

# We need more protection for home buyers: Roseman

Ontario will look at beefing up protection for new-home defects under its warranty plan. Let's hope for radical change.

By: [Ellen Roseman](#) On Your Side, Published on Mon Nov 09 2015

Former judge J. Douglas Cunningham will review a 40-year-old Ontario law that gives warranty protection to buyers of newly built homes.

The announcement by provincial consumer minister David Oraziotti, which [hit the Star's front page last week](#), caught my attention for a few reasons:

- I am impressed by the distinguished person who will head the review, Cunningham, and the broad terms of reference he was given;
- I am thrilled to see the key objective of the review is to provide recommendations on how to improve consumer protection;
- I am happy to see the review will compare Ontario's system of a single provider, Tarion Warranty Corp., with the choice of warranty providers in several other provinces;
- I am elated to see a focus on Tarion's accountability and transparency. The non-profit firm is often accused of not disclosing enough and of being too close to the builders it regulates.

Justice Cunningham, born and educated in Kingston, Ont., has presided over hundreds of cases as a trial judge.

In 2009, he ruled that observers could use laptops and other mobile devices in court to send stories and tweets to the outside world.

In 2011, he found Mississauga mayor Hazel McCallion was in a conflict of interest for mixing personal business with city politics.

In 2012, he retired from the Superior Court and began a private mediation and arbitration practice. His skills in getting out-of-court settlements made him a candidate for the Tarion review, Oraziotti said in an interview.

Justice Cunningham will focus on consumer protection. In particular, he will look at Tarion's tight deadlines to submit claims and seek warranty repairs — just two years in most cases, too short for my liking.

He will look at the onus on homeowner to prove defects. Is that fair and reasonable? Is a \$300,000 maximum for warranty coverage enough? How can Tarion's dispute resolution processes be improved?

Customers must go to the Licence Appeal Tribunal if their claims are turned down. Those who can't afford a lawyer have to fight lawyers hired by the builder and by Tarion. They usually lose.

Another focus of the review is government involvement in policy changes relating to consumer protection. Should Tarion have the authority to make regulations as it does now? Or should the Ontario Legislature be involved?

Oraziotti calls himself a consumer advocate. Yet he appears to like the status quo. "The review will take an independent look at the organization to see if improvements can be made," he said, adding that he expects no big changes. "I anticipate that Justice Cunningham will find Tarion's processes validated as good consumer protection measures."

It's hard to know how many satisfied customers go through the warranty process. Tarion runs the show and controls the statistics-gathering process.

However, I hear from many customers who expected more compensation arising from a builder's negligence than they received from Tarion.

When I wrote about [Tarion's annual meeting last June](#), I got only negative feedback from those who had used its services. Online comments were also mostly negative.

Orazietti also gets letters from home buyers, asking why his department's oversight is weak. Why can't the Ontario Ombudsman and Auditor General look into Tarion? The question is now on the table.

Will the consumer ministry turn over its correspondence from frustrated home buyers to Justice Cunningham? Yes, Orazietti said. He also told me that Justice Cunningham will travel to many communities to speak to homeowners and meet with the Conservative and NDP caucuses.

Ontario's new condo act is going through the Legislature. The Opposition parties seem to like it, except for the involvement of Tarion.

"We look forward to demonstrating how we serve Ontario's new home owners," said Tarion spokeswoman Melissa Yollick, noting that there are 365,000 homes enrolled in the program and 50,000 added each year. Tarion paid almost \$10 million in claims in 2014.

After 40 years, buildings need major repairs. Ontario's home warranty plan also needs restructuring. I am sure the message will come through as the retired judge proceeds with his review, which ends June 30.