



Office of the Auditor General of Ontario

Special Audit of the Tarion Warranty Corporation



October 2019



Office of the Auditor General of Ontario

To the Honourable Speaker
of the Legislative Assembly

I am pleased to transmit my Special Audit of the
Tarion Warranty Corporation, as requested by the
Standing Committee on Public Accounts under
Section 17 of the *Auditor General Act*.

A handwritten signature in black ink, reading "Bonnie Lysyk".

Bonnie Lysyk
Auditor General

October 2019
Toronto, Ontario

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Special Audit of the Tarion Warranty Corporation

Reflections

Since 1976, Tarion Warranty Corporation (Tarion) has been responsible to license homebuilders and ensure they honour their warranties on new homes. Tarion receives no provincial funding—it supports itself through licensing fees from the province’s 5,600 builders and registration fees on new homes. It registers about 60,000 new homes a year, and at the end of 2018 was responsible for overseeing about 380,000 homes still under builders’ warranty.

Tarion provides no warranties itself; it acts to assist new-home buyers resolve disputes with their builders and serves as a financial backstop if a builder refuses to fix a defect in a new home.

Fortunately, Ontario new-home buyers and homebuilders resolve most disputes on their own, under the terms of the builders’ warranties, without Tarion having to intervene. However, when the two parties cannot agree on a solution, new-home buyers expect that they can rely on Tarion to fairly and promptly enforce the builder’s warranty because this was something included in the purchase price of their homes.

The Standing Committee on Public Accounts of the Legislative Assembly passed a motion last year requesting that our Office perform a value-for-money audit of Tarion after concerns were expressed by many new-home buyers.

Our audit found that while Tarion intervened and helped resolve many new-home buyer and homebuilder disputes, concerns raised about Tarion’s operations were justified. What is often a person’s biggest single purchase in their life was sometimes turned into a frustrating and unnecessarily costly experience, because the organization to which the government delegated the responsibility to help them resolve disputes with their new-home builder didn’t always come through. Tarion’s rules, in some cases, favoured builders at the expense of new-home owners.

Until recently, successive governments have performed little oversight of Tarion to ensure it provides good service. As a result, Tarion wrote its own rules and regulations. The only avenue of appeal to its decisions was a government tribunal or court action, both of which can be lengthy and costly.

Warranties run for one to seven years, depending on the components of the house. Most defects are covered for one year, and homeowners are supposed to ask builders to fix the defects before seeking Tarion’s intervention. But when a builder fails to act, Tarion provides only two 30-day windows in which homeowners can ask for its help—one at the beginning and the other at the end of that first year, unless it is an emergency. (Requests may be made at any time for components covered by the longer warranties.)

Applications outside those 30-day windows are turned down flat, meaning that Tarion will not help these homeowners if their builder refuses to honour a warranty. We believe this is contrary to the spirit and intent of the *Ontario New Home Warranties Plan Act*.

Even when Tarion does accept a request for help, it gives builders up to 180 days after each 30-day window to make repairs, meaning that homeowners could conceivably wait up to 18 months for the home defect to be fixed.

We make recommendations in this Special Report to address the specific issues we identified in the audit, including putting in place stronger measures to protect new-home buyers' interests and eliminating the unnecessarily narrow deadlines discussed above. We also recommend that Tarion tighten its processes for dealing with builders who repeatedly construct homes with major defects and those who refuse to honour their warranties.

We received Tarion's full co-operation during the course of this audit and its agreement to fully implement the recommendations in this report—recommendations that, once implemented, should address the concerns of new-home buyers that led to the Standing Committee on Public Accounts requesting that our Office conduct this audit.

Outside of Tarion-specific recommendations, we also recommend that ongoing government oversight is necessary. This suggestion should also be considered for all self-sustaining, delegated authority organizations designed to serve the public. Over the years, legislators made only occasional and minor changes to the way Tarion operates. We noted that Tarion began to assume some of the characteristics of a private-sector for-profit company—senior Tarion executives received bonuses, for example, based, in part, on how well they kept a lid on payouts to new-home buyers.

We recognize that it can be difficult for the government of a province with more than 14 million inhabitants to cost effectively oversee all of its operations and agencies, as well as delegated authorities that, like Tarion, operate with varying

degrees of autonomy. However, in Tarion's case, it is particularly worth making the effort if the government is to fulfill its duty to protect new-home buyers when making the biggest single purchase of their lives.

1.0 Summary

In 1976, the Government of Ontario delegated Tarion Warranty Corporation (Tarion), formerly known as the Ontario New Home Warranty Program, as a non-profit corporation to administer the *Ontario New Home Warranties Plan Act* (Act). (The word "Tarion" is a partial anagram of "Ontario.")

Tarion's two main roles are to ensure builders honour their warranties on new homes, and to manage licensing of homebuilders. The Ministry of Government and Consumer Services (Ministry) oversees Tarion.

Tarion registers about 60,000 new homes every year. At the end of 2018, it was responsible for ensuring builders honoured their warranties on materials and workmanship in about 380,000 homes across the province.

Ontario's 5,600 licensed homebuilders are required to provide warranties on all new homes, with the cost factored into the home selling price. Tarion itself offers no warranties, but steps in to help resolve warranty disputes and provide financial aid to homeowners or arrange for repairs when it determines that builders failed to honour a warranty or declared bankruptcy.

Homebuilders must obtain a licence from Tarion every year, and further register with Tarion every home they propose to build before construction can start. Tarion also requires security deposits of varying amounts from builders, depending on a builder's assessed risk.

In 2018, Tarion paid out \$17.4 million to about 800 homeowners after finding that their builders had not honoured their warranties. In addition, Tarion received about 70,000 requests for help that

year from homeowners, who can make more than one request. Most of these requests were eventually resolved between homeowners and builders, with no intervention by Tarion.

Tarion receives no funding from the province; its revenues are primarily derived from licensing and enrolment fees, and investment income on its Guarantee Fund, from which it provides financial aid to homeowners. Annual expenditures for 2018 were about \$55 million.

Tarion is overseen by a 16-member Board of Directors (as of June 30, 2019, five Board member positions were vacant). It employs about 260 people, most of them responsible for dealing with warranty disputes between homeowners and builders, and for issuing builder licences.

Over much of its history, Tarion has drawn public attention because of numerous complaints that it failed to resolve homeowner disputes with builders on warranty coverage. Tarion's own Ombudsperson received about 3,000 inquiries (including complaints and requests for information) from homeowners over the last 10 years, mostly about Tarion's dispute resolution process and the service provided by builders to homeowners.

Our audit found that some Tarion processes have been difficult for homeowners to navigate, resulting in the denial of thousands of homeowner requests for help. Although new-home warranties are provided by builders, Tarion's information materials leave the impression that it is Tarion that provides the warranty—even its name, Tarion Warranty Corporation, contributes to this impression.

We also noted that the Ontario Home Builders Association, which represents the interests of residential builders, had disproportionate influence over Tarion's decisions and operations.

The Ontario Builder Directory, maintained by Tarion to provide online information about builders to homebuyers, is missing data about some builders' poor warranty records. In addition, laws currently in place in Ontario to deter illegal homebuilding are largely ineffective.

Among the specific significant findings of this audit:

Dispute Resolution Process and Licensing Builders

- **Tarion found in more than half of its inspections that builders had not honoured their warranties.** For example, our analysis of the 6,485 requests that Tarion assessed in the five years from 2014 to 2018 found that about 65% of the time, the builder should have fixed the defects under warranty but did not.
- **Tarion dismissed thousands of requests for help from homeowners because the homeowners missed Tarion's tight deadlines.** Homeowners may ask Tarion for help with defects in their homes covered by a one-year warranty by submitting a form—but only by submitting a form in the first 30 days or the last 30 days of that first year of occupancy (unless it is an emergency, for which they can make a claim anytime during the first year). Between 2014 and 2018, Tarion refused assistance on about 9,700 requests because the homeowners had missed the 30-day deadlines. About 1,300 of these requests had missed the deadline by a single day. Missing the first 30-day deadline does not disqualify the homeowner from the builder's warranty coverage, but it does mean Tarion will not hold the builder accountable for its warranty obligation. In effect, these narrow windows mean people lose the right to get help from Tarion. The homebuyer protection plans in Quebec and British Columbia, in comparison, have no such 30-day deadlines.
- **Builders with poor warranty records continued to get licences from Tarion.** We found that builders who refused to honour some of their warranties, causing Tarion to pay out compensation to homeowners, were routinely able to renew their licences. Since its inception until 2012, Tarion had a policy

in place to renew builders' licences without factoring into the renewal decision the fact that the builders had put up homes with major structural defects. In those rare cases where licences were revoked, some builders were able to return legally to the industry by creating a new company or partnering with an existing one.

- **Builders were subsequently licensed by Tarion even when homeowners alleged that they acted dishonestly and broke the law.** As of June 30, 2019, Tarion had a backlog of 41 complaints about builders' dishonest conduct that it had not yet investigated. All of the complaints were outstanding for more than six months, with some dating back to early 2017. Five of the allegations were serious, including one where a builder refused to make emergency repairs that required immediate attention. In another case, a homeowner alleged that a builder broke the law by not having Workers Safety Insurance Board (WSIB) coverage for sub-contractors, and by building homes without a Notice of Project from the Ministry of Labour, both mandatory by law. As of June 30, 2019, Tarion had yet to investigate these allegations or forward them to the WSIB and the Ministry of Labour—but it nonetheless renewed the builder's licence in January 2019 despite these serious allegations, which appeared to us to have merit.
- **The Ontario Builder Directory does not provide homebuyers with complete information on builders' warranty history.** The Directory is compiled by Tarion for prospective homebuyers to consult when choosing a builder. We found that Tarion excluded 2,033 inspections that found warranty issues from 2014 to 2018 from the Directory because builders alleged that homeowners prevented them from honouring their warranty. However, our sample testing of 75 inspections found that 42 did not have sufficient evidence to support the builders' assertions. We also found that Tarion

does not include other critical information such as Ontario Building Code violations, past convictions for illegally building homes, and the results of Tarion investigations into complaints against builders.

- **Tarion's pilot program's effectiveness in preventing illegal building is limited.** In the past 10 years, Tarion has paid out about \$19.8 million to homeowners to cover the cost of warranty repairs on 869 illegally built homes. Some builders engage in illegal building activity by declaring that they are building a new home for their personal use, and then selling the home for a profit. Tarion partnered with 15 municipalities to prevent these types of builders from getting municipal building permits. We question the overall effectiveness of this initiative because Tarion still had to investigate 37 individuals approved under the pilot program and convicted three of illegal building.

Tarion's Operations

- **Tarion's call centre did not always provide accurate and helpful information.** Tarion operates a call centre with nine employees who field about 90,000 calls a year on average. We listened to a sample of 50 calls recorded between February 1 and March 31, 2019, and found that in 14% of our sample, Tarion's response to caller questions was inaccurate and/or not helpful. For instance, without obtaining all the facts and inspecting the defect, Tarion told one caller that a roof leak was not covered by the builder's warranty when, in fact, it would have been covered under certain circumstances.
- **Tarion's senior management was 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. Having such an incentive can affect the quality of service to the public. These approaches to compensation appeared more suited to a private-sector for-profit company than to a government-delegated not-for-profit corporation.

- **Tarion did not collect enough security from builders to cover payouts to homeowners.** Tarion collects refundable security deposits from builders to cover the costs of any homeowner claims that it eventually pays out. However, Tarion bases those deposits on outdated information (for example, outdated home values that are lower than the homes' current values), while paying out claims based on current values. As a result, it paid out about \$127 million from the Guarantee Fund over the last 10 years, and recovered from builders only about 30% of the pay-outs.
- **The information Tarion communicates about its role could lead some to believe that it, rather than builders, provides the warranty.** In its publications and on its website, Tarion says that homeowners will lose their warranty rights if they do not submit their “warranty claims” to Tarion. However, Tarion does not provide the warranty—under the Act, that is the builder’s responsibility (even the name “Tarion Warranty Corporation” contributes to this confusion). Tarion is there as a backstop if the builder refuses to honour their warranty. It is not always clear to homeowners that they can submit warranty claims to their builders.
- **Tarion stopped its yearly in-person public meetings in 2016.** Tarion began holding a public meeting annually in 2009 to provide organizational updates and allow people to direct questions to Tarion management in person. The open meetings continued until 2015, the year when many angry homeowners showed up to voice concerns about “poor customer service” and difficult warranty adminis-

tration processes. The following year, in 2016, Tarion switched to online public meetings, where people could not physically attend but could submit questions in writing. Questions were screened and selectively answered.

- **Issues raised by Tarion’s own Ombudsperson not always resolved by Tarion.**

The Ombudsperson’s Office of Tarion raised concerns in 2009 and 2017 about the way Tarion investigated reported allegations of builders breaking the law or operating in a dishonest way. In 2010, the Ombudsperson recommended that Tarion always confirm directly with homeowners when builders claim that homeowners prevented them from fulfilling their warranty obligations. However, our review of a sample of 75 exempted inspections from 2018 found that Tarion still was not doing the verifications.

This report contains 32 recommendations, with 76 action items, to address our audit findings.

Overall Conclusion

Our audit concluded that Tarion’s processes and practices do not always conform to the spirit or intent of the *Ontario New Home Warranties Plan Act*. Tarion lacks effective processes and standards to consistently fulfil its dual mission of enforcing home warranties and regulating builders.

Homeowners can lose their legitimate appeal rights for assistance simply by failing to meet Tarion’s tight deadlines, even after they have met the timetable for reporting defects to the builder, who is actually the one providing the warranty coverage. The impact of this on homeowners can be enormous as it relates to what is usually the single biggest purchase of their lives.

At the same time, builders were not rigorously monitored by Tarion to ensure they operated knowledgeably and with integrity. Some were re-licensed to build despite demonstrating problematic behaviour and, in some cases, they did not reimburse

Tarion for costs incurred to resolve defects before being re-licensed.

We noted that in more than four decades of operation, Tarion has never drafted a builder code of conduct against which builder behaviour could be judged.

In part, this was due to minimal government oversight of Tarion until very recently, leaving Tarion largely free to determine by itself how it would operate, and what rules it would operate under.

The only way for a homeowner to appeal a Tarion decision is through proceedings before the Licence Appeal Tribunal or through civil litigation, which may cause some to just give up.

The Ministry took major steps in 2017 and 2019 to address some of these issues with new legislation. However, the Ministry has yet to determine an appropriate model for new home warranties that would effectively promote consumer protection.

OVERALL RESPONSE FROM TARIION

Tarion Warranty Corporation appreciates the work of the Office of the Auditor General of Ontario in its comprehensive review of Tarion's activities. As an organization that protects and supports consumers, we acknowledge the importance of the transparency and accountability that this kind of review brings.

These recommendations offer helpful guidance on how we can improve on, and build more public confidence in, Ontario's new home warranty program. We accept the Auditor's recommendations and will begin working towards their implementation.

In the near term, we are taking several positive steps in the journey to build a better warranty program for our stakeholders. This includes improvements to our dispute resolution tools, additional disclosure on the Ontario Builder Directory and implementing targeted pre-possession inspections to improve the quality of new homes across the province. In 2019, we became the first Delegated Administrative

Authority to publish board and executive compensation; and we are also introducing a new information sheet for condominium purchase agreements to help new condo buyers better understand the risks involved in their purchase.

Tarion is also actively supporting the establishment of the Home Construction Regulatory Authority (HCRA) and planning for the transition of Tarion's licensing and enforcement responsibilities beginning in the fall of 2020. We look forward to collaborating with HCRA and the Ministry on the implementation of the Auditor's recommendations to improve licensing requirements, accountability and customer service in the new home building industry.

OVERALL RESPONSE FROM MINISTRY

The Ministry of Government and Consumer Services (Ministry) would like to thank the Auditor General and her staff for their work on the audit and recommendations. The Ministry welcomes the feedback on how Tarion is performing and the recommendations to strengthen Tarion's operations as well as the Ministry's oversight of them.

The Ministry recognizes the importance of Tarion fulfilling its responsibilities under the *Ontario New Home Warranties Plan Act* in a manner that protects, enhances and improves consumer protection for new home buyers and owners.

The Ministry has been actively working with Tarion to improve both transparency and operational effectiveness over the past year. The report will assist the Ministry in these efforts, and we will work closely with relevant partners to consider all of the findings and recommendations.

The government has taken a number of steps in 2019 to enhance Tarion's governance, accountability and transparency. In October 2019, Tarion was required to post its board and

executive compensation information publicly. The Ministry, working with Tarion, is also launching initiatives to increase consumer awareness about the risks of purchasing a pre-construction condo and improving information for buyers, prior to or at the point of purchase.

The Ministry will work closely with Tarion to address the recommendations. The Ministry will request that Tarion provide an implementation plan that outlines the specific steps Tarion plans to take to implement each recommendation and to ensure the recommendations are addressed in a timely and responsive manner. The Ministry will closely monitor and track Tarion's implementation of each recommendation.

2.0 Background

2.1 Overview

The Government of Ontario named Tarion Warranty Corporation (Tarion) in 1976 as the not-for-profit body to administer the *Ontario New Home Warranties Plan Act* (Act) with respect to licensing of builders and enforcement of new-home

warranties. The Ministry of Government and Consumer Services (Ministry) oversees Tarion.

The Act requires builders in Ontario to provide warranty coverage for their work and materials in new residential houses, townhouses and condominiums (homes). The cost of this warranty coverage is factored into the home selling price.

