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**Standing Committee on
Justice Policy**

Rebuilding Consumer
Confidence Act, 2020

1st Session
42nd Parliament

Monday 20 January 2020

**Comité permanent
de la justice**

Loi de 2020 visant à rétablir
la confiance chez
les consommateurs

1^{re} session
42^e législature

Lundi 20 janvier 2020

Chair: Roman Baber
Clerk: Christopher Tyrell

Président : Roman Baber
Greffier : Christopher Tyrell

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

Monday 20 January 2020

**COMITÉ PERMANENT
DE LA JUSTICE**

Lundi 20 janvier 2020

The committee met at 1000 in the Courtyard by Marriott Hotel and Conference Centre, Brampton.

**REBUILDING CONSUMER
CONFIDENCE ACT, 2020
LOI DE 2020 VISANT À RÉTABLIR
LA CONFIANCE CHEZ
LES CONSOMMATEURS**

Consideration of the following bill:

Bill 159, An Act to amend various statutes in respect of consumer protection / Projet de loi 159, Loi modifiant diverses lois en ce qui concerne la protection du consommateur.

The Chair (Mr. Roman Baber): Good morning, everyone. My name is Roman Baber. I'd like to welcome all of you to Brampton. I now call this meeting of the Standing Committee on Justice Policy to order. We're here today in Brampton for public hearings on Bill 159, An Act to amend various statutes in respect of consumer protection.

**CANADIAN ASSOCIATION
OF TOUR OPERATORS**

The Chair (Mr. Roman Baber): I'd like to call our first witness to come up and take a seat at the table. Mr. Walker.

Good morning, Mr. Walker.

Mr. Brett Walker: Good morning, everyone.

The Chair (Mr. Roman Baber): Mr. Walker, you'll be offered 10 minutes for your presentation, followed by 20 minutes for questions from each of the official parties. May I kindly have you begin by stating your name for the record?

Mr. Brett Walker: My name is Brett Walker. I am here representing CATO, which is the Canadian Association of Tour Operators, for which I am the chair. I'm obviously not speaking on my behalf, but on behalf of CATO members.

I have a statement that I would like to read, if that would please the Chair and the committee.

The Chair (Mr. Roman Baber): Sure. Thank you.

Mr. Brett Walker: Afterwards, I would be happy to answer any questions that I can.

As pertaining to schedule 3 of the bill, in particular—administrative penalties: While it's all well and good that such penalties are meant to ensure both compliance and a

level playing field in Ontario, travel services, by their very nature, are intangible. They are not physical products like a car or an automobile, where competition is mainly local. Our competition is global, it's virtual, and it's ubiquitous.

While we cannot impose regulations on the world, we can make Ontario registrants more competitive by ensuring that the consumer is more protected right here in Ontario; in other words, giving Ontario consumers and others who purchase through Ontario registrants, us, surety of their full travel purchase—every cent, nothing less.

CATO believes that the Ontario travel industry is tethered to a sinking ship. The hole in the ship, if you will, is a completely inadequate consumer protection fund in Ontario. Administrative penalties and other changes to governance are well intended but, like bailing water from a sinking ship, do not fix the hole. Fixing the hole will require a significantly more robust consumer protection fund. Achieving this requires a different funding model.

The insufficiency of the current travel protection fund was confirmed in a recent 2018 Deloitte actuarial report that cited, "A large registrant failure would significantly impact the fund and expose TICO to financial, consumer, political and reputational risk." Furthermore, the Deloitte report stated that the target fund should be in the range of \$40 million to \$60 million. This Deloitte report, by the way, is available for you all on the TICO website. The current fund is somewhere around \$24 million.

Without a more robust fund and funding mechanism, both existing and prospective travel sellers will have to think hard about operating within Ontario, where they are subject to more regulations, more burden, more costs and now more substantial risks for non-compliance than virtually anywhere else in the world.

CATO understands and accepts the legislative changes proposed in Bill 159 are intended to both enhance DAA governance, as well as empower DAAs with greater compliance and enforcement tools. Yet, there is absolutely no remedy for the consumer in the event of a catastrophic, or even large, registrant or end supplier failure. These are not unprecedented. Two you might be familiar with quite recently: Thomas Cook in 2019 and Monarch Airlines in 2017. Either of those could be considered large and probably catastrophic.

While such events may be deemed unforeseen, what is not are the current limits on any consumer claims in Ontario: \$5,000 per person, per event; \$5-million per-event

cap; \$2-million repatriation per event; and a current fund of only \$24 million. I repeat: \$24 million. Deloitte reported that a large registrant failure in March of any given year would affect as many as 135,000 passengers and could result in claims of between \$20 million and \$183 million against the fund.

I am here today, the voice of CATO, to implore government to consider the reason for DAAs, in particular TICO and the travel industry fund, in the first place: the consumer. While the proposed changes in Bill 159 are likely just and warranted, they do not provide consumers with anything more than the grossly inadequate protection they have currently.

In the event of a large or catastrophic failure, the government will have to explain to consumers, if not stakeholders like CATO, why it failed to fix this ticking time bomb. We would respectfully submit, once again, that the government has missed an opportunity to fully protect Ontario travelers against failures, and it has done so despite many submissions by CATO and other stakeholders urging change to the funding model.

One solution of perhaps many was implemented in Quebec: a consumer-pay model which has built up their travel compensation fund to over \$150 million, to the point where they have currently stopped contributions. Yet, in Ontario, travel companies are required to carry the burden of funding a wholly inadequate fund. Consumers are told that they have “peace of mind” and that TICO provides “consumer protection for your travel investment.” Yet, nowhere in TICO’s advertising is the consumer advised about the maximum coverage or legislated limits to coverage.

CATO remains committed to working with government on a plan to provide better, more, wholesome consumer protection, not less and not the status quo—neither of these are acceptable. CATO, alongside many other industry associations, is on record, as we are here today, advocating for more and better consumer protection than currently exists. We’ve taken part in many such discussions and consultations, for different governments, regarding the Consumer Protection Act, the Strengthening Protection for Ontario Consumers Act, and now the rebuilding protection for Ontario consumers act, but none have addressed any change to properly funding the fund.

1010

As Bill 159 seeks to strengthen DAA governance and enforce compliance of registrants, we implore government to now turn its attention to the consumer. If we are to have consumer travel protection and a regime to support it, the consumer protection itself must be at least relevant and in accordance with the realities of today.

The Chair (Mr. Roman Baber): Just about a minute and a half, Mr. Walker.

Mr. Brett Walker: I’m just finishing up. Thank you, Mr. Chair.

I thank you for your time, committee, and I am now happy to answer any questions that I can, if you have any.

The Chair (Mr. Roman Baber): Thank you so much, Mr. Walker. We’ll commence with the government side. Mr. Bailey.

Mr. Robert Bailey: Thank you, Mr. Walker, for your presentation.

I’m interested in the Quebec model. What are the costs in Quebec for a consumer like myself, say, buying a trip, versus Ontario? Can you give us an idea?

Mr. Brett Walker: I know it has been adjusted. I’m not an expert, but I think it’s around \$1 per \$1,000.

Mr. Robert Bailey: What would it be in Ontario, for example?

Mr. Brett Walker: What would—

Mr. Robert Bailey: What is the cost in Ontario for—

Mr. Brett Walker: For registrants? Currently, the fund is funded by registrants, and it is 25 cents per \$1,000.

Mr. Robert Bailey: Okay. Do you have any comments on the ministry’s suggestion to harmonize accountability etc.?

Mr. Brett Walker: I believe it’s CATO’s view that a consumer-pay model would accomplish many different things, as opposed to a 100% registrant-pay model. Certainly, a consumer-pay model would increase awareness, number one. I would challenge any of the committee to go out and ask your friends or family how many are even familiar with the travel compensation fund. Most would say, “I have no idea.”

As we all know, as consumers, when we pay for things, it creates a much greater awareness of the fact that there is this consumer protection out there, which, if you stretch it far enough, from an industry point of view, could actually create a competitive advantage.

Consumer-pay would also create an accountability. We all know, as consumers, that if we are asked to pay for something, we want to be sure that we will be made whole. These caps and gaps that we have currently—quite frankly, for many of our membership, a \$5,000-per-person cap wouldn’t cover most of a vacation. And even if consumers are aware of the fact that there is a compensation fund, they’re certainly not aware of the fact that all of their money may not be protected. In fact, if there is a major, large or catastrophic failure, those limits probably don’t mean much in the event that they’re a—if the likes of a Thomas Cook were to fail, you might get cents on the dollar.

I think our view is that by a consumer-pay model, you would create greater awareness; you would create greater accountability to ensure the fund is funded appropriately; and thirdly, certainly, you’d create greater transparency, of which there is none right now. The consumer has no idea of the fund. They certainly have no idea what registrants pay into the fund.

Mr. Robert Bailey: Thank you.

The Chair (Mr. Roman Baber): Mr. Coe.

Mr. Lorne Coe: Thank you very much for your presentation.

I’m interested in your narrative on the Quebec model, particularly. Have you seen any evaluative data on how well that model is working?

Mr. Brett Walker: Well, only what I’ve mentioned, and the fact that the fund is now approximately \$150 million. It is a consumer-pay model. Based on their own

actuarial studies, they've deemed that to be sufficient for a large, possibly catastrophic failure, so they have imposed essentially a fee holiday. As I understand it, it is a fee that is still charged, with an equal offset, so that if need be at any point in the future that could be reinstated, but for the time being, it's sufficient. A consumer in Quebec can make a travel purchase knowing that, "Regardless of what I paid for that trip, I will be made whole in the event of a failure."

Now the interesting thing about travel is that we all take it for granted that there is going to be an advance purchase. I would suggest that none of us would ever buy an appliance or a car and pay for it a year in advance before getting it. But we as consumers do that all the time in the travel industry and no one thinks twice about "Will I get that trip?" It's sad, but for those of us in the industry, when we have failures like Thomas Cook, it creates reverberations among people who aren't directly involved in the industry to think twice about their next travel purchase. That may be what it's going to take here in Canada before people finally begin to question who they're buying a trip from and whether they're fully protected.

We would like to see a fund, much like Quebec, where consumers can be confident that if there is, God forbid, a failure—bear in mind, many of these travel companies are not public entities; most of our membership is private—that any consumer's funds would be protected in whole.

The Chair (Mr. Roman Baber): Mrs. Tangri?

Mrs. Nina Tangri: Thank you, sir. You're saying that they are compensated wholly, meaning there's no limitation whatsoever on what the fund can pay out per person?

Mr. Brett Walker: The only limitation is the fund itself, which is currently sitting at around \$150 million.

Mrs. Nina Tangri: Okay. Is it one organization that runs that fund, and they have it all? It's similar to, I guess, for lack of a better term, our EI model, federally? It's something along those lines, so—

Mr. Brett Walker: The acronym is OPC. It is a government organization, essentially, much like TICO, who determines what—I would imagine it's through a third party, much like Deloitte—the appropriate level of the funds should be. It's deemed that the \$150 million that is currently in the fund is sufficient to cover any failure.

Mrs. Nina Tangri: Have they, in any time in the recent past, had to pay out any claims? How well are they at paying out those claims, or is there a pushback?

Mr. Brett Walker: Again, I'm no expert. I'm much more familiar with our own authority. I am sure there are claims paid all the time, as there would be with TICO. There are always going to be insolvencies, and you just hope that it's not a catastrophic failure. There are always going to be small failures, for which I'm sure there are people who are tapping into the Quebec fund. But I'm not an expert in exactly what the disbursements are.

Mrs. Nina Tangri: It's great to have a model that is well funded and has all the right things in place, but when it comes to paying out the claims sometimes, as we've seen with many other organizations—when it comes to the consumer trying to tap into that fund, there's always an

issue. But it's something that certainly we will take a look at. Thank you.

Mr. Brett Walker: I share that concern too. How the monies are disbursed is a secondary issue. The main thing is, we need to make sure that we have a fund which is appropriately funded.

Mrs. Nina Tangri: I agree that it's a secondary issue, but it's really the first issue. If the consumer cannot claim against that fund, if there is no issue, then there is no fund.

Mr. Brett Walker: They may go in tandem. I fully agree.

Mrs. Nina Tangri: Thank you.

The Chair (Mr. Roman Baber): Mr. Bailey.

Mr. Robert Bailey: I have one quick question. Thank you for your presentation. We're talking about Ontario, and we're talking about Quebec. What about the rest of the provinces? Okay, Quebec, you say, is the ultimate model. What about the rest of the provinces? Where does Ontario rate with them? Are we in the middle?

Mr. Brett Walker: Again, I apologize. I'm not—there are three regulated authorities within Canada. Those authorities are Ontario, Quebec and British Columbia. British Columbia has a fund much like Ontario. I would argue that it's insufficient. However, they do not have the limitations on payouts that we do have in Ontario. So they have a fund, arguably insufficient, but they do not have the limitations.

1020

Mr. Robert Bailey: Okay. Thank you.

The Chair (Mr. Roman Baber): Just about a minute left—any further questions from the government side?

Mr. Robert Bailey: No, that's fine. Thank you.

The Chair (Mr. Roman Baber): Seeing no further questions from the government side, we'll now proceed with the opposition. Mr. Rakocevic.

Mr. Tom Rakocevic: Thank you for that very passionate presentation.

Just to reiterate, in Quebec the consumer is paying \$1 per \$1,000, roughly. Here, the operator is paying 25 cents per \$1,000, and you feel that the operator should pay nothing and that the consumer should be paying more here in Ontario because Quebec has a superior system when it comes to that fund. Obviously, it has \$150 million, right?

Mr. Brett Walker: We feel there are many reasons why it would be beneficial for the consumer to pay, certainly, to properly fund the fund. It would be, to use my word, catastrophic if industry were to fund the fund. It would put industry here in Ontario at a decided disadvantage to our competitors all over the world. Where do we purchase travel? Online. So we are competing in a very virtual world. We believe that consumers funding a fund will create the awareness, create the accountability, create the transparency of why it's important to purchase your travel here in Ontario. Yes, you may pay a little more, but considering the risk, isn't it worth it? As well, we have a model in Quebec that is working, and has sufficiently funded itself to a point where we now have a holiday, if you will. So I think those two reasons are important: one,

to create a consumer awareness of why it's important to purchase from an Ontario registrant; two, to properly fund the fund. I guess there's a third reason, that is, it's an industry self-interest; if we were to fund any more than we currently are, we are at a disadvantage to our competitors virtually anywhere in the world.

Mr. Tom Rakocevic: And operators are paying—when they set their prices for consumers, don't they factor in the fact that they are paying the 25 cents?

Mr. Brett Walker: I can't speak for all members. I would say that some may, some may not. At the current level, if you look at many of our members like a WestJet Vacations or an Air Transat Holidays or many names you wouldn't know are large companies like a Travel Corp. which incorporates many, many different brands like a Contiki, Trafalgar, Insight, AAT Kings, whatever, 25 cents per \$1,000, if you're looking at a small number, it doesn't seem like a lot, but when you're talking about very, very, very large companies—and these companies, by the way, are, if not national, global in nature—it's a very significant amount. Whether they price it in or not, I don't know, but we have to remember that everything we price in, whether it's a consumer protection fee or anything else, is part of the price and part of our pricing that we have that we must compete with other entities, other competitors in different regimes.

Mr. Tom Rakocevic: But if you're an Ontario consumer and you're purchasing from an operator here, let's say we move to the Quebec model, they would still be paying, basically, in fact, more. So if you're saying that it's about pricing and it's about being competitive, wouldn't the consumer just be paying more under what you're suggesting?

Mr. Brett Walker: Well I don't know. Right now it's sort of assumed in the price of the product. What I think we would perceive it as is as a separate line item. I think that's really, really important. So you would pay for a travel product and additionally you would have a separate line item for the consumer protection fee. And that's important, too, not just in terms of—it's not a shifting of the burden, but it's also part of the awareness which I've spoken to many, many times. The fact that consumers today are not aware that there's even a travel—most aren't, and that's been proven in TICO's own omnibus studies which have proven that only approximately 32% or 33% of Ontarians are even aware of TICO or the fact that there's a fund. What this separate line item would do is create that awareness as well as creating an accountability that the fund has to be funded properly.

Mr. Tom Rakocevic: So are operators currently prohibited from creating another line item simply putting the cost and describing what it is for their customers as it is under the current system?

Mr. Brett Walker: I would answer yes to that.

Mr. Tom Rakocevic: They're not allowed to do that?

Mr. Brett Walker: I don't believe we're allowed to do that.

Again, the current fees are based on Ontario gross sales. So the 25 cents per \$1,000 is based on Ontario gross sales,

which is assessed at year-end. I don't know how you would do it any other way.

Mr. Tom Rakocevic: I see. So the year ends, it's calculated, and then the tour operators are made to pay an amount that's set based on that.

Mr. Brett Walker: Based on Ontario gross sales.

Many of the companies I mentioned are not just doing business within Ontario; we're doing business all over the world. Ontario is but one province within one country that we are working—so it's probably, for most companies, assumed as part of their bottom line.

Mr. Tom Rakocevic: At the beginning of your speech, you talked about penalties. Are there any in particular that you feel are unjust or to this effect—because that's where we started, and then we spoke a lot about the fund.

Mr. Brett Walker: Again, speaking on behalf of CATO membership, which is a large constituency: We feel that the administrative penalties which are mentioned in the bill are not too terribly onerous and probably will enable compliance, but it's part and parcel—without a more substantive fund, it is viewed by most as a burden.

We have all of these hoops for which we have to jump through, but at the end of the day, if there's a larger catastrophic failure, the consumer will only get cents on the dollar. If we are talking about administrative penalties, they are viewed by membership as being, I think I mentioned, just and warranted in order that we create a level playing field and that we are all compliant. At the same time, we need to make sure that if we're doing all of this, the consumer is going to be made whole in the event of a failure.

This is all about consumer protection, and while the bill certainly helps to fulfill that—because we are making sure that anyone operating within Ontario is going to be compliant. Administrative penalties certainly enable that; we get that. I would think that most people would realize that's a tool that is required within the tool box. However, ultimately, that will only accomplish so much.

Invariably, as we've seen all over the world, from time to time you are going to have a failure. It may not even be an issue of compliance. It may be; it may not. It could be a world issue. We live in a very, very chaotic world, as you can imagine. Doing business in the travel industry, things go wrong. Events can happen far beyond any of our control. If there happens to be an "event"—we don't like that word—quite frankly, you could have an operator that is absolutely operating above bar and compliant in every way, but you have a geopolitical issue which brings them down.

There are a lot of reasons why you could have a failure. At the end of the day, you need to make sure that whether it's an issue of compliance or whether it's any other issue, the consumer is going to be made whole.

I hope that answered your question.

Mr. Tom Rakocevic: Yes.

The Chair (Mr. Roman Baber): Ms. Singh, you have about 90 seconds.

Ms. Sara Singh: Thank you so much for your presentation.

The entity in Quebec is the OPC, as you've referenced. I'm just curious, are they doing anything other than a fund that is helping raise awareness for consumers about the protections that they have? You said that there seems to be a heightened awareness in Quebec that we don't have here in Ontario. Are they doing anything specific that you can share with us?

Mr. Brett Walker: I think the most important thing they're doing is—in Quebec, it is a separate line item. As a consumer, when you're purchasing a travel program in Quebec, you're paying for your travel—much like Ontario, it's based on the amount you pay. In accordance with what you pay, you are assessed a fee which is a separate line item, which everyone is very much aware of and has to pay for.

Ms. Sara Singh: Thank you so much for that clarification. I think that helps the consumer understand that there's an additional cost.

In terms of the actual costing, have you seen any models where there's a shared responsibility for the regulator as well as the consumer, in terms of the dollar? Let's say it's 50-50. I'm just curious if there are any models that exist in terms of that cost-sharing.

The Chair (Mr. Roman Baber): Thirty seconds.

Mr. Brett Walker: There are other models in other jurisdictions—very few that have any such protection—and I'm not an expert. What I do know is that if we are to have consumer protection here in Ontario, it can be a competitive advantage, but you have to have a fund which is properly funded. There is only one way to do that, and that's through the consumer.

1030

The Chair (Mr. Roman Baber): Thank you very much, Mr. Walker. Just as a reminder, the deadline for filing any written submissions before the committee is this Wednesday, January 22 at 5 p.m. Thank you very much for your submissions.

Mr. Brett Walker: I'd like to thank everyone for their time. I appreciate it.

CANADIAN CONDOMINIUM INSTITUTE

The Chair (Mr. Roman Baber): We'll now proceed with our next witness. I'd like to invite Armand Conant on behalf of the Canadian Condominium Institute.

Good morning, Mr. Conant, and welcome.

Mr. Armand Conant: Thank you, Mr. Chair.

The Chair (Mr. Roman Baber): We'll begin with a 10-minute submission on your part, followed by 20 minutes of questioning from both recognized parties. I invite you to commence by stating your name for Hansard's purposes.

Mr. Armand Conant: Good morning, everybody. Thank you for allowing the Canadian Condominium Institute to present this morning. My name is Armand Conant. I'm a condominium lawyer, having practised condominium law for about 27 years. I am on the board of directors of the Canadian Condominium Institute Toronto and Area Chapter and head up the condominium law department of the law firm of Shibley Righton.

What I'd like to do is present very quickly on who we are and the three points that we would like to make today. The Canadian Condominium Institute is a nationwide not-for-profit organization that focuses on the advocacy and representation of all participants in the condo industry and community. We spend a lot of time focusing on condo directors and owners, because the condo act, being a consumer protection act, is something that we take very much to heart in working with the owners and directors.

