

Couple fights Tarion for home warranty: Roseman



By **Ellen Roseman** On Your Side
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When Jeffrey Ferland and Aleksandra Ferenc moved into a new house in Mississauga, they found the cement floor wasn't as thick as what the builder promised. Nor did it comply with the Ontario Building Code.

They complained to Tarion Warranty Corp., the private company created and overseen by the Ontario government to protect new home buyers.

Tarion asked the builder to fix the floor and, when the builder did nothing, it promised to charge the builder for the repair cost, the couple says in a [petition aimed at updating Ontario's new home warranty act](#).

Later, Tarion decided not to help. Ferland and Aleksandra appealed to the Licence Appeal Tribunal, where they spent a grueling 30 days giving testimony at the forum that handles compensation claims in a quasi-judicial way.

The couple did not hire a lawyer, but faced a Tarion staff lawyer and a top Bay Street lawyer acting for Tarion, plus the builder's lawyer. They now await the tribunal's decision, expected shortly.

"It's a hostile environment for a consumer," says Barbara Captijn, who became a volunteer consumer advocate after buying a defective new home and losing her own case at the tribunal. She and her husband later won a settlement in small claims court.

After dropping in on the Ferland-Ferenc hearing for nine days, she wrote about the lack of balance [in her blog](#).

"The money Tarion has spent so far on engineers and specialized litigators could have been used to fix the home. Lawyers for this type of hearing can cost \$1,500 to \$4,000 per day, with an up-front retainer costing anywhere from \$30,000 to \$60,000.

"What ordinary new home buyer can afford these legal fees? Not even middle class, two-income families. Tarion can, and does, pay these fees, using the warranty fund, which was meant to fix new home defects."

The couple reached out to Harinder Takhar, the Liberal MLA elected in 2003 to represent their Mississauga riding. They didn't get a response, but later found a tax return showing [Tarion had donated \\$816 to Takhar's constituency](#).

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Why would Tarion, with a mandate to protect consumers and regulate the building industry, donate to a politician? Ferland asked the question at Tarion's annual public meeting, held June 1 in Toronto.

President and chief executive Howard Bogach said he'd stopped the practice of campaign contributions after taking the job in March 2008. "It was not appropriate," he said. "Optically, it was not good."

But why did Tarion make political donations in the first place? Bogach never gave a reply.

I was in the audience Monday night. I'd heard that Tarion annual meetings could be raucous affairs, where the staff faced a barrage of questions and complaints from home buyers.

This time, Tarion hired a facilitator, [Nigel Bellchamber](#), a consultant on municipal issues, who kept a tight rein on participation and disallowed any follow-up questions.

An owner in an Oakville housing development with substandard heating systems said: "How can Tarion write regulations that supersede the Ontario New Home Warranties Plan Act?" She was referring to a rule that limits warranty claims to two years. Tarion staff disagreed with her interpretation of the law.

"How much does Tarion pay in legal fees to the Licence Appeals Tribunal?" another homeowner asked. It's just a small amount, Bogach said, and is not broken down separately.

Ferland asked a number of questions, while his twin brother James called out comments from the floor – and was silenced by Bellchamber.

The couple's tribunal hearing did make an impact. Bogach announced he was hiring a legal expert, [Genevieve Chornenki](#), to advise him on resolving disputes informally outside the court system.

He may also have been thinking about a private member's bill by Jagmeet Singh, the Ontario NDP's consumer critic, to bring Tarion under the oversight of the Ontario Ombudsman and Auditor General.

"Time and time again, we see new homeowners denied the coverage they need and deserve. There are serious problems with accountability and transparency when it comes to the Tarion corporation," Singh said in a statement.

Correction – June 3, 2015: This article was edited from a previous version that misstated MPP Jagmeet Singh's given name.

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