



Citation: Babbar v. Tarion Warranty Corporation, 2025 ONLAT ONHWP 16691

Licence Appeal Tribunal File Number: 16691/ONHWP

In the matter of an appeal from a Decision of Tarion Warranty Corporation under the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c.O.31 to Deny a Claim for Compensation

Between:

Sanjay Babbar

Appellant

and

Tarion Warranty Corporation

Respondent

DECISION

ADJUDICATOR: Michael Beauchesne

APPEARANCES:

For the Appellant: Sanjay Babbar (Self-Represented)

For the Respondent: Gavin Caleb, Warranty Services Representative
Ayesha Mehreen, Counsel

Court Reporter: Saiyara Rahman

Heard: July 21, 2025

OVERVIEW

[1] Sanjay Babbar (the “appellant”) appeals a decision letter issued by the Tarion Warranty Corporation (the “respondent”) and dated on February 25, 2025, under section 14(3) of the *Ontario New Home Warranties Plan Act* (the “Act”).

ISSUES IN DISPUTE

[2] The issues to be determined, in accordance with section 14(3)(b) of the *Act*, are:

- (a) Whether the appellant has a cause of action against Losani Homes (the “builder”) or vendor for damages resulting from the breach of warranty; and
- (b) Whether the appellant is entitled to receive payment out of the guarantee fund for damages resulting from a breach of warranty?

[3] For context, the appellant claims two breaches of warranty that relate to alleged defects identified in the respondent’s decision letter dated February 25, 2025. During the hearing, the appellant confirmed these defects pertained to the finishing on his kitchen cabinetry—which he insists was not the same colour he and his spouse selected at the design centre—as well as cracks in a vertical wooden post that supports a balcony attached to his home. Those defects, as specified in the decision letter, are:

- (a) “INTERIOR - Floor 02 - Kitchen - Cabinet(s) - All the dark kitchen cabinets have white hazy and cloudy stain all over. ugly, dusty and old. Probably was hurriedly installed with very poor workmanship. All must be changed. upset over the finishing look of cabinetry, all doors and gables;” and
- (b) “EXTERIOR - Lot/Property/Yard - Balcony - Staircase/Steps/Structure - Many large cracks on wood pillars & beams holding the balcony. It could be safety hazards.”

RESULT

[4] The appellant is not entitled to receive payment out of the guarantee fund for damages to his kitchen cabinets or the wooden support post because he did not establish a breach of warranty. The appeal is dismissed.

PROCEDURAL MATTERS

The respondent may rely on evidence it submitted late.

- [5] I find the respondent may rely on the interior colour chart it filed on July 18, 2025.
- [6] The respondent filed a motion on July 18, 2025, which sought to introduce an interior colour chart, dated August 14, 2023, into evidence. The case conference report and order (“CCRO”) for this matter ordered that all evidence the parties sought to rely on would be shared and filed by July 4, 2025. The respondent claims it submitted two requests to obtain this evidence from a non-party prior to the hearing but did not receive it until July 17, 2025. The respondent claims the colour chart is pertinent to the hearing and is not prejudicial to the appellant.
- [7] The appellant did not contest the respondent’s motion and consented to admit the interior colour chart into evidence.
- [8] Applying Rule 9.3 of the *Licence Appeal Tribunal Rules, 2023* (the “Rules”), I considered that: both parties consented to allow this evidence into the hearing; the evidence identifies the colour and wood species selected for the appellant’s kitchen, which bears directly on the appellant’s claim in this matter; and there does not appear to be any prejudice to either party if the colour chart were admitted into evidence. Accordingly, I ordered it be admitted to the proceeding.

The appellant challenges the attendance of the builder’s legal representative as an observer to the hearing.

- [9] I found the builder’s legal representative should be permitted to attend the hearing as an observer in accordance with the open court principle.
- [10] The appellant expressed concern with counsel for the builder attending the hearing. The appellant explained that the basis for his concern in this regard was owing to the ability of the builder’s counsel to electronically interact with respondent’s counsel—behind the scenes as it were—to convey messages and provide support. As such, the appellant reasoned that he was facing off, so to speak, against two lawyers.
- [11] The respondent’s counsel emphasized that she was not representing the builder in this matter, and further submitted that she has ethical obligations that preclude the scenario raised by the appellant. I explained that the Tribunal adopts the open court principle, which mandates that proceedings be accessible to the public and ensures transparency and accountability at hearings such as this one. However, I offered to address the appellant’s concerns by making an order that precluded

observers from directly or indirectly communicating with any parties or witnesses to the proceeding until after closing submissions.