The Canadian Condominium Institute is, as I said, nationwide. It's been around for about 35 years. There are eight chapters in Ontario. I'm speaking today on behalf of all eight chapters. We represent over 275,000 condominium units in Ontario. For those who may not know the size of the condominium industry, it's now in excess of 11,000 residential condominium corporations. That is over 800,000 residential units, with about 1.6 million Ontarians living in residential condos.

Our focus, as I said, for the directors and the owners, is dealing with how we can have better communities, harmonious communities, and consumer protection.

Here today in the audience, we also have Dean McCabe, who is on the board of directors of ACMO, the Association of Condominium Managers of Ontario, which is the pre-eminent and the oldest and largest not-for-profit organization for the education and advancement of condominium property managers. It was this organization that was instrumental in achieving the licensing of condo property managers that is now in effect.

Both organizations have been heavily involved and were heavily involved in the first round of the reforms that happened in 2012-13, leading up to the Protecting Condominium Owners Act of 2015, which resulted in a lot of necessary reforms—because we're dealing with an act that was brought in in 2001. They all received royal assent; some received proclamation, but not till November 1, 2017. We were in that. As an example, I was on the expert panel where we presented an in-depth report to the government on these reforms that we felt were needed to enhance the consumer protection inside Ontario for condos. That was a great privilege to be on.

It was wonderful, what has come in. These are necessary changes. They led to the November 1, 2017, date for the first reforms that were proclaimed. These included the creation of the Condominium Authority of Ontario with its tribunal, called the Condominium Authority Tribunal—we call it CAT; it was the licensing of managers, and then the creation of their regulatory authority, called the Condominium Management Regulatory Authority of Ontario, or CMRAO; and the mandatory training of directors.

All that was fabulous, but there was a lot that was not proclaimed, and no more reforms were proclaimed since then—until December 12, when we were so pleased to see the government announce the next round of reforms in Bill 159, the Rebuilding Consumer Confidence Act. Particularly, when the announcement came out, they also had one for dashed or hyphenated “condo-living.” These have brought out what I call the three stages of the reforms,

which we're so happy to see, and much more to come. And there's still a lot from that 2015 act that we feel has to be proclaimed and has to come in so we can get our communities—and it's probably soon going to be two million people living in condos, because you can see all the cranes around the GTA and the number of condos going up.

What has happened now is, I look at it as three stages of what has been announced on December 12 with the Rebuilding Consumer Confidence Act. One was delegating to the Condominium Authority of Ontario 17 of the prescribed forms. There are going to be a few more this year going to the CAO. These are the forms that run condo corporations, particularly the nemesis of all of us in the industry, and myself as a condo lawyer—the proxy form; the status certificates; and notice of meetings. These are the forms that are used in running a corporation. They've been delegated to the CAO for looking after them, for giving guidance, maybe clarifying them, and helping. We hope we can do some significant reforms to them. They got that delegated authority, or that delegation, as of January 1. So it's done.

Phase 2, which is what I will talk about—and I've handed out a two-page written submission on what I call stage 2—is the introduction of legislative nuisances, disturbances and annoyances, with definitions, and the increase of the jurisdiction of the tribunal, the CAT, to deal with those, and then what we have in the industry: the three Ps, which is the most number of disputes in condos, being people, parking and pets. Historically it has been like that. There are a couple more Ps now, but I won't say what they are. But they are going to the CAT tribunal. That's what our short paper is. The Ontario chapters of CCI will be submitting a more in-depth, comprehensive set of submissions on those before the January 31 deadline.

Just before I go to them, I'll go to what I call stage 3. In the announcements of the government on December 12, they said that the ministry will be undertaking consultations in 2020 for stakeholder input on a whole host of more reforms. The biggest and the most important that we've been pushing for a long time is the financing of condo corporations—the reserve funds. The financial footing is fundamental to the well-being of condos and the longevity of condos. We have had condos now since the 1960s, and we have to get them on a good financial footing, and the new condos coming in on a good footing.

They will also be dealing with things such as chargebacks, another bone of big disputes with owners and the corporations; procurement policies; mediation and arbitration; and a bunch more. So that's going to happen in 2020. CCI and I know ACMO and others will be participating to help the ministry, to get it as comprehensive and as clear as we can to help the owners and residents in condos.

In the last couple of minutes, I just thought I would briefly go over what's in that paper, and it's a brief summary. The nub of what we are saying to the announcement is more clarity and more certainty in the definitions. As lawyers, we love it when there's uncertainty. We love the words “reasonable” or “unreasonable.” That's what we do. So we are and have always pushed—I call it the clarity and

certainty. When you get to that CAT—and the tribunal was designed as an online service to have faster, less expensive and more efficient resolutions of the most common disputes in condos. But to do that, you have to have that certainty in definition.

Right now the CAT only deals with one issue, section 55, which is records. I'd like a copy of minutes, or I want to get a record, and there's a fight with the corporation: That's the only jurisdictional issue to go to the CAT. So it's going to be increased, first of all, by introducing what we call the nuisance: annoyances and disruptions for noise, odour, smoke, vapour, light, vibration and infestation. Fabulous, but you can just see in those words that there are problems with trying to understand them. What is light? Indoor or outdoor light? Intensity? Odour: What kind of odour—cannabis, tobacco, cooking? So there is a lot more that we are recommending, and we'll be there to help to get that clarity and certainty. What about the interaction of the condo corporation's documents that will deal with nuisances, or common-law nuisance versus what will be in the legislation?

The Chair (Mr. Roman Baber): About a minute.

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Mr. Armand Conant: So with the CAT—and I'll end with the CAT, the increasing of the tribunal—that is important. It works well; I think it does, personally. There is tweaking and fine stuff we have to do.

Two things, I think, are important. With the increased jurisdiction, it is important that the ministry help the CAO in determining the process and procedure, because there will be a lot more disputes. We've already had a lot of disputes over records, but there will be a lot more when we get to pets, parking, vehicles, storage, and transportation of disabled people. That's number one: a better procedure.

The other one would be that we'd like the government to reconsider the fact of awarding or not awarding costs—we call it legal costs, paralegal and consulting. Right now, it can only award them in exceptional or extraordinary circumstances, and one of our submissions will be for that.

In summary, we want to point out that the eight chapters of CCI and ACMO are here for the government, here for the ministry. These are wonderful changes coming in, and we're there to help you in any way we can.

The Chair (Mr. Roman Baber): Thank you so much, Mr. Conant. We'll now proceed with members of the opposition for 10 minutes of questioning. Mr. Rakocevic.

Mr. Tom Rakocevic: I'm happy to talk about this and ask some questions.

You might remember a former MPP from Trinity–Spadina, Rosario Marchese, who was a big proponent of the Condominium Act reform and changes. I'm sure you and many others worked with him closely.

There are a lot of things I want to ask. Does your membership have a position on short-term rentals within condos? I'm hearing issues of this come up within condos, even in our local constituency. Do you feel that's something you would like to see included in the tribunal? Do you have a position on that?

Mr. Armand Conant: That would be difficult in the tribunal. I think what's going to be important is how condo corporations, each individual community, can regulate it in their building.

We know that the city of Toronto passed their municipal bylaw that just got approved on the appeal, or at least it wasn't struck down.

We find in condo communities that most say, "I'm a home. We are a building of homes. We're not a hotel." So a lot of corporations are looking for mechanisms to be able to control short-term rentals. The best is your declaration, amendment to your declaration—it's impossible to do, but that's the best. Then others do it by rules. Our membership generally—there are exceptions—feel that short-term rentals, depending on what you define as a short term, are very problematic for condominium corporations.

There are some we know, built near the Scotiabank centre—or the Air Canada Centre, as it was called—who, when they were created by the developer, specifically said, "This can be for short-term rental, including daily." Usually, around entertainment centres, they're built in, so unless the corporation can amend their declaration, they have that. That brings a whole host of issues, in the sense of added wear and tear on the building, whether it's the elevators, the move-ins. Often, they'll use party rooms. Assuming they're not disallowed by their declaration, they allow parties. Some do great Airbnb. My wife and I have done it over in Europe. But by and large, we're finding that there are problems.

So the short answer is, generally speaking, the community would not like to see them in condo corporations.

Mr. Tom Rakocevic: When you want to make changes to a particular condominium, to their own laws that are governing the specific condominium in question, what do you need? About 90%?

Mr. Armand Conant: The declaration has two levels: 80% or 90% written consent, depending on what the amendment is. For your bylaws—because certain matters are dealt with by bylaws—that's 50% plus one of every voting owner. Then, the bottom is rules—and that's typically where the Airbnb short-term will happen; not in a bylaw. The rules are passed by a specific process under the Condominium Act. Basically, you set it out that if nobody has requisitioned a meeting, then it's okay. If they requisition a meeting, then it's just dealt with at the meeting, with no special vote count.

Mr. Tom Rakocevic: Does your association have any position on this? I know that there are condos within my constituency where a group of members will want a meeting to be held and they're just not able to reach the threshold, and I don't think it's for want of desire. It's very difficult to get a certain number of people to agree. Do you feel that 80% to 90% is adequate? Should it be less, more?

Mr. Armand Conant: Again, it depends on what the change is. Remember, 90% is only for major changes to your declaration—changing the common elements, changing the percentages of everybody's contribution. If you were going to do short-term rentals, that would be 80%. Even so, it's horribly hard to get that threshold.

Mr. Tom Rakocevic: No, I don't mean it with regard to the short-term rentals, at least with respect to that. I just mean it with regard to anything. Within my constituency, for instance, there are a lot of older condos where now you see maintenance fees at certain levels, and people are wanting to make changes, and it's very difficult. So just with regard to that, do you think that 90% is fair?

Mr. Armand Conant: But there wouldn't be 90%; that's what I'm saying. On those types of questions—

Mr. Tom Rakocevic: To change the declaration.

Mr. Armand Conant: Oh, to change—it would be 80%, but it's still high. The answer is, no, I think certain things should require a lower threshold.

But maintenance and repair, like common element fees going up, would not deal with the declaration. They would deal more with the board, good governance and their financial record-keeping, and then depending on what they've got in their other documents.

If you're talking about who is responsible for doing a repair, versus the amount of the repair or maintenance, yes, that would be dealt with in your declaration, or the condo—

Mr. Tom Rakocevic: Yes, that's what I mean.

Mr. Armand Conant: But if it's that, as opposed to the amount, that's hard when you are at 80%. It has been historic that it's high. Most of what happens in a condo is on the other levels: the bylaws and the rules. Then you have that requisition where owners can requisition a meeting to discuss stuff and/or to vote, with 15% signing the requisition.

But to your point about certain things in the declaration, yes, I think 80% on certain matters is too high.

Mr. Tom Rakocevic: And a last one, just for the record: What's missing? What do you see that you think could be implemented sooner rather than later?

Mr. Armand Conant: Generally speaking?

Mr. Tom Rakocevic: Yes.

Mr. Armand Conant: For me, I think the biggest one, other than dealing with disputes of owners, is the financial well-being of condo corporations. We need a proper definition of what is adequate funding of the reserve fund. We need a better way to make sure that reserve funds are set up properly when they're handed over by the developer—because we work hand in hand with developers. When I say we act for or represent owners—every time I've gone to every single stakeholder meeting, we've always had owners, directors, professionals and developers at the table. So we're trying to find a better way to (a) get a better product built, and (b) get the corporations on a good, sound financial footing.

Mr. Tom Rakocevic: Okay.

The Chair (Mr. Roman Baber): Ms. Singh.

Ms. Sara Singh: Thank you so much for your presentation.

I'm just curious. I know that you raised some concerns around some of the language, around "annoyance" or "disruption." As a lawyer, are there any suggestions that you would have in terms of amendments to that language?

Mr. Armand Conant: Yes. I think what we would do—it would be in our more in-depth submission. As I

said, “annoyance” itself is not a defined term. We have certain other ones that would be. “Nuisance” itself has a legal definition. You often hear that in common law. But the words “annoyance” or “disruption” have not got a legal definition. We’d like some clarity or some guidance in the regulations as to what that means.

The other one is the use of the word “unreasonable,” which we jokingly talked about earlier. There are some good court decisions trying to help us understand what “reasonable” is, but there’s nothing about what “unreasonable” is, and yet the draft regulations say “unreasonable” disturbance. Again, I think there should be some language to help us in the industry, and the owners, understand that.

We all know, and every court decision has said, that you can never have a silent corporation. You’re in multiple units, high-rises—generally, mid-rises; it doesn’t matter. You’re always going to have some level of noise. It’s when it crosses that line to become the nuisance, annoyance or disturbance. That’s a growing concern in condos.

So the words “annoyance” and “disturbance” should be defined; maybe changing it from “unreasonable” to “reasonable.” Then look at the individual words, which are “light,” “odour” and “infestation.” We would like more clarity on those, to help us in the disputes.

Ms. Sara Singh: Thank you so much for that. I think you touched upon this very briefly, but I think the lack of clarity in the language could actually result in increased concerns with owners or the condo board itself. Can you speak a little bit about some of those concerns, and perhaps how they may create further problems rather than protect a consumer, for example?

Mr. Armand Conant: That’s a really good point. When I used to talk about the first round of reforms, one of the big things we said, with the Protecting Condominium Owners Act, was clarity and certainty.

One of the biggest problems in condos across Canada—I sit on a national organization—is that people don’t understand what condos are. I lived in one with my wife and kids for six years. It’s a great quality of life, but they don’t tell you that it comes with restrictions and obligations. That becomes the disputes that arise in condos: “This is my castle. This is my home. How dare you tell me I can’t do something.” But they haven’t read the documents or the act, and when they do, because it’s so broad, it’s then open for interpretation from both sides. “What are you telling me that’s too much noise? That’s not too much noise.” “Yes, it is because of”—and that’s why, when I was talking about it in 2013 to 2015, I said we’ve got to get better clarity and certainty. That was the real intent of the first round of reforms, and big, big improvements, there have been, but there’s still a long way to go.

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If you don’t have that, you still have the unit owners. You have good unit owners with bad boards and bad unit owners with really good boards. It’s a recipe for disagreement and disharmony and disputes. You can’t cover everything. There is no regulation nor would we want a regulation—it would be 18 pages long—to try to cover every possibility. But I think basic definitions would be great to help us in the industry.

The Chair (Mr. Roman Baber): With 10 seconds remaining, unfortunately the time for the opposition expired. Thank you.

Mr. Armand Conant: Sorry, I get passionate in this too.

The Chair (Mr. Roman Baber): Thank you very much. We’ll now move on to government members. Ms. Kusendova.

Ms. Natalia Kusendova: Good morning, Mr. Conant. Thank you very much for your feedback and your valuable insight into this matter. I know you also met with the minister back in November and provided some great feedback which she has certainly taken into account.

I’m reading here the description of your organization, that it represents 280,000 paid member condominium units. Does that include renters or is it only owners? I’m a renter myself, so I’m wondering if the voices of renters are reflected.

Mr. Armand Conant: That’s a very good point. Technically, with the CCI membership, it is owners. We are based on ownership units and the condo corporation joins our organization and all of the unit owners are there. We do articles. We have some—I won’t say educational courses, but we try to educate the tenants because, obviously, in Ontario, those who may know, the rental percentage is very high. I’ve got a building in Liberty west of 1,200 units and 82% of them are rented with absentee owners.

There are provisions in the condo act that deal with how to deal with the tenants, but not as members of CCI per se, although we do have courses and information for them. I know the CAO will eventually be doing a guide for tenants.

Ms. Natalia Kusendova: Okay. Thank you for that clarification.

We’ve heard on the news recently about a lot of increasing disputes between landlords and tenants. You alluded to some of the language that might need some further clarification. This would also have a lot of impact on renters in terms of what’s defined as odour, what’s defined as unreasonable. Do you foresee renters being involved in the future clarification of these statutes?

Mr. Armand Conant: Absolutely, and I think they should be. When we went around in 2012-13 on the stakeholders and we went around the province and we had people come in, it wasn’t just owners and directors. The government made sure there were renters, tenants, at the table, because they do play a very important and valuable role. Really, condos are the rental stock for Ontario now. So, yes, they should be at the table.

You have to understand, though, that condos are homes. They’re not built as apartment buildings, they were never intended to be apartment buildings nor should they be. I buy, you buy, because that’s my home, that’s where I’m living with my family. You always have to balance the community of homeowners with those who legitimately rent their units. But they should be at the table.

Ms. Natalia Kusendova: Just out of curiosity, with the legalization of cannabis, the problem of odour in

condominiums is increasing. Do you have any anecdotal feedback as to how the government can better regulate that or legislate that?

Mr. Armand Conant: It was, we thought, going to be even bigger. What happens is, once it was legalized, then you have the problem in your corporation of whether or not somebody had already passed a rule—it wouldn't be in your declaration—prohibiting cannabis when it was still illegal. Then, what a lot have done is passed rules—and you must think now, with cannabis, since it's legal, it's treated like any other form of odour—cooking smells, tobacco, it doesn't matter. It's just that it's more pungent. What we do try to prohibit, and should, is—I don't like the cultivation in condos. You're allowed the four plants by the federal government, but they have an odour stronger than others. And when you're trying to make edible products, that can cause a lot of odours.

What we do in the condo world, when you have cannabis or any kind of smoking—and we're only talking in the unit, not the hallways, because that would be prohibited—is we deal with that resident just like anybody else, meaning, “You can't interfere with somebody next door to you or in the hallway.” What does that mean? We can come after you to say, “Okay, what other ventilation can you do? Where are your fans? You can't open up your balcony on the 48th floor because it affects the air pressure in the hallways, but what can you do?” We do this with everybody.

The thing with cannabis is that since in some of the buildings it tends to be the older demographics, they have that more embedded: “This is wrong. We shouldn't be smelling this.” You get that a little bit. So we deal with them with ventilation: How do you deal with it, and then what do you do when they come out in the hallway? Not medical marijuana; we're talking about non-medical. Then what do you do when somebody comes out reeking, and people are coughing on the elevator? That happens.

Ms. Natalia Kusendova: I have one more question on an issue that wasn't touched upon yet, and it's with regard to condo cancellations. As you may be aware, our government has taken action to implement initiatives to better inform and protect Ontarians buying a unit in pre-construction condominium projects. As of January 1, 2020, they must be given an information sheet that clearly outlines up front the possible risks of buying a unit in pre-construction. How will this change the market and what impact will it have?

Mr. Armand Conant: That's an interesting one, because I know our legislative committee looked at it, and it's a great first step. I like what's done, but the emphasis of all of it—the CAO, I think, had to produce some wording, and it goes in the schedules to the agreements of purchase and sale. It's information about, “Hey, you could be cancelled. You'll get your deposit back, but hey, the project may be cancelled.”

Personally—and I think our legislative committee has submitted this—we'd like to see a little bit more on the grounds under which the developer can cancel, because in two of the biggest cancellations that we've heard of that

were on the news, one was invoking financial hardship to get out of it, and then the other one was on some easements or restrictions registered on title so they could not go through with the project. Personally—and I think our industry, from the consumer view, meaning purchasers—I'd like to see more guidelines to the developers: that you've got to really have a good reason why you're cancelling the project, and one is really the financing.

Ms. Natalia Kusendova: Thank you.

The Chair (Mr. Roman Baber): Ms. Tangri, with three and a half minutes remaining.

Mrs. Nina Tangri: So you also represent commercial condominium unit owners, or is it just residential?

Mr. Armand Conant: No, industrial and commercial.

Mrs. Nina Tangri: Thank you. Pertaining to both, there are issues on new builds where—say, for example, they will say that the initial condominium fees will be \$300 or \$500 per month, and then after a year or two years it's suddenly now \$1,100, \$1,200 or \$1,300—almost the same amount as they pay for a mortgage. That has happened with old builds and new builds; it constantly happens. Then you have special fees invoked, or roof development fees, and these are things that are very unpredictable. You expect the property management and the condominium board to be a little more predictable in this sense, in thinking towards the future rather than invoking these special fees. Do you have anything to say on that and how we can perhaps ensure that there's a limitation on those fee increases or anything on those lines?

Mr. Armand Conant: I think that, because of what I said earlier about the financial foundation of condos, putting regulatory restrictions on that would be difficult because every corporation is different. But you have to also distinguish between new builds, whether it's commercial, industrial or residential, versus older corporations where the boards may not have been topping up the reserve fund or maintaining it to the level they should, and they could be held liable under their duty as directors.

With the licensing of managers—I note as an example that ACMO has wonderful courses teaching the managers how to properly administer the physical plant, the buildings, and properly do financial reporting to the boards. But if your board won't follow it, then you have a problem.

On new builds, that's an interesting one, because the portions of the reforms that have not been proclaimed yet all deal with new builds: how the developer deals with purchasers, how the developer discloses, and then the big one has been historically the downloading of costs into year 2 and 3, or making you purchase things.

I'll give you an example. There's one building in Toronto, a huge building, where the amenities—the swimming pool, the rec centre and the party room—in the documents and declaration, the owners have to buy it from the developer for \$10 million and pay back the developer—guest suites, parking units.

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Other things they've done are—and I'm not hitting on developers, because I know they have a tough business

and they have to make a profit. But these are things that have happened over 30 years. An example is downloading costs, such as a mortgage on the guest suite. You have to buy the guest suite from the developer, but the mortgage to the developer—which is fine; the interest rate might be a bit high, but none of the payments start till year 2. The downloading of other services like the leasing of HVAC units, which the corporation discloses—hey, the corporation has to take these on—the owners' costs don't start till year 2. So you have your first-year budget that we all buy on, and we see how great it is. And then you see that in year 2, you go up 22% or 28%.

