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**Official Report  
of Debates  
(Hansard)**

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**Journal  
des débats  
(Hansard)**

JP-13

**Standing Committee on  
Justice Policy**

Rebuilding Consumer  
Confidence Act, 2020

1<sup>st</sup> Session  
42<sup>nd</sup> Parliament

Tuesday 21 January 2020

**Comité permanent  
de la justice**

Loi de 2020 visant à rétablir  
la confiance chez  
les consommateurs

1<sup>re</sup> session  
42<sup>e</sup> législature

Mardi 21 janvier 2020

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Chair: Roman Baber  
Clerk: Christopher Tyrell

Président : Roman Baber  
Greffier : Christopher Tyrell

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## CONTENTS

Tuesday 21 January 2020

Rebuilding Consumer Confidence Act, 2020, Bill 159, Ms. Thompson / Loi de 2020 visant à rétablir la confiance chez les consommateurs, projet de loi 159, Mme Thompson .....	JP-287
Mrs. Gay Viecelli .....	JP-287
Mr. Ed Hooft .....	JP-291
Canadian Condominium Institute—Eastern Ontario Chapter .....	JP-295
Ms. Nancy Houle	
Retail Council of Canada .....	JP-300
Mr. Sebastian Prins	



LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
JUSTICE POLICY**

Tuesday 21 January 2020

**COMITÉ PERMANENT  
DE LA JUSTICE**

Mardi 21 janvier 2020

*The committee met at 1033 in the St. Clair College Centre for the Arts, Windsor.*

**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. I now call this meeting of the Standing Committee on Justice Policy to order. We're here this morning in Windsor for public hearings on Bill 159, An Act to amend various statutes in respect of consumer protection.

MRS. GAY VIECELLI

**The Chair (Mr. Roman Baber):** I would like to invite our first witness this morning, Ms. Viecelli, thank you for coming before the committee. You will now be allowed 10 minutes for your initial presentation, followed by 20 minutes of questioning, with 10 minutes each allotted to each of the recognized parties. I invite you to commence by stating your name for the record.

**Mrs. Gay Viecelli:** Good morning. My name is Gay Viecelli. Thank you for the opportunity to address this committee. I am concerned with schedules 4 and 5 of Bill 159. I am a retired administrator who, in the year 2004, had a new townhome built in Windsor. Thankfully, this townhome was demolished to make way for the Rt. Hon. Herb Gray Parkway. Why, then, am I here today? Because of several horrendous personal experiences with Tarion and one with the Licence Appeal Tribunal, I became and still am a staunch supporter of the organization Canadians for Properly Built Homes.

I believe that Ontarians deserve to have a home warranty that actually protects them, and I am willing to work until this goal is achieved. Bill 159 is addressing, to some extent, the issue of governance. The number of builders on the board is being reduced—a step forward, albeit a small one. However, Bill 159 leaves Tarion as a monopoly. It assumes Tarion can be fixed. It does not

address dispute resolution. It does not resolve the issues with the builder directory. It leaves Tarion as an administrative authority.

There is another bill on the table: MPP Tom Rakocevic's private member's Bill 169, the Home Warranties to Protect Families Act, 2019. Bill 169 ends Tarion's monopoly. It introduces a multi-provider system. It provides for dispute resolution, including unresolved disputes—criteria to be determined. It regulates builders fairly, and it is not an omnibus bill.

In my opinion, omnibus bills destroy democracy. Such bills, be they provincial or federal, deny our members of Parliament the right to vote on one specific issue. If a member of Parliament likes one section of an omnibus bill, he or she must accept all the other sections.

John Ibbitson, in a Globe and Mail article in April 2017, stated, "The true father of the omnibus bill was Pierre Trudeau." Pierre Trudeau was justice minister then. The year was 1967. Back then, the opposition party often objected to omnibus bills. In 1982, Joe Clark's opposition Conservatives were so incensed that they forced the shutdown of Parliament for three weeks by refusing to answer the summons to vote. The Liberals ultimately agreed to break the bill into several parts.

On June 19, 1976, the Globe and Mail printed an article by Jacob S. Ziegel, a professor of law at the University of Toronto. The title of the article was a question: "Home Warranty: Bill Being Rushed So Consumers Won't Be Heard?" Bill 94, the Ontario New Home Warranties Plan Act, 1976, was the subject of the article.

Professor Ziegel stated that, "What is without precedent in Ontario consumer protection legislation is the nature of the body entrusted with the administration of the important powers...."

"For it is not the Ministry of Consumer and Commercial Relations or any other government agency that is entrusted with the task. It will be a non-profit corporation of undetermined composition incorporated under the Ontario Corporations Act and at best only indirectly accountable for its actions to the Legislature."

On November 5, 2015, Ontario's Minister of Government and Consumer Services appointed the Honourable Justice J. Douglas Cunningham to examine and make recommendations regarding the Tarion Warranty Corporation and the new home warranty program it administers. On May 24, 2016, my husband and I travelled to London, Ontario, to participate in a town hall meeting, one of many

such meetings held by Justice Cunningham. You have a copy of my submission.

**1040**

In early 2017, after an extremely comprehensive review, Justice Cunningham submitted his final report to the Honourable Marie-France Lalonde, Minister of Government and Consumer Services. This report contained 37 recommendations. Unfortunately, only two or three were included in Bill 166, the Strengthening Protection for Ontario Consumers Act, 2017.

On November 20, 2017, my husband and I travelled to Queen's Park to witness a meeting of the Standing Committee on Social Policy. I had faxed a written submission, which was distributed at that meeting. You have a copy.

In October 2019, Bonnie Lysyk, the Auditor General of Ontario, transmitted her special audit of the Tarion Warranty Corp. to the honourable Speaker of the Legislative Assembly. Ms. Lysyk reflected, "What is often a person's biggest single purchase in their life was sometimes turned into a frustrating and unnecessarily costly experience because the organization to which the government delegated the responsibility to help them resolve disputes with their new-home builder didn't always come through. Tarion's rules, in some cases, favoured builders at the expense of new-home owners." The audit revealed many problems, several of which had already been identified by Justice Cunningham.

Tarion has been studied for decades while Ontarians have suffered under this legislation. There have been, and still are, tragic circumstances: new-home owners who committed, and some who are contemplating, suicide; and new-home owners suffering from terminal diseases, perhaps brought on by the stress of their difficulties with Tarion. The problems are well known. Numerous media reports show that there are many serious problems resulting from the legislation and from how Tarion administers the legislation. It is time for members of our Legislature to act aggressively. Former Premier Kathleen Wynne said that the time for monopolies was over. Premier Doug Ford has said that government should not have a monopoly on any business.

I recommend that Justice Cunningham's final report and Bonnie Lysyk's special audit be carefully reviewed and a new bill drafted and tabled. This new bill should move new-home warranty coverage from Tarion's monopoly to a multi-provider insurance system, and adjudication of unresolved warranty disputes should be delivered through a separate organization independent of warranty providers and the regulator.

By the way, studies show that self-represented litigants are hardly successful at the Licence Appeal Tribunal. Regarding such litigants, Justice Cunningham states, "Some homeowners' experiences before the LAT have been difficult. They have faced the prospect of two opponents, Tarion and the builder, each with their own legal counsel."

**The Chair (Mr. Roman Baber):** Thanks so much, Ms. Viecelli. We'll now proceed with 10 minutes of questioning, beginning with the government side. Mr. Bouma.

**Mr. Will Bouma:** Thank you very much for coming, Ms. Viecelli; I really appreciate your testimony. I appreciate how you brought out the Auditor General's report on the Tarion system, and I appreciate the opposition, which made it possible for the Auditor General to do that.

I was wondering if you could comment—because the Auditor General also had some very distinct concerns about going to a multi-provider model. I was wondering if you could just give your opinion, if I go through a few of those.

"Potential disadvantages"—this is from page 45 of the Auditor General's report: "Private insurers may seek to ensure or maximize profits through denying or limiting claims." What would your response be to that?

**Mrs. Gay Viecelli:** I'm sorry; I'm not hearing you clearly. Could you repeat the question?

**Mr. Will Bouma:** Can we get the speakers working on the microphones?

**The Chair (Mr. Roman Baber):** I believe the speakers are working.

*Interjections.*

**Mr. Will Bouma:** Okay, yes.

**Mr. Taras Natyshak:** Try with no mike, Will. You'll probably do better without the mike if you just project.

**Mr. Will Bouma:** "Private insurers may seek to ensure or maximize profits through denying or limiting claims," in going to a multi-provider model. What are your thoughts on that?

**Mrs. Gay Viecelli:** Personally, I know that insurance companies aren't quick to pay out, but I would hope that the problem-resolution answer to this would settle that issue, because the homeowner and the insurance company would have to go to this independent adjudicator system. In British Columbia, they're finding that it's working quite well. There, I believe the first step they require is the homeowner and the builder to meet and to try to work out their problems first.

**Mr. Will Bouma:** So that's a model that doesn't get into multiple insurers, or do they have a different step first that works quite well that can make a difference?

**Mrs. Gay Viecelli:** They have multiple insurers, and it's working.

**Mr. Will Bouma:** Good. Point 2 from the Auditor General is that, "Private insurers may consider small and/or less experienced builders risky and deny coverage as a result," that "they may not be able to build homes." So that a new builder wouldn't be able to get coverage at all for warranty: Any comment on that?

**Mrs. Gay Viecelli:** Not really, except that I would say, with the system that I think might work, the homeowner—if I'm thinking of buying a new home, I can go to a builder. I can research that builder. I ask him who his insurer is—because he will pick his own insurer. I can then research that insurer, so at least then I have a little bit more information.

I would like to say that before I purchased my town-home, I did my homework. I went to the Tarion website regarding the builder. There was nothing there. Later, I find out that Tarion doesn't keep up with the builders.

They don't report offences, so Tarion's builder directory is totally useless. But I did do my homework, like they say you should do, on their own website.

**Mr. Will Bouma:** A key part of this legislation is that we would make it easier for people to find bad builders so that there would be increased reporting. But one of the points that the Auditor General pointed out was that private insurers would be less interested in sharing that information with a central processing, because they would want to hold onto that information, so we would actually make the sharing of information more difficult by going to a multi-provider model. That's one of her concerns.

I think I'll stop there, but I'm just wondering—you're asking us to go carefully over the Auditor General's report and go to a multi-provider system. Yet the Auditor General was quite clear; Ms. Lysyk had serious concerns about going to a multi-provider model because, as you must be aware—we actually were joking about it yesterday. The member opposite's private member's bill would be to go to a multi-provider model, which seems like more of a Conservative thing to do, and our position is that we should stay with the single-provider model, which seems to catch us at odds with what we would normally be saying in the House.

