



FAULTY TOWERS



The rush to build Toronto's new condos has resulted in falling glass, disgruntled buyers and multi-million-dollar lawsuits. An investigation into who's to blame **BY PHILIP PREVILE**

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AN GANDHI AND OMAR JABRI share a love of big-city life: the people, the architecture, the fashion, the logarithmic bustle of human energy that comes from high-density, high-rise living. They first met as articling students with different Bay Street law firms, introduced by mutual friends. Together they moved to New York, where Gandhi worked as in-house counsel for MTV and Jabri as an intellectual property lawyer, and they lived in an apartment in Chelsea. Gandhi became addicted to flash-sale websites, filling her wardrobe with deeply discounted designer fashions. Flash sales are enormously popular in New York. She saw an under-

served market in Toronto, so she hatched a plan to return and launch her own site.

When they moved back in 2011 they were determined to live downtown. “We wanted a place where we could feel the energy of the city,” says Gandhi, who is 34 years old and striking. They settled on renting a glitzy, all-white 16th-floor unit in the Festival Tower, a brand-new 41-storey building by the developer Daniels. Their view was of the theatre district and, directly below, the rooftop deck of the TIFF Lightbox—the scene of many film festival parties. At night, the lights of the Gardiner formed a shimmering, suspended horizon. “It was bigger than the apartment we had in Chelsea, and it was cheaper, too,” says Jabri, who is 35. They signed a lease for \$2,600 a month, with a view toward purchasing their own condo in the city core down the road.

Six weeks later, in mid-May, their ideal downtown life was shaken. “The property manager called me at work to tell me that a pane of glass had fallen from my balcony,” Jabri recalls. The manager couldn’t say how it happened. Tempered glass is designed to shatter into tiny pieces when struck, but what could have struck it? “The only thing we kept on the balcony was my bike,” Jabri says, “and I’d ridden it to work that morning.” Perhaps a bird, then, or something falling from higher up.

Jabri honed in on one question: “What’s our liability?” He wondered if anyone had been hurt, if any property had been damaged below, what his insurance policy would cover, and what it all might cost him. When he told Gandhi about the glass, she immediately thought of the amount of time she spent on the balcony. “We dog-sit for my parents when they go away,” she says. “Can you imagine? The dog could have fallen. A child could have fallen.”

By the time they got home, their balcony had already been secured with a plywood board where the glass had been. Within days a fresh pane of tempered glass was installed. No one hurt, everything back as it was, liability nil.

The couple didn’t give the matter another thought until the Tuesday evening after the August long weekend. Jabri was standing at the busy corner of King and John when he looked up at his building and was startled to see the debris from another pane of glass falling to the sidewalk below. The shards rained down like a hailstorm. People on John Street scattered to escape the pellets, some dashing into the middle of the road. “When I realized it was happening again, that’s when I thought it could be a design flaw or poor workmanship,” he says.

CASE STUDY NO. 1:

THE FESTIVAL TOWER

THE BACKGROUND

The 41-storey building at King and John was completed by the developer Daniels in 2010. Units, priced between \$300,000 for 487 square feet and \$2.4 million for a 2,289-square-foot penthouse, come with memberships to the street-level Lightbox, the cinema that is the home of TIFF. Daniels, run by Mitchell Cohen, is building a dozen towers in the GTA, including market-priced condos in Regent Park.



