

REVISITING THE FLORIDA CONDO COLLAPSE

In our Summer 2021 Newsletter edition, we had a short article about the collapse of the Champlain Towers in Surfside Florida.¹ Amongst many online sources, The Globe and Mail have produced a series of articles highlighting many of the issues - warnings ignored, design and construction defects, questions about the Canadian developers and their many other projects, claims of fraud and potential litigation.² This article continues the thought process by trying to put yourself in the mind of a director for that doomed condominium corporation. Hopefully doing so will lead to more thoughtful action at your condo corporation.

THOUGHT EXPERIMENT

Imagine you are on the Board of Directors at Champlain Towers. You've retired there and want to savour your golden years. Since you've lived in a condo for several years, you felt it was your turn to get involved and were elected to the Board. While you lack a background in engineering and construction, you are conscientious and recognize your fiduciary responsibilities as a director. Conditions at the property are causing concerns, so the Board engages an engineering consultant, who delivers their report to you on October 8th, 2018 documenting "structural issues that require repair and/or remediation in the immediate and near future".³ In addition to the report, they provide an estimate of the costs to address the issues, with a \$9M+ price tag. Based on the amount of your reserve fund, the recommended work would require special assessments of \$80K for the basic units in the complex up to \$300K for the penthouse units.⁴

Upon reading the report, what immediately comes to mind? Perhaps the first thing to do is have a video conference with the consultant to go over the report in detail and ask questions. Hopefully one of the priority questions is a clarification of the timeline for "immediate and near future". Other questions that may arise include:

- Is the building currently safe to occupy or should an immediate evacuation be ordered?
- Should legal action be taken against one or more parties, such as the original developer, the architect, the engineer, the original or subsequent contractors, etc (since the collapse happened in the USA, this likely would come to mind early in the process and seems to be happening now)?

- Can legal action be taken against the Condo Board?
- How long has the Board been aware of the problem or when should they have known about the problem?
- Was the problem disclosed to unit owners at the time of purchase?
- Has the building reached the end of its useful life?
- Would it be better to demolish and rebuild rather than repair?
- If corrective action is required immediately and since there are insufficient funds to cover the costs, what should be done?
- Does the Board have the authority to issue the special assessment or must it be voted on by all owners?
- Even if the Board has the authority to issue a special assessment, could the current directors be voted off of the Board at a special meeting as part of a unit owner revolt?
 - What is the potential liability for a current, former or future director?

After several sleepless nights as a director, perhaps other questions come to mind.

- Are you suitably qualified to be a director of a condominium corporation?
- What kind of training and education should a director receive to ensure they are capable of handling this type of situation?
- Should director education be mandatory or recommended?
- Should there be some kind of certification and recertification required for directors?
- Is this a unique problem or are there other properties in similar or even worse situations?
- What does your Property Manager have to say?
- How about your lawyer?
- How about your maintenance team?
- Would you even imagine the building could collapse, killing close to a hundred people?
- Should you sell your unit and get out of town as soon as possible, and if so, what are the disclosure requirements for selling your unit?
- Could you sleep at night after selling to an unsuspecting buyer?

INVESTIGATION AND PRELIMINARY ANALYSIS

In addition to the Globe and Mail articles, there are dozens of other online sources. The National Institute of Standards and Technology (NIST) has started an investigation and is seeking documentation from the public that may aid the investigation.⁵



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Another source estimated that additional work required for the property brought the total for all repairs up to \$15M and brought some scrutiny to the Board of Directors.⁶ Another article suggests the shady reputation for the developer as a contributing factor.⁷

One especially interesting and informative video presentation from the West Florida Community Association Institute is available on YouTube and is a recommended watch for all CC boards and industry professionals <https://www.youtube.com/watch?v=Q7e4b8ruvOE>. The presentation is from forensic engineering consultants and lawyers. In the presentation, they explain the symptoms of the problem, the consequences and what kind of repairs were required. However, it tends to gloss over the required root cause analysis of why the building got to the point of collapse in the first place. A thorough root cause analysis would include not only the proximate causes (i.e. why the building collapsed) but also the systemic root causes (i.e. what deficiencies in regulations, inspections, building codes, maintenance, legislation, governance, etc, allowed the building to get to the point of collapse). Another recent article touches on some of these systemic root causes but doesn't leave you with a reassured feeling - recommended reading for all CC boards and industry professionals.⁸