I would like to see those proclaimed. They were done with the developers' input. I would love to see those proclaimed, which are sitting there in the act of 2015.

The Chair (Mr. Roman Baber): Thank you, Mr. Conant. With apologies to Mr. Coe, unfortunately the time for government questions has expired.

Mr. Conant, just as a reminder, the deadline for any written submissions is this Wednesday at 5 p.m.

Thank you so much for your submissions.

Mr. Armand Conant: My pleasure, and thank you all very much.

MS. KATHY MOJSOVSKI

The Chair (Mr. Roman Baber): We will now proceed with our next witness. May I please invite Kathy Mojsovski?

Good morning, madam.

Ms. Kathy Mojsovski: Good morning.

The Chair (Mr. Roman Baber): Did I pronounce your name correctly?

Ms. Kathy Mojsovski: Sorry?

The Chair (Mr. Roman Baber): Did I pronounce your last name—

Ms. Kathy Mojsovski: Close. An A for effort, though. It's Kathy Mojsovski.

The Chair (Mr. Roman Baber): Thank you.

Ms. Kathy Mojsovski: I'm going to put my alarm on, just to keep me guided here.

Forgive me; I just got over a cold and I'm a little nervous, to be honest with you, so forgive me.

The Chair (Mr. Roman Baber): You shouldn't be at all. I'm the one who got your name wrong.

Ms. Kathy Mojsovski: I hate public speaking. Nonetheless, show mercy on me.

The Chair (Mr. Roman Baber): Thank you very much for coming before us today. You have 10 minutes for initial submissions, followed by 20 minutes of questioning. Would you kindly begin by stating your name for the record again?

Ms. Kathy Mojsovski: And then I can proceed? The time starts when I say my name?

The Chair (Mr. Roman Baber): It starts as soon as you commence.

Ms. Kathy Mojsovski: Okay, great. My name is Kathy Mojsovski. Good morning. First, I want to thank the Standing Committee on Justice Policy and everyone here

for allowing me the opportunity to speak in today's public forum regarding Bill 159. I truly appreciate it. Second, I want to be clear that any statements I make today are my opinions based on my own experiences.

My goals for today are (1) to recap some of the proposed legislative changes for Bill 159; (2) to provide my sincere feedback in order to possibly improve the way matters are handled by Tarion and the builder when dealing with homeowners, and to provide feedback about Bill 159; and (3) to discuss some concerns.

My understanding is, if the government introduces legislative changes in Bill 159, it would strengthen protection and promote trust and confidence for the people of Ontario when they are investing in one of the biggest purchases of their life: a new house, a new home. My understanding is that our government is proposing to fix the Tarion Warranty Corp. and Ontario's new home warranty and protection program by restoring consumer trust and by reducing the influence of builders. Moreover, Tarion will focus on protecting buyers of new homes versus the builders.

The proposed changes would respond to recommendations in the Auditor General's 2019 special audit of Tarion, taking steps to make significant improvements that would be responsive to the needs of consumers. The government is proposing changes to the Ontario New Home Warranties Plan Act and the New Home Construction Licensing Act, 2017, which would overhaul the Ontario new home warranty and protection program to make it consumer-focused and reduce the role of builders and vendors by making improvements to the current single administrative model for warranties and protections delivery. It would support the new consumer protection priorities that were committed to in the spring of 2019 as part of the overhauled program, including enhancing the dispute resolution process and delivering new measures to promote better-built new homes, such as providing the warranty administrator with greater ability to scrutinize builder applications and conduct inspections before a homeowner moves in. This, I really like.

I understand that our government has already taken action to ensure that Tarion is more transparent and that protections for consumers are improved, and that steps have been taken to support the establishment of a separate regulator for new home builders and vendors known as the Home Construction Regulatory Authority. I understand that the province has also increased transparency and accountability at Tarion by requiring the public posting of board and executive compensation and changes to Tarion's board of directors' composition to address the perception of builder dominance on the board.

Should the bill pass, the ministry plans to consult with the public and other stakeholders, including Tarion, on proposed regulations, some of which would give effect to these legislative changes.

I understand that our government is proposing legislative changes to ensure there are consistent requirements for, and stronger oversight of, most administrative authorities—in short, AAs—to improve their accountability and Ontarians' trust in them.

AAs are responsible for delivering critical programs and services, including ensuring Ontario's consumer protection and public safety laws are applied and enforced. The government oversees AAs and is responsible for making or changing the acts that govern them. I'm still unclear on how AAs work, and kindly request the committee or others to further elaborate during Q&A.

Lastly, I understand the government concluded that enhancements to the single administrator model for warranties and protections delivery is in the best interests of the people of Ontario, and is a recommendation made by the Auditor General. However, I believe, at some point in the future, the government may need to review the multi-provider insurance model for new home warranties and protections in Ontario, should the enhanced single administrator model for Tarion Warranty not work.

I'm going to turn to some concerns that I have regarding Bill 159, to consider.

Health and safety issues: It is critical that Tarion responds to serious defects in a timely manner. For example, if there are high levels of mould found in a homeowner's house, Tarion and/or the government should make this a priority. There should be immediate action and injunctions for emergencies, if you will.

Furthermore, Tarion should pay for the homeowner's hotel/living accommodations whilst the builder is ordered to remediate said mould. For some homeowners, this is not the case. Homeowners may pay out of pocket for hotels etc., and then submit their claims to Tarion. Homeowners may or may not get paid for this expense.

I want to turn to accountability and transparency. There must be ongoing transparency and accountability during the entire process with Tarion by the government and/or a third party.

Turning to checks and balances: Who is responsible for these checks and balances for the Tarion process, from alpha to omega? How often are these checks and balances happening? Will there be frequent audits? If so, by whom?

Turning to incentives: There should be zero incentives to inspectors or anyone else handling homeowners' claims. The process should be objective, honest and done with integrity. Inspectors should be assigned from the government, not Tarion.

Turning to conduct: Tarion's staff should conduct themselves with professionalism, honesty and integrity when dealing with the homeowners at all times. For example, there should not be any intimidation or harassment to bully the homeowner, to deter them from filing a legitimate claim. Another example is when the inspector writes their reports. Comments/information should be factual and not false. Otherwise, it prolongs/delays the process for the homeowner. Tarion is not above the law. They still have to honour the rule of law.

Turning to deadlines: There should be deadlines in several areas of the Tarion process. For example, the inspectors' reports should not take about four to eight weeks to get back to the homeowners. It drags the process on and on. It delays, in my opinion, the administration of justice. For example, a homeowner who has lived in their

home for three years should have their claims from their 30-day form and/or one-year form already dealt with.

Again, please consider the resources that builders have, versus homeowners. There is an imbalance of power and resources, in my opinion. Consumers depend on Tarion for help.

There is also an inconsistency with deadlines of settlements. One should not feel that their hand is being forced.

Turning to the burden of proof regarding the claims: Tarion should consider all evidence submitted by the homeowner regarding their claims and not ignore and/or side with the builder right away.

Again, speaking of claims, I believe that if Tarion approves only two to three claims out of 65 claims that a homeowner has reported, there may be something wrong, and further investigation or intervention from the government is warranted.

Turning to the board of directors at Tarion/governing body: There should be several people on the board of directors, not just builders—for example, perhaps a mixture of government staff, the public, Tarion employees and builders.

Turning to the builder registry/directory: Every claim that a homeowner has should be put into the Tarion builder registry/directory, especially for health and safety issues. This may help protect consumers more, and builders may be more careful when building houses properly from the beginning.

Turning to LAT, the Licence Appeal Tribunal: Statistics show that homeowners are not that successful at the LAT. For example, during the period of 2006 to 2018, homeowners lost more than 85% of the items that they took to the LAT. Tarion is always represented by lawyers/paralegals. Homeowners typically represent themselves. In 2018, only 16 homeowners appealed Tarion's decision at the LAT. This is a shocking statistic.

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Please also keep in mind that by the time Tarion is done inspecting and re-inspecting and re-re-inspecting, two to three years may have passed. By the time homeowners reach LAT, some homeowners cannot afford a lawyer to represent them. These homeowners are stuck paying out of pocket for expenses that the builder or Tarion should have paid. Homeowners are exhausted mentally, emotionally, physically and financially. Some consider suicide. Some are forced to sell their house, their home, that they worked so hard for.

Turning to retroactive claims: The government should consider any claims that were not handled properly by Tarion if Bill 159 is passed—recourse for claims unfairly handled in the past.

Lastly, it is my sincere hope that the government make changes that are going to protect consumers. It is time. It is my opinion that homeowners honour their contracts with builders, and builders should do the same. However, if they do not, Tarion should be there to protect homeowners.

Please keep in mind that our houses protect our innocent babies, children and elders. Our home is where

we eat, sleep and live. It should not be a place that is unsafe.

Thank you for your time.

The Chair (Mr. Roman Baber): Thank you so much, Ms. Mojsovski.

Ms. Kathy Mojsovski: Thank you. Sorry, I was a little nervous.

The Chair (Mr. Roman Baber): That's okay. We'll commence with 10 minutes of questioning by the government side.

Ms. Kathy Mojsovski: The government side?

The Chair (Mr. Roman Baber): Mr. Bailey.

Mr. Robert Bailey: Thank you for your presentation this morning.

Ms. Kathy Mojsovski: Thank you.

Mr. Robert Bailey: I know all of my colleagues have got something to say too. I did want to address the composition of the board. That was recognized as an issue by the minister and the ministry, so the new Tarion board, instead of a majority of builders, now will be one third consumer advocates; that will be four people. One third of the board will be ministerial appointments. There will be four builders. I think it was six before, and they had a majority. That's not going to happen anymore. That dog won't hunt anymore.

Ms. Kathy Mojsovski: Excellent.

Mr. Robert Bailey: And the minister will be appointing the new chair. There's going to be a change at the top, with a whole new attitude, or they won't be there. There are a couple of other suggestions. I really appreciate your presentation today, because you made a very good proposal and presentation.

I agree. I've been involved in this for a couple of years now, I guess. Even before we formed government, in opposition, I had a number of people come to present. It's very frustrating, I can understand, for the individuals involved. I've been fortunate. I live in a different part of the province, where we don't have the pressures, I guess. That's not to excuse it, but I had no idea, until I got into this job, what people were living with and contending with.

So I'm going to do what I can do, as parliamentary assistant to the minister, to make sure that we implement and look at changes as we travel. That's why we're travelling here today. We're going to Ottawa and Windsor to hear from constituents and people like yourself.

Ms. Kathy Mojsovski: Thank you.

Mr. Robert Bailey: Do any of my colleagues have a comment?

The Chair (Mr. Roman Baber): Ms. Kusendova.

Ms. Natalia Kusendova: Thank you so much for your presentation this morning. With regard to the 30-day window, I believe that we are making changes to that. The previous model was such that homebuyers could only claim against the warranty in the first 30 days and the last 30 days. I believe that we are now changing that, and we will be consulting with the public and stakeholders on what a better model should look like. What is your feedback with regard to that specific issue?

Ms. Kathy Mojsovski: That's an excellent point, and I thank you for that. I really think that we need to keep Tarion accountable.

I'm not here to blast or speak negatively of Tarion or builders. They have their pressures. But there is definitely an imbalance, in my opinion, of what we've gone through.

I think that when you have that 30-day form, you have to work together. But if it's only the homeowner who is working, and we don't have a team effort from the builder and from Tarion—listen, Tarion doesn't always have to side with the homeowner. We could be wrong, right? We have to have that objective opinion. But I've found, in my experience, that they tend to take the builder's side and say, "Okay, off you go."

The 30-day form: Any items on there should be given a deadline. Again, there should be deadlines throughout the entire process, as I spoke about. Someone should be saying, "Okay, the 30 days is up." If someone from Tarion is not doing their job, we should have a right to have the government involved or have an injunction or something involved. But the 30 days—for example, if we're living in our home for three years and we still have items on the 30 days that have not been handled, that's not fair.

So you need somebody holding Tarion accountable and giving us a right to write a letter to somebody at the government, or going above—I guess our inspector or whomever, or a liaison—to get them involved, because I don't think there's any excuse that items that are on a 30-day form are not dealt with, specifically health and safety issues like mould, high levels of mould.

Ms. Natalia Kusendova: Actually, that's my next question. Mould is a very significant issue. As a nurse, I know that it can have very negative impacts on people living in that environment. Can you just give us a little bit more context? Would it be mould occurring during construction, and then someone moves in? Can you just give us a little bit more context?

Ms. Kathy Mojsovski: Sure. I can't speak in detail, because my dad is in litigation. I have respect for the builder and Tarion. But I will speak in the third party, if you will. The mould, from my understanding, high levels of mould—there's a distinction between mould and high levels of mould. Unfortunately, the law hasn't caught up to mould and high levels of mould. For example, I am strongly going to fight to introduce mandatory air quality before the homeowner moves in. I think that if you have a mandatory air quality and/or an occupational hygienist who visually inspects the mould from the basement—houses specifically that get targeted with high levels of mould are houses that are built in winter.

We have to understand that builders, capitalism, society—and I invite that; it's wonderful, but not at the cost of ruining somebody's house.

If you know that in wintertime—the builder should know, or ought to have known, that if a house is built in winter, it's possible that there's water damage and, hence, mould growing.

When you go on that PDI—I never knew that you could have levels of mould that high. So when you move in,

you're basically stuck, subsequent to that, fighting and trying to figure out what's going on. I didn't even believe that you could have high levels of mould in a brand new house.

Ms. Natalia Kusendova: Thank you.

The Chair (Mr. Roman Baber): Anyone else on the government side? Mr. Bouma.

Mr. Will Bouma: Thank you, Mr. Chair. I'd like to thank the presenter for an excellent job. I really appreciate that.

Ms. Kathy Mojsovski: Thank you.

Mr. Will Bouma: If we could only do one thing to fix Tarion, what would you want us to fix?

Ms. Kathy Mojsovski: Great question. One is kind of hard. More importantly, protect the consumers, the homeowners, when it comes to health and safety. You have to remember—without getting emotional—that these are people's houses that they've worked hard for. Some people are immigrants. Regardless, if they're not, they come here with nothing and they build, as my parents did. And you have children. There has to be social responsibility. I think that somebody has to be held responsible and accountable at Tarion to say, "Hey, listen, the builder is wrong; you're right. Let's step in."

I'll tell you where it's a win-win situation for both parties. If you have high levels of mould, or any health and safety issues, if you put that injunction in, or that quick resolution, it saves costs for everyone. Yes, it opens up floodgates and creates precedents. But that's tough; that's the price that you pay for having negligence or what have you.

In essence, as a society, let's work with the builders and Tarion and homeowners to create a better society. If they make mistakes, I get it; builders are human. But by the same token, own it.

That's what I think: health and safety. Get that protection for the consumers and their families. Tarion has little children's lives in their hands.

Mr. Will Bouma: Yes.

Ms. Kathy Mojsovski: Yes.

Mr. Will Bouma: Thank you.

Ms. Kathy Mojsovski: Thank you.

The Chair (Mr. Roman Baber): Anyone else on the government side? Ms. Tangri.

Mrs. Nina Tangri: I listened to the Auditor General as she went through the Tarion issues. We heard from a number of people, including Tarion. I have to admit that I was blown away by some of the things I was hearing, and quite disgusted that it has been allowed to go on as long as it has.

We've listened very intently on all sides of the House, and there's agreement from the government that we have to do something, we have to take action, which we have. We've taken swift action by cleaning up the board and getting going with these consultations.

One thing I'm really pleased about is that we have individuals who are coming out, like yourself, not just to tell us their story but to speak on behalf of other consumers. We always listen to stakeholders across the province,

whether it's a builder or whether it's a supplier. But this time, we really are hearing from the individuals.

Ms. Kathy Mojsovski: Thank you.

Mrs. Nina Tangri: I just wanted to let you know and everyone know that we are really listening. We will take action, and it will be swift action. It will be something, hopefully, that we can put together that will allow builders to build, and allow builders to build as affordably as they possibly can, but also will protect the consumer in probably what is their biggest purchase in their entire life.

Thank you for coming in. I really appreciate that.

Ms. Kathy Mojsovski: Thank you. I appreciate that.

The Chair (Mr. Roman Baber): Just under two minutes. Seeing no further questions on the government side, we'll now proceed to the opposition. Mr. Rakocevic.

Mr. Tom Rakocevic: Thank you so much for this presentation. Actually, it's really, really detailed. It's people like you who have pushed this agenda to protect new home purchasers.

The importance of committees like this—they're very, very important. To give an example, the fact that the Auditor General even issued a report—it's a little nuts to contemplate the fact that Tarion existed for over 40 years, and it took over 40 years for the AG to even get into the books—was because of an NDP MPP who had actually pushed for that under the former government.

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A number of changes are being contemplated. There are many who talk about the culture at Tarion. They talk about what the management looks like under its current form. Do you believe that a reshuffling of senior management will change the culture of Tarion?

Ms. Kathy Mojsovski: Yes, tabula rasa, a clean slate; revamp everything, 100%. It should be appointed from, basically, the government. They should have proper credentials. For example, the inspector—no one should be getting any sort of incentive. I think it should be, from alpha to omega, completely non-biased.

Again, they can side with the builder, but there has to be a complete change. Bring them fresh blood, people who have integrity and who have, hopefully, no biases.

Mr. Tom Rakocevic: I submitted a private member's bill that talked about immediately bringing in an administrator to make many changes that are required. Do you support that?

Ms. Kathy Mojsovski: I remember reading your information. I don't recall very much, but I think a new member would be lovely, yes—100%.

Mr. Tom Rakocevic: Okay. When I look at the Tarion file and protection of new homeowners—I've said this many times—I believe that the former government failed dramatically on that front. We've seen under the current Legislature many quick changes in a number of different areas.

Do you feel that this is moving fast enough to protect people?

Ms. Kathy Mojsovski: No. There are people who are suffering. There's one specific case—and out of respect, I'm not going to mention his name. People are on the verge

of suicide. People are dying of cancer. There are people who are living with high levels of mould and people who are living with defects that are affecting children. You cannot put a price on a child's lung. You cannot put a price on a child's heart. You cannot put a price on your mother who is 99 years old, who worked her entire life, suffering because of a builder's lack of responsibility and accountability. And then who's there? How are you supposed to fight against a multi-billion dollar company? Then you've got Tarion, another multi-billion one. So we're basically out of luck, unless you get people who are stubborn, know a little bit about the law and fight for the people's rights.

But to answer your question shortly, we do need change swiftly, quickly, immediately. We need that—like I said, even if we have to go to the courts to get an injunction to involve them to clean up that mould or what have you. We need something that's going to be immediate when it comes to health and safety, specifically.

Mr. Tom Rakocevic: Just to reiterate, we've seen a report from Justice Cunningham that talked about sweeping changes. The first was to move to a competitive model. We've seen the Auditor General's report. There have been countless advocates over the years, and media that have talked about changes. How do you feel about the fact that we're still consulting?

Ms. Kathy Mojsovski: Cunningham's report is excellent, and I concur with a lot of his points there. With respect to the Auditor General, there was one comment that she made, I think, when she was in the media. She stated something about 1%, but 1% of the homeowners is hundreds of people. We should have 0% who are suffering with defects.

Yes, it's in theory Cunningham's report, but I don't think anyone is listening and acting from the government. You're listening, and I appreciate that. Tarion's comments to the Auditor General—I don't have them in front of me, but they were like, "Yes, we listen." It was kind of the same answer for a lot of the problems; it's like, "Boys will be boys," or "Girls will be girls." But we need someone who is going to be taking these issues seriously, doing something about them, taking action and doing it a lot quicker—because people are suffering.

So, yes, look at that Cunningham report. There are a lot of good points there.

Mr. Tom Rakocevic: Under the government, some of the things that we've seen them move very quickly on—a lot of it has to do with giving concessions and more power to builders and developers. Do you feel confident that a board restructured under them will, in fact, favour consumers over builders and developers, when we may have seen differently for the last year and a half?

Ms. Kathy Mojsovski: Can you reword your question? Sorry, I don't understand.

Mr. Tom Rakocevic: For instance, I'm a Toronto resident, and we've seen sweeping changes in bills that heavily favour developers in what they're required to pay back to municipalities, that really put more control and power into the hands of builders and developers.

One of the biggest issues with Tarion was the control of these same builders and developers, basically making it a

priority—their needs over those of consumers. Now we're looking at a long-term contemplation of making these changes and changing the board. Do you feel confident, under this current government, that the new board makeup will be one that reflects consumer protection, or do you have any lingering concerns?

Ms. Kathy Mojsovski: Great question. I don't believe that either the developers and/or builders control anything 100%, nor do I believe the consumers should. I believe that there should be an equal blend of objective people, because again, you want to keep capitalism going, but you also want to protect the consumer. I think that the government needs to find people who have high integrity, who are going to be objective and who are going to provide change. That's the bottom line.

Again, why would we want to side with developers and builders? That's not right. It's not fair. They hold all the money, where a homeowner is usually house-poor by the time they get into their house. I think that you should have a balance of people who are going to be objective and have integrity and really be fair in the process. It has not worked before with the builders and developers. It hasn't worked before, so we need change.

Mr. Tom Rakocevic: Okay. Colleagues, if you have any questions?

The Chair (Mr. Roman Baber): Ms. Singh, with just over three minutes.

Ms. Sara Singh: Three minutes? Okay, thank you.

Thank you so much for your presentation. I think you raised a lot of important points that really put the consumer at the focus of what has happened with Tarion. I'll just pick up on some of the points that my colleague was asking around the board composition. You talk a lot about having people with integrity. What do you feel that type of person represents, and how do we achieve a consumer-centric board? Because ultimately it should be a board that is looking out for the consumers' interest. So what do you see that composition looking like?