Mitchell Cohen
PRESIDENT,
DANIELS

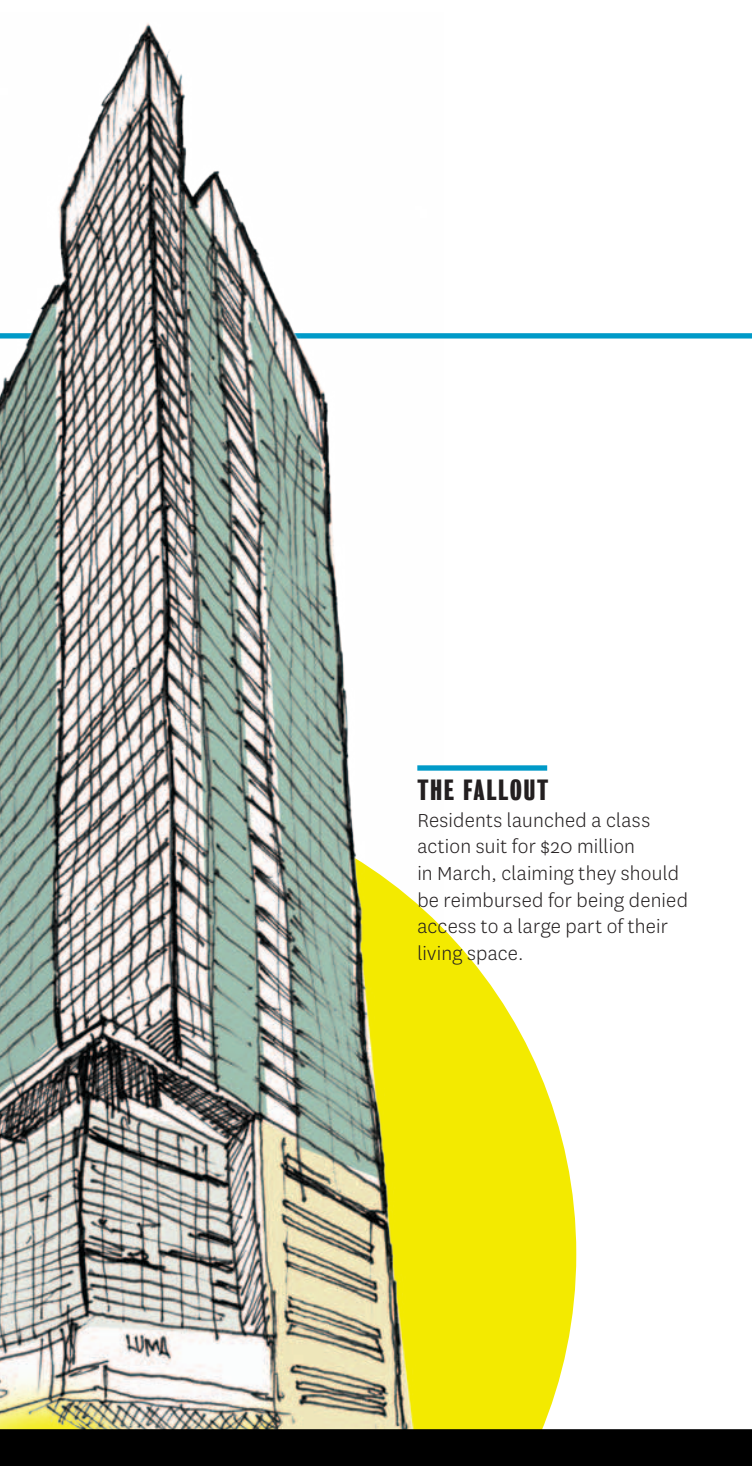
THE CRISIS

Between May and August 2011, five panes of balcony glass fell to the street. Daniels locked residents out of their balconies for three weeks. This May, the company began to replace all balcony guards with laminated glass.

By then, all of Toronto had turned into a collective Chicken Little, convinced the sky was falling in the form of glass shards. At the 45- and 37-storey Murano towers at Bay and Grosvenor, built by the developer Lanterra, at least 15 panes of glass shattered and fell between April 2010 and September 2011. Balcony glass fell from another Lanterra development last summer as well, the prestigious One Bedford condo tower in the Annex.

The falling glass phenomenon continued into this year. In March, a pane fell from the Trump Tower, closing the intersection of Bay and Adelaide and snarling traffic for the better part of a day. In April, the developer Concord Adex, realizing that it used the same glass supplier as Lanterra and Daniels, decided to wrap all the balconies at three of its towers—one at CityPlace, two up at ParkPlace in the Sheppard and Leslie area—in mesh as a precaution.

Under pressure from city hall to ensure public safety, Daniels and Lanterra locked residents out of their balconies and erected protective plywood hoardings over sidewalks. The developers



THE FALLOUT

Residents launched a class action suit for \$20 million in March, claiming they should be reimbursed for being denied access to a large part of their living space.

decided to replace the tempered balcony glass, at their own cost, with laminated glass (the kind used in windshields, which holds together and stays in place even following a full-force collision). But it's not easy to get your hands on hundreds of large panes of laminated glass, and as of late spring the process of replacing the old ones remained unfinished.

While waiting for the new glass, Daniels wrapped all of the Festival balcony panes in green mesh, which prevented more pieces from falling and also allowed residents back on their balconies. In all, the Festival balcony lockout lasted three weeks. At Murano, however, the lockout continued for months. Lanterra posted yellow notices on balcony doors that read: "Danger. No access. This balcony door has been secured from the outside. Do not under any circumstances attempt to open this door. All balcony glass panels are being removed."

The cause of the breaks appears to have been the presence of nickel sulfide within the glass. However, the problem cannot be

traced to a single manufacturer, as the glass used in the towers came from a variety of sources, including China and the United States. Some say climate is a factor, though the panes seem to shatter in all types of weather.

