

Legislative  
Assembly  
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Assemblée  
législative  
de l'Ontario

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**Official Report  
of Debates  
(Hansard)**

P-17

**Journal  
des débats  
(Hansard)**

P-17

**Standing Committee on  
Public Accounts**

Committee business

2019 Special report,  
Auditor General:  
Tarion Warranty Corp.

1<sup>st</sup> Session  
42<sup>nd</sup> Parliament

Wednesday 27 November 2019

**Comité permanent des  
comptes publics**

Travaux du comité

Rapport spécial,  
Vérificatrice générale :  
Tarion Warranty Corp.

1<sup>re</sup> session  
42<sup>e</sup> législature

Mercredi 27 novembre 2019

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Chair: Catherine Fife  
Clerk: Christopher Tyrell

Présidente : Catherine Fife  
Greffier : Christopher Tyrell

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Toronto ON M7A 1A2  
Telephone 416-325-7400; fax 416-325-7430  
Published by the Legislative Assembly of Ontario



Service du Journal des débats et de l'interprétation  
Salle 500, aile ouest, Édifice du Parlement  
111, rue Wellesley ouest, Queen's Park  
Toronto ON M7A 1A2  
Téléphone, 416-325-7400; télécopieur, 416-325-7430  
Publié par l'Assemblée législative de l'Ontario

ISSN 1180-4327

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

## STANDING COMMITTEE ON PUBLIC ACCOUNTS

## COMITÉ PERMANENT DES COMPTES PUBLICS

Wednesday 27 November 2019

Mercredi 27 novembre 2019

*The committee met at 0900 in room 151.*

### COMMITTEE BUSINESS

**The Chair (Ms. Catherine Fife):** Good morning, everyone. Welcome to the public accounts committee. On Monday, the committee received a notice of motion filed by Ms. Andrew with the Clerk of the Committee. This motion is the first item on our agenda today, and I would invite someone to move the motion that you should have before you. MPP Tabuns.

**Mr. Peter Tabuns:** I move that the Standing Committee on Public Accounts requests that the Auditor General conduct an audit of the costs associated with the government's cancellation of all renewable energy contracts from July 2018 to the present.

**The Chair (Ms. Catherine Fife):** Debate? Madame Gélinas.

**M<sup>me</sup> France Gélinas:** I don't know if people would be agreeable that I move a friendly amendment so that we would change the words "to the present" to be deleted and replaced by "onward." I have copies of it.

**The Chair (Ms. Catherine Fife):** Thank you. Madame Gélinas has moved a friendly amendment that adds—she's going to distribute it. It changes the motion. We will be debating the amendment that's before us. Do you want to speak to it, Madame Gélinas?

**M<sup>me</sup> France Gélinas:** It's simply because we have people coming today, so I certainly do not want this to take precedence over anything else. We will deal with Tarion and deal with this motion at a future time.

**The Chair (Ms. Catherine Fife):** Discussion? MPP Ghamari.

**Ms. Goldie Ghamari:** I think the Auditor General made it very clear that, if these contracts continue, we're going to be spending an additional \$133 billion by, what is it, 2032, so—

**The Chair (Ms. Catherine Fife):** So you're speaking against the amendment.

**Ms. Goldie Ghamari:** Oh, sorry, the amendment—I have nothing to say about the amendment.

**The Chair (Ms. Catherine Fife):** Okay. MPP Fraser.

**Mr. John Fraser:** Thank you very much, Chair. I'm glad to be back here in public accounts. I wanted to say hello to everybody—some familiar faces and some unfamiliar ones.

**The Chair (Ms. Catherine Fife):** Welcome.

**Mr. John Fraser:** I was used to seeing Ernie in the chair there, so it's a big change for me.

Our role and responsibility in public accounts is to take a look at how money is being spent in the government and to be assured that the people know exactly how their money is being spent and how decisions are made.

I very much appreciate the auditor's finding that the costs were reasonable—with the information that she was given. So that finding of reasonableness is limited. The reason that this motion has been put forward, I understand, from my colleague Mr. Tabuns, is that there's a lot of information that this committee needs to know about how the decision was made, what the real costs are going to be and, quite frankly, what the basis for the minister's argument is or an explanation of why he made the decision. I don't know whether the information that the minister is getting is from his bureaucrats or from some of the periodicals he enjoys reading, but I think this committee needs to—all of us, because we're a committee of all members of the Legislature, need to understand what has happened here.

It's a good thing and it's an important thing for all of us to do. I can tell you from experience that knowing what's happening right now is a lot better than knowing what is happening two or three years from now. So you can delay a decision and end up in a situation where you spent too much money and spent it the wrong way, and if you had made a decision earlier, then perhaps you could have avoided those costs. Know that. I've been on both sides.

There's also a case to be made, when you rush to make a decision without fully understanding the impacts of that decision, that you can make some pretty big mistakes. If you take a look at the minister's current explanation—savings of \$790 million—I'd like some validation of that. The minister says we're in oversupply, but he fails to say that, in three or four years, when they take Pickering off—and you should all know this: When they take Pickering off and we start to refurb nuclear, we'll be in a situation of undersupply. I'm not sure how he can get to that figure when he knows that we're going to need that power.

The last thing I'm going to say is, as members on the other side—because I've sat over there—you need to be concerned, because if you vote against this motion, if you vote against taking a look at this, taking a special audit of the situation, you're the ones who did the vote. You're the ones who made the vote; you're the ones who took the decision—not the minister, not your other colleagues—

you. And I've been on the other side of it. I think you would be best to support this motion and make sure that we all clearly understand the reasons for this decision, the implications of this decision not only financially but its implication on Ontario's power supply in the future, given the things that we know.

**The Chair (Ms. Catherine Fife):** Thank you, MPP Fraser.

*Interjection.*

**The Chair (Ms. Catherine Fife):** He was speaking to the amendment, which is before you. We're still debating the amendment. MPP Tabuns and then MPP Smith and MPP Miller.

**Mr. Peter Tabuns:** I want to say that I appreciate the amendment brought forward by my colleague. Having gone through the gas plants scandal and having sat on the gas plants scandal inquiry committee, I know that interesting and complex things happen when you start dealing with energy policy and energy contracts. There were many surprises, both to the government and to us, as we went through that process. I appreciated the work of the Auditor General. Her work was invaluable in that period.

If we are looking at this on an onward basis, I just think that the likelihood of surprises, and unpleasant ones, seems to be very real. I would like to have, and I think you as a committee, and we as a Legislature, would want to have those potential changes investigated and brought to light. If there's nothing there beyond the \$231 million that has been wasted, fair enough. But having gone through the process, I think it's incumbent on us to actually look at this fairly deeply.

**The Chair (Ms. Catherine Fife):** MPP Smith.

**Mr. Dave Smith:** I want to speak directly to something that MPP Fraser said. Currently, our generation capacity here is just over 36,000 megawatts at any given second. Pickering produces 7,000 megawatts. When it comes off-line, that will take us down to 29,000. Our peak consumption this past year was just over 22,000. We're projecting it to go to 24,000 at the time that Pickering comes off-line.

The deficiency that he's implying is a number of contracts that will expire, but that generation capacity still exists. We will not be in a deficit position for electricity when Pickering comes off-line, so it's a false narrative, to make that type of a statement. I just wanted to make sure that the actual numbers on record are correct.

**The Chair (Ms. Catherine Fife):** MPP Miller.

**Mr. Norman Miller:** I just think it's unfortunate that in our non-partisan committee the opposition has decided to bring in a partisan motion that has already been voted on in the main House.

The auditor has reviewed the 2018-19 public accounts and the costs associated with the allocation for the wind-down. She said just yesterday her office "already looked at the costs associated with the cancellation of the contracts.... Based on the review of the contracts and estimates of the payment, I find the audit to be clean."

I think this committee has tried to work collaboratively. We attended a conference this summer about how working together is the way the committee is supposed to work. It's

nice to see the independent member show up when it's the first partisan thing we've had to debate. We haven't had an independent member here so far in this committee, so I'm glad to see you. But I'd like us to vote on this matter and move on to the work again.

**The Chair (Ms. Catherine Fife):** Okay, I have two more speakers. MPP Fraser.

**Mr. John Fraser:** I'd like to thank my colleague across the way for his welcome. I can assure you that you'll see a lot more of me. I'm not going to come in and write a report that I haven't done something on. I'm not going to add anything to it. If you're encouraged by my presence, I hope you feel really good, because you're going to continue to feel good. Thank you very much. Now—

**The Chair (Ms. Catherine Fife):** I also would like to—

**Mr. John Fraser:** Chair, I'm—

**The Chair (Ms. Catherine Fife):** Sorry; go ahead.

**Mr. John Fraser:** My colleague across the way fails to mention refurb, fails to mention potential growth, fails to mention risk. I'm not convinced by you quoting me those numbers that that's okay. If the Auditor General—

**The Chair (Ms. Catherine Fife):** MPP Fraser, could you do your comments through the Chair, please?

**Mr. John Fraser:** Okay. Sorry.

**The Chair (Ms. Catherine Fife):** Thank you. I'd just like to remind members not to draw to attention the attendance of other members of this committee. The same principle applies as in the Ontario Legislature.

Please go ahead.

**Mr. John Fraser:** Thank you very much, Chair.

I'm interested, and we should all be interested, in the auditor's opinion, which is—for my colleagues across the way—not a partisan one.

I'd like to ask a question of the Auditor General, if that's appropriate right now, when we're in this debate.

**Interjection:** It is.

**0910**

**Mr. John Fraser:** Given your finding of reasonableness, does that allay any concerns that you may have as to what's happened here and the potential risk to the Ontario public purse by the information that you've been given?

**Ms. Bonnie Lysyk:** As part of the audit of the public accounts, we always look at any costs that should be recorded in the government's statements. With the announcement of the cancellation of the contracts, we did look at the costs that would have to be paid by the government for the cancellation of the 741 feed-in tariff contracts, the 10 large renewable procurement contracts and the FIT, the one with White Pines. We did look at the estimate that was put before us, the accounting for that, and as a result of that, we did opine on the March 31, 2019, statements that the amount that is booked in the provincial statements is reasonable based on our audit work.

The IESO had put in place measures to determine these costs. They had themselves brought in outside consultants to look at their procedures, as well as to look at their cost estimates. My audit team on the public accounts reviewed

that work and reviewed their external consultants' working papers.

Based on what we knew at the time we signed off on the government's statements, which was in August 2019, I would have to say that the amount recorded in the public accounts is reasonable, based on the estimates to provide reimbursement to the people for the costs they incurred and the costs under the contracts.

**Mr. John Fraser:** Very clearly on the information that you were given as of the end of this—on the information that you have, right?

**Ms. Bonnie Lysyk:** There's always a point in time when we sign an opinion and, as of the date of our audit, yes, we believed we had the necessary information to feel comfortable and that the amount booked in the public accounts was reasonable.

**Mr. John Fraser:** The risk to the public purse going forward—not looking backwards in terms of what they booked for this year—would that measurement that you're talking about look at things like line loss or the potential of litigation? If we look at what the government—the government settled a dozen contracts so far, the low-hanging fruit. It's going to be a bit more complicated when we get to the already-constructed, well-financed—companies are going to look at the loss that they're going to take over the investment they have made. So there's the potential for litigation there.

I understand what you're saying. I think you said that these are reasonable given the information that we have right now. Our concern here is the growth and the expansion of that and whether the calculations of that, at the end of the day, took in all the risks. That's a very serious concern because we've seen that before, right?

**The Chair (Ms. Catherine Fife):** The auditor would like to respond.

**Ms. Bonnie Lysyk:** The amount that was determined is booked in the government's statements as an expense and as a payable. What that means is that when we do the next audit of the public accounts for the year ended March 31, 2020, we will be revisiting it and taking into account any information that might be new between the time we signed off in August and the time we sign off on the new statements. We will be looking at that on an ongoing basis.

With respect to legal, at the time we signed off, the negotiations were all being done in good faith, so there wasn't any evidence that there was going to be any litigation. I'd have to say, though, going forward, we will definitely be looking at the accrual of the amounts payable as a result of the cancellation of the contracts, and we will look at it every single year until that amount no longer shows up in the government's statements.

It isn't like we sign off and there's a liability and we don't look at it again. We look at it every single year, and we look at any potential—the lawsuits that might have come to be as a result of new information. My team had no reason to believe, at the time we signed off, that we weren't being given all the information. So I have no doubt that what we were given was the best information we

could have gotten at the time, so I don't have any skepticism there.

But we will definitely be revisiting the number when we audit the March 31, 2020, statements.

**Mr. John Fraser:** If I can—

**The Chair (Ms. Catherine Fife):** Yes.

**Mr. John Fraser:** —I'll wrap it up. It's a prudent thing, instead of waiting until we get to next August, to take a look at those risks, what they potentially are, and how these decisions came to be made, simply because I'd rather not be surprised in August of 2020 or 2021. The information that you were given—which was, at that time, the only information that was available.

**The Chair (Ms. Catherine Fife):** Okay. Do you have a comment?

**Ms. Bonnie Lysyk:** I'll just say, again: I have no reason to believe that we're not being given all the information on the cancellation of the contracts.

After we sign off on the government statements in August, we do maintain contact with the controller's office, with the entities that consolidate in with their auditors, so we are in continual conversation about anything that might come up that maybe would surprise us. At this point in time, I have no reason to believe that that relationship is bad, and that information will be hidden from us.

I would say that, at the end of the year, we'll be looking at this definitely, and reporting to this committee any problems.

*Interjections.*

**The Chair (Ms. Catherine Fife):** Could we come to order, please?

MPP Ghamari, you have the floor.

**Ms. Goldie Ghamari:** I have no further questions or comments. The Auditor General answered all of my questions, and I just want to thank her for her work on this file.

**The Chair (Ms. Catherine Fife):** Seeing no other speakers, are the members ready to vote? This is on the amendment that the Standing Committee on Public Accounts requests that the Auditor General conduct an audit of the costs associated with the government's cancellation of all renewable energy contracts from July 2018 onward. All those in favour? All those opposed? That motion is lost.

Now we go back to the original motion that you also have before you: that the Standing Committee on Public Accounts requests that the Auditor General conduct an audit of the costs associated with the government's cancellation of all renewable contracts from July 2018 to the present.

**Mr. Peter Tabuns:** Recorded vote.

**The Chair (Ms. Catherine Fife):** Thank you. A recorded vote has been requested.

**Ayes**

Fraser, Gélinas, Tabuns.