- [12] The appellant agreed that this would be helpful to the extent it was enforceable, and I therefore made the order.

The appellant may not rely on new evidence it introduced during direct examination at the hearing.

- [13] I find the appellant may not rely on two reports that allegedly show the respondent is biased in favour of builders.
- [14] During the hearing, the appellant raised what he perceived to be incongruency between the respondent's mandate to protect the homeowner and his customer service experience on his claim. The thrust of his position was that the respondent was fighting the homeowner and protecting the builder instead. To support this position, the appellant made references to a 2019 "special" report by Ontario's Auditor General that allegedly found systematic bias in the conciliation process that favoured builders. The appellant also raised an Ontario Ombudsman's report that he alleged to identify conflict of interest concerns and a lack of accountability in the respondent's complaint handling process from 2016 to 2019.
- [15] As well, the appellant introduced two decisions—*Bastide vs. Tarion Warranty Corporation* (2017); and *Hirsch vs. Tarion Warranty Corporation* (2014)—that he claims were critical of the respondent's procedural fairness in resolving warranty claims. I was unable to locate these cases, and the appellant did not provide copies or case citation numbers. I was therefore unable to assess these cases. In any event, based on the appellant's submissions, these cases would likely bear little on this onus to show he sustained damages resulting from a breach of warranty.
- [16] The respondent objected to admitting the reports because this evidence had not been filed or served in accordance with the case conference report and order, or at any later point prior to the hearing for that matter. The respondent submitted that she was unaware of the reports or what information is them in.
- [17] In response, the appellant argued that he was unaware he needed to file this evidence in advance, and that because counsel was employed by the respondent, she should have been aware of this information regardless of whether it was filed for the hearing.

[18] I applied the factors in *Rule 9.3* and declined to admit the reports into evidence and allow the appellant to rely on them. In considering the submissions of the parties, I found the appellant was attempting to introduce new evidence during the hearing despite the CCRO requiring the parties to exchange copies of all documents and electronic files they intend to rely on at the hearing—as well as their authorities and expert reports—no later than July 4, 2025. Given that the Tribunal sent the CCRO to both parties, I found this diminished the appellant’s reason for non-compliance (i.e., that he did not know he had to file these reports in advance of the hearing). Further, I weighed that all of the evidence the appellant was relying on had been late filed on July 17, 2025, and that the respondent had not objected to entering this evidence because she had knowledge of it and was prepared to respond. Given that the respondent claimed no knowledge of the Auditor General’s or Ombudsman’s reports, I considered the limited extent to which the substance of the information lies within counsel’s knowledge despite the appellant’s assertion that counsel ought to be aware as an employee of the respondent.

[19] In addition, the respondent was not consenting to allow these reports into the proceeding. I found the probative value of these reports—on the face of it as described by the appellant—was likely to be low with limited relevance to whether the applicant’s claim was warrantable or the appellant’s onus to prove the same. As such, I was persuaded that the appellant’s ability to have his case fairly and fully heard would not be prejudiced by the exclusion of these two reports.

ANALYSIS

There is no breach of warranty on the kitchen cabinets as described in the February 2025 decision letter.

[20] I find the appellant has not established a breach of warranty pertaining to the kitchen cabinets installed in his home.

[21] Section 13(1) of the *Act* provides that every vendor of a home warrants to the owner, that the home is constructed in a workmanlike manner and is free from defects in material; is fit for habitation; and is constructed in accordance with the Ontario Building Code.

[22] The *Act* does not include a definition for “workmanlike manner” and the interpretation has been left to the Tribunal. Although each case must of course be decided on its own merits, I find that certain principles have been applied in past cases to guide the Tribunal in its consideration of the facts. Relevant to this case, is that while the Tribunal has accepted that aesthetics play a role in “workmanlike

manner,” the standard is not one of perfection. (see, for example: *Re Goulet*, [2000] OCRATD No. 51).

