

Submission to the Barrett Commission on Leaky Condo's by Gerry Fanaken, President of Vancouver Condominium Services Ltd.

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(Note: The appendices referred to in the following submission are not included in this web

INTRODUCTION

Canada, by many accounts including those of the United Nations, is one of the most favorable nations in the world to live. British Columbia undoubtedly has the finest scenery and the most moderate of climates and Vancouver and its surrounds must be considered the jewel in the crown. It is a spectacular city both day and night. Magnificent buildings and parks abound, all complimented by the natural beauty of oceans, mountains and blue skies. Visitors are in total wonderment of what a beautiful city we live in. Perhaps because of the infamous rain, we tend to take it all a little for granted, but it is certainly hard to argue that this is not the greatest place in the world to live.

In the early 1980's when certain visionaries contemplated the Expo '86 world's fair in Vancouver, one of the expressions that was coined in support of the proposal was to make Vancouver a "world class city". There can be no doubt whatsoever that this has been achieved. The city, and I mean not just the city of Vancouver but also all of the suburbs has become a diverse mixture of cultures, lifestyles, architectural forms and modernity. We are certainly very proud of our achievements and we do consider ourselves to be a "world class city".

All of this, of course, has meant more housing and it would appear that the supply has kept up well with the demand. What we all know now, however, is that, paradoxically and sadly, much of the housing, particularly multi-family housing such as condominiums (properly known as strata corporations) has been designed and built unsuitably for the West Coast climate. All of this bad news is, in fact, not new to people such as property managers who are constantly exposed to construction problems and who have been aware of this growing dilemma for the past ten years. It has only become a media event in the last year because of the now apparent enormity of the problem generally estimated to be at \$1 billion. It turns out that our world class city is, in fact, a world class disaster when it comes to the design and construction of condominium, strata corporations. With shame, we must all admit that it is a world class disgrace.

In anticipation of the Commission Inquiry into the leaky condominium issue, those people who have been responsible for this mess are busy "circling the wagons" and aiming their guns at others. The Commission will have the difficult task of determining just who carries the most responsibility. Perhaps it is a bit cynical of some people to prematurely predict the outcome of this Inquiry, which itself has been widely criticized about its structure before even starting its work. I urge the Commission to focus on the issues, not the politics. There must be accountability and there must be new directions.

What is remarkable is that much of what this inquiry aims to achieve in the way of information gathering has already been known for many months and years. In fact, the government itself organized a task force several years ago and that task force put forward many recommendations to address the problem. (Appendix A) The recommendations of that task force were thoroughly analyzed and utilized by government civil servants (Appendix B) to prepare new legislation which has been written, although not yet introduced into the legislature. In the recent throne speech the government promised that the leaky condominium issue would be addressed by this new legislation. We now have an inquiry which will study what is painfully obvious already and hopefully make some new recommendations, but all this process has done is delay the necessary legislation for even longer. I, therefore, urge the Commission to make its best efforts to present the government at the earliest date with **substantial and meaningful recommendations** for prevention of similar disasters in future and I can only plead with the government that such recommendations are enacted post-haste.

My experience with strata corporations is vast as I have been actively involved in the administration of strata corporations for about 25 years. Vancouver Condominium Services Ltd. is a property management company exclusively devoted to the administrative management of strata corporations and, at present, manages 225 residential properties in the lower mainland of British Columbia which represents approximately 13,000 individual condominium units. I am also a director of a fledgling organization of professional condominium property managers being organized as a non-profit society to provide education and assistance to the public with respect to a wide range of condominium issues including, but not limited to, the leak matter. I speak on behalf of that organization also.

#1 - Design, Materials and Applications

Strata corporation housing commenced in the mid 1960's and most of the early strata corporations were actually townhouse developments or concrete high-rises. For the balance of the 1960's and most of the 1970's, condominium housing consisted of what could be described as "boxy condos". Perhaps that was not a flattering term but, for the most part, they worked quite well because they were easy to construct from an architectural and engineering standpoint. To some extent, the quality of workmanship was also better than what we have observed in the 80's and 90's probably as a result of the

very competitive economics of construction. What happened in the 80's, however, was a radical change in design from the "boxy condo" concept and the marketplace loved it. The designs were fashionable, artistic and highly appealing (often referred to as California style). To achieve this new style, building exteriors went in all directions, that is to say that there were substantially more corners, angles, gables, fascias etc. In order to maximize square footage, overhangs at roof lines were eliminated also and this, we now know, is one of the major contributing factors to water ingress problems. This Commission of Inquiry will, no doubt, hear substantial evidence from qualified building science technologists, civil engineers and others involved in the design and construction of strata corporations and, for that reason, I do not wish to duplicate that technical evidence which, no doubt, will be presented in a much better fashion than I can as a layperson. What I can tell the Commission as a condominium property manager is what I have seen develop over the past 15 or 20 years with the change of design structures.

