

Chapter 3

Section 3.06

Tarion Warranty Corporation

Standing Committee on Public Accounts Follow-Up on *October 2019 Special Report*

On November 27, 2019, the Standing Committee on Public Accounts (Committee) held a public hearing on our 2019 audit of Tarion Warranty Corporation. The Committee tabled a report on this hearing in the Legislature in February 2021. A link to the full report can be found at <http://www.auditor.on.ca/en/content/standingcommittee/standingcommittee.html>.

The Committee made 18 recommendations and asked the Ministry of Government and Consumer Services (Ministry) to report back by June 2021. The Ministry formally responded to the Committee on June 22, 2021. A number of the issues raised by the Committee were similar to the audit observations of our 2019 audit, which we followed up on in 2021. The status of each of the Committee's recommended actions is shown in **Figure 1**.

We conducted assurance work between March 2021 and September 2021, and obtained written representation from the Ministry of Government and Consumer Services and Tarion Warranty Corporation that effective November 16, 2021, they have provided us with a complete update of the status of the recommendations made by the Committee.

Overall Conclusion

As of September 30, 2021, 67% of the Committee's recommended actions had been fully implemented, and 18% of the recommended actions were in the process of being implemented. There has been little or no progress on 11% of the recommended actions. In addition, 4% of the recommendations are no longer applicable.

Detailed Status of Recommendations

Figure 2 shows the recommendations and status details that are based on responses from the Ministry of Government and Consumer Services and Tarion Warranty Corporation, and our review of the information provided.

Figure 1: Summary Status of Actions Recommended in February 2021 Committee Report

Prepared by the Office of the Auditor General of Ontario

RECOMMENDATION STATUS OVERVIEW						
	# of Actions Recommended	Status of Actions Recommended				
		Fully Implemented	In the Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable
Recommendation 1	1	1				
Recommendation 2	4	1	2	1		
Recommendation 3	1	1				
Recommendation 4	3		1			2
Recommendation 5	1		1			
Recommendation 6	4	4				
Recommendation 7	1	1				
Recommendation 8	3	3				
Recommendation 9	4	4				
Recommendation 10	2	2				
Recommendation 11	7	6		1		
Recommendation 12	3		2	1		
Recommendation 13	2	2				
Recommendation 14	4	1	1	2		
Recommendation 15	1	1				
Recommendation 16	2	2				
Recommendation 17	1		1			
Recommendation 18	1	1				
Total	45	30	8	5	0	2
%	100	67	18	11	0	4

Figure 2: Committee Recommendations and Detailed Status of Actions Taken

Prepared by the Office of the Auditor General of Ontario

Committee Recommendation	Status Details
<p>Recommendation 1</p> <p>The Standing Committee on Public Accounts recommends that the Ministry of Government and Consumer Services protect the interests of home buyers and ensure that homebuilders fulfill their warranty by formally requiring that Tarion's board of directors maintain a balance between representing the interests of homebuyers and home builders while maintaining consumer protection in its decision-making.</p> <p>Status: Fully implemented.</p>	<p>In our 2019 audit, we found that the Ontario Home Builders Association (OHBA), who represents the interests of the province's residential homebuilders, were heavily involved in Tarion decisions, where Tarion policy required that eight of the 16 directors on its Board be members of, and nominated by, the OHBA. The relationship between the Tarion Board and the OHBA created an imbalance over the years that favoured the interests of builders at the expense of homebuyers.</p> <p>In our follow-up we found that the Minister of Government and Consumer Services issued an order on November 27, 2019, to make changes to the structure of the Tarion Board, where no more than 34%, or four out of 12 director positions on the Tarion Board shall be drawn from builders, or individuals representing builders. The Minister also reduced the size of the Tarion Board from 16 directors to 12. These changes were done to create more balance between the interests of homebuyers and home builders, and to ensure that no stakeholder's interest is favoured over another.</p>
<p>Recommendation 2</p> <p>The Standing Committee on Public Accounts recommends that Tarion Warranty Corporation:</p> <ul style="list-style-type: none"> • remove its two 30-day deadlines and allow homeowners to submit requests for assistance at any time during the first year of ownership; Status: In the process of being implemented by December 2022. • eliminate the 30-day deadline to request a home inspection; Status: In the process of implementing changes by December 2022. • permit homeowners to update their listing of unresolved defects after submitting the initial listing; Status: Fully implemented. 	<p>During our 2019 audit, we found that Tarion restricted the times when homeowners may ask for its help in a warranty dispute with builders. Homeowners could only ask Tarion for help during the first 30 days and last 30 days of the first year of occupancy of their home. In addition, homeowners had a 30-day window to request an inspection from Tarion. These restrictions made it more difficult for homeowners to seek help from Tarion.</p> <p>In our follow-up, we found that effective September 14, 2020, Tarion put in place temporary measures by adding a 10-day grace period for its two 30-day deadlines, and its 30-day deadline to request a home inspection, to increase the time homeowners have to access help from Tarion. Tarion told us that it is in the process of assessing options to formally change deadlines for homeowners to submit requests for assistance through regulatory change. At the time of our follow-up, Tarion was in the process of obtaining approval from the Ministry of Government and Consumer Services to hold consultations with stakeholders to seek input on changes to its 30-day deadlines. Tarion plans to finalize the public input on a final proposal and announce these changes in fall 2021. The changes will be implemented in 2022.</p> <p>In our 2019 audit, we found that homeowners were allowed to provide only one listing of unresolved defects to Tarion in each 30-day window of the first-year warranty, and could not subsequently amend those listings. Tarion accepted only the first listing of defects and rejected all subsequent ones.</p> <p>In our follow-up, we found that effective September 14, 2020, Tarion has allowed homeowners to make amendments and additions to initial lists of unresolved defects submitted to Tarion. Homeowners can now make changes to add more items to lists over the course of the first 30 days and last 30 days of the first year of occupancy of their home. Tarion also implemented on a temporary basis, a 10-day grace period for its two 30-day deadlines, which gives homeowners more time to request help from Tarion.</p>

