

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: March 27, 2024

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(CEO)

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. 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 Condominium Authority Tribunal is an independent adjudicative tribunal, established under the Condominium Act (1998).
- 1.3 The CAO is an Administrative Authority that has been designated by the Minister of Public and Business Service Delivery (**Minister**) to administer delegated provisions of the *Condominium Act, 1998*, as amended (**Act**) and associated regulations.
- 1.4 The CAO supports consumer protection and condominium communities by providing training, information, resources, and dispute resolution services.
- 1.5 The relationship between the CAO and the Minister is further outlined in a separate Administrative Agreement.
- 1.6 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.
- 1.7 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.
- 1.8 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. **“Ethics Executive”** means the designated individuals responsible for promoting ethical conduct under the CAT Ethical Framework.
- ix. **“Minister”** means Minister of Ministry of Public and Business Service Delivery 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. **“Parties”** means the parties to this MOU;
- xiii. **“Tribunal Chair”** means the Chair of the Tribunal of the Condominium Authority Tribunal;
- xiv. **“Tribunal Vice-Chair”** one or more of the Tribunal Vice Chairs of the Tribunal; and
- xv. **“Tribunal User”** means the “Users” as defined in the CAT Tribunal Rules of Practice.

3. Legal Authority and Mandate

- 3.1 The Condominium Authority is designated as the condominium authority pursuant to section 1.1 of *The Condominium Act, 1998* (**Act**). The CAO supports consumer protection and condominium communities by providing training, information, resources, and dispute resolution services.
- 3.2 The Tribunal is established under section 1.32 of the Act. The Tribunal has powers under Part I.2 of the Act to resolve any type of dispute that is prescribed by regulation. The Tribunal's jurisdiction is prescribed in Ontario Regulation 179/17,
- 3.3 The Tribunal also exercises powers and authority granted under the *Statutory Powers Procedure Act*, including the authority to make rules governing the practice and procedure before it.
- 3.4 The authority for the Tribunal is further set out in the Administrative Agreement between the Ministry and the CAO, and the CAO By-laws.

In accordance with the Administrative Agreement, the CAO shall carry out its powers and duties with the purpose of ensuring the independence of the Tribunal in all matters affecting its adjudication and resolution of disputes, and case management within its statutory mandate, and the exercise of any powers and authority granted under the Condominium Act, and Statutory Powers Procedure Act, and in the assessment and management of Members, and in its relationships, dealings and communications with tribunal users and persons affected by its services.

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 and will not interfere in practice and procedural decisions that could impact the independent exercise of statutory decision-making authority.
- 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

- 5.1.1 The Board, through the Board Chair, is accountable to the Minister for the fulfilment of the CAO's mandate including the mandate of the CAT.
- 5.1.2 The Board is responsible for appointing and re-appointing Tribunal Members and Vice-Chairs. No person shall be appointed or reappointed unless they have completed the competitive, merit-based evaluation process (see section 6.2.4 iv below), and the Chair recommends that person be appointed or reappointed.
- 5.1.3 The Board is responsible for terminating the appointment of the Chair, a Vice-chair, or a Member for cause in accordance with section 1.34 of the Act.

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 shall consult with their Ethics Executive prior to seeking or accepting 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 will inform the Board of Rule changes, and the results of any public consultations related to the rules.
- 5.2.6 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.

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 4.2)
- 6.1.3 Ensuring 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 terminating Members of the Tribunal in accordance with 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 the Tribunal's service standards and accountability and governance policies – specifically, those identified in Appendix "A";
 - (b) consulting and advising the Tribunal Chair on 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 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 and approving Tribunal Rules of Practice and Tribunal Practice Directions;
 - 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. 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, and to collaborate with other Tribunal Members;
 - vii. Developing adjudicative service standards and performance metrics for the Tribunal;
 - viii. 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;

- ix. 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;
- x. 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;
- xi. Reviewing and handling any public complaints against Members under the Tribunal's Complaints Policy;
- xii. Acting as the spokesperson for the Tribunal on Adjudicative matters; and
- xiii. 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, including for self-represented litigants.

- 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.

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. 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. The Chair will provide the Board with a quarterly update on adjudicative risks.
- 14.4 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.
- 14.5 The CAO will provide indemnification for Tribunal Members.

15. Service Standards/Complaint

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

16. Creation, Collection, Maintenance and Disposition of Records and Access to Information

- 16.1 The CAO Privacy and Access Policy, which forms Schedule J to the Administrative Agreement, applies to the Tribunal, and the Tribunal Chair will be consulted in the development or review of the Policy.
- 16.2 The Tribunal will provide access to adjudicative records in accordance with the Policy. The Tribunal will maintain the confidentiality of all non-adjudicative records.
- 16.3 The Tribunal will maintain a "record of a proceeding" as defined in the Statutory Powers Procedure Act.
- 16.4 The Tribunal will develop and implement a Records Retention Policy.

17. Consultation, Issues Management and Communications

- 17.1 The CAO's CAO Spokesperson and External Communications 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 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.
- 17.3 The CEO will inform the Tribunal Chair of possible issues management situations that might affect the Tribunal.
- 17.4 The Tribunal Chair and the CEO will consult each other regarding Tribunal User engagement strategies, public presentations and statements about the Tribunal.

- 17.5 The CEO will seek Tribunal User feedback on operational effectiveness.
- 17.6 The Tribunal Chair will seek Tribunal User feedback on effectiveness of mediation and adjudication practices, such as the Tribunal's Rules.

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

- 18.1 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.
- 18.2 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.
- 18.3 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.
- 18.4 A copy of the letter of affirmation or of the new MOU referred to in MOU section 18.3 above must be provided to the Minister within 30 days and posted on the CAO's publicly available website.
- 18.5 The Board Chair, the Tribunal Chair or the CEO may initiate a review of this MOU by written notice to the other Parties.
- 18.6 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.
- 18.7 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.
- 18.8 This MOU continues to be in effect until and unless the Parties sign a new MOU.

19. Signatures



Allison Scanlan, Chair, Condominium Authority of Ontario

April 12, 2024

Date



Ian Darling, Chair, Condominium Authority Tribunal

April 19, 2024

Date



Robin Dafoe, CEO, Condominium Authority of Ontario

April 23, 2024

Date

APPENDIX “A” – CONDOMINIUM AUTHORITY TRIBUNAL POLICIES

- [CAT Ethical Framework](#)
- [CAT Member Code of Conduct](#)
- [CAT Member Conflict of Interest Policy](#)