

**CITATION:** 1499469 Ontario Inc. et al v. Tarion Warranty Corporation, 2026 ONSC 2835  
**DIVISIONAL COURT FILE NO.:** DC-25-00000630-0000  
**DATE:** 20260514

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**DIVISIONAL COURT**  
**Matheson, O’Brien, Mandhane JJ.**

|                              |   |                                               |
|------------------------------|---|-----------------------------------------------|
| <b>BETWEEN:</b>              | ) |                                               |
|                              | ) |                                               |
| 1499469 ONTARIO INC.; 498599 | ) | <i>Peter J. Mitchell</i> , for the Appellants |
| ONTARIO LIMITED              | ) |                                               |
|                              | ) |                                               |
|                              | ) |                                               |
|                              | ) |                                               |
| <b>– and –</b>               | ) |                                               |
|                              | ) |                                               |
|                              | ) |                                               |
| TARION WARRANTY CORPORATION  | ) | <i>Alicja Puchta, Martha Coté, David</i>      |
|                              | ) | <i>Outerbridge</i> , for the Respondent       |
|                              | ) |                                               |
|                              | ) | <b>HEARD in Toronto:</b>                      |
|                              | ) | March 09, 2026                                |

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**REASONS FOR DECISION**

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**MANDHANE J.:**

**A. INTRODUCTION**

[1] Every new home vendor and builder (together, “builders”) in Ontario must apply for mandatory new home warranty coverage through Tarion Home Warranty (“Tarion”) for each new home they build: *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31 (“*Warranties Act*”), ss. 10.1, 10.2. This is a dispute between two related builders and Tarion, primarily about the proper interpretation of section 10.3 of the *Warranties Act*, which allows builders/vendors to apply to Tarion for prior determination of whether their proposed housing project qualifies for enrollment in the new home warranty plan (“qualification application”).

[2] The appellants — 1499469 Ontario Inc. (“149”) and 498599 Ontario Ltd. (“498”) — both submitted qualification applications to Tarion that were unsuccessful. Tarion initially granted

498’s application for 16 homes but gave notice of its proposal to revoke it on June 6, 2024. The same day, Tarion also gave notice of its proposal to refuse 149’s qualification application for an additional 12 homes.

[3] In its notices, Tarion referred to s. 10.3(4) of the *Warranties Act*, which provides that it may “consider the past and present financial position or conduct of the applicant” and “interested persons”, as defined s. 1(2) of the *Warranties Act*. In support of its proposals, Tarion noted the following facts:

- 498 was deemed to qualify for enrollment in the warranty plan as of February 1, 2021,
- 498 owed Tarion over \$350,000 for warranty breaches as of June 6, 2024, and despite repeated requests, 498 had failed to indemnify Tarion;
- In several cases, 498 did not make any attempts to repair defects in the warranty process;
- 498 still had outstanding warranty claims against it,
- 498’s poor workmanship — including major structural defects, building code violations, and water penetration — caused the warranty breaches and the outstanding balances,
- 498’s warranty breaches and associated outstanding balance constituted a “material change” and breach of condition under the applicable regulations, and
- 149 and 498 were “interested persons” because Paolo Cusinato directed and controlled both corporations.

[4] In response to the notices, the appellants had the right to request a hearing before the Licence Appeal Tribunal (LAT) under s. 10.6 of the *Warranties Act*, and did so. Tarion had the burden of establishing on a balance of probabilities that it had grounds for proposing to revoke and refuse (respectively for 498 and 149) the qualification applications: *Warranties Act*, s. 10.6(2). After a hearing, the LAT could direct Tarion to carry out its proposed action or substitute any conditions it saw fit: *Warranties Act*, 10.6(8).

[5] After a 12-day hearing, the LAT found that Tarion had proven its reasons for refusing/revoking the appellants’ qualification applications: *1499469 Ontario Inc. and 498599 Ontario Limited v. Tarion Warranty Corporation*, 2025 CanLII 58818 (Ont. L.A.T.) (“LAT Decision”). This effectively halted the appellant’s two proposed housing projects (although it was open to the appellants to reapply).

[6] The appellants appeal the LAT Decision to this court: *License Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sched. G, s. 11(1). First, they argue that the LAT erred in its interpretation of the new home warranty scheme by adopting “construction and warranty service competence”

(together, “competence”) as thresholds for acceptable builder conduct. The parties agree that this is a question of law and that the standard of review is correctness.

