



The Empire Club Presents

**THE HONOURABLE TRACY
MACCHARLES, MINISTER OF
GOVERNMENT AND CONSUMER
SERVICES**

with

**CONSUMER PROTECTION, NEW
HOMES, AND THE HOMEBUILDING
INDUSTRY**

March 28, 2017

**Welcome Address, by Colin Lynch, Vice President,
Strategy Growth – Executive Office at Greystone
Managed Investments and First Vice President of the
Empire Club**

Good afternoon, ladies and gentlemen. From the Delta Hotel in downtown Toronto, welcome, to the 113th season of the Empire Club of Canada. For those of you just joining us through either our webcast or our podcast, welcome to the meeting.

Before our distinguished speaker is introduced, today, it gives me great pleasure to introduce our Head Table Guests. I would ask each guest to rise for a brief moment and be seated as your name is called. At this point, I would typically ask the audience to refrain from applauding until all Head Table Guests have been introduced, but I know from experience, nobody ever respects that request, so feel free to applaud as I introduce each guest.

HEAD TABLE

Distinguished Guest Speaker:

The Honourable Tracy MacCharles, Minister of Government and Consumer Services

Guests:

Mr. Ettore Cardarelli, President, Ontario Real Estate Association

Mr. Thomas Chanzy, Vice President, Public Affairs, Ontario Trillium Foundation; Director, Empire Club of Canada

Ms. Angela Coke, Deputy Minister, Ministry of Government and Consumer Services; Chair, Public Service Commission

Mr. John Oddi, Chair, Government Relations Committee, Ontario Real Estate Association

Ms. MJ Perry, Vice President and Owner, Mr. Discount Ltd.; Director, Empire Club of Canada

Mr. Neil Rodgers, President, Ontario Home Builders Association; Executive Vice President, Acquisitions, Tribute Communities

My name is Colin Lynch. I am the Senior Vice President of Strategy and Growth at Greystone Strategy Investments and the First Vice President of the Empire Club of Canada. Ladies and gentlemen, this is your Head Table, today.

In my several roles in life, I have been afforded the privilege of meeting many people. Most of us are born with high school dreams, do something that our childhood self saw as cool, and some of us have the opportunity to realize those dreams. Others devote their lives to building enterprise in the hopes of leaving a financial legacy for their families or obtaining a lifestyle that was unattainable to their parents and grandparents. Yet, others of us aspire to impact hundreds, thousands or even hundreds of thousands of lives in a direct or indirect way. All three groups are relevant to our speaker today.

Those of us fortunate to achieve our childhood dreams, did it in some way, with the assistance of the government, whether federal, provincial or municipal. For some of us, we were inspired by teachers; others had parents who moved to our province and took advantage of a framework that provided them with access to healthcare, public transit, social housing, and the list goes on and on. Others of us devote our lives to building enterprise. We do it in one of the most peaceful, stable, equitable and prosperous societies in the world, as measured by a range of statistics from education achievement to literacy, et cetera.

Others of us seek to leave a direct and positive im-

pact on many lives. Our guest is a distinguished member of that group. As Minister, she is at the helm of an agency that delivers a broad array of programs, services and products ranging from health cards, driver's licenses to birth certificates. Most of her 4,000+ employees are the customer service ambassadors of the government. They deliver documents; they enable access; they simplify complexity. In short, they improve our lives.

Minister MacCharles is an inspiring person, not simply because of the role she now plays. She entered public life as an expert in human resources management, serving as vice president of HR at Manulife Financial for the Corporate and IT Services Divisions, and as a founder of her own human resources practice, focused on health-care, education, human rights, discrimination prevention and business effectiveness. More than that, she has served as an active volunteer in several charities and has been a champion for disability advocacy as the former Chair of the Ontario Accessibility Standards Council.

It is, indeed, a pleasure and a delight, today, to welcome the Honourable Tracy MacCharles to the podium.

The Honourable Tracy MacCharles

Good afternoon, everyone. Thank you, Colin, for that kind introduction. As always, I would like to acknowledge that we are gathered on the traditional territory of the Mississaugas of the New Credit First Nation. Just to put in a little

plug for Durham Region: It is great to see so many builders and developers here from the region that I live in, and it is great to see all of you here today.

As you know, I am here to talk to you about our government's commitment to consumer protection and to support a fair, transparent and competitive marketplace where businesses can thrive. I have recently taken on the role of Ontario's Minister of Government and Consumer Services, and, in a sense, I have returned to my roots. My very first job out of university was as a management intern in the former Ministry of Government Services, and my first job as a minister was as Minister of Consumer Services, in 2013 and 2014.

