

CAPTIJN: Illegal building problematic in Ontario for decades, must be stopped

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Imagine having to check whether a doctor is licensed to practice medicine before you go to a medical appointment, or whether a lawyer or engineer is licensed, before seeking their advice. We rely on regulators to be gatekeepers of these professions. Practitioners need to be licensed and meet certain standards of competence and conduct, to protect the public.

The term illegal building refers to builders constructing new homes without being licensed, and/or without registering new homes with the warranty program. Two government agencies are responsible for this regulation, the Home Construction Regulatory Authority (HCRA), for licensing and conduct issues, and Tarion, for the builder's warranty enrollment. If builders can't show they are licensed or enrolled, purchasers may be exposed to shoddy work. Builders need to demonstrate technical competence in new home construction, and the financial ability to complete the homes. If these standards are not met, new home buyers could face a significant threat.

How big is the illegal building problems in Ontario? This year, the regulator HCRA reported an increase of 87% in illegal building complaints. (See HCRA's Annual Report, 2023-4, pg. 9). Also this year, Tarion in its Business Plan announced the largest claims event in its history, a loss of \$90 million, attributed to "illegal deposit-taking," by builders who didn't have licenses and didn't comply with the warranty enrollment legislation.

How many doctors, lawyers, or engineers do we find practicing the professions without being licensed? Not many. Then why can't regulators clamp down effectively on illegal builders?

Of the over 800 complaints HCRA receives each year, about 25% are about illegal building. This problem has unfortunately a long history in Ontario. The former CEO of Tarion wrote an article in *The Toronto Star* over 30 years ago on April 22, 1995, that he "considers illegal building to be a sizeable problem in Ontario." Twenty years after that, a former Tarion board Chair wrote in the *Ottawa Citizen* (May 15, 2015) that he made illegal building his priority, and developed a model to deal with it.

What's happened since then? To look at the results, not much.

There's been lots of talk about the regulatory agencies partnering with municipalities who issue building permits, several pilot projects, and you guessed it, more consultations with the ministry.

How can this be such an unruly problem for two regulators? How can they be fighting this issue for decades, and we still see it growing?

There are sanctions for illegal builders, for example, the regulators “can” and “may” impose penalties, and revoke or suspend licenses. But either the penalties are not much of a deterrent, or there are too many loopholes, or delays and appeals of the Registrar’s opinions, or there’s no strong political will by government to protect new home buyers.

The advice of the regulator today to new home buyers is the same as given by Tarion’s CEO 30 years ago, and that is to call Tarion if you spot an illegal builder, and do your research. How has this worked out?

There’s the added problem that this system has become too complex for consumers and builders alike. HCRA admits in its annual report that over 51% of homebuyers are not familiar with the difference between Tarion and HCRA, and one in three builders are uncertain of these roles. Then there’s a complex maze of legislation which governs home purchases. The Consumer Protection Act, where one might look for home buyer protection, doesn’t cover real estate transactions. Even the name of the oversight ministry is a mouthful, it’s the Ministry of Public and Business Service Delivery and Procurement.

The regulator warns they “expect” builders to obey the law. But expecting car drivers to stop at red lights isn’t much of a deterrent.

It’s long overdue for a standard contract for new home sales, as exists now for re-sale homes. The current pre-construction contracts are lengthy, complex, and developer-written, with plenty of so-called weasel clauses, which favour the interests of developers. A standard, simplified contract could include the Tarion and HCRA registration numbers, in order to prevent builders who are not licensed or registered from signing buyers up for new homes and taking deposits, if they’re not licensed. Or these numbers could be listed on the current mandatory addendum attached to all developer-written purchase contracts.

This could be a much-needed boost for consumer confidence in the current housing crisis, and strengthen and simplify consumer protection.