Typically what happens is that a property manager receives a telephone call from a homeowner advising that there is water seepage into the unit. This is investigated and a "handyman type" of repair is generally the first course of action. In hindsight, there can be criticism about this type of approach but the reality is that a strata council is quite right in addressing these types of apparent localized problems on a handyman basis rather than ripping apart great chunks of exterior walls to see whether or not there is a much deeper problem. In many cases, the handyman repair job appears to be effective because the homeowner reports that the leak has stopped. The problem, however, is that sometimes the leak has not, in fact, stopped but it is simply hidden behind the walls and continues to do damage. It is sometimes many years before this hidden damage is exposed and remedial steps become necessary. Unfortunately, because of the fact that the water has been penetrating behind the walls out of sight for years and years, the amount of damage that has occurred is substantially more than would have been had the problem been addressed in a different fashion, a great benefit of hindsight. A number of developers have taken the position that, if strata councils and property managers did not take the handyman approach to these repairs, the problems would not be as severe as they have turned out to be. That is easy to say but common sense tells us that an apparent simple leak warrants only a simple repair, not major surgery.

Some of the leaks are relatively easy to find; however, others are very difficult to find and strata corporations can sometimes spend many, many dollars in chasing the source of a leak. In fact, a whole industry of leak repair specialists has developed in the last decade and some of these companies have been quite successful while others have only made the problems worse. It is unfortunate but some of the remedial contractors in the strata corporation leak repair business have little building science expertise and rely simply on their acquired skills as tradesmen to resolve these problems. Some absolutely terrible advice has been given to strata councils and property managers from these tradespersons and, while everyone thought that the advice was good at the time, it has turned out that a

lot of it was not so good. In defence of the remedial repair trades industry it should be noted that they are often restricted in their efforts by limited budgets of the strata corporations. One property that I am involved with spent approximately \$60,000 doing remedial work only to learn less than five years later that all of it was for naught and that, in fact, they had to rip apart the entire exterior envelope and rebuild the property. The proper job cost \$2.5 million. One could argue that the \$60,000 initially spent is a relatively small amount given the \$2.5 million but for homeowners every penny counts and the frustration levels for strata councils and owners with this kind of experience is difficult to describe. It is enormous. Until recently, such repair programs as the aforementioned \$60,000 effort did not require a building permit from the City of Vancouver. Under new regulations, such remedial repair projects must have a permit. This is more costly to the strata corporation but it is an excellent initiative.

Another type of very common problem experienced in strata corporation housing is that of improperly sloped balconies and walkways. While it is no joke at all, it is legendary ("the joke") in this business that drains always seem to be installed at the high point rather than the low point. Decks which slope backward cause the water to accumulate rather than dissipate. The buzz word these days is "drain the rain" and it is true. Years and years of water accumulation on decks, balconies and walkways has a terrible effect on the internal wood structures and, by the time these horror stories are uncovered, the damage is so severe that the cost to repair is virtually astronomical. In some cases, the structural rot is so bad that safety hazards exist and walkways and decks have to be literally boarded up so that they are not used in order to prevent personal injury or death. I would venture a guess that there are a number of properties in the lower mainland that will collapse very, very quickly in the event of a moderate earthquake, not because of the earthquake itself but because the structures are so rotted that one can stick a pen into the wood with ordinary hand pressure. [The March 1998 edition of Build & Green magazine \(Appendix C\) contains an excellent article on this issue.](#)

All of this water accumulating behind the walls also constitutes a severe health hazard and there is a substantial concern in some developments about the presence of fungus such as *stachybotrys atra*. Health Canada produced an excellent paper (September 25, 1997) on the health effects of *stachybotrys atra*, a copy of which is appended in this report. (Appendix D)