Balcony glass is not the only building component that's failing in Toronto's new condominium towers. As more and more people move into their brand-new units, they are discovering that their idealized urban homes are far from perfect, with flaws that run from the typical (unpainted lobbies and unfinished fitness rooms) to the severe (leaky window walls and cracking foundations). And as condo owners discover the problems, the paranoia sets in: fearful of losing their investment, and of defamation suits from developers, they don't dare speak out.

Every condo building in Toronto has a secret. The only thing that separates crappy balconies from crappy soundproofing, plumbing, drainage, elevators, heating, air conditioning and mechanical equipment is that anybody can see the balconies falling apart. The rest is hidden from public view, as are the boardroom confrontations and the quietly launched civil lawsuits that follow, when condo owners with no other recourse take their developers to court. In March, a group of unit owners at the Festival and Murano towers filed class action lawsuits against their respective developers and architects, and the balcony installer at both locations, Toro Aluminum Railings. Even though the developers are replacing the glass at their own expense, the lawsuits claim that residents have been denied access to a significant portion of their living space for too long, through no fault of their own. They believe someone is negligent, and someone should pay. Each suit claims a total of \$20 million in damages.

Such lawsuits are increasingly common, with damage claims for shoddy construction running from the tens of thousands to the tens of millions, naming developers, architects, concrete-waterproofing subcontractors and everyone in between. As the repair bills and legal fees mount, the courts try to figure out who will pay for the fixes. Meanwhile, with hundreds of cranes poking out of the city skyline and developers scrambling to build still more towers, we're presented with the real possibility that many more of these condo boom buildings will bust.

TORONTO HAS NEVER BEEN a city where people live in tall buildings. A quarter-century ago, in 1986, there were 146 completed condominium developments in the entire GTA. Those were the days of the City of Neighbourhoods: clean, tree-lined residential streets of semi-detached homes with easy access to bustling commercial avenues, rambling ravine parks, schools and libraries, all connected by transit, and all in a major financial and commercial capital.

Today, within the boundaries of the old city alone, there are 520 completed condos that average 159 units each. Another 162 buildings (averaging 276 units each) are currently in the sales and construction phase, their footprints wrapped in plywood, scaffold cocoons for a city in metamorphosis.

Within the last few years, our self-image has begun to shift along with our skyline. As Toronto evolved into a global mecca of finance, film, fashion and food, the sleepy city-of-neighbourhoods identity has given way to a vertical lifestyle fit for a city that never sleeps: high incomes, no kids, nice clothes, nights on the town. That's certainly what life looks like in the developers' elaborate pre-sales marketing packages and websites. But there's also a philosophical sales pitch to condo living in the tenets of new urbanism: higher density to cure urban sprawl, smaller spaces to shrink carbon

Condo owners won't complain because they're paranoid about affecting their property value or getting slapped with defamation suits by developers

footprints, commuting proximity to reduce automobile use, collective ownership to build community.

Condos add a veneer of glamour to what is, in essence, nothing more than affordable living. Real estate prices in Toronto have skyrocketed, and the lack of supply—last year developers created more than 15,000 new condo units for sale in the city, but fewer than 1,800 new homes—means prices for single-family detached homes will likely stay high even if the real estate market softens. Condos are the last stand of the “mid-2000s” price tag in the city core. Perpetually low interest rates continue to encourage potential buyers—especially first-timers—to take the plunge.

For developers with two acres of downtown land, the choice of what to build is a foregone conclusion. They could build 20 townhomes, sell them for a million apiece and reap maybe \$5 million in profit. Or they could build an \$80-million high-rise with 400 units that sell for \$300,000 each and reap a profit of \$40 million. Add two swanky top-floor penthouse suites for a couple of million each, and a developer can pad its margin even more.

“Developers make money beyond anything most people can even imagine,” says the Toronto real estate agent and condo sales specialist Charles Hanes, author of the [simplycondos.com](#) blog—a rare tell-all source of information and opinion about Toronto’s condoland. The field is a crowded one, and its top players are among the city’s most generous philanthropists, testament to both their businesses’ profitability and their community spirit. Daniels president Mitchell Cohen, whose preferred charities include food banks and Habitat for Humanity, also led an impromptu corporate giving campaign that helped create the Citadel dance theatre in Regent Park. Lanterra chair Mark Mandelbaum runs a charitable foundation that gave \$161,000 to Jewish charities in 2009 on assets of \$1.5 million.