- [23] The appellant submits that the colour of the cabinets installed in his home is inconsistent with his selection at the design centre. He takes the position that the cabinet sample produced by the respondent to show that the colour is accurate should not be given weight because it is not the same colour as the sample in the design centre that he consulted at the time of colour selection. The appellant also submits that a cash settlement offered by the builder—and alternate offer to replace the cabinet facings with a different colour—supports his assertion that a warranty breach occurred. The appellant asserts that the cabinet manufacturer has a “very bad online reputation” and relies on an estimate he obtained to remedy his kitchen complaints to show the value of the damages arising from the alleged warranty breach.
- [24] In terms of evidence, the appellant relies on Schedule A to his Agreement of Purchase and Sale (“APS”) to show he was entitled to premium cabinets; a series of photos to show his cabinets were stained with a colour other than what he selected; and multiple online reviews to show the cabinet manufacturer has a “very poor” reputation. The appellant also relies on several documents to show the builder acknowledged deficiencies in the cabinet stain, namely: an undated diagram that proposed to change out certain aspects of the appellant’s kitchen cabinetry; a cash settlement letter from the builder dated November 26, 2024; and a series of emails he exchanged with Mr. Rick Bagni (Director of Quality for the builder) between September 16, 2024, and November 28, 2024.
- [25] The respondent argues that the appellant has not shown the cabinet colour he received is different from what he selected at the design centre. The respondent takes the position that the evidence demonstrates the colour of the installed cabinets matches what the appellant chose and maintains there is no evidence of defects in workmanship or material. The respondent adds that the appellant’s proposal to replace the whole kitchen is disproportionate to his claim.
- [26] In terms of evidence, the respondent relies on the testimony of Gavin Caleb (warranty services representative) and Mr. Bagni as well as various documents included in its hearing brief, including its conciliation assessment report dated January 8, 2025, and decision letter dated February 25, 2025, as well as a letter from the cabinet manufacturer dated March 1, 2024; various photos of the appellant’s kitchen cabinetry and manufacturer’s stain sample; and the interior colour chart.

- [27] As I understand it from witness testimony and the description of the alleged cabinet defects in the decision letter, the deep issue here is whether the appellant received the cabinet colour he selected at the design centre. As such, I find the appellant's APS—and specifically paragraph 42(b) of Schedule A pertaining to kitchen features—to be of little assistance because it largely pertains to the assembly of the cabinets (i.e. glue and dowel construction and laminate countertops) which do not form the basis of the appellant's warranty claim. While I accept this evidence also references "premium-finished cabinets" as a kitchen feature, I find this description is vague and offers little insight into whether a warranty breach (i.e. the wrong colour cabinets) occurred in this case.
- [28] Similarly, I find the evidence the appellant filed to show the manufacturer of his kitchen cabinets has a "very bad online reputation" weighed little on establishing that the colour and finish of his cabinets differed from his design centre selection.
- [29] I am not persuaded that the appellant received a kitchen cabinet colour that is different from what he selected, and therefore disagree that there is a defect in workmanship or materials. I accept that the colour selected by the appellant is characterized as "Lunar" stain, which was to be applied to maple cabinetry. This is indicated in the interior colour chart signed by the appellant's spouse in August 2023. The parties did not dispute the authenticity of this evidence, which I accept forms part of the APS. In his testimony, the appellant confirmed that although only his spouse's signature appears on this document, he was present at the time it was signed and agreed with the selection.
- [30] In my view, neither party established a reliable representation of "Lunar" colour at the hearing. The January 2025 conciliation assessment report indicates Mr. Caleb concluded that "maple lunar" was the colour choice made by the appellant. The report offers that Mr. Caleb detected "no difference in the colour, grain, finish, or stain visually from a normal viewing position under normal lighting conditions" when the "design centre's sample" was placed on the counter as a point of comparison. I find Mr. Caleb's testimony on these points was largely consistent with his reported observations, save for confirming that the colour sample he consulted at the time of conciliation was, in fact, procured from the design centre. Rather, his testimony confirmed only that the sample had been brought by the builder, and Mr. Bagni—who, during cross-examination, similarly disagreed that the cabinets were a different colour than the sample—added little persuasive insight as to where the sample used by Mr. Caleb had been procured. Thus, I cannot conclude where the colour sample used by the respondent during the conciliation inspection was obtained, whether from the design centre or otherwise.