But just on that, you're saying that sharing information is very, very important. The Auditor General pointed out that going to a multi-provider model would make the sharing of information slightly more difficult. Any comment on that? And then I'll conclude.

**Mrs. Gay Vecelli:** Yes. I would like you to consider Justice Cunningham's recommendations along with—yes, Bonnie Lysyk has some statements, but Justice Cunningham does. Justice Cunningham was hired by the Liberal government, and the Liberal government only accepted two or three of his 37 recommendations. That research that Justice Cunningham did cost taxpayers, to the tune of over \$750,000.

1050

**Mr. Will Bouma:** Just to say, then, that there are equal and differing valid opinions on these issues.

**Mrs. Gay Vecelli:** Exactly.

**Mr. Will Bouma:** Thank you.

**The Chair (Mr. Roman Baber):** With just under four minutes remaining, Ms. Kusendova.

**Ms. Natalia Kusendova:** Good morning.

**Mrs. Gay Vecelli:** Good morning.

**Ms. Natalia Kusendova:** Thank you so much for being here, and thank you for your testimonial.

I wanted to ask specifically about something you didn't speak about, but first, I wanted to address some of the issues you mentioned about accountability and transparency at Tarion. Part of this bill is to actually require builders to register with Tarion, and also make proof of the warranty choice. It's a small step, but it is a step to ensure that Tarion is more transparent and more accountable to homebuyers.

I wanted to ask you about the 30-day window. We are in the process of doing consultations. We have heard from the public that the 30-day window in the first year at the

beginning, and then the 30-day window at the end, is not sufficient, so we are going to be hosting consultations to see what stakeholders such as yourself think. What do you think about opening this up to a different model, to having more opportunities for consumers to claim against their warranty?

**Mrs. Gay Vecelli:** I think that's a good idea. When I purchased my townhome, there was a 30-day report and there was a one-year report, and then there was a longer report for—I think it was building, structural, things like that. For me, that was sufficient, but in reality, the first 30 days to report is too short.

**Ms. Natalia Kusendova:** And that's what we have heard from the public. This was also one of the recommendations by Justice Cunningham. So we have implemented a lot of them—not every single one, but we did look at both reports comprehensively, and the results are in the bill.

**Mrs. Gay Vecelli:** If I may comment, though, builders have always had to register with Tarion.

**Ms. Natalia Kusendova:** But that information wasn't available online and there was really no way to ensure compliance.

**Mrs. Gay Vecelli:** That's because Tarion didn't do its job.

**Ms. Natalia Kusendova:** And that's why we're changing the composition of the board and the CEO etc. Thank you.

**The Chair (Mr. Roman Baber):** Before we proceed, I must apologize to the members. We are at a beautiful centre for performing arts. As such, we're experiencing acoustics that make it very, very difficult for people, even around the table, to hear. May I please ask everyone to bring their microphones as close to them as possible? Given the time loss, I will add a little bit of time for the government side.

If anyone is having difficulty hearing, there are earpieces provided that you can use as well.

Mr. Anand, with about a minute and a half to go.

**Mr. Deepak Anand:** Thank you, Chair. Through you, thank you for your commitment. I was going through the notes, and what I'm trying to understand from you is, you're saying there is an issue with Tarion, which we also agree with: There is an issue with Tarion, and that's why we're trying to fix it. But what you're suggesting is, yes, we have a problem with one provider, but rather than fixing that provider, to go to many more providers.

So I'm trying to understand. Are you saying that having more providers is the solution, or shouldn't it be that when we know there is a system which is working, but not working well, to fix that? That's one thing.

The second thing I wanted to ask here: Because homeowners are the consumers—they are the stakeholders which are most important—in your opinion, what is the best way to involve new homebuyers in the development and implementation of any changes to new home warranties and protections?

**The Chair (Mr. Roman Baber):** Less than a minute for your answer.

**Mrs. Gay Vecelli:** Okay. Tarion is a monopoly. Monopolies don't work. What happens is, they take advantage of their power. So, no, I firmly believe in a multi-provider situation.

Your second question?

**Mr. Deepak Anand:** My second question was: Homebuyers are the major stakeholders.

**Mrs. Gay Vecelli:** Okay. I don't know how—I've done several petitions. I've walked neighbourhoods. I've handed out petitions. Homeowners—I don't know how you can engage them. I've found that the majority of the people I spoke with were ticked off with Tarion. They said it was useless. They didn't want anything to do with it. Some have decided to fix their own problems out of their own pocket; others have decided to take more of a legal action.

Personally, I don't have the answer to that—how you can provide accurate information to them—except that I would say that one of the things that should happen is that the home warranty should be given to homeowners prior to the day that they take possession of the house. That is a really bad thing, because the homeowner has no idea what their rights are. That's the day that the warranty was handed to me.

**The Chair (Mr. Roman Baber):** Thank you, Ms. Vecelli. We'll now proceed with 10 minutes of questioning by the opposition side. Mr. Rakocevic.

**Mr. Tom Rakocevic:** Thank you so much, Ms. Vecelli, for your submission here. It's obvious that you've been very thoughtful about it and that you're very, very knowledgeable, especially on the background and history of this.

You're aware that people have been complaining about Tarion in many different ways for years—for decades, even. It has been established for over 40 years, and it was an NDP MPP's motion in committee that actually got the Auditor General to look at the books. The Auditor General follows Justice Cunningham, whose first recommendation was to end the monopoly and to move it to a multi-warranty-provider system.

Would you agree that you're hearing from a lot of people that Tarion is broken? Are these terms that you've heard from other people?

**Mrs. Gay Vecelli:** Yes.

**Mr. Tom Rakocevic:** Have you heard that for years? Even under the previous government and for years, it continues to be said? Do you believe that that's a fair statement?

**Mrs. Gay Vecelli:** Yes.

**Mr. Tom Rakocevic:** Okay. Do you believe that re-shifting the chairs of the senior management within Tarion would be sufficient to bring something from a state of broken to unbroken?

**Mrs. Gay Vecelli:** I do not believe that. It's just going to be more of the same.

**Mr. Tom Rakocevic:** Okay. Have you heard or noticed that there are some criticisms of the government that in some areas they've moved very quickly—I, for one, have heard of the public speak of the government in terms of

some of the bills and some of the things they've proposed as moving too quickly without consultation. But in the area of Tarion reform, we have years and years and years of consultations. Do you feel that this specific situation is moving fast enough for reform relative to other things?

**Mrs. Gay Vecelli:** It's absolutely not moving fast enough. It's moving too slowly, and I personally believe that it's because of the builders' lobby. There's lots of money there.

Take care of Ontarians, please.

**Mr. Tom Rakocevic:** I was actually going to move on to the second part. A criticism I've heard people echo was on the amount of legislation that the government pushes to actually give more power to developers and builders, often at odds with communities. Have you heard or do you feel that this might be an issue with this government?

**Mrs. Gay Vecelli:** Yes.

**Mr. Tom Rakocevic:** Okay. And you're aware that builders may not like a move to a multi-warranty-provider system.

**Mrs. Gay Vecelli:** I certainly am.

**Mr. Tom Rakocevic:** Why do you think that might be?

**Mrs. Gay Vecelli:** I think builders like the current situation. This bill is suggesting that the number of builders on the—I lost the word; sorry. I just think they like the status quo. It works in their favour.

**Mr. Tom Rakocevic:** Thank you. One of the things the Auditor General also mentioned was the fact that even when Tarion ruled on the side of individuals in cases against builders and went and made repairs or made fixes, they were only able to capture about one third of the money back from builders. What you're having is that people will make complaints about a builder, there will be deficiencies, the builder will not fix them, and in certain cases where Tarion does fix them, they're not even able to get money back from the builders. In those cases, perhaps some might say that the builders were able to actually save money in terms of having to do what they were supposed to do.

**1100**

Do you think that it would be a fair assessment, when it comes to this to say, that Tarion reform is long overdue, but substantive reform has been asked for by many; that we have a government that moves very quickly in certain ways to bring in new legislation in bills; that we have a government that has been criticized for moving legislation that's very pro-builder and pro-developer; that the builder and developer lobby doesn't want a multi-warranty position; and that this government is siding with builders in this case?

**Mrs. Gay Vecelli:** I would say yes, and I'd like to take this opportunity to point out that Bill 94 back in 1976 was rushed through by the Conservative government without proper consultation with consumers and didn't even heed the advice of people. By the way, the federal government didn't even accede to the builders' demand at that time, but our Ontario government did. That's very sad.

**The Chair (Mr. Roman Baber):** Mr. Hatfield.

**Mr. Percy Hatfield:** To the committee members: Welcome to Windsor, by the way, from the member from Essex and myself. The member for Windsor West is driving back from Toronto today and regrets she couldn't join us. But welcome. I hope you try the pizza and I hope you lose money at the casino.

I was really touched by one line in your presentation in London, where you said, "If I buy a new car and it is in an accident before I take delivery, I don't have to accept it." Unfortunately, when you buy a home, you may buy it in the wintertime, so you haven't turned on the air conditioner and you don't know if it works or not until the next summer. Or if you buy it in the summertime, you haven't tried the heater and you don't know if the furnace is going to give you heat. You don't know if the builder has put in undersized furnaces that aren't going to do the job adequately for the size of the home. There are many things out there.

You have a long and dedicated track record of taking Tarion to task. From what you have seen from the proposed legislation, do you believe it will be enough, or do you believe, as I believe you do, that the committee should listen and make amendments to the bill to improve it?

**Mrs. Gay Viecegli:** It's definitely not enough, and I beg you to listen and to make changes to the bill.

**Mr. Percy Hatfield:** Are there one or two things in particular that you would suggest to the committee, to the government members, that they really take another look at?

**Mrs. Gay Viecegli:** There are two major issues: One is that I believe that Tarion's monopoly should be ended; and something has to be done about the problem resolution process. It does not work for consumers. In 2018, there was a 93% failure for homeowners who were self-representing at LAT. That says a lot: 93% failure.

**The Chair (Mr. Roman Baber):** Mr. Natyshak, with about three minutes to go.

**Mr. Taras Natyshak:** Three minutes? Ms. Viecegli, thank you so much for appearing here, and thanks for travelling in tandem with this committee to continue to reinforce the message about Tarion. We've heard for decades about its shortcomings and failures to protect homeowners. I'm actually one of them. Thankfully, the problem that I had with my new build were resolved prior to having to go down that rabbit hole of Tarion. Suffice it to say, the builder met the requirements of the home. That being said, I've received many, many calls from constituents about the nightmare that has become Tarion, and I appreciate your comments.