Committee Recommendation	Status Details
<ul style="list-style-type: none"> significantly reduce the amount of time provided to builders to resolve defects before stepping in to help homeowners, and establish prescribed, transparent, and appropriate timeframes for fixing defects. <p>Status: Little or no progress.</p>	<p>In our 2019 audit, we found that when Tarion received a request for help from a homeowner, Tarion gave the builder 120 days to resolve the issues directly with the homeowner. As a result, homeowners had to wait a minimum of four months before they can ask Tarion for an inspection to assess the unresolved defects. When Tarion accepted a homeowner's second request for assistance, it sent another email to the builder asking it to resolve the dispute within 30 days. After 30 days, if it is not resolved, Tarion may inspect the disputed defects and decide within yet another 30 days if the builder should have repaired the defects under warranty.</p> <p>In our follow-up, we found that Tarion is assessing its policy to reduce the 120-day builder repair period. At the time of our follow-up, Tarion was in consultation with stakeholders to seek input on changes to its builder repair period. Tarion expects to make regulatory change to reduce the 120-day builder repair period in December 2022, with implementation occurring no later than December 2023.</p>
<p>Recommendation 3</p> <p>The Standing Committee on Public Accounts recommends that Tarion Warranty Corporation either eliminate the word "Warranty" from its name or select a new name that better reflects its mandate.</p> <p>Status: Fully Implemented.</p>	<p>In our audit in 2019, we found that the agency's name – Tarion Warranty Corporation – is confusing, and could also lead some consumers to believe that the warranty on their home is provided by Tarion rather than the builder.</p> <p>In our follow-up, we found that Tarion removed the word "warranty" from its name on all public-facing materials including its website, social media platforms, email signatures of Tarion staff and any materials provided to homeowners, including the Warranty Information Sheet (previously the Homeowner Information Package). We noted that Tarion did not change its legal business name to eliminate the word "warranty." Tarion told us that by February 2022, the Board will evaluate the next steps in this process, including whether Tarion's name will be changed legally.</p>
<p>Recommendation 4</p> <p>The Standing Committee on Public Accounts recommends that Tarion Warranty Corporation address the issue of warranty coverage that starts before a house is truly finished by:</p> <ul style="list-style-type: none"> redefining "finished house" for the purposes of homeowners' warranty rights and coverage period so that the one-year warranty period commences only once the home meets this new definition of a finished house; <p>Status: No longer applicable.</p>	<p>In our 2019 audit, we found that Tarion's use of the Ontario Building Code's definition of a finished house/condominium effectively diminishes homeowners' warranty rights by potentially shortening the warranty coverage period. Builders have the right to initiate their warranty coverage as of the time a house meets the Ontario Building Code's minimum occupancy requirements, which only require that limited plumbing fixtures be complete and operational. Once the minimum occupancy requirements are met, a builder can require a homebuyer to take possession of a house, and thus, some builders could shorten their warranty coverage period by the amount of time it takes them to complete any outstanding work after the day they require the homebuyer to take possession of the unfinished house. During our 2019 audit, Tarion told us that it had no official policy to ask builders to extend the warranty for uninstalled items.</p>