Being back at the combined Ministry of Government and Consumer Services feels a bit like coming home. The issues that the Ministry focuses on are ones I care deeply about. My ministry touches the lives of the 13 million people who call this province home in both far-reaching and everyday kinds of ways. Whether someone is applying for a birth certificate, as Colin said, buying a house or a car, receiving a health card, going fishing or accessing a range of business services, Ministry of Government and Consumer Services is their go-to ministry.

We are very focused on making people's lives better by strengthening consumer protection, supporting a fair and transparent marketplace, making it easier for people in their everyday lives and reducing the administrative burden

on businesses. Part of this work means we occasionally have to review, take stock and find ways to do better and move forward.

Our vision is to have the strongest consumer protection laws in Canada, and to ensure they are delivered in a way that makes people's lives better. Achieving this means at times we have to take a hard look at specific areas of consumer protection where, frankly, we could be doing better, where we have to do better because it is what people expect and deserve.

Part of our government's larger vision of being a leading jurisdiction for consumer protection, includes our commitment to protecting the investments of Ontario families in newly built homes. I have heard many voices among consumers, the media, the legislature, of course, the industry, talking about the warranty and dispute resolution process in the new home building sector. The Tarion Warranty Corporation, or Tarion, as we call it, oversees the program for newly built homes in Ontario as well as regulates new home builders in the province.

Let me underscore that a new home building industry in Ontario produces very high-quality housing and the vast majority of purchasers are pleased with their purchases and are very happy to call them their homes.

I always try to keep in mind that buying a house is the largest investment in most people's lives, and it is so important to them. It is so much more than that, of course.

It is a home to shelter those they love, where they will create memories with family and friends and build a secure future. Buying a home is a fulfilment of a dream. It is concerning, of course, when my ministry, my office, my MPP, colleagues receive emails, letters or calls from people who dream of owning a home, and that dream turns out to be something less or, in some cases, even a nightmare, and they do not know where to turn.

Here is one example from a single mother who said, "The experience of purchasing my first home was supposed to be an exciting and happy time in my life for me. Instead, it has been plagued with problems and has left me incredibly distressed." As I have mentioned, a strong commitment to consumer protection requires us to review policies from time to time, to determine how we can make things better. That is why in late 2015, the Honourable John Douglas Cunningham was appointed by our government to conduct a public and independent review of the Ontario New Home Warranties Plan Act and Tarion. Justice Cunningham completed a very comprehensive view, meeting with over 200 individuals, homeowners and industry professionals from across Ontario who have had a range of experiences dealing with Tarion and the Act. These consultations included builders, condominium boards, engineers, home inspectors, consumer advocacy groups, real estate professionals, lawyers and subject matter experts. During consultations with homeowners, the perception of the participant was often

that Tarion unduly favoured builders. Funded by builders, they clearly operate from a position and the very definition of conflict of interest. This was a common sentiment received by Justice Cunningham.

When builders were the focus of the consultations, particularly the smaller builders, they expressed concern that Tarion favoured homeowners. Here is an example shared by a builder: “I am only looking to be treated fairly. In the honesty of my heart, I do not think I am liable for any of these repairs. Tarion did a poor job of guiding me through this process.”

I have been in politics just long enough, I think, to know that when you have both sides a little bit upset with you, that you have probably found a balanced solution to the demands. That is what we often say in policy development and government. In this case, that is not good enough. It is not good enough here. We need *all* the stakeholders in the home building and home buying business on side with a credible and satisfying home warranty model. It is clear we have our work cut out for us.

I believe that the conflicting perceptions homeowners and builders have of Tarion are rooted in the structure and all-encompassing mandate of Tarion that dates back no less than 40 years. Tarion was one of the province’s early attempts, using the delegated administrative authority model, to oversee and regulate the sector. At the time, the Ontario Home Builders’ Association offered their own new

home warranty, and the government determined that warranty protection should be mandatory for all new homes, and the Ontario New Home Warranties Plan Act was born.

Tarion was given multiple roles and responsibilities, including administering the Warranty Plan and guarantee fund, setting many of the terms of the warranty, adjudicating disputes between homeowners and builders, and regulating builders and vendors. If we were doing this, this year in 2017, would we do it differently? The short answer is yes. Benchmarks for modern governance, transparency, accountability and oversight have evolved over the past 40 years in all kinds of sectors. The size and complexity of the building industry have also changed dramatically since Tarion was conceived in 1976 as an independent, not-for-profit corporation. For example, about 50% of new homes built today are condominium units. The sector is changing and evolving.

I want to commend Tarion for the commitment they have made to continuous improvement over the years. They have made important and significant changes, and I want to thank Howard and the team for being here today.