However, the Act specifies only part of the required coverage; Tarion sets and enforces most of the warranty rules itself. For example, Tarion decides which defects should be covered by builders' warranties; how disputes between homeowners and builders are handled; when and how homeowners may ask Tarion for assistance; and the maximum compensation for homeowners whose builder does not honour a warranty. Tarion also decides what builders must provide when they apply for their licence, what information to use when renewing their licence, and how to assess risk for refundable security deposits. However, since December 2017, key changes such as changes to warranty periods have been subject to the approval of the Minister.

Warranties cover a variety of home components for periods ranging from one to seven years, depending on the component. **Figure 1** summarizes warranty coverage that builders are required to

Figure 1: Mandatory Warranty Coverage Provided by Builders

Source of data: Tarion Warranty Corporation

Examples of Items Covered Under Warranty		
1-Year Coverage*	2-Year Coverage*	3- to 7-Year Coverage*
<ul style="list-style-type: none"> Defects in work and materials such as: <ul style="list-style-type: none"> floors (cracking, scratches, leveling) doors (scratches, alignment) paint (chips, brush marks) roof shingles (damaged) drywall (damaged) Ontario Building Code violations such as: <ul style="list-style-type: none"> inadequate venting in roof improper installation of vapour barrier Unauthorized substitution of materials 	<ul style="list-style-type: none"> Water penetration in basement, foundation or building envelope Plumbing problems Electrical and heating-system problems Excessive cracking of bricks, loose siding Ontario Building Code violations relating to health and safety (e.g., stairs not of proper size, improperly installed stair handrails) 	<ul style="list-style-type: none"> Basement walls (major cracks) Distortion of joints or roof structure Any defect that can significantly restrict the use of a considerable portion of the home

* Coverage remains with the home in the event it is sold during the builder warranty coverage period.

provide. **Figures 2 and 3** provide a comparison of Ontario's builders' warranty coverage to that of the three other provinces with mandatory new home warranties. Ontario's builders' warranty coverage is three years shorter for major structural deficiencies compared to Alberta and British Columbia. However, Ontario's coverage is more comprehensive compared to other provinces. Tarion registers about 60,000 new homes every year. At the end of 2018, it was responsible for ensuring builders honoured their warranties on materials and workmanship in about 380,000 homes across the province. **Figure 4** provides information on the number of new homes enrolled with Tarion that are under warranty.

Tarion itself provides no actual warranty coverage—that is the responsibility of builders. Instead,

Tarion functions as a financial backstop, providing financial aid to homeowners after finding that a builder failed to honour a warranty.

Homeowners who cannot resolve warranty disputes with builders to their satisfaction, or whose builders declare bankruptcy, may ask Tarion to help them resolve their disputes. If unable, Tarion will provide financial compensation up to the maximum amounts listed in **Figure 5**. Tarion investigates claims and pays them—if it has first determined that the claim is justified. It attempts to subsequently recover the money from builders that fail to honour their warranties.

In 2018, Tarion received about 70,000 requests for assistance from homeowners. Most were eventually resolved between the builder and the

Figure 2: Comparison of Mandatory Minimum Builder Warranty Coverages by Selected Jurisdictions

Prepared by the Office of the Auditor General of Ontario

Selected Jurisdictions	Coverage Areas
Ontario	<ul style="list-style-type: none"> • Deposit protection • Delayed closing or occupancy protection • 1 year on labour and materials, unauthorized substitutions, building code violations • 2 years on water penetration, building envelope, exterior cladding, building code violations relating to health and safety, HVAC, electrical and plumbing systems • 7 years on major structural deficiencies¹
Alberta	<ul style="list-style-type: none"> • 1 year on labour and materials • 2 years on labour and materials related to heating, electrical and plumbing systems • 5 years on building envelope (warranty providers required to offer option for an additional 2 years) • 10 years on home's major structures (e.g., frame and foundation) • 10 years on additional living expenses incurred
British Columbia	<ul style="list-style-type: none"> • 2 years on labour and materials • 5 years on building envelope, including water penetration • 10 years on structure of the home
Quebec ²	<ul style="list-style-type: none"> • Deposit protection • Furniture storage and accommodation costs • Coverage for completion or repair of apparent defects and poor workmanship at acceptance of home (or three days following if not moved in) • 6 months for reimbursement of relocation, storage and moving costs while corrective work carried out • 1 year for repair of issues related to labour and materials not apparent at acceptance of home • 3 years for repair of latent defects • 5 years for repair of faulty design, construction, or soil issues

1. Ontario's definition of major structural defects also includes any defect in work and material that materially and adversely affects the normal use of a significant part of the home.

2. Note that Quebec warranty does not apply to buildings with more than four stacked units (i.e., condo towers).

Figure 3: New Home Warranty Protection Coverage Models

Prepared by the Office of the Auditor General of Ontario

	Are Builders Required to Provide Mandatory Warranty Coverage on New Homes? (Yes/No)	If Builders Default on Warranty Coverage, who Provides Financial Compensation for Homeowners?
British Columbia	Yes	Private-Sector Insurance ^{1,2}
Alberta	Yes	Private-Sector Insurance ^{1,2}
Saskatchewan	No	None ³
Manitoba	No	None ³
Ontario	Yes	Tarion Warranty Corporation
Quebec	Yes	Garantie de Construction Résidentielle
New Brunswick	No	None ³
Prince Edward Island	No	None ³
Nova Scotia	No	None ³
Newfoundland and Labrador	No	None ³

1. Private-sector insurance companies in this province must be approved by the government to offer new home warranties.
2. Technically, the homeowner's right to insurance in this province does not depend on the failure of the builder to provide the warranty, but as a practical matter builders are given the opportunity to address a homeowner's complaint.
3. In provinces where builders are not required to provide mandatory warranties on new homes, builders may have the option of purchasing coverage from third-party providers such as not-for-profit providers set up by builders or insurance companies.

Figure 4: New Homes under Builder's Warranty

Source of data: Tarion Warranty Corporation

Homes under Warranty	2014	2015	2016	2017	2018
New Homes under Warranty	367,272	367,750	376,963	378,586	383,845
New Homes Enrolled with Tarion¹	49,890	57,788	58,648	68,945	63,009
Freehold Unit	30,803	34,390	35,991	36,779	29,580
Condominium – High rise ²	16,280	21,202	19,933	29,509	31,169
Condominium – Low rise	2,807	2,196	2,724	2,657	2,260

1. New homes enrolled in respective years; this number is included in the number of new homes under warranty.
2. Seven storeys or higher.

Figure 5: Maximum Compensation Paid by Tarion When Builders Do Not Honour Warranty

Source of data: Tarion Warranty Corporation

Builder Does Not:	Tarion Pays a Maximum of:
return deposit	\$100,000 for freehold home, \$20,000 for condo unit ¹
finish construction of a contract home ²	\$40,000
compensate for late closing or occupancy	\$7,500
Builder Does Not Honour 1- to 7-Year Warranty (see Figure 1)	Tarion Pays a Maximum of:
freehold home/condo unit	\$300,000
condo common element	\$2.5 million ³
entire condo building (including all units and common elements)	\$50 million

1. Condominium purchases are protected under the *Condominium Act, 1995*, which requires builders to place the full amount of deposits into a trust account.
2. A contract home is one built on land already owned by the homeowner. If the home is not completed, Tarion pays the homeowner the difference between the value of the work and materials provided and what was paid by the homeowner.
3. The maximum compensation for a condo common element is the lesser of \$2.5 million or \$50,000 times the number of units.

homeowner without Tarion's intervention. The agency did, however, get involved with about 1,600 homeowners. It paid out \$17.4 million to about 800 of them in compensation or for repairs after it determined that builders either failed to honour their warranties or declared bankruptcy. **Figure 6** provides statistics on Tarion's dispute resolution process.

The Act does not apply to buildings constructed for commercial purposes or to homes for builders' personal use.

As of December 2018, there were about 5,600 licensed builders in Ontario. Under the Act, every builder must be licensed by Tarion. To be licensed, builders must:

- have technical competence in home construction;
- be financially responsible; and
- operate according to the law and with honesty and integrity, honouring their warranty obligations.

Builders pay a licensing fee to Tarion each year, and further pay to register every new home with Tarion prior to the start of construction. Tarion

also requires builders to pay a refundable security deposit based on a risk assessment of the builder conducted by Tarion.

Tarion receives no funding from the province; it derives its income primarily from fees paid by builders, as illustrated in **Figure 7**.

Tarion had revenues of \$46.6 million in 2018, and its expenditures exceeded \$55 million the same year, with **Figure 7** illustrating spending by category over the last five years.

The Act also requires Tarion to maintain a sufficient amount of money in its Guarantee Fund (Fund) to provide financial compensation to homeowners whose builders fail to honour their warranty, refuse to return deposits for unbuilt homes, or fail to provide compensation for late completion. As of December 31, 2018, Tarion had about \$592 million in the Fund, which is managed by external investment firms.

Tarion maintains and updates a publicly accessible online Ontario Builder Directory (Directory), which lists the names and contact information of all builders and their current licence status (active or non-active).

Figure 6: Tarion's Dispute Resolution Process Statistics

Source of data: Tarion Warranty Corporation

	2014	2015	2016	2017	2018	Total
# of homeowner requests for assistance received by Tarion	59,337	60,575	63,087	63,952	69,573	316,524
# of assessments completed by Tarion ¹	1,079	1,290	1,207	1,301	1,608	6,485
Home inspections	988	1,150	1,100	1,223	1,502	5,963
Desk assessments ²	91	140	107	78	106	522
# of assessments where Tarion sided with the homeowner	654	784	744	889	1,062	4,133
# of Ontario Building Code violations found by Tarion ³	53	62	42	59	100	316
# of homes where Tarion provided compensation on behalf of the builder	477	657	721	638	805	3,298
Amount paid to homeowners ⁴ (\$ million) (A)	9.9	11.6	13.1	13.6	17.4	65.6
Amount recovered from builders (\$ million) (B)	3.2	3.6	3.3	4.5	4.6	19.2
Amount not recovered (\$ million) (A-B)	6.7	8.0	9.8	9.1	12.8	46.4

1. Assessments completed by Tarion may relate to a form listing defect(s) submitted in prior years.

2. Disputes that do not require a physical inspection by Tarion. For example, a dispute over delayed closing or deposit issues.

3. During a Tarion inspection.

4. Amount includes cash compensation directly provided to homeowners and costs of hiring tradespeople to perform warrantied work.

Figure 7: Tarion Revenues and Expenses by Category, 2014–2018 (\$ million)

Source of data: Tarion Warranty Corporation

	2014	2015	2016	2017	2018
Revenue					
Home enrolment fees	28.0	32.9	37.5	44.1	46.7
Builder licensing fees	3.3	3.5	3.4	3.2	3.2
Investment and other income	22.9	10.8	32.5	23.6	(3.4)*
Total Revenue	54.1	47.2	73.4	70.8	46.6
Expenses					
Net claims incurred	4.9	6.2	10.2	6.6	10.5
Salaries and benefits	24.3	24.8	25.0	26.5	27.9
General administrative	10.5	11.5	11.8	13.0	13.7
Depreciation and Interest	3.7	3.4	2.7	2.6	3.3
Total Expenses	43.3	45.9	49.6	48.6	55.3
Excess of Revenue Over Expenses	10.8	1.3	23.8	22.2	(8.7)

Note: Total may not add up due to rounding.

* The \$3.4 million loss on investment and other income consists of unrealized losses on stocks, net of interest and dividend income.

The Directory also contains a 10-year history of new homes constructed by each builder and the amount of money Tarion has had to pay to homeowners to compensate for the builder's refusal to honour a warranty.

2.2 Tarion's Authority and Organizational Structure

Tarion continues to have the power to write its own regulations, making it unique among Ontario's 12 delegated administrative authorities—agencies outside of central government that the government has made responsible for enforcing certain consumer-protection laws.

This means that for the first 40 years of its existence, Tarion had the authority to decide how to regulate builders, how to handle disputes between homeowners and their builders, and what rules the parties would have to follow. Only since 2017 did the government begin to take a more directive role by requiring Tarion to seek approval from the Minister in certain areas.

For instance, Tarion effectively sets the warranty coverage that builders must provide on new homes, and the maximum compensation amounts to homeowners. Since its inception, Tarion has made

a number of changes to builder warranties and its regulatory processes. We describe these and other important past changes in **Appendix 1**.

Tarion is overseen by a 16-member board of directors, with distribution of seats listed in **Appendix 2**. Tarion employs about 260 people, most of them responsible for addressing warranty disputes between homeowners and builders, and for issuing and renewing builder licenses. **Appendix 3** illustrates Tarion's organizational structure as of June 30, 2019. Tarion also has a Consumer Advisory Council. Tarion established the Council in 2011, although a committee with a similar mandate existed for a time a few years earlier. The terms of reference for the Council indicate that the Council's role is advisory; it is to provide advice from a homebuyer's perspective on proposed Tarion warranty changes. Its membership is to include homeowners, individuals such as real estate agents and real estate lawyers whose clients are homeowners, building science experts, and consumer advocates. It reports to the Board's Consumer Committee. We observed that in fall 2018 (during our audit), five of the Council's 13 positions (not including the Chair) were vacant. These included two out of four positions intended for homeowners.

In 2010, the Ministry established an accountability agreement with Tarion. The Ministry is ultimately responsible for monitoring whether Tarion fulfills its mandate and can recommend legislative and regulatory changes to the Ontario government.

There have been two major legislative changes since 2017 intended to reform Tarion, but key changes had not been implemented at the time of our audit.

In 2019, the government announced a number of legislative changes, outlined in **Section 4.3**, that affect Tarion and the administration of the new-home warranty plan. At the completion of our audit on June 30, 2019, not all of these changes were in effect.

2.3 Tarion's Dispute-Resolution Process

Homeowners may ask Tarion for help with defects in their homes covered by a one-year warranty only within two 30-day windows in that first year (unless the defect needs to be urgently attended to, in which case it can be reported anytime during the first year). Defects covered by two- three- and seven-year warranties can be reported at any time during those warranties.

Under the Act, builders are responsible for resolving warranty claims directly with homeowners. However, if a dispute arises between them—the builder refuses to resolve the claim, for example, or is taking too long to make agreed-upon repairs—the homeowner can ask Tarion for help by submitting a claim form. Once the homeowner submits the form, it goes through a dispute-resolution process described in **Figure 8**.

Homeowners not satisfied with a Tarion decision may take their case to the Licence Appeal Tribunal (Tribunal), an independent administrative tribunal that adjudicates in certain areas regulated by the Province. They can also take their builder to court.

2.4 Internal Ombudsperson

In 2008, Tarion established an internal Ombudsperson Office, reporting directly to the Board of Directors, to investigate and resolve complaints from homeowners who believe Tarion has treated them unfairly.

The Ombudsperson has no power to resolve warranty disputes between homeowners and builders. However, with the homeowner's consent, it can review how Tarion handled the dispute, and assess whether Tarion's resolution was fair and based on complete and relevant information. The Ombudsperson makes non-binding recommendations to management and to the board about Tarion's dispute-resolution and builder-licensing processes.

2.5 Investigation and Prosecution of Illegal Builders

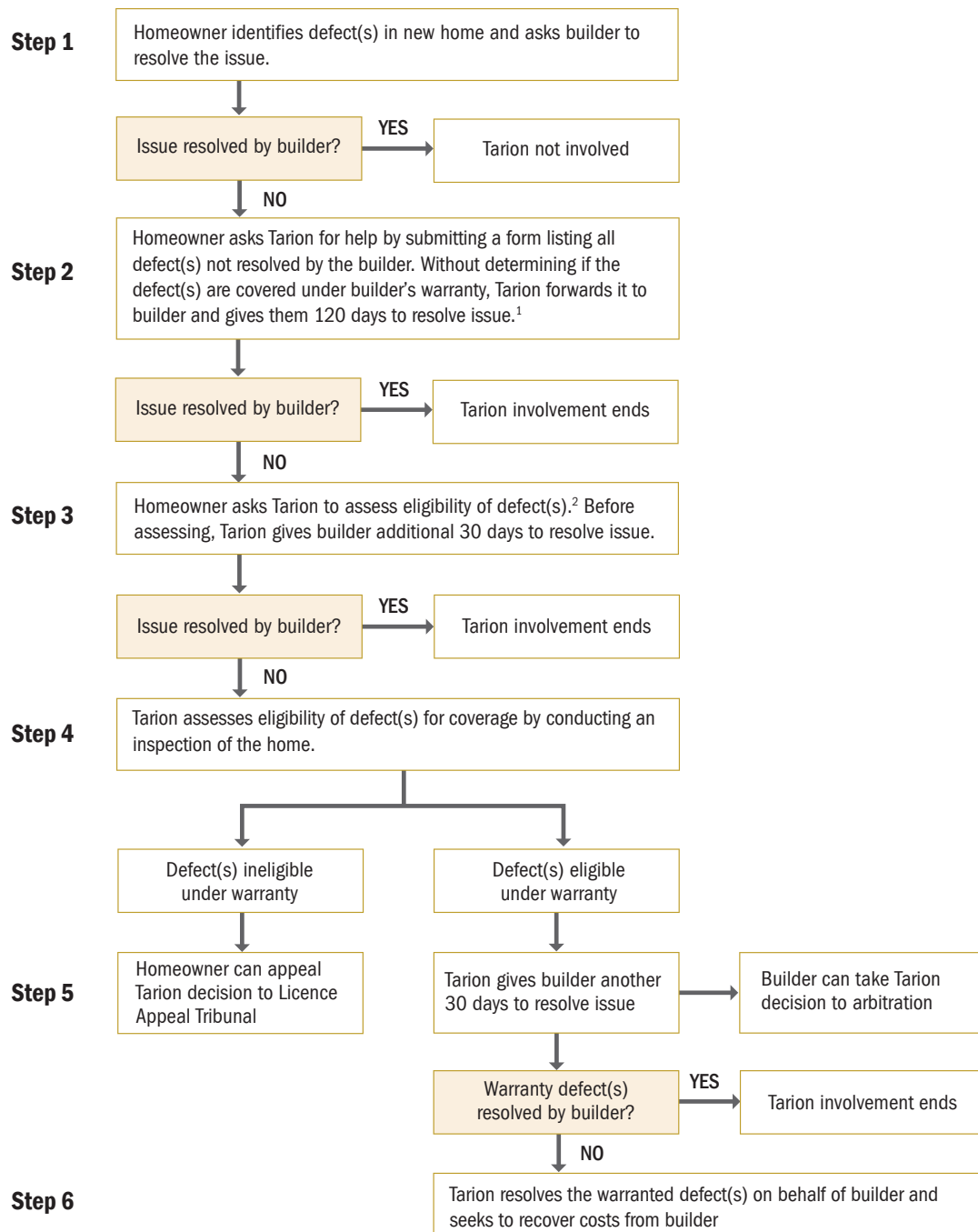
It is illegal to build and sell a home in Ontario unless the builder is licensed by Tarion and the home has been enrolled with Tarion prior to the start of construction.