There is an article that came out today on the CBC by Michael Smee. The title is, "Province Eyeing Changes That Could See Developers Hire Their Own Building Inspectors," so deregulating, and privatizing the inspection process. Imagine, if a builder can hire their own preferential building inspector and circumvent that process, what it would lead to down the road in the terms of the need for homeowners to protect against deficiencies. It is connected to this issue of Tarion after the build is

complete. I wonder if you have any concerns about that proposal that is being floated around within the building industry by the government.

**Mrs. Gay Viecegli:** I would be strongly against it.

**Mr. Taras Natyshak:** Any idea why you would be strongly against a builder hiring their own inspector?

**Mrs. Gay Viecegli:** I think that's a slippery slope because—

**Mr. Taras Natyshak:** Do you think—sorry, I'll throw a little bit out there maybe for you to consider. You had alluded to the deep, tight, close connection that the government has on the builder side, and we've heard many times that Tarion seems to protect the builders rather than the homeowners. Do you think that might be a continuation of that close relationship?

**Mrs. Gay Viecegli:** Yes, I do.

**Mr. Taras Natyshak:** As a result of vocal support by the industry for these types of reforms. I'll give you another teaser. The building industry is quite supportive of this type of change and we wonder why these types of proposals are coming forward. I'll leave it at that.

I really do appreciate your being here and your presentation and your deep thought around this issue. It's one that many folks in Ontario don't have the ability to really put a lot of thought into because by the time it hits them, they're at a loss. It's catastrophic for families sometimes. I thank you for being here and presenting.

**Mrs. Gay Viecegli:** Thank you. I want my granddaughters, when they buy a house, to have a warranty similar to the warranty they get when they buy a new car.

**The Chair (Mr. Roman Baber):** Thank you very much, Mrs. Viecegli. Thank you for your submissions today. I already have your written submissions. They will be filed with the committee, but should you wish to submit additional materials, they'll be due tomorrow by 5 p.m. Thank you again.

**Mrs. Gay Viecegli:** Thank you.

MR. ED HOOFT

**The Chair (Mr. Roman Baber):** We'll now proceed with our next witness. I'd like to invite Ed Hooft. Good morning, sir, and welcome.

**Mr. Ed Hooft:** Good morning.

**The Chair (Mr. Roman Baber):** The committee will allow you an opportunity to make submissions for 10 minutes, followed by questioning by both recognized parties for 10 minutes each. I invite you to begin by stating your name for the record.

**Mr. Ed Hooft:** I'm smiling because I cannot see you. I see a shadow, so it took me a while to—

**The Chair (Mr. Roman Baber):** It's not a halo.

**Mr. Ed Hooft:** It took me a while to zero in on who was speaking.

Good morning, Chair and members of the Standing Committee on Justice Policy. I am Ed Hooft and I live within the city of Windsor.

Thank you for coming to Windsor and thank you for allowing me to present. I congratulate Gay Viecegli on her

presentation and admire the depth of her knowledge on the act and the studies that preceded it.

I have owned four homes in my life, and only one has been younger than me. In 2012, we bought a new home expecting to have no building issues in our retirement years. Our dealings with the new home warranty program were professional, but were not satisfactory and for this reason I requested an opportunity to address Bill 159, the Rebuilding Consumer Confidence Act.

In my reading of Bill 159, I could not find a single reference to “quality.” If we want to rebuild confidence, I recommend that the legislation include wording that affirms the need for quality construction.

We have a lovely home, but quality is certainly lacking. We have a closet that continues to have frost and moisture problems. These issues were pointed out in the year 1 and year 2 reports. The builder made attempts to rectify the matter, but the deficiency, or lack of quality, still exists.

In year 7 we made a new claim. During a repair that I initiated, I discovered that a batt of insulation was not installed correctly, leaving a four-foot gap. Our year 7 claim was denied because the issue was not substantial. In their words, the home has to be falling down to be eligible in year 7. A reference to quality construction would have been beneficial to my wife and I.

**1110**

The second quality example that I have to share with you is that of our roof. The roof was of poor quality, both in the installation and the product. During strong winds, the shingles would lift and eventually blow off. There were 55 homes all experiencing the same poor-quality issue. The manufacturer hired an engineer to examine each roof. Their conclusion was that the roofs were not properly installed, and the manufacturer voided all warranties.

I replaced our roof after less than four years. On appeal, an independent third party examined the roof and verbally agreed that it had to be replaced. However, when he entered the attic, he could not find evidence that there had been water penetration. He could not therefore recommend that the roof be replaced on the basis of something that might occur.

The recommendation then became to have the roof resealed. If the independent third party could have relied upon a quality construction clause, my roof would have been replaced at the builder’s cost.

As a footnote, the following spring, most of those 55 homes had their roofs blown off in a windstorm, and the majority of the cost was covered by home insurance policies. Quality was clearly lacking, but because I had no water penetration, my claim was denied.

I would like to see Bill 159 expanded to make the reporting periods longer. I would suggest that the reporting years be two, five and 10, as contained in British Columbia’s legislation.

Most persons who buy new homes are inexperienced. This is a major investment. Navigating the reporting system and becoming familiar with the governing provisions are daunting. Extending the reporting period would

go a long way to restoring consumer confidence in this system.

In reviewing Bill 159, I could not find a provision allowing for a dispute resolution mechanism that would provide for an independent third party to become involved in bringing the builder and homeowner together to work out a fair settlement of the dispute.

My issues are in the past and are now beyond the seven-year reporting period. My intent in attending today is to help others going forward. I thank you for your time.

**The Chair (Mr. Roman Baber):** Thank you very much, Mr. Hooft. We’ll now proceed with 10 minutes of questioning, beginning with the opposition. Mr. Hatfield.

**Mr. Percy Hatfield:** I’ll start off with just a couple of questions.

You talked about 55 homeowners with a problem with their roofs. You have the builder that builds the home, you have shingles that go on the roof, and you have installers who put the shingles on the home. Sometimes I imagine that builders contract out installation of the shingles. So when there’s a problem, and you have the builder, the installer and the shingle manufacturer all pointing fingers in different directions, and you have 55 homeowners in a row who have a problem, what was the end result of that fight, if you will?

**Mr. Ed Hooft:** Thank you for the question. There were 55 homeowners and we are in townhomes, so some of them are in groups of two and some are in groups of four. Structurally, maybe there are 10 buildings involved, but the number is 55. If you’re in a quad, if one blows off, all four of you are replacing it.

Interestingly enough, the builder never once blamed their subcontractors. They did not install a single roof on their own. In building construction in that period, it was difficult for them to find one single installer who would be responsible for all roofs.

I was on the association at that time, so I got to see the invoices.

Just to back up a bit: The board took it upon themselves to request a copy of all the invoices so we could see who the roof installers were for each particular roof. I’m guessing that there were over 10 different installers involved. Some of them were the Roofing Gods; there were no names that you would have recognized. They were anyone they could hire off the street, basically.

The builder never blamed the installation; they blamed the manufacturer. In our case, with 55 roofs in default, they actually contacted the manufacturer and submitted a warranty claim on our behalf. You can imagine that the manufacturer took note of that and decided to muscle up, and hired an engineer to examine each of the roofs.

Each of us has a copy of a report pointing out the deficiencies in each roof, including high nailing and improper installation of flashing. There are others, and I can’t recall them at the moment. But they were quite clear that the installation was the problem, not the product. At that point, they voided all of the warranties.

**Mr. Percy Hatfield:** The end result, then, was dissatisfaction with the process and dissatisfaction with Tarion?

**Mr. Ed Hooft:** Yes and yes.

**Mr. Percy Hatfield:** And if the government wants to improve that on a go-forward basis, do you have a recommendation that they could listen to today and take back to their caucus colleagues?

**Mr. Ed Hooft:** In our case, the builder was looking for the cheapest solution possible, which in this case was resealing the roofs involved. The person they hired was a known roofer with a good reputation.

To identify the weak spots on the roofs, what they would do is they went onto each roof with a leaf blower and aimed it at the shingles. The ones that were lifted, they took a caulking gun and caulked them down.

Before the leaf blower, our president—I'll just throw his name in here—John Meyer saw them inspecting the roofs. He said, "How do you know where to put the caulking?", because they were just walking randomly across the roofing with the caulking gun. At that point, they brought the leaf blower in, to try and identify the weak spots.

**The Chair (Mr. Roman Baber):** Thank you, Mr. Hatfield. Mr. Rakocevic?

**Mr. Tom Rakocevic:** Thank you so much for this detailed presentation. It's really unfortunate to hear it. To really get the play-by-play of what happened in your specific townhouse development—it's very disappointing to hear that that happened.

I also want to mention this one thing. This is in the past?

**Mr. Ed Hooft:** Correct.

**Mr. Tom Rakocevic:** I want to express my appreciation that a lot of the movement around Tarion reform has come from people who have experienced problems in the past and continue to advocate for other people, not to their own advantage. I just want to personally thank you for that. That is such important advocacy. It's because of people like you that we're here today, so thank you for that.

**Mr. Ed Hooft:** Thank you for that acknowledgement.

**Mr. Tom Rakocevic:** I'm interested—you mentioned that there was really no allusion to improving quality construction in this bill. What would you like to see to improve quality construction? Are there a couple of short bullet-point types of things we could see the government implement to improve that?

**Mr. Ed Hooft:** I do wish I could help you with the wording on that. I guess you would have to use wording that includes the normal standard of care in the construction of a new home.

**Mr. Tom Rakocevic:** That's good. I think you had mentioned that people are trying to do it as cheaply as possible, in the case of your roof shingles. Under this legislation, it will just continue to go the same way.

**Mr. Ed Hooft:** That's what I suspect. Builders of townhomes are not promoting them as custom homes. In our first year of ownership, we were already experiencing cold in a closet on a shared wall. We went to a home builders' show and talked to different insulation firms about our situation. One of them was quite blunt and said, "Oh, you have a cookie-cutter home." It means mass-produced

quickly. They're built very quickly to a standard that does not always suffice. If I had a custom home, I would have had a daily dialogue with my builder.

With our home, I visited the site almost daily to see progress, and I pointed out some concerns. At one point, I was asked not to attend anymore because of health and safety concerns, I think, under the workmen's compensation act, perhaps.

**Mr. Tom Rakocevic:** You do mention the fact that we are looking at cheap construction. We've seen, through the Auditor General's report, that builders that have had bad records or problems, in many cases, don't end up on the directory. But regardless of whether they do or don't, they just are given licences. Under the current warranty system, it doesn't matter who you are; it looks like you're probably just going to get a licence anyway to be able to construct.

Do you believe that that improves the situation? Does that lead to more quality homes, or do you think it makes it worse?

**Mr. Ed Hooft:** I'm sorry, I think I've lost my concentration there. I don't see it as leading to better-quality homes. The bottom line of every project is to make money, so they will cut corners wherever they can.