### Nays

Bailey, Barrett, Ghamari, Norman Miller, Parsa, Dave Smith, Tangri.

**Chair (Ms. Catherine Fife):** That motion is lost.

Before we move into the closed session, members will see in the package in front of them an email from Metro-linx addressed to the Clerk of the Committee. Do you have that in front of you? It's the very last thing. The email states, "Metrolinx included commercially sensitive information as part of appendix 1 to their written response to the committee's request for additional information. Metro-linx respectfully requests that the committee not publicly exhibit the appendix 1 response, and share it only with members of the committee."

Does the committee agree?

**M<sup>me</sup> France Gélinas:** Agreed.

**Chair (Ms. Catherine Fife):** Okay, the committee has come to consensus. We are in agreement.

Therefore, this committee will now move into closed session to receive a briefing from the research officer and the Auditor General in advance of our meeting this afternoon.

*The committee continued in closed session at 0921 and resumed at 1231.*

## 2019 SPECIAL REPORT, AUDITOR GENERAL TARION WARRANTY CORP.

**The Chair (Ms. Catherine Fife):** Good afternoon, everyone. I'd like to call this meeting of the Standing Committee on Public Accounts back to order. We are here to begin consideration of the Special Audit of the Tarion Warranty Corp., 2019 special report of the Office of the Auditor General of Ontario.

Joining us today are officials from the Tarion Warranty Corp., as well as current and former deputy ministers of the Ministry of Government and Consumer Services and their staff.

Thank you for being here today to answer the committee's questions. I would like to invite you each to introduce yourselves for Hansard before you begin speaking. You will have 20 minutes collectively for an opening presentation to this committee. We will then move into the question-and-answer portion of the meeting, where we will rotate back and forth between the government and official opposition caucuses in 20-minute intervals.

Hansard just needs to capture your name and your title. You have 20 minutes. I'll give you a two-minute warning closer to that 20 minutes.

Please feel free to begin.

**Ms. Karen Hughes:** I'm going to start it off with some opening remarks, and then I'll pass it over to Tarion to give some additional remarks.

Good afternoon. I'm Karen Hughes. I'm the Deputy Minister of Government and Consumer Services. I'd like to introduce those at the table with me today. First is Paul

Golini Jr., the chair of the board of directors from Tarion, and Howard Bogach, the president and chief executive officer. They're joined by Peter Balasubramanian, the chief operating officer, and Tim Schumacher, their general counsel.

I'd also like to introduce Deputy Minister Hillary Hartley, now the chief digital and data officer, and Giles Gherson, Deputy Minister of Small Business and Red Tape Reduction.

Also with us from the ministry today are Michèle Sanborn, the assistant deputy minister of the planning, policy and oversight division; and Mike McRae and Matthew Hellin, from the policy and governance branch in the planning, policy and oversight division within the ministry.

I'd like to start by acknowledging the Auditor General for her thorough and diligent work in compiling her recent audit report of Tarion. We take the recommendations in the Auditor General's report very seriously. We are committed to ongoing improvement within the new home warranties portfolio.

The ministry's oversight of Tarion dovetails well with existing core competencies and expertise it has developed in its oversight of a wide range of government assets and services.

Today, we're discussing one of the biggest purchases many Ontarians are likely to make in their life—a home—and the consumer protections that go along with it.

In 2016, the Honourable J. Douglas Cunningham completed an independent review of the Ontario New Home Warranties Plan Act and Tarion. He concluded that there was a perceived conflict of interest with Tarion carrying out both warranty administrator and builder regulator functions, leaving homeowners vulnerable. The ministry is committed to addressing these concerns and is acting on the majority of Mr. Cunningham's recommendations.

On February 20, 2019, the government announced that it was taking action to strengthen protections for new homebuyers and to make life easier for Ontarians. We've taken action by:

- taking steps to establish a separate regulator from Tarion for new home builders and vendors to address conflicts of interest;

- looking at the feasibility of an insurance model for new home warranties and protections in Ontario;

- exercising a new power to require Tarion to make executive and board compensation publicly available;

- implementing new initiatives to better inform and protect Ontarians buying a unit in a pre-construction condominium project; and

- setting requirements to require Tarion to move to a more balanced, skills-based board composition.

The government is taking steps to establish a separate regulator for new home builders and vendors, through the separation of Tarion's warranties and protection administration and its builder and vendor regulation function. The Home Construction Regulatory Authority is preparing to potentially be the new regulator of new home builders and vendors, a role that is currently Tarion's responsibility.



We expect the future regulatory authority to be operational in late 2020.

Starting in the spring of 2019, the government consulted with key stakeholders, including the insurance industry, consumers, builders and vendors, other Canadian jurisdictions and Tarion as part of its assessment of the feasibility of an insurance model for new home warranties and protections in Ontario.

In May 2019, the government committed to acting on three new consumer protection priorities to address key consumer concerns heard during the spring 2019 consultations. We are looking at all stages of the new home warranty building and buying process to protect consumers; so for example, before they buy a home, making it easier for new homebuyers to check out a developer's track record in the Ontario Builder Directory; during construction, adding more proactive risk-based inspections by Tarion during construction to make sure that homes are built properly; and, after they move in, when new homebuyers have problems, creating an easy-to-use process to help them resolve disputes quickly and fairly.

In addition, the government has taken action to strengthen Tarion's transparency. On September 30, 2019, the minister made an order directing Tarion to publicly disclose compensation paid to its board members and certain officers of the corporation. This was completed by Tarion on October 15.

The government has also taken action to implement initiatives to better inform and protect Ontarians buying a unit in a pre-construction condominium project. On February 20, the minister asked Tarion and the Condominium Authority of Ontario to work together on a series of measures to better inform consumers of the potential risks associated with buying newly built condominiums. This included updating Tarion's builder directory to include information about developers with a history of condominium project cancellations, working with the Condominium Authority of Ontario to educate prospective buyers on the potential risks associated with buying newly built condominiums, improving information collection on new home construction projects, and enhancing disclosures for consumers about the risks of purchasing pre-construction condominiums. I'm pleased to say that, as of October 23, all of these initiatives were launched or completed.

The Auditor General's value-for-money report will help the ministry's efforts to continue to improve Tarion and ensure its mandated responsibilities are met. The ministry is working closely with Tarion and relevant partners to consider all of the findings and recommendations. We are committed to overhauling Ontario's new home warranty program and strengthening consumer protections.

Further, the minister will request that Tarion provide a plan to address each recommendation in a timely and responsive manner. The plan must prioritize the measures they will take to strengthen their operations, enhance transparency and put consumers first. The ministry will track Tarion's implementation of this plan for each recommendation that Tarion is responsible for.

Finally, we anticipate that the government will make a decision on the new home warranties and protections delivery model in the coming weeks and is considering the Auditor General's recommendations as part of this decision.

I'd like to thank you very much for your time. I'll now hand it over to Paul Golini, who I believe will make opening remarks for Tarion.

**Mr. Paul Golini:** Good afternoon, Madam Chair and Vice-Chair, ladies and gentlemen of the committee. My name is Paul Golini Jr., and I'm here today in my capacity as chair of the board of directors of Tarion Warranty Corp.

I'm also joined today by Howard Bogach, chief executive officer for Tarion Warranty Corp. Howard will be speaking shortly to outline Tarion's response to the recent value-for-money report conducted by Ontario's Auditor General.

Ms. Lysyk, I want to acknowledge that you are here today and want to thank you for your important work examining Ontario's new home warranty program, reviewing our organization and providing a comprehensive set of recommendations. As you will all be aware, we have accepted these recommendations in full. Our board found the audit process to be a useful exercise in self-examination, and Tarion's staff appreciated the professionalism and attention to detail from the auditor's office.

I'm also joined today by Peter Balasubramanian, chief operating officer for Tarion, and Tim Schumacher, chief counsel. In addition to Howard and I, Peter and Tim will also be available to answer your questions this afternoon.

We're looking forward to having a robust and thorough discussion on the home warranty program that Tarion administers. We're also pleased to be with you today joined by past and present deputy ministers from the Ministry of Government and Consumer Services: Karen Hughes, Hillary Hartley and Giles Gherson. The Auditor General's report provided recommendations directly to Tarion as well as recommendations to the ministry to which we report. Deputy Ministers Hughes, Hartley and Gherson will be available to speak to the latter.

Our goal in working to implement the auditor's recommendations and responding to feedback from industry and consumers is to ensure that Ontario's home warranty program lives up to all reasonable expectations of transparency, predictability and fairness. This is a goal that I believe we all share with you.

**1240**

I don't believe that this is an objective that requires us to choose between the interests of builders and the interests of consumers. Rather, I expect that we can come out of this process with clear standards, improved education and a reasonable policy that holds bad actors accountable while minimizing red tape and ensuring Ontarians can make what is often the biggest purchase of their lives—a new home—with confidence.

My perspective on this matter is shaped directly by my professional history as a home builder. In addition to my role as chair of the board of Tarion, I am co-founder and executive vice-president of Empire Communities. Empire

started small and has grown to become a leading new home builder and condo builder by focusing on our customers and the communities we help create. At Empire, we're committed to sustainable, ethical and high-quality development practices.

There's a right way of doing things, and my work at Tarion is dedicated towards building a framework that holds builders to high standards, but does so in a way that's fair and reasonable, and we're looking very hard and working very hard to do exactly that. I'm proud of the many steps that we have taken, but we're working hard to meet a higher standard of consumer protection.

We have heard from this government that they expect us to improve, and we are working hard to live up to the high standard that they have proactively set for us. Co-operating with the Office of the Auditor General in helping inform her report, discussing her recommendations with you today and working hard on implementing her recommendations is all part of this process.

I know that Tarion will emerge a stronger, more consumer-focused organization as a result of this experience, and thank you all for your time here today.

I expect that we will have a proactive discussion focused on a common goal of ensuring that Ontario's home warranty program lives up to reasonable expectations of transparency, predictability and fairness. It's what the public deserves and expects.

My colleague Howard Bogach will speak to you now more specifically about the steps we plan to take to improve as a result of the auditor's findings. Thank you.

**Mr. Howard Bogach:** Thank you, Paul, for those remarks and to the committee members and the auditor for being here.

As Mr. Golini indicated, our work with the auditor and her office has been a healthy exercise in self-examination. Without question, it has resulted in challenging but productive conversations for our organization.

We view the report as a whole as both constructive and instructive, but the work of the auditor has provided Tarion and our ministry counterparts with 32 concrete recommendations that we have accepted and are keen to work with. This will ultimately contribute to the goal that Mr. Golini outlined: ensuring that Ontario's New Home Warranty Program lives up to our shared expectations of transparency, predictability and fairness.

Some of the committee members may reasonably ask, "Why now? Why are these reforms now a priority after 40 years of administering Ontario's New Home Warranty Program and regulating Ontario's builders? Shouldn't consumer protection have always been a priority?"

First, I can tell you that consumer protection has always been our priority. We've made several improvements through my tenure as chief executive officer, and I will speak to them shortly.

An independent-conducted survey found that 82% of consumers found that Tarion was open and transparent in our dealings last year. While inappropriate for me to speak to any specific files or decisions here in committee, I understand that our challenges are often the stories that are

reported. I can assure you we take these very seriously, but let me also assure you that we have numerous success stories that get little mention but make me and our staff very proud.

Discovery of any serious flaw can be traumatic for homeowners, and we work hard to provide those families with the resources they need in timely responsive investigations. In the last 10 years, Tarion has developed a state-of-the-art warranty management system which allows homeowners a simple way to manage their home warranty process, provides up-to-date reminders of important dates, and supports homeowners through a series of materials and videos to help the homeowners through the process.

Through our participation in the production of this audit report, we're also here to say that we can and will do more.

I speak to our success stories not to pat ourselves on the back but to demonstrate that we are continually working hard to be a better consumer protection organization.

The Ontario home building sector is both complex and dynamic. It never stays still. Technology is changing, construction finance practices are changing, the commercial landscape is changing and, most importantly, consumer expectations are changing. It is imperative that we continue to evolve with that change.

This evolutionary process has included co-operation with third-party assessments. In November 2015, the previous government initiated an independent review of our organization, led by the Honourable Justice Douglas Cunningham. Earlier that same year, we retained the services of Ms. Genevieve Chornenki, an independent dispute resolution practitioner with more than 25 years of experience, to conduct an end-to-end review of our dispute resolution processes.

We always approach these reviews with an open mind to improving and growing. As Mr. Golini indicated, we have approached the auditor's report with a similar open mind. I'm pleased to reiterate that we have accepted and committed to implementing each and every recommendation. I'm also pleased that the auditor in her report acknowledges that once the recommendations put forward are implemented, she believes those steps should address the concerns of new homebuyers that led to the Standing Committee on Public Accounts requesting this audit.

I understand that the members of this committee have received a progress report, an updated report, on our response to the auditor's 32 recommendations. While it is clear that we're still very early in the process, I encourage any one of you to contact Tarion throughout the year to check in on the steps we have taken. We are also committed to regularly posting progress reports on our commitments on our public website, to ensure that the public has confidence in the steps we are taking. We welcome interest from elected officials and feel the ongoing discussions contribute to our evolution as a more accessible organization.

Within this presentation, I'll focus on a few themes, including supporting consumers with a predictable and transparent system, necessary enhancements to consumer

education, and consumer protection initiatives across our organization.

Given the highly technical nature of the home-building sector, it's important that our organization include voices that have home-building experience, including those within our board. Those voices should be complementary, not antagonistic, to the more consumer-focused voices. However, the perception of conflict is a problem, and we accept in reviewing the auditor's report that certain actions have created that perception of conflict. I take responsibility for this, and our work on implementing the recommendations has already begun.

Prior to this audit, we had decreased the role of the building industry on our board, and we continue to evaluate the best, most representative composition. We've also engaged with leading academics in the field of governance to gain their advice and wisdom as to how to achieve a complementary governance form.

More recently, in response to the auditor's report, we have discontinued sponsorship to the Ontario Home Builders' Association. As we continue implementing the auditor's recommendations, we are wholly committed to considering a fair balance of perspectives on future decisions from all stakeholders.

The auditor's report included several recommendations aimed at better informing homeowners and prospective homeowners. These included requiring builders to inform homeowners about the importance of pre-delivery inspections, providing clear communications on the rights of new homebuyers, and public disclosure of any restrictions that could delay high-risk construction projects.

