

# CAPTIJN: Homeowners need right to record Tarion home inspections

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The new home construction has bounced back quickly and most developers are running at 75 to 90 per cent capacity.

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If you buy a new home in Ontario and discover a leak in your basement, you'll call your builder to fix it.

If he refuses or delays, you'll call Tarion, the agency which administers the warranty, and provides financial backing if builders don't fix defects.

If there's a dispute about the cause, Tarion can arrange an in-home inspection. However, they forbid homeowners from recording these inspections, and their published policy says they'll walk away if anyone records.

Is this fair, or legal?

This question was put to an administrative and civil litigation lawyer, Brian Moher, of Brian Moher, Barrister. In his legal opinion, he wrote it is "permissible" for Tarion to enact the policy, but it has no "legal force."

Anyone can legally record a conversation if they are a participant, he explained, according to Sec. 184 of the Criminal Code. But even if a homeowner records secretly, that doesn't change Tarion's obligation to administer the warranty.

What's the point of this policy then?

In an age where people routinely record so many parts of their lives, this seems something from another era. Tarion says the policy is to protect their employees from "workplace harassment" — for example, angry comments of homeowners during inspections — under the Occupational Health and Safety Act.

Consumers have a lot more at stake during inspections than Tarion's employees, namely their life savings in the home. If a homeowner thinks the inspection is incomplete, or not done by a qualified professional, this could have serious financial consequences for them, not Tarion's employees.

What if a builder is aggressive toward the homeowner during an inspection? Does Tarion protect the homeowner from this behaviour? There's no mention of this.

Trying to hold a builder accountable for defects is often a long, adversarial process of pass-the-buck. No one likes to admit they're wrong or lacking skills, and no one wants to pay for repairs. The consumer is often caught in a time-consuming blame game between builders, trades, Tarion, municipalities, and lawyers. It shouldn't have to go this far.

Tarion's role is to resolve problems quickly, fairly, and transparently. A professional inspection for all parties to see is a building block in this process. It helps homeowners understand construction issues, and see if the inspection looks fair and professional.

Preventing recording raises the suspicion that one party may be trying to bias the process, and deprives the homeowner of clear and reliable evidence that the consumer may need to support a warranty claim.

Tarion also forbids homeowners from recording their questions at the annual public meetings and blocks consumer advocates on social media. Both policies are out of date and create doubt about Tarion's stated role as a consumer protection agency.

This no-recording policy is part of the bigger problem of lack of transparency and accountability, outlined in the 2017 Tarion review and the 2019 Auditor General's report. The review recommended there be competition in new home warranties, which was hugely supported by consumer advocates, but brushed aside by both Liberal and PC governments.

This policy deprives consumers of having an evidentiary record. Scaring consumers away from exercising their rights is not consumer protection. The policy is self-defeating and outdated.

Scrap it.