

# CAPTIJN: Ontario courtrooms aren't the answer to new-home defects

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If you buy a new home in Ontario and find it has defective heating, you're supposed to be able to get this fixed through the government's warranty agency, Tarion, if your builder can't or won't resolve it.

New-home buyers are forced to deal with Tarion, since Premier Doug Ford decided in new legislation that this will continue to be the sole warranty provider. He's against monopolies, he says, but he seems to like this one.

Getting home defects fixed through Tarion has been a long, complex ordeal for many, as revealed in the 2017 Tarion review, and the 2019 auditor general's report.

You shouldn't have to go to court to get your new home fixed, but that's what many have had to do, after Tarion denied their claims. A leaking roof isn't a legal issue, so why should you go to

court to get it fixed? The consumer is entitled to get what he paid for — a home free of construction defects, just like he expects a new car to be defect-free.

But telling the truth and proving it in court are two different things. The party with the most experienced lawyers, the best experts, and the deepest pockets usually wins. Access to justice has a nice ring to it, but it's not a reality for most consumers who tackle big corporations or government agencies in court.

The Licence Appeal Tribunal (LAT) handles consumer appeals when Tarion denies claims. Tribunals are supposed to be less formal and legalistic than other courts. This may have been the original goal, but the tribunal system is just as procedure-bound and intimidating for consumers as other courts. Those saying it's faster and easier have perhaps never sat through actual hearings, and certainly not as self-represented litigants.

What's unfair about the LAT? The homeowner has the burden of proof in a highly technical matter, the adjudicators have typically no construction knowledge, the consumer has to hire his own experts, take time off work, and is pitted against two sets of lawyers — Tarion's and the builder's.

It's like playing a game where the rules are tricky, opponents move the goalposts, give penalty cards ("objection!"), use hardball tactics, and tell you black is white. It's a surreal nightmare for most consumers. No surprise that Tarion and builders, whose interests are aligned in getting claims dismissed, win the lion's share of cases.

How is this a wise use of taxpayer money or overburdened courts? Lawyers can't fix freezing homes. Usually more legal problems are created, and the homeowner's life is turned upside down, and the home is still frigid in winter.

Why did the Ford government decide to keep the LAT for Tarion appeals? Why burden the homeowner and taxpayer with the costs of dispute resolution when Tarion sits on a whopping reserve fund of about \$660 million? They can afford to have disputes resolved in a fair, credible way by external mediation. Not just when they feel like it, but in every unresolved dispute.

It makes no sense to put consumers through a legal meat-grinder, funded by the taxpayer. New home warranty dispute resolution should be handled by independent mediation and expert reports, all covered under the mandatory warranty.

When it comes to the building industry and Tarion, Ford has been their champion. When it comes to protecting the consumer, no one's home.