**1120**

**Mr. Tom Rakocevic:** I'm going to pass it on to my colleague.

**The Chair (Mr. Roman Baber):** Mr. Hatfield, with about two and a half minutes to go.

**Mr. Percy Hatfield:** It just occurred to me that our friends from out of town wouldn't know the neighbourhood of which we speak when we're talking about your development. Is it safe to say that it's in a relatively new part of the city? The townhomes are on a pond, on a walkway, close to all the amenities, and are quite expensive for Windsor. Is that a fact?

**Mr. Ed Hooft:** That is a fact. When we downsized, we sold our home. It took all of those proceeds and \$100,000 to move into this home.

**Mr. Percy Hatfield:** I'm hesitant to say what you paid for it, because these people that live in their million-dollar homes or half-million-dollar homes—

*Interjections.*

**Mr. Percy Hatfield:** Not you, Mr. Bailey. But the Toronto-area MPPs are used to paying a lot more money than what we pay in Windsor. We're one of the best-kept secrets in housing, even though, a couple of years ago, we finally started overbidding for the first time.

Mr. Hooft lives in a very nice neighbourhood that every one of you would be very happy to live in if you lived here in Windsor. So what he's describing is not some low-end part of town where you throw up a building and you don't get classy quality. The quality of these homes should have been a lot better than what they ended up with, with all of those homes having the same problem with the roofs.

Fair statement?

**Mr. Ed Hooft:** It is a very fair statement. I guess when we moved in—as retired people moving into this house, we wanted to ensure that we did not spend more than a specific amount of money. I can tell you that our target

was not to spend more than \$250,000. I believe we spent \$290,000 on the construction. We eliminated fireplaces, we eliminated central vac, all to try and meet our goal of making it a house that we could afford.

**Mr. Percy Hatfield:** Thank you again for coming in today.

**Mr. Ed Hooft:** Thank you.

**The Chair (Mr. Roman Baber):** We'll now proceed with 10 minutes of questioning by the government side, beginning with Mr. Bailey.

**Mr. Robert Bailey:** Thank you, Mr. Hooft, for coming in. I want to thank Mr. Hatfield for that comment. I was going to ask what part of Windsor these homes were in. It sounds like it was all one developer in one certain area. I'm glad Mr. Hatfield got that on the record—where it was and the type of homes they were.

Did the city building inspectors—I always feel like some people—we've heard a lot of stories, and we've only been on the road two days now. We've heard a lot of stories in the last two days about—it seems like a lot of people, along with Tarion—who, I don't mind putting on the record, certainly have dropped the ball. But it seemed like a lot of other people, like the building inspectors for the city here—and other cities; not just to point at Windsor—maybe dropped the ball. Do you feel there was some obligation on them to do something along the way as the house was being built?

**Mr. Ed Hooft:** Well, interestingly enough—that's a good question. I've been in contact with the building department a few times. With respect to the closet that is cold and wet and frosty, the building code at that time did not specify an R factor.

**Mr. Robert Bailey:** Okay.

**Mr. Ed Hooft:** It specified a decibel rating. So we have probably a three-inch gap between the units, followed by a firewall, followed by R12, followed by another sheet of drywall, which, when repeated on the other side, gives you the rating for decibels. Sound transmission is covered, but there's no rating for R factor.

**Mr. Robert Bailey:** Okay. The reason I asked that is, I was interested—my daughter recently bought not a townhome but, I guess, a duplex, like two homes on one footprint. I've been thinking about this as I've heard some of these stories. I'm going to go and check when I get home. I know she's got some closets or some space she shares on the one wall.

These are more recent homes, from the last maybe 10 years or less, so hopefully those types of things were—I've got some other things I wanted to say. One thing I wanted to get on the record—and I've made a lot of notes the last couple of days—is that when a person goes to get their building permit in the first place, they'd be handed a checklist explaining Tarion, and you'd have to go through it. When you get the building permit from them, you'd know your rights and obligations—especially your rights—under Tarion. Is that something that you think would help, along with extending the 30-day window? I like your two-, five- and 10-year suggestion that you

made, but do you think that that would be something, to get that checklist when you get the initial building permit?

**Mr. Ed Hooft:** Yes—and I guess I'd like to expand that answer. As I was listening to Gay's presentation, I was trying to anticipate questions that you might present me with, and I wrote down “perhaps an orientation session before you buy a home.” Maybe once or twice a year, anyone contemplating a new-home purchase would have an opportunity to attend a new-home orientation, because I was clueless as to what my rights were until we took possession. I think that if I had known more, I could have done a little bit of research and been armed and ready for the ensuing years.

**Mr. Robert Bailey:** Okay. Good. I like that. I think my colleague—

**The Chair (Mr. Roman Baber):** My apologies. Mr. Anand?

**Mr. Deepak Anand:** Thank you, Mr. Hooft. It's really good to see your commitment for the community, that you have done your work. I just want to echo Mr. Hatfield when he said that even though it doesn't matter what the value of the house is, in my opinion, most of us like to go above and beyond our capacity, to make sure that the biggest investment we are making is sound.

You touched upon quality over quantity. You talked about the quality assurance part of it. You talked about the installation piece. I just want to know what your take is on this, what your suggestion is: Maybe if there is a quality assurance plan for the homes in the time before the construction of the house, if there is a document showing, along the way as the home is being built, “These are the checks which will be made.” At the end of the day, when the homebuyer is getting the keys, it comes with a kind of binder which has all the details: “Okay, they did these checks, and these were the measurements.” It's just like a homeowner manual, in that when you sell that home to a new homeowner, to the resale, you pass on that homeowner manual.

One of the things which I found difficult was that when I bought my house, I was the second owner, and I didn't know where half of the things were located. What is your opinion about that?

**Mr. Ed Hooft:** You know, it sounds like a good idea in principle. I guess it's going to put a burden on the builder to do that type of thing. I would like us to reach a point where we could rely on the building departments and building inspectors to make sure that I don't need to look at the checklist to say that the checklist was checked.

A few times when I spoke to the city building department, they could tell me what the code was and they would say, “But your home passed inspection.” What I can tell you about the insulation in the attic is that the insulation was there; it had never been rolled out to the end of the eaves. Because we have cathedral ceilings with a roof over top of that, physically getting to where that batt of insulation was probably would have been difficult. I suspect somebody laid the batt there, gave it a kick, and it rolled partway down and stopped. We had a four-by-two-foot window for wind to enter into that cavity.

Getting back to your question, I'm not sure that a checklist would have been helpful. We've been homeowners for many years so we've kind of figured out how to work appliances and furnaces and things like that. One of the things that maybe would have been helpful as a new homeowner would have been all the brochures that went with the furnace and the thermostat and other things that are included in the package. You go, "Well, where's the manual?" In my case, the manual for the thermostat wasn't there. I think in a Tarion complaint I made, I couldn't find out how to work the thermostat; they photocopied a manual for me and gave it to me.

**Mr. Deepak Anand:** So you think a homeowner manual would be helpful?

**Mr. Ed Hooft:** Maybe not a manual, but all the supporting documents for things that go into it: say, the humidifier, the furnace and the air conditioner.

**Mr. Deepak Anand:** Thank you, Chair.

**The Chair (Mr. Roman Baber):** We'll proceed to Mr. Coe, with just under three minutes remaining.

**Mr. Lorne Coe:** Thank you, Chair, and through you: Thank you very much, sir, for your presentation. As you were speaking, I was taking some notes down. Bill 159 permits regulations—as you know, because out of your presentation it's clear that you've read the legislation—that could address the warranty claims and dispute resolution process with Tarion. I'm particularly interested in what advice you would provide about making improvements in those two areas.

1130

**Mr. Ed Hooft:** Can you just highlight those two areas?

**Mr. Lorne Coe:** Yes: warranty claims and the dispute resolution process.

**Mr. Ed Hooft:** Well, I can say that the builder would always—sometimes I had to build a fire under the builder by filing a complaint with Tarion. When that happens, the builder is all of a sudden there. When I appealed my roof issue and the third party was coming to inspect the roof, the builder showed up the day before to start doing some repairs. I said, "I will not let you proceed because I want him to see the roof in its current condition," which included a nail through a shingle to hold it down from flapping. That's why I believe that the independent third party was in favour of replacing the roof, because he saw a lot of deficiencies there, and if he hadn't been able to get into the attic, I would have had a new roof at the builder's cost.

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

**The Chair (Mr. Roman Baber):** Ms. Kusendova, we have just over a minute remaining.

**Ms. Natalia Kusendova:** Hello, Mr. Hooft, and thank you so much for your presentation. I just wanted to state a few things on the record that may address some of the things that you had mentioned earlier. With the Ministry of Government and Consumer Services, we are proposing changes based on consumer feedback, and so we are overhauling the new home warranty and protection program to make it more consumer-focused and reduce the role of the builders, which is what we've heard loud and clear.

We are focusing actually on three consumer priorities, the first one being the enhancement of the warranties and protection claims and dispute resolution process. For example, if consumers are not satisfied with the LAT, they can actually request a third-party resolution. This is to be worked out further in regulation, which we will be consulting on as well.

The second one is promotion of greater quality in new homes, as you have mentioned. We're hoping to achieve this by training our inspectors and also by increasing the frequency of inspections, so the 30-day window at the end of year one, we are actually expanding that and opening it up to a consultation to increase the frequency of inspections. We are hoping to achieve, in the end, greater quality, as you have mentioned, which was a problem. So that's how we're hoping to address that.

Finally, the third priority is greater transparency in providing consumers with better and more accessible information about builder track records and the warranties and protection process. We are doing this by requiring Tarion to publicly post all builder records and complaints. Those are the three priorities that we are focusing on, and I think that addresses some of the concerns that you had.

**Mr. Ed Hooft:** Yes, thank you—

**Mr. Roman Baber:** Could you please contain your answer to 30 seconds?

**Mr. Ed Hooft:** Oh dear. Well, in 30 seconds, I'd like to say that a regulation comes after the fact, and I would rather see it built into the bill as opposed to a regulation that will follow some time afterwards. I would like to beef up that act so that it contains all the tools necessary, as opposed to waiting for the regulations to come forward.

Regarding the builder and the track record, as a new homebuyer, I had no clue to check that out. Whether it's improved or not, it wouldn't have helped me. I kicked the tires; I liked what I saw. It would not have benefited me at all.

**The Chair (Mr. Roman Baber):** Thank you very much for your presentation today. Should you wish to make written submissions, you put them before the committee. The deadline to do so is 5 p.m. tomorrow. I thank you again for being here today.

**Mr. Ed Hooft:** Thank you for your time.

CANADIAN CONDOMINIUM INSTITUTE—  
EASTERN ONTARIO CHAPTER

**The Chair (Mr. Roman Baber):** We'll now proceed with the Canadian Condominium Institute, the Eastern Ontario Chapter. On the line we have Ms. Nancy Houle, who's the president of the chapter, I believe. Ms. Houle, are you on the line?