We have accepted all of the auditor's recommendations and have taken several important steps to better inform homebuyers. For example, in October we announced the addition of new search tools on the Ontario Builder Directory so that prospective homebuyers can see even more information about their vendor project information, about cancellations or partial cancellations. Additionally, we've added a requirement that purchase agreements for prebuilt condo projects are accompanied by an upfront information sheet outlining potential risks. We know that home-buying decisions are complicated and intimidating, and that will always be the case, but we're doing what we can so that these decisions are guided by clear, reliable facts.

The auditor also made several recommendations aimed at ensuring that consumer protection is a primary consideration in our licensing and regulatory function, and our process—

**The Chair (Ms. Catherine Fife):** You have two minutes left in your presentation.

**Mr. Howard Bogach:** Thank you. Our process reflects the intent of the Ontario New Home Warranties Plan Act. We have accepted all these recommendations and are actively working to support the establishment of the Home Construction Regulatory Authority.

As some of you may know, the government recently committed to the establishment of a separate regulator for home builders. Tarion has supported the government

through this process, and we've been holding weekly meetings with the Home Construction Regulatory Authority's leadership to support them. The establishment of this independent organization will add to our efforts to implement the auditor's recommendations.

Having said that, we can make improvements to our own organization on our own, whether in our warranty or licensing function. One particularly important example is the auditor's recommendation that Tarion update its customer service review to allow more flexibility for homeowners to request home inspections or assistance. I would point out that the process in place was designed to assist both homeowners and builders, in essence to bring order and predictability.

We accept that in doing so, we may have made it complicated and difficult for some consumers to navigate through, and are committed to putting consumers at the heart of what we do. We have accepted this recommendation, and we're committed to working with the ministry on the development of appropriate revisions.

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Over the coming weeks, months and years, we're committed to continually working with the ministry, the Home Construction Regulatory Authority and members of the community, as requested, to evolve as a stronger consumer protection organization.

Thank you all for being here today. I look forward to a continued discussion of this matter so that we can make real, meaningful improvements together.

**The Chair (Ms. Catherine Fife):** Thank you very much for your opening comments.

At our last public hearing, in the spring, we began the questioning rotation with the official opposition, so this week we are going to be beginning with the government side. You have 20 minutes in this rotation for questions. MPP Miller.

**Mr. Norman Miller:** Thank you for coming before the committee today. I'll start with a few questions, and then I'll pass it on to one of my colleagues who would like to go next.

I guess I'll start with the recommendation number 1 out of the report of the Auditor General, which was that there wasn't balance on the board of directors, and that there were too many home builders and too much influence of home builders, which isn't necessarily in the best interests of the homeowners. In fact, it was noted that there was a sponsorship of the annual home builders' convention, which I believe has now been discontinued.

What steps has Tarion taken, or are you taking, to have a more balanced board that represents the interests, obviously, of the homeowners, who were not as well represented in the past?

**Mr. Paul Golini:** Thank you, Mr. Miller. It's important to understand that each board member sits on the board of Tarion and has a fiduciary duty and a duty of care to the corporation and the stakeholders. Whether or not they are builders or non-builders, their interests are always focused on the mandate of consumer protection.

Currently, as you're all aware, we have a balanced board, a board that's made up of eight representatives who are from the building industry in some shape or form, and eight who are representatives from ministerial appointments, as well as at-large independent board members.

The board members who are nominated and eventually appointed to the board come with varying experiences both in and outside of the home-building sector.

I think that it's important to have that balance when creating policy. This is not about putting consumers against builders. We've always taken an approach to having a mandate that's clearly geared towards consumer protection, but bringing the insights and experiences from the industry, whether that be from the multi-family sector, the low-rise sector, the finance or the legal sector as it relates to the building industry, from the building code—

**Mr. Norman Miller:** So to be clear, how are the consumers represented on the board?

**Mr. Paul Golini:** The consumers are represented via a number of different ways. They're represented by a Consumer Advisory Council, which is completely made of non-builder representatives, which is comprised of homeowners who have gone through the entire new-home-buying experience, people who come from the building inspection sector, representatives who are from consumer advocacy, and representatives of the real estate industry as it relates to legal experience. So it's a balanced committee—

**The Chair (Ms. Catherine Fife):** Mr. Golini, can you just go a little bit closer to your microphone, please? Thank you.

**Mr. Paul Golini:** Sure.

**Mr. Norman Miller:** I'm sorry to interrupt, but is this a recent change that has been made? Obviously, the auditor was critical. So how recent is this?

**Mr. Paul Golini:** No, we've had the Consumer Advisory Council in effect since 2011, and it reports directly to the consumer committee of the board of directors. As well, the Consumer Advisory Council, apart from having a mandate to provide ongoing advice to the board in general as it relates to consumer-related issues, is also open to the general public, providing any sort of questions or recommendations, or just items that should be addressed from a consumer perspective—

**Mr. Norman Miller:** So the auditor did this report just recently, though, and was critical that there wasn't balance on the board. Have there been changes since the auditor's report?

**Mr. Howard Bogach:** Can I speak to that issue?

**Mr. Norman Miller:** Yes, please.

**Mr. Howard Bogach:** I want to be clear here: The structure in our bylaw calls for eight individuals who come through a nomination process through the Ontario Home Builders' Association; five are appointed by the minister—we're presuming that they're all coming from strong consumer backgrounds along the way—and three are selected on a skills-based matrix on the basis that they cannot come from the building industry and they cannot

come from the government sector, and they're based strictly on their skill base.

They gave us this structure in our bylaws, it's 16—eight and eight—however, at the time of renewal, I think we got a clear signal from the minister that they're looking at reshaping this governance structure, so, currently, we only have 11 members sitting on our board, and I think that's reflected in the auditor's report as well—five coming from the building community, four ministerial appointees and two of the at-large members who are on that committee as well. So we do have a balanced sector.

What we've tried to do through the creation of a consumer advisory committee is to make sure we're making sure the voice of the consumer is also heard within that. So we've created this committee, and, again, as Mr. Golini was saying, two members come from condominium buyers, two are freehold buyers who've had experience, two members are consumer advocates, two members are real estate lawyers with experience in new home purchases, and we have a municipal building official, a real estate agent, a home inspector, a condominium manager and two academics in building science.

**Mr. Norman Miller:** And they report to the board?

**Mr. Howard Bogach:** They report through the consumer committee to the board of directors, and they're there to review policy and give advice on issues.

**Mr. Norman Miller:** Thank you. Can I switch to something else, then, just from the consumer perspective? Looking at the one-year coverage, two-year coverage, three- to seven-year coverage, I assume the board has come up with deciding what's one year and what's three to seven years, is that correct? I'm looking at the auditor's report; it's page 11.

I guess the thing that caught my attention is that Ontario building code violations are on one-year coverage—things like inadequate venting in the roof or improper insulation of vapour barriers are what's listed here. It just seems to me that, in the case of inadequate venting of a roof, you probably have to go through at least one winter to figure out that there's a problem, that you're going to get ice buildup and maybe leakage of water into the home. A vapour barrier as well—it's the sort of thing that you wouldn't necessarily notice within one year.

I'm just wondering who came up with putting that in one year, and is that revised from time to time? It seems to me, if I was looking at it from the perspective of the homeowner, I would want that longer term, especially when it's taken into consideration with the windows for that one year—you know, the 30 days at the beginning, the 30 days and this complicated structure, or not very consumer-friendly structure for being able to raise a warranty concern.

**Mr. Peter Balasubramanian:** Thank you—

**The Chair (Ms. Catherine Fife):** Can you please read your name into the record? Thank you.

**Mr. Peter Balasubramanian:** Yes. My name is Peter Balasubramanian. I'm the chief operating officer at Tarion Warranty Corp.

Mr. Miller, I want to provide an answer to your question. I want to go through three different elements. One part of your question is about where these warranties came from—in effect, who sets the warranty term? The second part of your question is, to what extent can they be reviewed? The third part of your question may be the most important one: As a practical matter, are they enough for consumers in Ontario, given—

**Mr. Norman Miller:** And can consumers, with that 30-day restriction—are they going to be able to make use of it, because of the restrictions and the time frames?

**Mr. Peter Balasubramanian:** I'm going to add a note to that last part as the next question, but let my try and get through the first three.

The starting point is that the statute that provides warranty protection in Ontario was developed in 1976. That's common knowledge. Some of the warranties date back to 1976 and were actually put in place based on the legislation at the time. The building code warranty, which you're referring to, which is the one-year warranty, is an example of a warranty that has been in place since 1976 when it was actually developed by—I believe it was a Conservative government at the time. The first answer to your question is, there are some warranties that were in place since the beginning of the legislation and there are other warranties that have been added over time.

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To expand on the second piece, the board of directors of Tarion has the power, through the bylaw amendment section of the legislation, to amend and change and add warranties. An example of a recent amendment to a warranty that was brought forward by the board of directors and approved by the government was the changes to deposit protection which happened most recently, where the Tarion warranty expanded the scope of deposit warranty protection. So there's also the ability to change those warranties over time.

The third part of the question was with respect to, if your building code issues only one year, is that enough, given what we know about the impact of seasons and the time it takes to understand the impact of a warranty defect? There are two answers to the question—maybe three. The first is, there are actually two elements of the building code warranty in the legislation. There is a two-year building code warranty that covers issues of health and safety. The coverage of the specific building code warranty in actual fact may be longer than one year.

The second answer is, the building code violation itself is not the be-all and end-all of how you analyze a defect. In fact, most often, when we review a situation, it's not really a building code issue that's raised; it's the effect of the problem on the homebuyer. I want to use the example that you're talking about. If there's penetration of water, if there's water leaking in through a roof, while that might be a building code violation, just the mere fact that you have a defect of water—a common defect of water coming in the roof would be what you would be dealing with. That actually is covered by a different warranty, which is the building envelope warranty.

There are other warranties that layer on the different protections and they—

**Mr. Norman Miller:** The building envelope warranty, that's the two-year—

**Mr. Peter Balasubramanian:** That's two years.

**Mr. Norman Miller:** Okay.

**Mr. Peter Balasubramanian:** I think we can go further and ask the question about whether or not that warranty should be expanded and how we go about assessing that. I think that is a question where we would say that the best approach to that is data-driven, where you try to do data-driven policy analysis to understand what the cost implications of expanding a warranty are and what the data that suggests whether or not you need it is. Those are live questions that the organization and its board does deal with over time, and that's why you do see the warranties change over time. There have been a number of warranties—as I mentioned, the deposit warranty, but there are other examples of warranties that have been added over time, where we think the product that needs to be brought forward to the consumer should be expanded.

**Mr. Howard Bogach:** I'd like to take this opportunity because November is radon awareness month in Ontario and Tarion is the only organization to introduce a radon warranty in Canada. This warranty, because of the nature of radon being a health and safety issue, has a seven-year limit within it in terms of how it's dealt with. We're very proud of taking the lead in terms of what we've done in introducing that warranty and certainly making better protection to Ontario homebuyers through doing that.

**Mr. Norman Miller:** The fourth part was the 30-30 thing, which not being an expert on it, seems like almost something designed so consumers can't access the warranties. It seems very restrictive, is what I would say.

**Mr. Howard Bogach:** Let me start with that the customer service standard time frames were implemented in 2003 after a multi-year consultation process. Prior to the customer service standards, there was ambiguity around what a complaint was, when the warranty file started, how long were reasonable timelines to provide a build or repair, among other things.

In addition, the claims-handling process was cumbersome and confusing to homebuyers. You'd get multiple complaints or issues coming over time; it might be the same issue being reported several different times. Our own staff can tell you that they recall challenges dealing with managing a claims process where homeowners would fax in multiple claims forms sometimes across several days.

With all this data, we looked to create a system that provided greater predictability and aggregation in terms of the issue. I will tell you, I go out and speak to homeowners, and one of the biggest frustrations I hear about with them is, "I have to stay home when my builder is coming in to do a repair." The idea of trying to capture things in the first 30-day period or to aggregate issues was somewhat intended to give homeowners an idea of predictability in terms of how they would be there. It will be clear here that the Ontario building code allows and permits a home to be turned over in less than a complete state. There are often

issues where there are ongoing call-backs from the service issuer.

This also gave the ability for the builder to make sure that they could get to some of those issues within the aspect of still having trades in the neighbourhood. But when I say this to you, I want to point out something too: We do think that the vast majority of our forms come in on time, but we accept what the Auditor General has said. Perhaps we have made this too confusing. Perhaps we need to address what we've done with this to simplify it, to make it easier to deal with. I think we have to find the right balance of making sure we have some order and not a chaotic form to it. On the other hand, we don't want to do anything that gives homeowners the impression they're getting anything less than what's there in their ability to add things.

I think we can accomplish this. I'm not saying it's going to be an easy accomplishment, because I do think we have to balance off both sides of this. But I think this is a very, very important recommendation. In our efforts to put order into a world we thought was chaotic, we perhaps have gone too far.

**Mr. Norman Miller:** Thank you.

**The Chair (Ms. Catherine Fife):** Do you want to follow up?

**Mr. Norman Miller:** No. I may follow up on that later, but I want to give time to some of my colleagues.

**The Chair (Ms. Catherine Fife):** Okay. MPP Crawford, I just want to let you know that there are just over four minutes left.

**Mr. Stephen Crawford:** Four minutes: Okay. Thank you very much, Madam Chair.

I just had a question on the compensation. I know that the Auditor General was somewhat surprised to learn that the compensation of the senior management—much of it was focused on minimizing payouts and claims. We all know that compensation dictates behaviour, and I know there has been some concern around that. I guess my question is: How would you justify that? But more importantly, going forward, what is your senior management compensation plan, and how do you think it's going to align better with consumers?

**Mr. Howard Bogach:** Let me begin to address this. First of all, can I turn you to page 49 of the auditor's recommendations? If you read page 49, section 4.7.4, and we go to the second paragraph, it reads as follows:

"For example, we noted that five of the 11 key performance indicators used in the corporate performance scorecard incentivized Tarion to maximize profit and minimize expenses, which can have the unintended consequence of keeping claims payouts to a minimum."

I want to be clear here: We do not look at any efforts in terms of denying claims or dealing with issues like that. That's not how we operate. I'd like to at least talk about an example in terms of that, and I'll get back to the balance of your question, if you permit me.

Recently, there was an article on CTV News, and the story was about a family who bought a mold-infested dream home. They bought this home, thinking that it was

new, and found out afterward that it was actually built in 2006 and had been badly inflicted with mold along the way.

The person never filed a claim with us. One of our staff had heard this on the news and had followed up with this. We looked at this home and found that it had been registered with us and then de-registered by the builder along the way. We did an investigation: Nobody had ever lived in this home. We reached out to the homeowners and we are providing them with pretty substantial compensation to address this issue.