Committee Recommendation	Status Details
<ul style="list-style-type: none"> developing a warranty that will protect homebuyers for unfinished items in their homes once the home has met the minimum occupancy standard, and ensuring that the one-year warranty coverage begins only after the items are finished; Status: In the process of being implemented by December 2022. working with the relevant ministries to expand what must be completed to meet the minimum occupancy requirement in the Ontario Building Code so that new home buyers are appropriately protected by their warranty rights. Status: No longer applicable. 	<p>In our follow-up, we found that the Ministry of Government and Consumer Services engaged in discussions with the Ministry of Municipal Affairs and Housing (MMAH) and determined that the requirements of what must be completed to meet the minimum occupancy requirement in the Ontario Building Code could not practically be expanded. Alternatively, Tarion established an internal working group to develop an extended warranty to protect homebuyers for unfinished items in their homes. The working group recommended:</p> <ul style="list-style-type: none"> extending the one-year, two-year and seven-year warranties for an item that is missing or incomplete on the date of possession; and starting the extended warranties on the date on which the item is completed by the builder, or on the last possible date the builder could have made a repair. <p>A consultation was completed to seek public input from stakeholder groups on the new extended warranty for unfinished items at the time of possession. At the time of our follow-up, Tarion was in the process of reviewing input received from stakeholders through its public consultation. Tarion plans to implement the extended warranty for unfinished items in December 2022.</p>
<p>Recommendation 5</p> <p>The Standing Committee on Public Accounts recommends that Tarion Warranty Corporation increase the maximum limit of \$300,000 paid to homeowners when builders do not honour their warranty, to better reflect the costs of home construction in Ontario.</p> <p>Status: In the process of being implemented by December 2022.</p>	<p>In 2021, Tarion conducted a jurisdictional review of all warranty programs across Canada to benchmark the \$300,000 maximum against what is offered in other jurisdictions. Tarion also engaged a third party to provide the average construction costs for homes in Ontario to compare a rebuild cost to the warranty maximum. Tarion has developed recommendations for potential changes to the maximum and plans to conduct public consultation by the end of 2021, with changes to be implemented by December 2022.</p>
<p>Recommendation 6</p> <p>The Standing Committee on Public Accounts recommends that Tarion Warranty Corporation:</p> <ul style="list-style-type: none"> specify what evidence must be submitted by builders to justify exempting inspection results from Tarion's licensing decisions; Status: Fully implemented. verify with homeowners any allegations made against them by builders in all cases before approving the exemption of an inspection from a licensing decision; Status: Fully implemented. review and update current policies to provide more guidance to inspectors for making decisions on exemptions, and require that they document their decision; Status: Fully implemented. 	<p>In our 2019 audit, we found that Tarion did not always factor a builder's record of poor warranty service into its licensing decisions. Tarion found that builders did not honour their homeowner warranty in about two-thirds, or 4,133 of its 6,485 warranty-dispute decisions between 2014 and 2018, but factored into its licensing decisions only half of these 4,133 cases. Tarion excluded the other 2,033 cases because builders alleged that homeowners prevented them from honouring their warranty. However, we found that Tarion was exempting the inspection from consideration in its licensing decision based only on information provided by the builder, without verifying the builder's explanation directly with the homeowner, as required by Tarion's own policy.</p> <p>In our follow-up, we found that as of May 2020, Tarion updated its policy to clearly specify what evidence builders must submit to apply for exemptions in licensing decisions. This policy is used by inspectors when making decisions on exemptions. Builders are now required to provide evidence to Tarion if an exemption is to be granted. For example, if a builder is requesting an exemption because a homeowner denied access to their home to repair a defect, the builder must provide correspondence with the homeowner to prove that access was denied. Tarion told us that it will then verify any evidence obtained from the builder with the homeowner.</p>