Politicians and political parties are also recipients of developer largesse. According to the watchdog website [votetoronto.ca](#), developers gave \$4.7 million to the provincial Conservatives and \$4.2 to the Liberals from 2004 to 2011 (plus a meagre \$7,331 to the NDP). Corporate donations are prohibited in Toronto’s municipal elections, but that doesn’t mean city hall isn’t awash in development cash. For a typical 35-storey, 350-unit downtown high-rise condo, city coffers can pull in up to \$8 million from the developer: that includes \$200,000 in planning fees, \$400,000 in building permits and \$3 million in development charges (which are cheaper in Toronto than in most other GTA municipalities), plus up to \$2.5 million for a Parks and Recreation levy and a Section 37 grant (which developers pay in exchange for increased density on their site, with funds earmarked for specific community improvements) that can run as high as \$1.5 million. And once they’re built, there are suddenly 350 new properties for the city to tax where before there was probably a parking lot.

The condo boom has created a two-track system at city hall: a shiny track greased with developer money, and a creaky track funded by property taxes. If councillors want to build a community centre in their wards using general tax revenues, they must fight other councillors for scarce funds or wait their turn in line. But developer money stays in a councillor’s ward—and he or she can decide how it gets spent. “In all my years here, I can think of only one community centre that was built with tax dollars,” says Don Valley East’s Shelley Carroll, who has been on council nearly a

CASE STUDY NO. 2:

OPTIMA

THE BACKGROUND

The 34-storey tower at Navy Wharf and Bremner was completed in 2003. It was one of the first condos in the newly established CityPlace neighbourhood. Units, priced between \$139,300 for 550 square feet and \$700,000 for 2,200 square feet, have spectacular views of the lake. The developer, Concord Adex, run by Vancouver billionaire Terry Hui, is erecting 26 CityPlace towers, with a total of 8,000 units.



Terry Hui
CEO,
CONCORD ADEX

THE CRISES

Water allegedly seeped into the building’s window walls; interior walls allowed smoke and noise to permeate from unit to unit; sprinklers leaked; the ventilation system malfunctioned; and balcony guards weren’t properly secured.

decade. “The rest have all been built with developer money.” Playgrounds and even daycares can also happen faster with developer dollars. So can site plan, zoning and traffic studies: the city’s overworked, understaffed planning department will sometimes hire a consulting firm to do the work, if the developer is willing to pay the consultant’s invoice. “We have entered into a whole bunch of public-private partnerships without really saying that’s what we’re doing,” Carroll says.

The boom is creating ripple effects through other sectors of the city’s economy. With more high-rises under construction here than anywhere else in the world, there’s constant pressure on the supply of labour in the construction trades. One recent study predicts that Ontario will be short 60,000 skilled workers before the end of this decade. Toronto Hydro has said that, because so many new towers are coming online all at once, the electrical grid is reaching capacity, and warned of blackouts if it doesn’t get a cash injection to upgrade its equipment, including construction of a new transformer



THE FALLOUT

Residents launched a \$3-million class action suit in 2006, which in 2009 was raised to \$20 million. Some lenders are refusing to insure new mortgages for the building until the dispute is resolved.

station next to the Rogers Centre. Toronto may not have the capacity to handle the condo boom to which it plays host.

THE PROCESS OF BUILDING a condo tower begins not with a hole in the ground, but with a sales pitch. Developers cannot get construction financing from the major Canadian banks until a substantial percentage of units, sometimes as high as 70 or 80 per cent, have been pre-sold. Even then, the banks, convinced that the market is overheating, are steering clear of construction financing for new condo towers, pushing developers into the hands of foreign lenders. The Trump Tower was built with Austrian money. The Libeskind-designed L Tower above the Sony Centre is being financed in part by the French bank BNP Paribas, which also has ties to Lanterra and Concord Adex.

Once the marketing team has succeeded in pre-selling the developer's dream, next comes the bricks-and-mortar attempt to

build its passable facsimile. Architects prepare the building design, structural engineers plan the building's skeleton, and a general contractor manages the site's construction. Some developers serve as their own contractors, including Tridel, reputed to be among the city's best builders; Tridel manages its own construction through its subsidiary, Deltera. Others, like Vancouver-based Concord Adex, hire large construction firms such as PCL or EllisDon.

Then the real deal making begins: the hiring of trades for the vast array of subcontracts, from the reinforced concrete and the window walls through the plumbing and wiring down to the installation of carpets. With the units pre-sold, developers know what the project's revenue will be and how much they'll be paying in sales commissions. Construction costs are the last unknown, and they offer many opportunities to cut corners. "There are a dozen layers of contracts between the developer and the schmuck who tapes the drywall," says Hanes. "No one is watching him and he knows it. And he is under pressure to finish the job and move on to the next one."

