

●●● Tarion home warranty review is long overdue

Monday, 11 January 2016 09:00 | Written By Alan Shanoff

Writing this social justice column has few benefits. Feedback from colleagues and the public is minimal. Receiving two or three e-mails telling me why my ideas are unworkable or wrong is typical for a column. Few lawyers agree with me and when they do they don't want me to use their names.

But last March I touched a nerve. I wrote a column about Tarion, the private, non-profit corporation empowered to administer and enforce the Ontario New Home Warranties Plan Act. I watched in bemusement as 63 comments were posted online, including one from a sitting MPP and another from a former MPP.

I argued that Tarion ought to be made more transparent and accountable. It wasn't a controversial topic — or so I thought. Who wouldn't want more transparency and accountability for a body tasked with administering a statutory duty?

My column sparked a rebuttal column from the chairman of Tarion's board of directors in an April edition of *Law Times*. That column praised Tarion and the way it "efficiently manages its financial affairs."

Clearly, the rebuttal column did not assuage Tarion's critics as the column attracted 33 negative and no positive comments.

Fast-forward to Nov. 5, 2015 when David Oraziotti, the minister of Government and Consumer Services, announced the appointment of the former associate justice of the Ontario Superior Court of Justice, J. Douglas Cunningham, as a special advisor to conduct a public, independent review of the Ontario New Home Warranties Plan Act and the Tarion Warranty Corporation. The review is said to provide recommendations on how to improve consumer protection, accountability, transparency, and board governance.



I am not naive enough to believe that my March column precipitated this review.

Opposition members of the legislature have called for an independent review of Tarion for several years. Based on poor consumer satisfaction levels and complaints made to the office of the Ontario Ombudsman (these complaints were filed in the absence of any mandate to receive or investigate complaints concerning Tarion), this review is long overdue.

However, almost immediately after announcing the review, Oraziotti made an unfortunate comment. He was quoted in a *Toronto Star* article as stating: "I anticipate that Justice Cunningham will find Tarion's processes validated as good consumer protection measures."

According to Canadians For Properly Built Homes, a consumer advocacy group that has advocated reform of Tarion for some time, Oraziotti's comment has undermined the credibility of the review. Surely, the minister should have refrained from publicly releasing his preconceived views concerning the review.

Oraziotti's comment is also troubling in its focus on Tarion's processes. Purchasers of new homes are not interested in processes as much as they are interested in results. They aren't so much interested in enhancements to warranty coverage — as trumpeted in the ministry's announcement of the review — as they are in having their warranties enforced.

Then there's the problem of Tarion's dual role: overseeing new-home warranty coverage and licensing builders. There seems to be an inherent conflict in these two roles, particularly given the makeup of Tarion's board with seven of 15 current directors representing builders or developers.

This conflict is worrisome every time Tarion denies a homeowner's claim in favour of a builder. The appearance of a conflict is exacerbated when homeowners, often self-represented, appeal to the Licence Appeal Tribunal and face legal representation from both Tarion and the builder. Surely, homeowners should not have to face two sets of counsel.

Of course, problems with Tarion would be of lesser concern if it were not a monopoly provider of a mandatory purchase warranty. New-home buyers have no option but to deal with Tarion. Whether Tarion ought to enjoy a monopoly — other provinces have multiple sources of new-home warranties — should be open for review along with whether the new-home warranty ought to be optional.

As well, the review should consider the wisdom of the province contracting out enforcement of new-home warranty legislation. Contracting out government services to a private body isn't necessarily a wise approach.

Having contracted out this service, the Ontario government has shielded Tarion from oversight by the Ontario Ombudsman and the Office of the Auditor General of Ontario. As well, Tarion is not subject to sunshine and access to information laws.

The status quo isn't acceptable to new-home purchasers. Let's hope this review results in meaningful reform.

Alan Shanoff was counsel to Sun Media Corp. for 16 years. He currently is a freelance writer for Sun Media and teaches media law at Humber College. His e-mail address is This email address is being protected from spambots. You need JavaScript enabled to view it..">ashanoff@gmail.com.