Committee Recommendation	Status Details
<ul style="list-style-type: none"> publicly report the number of times each year that approval was given to exempt inspection results from licensing decisions. <p>Status: Fully implemented.</p>	<p>In addition, Tarion, as part of its policy, performs monthly audits of all cases where an exemption was applied to a builder to ensure Tarion's policy is being followed. Any discrepancies with the policy are presented to Tarion's senior management on a monthly basis for further action.</p> <p>We also found that effective April 1, 2020, Tarion updated its website to publicly report on the number of times each year that approval is given by Tarion to exempt inspection results against each builder's record. Up until February 1, 2021, Tarion was responsible for licensing builders. The government designated the Home Construction Regulatory Authority (HCRA) to regulate homebuilders. Upon their designation on February 1, 2021, the Home Construction Regulatory Authority became responsible for licensing builders.</p>
<p>Recommendation 7</p> <p>The Standing Committee on Public Accounts recommends that Tarion Warranty Corporation strengthen its procedures to consider all data about a builder's past building-quality and warranty performance when deciding whether to grant a future licence.</p> <p>Status: Fully implemented.</p>	<p>In our 2019 audit, we found that for years, Tarion had a policy in place to not factor into its licensing decisions any major structural defects caused by builders, and to not recover from builders the compensation it paid out for those defects. When Tarion licensed a builder, it did not take into consideration the homes with major structural defects that the builder constructed and sold, and the total cost Tarion incurred to resolve those issues. In July 2012, Tarion changed its policy to begin including such homes in builders' licensing decisions, but only if the house was sold after July 2012. Even with this policy change, Tarion still does not factor into its licensing decisions the fact that a home with major structural defects was constructed and sold if the builder resolves the defects.</p> <p>In our follow-up, we found that in April 2020, Tarion implemented a new policy to broaden its review of a builder's past performance for licensing decisions. The new policy requires Tarion to consider in its review the total number of defects caused by builders, the severity and the type of warranted defects.</p>
<p>Recommendation 8</p> <p>The Standing Committee on Public Accounts recommends that Tarion Warranty Corporation:</p> <ul style="list-style-type: none"> identify the best available external evidence (e.g., financial statements, promissory notes) that builders should provide when applying for a licence to establish that they have the financial means to complete proposed projects and honour their warranty obligations; <p>Status: Fully implemented.</p>	<p>In our 2019 audit, we found that Tarion licensed builders without obtaining evidence to confirm that they have access to the financial resources necessary to complete proposed projects and cover the potential costs of their warranty obligations. More specifically, licence applicants were not required to submit to Tarion any specific documents, for instance a letter from a financial institution, which would confirm they have access to financial resources.</p> <p>In our follow-up, we found that in February 2020, Tarion conducted an internal analysis to determine what evidence could be used to assess a builder's financial means. As a result of the review, Tarion revised its policy to require a letter of intent from a financial institution for most new condominium builders. A letter of intent is a declaration from the lending institution that a preliminary commitment has been made to provide funding for the proposed construction project. Tarion's revised policy states that if Tarion identifies risks with the builder, such as rapid expansion from the initial project proposed, a letter of intent may be requested from experienced condominium builders. We noted that a letter of intent is not being required for new or experienced builders of freehold homes; however, Tarion's revised policy states that if the construction project is found to be larger in scope than what was initially proposed, a letter of intent would be required.</p>