I want to say: That behaviour doesn't align with the comment that we're looking to deny claims or to deal with issues on any kind of incentive basis. This wasn't a claim brought to us; this was a claim we went out and solicited. I throw that out as an example.

Let's come back to the broader question you asked, which is about compensation. Tarion's compensation for executives is based on five key factors: financial performance, risk management, leadership, strategy, and stakeholder relations. The board engages outside, external consultants to help them determine what those salaries should be. The board brought in outside experts from the Rotman School of Management to help them design the balanced scorecard that is used, which was developed along the way.

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Notwithstanding all of that, we have also accepted what the Auditor General has said. Our commitment on a go-forward basis for 2020 is that the board is going to engage the consultants to come back with a plan that addresses the concerns raised by the Auditor General as to whether the compensation plan aligns with the nature of the organization that we are. We are committed to doing that, the board has made that commitment, and we all understand that that is what is going to happen along the way.

I apologize if it sounds like I'm taking offence at the issue.

We do deal with things in terms of, yes, we have a balanced scorecard; yes, there are aspects of it that remind people of what a for-profit company would be. But I really take exception to the idea that we deny claims to people. We are a consumer protection organization first and foremost. We try to think of ourselves as an efficiently-run consumer protection organization.

**The Chair (Ms. Catherine Fife):** That pretty much sums up that first round of questions. Now we'll go to the official opposition. MPP Gélinas.

**M<sup>me</sup> France Gélinas:** I'd like to thank you for coming, and thank you for your opening comments, where you accepted the 32 recommendations and have already moved to change things, I would say, for the better. For many, many of those recommendations, we've had your summary status given to us by the Auditor General.

My question is sort of at the 40,000-foot level: How could it be that we are here today? How could it be that the Auditor General found that thousands of requests from homeowners were dismissed because they did not meet the deadlines; that you did not provide homebuyers with

complete information; that the call centres did not always give accurate information?

How did we get there? I'm not interested as much in each of those issues as in—you are here today. You've been asked to come and testify in front of public accounts because—I will be very blunt—there are many people in Ontario who hate you.

I represent the riding of Nickel Belt. I have people in my riding who spit on the ground when they say your names, because they have not been dealt with fairly, because they have not had a positive experience, and this is being replicated throughout.

You've quoted some media stories. How did we get there? You are a consumer protection agency. Usually people love those. They want consumer protection. You are on their side to fight the bad guys. I'm not saying that the home builders are bad; 99% of the homes built are perfect, and people are happy, and everything goes well. You are there for the 1% when it derails. Yet, the auditor tells us that for about 5,000 of those people, part of the 1%, you have been perceived, anyway, as failing them. How did we get there?

**The Chair (Ms. Catherine Fife):** Who wants to take that?

**Mr. Peter Balasubramanian:** Okay, thank you. I would say that in your question, I think, is a signal of where the answer is.

Let me say, first off, that this is serious. We take coming here seriously. We take the Auditor General's review seriously and we take to heart statements made like "constituents of mine hate the organization." That's not an acceptable outcome, and I hope that nothing you hear today in terms of answers we give or materials we provide sounds like that's acceptable to us, because it's not.

When I say that there is an outline of the answer in the question you asked, what I mean by that is, you said that we are being asked not to deal with the 99%, but the 1%. When I look at the complexity of the 30-day form issue, as an example—I was at an open town hall session, because we will go from time to time to speak in front of communities and hold ourselves out there to hear what they say, and I heard a gentleman stand up and talk about the challenges that he had navigating the system, and it resonated. I heard his disappointment.

When I look at our statistics, the 6,000-or-so forms that are missed, in the context of a five-year period, relate to a time frame in which the organization received close to 360,000 forms. From a statistics perspective, that means that 96% or 97% of the homebuyers who need to use Tarion's services are able to work through the systems and the education that we provide and have their forms in on time. But the message, and the question and the challenge posed by the AG—and the answer, I think, to your question—is it's not enough for a consumer protection organization to rest on the 97%. The challenge for the organization is to focus on that smaller amount, to look at how we handle the difficult cases and find ways to improve the processes so that the difficult cases are what we measure ourselves on, not the 97%.

I feel that's the theme of the AG's findings, that as a whole the organization has the right heart in terms of consumer protection, but where it's failing is in those tough cases, in the small minority of cases—and those are difficult for a reason. They are difficult because those are the cases that have the most complicated issues, they have the most grey area, and those are the ones that are the hardest.

I don't know if that's enough of a response. I wish I could change the perception that your constituents have, but I can't. But I can say that that's the focus, to me, and that's the area, if I was asked at a personal level, where I think the challenge is: Have we focused enough on the hard cases?

**M<sup>me</sup> France Gélinas:** But some of the recommendations from the auditors don't have anything to do with the hard cases. They have to do with: Why is it that the \$300,000 limit hasn't been increased in decades? It has to do with: Why is it that your annual general meeting is not held in the public forum anymore? That has nothing to do with hard cases. That has to do with you making decisions—you, as in all of you.

**Mr. Howard Bogach:** I can certainly respond in terms of the annual public meeting. We do think that an important part of our mandate is engaging with homeowners and prospective homeowners and consumer advocates, listening to them. We have very clear standards for that. In fact, in 2009, I introduced the annual public meeting to Tarion—there had been none before that period of time with stakeholders—with an update on the organization and an opportunity to direct questions to Tarion's management and employees. The in-person meetings were discontinued in favour of webcasts in 2016. The previous meeting had been very disruptive, with some homeowners leaving before the meeting was over because they couldn't be heard.

The webcast annual public meeting increased accessibility and transparency for stakeholders. We post the webcast of that on Tarion's YouTube, so it allows for people to answer questions. We also accept the Auditor General's feedback that maybe it's time to go back to an in-person annual meeting, and we've agreed to implement that for our 2020 year-end, to go back to a public meeting. The suggestion for going online actually came from a homeowner.

**M<sup>me</sup> France Gélinas:** You say that you accept the auditor's recommendations. You admit that the perception out there is not always good, although you don't say how to change this. I'm still curious as to: How did we get there? The ministry has oversight of your agency. Did they not talk to you and say, "We have all of these MPPs who come to talk to us with questions in their riding. What are you guys doing?"

**Mr. Howard Bogach:** Personally, I think that's probably a question for Deputy Hughes.

**Ms. Karen Hughes:** I think the ministry has maintained ongoing contact with Tarion throughout and has had open discussions and information. But part of it, I

think, is that Tarion is a self-funded regulatory administrative authority that sits at a certain distance from the ministry.

That being said, over the years the ministry has made a number of changes to try and make Tarion more accountable. If you look back, I think, in 2010—and Deputy Gherson could speak better to this than I—they tried to get in place an administrative agreement with Tarion to be able to better understand and start to collect some information from them as the organization involved: In 2015, bringing in Justice Cunningham to take a look at some of the issues that were arising in Tarion; in 2018, inviting the Auditor General to come and be part of it as well to help inform the pieces. This will be used to help inform the ministry's position going forward with how we're responding to the Auditor General's recommendations over the coming months.

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**M<sup>me</sup> France Gélinas:** Coming back to Tarion, were you getting feedback from the ministry as to the complaints that were coming forward? Were you getting guidance from the ministry as to we have to make sure that not only do you provide consumer protection but you are perceived by the public as providing consumer protection? Did any of that take place?

**Mr. Howard Bogach:** Let me start by saying that we meet regularly with ministry staff. We have discussions about issues that are ongoing. We discuss a number of issues, both in terms of policy and future policy, and the situations they've dealt with.

I also want to go back to: Every year, we conduct a survey of homeowners. Last year, we found that 82% of those consumers found Tarion open and transparent in our dealings. While we're dealing with issues in terms of "we're not satisfying everybody" and we have issues that we need to address along the way, I want to be clear that we do take our role as consumer protection very seriously.

We are working to try and get that 82% up to a much higher number. But I think in the nature of a business of dealing with warranty disputes between parties, no one is going to be 100% happy along the way. There are always going to be people who aren't going to be there. We get all kinds of different issues. We get people who have had shingles blow off their roof and they need a roof replacement. Sometimes they do need a roof replacement, but there are all kinds of real issues that go in, too.

Home warranty is a complicated issue. The literature from across other countries and regions suggest the same kind of issues: a rising gap in terms of consumer expectations and the ability for builders to meet that challenge, and a lot of it falls to the warranty company to try and pick up the basis within that. We think we do a good job of this, but we think we can do a much better job of this.

We've looked at this auditor's report as a road map for where we go into the future. We accept that as what is. As I said, we're not afraid of taking the criticism from here and looking for how we can make the organization better and stronger.

**M<sup>me</sup> France Gélinas:** When you say you meet with ministry staff regularly, which level of staff do you meet

with, and what does "regularly" mean—weekly, monthly, yearly?

**Mr. Howard Bogach:** I believe there are at least quarterly meetings that go on.

**Ms. Karen Hughes:** I think they meet quarterly. I can ask assistant deputy minister Michèle Sanborn to come up and tell you a little bit more of the types of quarterly meetings that we have, if that's helpful.

**M<sup>me</sup> France Gélinas:** Sure.

**Mr. Howard Bogach:** I can also tell you in the interim that I meet with the deputy on a quarterly basis.

**M<sup>me</sup> France Gélinas:** With the deputy?

**Mr. Howard Bogach:** Yes.

**M<sup>me</sup> France Gélinas:** Okay. Did any of them ever talk about the perception of your agency within the public?

**Mr. Howard Bogach:** We talk about all the different issues that go on within Tarion, as I said, both from a policy perspective and from a consumer protection perspective about issues. We talk about potential issues where there could be new policies. We have pretty ongoing live dialogue about issues.

**The Chair (Ms. Catherine Fife):** Okay. We have a new witness at the table. Could you please read your name into the Hansard?

**Ms. Michèle Sanborn:** Yes. I'm Michèle Sanborn. I am the acting assistant deputy minister of policy planning and oversight in GCS.

**The Chair (Ms. Catherine Fife):** Thank you. Put your question.

**M<sup>me</sup> France Gélinas:** Did you hear the question, or should I repeat it?

**Ms. Michèle Sanborn:** Maybe I'll answer it in two ways. First, I want to just go over some of the bigger oversight pieces that the ministry has undertaken in the last several years.

Deputy Hughes talked about the Cunningham review. Justice Cunningham did a review of Tarion in 2015, and the ministry, in 2017, did make some changes to the Ontario New Home Warranties Plan Act to provide better oversight at Tarion. That included, for example, the oversight of the Auditor General. I just wanted to go over those pieces.

In terms of what Mr. Bogach was saying, we do meet with Tarion quarterly at a staff level. In addition, the deputy minister does meet quarterly with the CEO of Tarion, and from time to time the minister may meet with the chair of the board.

There are some other accountability pieces that are required in our oversight relationship. That includes Tarion doing a business plan that the ministry does review. That also includes an annual report that Tarion does, and Tarion also reports into the ministry quarterly on some key pieces. That is very much a live dialogue. That's kind of the structure. That doesn't mean that in between any of those pieces, we obviously don't have conversation. We have protocols where we flag issues, where we try to resolve those issues. So it's very much an ongoing relationship.



In terms of implementing the Auditor General's report, the minister has tasked Tarion with submitting a comprehensive implementation plan, which I understand they are working on, and Tarion has accepted all the recommendations.

**Mme France Gélinas:** Before the Auditor General report, when was the last time you had a conversation about the thousands of cases of requests that were dismissed because of the tight deadlines? Did you ever talk to Tarion about that?

**Ms. Michèle Sanborn:** We do have quarterly meetings with Tarion. These kinds of issues can come up in those meetings from time to time.

I think that I will point back to Justice Cunningham's review. That was an initiative that the ministry undertook, realizing that we had heard from many consumers. There was a need to do a comprehensive review of Tarion from a strategic point of view, looking at some of those strategic issues, such as the role of builders in the overall operations of Tarion. I think that was a critical piece. Then there were changes brought in following the review.

In addition, the government has indicated it intends to act on the majority of Justice Cunningham's recommendations, and it is intending to announce its plans for transformation later on.

**Mme France Gélinas:** Back in 2012, 2013, 2014—before we asked Justice Cunningham to look at Tarion—we already know that there's a number of consumers that are not happy. Some of the frustration comes from the tight deadlines. Some of the frustration comes from the information not getting to them in time. Some of the frustration comes from the call centre that gives you false information.

There are many people whose lives got turned upside down between 2012 and 2019. Why was the ministry's response to say, "We'll commission a report"? I have nothing but respect for Justice Cunningham, but what did you do in between? Why is that they're able to do a whole bunch of changes now? Why weren't those changes done in 2013, when you identified them?

**Ms. Michèle Sanborn:** I do understand that there were some things that occurred around the 2011, 2010 time-frame, including an updated administrative agreement. I know that Deputy Gherson can speak to that. Prior to that, there hadn't been a really comprehensive administrative agreement. So at that time, that was brought in, and that included clearer reporting and some other changes around the governance of Tarion.

I think it has been a bit of an evolution in terms of the ministry increasing its oversight of Tarion from that period of time to 2015, to 2017, to very recent announcements in 2019 in terms of improving the governance and overall oversight of Tarion.

**Mme France Gélinas:** The set limit—I will take it as an example. The set limit of \$300,000 was set decades ago. When was the last time the government talked to Tarion about changing that?

**Ms. Michèle Sanborn:** I'm going to turn that over to Tarion, because I think they would have the history of that.

**The Chair (Ms. Catherine Fife):** I'm sorry. Your question is about the government. You were asking the government why they did not have oversight. It wasn't a question for Tarion.

**Mme France Gélinas:** It was, "When was the last time you looked at this?" You have oversight of Tarion. They are there to protect the public. The cost of houses keeps going up, yet the protection stays at \$300,000. Even in northern Ontario, sometimes that's not enough.

**Ms. Michèle Sanborn:** The reason I deferred to Tarion is that they do have the ability, through their bylaws, to set those warranty protections.

**Mme France Gélinas:** And the ministry was not interested in making sure that this went up?

**Ms. Michèle Sanborn:** The changes that were made in 2017 allowed the ministry, for example, to have more authority in rule-making for Tarion. I think that it was a little bit different before that period of time. Those changes allowed the ministry to have a more direct role in the substance of warranties. I think it was a bit different prior to that time frame—

**The Chair (Ms. Catherine Fife):** Okay, there's one minute left in this question set. Do you want Tarion to answer this question?