According to Martin Gerskup of BEST Consultants, a GTA firm that conducts many reviews of new condo towers after they're built—known as performance audits—the last two decades have seen some quiet but significant changes in the ways architects work. "Twenty-five years ago, when architects prepared the building documents for a development, they would specify exactly what products should be used for things like soundproofing or heating systems," Gerskup explains. "And the performance audits were witch hunts, as people tried to find out if the dimensions were wrong or if a cheaper product had been substituted."

Today, says Gerskup, the building documents have been "dumbed down": they are less specific, noting only the general performance standards that a particular insulation, heating coil or window system should meet. "Basically, developers learned from getting burned," says Gerskup. "The new documents give them more opportunities to switch materials without penalty." Cheaper materials keep costs down, resulting in brand new towers built with junk. New condo buildings are often outfitted with energy-pig lighting systems in their underground parking garages, or mid-efficiency boilers for heating. Within the first two years of operation, many condo boards resort to replacing them with more energy-efficient systems, at a cost of hundreds of thousands.

There are far more suspect practices too, such as skimping on the cement coating over steel rebar or putting less insulation behind the drywall—all of which can save untold sums in materials and labour costs. Rosario Marchese, the New Democrat MPP for Trinity-Spadina who is a lone voice for condo reform at Queen's Park, says his downtown riding is rife with condo towers that have noise transmission problems. "People can hear everything in the neighbouring units," he says. "They have no privacy at all."

Toronto Building, the city department that issues construction permits, conducts a minimum of 11 inspections during the building process. But as Ann Boroah, the department's executive director, puts it, "We don't supervise construction. We inspect the finished product for compliance with the Ontario Building Code." The code's job is to enforce a minimum standard: buildings must be structurally sound, have serviceable plumbing, adequate heating and enough fire escapes, and generally pose no threat to human safety—a fairly accurate description of just about every building in town that's not boarded up.

And so, while every development begins as a vision of exquisite design and comfort, it often ends up as the patchwork assembly of dozens upon dozens of lowest bidders, built in the midst of a hysterical

real estate boom. Despite the system's many checks and balances, the quality of construction can vary widely. Deficiencies can run from the most superficial to the most compromising. And there's just no knowing what kind of building you've bought into—or what the true character of your developer might be—until you move in.

WE TEND TO THINK of high-rise buildings as inert entities made up of nothing more than square footage. We should instead think of them as highly complex machines—a vast interconnected network of pumps, furnaces, ducts, wires, pipes, drains, coils and more—designed by the most skilled of professionals. Once completed, they are handed over to a newly formed condo board, made up of a small group of owners who typically have no idea how it all fits together, or any concept of how to assess what may have gone wrong.

To complicate matters further, the developer often hires the property manager—a company that will oversee the cleaning, security, waste management and other day-to-day maintenance of the building. The property manager will also, with the help of a consulting engineer, guide the board through the first-year performance audit, which is the report on the building's deficiencies—a potential conflict of interest. “Property management companies need good relations with developers to get contracts,” says one former property manager who quit the industry in frustration. “How can they be in charge of checking the building's defects when they're looking for more business from the developer down the road?”

New condo boards are in a vulnerable position: with little expertise or experience, they are suddenly tasked with overseeing staff, managing a multi-million-dollar operating budget and stick-handling their way through Ontario's new home warranty program. The warranty covering most parts of a condo expires within two years. It's administered by Tarion, the private corporation set up to protect homeowners' rights and regulate developers. But it's the developer that provides the warranty, and it's up to the condo board and the property manager to force the developer to fix any problems. Tarion, whose board of directors is heavily populated by developers, steps in only when disputes can't be settled amicably.

“To get developers to fix anything substantial is like pulling teeth,” says one Bay Street financial executive who has sat on more than one downtown condo board. “Enforcing the warranty is such a long and painful process that it becomes a game of attrition. Developers often drag things out to the end and then try to get the board to accept a cash settlement for a fraction of what the repairs will cost.” She's seen developers spackle over cracks in concrete foundations and drag their feet to replace hallway carpet that had worn threadbare within months. “You call Tarion, they come to a meeting, they give the developer time to rectify the problem, then they all disappear,” she says. “Months go by and nothing happens, so you call Tarion in for another meeting. Then Tarion gives them more time.” Marchese is particularly critical of Tarion: “I don't think condo buyers have any consumer protection at all.”