Apart from health risks, it is easy to understand the enormous inconvenience for strata corporation owners who live in apartments with constant mold, moisture and water flow within their units. It is no way to live. Owners often become very frustrated with the property managers and their strata councils because the problems are not promptly rectified and a considerable amount of hostility and anger is generated by the lack of solutions. Most developers take the position that such problems are not warranty problems but merely maintenance issues. Strata councils quite rightly disagree with the developers in

this respect and, rather than spending big bucks from the strata corporation's budget attacking the problem, they and their property managers spend a lot of their time chasing the developer to do something about the problem. This, of course, chews up an enormous amount of time, while the affected homeowner sits waiting patiently with continuing water leaks. This adds to the frustration and anger by the homeowners. It is remarkable that one can pay anywhere from \$100,000 to \$1 million for a strata lot and have no guaranty that the unit will be free of water leaks. As stated earlier, often it takes a year or two before these problems become manifest and this fact also works against the strata corporation because, if there was a warranty, it was likely only for one year.

Another type of problem that is commonly experienced by strata corporations is that of membrane failures on parkade slabs and other areas (decks) where membranes are required. Locating the source of a leak from a damaged or defective membrane is very difficult because, in most cases, the membrane has been covered over with landscaping, driveways, walkways, paving stones, patios and so on. It is hugely expensive to locate the sources of these membrane deficiencies and yet it is the only way to effectively repair the leaks. When the sources are finally uncovered, it is often apparent that the membrane was improperly applied or someone else came along after the applicator and dropped something on it to tear the membrane. It is common in construction sites to have many subcontractors, none of whom are responsible for the other guy's work. At the end of the day, no one is accountable for damages to the property and the project simply continues to completion and is sold to unsuspecting buyers.

It is astounding to witness in Vancouver the construction of wood frame buildings in the middle of winter. I have witnessed buildings standing open in the rain with the wood framing simply soaking up every drop of water week after week, month after month, from October to February. In some cases, the developers have gone into receivership or have become bankrupt and a property can sit in an uncompleted stage for a year or longer until someone else purchases it and then simply continues on with the construction. In the meanwhile, all of the wood framing continues to soak up the water, thereby diminishing the integrity of the structure. This is all covered over with drywall at a later date, sealing in the moisture. A number of engineers and building science technologists, when working on defective properties, have come to the conclusion that the problems stem from these construction practices.

One would think that, upon completion of a project, the developer would turn over to the strata corporation copies of blueprints, other engineering drawings, warranties and such meaningful documents so that the strata corporation would have some ability to control and direct its efforts with respect to the maintenance of the property, as well as to deal with the trades and subtrades that built the place. It is a rarity that a developer will take the steps to turn over this material and, even when strata councils ask repeatedly for it, they are most often stonewalled. The expression "after sales service" by the construction and

development industry in the lower mainland is an oxymoron.

There is a widespread but erroneous impression by the public that municipal governments provide inspection services. Perhaps it is not the fault of the municipal governments but the fact is that they do not provide inspection services. What they do provide are spot-checks for certain construction components, primarily with respect to electrical and plumbing codes, but they do not provide inspection services for such things as water tightness and sound workmanship. A City of Vancouver inspector speaking at a recent forum on the topic said that the City simply does not have enough staff to go around to every one of these buildings and do full inspections. It raises a good question: why not? Surely with the huge amount of construction and the resulting tax base, the City (and other municipalities) would be generating enough revenue to provide more staff for inspections. The municipalities take the position that it is up to the builder to provide inspection services, forgetting that the builder is not the owner at the completion of the project. While lower mainland municipalities enjoy the magnificent new ("world-class") urban environment, and are quick to take in millions of tax dollars from condominiums, they have demonstrated to me over the past 20 years an appalling understanding of the basics of strata corporation administration.

When it comes to litigation, the cities and municipalities are well protected to be sure. The Municipal Act gives an inordinate amount of protection to municipalities with respect to potential litigation and, in fact, even the rules of the game are such that many strata corporations do not even realize that they have to initiate litigation in a very short period of time against a municipality for it to even be considered. With the substantial amount of horror stories that we have seen over the past years, one would think that municipal governments would be coming to the aide of strata corporations to assist them with their problems. If anything, the municipalities have gone the other way. In one instance that I know about, a municipality actually denied a building permit to a strata corporation for its \$3 million retrofit program because the strata corporation had initiated litigation against the municipality. Fortunately, common sense prevailed at the legal level and the building permit was ultimately issued. This is an illustration, however, of the type of attitude that strata corporations have experienced with their civic governments.