**Mme France Gélinas:** Sure, go ahead.

**The Chair (Ms. Catherine Fife):** One minute.

**Mr. Peter Balasubramanian:** The question relates to the \$300,000 limit. The limit, I believe, was changed from—going back in time, in 1989 it went from \$50,000 to \$100,000. In 2003, it went from \$100,000 to \$150,000. In 2006, it went from \$150,000 to \$300,000.

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The way that the organization will look at the appropriateness of the limit is in two different ways. One, we look at the history of the claims that we receive and try to identify how often, in claims that we receive, is the cost coming up to that limit or surpassing that limit. I don't have the actual data here, but I can tell you that when we do that review. Very few freehold home cases reach that limit in Ontario—

**The Chair (Ms. Catherine Fife):** Okay. Thank you very much. That concludes that 20-minute cycle. We're going to move over now to the government, and I believe MPP Parsa followed by MPP Ghamari. Please go ahead.

**Mr. Michael Parsa:** Thank you, all, for being here today and for, I guess, agreeing to implement all 32 recommendations by the Auditor General. I appreciate that. It's a great start.

The very first thing I want to address is the name of the organization. If you don't mind, I'm just going to—so it's Tarion Warranty Corp. The term "warranty" in the title: Could you tell me if that term needs to be in the title? Do we need to have the term "warranty"?

**Mr. Howard Bogach:** I'm going to be totally honest. When the Auditor General raised this with me, it sort of just—my hair went up. I wasn't sure about this issue. Like, why was this an issue? Because it's the Ontario New Home Warranties Plan Act, and we're charged with administering the act—

**Mr. Michael Parsa:** I apologize for interrupting you. Let me just give you some background and maybe it will make your answer a little easier. I apologize. I'm sorry for interrupting, Chair.

**Mr. Howard Bogach:** I understand.

**Mr. Michael Parsa:** Buying a home, for most people, I don't have to tell you, is—it's a dream for most people. It's something that people work hard all their lives, and at some point they're able to live the dream of being able to afford a house—get a mortgage and be able to afford it. Most people put maybe everything they have—their life savings—to be able to purchase their home where they're going to grow their family etc. So they go into this with this vision.

When you have a dream, and when you're purchasing a home, when you're looking at an organization that has the term "warranty" in there, when it all fails, you want to lean on somebody. You want some support. You want some help. So that's why I wanted to give you the background. I'm talking about this now from a general public standpoint.

**Mr. Howard Bogach:** And I accept what you're saying. I want to come back to, sort of, the practicalities. For the most part, the builder provides the warranty. Tarion provides essentially what is a backstop or a surety that says that if the builder can't or won't provide that warranty, Tarion will provide the warranty, except for a couple of exceptions.

The exceptions come in to two particular areas. The one exception is, if the builder goes insolvent, Tarion steps into the place of providing the actual warranty. We're no longer the backstop of this; we actually provide the warranty.

The other one, which is particularly interesting, and I really do want to give the Auditor General credit for elaborating on this, is this issue of what we call illegal building. So this is a home that's vended without there being a registered builder in place, for the most part, along the way. Ontario is the only province that provides statutory protection to those consumers through this process. In that process where there is no vendor, Tarion actually does provide the warranty. They are the supplier of the warranty.

I appreciate that, for the most part, we administer a warranty process that helps the consumer, provides them information, gives them online support on a number of issues, but in two circumstances, we do actually provide the warranty: in an insolvent situation and a situation where there is an illegal builder.

Illegal building, over the last few years, has been costing Tarion probably in the area of \$3 million a year in terms of claims that we pay out. I suspect that—we're trying to do more to educate people about the issues about illegal building and all the issues there, but I would say to you, that's one of the biggest.

I do take these stories very seriously. We had a couple that spent \$850,000 on a home, and the builder ran away from them. We provided them the coverage we could. We couldn't make up the difference. We couldn't. We charged

their builder. The builder went to jail in that case. But they never got all their money back along the way, so we are concerned. We're concerned with the impact of illegal building. We're concerned with how it hurts consumers. We're concerned with how it hurts the economy, because a lot of this is done to avoid the CRA, to be honest, in terms of the issues that go into that. That's another huge issue that we deal with, but we do take that seriously.

But we are going to examine this. In the cases that we mentioned, the auditor pointed out to you that the term "warranty" can be confusing. I accept that it is. There are a couple of spots where we actually do provide the warranty. We've agreed to sit down with the minister and the ministry and review this properly to say, "How can we put this into the right light? How can we portray the organization in its true light, as a consumer protection organization, doing all the right things along the way and avoid any aspects of confusion?"

When the auditor raised this with me, it was the first time I'd had that discussion about whether it was confusing. I accept what she found, and I'd say it was a very intellectual discussion and dialogue that raised some issues for me.

**Mr. Michael Parsa:** Thank you. Out of the 200-plus employees you have, roughly how many of them would be home inspectors approximately?

**Mr. Howard Bogach:** Peter, you might be better—

**Mr. Peter Balasubramanian:** I want to say—if I can have just one moment to clarify—about 50 would be staff who would have as part of their job that they would go out and attend at people's homes to assess the defects they identified.

**Mr. Michael Parsa:** These are, I presume, all 50 or so, approximately, are licensed home inspectors to be able to go in and inspect homes?

**Mr. Peter Balasubramanian:** No. I was careful to describe the function. Our staff have a job that they do, which is that the job of Tarion field staff involves writing decision letters and attending at a home to review the list of defects that the homebuyer has identified. They're not home inspectors. They're not municipal inspectors. They have a specific job. Our lingo would be a warranty service representative, but it is a unique function that's unique to our organization. So I hesitate to refer to them as a home inspector or as a municipal inspector.

**Mr. Michael Parsa:** Would you have different criteria within these inspectors—I would call them, or I don't know. Would you have different criteria for them? Service folks perhaps?

**Mr. Peter Balasubramanian:** Can you clarify a little more what—

**Mr. Michael Parsa:** Qualifications.

**Mr. Peter Balasubramanian:** In terms of qualifications—

**Mr. Michael Parsa:** For example. I'm a very practical person. I come from a small business background, so everything has—like, I will understand on both sides, and we discussed it earlier. I understand that if there's a complaint about a scratch on drywall, you're not going to

send a structural engineer to go and inspect this. But when there are structural issues, you're also not going to send somebody who's not qualified to go and do this. I just want to make sure—what kind of range—do you have enough personnel to be able to address the issues that arise?

**Mr. Peter Balasubramanian:** Our staff come from a range of backgrounds. Some of them carry with them the expertise if they've been hired—they may have been a former municipal inspector, for example. Stage one is, they all come with their own experience they bring to the table, but they are trained in the areas of defect recognition. That would be for those who are familiar with what a home inspector does. They come and they look at your house after it's been built.

Your home is already built and what they're doing there is, they're looking at your finished home and they're trying to recognize defects in a finished home state. That's what I call defect recognition. Our staff would be trained on defect recognition. There's a document called the construction performance guidelines, which we can talk about later, but I'll just highlight that as part of that.

About 14 or 15 are qualified building code professionals. They also have a variety of other training that's unique to our organization that you might not find in another organization that I would say relate to the soft skills: dispute resolution, decision-writing, those elements of communication. Each of these warranty reps, when they attend a file, have the ability to involve an expert if it's needed. One of our key expectations is, if you're dealing with a situation which is outside of your expertise, you're empowered to bring in the right expertise or involve a staff member who has that expertise.

I want to focus in on a comment you make because I think it's a helpful one to illustrate the challenge and how we approach our training, which is, when the problem is a building code issue or a structural issue, let's have structural, but if it's a fit-and-finished issue or something, maybe you don't need to do that from a perspective of overkill, for example.

One of the key pieces of information that's in the report before us—and I'd refer the committee to page 14. I think it's a helpful element to answer this question. I'll wait for a moment. Mr. Parsa, do you see the table? It's figure 6. It's at page 14 of the document, at the bottom.

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**Mr. Michael Parsa:** Yes.

**Mr. Peter Balasubramanian:** To give you a sense of the issue here: You have the number in the far-right column: 316,000-some-odd. That's the number of requests for assistance over a five-year period.

The next line is 6,485. What is that? That represents the number of times where one of our staff, which you referred to as an inspector—I'm going to be a little more cautious on the language. One of our staff is asked to go and attend to a person's home. In the five-year period, 6,485 times, that issue that you raised, where we have to decide if the person has the right expertise to deal with that they're looking at—that arises 6,485 times.

If you scroll down that line, you'll see the number 316. Do you see the 316?

**Mr. Michael Parsa:** I do.

**Mr. Peter Balasubramanian:** It says, "number of building code violations found by Tarion." It's about 5%.

If you turn to page 24, you'll see a reference where the Auditor General team randomly sampled a number of forms filed by homebuyers. I'll draw your attention to the right-hand side, the fourth paragraph down, where it starts with, "We selected a random sample." Do you see that paragraph? Do see what they write? They say, "We selected a random sample of 40...." Of the 40 they reviewed, at the bottom of that paragraph, they found one Ontario building code violation, which is about 2.5%.

So what we find is that the majority of defects that our staff are called to observe—because, remember: We're called to come to a house after it has already been built—tend to be fit-and-finished type. The vast majority tend to be fit-and-finished type. That's why, when we set up our original assessment, we leaned toward training in the areas of defect recognition and dispute resolution.

The Auditor General's team—the point that I think they are making in the material—and it comes back, to a certain degree, to the theme, which I think is in this report, which is, "Well, it's fine that 95% of your claims are fit-and-finished type." But that's the easy stuff. The test that we're holding Tarion to is: How do you deal with the hard stuff, and how do you deal with the 5%? That's the way in which we receive the recommendation to push the training of our staff further in the building code area of qualification.

I think I went a little bit beyond your question. But, Mr. Parsa, does that address the issue you asked about?

**The Chair (Ms. Catherine Fife):** Mr. Parsa, I just want to let you know that there are eight minutes left in this cycle, and I have Ms. Ghamari waiting, and then also Ms. Tangri.

**Mr. Michael Parsa:** Okay. Final question: Thirty-two recommendations were made. You've agreed to every single one of them. Why did it take so long? This audit was conducted, and it pointed out faults, and you've agreed to every single one of them. Why did it take so long? Why did it take the audit to be able to implement all of these?

**Mr. Peter Balasubramanian:** I think there are two answers to that question. One is a technical one. The process of working through a delegated authority undergoing an extensive, 11-month audit has its root in jurisdiction. There was no audit before the legislation was changed to allow an audit. There was no audit until—I believe it was an NDP resolution to direct the audit.

I'm going to have a second part to this, but that first part is somewhat inescapable. This audit happened, and the way that it happened is transparent. It happened as a process where the jurisdiction came about in, I'm going to suggest, 2018. The resolution happened. So if you go by the date of when this was made possible by the ministry and by the legislation, the process has happened quickly.

In terms of what I think is more the heart of the question, if I can be so bold as to say that, is, "Well, if these are consumer improvements—you're a consumer protection organization. Why aren't you moving on to those?" Part of the answer to that, I think—and this is something that I

accept is in the eye of the beholder, which is: Tarion has moved forward on consumer protection initiatives, consistently, in one sense, for its whole existence, but in particular over the last decade. We can enumerate all of the consumer protection initiatives I mentioned in response to a question a moment ago. If you just think about the warranty coverage limit, it went from \$50,000 to \$100,000 to \$150,000 to \$300,000 over the course of 1989 to 2006. Those were initiatives, those were consumer-pushing-forward initiatives, that actually happened. You can touch them; you can feel them.

The \$300,000 limit—I wasn't able to finish my answer, but as an example, when you look at the \$300,000 limit, the organization looks at the history of the claims and the organization looks at the cost to repair a house. Remember that, although we read in the newspaper that the cost of housing is going up and up and up and up, when you're dealing with the warranty issue, you have to remember that you have to take out the cost of land, because the land isn't the issue; it's the cost of building the house. I think it's an interesting point: When we look at every other jurisdiction in Canada, the \$300,000 limit is the highest.

I use that only as one example to say that we accept the criticisms in this report and are committed to moving forward with them, but that's not an inference that no other consumer protection actions have happened in the past.

**The Chair (Ms. Catherine Fife):** Thank you. MPP Ghamari.

**Ms. Goldie Ghamari:** How much time do I have?

**The Chair (Ms. Catherine Fife):** There is just under four minutes.

**Ms. Goldie Ghamari:** And we get another round after this. Do you want to go, then?

**Mrs. Nina Tangri:** Sure.

**The Chair (Ms. Catherine Fife):** MPP Tangri.

**Mrs. Nina Tangri:** Thanks for coming and enlightening us on some points. In an ideal world, obviously, Tarion wouldn't even need to exist; all the builders would build their homes to the satisfaction of the purchaser. However, obviously, that is not the case.

I want to know what measures you are taking to ensure that municipalities know if there are builders that are not performing to a minimum standard that's set out by the municipalities so that they don't continue to be giving permits to some of these builders. That's the first part.

The second part of my question is: The claims process is considered to be extremely rigorous. When someone calls or notifies you within those 30-day limits, which I find are very restrictive, what do you do at that point? Is an adjuster assigned? Is it just a caseworker? If somebody wants to follow up, is it just a central database? How do people—when they want to follow up, do they have one point person? What happens at that point?

**Mr. Howard Bogach:** Let me respond to you about the building officials issue.

The interesting part is, I came back two weeks ago from a meeting with what's called LMCBO, the Large Municipalities Chief Building Officials. We try to meet with them to talk about issues along the way. Sometimes we're

talking about chicken-and-egg issues, because they see the home first: They see the home in its construction stage, they see the home in terms of what's there, and they also issue orders to comply on the building code. I would never expect them to come and tell me that there's a building code issue, because they would have issued an order to comply within that building code. What we're talking about was—I wanted to share the Auditor General's report with them.

I think what it leads to is that we need to find a way—and we do have to find a way to work around some of the privacy laws, because there are some issues that hold us back from providing information and sharing information. But I think there's a world where we need to find a way where we're working closely together.

We have the exact same objectives: We want to see consumers get the home that they're entitled to, the one they were promised—and built properly, without building code defects along the way. We've also talked about a number of other issues. We both have expressed concerns that the building code allows a home to be delivered in too early a stage. You may not know this, but a home can be delivered with one working washroom, one working sink; it doesn't have to have countertops. I don't think that's a reasonable standard. I know that when a home is delivered that way, our telephone rings. Maybe that's why we have telephone issues some days.