[7] Second, the appellants argue that Tarion did not prove that 498 was unable to properly construct homes and service warranties. The parties agree that, to be successful on this ground of appeal the appellants must demonstrate a palpable and overriding error in the LAT’s factual findings.

[8] Finally, the appellants argue that the LAT denied them procedural fairness by issuing reasons that were insufficient.

[9] Tarion asks this court to dismiss the appeal. It says that it was entitled to consider competence when deciding whether to grant/revoke the appellant’s qualification applications, that the LAT’s factual findings were free from error, and that the process the LAT adopted was fair.

[10] To decide this appeal, this Court must answer the following questions:

- Did the LAT err in its interpretation of the new home warranty scheme by considering competence as a threshold for acceptable builder conduct?
- Did the LAT’s findings about the appellant’s competence contain palpable and overriding errors?
- Was the proceeding before the LAT fair?

[11] Based on the answers to these questions, I would dismiss the appeal and order costs in the amount of \$80,000.

#### **B. DID THE LAT ERR IN ITS INTERPRETATION OF THE NEW HOME WARRANTY SCHEME BY ADOPTING COMPETENCE AS A THRESHOLD FOR ACCEPTABLE BUILDER CONDUCT?**

[12] Tarion’s position before the LAT was that 498’s qualification should be revoked because there was a material change in its ability to properly construct homes and service warranties. Tarion further argued that 149’s application should be refused because of 498’s conduct. The appellants’ primary argument before the LAT was that the alleged deficiencies were not properly warrantable such that no grounds to refuse or revoke flowed from Tarion’s decision to remediate them.

[13] In the LAT Decision, the Adjudicator set out the law applicable to qualification applications including requirements under sections 10.1, 10.2, and 10.3 of the *Warranties Act*, as well as the regulatory preconditions in O. Reg. 638/20, *Enrolment* (the “*Enrolment Regulations*”) requiring ongoing compliance with the licensing and warranty scheme. After detailing the statutory scheme, the Adjudicator gave extensive reasons for decision. She weighed the evidence, including in relation to two specific properties, made factual findings, and applied the law to the facts she found.

[14] The LAT referred to s. 10.3(4) of the *Warranties Act* as the source of Tarion’s authority to grant an application, refuse it, or impose conditions, noting Tarion’s discretion to consider the past and present financial position or conduct of the applicant or an interested person when making its decision. The LAT referred to s. 10.4 of the *Warranties Act* as the source of Tarion’s authority to revoke an application prior to formal enrolment in the plan.

[15] The LAT further noted that both 149 and 498 were required to satisfy certain statutory preconditions before Tarion decided about qualification or continued qualification: *Enrolment Regulation*, ss. 2, 3. These regulatory preconditions required ongoing compliance with the licensing and warranty scheme: *Enrolment Regulation*, ss. 2(5), 3(2).

[16] The LAT further distinguished between the regulatory preconditions for qualification versus those for continued qualification, noting that a precondition for qualification was that the applicant be “qualified and suited for the work they will do,” whereas a precondition for continued qualification was that there not having been a material change affecting the construction, “after-sales service”, or servicing of warranties of the home: *Enrolment Regulation*, ss. 1, 2(9), 3(5).

[17] The appellants take issue with the LAT’s interpretation of the word “conduct” within the overall statutory scheme. They say that the Adjudicator erred by interpreting “conduct” in s. 10.3(4) of the *Warranties Act* to include “construction and warranty service competency” because neither are enumerated factors for warranty qualification under sections 3 of the *Enrolment Regulation*.

[18] I see no error in the LAT’s interpretation. The appellants agreed that 489 and 149 were “interested persons.” 489’s conduct was relevant to both its continued qualification and 149’s qualification. A plain reading of the word “conduct” makes it clear that construction and warranty service competency were relevant factors that Tarion was entitled to consider when deciding the applications: see *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21. The wording in section 10.3(4) of the *Warranties Act* allows Tarion to consider “past and present...conduct” when deciding whether to grant an application for qualification enrollment in the warranty scheme. The ordinary meaning of the word “conduct” is broad enough to encompass both construction and warranty service competence. In terms of the revocation of a prior qualification, “material change” is defined by the legislature as encompassing a “change in operations,” which is again broad enough on a plain reading to encompass a change in construction and/or warranty competence: *Enrolment Regulation*, s. 1.