Committee Recommendation	Status Details
<ul style="list-style-type: none"> review all reasons leading to the cancellation of construction projects and factor these reasons into future licensing decisions; <p>Status: Fully implemented.</p> <ul style="list-style-type: none"> always collect and review the required external evidence from builders before making a licensing decision. <p>Status: Fully implemented.</p>	<p>In our 2019 audit, we found that between 2009 and 2018, builders in Ontario cancelled 460 condominium projects accounting for about 33,850 units. We were unable to determine how many of these projects were cancelled for financial reasons because Tarion did not previously collect that information. Tarion began asking builders for reasons and supporting documents for cancelling condominium projects only in 2018, and as a result, it could not factor this information into licensing decisions when approving a builder for new construction projects.</p> <p>In our follow-up, we found that Tarion has continued to collect information from builders on reasons for cancelling condominium projects since 2018. Since January 2018, 51 condominium projects were cancelled. From collecting information from builders, Tarion found that about 45% were cancelled due to the inability to achieve satisfactory financing, 21% due to the inability to meet the required sale threshold, and 18% were cancelled due to zoning/municipal approval delays. With the tracking of this information in its information system, Tarion now plans to use this information when evaluating the risk of future projects proposed by these builders. As of February 2021, responsibility for assessing the conduct of home builders was transferred to the Home Construction Regulatory Authority, which is now responsible for licensing new home builders. Tarion retains the authority to approve construction projects.</p>
<p>Recommendation 9</p> <p>The Standing Committee on Public Accounts recommends that Tarion Warranty Corporation:</p> <ul style="list-style-type: none"> establish and release publicly a builder code of conduct that clearly defines actions and behaviours by builders that would constitute dishonest conduct and/or lack of ethics and integrity; <p>Status: Fully implemented.</p> <ul style="list-style-type: none"> establish clear consequences for builders who breach the code of conduct; <p>Status: Fully implemented.</p> <ul style="list-style-type: none"> commit sufficient staff resources to initiate and complete investigations into all homeowners' complaints against builders on a timely basis; <p>Status: Fully implemented.</p>	<p>In our 2019 audit, we found that about 80% of investigations into complaints against builders resulted in no action taken against the builder. We found that Tarion did not consider the seriousness of these allegations when it renewed builders' licences; nor had it established a builders' code of conduct to define the actions and behaviours that would constitute dishonest conduct and lack of integrity. As a result, it was difficult for Tarion to verify whether the allegations were founded. Tarion staff who conducted these investigations told us that it was difficult to determine when builders acted dishonestly or without integrity because Tarion had no code of conduct to define these terms.</p> <p>In our follow-up, we found that this action item was assigned to the Home Construction Regulatory Authority (HCRA) for implementation. The Home Construction Regulatory Authority issued a guide called "Good Conduct for New Home Builders" and published the guide on its website. The guide was updated in July 2021 to reflect the introduction of an enforceable Code of Ethics regulation and expectations for good conduct along with potential actions that can be taken for any builder found not following the code of conduct. For example, the guide explains that if a builder is found to not have reasonably met the expectations of good conduct, HCRA may refer an issue to the discipline committee, or in severe cases, issue a Notice of Proposal to refuse, suspend or revoke a licence or impose conditions on a licence.</p> <p>In our 2019 audit, we found that as of June 30, 2019, there was a backlog of 41 complaints received in the five-year period from 2014 to 2018 that had not been investigated. All complaints were outstanding for more than six months, with some dating back to early 2017. Tarion told us that the backlog was due to limited staffing resources.</p> <p>In our follow-up, we found that the backlog of 41 complaints was cleared.</p>

Committee Recommendation	Status Details
<ul style="list-style-type: none"> take into account important, relevant information confirmed through investigations (e.g., criminal record, convictions, bankruptcy, history of illegal building, information from other jurisdictions) in re-licensing decisions for builder code-of-conduct violations. <p>Status: Fully implemented.</p>	<p>In our 2019 audit, we found that when allegations of inappropriate behaviour by builders were not investigated on a timely basis, this information was not available to be considered in renewing a builder's licence to put up new homes.</p> <p>In our follow-up, we found that the responsibility of investigating complaints against builders was transferred to the Home Construction Regulatory Authority in February 2021. Using a newly established guide for builder conduct, the Home Construction Regulatory Authority told us that it ensures investigations into any complaints against builders are conducted on a timely basis in order to ensure that this information can be available for consideration in renewing a builder's licence.</p>
<p>Recommendation 10</p> <p>The Standing Committee on Public Accounts recommends that Tarion Warranty Corporation:</p> <ul style="list-style-type: none"> establish clear and specific criteria to help determine when a builder's licence should be restricted or revoked for Code violations; <p>Status: Fully implemented.</p> <ul style="list-style-type: none"> implement a risk-based inspection process to inspect homes for compliance with the Code during construction. <p>Status: Fully implemented.</p>	<p>In our 2019 audit, we found that Tarion had not established clear and specific criteria to determine how many Building Code violations have to occur before a builder's licence is revoked or restricted.</p> <p>In our follow-up, we found that in April 2020, Tarion revised its policy to include clear criteria that can be used to determine whether a builder's licence should be restricted or revoked for Code violations. For example, if Tarion finds that a builder had Code violations that do not pose a significant risk to health and safety, a warning letter will be issued. If Code violations are found to pose a minor risk to health and safety and a warning letter was issued in the past, a restriction on the builder's licence will be imposed. Lastly, if Code violations pose a significant risk to health and safety and the builder is unwilling or unable to correct them, the builder will face a licence revocation. The responsibility of applying this policy was transferred to the Home Construction Regulatory Authority in February 2021.</p> <p>In our 2019 audit, we found that under the <i>Ontario New Home Warranties Plan Act</i>, Tarion could inspect houses and townhouses at the time of construction to assess whether builders are following the Code. Tarion could therefore make compliance with the Code a licensing requirement for builders and conduct risk-based inspections of homes built by those who have had Code violations in the past. However, historically, Tarion did not do these types of risk-based inspections.</p> <p>In our follow-up, we found that Tarion took steps to implement a process to inspect houses and townhouses at the time of construction to assess whether builders are in compliance with the Code using a risk-based approach. In 2020, Tarion identified 30 builders with recent Code violations. Tarion found that 13 of the 30 builders had no new construction projects to inspect. Tarion staff conducted inspections of six builders and identified no significant risks during the inspection. Due to COVID restrictions in 2020, the remaining 11 builders were inspected in 2021.</p>