Ms. Kathy Mojsovski: That's a great question. First of all, it should not be a Tarion employee. There should be people who are appointed from the government who have the credentials and who are going to have the courage to say, "No, I disagree with you."

I will respectfully say that yes, we do need the consumer protection, but again, to maintain that fairness—homeowners could be at fault, but in this case in the past it has been where the consumers have been basically unlucky. I think that education and not having incentives—that has to go; it should be completely objective. It should not be Tarion employees. Just basically looking at it like Lady Justice, if you will—hearing the facts and saying, "No, this is wrong. What do the sources of law say?" And they have to follow the law as well, not just public policy, because law does trump policy. Again, it's the rule of law. They have to maintain what is policy in law and adhere to that at all times.

Ms. Sara Singh: Okay. Thank you.

Ms. Kathy Mojsovski: Did that answer your question?

Ms. Sara Singh: That does. I think what I wanted to try to understand from you was what you want that board to

look like and whose interests should be represented by the board.

Ms. Kathy Mojsovski: Of course. It should be whoever is in the right—I'm going to lean more toward consumers because I do find that they tend to get unlucky. I would really like to see a group that's mixed. You need to hear from builders. You have to, to remain objective. You need to hear from people who are actually homeowners; advocates like Karen Somerville, who is incredible, and Barbara Captijn, I believe her name is; and people who are homeowners who have gone through this process, and feel and know what people have gone through. I think that might help out.

Ms. Sara Singh: Thank you. And I just want to follow up on the theme of accountability. This came up quite a lot in your presentation and in other presentations that we've heard. What do you feel are appropriate accountability measures for Tarion to be held accountable by the public and consumers when it isn't effectively doing its job, as we've seen time and time again?

Ms. Kathy Mojsovski: Incredible question. We need to just basically get the government to interject and say, "Tarion, you are not doing your job." I don't know how you're going to answer that problem, but we need spot audits. We need people who are going to come in and look at reports and say, "Okay, hang on a second. These LAT statistics—there's something wrong if five out of 2,000 people are losing at the LAT appeal." That, to me, is basically showing a red flag: Where are we going wrong?

Ms. Sara Singh: And when we find—

The Chair (Mr. Roman Baber): Ten seconds.

Ms. Sara Singh: Oh, sorry. Just one last follow-up question: When we find those discrepancies in, let's say, payouts, do you think that there should be some sort of penalty or something that is put in place by the government to hold Tarion or whatever entity accountable?

Ms. Kathy Mojsovski: Yes, 100%. A fine as punishment, and whoever the inspector was, whoever was responsible, fire them or let them go.

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Ms. Sara Singh: To have some sort of accountability measure.

Ms. Kathy Mojsovski: Yes, 100%.

Ms. Sara Singh: Okay, thank you.

The Chair (Mr. Roman Baber): Thank you very much.

Thank you, Ms. Mojsovski. I see that you've already filed some submissions.

Ms. Kathy Mojsovski: Yes.

The Chair (Mr. Roman Baber): Should you be interested in filing supplementary materials, the deadline is this Wednesday at 5 p.m. Thank you very much for your submissions.

Ms. Kathy Mojsovski: Thank you so much.

MS. BARBARA CAPTIJN

The Chair (Mr. Roman Baber): Next, I'd like to invite Barbara Captijn to make submissions before the committee. Good morning, Ms. Captijn, and welcome.

Ms. Barbara Captijn: Good morning.

The Chair (Mr. Roman Baber): Further to the decision of the committee, you'll have 10 minutes for your initial submissions, followed by 20 minutes of further questioning by the two recognized parties. Kindly commence by stating your name for the record.

Ms. Barbara Captijn: Thank you. My name is Barbara Captijn. I am a consumer advocate. I was initially a client of Tarion back in 2011 and, after an unfortunate experience with them and with my builder, I decided to try to help other consumers get their homes fixed through the system and to become an advocate for change in the legislation. I've been doing that since 2011.

I would like to, in my deputation, tell you why I think Bill 159 is inadequate in the goal that it says it's to achieve, which is to protect consumers, and I would like to propose to you several amendments which I believe would help your bill achieve its stated goal.

Your bill, Bill 159, purports to "rebuild consumer confidence" and "strengthen consumer protections" relating to the new home warranty and the builder regulatory body. It fails to do this for several reasons, but I only have time to concentrate on one today, and that is dispute resolution.

Dispute resolution has been the key consumer complaint about Tarion for decades. Consumers do not have confidence that their claims are handled in a balanced, transparent and fair way. They do not have the technical expertise to investigate building defects or the financial resources and lawyers and engineers to support their claims. Tarion holds all the power on investigation, adjudication and payout decisions, and the ministry has said repeatedly it will not get involved in individual claims.

Tarion's dispute resolution process is one of the main conflicts of interest which was pointed out by Justice Cunningham in the 2017 Tarion review. I quote from his report: "There is potential for conflict when the same person receives a claim, investigates it, attempts to assist the parties in resolving the claim and then sits in judgment on the claim if not resolved."

The Auditor General's report, which you just read several months ago, said the same thing in different words: "Tarion's senior management was rewarded for increasing profits and minimizing financial aid paid to homeowners." That's pretty scandalous. As consumers, we have been saying that for years, but there has not been an independent audit allowed until the NDP brought its motion in 2018.

The Auditor General's report further states, "Our audit concluded that Tarion's processes and practices do not always conform to the spirit or intent of the Ontario New Home Warranties Plan Act." That's also scandalous. But we, as consumers, have been saying this for over a decade.

I would like to join forces with you PC MPPs for a moment, because everybody in this room agreed that the justice's review, which was released in 2017, should be followed. We all agreed that there were key problems with Tarion that the judge had brought out in his review, and he recommended the multi-provider-model competition for

Tarion. Why are the PC MPPs, who are now in government, not following through with promises that they made to the public at that time?

I'll give you one of them, because I looked at the former critic's statements, which are reported in Hansard, from December 2017. The former critic of the ministry, who was very pro the judge's report, said, and I quote from Hansard of December 6, 2017: "You cannot have a truly impartial warranty system without an independent adjudicator." I'd like to repeat that: "You cannot have a truly impartial warranty system without an independent adjudicator." The problem is that you can't have these conflicts of interest inherent in this government monopoly, which has been running without oversight.

I would like to skip to another statement which Justice Cunningham made about this conflict of interest, which is still present in the organization. This is MPP McDonell in the Legislature referring to the judge's review. He said: "Justice Cunningham laid out a well-thought-out framework. When disputes with the warranty authority arise, the matter would be referred to independent dispute resolution, and the appointed mediator or arbitrator would be able to hire an independent expert to ascertain the facts around the claim, and have the costs borne by the authority." This was a good idea in December 2017. Why is your government, which now has its majority, not stepping up to the plate and accomplishing what it said it would do?

Again quoting MPP McDonell, the former critic of the minister: "It was incumbent upon this government"—referring to the Liberals, who were in power—"to give consumers a dispute resolution process that they could trust, which the government failed to do." I ask you: If you have the opportunity now to take action on this key issue, why is it absent from your bill? There is not one single mention in Bill 159 of dispute resolution.

Again I quote your MPP colleague from Hansard, October 19, 2017: "Isn't it time we stopped taking half-steps when we have the tools and the knowledge to implement reform on a much larger scale, setting ourselves and our institutions up for the next decades rather than catching up to what consumers and businesses have been expecting for just as long?"

I ask the same question of you now. Why are we tinkering around with a bill which, to most of us, does nothing more than the Liberals' Bill 166 did in December 2017—which, by the way, everybody who was a sitting MPP in this room voted against? Consumers were against it. It was a weak bill. It did not protect consumers. It did not address dispute resolution.

My amendments to you that I would like to propose quickly:

(1) An independent dispute resolution body, independent of Tarion, which would satisfy the PCs' views at the time when you read the judge's review, and would satisfy the judge's review and would satisfy consumers that they're not getting a biased investigation of defects and a biased adjudication, and then a biased withholding of pay;

(2) Or an independent administrator of Tarion's dispute resolution, someone who would report to the ministry, not to Tarion;

(3) Or oversight of Tarion's dispute resolution by the Office of the Auditor General of Ontario.

Failure to address this would affect your government's credibility to us, who worked with you together, shoulder to shoulder on the judge's review, trying to get clarity and solutions. We have the research; we have the knowledge. Your government has the majority; where's the action?

The Chair (Mr. Roman Baber): Just under two minutes.

Ms. Barbara Captijn: Thank you. I hope that someone in this room will take the political leadership that you talked about two years ago, and, at a very minimum, add an independent dispute resolution option amendment to Bill 159. That is the Achilles heel of your bill. We'll be here three years, five years or 10 years down the road talking about the same problems if you don't step up to the plate and address this, as you all agreed to do in December 2017.

I am asking for your political leadership with your majority government. I'm asking for you to fulfill the promises you made to the public about Tarion that you've not done in Bill 159. I'm asking you for what I think is this reasonable amendment to the bill.

Thank you.

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The Chair (Mr. Roman Baber): Thank you, Ms. Captijn. We'll now proceed with 10 minutes of questioning, beginning with the official opposition. Mr. Rakocevic.

Mr. Tom Rakocevic: Thank you very much, Ms. Captijn. I mentioned former MPP Rosario Marchese around Condominium Act reform. I know that he was certainly a leader around Tarion reform too. But I also know that he relied heavily on work from you, Karen Somerville and others who have really been pushing and bringing a lot of light to this issue. If it weren't for people like you, I don't think we would be here.

There are a number of things I want to ask, but one of the things we didn't really have a chance to talk about was the Licence Appeal Tribunal. I think it was really quickly mentioned, just in passing, in the former submission. A lot of people end up there, and we hear that it doesn't rule in their favour, generally, as well. Do you have any comments around the structure of that, or what happens to people that end up there?

Ms. Barbara Captijn: Yes. I've been there personally, and I've sat through, as a friend for consumers, many, many hours of Licence Appeal Tribunal hearings.

The problem is, it's not a level playing field. You're up against two sets of lawyers. Most consumers are self-represented. It is a highly complex, legalistic, courtroom-style proceeding. It is a courtroom. So imagine yourself as a self-represented consumer up against two sets of lawyers, Tarion's and the builder's. There are all the procedural hurdles you have to go through. Sometimes they eliminate your key witnesses through legal—there are all

sorts of legal tricks of the trade. There are several lawyers in this room today. It's about delay, it's about tactics, it's about winning for your client.

But Tarion is there as your adversary when you're a homeowner. That's a problem. They're not there as your friend. They team up with the builder, both of them with an interest in getting the claim dismissed. It's not a level playing field. Even Frank Denton, who was key at the ministry for many years, said to Tarion, "You've got to try to find, for consumers, a less legalistic and adversarial forum to resolve home disputes," because they don't have the money to hire engineers and lawyers, and they certainly don't have courtroom expertise to fight two sets of lawyers—some of them hired by Tarion are top Bay Street litigators, to go against self-represented consumers.

There is something wrong with this, as your previous presenter said. If 83% of consumers are losing there—for years, we've been saying there's something wrong with this. What is it that we don't get about that, in terms of it being an unfair playing field?

Justice Cunningham said as well, in his report, that you can't only do justice; justice has to be seen to be done. Somebody might accept that their defect isn't warranted if they believe that the process that got them there was a fair, transparent one which allowed them a level playing field upon which to present their case.

Again, we can't present our cases because we can't investigate the root causes. The mould that you were questioning one of the other consumers about—mould is usually the result of water infiltration. In a new home, you don't know in 30 days where the water infiltration is. It's like a cancer. You can walk around with cancer for many years and not know that it's eating away at you. You can't ask a homeowner to go down to his basement and figure out where the defect is that the builder did, and try to argue that with Tarion.

It's an unlevel playing field from A to Z. I, quite frankly, don't understand what it is that we don't get about that, and why we can't step up to the plate and fix it. I wish you would help me with that.

Mr. Tom Rakocevic: Thank you very much for that very, very detailed response.

Ms. Barbara Captijn: Thank you.

Mr. Tom Rakocevic: Considering your years of knowledge on this, and your years of advocacy, are you surprised that we're still discussing this and not making immediate change, when we've seen change move quickly on other fronts?

Ms. Barbara Captijn: I'm surprised, yes, but I'm trying to withhold my anger and frustration, and that's very tough. I'm trying very hard, because I know you're all very intelligent and competent people in this room. I know that at the ministry, for years and years—almost a decade—we've been trying to convince the ministry that they lack oversight over one of the most important investments that Ontarians make in their lives, the purchase of a new home. They've been saying, "The Legislature doesn't allow us to do so." We couldn't even get the Auditor General to look at Tarion's books until the NDP enabled that.

So it appears that the deck of cards is stacked against the consumer. We all seem to know it. It has been researched from here to eternity. We have 37 recommendations from Justice Cunningham. We have 32 recommendations from the Auditor General. Everybody seems to be shaking their head and saying, "Well, these were fabulous ideas," but where are they in the legislation?

Mr. Tom Rakocevic: My final question before I pass it off to my colleagues would be, are you familiar with Bill 169, that I've submitted?

Ms. Barbara Captijn: Yes.

Mr. Tom Rakocevic: Do you believe that this would improve the system?

Ms. Barbara Captijn: When I read it, I thought, "This is it. This is the answer. This is Justice Cunningham's report translated into legislation. Where do I sign?"

Mr. Tom Rakocevic: Thank you.

The Chair (Mr. Roman Baber): Ms. Singh?

Ms. Sara Singh: Thank you so much for your presentation and your passion and advocacy on behalf of consumers.

I just wanted to pick up on the question that I asked earlier to the previous presenter as well, about accountability. Are there any recommendations that you have to help increase accountability in terms of Tarion? When we look at an 83% failure-to-pay rate, how do we hold this entity accountable to the consumer?

Ms. Barbara Captijn: I think we have to go back to the judge's review. He said that you need competition. His key was—and that was the number one point, which all of the PC MPPs agreed with—let's see how good Tarion is. Let them compete. Provide competition.

None of the insurers I've talked to would ever insure a shoddy builder because they have to manage their own risk, so they're not going to do it. That would help transparency and accountability because if there are builders out there building homes with construction defects, they won't be able to get insurance under a new system.

Tarion has a monopoly, and without proper government oversight has just been licensing almost everybody, it appears, even builders who have been reported to Tarion to be not acting with integrity, or even in these pre-construction condo problems giving licences to condo builders to build without sufficient scrutiny of their financial ability to carry through with their contract.

And so to try to fix Tarion—I think your question leads to, how do you fix the current system in order to make it transparent and accountable? I think that that is pretty well a lost cause. I think any business which is not addressing consumers properly—if it's given competition, it will have to or it will go out of business. So if Tarion is as great as they've been telling people they are for the last 42 years, let them compete. Let other providers—which is what you, as PC MPPs, agreed with in Justice Cunningham's review—compete. You don't have to put them out of business, but let's see whether independent insurers will step up and insure crappy builders. They won't do it because their business is risk management.

Tarion has a monopoly, and with very little oversight and accountability can license almost anybody. We'll

never know why a builder is licensed; there's no transparency in that. We don't get to look at their books. But an independent insurer won't go that route. That protects the consumer, ultimately.

I don't know if that answers your question.

Ms. Sara Singh: That does. Thank you.

The Chair (Mr. Roman Baber): Just about a minute left.

Ms. Sara Singh: I'm okay. Thank you.

The Chair (Mr. Roman Baber): Any other questions by the opposition?

Mr. Tom Rakocvic: If I may, it's just more of a thank you. I really thank you for your years of advocacy. There's so much information that you've provided. Your submission is very detailed, even providing options for amendments and whatnot. I hope that the government will take it very seriously. I really thank you for being here.

Ms. Barbara Captijn: Thank you so much for listening. Thank you, all of you. Please remember the consumer.

The Chair (Mr. Roman Baber): Thank you. We'll now move on to—

Interjections.

The Chair (Mr. Roman Baber): Sorry. We have questions on the government side.

Ms. Barbara Captijn: Oh, I'm sorry.

The Chair (Mr. Roman Baber): That's okay.

Ms. Barbara Captijn: I wanted to exit on such a wonderful thank-you note. Please go ahead. Thank you.

1150

The Chair (Mr. Roman Baber): Mr. Bailey.

Mr. Robert Bailey: Thank you very much for your presentation. I know you by reputation. I may have met with you a few years ago. But thank you for these comments. That's why this committee is travelling, as we said earlier to some other presenters: to take back what we hear on the road—in Ottawa, in Windsor, and here today in Brampton—and try and improve the legislation. You've certainly made some great recommendations here.

A couple of things I did want to get on the record: Going forward, Tarion will have to post all the builders—any of their deficiencies, any litigation they have against them will have to be posted on the Tarion website. I don't know; that won't solve everything, but it will go somewhere, hopefully, towards notifying consumers who they should use and who they probably should steer clear of. When you know your name is going to be on there, you'd better do a good job.

We have drastically revamped—and I agree it was certainly not very proportional to the consumer—the former board, which is going to be drastically changed with a new CEO appointed by the minister. We've taken the builders and the majority that they had on there—the new board—you'll know this, I'm sure—has 12 members, four from consumer advocates like yourself, a third will be ministerial appointments, and then the builders will appoint four.

Ms. Barbara Captijn: May I interrupt you, sir?

Mr. Robert Bailey: Yes, go ahead.

Ms. Barbara Captijn: I was intrigued when you said this earlier. You said that one third of the board will now be consumer advocates.

Mr. Robert Bailey: Yes.

Ms. Barbara Captijn: If I may email you later, I'd like to find out who they are. Because I looked at the new board. I see four builders; they're the same ones who were there before. There is a former mayor of some city; she was there before. I see no consumer advocates. I see nobody who is what we would term a consumer advocate. There is someone who used to be in the title insurance business. But the board members that we see now are still the same. They've let go a number of them because half of Tarion's responsibilities went over to the regulatory authority. That's why they've cut the board in half. But I don't see one third of your Tarion board members as consumer advocates.

Mr. Robert Bailey: I'll certainly look into that, because that's my understanding—I'd better not say on the record what I'd do if that's not the case.

The Chair (Mr. Roman Baber): Ms. Kusendova.

Ms. Natalia Kusendova: Thank you so much for your passionate presentation and also for your engagement with the ministry in previous consultations. I just wanted to address some of the things that you've said in terms of the conflict of interest.

We are splitting the regulatory piece from the builders, from Tarion, and establishing a new administrative authority, which is HCRA, the Home Construction Regulatory Authority. We are hoping that they will serve as the new regulator in the building industry.

We're also changing the culture at Tarion by changing the CEO and the composition of the board. As my colleague has said, they will be now accountable to the public by having to post all the disputes on the website as well as the compensation for the board and for the CEO. With these changes, we are hoping that Tarion will now focus solely on consumer protection, which will include inspection before homeowners take possession of their homes—

Ms. Barbara Captijn: But—

Ms. Natalia Kusendova: Go ahead.

Ms. Barbara Captijn: Sorry to interrupt you, Ms. Kusendova, but all of those things have been told to us before. The board composition that you all are very proud of—the board doesn't handle dispute resolution. We've been told as consumers that we're not allowed to contact the board. And I dispute whether you have one third consumer advocates there.

You've said the builder directory is going to be updated. I don't see that happening. There are still builders out there who've created terrible problems with mould in homes; they're not updated on the Ontario builder directory.

The separation of the regulator from the warranty provider was passed by the Liberals in December 2017. They're starting to set that up now. But that's not the conflict of interest that I'm referring to here, which is in dispute resolution. The fact that the regulatory authority

has been fused with the warranty authority since 1976 was wrong from the get-go. It has taken us 42 years to get that done. That hasn't even been done; it won't be open until the end of 2020.

So these remedies—and I know the ministry has also tried to put that narrative out there that, “Oh, but we’ve overhauled Tarion, and it’s a new day, and everybody has a different—everybody is now pro-consumer.” After 42 years, an ingrained pro-builder culture doesn’t change overnight. Every year, there are 60,000 Ontario consumers buying new homes. Those people are still faced with what you yourselves have called a broken organization. These little tinkering-around things have been promised for years: “We’ll update the builder directory and get that to be more meaningful for consumers.” Talk is very nice, and it’s comforting, but I don’t buy it anymore unless I see it in the legislation.

What I’m asking you to put in the legislation for consumers is what we care about most, and that is, when I see my roof leaking in my new home, I’m going to get what I paid for, which is a home free of defects in workmanship and materials, which is guaranteed to me under Ontario law. How you get that to me, whether you’re changing the board or you’re separating—I’m telling you that it has to be done through independent dispute resolution. All the rest of these changes are very nice and well, but this is your Achilles heel. This is where the thing is going to fall, again and again and again.

The Chair (Mr. Roman Baber): Mr. Coe.

Mr. Lorne Coe: Thank you very much for your presentation. I’m going to turn for a moment to your proposals that are outlined on pages 4 and 5, particularly on page 5. You recommend for our consideration an independent administrator of Tarion’s dispute resolution, reporting to the ministry. To whom in the ministry?

Ms. Barbara Captijn: I think there are brains more competent than mine to figure that out, but I would say that it has to be some sort of consumer watchdog person or office. I know that in Alberta there is an office. I was looking at how they handle things. It’s a consumer watchdog office. They hear from people like me and a couple of the other colleagues here. They hear from people who are consumers who have no commercial interest in developing policy which is going to fill their pockets.