But we need to work collectively, so I've been arguing with them. I'm suggesting a round table right now among building officials, the Home Construction Regulatory Authority and Tarion and the ministry to sit down—I'm talking both ministries, to be honest—to talk about how we can do this better. I think the issue is there. The auditor points out that we need to have better coordination and communication. We accept that. Let's figure out how to do that. We do accept that, and we will work on that issue.

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**Mr. Peter Balasubramanian:** I would just also add, on the municipality front, I think we agree that sharing information—

**The Chair (Ms. Catherine Fife):** There's one minute left, just so you know.

**Mr. Peter Balasubramanian:** I'll just say that the other point is, in my experience working with the municipalities—there are 411 municipalities in the province, and they have differing levels of technology. To do information-sharing officially, in the spirit of a digital transformation—sometimes there are operational barriers when you're trying to work with individual municipalities. An idea that sounds good at the high level can sometimes be an onerous burden for a small municipality that doesn't necessarily have the infrastructure to participate in a sharing protocol.

**The Chair (Ms. Catherine Fife):** Thank you. That concludes this question set. We'll now move to the official opposition. MPP Rakocevic.

**Mr. Tom Rakocevic:** I just also want to echo my appreciation that, amongst the many things I read within the Auditor General's report, one thing that stood out was the full co-operation of Tarion.

I also want to acknowledge that I know it's not easy to be on the stand and to have to answer very tough questions today, so I appreciate that.

My colleague mentioned some of the issues pertaining to the huge decrease in public confidence about Tarion. I'm going to read a couple of excerpts from consumer rights advocates who have been battling home builders and Tarion, just to put it on the public record, to let people hear.

This one is from a consumer rights advocate. Her name is Barbara Captijn. "The government agency licensing builders and protecting consumers is failing in both its mandates. So the nightmare for consumers continues.

"Struggling with broken Tarion and fixing defective homes should not fall on the shoulders of the most vulnerable party, the consumer. That's not what consumer protection legislation is for. But it's sadly what this government and its predecessors have left for consumers to contend with."

Canadians for Properly Built Homes scheduled a meeting in Cardinal Creek Village, which I will be getting into afterward. This is what Karen Somerville and her team had to say: "It is critical to note that many of the families who are fighting Tarion are stuck with Ontario building code (OBC) violations. OBC violations typically involve health and safety concerns for the occupants of the homes. Many serious consequences have resulted for homeowners due to Tarion's improper handling of homeowners' claims. These range from freezing in houses with faulty HVAC systems, physical illness such as asthma from mould, financial hardship, mental illness from stress, anxiety and trauma, marital breakdown, bankruptcy and suicide.

"Tarion's own performance has clearly demonstrated to thousands of Ontario's new homebuyers each and every year, and to Justice Douglas Cunningham, that it is beyond repair."

These are strong words.

I'm going to read an excerpt—I think we often understand things in terms of case studies and examples. One of the examples where it appears we still haven't got it right yet is the example of Cardinal Creek Village. I'd like to read something from Marcel and Julie Bellefeuille, who have been very brave. It's very hard to get this sort of submission, because when people come out and speak out about the deficiencies in their own homes, it also places them at many forms of risk.

This is what they are going through: "When we purchased our new home in October 2016, we unfortunately realized that there were many health and safety issues and Ontario building code violations in our home. At that time, the dream of a new home and retirement investment quickly became a nightmare.

"As we moved forward with trying to mitigate the damage and health concerns, it became increasingly difficult. Health concerns such as radon, mould, carpenter ant and deer mice infestations as a result of building defects became the norm. We were often forced from our home for extended periods of time for remediation. Our family

was put on medication to counteract the effects of the mould.

"Structural defects such as 29 basement slab cracks, 14 foundation cracks, water infiltration, lack of insulation, framing deficiencies and much more only made things worse. The uncertainty of living in a dangerous home was always evident.

"We hoped that the Tarion warranty program would be able to assist us and release some of the stress and uncertainty from our lives. Unfortunately, it only created more stress and demands on us. We found ourselves in a long drawn-out process that required us to meet the burden of proof for what we felt were obvious builder defects. After hiring engineers, contractors and building specialists, we found ourselves continuing to fight to get what we paid for. A safe home free of defects. The lack of transparent processes at the time, delayed coverage and maximum administrative delays forced us to spend time travelling back and forth from Ottawa to Queen's Park to meet with government, Tarion and ministry officials to get answers. It took many months to get coverage for our 30-day warranty list which included serious health and safety concerns and Ontario building code violations. We have been in our home for over three years and are still battling through the system for items that include major structural concerns."

There is more, but this is clear evidence.

Tarion is here to help 100% of people that purchase new homes. The fact that there are people like the Bellefeuille family and others in Cardinal Creek Village highlights the importance of getting this right.

So there's a couple of things that also were apparent thanks to the AG's report. First of all, that when people called in through a call centre, one in six people received information that was not helpful. Were there additional claims, for instance, that would have been made, but because people received information that was incorrect, they would never know? I know that another member here in committee today asked about the question of the experiences of the people that are heading out, like the inspectors themselves—what sort of experiences, degrees and licensing and all that stuff that they have.

Even the bonus structure—based on a lot of the AG report, it seems that only 30% of builders even pay back what they owe. So Tarion goes after them in the cases where they pay back, and they only—in the 2014-to-2018 period—were able to get back 30% of the money. That leaves me with questions about the board, the fact that there are so many builders on the board, as well. Why is it, one, that the council seems to have more representation—the advisory council—from other types of individuals, but the board is so slotted with builders? So if you acknowledge that a council is needed, why wouldn't the board itself be constructed of people that are made up with, I guess, more rounded experience?

**Mr. Howard Bogach:** That's a lot of question to unpack.

**Mr. Tom Rakocevic:** I would like to try to ask a bunch of questions, because it is limited time. I just wanted to

highlight some of the issues that people are facing right now, and give these stakeholders, who have worked years and years to help others, the chance to have their words on record.

**Mr. Howard Bogach:** I appreciate that. Certainly, I'm happy to try and address the questions. So, if you want me to address Cardinal Creek, I'm happy to, and then we could go and see if there's a further piece that—

**Mr. Tom Rakocevic:** Why are we still dealing with Cardinal Creek right now? After, a question to the ministry is that since 2008, there were issues brought up. There were commitments made under the former government, I believe, in 2013. In 2016, a whole bunch of recommendations were made, and Cardinal Creek Village happened after that.

**The Chair (Ms. Catherine Fife):** Okay. So you have a question with regard to Cardinal Creek to Tarion, and then a follow-up question to the government. Please go ahead.

**Mr. Howard Bogach:** We won't get into discussing individual cases. I can confirm, generally, the information that has been published saying that the issue relates to a subdivision in Ottawa. There are a number of new homebuyers who have raised issues relating to building code violations and mould. We've received warranty claims relating to some of those homes. We're working with homeowners, the builder and the municipality to resolve the claims.

The number of homes we're dealing with is 15 out of a subdivision of 250. The builder has repeatedly stated they stand behind their homes and are willing to work to address the issues. The builder has publicly stated that it has been challenged, in some cases, where the homebuyers have not allowed its employees to have access to do the repairs. Regardless, we're working with all homeowners to resolve all the situations.

With respect to mould, I want to point out that a number of the issues that have been raised relate to mould. Mould does possess a serious health risk, and we take it extremely seriously. Tarion has one of the most comprehensive mould warranties of any warranty provider in Canada. The assessment cases involving mould in terms of diagnosis or remediation can be complex, and depending on the nature, the issue generally requires the involvement of third-party experts, professionally accredited in the science of mould analysis to look at.

We work hard to get the resolutions of these claims right. We understand that the timing can be involved, and it's very frustrating. Particularly when we're using experts along the way, some of the timing of it isn't favourable. Our priority is to get these cases fixed, help the homeowners, and we're always open to improvements. We've accepted a number of the auditor's recommendations, which we believe will help improve the process.

We continue to work with homeowners in Cardinal Creek. We had an open town hall session in August. I believe you were in attendance that day. There were about 80 residents who were in attendance at that meeting. We addressed them openly. We attempted to answer their questions and ensure their lines of communication were

open. So we've working with those individuals. We're working on a process to get the—we appreciate the concern with it. We appreciate that it takes time to get these issues resolved properly.

**Mr. Tom Rakocevic:** Thank you. Thanks for answering that very quickly, actually.

I guess the second one was to the ministry.

**Ms. Karen Hughes:** Your question, I think, is a little bit about a conflict that exists between Tarion being looked at as the regulator of builders versus the supporting-consumer-protection pieces of it. So I think the ministry is really committed to addressing consumer concerns about the conflict of interest between Tarion performing both of those protections from a vendor side as well as the builders. We're taking steps, following up on Justice Cunningham's recommendations, to establish a separate regulator for new home builders and vendors through the separation of Tarion's warranties and protections, administration, and its builder regulation function.

**1400**

The Home Construction Regulatory Authority that I mentioned in my opening remarks is preparing to potentially be designated as the new regulator of new home builders and vendors, independent of the warranty and protection program. Once the future regulatory authority is operational, Tarion would no longer be responsible for new home builders and vendor regulation functions.

The other thing I want to talk about with respect to your question is, I think the other thing that the government has done—and we did consultation in the spring of 2019. We heard key consumer concerns about Ontario's new home warranty program and protections. To address this, we're proposing three things: supporting greater quality in new home construction through inspections during construction, so risk-based inspections earlier in the process; enabling greater transparency through access to information on the track record of builders through the builder directory—

**Mr. Tom Rakocevic:** Can I interrupt you?

**Ms. Karen Hughes:** Yes.

**Mr. Tom Rakocevic:** This was at the beginning of your submission, right?

**Ms. Karen Hughes:** Yes.

**Mr. Tom Rakocevic:** Just in the interests of time, because you mentioned that at the beginning—and I appreciate that you're restating it. You did mention inspections. When I spoke with stakeholders in Cardinal Creek Village, they brought to our attention—and everyone who was there—that their concerns were brought, even in 2016, to the government of the time. My question—there are a couple. Did the ministry support Tarion at the time when these individuals were coming to members of the government and saying, "Look, these are problems that are not being served"?

And you talked about construction surveys. There were additional homes added to Cardinal Creek Village. Tarion would have been alerted to the fact that there were potentially major structural defects. Did you take any enhanced steps? Did this put it on the radar and you said,

“Okay, we now have major structural defects in a new subdivision, so maybe we should get involved in the actual inspection process at the time of construction?” Did Tarion get involved in that state? What did the government of the time do to assist or get involved with Tarion? I’ve been told by multiple individuals there that they brought it to the attention of the government of the time. Had the ministry intervened—

**Ms. Karen Hughes:** I actually wasn’t at the ministry during the time you’re referring to, in 2016.

**Mr. Tom Rakocevic:** Okay.

**Ms. Karen Hughes:** I’m not sure if either of my colleagues were at the ministry—

**The Chair (Ms. Catherine Fife):** Is there another person here who was? The ADM?

**Ms. Karen Hughes:** No, I actually don’t think the ADM was—during 2016? That’s three years ago. I don’t think any of us were here at that time.

**The Chair (Ms. Catherine Fife):** Okay, so that question cannot be answered by the government. Do you want to move on to another question?

**Mr. Tom Rakocevic:** No, there’s the inspection—yes?

**Mr. Howard Bogach:** The only thing I was going to add to this degree of—I don’t have the dates, I don’t have the times, and I don’t know what was reported along the way. But from my understanding, 12 of the 15 I reported have followed through in the last four months. So there’s a possibility that there may have been three homes at that point in time that were earlier than that, but my understanding is, a number of them came forward after the public meeting we held. I just want to be clear that there may have been two or three that were before that point in time, but I don’t have the specific dates or times to be able to provide that to you.

**Mr. Tom Rakocevic:** Okay.

Why all this difficulty around the one-year period? Why set up situations where you have 30-day windows? When you look through the AG report, you find that it’s very complicated. You could imagine a first-time home-buyer of a new home now has to follow: “Okay, I’ve got 30 days, and then I go back to them.” There are constant chances for the builder to come back, but they could fall off along the process. You can imagine the level of frustration. Why create a system like that, that would make people think that—

**Mr. Howard Bogach:** I appreciate what you’re saying and I appreciate that that’s what the auditor’s comment was. We started in a period where this was an absolute chaotic situation, where people could submit anything within that one-year form at any point in time along the way. It had no process. It wasn’t working for homeowners; it wasn’t working for builders along the way.

We brought in—this is way before my time; I think in 2003—a process to say, “Could they design a better system for dealing with this along the way?” In truth, I think Peter said it, 96% of the forms come in, but that’s no excuse. We need to deal with the ones that don’t come in in time.

The latter period is really an intention as we try to warn people that if you don’t file something by this date, you’re going to lose the ability to get Tarion involved in this. But the first 30-day period I think is confusing for people. It doesn’t mean they can’t add things. It doesn’t mean things don’t go from that 30-day list to the one-year list. We also deal with emergency issues and we also deal with water penetration issues in between.

But I accept that our process is too confusing right now. We need to clean it up and to make it simpler and easier to understand. So we adopt the recommendation. It’s there. Even to the degree that we’re saying we’ve turned down people, that’s not totally true in terms of what we’re dealing with. A number of the people will have submitted their form at the second period of time, so they may capture it another time, or the builder may have repaired the home in the interim, along the way. We have no ability to track that within the process. But I do accept—I think it’s fairness.

I think we need to find a way that we can maintain some order to this. To go back to the chaotic system isn’t the right answer either, but to find some way to order it. Now, maybe it means more periods of time where people can report or aggregate issues along the way within that. And then you open up a whole separate issue about builder repair periods.

So I appreciate what you’re saying, but I think our plan is—

**Mr. Tom Rakocevic:** Chair, how much time do I have left?

**The Chair (Ms. Catherine Fife):** Six minutes.

**Mr. Tom Rakocevic:** Okay, good. I opened talking about Cardinal Creek Village, and we’ve revisited that. I know that you don’t have certain details about it, but it really is a good case study for the state of where we are when things do go wrong.

Let’s talk about the builder directory. We have serious issues that are happening there. As you said, there were homeowners—there were about 80 of them—at that meeting. People were very, very frustrated. I was there as well. If I go to the builder directory and I look at the builder of that particular subdivision, I find that there are: zero chargeable conciliations, zero homes with claims, zero dollars paid. I believe that’s not true. So why is it in the builder directory, which people are supposed to go to get information on builders? Why is that the case?

A second part is, there are ways in which—I heard that builders—actually, no. Please just answer that one. Let’s just deal with that.