In 1997, the City of Vancouver introduced a new by-law which is generically known as the "Rainscreen Cavity" system. On the surface, this appears to be a very good improvement to the building code, but it has added hundreds of thousands of dollars to the cost of doing retrofits. Remarkably, apart from the City of Vancouver, not one other municipality in the lower mainland of British Columbia has adopted a similar rainscreen cavity by-law. A survey of most of these municipalities within the last week indicated that they are all waiting to see what happens from this Inquiry. Since this Inquiry was only called one month ago, one wonders why they have not initiated a review already.

One of the problems that I foresee even with the new rainscreen by-law is that there is no guarantee that it will work. We have been told by the City of Vancouver that this is the best thing and that it will work but, of course, there are no guarantees. Will we all be sitting here in ten years from now no further ahead? In what the City of Vancouver probably thought was a proactive program last fall, it instituted a building envelope certificate course for engineers, building science technologists and other tradespeople. Individuals from these firms have taken the course and now appear on a list of certified envelope specialists which, in itself, will create a problem. In some instances, companies and individuals listed on the schedule have lawsuits pending against them already. They are now advertising their services using the City of Vancouver endorsement as advertising. Extreme care must now be taken to prevent misuse of such certifications or the public will be fooled once again and we will be no further ahead in 2008 than in 1998.

I am enclosing a recent letter written by Gorm Damborg of Ocean West Construction which was submitted to the media for publication. I urge the Commission to read this material as it is extremely salient.

#2 - Accountability

One of the very evident and prevalent problems for strata corporations with severe water leak penetration is the difficulty of achieving compensation through litigative measures. There are a number of reasons to be considered.

First, although the public generally think they are dealing with a well-known company or name when buying a condominium, in many instances they are, in fact, legally dealing with a numbered company or equivalent such as a "joint venture". There is nothing new about this concept and we all know exactly what it entails for the developer: get in and get out. The process taken is that a building is constructed under a numbered company arrangement (a.k.a. a shell company) and, upon completion, the numbered company is either wound up or remains in existence without any assets. If there is potential litigation by the new strata corporation against the developer or others involved in the numbered company, it is very difficult to successfully pursue such an arrangement. Admittedly, there is the concept of penetrating the corporate veil where, notwithstanding the numbered company arrangement, the individual directors might be held liable by a court. The problem with this, of course, is that it takes an enormous amount of money and time to pursue these directors through the court process. Some of the numbered companies are, in fact, not even registered in British Columbia. Some are registered in foreign territories so one can only imagine the difficulty of bringing litigation against such developers. In one particular project that I am involved with containing 240 strata title units, we have learned that the project actually was built with two different joint venture companies, neither of which were registered in British Columbia. In order to litigate for damages, the legal process would be extremely complicated and cumbersome. And costly!

It should also be noted that, notwithstanding numbered companies and/or whether they are registered in British Columbia, the entire notion of litigating is extremely difficult for a strata corporation. In most instances where there is prima facie evidence that a potential for litigation exists, it usually takes several hundred thousand dollars to initiate and pursue litigation. Commonly, it is not just a matter of naming a single defendant but rather a number of defendants, i.e.: the developer, the general contractor, the sub-trades, the architects, the engineers, the municipality and a host of other people. Each of the defendants will respond separately but consider what that does to the cost of the single plaintiff - the strata corporation. Further, it requires at least five years from start to finish. Individual condominium (strata lot) owners consistently demand that their strata councils and management companies sue the people responsible. They, unfortunately, have no idea just how difficult, expensive and impractical this can be. Nevertheless, I do not blame them for being angry. I would be, too. The concept of strata title home ownership is such that the membership is dynamic, meaning that people come and people go. In order to pursue litigation over a five year period, it is extremely difficult with the turnover of ownership, especially if some of them go bankrupt in the interim. For those people who do pick up the ball and run with it as strata council members, the level of frustration is enormous and they often simply give up because they run out of energy, money and support. Remember always that strata council members get paid nothing for their time and efforts and, in fact, are often the targets of substantial and unwarranted abuse by frustrated owners who do not understand how the whole process works. Strata councils and property managers are often blamed for construction deficiencies because they are the nearest and handiest targets. To put it another way, for developers to take advantage of strata corporations is an easy thing to do.