You can’t have builders saying they’re consumer advocates. You can’t have Tarion executives saying they’re consumer advocates, because they have various other vested interests at play. You can’t have that, because it’s not credible. You’ve got to have people who are independent of the commercial link between consumer protection and filling their own pockets. That’s where Tarion has gone wrong, by trying to tell us that builders are consumer advocates and their lawyers are consumer advocates. They have a vested interest in making policy that will further their businesses.

I believe a consumer watchdog—

Mr. Lorne Coe: Okay. Is your proposal here based on practices that are taking place in other parts of Canada?

Ms. Barbara Captijn: Yes, because I’ve had the chance to read the jurisdictional review which Judge

Cunningham and Deloitte did of jurisdictions around the world, not just in Canada. I’ve read a lot of reports over the years about how things are handled in Britain, how dispute resolution is handled in order to be cost-efficient and fair and independent. I’ve tried to read up.

Mr. Lorne Coe: The other part of your proposal, number 2, that speaks to the potential of oversight by the Office of the Ombudsman of Ontario: To what extent have you had discussions with the Ombudsman or his staff about the practicality of that?

The Chair (Mr. Roman Baber): About a minute—just a minute for your answer, please.

Ms. Barbara Captijn: Yes. I have not talked to him about that, but I’ve had correspondence with their office about the unfairness and imbalance of the Licence Appeal Tribunal, because they have oversight now for the Licence Appeal Tribunal. But that is not working for consumer protection. I’ve had many, many years—I don’t say that that is the absolute final solution. I think it’s a consumer watchdog function.

You in the Ontario government are responsible for consumer protection. I shouldn’t have to be here. I shouldn’t have had to be doing this since 2011. This is the legislative responsibility of government—and therefore, a consumer protection watchdog there.

Mr. Lorne Coe: I’m just trying to get some clarity about this aspect of your proposal, the oversight by the office of the Ontario Ombudsman and how that might apply. It would seem to me that there would need to be some discussion, either with staff within that office or with the Ombudsman directly, to understand how that would occur and if it would occur.

Ms. Barbara Captijn: The former Ombudsman of Ontario, Mr. Marin, and I believe his other colleagues have tried to get oversight over Tarion for almost 20 years, to my recollection. They wanted to be able to do what the Auditor General—they wanted to be able to get eyes and ears on the ground in Tarion, to figure out what’s going on in there, because there has been no transparency and accountability to the public. So they themselves wanted to have oversight over Tarion. I believe you can see that document.

Mr. Lorne Coe: Right. Thank you, Chair.

The Chair (Mr. Roman Baber): Thank you very much. Thank you so much, Ms. Captijn. That in fact concludes your testimony right now.

Ms. Barbara Captijn: Thank you.

The Chair (Mr. Roman Baber): I propose that the committee take a five-minute recess.

The committee recessed from 1200 to 1209.

The Chair (Mr. Roman Baber): I’d like to call the members to order please. The Standing Committee on Justice Policy is going to resume its hearings on Bill 159.

Before I resume, I’d like to advise the members that a request has been made to the maintenance staff to increase the lighting in the room. Also, I’d kindly ask all the members to bring their mikes a little closer to them or speak into the microphone when they ask questions or make a presentation.

MR. KEMAL AHMED

MS. MINI RIAR

The Chair (Mr. Roman Baber): We will now proceed with our next two witnesses. I'd please invite Kemal Ahmed and Mini Riar to provide testimony. Thank you very much for attending before us today. You'll have 10 minutes collectively for your initial submissions, followed by 10 minutes of questioning from each of the recognized parties. I'd kindly ask that you commence your submissions by stating your name for the record.

Mr. Kemal Ahmed: Okay. Good afternoon. I'm Kemal, a resident of York Centre.

Ms. Mini Riar: My name is Mini Riar.

Mr. Kemal Ahmed: We're both homeowners. This is our Tarion story.

Ms. Mini Riar: Our story begins 10 years ago in 2010. We wanted to build a custom home which was modern, environmentally friendly and close to the subway. We hired an architect, who offered to build the custom home but instead we hired a builder, who was a family friend at the time, because we wanted Tarion coverage and warranty, which he promised. Our builder was licensed by Tarion and had built homes and condos in the past and his quote was more cost-effective.

In October 2011, we moved into a condo after selling our home. We were told that our home would be ready less than 12 months after the building permits were approved. In January 2012, the plans were ready, so the builder worked with the contractors to get tenders. In May 2012, we got the quote. Excavation and building began with the promise that it would be ready by April 2013.

During the construction, the builder advised us of some major cutbacks to the plans to reduce some of the costs, including the cantilevered roof on the second floor because I think he didn't know how to actually build it. There were so many things he didn't do, we found out at the end. For example, to this day, we're not able to install a simple doorbell because no electrical plans were provided. Geotechnical was never completed, despite the engineer requesting it. They installed four sump pumps instead of dealing with the water issues directly, and these keep jamming; they're on 24/7. Many other things were not done but they were invoiced, including a pool heat exchanger, kitchen gas line, stain and sealant on the stairs, pot lights. These are just a few of the many things; I can provide you a list.

In May 2013, the house was only about 60% complete and that was a month after the promised date. The builder, we found out, was reminded by the city of Toronto that there were no HVAC or drain permits, despite HVAC and drains already being installed since six months earlier. This permit communication was never provided to us.

In October 2013, HVAC was still not complete and this was a rate-limiting step for many other tasks in the house. Since we'd actually given notice to our landlord, we were literally homeless, forced to stay with friends. Our belongings were put into numerous temporary storage facilities, adding to the costs incurred.

In December 2013, a new move-in estimate of two weeks was provided, and two weeks later, the builder advised us that the house was ready enough to be moved into. "Occupancy permit is not quite obtained but will be in January"—no education about any legal implications. The stove was not even working when I moved in.

In January 2014, the builder surprised us with invoices which were \$400,000 over the quote, and also prices had suddenly gone up despite tenders having been received by him before he provided us with the quote. He wouldn't even review the invoices. Instead, he threatened to not apply for the occupancy permit, not close electrical permits, and place liens on the house. Scared consumers, we paid the invoices and took out a large amount of money from different savings that we weren't planning to. So now we're in the house, and we have no money left to even decorate or finish our dream home. The HVAC, at that point, we found out was invoiced at \$34,000 more than the estimate from a year earlier—and no communication on that.

In February 2014, we inquired of the builder, "We haven't received information about the Tarion warranty. What's happening?" Then he said, "Oh, no. Tarion is not applicable because some items were done by your own contractors." These were aesthetic things like the kitchen cabinets, or we provided our own light fixtures. Then he threatened that his trades would just come in and rip everything out—electrical and HVAC—if we complained any more.

In April 2014, we reached out to Tarion directly for help, on your website. We were told that it's the builder who is supposed to register the house. Then in May 2014, the builder totally declined to register us for Tarion.

We waited to do the registration, because the builder had a death in the family. We knew the family. His wife was going through liver failure. So we delayed further action until December 2014, at which time Tarion agreed to investigate the case. But at that time, we were not advised on the fact that there were strict due dates on the first-year term. At this point, the first year happened at the same time as we put in our application.

In July 2015, there was an investigation begun by Tarion. In October 2015, we finally received notice that our registration was complete and our house was registered with Tarion, but it was too late for the first-year form. We still provided them with an itemized list of first-year issues, which actually totalled more than \$200,000 of discrepancies and repairs.

Then in December 2015, we submitted the second-year form on time. We probably didn't provide all the details we needed to, but we put in whatever we thought was applicable. The builder did not oblige to fix any of those issues during the 120-day period that they're given.

In June 2016, the city of Toronto building inspector declared the HVAC system was not to Ontario building code. The HVAC system was one of the items on the second-year form. A Tarion inspector came to the house, and he inspected and found that most of the things that we had indicated were applicable. There were a couple which he said weren't applicable, but 80% of them were.

Then he said, “Yes, okay.” It was, oh my God, what’s happening? Then as he was leaving, the builder just talked to him outside. It was like a personal interview. Verbally, he confirmed non-resolution of items, but then none of those items were in the report. He just said, “Yes, they’re not warrantable.”

In July 2016, Tarion used mediation settlement to close the case, despite that the mediation between us and the builder was not completed. Plus, the mediation was really non-Tarion-related items; I was very careful about what I put in the Tarion list.

In September 2016, the Tarion inspector came again, and again the results weren’t documented. It was really, really frustrating, because an inspection is supposed to document any facts, and then later on, they can decide on whether it’s applicable. The facts should have been put into his documentation. The condition of warranty should not be part of an inspection report. You can say in an inspection, “This is wrong, this is wrong and this is wrong, but we’re not sure if it’s going to be covered by us.” He didn’t even put the details into the inspection report.

In February 2017, because I was really frustrated, I paid an independent inspector to do a thermal evaluation on the windows, which revealed the quality of the install and the air coming into the house. I sent that report to Tarion. Then the Tarion inspectors came back to inspect the windows, and they were appalled by the air that was literally dancing inside our windows. But they took no further actions.

We had four inspections by Tarion, and then Tarion agreed to send an independent inspector, who then outlined major issues with the windows, mould, leaks in the basement, as well as the stairs and some other electrical issues.

Interjection.

Ms. Mini Riar: Sorry. Go ahead.

Mr. Kemal Ahmed: No further action was taken by Tarion after that point, and no further action was taken by the builder. When we asked, we found out that in 2015, Tarion did try to charge the builder with not registering the home, but they later dismissed this charge in fear that if they lost for any reason, it would create a legal loophole for other builders to not register further homes.

We’re consumers. We’re not educated about how to fill in these forms. We shouldn’t know; we’re not inspectors. I’m a software engineer, and she’s in health. We’re not in building construction. Having to fill in the second-year forms ourselves—we didn’t know what details were really important to include on there. I think that it would have been much better to have an inspector who did know to actually do that form for or with us—so if there is more availability on education. Maybe if it’s even online training and articles or organizations that you can go to—similar to how CRA has certified accountants—and then fixing the inspection process, and then also fixing the loophole of the non-registration.

1220

Ms. Mini Riar: Yes, because these were electrical issues; there were lights which weren’t working, and we had to prove it ourselves. The inspector said, “You have to prove it.”

Mr. Kemal Ahmed: Thank you for listening to our story.

The Chair (Mr. Roman Baber): Approximately 10 seconds is left for your submissions, but hopefully you’ll try and incorporate any further submissions into your answers.

We’ll now proceed with 10 minutes of questioning by the government side. Mr. Bailey?

Mr. Robert Bailey: I’ll start. Thank you very much for your presentation. I apologize. I know that doesn’t mean much with what you went through.

I guess why we’re travelling with this bill is to try and make things better for people going forward. I wish we didn’t have your story here, and I know there are others like you out there. That’s what we want to try and clear up. That’s what the minister’s directive is to Tarion, and to the ministry as well. That’s why we’re travelling around the province to a number of different areas, to hear from individuals like yourselves, to try and make improvements.

I’m a homeowner myself and I’ve got family who have homes. I guess I’m fortunate; where I live, we’ve got some pretty good builders. I live in southwestern Ontario. I’m not saying we don’t have problems there either, but they’re certainly not like the ones I’ve heard today and in the past. I’ve heard from a number of people. I guess I’m fortunate.

I like your idea about the CRA, where they provide advice to help people fill out their income tax forms. I don’t know whether it’s free or not. That sounds like a pretty simple fix—not fix, but to help people fill out these forms. I mean, the old saying, “I’m from government; I’m here to help you.” We know that don’t wash, right? So that might be a very simple alternative, like a fix, to help make things better. We’ve got a lot of things to fix, but you’re the first one who has brought that up. I like that idea.

Ms. Mini Riar: Yes, because one of the things when we were doing the form—they said, “You didn’t say that there was water coming in the windows.” I said, “The windows weren’t installed.” That was just like an extra two lines—I just had to add two words or something to it. I didn’t think of it.

The Chair (Mr. Roman Baber): Ms. Kusendova?

Ms. Natalia Kusendova: Thank you for sharing your story with us. It is certainly heartbreaking to hear because the dream of a home is so common for so many of us Canadians, whether we were born here or came from another country. It shouldn’t be such a struggle, and such a multiple-year struggle, to attain that dream, right?

Just to reflect on some of the points that you’ve made in terms of, for example, Tarion inspectors—so we are making some changes to improve the overall experience. There will be some standardized training for all inspectors to make sure that they know what it is they’re looking for.

We’re also going to be increasing the frequency of inspections. I know that you’ve only had four inspections. We’re hoping that we will increase that to ensure better compliance.

In terms of the compliance of home builders to register the homes, some of the changes that we’re proposing in

the overall administrative authorities—they will receive administrative monetary penalties, so the power to actually enforce the new rules and hold the builders accountable for that process. Do you find that a positive step in the right direction to ensure greater accountability by the home builders?

Ms. Mini Riar: I don't know, because in our case the builder has never paid a cent for any of this through Tarion. Our house is still not even on the registered Tarion list on the website for some reason.

Ms. Natalia Kusendova: I'm sorry to hear that, but we're hoping that the changes that we're proposing with this legislation will help to address some of that.

I just wanted to talk about one more issue that you raised: the 30-day window. We're looking to change that model because we've heard that it's not working for a lot of homebuyers. And so we will be consulting with the public and stakeholders such as yourself to see what would be a better model instead of having that 30-day window at the beginning of the year and that 30-day window at the end. What is some of your feedback in terms of what would be a better model?

Ms. Mini Riar: In our case, it wouldn't have mattered. In those cases the builder has registered the house; correct? So then there's a 30-day window. We did not have that opportunity.

Even when we put in our application in 2014, I would have given them a first-year list even if it wasn't registered, but I was never told that. I think it's a good idea to give more opportunity, because things happen over a year's time. I've seen that with my mother-in-law, when she bought her condo. There were things that would happen, and then you would forget to add them in later on. Some things need to get fixed much sooner. There are some things that you can't even wait for anybody to come in and fix.

There should be a helpline with Tarion, that—if I'm having a leak in the basement, can you come to see it today? Because six months from now it's not going to be leaking. The wind's not going to be coming in the window—because the papers were just dancing, luckily, the day that the inspectors came in. They literally couldn't believe it, the way that he put them in. Even the window manufacturer told me, "Yes, all of the windows were built the wrong size." That comes under errors. It was the workmanship.

But he had a scheme. That's the thing. The scheme was that he knew he was supposed to register us. Everything he did, it was like a big scheme that he had going, and we didn't realize it. We were just victims.

Mr. Kemal Ahmed: What are we doing in terms of the changes to the bill, in terms of trying to fix that legal loophole of the non-registration?

Ms. Natalia Kusendova: We can ask our representative from the ministry to answer that question. If you may, please.

The Chair (Mr. Roman Baber): Just one minute.

Interjections.

The Chair (Mr. Roman Baber): Typically, this kind of process would be reserved for the clause-by-clause

process, so unfortunately there is no opportunity right now to hear from a ministry person. However, a request could be made in writing and an opportunity provided during clause-by-clause.

Back to the government side, with an additional three minutes remaining.

Ms. Natalia Kusendova: My apologies, Chair.

What is a good way for the government to involve consumers in the process going forward to ensure that their voices are heard?

Ms. Mini Riar: Let's say the homeowner is talking to the person on the Tarion side. They should be aware of everything that the builder is sending them and then see all of the documents in one file.

The other piece would be to—because I think some of the confusion is over contract-built homes and owner-built homes and regular block homes. I think that in Ontario, all homes, whether they're owner-built or contract-built, should be covered under Tarion. I think that would reduce any sort of confusion. There could be different regulations regarding the different types. For example, if somebody wants to buy my home today and if they find out that it wasn't covered or things weren't done, it reduces the value of my house.

Mr. Kemal Ahmed: I think also the availability of some sort of training program—if we knew that there was an optional training program or something that we could have gone through so that we would know about what the processes were and what we needed to get done, that would have been very, very helpful.

Ms. Mini Riar: Yes, that should come with the building permit. When you get the building permit, you should be provided with a package from Tarion to say, "These are the requirements," or, "These are what you should expect," or, "This is what you need to do," etc. That would be very, very helpful.

Mr. Robert Bailey: Thank you. I guess I've got a second.

The Chair (Mr. Roman Baber): There's about a minute left.

1230

Mr. Robert Bailey: Okay. I'd like to thank you for your presentation. We'll make a commitment—we made a note about the non-registry; we'll get an answer. Maybe we'll have it before—

Ms. Mini Riar: It's a huge thing.

Mr. Robert Bailey: Yes, I agree, and I like your idea about a package with the actual building permit from Tarion. That only seems to make sense.

Ms. Mini Riar: And you shouldn't be able to tick off that it doesn't require Tarion—because I think he just ticked that off.

Mr. Robert Bailey: I agree.

Ms. Mini Riar: Okay.

Mr. Robert Bailey: We'll take that back. Thank you very much.

The Chair (Mr. Roman Baber): Thirty seconds for any additional questions.

Mr. Robert Bailey: I'll just thank you for your presentation.

Ms. Mini Riar: Thank you for listening.

The Chair (Mr. Roman Baber): Seeing no more questions on the government side, we'll proceed to 10 minutes of questions by the opposition. Mr. Rakocevic?

Mr. Tom Rakocevic: Thank you so much for your submission. I think it's very valuable to the committee to have someone come in and speak very openly about their own situation. I know that that's not easy. It takes courage. For many reasons, people don't want to do such things, so it's very informative for all of us.

It also highlights that it seems like you may have known the builder prior. We don't expect things like this to happen when you have that kind of contact with someone, so you can imagine people who are buying from faceless entities that they have no contact with.

Your home: These are images that are taken—

Ms. Mini Riar: This is from our house. These are things which should have been covered under Tarion, and they're still not fixed.

Mr. Tom Rakocevic: And these photos—when are they dated?

Ms. Mini Riar: What's that?

Mr. Tom Rakocevic: Are these photos taken, like, now? I see that it says December 2014—

Ms. Mini Riar: This is still happening in my basement. The last page, I took yesterday.

Mr. Tom Rakocevic: Wow. At the time of the construction—you said this is a Toronto home?

Ms. Mini Riar: Yes.

Mr. Tom Rakocevic: What was the involvement of municipal inspectors during construction?

Ms. Mini Riar: Not sufficient. For example, they came in in May 2013 and told the builder that there was no HVAC permit, that there was no drains permit. They should have stopped the build right then, but they didn't. Instead, we were never told that there was no HVAC. For some reason, the communication didn't come back to us.

Mr. Tom Rakocevic: I see.

Ms. Mini Riar: I'm not sure why it didn't come back to us, but it didn't, and the builder didn't tell us that there was no HVAC permit. He installed the whole HVAC. All the drains in the house were done without a single permit. The permits, I got afterwards, and even then I had to beg a couple of HVAC companies to come in and say, "Please, I've got some sort of"—somehow I got some diagrams that were submitted with the building permit but were never used, because the house was finished. We had dry-wall, the ceilings—

Mr. Kemal Ahmed: Previous contractors didn't want to come in.

Ms. Mini Riar: How are you supposed to say where the HVAC pipes are? How are you supposed to say where the drains are at that point? How is an electrician supposed to come in and say, "Oh yes, the electrical is down to ESA." We were held hostage by this builder.

Mr. Kemal Ahmed: One contractor even came in and received a mild shock because there were live wires behind drywall without caps, and he never came back.

Mr. Tom Rakocevic: And so you missed the one-year warranty on some of the stuff out of respect, because the builder was going through personal issues—

Ms. Mini Riar: Well, we just thought he would do a real—my husband was like, "You know, it's okay. They'll do it. Let them do it, and then it won't be so bad on them. It won't look bad on them." And I was like, "No, we need to do this." That's the only reason we delayed it. It was just out of compassion and hope that they would just take care of it, and then we could just move forward and get everything taken care of.

Mr. Kemal Ahmed: As well as non-education: We didn't know how important it was to get it in on time until it was too late.

Mr. Tom Rakocevic: Before I ask a couple more questions, just as a comment: I'm not sure who to ask, if it's the Clerk or the Chair, but there was a very knowledgeable person from the ministry about to take a mike but unable to do so now, but they are in the room. Is there any prohibition for a person to talk to them themselves afterwards?

The Chair (Mr. Roman Baber): I'm not aware of any procedural prohibition, seeing that it would not be within the constitution of the committee. It would be outside the framework of the committee.

Mr. Tom Rakocevic: Okay. So then if someone who is very knowledgeable was to come, I encourage you to talk to them afterwards. I'd just probably forget to mention that.

It's really surprising to see that your home is still in this state. The most recent conversation with Tarion—where are we at right now?

Ms. Mini Riar: It was over a year ago. They just said, "We'll get back to you." I have an inspection report, and he even outlined—the other thing is that there's a stairs issue. It's not to the Ontario Building Code. I've got a 20-page document from Norman Lee, the Tarion engineer, somebody who they hired to come in. He talks about electrical issues, he talks about the stairs issues, he talks about the window issues, the fact that when the window was built, the roofing membrane was put underneath. That's why we're having all the air coming in. The other window is leaking water and was cracked; the whole thing was cracked.

Mr. Kemal Ahmed: Basically, because of the non-registration loophole that they were able to exploit, they decided to kind of—

Ms. Mini Riar: Because the builder's wife is a lawyer. The way they wrote things up, it was really—anyway, I can't really go there right now.

Mr. Tom Rakocevic: Wow.

Ms. Mini Riar: Sorry. I don't know.

Yes, these things are still there. I would love to know if and when somebody's going to come in and look at it.