Tarion relies primarily on tips from homeowners, other builders and municipalities to identify and investigate illegal construction. Certain Tarion employees are designated as Provincial Offences Officers and have the power to prosecute illegal builders. In 2018, there were 116 convictions in provincial courts for illegal building, and fines of about \$370,000. Fines go to the municipality where the offence occurred.

The government increased maximum penalties for illegal building in January 2018, to \$250,000 from \$100,000 for a corporation, and to \$50,000 from \$25,000 for an individual. Individuals can also face imprisonment for up to two years less a day, double the previous maximum of one year.

Figure 8: Tarion's Dispute Resolution Process

Prepared by the Office of the Auditor General of Ontario



1. When homeowner notifies Tarion of major structural defects in years three to seven of their coverage period, Tarion gives the builder 90 days, instead of 120 days, to fix the defect. Further, this process does not apply to emergency cases which are investigated immediately.

2. Homeowner must pay Tarion a \$282.50 fee that is refundable if Tarion finds at least one eligible defect.

3.0 Audit Objective and Scope

On March 21, 2018, the Legislature's Standing Committee on Public Accounts (Committee) passed a motion requesting that the Auditor General conduct a value-for-money audit of Tarion Warranty Corporation (Tarion). The motion was presented following increasing public criticism of Tarion.

We accepted this assignment under Section 17 of the *Auditor General Act*, which states that the Committee can request the Auditor General to perform special assignments. We indicated that we would commence our work in late 2018 as a result of other work under way in our Office. Over the course of our audit, Tarion was co-operative and made complete efforts to provide information requested.

Our audit objective was to assess whether Tarion has effective and efficient processes in place to:

- administer the Ontario *New Home Warranties Plan Act* (Act) in a way that serves and protects homeowners; and
- license and regulate new home builders to ensure that they meet required standards of technical competence and financial capacity and comply with the Act.

In addition, our audit assessed whether the Ministry of Government and Consumer Services (Ministry) has effective oversight processes in place to ensure that Tarion effectively administers the Act, and licenses and regulates new home builders.

In planning our work, we identified the audit criteria, listed in **Appendix 4**, that we would use to address our audit objective. These criteria were established based on a review of applicable legislation, policies and procedures, internal and external studies, and best practices. Senior management at Tarion and the Ministry reviewed and agreed with the suitability of our objectives and associated criteria.

We conducted our audit between November 2018 and June 30, 2019. We obtained written representation from the Ministry and Tarion that,

as of October 25, 2019, they had provided us with all the information they were aware of that could significantly affect the findings or the conclusion of this report. We also examined complaints about Tarion that we received from 15 people.

Our audit work was focused on Tarion's two key functions: ensuring builders honour their warranties, and licensing of builders. Our audit focused on operations over the five years between 2014 and 2018. However, in some areas we analyzed data going back 10 years, to 2009.

In conducting our work, we carried out a detailed examination of Tarion's warranty dispute-resolution process by reviewing policies and procedures, examining claims (including inspection reports), and interviewing key Tarion staff. We also attended on-site home inspections with Tarion inspectors.

To aid in our evaluation of the warranty program, we visited seven municipalities in Ontario—Toronto, Mississauga, Milton, Whitchurch-Stouffville, Barrie, Ottawa and London—and conducted work on an eighth, Bradford West-Gwillimbury, by phone. We met with chief building officials and municipal inspectors to gain an understanding of their inspection practices for new-home construction, as well as the extent of their communications with Tarion. We also met with the Ministry of Municipal Affairs and Housing to understand its role in administering the Ontario Building Code.

In our review of builder licensing, we conducted walkthroughs with Tarion staff to understand the process and reviewed relevant documents. To assist in our understanding of the building industry, we met with the Ontario Home Builders Association and with building industry educators to observe training. We also met with a builder to gain an understanding of the impact of illegal construction in the building industry.

In addition, we collected and analyzed data from Tarion's information systems on warranty disputes, assessment results, licensed builders, and prosecution cases against builders.

To evaluate Tarion's governance structure, we engaged in discussions with current and past members of the Board, and with the Office of the Ombudsperson. We also reviewed Board minutes and reports.

The audit also evaluated the Ministry's oversight function of Tarion's operations and performance through a review of past communications, evaluations, and reports. In addition, we engaged in discussions with key personnel from the Ministry who interact regularly with Tarion.

We conducted research into other jurisdictions, including British Columbia, Alberta and Quebec, to identify and assess best practices.

We retained the services of two professional engineers who are experts in construction and building codes. The experts assisted us in understanding the role of municipalities in enforcing the Ontario Building Code. We also interviewed representatives of various stakeholder groups, including consumer advocates.

We conducted our work and reported on the results of our examination in accordance with the applicable Canadian Standards on Assurance Engagements—Direct Engagements issued by the Auditing and Assurance Standards Board of the Chartered Professional Accountants of Canada. This included obtaining a reasonable level of assurance.

The Office of the Auditor General of Ontario applies the Canadian Standards of Quality Control and, as a result, maintains a comprehensive quality-control system that includes documented policies and procedures with respect to compliance with rules of professional conduct, professional standards and applicable legal and regulatory requirements.

We have complied with the independence and other ethical requirements of the Code of Professional Conduct of the Chartered Professional Accountants of Ontario, which are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.

4.0 Detailed Audit Observations

4.1 Association Representing Builders Heavily Involved In Tarion Decisions

The Ontario Home Builders Association (OHBA) represents the interests of the province's residential homebuilders. Current Tarion policy requires that eight of the 16 directors on its Board be members of and nominated by the OHBA.

In our 2009 audit titled Consumer Protection, we also reported that Tarion engaged in the unusual practice of allowing an OHBA observer, typically its president, to attend all Tarion Board meetings. This practice ended in April 2014, and OHBA observers no longer attend Board meetings.

We also found that Tarion guidelines stipulate that any proposed changes to its regulations require advance consultation with the OHBA. The OHBA also has direct access to Tarion's senior management through a liaison committee that meets regularly to discuss proposed changes to regulations and Tarion operations. The OHBA has also created special groups to further discuss specific proposed changes with Tarion.

Senior management told us that meetings with the liaison committee took place more regularly in the past, but were held more recently on an ad hoc basis, at the call of either Tarion or the OHBA. When we reviewed meeting agendas, we found that a range of topics were discussed, including proposed changes under consideration and discussions about Tarion's operations.

We found that this relationship between the Tarion Board and the OHBA created an imbalance over the years that favoured the interests of builders at the expense of homebuyers. For example, some Board decisions, such as the implementation of the 30-day submission window, made it difficult for homeowners to access Tarion's services when they needed them most, resulting in the denial of

thousands of claims. We also found that a number of policies and rules put in place to oversee builders were lenient; for example, Tarion did not for years factor into its licensing decisions any major structural defects caused by builders, and did not recover from builders the compensation it paid out for those defects prior to issuing licenses to them (see **Section 4.4.3**).

We also noted that Tarion has for years been sponsoring a dinner at the OHBA's annual conference. In the last five years, payments to the OHBA for sponsorship have totalled \$185,000.

RECOMMENDATION 1

So that Tarion Warranty Corporation and any successor organization(s) maintain a balance between the interests of homebuyers and homebuilders (the latter as represented, for example, by the Ontario Home Builders Association), we recommend that:

- the Ministry of Government and Consumer Services formally put in a requirement that no stakeholder group should have any advantage over any other one; and
- Tarion discontinue providing monetary sponsorship to the Ontario Home Builders Association.

TARION RESPONSE

Tarion acknowledges both action items in the recommendation. We will work to support the Ministry with regard to governance and will discontinue providing monetary sponsorship to the Ontario Home Builders Association.

MINISTRY RESPONSE

The Ministry supports the recommendation and recognizes the importance of increasing Tarion's transparency and governance. Changes passed in 2019 allow the Minister to exercise new powers to order that no more than a fixed percentage of board members can be drawn from any given class of persons, as defined in the order.

4.2 Importance of Homebuyers Understanding the Pre-Delivery Home Inspection Process

4.2.1 Homebuyers Given Insufficient Time to Understand Importance of Pre-Delivery Home Inspection

Tarion requires a Pre-Delivery Inspection (PDI) report of a new home conducted jointly by the builder and the homebuyer so that the homebuyer can examine thoroughly the interior and exterior of their new home and document any defects prior to taking possession. This is important because the warranty does not cover damages caused by the homeowner or the normal use of the home after possession—and noting an item on the PDI is the best way to prove later that it was not caused by the homeowner after possession.

Tarion uses the PDI report as evidence when resolving homeowner disputes with the builder, especially when making a decision on items that are missing, damaged, incomplete, or not operating properly. However, it does not formally recognize the PDI as a claim.

We also found that, as a matter of policy, Tarion allows builders to give homeowners the Homeowner Information Package, which explains their rights, the builder's obligations and Tarion's role, as late as the day of the PDI. This leaves little time for homebuyers to familiarize themselves with the Package, which is more than 40 pages long. Tarion told us that in 2003, it began mailing out letters reminding homeowners to read thoroughly the Homeowner Information Package, which is also available on Tarion's website. However, we found that Tarion mails out the reminder letters only after homebuyers take possession of the home, which happens after the PDI.

Despite the fact that homeowners may not have had enough time to learn their rights, Tarion ruled in favour of builders regarding 2,700 defects brought forward by homeowners between 2014 and 2018 because the defects were not documented in the PDI report, and there was no other evidence

to suggest that the defects were not the result of normal wear and tear or use of the home after occupancy.

We also found that Tarion did not check whether builders were even providing the Homeowner Information Package to new home buyers as required by law. In our review of complaints, we noted that homeowners cited tactics used by builders to undermine the PDI process, including:

- builders rushed the PDI without giving homeowners sufficient time to thoroughly inspect the home;
- PDIs were conducted before the home was substantially completed—in one case before the hardwood floor, garage door and shower had been installed;
- completing the PDI without the homeowner present, or on the day of closing, or after the homeowner had moved in; and
- builders inaccurately documented defects on PDI reports.

RECOMMENDATION 2

To ensure homebuyers receive sufficient time to familiarize themselves with the Homeowner Information Package so they understand the importance of the Pre-Delivery Inspection (PDI), we recommend that Tarion Warranty Corporation:

- require builders to inform homebuyers about the importance of the PDI and provide them with the Homeowner Information Package at the time the purchase agreement for the home is signed;
- conduct random audits of builders to ensure that they comply with the above requirement or survey homebuyers to confirm builders are complying; and
- send out letters to homebuyers, before their occupancy date, reminding them about the importance of conducting the PDI.

TARION RESPONSE

Tarion accepts the recommendation and acknowledges the importance of communicating the function of the Pre-Delivery Inspection (PDI) to homebuyers. We will work with the Ministry to require builders to inform homebuyers of this at the time the purchase agreement for the home is signed. We will also develop policies for compliance audits and develop an effective means to proactively remind homebuyers of the importance of the PDI before occupancy.

4.2.2 Information Provided by Tarion Could Confuse Homebuyers About Tarion's Role

We found that the information provided by Tarion to homeowners about its role in administering new-home warranties could be confusing to some. Even the agency's name—Tarion Warranty Corporation—could lead some consumers to believe that the warranty on their home is provided by Tarion rather than the builder.

Tarion's Homeowner Information Package (Package) is one of the main sources of information for homebuyers about their warranty rights and Tarion.

The Package states that every new home in Ontario is “protected by mandatory warranties provided by your builder and backed by Tarion,” and that Tarion works “with homeowners and builders to help resolve disputes about statutory warranty coverage, however, Tarion only becomes involved in a claim at a homeowner's request.”

The Package goes on to state that homeowners will lose their warranty rights if they do not submit their “warranty claims” to Tarion as well as to the builder. This could confuse or misguide homeowners, who in fact have the right to ask their builder to fix a defect at any time. Missing a Tarion deadline does not mean the homeowner loses warranty coverage; it does currently mean, however, that Tarion will not accept requests for help or hold the builder accountable for its warranty obligation.

Under the Act, Tarion’s role is to make sure that builders honour their warranty, and to assist homeowners with their warranty disputes. Tarion does not provide the warranty—that is the builders’ responsibility. We therefore question why Tarion uses the term “warranty claims” to describe homeowners’ requests for Tarion’s assistance. This may lead some homeowners to believe that Tarion, rather than the builder, provides the warranty.

RECOMMENDATION 3

To provide homebuyers with less confusing information on new-home warranties and their rights, we recommend that Tarion Warranty Corporation clearly explain in its Homeowner Information Package and its other publications:

- the respective roles and responsibilities of builders and Tarion;
- that homeowners should submit warranty claims directly to their builders, not Tarion; and
- that Tarion’s role is to hold builders accountable for addressing unresolved homeowner warranty claims to builders; and
- that homeowners do not lose their warranty rights with the builder if they do not ask Tarion for assistance.

TARION RESPONSE

Tarion accepts the recommendation, and we will develop and implement clearer communications that capture the elements identified in this recommendation.

RECOMMENDATION 4

To eliminate any potential confusion about the role of Tarion Warranty Corporation, we recommend that Tarion either eliminate the word “Warranty” from its name or select a new less confusing name.

TARION RESPONSE

Tarion will work to resolve any confusion arising from the use of “Warranty” in the organization’s name.

4.2.3 Use of Ontario Building Code Definition of a Finished House Reduces Homeowners’ Warranty Rights

We found that Tarion’s use of the Ontario Building Code’s definition of a finished house/condominium effectively diminishes homeowners’ warranty rights by potentially shortening the warranty coverage period.

A builders’ one-year warranty covers many defects in work and materials, such as scratches on floors, kitchen cupboards, and paint chips. However, builders have the right to initiate their warranty coverage as of the time a house meets the Ontario Building Code’s minimum occupancy requirements—which is when a builder can require a homebuyer to take possession of a house.

To meet the Ontario Building Code’s occupancy requirements, builders do not need to install flooring, kitchen cupboards, or tiling; nor do they need to paint the house. Only limited plumbing fixtures must be complete and operational; there must be at least one working washroom and a kitchen sink. No additional bathrooms need to be finished or in working condition.

Thus, some builders could shorten their warranty coverage period by the amount of time it takes them to complete any outstanding work after the day they require the homebuyer to take possession of the unfinished house.

When we asked Tarion why it has not made any changes to ensure homeowners retain their full warranty rights, Tarion told us that it has no official policy to ask builders to extend the warranty for uninstalled items. However, when a warranty dispute arises it does consider each situation on an informal basis.

RECOMMENDATION 5

To better protect homeowners who take occupancy of an unfinished house so that they retain their full and reasonable warranty rights, we recommend that Tarion Warranty Corporation address the issue of warranty coverage beginning before a house is finished by:

- redefining “finished house” for the purposes of homeowners’ warranty rights and coverage period so that the one-year warranty period commences only once the home meets this new definition of a finished house; or
- developing a warranty that will protect homebuyers for unfinished items in their homes once the home has met the minimum occupancy standard, and ensuring that the one-year warranty coverage begins only after the items are finished; or
- working with the relevant ministries to expand what must be completed to meet the minimum occupancy requirement in the Ontario Building Code so that new home buyers are appropriately protected by their warranty rights.

TARION RESPONSE

Tarion accepts the recommendation and will work with the government (including the Ministry of Government and Consumer Services and the Ministry of Municipal Affairs and Housing) on a solution.

4.3 Dispute Resolution Process Difficult for Homeowners

We found that Tarion restricts the times when homeowners may ask for its help in a warranty dispute with builders. This is especially true for items covered by the one-year warranty, which provides coverage for most defects. These restrictions have

effectively made it more difficult for homeowners to seek help from Tarion.

In the first year, the builder’s warranty covers defects such as scratches on floors and doors, damage to roof shingles or drywall, unauthorized substitution of materials, and a builder’s non-compliance with the Ontario Building Code.

At any time during the first year after taking possession of a house, homeowners may report such defects to their builders, who are responsible for resolving all warranty claims. If builders do not repair these defects to the customer’s satisfaction, the homeowner may ask Tarion for help—but only during the first 30 days and last 30 days of the first year of ownership. Tarion does not accept homeowner requests at any other times, unless a defect requires urgent attention; nor does it accept written claims made to builders within those time frames as sufficient to trigger its help. This means, for example, if a homeowner discovers a defect on the 31st day after the date of possession and the builder is not willing to resolve the issue, the homeowner has to wait almost a year before they can ask Tarion for help.

Homeowners who ask Tarion to help them resolve warranty disputes must submit a form with all the outstanding defects within the two 30-day windows. Any forms submitted outside those windows are rejected without any review, regardless of the seriousness of defects listed on the forms.

