

## BC Court Imposes \$16.8 Million Levy on Condo Owners to Remediate Water Leak Damage

[The British Columbia Supreme Court](#) has ordered a Vancouver strata corporation to impose a \$16.8 million special levy against the unit owners to pay for repairs necessitated by water leaks in the condominium for over two decades. The Court also appointed an administrator to oversee the repair work.

The court action was commenced by a group of owners who claimed that the strata corporation had failed to repair the common property as it was required to do under the governing legislation.

The water leaks started soon after the condominium was built in 1984. Repeated leaks over the years resulted in extensive damage to the building cladding and the growth of mould. The owners who commenced the legal action claimed that this led to negative ramifications for all owners: “depressed property values, foregone rental income, excessively high utility bills, high and recurrent maintenance expenses, inability to sell their units, and lack of access to credit because lenders have refused to accept ‘leaky condos’ as security”, as well as respiratory and skin problems, stress and anxiety.

In 2005 the City of Vancouver ordered the strata corporation to remediate the failing building envelope. An engineering firm was hired, which ultimately recommended that a complete remediation program be undertaken, which would include replacing the building cladding with a rain-screen system. However, the strata corporation did not implement those recommendations.

In 2008 a special levy in the amount of \$10,000 was imposed by the strata corporation and some remedial work was undertaken, but the cladding was not replaced and the leaks continued.

In 2013 another engineering firm also recommended the replacement of the existing building cladding but those recommendations also were not implemented.

In 2015 a third building assessment was undertaken by another engineering firm that once again recommended that the building cladding be replaced with a rain-screen system. At the request of the president of the strata corporation, an alternate repair strategy that would cost considerably less was also presented by the engineering firm, but it was strongly recommended that complete replacement of the building cladding with a rain-screen system was the preferred strategy in the long run.

In British Columbia the legislation requires that a special levy be approved by  $\frac{3}{4}$  of the owners. Neither of the two alternative repair strategies received the requisite owner approval. This stalemate prompted some of the owners to petition the court for the appointment of an administrator and the imposition of a special levy to fund the necessary repair work.

The Court ordered the appointment of an administrator on the basis that there were competing factions within the strata corporation that were impeding or preventing the proper governance of the condominium. The Court then imposed a special levy in the amount of \$16.5 million, being the estimated amount to replace the cladding with a rain-screen system.

*“There would be little point in appointing an administrator to deal with a dysfunctional building only to have the administrator paralyzed by the owners’ inability to agree on important issues.”*

The corporation also authorized the imposition of an additional levy to cover the cost of the administrator.

In Ontario condominium corporations do not need to obtain approval of the unit owners to impose a special assessment. It is the board of directors who have the authority to approve a special assessment. This British Columbia case illustrates that condominiums that fail to make necessary repairs recommended by experts do so at their peril.