These changes have not been able to overcome some of the structural changes with the organization’s multiple functions I mentioned earlier, that of being a rule-maker, a regulator, a warranty provider and an adjudicator. If we were doing this in 2017, would we give the organization all these multiple roles? The short answer is no. Why? As

Justice Cunningham noted in his final report, Tarion's multiple roles and responsibilities can give rise to a perception of conflict of interests and could result in an actual conflict or conflicts of interest. In other words, the very structure of Tarion lends itself to the perception of conflict of interest. We have been stuck with these structural challenges since the Conservative government of the day set them up.

Tarion's multiple-focus model is unique in Canada and can be confusing and frustrating for both owners of newly built homes and for the builders as well. Just a bit about Tarion and the numbers—this will be very familiar to many of you, but it may be new information to others. The value of the guarantee fund that Tarion administers that backs up the warranty plan sits at about \$495 million. There are over 365,000 new homes in Ontario covered by warranty protection. I am going to use the year 2015 to provide you with a brief statistical snapshot of the claims and dispute resolution process. In that year, Tarion received about 56,000 claim forms, and about 10% of these led to conciliation requests for homeowners. About a quarter of these requests resulted in a warranty decision by Tarion. That means the remainder were resolved between the homeowner and builders or vendors. Of the homeowners who went through conciliation, almost half were dissatisfied with Tarion's service during the process. In 2015, Tarion paid out \$11.6 million on a total of 522 homes, including condominium units. That is less than 1% of the total number of homes under warranty

that year. Eighty-two warranty decisions made by Tarion were appealed to the Licence Appeal Tribunal, also known as LAT, and 16 LAT decisions were issued in 2015. We do not know how many warranty matters were dealt with in the courts.

Over the past decade, Tarion has paid out over \$136 million in warranty claims to homeowners. Improvements have been made over the years to better address the concern of homeowners. I know a number of these measures were taken when I was the Minister of Consumer Services in 2013, and they included things like doubling the maximum paid out per home by the guarantee fund. Actually, that was before me—2006. The amount was doubled from \$150,000 to \$300,000, and Tarion established the Home Buyer Ombudsperson Office in 2008. I know they took other measures to enhance information sharing and transparency.

Overall, the reality is that the statute governing Tarion has remained virtually unchanged in 40 years, and this is out of step with the times. Unlike other administrative authorities—and we have many of them; I think Dave Collier is here from the Electrical Safety Authority, and they are representing one of several Delegated Administrative Authorities (DAAs) in the province. Unlike those other DAAs, Tarion has authority to make by-laws that are deemed to be regulations, and they do not require approval from the Ministry. The Ministry does, however, receive advanced notice of proposed new regulations and is given opportunity

to comment.

I want to thank Justice Cunningham for his thorough and insightful report. The report, along with related Ministry work, has led our government to plan to improve consumer protection for owners and new home builders and to plan a way forward to delivering simple, easy and transparent solutions, so consumers can confidently buy newly built homes in Ontario. A robust plan provides consumers with a fair and equitable system to manage any concerns if they discover a problem in the construction of their new home, an approach that increases consumer confidence in the warranty program by introducing them to modern governance, transparency, accountability and oversight measures.

Tarion is too far removed from government. Its unique structure does not give my Ministry the same oversight tools that it has for other administrative authorities. Our plan involves moving responsibility for setting warranty terms from Tarion to government. We believe that consumers can be better protected by giving government the lead in making rules and setting standards. It is also important to separate the delivery of the warranty program for new homes from the regulation of the builders and vendors. Having the warranty program separate from the regulator could help to deliver fair and more equitable protection for both consumers and builders.

I believe that separating these functions will allow

each to focus on their efforts on delivering their respective mandates. It would give consumers greater confidence in the New Home Warranty Plan. The new home building sector is an important driver of Ontario's economy and, quite frankly, I believe it deserves a standalone regulator. It should also support the quality of new home construction.

The new approach of separating functions is a win-win scenario for both consumers and builders and for Tarion as well. This would solve many of the problems, both real and the perceived ones that we have heard so much about. In addition, we want to make the dispute resolution process easier for homeowners. I have heard of homeowners having to diagnose their own home defects and to have to provide the evidence. As Justice Cunningham noted in his report, the average homeowner is not a technical expert in new home construction. We are committed to creating a more level playing field where what is required of homeowners in the dispute resolution process is clearly spelled out. For example, we believe a homeowner should only have to establish credible symptoms of a defect, but should not have to prove the cause of that defect.

I now want to tell you about a step we are taking to immediately strengthen consumer protection. I have asked Tarion to bring new deposit protection measures that better reflect today's home prices and the deposit requirements. Since 2003, the maximum deposit protection for a condominium unit has been \$20,000 and \$40,000 for other new

homes. This has remained changed for about 13 years and that, of course, is back to when there was no Facebook or YouTube. In the meantime, housing prices, particularly in the GTA, have increased dramatically.