Mr. Tom Rakocevic: I'm very, very sorry to hear what you're going through. These are the exact reasons why people are fighting and pushing to make changes to Tarion. These changes are long overdue. This happened in 2014 under the past government, and we were still waiting for years for changes that have been pushed by many

advocates. So I'm sorry that you're in this situation and I hope that you'll get some answers.

Have you contacted, by the way, your local member of provincial Parliament on this issue to advocate—

The Chair (Mr. Roman Baber): That would be the Chair.

Mr. Tom Rakocevic: Okay. All right.

The Chair (Mr. Roman Baber): Did you get an answer to your question?

Mr. Tom Rakocevic: Go ahead—if there are any further things you'd like to mention to me, at least.

Ms. Mini Riar: Is there anything further? I'm sorry I ran through everything. I just wanted to tell you as much as I could. Otherwise, I was going to get emotional about it.

Mr. Kemal Ahmed: If there's anything we can do to further any developments on this, then let us know. This is really important to us.

Ms. Mini Riar: We finally got occupancy in February 2017.

Mr. Kemal Ahmed: But we applied ourselves.

Mr. Tom Rakocevic: I can say in a very non-partisan way that everyone around this table is probably very concerned to hear what they're hearing and would want to see you helped.

Ms. Mini Riar: If there's somebody who can help us with the water issue. The sump pumps are still—I brought people in to look at them and nobody knows. I've got to have four sump pumps running 24/7 because there is an underground water stream there. I don't know. If you can direct me to somebody who I can talk to. Even if I have to pay them, I just need to know how to best deal with it.

Mr. Tom Rakocevic: I don't know if I can provide an answer to that here with regard to this, but I just want to say thank you so much for your submission. I know that it's not easy.

If my colleague has anything to say in our questions?

The Chair (Mr. Roman Baber): Ms. Singh. You have about two and a half minutes remaining.

Ms. Sara Singh: Okay. Thank you, Chair.

Thank you so much for sharing your story. This must have been quite an ordeal for your family to go through, expecting a brand new home.

I'm really curious about the process. You connect with this builder who's a friend of yours. You go through the process of creating, essentially, your dream home. Were you ever at any point provided with documentation to help you substantiate and validate this person and their ability to construct your dream home, and make sure that you were doing that in a way that was safe and that you were insured?

Ms. Mini Riar: We had seen other homes that he had built, plus he was Tarion-licensed. I think my husband went to see the condos that he had built as well before we started up with him.

Ms. Sara Singh: Did you review any of that documentation? Did he provide you, let's say, with anything to validate his credentials, other than the homes you had seen already?

Ms. Mini Riar: Not really, no.

Ms. Sara Singh: Okay. Do you think if you had a package, let's say, that was provided to you as a new homeowner who was about to undertake a new construction, a new build—some sort of checklist that you could have used to, again, review those credentials, have for yourself a list of things you should be looking for—would you have gone with the same person? Would you have maybe questioned things a little bit differently? Would you have gone into the situation with a little bit more knowledge and more tools? Do you feel you would have been more prepared?

Ms. Mini Riar: Definitely that would have helped, absolutely. The thing is, my husband felt really comfortable with the builder, so I let him run with it because at that time, it was more his dream than mine. I was okay. I was busy working and whatnot. As a woman, there are so many things on your plate that this was sort of like, "Okay, you deal with that." Unfortunately, I know that if I'd dealt with it, I quite possibly wouldn't have gone with this builder.

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Ms. Sara Singh: That's fair. So that may be a helpful suggestion for us, to create some sort of list or protocol for consumers—

Ms. Mini Riar: Absolutely, yes.

Ms. Sara Singh: —to ensure that they're protected—the things you should be looking for.

Ms. Mini Riar: I would be willing to help you with that. That's something which would be absolutely helpful. Now I know that the other places that he showed us had the same problems as us, but we didn't know about that at that time.

Ms. Sara Singh: Of course. He's only going to take you to units that are pristine and perfect, not the ones with mould in the basement, right?

Ms. Mini Riar: He did it to his sister-in-law, okay? He even did it to his sister-in-law. I couldn't believe it.

Ms. Sara Singh: I'm really sorry to hear that. I think this is why we need those protections in place, to ensure that those types of builders are not exploiting consumers like yourself.

I'm also curious—you mentioned—

The Chair (Mr. Roman Baber): Sorry, Ms. Singh.

Ms. Sara Singh: Am I out of time?

The Chair (Mr. Roman Baber): Unfortunately, the opposition is out of time.

If I may please have a personal indulgence of the Chair: First of all, I want to extend my regrets to you, not just as Chair of this committee but as your MPP, and invite you to contact my office at any time, to see if there is anything, any information, we could provide you with, or any assistance that we could render. That's why we're here, and we'd be very pleased to assist you. Again, please accept my regrets.

Ms. Mini Riar: Okay. If you need further details, let me know. I rambled through everything really fast.

The Chair (Mr. Roman Baber): That's okay. Thank you so much for your evidence.

Ms. Mini Riar: Thank you for listening.

The Chair (Mr. Roman Baber): I drive by your home quite often, and I think it's beautiful.

Mr. Kemal Ahmed: Oh, yes? Well, thank you.

ONTARIO BUILDING OFFICIALS ASSOCIATION

The Chair (Mr. Roman Baber): We're going to move on to our next witness. I'd like to invite Matt Farrell of the Ontario Building Officials Association.

Mr. Matt Farrell: Thank you, Mr. Chair and members of the committee, for allowing me to come here and present to you today.

The Chair (Mr. Roman Baber): Thank you, Mr. Farrell. You will have 10 minutes for your initial statement, followed by 20 minutes of questions from both recognized parties. I kindly ask that you begin your submission by stating your name for the record.

Mr. Matt Farrell: Understood. My name is Matt Farrell. I am the building and planning manager/chief building official for the township of Huron-Kinloss. I am also the immediate past president of the Ontario Building Officials Association, or OBOA, as I'll be referring to it. Today, I am pleased to speak to you on behalf of the association.

For those of you who are not familiar with the OBOA, I'll share a little bit of our background. We represent over 1,900 professional building officials from municipal jurisdictions across the province. The OBOA and our members are committed to consumer protection; the sharing of our expertise with government and industry partners; achieving high professional standards; providing top-notch training and education for Ontario building officials; reducing red tape; and employing innovative and modernized administration, policies and processes in implementing Ontario's building code, all while ensuring that the buildings where Ontario's people live, work and play are safe.

The Ontario Building Officials Association applauds the government and Minister Thompson's efforts to rebuild consumer trust through the introduction of Bill 159, the Rebuilding Consumer Confidence Act. The changes being sought through Bill 159 align with a number of our principles, including strengthening consumer protection and trust, as well as ensuring that the health and safety of those who live in new homes are protected.

Our association expressed apprehension when the Strengthening Protection for Ontario Consumers Act was passed by the previous government in 2017, as it left a lot of unanswered questions at that time. These concerns have been addressed through the many changes introduced by this government, which include having broader stakeholder involvement in the governance of Tarion, as well as a focus on information-sharing between agencies.

In addition, the OBOA supports the government's efforts to increase consumer awareness around the buying of pre-construction condo projects, and builder track records.

Home construction licensing and warranty protection for new homes are two of the integral pillars in a complex system that protects consumers. Municipal permitting and compliance-checking are the other pillars. Unfortunately, as a result of a province-wide shortage of building officials, that system is also under stress. The OBOA, through a number of initiatives, is working to address this shortage with our government.

But there are additional stresses on the system. There's a shortage of skilled trades in the industry, and higher social expectations that our buildings rightfully be more accessible, reduce energy consumption and adapt to a changing climate, all the while facing a desperate need for more affordable housing at a time when the province is expected to grow by two and a half million people over the next 10 years.

The government needs to consider all these factors with the knowledge that any dramatic structural changes to a system can result in unintended consequences.

Both Justice Cunningham and the Auditor General identified in their respective reports that all stakeholders in the new home building system have a role in implementing these necessary consumer protections.

The OBOA agrees that we must work together to fix these critical issues so that future homebuyers are not put at risk. We must also ensure that fairness is maintained within the system so that builders remain encouraged to construct high-quality homes.

I'm just going to add a piece from the previous presentation as well about work we've done previously with Tarion to address an issue that was presented as part of that presentation, on the identification of poor builders at building permit submission time: We worked with Tarion a few years ago and developed a pilot program where all municipal permits that came to our counter had to go to Tarion to verify if that builder was registered or the project was registered before the project started. To implement that project fully would require legislative changes to the Building Code Act. It's not something that would be under the Ministry of Government and Consumer Services; it would be under the Ministry of Municipal Affairs and Housing. There were a number of changes that were recommended by the Auditor General to the Building Code Act. That would be something that the government could consider going forward to address that situation.

As the association that represents professionals responsible for ensuring that new homes comply with Ontario's building regulation, our members look forward to continuing to work with the province, the Tarion Warranty Corp., the housing construction regulatory authority, home builders and consumers to ensure that the new home purchasing process remains a positive and safe experience.

Once again, the OBOA applauds the government's efforts to strengthen consumer protection, and believes the changes introduced will go a long way to build confidence in the sector and put new homebuyers at ease when making their largest investment.

The Chair (Mr. Roman Baber): Thank you very much, Mr. Farrell. We'll now proceed with 10 minutes of

questioning, beginning with the opposition side. Mr. Rakocevic.

Mr. Tom Rakocevic: Thank you very much for the submission.

Just a couple of questions: What changes are you looking for with regard to the building code?

Mr. Matt Farrell: We're looking at reducing or managing the risk throughout the building permit process, so that would be working collaboratively with the housing construction regulatory authority or Tarion, depending on the roles and responsibilities each undertakes to identify, as I said before, bad actors or risky builders in the process, so that every house is checked by them to ensure that the project has to be registered, and working with them throughout the construction process as well, sharing information, so that we know where they see issues arising in the construction process. Maybe it's a geographical issue, that in certain areas they are seeing specific issues with the amount of groundwater that's entering houses, or that there are built-envelope issues that are happening across the province. We'd be discussing those types of issues. And then the occupancy stage as well: before the house is actually turned over—to work to ensure that the builder understands what their rights are fully at that point, that they are getting a complete and quality-built home at that time, and that they are also aware of their obligations in operating that house as well.

Mr. Tom Rakocevic: That's good. Do you have any comments about the inspections that take place during home construction, if it's adequate? Permits are being made, and I hear examples of, in some cases, multiple homes within a subdivision that seem to be deficient.

You heard from the family that spoke just earlier—that there was damage behind drywall. Unless you see some event occur, like moisture accumulating, you might not know. You might purchase a home that has defects and then it might reveal itself years and years later, even after any warranty is there.

What role do you think there should be in terms of inspections during construction?

Mr. Matt Farrell: I'll just give you what our role is, and the municipal side of things as well. We're obligated under the Ontario building code to make inspections that prescribe stages of construction. There are many instances throughout the building process where we're not able to get in there and see what's actually happening. In a lot of cases like that, it's what's happening behind the drywall, or in some of the finishes as well.

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What I would like to see as part of this is, when possibly Tarion or whatever entity is doing their risk-based inspection, the sharing of that information as well. If they are hearing of issues that have to deal with water penetration behind drywall—that they share that information with us so that we will step up our inspection process of the building envelope as part of our inspections or maybe make stop-in inspections on projects where there might be more risk occurring in those specific areas.

Mr. Tom Rakocevic: Thank you. Before I pass it on to a colleague, around the builder registry—there are

examples of subdivisions where there are, again, multiple issues. People are waiting for years, they've made submissions to Tarion, they're still waiting. You look at the builder registry and the builder has a pristine record. Do you have any further comments on that or what should be in the builder registry?

Mr. Matt Farrell: The builder registry is difficult to do off just a sole set of numbers, basically, and that's what Tarion has been doing. They've been looking at their instances on past bad track records. To pinpoint one builder would be very difficult because it's their word against theirs. If you have a multitude of agencies that are participating in this process identifying bad actors or bad areas where instances occur, I think that would be helpful. Say, for instance, you work with the Electrical Safety Authority, the body that does electrical inspections—they're a different agency. You look at the Ministry of Finance—maybe the builder is not meeting their financial obligations—or the Ministry of Labour, where they're not meeting safety guidelines. There's a multitude of different things that a builder could do possibly that could weigh into that builder registry that would identify that they're not following best practices. That way, it's not one agency's word against a builder, it's a multitude of agencies.

Mr. Tom Rakocevic: Thank you for that. I'll pass it on to—

The Chair (Mr. Roman Baber): Mr. Singh.

Mr. Gurratan Singh: Hello. Thank you so much for your comments.

A quick question: I was just on your website and I was looking at your mission and it discusses how part of it is building more sustainable and accessible buildings in Ontario. I was just curious to see what you think can be implemented to create more sustainability in this industry of building and constructing homes.

Mr. Matt Farrell: More sustainability? That's a very complex question to answer because there's a multitude of opinions and thoughts. The development of the building code is becoming very broad and a number of players have an interest in it. We have to critically look at what is important to making buildings more sustainable. We have to look specifically at those factors.

I work with the National Research Council, which develops the code at a national level for all of Canada, and they're currently undertaking a large study to look at how we make houses and buildings more adaptable to climate change. They've spent a lot of money doing that. I think that's one of the ways that we can raise the quality of buildings that are actually being built—because they will have to sustain the changing climate that we're enduring.

Mr. Gurratan Singh: My second question is that affordability has been a big issue and a big point of discussion around people's ability to access housing and housing being something that increasingly—especially in the greater Toronto area, we know it's pretty unaffordable to buy a house and often a lot of professionals can't buy houses. What are your comments with respect to affordability?

Mr. Matt Farrell: That's again a very difficult question to answer because the building code has so many objectives that it wants to achieve. When you construct a house, you want it to be more accessible, you want it to conserve resources, you want it to be energy-efficient, you want it to be adaptable to climate change. All those factors incur costs as well to make that occur. It's a fine balance between having the expectation that the building will last a long time and be affordable, and you don't want to give up quality and you don't want to give up health and safety. It takes an extensive amount of discussion to make sure that the building code is done properly and that what we're including in those regulations is suitable.

Mr. Gurratan Singh: Those are my questions.

The Chair (Mr. Roman Baber): Ms. Singh?

Ms. Sara Singh: Just following up on some of that: I know that here in the province of Ontario we are facing a bit of a housing crisis. There is a big push for developers and builders to meet that housing need and I know that there have been some recent changes that will help expedite the construction. I think for us, one of the big concerns is that expedited construction and the lack of checks and balances along the way. We'd heard earlier from folks talking about homes that are being constructed in the winter, for example, being more prone to, perhaps, mould arising there.

What in your opinion, as a body here representing the builders, can be done to protect consumers throughout the life of construction? Is it that there need to be more inspections throughout the process of construction? I'll just leave it to you to perhaps provide us with some suggestions.

Mr. Matt Farrell: Just to be clear, I'm not here representing builders; I'm here representing building officials.

Ms. Sara Singh: It was the officials, sorry; my apologies for the wording.

Mr. Matt Farrell: No problem. I don't want to have a perceived conflict.

Ms. Sara Singh: My apologies.

Mr. Matt Farrell: A lot of things that you mentioned would be helpful—different practices in construction. But I think education plays a big importance in it as well, and I'm not just saying on the builders' side of things. I think it goes pretty much to our community, as well. We, as building officials or designers or design professionals, need to have a larger level of building science knowledge so that we know when you're building in adverse climates that there are special precautions that have to be taken and considerations made to adapt to those. It's one of these things that is talked about largely, but it's mostly overlooked as well. One of the things that our association advocates for is higher standards for ourselves. The last thing we want is for an occurrence to happen that puts us in a bad spotlight.

The Chair (Mr. Roman Baber): Forty-five seconds.

Ms. Sara Singh: Thank you.

You spoke a lot about bad builders and reducing those bad builders. What do you feel needs to be done to help hold those people to account and perhaps address the issue of bad builders?

Mr. Matt Farrell: The upfront identification is pretty key, and looking at ways that we can identify them throughout the process. But some of the other things that they talked about as well—monetary penalties, more tools for enforcement. The delegated administrative authorities are going to be increasing their monetary penalty framework. We would like the same, under the Building Code Act. The provisions are there under the act, but we haven't had the regulations introduced. But it's something we're working on with our ministry.

The Chair (Mr. Roman Baber): Thank you very much, Mr. Farrell. As a reminder, the deadline to file your written materials before the committee is this Wednesday at 5 p.m.

Mr. Matt Farrell: Okay, thank you.

Interjection.

The Chair (Mr. Roman Baber): Oh, sorry; I'm reminded to call on the government side. We will now proceed with 10 minutes of questions from the government side. Mr. Coe.

Mr. Lorne Coe: Thank you, Chair. Through you, thank you very much for being here. We appreciate very much your presentation.

I've got three questions. I just want to continue on the line of questioning from my colleague on building codes. Your response I found on one level interesting and on another level a little bit troubling. It related to the apparent duplication of roles, to some extent, of the municipal building inspectors and of Tarion performing inspections as well during the construction phase.

In your response to my colleague, you indicated, and I need to understand reasons for this, that you're not—not you, personally, sir, but inspectors generally. Municipal building inspectors are not always able to conduct inspections—for example, drywall—at particular times. Let us understand some of the underlying reasons for that. Some of us here have served on municipal council, so we're familiar with the process that takes place. So let us understand for the benefit of the committee why that's happening and how regularly.

Mr. Matt Farrell: Why we can't do more inspections at the municipal level?

Mr. Lorne Coe: Yes.

Mr. Matt Farrell: There's nothing stopping us, and I want to be clear about that as well. There's nothing stopping us from doing more inspections. But we base those off when inspections are required. There's a prescribed number; there are seven required inspections as part of a new home. We can opt to do more. I base mine on comfort level with the builder. I assess upfront, to manage the risk, whether more inspections are needed. Sometimes I'll go out twice as much as the number required. But that's gut-feeling stuff. What we're looking to do is calculate that system a little bit better so that we're sharing more information and can assess when those other risk-based inspections are needed.

The one point, as well, that I want to talk about is that we look for code compliance. If Tarion or some other body were doing inspections, it would more likely be based on

building quality. But at the same time, we can share information that is found during those inspections to help us as well, and maybe we can use that information to broaden the number of inspections that are actually required under the building code.

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Mr. Lorne Coe: So on the point of sharing of information, would you agree that the sharing of information between municipalities, your organization and Tarion and other parties that have an interest in this sector needs to be strengthened? If so, how would you see that being done?

Mr. Matt Farrell: That's not just my opinion; that was the opinion of Justice Cunningham and the Auditor General as well. I think it's fairly well accepted that that needs to be done. How we go about it: I think we're at a time right now where digital transformation will allow for a lot of this sharing of information. One of the committees that I sit on is looking at how we develop online permit application systems for every municipality in the province, or that they adapt such a system—what that will enable to do is ease in the information sharing, so it's completely automated, that process.

Mr. Lorne Coe: All right. Chair, through you, I'd like to turn to a new area. What would you think would be the best way to involve building officials in the development and implementation of any changes to new home warranties and protections?

Mr. Matt Farrell: What our involvement would be?

Mr. Lorne Coe: Yes.

Mr. Matt Farrell: I don't want to look like I'm favouring my own business, I guess, but we do have a large body of expertise and knowledge in these areas. One of our strengths is that we aren't necessarily policy-driven, but we know what effective policy is and how effective it is in implementation. That's some of the information we can share at a table like that. I think there are a number of our members that have enough knowledge and expertise in this area that they can be beneficial in looking at the leading of some of these organizations.

Mr. Lorne Coe: Just to finish up on information sharing, and the inter-relationship of your organization and Tarion: I think a piece that you might want to consider is the engagement of the Association of Municipalities of Ontario. I know that from time to time, there is some level of engagement. But as part of the education process that has come up not only in your presentation, but has come up in some others—the policy group at AMO is playing a very active role in trying to reach out to municipalities and discuss some of the nuance and subtext of some of the issues we're talking about here. How do you see your organization strengthening that relationship with AMO beyond what it has been?

Mr. Matt Farrell: We have an excellent relationship with AMO. It has been broadened over the last few years. They've seen us as an expert in this area, and they recognize that when there are legislative changes proposed, they rely on us to give them expertise. I'm not going to try to brag. I presented to AMO twice, at their conference, to municipal officials there. I'm on my way to ROMA after

this presentation as well, to do a presentation. So it's a strong relationship. But part of it is us working with AMO and our municipal leaders to share some of these issues as well, talk about how it's affecting people, because these are real-life instances where people are being hurt by this. As I mentioned in my presentation, we all have a role in improving the system, not just Tarion.

Mr. Lorne Coe: Yes. I would suggest—this is a final suggestion through the Chair—that, where it's practical, you look towards upper-tier governments, an opportunity to make a presentation along the lines of what you've done today, about some of the solutions, some of the partnerships that could be affected, and enable upper-tier councils to be partners in trying to affect the direction forward. Thank you, Chair.

The Chair (Mr. Roman Baber): Thank you, Mr. Coe. Mr. Bailey?

Mr. Robert Bailey: Got a couple of minutes? Yes.

The Chair (Mr. Roman Baber): About three and a half minutes.

Mr. Robert Bailey: Thank you very much for your presentation. I found it very interesting, very informative.

I've only got one question. One of the presenters brought it up. I like simple things, simple ideas. When you get the building permit, do you get a document from Tarion that you would fill out—maybe before you leave the office where you get your building permit—with some of the dos and don'ts and things to watch for? It seems like a great idea to me, but I'm not a builder; I'm not a building official. Does it make sense to you that we do something like that, that we give people something to watch for?

