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Deputation re bill 109, More Homes for Everyone Act; to be delivered in person April 11, 2022

1 message

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Sun, Apr 10, 2022 at 1:56 PM

To: Standing Committee on the Legislative Assembly <comm-legisassembly@ola.org>

Bcc: Barbara Captijn <bcaptijn@gmail.com>

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DEPUTATION TO:

**Standing Committee on the Legislative Assembly: MPP Scott, Chair; MPP Gelinas, Vice-Chair;
Members: MPP Burns, MPP Ghamari, MPP Harris, MPP Mcdonell, MPP Osterhoff, MPP Thanigasalam.**

RE: Bill 109, "An Act to amend the various statutes with respect to housing, development and various other matters"

SUBMITTED BY:

**Barbara Captijn, Independent Consumer Advocate;
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DATE: April 11, 2022

Delivered in person April 11, 2022, and by email to *comm-legisassembly@ola.org*, and 25 copies to Committee Clerk.

Dear Madam Chair, and members of the Committee,

Thank you for the opportunity to present today. My name is Barbara Captijn. I am an independent consumer advocate with 14 years experience in matters related to newly-built homes, Tarion, and the builder regulator.

The title of this bill, "**More Homes for Everyone**" sounds like a dream come true. It is a challenging goal to try to address the housing supply and affordability crisis, and get 1.5 million more homes built within the next 10 years amidst rising costs of supplies, labour, and land, a shortage of skilled trades and municipal inspectors, and rising interest rates.

Just like a home built on a shaky foundation will fall, so will this plan to build more homes faster, if the regulatory framework governing the industry is flawed.

I would like to point out just one of the major failings in consumer protection I see in this bill.

I'd like to draw your attention to **Schedule 3** of the bill, **section 56 (1)**, on page 5. This section is new, and replaces section 56 of the New Home Construction Licensing Act passed in 2017.

This new section 56 (1) gives unusual discretion to the Registrar of the regulatory agency, the Home Construction Regulatory Authority known as HCRA. No other regulatory body I know of has given this wide and unfettered discretion to its Registrar to deal with complaints about licensees, based entirely on her opinion.

This new section reads: ***"If the registrar is of the opinion, whether as a result of a complaint or otherwise, that a licensee has contravened any provision of this Act, the regulations, or prescribed legislation, the registrar may do any of the following, as the registrar considers appropriate."*** (Then follows a list of 6 possible actions).

The words ***"If the registrar is of the opinion"***, is problematic because it doesn't use an objective standard for evaluating complaints, but rather someone's opinion. This opens the door to conflicts of interest, and off-the-books decision-making. Even a court can't challenge a decision based on someone's opinion.

This is a dangerous shift in language in bill 109, and seems not to have been the intent of the original section 56 (1) in the Construction Licensing Act, which uses the words the handling of complaints must be done "as appropriate", meaning held to an objective standard. New home buyers need to see the regulator is doing the job of regulating, and fairly and

impartially handling complaints about conduct or service. Someone's opinion is not a fair or transparent regulatory yardstick.

To give a recent example, if a builder installs used furnaces in new homes without disclosing this to the buyer, and the homeowner makes a complaint to the HCRA, the registrar can decide to do nothing, based on her opinion.

HCRA has already received over 600 complaints about builders in its first year of operation, according to its 2021 Annual Report. Where are the results of these investigations, why were apparently none referred to the Discipline Committee? There is nothing on the HCRA website about this, although they are obliged by **section 82 (1) of the Licensing Act** to publicly disclose actions by the discipline committee or any penalties imposed. None of this is to be found. Doubling fines for builder misconduct, as the Minister promises to do, isn't meaningful, if you aren't levying any fines in the first place. Doubling zero is zero.

There is, for example, no mention on the HCRA site of what has become of the April 2021 complaint about a much-publicized sex and alcohol-fueled party captured on video at a construction site in Milton, reported by Global News on April 16, 2021. The builder's conduct was widely criticized as inappropriate and unacceptable, and against HCRA's Code of Ethics. There's no record of anything on HCRA's website re Disciplinary Committee hearings or any actions taken, and the complainants have received no response.