**Mr. Howard Bogach:** Let me respond to say, first of all, I want to say that the builder directory that Ontario provides is the most comprehensive builder directory you’re going to find anywhere in Canada. The fact is you’re not going to find another builder directory that provides this information in any warranty program across Canada. It’s not perfect, but it works in a lot of ways.

The disclosure on the builder directory where a warranted item is found is currently subject to a fairness-based exemption—in an inspection where a defect is

found and is not disclosed—if the builder can show that they did not have a reasonable opportunity to fix it before the inspection.

So I think this puts us in this very odd conundrum. The conundrum is, we know these homes have issues. We agree, between us, that these homes have issues along the way, but if the builder isn't given an opportunity to go in and to repair those issues, it shows up in terms of saying that they were denied access. If they reimburse us for all the costs that go into it and they were denied access, what do I put on their builder record?

Our policy is that we hold them responsible for the repair, but we don't disclose it if there's reasonable grounds that they were denied access to go in and do this. That kind of exception is the reason why some of the Cardinal Creek files where there are issues are not showing up on the website.

I think there are a number of very important things about this policy. One is, it's entirely public and transparent. It's published on our website in Builder Bulletin 20, which is a policy document. It's also explained in the builder directory itself, to make sure that people can look and understand what the Ontario Builder Directory is and understand its limitations.

The developmental policy was done in public consultation, including direct consultation from consumers. It was also developed at the direction of our internal ombudsperson. Our internal ombudsperson asked us to do this type of work to make sure there was a clear understanding.

**The Chair (Ms. Catherine Fife):** Two minutes left.

**Mr. Howard Bogach:** As I said, compared to any other jurisdiction, it's still the best form of disclosure you can find. We've looked for all kinds of information, available in any other province and, in certain aspects, in the UK. We think this is still the most comprehensive.

Lastly, the Auditor General has raised fair and important questions about its application that should be revised. So we do see this as something we're going to look at. Because I described the situation to you where we agree there is an issue with these homes being built. And I think, on a fairness issue, I have an issue of how I disclose that within that way. I think we have to look at how we do this properly within that.

So I accept your observation. I accept your concerns. I hope you will accept my explanation as to the fairness issue.

**The Chair (Ms. Catherine Fife):** One minute.

**Mr. Tom Rakocevic:** How much? One minute?

Okay, so then I'll just leave it with a comment. What I've heard is, in its current form, that it will create false hope, because people will look on this builder directory and think that more information is being captured. They don't ever want to be in this kind of situation. When you compare it to other jurisdictions, if there is not full information there, what purpose does it serve?

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The last comment is that I do appreciate your answers, and I understand that a lot of this is challenging.

**Mr. Howard Bogach:** Thank you.

**The Chair (Ms. Catherine Fife):** We're going to move into the last rotation for each party. You'll have 17 minutes each. We're going to continue the session with MPP Ghamari.

**Ms. Goldie Ghamari:** Thank you for coming here today. I have a number of questions, and I'm just going to try to get through them as quickly as possible, so I apologize in advance if I cut you off. I just want to get the answers as quickly as possible.

I'm going to start by referencing an article that was written by the CBC and posted October 16, 2019. It indicated that your salary for the CEO was almost \$800,000. My understanding is that Tarion is a non-profit corporation, correct?

**Mr. Howard Bogach:** Correct.

**Ms. Goldie Ghamari:** Perfect. In response to those numbers and those figures coming out, someone—I guess a Tarion spokesperson—said, “We use market salary surveys and independent external HR compensation experts to review our board and executive compensation programs and we benchmark our compensation against Ontario's other administrative authorities as well as comparable public sector organizations....”

My question to you is, what other administrative authorities in Ontario, or comparable public sector organizations, were used as a benchmark to justify your salary of almost \$800,000?

**Mr. Howard Bogach:** I can't answer that question. I can tell you that we engaged with—

**Ms. Goldie Ghamari:** Would you undertake to get me the answer to that question?

**Mr. Howard Bogach:** I can undertake to get you information on that.

**Ms. Goldie Ghamari:** Thank you very much.

**Mr. Howard Bogach:** It's a study that was conducted by, I think, Wyatt.

**Ms. Goldie Ghamari:** I would just basically like a list of those administrative authorities and comparable public sector organizations.

Also, with respect to the board, my understanding is that \$520,000 was given to 16 directors last year. Could you also undertake to provide me with benchmarks and comparisons for similar boards?

**Mr. Howard Bogach:** I can answer some of that for you right now, in terms of—

**Ms. Goldie Ghamari:** Just because my time is limited, if you could just get me a list of those—

**Mr. Howard Bogach:** Fair enough, yes.

**Ms. Goldie Ghamari:** Thank you. So you undertake to get that information?

**Mr. Howard Bogach:** Yes.

**Ms. Goldie Ghamari:** Thank you very much. Prior to being elected I was an international trade lawyer, so I did a lot of money import/export work with foreign governments and multinational corporations on audits by the CRA, so I'd kind of like to look at numbers here.

There is a chart in the Auditor General's report—it would be figure 7; I don't know what page that is on.

**Interjection:** Page 15.



**Ms. Goldie Ghamari:** Page 15, yes. It's essentially Tarion revenues and expenses by category. If we look at 2014, the total revenue is \$54.1 million, and the total expenses is \$43.3 million, so there's an excess of revenue over expenses of \$10.8 million there. As a non-profit corporation, how do you justify these yearly expenses?

**Mr. Peter Balasubramanian:** You're looking at the 2014 column?

**Ms. Goldie Ghamari:** Yes. If you look at the bottom, it will say "Excess of revenue over expenses." How does a non-profit operate in that sense?

**Mr. Howard Bogach:** Let me explain the issue. We don't have profit, but we do build surplus within our organization.

**Ms. Goldie Ghamari:** And where does that surplus go?

**Mr. Howard Bogach:** The surplus is in the guarantee fund of the organization along the way.

**Ms. Goldie Ghamari:** And what is that surplus used for?

**Mr. Howard Bogach:** If I can just refer you back to—I believe it's recommendation 31. It's 4.7.5 on page 50.

**Ms. Goldie Ghamari:** Okay.

**Mr. Howard Bogach:** "Tarion maintains a guarantee fund from which it pays compensation to homeowners whose claims it approves. The fund stood at \$592 million at the end of 2018." The chart there shows the growth in the fund.

"The fund receives no money from the province; its income is derived from builder licensing and registration fees, and from investments" along the way.

Within that section, the Auditor General speaks about the financial crisis in British Columbia, where the program went bankrupt—

**Ms. Goldie Ghamari:** Okay. Thank you.

**Mr. Howard Bogach:** She speaks about how it went bankrupt in Quebec—

**Ms. Goldie Ghamari:** Thank you very much. I'd now like to look at line item salaries and benefits. We see that in 2014, total salary and benefits is \$24.3 million, and in—  
*Interjection.*

**Ms. Goldie Ghamari:** No. Up until 2018 it goes up to \$27.9 million. We see a net increase in salaries and benefits of—where's my math here—almost \$4 million. Can you please explain how and why those salaries went up?

**Mr. Peter Balasubramanian:** So 2017 relative to 2018?

**Ms. Goldie Ghamari:** Let's look to 2014 and 2018. What accounts for the year-over-year increase in salaries and benefits? Is that because you hired more staff? Is it because executives got more compensation? I'm just trying to—

**Mr. Howard Bogach:** I think it's a combination of a number of issues: increases in staff, increased costs of technology—

**Ms. Goldie Ghamari:** What was the increase in staff from 2014 to 2018?

**Mr. Howard Bogach:** I don't have that information with me.

**Ms. Goldie Ghamari:** Would you undertake to get me that information?

**Mr. Howard Bogach:** Yes, please.

**Ms. Goldie Ghamari:** Thank you. Now, what other factors would there be for that increase in salary?

**Mr. Howard Bogach:** In salaries and benefits, it could be benefit costs. It could be increase in staff along the way. I'll have to get you a detailed breakdown. I don't have it with me.

**Ms. Goldie Ghamari:** Thank you. I appreciate that.

Now I'd like to look at 2018, just that column there. Total revenue was \$46.6 million and expenses were \$55.3 million; however, we see that the salaries and benefits still increased. So what accounted for an increase in salaries and benefits in the fiscal year where you were operating at a loss?

**Mr. Howard Bogach:** As I don't have the information in front of me, I will commit to bringing you that information forward.

**Ms. Goldie Ghamari:** Thank you very much. Now my understanding, based on the Auditor General's report, which you've all signed off on and agree with—correct?

**Mr. Howard Bogach:** We've accepted the recommendations, yes.

**Ms. Goldie Ghamari:** Perfect. Thank you. The Auditor General has stated that senior management at Tarion has been "rewarded for increasing profits and minimizing financial aid paid to homeowners. Bonuses to senior management totalling 30% to 60% of their annual salaries were based on increasing profits by, for example, keeping operating costs down, including those of the call centre." Could you please explain—

**The Chair (Ms. Catherine Fife):** Excuse me, Ms. Ghamari, can you just reference where you are? It would be helpful.

**Ms. Goldie Ghamari:** Oh, my apologies. I'm looking at page 8 of the Auditor General's report.

**The Chair (Ms. Catherine Fife):** Okay. So a completely different page.

**Ms. Goldie Ghamari:** And if we go to the bottom right corner under "Tarion's Operations," it says that "senior management was rewarded for increasing profits and minimizing financial aid..." My question is, why is a non-profit organization giving compensation to its executive for increasing profit? That doesn't seem to make sense.

**Mr. Howard Bogach:** As I answered some of this question earlier on today, I wanted to go back and refer to the auditor's comments along the way and what her recommendation is. Tarion is a not-for-profit organization. It is, in some many respects, still a financial institution when it has \$600 million in surplus—

**Ms. Goldie Ghamari:** Sorry, but that's not answering my question. My question is, why is there an incentive program, for a non-profit organization, that incentivizes profits, minimizing payouts, and senior executives get rewarded for that?

**Mr. Howard Bogach:** In answering this, the board of directors brought in—I'm going to say—senior people from the Rotman school to help them design what the key

performance indicators are for the company. They used a professional consulting firm to help them design what the compensation programs were, and they tied these issues together. In terms of responding to the auditor's report, the board has undertaken to review this to make sure that they can meet the recommendation of the auditor to more align these with public sector organizations.

**Ms. Goldie Ghamari:** But my question is, why was this happening? Would you undertake to look into that?

**Mr. Howard Bogach:** No. I—

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**Ms. Goldie Ghamari:** No? Okay, that's fine. Thank you.

I'd now like to talk about the Auditor General's recommendation number 5, with respect to the definition of "finished house." My understanding is that a lot of times homebuyers are not able to take advantage of the 30-day warranty because a finished house could be a house that does not have a floor, for example. Are you looking at redefining what a finished house is so that homeowners have better protection?

**Mr. Peter Balasubramanian:** Sorry, Ms. Ghamari, can you help me locate which recommendation that is?

**Ms. Goldie Ghamari:** Yes. It's recommendation number 5, page 23.

**Mr. Peter Balasubramanian:** Page 20.

**Ms. Goldie Ghamari:** Sorry, page 25. Recommendation 5—

**The Chair (Ms. Catherine Fife):** We are on recommendation number 5 on page 23. The question is to the COO.

**Mr. Peter Balasubramanian:** I'm sorry, now, the question was?

**Ms. Goldie Ghamari:** My question is, will you be redefining the term "finished house" so that a finished house does not include something that doesn't include a floor or something else that is unlivable? Because my understanding is that Tarion has been very strict with the 30-day warranty.

**Mr. Peter Balasubramanian:** The recommendation looks at three possible solutions: redefining "finished house," developing a warranty that will protect homebuyers for unfinished items in their homes once the home has met a minimum occupancy standard, and ensuring that the one-year warranty coverage begins only after that item is finished—so that's another way to solve the problem. And the third—

**Ms. Goldie Ghamari:** Is it your—sorry to interrupt.

**Mr. Peter Balasubramanian:** If I may just complete the answer—

**The Chair (Ms. Catherine Fife):** Actually, if you can do that quickly, because we don't need to hear the same things over again, so if you could just finish that and then we'll go to the next question.

Also, I just want to let you know that there's just over five minutes left. Are there other speakers on the government side? Yes. Okay. Thank you. Please go ahead.

**Mr. Peter Balasubramanian:** Yes, Madam Chair. I'm trying to be directly responsive to the question. The question was whether or not we would be redefining "finished house," and I'm simply pointing out to the committee that there are three solutions, and that the undertaking of the warranty program is to work with the ministry and stakeholders to find out what the best solution is and to implement that within two years.

**Ms. Goldie Ghamari:** Would you agree that a house that does not have flooring, kitchen cupboards or tiling meets the minimum occupancy standards? Would you move into a house like that?

**Mr. Peter Balasubramanian:** Those are two separate questions. Which one do you want me to answer?

**Ms. Goldie Ghamari:** Both.

**Mr. Peter Balasubramanian:** I would say that the definition of what meets the minimum occupancy standard is set out in the code. I'm not an expert in that. I would say that my understanding is that if the house does not have a floor, it will not meet the minimum occupancy standard. And, no, I would not move into a house without a floor.

**The Chair (Ms. Catherine Fife):** Thank you.

**Ms. Goldie Ghamari:** Thank you. Sorry, I have just a few more questions left.

**The Chair (Ms. Catherine Fife):** There is four and a half minutes left.

**Ms. Goldie Ghamari:** Okay. Actually, this question is for the ministry. Given all the issues, and given the lack of accountability, even with the 20% raise given to the ombudsman within Tarion, why has the ministry not moved forward with eliminating Tarion and establishing a new system entirely?

**Ms. Karen Hughes:** Right now, the ministry is undertaking consultations, and the government will be coming forward with its recommendations in the coming weeks. I think the minister committed to doing that and will be responding back to the direction, although we are clearly committed to reviewing, as part of that, the Auditor General's recommendations and ensuring that they're implemented.

**Ms. Goldie Ghamari:** Thank you. My last question: What will the government be doing for homeowners who feel that their claims have been wrongly denied in the past?

**Ms. Karen Hughes:** What will the government be doing for homeowners? I think part of that is for us to hear from homeowners, and that's something that we have been doing, to make sure that, as we come up with a plan to respond to the recommendations from the Auditor General, we are hearing from a broader group of homeowners going forward.

**Ms. Goldie Ghamari:** Thank you very much.

**The Chair (Ms. Catherine Fife):** Thank you. MPP Tangri.

**Mrs. Nina Tangri:** Just very quickly, based on Cunningham's recommendations and now the Auditor General's recommendations, most of them say that they will be done by November 2021. That's two years from now. Why not expedite that? Will you be making changes

ongoing and notifying us of that, or are you just going to hold off until 2021 before it's all done?