At my request, Tarion will be consulting on the expansion of deposit protection with a target implementation date of January 1st, 2018. There will be several options on the table and one important change as well. Right now, deposits on upgrades amenities are not covered by Tarion. They will be under whatever new plan comes out of the pending consultations. These are among the many measures we want to address to enhance protection for owners of newly built homes. The possibility of a multi-provider model, as suggested by Justice Cunningham's report, would, of course, be a significant change. I believe that the plan we are proposing today will solve most of the issues that put moving in that direction on the table. The impacts on cost outcomes would need to be carefully assessed before we took any steps on the topic of a multi-provider model. Same for any other changes I am discussing today.

We are intending to proceed with proposals to implement many of Justice Cunningham's recommendations while we further consider the remaining recommendations. I hope to have a bill in the legislature this fall.

The actions I am announcing today will not increase the price that Ontarians pay for a new home. We know that affordability of housing is something that is top

of mind for people across the province. We see it, I think, in the media every day right now. That is why our government is reviewing all options to help make it more affordable and fair whether you are buying a new home or renting. We look forward to sharing further information on our plans in the weeks to come.

Our overall plan, a new plan to better protect investments in new homes is part of our government's larger vision of becoming a leading jurisdiction for consumer protection that will benefit all Ontarians. One example of that is Bill 59, the Putting Consumers First Act, which has been ordered for third reading and, if passed, it will regulate the home inspection industry to better protect consumers. It will curb door-to-door contracts for certain to-be-prescribed goods and services and reduce the risk to consumers who use alternative financing services, such as payday loans.

In late 2015, action was taken to better protect condo owners by passing the Protecting Condominium Owners Act, 2015, marking the first overhaul of Ontario's condo laws in over 16 years. The Protecting Rewards Points Act was passed late 2016, so that expired reward points based on the passage of time alone will soon be illegal. While this may not seem like a major issue, we have heard from so many people that it has mattered in their everyday lives. We listened, and we took action.

We are also taking action to modernize Ontario's corporate and commercial laws to meet the changing needs

of businesses and help solidify the province's position as a jurisdiction of choice for business. In addition, we are reviewing the Travel Industry Act, 2002, to strengthen consumer protection and reduce burden on business.

We know that Ontarians work really hard, extremely hard, to save up and buy a new home. Some of the highest quality new homes are built by Ontario builders, and many of you are here today, so I thank you for that. We believe both Ontarians, the builders, deserve to be protected by the strongest and fairest of the warranty protection in the business with a regulator whose only focus is regulation. We look forward to working with all the elements of the new home building sector to strengthen an industry that is so important to Ontario's economic vitality, and to ensure that buyers of newly built homes are protected as well as served. Merci. Thank you. Miigwech. Thanks, Neil. Thanks, Colin.

Note of Appreciation, by Neil Rodgers, President of the Ontario Home Builders' Association; Executive Vice President—Acquisitions at Tribute Communities

Thank you. On behalf of our 29 locals across the province of Ontario and the board of directors of the Ontario Home Builders' Association, we are quite pleased to host this event for the Empire Club. I would also like to thank Minister MacCharles for your service and your dedication. You call Durham Region home, as does Tribute Communities.

The OHBA values the relationship with your Ministry and government on a host of policy and regulatory issues that we are currently working hard to solve. We look forward to the continued and strong working relationship and to keeping Ontario's home building and renovation sector extremely strong, so, thank you, Minister.

Concluding Remarks, by Colin Lynch

A sincere thank you to our generous sponsor, the Ontario Home Builders' Association and our VIP reception sponsor, the Ontario Real Estate Association, for making this event possible. Without sponsors like these great companies and organizations, the Empire Club lunches would not be possible. Thank you, once again, for your support.

I would also like to thank the *National Post*, as our print media sponsor, and mediaevents.ca, Canada's online event space for live webcasting today's event to thousands of viewers around the world. Although our club has been around since 1903, we indeed have moved into the 21st century, thankfully, and are active on social media. Please, follow us on Twitter at @Empire_Club and visit us online at empireclub.org. You can also follow us on Facebook, LinkedIn and Instagram, and whatever else you would choose to follow us on.

Finally, please, join us again soon at one of our fantastic upcoming events. We have Kevin O'Leary on April 7th at the Arcadian Court; the Honourable Charles Sousa, Minister of Finance, on April 13th, also at the Arcadian Court; Dr. Eric Hoskins, Minister of Health, on May 29th at the Royal York Hotel.

Thank you for your attendance today. The meeting is now adjourned.