We asked Tarion how these restrictions for filing claims came to be. It told us that prior to 2003, the claims process was paper-based and homeowners could mail claim forms at any time. However, some would mail in multiple claim forms with the same defects listed on each, making it difficult for Tarion to track duplicate claims and defects. The restrictions were introduced in 2003, Tarion told us, to make the claims process less cumbersome and schedule its work more efficiently.

We question whether this reasoning is still valid, given more than 95% of homeowners request Tarion’s help by submitting a form online.

4.3.1 Requests for Help by Homeowners Dismissed for Missing Tight Deadlines

Over the five years between 2014 and 2018, Tarion rejected about 9,700 requests for help made with regard to first-year warranty issues because they were made outside the two 30-day windows (see **step 2 in Figure 8**). We found that about 6,740, or 70%, of the requests were submitted within a month after the 30-day windows expired, and just over 1,300 of them missed a window by just one day.

We also found that of the 9,700 requests, about 3,150 had no other recourse to deal with their warranty dispute after missing their second 30-day window, effectively ending assistance for items in the one-year warranty. Tarion would not provide assistance if its deadlines were not met, even when the homeowner had applied to the builder—the actual provider of the warranty—within the appropriate timeframes.

We noted that home-warranty programs in Quebec and British Columbia had no such 30-day deadlines in the first year.

4.3.2 Tarion Will Not Accept Updated Lists of Defects from Homeowners

Homeowners are allowed to provide only one listing of unresolved defects to Tarion in each 30-day window of the first-year warranty, and cannot subsequently amend those listings. This means, for example, that a homeowner who has found a new defect or forgotten to add one that was not resolved by the builder, cannot include these in an updated or revised listing of unresolved defects—Tarion accepts only the first listing of defects and rejects all subsequent ones.

4.3.3 Short Deadline for Homeowners to Request an Assessment from Tarion

When homeowners submit a listing of all the outstanding defects any time during the seven year warranty period, Tarion does not review the severity of the defects, or how long they have been outstanding. Instead, it forwards the listing to the builder

with instructions to resolve the listed defects within 120 days (90 days for major structural defects).

If the dispute remains unresolved after 120 days, the homeowner must submit a second request for assistance to Tarion, along with a fee of \$282.50, refundable if Tarion resolves the dispute in favour of the homeowner. This second request leads to a physical inspection of the defects by Tarion.

However, Tarion only allows homeowners a single 30-day window after the 120 days have passed in which to submit this second request—and again, it accepts no late requests (see **step 3 in Figure 8**). Over the past five years, about 800 homeowners who sought help from Tarion at this phase of the process were denied because they missed this 30-day window.

Tarion did not review to determine whether any of the defects that the 800 homeowners reported were serious and/or due to builders' non-compliance with the Ontario Building Code, or if the defects should have been repaired by builders under warranty.

We selected a random sample of 40 homeowners from among the 800 who were denied help after missing the window, and found that 13 reported major issues such as cracks in the basement foundation and water penetration, lack of proper insulation and one Ontario Building Code violation. All such defects are usually eligible for warranty coverage.

The other 27 homeowners reported less serious defects mostly related to poor workmanship and materials, usually covered by warranty. Tarion did not track the fact that these builders did not repair the reported defects after Tarion already asked them once to do it, and it did not use this information in deciding whether to license these builders in the future.

We also noted that in about two-thirds of warranty disputes that reach this stage (see **step 4 in Figure 8**), Tarion finds that builders do not honour their warranty. For example, our analysis of the 6,485 requests that Tarion assessed in the five years from 2014 to 2018 found that about 65% of the time, the builder should have fixed the defects under warranty but did not.

4.3.4 Tarion Gives Builders Too Many Chances to Repair Defects Before Stepping In

As previously noted, after Tarion receives a request for help from a homeowner, it gives the builder 120 days to resolve the issues directly with the homeowner. This means the homeowner has to wait a minimum of four months before they can ask Tarion for an inspection to assess unresolved defects.

When Tarion accepts a homeowner's second request for assistance, it sends another email to the builder asking them to resolve the dispute within 30 days. After 30 days, if it is not resolved, Tarion may inspect the disputed defects and decide within yet another 30 days if the builder should have repaired them under warranty. **Figure 9** shows the time it can take for homeowners to receive help from Tarion.

We identified these repeated extensions to builders as the principal reason why it takes an average of about seven months for Tarion to assess unresolved defects and issue a decision on whether they are covered by a warranty.

RECOMMENDATION 6

To improve homeowners' ability to seek assistance from Tarion Warranty Corporation when they have a warranty dispute with their builder, we recommend that Tarion:

- remove its two 30-day deadlines and allow homeowners to submit requests for assistance at any time during the first year of ownership;
- eliminate the 30-day deadline to request a home inspection;
- permit homeowners to update their listing of unresolved defects after submitting the initial listing; and
- reduce the amount of time provided to builders to resolve defects before stepping in to help homeowners.

TARION RESPONSE

Tarion acknowledges the recommendation and will work with the Ministry of Government and Consumer Services to revise the Customer Service Standard timelines and improve homeowners' ability to seek assistance from the warranty provider in these areas.

4.3.5 Tarion Misses Its Own 30-Day Deadline for Decisions in Half of Cases

The current regulation requires Tarion to decide if a disputed defect is covered by the builder's warranty within a 30-day period that begins the day after the homeowner has made a request for help during the 30-day window for such requests. This decision is made on the basis of Tarion's inspections (see **step 4** in **Figure 8**).

We found that Tarion was late making this 30-day decision in about 45% of the warranty disputes it handled in the past five years. On average, it took Tarion about 50 days to issue its decision to homeowners in these cases where it had missed its deadline. This further extended the wait for homeowners for their builders to fulfil their warranty obligations.

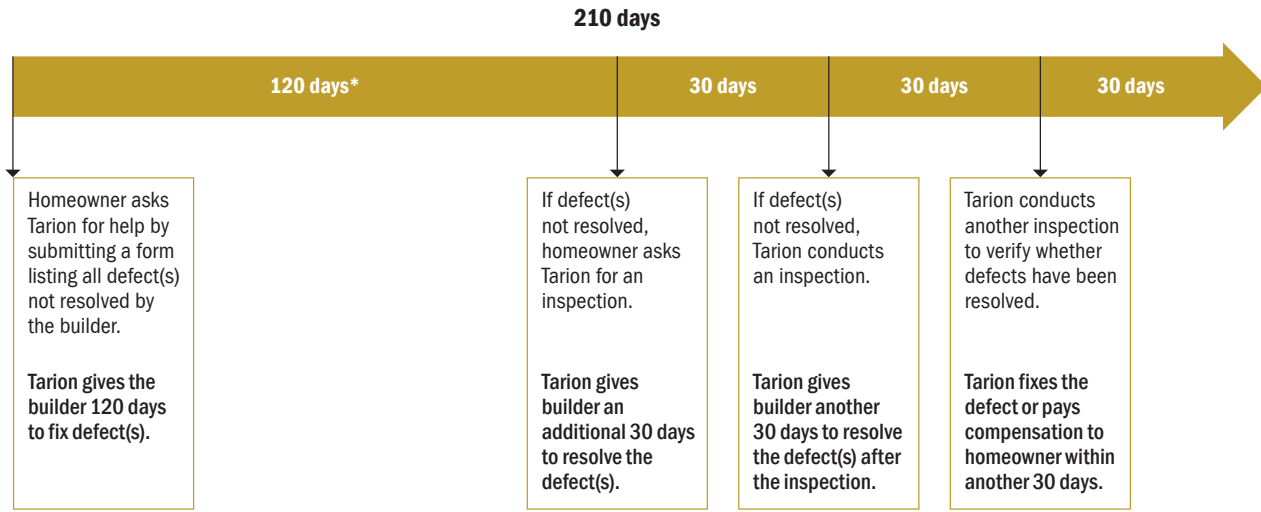
When Tarion sides with the homeowner, builders are given an additional 30 days to resolve the warranty dispute from the date Tarion makes its decision. If the builder still has not honoured the warranty after these 30 days, Tarion will provide financial compensation to the homeowner for the defect the builder should have repaired—or arrange itself for the repair to be made—up to the limits it has specified.

Under this timetable, it is conceivable that having repairs made by the builder, or receiving compensation from Tarion, could take 210 days—longer if Tarion is late.

Tarion told us that in some cases it has to engage an expert to assist in assessing the defect, which can prolong even further the time it takes to issue a decision.

Figure 9a: Timeline for Homeowner Seeking Tarion’s Help to Fix a Defect (Year 1 to 7)

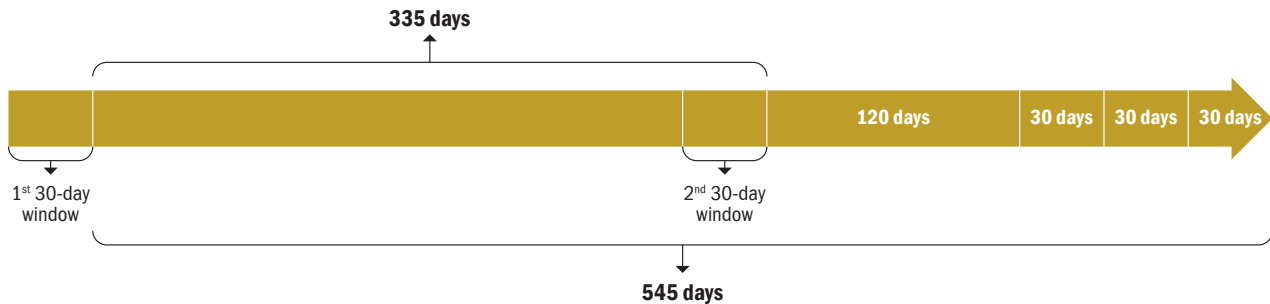
Prepared by the Office of the Auditor General of Ontario



Note: When homeowner notifies Tarion of major structural defects in years three to seven of their coverage period, Tarion gives the builder 90 days, instead of 120 days, to fix the defect. Further, this timeline does not apply to emergency cases which are investigated immediately.

Figure 9b: Timeline if a Homeowner Misses the First 30-Day Window to Request Help from Tarion for Defects Under Year 1 Coverage

Prepared by the Office of the Auditor General of Ontario



Note: If a homeowner misses the first 30-day window to request help from Tarion, the homeowner has to wait 335 days for the second 30-day window to start the Tarion process outlined in the timeline above. As a result, the Tarion process for a homeowner who misses the first 30-day window can take 545 days or more to resolve a defect covered under the first year warranty.

RECOMMENDATION 7

To resolve homeowners’ disputes with their builders in a timely manner, we recommend that Tarion Warranty Corporation:

- review its regulatory timelines for delivery of decisions to ensure they are reasonable;

- establish a process to ensure its decisions regarding homeowners and builders are made within the required time; and
- promptly notify homeowners and builders in writing of the reasons for a delay if Tarion is unable to meet its own deadline.

TARION RESPONSE

Tarion accepts the recommendation, and will work to develop a process to ensure its decisions regarding homeowners and builders are made within the required 30 days, and will promptly notify homeowners and builders in writing of the reason for a delay if Tarion is unable to meet its own 30-day deadline.

4.3.6 Appealing Tarion Decisions Could Be Costly and Time-Consuming for Homeowners

There is no simple process for homeowners to appeal a Tarion decision; instead, homeowners have the option of going before the Licence Appeal Tribunal (Tribunal), an independent government body, or pursuing a costly civil case against their builder in court. The appeal process at the Tribunal is similar to that of a court in that each party submits their evidence in an adversarial format.

Homeowners can appeal Tarion's decision before the Tribunal by paying \$100. When the case goes to full hearing, homeowners often have to incur the costs of providing expert reports to prove their case, which range anywhere from \$5,000 to \$10,000. For example, the onus is on the homeowner to establish that a warranted defect exists and that damages have been suffered as a result. Homeowners have for years complained to the Min-

istry and Tarion that appeals to the Tribunal or to a court are prohibitively expensive.

In addition, whereas many homeowners represent themselves at the Tribunal, Tarion is represented either by staff lawyers or external counsel; both have extensive experience with the Tribunal process. Tarion also has the financial resources to hire experts. Builders are also represented by their lawyers, if they choose to participate in the appeal.

We also noted that about 146, or 80%, of appeals brought by homeowners to the Tribunal between 2014 and 2018 were settled by Tarion before the full hearing. **Figure 10** provides the number of Tarion assessments appealed to the Tribunal.

We questioned why Tarion did not offer homeowners an impartial appeals process to challenge its decisions that could cost them less money and time, given that about 80% of appeals are settled by Tarion after decisions are appealed but before the cases are heard at the Tribunal. Tarion's Office of the Ombudsperson, for example, already reviews decisions challenged by homeowners. Although it currently has no power to change decisions, it could potentially be redesigned to perform this function.

RECOMMENDATION 8

For homeowners to have access to more timely and cost-effective ways to appeal decisions of Tarion Warranty Corporation, and given that about 80% of appeals are settled by Tarion after

Figure 10: Tarion's Assessments Appealed to Licence Appeal Tribunal (LAT)

Source of data: Tarion Warranty Corporation

	2014	2015	2016	2017	2018
# of assessments completed by Tarion	1,079	1,290	1,207	1,301	1,608
# of assessments appealed by homeowners to LAT	104	80	60	66	68
# of cases withdrawn ¹	48	45	26	14	17
# of cases settled prior to LAT hearing	35	28	23	39	21
# of cases proceeded to hearing ²	20	5	9	7	0
# of ongoing cases ³	1	2	2	6	30

1. These cases were either withdrawn by homeowners, Tarion or LAT. A majority of these cases were withdrawn by homeowners.

2. Only four of the 41 cases were ruled in favour of homeowners.

3. These cases were ongoing at the time of our audit.

decisions are appealed but before the cases are heard at the Licence Appeal Tribunal, we recommend that Tarion implement an internal appeal process that allows for simpler, less costly and homeowner-friendly appeals before requiring homeowners to go before the Licence Appeal Tribunal or a court. For example, Tarion could consider creating an appeal mechanism through its internal Ombudsperson's Office.

TARION RESPONSE

Tarion accepts the recommendation and will work to implement an appeal process that homeowners can access before going to the Licence Appeal Tribunal. In doing so, we will assess alternatives such as expanding the role of the Ombudsperson's Office.

4.4 Licensing and Regulating of Builders Needs Improvement

In addition to enforcing builder warranties, Tarion's other major responsibility is the licensing of builders. According to the Act, anyone in Ontario who wants to build a new house is entitled to a licence if they can demonstrate technical competence in home construction, financial responsibility, that they operate according to the law with honesty and integrity, and that they honour their warranty obligations to homeowners.

These requirements are supposed to protect homebuyers from incompetent or shoddy work. However, we found that Tarion did not always fully investigate whether builders met the requirements before issuing a new or renewed license. We also

found that Tarion has not established any clear and specific criteria to help determine if a builder's license should be restricted or revoked. From 2014 to 2018, Tarion revoked the licences of just 10 builders. **Figure 11** shows the number of licences that Tarion issued or revoked from 2014 to 2018.

4.4.1 Most Licensed Builders and Site Supervisors Not Required to Take Home Construction Courses

Tarion did not ask licence applicants to complete any courses to demonstrate that they have technical competence in home construction until September 2016, when it began requiring that new licensing applicants complete educational courses in areas such as project management, the Ontario Building Code, and legal issues in housing and customer service.

However, builders who received their first licence prior to September 2016 were exempted from this new requirement, meaning that of the 5,600 currently licensed builders in Ontario, only 300 were required to meet the new requirement. Before September 2016, Tarion assessed the technical competency of new applicants by requiring them to take a technical test on home construction and interviewing them, measures which are not as comprehensive as the courses builders are currently required to complete. Tarion also took into consideration the years of experience the applicant has had in construction prior to granting a license. We also noted that only the directors or owners of construction companies are required to complete the educational requirements introduced in

Figure 11: Builder Licences, Revocations and Denials, 2014–2018

Source of data: Tarion Warranty Corporation

Category	2014	2015	2016	2017	2018
# of Licensed Builders*	5,400	5,507	5,551	5,549	5,563
# of Licenses Revoked	3	1	1	3	2
# of Licenses Denied	26	14	33	23	24

* Typically, large builders incorporate a company for each project they undertake and obtain separate licences from Tarion for each company. One builder can therefore hold multiple building licences.

September 2016. However, these individuals may not be directly involved in supervising day-to-day construction, especially in larger companies.

Large builders often employ site supervisors to directly oversee day-to-day construction—but Tarion’s educational requirements do not apply to these site supervisors. These companies build more than 300 homes a year and account for about 75% of all new-home construction.

RECOMMENDATION 9

To ensure the licensing process of Tarion Warranty Corporation reflects the intent of the *Ontario New Home Warranties Plan Act*, we recommend that individuals in homebuilding companies who supervise day-to-day construction, either directly or indirectly via their employer, demonstrate they have the proven technical competence necessary for building new homes or be required to take the appropriate educational courses before being granted a licence by Tarion.

TARION RESPONSE

Tarion accepts the recommendation and will work with the Ministry of Government and Consumer Services and the Home Construction Regulatory Authority to develop appropriate education and regulatory requirements.

4.4.2 Builders’ Poor Warranty Performance Affecting Homeowners Not Always Factored into Licensing Decisions

We found that Tarion did not always factor a builder’s record of poor warranty service into its licensing decisions.

Tarion found that builders did not honour their homeowner warranty in about two-thirds or 4,133 of its 6,485 warranty-dispute decisions between 2014 and 2018 (see **Figure 6**). However, Tarion factored into its licensing decisions only half of these 4,133 cases.