**Ms. Nancy Houle:** Yes, I am. Good morning.

**The Chair (Mr. Roman Baber):** Good morning to you, and thank you for being with us today. You will now have an opportunity to make initial submissions for 10 minutes, followed by 10 minutes of questioning by each of the recognized parties. I invite you to begin your submissions by stating your name for the record.

**Ms. Nancy Houle:** Thank you very much. Good morning, members of the committee. Can everybody hear me?

**Mr. Lorne Coe:** Yes, thank you.

**Ms. Nancy Houle:** Great. Thank you. My name is Nancy Houle, and I'm a condominium lawyer practising exclusively in the area of condominium and shared property law for the past 18 years. I'm one of the founding partners of a niche firm, Davidson Houle Allen LLP, servicing approximately 1,000 condominiums in the eastern Ontario region. I am appearing remotely today, from Ottawa, to dialogue with the committee in my role as president of the eastern Ontario chapter of the Canadian Condominium Institute and a member of the Ontario caucus legislative review committee.

Yesterday you heard from my colleague Mr. Armand Conant, president of the Toronto chapter of CCI and chair of the legislative review committee. During his presentation, he would have provided you with a summary of CCI's role, both nationally and provincially, and accordingly I won't reiterate that summary. However, I will confirm that CCI has eight provincial chapters representing in excess of 275,000 condominium units across the province. To that end, on behalf of the Ontario chapters of CCI and all of our members, we're grateful to the committee for the chance to attend today. Given the extent of the diversity of interests and demographics in each of the condominium communities across the province, it's important to consider that each jurisdiction has its own idiosyncrasies. Therefore, the impact of condominium legislation can have a different impact across the province. While we all speak with a common voice, each chapter can add a nuance about how legislative change may affect a jurisdiction differently.

As explained yesterday by Mr. Conant, the Ontario chapters of CCI are submitting a comprehensive brief on the changes to the legislation and the key issues which we feel are important at this time. However, for the purpose of these committee hearings, the Ontario chapters of CCI have prepared a brief handout, which I understand Mr. Conant provided to all committee members yesterday. For the purpose of my presentation today, I will also be following the procedure in that handout.

I turn first to what is one of the overall changes in the industry. On December 5, 2019, the ministry communicated to the public the government's commitment, through Bill 159, to help improve condominium living and to protect financial investments for people in condos. This commitment is a key pillar to the government's rebuilding consumer confidence strategy. As part of the process, there are three main phases. The first one is the delegation of amendments to the various condominium forms to the Condominium Authority of Ontario. This has been completed.

The third one is the implementation of further amendments to the Condominium Act following conversation with key stakeholders. This process begins in February, and CCI will be involved throughout that process.

The second phase is the one CCI is focusing on today, and that is the proposal set out in our short brief

concerning the introduction of a definition and prohibition on various nuisances, and the increased jurisdiction for the Condominium Authority Tribunal. I'll deal with each of those issues in turn. However, as a general statement, let me first say that all of our comments are aimed at providing clarity and consistency for our condo community, to reduce potential disputes. As I review the proposals, I will explain why we feel further amendments may be needed to increase such clarity and consistency.

Turning first to nuisances, annoyances and disruptions: One of my favourite descriptions of condominium living is that a condominium community is essentially a microcosm of society. Anything that can happen in our society can happen, and probably will at some point, in a condominium. Because of the close quarters and that personal investment in the community, when problems do arise, they can take on a life of their own. This is, in my view, one of the key reasons we are dealing with this first issue: the introduction of a prohibition on nuisances, annoyances and disturbances. In short, if the proposal, in its current form, is approved, it will establish that certain nuisances, annoyances and disruptions are strictly prohibited on condominium properties, and any assets, of the condominium corporation, including noise, odour, smoke, vapour, light, vibration and infestations.

The way in which the proposal is drafted is that it essentially introduces a new definition of prohibited activities. While CCI is most certainly in favour of the introduction of provisions which will help to foster harmony in community living, these provisions, in our view, need to be clear and allow for consistent application. Here is our specific concern: The definition, as it currently stands, is broad and unclear. I can explain as follows.

The word "nuisance" has, to a certain extent, an established legal definition. While it's certainly great fodder for lawyers to debate, there is, at the very least, a framework of legal interpretation to guide the dialogue on this issue. However, the words "annoyance" and "disruption" do not have established legal definitions. These words are very broad and subjective. Clarity of these two words is recommended.

#### 1140

The word "unreasonable" is also introduced into the provision. Again, there is a concern about a lack of existing legal interpretation or definition of "unreasonable." "Reasonableness" has been commonly used and has been interpreted in the law; "unreasonableness" has not. So what is the threshold for unreasonableness? Clarity is requested on this issue.

I now turn to each of the various terms which are listed as nuisances, disturbances or annoyances. A definition or explanation of each of the terms is requested to avoid uncertainty and confusion, both on what the nuisance, annoyance or disturbance is but also in relation to its origin.

Just as an example, light: Is it indoor, outdoor, or how about festive lights? What about spotlights for safety? And odour: Is it cooking? What about personal hygiene? What

about perfumes? Infestation: We typically think of pests and vermin. What about viruses or illnesses?

Finally, there is concern about how this new provision will interact with the corporation's existing governing documents. Many condominium corporations have provisions which already exist in their governing documents. Again, clarity is needed on how these sections will interact with each other.

I turn now to the increased jurisdiction or scope of the CAT. My colleague Mr. Conant took you through the establishment of the CAT yesterday and summarized its current jurisdiction. The purpose of these proposals, if approved, is to broaden the scope of disputes that can be heard by the CAT, including nuisances, annoyances and disturbances; pets or other animals; vehicles, parking and storage; and indemnification or compensation provisions as they relate to the corporation's existing governing documents.

The condo industry has been waiting for the jurisdiction of the CAT to be increased, and accordingly, the concern doesn't relate necessarily to the specific nature of the disputes which would now fall within the jurisdiction of the CAT. The concern instead relates to the broader issues which affect the ability of all parties to utilize the various dispute resolution mechanisms and processes at the CAT, as effectively as possible.

Our comments are threefold:

First, the implementation of a procedural process for parties to follow in advance of a CAT process being initiated is recommended. The CAO currently has an initiative called Guided Pathways on its website. It sets out guides to assist parties involved in a dispute by establishing a suggested path. The purpose of a procedural process would be to provide the parties with a checklist or steps which could be followed before the dispute resolution is engaged, the intent being to put power into the hands of the parties to try and communicate and effectively resolve the dispute, increasing the potential for a harmonious resolution.

Secondly, revisions to the provisions relating to cost awards: Currently, the CAT cannot award costs except in extraordinary or exceptional circumstances. This can be an increasing problem for parties who may need to rely on lawyers to handle their disputes because the disputes will become more complex given the increased expansion of the CAT's jurisdiction. Volunteer board members and property managers cannot be expected to handle complex disputes. They are not trained for this, and it can sometimes place an unfair burden on the director. The challenge becomes, if one party causes the corporation to incur unreasonable costs, all innocent owners could bear that burden. Clarity and consistency on the cost issue may reduce unreasonable disputes.

Thirdly, clarity in relation to the appropriate venue for these types of disputes is recommended. Section 117 of the act, if amended, will deal with both dangerous activities, which are issues to be heard by a court, but also nuisances which are to be dealt with at the CAT. What happens if we have a dangerous nuisance? Where does the jurisdiction lie—the court or the CAT?

In summary, as I wrap up, I thank you for the opportunity to meet with the committee today. CCI is made up of various stakeholders, all with an interest in promoting harmonious living within the condominium community. To the extent that CCI can at any time give assistance to this committee, please do not hesitate to call upon us.

**The Chair (Mr. Roman Baber):** Thank you very much, Ms. Houle. We'll now proceed with 10 minutes of questioning by the government side, beginning with Mr. Coe.

**Mr. Lorne Coe:** Thank you, Chair, and through you: Thank you very much for your presentation. On the aspect of your presentation that deals with the Condominium Authority Tribunal, your colleague yesterday, in his presentation—you touched on it to a degree today—suggested that a prescribed procedural process is needed before the CAT process should be initiated. What would you anticipate to be some of the features of this prescribed procedural process?

**Ms. Nancy Houle:** An excellent question. Thank you. In my view, the process would necessitate a certain amount of written and verbal dialogue between the parties so that they can establish that each party has fairly looked at the issue, considered the issue and taken certain steps to address it. For example, it could be starting out with each party setting their position out in writing, followed by a meeting, followed by a follow-up written dialogue between the parties to confirm whether or not there are more steps which could be taken before we get to the CAT. This is just a bit of brainstorming from our initial call that we had with CCI members, but we are thinking of trying to put together a more formal procedure that we could potentially recommend to committee prior to the January 31 submission.

**Mr. Lorne Coe:** Thank you very much. I look forward to reading that in a little bit more detail beyond what time permits this morning. Thank you, Chair.

**The Chair (Mr. Roman Baber):** Thank you, Mr. Coe. With eight and a half minutes remaining, anyone else from the government side? Mr. Bouma.

**Mr. Will Bouma:** I was wondering if I could—and thank you very much for your excellent presentation. I really appreciate it. Will Bouma, MPP for Brantford–Brant. I was just curious: In our legislation, on page 13, tab 3, Tarion is directed to promote the construction in Ontario of properly built homes for residential purposes. I think we're trying to affect that quality issue. If you could, Ms. Houle, I was wondering if you could expand further on that. In your opinion, does that go far enough, or should we be more specific in that?

**Ms. Nancy Houle:** Well, I have to say that I'm not prepared to speak on the Tarion reform. I was here specifically on condo act amendments. However, Tarion reforms are near and dear to my heart, so I am very much looking forward to seeing an expansion, where the builder does have more involvement in the homeowner process as set out earlier by Ms. Kusendova.

**Mr. Will Bouma:** Thank you. I appreciate that—free legal advice when I can get it.

**Ms. Nancy Houle:** Always a pleasure.

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

**Mr. Robert Bailey:** Thank you for your presentation today. I have a couple of questions. Of the proposed changes in Bill 159, what do you feel are the most important to the owners, and owners specifically of condos? Is there one or two—

**Ms. Nancy Houle:** Yes. Based on what I'm seeing as the amount of disputes going through the CAT, I think that it is very important to expand the jurisdiction that the CAT has to try to resolve these disputes. So I do believe that owners are going to be very excited about increased jurisdiction for the CAT. Nuisance, obviously, is an issue that comes up quite frequently in individual homes as well, and that plays right in to the ability of the CAT now to hear those disputes as well as trying to keep these issues out of the court to keep costs down.

