

## Condo Unit Owner Awarded Damages for Condo Corporation's Breach of Repair Obligations

In a recent case, [Ryan v. YCC No. 340](#), a condominium unit owner was awarded almost \$70,000 in damages plus pre-judgment interest, after the Ontario Superior Court of Justice found that the condominium corporation had breached its repair and maintenance obligations under sections 89 and 90 of the Condominium Act, 1998 (the "Act"). Section 90 requires the condominium corporation to maintain the common elements and section 89 imposes an obligation on the corporation to repair the units and common elements after damage.

The condominium corporation was created in 1977. Due to a construction defect, there was no proper building envelope installed for the upper floors of the condominium, which resulted in weather-related water penetration into some of the units. The owner in this case experienced water penetration in his unit on multiple occasions over several years, which caused damage and led to mould growth in the unit to such an extent that the unit was uninhabitable and the owner had to move to alternate living quarters.

In addition to claiming damages, the owner sought a declaration that the corporation had breached its duty under the Act to maintain and repair and had conducted itself in a manner that was oppressive towards the owner. The corporation's initial position was that the matter should have been submitted to mediation/arbitration. This position was rejected by the Court, as it is settled law that an applicant for an oppression remedy does not need to first undertake mediation/arbitration.

The Court noted that in determining whether a condominium corporation has breached its duty to maintain and repair, the courts apply a test of reasonableness, which is dependent on the facts specific to each case. In this case, the corporation did undertake a number of temporary and permanent repairs over the years. However, it took over four and a half years for the water infiltration to stop and an additional year for the mould to be remediated. Because of this extended time period, the Court determined that the corporation had not acted reasonably and thus had breached its obligations under sections 89 and 90 of the Act.

However, the Court dismissed the owner's claim that the corporation's behavior was oppressive. After reviewing the case law, the Court noted that oppressive conduct is harsh, harmful, burdensome and wrongful. In this case the corporation did not dispute the owner's water infiltration and mould problems and did make some efforts to address these issues. "Its conduct was ineffective until recently but not abusive or oppressive."

The damages awarded by the Court were to compensate the owner for:

- common expenses and realty taxes for a unit that the owner was not able to inhabit and enjoy ("wasted expenses");
- repairs to the interior of the unit;

- mileage and gas expenses to cover additional costs incurred by the owner to commute to medical appointments from the owner's temporary residence; and
- legal expenses incurred prior to the commencement of legal proceedings.

This case should be a wake-up call for condominium corporations. In order to fulfil their obligations under sections 89 and 90 of the Act, corporations must act diligently and efficiently in undertaking any necessary maintenance and repair work, especially where the failure to complete the work will result in additional or ongoing damage. Acknowledging the need to conduct such work and commencing the work will not be sufficient if the necessary work is not completed in a reasonable time frame.