Tarion excluded the other 2,033 cases because builders alleged that homeowners prevented them from honouring their warranty. Tarion has a policy to exempt inspection results from its builder licensing decisions if there is evidence that a homeowner’s actions prevented a builder from honouring a warranty in a timely manner—the homeowner refusing to allow the builder into the home to make a repair, for example, or declining a reasonable cash settlement offer.

Other common circumstances that could prevent a builder from honouring a warranty were:

- a homeowner who had previously indicated they were satisfied with repairs made by the builder;
- a builder not given a reasonable amount of time to conduct repairs; and
- a defect not accurately described by the homeowner, or a new defect discovered during the builder repair period or during Tarion’s inspection.

However, when we reviewed a sample of 75 of the 2,033 warranty dispute cases where builders claimed that homeowners prevented them from honouring their warranty, we were unable to find sufficient support that the homeowner prevented the builder from honouring its warranty obligation in 42 or 56% of them.

We found that in most cases, Tarion was exempting the inspection from consideration in its licensing decision based only on information provided by the builder, without verifying the builder’s explanation directly with the homeowner, as required by Tarion’s own policy.

In six of the 42 disputes, builders told Tarion that homeowners denied them access to conduct repairs. However, Tarion did not check directly with homeowners if any of this was accurate. In another 16, builders told Tarion that homeowners refused to accept a reasonable cash settlement.

It did not, for example, independently verify if the cash settlement offer was reasonable, which would suggest it was made only to give the impression of good faith on the part of the builder.

In one of the 16 disputes, for example, a builder offered a homeowner \$50,000 to settle. The homeowner refused, saying the offer was too low. The builder then refused to honour its warranty and Tarion ended up paying \$110,000 to resolve the dispute. However, we found that Tarion still accepted the original \$50,000 offer from the builder as reasonable, and so excluded the builder's poor warranty record from its licensing decisions.

RECOMMENDATION 10

To ensure builders who do not honour their warranty obligations to homeowners are held accountable and their poor warranty performances are factored into licensing decisions, we recommend that Tarion Warranty Corporation:

- specify what evidence builders must submit to Tarion to request that inspection results be exempted from licensing decisions;
- verify with homeowners any allegations against them by builders in all cases before approving the exemption of an inspection from a licensing decision;
- review and update current policies to provide more guidance to inspectors for making decisions on exemptions, and require that they document their decision; and
- publicly report the number of times each year that approval was given to exempt inspection results from licensing decisions.

TARION RESPONSE

Tarion accepts the recommendation and will develop clearer guidelines, including on what evidence must be submitted, and will ensure that allegations against homeowners will be verified with them before an exemption decision is made. We will also arrange for appropriate disclosure of exemptions.

4.4.3 Licensing Process Ignores Major Structural Defects Caused by Builders

We also found that for years, Tarion had a policy in place to not factor into its licensing decisions any major structural defects caused by builders and to not recover from builders the compensation it paid out for those defects. When Tarion licensed a builder, it did not take into consideration the homes with major structural defects that the builder constructed and sold, and the total cost Tarion incurred to resolve those issues.

Between 2009 and 2018, Tarion paid about \$34 million to about 800 homeowners whose homes had major structural defects, such as large cracks in basement walls, collapsed or serious distortion of framing joints or roof structures, or other issues. Homeowners usually identify and report to Tarion most such defects a few years after their house is built. In essence, builders of these homes faced no financial or licensing consequences for building and selling homes with major structural defects.

In July 2012, Tarion changed its policy to begin including such homes in builders' licensing decisions—but only if the house was sold after July 2012. The year 2012 is significant because homes sold after that year were nearing the end of the seven-year warranty for major structural defects in 2019. This policy was changed because the costs of repairing major structural defects were becoming more expensive over time and had a negative impact on the Guarantee Fund. There was concern from the building industry that it was unfair to have builders with no major defects subsidize those that did. Lastly, the lack of financial accountability meant builders had no incentive to ensure high-quality home construction without major defects.

Even with this policy change, Tarion still does not factor in its licensing decisions the fact that a home with major structural defects was constructed and sold if the builder resolves the defects. Tarion also does not investigate to determine if the cause of the problem was a builder's lack of technical competence, which is another licensing requirement of

the Act. About 130 out of the 800 homes with major structural defects were constructed between 2009 and 2018 by four medium to large builders.

RECOMMENDATION 11

To strengthen the builder licensing program of Tarion Warranty Corporation, we recommend that Tarion revise its procedures to consider all data about a builder's past building-quality and warranty performance when deciding whether to grant a future licence.

TARION RESPONSE

Tarion accepts the recommendation and will adopt a more comprehensive approach to assessing a builder's past building quality and warranty performance when deciding whether to grant a future licence.

4.4.4 Tarion Did Not Check Whether Builders Had Access to Financing

We found that Tarion licensed builders without obtaining evidence to confirm that they have access to the financial resources necessary to complete proposed projects and cover the potential costs of their warranty obligations. They were required only to mark a checkbox on their application form (which each builder in our sample of 20 licence applications had done) to indicate that they had access to financial resources.

In fact, licence applicants are not required to submit to Tarion any specific documents, for instance a letter from a financial institution, which would confirm they have access to financial resources. In addition, Tarion does not seek out any evidence about whether licensed builders have access to financial resources when they request Tarion's approval for an expansion of their project.

In August 2018, for example, a builder cancelled its 1,633-unit condominium project in Vaughan, citing lack of available financing. The cancellation

occurred just eight months after Tarion approved one of this builder's three separate requests to expand the project, from 1,148 units to a final total of 1,633, and about 18 months after the builder began pre-selling units in February 2017 at an average price of \$375,000.

By August 2018, when the builder cancelled the project, real-estate market data showed that condominium prices in Vaughan had increased by an average of almost 20%. This suggested that some early buyers appeared to have potentially lost around \$70,000 in price appreciation after their unit was cancelled—and their deposit was fully refunded.

Tarion told us that it is not practical to ask licence applicants to submit documents confirming that they have access to sufficient financing because builders usually cannot get financing from a lender without first being licensed by Tarion. However, neither Tarion nor the Ministry have attempted to update this legislated licencing requirement, which has been in place for over 40 years.

According to Tarion, over the 10 years between 2009 and 2018, builders in Ontario cancelled 460 condominium projects accounting for about 33,850 units. We were unable to determine how many of these projects were cancelled for financial reasons because Tarion did not previously collect that information. Tarion began asking builders for reasons and supporting documents for cancelling condominium projects only in 2018, after a series of cancellations occurred that affected many purchasers. Since then, 25 were cancelled, and seven of the 25 cancellations were attributed to financial reasons.

RECOMMENDATION 12

To confirm that licensed builders have access to the financial resources necessary to complete proposed projects and cover the potential costs of their warranty obligations, we recommend Tarion Warranty Corporation:

- conduct a review to identify the best available external evidence that builders should provide when applying for a licence to

establish that they have the financial means to complete proposed projects and honour their warranty obligations;

- review all reasons leading to the cancellation of construction projects and factor these reasons into future licensing decisions; and
- always collect and review the required external evidence from builders before making a licensing decision.

TARION RESPONSE

Tarion accepts the recommendation and will improve the builder registration and approval process.

4.4.5 Tarion Did Not Verify Builders' Legal Permissions to Develop Land

Tarion did no review to determine whether there were any restrictions on land that builders proposed to develop that could prevent or delay construction.

In our sample of 20 licence applications (10 new and 10 renewals) that Tarion granted between 2016 and 2018, there was no documentation to show that Tarion had checked whether the builders had researched for land restrictions.

Applicants also did not need to submit any documents, such as a land registry search, which would confirm there are no restrictions on the land that would delay or prevent them from commencing construction.

There are no laws in Ontario requiring builders to have the necessary municipal approvals, such as site plan and zoning approvals, before they can be licensed by Tarion. In comparison, builders in British Columbia are not allowed to market or sell condominium units unless they have already deposited certain plans with the land title office or already obtained a municipal building permit.

In February 2019, the government asked Tarion to work with the Condominium Authority of Ontario (Authority), another provincial delegated administrative authority, to better inform consum-

ers of the potential risks associated with buying pre-construction condominiums. The Authority was established by the government in 2017 to provide services and resources for condominium owners, residents and directors.

By February 2020, Tarion must ask builders to add new disclosures on their standard purchase and sale-agreement forms about issues that could cause cancellation of a condominium project.

RECOMMENDATION 13

To better protect consumers from purchasing pre-construction homes that may later be cancelled and/or delayed by legal restrictions on construction land, we recommend that Tarion Warranty Corporation:

- undertake a study to identify the types of construction project that would require a review of land title;
- either obtain from the builder a title search for those high-risk proposed construction projects and review it or require the builder to provide a third-party certification of this information; and
- establish a process to disclose publicly any restrictions found during the review that could delay or cancel the construction project.

TARION RESPONSE

Tarion accepts the recommendation and will implement a process for the collection, review and disclosure where appropriate of land-registry information.

RECOMMENDATION 14

To better protect consumers from purchasing pre-construction homes that may later be cancelled and/or delayed by legal restrictions on construction land, we recommend that the Ministry of Government and Consumer

Services explore, for potential implementation in Ontario, British Columbia's practice of not allowing builders to market or sell condominium units unless they have already deposited their plans with the land title office or have already obtained a municipal building permit.

MINISTRY RESPONSE

The Ministry will work with the Ministry of Municipal Affairs and Housing to review British Columbia's practices regarding the marketing and selling of condominium units to determine lessons for Ontario within the province's overall goals for increasing housing supply and improving housing affordability.

4.4.6 No Action Against Builders in Majority of Complaints

From 2014 to 2018, Tarion investigated 149 of 190 complaints received in which homeowners alleged that their builders broke the law or were dishonest, or that their actions lacked integrity. **Figure 12** shows the status as of June 30, 2019 of investigation into complaints received against builders between 2014 and 2018.

About 80% of the investigations into these complaints cleared the builders. Tarion staff who conducted the investigations told us that it was difficult to determine when builders acted dishonestly or without integrity because Tarion had no code of conduct to define these terms.

As a result, Tarion took no action against the builders. Tarion did not consider the seriousness of these allegations when it renewed builders'

licences; nor had it established a builders' code of conduct to define the actions and behaviours that would constitute dishonest conduct and lack of integrity. As a result, it was difficult to verify whether the allegations were founded.

We also found that, as of June 30, 2019, there was a backlog of 41 complaints received in the five-year period from 2014 to 2018 that had not been investigated. All complaints were outstanding for more than six months, with some dating back to early 2017. Tarion told us the backlog was due to limited staffing resources. When allegations of inappropriate behaviour are not investigated by Tarion on a timely basis, this information is not available to be considered in renewing a builder's license to put up new homes.

Tarion did flag five of the allegations as very serious, including one where a builder refused to make emergency repairs that required immediate attention, and another where a homeowner alleged that a builder broke the law by not having Workers Safety Insurance Board (WSIB) coverage for sub-contractors, and by building homes without a Notice of Project from the Ministry of Labour, both mandatory by law.

At the time of the completion of our field work in June 2019, Tarion had yet to investigate these allegations or forward them to the WSIB and the Ministry of Labour—but it nonetheless renewed the builder's licence in January 2019 despite the serious allegations, which appeared to us to potentially have merit. During the course of our audit, we asked Tarion to immediately notify the WSIB and the Ministry of Labour, which Tarion did in September 2019.

We also found that at the same time that Tarion renewed this builder's licence in January 2019,

Figure 12: Status* of Investigations into Complaints Received against Builders, 2014–2018

Source of data: Tarion Warranty Corporation

	2014	2015	2016	2017	2018	Total
# of complaints received	24	39	38	47	42	190
# of complaints investigated *	24	39	38	40	8	149
# of complaints not yet investigated	0	0	0	7	34	41

* As of June 30, 2019.

it was still trying through the court to recover \$520,000 from it for failing to honour its warranties. This failure forced Tarion to compensate homeowners for a number of serious defects in this builder's homes, including two where sinking foundations caused the roof to detach from the walls. Tarion told us that it would be unfair to use its licensing power to force collection payments from builders. We also noted that when Tarion renewed this builder's license, two new houses were approved to be built and Tarion chose to collect no security.

RECOMMENDATION 15

To ensure homeowners' complaints against builders are properly investigated, we recommend that Tarion Warranty Corporation:

- establish and release publicly a builder code of conduct that clearly defines actions and behaviours by builders that would constitute dishonest conduct and/or lack of ethics and integrity;
- establish clear consequences for builders who breach the code of conduct;
- commit sufficient staff resources to initiate and complete investigations into all homeowners' complaints against builders on a timely basis; and
- take into account relevant information in re-licensing decisions for builder code-of-conduct violations.

TARION RESPONSE

Tarion accepts the recommendation and will work with the Ministry of Government and Consumer Services and the newly created Home Construction Regulatory Authority to determine the best approach to implementation.

4.4.7 Tarion Established No Clear Criteria for Licence Restriction or Revocation

From 2014 to 2018, Tarion found 316 defects caused by builders' non-compliance with the Ontario Building Code (Code) (see **Figure 6**), which sets minimum standards for structural safety, fire protection, and materials for the design and construction of homes in Ontario. However, Tarion does not have clear or specific criteria to determine how many Code violations have to occur before a builder's licence is revoked or restricted.

Under the Act, Tarion can inspect houses and townhouses at the time of construction to assess whether builders are in compliance with the Code (with respect to high-rise condominiums, Tarion policy requires reports from experts at regular intervals). Tarion could therefore make compliance with the Code a licensing requirement for builders, and conduct risk-based inspections of homes built by those who have had Code violations in the past. However, historically, Tarion has not done these types of risk-based inspections.

We also found that builders whose licence Tarion revoked could continue to operate by setting up new companies or partnering with other builders.

In February 2015, for example, Tarion revoked the licence of a builder for taking and later refusing to refund about \$1.5 million in deposits from homebuyers. Tarion reimbursed homebuyers for the full \$1.5 million. The same builder also constructed 136 homes with defects, later refusing to fix them under warranty, which cost Tarion another \$500,000 to resolve.

We found that in May 2016, Tarion licensed a new company owned by a close family member of the owner of the company whose licence Tarion revoked. This individual was listed as an acting director of the newly licensed company for a short time.

Tarion told us that there is nothing in the Act that prohibits a relative of a principal of a builder with a bad history under Tarion from obtaining a licence for a new building company based on their

own merits. During our audit, the government was in the process of moving forward on legislation to address this issue by permitting consideration of a wider range of associated persons.

RECOMMENDATION 16

To strengthen the builder-licensing process to protect homebuyers so that new homes are constructed in accordance with the Ontario Building Code, and to minimize warranty issues related to the Code, we recommend that Tarion Warranty Corporation:

- establish clear and specific criteria to help determine when a builder's licence should be restricted or revoked for Code violations; and
- implement a risk-based inspection process to inspect homes for compliance with the Code during construction.

TARION RESPONSE

Tarion accepts the recommendation and will develop clear criteria with respect to the impact on a builder's licensing of Building Code violations and will also implement a risk-based inspection process for code compliance during construction.

4.4.8 Municipal Inspections for Ontario Building Code Issues are Limited

During our audit, we found limitations in Code inspections conducted by municipal inspectors, whose role is to inspect new home construction and assess compliance with the Code.

To understand the municipal inspection process, we visited seven municipalities—Toronto, Mississauga, Milton, Whitchurch-Stouffville, Barrie, Ottawa, and London—and spoke to officials of Bradford West-Gwillimbury by phone. We also consulted our experts, who told us that municipal inspectors are only called in upon substantial completion of specific stages of construction as it would not be practical for them to observe construction on a daily basis.

As a result, there is reliance on the builder to carry out the work properly and in accordance with the Code.

The municipalities we spoke with also informed us of their challenges in dealing with a general shortage of inspectors. Further, access to relevant parts of a construction site can be a problem—some municipalities, for example, do not allow inspectors to carry ladders because of safety issues. As a result, certain home components such as roof attachment or nuts on anchor bolts may not get inspected as required. We were unable to determine how pervasive this issue is in the province.

Municipalities also told us that Tarion does not share with them any information it has about builders' non-compliance with the Code, even though such information could help them better plan inspections and target specific builders.

RECOMMENDATION 17

To help municipalities plan their inspections and improve builders' compliance with the Ontario Building Code, we recommend that Tarion Warranty Corporation report on a timely basis to municipalities all significant instances of builder non-compliance with the Code that it identifies.

TARION RESPONSE

Tarion accepts the recommendation and will work with relevant ministries to implement a reporting process to municipalities in respect of building code violations that are noted as a result of a warranty-related home inspection or targeted inspection.

RECOMMENDATION 18

To improve builders' compliance with the Ontario Building Code, we recommend that the Ministry of Government and Consumer Services:

- work with the Ministry of Municipal Affairs and Housing to recommend consistent inspection standards for use by all municipalities for assessing compliance with the Ontario Building Code; and
- work with the Ministry of Municipal Affairs and Housing to establish a process for municipalities to report on a timely basis to Tarion all significant instances of builder non-compliance with the Code that it identifies during its inspections.

MINISTRY RESPONSE

The Ministry agrees with the goal of improving compliance with the Ontario Building Code and will work with the Ministry of Municipal Affairs and Housing to address the recommendation.

4.4.9 Tarion Does Not Hold Builders Accountable For Full Cost of Their Warranty Obligations

Builders are supposed to be responsible for the full cost of their warranty obligations. Tarion exists to make sure builders honour their warranty and, as a last resort if builders fail to meet their obligations, to provide homeowners with financial compensation. However, we found that Tarion was not collecting enough security from builders; nor was it holding them accountable for repaying Tarion the costs of the warranty obligations that they failed to honour.