The *Condominium Act* itself does not escape blame in this respect because, in order to litigate, the strata corporation has to jump through a number of hoops and hurdles in order to satisfy the statute. It is not simply a matter of the strata corporation initiating a writ in the Supreme Court of British Columbia against one or more potential defendants and presenting its case. The strata corporation, in fact, has to obtain total consent by formal special resolution of all the members of the corporation in order to properly represent the strata corporation in litigation. Consider the enormity of this nearly impossible task and, once again, you will see how easy it is to take advantage of the strata corporation. In one particular strata corporation situation involving a potential \$500,000 lawsuit based on excellent evidence of poor construction (defective copper piping), the lawyers for one of the defendant's insurance companies required each of 160 strata lot owners within the strata corporation to complete a detailed and exhaustive interrogatory as part of the legal process. To add to the difficulty, this interrogatory was to be completed in a very short period of about 30 days just before Christmas. Few owners responded and it is not surprising that the strata council simply threw up their hands and walked away from the whole mess. To this point in time, the strata corporation had spent over \$10,000 in legal

fees, all of which was wasted. I am sorry to repeat myself, but it is important to drive home this point that litigation is a treacherous route for grieved strata corporations.

The *Condominium Act* was introduced in 1966 and was, for the most part, a plagiarization of the legislation from New South Wales, Australia. In 1974, the government (Premier Dave Barrett) introduced a few meaningful amendments to the legislation but, since then, very little has been done to amend the statute. It is, in effect, a 30 year old vehicle and totally out of date and ineffective in today's vastly expanded condominium world. The growth of condominium housing has been substantial in the last decade and, despite pleas from property managers, condominium owners and others in the know to bring about new legislation, we are still working with the 1966 photocopy of the Australian legislation. How can anyone expect strata corporations to survive with this type of government support.

With the exception of the Vancouver Sun, I would commend the media for their involvement in the leaky condo crisis. Without the media, and in particular I refer to the television media, this story would not be public. It is only because of the repeated graphic videotapes on the 6 o'clock news that this issue has become a public and government concern. Although a bit unscientific, I would guess that the vast number of new condominium purchasers rely on the print media for guidance. In Vancouver, this essentially means the Vancouver Sun and, in particular, the Saturday New Homes Section. With respect to condominium housing for the most part, the New Homes section is nothing other than glorified promotional literature. I do not blame the Vancouver Sun for the leaky condo crisis but it is unfortunate that its primary focus is on carpet colours, local bus stops, attractive views and the like. Very little has been said to educate and inform prospective purchasers about the other side of the coin such as how to be a better buyer and how to avoid the pitfalls of poor construction, shoddy workmanship, numbered companies and so on. Virtually nothing has been said about the thousands of condominium owners whose incomes have been decimated by the special assessments they have had to pay. Virtually nothing has been said by the Vancouver Sun about the many lawsuits against the developers. I have written many times to the management of the Vancouver Sun on this topic. They do not reply.

#3 - The New Home Warranty Program

The public's understanding of The New Home Warranty Program is, to put it bluntly, very poor. Whether this is the fault of the public or the New Home Warranty Program itself is a question which remains unanswered, but the net effect is that condominium buyers seeing new condominium projects advertised with the New Home Warranty Program designation understandably have an impression that there is substantial protection for buyers. Consider some of the slogans:

Every builder who applies....is reviewed in the areas of established track record, technical expertise and financial stability.

Mission Statement: New Home Warranty of British Columbia and Yukon is dedicated to excellence in consumer service, excellence in housing construction, as well as the perpetuation of industry order through self-regulation.

New Home Warranty warrants that, during the first year, the Registered Builder, will repair any Defects in Workmanship and Materials, as defined in the Limited Warranty Certificate.

Other expressions found in their literature include "*The Cost for your Peace of Mind*" and "*Optional Gold Coverage*". Lofty and persuasive words for the public.

The first area of misconception by the public, however, is that the New Home Warranty Program is some sort of government agency or non-profit society representing consumer interests. What is not understood is that the New Home Warranty Program is a private company which is made up of shareholders, those shareholders being developers, construction companies and others who are involved in the construction of condominium properties. This is not the BCAA or the Better Business Bureau: this is not a crown corporation or some public information/assistance agency. In some of its advertising literature, the New Home Warranty Program describes itself as being "*not for profit*" which is absolutely true. It is a subtle distinction, however, when one considers that its sole purpose is to administer its own "warranty program". The profits, of course, are made by its shareholders in the construction and the development of new properties. There is nothing wrong with making profits but when the Program offers itself as a not-for-profit enterprise, it conjures up an image of broad consumer protection. The affairs and executive structure of the organization are closely guarded and any request for information by individuals or the media for that matter, are generally rejected.