Mr. Matt Farrell: When I first started in the industry, that was what happened. Then they changed the building permit application, to standardize it, in 2006. There were a number of changes that occurred at that time. The form was removed. It was two check boxes on the building permit application that waived the homeowner's right for the Tarion. As I mentioned before, digital transformation is going to enable a lot of things to occur with more ease. When an application comes in, I would love to be able to share that information with the regulator and get a response on whether I should be issuing the permit because they're registered or not.

Mr. Robert Bailey: Is that something we should deal with in our ministry, but also with the Ministry of Housing—so, make sure that that form goes back there again?

Mr. Matt Farrell: There's a number of times in the Auditor General's report that both the Ministry of Municipal Affairs and MGCS are mentioned as having a role in implementing the changes. I think that's something they need to work out.

Mr. Robert Bailey: Because I'm thinking of all of the horror stories that we've heard so far and that I've heard long before today—I'll admit I watch Mike Holmes sometimes. I mean, how the hell can people get a home built?

Are there actually homes being built with no inspections, or do you think every home gets inspected to some degree or other?

Mr. Matt Farrell: Unfortunately, there are homes that bypass the building permit process as well. That's where the sharing of information is more critical. There are agencies out there right now that are implementing technology that uses satellite imagery to identify where builds are occurring, but municipalities just don't have access to that information. But if we can share that information and target it, then we can protect the homeowners who are, you know—

Mr. Robert Bailey: It sounds like we've got something to do in our ministry, but also the Ministry of Housing.

Mr. Matt Farrell: I think we all have something to do, but those are the two ministries that have the most interest.

Mr. Robert Bailey: All right. Thank you. That's all I have.

The Chair (Mr. Roman Baber): Thank you. We have about 50 seconds remaining.

Mr. Bouma.

Mr. Will Bouma: I'll take it.

Thank you very much for your presentation. I was just wondering if you had any thoughts—we just had a presentation from someone. I know today is about Tarion, but the fact of the matter is that the house should never have been built. It never should have gotten a permit. The geotechnical studies were never completed, so they've got water running underneath their basement.

Where do you think the breakdown was—I know that's asking too much, but what could we do to help building officials to make sure that something like that doesn't happen, so that you could just say, "Okay, not a chance. There is no building permit for this place, because you don't have this ready," so that you don't end up half a million dollars in and trying to deal with this stuff after the fact?

The Chair (Mr. Roman Baber): A quick answer, please.

Mr. Matt Farrell: It was difficult hearing that presentation, because I could put myself in that person's shoes. I have experienced those issues as well in the industry.

There are a lot of good builders. The last thing I want to do is vilify builders through this process, but there are bad builders out there. What we have to do is work more effectively to identify them and stop them before they are able to work with the homeowner. I think it takes a bit of consumer education as well, but it takes a big part by our regulators to ensure that the consumer is protected.

The Chair (Mr. Roman Baber): Thank you, Mr. Farrell. I believe both sides now have had an opportunity to ask questions. I apologize again to the government members.

Mr. Farrell, thank you very much for your submissions.

MS. MERG KONG

The Chair (Mr. Roman Baber): I'd like to invite our next presenter. I'd like to invite Merg Kong to make submissions.

Ms. Kong, welcome.

Ms. Merg Kong: Thank you. My name is Merg Kong. I'm sort of getting what I'm supposed to be saying.

Is there anything else I should say other than my name, fully?

The Chair (Mr. Roman Baber): First of all, come a little closer to the microphone.

Ms. Merg Kong: Okay. Is that close enough?

The Chair (Mr. Roman Baber): That's great.

You're invited to make 10 minutes of initial submissions, which will be followed by 20 minutes of questioning by both official parties. If you would kindly begin your submissions by stating your name again for the record.

Ms. Merg Kong: My name is Merg Kong, and I'm here speaking from a condo owner's perspective. I know there have been a lot of single family homes that have been discussed. Bill 159, from what I could read and gather, doesn't build consumer confidence. It doesn't address the blatant disconnect for condo owners, for example.

Condo owners don't only have to deal with something called a home warranty or whatever you'll call it in two years—today, it's called Tarion. We have something called a common element that is essentially the whole building of a condo or an interconnected townhome. We can't do anything about the common element—and that is your primary investment—because those are your walls; that's your infrastructure, so plumbing, electrical, your roof. A lot of times, you can't file a claim for that, because as Tarion states, only the board of directors can.

So there are two layers, I guess, when you think about it, that cause a barrier for a consumer to get something fixed.

1310

I don't know if Tarion has it, but they certainly didn't tell me when I tried to file and found out that I couldn't because I'm not on the board; I'm not the corporation. If there was a clause that allowed them to accept me and a few other neighbours to submit our claims, they never exposed that to us, so that's an issue.

One of the things I discovered was the Ontario Building Code Act. I didn't think such a thing existed. Amazingly enough, it actually has penalties built in. So, when you have penalties built in, my curiosity is, why weren't these enforced? They don't seem to be enforced. The enforcer is the minister of MMAH. Why has that minister never enforced anything? I actually called them, the ministry itself, and they said they don't have any purview. That's not the minister; that's staff.

I want to talk about one thing from a victim standpoint. Without penalties, with very few lawyers willing to assist the condo owners—but there are plenty to help the builder, the corporation. There was one scenario that really upset me that I found, that I discovered, through processes like this. An elderly woman was hospitalized due to her board of directors' oppressive treatment. This is not a joke; there are hospital records here. What she was saying for years, being oppressed, finally came out because one board director got onto the board and exposed everything to all the owners. Once that document went out to the larger

corporation—so people were notified of situations that were occurring that they weren't notified of—the board quit. It was amazing. You didn't even need a board removal meeting. The property manager allegedly shredded documents, and then disappeared.

There were zero consequences, despite the potential for the Criminal Code or a condo act to be enforced. You're not supposed to obstruct OBC or the condo act, and certainly not the Criminal Code.

If you guys wonder, "Well, why don't you join the board?", it's a little difficult when the board holds every board owner's piece of information. Because of the updated condo act legislation, they can get proxies through emails. Can you imagine if the municipal, provincial and federal elections were run like that? The current government, that holds records for everybody in Ontario, would just press "send" and ask for a proxy. Do you think that any competing opposition party would really get in? I don't think so. They would control all of that. That's what is happening in condos.

This lady is okay now, thank God, because of one board member who grew a conscience and blew this situation open. Money was missing. It's not the first condo. I personally know of another one with same thing. They called the condominium CAO, or whatever that's called, but all they do is paperwork. They don't actually enforce anything.

What was interesting was, for another condo, a former director asked, "What can we do? We think money is missing." The CAO, or whoever the representative was, allegedly said, "Don't tell anybody about this." What kind of governing bodies or oversight do we have that inform you to hide a potential white-collar crime? It's a little odd.

MMAH has the ability to enforce the Building Code Act, yet they don't. In my view, it precedes any home warranty, because if I were to ask for permits to build onto a house today, I have to meet code. I have to also meet requirements of the city to even get the permit. And yet, these very large builders, established developers, appear to get permits with very little requisite. I can't build to save my life, and I bet that if I were under one of their umbrella companies, I would be allowed to wander on-site with a quarter-ton truck and wield a hammer, which is insane.

That's literally how I view my condo: We have a facade that is breached. We've paid to repair a brand new garage, which we found out in one AGM meeting was only about \$270,000-ish. That's above the band-aid solutions we did before that.

Again, it's not the first condo that has a breach in their garage. This is not unusual or special information to anybody who has had the opposition position to these files. You know about the complaints from your constituents; you know them. If you're on the consumer end of it, as the critic or whatnot, you know: These are complaints that have been around for only 40 years. It's really, really bad.

Only recently—it took me seven years to get a forensic engineer to come look at my windows, at least. And yes, I have a problem. Many engineering firms wouldn't even touch my project. The infamous question would be: Can I

have your address? Because the address would reveal who the builder is. So the co-mingling is fascinating. It's disturbing, because engineers have a certain code they themselves have to follow, and yet here we are—seven years to get an engineering report.

The builder rejected my level 2 or level 3 thermo-grapher's report. Roughly three-ish years into my ownership, they rejected it. They said, "This is not from an engineer; we reject it." So roughly three to four years after that rejection, I get a forensic report. I was shocked that a forensic company was willing to show up—because between the three I got from somebody I called, only one was willing to show up.

By the way, the quotes on the windows: This is not a Home Depot purchase. We can't go to Home Depot or Leon's or whatever. This is something that's custom. The tolerance for weight of a building, as you guys might know—Toronto has buildings that are 30 to 60 floors high. You can't just slap a Home Depot window in. These are the restrictions from a condo owner's perspective.

So when you talk about protecting a consumer, or having Bill 159, it doesn't even begin to cover this stuff. It has never been updated. The condo act now has been updated to allow proxies through emails. Like I said earlier, you can't even run for the board. You can't even get in there, into the secret society, to in camera meetings.

Speaking of in camera meetings, only recently did I discover that my board vetoed an amenity update. When I got a hold of the minutes from that meeting, there was no discussion. There is no reveal that they had a vote, and how the vote outcome came about. So basically, they had four people in that meeting; it was a 3 to 1 vote. The quorum was there and yet nothing happened.

One case you guys might be fascinated with, if you don't know about it, is RBC v. MTCC No. 1226. Yes, the condominium board tried to bully RBC. That's the bank. I mean, that's how noxious this environment gets. They're not even afraid of a multi-billion dollar entity. If you read Justice Whitten's remarks, they underscore the issues that confound condo owners in situations where we can't get out from under the thumb of the builder or the board, and it's ridiculous.

And CAO continually today—about two or three-ish years in existence—only deals with documents and paperwork. That doesn't help anybody whose building is collecting mould, potentially, because there is a breach in plumbing or in the windows.

The Chair (Mr. Roman Baber): Unfortunately, your time for initial submissions is up. We'll now begin with 10 minutes of questions by the government. Ms. Kusendova.

Ms. Natalia Kusendova: Good afternoon. Thank you so much for being here, and thank you for sharing your testimonial. I'm sorry for all the troubles that you went through. Certainly, we're hearing a lot of feedback today and there are lot of common themes in some of the struggles that new condo owners and new homeowners are going through. We're certainly taking notes on everything that's being said today, and we'll be providing that feedback back to the ministry.

I just wanted to address some of the points that you mentioned today and perhaps give you some context for what we are doing at the ministry. As far as I am aware, there will be further consultations taking place in terms of condo management and dispute resolution. We've heard in the news that there has been a lot of activity on this file, and so we will begin embarking on new consultations to make sure that stakeholders such as yourself have their voices heard.

We're also empowering the CAT, the Condominium Authority Tribunal, to allow more disputes to be adjudicated through this process. Some of the things that we heard earlier in terms of orders and other issues of contention can now go through this adjudicative body.

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We'll also be holding broader consultations with condo stakeholders to look at areas where we need more regulation, to address some of the issues that you mentioned today. We will be taking a look at that.

We're also strengthening the CAO, or the Condominium Authority of Ontario, with what we call AMPs, or administrative monetary penalties, to make sure that in areas of negligence there is some accountability.

Those are some of the things that we are looking at. I know that for a lot of people who have been struggling for years, this is perhaps some of the smaller steps that we are taking. But we are listening, and that's why we're travelling with this bill: to ensure that stakeholders across the province can be heard.

There was one thing that I thought might be of interest to you, which was announced recently: All buyers of residential units in a standard or phased pre-construction condominium project, where the first agreement of purchase and sale for the project was signed on or after January 1, 2020, must be given an information sheet that clearly outlines upfront the potential risks of buying a pre-construction condominium project. This is another area where we're trying to improve accountability and give more protection and information to the consumer. Do you feel that this is a step in the right direction?

Ms. Merg Kong: No. You're asking us to assume liability for a building that we didn't build. That's why the Ontario building code is so critical. The penalties exist, so you don't need to revise them or anything. If that new condo area, that tribunal or whatever that you spoke of, is anything like what I've heard of the horror stories from LAT, that's not going to help. If this is the builder and lawyers, and then there's somebody like me filing the LAT, that is not a very open proposition. Literally, you have a bus of lawyers and the builder, and then there's me, the consumer. That's not the case here, but literally LAT is something like this.

That has to change. To have an elderly woman—somebody who could be your grandmother—put in the hospital because a condo corporation was so oppressive in their treatment?

Ms. Natalia Kusendova: I certainly hear your points on that. I believe we are changing the makeup of Tarion to ensure that there are some consumer advocates on that board as well.

One more question that I had for you was in terms of expanding the 30-day window. We are doing consultations on that, as well, to ensure that there are more opportunities for consumers such as yourself to claim against the warranty. Do you feel that is a step in the right direction?

Ms. Merg Kong: Not when we can't claim. The warranty right now doesn't allow common elements, as I've stated. Until you change the legislation to not protect the people who are supposed to be regulated, it doesn't help. If you're going to accept my common element disclosure, it's roughly \$2 million of damage on our facade. That's not including the \$275,000 roughly for the garage. If you keep adding it up, that exceeds Tarion's coverage for condos per unit, per building, whatnot. I think \$2 million is the top end.

You've set up an environment where, if I were a builder, it's amazing, because I will know that I can build up to a tolerance level to be accountable for X amount of dollars; everything above that is not my problem. I know it's very flippant of me to say that, but I figured this out finally when I wondered why calling Tarion—I'm still waiting for a callback, by the way, from somebody who was busy at the time and couldn't call me back. It's only been five years. He hasn't called me back. Howard Bogach—I've actually had him on email. He pretended that he didn't understand. I would hope you hire people who understand their job.

Mario Deo is the consumer side of Tarion. He was involved with my condo at one point. I was doing the board removal meeting. He held the mike away from me. He wouldn't even allow me to use the mike.

When you have a cyclical amount of people that the names start becoming familiar—they shouldn't, but they are, and it makes the hairs on your arms and your neck go up. That's a challenge. Why are these people not held accountable? I found out later that Mario Deo was supposed to allow me to speak at my own board removal meeting. That's odd that he didn't let me. And he should know, right? He worked on some committee at Tarion at some point.

Ms. Natalia Kusendova: Thank you for that constructive feedback. We will certainly take that back to the ministry.

Some of the suggestions that we've heard today that may be helpful for future consumers would be establishing a Tarion 1-800 number with people who will actually be equipped with information to help new homebuyers or condo buyers through the process, which is quite difficult and complicated, as well as having more awareness—perhaps throughout the building registry, when they register for permits, to have an information package which would outline all of the risks and all of the different stages of the process. Those are some of the things that we will certainly be bringing back to the ministry.

It's critical that stakeholders such as yourself come to these hearings so that we can hear directly—and we've heard many stories today, and we will certainly take that into account.

Ms. Merg Kong: Speaking of disclosures, the pre-sale and post-sale documents are missing clauses in my

building. You don't need to keep reminding the consumer that you're buying a risk; we shouldn't be buying a risk. Do you buy a car that might not have brakes? Is that okay? We're entering an environment where AV, AI is a thing. Should the AI autonomous software be something you assume might drive your family over Scarborough Bluffs and then you sign for your car, knowing that it will do that and that's okay? That's not okay. There are controls over programming API, AV, autonomous vehicle. Nobody is allowing Tesla to just suddenly drive level 5 through Ontario.

When I say "people," I'm talking consumers. Everybody buying a Tesla understands there's exposure, but nobody is allowed to sign a document, I don't think, that goes something like the following: "If we drive the autonomous vehicle level 3 into your vehicle, we warned you that we might do that, so sorry." You're asking to sign documents such as that. It's ridiculous. That's not our fault. We're not the OEM here. The OEM is the builder, the developer. The onus shouldn't be for us to be delivered documents that waive them, builders and developers, of their accountability to the OBC to begin with, or legislation as a whole.

The Chair (Mr. Roman Baber): Sixty seconds. Mr. Bailey?

Mr. Robert Bailey: I just want to thank you for your presentation. Can you make sure that you email some of your ideas to us? You had a short presentation here, but is there something more detailed to make sure we get it? I'll give you my business card.

Ms. Merg Kong: I can give you my forensic engineer's report.

Mr. Robert Bailey: Okay. Great.

Ms. Merg Kong: Okay, thank you.

Mr. Robert Bailey: Thank you very much.

The Chair (Mr. Roman Baber): Any further questions by the government side in the 30 seconds remaining? Okay.

Before we move on to the opposition side, if you do intend to file anything with the committee and you want it to be part of the record, it should be filed by Wednesday, at 5 o'clock.

We will now proceed with the 10 minutes from the opposition. Mr. Yarde.

Mr. Kevin Yarde: I want to thank you for coming in today. I know it can be a little bit daunting coming in here with everybody standing around and sitting around here listening to you.

One question I have for you—I know you did mention proxy forms; you talked about that. I have friends who live in condominiums and they've said that there have to be some changes, that proxy forms are too convoluted and too complex for the ordinary person to fill out and that these changes were done by the government.

What sort of advice would you provide the government in terms of proxy forms? I know it seems simple—

Ms. Merg Kong: I don't think there are enough seconds in there, but very quickly, the last government actually did a great thing. They did update the proxy form by mandating a template, but we still now have an issue

where the condo corporation, if they choose to act rogue, can collect them from all the owners. They have the owners list. So that still is the problem, that we don't have a vetting.

When you go through a provincial election, if you so choose, and you question the vote results, there is a process that comes in from a provincial standpoint that is arm's length from the process—"process" meaning the candidates. Then, of course, candidates bring their own lawyers in to vet everything. We don't have that luxury. The vetting is by the corporation.

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By the way, before the email proxy came into effect, my corporation went and used it, just to show you how obnoxious corporations can become. Basically, those proxies they collected for that meeting were null and void. They just shrugged it off and said that it's fine. It's not fine. But I'm not going to spend \$10,000 to tell them it's not fine, which is lawyer fees. That's all we have right now: to constantly go to the courts. We all know that the courts are incredibly busy. They shouldn't have to deal with this. But thank you for asking.

Mr. Kevin Yarde: Okay. What would your suggestion be, then?

Ms. Merg Kong: We need an oversight. We need to be able to go to consumer services, somewhere that can actually pull in those proxies and let us review them. In the case that I'm mentioning right now, pre the actual legislation coming into force, those would be all null and void. We should now have another AGM, another vote. We need that, some third party, like a court: that type of judicial oversight or adjudication.

Mr. Kevin Yarde: Okay.

The Chair (Mr. Roman Baber): Any further questions from the opposition? Mr. Rakocevic.

Mr. Tom Rakocevic: Thank you for that. Your submission has certain elements of condo act reform as well as Tarion. I'd like to also extend talking a little bit about the Condominium Act. Are there any other suggestions or things that you'd like to see even beyond the proxies that could be changed within the act? I know that that could be hours, but if you could give a couple of bullet points of what you'd like to see changed.

Ms. Merg Kong: I think the existing sections where they mention that nobody should obstruct it should be enforced, and the enforcement shouldn't be placed on the consumer. That's a five- or six-figure visit to the court. Do the courts really want to babysit something that the government should have a mechanism for enforcing?

The CAO that was put in place doesn't even do that. We could have them on conference call today and you'll hear them say, out of their own phone number: "We literally only do documents." I have 30 days to request a document over board meeting minutes. That's it. How does that help a garage that's falling apart or a facade that has about \$2 million of defects etc.?

"Just enforce it, please," is I think what consumers are asking for. Most of these legislations are actually really quite good, because they do have a mechanism that states

that you shouldn't obstruct, and for the OBC, builders and developers apparently can have a \$100,000 penalty levied against them and people like my board of directors can have \$50,000. That's a significant indication, if you bother to use it, to tell people—it signals to them, “You have a duty of care.” Simple.

I really dislike people saying, “Your board of directors are just merely innocent volunteers.” They are not. I think you can hear enough. When you drive somebody to the hospital because of your antics, that's not innocence. That's repugnant. It's a wilful effort on their part, and it's reckless.

I won't bring her here today because I think it could trigger her. She's a frail old lady.

Mr. Tom Rakocevic: You talked a little bit about the Licence Appeal Tribunal. We actually heard about it again earlier, and how, in the cases with regard to Tarion, the vast majority of people that go there lose their case. What changes would you like to see at the LAT? Are there things that you'd like—you depicted it in a way where it's people with high-powered lawyers and then there's just a person trying to fight for their rights. What would you like to see changed that might make better outcomes or make more of a fair playing field?

Ms. Merg Kong: I think if the panel could be impartial, it would be a help—if the panel didn't literally walk off the golf course with the other side. I know I'm being frivolous right now in my remarks, but that's how it feels. We've all possibly gone through university, been part of sororities or fraternities; that's fine. But when you talk about somebody's house moulding and it's going to kill them, in the case of a man named Daniel Emery—he thinks he may have cancer as a result of his mouldy home. That's unacceptable.

This is statistical. It's health. It's WHO. Mould, noise and vibration, things like that—it's actually science that is in existence that states that this is not part of your healthy lifestyle.

I'm just very frustrated right now, because when you get into the advocacy side of this stuff, and you're just Joe Consumer trying to help other consumers—one gentlemen here bought a condo, and I asked him, “Did you read your declaration?” He goes, “What's that?” That's my case in point. It's literally a drop-the-mike moment.

Most people don't have an idea. My lawyer, who read my declaration, to this day has no idea that we have two different declarations, technically. The one that was sent to her—she never saw the other one. I didn't see it until about two years later. It's tough when you have this in camera environment.

Mr. Tom Rakocevic: Okay. Do any of my colleagues want to—

The Chair (Mr. Roman Baber): Mr. Yarde.

