may or may not be used in the hearing, subject to specific directions from the Stage 3 Member assigned to the case.

3. Settlement Agreements

If the parties agree to resolve their dispute through a settlement agreement, the agreement will typically contain a requirement that the agreement be kept confidential (though parties can agree to vary this requirement). This means that the parties and their representatives (including condominium board members) are not permitted to share the settlement agreement with others, post it publicly in any forum, or tell others about the details of the agreement.

While the agreement itself is confidential, the fact that there was a case and that it was resolved by settlement agreement is not confidential. For example, if a party tells someone that they had a case that resolved in Stage 2 – Mediation by settlement agreement, but does not disclose the agreement itself or the terms of that agreement, that would not constitute a breach of the Tribunal’s confidentiality requirements.

4. The Stage 3 Hearing & Confidentiality Orders

Consistent with the open court principle, everything that occurs during a hearing in Stage 3 – Tribunal Decision will be included in the Tribunal’s adjudicative records. The Tribunal record will be made available to the public on request. This includes a copy of the application when it was filed, any messages posted on the CAT-ODR system, any documents provided by the parties, any evidence provided by witnesses, and any recordings of teleconferences or videoconferences.

The Tribunal can make orders to protect the confidentiality of personal information and/or restrict public access to all or part of its adjudicative records pursuant to Rule 21 of the [CAT Rules of Practice](#). The Tribunal typically does so by issuing a **confidentiality order**, which is an order of the Tribunal that may require the parties to keep those

records confidential and that public access to all or part of the adjudicative records be restricted.

If you want to request a confidentiality order because you have concerns about public access to the adjudicative records in a case, you should request a confidentiality order as soon as possible. The Tribunal can issue a confidentiality order at a party's request or on the Tribunal's own initiative.

You can request a confidentiality order by:

- Sending the Tribunal an email at CATinfo@condoauthorityontario.ca if your case is in Stage 1 – Negotiation.
- Making a request to the Member assigned to the case if your case is in Stage 2 – Mediation or Stage 3 – Tribunal Decision.

In deciding whether to issue a confidentiality order, the Tribunal will consider several factors, including the nature of the information, the interests of affected individuals, and the public interest in the openness of proceedings.

The CAT is guided by section 2 (2) of the [Tribunal Adjudicative Records Act, 2019](#) – in particular, the CAT may issue a confidentiality order if:

- (a) Matters involving public security may be disclosed; or
- (b) Intimate financial or personal matters or other matters contained in the record are of such a nature that the public interest or the interest of a person served by avoiding disclosure outweighs the desirability of adhering to the principle that the record be available to the public.

The Tribunal will also consider the factors outlined by the Supreme Court of Canada in [Sherman Estate v. Donovan, 2021 SCC 25](#), which indicates that the following three pre-requisites must be met to restrict access to adjudicative records:

1. Openness poses a serious risk to an important public interest;
2. The order is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
3. The benefits of the order outweigh its negative effects.

As public access to adjudicative records is protected by the Charter, restrictions on access are exceptional and confidentiality orders are rare.

The CAT generally **will** issue a confidentiality order if the adjudicative records include...

- Personal medical information, such as reports or notes from medical professionals.
- Personal information about minors / persons under the age of 18.

- Personal information about victims of domestic or sexual abuse.
- Personal information that may pose a legitimate risk to health and safety or an individual's dignity.

See, for example: [2021 ONCAT 90](#), [2022 ONCAT 41](#), [2022 ONCAT 119](#), [2024 ONCAT 10](#)

The CAT generally **will not** issue a confidentiality order if...

- The parties or their witnesses would prefer to participate anonymously / remain anonymous.
- The person requesting the order is unable to demonstrate that the information included in the adjudicative records meets the criteria above.

See, for example: [2019 ONCAT 22](#), [2023 ONCAT 140](#)

Because the Tribunal will provide public access to adjudicative records unless they are protected by a confidentiality order, parties should be careful when disclosing sensitive personal information. Parties should:

- Consider whether the disclosure of that sensitive personal information is necessary and relevant to the issues in dispute.
- Only disclose sensitive personal information where necessary.
- Request a confidentiality order at the time of providing sensitive personal information, where appropriate.