In fairness to the New Home Warranty Program, it has never, to the best of my knowledge, maliciously deceived the public nor is it responsible for the construction of leaky condos. What it has done is created a smart marketing program which the public believes to be an all-inclusive, comprehensive warranty when, in fact, it is not. So instead of buyers asking a lot of questions and doing their homework before they buy, they are lulled into a false sense of security due to a misunderstanding of what is included in the Limited Warranty. Every project built under the New Home Warranty Program is supplied with stacks of documents, including what we like to call the "fine print". As is always the case with the "fine print", no one ever reads it and everyone believes in the images that are created rather than the actual and tangible benefits of the warranty itself.

For those who do avail themselves of the warranty program, they soon learn that it is a bureaucratic nightmare of procedures, paperwork and procrastination. Many condominium owners do not speak or read English and, for them, completing the fine-print forms is impossible. Claims can take years to resolve. It should be remembered that the formation of the New Home Warranty Program was initiated essentially by the building industry decades ago (1976) when government regulators suggested that "self-policing" by the construction industry would be much better than government intervention. Can we say today that it was true? An article in the April 24, 1998 Vancouver Sun reveals that the development/construction industry still supports the notion of self-regulation. (Appendix F)

For those strata councils and property managers who have tried to claim the New Home Warranty benefits, it has been a frustrating experience. To put it mildly, it has not been a user-friendly organization and the level of service can best be described as surly. In recent months, however, probably due to the public outcry about leaky condos, the probability of new legislation by the government and now the Barrett Commission of Inquiry, the attitudes at the New Home Warranty Program appear to be changing. They actually return phone calls these days. It would be unfair and improper to blame the New Home Warranty Program for the leaky condo crisis because, strictly speaking, the program itself did not build these properties. What does constitute a big problem, however, is that members of the program are the people who built these properties and, to that extent, it is important to remember that the people who are offering the warranty are essentially the same people who built the leaky condos in the first place.

The topic of leaky condos has become a hot news item in the last few months but, as said in my introductory remarks, this is actually something that has gone on for many years. In fact, the New Home Warranty Program itself was aware of the many complaints about water penetration and related damages caused by water penetration as far back as 1987, perhaps even earlier. In the spring of 1993, the New Home Warranty Program convened its own Commission which was called The Commission on Water Penetration in Wood Frame Condominium Buildings. (Appendix G) The purpose of the Commission was to hear from condominium owners, strata councils, builders, architects, building code regulators, designers and others who may have a direct interest in the topic. Whatever came of that Commission is uncertain. Three years later, in February, 1996, I wrote to the New Home Warranty Program requesting a copy of the Commission's final report for inclusion in an article on the topic of leaky condos. No report was forthcoming but rather the Program's CEO, Mr. David Verge, responded that "*we honestly feel that we are best qualified to write about this Company*". (Appendix H) As a property manager involved in many, many strata corporations suffering from leak problems over the past decade, I continued my interest in the New Home Warranty Program and in July, 1997 again wrote to the program requesting information with respect to the Program and the substantial criticism voiced by condominium owners about it. (Appendix I) No response was received from the

organization. There is, of course, no obligation whatsoever for the Program to respond to my inquiries but it certainly indicates that the organization is not one which can be described as "forthcoming".

Recently in British Columbia, other private organizations have shown an interest in providing warranty programs and, in fact, there is now competition in the field. This competition will end the monopolistic position enjoyed by the New Home Warranty Program and it is hopeful that substantive and user-friendly warranties will be available in the coming months and years. The government has already drafted new legislation also to mandate warranties.

In conclusion, I again repeat that the New Home Warranty Program itself is not to blame for the leaky condo crisis. It is to say, however, that when we (through The Barrett Commission Inquiry) are trying to establish how this mess came to be and what can be done in future, it is important to note that the so-called self-regulation theory did not work and that real and substantive warranties have to be meaningful, beneficial and timely to the consumer. Images are not warranties.