And without protection, everyone goes silent. There are 82,976 condominium units within the boundaries of old Toronto, and by and large, the people who live in them—or at least the many I spoke with—are singing the same tune, which goes like this: “Don't identify me, my building or my developer in your article.” They all believe that if anyone learns the truth about the construction flaws and

CASE STUDY NO. 3:

MURANO

THE BACKGROUND

The 45- and 37-storey towers at Bay and Grosvenor were completed by Lanterra in 2009. The development takes its name (ironically) from the famous Italian glassworks. Units, priced between \$189,000 for 425 square feet and \$320,000 for 1,160 square feet, were marketed as luxurious homes in the middle of the city. Lanterra's Mark Mandelbaum and Barry Fenton are currently building the Ice condos at York and Bremner and the Burano at Bay and Grosvenor.



Mark Mandelbaum
CHAIRMAN,
LANTERRA



Barry Fenton
CEO,
LANTERRA

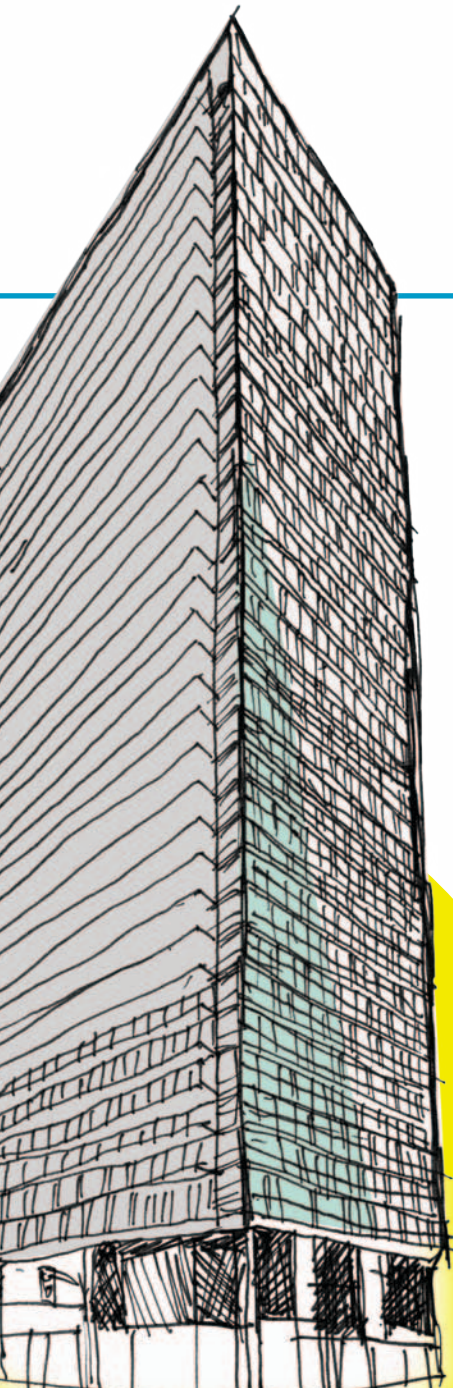


THE CRISIS

Between April 2010 and September 2011, 15 pieces of balcony glass fell to the street. Lanterra has locked balconies to residents while it replaces all balcony guards with laminated glass.

ongoing developer disputes in their building, they'll never be able to sell. They also fear retribution. “Developers can get away with just about anything,” says Charles Hanes, “because they know that even the people who buy from them won't rat them out.”

LAST SUMMER, a man I'll call Jeff moved into a brand new 800-square-foot Liberty Village condo with concrete floors and a west-facing window wall. This was his second condo, and he was one of the first to move into his new tower. At first it seemed perfect, though he noticed some cut corners: the epoxy coating on the cement floor was laid only after his kitchen was installed, for example. “The floor beneath my cabinets is just unvarnished concrete,” he says. “If I ever want to remodel my kitchen, that will be a problem.” But he wasn't planning on remodelling the kitchen any time soon. If that was the extent of his condo's problems, he could live with it. It only took a few days of summer sun to discover a far more serious problem.



THE FALLOUT

Residents haven't been able to use their balconies for a year, and repairs are still ongoing. In March, they launched a class action suit for \$20 million.

"The entire window wall system expands in the heat, to the point where it actually moves away from the interior wall," says Jeff. To be more precise: as it expands it bows outwards and separates from his interior wall, creating a lengthy floor-to-ceiling crack where the drywall meets the window wall frame. At the peak of the summer heat, the space between his interior wall and window wall grew to a full inch or more—enough room for him to put his finger through.

The shortcomings of window-walled towers—the construction style of nearly every new condo rising in the city—have become well-known: even when built with good materials and good craftsmanship, they are not energy efficient and age quickly, often lasting only 10 years before their already-poor insulation qualities begin to deteriorate. Jeff's problem is worse than that. His window wall is malfunctioning mere months after completion. "I don't know if the problem is due to poor workmanship or poor design,"

"Our board is preparing for war," says one condo owner. "We know the developer will dispute as many warranty claims as it can"

he says. "But I would expect that it doesn't comply with the building code. And I don't know how to address the problem without tearing out my entire exterior wall." He says he's not worried that his window will pop out and fall if he leans on it, but he is worried that water is going to get in behind it and cause further damage.