This new bill gives the registrar wide discretion to make complaints go away, or avoid handling them until the two-year deadline to bring them to the Discipline Committee has passed, as stated in **section 24 of the Code of Ethics**. Given the huge backlog of cases HCRA is handling, there should be no deadline to proceed to the Disciplinary Committee. This again benefits builders and the HCRA, not consumers.

Consumers need to see accurate and up-to-date builder records before buying new homes. How are consumers to have confidence the regulator is acting fairly and protecting consumers from bad builders? Shifting decision-making to opinions instead of objective standards is a huge step backwards in transparency and consumer protection.

How many construction defects are there per year in newly-built homes?

4.
The Auditor General's report on the warranty administrator Tarion in 2019 (page 7) said in the years from 2014-18 Tarion assessed over 6,485 construction problems, and refused 9,700 requests because they missed the reporting deadlines. Construction defects put an enormous financial burden on new home buyers, who are too often left with the problem.

With the current political pressure to double the number of homes built in the coming years, and build faster, this could potentially double the number of deficiencies, especially since skilled labour is scarce. This is bad for consumer protection and the public interest, and doesn't make homes more affordable.

With a weak regulator with unfettered discretion, and a still-flawed warranty administrator, this creates a perfect storm in **lack of consumer protection**.

B.Captijn, April 2022



 Bill 109, More Homes for Everyone Act, 2022 - Legislative Assembly of Ontario.htm
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**SCHEDULE 3
NEW HOME CONSTRUCTION LICENSING ACT, 2017**

1 Clause 38 (1) (c) of the *New Home Construction Licensing Act, 2017* is repealed and the following substituted:

- (c) neither the applicant, nor any interested person in respect of the applicant, has carried on or is carrying on activities,
 - (i) that are in contravention of this Act or the regulations, or that will be in contravention of this Act or the regulations if the applicant is issued a licence, or
 - (ii) that are in contravention of prescribed legislation, or that will be in contravention of prescribed legislation if the applicant is issued a licence;

2 Section 56 of the Act is repealed and the following substituted:

Complaints

56 (1) The registrar may,

- (a) receive complaints concerning conduct that may be in contravention of this Act, the regulations or prescribed legislation;
- (b) make written requests to licensees for information regarding complaints; and
- (c) attempt to mediate or resolve complaints, as appropriate, concerning any conduct that comes to the registrar's attention that may be in contravention of this Act, the regulations or prescribed legislation.

Request for information

(2) A request made under clause (1) (b) shall indicate the nature of the complaint.

Duty to comply

(3) A licensee who receives a request made under clause (1) (b) shall provide the requested information to the registrar.

Registrar's powers

56.1 If the registrar is of the opinion, whether as a result of a complaint or otherwise, that a licensee has contravened any provision of this Act, the regulations or prescribed legislation, the registrar (may) do any of the following, as the registrar considers appropriate:

1. Give the licensee a written warning, stating that if the licensee continues with the activity that led to the alleged contravention, action may be taken against the licensee.
2. Require the licensee to take further educational courses.
3. Require the licensee, in accordance with the terms, if any, that the registrar specifies, to fund educational courses for persons that the licensee employs or to arrange and fund the courses.
4. Refer the matter, in whole or in part, to the discipline committee.
5. Take an action under section 40, subject to section 43.
6. Take further action as is appropriate in accordance with this Act.

3 (1) Paragraph 3 of subsection 57 (4) of the Act is repealed and the following substituted:

3. Impose such fine as the committee considers appropriate, subject to subsections (4.1), (4.2) and (4.3), to be paid by the licensee to the regulatory authority or, if there is no regulatory authority, to the Minister of Finance.

(2) Section 57 of the Act is amended by adding the following subsections:

Maximum fines

- (4.1) Subject to subsection (4.2), the maximum amount of the fine mentioned in paragraph 3 of subsection (4) is,
- (a) \$50,000, or such lesser amount as may be prescribed, if the licensee is an individual; or
 - (b) \$100,000, or such lesser amount as may be prescribed, if the licensee is not an individual.