- [31] In any event, I did not place full weight on the colour sample that the respondent produced for the hearing—albeit for reasons other than the point of origin argued by the parties. Mr. Caleb testified that the sample in evidence was the same one he used for comparison purposes at the time the conciliation assessment was performed on November 27, 2024. While I accept the sample indicates it is representative of “Lunar” stain on maple wood, the cabinet manufacturer indicates the sample is valid for two years from the date of manufacture, and the manufacture date provided on the sample is January 2021. As such, I find the sample used and produced by the respondent was invalid at the time the appellant selected kitchen cabinet colours in August 2023, and certainly by the time of the conciliation inspection in November 2024.
- [32] Notwithstanding that the sample the respondent relied on to perform its conciliation assessment is invalid, it remains the appellant’s onus to show a defect in workmanship or materials to prove a breach of warranty. The appellant must show that the colour of the cabinets installed in his kitchen is defective (i.e., different from what he selected) to prove his claim.
- [33] While the appellant maintained in his testimony that the stain colour applied to his kitchen cabinetry was not “Lunar” as depicted on the sample he consulted at the design centre, he did not lead evidence that proved this as fact. The appellant did not produce the design centre sample he was relying on, and, in the absence of evidence to contrary, I find it was open to him to go to the design centre himself and obtain the sample. He testified that he did not take a photo of the sample at the time the colour selection was made. Rather, the appellant’s evidence consisted of photos of his kitchen cabinetry with no point of comparison to the design centre sample or the stain colour he alleges to be different. For what it’s worth, when I compare the kitchen photos produced by both parties to the sample produced by the respondent, I discern no appreciable difference in colour or finish that would support a defect in workmanship or materials.
- [34] I also considered the evidence led by the appellant to show the builder had acknowledged the cabinet colour was defective. And I find this evidence does not establish the warranty breach claimed by the appellant.
- [35] The appellant pointed to an undated diagram that highlighted the builder’s offer to replace cabinet facings (i.e., the doors, gables, light valance, and kick plate) with either an “ink laminate” or “raven-stained maple” colour and finish. However, I note the diagram is silent on the reason this offer was extended by the builder.

Further, I am persuaded by Mr. Bagni's explanation, who testified that the builder offered to swap out the facing elements of the cabinets as a non-warrantable item to go "above and beyond" and make the appellant happy.

- [36] Similarly, I find the November 2024 cash settlement letter—which alternatively proposed to pay the appellant \$4,000.00 to address all the items listed on his 30-day form—does not support the appellant's claim. The relevant excerpts of the letter follow:

*"We are writing with respect to your 30-Day. After careful consideration and discussions with contractors regarding the **potential** [emphasis added] repairs and their associated costs, please accept this letter as our offer to pay you in lieu of completing repairs that are not signed off by yourselves which includes items that are signed off by our trades. We believe that this would be a more efficient resolution to the matter, allowing you the flexibility to address the deficiencies as you see fit or to allocate the funds elsewhere if you choose to ... [w]e want to assure you that this offer is made in good faith, with the aim of resolving the issues in your List in a full and final manner for both parties."*

- [37] While I accept the letter references "repairs" and "deficiencies," I find the context for this language is a broader attempt to resolve all the items **that the appellant listed as being deficient or requiring repair** on the 30-day form and does not support the appellant's notion that the builder was acknowledging deficiencies, or, more specifically, that it provided the wrong colour stain on the appellant's kitchen cabinets.
- [38] That said, the builder's offers to alternatively swap out the kitchen cabinet facings or pay a cash settlement to address all the appellant's grievances were, in my view, not wholly altruistic and at least partly motivated by self-interest (i.e., to avoid a finding of fault that Mr. Bagni characterized as "chargeability"). However, I am nevertheless persuaded, on a balance of probabilities, that the builder's gestures were indeed made in good faith and fall short of establishing that the wrong colour of cabinet was installed.
- [39] Further, I do not accept the appellant's position that an e-mail exchange with Mr. Bagni between September 2024 and November 2024 establishes that the builder agreed a warranty breach occurred as a result of applying the incorrect colour stain to the kitchen cabinets. The series of e-mails reference the appellant's recollections that Mr. Bagni "confronted" the cabinet manufacturer about the "poor

staining” which resulted in “noticeable colour variations” and a “white, dusty appearance” throughout the kitchen. The e-mails also relate the appellant’s view that Mr. Bagni concurred the kitchen’s appearance was “abnormal,” and that, at a later time, Mr. Bagni and the builder’s Chief Operating Officer, Mark McGregor (who did not appear as a witness) acknowledged that the kitchen was defective and agreed to replace it.

