

## Mould in Condo Unit: Who's Responsible?

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The case of [\*Brasseur v. York Condominium Corporation No. 50\*](#), 2019 ONSC 4043, outlines the respective responsibilities of a condominium corporation and a unit owner.

### ***Duty to Maintain and Repair***

Condominium corporations have a duty to maintain and repair the common elements. On the other hand, the declarations of most condominium corporations require unit owners to maintain their own units and to repair and deal with any issues in their units that create an unsafe condition to the occupants, property, and assets of the corporation.

The dispute in question involved a significant mould problem in a unit which first arose in 2009 and was only remediated in 2018.

The unit owner argued that the mould was caused by issues related to the common elements, such as problems with the exterior windows, the heating system within the common elements ceiling, and the ventilation systems.

The condominium corporation argued that the mould was caused by lifestyle choices made by the unit owner, such as not properly operating the heating system and installing weather stripping on the entry door which prevented adequate ventilation.

After reviewing competing expert reports, Justice Nakatsuru found in favour of the unit owner. He held that the mould was caused by reasons related to the design of the building. He found that the condominium corporation breached its obligation to repair and maintain the common elements.

As a result, the condominium corporation was found responsible for the cost of the mould remediation.

## ***Oppression Remedy***

The unit owner also argued that she should be entitled to compensation under the oppression remedy in section 135 of the [Condominium Act, 1998](#). Justice Nakatsuru denied this relief.

To be successful in an oppression remedy, it must be shown that the condominium corporation engaged in oppression, unfair prejudice, or unfair disregard of a relevant interest.

Justice Nakatsuru noted that oppressive conduct is conduct that is coercive, harsh, harmful, or an abuse of power.

Unfairly prejudicial conduct is conduct that adversely affects the claimant and treats him or her unfairly or inequitably from others similarly situated.

Unfair disregard means to ignore or treat the interests of the complainant as being of no importance.

Although Justice Nakatsuru found that the condominium corporation's overall approach to the mould problem was not reasonable, he said that there were mitigating circumstances.

The condominium corporation needed time to investigate the problem. It retained and hired experts and contractors. It met with the unit owner. It ultimately remediated the mould albeit on a without prejudice basis.

Justice Nakatsuru stated that the condominium corporation did not have to immediately accept the most comprehensive and expensive option to remediate. It was entitled to take a more graduated, cost-conscious, and adequately effective option to solve the problem.

He further noted that mould and its reoccurrence can be a complex issue. The reasons for it are multi-faceted and not easy to sort out. The gravity of the situation may not have been immediately appreciated. Moreover, experts and contractors are not always immediately available.

## ***Conclusion***

A condominium corporation has obligations to the unit owners. It must maintain and repair the common elements. It must conduct reasonable investigations into problems.

However, perfection is not expected of a condominium corporation. A unit owner cannot always expect a condominium corporation to immediately fix a problem, especially where

the issue is complex. Time may be required to conduct investigations and to develop a cost-conscious and effective plan of action.

A condominium corporation's breach of its duty to repair does not necessarily mean that a unit owner is entitled to compensation under the oppression remedy. The oppression remedy is reserved for harsh and burdensome conduct.

The intent of the oppression remedy is to balance the interests of those claiming rights from the condominium corporation against the ability of management to conduct business in an efficient manner.

The oppression remedy protects legitimate expectations and not individual wish lists.