At the time of licensing, Tarion sets the amount of refundable security it collects from builders and/or their guarantors by rating the builder on a risk-based point system—low-risk builders pay little or no security deposit, while high-risk ones pay more. In this way, Tarion can put some money aside to cover the costs of potential warranty obligations that a builder may not honour in the future.

When this happens, and the costs exceed the amount of security collected from the builder, Tarion draws on the Guarantee Fund (Fund) to compensate homeowners for the difference. Tarion

then attempts to collect back this difference from the builder, unless the builder has gone bankrupt.

To the extent that money from the Fund is used to compensate homeowners for the builder's warranty obligations, the costs of resolving those obligations are paid for by all builders and, ultimately, all homebuyers.

Over the last 10 years, Tarion paid about \$127 million out to homeowners from the Guarantee Fund, as shown in **Figure 13**. These payouts were to cover the costs of warranty obligations that builders did not honour (this includes refunds of purchase deposits and compensation for late closings).

In 2003, Tarion increased the maximum amount of compensation that it would pay homeowners whose builders did not honour their warranty. For instance, compensation for unresolved defects increased from \$150,000 to a maximum of \$300,000.

Tarion Still Bases Builder Deposits on 1990s Values

However, to calculate the amount of security deposits required from builders, Tarion still used outdated, lower compensation amounts from the early 1990s. Tarion also uses an average home selling price of \$250,000, significantly below the 2018

Figure 13: Compensation Paid Out to Homeowners from the Guarantee Fund, 2009–2018 (\$ million)

Source of data: Tarion Warranty Corporation

Year	Amount
2009	20.9
2010	17.6
2011	8.4
2012	6.8
2013	7.3
2014	9.9
2015	11.6
2016	13.1
2017	13.6
2018	17.4
Total	126.6

Figure 14: Comparison of Values Used by Tarion to Determine Builder Security Deposits, and Actual Current Values as of December 2018

Source of data: Tarion Warranty Corporation

Key Values	Presently Used by Tarion (\$)	Actual Current Value (\$)	Difference(\$)
Average price of a new freehold home ¹	250,000	648,000	398,000
Maximum compensation for defects ²	150,000	300,000	150,000
Maximum deposit refund	20,000	100,000	80,000
Maximum delayed closing compensation	5,000	7,500	2,500

1. The average home selling price was provided by Tarion.

2. The average compensation homeowners received from Tarion increased from \$3,536 in 2003 to \$8,020 in 2018.

average price of about \$648,000. In **Figure 14**, we contrast the current maximum compensation that homeowners can currently receive with those that Tarion uses to calculate builders' security.

Tarion acknowledged that its risk model used outdated values and that it manually adjusted the security deposit amounts to be collected from builders. However, we found that Tarion had still been systematically collecting less security from builders than required. At the time of our audit, Tarion was holding security from only about 40% of licensed builders.

For example, we reviewed Tarion's 16 biggest settlements with homeowners by dollar value from 2014 to 2018, worth a total of \$5 million. Each homeowner received at least \$150,000 in compensation. However, Tarion was able to recover only \$603,000 of the \$5 million from the 16 builders and their guarantors—the remaining \$4.4 million was never collected from these 16 builders.

Over the past five years, Tarion has on average recovered only about 30 cents on every dollar owed by builders and their guarantors (see **Figure 6**). In addition, as noted previously, for homes sold up until July 2012 that had major structural defects, Tarion, not the builder, almost always paid the full cost of repairs. Tarion was not charging and recovering these costs from builders.

Between 2009 and 2019, Tarion paid \$34 million to about 800 homeowners whose homes had major structural defects. In essence, builders of

these homes faced no financial consequences for building and selling homes with major structural defects up to July 2012, as Tarion covered the full cost of repairs.

RECOMMENDATION 19

To hold builders accountable for the cost of warranty obligations that they do not honour, we recommend that Tarion Warranty Corporation:

- update its security deposit policies and adjust its thresholds for the deposits to more closely align with its risk exposure;
- set collection targets and provide sufficient resources to improve its collections results from builders and their guarantors; and
- publicly report on its collection efforts each year.

TARION RESPONSE

Tarion accepts the recommendation and will update its policies relating to the taking and release of security. We will also set collection targets that meet or exceed comparable industry benchmarks and ensure that appropriate resources are allocated to meet those targets. We will also publicly report annually on collection efforts.

4.4.10 Ontario Builder Directory Missing Critical Data

We found that the Ontario Builder Directory (Directory), compiled by Tarion for public use, was missing information that could help prospective homebuyers make a more informed choice when selecting a builder.

Tarion does not, for example, include in the Directory such available information about a builder's record as:

- results of Tarion investigations that found the builder's behaviour lacked honesty and integrity;
- the number and percentage of homes a builder constructed with major structural defects; and
- the amount of money a builder owes to Tarion that remains unpaid for costs that Tarion paid to homeowners when builders did not honour their warranty responsibilities.

The current Directory also contains language that some prospective homebuyers might find unclear. For example, the number of times a builder has refused to honour their warranty was referred to as "chargeable conciliations."

In addition, Tarion provides no details on how many defects the builder refused to repair that were under warranty, or how many defects were due to the builder's non-compliance with the Ontario Building Code. The Act does not set out a requirement for a Directory or specify what information Tarion is supposed to include.

We also noted that Tarion excluded 2,033 inspections that found warranty issues from 2014 to 2018 from the Directory because builders alleged that homeowners prevented them from honouring their warranty. However, as previously noted, our sample testing of 75 inspections found that 42 of them did not have sufficient evidence to support the builders' assertion. As a result, this raised questions about the accuracy and usefulness of the Directory.

Tarion Does Not Add Information on Builders Convicted for Illegal Building to Ontario Builder Directory

From 2009 to 2018, Tarion convicted 666 individuals for illegal building, either for building without a licence and/or for not enrolling a new home with Tarion. The convictions led to about \$4 million in fines, paid to the municipalities where the offences occurred.

Licensed builders may also engage in illegal building activity by constructing a new home but intentionally failing to register the home with Tarion. However, we found that when Tarion convicts a licensed builder, it does not add this information to the builder's record on the Ontario Builder Directory.

RECOMMENDATION 20

To help homebuyers make more informed choices when selecting a builder, we recommend that Tarion Warranty Corporation add the following information about each licensed builder, all in clear and easy-to-understand language, to the Ontario Builder Directory:

- all results of Tarion investigations that found the builder's behaviour lacked honesty and integrity;
- past convictions for illegal building activities;
- the number and percentage of homes with major structural defects that a builder constructed each year;
- the amount of money a builder owes to Tarion that remains unpaid;
- the number of defects under warranty that a builder refused to repair; and
- the number of defects the builder refused to repair that were due to the builder's non-compliance with the Ontario Building Code.

TARION RESPONSE

Tarion accepts the recommendation and will work to improve disclosure on the Ontario Builder Directory.

4.4.11 Illegal Building Activity Continues

Individuals who build homes for their personal use rather than for sale do not have to obtain a licence or register their home with Tarion. Such properties, called owner-built homes, are not covered by warranty.

Some individuals take advantage of the owner-built home exemption by, for example, declaring on their municipal building permit application that they plan to build a new home for personal use when, in fact, they intend from the start to build and sell the home for a profit.

There are significant financial incentives to build homes illegally. Builders avoid paying Tarion fees (listed in **Appendix 5**) and, sometimes, a significant amount of tax, including HST and, under the principal residence capital gains tax exemption, income tax. All of these costs apply to the sales of new homes, built and sold by legal builders. **Figure 15** shows how an illegal builder can avoid a significant amount of tax in a single home-sale transaction.

Although it is illegal to build or sell a new home in Ontario without first registering the home with Tarion and obtaining a licence, Tarion does provide financial compensation to people whose homes

were constructed by illegal builders who do not honour their warranty.

In the past 10 years, Tarion has paid out \$19.8 million to homeowners to cover the cost of warranty repairs on 869 illegally built homes that builders refused to cover. Tarion told us that it is very difficult and time-consuming to successfully prosecute an illegal builder through the courts because it is a challenge to gather sufficient evidence to convict.

Even when Tarion does obtain a successful conviction, an illegal builder usually faces low fines that do not provide a strong deterrent. In fact, there have been cases where a builder continued to build illegally even though they had already been convicted. The amount collected by the courts between 2009 and 2018 was only \$4 million, far less than the \$19.8 million paid out by Tarion to compensate homeowners for repairs that their builders should have done under warranty. We also noted that Tarion does not have the ability to issue fines directly to individuals engaging in illegal building activity; it must take these individuals to court.

Figure 15: Taxes Avoided on Sale of Illegally Built Home^{1,2}

Prepared by the Office of the Auditor General of Ontario

Key Values	Licensed Builder (\$)	Illegal Builder (\$)
Home Selling Price (before HST)	1,650,000	1,650,000
13% HST on Sale	214,500	214,500
Total Home Selling Price (after HST)	1,864,500	1,864,500
Total Costs to Build	(1,365,000)	(1,365,000)
Government Taxes Paid		
HST (13% of \$1,650,000)	(214,500)	0
Business Income Tax (10% of \$285,000) ³	(28,500)	0 (use of principal residence exemption)
Total Profit	256,500	499,500
Total Taxes Avoided	–	243,000

1. Calculation based on estimated costs obtained from a licensed builder in Ontario in 2019.

2. Calculation does not include HST rebate and input tax credit available to some homebuyers.

3. Taxable business income for licensed builder of \$285,000 is the home-selling price (before HST) less costs to build.

RECOMMENDATION 21

To discourage illegal home construction in Ontario, we recommend that the Ministry of Government and Consumer Services:

- provide Tarion Warranty Corporation with the ability to directly fine any individuals and/or corporations found to have engaged in illegal home construction;
- establish an appeals process for individuals and/or corporations wishing to dispute the fines imposed by Tarion; and
- establish a process by which Tarion can share information about illegal builders to governments for investigation of potential tax evasion.

MINISTRY RESPONSE

The Ministry agrees with the recommendation and will work with Tarion and relevant partners to discourage illegal home construction in Ontario.

Pilot Program to Fight Illegal Building is Not Fully Effective in Curbing Illegal Building

In an attempt to reduce the number of builders who take advantage of the owner-built exemption, Tarion and six volunteer municipalities initiated a pilot program in July 2015 whereby individuals applying for the owner-built home exemption on their municipal permit application would be directed to Tarion.

Under the program, Tarion would first review if the applicant had title to the land, was actually in charge of building the new home, and truly did not intend to sell it. Only then would the municipality grant a construction permit.

By January 2017, the number of participating municipalities had increased to 15 from six. From July 2015 to December 2018, Tarion reviewed 724 applications for exemptions, approving 713 and rejecting 11.

However, we question whether this pilot program is fully effective, because some builders were still

able to obtain a municipal permit falsely claiming that they were building a home for their own use.

In fact, Tarion opened 37 investigations into individuals approved under the program and convicted three of illegal building—obtaining a permit claiming they were building the home for themselves when, in fact, they planned to sell it.

Laws currently in place in Ontario to deter illegal building are largely ineffective. In contrast, British Columbia, which has an owner-built home exemption similar to Ontario's, has specific laws designed to prevent individuals from abusing the exemption.

Owner-builders in British Columbia, for example, must live in the house for a minimum of 12 months before they can sell it. They must then wait 18 months from occupancy of their first owner-built home before applying to build a second, three years before applying for a third, and five years for each subsequent owner-built exemption.

In British Columbia, a person convicted of illegal building can never again apply for the exemption. People who want to build their own homes must also demonstrate basic competence in construction and pass an exam administered by British Columbia Housing. Owner-built homes that are sold are not covered by warranty. Rather, the individual who built the home is personally liable for the warranty coverage for up to 10 years, and this information must be disclosed to the homebuyer.

RECOMMENDATION 22

To help reduce illegal building in Ontario, we recommend that Tarion Warranty Corporation work with the Ministry of Government and Consumer Services to impose restrictions on the owner-built exemption such as those in place in British Columbia.

TARION RESPONSE

Tarion supports the recommendation to look at adopting the British Columbia approach to

owner-built exemptions and will support the Ministry of Government and Consumer Services in any review it may undertake in this regard.

MINISTRY RESPONSE

The Ministry agrees it is important to take action to reduce illegal building in Ontario and will review the British Columbia model and work with Tarion and relevant partners to consider changes to help reduce illegal building in Ontario.

4.4.12 Significant Backlog of Investigations Into Illegal Building

Tarion relies primarily on tips from the public, other builders and municipalities to identify and investigate illegal building activity. There are 16 full-time staff in the compliance and investigations department, including nine Provincial Offence Officers assigned to investigate illegal building. Tarion told us an investigation can take from three weeks to three months.

As of June 30, 2019, Tarion had a backlog of 139 tips that it had not yet investigated, the majority of which (107) were received between 2018 and 2019. Of the remainder, four tips were from 2016 and 28 from 2017. Tarion had classified 24 of them as high priority, because they related to more than one illegally built home. Four more involved repeat offenders. Tarion told us that the backlog of investigations was due to an increase in tips on illegal building activity in the province.

There is no dedicated case-management system, which would help with planning, prioritizing and tracking of investigations. Instead, staff must enter data into four different systems to document their work, which is time-consuming and inefficient.

We also found that there has been significantly high staff turnover in the compliance and investigations department in the past four years.

RECOMMENDATION 23

So that investigations into illegal building activity are completed on a timely basis, we recommend that Tarion Warranty Corporation:

- procure a case-management system to increase staff efficiency on investigations; and
- commit the necessary staff resources to eliminate the backlog of investigations.

TARION RESPONSE

Tarion accepts the recommendation and will allocate the appropriate resources to eliminate the current backlog of investigations. In addition, Tarion will explore the implementation of technology solutions to improve the efficiency of investigation handling.

4.5 Issues Raised by Tarion's Own Ombudsperson Not Always Fully Resolved

Since its inception in 2008, Tarion's Ombudsperson's Office has issued 10 reports, including 33 recommendations for Tarion to improve how it licenses builders and resolves warranty disputes.

In 2009 and again in 2017, for example, the Ombudsperson raised several concerns about the way Tarion investigated reported allegations of builders breaking the law or operating in a dishonest way. The Ombudsperson was concerned that Tarion had not established a builder's code of conduct to define such behaviours and help with investigations. Tarion has still not established such a code.

In 2010, the Ombudsperson recommended that Tarion always confirm directly with homeowners when builders claim that homeowners prevented them from fulfilling their warranty obligations. However, our review of a sample of 75 exempted inspections from 2018 found that Tarion still was not doing the verifications.

RECOMMENDATION 24

To resolve issues identified by the Ombuds-person's Office of Tarion Warranty Corporation, we recommend that Tarion work directly with the Ombudsperson's Office to:

- fully resolve all issues raised in the Ombuds-person's public reports since 2008; and
- post the results of this review on Tarion's website.

TARION RESPONSE

Tarion accepts this recommendation and will work directly with the Ombudsperson's Office to implement it.

4.6 Lack of Government Oversight Led to Ongoing Issues Not Being Addressed

Minimal government oversight of Tarion meant that the Ministry was not in a position to require improvements to Tarion's performance, or to address homeowners' issues. It also effectively limited homeowners' options because there was little effort for many years by the Ministry to, for example, examine alternatives to Tarion's difficult deadlines or the cumbersome and costly appeals process at the Licence Appeal Tribunal.

Homeowners unhappy with a Tarion ruling have three alternatives—launch a costly and difficult appeal with the Tribunal, launch an expensive civil court case against the builder or give up.

Unique among Ontario's 12 delegated administrative authorities, Tarion was free for most of its 43-year existence to draft its own regulations without statutory oversight by the Ministry.

As the first such delegated administrative authority, Tarion had more power to regulate itself than the ones that followed. Our Office identified issues with oversight of Tarion in previous audits of the Ministry in 2003 and 2009, as well as in follow-ups to those audits.

4.6.1 Limited Accountability Relationship Between Tarion and Ministry

The Ministry and Tarion made changes to their accountability relationship in 2003 and 2010. The 2010 accountability agreement required Tarion to provide the Ministry with key information about its operations, including its annual regulatory and business plans. These and the additional obligations under the accountability agreement are listed in **Appendix 6**.

However, there was no statutory requirement for an agreement between the Ministry and Tarion to set out the accountability relationship and the respective authorities and responsibilities of the two parties, as there was with most other such agencies and the Ministry. During our audit, we found the Act still did not include any specific requirements for an accountability framework between the Ministry and Tarion. Because of that, the Ministry told us that its current agreement with Tarion, signed in 2010, was non-binding and therefore not legally enforceable.

Tarion was also unique in that it could make or change its own regulations. In other words, Tarion effectively had control to decide how it would administer the *Ontario New Home Warranties Plan Act (Act)*. In December 2017, the government passed legislation requiring Tarion to seek the Minister's approval for certain changes to the regulations, including those about warranty coverage, dispute-resolution, and builder-licensing.

The government's oversight powers changed during our audit following passage of the *Protecting What Matters Most Act (Budget Measures), 2019*. As part of our audit, we compared the Ministry's key oversight powers over Tarion before and after these changes came into effect, and summarized the results of this analysis in **Figure 16**.

Notwithstanding these changes, the Ministry continued to have fewer oversight powers over Tarion than over other agencies to which it has delegated certain responsibilities and authority. Further, we found that the Ministry did not fully use the limited

Figure 16: Statutory Oversight Powers on Tarion Before and After May 29, 2019

Prepared by the Office of the Auditor General of Ontario

Oversight Powers	Before May 29, 2019	After May 29, 2019
Appoint minority of board members	No	Yes
Establish competency requirements for board members	No	Yes
Appoint chair of the board from among the members of Tarion's board	No	Yes
Require binding accountability agreement	No	No
Require changes to the responsibilities of Tarion	No	No
Issue policy directions to Tarion	No	No
Appoint an administrator for Tarion*	Yes	Yes
Approve process/criteria used by Tarion to set fees	No	No

* The Minister was given the power to appoint an administrator to Tarion since December 2017.

powers it did have to oversee Tarion. For example, the Ministry could have asked Tarion to change the composition of the Board to fairly balance the interests of homebuyers and homebuilders, and eliminate many restrictions, such as the strict deadlines faced by homeowners who seek Tarion's help.