#4 - Property Maintenance and Management

There have been suggestions that the leaky condo crisis would not exist if property managers and strata councils took better care of their properties. It has also been suggested that the licensing of property managers would be beneficial and would go a long way to resolving this problem. All of these propositions are preposterous.

Owners of brand new strata corporations should reasonably expect that the properties they have purchased at enormous cost actually work. The vast number of strata councils, when faced with reports of leaks from its ownership, address the issue immediately. As stated earlier in this report this typically means a "handyman-type" of repair. There is absolutely nothing wrong with such an approach given the fact a strata council would not expect that beneath the surface of an exterior envelope lies a horror story that probably originates in faulty design, improper construction materials, poor workmanship and so on. Further, strata councils are restricted by the strata corporation budget process and, even if they wanted to tear apart an exterior envelope, they could not do so without first seeking consent and substantive funding from its ownership. This is highly unrealistic in a brand new project. In fact, proactive strata councils that do initiate engineering reviews of their properties within the first three years of construction are often met with rejection by its membership due to a lack of credibility. To put it another way, the owners cannot believe that a brand new project only a few years old should need an engineering review to uncover horror stories. Can anyone blame these owners or strata councils? Even worse, for those developers and construction companies to even suggest that remedial caulking and exterior maintenance programs would resolve the leaky condo crisis, demonstrates how

little they really understand about the real problem that exists. All the caulking in the world will not resolve the design inadequacies, improper materials and poor construction quality which lurks beneath the exterior envelope. Putting multiple layers of wax on a defective automobile will not make it drive any better. Competent and knowledgeable engineers and building science technologists will also caution against excessive caulking and applications of elastomeric paint products as these remedial measures can actually contribute to the leaky condo crisis by trapping the water in the sub cavities instead of permitting it to drain out.

Criticisms have been launched against the property management industry also, of which I am a member. For the development/construction industry to blame the property manager for the leaky condo mess that has been created is to suggest that the janitor on the Titanic should have mopped the decks a bit better to prevent the ship from hitting an iceberg and going down. The pointing of fingers at the property management industry usually takes the form of suggesting that licensing is required for property managers. Once again, this is a simplistic solution to a far more complex problem. The property management industry itself is in support of licensing but not to prevent leaky condos. Licensing has many benefits, more directed at fiduciary responsibilities rather than poor construction. Many property managers in the industry, in fact, do have construction related backgrounds and experience but this does not make them responsible for what has been built and what is hidden beneath the surface of the exterior envelope. It often takes months, if not years, before some of these problems are manifest and the licensing of property managers will have absolutely no benefit whatsoever in getting to the root causes of the problem. As stated earlier in this report, property managers are limited in what they can do when faced with leaks and much of their time is spent chasing the developer and its many sub-trades to have them simply acknowledge the deficiencies and take responsibility for the resultant costs of repair. Indeed, the leaky condo crisis has generally increased the workload of property managers for which there is infrequently any compensation. Worse, many strata management companies now carefully evaluate whether or not they wish to manage such properties. There are huge risks from a business viewpoint and some companies are saying "No Thanks". This is not going to be good for the strata corporations who require good professional advice on a day to day basis.

In the overall scheme of determining responsibility for the leaky condo crisis, assessing blame on the buyers, the strata councils and the property managers is plain and simply disingenuous.

#5 - Conclusion

I trust that the Commission of Inquiry will find the contents of this report to be useful. My report, along with the evidence submitted by a number of other professionals and condominium homeowners, will surely illustrate to the Commission that this problem has

been simmering for years, if not for decades. It is the equivalent to the old cliché about not putting up a traffic light at a dangerous intersection until at least three people have been killed. We have enough evidence before us at this time to see that we definitely need a traffic light for the condominium construction issue. What has happened, has happened, and finding fault is necessary if we are to go forward. What is more important, however, than finding fault is just how we go forward. There are those who say that the government should have been responsible for ensuring that this crisis never occurred in the first place and there are those who say that the government should be providing compensation. As far as compensation is concerned, this report does not address that issue. I am sure that others will bring forward their cases vociferously to the Commission. I do not believe that the government is responsible for what has happened over the past 20 years but I do feel that the government is responsible for what we do over the next 20 years. I urge the Commission not just to find fault about the past and to get into the politics of the day, but rather to present bold and meaningful initiatives and recommendations to the government so that this matter is dealt with once and for all.

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