

Tarion Warranty Corporation Independent Review – Final Report Released

After a comprehensive review and consultations with industry stakeholders, Justice Cunningham recently released his [final report](#) containing recommendations on how to reform the Ontario New Home Warranties Plan Act and the Tarion Warranty Corporation (“Tarion”). Sweeping changes have been recommended to improve consumer protection, accountability, transparency and board governance. The recommendations address concerns raised in Justice Cunningham’s interim report, which we previously blogged about, and are focused on the following objectives:

Consumer protection

Promoting high-quality residential home construction

Accountability to the government and transparency to the public

Accessible, timely and fair dispute resolution

Inclusive, transparent and accessible rule making and standards setting

Efficiencies with clear roles and accountabilities

Highlights of the Recommendations

Multiple Home Warranty Providers

Currently Tarion is the sole provider of home warranties and is also the regulator of home builders and vendors. This multiplicity of roles has resulted in perceived and perhaps actual conflicts of interest. The report recommends that the mandatory home warranty protection be offered by multiple insurance providers, who would be selected by the builder. Not only will this provide a competitive market for new home warranties, but warranty protection providers would be subject to oversight under the Insurance Act, including a mandatory complaint process to which homeowners will have access.

To accommodate the transition to a competitive insurance model, the report recommends that a new not-for-profit corporation be created to deal with existing home warranty enrolments. This new not-for-profit entity would also be able to offer future warranty coverage in competition with other insurance providers, but would not be the regulator of builders.

Builder/Vendor Regulator

The report recommends that a new regulator of builders and vendors be set up as an administrative authority, with increased reporting, oversight and accountability to the government. The regulator’s primary purpose would be to protect consumers and support the building of high-quality homes. To achieve these objectives the regulator would have an augmented range of enforcement and compliance tools.

The report also recommends that builders and vendors be required to take continuing education courses on an on-going basis in order to maintain registration, a code of ethics for builders and vendors, and, an improved directory that provides relevant and easily accessible information to consumers about builders and vendors.

Dispute Resolution

Creation of an independent adjudicator (independent from both the warranty providers and the builder/vendor regulator) to resolve disputes. This would result in an easier, less costly dispute resolution process than litigation and also provide consistency in the interpretation of the warranty legislation. However, homeowners would still have access to the courts if they wish to pursue a legal action. The report also recommends that the legislation be revised to make it clear that the home owner does not have the onus of proving the existence of a defect and that if expert reports are required, then such experts would be engaged in a neutral capacity by the claims adjudicator.

Warranty Rules and Standards Settings

The implementation of a standardized process of rule-making on warranty protection and setting standards for builder/vendor registration (with final approval by the Government), including keeping the Construction Performance Guidelines current and relevant.

Consumer Education

Enhance consumer education about the warranty program for those consumers who buy directly from the builder as well as successive homeowners who buy homes still under warranty.

Deposit Protection

In view of the phenomenal increase in the price of homes in the Greater Toronto Area and the corresponding increase in deposits paid by consumers, the report recommends that the adequacy of the current deposit protection (\$40,000 for freehold homes and \$20,000 for condominiums) be assessed.

Builder/Vendor Definitions

Clarify builder/vendor definitions to take into account that many developers have complex corporate structures with many different companies, some of which may cease to exist for the duration of the entire warranty period.

Condominium Specific Issues

Due to the complexities of condominium ownership and the shared responsibility of unit owners and the condominium corporation for dealing with construction defects, the report recommends a review of the condominium-specific provisions of warranty protection, including timelines for submitting claims and performance audits, and consideration as to whether condominium-specific issues should be addressed separately in the warranty legislation.

A [press release](#) from the Ministry of Government and Consumer Services indicated that the Government of Ontario will be moving forward with the recommendations in Justice Cunningham's report.