APPLICATIONS TO THE MANITOBA CONTEXT

There are numerous points that need to be understood in relation to condos in Manitoba. It would be interesting to have a discussion with members of the Manitoba Association of Architects (<https://www.mbarchitects.org/>) and with members of Engineers Geoscientists Manitoba (<http://www.enggeomb.ca/>). The discussions could provide some clarity and reassurance that this type of problem could not occur here or the discussion could highlight gaps in current legislation and regulations.

Some topics to investigate and possibly address in future articles include:

- What requirements are there, if any, to recertify buildings here in Manitoba for structural integrity, for conformance to building codes or fire codes for that matter? As the building ages and building codes are periodically updated, are there any triggers to get a building inspected or to get building components upgraded? Does any regulator verify to ensure required and mandatory inspections and maintenance are performed? It would be interesting to hear from any readers that are engineers or architects involved in new multi-family residential projects or major renovations.
- Currently, there are no requirements for mandatory director education in Manitoba nor is there any definition of what topics should be covered and to what level. Would making education mandatory reduce the number of unit owners willing to volunteer for the Board? If mandatory, what time frame should be set to achieve what level of education? For example, Ontario requires all directors to complete a basic curriculum in six months and must recertify every seven years.
- The Globe and Mail investigation includes looking into the developer and the possibility of fraudulent activities. As part of their investigation, they have noted that it is much easier to trace and track the developer and their activities in the USA than it is to do so in Canada. Why is that? What needs to be done in Canada to provide better protection for consumers and unit owners?

What are your thoughts on the matter? Does your condo corporation have any of the same symptoms? Are you getting regular inspections and periodic building condition assessments? Are you performing preventive maintenance or reactive

maintenance or hopefully not deferred maintenance? Are you paying for engineering reports and not taking action because of the cost? Please join the conversation by sending your comments to us - cci.mb.news@gmail.com. We would especially like to hear from you if you are a professional engineer or architect involved in multi-family residential projects. 🍁

¹ Condominium News and Views - Summer 2021, CCI Manitoba <https://cci-manitoba.ca/sites/default/uploads/files/CCI-MB-Newsletter-2021-Summer-Final.pdf>

² The Globe and Mail <https://www.theglobeandmail.com/search/?q=champlain+towers&mode=all&S=relevant>

³ Structural Engineering Report, Morabito Consultants <https://www.wfla.com/wp-content/uploads/sites/71/2021/06/8777-collins-ave-structural-field-survey-report.pdf>

⁴ Before building collapse, \$9M+ in repairs needed Curt Anderson & Bernard Condon, Associated Press 2012-06-27, <https://abcnews.go.com/US/wireStory/building-collapse-million-repairs-needed-78518874>

⁵ Champlain Towers South Collapse NIST <https://www.nist.gov/disaster-failure-studies/champlain-towers-south-collapse>

⁶ Condo owners in Surfside building were facing assessments for \$15 million worth of repairs, Casey Tolan, CNN, 2021-06-29 <https://www.cnn.com/2021/06/28/us/surfside-condo-owners-assessments-invs/index.html>

⁷ Surfside condo developer faced legal trouble in Canada, found clean slate in South Florida Lidia Dinkova & Keith Larsen, South Florida Real Estate News 2021-07-19 <https://therealdeal.com/miami/2021/07/19/surfside-condo-developer-faced-legal-trouble-in-canada-found-clean-slate-in-south-florida/>

⁸ The fatal flaws behind the Surfside condo collapse, Sally Thompson, CondoBusiness, 2021-11-29 <https://www.reminetwork.com/articles/fatal-flaws-surfside-condo-collapse/>

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