**Mr. Robert Bailey:** Okay. One more question: What's the best way to involve condo owners in development, implementation of any changes in new home warranties in a couple of words? Then my colleague would like to get in on this.

**Ms. Nancy Houle:** I'm not prepared to speak on the expectation of owners in the new home warranty process, but I can say, based on my experience, generally speaking, in issues that they might encounter, owner meetings are the best way to get individuals involved. Getting owners involved from the get-go, then coming out to the members of the community, inviting participation from the community and having a say will give them a sense of ownership of the property as a whole and make them more interested in the outcome of any Tarion issues or even if it's an issue that changes rules. So I think meetings and dialogue are the key factors to getting owners involved.

**Mr. Robert Bailey:** Thank you.

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

**Ms. Natalia Kusendova:** Good morning, Ms. Houle. Thank you for your presentation. I wanted to ask you about condo cancellations, which we have not yet touched upon today. As you are most likely aware, we are making some changes when it comes to buying a unit in pre-construction, such that, as of January 2020, all potential buyers must be given an information sheet that clearly outlines up front the possible risks of buying a unit in a pre-construction condominium project. This information sheet will outline the early termination conditions and note timelines and the project's status.

What are your thoughts on this proposed change?

**Ms. Nancy Houle:** I welcome this proposed change. I can tell you, going to about 120 AGMs a year [inaudible] for condos, one of the biggest concerns I hear from owners at meetings is that they didn't understand what they were purchasing and didn't understand what the process was—pre-build, post-build, etc. So to the extent that the ministry or government can prepare documentation—that can be even just a checklist or a handout to owners to understand the process—it's going to be a huge step forward to reducing concern with complaints going forward.

1150

**Ms. Natalia Kusendova:** Yes. We have actually gone one step further in that we are requiring Tarion to retroactively post information about projects that have been completed, in progress or cancelled, as of January 1, 2018. So do you believe this will increase transparency for consumers and potential condo buyers?

**Ms. Nancy Houle:** I think the intent is great. Hopefully, that [inaudible] will make use of that posting and, if so, then yes, I think it will. Just to clarify, though, I wasn't prepared to speak on Tarion reforms today. I was speaking on the condo act reforms. So to the best of my ability, I will answer questions about Tarion reforms.

**Ms. Natalia Kusendova:** Thank you.

**The Chair (Mr. Roman Baber):** Okay. Seeing no more questions on the government side, we'll now proceed with 10 minutes of questioning by the opposition. Mr. Hatfield.

**Mr. Percy Hatfield:** Thank you, Chair. I'll start off. Thank you for your presentation. I heard Mr. Bouma talk about free legal advice. Maybe that's what I'm looking for.

In Windsor, of course, we have a lot of condos, but we also have a lot of townhome associations. They're set up initially by the builder. They're there for a set number of years, I believe, or in perpetuity. The point is, when the previous government was dealing with condo legislation, we were getting all kinds of complaints at my constituency office about how townhome associations didn't fall under condo legislation, even though they're condominiums. They're not in a high-rise, necessarily, but they're separate. As we heard from previous delegations this morning, there could be three homes in a row, four homes in a row, or whatever. They're the same principle as a condo association, but they're townhome associations.

We couldn't get anybody, at the time when the Liberal government was there, to do anything about incorporating language into legislation not specifically to condominiums, because they're considered townhomes as opposed to condominiums. Otherwise, they are the same. I'm just wondering whether you've encountered anything like that in your part of the province, or no.

**Ms. Nancy Houle:** Absolutely. We probably deal with, in my practice, at least 100 homeowners' associations, townhome associations etc. There is no question that it is far more difficult to deal with enforcement issues or to deal with issues which arise in a townhouse development or a homeowners' association than under a condo regime. The condo act gave birth to the guidelines on how to approach the big issues—for example, non-payment of fees. Under the condo act, you can request payments, you can pass a lien, and you can enforce the condo lien in the same way as a mortgage.

In a homeowners' association, basically, you're bound by the provision of your particular contract with that particular association. We do have a lot of them in eastern Ontario, but my experience most frequently is that homeowners' associations are becoming less and less common and less and less likely to get approved by the city or the planning department because of the intricate nature and

the difficulties that can arise in these types of communities. I would lean more towards common element condos or phased condos or vacant land condos etc.

**Mr. Percy Hatfield:** I was still a reporter before I moved into the neighbourhood I'm in now, of townhome associations. One of the homeowners had built an addition on the back, sort of like a sunroom. It was not in compliance with the neighbours. They didn't go through the association. They had a lawyer who kept dragging it out for years and years and years. Finally, they caved in and said, "Okay, we'll ask for permission. We'll amend whatever it looks like."

When you run into a situation like that, it pits neighbour against neighbour and puts all kinds of other unnecessary stress on the lives of people. So I was just wondering if you had any suggestion to the government side, when they're looking at condominium legislation, whether you can suggest anything that might help townhome associations somehow getting in on the legislation.

**Ms. Nancy Houle:** I think it would be very difficult to find a way to bring existing homeowners' associations under the guise of the condo act, but perhaps a separate piece of legislation similar to the co-operative housing act could deal with homeowners' associations, setting out some specific parameters which would govern the various contractual arrangements related to homeowners' associations.

**Mr. Percy Hatfield:** Thank you for that and for the legal advice. I would suggest you send your bill to the Chair of the Committee.

**Ms. Nancy Houle:** It's always my pleasure.

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

**Mr. Gurratan Singh:** Yes. Thank you so much for your presentation and for sharing your knowledge with us today. At one point, condominiums, especially in terms of condominiums in larger buildings, were an affordable source of housing for people who couldn't afford a home. But in many parts of Ontario, especially in the greater Toronto area, we see that even condominiums are becoming unaffordable. I wanted to get your thoughts and your perspectives on how this bill impacts affordability with respect to condominiums, and overall, let's just talk about this housing crisis, this condominium crisis and this affordability crisis, and your thoughts on that.

**Ms. Nancy Houle:** Absolutely. This is a topic, again, very near and dear to my heart. We're facing a condominium insurance crisis across the country as well; I'm sure many of you are aware. There's a need to look at the fact that many condominium corporations can't even obtain insurance as a result of the crisis.

There's no question that costs for individual homeowners in condominiums are skyrocketing: water, insurance etc. The proposed changes to this particular bill, being the introduction of additional jurisdiction to the CAT, and if we can see a little bit of change toward starting a process in there before we get to the CAT, in my view, can significantly reduce financial hardship on the owners by keeping legal fees down for those innocent owners who are not impacted.

So I talked about three things: I talked about a procedural process which would keep things hopefully out of the CAT and away from lawyers' hands. Two, if we do get lawyers involved, then a method by which we can charge back those lawyer's fees to the parties is not unreasonable, as opposed to innocent owners being impacted. Three is the thresholds for when we go to court and when we go to CAT. I think each of those comments or recommendations could serve to try to keep costs down, which of course is very important for owners of condos.

**Mr. Gurratan Singh:** Thank you so much for your response. That's the extent of my questions.

**Ms. Nancy Houle:** Thank you.

**The Chair (Mr. Roman Baber):** Mr. Rakocevic.

**Mr. Tom Rakocevic:** Chair, how much time do I have left?

**The Chair (Mr. Roman Baber):** Three and a half minutes.

**Mr. Tom Rakocevic:** Three and a half minutes. Okay. Thank you so much, Nancy, for your presentation. Just like your colleague's, it's very, very informative, and the handout that was provided was very informative. I'm sure all colleagues here around the table appreciate it. So thank you so much for that.

**Ms. Nancy Houle:** I'm glad. Thank you.

**Mr. Tom Rakocevic:** Something that I had asked your colleague, I'd like your opinion on as well: Within my constituency in particular, most of the condo builds are old—decades-old condos—where at times you'll find members at odds with boards over things like how much should be going into the reserve fund, on what to spend, what not to spend. One of the issues has to do with percentages of votes needed to change, let's say, the declaration or make other sorts of changes. Do you have any opinion on the percentage of votes that are required? Should there be any changes or whatnot?

**Ms. Nancy Houle:** I'm actually quite happy with the various thresholds that we have right now for amending declarations and descriptions. Very, very important changes, for example, changing the boundaries etc., require 90%. Somewhat less important changes, I guess you could say, require 80%. I think those are important thresholds, because making changes that affect the percentage that an owner pays goes to the very heart of the contractual arrangement that they entered into when they purchased their unit. So I'm hesitant to see those changes without a high threshold of participation.

I can say that it may be less of an issue in eastern Ontario, where we have found that we do get good owner turnout when we market the issue sufficiently. My experience may be different, based on my jurisdiction, than those of my colleagues in Toronto or the surrounding area.

**Mr. Tom Rakocevic:** Okay. Thank you. With regard to the tribunal, if we allow more and more things to be debated at the tribunal or resolved there, what is the impact you find in terms of costs to condo boards and members who find themselves at odds with their condo boards?

**Ms. Nancy Houle:** Well, to the extent that the tribunal can help parties resolve a situation before they get to a hearing, the cost to the owner is significantly minimized, because you don't have the involvement of legal counsel and legal costs increasing. It's really that those few things that can't be resolved at the early stages where we see the costs start to rise. So I think, as long as we can get good process, a little bit perhaps better technological infrastructure, because I know that they do struggle right now with the technological infrastructure—to the extent that we get good processes and good technological infrastructure in place, I do think we can make really good headway to reducing the costs for everybody by seeing more movement through the tribunal on these issues.

**Mr. Tom Rakocevic:** I'm really happy to hear that. A former colleague, an NDP MPP, Rosario Marchese, worked very strongly with condominium advocates to establish a tribunal, and I'm really glad to hear that you're suggesting that there have been cost savings in a lot of situations.

*Interjection.*

**Mr. Tom Rakocevic:** Great.

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

**Mr. Tom Rakocevic:** Okay. I guess as a wrap-up, is there any wish list that you'd like to see with regard to condo reform that you feel you haven't said, or a final point you want to restate that's most important out of your presentation, in the last 20 seconds now?

**Ms. Nancy Houle:** I think that to the extent that we can try to make the CAT system technologically effective, good procedure and understandable—I think we really can do some good work on having positive changes for the owners in the industry and for the board members.

**Mr. Tom Rakocevic:** Thank you very much.

**The Chair (Mr. Roman Baber):** Thank you very much, Ms. Houle. If you wish to make any additional submissions to the committee in writing, the deadline to do so is 5 p.m. tomorrow. I thank you for your submissions.

**Ms. Nancy Houle:** Thank you, everyone. I wish you all a great day. Take care.

**The Chair (Mr. Roman Baber):** Have a great day.

The Legislative Assembly staff require a couple of minutes to get our next presenter on the line. As such, the committee will recess for five minutes and will resume at 12:06.

