

Consumer group concerned about effectiveness of new home construction regulator

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A consumer protection organization for new homebuyers is warning that Ontario's recently launched Home Construction Regulatory Authority (HCRA) is already making some of the same mistakes as its predecessor agency, Tarion, which was criticized by the province's auditor general in 2019 for favouring homebuilders over buyers.

"HCRA has recently provided lofty statements, e.g., 'effective engagement' and 'regulatory excellence' and 'building trust,' but it is off to a very poor start," Karen Somerville, president of the Ottawa-based Canadians for Properly Built Homes (CPBH) said in an e-mail to *The Lawyer's Daily*.



Karen Somerville, president of the Ottawa-based Canadians for Properly Built Homes

The Toronto-based HCRA officially began its mandate on Feb. 1 as the agency overseeing licensing and regulatory compliance for new homebuilders and vendors. Tarion will continue to administer the new home warranty program. A 2016 independent review conducted by former Superior Court associate chief justice J. Douglas Cunningham recommended that Tarion's warranty and regulatory functions be split.

"Today's launch of the HCRA is another great example of our commitment to strengthening consumer protection for our province," Government and Consumer Services Minister Lisa Thompson said in a Feb. 1 [news release](#). "The HCRA will ensure that new homebuilders

and vendors are held to professional standards and that all buyers and owners of new homes are well-informed and feel confident that their homes have been built properly.”

But, like Tarion, the HCRA board does not include anyone with a background in consumer advocacy, said Somerville. Instead, it is made up of former high-ranking bureaucrats, a corporate executive and the president of a home construction firm.

She also claimed that the information in the HCRA’s public directory of builders remains unreliable, as it was under Tarion, and she expressed concern about HCRA’s lack of transparency. In public webinars in January, she said, HCRA representatives did not respond to some questions and the regulator has not answered CPBH’s repeated requests for information on how many former Tarion employees have been hired by HCRA. Somerville said she is concerned that HCRA is not fully independent of Tarion.

“Some say,” she added, “that HCRA and Tarion have made a mockery of the path to a fair regime for home construction regulation and consumer protection as laid out by Justice Cunningham in his 2016 Tarion review.”

On Feb. 10, after Somerville spoke with *The Lawyer’s Daily*, the government appointed former Conservative MP and MPP Terence Young as a member of the HCRA board, highlighting his consumer advocacy work as the founder of a nonprofit called Drug Safety Canada.



Edward Lynde, McLauchlin & Associates

Edward Lynde, an associate with Toronto-based construction law firm McLaughlin & Associates and a member of the Ontario Bar Association's construction and infrastructure law section, said that legislation has equipped HCRA with a broad mandate and stronger regulatory and enforcement powers than Tarion — but its effectiveness will depend on how well those powers are put into action.

“Tarion just wasn't working and it was failing homeowners,” he told *The Lawyer's Daily*. “So here we are in 2021 with the HCRA.

“They're saying all the right things, and it all relates to creating a consumer-based model that leads to confidence in the marketplace with respect to residential builds,” he added. “That being said, just like anything when there's a seismic and large-scale change, let's see how it actually gets implemented on a practical level. And it's anyone's guess frankly.”

Lynde said the accuracy of the builders' directory will be one key to restoring consumer confidence. He noted that it will include information such as the name of the licensee, number of homes built, a 10-year history, licensing conditions, offences if charged, offences if guilty and orders made by HCRA's discipline committee.

“Residential construction has been a bit of a wild west,” he said. “There are some fantastic residential builders, but there are some poor ones, too, and it's really hard for the marketplace to understand the difference.

“Hopefully this works,” he added. “Conceptually, it appears to be structured the right way. But will the investigations actually be done properly and will complaints be dealt with appropriately? It's one thing to say it. It's another to actually do it.”



Tim Hadwen, HCRA's interim CEO

The HCRA's interim CEO, Tim Hadwen, a lawyer and former assistant deputy minister of education labour relations in the Ministry of Education, said the regulator will set licensing standards for conduct, competence and financial responsibility. It will go beyond Tarion, in part, he said, by establishing for the first time a code of ethics, a discipline committee for violations of the code and an appeals committee. As part of its more effective licensing process, he noted, HCRA has introduced a mandatory criminal record and judicial matters check and an attestation about the presence of interested persons (in addition to principals, directors and officers) who have a material influence over the company's decision making.

The government is conducting public consultations on the proposed code of conduct, and Hadwen said he expects it to be put in place by the end of the year.

The regulator will address consumer complaints through an "accessible and streamlined" complaints process, he said, and will have a broader range of regulatory tools, including the power to set conditions on licences, to revoke and suspend licences, to issue compliance orders, to issue warnings, to require education courses and, in the future, the ability to impose fines and administrative penalties.

"The overall package of developments, both legislative, regulatory and from a policy point of view," he told *The Lawyer's Daily*, "really strengthens the approach to licensing and compliance and does enhance consumer protection for new home buyers in Ontario."

Hadwen said the HCRA intends to do more to maintain consistency across the sector by

curtailing unethical and illegal builders and fostering a safer, fairer and more informed marketplace. To that end, it will also focus on consumer education, providing practical information to consumers to help them make informed decisions.

The construction and real estate bars could potentially be more involved in helping builders and homebuyers move through the regulator's expanded processes, he said. There may also be a need to help vendors and purchasers with certain disclosures, which will remain unchanged for now but could be updated in the future.

One of the regulator's immediate priorities is to ensure a smooth transition from Tarion, said Hadwen. To facilitate that, all valid Tarion licences will automatically become HCRA licences and the time for filing renewals has been extended for a transitional period of 150 days.

The HCRA was originally designated under the *New Home Construction Licensing Act, 2017*. The *Rebuilding Consumer Confidence Act, 2020*, passed in July 2020, is also intended to protect consumers and promote higher quality home construction.

Editor's note: This article has been updated to include the appointment of Terence Young to the HCRA board.