Committee Recommendation	Status Details
<p>Recommendation 11</p> <p>The Standing Committee on Public Accounts recommends that Tarion Warranty Corporation add the following information about each licensed builder, in clear and easy-to-understand language, to the Ontario Builder Directory:</p> <ul style="list-style-type: none"> • all results of Tarion Warranty Corporation investigations that found the builder's behaviour lacked honesty and integrity; Status: Fully Implemented. • past convictions for illegal building activities; Status: Fully implemented. • the number and percentage of homes with major structural defects that a builder constructed each year; Status: Fully implemented. • the amount of money a builder paid or owed to Tarion Warranty Corporation; Status: Fully implemented. • the number of defects under warranty that a builder refused to repair; Status: Fully implemented. • the number of defects the builder refused to repair that were due to the builder's noncompliance with the Ontario Building Code; Status: Fully implemented. • cancellation of projects and reasons for the cancellation. Status: Little or no progress. 	<p>In our 2019 audit, we found that the Ontario Builder Directory (Directory), compiled by Tarion for public use, was missing information that could help prospective homebuyers make a more informed choice when selecting a builder. Tarion did not include in the Directory the results of Tarion investigations that found the builder's behaviour lacked honesty and integrity.</p> <p>In our follow-up, we found that the Home Construction Regulatory Authority is in the process of updating the Directory to include investigation results related to lack of honesty and integrity.</p> <p>In our 2019 audit, we found that the Ontario Builder Directory, compiled by Tarion for public use, did not include past convictions for illegal building activities.</p> <p>In our follow-up, we found that the Directory had been updated to include charges and convictions related to illegal building activities.</p> <p>In our 2019 audit, we found that the Ontario Builder Directory, compiled by Tarion for public use, did not include the number and percentage of homes a builder constructed with major structural defects.</p> <p>In our follow-up, we found that the Directory had been updated to include information on major structural defects.</p> <p>In our 2019 audit, we found that the Ontario Builder Directory, compiled by Tarion for public use, did not include the amount of money a builder owes to Tarion that remains unpaid for costs that Tarion paid to homeowners when builders did not honour their warranty responsibilities.</p> <p>In our follow-up, we found that the Directory had been updated to include amounts remaining unpaid to Tarion by the builders.</p> <p>In our 2019 audit, we found that the Ontario Builder Directory, compiled by Tarion for public use, did not include the number of defects under warranty that a builder refused to repair.</p> <p>In our follow-up, we found that the Directory had been updated to include information on defects that a builder refused to repair.</p> <p>In our 2019 audit, we found that the Ontario Builder Directory, compiled by Tarion for public use, did not include the number of defects the builder refused to repair that were due to the builder's non-compliance with the Ontario Building Code.</p> <p>In our follow-up, we found that the Directory had been updated to include information on Ontario Building Code defects that the builder refused to repair.</p> <p>In our follow-up, the Ministry informed us that it will be working with the Home Construction Regulatory Authority to assess this recommendation and provide an update in 2022.</p>