Same, monetary benefit

(4.2) The total amount of the fine referred to in subsection (4.1) may be increased by an amount equal to the amount of the monetary benefit acquired by or that accrued to the licensee as a result of a failure to comply with the code of ethics.

Same, prior determination

(4.3) In making its order to impose a fine under paragraph 3 of subsection (4), the discipline committee shall consider any prior determination of the committee that the licensee failed to comply with the code of ethics and, subject to the maximum amount of the fine referred to in subsection (4.1), may impose a more severe fine having regard to the prior determination.

Enforcement

Complaints and Discipline

Complaints

56 (1) If the registrar receives a complaint about a licensee, the registrar may request information in relation to the complaint from any licensee.

Request for information

(2) A request for information under subsection (1) shall indicate the nature of the complaint.

Duty to comply with request

(3) A licensee who receives a written request for information shall provide the information as soon as is reasonably possible.

Procedures

(4) In handling complaints, the registrar may do any of the following, as appropriate:

1. Attempt to mediate or resolve the complaint.
2. Give the licensee a written warning that if the licensee continues with the activity that led to the complaint, action may be taken against the licensee.
3. Require the licensee to take further educational courses.
4. Require the licensee, in accordance with the terms, if any, that the registrar specifies, to fund educational courses for persons that the licensee employs or to arrange and fund the courses.
5. Refer the matter, in whole or in part, to the discipline committee.
6. Take an action under section 40, subject to section 43.
7. Take further action as is appropriate in accordance with this Act.

Public information

82 (1) Subject to the regulations, the registrar shall make available publicly on the website of the regulatory authority and by any other * means that the registrar determines,

- (a) information about the business activities of any class of licensees or prescribed persons, including their business name, business address, phone number and electronic mail address;
- (b) licensing information about a licensee, including the licensee's licence number, the date that the licence expires and the current status of the licence;
- (c) information about what persons are directors, officers or prescribed persons of a licensee, contact information for them and how they are interested in the licensee or associated with the licensee;
- (d) information about persons who are subject to a notice of proposal under section 43;
- * (e) information about persons whose licence has been suspended, immediately suspended or revoked;
- * (f) information about determinations and orders made by the discipline committee or appeals committee under section 57;
- (g) information about persons who have been subject to an order under any of sections 64, 65, 66, 70 and 72, including the terms of the order;
- * (h) information about persons who have been convicted of an offence under this Act;
- * (i) information about persons in respect of whom an assessor has imposed an administrative penalty, including the amount of the penalty;
- * (j) information that the registrar receives under section 5.6 of the *Ontario New Home Warranties Plan Act* or under subsection 67 (1) of the *Protection for Owners and Purchasers of New Homes Act, 2017*; and
- (k) any other prescribed information. 2017, c. 33, Sched. 1, s. 82 (1); 2020, c. 14, Sched. 4, s. 18.

Searchable information

Special Audit of the Tarion Warranty Corporation
October 2019

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www.auditor.on.ca/en/content/downloads/summary_Tarion.pdf

Dispute Resolution Process and Licensing
Builders

- **Tarion found in more than half of its inspections that builders had not honoured their warranties.** For example, our analysis of the 6,485 requests that Tarion assessed in the five years from 2014 to 2018 found that about 65% of the time, the builder should have fixed the defects under warranty but did not. *

- **Tarion dismissed thousands of requests for help from homeowners because the homeowners missed Tarion's tight deadlines.**

Homeowners may ask Tarion for help with defects in their homes covered by a one-year warranty by submitting a form—but only by submitting a form in the first 30 days or the last 30 days of that first year of occupancy (unless it is an emergency, for which they can make a claim anytime during the first year). Between 2014 and 2018, Tarion refused assistance on about 9,700 requests because *

the homeowners had missed the 30-day deadlines. About 1,300 of these requests had missed the deadline by a single day. Missing the first 30-day deadline does not disqualify the homeowner from the builder's warranty coverage, but it does mean Tarion will not hold the builder accountable for its warranty obligation. In effect, these narrow windows mean people lose the right to get help from Tarion. The homebuyer protection plans in Quebec and British Columbia, in comparison, have no such 30-day deadlines.