*The committee recessed from 1201 to 1207.*

**The Chair (Mr. Roman Baber):** I call the committee back to order. The public hearings on Bill 159, An Act to amend various statutes in respect of consumer protection, shall now resume. I kindly ask all members to take their seats.

#### RETAIL COUNCIL OF CANADA

**The Chair (Mr. Roman Baber):** We have on the line with us Sebastian Prins from the Retail Council of Canada. Mr. Prins?

**Mr. Sebastian Prins:** Hi, there.

**The Chair (Mr. Roman Baber):** Good afternoon to you, and welcome. You will have an initial 10 minutes for a presentation, followed by 20 minutes of questioning, divided equally between the two recognized parties. I invite you to make your initial submissions, commencing with stating your name for the record.

**Mr. Sebastian Prins:** Sounds good. I'll start with the name. My name is Sebastian Prins. Thank you, members of the Standing Committee on Justice Policy, for having the Retail Council of Canada teleconference in for this bill. We very much appreciate it. At RCC, I'm our director of government relations for the province of Ontario. I'm going to walk you through some of our support for Bill 159 in a moment, but before we kind of get to the bulk of my presentation, I wanted to take a second to remind members a bit who the Retail Council of Canada is and who we represent.

The Retail Council of Canada—retail is the largest private sector employer. We're a national non-profit. There are about 2.1 million Canadians working in our industry. At RCC, we represent 45,000 storefronts across Canada. Our members are about 95% of retail sales based on StatsCan data. In some sectors, we actually represent a larger portion of the market. So for example in Ontario, our members represent 95% in the grocery sales area. One of the facts that I always want to share is whenever we do a riding-by-riding breakdown, on average, about 11.2% of every riding works in retail, which is a great stat that we like to point out.

I know that the committee is looking at Bill 159. RCC wanted to kind of highlight—I know Tarion probably has likely been much of the discussion. A lot of it is triggered primarily by a recent Auditor General report. RCC may take a moment to take a look at what's wrong about delegated administrative authorities in general. We've kind of seen, through that Auditor General's report, that there were serious questions raised about Tarion's operational efficiency, transparency and accountability and what that meant to the public in terms of sufficient delivery of goals from some high-paid executives—a lack of transparency. We see Bill 159 as a direct response to the auditor's report, in a way, and addresses some of those issues. We see those issues as something that more broadly apply to any delegated authorities, and we wanted to effectively showcase that in the presentation.

Just to make members aware, DAAs are not held to the same standard as agencies, boards and commissions. They operate at arm's length of government and charge fees on market *[inaudible]* participants, like the consumers of our retail *[inaudible]*, and they do that on a cost-recovery basis. I'm sure you're familiar with Tarion's *[inaudible]* profitable programs and registry fees on new homes. There are other groups in this bill that are impacted, like the Technical Standards and Safety Authority, which can issue fees on everything from boilers to pressure vessels, to, very recently, upholstery and stuffed articles. So a stuffed toy used to be something that the TSSA could issue fees on. Other DAAs kind of built in their Resource Productivity and Recovery Authority, which can charge fees

directly to consumers on tires, batteries, electronics, paper and all packaging.

To give you a bit of a broader view, if you look at expense growth year over year in some of the most recent annual reports that we have from these DAAs, if you look at the 2017-18 fiscal year and compare that to the 2018-19 fiscal year, you'll see that some of the expense growth and issues that we've been discussing around Tarion apply to a lot of different DAAs. With Tarion, between those two financial reports, it's a 14% increase in their expense growth, but that applies to a lot of other DAAs as well, like the TSSA—19% growth—and RPR, which is 24% growth, and even smaller DAAs, like the CAO, which has seen a 45% increase in growth between those two fiscal years.

If you do a deeper dive, again, we've seen a lot of media articles based on the Auditor's report focusing on Tarion's average compensation and part of the compensation rates for its higher executives. That's something again that we see across the board from DAAs. Tarion has an average compensation rate of about \$116,000 per employee. The TSSA, based on their financial report, if you look at their compensation, their compensation is about \$124,000 per employee. RPR is at \$116,000, and again, I'll use the CAO, which is a much smaller one, but it's \$134,000 per employee.

So even if you look at the broader view of DAAs beyond Tarion, we find pervasively that there's a lack of accountability, transparency and oversight of these bodies. Bill 159 does a very good job of addressing some of those pieces. Bill 159 increases accountability by letting DAAs without a direct reporting line to the minister's office—they could create one by letting the minister directly appoint and dismiss the chair of the board—that's a very important one—and for other DAAs, the minister can now appoint a fixed percentage of board members.

We've seen on the transparency front that there is a new avenue *[inaudible]* for executive pay disclosure at DAAs. Given the ability of DAAs to act as quasi tax groups, if you will, given their ability to charge consumers directly for products in certain categories, we believe that executive pay disclosure is extremely important.

Just to kind of loop it back to *[inaudible]* fees and how they impact RCC members: By creating a line of reporting between the minister's office and these DAAs, we see that there is a greater ability for the minister to ensure that management and organizational practices will be efficient, and that the minister has more tools to work with generally. Those DAA boards are the ones approving these budgets. So when you're hearing these double-digit budget increases—I'll use RPR as an example: RPR projected nearly 19% budget increases every year for the next three years. So that's something that DAA boards are going to be improving and that's something that we see, by having board director oversight there are extra tools *[inaudible]* there.

Boards are also the ones creating the implementational policies. So we're not just talking direct costs, even though that is, you know, when we think of cost recovery that's a

function of the DAA. They also are implementing implementational policies. I'll use the example—

*Failure of sound system.*

**Mr. Sebastian Prins:** —recovery authority. Depending on how they choose to implement fiscal fee disclosure, our members may or may not be able to report to the public the recycling fees appended to a product. A TV, as an example, would be a \$45 fee to make sure that, at end of life, that TV will be properly recycled and handled. Based on the policies that the board chooses, that could be something that we're unable to functionally *[inaudible]*.

On data reporting, depending on the standards, even though we've chatted with officials and as you can see they've had certain ideas around data reporting standards, it's ultimately up to the board of RPR to determine what types of data can be reported. So beyond budgets, there are a lot of efficiencies for us in terms of red tape that can come by having a more accountable board.

We wanted to kind of highlight what this bill does and also highlight potential—

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

**Mr. Sebastian Prins:** Perfect, perfect. I'll wrap up quickly here.

Just some potential future things we can do: DAAs are not agencies. For us, it would be even better if they became closer to agencies. Agencies have executive board cabinet directives for meals, travel and hospitality directors, and are subject to the Open Data Directive. We also know that there are executive compensation restrictions and seven-year reviews of the mandate of agencies. So we would love to see this even go further on the accountability and transparency end and include some of those pieces to make sure that our DAAs are more accountable and transparent to the public.

I'll leave off there. Really looking forward to taking your questions.

**The Chair (Mr. Roman Baber):** Thank you so much, Mr. Prins. We'll now begin with 10 minutes of questioning by the official opposition, beginning with Mr. Hatfield.

**Mr. Percy Hatfield:** Thank you for your presentation, Mr. Prins. I'm interested in your membership of the Retail Council of Canada. Do your members, for example, sell flooring or windows and doors or carpeting or heating and cooling or bathroom fixtures or kitchen sinks or anything like that?

**Mr. Sebastian Prins:** Sorry, do you mind if I ask that the member speak a bit more into the mike? Sorry. I'm losing about half of what you're saying there.

**Mr. Percy Hatfield:** Thank you. I was just trying to nail down—I don't know if you can hear me; I'm almost on top of the mike—whether your membership in the Retail Council of Canada includes members who are involved in the sale of, for example, flooring, windows, doors, carpeting, heating, cooling, bathroom fixtures, kitchen sinks.

**Mr. Sebastian Prins:** Yes. Our membership, yes: just as some examples, Home Depot, Home Hardware. All of those home improvement groups are members of RCC.

**Mr. Percy Hatfield:** That's excellent. In some of the earlier presentations we heard from people who were concerned about the warranties and the quality of the products that go into new homes. With your experience in the RCC, going back to the 1960s, I guess, is there some professional guidance? If somebody was to call on you and say—I'm dating this back to Tarion—"We're looking for ways to improve the customer experience with Tarion," based on your marketing experience and your insurance capabilities, would you have the expertise to offer to somebody from the government side who was looking to make it easier for homebuyers to deal with their warranties and with Tarion, based on your experience—your wide, vast, Canada-wide experience—in dealing with such issues?

1220

**Mr. Sebastian Prins:** Yes. Thanks for that question. That's certainly something that we could look into and likely—look, one of the strengths of the retail council is that we have the ability to connect in with our members to get a lot of that expertise. We regularly connect in with a lot of the vice-presidents at our member organizations, who certainly would have access to product safety and product information and standards like that. Certainly though, through our federal caucuses, that we work a lot on health and safety for products. That's something that, yes, we would be happy to connect in more on and discuss how we can support the policy development there.

**Mr. Percy Hatfield:** I think it's a good idea because, indirectly, your members are involved in providing the essentials like a good-quality home, and if new homebuyers are having a problem with their builders or their insurance companies, indirectly, that would involve your membership as well. I think there's a hand-in-glove association that could be exploited here, perhaps, if indeed somebody from your organization was to reach out to the committee in some form or fashion and suggest ways of improving what's proposed under the Tarion legislation.

**Mr. Sebastian Prins:** Certainly, yes, I'm happy to connect in on that. I can make sure to connect in both with the committee on that as well as folks at MGCS.

**Mr. Percy Hatfield:** Thank you for that, because I think, at the end of the day, if these connections were made and improvements were made in the proposed legislation, it would be good for your members as well as those people who buy new homes, which include your products. Thank you.

**The Chair (Mr. Roman Baber):** Mr. Rakocevic.

**Mr. Tom Rakocevic:** Thank you very much, Mr. Prins, for your presentation and offering a new perspective. We've definitely been hearing a lot about Tarion here in the committee over the last couple of days. But I really also appreciate my colleague from Windsor-Tecumseh, who did tie in to Tarion a little bit of what you were saying.

I just want to let you know that one of the earlier presenters gave an example whereby their builder—a whole bunch of roof shingles were blown off in a townhouse complex. The builder went so far as to say that the retailer—the people who were actually making the

shingles—was at fault, not the installation. This does directly influence and affect you, and it affects your members. Do you have any comments on that, or is this a usual occurrence or something that you've heard before, where, often, retailers are getting blamed in this way?

**Mr. Sebastian Prins:** Yes. That is one particular scenario that I haven't heard before. But I certainly do know that, yes, the accountability and oversight of DAAs is something our members are very tuned in to.

