

After Miami building collapse, questions emerge about condo safety in Canada

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JOHN LORINC

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It's a troubling question that has been echoing through the condo towers in Canada's largest cities for the past two weeks: Could the disaster in suburban Miami happen here?

The revelations about the collapse of the Champlain Towers South condo building in Surfside, Fla. – deferred maintenance, construction flaws, salt-related erosion and potential foundation failings – seem to point to a uniquely toxic combination of causes.

There's never been a similar tragedy in Canada, where provincial governments tend to be more rigorous with condo regulation.

"I've been doing [this] for 30 years and I've never seen something like this," said condo lawyer Denise Lash.

Still, existing Canadian condo rules have significant gaps, which have been further exposed by the highly speculative nature of the market in cities such as Toronto and Vancouver.

"I think there's a rude awakening coming," said Martin Gravel, a civil engineer who is also the president of the condo board of a downtown Toronto building.

Condo owners, tenants and directors are wise to take a hard look at the structural integrity of their buildings and make sure that key repairs aren't neglected.

The Canadian condo sector is better known for lesser incidents – high-rise windows and balconies that pop out or extensive water damage caused by shoddy construction.

In some cases, structural failings can be traced back to faulty construction and have led to legal action. In 2001, for example, the Ontario Superior Court awarded \$1.6-million to an Ottawa condo board that sued then-Minto Construction and its contractors several times for work on an 11-storey building dating to 1972. The building experienced chronic water infiltration problems in the upper floors and consequently worrisome deterioration in the exterior brick cladding.

Under Ontario's condo regulations, boards must regularly commission "reserve fund studies," which can only be carried out by designated professionals. Investors or buyers can request to see these documents under the law. Reserve fund studies typically ballpark the replacement value and lifespan of building components such as boilers. But, as Ms. Lash noted, a "physical assessment" evaluation is only done once every six years.

Despite these rules, Ms. Lash and others pointed out that requirements designed to prevent properly designed buildings from deteriorating do not necessarily provide a complete picture of the required long-term repairs. Nor do current laws ensure that owners heed the warnings they receive from the engineers or consultants hired to evaluate whether the owners are putting aside sufficient funds to make major repairs to building components.

Mr. Gravel added that those estimates tend to lowball the actual financial impact of repairs, especially given the rapidly rising costs of contractors and replacement components. Many condo corporations, he said, likely don't have enough set aside in their reserve funds.

It's not uncommon for owners or investors to balk at a costly special assessments to address a major maintenance issue, such as the US\$15-million in structural repairs identified by a consultant to the Champlain Tower board in 2018. As Mr. Gravel pointed out, "Most directors wouldn't get elected if they're putting out special assessments."

What's more, if an owner or tenant notices and reports to the property manager evidence of deterioration – for example, chipping concrete and exposed rebar on a load-bearing pillar in an underground parking garage – there's no regulatory requirement in Ontario to disclose this information to potential buyers or even other residents, Ms. Lash said.

Consequently, in some buildings, such maintenance work may be chronically ignored or deferred. Ms. Lash cites a former client as an example – a newly elected condo board of a townhouse complex where previous boards had allowed structural problems in a parking garage to fester.

The new board “realized that repairs had been put off for years because the previous boards didn't want to special assess the owners and they continued to carry out Band-Aid repairs,” she said. “It got to a critical stage with the engineer advising that the work could not be put off any longer.”

Despite those warnings, the owners decided to vote out the new directors instead.

University of Windsor sociologist Randy Lippert, who wrote extensively about the tangle of competing interests on condo boards in his 2019 study Condo Conquest, says governance failings in these vertical communities can have dire consequences.

“The disaster [in Miami] was caused by social reasons, not physical reasons,” he said.

While property management firms that own and operate office or rental apartment buildings have a clear financial interest in ensuring the structural integrity of their assets, condos are directed by boards of unpaid individuals, most of whom have no technical knowledge and may not even live in the building. The speculative nature of the condo market adds another layer of complexity, Prof. Lippert added.

“It's of no interest to the owners and boards to ever reveal all of the problems in their buildings,” he said. “Somebody has to make decisions about what should be done with these buildings and I'm not sure it should be left to the boards.”

He said in some jurisdictions, including Australia, state governments have recently passed legislation that aims to systematically address the aging condo question – either by redeveloping, demolishing or converting older buildings based on the approval of just three-quarters of the owners.

Such reforms are not yet on the public policy agenda in Canada. And recent regulatory changes, such as the newly established Condominium Authority of Ontario, have tended to focus on soft issues such as director training and information on dispute resolution.

As for the harder questions about structural integrity or whether a high-rise glass building is setting aside enough money to replace its curtain walls three decades later, Mr. Gravel encourages buyers and owners to not just rely on a quick skim of a condo's reserve fund studies.

“Walk around the building and make some common sense conclusions if you see spalling concrete or leaks in the walls,” he said. “Do the smell test.”