We found that the Ministry could not effectively evaluate whether Tarion was fulfilling its mandate and could not make informed decisions to seek improvements because it did not have effective systems and processes to ensure it collected the right information from Tarion; nor did it have effective systems and processes to analyze the information it received from Tarion. At the time of our audit, for example, the Ministry did not have any performance indicators to measure the effectiveness of Tarion's efforts to help new homeowners. Nevertheless, the Ministry was collecting an oversight fee of about \$280,000 annually from Tarion and had notified Tarion that the oversight fee would be increasing.

RECOMMENDATION 25

To ensure Tarion Warranty Corporation meets its mandated responsibilities to help homeowners who seek its help, we recommend that the Ministry of Government and Consumer Services:

- consider requiring, in statute, a binding agreement between Tarion and the Ministry that sets out Tarion's accountability;

- establish a process to track and analyze information provided by Tarion;
- establish performance indicators and targets to measure Tarion's performance; and
- assess Tarion's performance against these targets on a regular basis and take corrective actions where necessary.

MINISTRY RESPONSE

The Ministry agrees there is an opportunity to improve its existing oversight of Tarion to ensure that it meets its mandated responsibilities. The Ministry agrees with the recommendation and is committed to implementing the recommended measures.

4.6.2 2017 Review of Tarion

Some homeowners have for years expressed strong concerns to the Ministry about Tarion's perceived and real ability to protect them. The Ministry told us that between January 2013 and June 2014, three-quarters of all correspondence from the public regarding delegated authorities related to issues with Tarion. (The Ministry did not have more current and complete information available regarding complaints from the public about Tarion.)

In response to public criticism of Tarion, the Ministry appointed the Hon. J. Douglas Cunningham in

2015 to conduct a review and make recommendations regarding the *Ontario New Home Warranties Plan Act* and Tarion.

The review cost about \$530,000 and produced a report publicly released in March 2017. The report contained 37 recommendations, most of which outlined measures to accomplish two major changes. One of the changes was to replace Tarion with a new regulatory authority to regulate and license builders. Another key change recommended in the report was that new home warranties should be delivered through a competitive, multi-provider insurance model in which builders obtain warranty insurance from private-sector insurers. Insurers could offer different products, but legislation would set out the minimum warranties. A multi-provider approach has been used in British Columbia since 1999 and Alberta since 2014 to deliver new-home warranties. A multi-provider model has also been used in England, where problems still occurred with the quality and workmanship of homes built. Quebec, on the other hand, uses a single-provider model similar to Ontario's.

There are potential advantages and disadvantages to both models, and we present them in **Figure 17**. It is important to understand that changing the delivery model may not itself resolve many issues currently raised by the consumers, although it is possible to take steps to manage risks in both models. It is also important for homeowners to understand that in a multi-provider insurance model, builders would choose their insurance companies and, instead of turning to Tarion for help with warranty disputes, homeowners would instead have to seek assistance from their builder's insurance company, whose client is the builder and not the homeowner. Under the multi-provider insurance model, the importance of consumer protection may be diminished. With multiple providers, there is increased risk of differing treatment of homeowners in terms of coverage decisions, compensation paid to homeowners, and dispute resolution. Claim information would not be as readily available to inform

home purchaser and licensing authority decisions, and government oversight would be lessened.

Further, we also want to note that with the use of the multi-provider insurance model there will be responsibilities and cost that the government would need to assume from Tarion.

The advantages of moving toward the competitive, multi-provider insurance model is therefore still unclear. The government announced in February 2019 that it would be further evaluating the feasibility of implementing this change and could make a final decision in late 2019.

The remaining recommendations proposed improvements to homeowner and builder education, and to the Ministry's oversight powers. For example, the report recommended that it should be the government that has final approval of the core rules and standards for warranty protection and builder regulation.

4.6.3 Legislative Changes Planned for Tarion

The *Strengthening Protection for Ontario Consumers Act, 2017* (Act), legislation introduced in October 2017 to make changes to Tarion, included the creation of a separate regulator for builders. In February 2019, the government said that it was moving forward with this change. The plan calls for a new regulator to take over Tarion's current role of regulating builders by fall 2020. However, the section of the Act relating to the creation of such an entity has not been proclaimed.

The Act also contains unproclaimed provisions to create a new separate administrative authority for warranties. The government announced it was evaluating different approaches for providing new-home warranties. **Figure 18** outlines the status of the legislative changes as of June 30, 2019.

Figure 17: Potential Advantages and Disadvantages of Different Approaches to New Home Warranties

Prepared by Auditor General of Ontario based on materials from the Ministry of Government and Consumer Services and Tarion Warranty Corporation

Potential Advantages	Potential Disadvantages
<p>Multi-Provider Insurance Model</p> <ul style="list-style-type: none"> Private insurers may effectively promote better-built homes by denying coverage to poor builders Private insurers may promote quality construction to reduce claim payouts. Competition amongst multiple providers may promote service quality and new warranty coverages Private insurers can be made subject to financial institution regulation 	<ul style="list-style-type: none"> Private insurers may seek to ensure or maximize profits through denying or limiting claims Private insurers may consider small and/or less experienced builders risky and deny coverage as a result they may not be able to build homes Private insurers may be less interested in sharing claims information to inform decisions about licensing builders Possibility of warranty cancellation prior to occupancy (if private insurers identify problem during construction) Potentially higher cost of coverage Less government oversight Competition amongst multiple providers may lead to builders selecting their warranty provider based on cost, without reference to homeowner service Inconsistent warranty decisions and dispute resolution processes among different providers Transition would be complex and costly
<p>Current Model</p> <ul style="list-style-type: none"> More consistent warranty decisions and dispute resolution processes May offer lower cost of coverage Potentially more accessible to new and/or small builders More directly accountable to government Warranty costs can be made subject to government approval More consistent and accessible data for licensing decisions Poor compliance with warranty obligations, claim history and bad conduct by builders can be tracked and disclosed publicly Homes constructed by illegal builders is covered Subject to independent legislative office's review such as Auditor General's office Improvements to existing model more feasible and less costly than change to an alternate model 	<ul style="list-style-type: none"> Not-for-profit provider may have less incentive to minimize claim payouts and thus may not push builders to improve construction quality Less competition may lead to less innovation, such as new warranty coverages

4.6.4 Other Legislative Changes Already Implemented

The Act also included a number of changes to strengthen Ministry oversight of Tarion. These changes came into force on December 14, 2017, and included:

- new powers for the Minister to appoint an administrator to replace the Tarion Board;

- giving the Auditor General of Ontario the authority to conduct value-for-money audits of Tarion; and
- requiring Tarion to pay oversight fees to the Ministry, something that was previously voluntary.

In addition, the government announced on February 20, 2019, a commitment to move forward on legislative amendments to give the Minister

Figure 18: Progress on Legislative Changes Regarding Tarion, as of June 30, 2019

Prepared by the Office of the Auditor General of Ontario

Act and Provisions	In Force?
Strengthening Protection for Ontario Consumers Act, 2017	
1. New separate regulator for builders ¹	Passed But Not Yet Proclaimed
2. New separate administrator for home warranties ²	
3. Homeowners not required to show Tarion the root cause of a defect ^{3,4}	
4. Minister has power to appoint administrator in place of Tarion board	Yes
5. Auditor General of Ontario has authority to conduct value-for-money audits of Tarion	
6. Tarion's changes to regulations in key areas (e.g., create new warranties, set procedures for adjudicating disputes) now subject to approval by Minister	
7. Minister can require Tarion to pay oversight fees to the Ministry	
Protecting What Matters Most Act (Budget Measures), 2019	
1. Minister can appoint a chair from among the members of Tarion's board, appoint more than one board member (without forming a majority), establish competency criteria for board members require a change in the size and composition of Tarion's board ⁵	Yes
2. Minister may require Tarion to disclose compensation paid to Tarion board and employees ⁶	
3. Access to information for Auditor General	

1. Government announced on February 20, 2019, that it would establish the new regulator by fall 2020.

2. Placed on hold pending decision on adoption of multi-provider insurance model.

3. Requires introduction of new regulations to implement.

4. Currently, the onus is on homeowners to demonstrate the root cause of the defect to Tarion and the License Appeal Tribunal which often requires homeowners to obtain expert report(s) from a third party at their own cost.

5. Government has not yet used its new authority to implement this change.

6. On October 2, 2019, the ministry announced that Tarion will now be required to annually post information about the compensation it pays to board members and specified officers of the corporation on its website.

the power to appoint a chair and require Tarion to publicly disclose executive and board compensation information, change the board's size and composition, and establish competency criteria for board members. The legislation to implement these changes was part of the *Protecting What Matters Most Act (Budget Measures), 2019* and came into force May 29, 2019.

RECOMMENDATION 26

Keeping consumer protection as the primary consideration, and complexity and costs as additional considerations, and with Tarion's agreement to implement the recommendations in this report (with government monitoring the timely implementation of these recommendations), we recommend that the Ministry of Government

and Consumer Services continue to thoroughly assess the following, taking both qualitative and quantitative factors into account:

- proceeding with a separate regulatory authority for regulating and licensing builders or maintaining this responsibility within Tarion; and
- maintaining Tarion as the warranty administrator or changing to a multi-provider insurance model.

MINISTRY RESPONSE

The Ministry agrees that consumer protection is a primary consideration, and qualitative and quantitative factors are important considerations for future decisions about the new home warranty program. The Ministry also agrees

that minimizing cost and complexity are important goals as it implements changes.

The Ministry is committed to addressing consumer concerns about the conflict of interest with Tarion performing both the warranty administration and builder and vendor regulation functions.

The Ministry will take into account the considerations identified in the report in its work to explore the feasibility of the multi-provider insurance model.

4.7 Tarion Operations

4.7.1 Issues with Qualifications of Some Tarion Staff

We found that some Tarion staff assigned to assist homeowners in resolving their warranty disputes did not have the appropriate qualifications.

Tarion has 51 employees who inspect defects and determine if builders should have repaired them under their warranty. They must also decide if builders caused the defects by failing to comply with the Ontario Building Code (Code), something specifically covered in the warranty.

The *Building Code Act, 1992* requires municipal staff who inspect homes for compliance with the Code to have an Ontario Building Code certification. The Ministry of Municipal Affairs issues the certification to individuals who complete required courses and pass an exam.

A review of internal Tarion documents showed that in 2011, Tarion recognized the importance of the Code certification program, and committed to have its staff certified by the program.

We found, however, that as of June 30, 2019, only 16 of Tarion's 51 inspection staff had the Code certification. Tarion told us that there is no need to have its entire staff certified, as most of the warranty disputes are simple and unrelated to the Code.

However, Tarion had no process to ensure that qualified staff always perform the more complex inspections, which are more likely to relate to non-compliance with the Code.

Tarion's customer service department has three dedicated staff (separate from call-centre staff) who respond to homeowners calling with specific technical questions about defects in their homes, including questions pertaining to the Code. However, we found that only one of the three had Code certification.

RECOMMENDATION 27

So that Tarion Warranty Corporation staff who deal with the public are qualified to perform home inspections and correctly answer questions regarding possible violations of the Ontario Building Code, we recommend that Tarion require such staff to obtain the Ontario Building Code certification.

TARION RESPONSE

Tarion accepts the recommendation, and will develop and implement a plan to ensure that inspections involving possible violations of the Ontario Building Code are assessed by staff who have obtained the Ontario Building Code certification or a professional equivalent.

4.7.2 Call Centre Answers Only 54% of Calls Within Tarion's Two-Minute Target

We found that homeowners experienced long wait times when they try to call Tarion, and many hang up before their calls are answered. Callers are also occasionally given inaccurate information.

Tarion operates a call centre, open between 8 a.m. and 5 p.m., Monday to Friday, with nine employees. Each year, the centre receives about 90,000 calls, and records all of them.

Tarion's goal is to answer 70% of the calls within two minutes. However, we found that in each of the five years between 2014 and 2018, only 40% of calls on average were answered within the two-minute target.

Performance improved in 2018, when Tarion received 87,000 calls, and answered 54% of them within two minutes. However, in the same year, about 14,200 callers hung up prior to their call being answered, and another 6,000 calls went directly to voicemail after being on hold for seven minutes.

In addition, Tarion says all calls left on voicemail must be returned within 24 hours—but it did not verify to ensure this was in fact done.

We listened to a sample of 50 recorded calls between February 1, 2019, and March 31, 2019, and found that in 14% of our sample, Tarion’s response to caller questions was inaccurate and/or unhelpful.

For instance, without obtaining all the facts, Tarion told one caller that a roof leak was not covered by the builder’s warranty when, in fact, it would be covered in certain circumstances. Tarion’s phone representatives are not supposed to make warranty decisions, especially over the phone and without knowing all the facts. In this case, the phone representative should have advised the caller to submit a form asking Tarion for help.

RECOMMENDATION 28

To provide homeowners and builders with accurate information in a timely manner, we recommend that Tarion Warranty Corporation:

- commit the necessary staff resources to ensure it meets its internal targets for answering calls within specified times;
- periodically review recorded calls to ensure callers are given accurate and helpful information; and
- establish a clear customer-service standard for call-centre staff that focuses on providing more helpful information for homeowners to better navigate the dispute-resolution process and identify those who may need further assistance.

TARION RESPONSE

Tarion accepts the recommendation and will take steps to improve the Quality Assurance function in the Contact Centre, establish an improved customer service standard and allocate sufficient resources to ensure that the internal call targets are met.

4.7.3 Ombudsperson Lacks Distance from Senior Management

Tarion created the Office of the Ombudsperson in 2008 to help identify and report on issues with Tarion’s service to the public. The Ombudsperson can, with the homeowner’s consent, review how Tarion handled and resolved the dispute, and assess whether the resolution was fair and based on complete and relevant information.

We would also have expected the Office to operate independently of senior management in order to carry out its work. However, we found that 12 months after taking the job, the current Ombudsperson received a 20% salary raise on the recommendation of the CEO, without any documented performance evaluation.

When we asked about the lack of any written evaluation, the Ombudsperson told us that the CEO does such evaluations verbally.

In addition, the CEO reviews the operating budget of the Ombudsperson’s Office, which could also diminish that Office’s independence from senior management.

We also found that since the Ombudsperson’s office is part of Tarion, Tarion has asked the Ombudsperson to disclose to it confidential information about homeowners who have complained to the Ombudsperson.

In 2018, for example, Tarion’s legal department asked the Ombudsperson on two occasions to disclose information in a homeowner’s file to help it prepare for a hearing before the Licence Appeal Tribunal. We noted that the Ombudsperson did refuse

to grant the request and reached an agreement with Tarion the following year that Tarion would not make such requests in future.

RECOMMENDATION 29

To establish and maintain the internal Ombudsperson's Office's formal independence from senior management of Tarion Warranty Corporation, we recommend that:

- the Ombudsperson's Office report directly to Tarion's Board of Directors (Board) on all operational matters, including budget and salary approvals;
- the Board review the performance of the Ombudsperson's Office;
- Tarion management abstain from any role or involvement in evaluating or reviewing the performance of any employee of the Ombudsperson's Office; and
- Tarion work with the Ministry of Government and Consumer Services to add a provision in the *Ontario New Home Warranties Plan Act* that prevents Tarion from accessing any information in homeowners' files held by the Ombudsperson's Office.

TARION RESPONSE

Tarion accepts the recommendation and will work to implement the structures outlined to ensure the independence of the Ombudsperson's Office. Tarion will work with the Ministry of Government and Consumer Services to support the noted legislative change.

MINISTRY RESPONSE

The Ministry agrees with the recommendation and will work with Tarion to propose changes to prevent Tarion from accessing homeowners' information held by the Ombudsperson's Office.

4.7.4 Incentives to Senior Management Not Aligned to Tarion's Mandate to Help Homebuyers

We found that Tarion's compensation policies for senior executives appeared misaligned with the spirit and intent of the *Ontario New Home Warranties Plan Act*, which is to regulate builders and assist homeowners with warranty disputes.

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.

So for example, one of those five key performance indicators was "net claims incurred loss ratio." This ratio compares the net claim costs incurred to total revenue collected from fees. Tarion's management has limited control over the inflow of revenue given that revenue is driven by the volume of new-home construction in Ontario. Tarion management has more control over net claim costs, and minimizing claims payouts would be one way to improve their performance as measured by this indicator. In other words, the indicator could be creating an incentive to minimize claims payouts to homeowners. These incentives might be better suited to a profit-making insurance company than a not-for-profit delegated authority with the mandate to help new homebuyers.

We also found that vice presidents and higher can earn bonuses worth 30% to 60% of their annual salaries, and that senior management accounted for one-third of the \$2 million paid in bonuses in 2018.

RECOMMENDATION 30

To better align the compensation structures of Tarion Warranty Corporation with the intent of the *Ontario New Home Warranties Plan Act*, we recommend that Tarion:

- review and revise the key performance indicators it uses in the corporate performance

scorecard to reflect its mandate of regulating builders and assisting homeowners with warranty disputes; and

- undertake a review to assess the current bonus pay method to determine whether it is consistent with public-sector practices, and adjust it accordingly.