### **C. DID THE LAT’S FINDINGS ABOUT COMPETENCE CONTAIN PALPABLE AND OVERRIDING ERRORS?**

[19] In their factum, the appellants assert that the Adjudicator’s reasons were insufficient and/or that the LAT misapprehended the expert evidence before it.

[20] Again, I must disagree. The LAT’s reasons make very clear the facts the Adjudicator relied upon to find that the appellants were unable to properly construct homes and service warranties: LAT Decision, para. 93. Ultimately, the LAT found that:

- The appellants did not properly construct multiple warranted items at two properties—“Columbia Terrace” and “Royal Street”: LAT Decision, at paras. 50-51, 70, 78-79, 94, 101.
- The appellants had several opportunities to remedy the warranted items but were unwilling or unable to do so: LAT Decision, at paras. 78, 81, 84, 87-88, 101.
- Tarion discharged the appellants’ warranty obligations and its expenses to do so were reasonable: LAT Decision, at paras. 87-89, 94, 101.
- The appellants’ failed to indemnify Tarion its costs associated with satisfying the warranties: LAT Decision, at paras. 90, 92, 98, 101.

[21] The LAT had a full evidentiary record to draw upon when arriving at its factual findings on a balance of probabilities standard. The Adjudicator conducted a twelve-day hearing where she weighed evidence from the appellant’s corporate representative and Tarion’s employees, along with competing construction experts, all of whom were cross-examined.

[22] The Adjudicator gave detailed reasons for rejecting the appellant’s evidence about competence: LAT Decision, at paras. 61-75, 87-89. The LAT weighed competing expert evidence evaluation 498’s construction track record before making its findings about construction competence: LAT Decision, at paras. 49-82. The LAT also considered and accepted evidence proffered from Tarion’s employee on the issue of the appellant’s warranty service competence: LAT Decision, at paras. 84-92. There was no error in the sufficiency of the Adjudicator’s reasons on this issue or related to her treatment of the expert evidence. This ground of appeal fails.

#### **D. WERE THE PROCEEDINGS BEFORE THE LAT FAIR?**

[23] The appellants argue that proceedings before the LAT were not procedurally fair because the Adjudicator failed to provide adequate reasons and did not properly draw inferences from the evidence.

[24] Again, I disagree. Read as a whole, the Adjudicator grappled with the conflicting evidence, made relevant findings of fact, and applied those facts to the law correctly stated. Her reasons were more than sufficient to allow for appellate review: see *R. v. Sheppard*, 2025 SCC 29, 507 D.L.R. (4th) 78, at paras. 44-50.

[25] The LAT was not required to delve into every factual issue regarding warrantability, such as repair access or claim timeliness, because those issues were not properly before her. The Adjudicator was correct that the LAT did not have the jurisdiction to consider warrantability because s. 14(14) of the *Warranties Act* only affords homeowners the right to appeal Tarion’s warrantability decisions (and not builders or vendors): LAT Decision, at para. 89; see also *Metropolitan Toronto Condominium Corporation No. 1352 v. Newport Beach Development Inc.*, 2012 ONCA 850, 113 O.R. (3d) 673, at paras. 18, 22. The appellants had the option to engage in binding arbitration or seek judicial review of Tarion’s warrantability decisions: *Remington Georgetown Inc. v. Tarion Warranty Corporation*, 2025 ONSC 1285, at para. 4; 10381 v.

*Registrar, Ontario New Home Warranties Plan Act*, 2017 CanLII 35337 (Ont. L.A.T.), at para. 4. Having failed to do so, the appellants were barred from raising them for the first time at the hearing about its qualification applications.

[26] Contrary to the appellant's arguments, the Adjudicator was not required to draw adverse inferences against Tarion for not proffering evidence from each employee involved in administering a claim against 498. Tarion was also not required to call the homeowner claimants. To the limited extent that the LAT referred to hearsay statements from the homeowners, it was entitled to do so: see *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, s. 15.

#### **E. DISPOSITION AND COSTS**

[27] For the above reasons, the appeal is dismissed. Because Tarion was successful, the appellants must pay costs. Tarion asks for full indemnity costs in the amount of \$169,174. The appellants ask us to limit costs to \$40,000. Weighing the appellant's unmeritorious appeal against Tarion's late filed and excessive bill of costs, I award costs of \$80,000, all inclusive.

I agree

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**Mandhane, J.**

I agree

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**Matheson, J.**

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**O'Brien, J.**

**Released: May 14, 2026.**

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**Released: May 14, 2026**