**Mr. Howard Bogach:** Our plan is to produce a quarterly progress report on how we're doing against these recommendations. We've said we're—

**Ms. Karen Hughes:** Maybe just to speak—the ministry expects that Tarion will come up with a detailed implementation plan that they will submit to us that will be tracked quarterly going forward, and then we'll be monitoring that. I think the intent of the 2021 date is that the recommendations would be fully implemented by that period, but some things should be starting to be implemented within the coming weeks and months.

**Mrs. Nina Tangri:** And just finally on the board makeup: Changing the makeup of a board can happen at an annual general meeting. That's something you could have done this year, last year and many, many years before that. Why have you not attempted to bring more, broader people, from homeowners, from people from real estate—rather than just a council, why not have them sit on the board? The only people who could potentially be on there are the ministerial appointees. Why have you not made more attempts to have a broader board?

**Mr. Howard Bogach:** Our belief was that in 2017, when the new act was put forward, the minister would be taking a much more active role in determining what the qualifications for directors would be, what the establishment would be, and what the number for the board would be. Our board has done some studies. They've been engaged with—

**Mr. Paul Golini:** Richard Leblanc.

**Mr. Howard Bogach:** —Richard Leblanc from York University in terms of helping to provide them guidance to work with the ministry to develop a recommendation.

But I think the sense of our board was that a lot of this sat with the minister and the ministry to make the final decisions—

**Ms. Karen Hughes:** I'll just maybe answer your question about the board. In May 2019, as part of the Protecting What Matters Most Act, the Ontario New Home Warranties Plan Act was amended, with new permissive powers that allow the minister to do three things: to limit the percentage of members on Tarion's board who can be drawn from among specified persons or classes of persons; to change the size of Tarion's board; and to establish competency criteria for board members.

The minister can issue orders going forward with respect to the board and the board's composition.

**Mrs. Nina Tangri:** And I agree with that, and I think that's a great step in the right direction. My question is to the board and to the CEO, and why you have not, in past years, made an attempt to change the makeup of your board to include fewer builders and more people from the general public sector.

**Mr. Howard Bogach:** I do want to answer that. At one point in time, there was a dominance of builders on our board. We worked to reduce that. We came back with this model. I sat on the board of directors. I resigned from the board of directors to make sure that balance would happen.

We went to work to try to find a balance, which was eight representatives coming from the building sector, five appointees by the minister and then three people chosen for their expertise. For the most part, they were chosen for their financial expertise, because of the nature—

**The Chair (Ms. Catherine Fife):** Thank you very much. That ends the question set. We'll move, for the last 17 minutes, to the official opposition. MPP Gélinas.

**Mme France Gélinas:** We will be sharing our time, but I will start.

You've heard the questions. You've heard some of the tones that came with them.

You were created 43 years ago as a delegated administrative authority to enforce the Ontario New Home Warranties Plan Act. You have two main roles: the enforcement of new home warranties, and the licensing of builders.

I think it has become clear, through the opening statement of the deputy minister, that half of your responsibilities are about to be taken away—that they will put a new model before us, so that there's a separate regulator for the builders, so you won't have this responsibility anymore.

You've heard some of the things under discussion—that we move away from the consumer protection model that was the basis of Tarion, and move toward an insurance company providing insurance for new homeowners.

Is there anything we could have done to not end up there? It made sense to me that both those mandates work together, because both those mandates were in the law that we passed and were given to Tarion. Now one of them will be moved away from you, and the other one may be very, very diminished. What could we have done to not end up where we are today?

**Mr. Peter Balasubramanian:** Take this statement for a personal observation, and that is that the designated authority model benefits from the oversight of the Auditor General. I think that having an organization go 46 years without going through an external audit creates a challenging situation when that audit happens.

From a personal perspective, I think that the organizations would have benefited from a more standardized or regularized review. I think you would have been dealing with more incremental change. The fact that we're dealing with non-incremental change doesn't mean we can't deliver it, but your question is if we were modelling this in a different way. I would say that part of the learning of this experience is that I think it is a beneficial process to have an organization like ours go through this kind of process: public, and for transparency and for accountability.

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**Mme France Gélinas:** You are a delegated administrative authority, which means that the government has full oversight of you. The government has audits, they have lawyers, they have—no offence to you, Auditor, but they have all of that expertise. How come none of this was ever available to you to do reviews, to guide you, to avoid where we are now?

**Mr. Peter Balasubramanian:** I'm just making the observation. I want to say—and it's a sentiment that I tried

to articulate earlier—that to say the one thing is not necessarily to imply the other. So to say that we would benefit from, or organizations would benefit from, the transparency and the accountability that working with the Auditor General brings doesn't mean that the government doesn't apply oversight, that the consumer protection hasn't happened.

If you look at the wording in the Justice Cunningham review—and I may not agree with all of his recommendations—Justice Cunningham says, based on the review of the Tarion Warranty Corp, that it's a consumer-oriented organization that is committed to continuous improvement. So I don't necessarily accept that it's one or the other; I'm suggesting, in answer to your question, that there is a role to play for an independent review notwithstanding the best efforts of governments and designated authorities—notwithstanding their best efforts and not undermining those efforts. I still can accept that there is a place for that kind of review, and I think we are seeing the merit in that in the transformation, in the renewal, that is coming out of this process.

**Ms. Karen Hughes:** Can I just add: From the government's perspective, I think the Auditor General's recommendations with respect to both Tarion and TSSA really speak to the need to improve accountability, governance and oversight of the administrative authorities, and to take a closer look at that model and to see what changes need to be made to address some of the issues, I think, that have been raised through the Auditor General's reports and pieces, and to understand the lessons learned and how that applies to all of the administrative authorities.

Much of the legislation hasn't been changed or looked at in a number of years, and the administrative authorities have been put in place. So there's an opportunity for the government to take a closer look at that based on the lessons learned from the various reviews going forward.

**M<sup>me</sup> France Gélinas:** Given your knowledge of how you were there to protect the public—and you were successful, you said, 96% of the time—not so much 4% of the time, which is the one we focused on. But let's focus for a minute on the 96% of the time where you were successful. What will be lost once we go to an insurance model rather than a consumer protection model that you have been putting forward?

**Mr. Peter Balasubramanian:** I want to say that our organization—and the question is about the model. I know that in the Auditor General's report, there are observations made about the different models. But our organization is focused on delivering the services that we can in the best way that we can under the model adopted by the government. So I would defer commentary on the policy to the government. We will deliver the warranty program in whatever model the government chooses based on its policy consultation.

**Ms. Karen Hughes:** I think that's one of the things that we have been doing: looking at the insurance model for new home warranties and protections. We've been consulting and considering options for the new home

warranty and protection program. Part of that assessment was that we talked to stakeholders, we've looked at other jurisdictions, we've taken the advice that it has provided from within the Auditor General's report, and the government will be coming back with recommendations on that in the coming weeks.

**M<sup>me</sup> France Gélinas:** Because in the Auditor General's report, she doesn't say to move away from consumer protection and go to an insurance model; she says that it can be fixed. If you look at what has been submitted so far, it looks like the work between the ministry and Tarion has really brought upon a lot of changes that have been identified by the auditor. So where is the disconnect?

**Ms. Karen Hughes:** I think we're looking at balancing the Cunningham recommendations along with the Auditor General's recommendations and our multi-jurisdictional scan on this as we go forward. That will be something that the government will bring forward in the coming weeks.

**M<sup>me</sup> France Gélinas:** Okay.

Did you want to go?

**Mr. Tom Rakocevic:** Yes.

**The Chair (Ms. Catherine Fife):** MPP Rakocevic.

**Mr. Tom Rakocevic:** I just want to clear the record. Cardinal Creek Village: We were told multiple times that they did provide access and that it has been three years for deficiencies. It's not a question; I'm just stating that this is what I was told and what many have said. We've had three years to fix deficiencies, update the builder directory and implement legislation that had been asked for a long time ago. That's to the ministry.

I just have a few quick questions, then. I apologize if I have to cut you off, because I know there's not much time.

How do you determine the financial solvency of a builder so that we don't have issues like funding falling apart and people basically losing their condo unit? What is being done to determine that solvency?

**Mr. Peter Balasubramanian:** Is this in the context of condominiums?

**Mr. Tom Rakocevic:** Essentially, when a builder comes forward, what do they have to demonstrate to you financially that they're going to be able to continue on with a project and not leave customers holding the bag and stuck?

**Mr. Peter Balasubramanian:** There's a slightly different process depending on the nature of the business person who's coming forward. If it's a freehold builder, a small builder, a medium builder or a condo builder, they have different financial implications. But generally, when we deal with a freehold builder, to take the example, we would have them come forward. If they're a new builder, they're going to have to show core competencies, including a business course. So there's a core competency on business. They'll have to produce financial information, including personal net worth statements, equity statements, a credit check. Then there's a dynamic review; so each year we would be looking at that financial situation.

But I do want to make an important point—I know you're conscious of time. Our financial review can't

guarantee the financial solvency of a builder. The business of building homes is too complex. Our review is a review to establish a certain level of confidence, but there are bankruptcies and there are insolvencies, and those will happen. To a certain degree, the role of the warranty program is to be the backstop for those situations.

**Mr. Tom Rakocevic:** What criteria do you have to revoke a builder's licence when you see OBC violations? How are you really holding them accountable when builders are not paying out warranties, major structural issues are occurring, and then all of a sudden, they're reissued the licence and they're able to go back and construct homes and put people at risk?

**Mr. Howard Bogach:** We do take all those things into consideration in terms of how we look at a builder's licence, but I want to come back to the issue, because one of the points is—we talk about major structural defects and not taking that into consideration. I think it's important to acknowledge something here: Up until 2012, Tarion took full responsibility for major structural defects. So if a builder had a major structural defect and it was past two years, Tarion would pay the amount. In 2012, on initiation by the board, it was unanimously passed to put that burden back to builders. That was a very, very important step and a very positive step in terms of holding builders accountable along the way, and that was a very big part of it.

But we take a look at all the aspects of a builder's performance and conduct in their licensing. If we are to remove a licence, it requires us to go before the Licence Appeal Tribunal and prepare a case as to what's there, and the onus in proof is relatively high in terms of what this is. If this was an experienced builder and they had two building code violations, the chances are that we wouldn't get very far in that dialogue with a discussion. But we can do things in terms of requiring additional training, requiring inspections along the way. We can limit the number of homes that they can build in terms of a restriction that goes into it.

So we do have some tools within the tool kit to be able to address those issues, but we take those concerns into consideration every time when we're dealing with those types of issues.

**Mr. Tom Rakocevic:** What are you doing practically to discourage illegal home construction?

**Mr. Howard Bogach:** Thank you for asking the question. We have just put some more boots on the ground to chase after these issues. We've got a pilot program running in a number of municipalities. The pilot program is not there to stop illegal building; it's there as an educational thing. It's a deterrent. My analogy is that there's a sign on the 401 that tells me I'm going to get a fine for speeding along the way, but everyone's speeding by me at the exact same time as I see that.

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What we're trying to do is to discourage it. We pay out \$3 million a year on this. I've talked to you about an \$850,000 home where the homeowners got nothing on this basis. We see more and more of this along the way. I think

we need to take this dialogue to the next level. I think it needs to be much more holistic in terms of where we're going with this along the way.

The Auditor General mentions the program that's running in British Columbia. We have said for a while that we think that's a better way to deal with this. It's stricter and has better benefit for consumers. We've been raising that point for a fair amount of time now. We think that's a better way to go. But we need to examine it in conjunction with the Ministry of Municipal Affairs and Housing. Every time we do something, there's always some unintended consequence, so we do have to make sure that we measure and take the time to see what's there.

But I really do appreciate your support on that end, because I do think illegal building is a problem. Even when I tell you that we pay \$3 million a year, I will guarantee you that there are tons of homes that we haven't found out were built illegally and the people don't know that they have a warranty available to them, even though it's a statutory warranty. We hear the stories all the time: "Tarion will cost you \$20,000, and I'll give you my own two-year warranty."

I think there's more that needs to be done with this, and it has to be done in a holistic manner to resolve that issue. I truly appreciate your question.

**Mr. Tom Rakocevic:** Since there's time, I do want to ask a question again about the builder registry. The fact that, in the case of Cardinal Creek Village, there's nothing reported and we've had three years—do you think that there is an omission here? Why is it not mentioned? Why are the things that are happening on the ground right now not mentioned in this directory? It's three years. If I'm a prospective homebuyer and I'm looking at the directory under a specific builder, I might have a different choice if I know what was going on.

**Mr. Peter Balasubramanian:** I would just agree that that's something we need to look at. It was an issue that was identified in the report of the auditor. I'll give a very specific reference: It was identified by the audit team when they reviewed the builder directory and when they reviewed the application of the kind of exemptions that we're talking about in Cardinal Creek. They identified that when they looked at the data that Tarion was able to provide. They didn't find in all cases that we checked with the homebuyer for their side of the story in terms of the application of that exemption.

We have accepted that recommendation and are reviewing our processes to see how we can make sure that we have an auditable process to comply with that. We think that's an example of a specific actionable recommendation where the auditor team has worked with us to identify a problem and there is an actionable solution that we're going to be working on to improve that very issue you're raising.

**Mr. Tom Rakocevic:** Okay. And one to the ministry: We had an opportunity to protect—there was some legislation that's currently being dealt with around realtors. Why did the ministry decide to continue this builder

exemption when it comes to tightening rules around real estate and home purchases? Is that something you can answer?

**Ms. Karen Hughes:** No, I don't think I can speak to that. Michèle, can you speak to that?

**The Chair (Ms. Catherine Fife):** We have one minute left.

**Mr. Tom Rakocevic:** If you're purchasing a pre-owned home versus a new home, there seems to be a different level of standards now.

**Ms. Michèle Sanborn:** I think the government has made a commitment that it will be coming forward. This may be something that is better dealt with in terms of

future policy direction rather than through that real estate bill. There may be an opportunity through another vehicle.

**The Chair (Ms. Catherine Fife):** Okay. Thanks very much, Michèle, for coming into the hot seat several times there.

That concludes our time for questions. I want to thank all of you for appearing here this afternoon and for answering our questions.

We will now be going into closed session so that the committee may commence report writing. I would ask all members of the public to leave the room at this time. Thank you very much.

*The committee continued in closed session at 1445.*



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