As other owners moved into his building, people began to talk. Residents set up a Facebook group to share information. It was originally an open group for anyone to see, but they realized it wasn't good for resale values to be complaining about their building in an open public forum. Nor was it good for the reputation of the building's developer, which threatened a libel suit over the messages being posted there. The Facebook group is now closed to people who don't live in the building.

The job now falls to Jeff's condo board to complete the building's performance audit and demand satisfaction through the warranty program. "It's like preparing for war," says Jeff. "Our board is already compiling a comprehensive list, because we know the developer will dispute as many warranty claims as it can."

Indeed, the true test of a developer's reputation is how well it responds to issues raised in the performance audit. Some, including Daniels, have excellent reputations for post-sales customer service. But Marchese says many other developers routinely fail the test. He recalls attending a meeting between a downtown condo board and its developer and property manager to discuss needed repairs. "The property manager spoke up about some of the problems in the building, and the developer threatened on the spot to withhold contracts for future buildings," he says, surprised at the baldness with which the developer-enforced *omertà* was put on display at that meeting. "This is what I call the condo underworld." And when the warranty process yields little in the way of satisfaction, there's only one recourse left: the courts.

JAN GANDHI AND OMAR JABRI moved out of the Festival Tower this summer—they purchased a two-bedroom unit in a condo tower on Front Street. Gandhi launched her flash-sale site, which she named The Peacock Parade, and Jabri works as in-house counsel at the pharmaceutical company Apotex. They are still eligible to join the class action lawsuit, but they have yet to decide if they will. "People spend \$400,000 to buy a condo and they get 500 square feet of interior space and 200 square feet of outdoor space," says Theodore Charney, the counsel for the Festival Tower case, who represented victims of the Maple Leaf Foods listeria scare and the Sunrise Propane explosion. "They have been precluded from enjoying the outdoor space they paid for. It's just a matter of deciding who is responsible and who should compensate people for their loss."

The Festival and Murano class actions are two of several condo cases currently lined up before the Ontario Superior Court. The condo corporation of the posh Loretto Academy, a 1914 heritage-building-cum-condo-development in the Annex, filed suit for \$2.5 million in 2010 against Context Developments, as well as the architecture firm E.R.A., Veisman Consulting and the City of Toronto. According to the amended statement of claim filed last year, the Loretto's deficiencies include cracked stucco and windows, poorly installed drainage systems, corroding balconies and leakage in the roof and foundation. Court documents allege that Context

gave “instructions to hire the cheapest labour, and purchase the cheapest materials, and perform the minimum possible to complete construction. Context further instructed the defendant E.R.A. not to supervise the heritage restoration work, but merely to ‘sign off’ on it.” The defendants deny all the allegations.

Over at CityPlace, the massive downtown redevelopment west of the Rogers Centre, at least three condo boards are suing Concord Adex. One of Toronto’s most convoluted and longest-running suits concerns the 34-storey, 404-unit Optima tower at 81 Navy Wharf Court. When it was first built in 2003 it was the jewel of CityPlace, with lots of open space providing excellent views of the CN Tower and Lake Ontario. But the claim cites a performance audit that showed water was seeping behind the window walls and not draining properly, causing visible damage to some parts of the complex, to say nothing of the potential invisible damage to insulation behind walls or between floors.

There were other problems, too. The lengthy statement of claim lists, among other things, interior walls that allowed noise, smoke and odours to permeate from suite to suite; insecure exterior cladding and balcony guard plates; and water leakage into the parking garage. Optima’s board filed its performance audit with Tarion and Concord Adex in 2004. By the summer of 2006, with problems worsening and no resolution in sight, Optima’s condo corporation filed a civil suit for \$3 million on behalf of all the building’s owners. Three years later, with the case stalled, they raised the stakes to \$20 million, filing an amended statement of claim that now included leaky sprinklers and a defective ventilation system that suffered from malfunctions in the cooling tower, chiller and circulating pump—and, to make matters worse, negligent placement of the rooftop HVAC unit, making it inaccessible for repairs.

Twelve defendants were initially named in the suit, including Concord Adex, the main contractor, PCL, the engineering firms and right on down to the window wall manufacturer and installer, Primeline Windows, and their subcontractor, as well as the City of Toronto and Tarion. The suit also named the architects Adam Feldmann and Ralph Bergman, as well as their firm, the condo specialist Architects Alliance.

