

Globe and Mail, June 19, 1976 "Home Warranty – Bill being rushed so consumers won't be heard?"

HOME WARRANTY

Bill being rushed so consumers won't be heard?

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A HOME IS easily the single largest purchase made by a family in its lifetime. But as many young couples have painfully learned during the past three years, the price of homes is rapidly exceeding their grasp.

However, financing the purchase of a home is only one of the headaches Canadians have to contend with. The other is to ensure that the house they buy is properly built, on time and in accordance with the promised specifications. Many Canadians purchase an older home but others are obliged or prefer to purchase a new home, to the tune of 200,000 or more a year.

Most consumers know even less about homes than they do about cars, their second-largest single investment.

Builders, moreover, are not always competent or scrupulous. Some are more interested in making a fast profit than in giving fair value for money. As a result there has been a rising tide of complaints about badly built homes and builders who do not honor their contractual undertakings.

According to federal officials such complaints have ranked third in the frequency of complaints by consumers.

Government's answer

Bill 94, The Ontario New Home Warranties Plan Act, 1976, is the Ontario Government's belated answer to these problems. The thrust of the bill is in the right direction but it is seriously flawed in one vital respect and suffers from a number of other shortcomings.

The bill has four main components. First, it requires all builders and vendors of new homes to be registered.

Second, it requires every vendor to warrant, *inter alia*, that the home is constructed in a workmanlike manner and with proper materials and is fit for habitation and free of major structural defects.

Third, the bill envisages the establishment of a guarantee fund which

will compensate an aggrieved buyer if the builder goes bankrupt or otherwise fails to perform his contract, breaches his warranties, or if the buyer suffers damages because of a major structural defect.

The fund will be supported by the builders' registration fees and fees payable by them on the construction of a home.

Finally, and not least importantly, the bill encourages the conciliation of disputes and requires the parties to agree to arbitration if conciliation is not effective.

Without precedent

These provisions are neither novel nor objectionable in principle. They are indeed widely regarded as necessary for the operation of a successful warranty scheme. What is without precedent in Ontario consumer protection legislation is the nature of the body entrusted with the administration of the important powers contained in them.

For it is not the Ministry of Consumer and Commercial Relations or any other Government agency that is entrusted with the task. It will be a non-profit corporation of undetermined composition incorporated under the Ontario Corporations Act and at best only indirectly accountable for its actions to the Legislature.

There is no secrecy about the reasons for this feature of the act. It is a surrender to the long-sought goal of HUDAC, the Housing and Urban Development Association of Canada.

The association has argued for several years that warranty schemes for new homes should be administered by the builders themselves and that the construction industry should have majority representation on the corporation to be established for this purpose. In earlier discussions involving the establishment of a national home warranties scheme, the federal Government refused to accede to this demand. There are strong indications the Ontario Government will prove more compliant.

Imagine the furor if it was proposed that a *consumer-dominated* corpo-



ration should regulate the construction industry.

The right answer, of course, is that no single interest group should dominate the corporation. It should fairly represent all the various groups—builders, unions, consumers, architects, local municipalities, etc.—as is true of the British National Home Builders Registration Council.

And the corporation should be established by statute and be fully accountable in all respects to the Legislature.

We ought no longer to tolerate the creation of legislatively sanctioned semi-private monopolies exercising important statutory powers.

All this is bad enough. Equally objectionable is the Government's apparent eagerness to rush the bill through as quickly as possible. The bill should have been referred to a standing committee so the members of the public would have been provided with an opportunity to make representations. Instead, the bill has been re-

ferred to the Committee of the whole House.

It is about four years since the Government first announced its intention of introducing a home warranty plan and eight years since the Ontario Law Reform Commission first published its report on the subject.

Where so much time has already elapsed another month's delay would not have mattered. It could only have improved public credibility of the new bill.