Committee Recommendation	Status Details
<p>Recommendation 12</p> <p>The Standing Committee on Public Accounts recommends that the Ministry of Government and Consumer Services:</p> <ul style="list-style-type: none"> provide Tarion Warranty Corporation with the ability to directly fine any individuals and/or corporations found to have engaged in illegal home construction; <p>Status: In the process of being implemented by January 2023.</p> <ul style="list-style-type: none"> establish an appeal process for individuals and/or corporations wishing to dispute the fines imposed by Tarion Warranty Corporation; <p>Status: In the process of being implemented by January 2023.</p> <ul style="list-style-type: none"> establish a process by which Tarion Warranty Corporation can share information about illegal builders to governments (municipal, provincial, and federal) for investigation of potential tax evasion. <p>Status: Little or no progress.</p>	<p>In our 2019 audit, we found that in the past 10 years, Tarion has paid out \$19.8 million to homeowners to cover the cost of warranty repairs on 869 illegally built homes that builders refused to cover. We also found that it is very difficult and time-consuming for Tarion to successfully prosecute an illegal builder through the courts because it is a challenge to gather sufficient evidence to convict them. Even when Tarion does obtain a successful conviction, an illegal builder usually faces low fines that do not provide a strong deterrent.</p> <p>In our follow-up we found that sections 75 to 79 of the <i>New Home Construction Licensing Act, 2017</i> provide the Home Construction Regulatory Authority with the ability to implement administrative penalties. However, these sections of the <i>New Home Construction Licensing Act</i> have not been proclaimed. The Ministry of Government and Consumer Services is working with the Home Construction Regulatory Authority to develop a regulation to implement administrative penalties. Once the regulation has been drafted, the Ministry would publicly consult on the proposal to seek approval from the government to proclaim sections 75 to 79 of the <i>New Home Construction Licensing Act</i>.</p> <p>Implementation of this action item is dependent on the implementation of administrative penalties. The Home Construction Regulatory Authority has yet to develop a mechanism to fine any individuals and/or corporations found to have engaged in illegal home construction, along with an appeals process.</p> <p>In our audit in 2019, we found that there are significant financial incentives to build homes illegally. Builders avoid paying Tarion fees and, sometimes, a significant amount of tax, including HST and, under the principal residence capital gains tax exemption, income tax. All of these costs apply to the sales of new homes, built and sold by legal builders.</p> <p>In our follow-up, we noted that the Ministry of Government and Consumer Services is working with the Ministry of Finance to establish a process so that Tarion and the Home Construction Regulatory Authority can share illegal building information with the Ministry of Finance. The Ministry of Government and Consumer Services is in the process of reviewing privacy legislations to ensure information sharing is consistent with the <i>Freedom of Information and Protection of Privacy Act</i> and other privacy legislation.</p>
<p>Recommendation 13</p> <p>The Standing Committee on Public Accounts recommends that Tarion Warranty Corporation:</p> <ul style="list-style-type: none"> procure a case-management system to increase staff efficiency on investigations into illegal building activities; <p>Status: Fully implemented.</p>	<p>In our 2019 audit, we found that there was no dedicated case-management system, which would help with the planning, prioritizing and tracking of investigations. Instead, staff must enter data into four different systems to document their work, which was time-consuming and inefficient.</p> <p>In our follow-up, we found that the Home Construction Regulatory Authority has implemented a new Customer Relations Management (CRM) System to facilitate compliance and investigations activities.</p>

Committee Recommendation	Status Details
<ul style="list-style-type: none"> commit the necessary staff resources to eliminate the backlog of investigations by the end of the 2020/21 fiscal year. Status: Fully implemented. 	<p>In our 2019 audit, we found that, as of June 30, 2019, Tarion had a backlog of 139 tips that it had not yet investigated, the majority of which (107) were received between 2018 and 2019. Of the remainder, four tips were from 2016 and 28 from 2017. Tarion had classified 24 of them as high priority, because they related to more than one illegally built home. Four more involved repeat offenders.</p> <p>In our follow-up, we noted that Tarion had eliminated the backlog.</p>
<p>Recommendation 14</p> <p>The Standing Committee on Public Accounts recommends that the Ministry of Government and Consumer Services:</p> <ul style="list-style-type: none"> consider requiring, in statute, a binding agreement between Tarion and the Ministry that sets out Tarion Warranty Corporation's accountability; Status: Fully implemented. establish a process to track and analyze information provided by Tarion Warranty Corporation; Status: In the process of being implemented by December 2021. establish performance indicators and targets to measure Tarion Warranty Corporation's performance; Status: Little or no progress. assess Tarion Warranty Corporation's performance against these targets on a regular basis and take corrective actions where necessary. Status: Little or no progress. 	<p>In our 2019 audit, we found that there was no statutory requirement for an agreement between the Ministry of Government and Consumer Services and Tarion to set out the accountability relationship and the respective authorities and responsibilities of the two parties, as there was with most other administrative authorities and the Minister.</p> <p>In our follow-up, we noted that the government passed legislative changes that require Tarion to sign a binding administrative agreement with the Minister. Tarion and the Minister entered into a new Administrative Agreement on February 26, 2021.</p> <p>In our audit in 2019, we found that the Ministry of Government and Consumer Services could not effectively evaluate whether Tarion was fulfilling its mandate and could not make informed decisions to seek improvements because it did not have effective systems and processes to ensure it collected the right information from Tarion.</p> <p>In our follow-up, we noted that the Ministry of Government and Consumer Services developed preliminary recommendations for enhancing the key operating statistics that Tarion reports to the Ministry. Once the metrics are finalized, a formal business process and protocol is to be developed for the Ministry to track and analyze data provided by Tarion.</p> <p>As mentioned above, the Ministry of Government and Consumer Services is in the process of developing appropriate performance measures, targets and assessment approaches.</p> <p>This recommendation will be implemented once the Ministry of Government and Consumer Services has identified appropriate performance measures, targets and assessment approaches.</p>
<p>Recommendation 15</p> <p>The Standing Committee on Public Accounts recommends that Tarion Warranty Corporation should require staff who perform home inspections to obtain the Ontario Building Code certification or a professional equivalent including the necessary training, background, and understanding to ensure that inspections involving possible violations of the Ontario Building Code are conducted appropriately. Status: Fully implemented.</p>	<p>In our audit in 2019, we found that some Tarion staff assigned to assist homeowners in resolving their warranty disputes did not have the appropriate qualifications. At the time of our audit, we found that only 16 of Tarion's 51 inspection staff had the Code certification, and Tarion had no process to ensure that qualified staff always perform the more complex inspections, which are more likely to relate to non-compliance with the Code.</p> <p>In our follow-up, we found that Tarion implemented a policy and training that ensures all potential Ontario Building Code issues are reviewed by Ontario Building Code qualified persons before a final assessment is made. In addition, Tarion also hired two directors with an in-depth understanding of the Ontario Building Code to oversee the inspection program.</p>