Mr. Kevin Yarde: I just want to switch gears and talk a little bit about owner-occupied positions. You probably know what I'm going to ask you. There's some thought that the owner-occupied position should be eliminated, because the only people who can do any voting on issues within a condominium are the owners. Every year or every six months, they have a hard time finding enough people

to fill out the proxies and to vote. So do you think there should be any changes with the owner-occupied position, or should it be just left the way it is?

Ms. Merg Kong: Again, it comes back to the Ontario condo act. It actually is a fairly good document. It's just the enforcement of the rules. For the owner-occupied position, only people who literally are owners in the building should be voting, so it's not actually a problem that owners don't exist per se.

Then the rule gets even more funky. The owners who don't qualify to vote should be removed from that list, and this is where things get murky and confusing. If your board has any intent to hide from you evidence, the reality of the counts and so on, you're never going to know whether or not the real count was 150 or should have been 125, because 25 units fell out of qualification. For instance, whatever the rules were, that excluded them. That's the problem: We don't know.

Per my remarks about an AGM where I simply asked about the proxies, and saw the stack walked in, I said, “You're not allowed to have those right now. You're not even allowed to use them.” And they just said, “Oh, whatever.”

The other problem is, my board did speak in the owners' position.

The Chair (Mr. Roman Baber): Thirty seconds.

Ms. Merg Kong: They switched who was the actual owner-occupied representative. I couldn't believe it. They actually switched, so that they could extend the time of service of another board member.

It's hard to answer that. Nobody can make the board accountable at this point, because they're allowed to self-regulate with no accountability. But we need the role.

The Chair (Mr. Roman Baber): With about seven or eight seconds remaining, I believe that concludes the questioning by the opposition.

Ms. Kong, thank you very much for your submissions.

Ms. Merg Kong: Thank you.

DR. NANCY LEE

The Chair (Mr. Roman Baber): I'd like to invite our last presenter for the day, Ms. Nancy Lee. Good afternoon, Ms. Lee.

Dr. Nancy Lee: Hi, members of the committee.

The Chair (Mr. Roman Baber): Thank you so much for coming today. We invite you to make an opening statement of up to 10 minutes. We kindly ask that you begin by stating your name for the record.

Dr. Nancy Lee: Okay. Last night, I was watching Star Trek, and I was wondering how I was going to wake you up, because I'm the last presentation of the day, so I thought I'd introduce myself as James Tiberius Kirk. No, it's Dr. Nancy Lee, for the record, but the idea is the same, and I want to take you on a path or a journey different from where you've been.

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Overall, we know what's missing in the government's approach. The monopoly model still continues for the new

home warranty, instead of the multi-provider model that was proposed by Justice Cunningham in his 2016 review. The dispute resolution process continues with the LAT; I unfortunately have been in the LAT. There is no independent ombudsman still, and Tarion still continues as an administrative authority. In fact, now there's another DAA called the HCRA, the Home Construction Regulatory Authority, because of the split of Tarion's two roles, so consumers have another AA to deal with.

But today, because we're limited with what is before us, I think that we're here like clinicians; we've got to determine what is the best treatment option for the homeowner, who is basically afflicted with a cancer called Tarion. Right now, Tarion has metastasized and has threatened its host, because it is now two cancers: the Tarion organization itself and the HCRA. Now, of course, definitive treatment would be a course of action like proposed in Bill 169 by Mr. Rakocevic, but because we have some restrictions with Bill 159 here, I propose some more modest but still attainable changes.

I propose that we amend various statutes in the act to prevent loopholes that the builders are using to build unwarranted homes, illegal homes. I'm going to assume, first of all, that the Tarion warranty is worth something, so it's something worth trying to aspire for. As Justice Cunningham stated in his December 14, 2016, letter to the minister regarding the Tarion review, "There is room for considerable improvement, including with the legislation itself." He understood that just separating the regulator and the warranty provider was inadequate.

I want to focus on illegal building in Toronto especially, and in Ontario. The former CEO of Tarion, Howard Bogach, was aware of this on record, but was unwilling and unable to do more.

I'm going to show you specific examples of why there are limitations in the current act. In the current act, the Ontario New Home Warranties Plan Act, definitions of "builder," "owner" and "vendor" are subject to interpretation by lawyers. Application of these current definitions to actual live situations can be quite complex and subject to interpretation. The act says that there needs to be a builder and a vendor, and sometimes the builder and vendor are the same in a home.

I had some various questions. Let's look at the builder/owner situation. Builders are required to register a new house for a warranty, but what if a builder builds a new house for himself? Does he need to register the home? He is the builder and the owner in this case, correct? The answer I got was that if someone builds a new home for themselves, they are not a builder within the meaning of the legislation; the definition of a builder contains the requirement that a builder is building it for the purpose of sale. There are other elements: If the builder is building it for the purpose of living in it, then he or she is not a builder, and therefore needs to be registered under the act.

Another question I had: Can a builder build a house for a relative and avoid registering the home with a warranty? Does this relative need to register the home? The answer that I got is that there is nothing in the definitions which

exempts from registration a builder who builds a completed home for the purpose of selling it to a relative. In that case, the builder is the builder and likely also the vendor, and the relative who buys the home would be the owner. If the builder transfers title to the relative, it seems to me that coverage would apply, unless the builder occupied the home before transferring title. Note that it is the builder in this case who needs to register, not the relative.

Another answer I got was that if the builder builds and sells the home to a relative without occupying it, then they likely should be registered, and if they're not they may be acting illegally. However, the builder can avoid having to register if they structure the transaction so that one of two definitions is not met. Two common ways in which this is done are (1) not building a completed home, in other words building on a pre-existing foundation, and (2) by living in a home for a while before selling it, so that the home is not considered previously unoccupied and the definition of "vendor" is not met.

Another question I had: If the owner decides to sell the home which he occupied, is he required to register, and what's the timeline? No. If the owner occupied it, then the home would likely be "previously occupied," and the home would not be covered. There's no specific timeline set out in the legislation.

In other words, a builder can build a home for himself and avoid registering the warranty. It is essentially a non-warranted home. He can occupy it for one day, then sell it. It's a new home that has no warranty. The builder has no legal accountability here.

If you talk to Tarion's current CEO—he has written to me and told me that, "Changing the legislation to require all new home construction to require registration would reduce or eliminate the current loophole which allows some individuals to avoid regulation by falsely claiming to be owner-builders."

I have a solution for you, within Bill 159. I propose that we use clear language, like in BC's Homeowner Protection Act, 1998. In that act, part 7, "Owner Builders," they state:

"Authorizations for owner builders

"20(3) An owner builder ... is not required ... to obtain home warranty insurance."

There is a prohibition on sales and offers to sell. They cannot sell while a new home is being constructed, and there is a mandatory home warranty. All new homes must be built and registered for warranty coverage. If a person sells a new home while it is being constructed, or within 10 years, they need special permission.

I'm proposing that Bill 159 change schedules 4 and 5 so that they will allow this loophole to be removed so that owner builders do not have this loophole to build illegal homes. I gave you three scenarios where—it's very complicated. Even hearing the language of me asking the question and trying to figure out—I'm sure you couldn't follow me. What I want to say is: How do you expect a potential new homebuyer looking to buy a new home to

understand all the differences between “builder,” “home-builder,” “vendor” or “owner” before buying their new home? What is a “building”? What is an “owner builder”? What is “previously occupied”?

The Chair (Mr. Roman Baber): Just over a minute and a half for your submissions.

Dr. Nancy Lee: What I want to ask you is—basically, we have a mission: to go where no man or woman has gone before in the Ontario Legislature. I’m asking you to consider these amendments to Bill 159 in schedule 4 and 5 so that some of the language used in the BC Homeowner Protection Act can be encompassed, in order to protect potential new homeowners.

I know that the timeline is not urgent, and that is another problem with the government’s action at this point. I reflect that I am here now, today, close to county court. Over 28 years ago, there was a homeowner who was very concerned about unfair treatment he received with an improperly built home in a Brampton subdivision. He got the Brampton Guardian, the local MPP, the city councillor and the minister of consumer affairs at that time, Monte Kwinter, involved. He was told that the ministry will work on it. That was 28 years ago. Fast forward. I met him a few years ago and I asked him, “What do you know about the Tarion problem?” He was flabbergasted and just smiled.

I ask you now to consider the fact that the timeline is, in fact, very urgent. We can’t wait another 28 years.

The Chair (Mr. Roman Baber): Thank you very much, Dr. Lee. We’ll now proceed with 10 minutes of questioning by the opposition side. Mr. Rakocevic.

Mr. Tom Rakocevic: Thank you very much, Dr. Lee. I really appreciate this submission and the level of detail and obvious thought that has gone into this.

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Do you want to elaborate on why you believe that multi-provider would perhaps be an improvement over the current system?

Dr. Nancy Lee: Basically, if you have a monopoly, what incentive is there for Tarion to improve? If you have multiple choices of warranty providers, if that company is not providing the level of service that the consumer is looking for, naturally the market will dictate and will eliminate, and will improve customer service for the potential purchaser.

Mr. Tom Rakocevic: It’s interesting that you bring up the word “incentive.” You might be aware of the fact that—have you read the AG’s report, or are you familiar a little bit with the Auditor General’s report?

Dr. Nancy Lee: I’ve read a little bit of it, but not too much.

Mr. Tom Rakocevic: Okay, no problems. It was determined that there were actually incentives placed on the executives to minimize claims, let’s say, because that was a way to increase the profitability of Tarion. How do you feel about that?

Dr. Nancy Lee: I feel that the incentives should have been in claims paid out for the homeowners. If you look at claims that Tarion has paid out, there’s more than enough money in the funds of Tarion to, I think, pay off claims.

Why put it towards trying to prevent people from getting the help they need? It baffles me, how you could reward somebody to do something that they’re not even—it’s the homeowners that are paying for the warranty, the fund, but their money is being used to basically work against them. So, of course, it’s insulting.

Mr. Tom Rakocevic: Right. You mentioned—I think you said 27 years. I think you were speaking in terms of change. Tarion has been around, I believe, over 40 years, actually. There have been calls for change many times over the years. Justice Cunningham’s report, which you’re familiar with; the AG; a number of advocates, some of whom have spoken today, have been calling for change. The fact that the Auditor General even had access to the books, and I had mentioned this earlier, was because of an NDP member in committee actually asking for that and winning that. So your participation here shows how important committee can be.

How long do you think we should be waiting for change? You feel it’s overdue? We’re still in committee. We’re still consulting. We’ve had experts talk about change. Do you feel that it’s very overdue? Do you think we should be moving a little quicker on that?

Dr. Nancy Lee: I think the solution that is proposed in Bill 169 is a very clear vision of going forward. I really appreciate the honesty of putting such a definitive bill to address many of the issues with Tarion, with it being an AA, the administrative authority. I think that the solution is here, and we need to act on it now. There’s no more consultation that is needed.

How much do we have to wait? The consumer that I had spoken to had been an advocate 28 years ago. He’s an old man now. He laughed when I asked him about the Tarion problem. He said, “It’s still not fixed yet, is it?” I said, “I hope I’m not going to be an old woman and talking to somebody else.”

Mr. Tom Rakocevic: Thank you for that. My colleagues: Did you have any questions? Okay.

How much time do I have? Do I have a little more time?

The Chair (Mr. Roman Baber): It’s about six minutes.

Mr. Tom Rakocevic: Excellent. Any words about the Licence Appeal Tribunal?

Dr. Nancy Lee: The Licence Appeal Tribunal, I would say, is an unfortunate escalation of events, where the homeowner is totally unprepared for something like that. It does not need to go to that step. I think Tarion should look at the BC model of how they do dispute resolution. I think that’s a good path for us.

When I ask the committee here to make amendments in the schedule, it’s not like I’m inventing. You don’t have to listen to me; it has been done before, in BC. There’s a clear path there. The language is already written there. You’re not making it up.

The LAT is not the way to go for consumers, but it’s a great way for Tarion to basically make it a quasi sort of situation where it eliminates the consumer from having an avenue to go after the builder in Superior Court, say, if they wanted to do that. Once they go to the LAT, they do

not have an option to go after the builder separately, in a different proceeding, and that's not understood by—it's not clear, so they're totally unaware of what is to happen. But I think that's intentional on Tarion's behalf, because they're run by lawyers, right?

Mr. Tom Rakocevic: My colleague MPP Singh wanted to contribute.

The Chair (Mr. Roman Baber): Ms. Singh.

Ms. Sara Singh: Thank you, Mr. Rakocevic. Thank you so much for your presentation.

I just wanted to follow up a little bit. A number of presenters today have discussed the need for not only increased accountability but changes to make things more consumer-friendly with Tarion. What are some suggestions that you have in terms of the complete process for consumers to ensure that they are at the centre of an investigation? Are there mechanisms that you would suggest to the government that would make this a little bit more consumer-centric?

Dr. Nancy Lee: Unfortunately, I think the solution would only be to remove Tarion's status as an administrative authority. It has to be accountable to Ontario's government laws—freedom of information—because I have dealt with Tarion's ombudsman and it is not what you think it is, okay? It is not a true, real—it doesn't follow the guidelines of the actual ombudsman. But it's very confusing, because a consumer doesn't know that.

As the situation exists right now, there is no way that Tarion can disseminate the right information. It's not trustworthy. You can't change it. You cannot work with it as it is. It needs to be dismantled immediately.

Ms. Sara Singh: Thank you for that. I know you spoke about the need for increased competition as one of the solutions to ensure that consumers have choice. Can you just elaborate a little bit on why you think that that is a better model than the one that has been proposed by the current government?

Dr. Nancy Lee: I liken it to buying a car. If you have to buy insurance from only one agency, how can the consumer get good service from one car insurance company? It's impossible. There's no incentive—I go back to that because we're all driven by incentives—for that company to try to improve service. I think consumers have to have choice in order to be able—otherwise, there's no incentive for the companies to improve. Just like when it comes to public education, if I can give that, since there is this labour strife now: If all our children have the ability to have a voucher system and have choice, I'm sure the public system will do things within the union to improve certain things. That's the same thing.

I know it's odd for me to say “advocate for choice” and be marketplace-driven within the social policy. I would have expected it to be more of a Conservative policy. But I go with the principles. It doesn't matter the party. I'm an independent.

Ms. Sara Singh: And what are some additional accountability measures you'd like to see in place to protect consumers undergoing one of the biggest investments in their lifetime?

The Chair (Mr. Roman Baber): Sixty seconds.

Ms. Sara Singh: In 60 seconds.

Dr. Nancy Lee: There's no protection available. I don't think you can, because Tarion can't regulate. It's not fixable as it is. You have to dismantle it and go to the Bill 169, which is currently up. Sorry; I'm not a policy adviser. I can't help you.

Ms. Sara Singh: That's okay. Thank you.

The Chair (Mr. Roman Baber): There are about 30 seconds remaining. We'll pass it over to the government side. Mr. Bailey?

Mr. Robert Bailey: Thank you, Ms. Lee, for your presentation today. I made a few notes, but do you have something more formal? You do? Good. And you're going to submit it before Wednesday so we'll have it? Good.

I did want to get on the record that I agree with you. When I read Justice Cunningham's report and the Auditor General's report, actually, where it talked about incentives to the former board—I'd like to stress “former” board; now we have a restructured board at Tarion—where there were incentives to not pay out to claimants. I couldn't believe that, so I was as shocked as anyone when we read that. I'm glad to say that we've moved away from that. That's the directive to the new CEO. The former CEO, as you say, is no longer there. There are a number of changes at the board.

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I will say, in my opinion as a member of the government, and the parliamentary assistant to the minister, I'm personally going to be watching what's going on in this revamped Tarion. I'm going to take a lot of the suggestions that we've heard here today and I'm personally going to be monitoring what's going on, and let the minister know if there are people who aren't doing their job—I probably shouldn't say this—but they probably won't be there. I don't mind saying that, anyway.

The Chair (Mr. Roman Baber): Mr. Coe.

Mr. Lorne Coe: Thank you, Chair. Through you, in the course of your presentation, you talked about illegal builders and some checks and balances that, in your estimation, are required. We've heard of similar sentiments from earlier delegations as well.

You've been consulting and providing submissions on this particular issue for quite a long time, so hopefully you will know that there has been a pilot project under way since probably 2017 on illegal builders. Going forward, it was the Ontario Home Builders' Association, the Ontario Building Officials Association—who just presented earlier today—and it was expanded to include 15 municipalities across the province of Ontario to address specifically some of the concerns that you spoke of today.

Added to that, in October 2017, the Ontario Home Builders' Association and the building officials announced another partnership to advocate for a province-wide program to protect buyers from illegal builders. Are you aware of that?

Dr. Nancy Lee: Yes, I am aware of that.

Mr. Lorne Coe: Did you make a submission to that pilot project?

Dr. Nancy Lee: The pilot project is ineffective. Tarion lacks compliance tools. To enforce the penalties for doing illegal building is very, very minimal.

Mr. Lorne Coe: Okay.

Dr. Nancy Lee: What I mentioned to you—if we just have clearer language within the different schedules, just like in the BC model, it will simplify this. Homeowners do not have to deal with this confusion, rather than having to deal with all this extra paperwork for the municipalities.

Mr. Lorne Coe: I referenced those two exercises because taken together with the larger body of work that's evident in Bill 159, those processes have informed where we are today.

To your point about 28 years: It hasn't taken 28 years to get to the point where we are with Bill 159. I think you would agree with that. Is that not the case, for the record?

Dr. Nancy Lee: Yes.

Mr. Lorne Coe: The other point that you made in your presentation spoke about the level of information that's available to new homebuyers, and the consolidation of that information, and it not being readily available to new homebuyers going forward. Do you think that there are aspects in the information that's available at the present time that can be enhanced through social media or other means as well?

And not unlike many of the other MPPs here, I have a very large, multicultural constituency. I've got 10 different multicultural groups in my riding. Do you think that looking at ways in which you communicate that's more reflective of the general makeup of Ontario as it exists today is something we should be looking at?

Dr. Nancy Lee: Yes, that would be; however, the problem is if the messaging is still coming and it has been false, as it has been for years from Tarion, I think it's still very confusing. It takes a while for any consumer, whatever nationality, to get through to actually understand the real truth. It takes a long time to get through to that. So I don't know how, other than once you realize it, you realize—I still say—that you can't fix Tarion as it is right now.

Mr. Lorne Coe: Thank you for your answers. Thank you, Chair.

The Chair (Mr. Roman Baber): Thank you, Mr. Coe. Approximately just over four minutes left for the government. Mr. Bouma.

Mr. Will Bouma: I'll take a crack at it. Thank you to the presenter. I really appreciate your presentation. It's interesting; I'm under the understanding from your comments that Bill 169 would envision a multi-insurer model.

Dr. Nancy Lee: Multi-provider, yes.

Mr. Will Bouma: I find that intriguing, that we sit on opposite sides of the table and we're making what would typically be each other's arguments. However, though—looking at the Auditor General's report on Tarion, I was wondering if you could give your thoughts. Specifically, the Auditor General, whom our government tends to take pretty seriously, said that there would be quite a few issues with going to a multi-provider model, specifically related to costs that private insurers might not be as willing to share information on, and those sorts of things.

I'll give you time to answer those things, because we've heard—and the Auditor General said potential advantages also. Just to read through, if you don't have it handy:

“—Private insurers may seek to ensure or maximize profits through denying or limiting claims

“—Private insurers may consider small and/or less experienced builders risky and deny coverage as a result they may not be able to build homes

“—Private insurers may be less interested in sharing claims information to inform decisions about licensing builders

“—Possibility of warranty cancellation prior to occupancy (if private insurers identify problem during construction)

“—Potentially higher cost of coverage

“—Less government oversight

“—Competition amongst multiple providers may lead to builders selecting their warranty provider based on cost, without reference to homeowner service

“—Inconsistent warranty decisions and dispute resolution processes among different providers” and that

“—Transition” to this model “would be complex and” very “costly.”

Because you obviously have much more experience with this than I, I was just wondering what your response would be to the Auditor General on those cautions of going to that kind of a model.

Dr. Nancy Lee: When you're buying a home that is \$4 million, there is a certain expectation that things are constructed properly. What's the difference for me if the warranty is \$1,500, which I may be paying now, or if it's \$2,000 or \$5,000? It's worth it if I can actually use the warranty. But if the warranty is useless, as it is now, and claims are being rejected, there's no point even if it's cheap.

I know you're talking a lot about cost, but I think it's more important for the homeowner, long term, that if they're paying for something they get—I don't mind paying for something if I'm actually going to get coverage for this. Charge me a fair fee and I will pay the fair fee. I don't want you to lose money. So I'm willing to pay the cost, yes. I don't think that should be a deterrent, the fear of cost. Let the market dictate.

Mr. Will Bouma: Or if small, quality home builders can't get insurance because they're considered too much of a risk starting out, or other reasons like that. But in your opinion, the only way to reform Tarion is to break it up completely and that it should be a multi-provider model?

Dr. Nancy Lee: Yes.

Mr. Will Bouma: Okay. Thank you.

The Chair (Mr. Roman Baber): With about 30 seconds remaining for the government side, seeing no further questions—Dr. Lee, thank you very much for your submissions. As a reminder, the deadline to file your written submissions is Wednesday at 5 p.m., and then on Thursday you'll be able to enjoy the premiere of Star Trek: Picard. Thank you very much.

Dr. Nancy Lee: Thank you. I hope you remember this presentation and keep it in mind for your schedule adjustments—schedules 4 and 5. Thank you.

The Chair (Mr. Roman Baber): Thank you.

This concludes our hearing for today. We'll adjourn for the day until tomorrow morning at 10 a.m. in Windsor. Thank you.

The committee adjourned at 1409.

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