TARION RESPONSE

Tarion accepts the recommendation and will conduct a review of its key performance indicators and balanced scorecard to ensure they appropriately reflect its mandate, and will undertake a review to assess whether the current bonus pay method for executives is consistent with appropriate comparables.

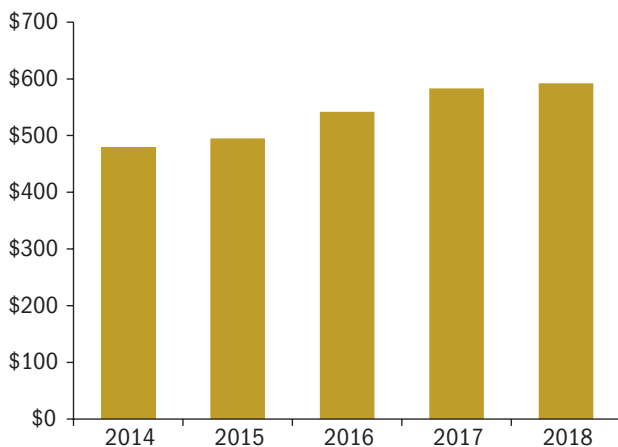
4.7.5 Guarantee Fund Has Sufficient Funds to Compensate Homeowners Whose Builders Do Not Honour Their Warranty

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. **Figure 19** shows the growth of the Guarantee Fund in the five years from 2014 to 2018.

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

Figure 19: Value of the Guarantee Fund, 2014–2018
(\$ million)

Source of data: Tarion Warranty Corporation



We found that Tarion had put aside more than enough money to cover future projected pay-outs for warranty claims, deposit refunds, and compensations for late closings.

An actuarial report obtained by Tarion for its financial statements estimated that Tarion’s future financial exposure to such events was about \$274 million as of December 31, 2018—or less than half the \$592 million Tarion had set aside as of that date.

Although the value of the Guarantee Fund is more than double the amount required to offset estimated future liabilities, Tarion told us the Fund also provides a financial reserve to help shield Ontario homeowners from possible catastrophic construction defects.

It cited the “leaky condo crisis” that bankrupted the British Columbia warranty program in 1999 after more than 70,000 poorly designed and built condominium units developed catastrophic leaks. The crisis also drove many homeowners into bankruptcy after they were unable to meet the high cost of repairs.

Further, more recently there was also a major crisis in Quebec involving homes built with contaminated concrete. Between 2010 and 2018, the Quebec warranty provider received 1,100 claims relating to contaminated concrete in the Trois-Rivières area; 600 of them were covered at an approximate cost of \$105 million.

RECOMMENDATION 31

To confirm the sufficiency of assets in the Guarantee Fund to cover any future catastrophic construction defects, we recommend that Tarion Warranty Corporation conduct a review of the Fund on an annual basis.

TARION RESPONSE

Tarion accepts the recommendation and will continue the annual review of the adequacy of the Guarantee Fund as required under the Accountability Agreement with the Ministry.

4.7.6 Tarion Stopped its Yearly In-Person Public Meetings in 2016

Tarion began operating at the end of 1976. In 2009, it launched yearly public meetings that people could attend to obtain organizational updates and ask questions in person to Tarion management and employees. The requirement for a public meeting was included in the 2010 accountability agreement between the Ministry and Tarion.

These open public meetings continued each year until 2015, when many angry homeowners attended and voiced concerns about “poor customer service” and difficult warranty administration processes (our Office listened to an audio recording of the meeting).

The following year, in 2016, Tarion switched to online annual meetings, where people could not physically attend but could submit questions in writing. Questions were screened and selectively answered.

We asked Tarion why it no longer holds public meetings annually that people can attend. It told us that the online meetings provide better access to the public. However, we noted that Tarion had already accepted online questions in 2015, in addition to holding an in-person meeting that was open to the public.

RECOMMENDATION 32

To improve transparency of and public access to Tarion Warranty Corporation, we recommend that Tarion hold annual open meetings where members of the public can physically attend to ask questions and voice concerns.

TARION RESPONSE

We accept this recommendation and will implement it for the 2020 Annual Public Meeting.

Appendix 1: History of Significant Changes to Tarion

Prepared by the Office of the Auditor General of Ontario

Year	Change
1976	Builder registration and new-home enrollment become mandatory
1987	Protection against basement leaks extended to two years
1988	<ul style="list-style-type: none"> • Introduction of substitution warranty • Introduction of coverage for delayed closing for freehold homes
1989	Maximum total warranty coverage for freehold and condo units increased from \$50,000 to \$100,000
1991	<ul style="list-style-type: none"> • Introduction of two-year warranties for: <ul style="list-style-type: none"> • building envelope; • electrical, plumbing, heating distribution systems; and • exterior cladding • Introduction of coverage for delayed closing for condo units
2003	<ul style="list-style-type: none"> • Tarion enters into Accountability Agreement with the Ministry of Government and Consumer Services • Construction Performance Guidelines • Minimum Customer Service Standards • Mandatory Homeowner Information Package • Mandatory pre-delivery inspection • Deposit protection for freehold homes increased from \$20,000 to \$40,000 • Builder Arbitration Forum introduced • Maximum total warranty coverage for freehold and condo units increased from \$100,000 to \$150,000
2004	Builder Internet portal launched to assist builders with registration, renewal, enrolments and other Tarion requirements
2005	Builder Internet portal enhanced to allow builders to monitor after-sales service and compare with provincial averages
2006	<ul style="list-style-type: none"> • Maximum total warranty coverage for freehold and condo units increased from \$150,000 to \$300,000 • Introduction of consumer survey
2007	Ministry asked Tarion to increase the number of ministerial appointees from four to five. Board could also invite individuals, including at least one member of the Ontario Home Builders Association, to become associate members of Board (attend, but not vote)
2008	<ul style="list-style-type: none"> • Changes to delayed closing and delayed occupancy warranties, including: <ul style="list-style-type: none"> • introduction of mandatory attachments to home contracts to show different types of completion dates and ways these can be extended • clarify when a builder or homeowner can cancel a contract • increase in compensation for delayed closing and delayed occupancy • Creation of New Home Buyer Ombudsperson Office
2009	<ul style="list-style-type: none"> • Tarion introduces policy of accepting warranty forms on anniversary date (technically one day late) • Homebuyer Internet portal “MyHome” launched • Establishment of stakeholder committee “to provide consumer view on policy matters” • Earlier intervention in files to seek resolution between builders and homeowners • Introduction of fees charged to homeowners to schedule assessment (refunded only if warranty defects found) and for builders if warranty defects • First annual public meeting

Year	Change
2010	<ul style="list-style-type: none"> • Updated Accountability Agreement replaces Accountability Letter of June 26, 2003. • Changes to condominium warranty process to expedite review of common element issues and streamline design and field review • Forms Consumer Advisory Council
2011	<ul style="list-style-type: none"> • New legislation comes into effect that makes it easier for municipalities to provide permit information to Tarion • Introduction of Construction Performance Guidelines for condominium common elements
2012	<ul style="list-style-type: none"> • Amended attachments to home contracts to show more information about adjustments, delivery of occupancy permits • Changes to delayed closing and delayed occupancy • Changes to coverage for major structural defects • Changes to Builder Arbitration Forum
2013	<ul style="list-style-type: none"> • Introduction of Ontario Builder Directory • Change to composition of Board to reflect more formal skills-based selection process and balanced stakeholder representation. Other changes include: <ul style="list-style-type: none"> • eight nominees of OHBA, five nominees of Ministry, three nominees of Board. • no more board observers (OHBA usually had one) • board chair loses right to cast an additional vote in the event of a tie • CEO would no longer be a director
2014	Introduction of Early Intervention Process
2015	<ul style="list-style-type: none"> • Phase-in of education criteria as condition of builder registration • New customer service survey sent to homeowners after conciliation inspections, with feedback used to inform staff training • New survey of clients following interaction with call centre
2016	Act amended to allow deposit protection to include “other payments” such as upgrades and extras
2017	<ul style="list-style-type: none"> • Deposit coverage maximum for freehold homes increased from \$40,000 to \$100,000 • New legislation, the <i>Strengthening Protection for Ontario Consumers Act, 2019</i>
2018	<ul style="list-style-type: none"> • Warranty coverage extended to condominium conversion projects • Penalties under the Act doubled: <ul style="list-style-type: none"> • maximum fine for individuals of \$50,000 and maximum imprisonment of two years less a day • maximum fines for corporations of \$250,000
2019	Government announces that a new regulator will assume Tarion’s current role of regulating builders in fall 2020

Appendix 2: Composition of Tarion Board of Directors as of June 30, 2019*

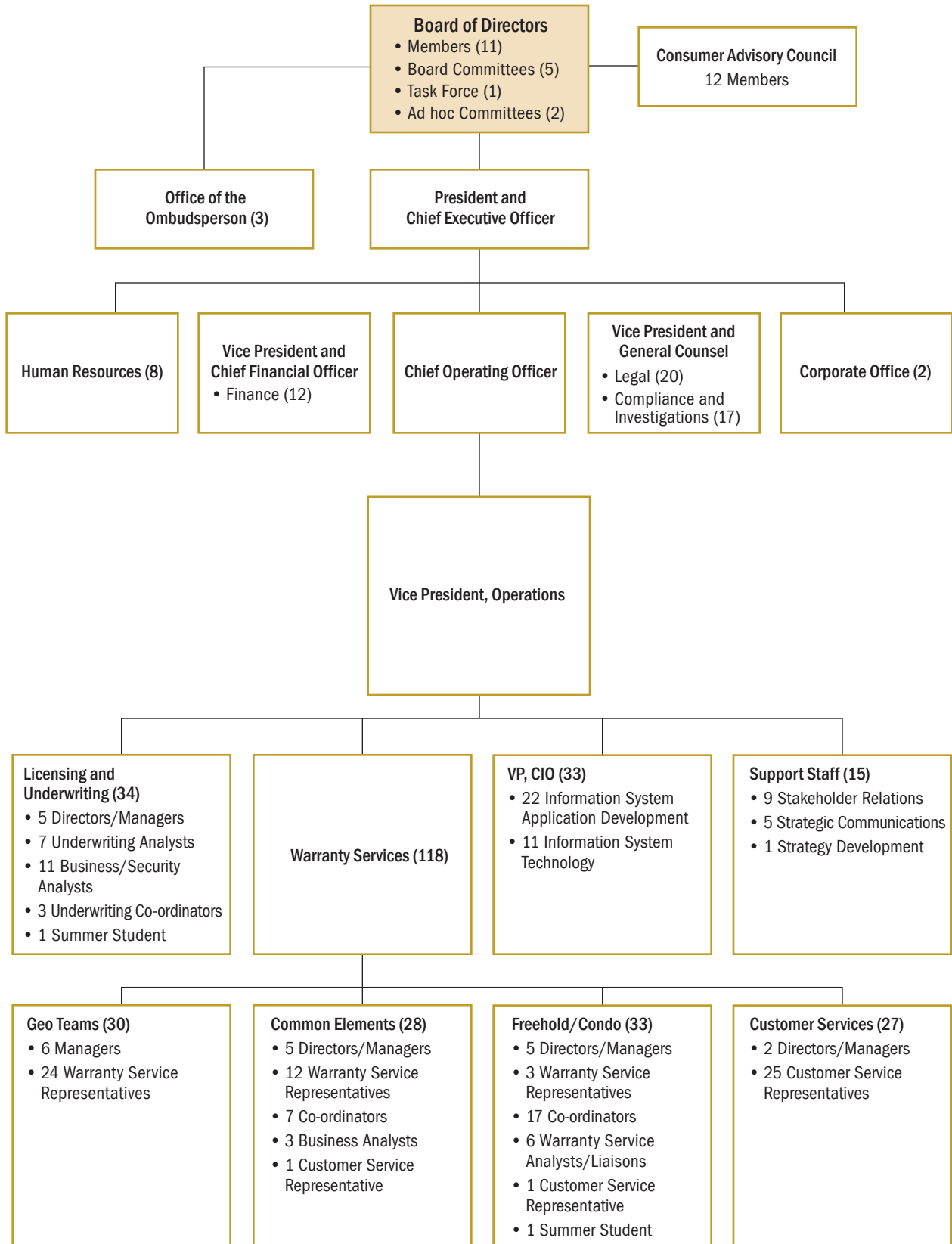
Prepared by the Office of the Auditor General of Ontario

Nominated by Ontario Home Builders Association	Appointed by Nominations Committee	Appointed by Ministry of Government and Consumer Services
Empire Communities (Chair) Builder	KPMG Retired Partner—Audit and Advisory Services	RayleeValleyGroup (New) Lawyer
Cardel Homes Builder	PanVest Capital Corporation Corporate Finance/Advisory Services	First Canadian Title Title Insurance
Herity Builder	Vacant	Former City Councillor/ Former Mayor of Thunder Bay Government
Conservatory Group of Companies Builder		Financial Services Regulatory Authority (New) Government
Marz Homes Builder		Vacant
Vacant		
Vacant		
Vacant		

* The government of Ontario replaced two of its Board appointees on April 25, 2019 and left an additional spot open. Tarion said the government had advised it to not replace any departing board members so as of June 30, 2019, the Board had 11 members.

Appendix 3: Tarion Organizational Structure as of June 30, 2019

Prepared by the Office of the Auditor General of Ontario



Appendix 4: Audit Criteria

Prepared by the Office of the Auditor General of Ontario

1. The governance structure and processes in place result in effective oversight of Tarion fulfilling its mandated responsibilities.
2. The processes in place to resolve disputes between homeowners and builders over warranty coverage are fair and result in timely resolution.
3. Effective processes are in place to ensure builders possess required technical competence and financial capacity to build new homes.
4. Tarion's processes for setting deposit protection and warranty coverage take current market conditions into account.
5. Effective processes are in place to identify, investigate and prosecute illegal building.
6. Effective processes are in place to identify and investigate builder non-compliance with the *Ontario New Home Warranties Plan Act*.
7. Tarion's processes ensure effective public reporting of new home builder performance.
8. Systems and processes permit the collection and use of timely and complete information to allow Tarion to carry out and publicly report on its mandated responsibilities.
9. Tarion's management of human and financial resources, including the Guarantee Fund, ensures that resources are used efficiently and effectively to fulfill Tarion's mandated responsibilities.
10. The Ministry has effective processes to monitor and address Tarion's performance in protecting homeowners and regulating new home builders.

Appendix 5: Schedule of Tarion Fees as of June 2019

Source of data: Tarion Warranty Corporation

Tarion Services	Fees Before HST (\$)
Builder Licensing	
New builder licence	2,500
New license for a new company of an existing builder	600
Vendor licensing fee (one-time fee) ¹	350
Builder License Renewal	300-500 ²
New Home Enrolment³	
Freehold and condo unit	385-1,800
Condo conversion unit	770-3,600
Tarion Assessment⁴	
Homeowner requested—Freehold/Condo unit	250
Homeowner requested—Common element	1,000
Builder requested—Freehold/Condo unit	550
Builder requested arbitration fee (resolve licensing disputes)	750
Builder Penalties⁵	
Builder penalty—Freehold or Unit	1,000
Builder penalty—Common element	3,000
Claim administration fee (if Tarion carries out necessary repair)	15%
One-time compliance fee for illegal builder	2,500
Administration	
Deposit trust agreement	500
Other administration fees (NSF fee, ordering of forms, etc.)	10-50

1. A vendor is a person who sells on their own behalf a home not previously occupied by an owner
2. Builder licence-renewal fee is \$300 for low-risk builders who typically build 10 or fewer homes and had no issues with Tarion.
3. New-home enrolment fee varies depending on the purchase price of the house.
4. Fees for homeowner requests are refundable if Tarion finds at least one eligible defect during the inspection.
5. Penalty charged to builder if an item from the claim is found to be warranted.

Appendix 6: Requirements of 2010 Accountability Agreement between Tarion and the Ministry of Government and Consumer Services*

Prepared by the Office of the Auditor General of Ontario

1.	Provide Ministry with notice of intent to adopt new bylaw (e.g., new or changed warranty requirement)
2.	Provide Ministry with an annual regulatory plan (e.g., changes to regulations including administration of warranties)
3.	Provide Annual Report no later than 150 days after fiscal year-end
4.	Provide annual business plan for coming year no later than 120 days after fiscal year-end
5.	Hold annual public meeting
6.	Make improvements to governance, and summarize these each year in annual report
7.	Appoint auditor
8.	Obtain actuarial report on policy reserves
9.	Follow International Financial Reporting Standards for accounting for policy reserves
10.	Meet with Minister and Deputy Minister as required
11.	Hold at least one liaison meeting with the Ministry every quarter
12.	Retain an independent organization to conduct a Board evaluation process each year
13.	Nominate directors and members of committees following Tarion's corporate by-law, and using a skills matrix
14.	Adopt a binding code of conduct for employees and board members
15.	Provide Ministry with quarterly reports of key operating information
16.	Work with Ministry to identify key operating information and discuss changes to this information at liaison meetings
17.	Provide additional information required by the Ministry in annual fact sheets
18.	With the Ministry, maintain an issues management and communications protocol
19.	Tarion staff to be available as necessary to discuss any issues of concern raised by senior Ministry staff
20.	Employ a New-Homebuyer Ombudsperson (terms of reference are appendix to the accountability agreement)
21.	Implement a privacy policy for building permit information from municipalities (appended to agreement)
22.	Use the principles in the stakeholder commitments document (appended to agreement)
23.	Survey homeowners and builders at least every two years using third party consultants and report results publicly
24.	Maintain annual budget for home buyer awareness advertising and related activities and list these in annual report
25.	Meet with MPPs upon request of Members of Provincial Parliament or Minister

* Tarion's records show that they were in compliance with requirements of the 2010 accountability agreement with the Ministry.



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