Committee Recommendation	Status Details
<p>Recommendation 16</p> <p>The Standing Committee on Public Accounts recommends that Tarion Warranty Corporation:</p> <ul style="list-style-type: none"> review and revise the key performance indicators it uses in the corporate performance scorecard to reflect its mandate of regulating builders and assisting homeowners with warranty disputes; Status: Fully implemented. undertake a review to assess the current bonus pay method to determine whether it is consistent with public-sector practices, and adjust it accordingly. Status: Fully implemented. 	<p>In our 2019 audit, we found that five of the 11 key performance indicators used in the corporate performance scorecard incentivized Tarion to maximize profit and minimize expenses, which can have the unintended consequence of keeping claims payouts to a minimum. Tarion's compensation policies for senior executives appeared misaligned with the spirit and intent of the <i>Ontario New Home Warranties Plan Act</i>, which is to regulate builders and assist homeowners with warranty disputes.</p> <p>In our follow-up, we found that Tarion delinked all key performance indicators related to financial measures from its incentive plan. In addition, Tarion also included more performance indicators to measure Tarion's services to consumers, such as call response time in the Call Centre, timeliness of inspections, and issuance of Warranty Assessment Reports within established time frames.</p> <p>In our 2019 audit, we found that Vice Presidents and higher could earn bonuses worth 30% to 60% of their annual salaries, and that senior management accounted for one-third of the \$2 million paid in bonuses in 2018.</p> <p>In our follow-up, we found that Tarion adjusted the compensation of its executive team members following a compensation study undertaken by a consultant it retained in January 2020. According to the new compensation structure, the maximum amount of bonus a senior management team member can earn is 30% of their annual salary. The recent changes to the compensation are expected to yield a savings of about \$700,000 per year.</p>
<p>Recommendation 17</p> <p>The Standing Committee on Public Accounts recommends that Tarion incorporate their financial statements in their public annual report, including an extensive quantitative and qualitative analysis that should include, but not be limited to, operations, compensation, legal expenses including and delineating those incurred with respect to homebuyer appeals, discussion of the reserve fund and claims, rationale and a trend analysis on this information.</p> <p>Status: In the process of being implemented by December 2022.</p>	<p>Tarion accepts this recommendation and has taken steps to add full audited financial statements and more qualitative analysis on its operations to its 2020 public annual report. In its 2021 public annual report, Tarion plans to include more information on legal expenses. Tarion will take steps to ensure this information is incorporated into all future annual reports going forward.</p>
<p>Recommendation 18</p> <p>The Standing Committee on Public Accounts recommends that Tarion should base its executive compensation on a reasonable industry standard that is based on the compensation paid by comparable organizations.</p> <p>Status: Fully implemented.</p>	<p>In our follow-up, we found that Tarion evaluated the executive compensation structure and made changes to align it with comparable organizations, including public-sector organizations.</p> <p>Tarion also reduced the number of executives by three and reduced the compensation of the CEO and other executives. Executive bonus pay has also been lowered from the range of 30–60%, as identified in the audit report, to 15-30%.</p>