Just some examples—we often find ourselves on the implementation end of these pieces. I made reference to the TSSA. They, up until very recently, used to enforce the Upholstered and Stuffed Articles Act, which, thankfully, through the administrative and red tape burden reduction, we saw some relief on, because this was always a duplicative double tag with the federal government. Through that agency, there were some very strict implementational standards around printing, and 99% of all violations of the Upholstered and Stuffed Articles Act were related to misprinted tags that had the information, but had the information in a slightly different manner than what was traditionally acceptable. So based on that, our retailers would pay not only tens of thousands of dollars in fines but would then have to rip out all of the tags and sew them back in with new tags. That was extraordinarily expensive as that often occurs at the end of the supply chain, when these are actually in the retail outlet. That, to us, especially when it had all the contents and the materials and it's just that the bars were too thick or that there were no borders on the tables—for items like that, our retailers had to pull out these tags. Direct oversight of boards and more representation on boards and accountability and transparency for these organizations translates directly into money and cost savings that [*inaudible*] capital, potentially—

**Mr. Tom Rakocevic:** I do want to ask you one last thing about Tarion. You spoke extensively about delegated authorities. You've probably heard, whether Tarion is of a big interest to you or not, that for quite some time—many, many years—there have been complaints about the culture of Tarion itself. Under the current legislation, the bureaucracy, the management, is virtually not going to be that changed. In fact, we're seeing some shuffling of senior management to retain specific positions; we're not seeing a lot of change within Tarion itself. Do you believe that if a delegated authority—the people who are affected by it, the stakeholders, are up in arms and for years and years are saying that it's not working, do you believe that essentially leaving Tarion itself, or a delegated authority, completely unchanged—do you think that will help the issue?

**Mr. Sebastian Prins:** Our stance in general with DAAs is that they should—we think that there's a lot of accountability and oversight over our agency's boards and commissions. So we think that the more things can move into structures like agencies, the better that would be. That provides even more accountability and oversight for organizations, and agencies are kind of better integrated into ministries and ministers' offices in terms of communication and support. In our opinion, that would be where we would love to see all DAAs.

For Tarion, specifically, I can't speak to—in our own organization, we feel that that strong activist board can make a real difference. So I'd say, depending on who the minister's office appoints and puts in at the board level, that could very much change an organization once you get a good active board in there. Like I mentioned, all policies are still approved at the board level, and a lot of those not only directly affect external groups, in terms of our reporting requirements and data flows *[inaudible]*. But also, just in terms of internal policy—even if it's little things, I'll say, like, right now our DAAs are not subject to the same meal and travel expenses that elected officials like yourselves are and that all agencies are subject to, where they have to report data online for executives. To actually put these things in place, even if it's little things like that, could really change the culture at entrenched institutions like this. And, by having proper control of the board, you can, if necessary, see the dismissal of some executives, and that is—you've got greater accountability there—

**The Chair (Mr. Roman Baber):** Thank you very much. Thank you, Mr. Prins. That concludes the 10 minutes allotted to the opposition. We'll now proceed with government questions. Mr. Bailey.

**Mr. Robert Bailey:** Thank you. It's Bob Bailey, MPP, Sarnia–Lambton. Thank you for your presentation again, Mr. Prins. I have two or three questions. I think you've covered the retail side of this very well. You touched on Tarion. You're directly or indirectly involved with Tarion through your members. I have a couple of questions. Do you agree, or disagree, that enabling administrative penalties under the act could actually strengthen protection for consumers?

**Mr. Sebastian Prins:** I'm sorry. You faded out just at the end of the question there—

**Mr. Robert Bailey:** Okay, sorry. It's hard to hear. I can't hear you very well either. Do you agree that administrative penalties under the act could strengthen protection for consumers? The administrative penalties—

**Mr. Sebastian Prins:** Yes. I can simply say a few things on this. We have a lot of administrative penalties in place when it comes to TSSA and to RPRA. Our members always like to be good actors. Let me just say this, number one. Just even having drawn a line in the sand, that's already good enough for all of your good actors in the group.

1230

I think having administrative penalties, yes, certainly does add heightened sensitivity for anything. But, you know what? I think there's a careful line to be walked in Ontario, just to make sure that those aren't inhibiting business. If you apply penalties to the wrong thing, that can be bad—or to an area where, you know, *[inaudible]* a lot of attention to detail on data-reporting requirements to make sure that, that said, we're not receiving administrative penalties. I think, yes, I think having targets in line with the feds and/or potentially administrative penalties, as long as they're appropriate, doesn't harm an area, especially if you're good actors like our members.

**Mr. Robert Bailey:** Another question, just before I go—I think there are some others here who want to ask a question. How would the proposed amendment to the Consumer Protection Act impact retail businesses and online merchants—I don't think we've talked about online merchants much—represented by the Retail Council of Canada? I know there are other people who want to ask questions, so just if you could respond to that in a couple of minutes.

**Mr. Sebastian Prins:** So for current amendments that the *[inaudible]* I'll just repeat these as well—how the current amendments before us affect online retailers *[inaudible]*.

**Mr. Robert Bailey:** Okay.

**Mr. Sebastian Prins:** Some of the largest fees or upcoming fee assessments for retailers right now involve things like the uploading of the Blue Box Program. That's something that retailers will be paying about a quarter of a billion dollars every year for. Right now, just as an example, the operational policies at the *[inaudible]* force our members to sometimes triple-report certain things and require multiple audits *[inaudible]*. So just in terms of *[inaudible]*, an active board that has an attention to how this is impacting business might understand that really you only need to report these data once, and, you know, one audit is enough.

Those are some examples and ideas of how the current DAA structure set-up isn't supporting businesses and is leading to a lot of costs downloading onto our members. We believe that having additional board oversight would lead to more efficiencies *[inaudible]*.

**The Chair (Mr. Roman Baber):** Thank you, Mr. Prins. We'll proceed with MPP Anand.

**Mr. Deepak Anand:** Thank you, Chair. I appreciate it.

Thank you, Mr. Prins, for your insight and input. With respect to the proposed changes to the Resources Recovery and Circular Economy Act, RRCEA: How do you think the changes in the RRCEA will impact your members specifically?

**Mr. Sebastian Prins:** That's something I can speak a lot to. So yes, right now, for the RRCEA, RPRA is the authority under that. We're seeing currently an uploading of tires, batteries and electronics as well as potentially the Blue Box. It is very important for RCC members that reporting requirements be very efficient there, because it is quite costly when you've got to do multiple audits and to report multiple times—and even clarity when it comes to policies around what data we are and aren't allowed to report.

We often are in having conversations with officials, and officials will try to clarify for members certain types of data that they're allowed to use. But then we often get the exact opposite from the authority regulator. Those are things where the current set of amendments we see before us allow the chair to be appointed and dismissed by the minister's office. That can allow for a more active board that helps support in areas like this and brings clarity to our members around what data they are and aren't allowed to report to this entity, as well as operational efficiency

when it comes to reporting and auditing. That, as well as with the executive salary disclosure, has been kind of worked *[inaudible]*. As I mentioned before with the average salary rate, with the DAAs that we mentioned the average compensation rate is well over \$110,000; at RPPA, \$116,000 per FTE. I suspect that that means the executives are being quite generously compensated. We've seen in Tarion that that was the case. DAAs have the ability to cost-recover and can kind of infinitely do so. So, without that executive pay transparency, that's very problematic for our members because we don't know what we're paying for and what costs are *[inaudible]*.

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

Any other questions?

**Mr. Deepak Anand:** I just want to add one more thing, Chair. Mr. Prins, broadly, at present, here, do you agree with the proposed changes to the Resource Recovery and Circular Economy Act as seen here?

**Mr. Sebastian Prins:** Yes, 100%; we definitely do. We would love to see even additional changes, if possible, to add RPPA in under the Broader Public Sector Executive Compensation Act, which would then mean that we have clarity as to what future rates executives could now be given as pay caps. Any *[inaudible]* fees would go to the province. This is a great, *[inaudible]* first step that will really support my members.

**Mr. Deepak Anand:** Thank you, Chair.

**The Chair (Mr. Roman Baber):** Any other questions by the government side? Mr. Bouma?

**Mr. Will Bouma:** How much time left?

**The Chair (Mr. Roman Baber):** You have about just under two minutes remaining.

**Mr. Will Bouma:** Very good. Not so much a question, I apologize for that, but just I noted a member on the opposition side saying that we weren't really making any significant changes to the board of Tarion. That struck me as odd. It seemed like they would not be qualified, so I just wanted to quickly read into the record a couple of the appointees to the Tarion Board:

Number one is Hari Panday, who's a seasoned executive and an independent corporate director, with experience in banking, investment, private capital markets—it goes on. He owns PanVest Capital Corp. and has a lot of

history in the not-for-profit sector. He sits on the boards of the Canadian Forces College Foundation, the Institute of Corporate Directors and the C.D. Howe Institute. He's an honorary governor of the Royal Ontario Museum.

Moving on quickly: Andy Kenins, who is a CPA. He has the IDC.D designation. He is retired from KPMG, and he's on the board for the SBI Canada Bank, the Banff Centre for Arts and Creativity, the Banff Centre Foundation, the Oakville Symphony orchestra, and the executive of the Institute of Corporate Directors.

Just in the last few seconds, Sebastian, does that sound like people who would be qualified to sit on the Tarion board?

**Mr. Sebastian Prins:** They certainly sound like qualified individuals to me, yes.

**Mr. Will Bouma:** Thank you. I appreciate that.

*Interjection.*

**The Chair (Mr. Roman Baber):** You're allowed to raise a point of order if you wish; however, with 15 seconds remaining, I would propose—well, it's up to you, of course.

**Mr. Tom Rakocevic:** I just wanted to raise a point of order to correct the member on the other side in which I was speaking of the administration and the bureaucracy of Tarion. He spoke about the board members.

**The Chair (Mr. Roman Baber):** So you wish to correct the record—or you wish clarify the record.

**Mr. Percy Hatfield:** Correct his record.

**Mr. Tom Rakocevic:** Just clarify, I guess, then.

**The Chair (Mr. Roman Baber):** You can only correct your own record.

**Mr. Tom Rakocevic:** Okay.

**The Chair (Mr. Roman Baber):** Mr. Prins, thank you so much for your submissions today. Should you wish to make any further submissions, you're welcome to do so in writing by 5 p.m. tomorrow.

**Mr. Sebastian Prins:** Thanks so much. I appreciate this, and will be making a submission in writing as well.

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

Members of the committee, that concludes our hearing for today. We will adjourn till 10 a.m. tomorrow in Ottawa. Thank you very much.

*The committee adjourned at 1239.*



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### **Also taking part / Autres participants et participantes**

Mr. Percy Hatfield (Windsor–Tecumseh ND)

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