

# OPINION: Ontario's new builder regulator off to weak start

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The new Netflix documentary entitled “Madoff, the Monster of Wall Street”, is a tragic saga of financial fraud, and shows a complete failure of regulatory oversight.

The aftermath for investors was devastating. How did this happen? Partly because, as Madoff himself later deadpanned from his jail cell, the regulators (the Securities and Exchange Commission, the SEC), never asked him for certain information.

Hopefully, many lessons were learned about the importance of regulating powerful industries to protect the public.

What did the Ontario government learn after the failure of the new home builder regulatory agency Tarion, before setting up its successor in 2021, the Home Construction Regulatory Authority, or HCRA? Are new home buyers better protected from bad builders two years after HCRA opened its doors?

A key task for HCRA from the outset was to try to gain consumer confidence. The previous regulator had been roundly criticized in two independent studies in 2017 and 2019 for conflicts of interest, appearing too close to the building industry, and failing to stick to the spirit and intent of its governing legislation, as stated in the Auditor General’s report, 2019.

There were a few simple things HCRA could have done from the outset to gain consumer confidence, but has not.

For example, at least one-third of HCRA’s board should be independent consumer advocates. There are three builders on the board, but no one with experience dealing with builder misconduct or poorly-built new homes, and the problems getting this resolved. Without this voice and experience at the decision-making table, consumers are not convinced HCRA is any different from its troubled predecessor.

Another curious fact is that HCRA’s Discipline Committee has only made one decision in two years. Yet HCRA received 808 complaints about builders in one year, 539 regarding its own

licensed builders. What has happened to these complaints? No public disclosure. If sunshine is the best disinfectant, there's very little sunshine here.

There should also be a clear timeline for handling complaints. More than a year after placing complaints, some consumers have been told there's been no decision, these cases are complex, there are staff shortages, and of course pandemic delays. The appearance that something may be hidden, or that not all cases are dealt with based on fact or evidence, or that some can be whisked away due to the Registrar's opinion alone, is not a good look for a regulator.

Trust is not enough; there has to be transparency and accountability to the public.

Another basic task would have been to make HCRA's website consumer-friendly. The much-critiqued Builder Directory, which is supposed to show builder performance records and be a reference tool for home buyers, is still not much more than a telephone book. It should contain plain language summaries for consumers, instead of multiple links buried in legalistic or obscure terms.

The only decision which was referred to the Discipline Committee (for coercion, intimidation, and obstruction of a complaint), was decided by the Chair alone, no Committee. In his decision, tucked away on HCRA's website, the Chair says he imposed a penalty which he said was suggested by the parties of \$10,000, (the cost of a one-page advertisement in a newspaper), and some educational courses.

This is not a strong stand to take if you only issue one decision every two years. Educational courses should have been a mandatory condition of licensing, not an afterthought.

This penalty is intended to be a deterrent to other builders, according to the Chair. Looks like wishful thinking.

Since HCRA expects complaints to be brought to them by consumers, they could have set up an anonymous tip line, a whistleblower program, to protect consumers from being sued by builders for placing complaints, or being cornered into non-disclosure agreements. The SEC did this after the Madoff debacle, with some success in clamping down on fraud.

The only other decision HCRA made in two years against a licensed developer was for cancelled contracts, price escalations, withholding deposits, and false advertising.

HCRA said in August 2022 it intended to revoke the builder's license. Three months later, all was resolved, clerical errors had apparently occurred, and the case was "disposed of without a hearing" by a License Appeal Tribunal adjudicator. He imposed a penalty of \$60,000, and some courses in Financial Planning and Business Management.

Another light touch, and a curious reversal of HCRA's initial sabre-rattling. The quotation of a famous judge, Lord Hewart, comes to mind: "Justice must not only be done, but be seen to be done." The public can't see most of what went on here.

In April of this year, a much-publicized complaint about a major builder, a sex and alcohol-fueled construction workers' party in a home under construction, comes up to its two-year deadline.

HCRA's legislation says there can be no Disciplinary Committee hearings two years after a complaint is made. Does HCRA think this builder or his trades breached the Code of Ethics? Silence so far. Maybe a few educational courses?

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