The condo board’s claim reads like a dragnet attempt to find liability—naming as many defendants as possible while making the broadest possible allegations, a tactic that gives lawyers lots of latitude when asking questions. Meanwhile, the statements of defence read as grand hypocrisies. Many defendants make multiple cross-claims against the others, alleging that someone else is responsible—PCL brought five additional subcontractors into the suit as third parties—all the while disclaiming that any deficiencies exist. Concord Adex, denying the allegations, claims that Optima’s property manager, Laura Ann Lee of Enhanced Management Services, impaired and impeded their access to the units to correct deficiencies. (Lee signed a non-disclosure agreement that prevents her from commenting on the case.)

Today, six years after the suit was filed and a full nine years since Optima’s first residents moved in, the case is still before the courts and has yet to go to trial. According to the timetable, discovery motions—the preliminary hearings in which the plaintiffs and defendants are questioned—were to be heard by April 30. But the process of matching the availabilities of dozens of witnesses with a slew of lawyers is complex enough to require its own computer program. One lawyer associated with the case doubted that the current timetable, which has already been revised twice, could be met.

The lawyer for Optima’s condo board, Nada Nicola-Howorth of Lerners, declined to comment on the case, as did the lawyer for Concord Adex, Michael Tamblyn of Norton Rose. (Tamblyn, also the lawyer for Context, declined comment on the Loretto case as well.) But lenders and insurance brokers have already taken notice of Optima’s situation, and some have reportedly refused to insure mortgages for that property.

As a result, Optima’s unit owners could find it difficult to sell to anyone who wants to buy with a down payment of less than 20 per cent. “That’s a large chunk of the downtown market right there,” says Toronto mortgage broker Kevin Berry of Mortgage Alliance. “Those small condo units are starter homes, and most buyers for those units don’t have a 20 per cent down payment.”

Optima is not the only Toronto condo tower on what brokers call the “black list.” Any tower with known construction problems, bad finances and pending lawsuits can suddenly find itself cut off from a substantial group of potential buyers. Optima’s unhappy owners may find themselves experiencing a premature version of the bursting condo bubble: stuck with units they can’t sell and a building that’s become too expensive to fix, they must find a way to cut their losses.

EARLIER THIS YEAR, Rosario Marchese introduced a private member’s bill at Queen’s Park to amend the Condominium Act, the legislation that lays the groundwork for buying, selling and living in condominium dwellings (including everything from who is allowed to vote at condo corporation meetings to how a condo decides whether to ban pets) and which hasn’t been updated since 1998. Marchese’s bill would also update the Ontario building code’s soundproofing standards. It will be the fourth time he has tried to amend the act; each previous attempt has been stymied by the Liberal government.

Marchese’s bill would create a condo review board not unlike the current landlord and tenant board, to act as a dispute resolution body for conflicts between condo boards, owners, property managers and developers. He wants more civilian home and condo owners on the Tarion board, and the agency to be designated as a consumer protector.

Tarion, for its part, recently revised its construction guidelines for condominiums, in order to reduce such problems as high noise levels and vibration from mechanical equipment and leakage from parking slabs. Last year it instituted new procedures for dealing with complaints of builder misconduct. Tarion also created a task force in 2010 to assess emerging risks, such as falling balcony glass, in condo development.

Finding a way to detect problems early could help head off a situation similar to the condo crisis in Vancouver and Victoria, which suffered an epidemic of leaky buildings constructed in the late 1980s and 1990s—some 65,000 units in all. British Columbia created a commission of inquiry headed by former premier Dave Barrett, and its report, issued in 1998, was scathing. It blamed municipalities for failing to monitor building quality, the province for allowing loose interpretations of the building code, architects and engineers for failing to ensure their designs were properly translated, contractors for passing the buck, unskilled labour for poor workmanship and developers for failing to disclose all information to newly formed condo boards.

The Barrett Report also singled out B.C.’s equivalent of Tarion as inadequate. One year later, the warranty program went bankrupt due to the volume of claims. By 2009, B.C.’s Homeowner Protection Office—created in the wake of the crisis—had doled out \$670 million for more than 16,000 interest-free loans to pay leaky condo owners’ repair bills.

By nearly all accounts, Toronto’s condo boom is about to come to an end. Canadian banks want the government to tighten the rules for consumer lending, and higher interest rates seem like an inevitability. In other words, fewer people will be allowed to buy condos, and fewer still will be able to afford them. Meanwhile, the towers keep going up at a breakneck pace. Toronto may find itself glutted with units for sale. And if the cone of silence continues to hang over condoland, we won’t really know the quality of the high-rise housing stock we’ve got until after it’s too late. ■