- [40] During the hearing, Mr. Bagni agreed he was taken aback by the stain applied to the appellant’s kitchen cabinets when he first inspected them. However, Mr. Bagni disagreed that he ever said he would not accept the cabinets in this state and maintained that he did not recall agreeing the stain was defective at that time. Mr. Bagni testified that once he investigated the appellant’s colour complaints, he was satisfied the stain was indeed consistent with the appellant’s selection. I find Mr Bagni qualified his opinion by comparing the appellant’s cabinet colour to the sample provided by the manufacturer and by consulting relevant “paperwork,” which consisted of the August 2023 interior colour chart as well as the March 2024 letter from the cabinet manufacturer that indicates its own on-site inspection of the appellant’s cabinets determined the “... finished product is within specifications of [its] standards and has a uniform appearance.” The letter went on to explain that the “Lunar” stain applied to the appellant’s cabinetry “... does not have high levels of pigment and will bring out the natural characteristics of the underlying maple wood door.”
- [41] Taken together on a balance of probabilities, I find the evidence in this case does not establish the breach of warranty claimed by the appellant because he has not shown a defect in workmanship or material. The appellant has not produced evidence that shows the colour of stain applied to his kitchen cabinets is different from what he selected at the design centre. Therefore, he cannot demonstrate the wrong colour was used to stain his kitchen cabinets. Nor, for that matter, has he produced evidence that shows the variations in finish he ascribes to poor workmanship (i.e., the white, cloudy appearance) are anything other than those attributable to the natural characteristics of the maple wood used to construct his cabinets.
- [42] Given that my finding precludes the appellant’s entitlement to receive payment out of the guarantee fund, I find it unnecessary to address the parties’ arguments and evidence that pertain to monetary damages.

There is no breach of warranty on the wooden support post as described in the February 2025 decision letter.

- [43] I find the appellant has not established a breach of warranty pertaining to the cracks in the load-bearing wooden post that supports the balcony attached to his home.
- [44] The Construction Performance Guidelines (“CPG”), while not binding on the Tribunal, have been accepted as a helpful tool to determine what is acceptable and common in the residential construction industry. In applying them to this case, and specifically article 2.1 that deals with wood joists, beams, or posts that are split, checked or cupped, the appellant should show the post was not sized according to the Ontario Building Code (“Code”) and that a structural deficiency exists in order to prove a warrantable claim owing to defects in material or workmanship.
- [45] The appellant submits that the cracks in the wood post pose safety concerns of structural failure. The appellant maintains that the respondent lacks the engineering expertise and evidence to comment on the structural fitness of the support post. He asserts that the balcony supported by the allegedly deficient post is structurally connected to the row townhouse balconies of his neighbours, and therefore poses an increased safety risk should post failure occur. He also claims that the builder hindered the conciliation inspection by attending his property without notice to “underhandedly” fill the cracks in the post without notice just prior to the respondent’s inspection.
- [46] The respondent argues that the appellant has not produced evidence of structural issues with the wood post that establish non-compliance with the CPG, and specifically article 2.1. The respondent adds that, by its own estimate, the wooden support post has now stood for at least two years without experiencing a failure.

The size of the wood post cannot be said to be non-compliant with article 2.1 of the CPG.

- [47] The appellant did not lead evidence to show the size of the wood post was non-complaint with the Code. Further, the appellant did not establish what size of post is required to be in compliance.
- [48] For that matter, neither witness testimony nor the respondent’s conciliation assessment report offered much insight in this regard either. Mr. Caleb’s testimony did not address whether the size of the post complied with the Code.

While Mr. Bagni testified that he identified no Code violation in the post, his testimony confirmed only that he had measured the size of the cracks and not the post itself. The conciliation assessment report offered only that the wood beams and posts inspected at conciliation were solid-sawn timbers that measured at least 114 millimetres (or 4.5 inches) in the smallest dimension. I cannot discern from this narrative if that dimension applies to the post at issue.

[49] As such, I am not satisfied on a balance of probabilities that the appellant has proven that the post fails to comply with the Code.

The cracks have not been shown to constitute a structural deficiency in the wooden post.

[50] I find that the appellant has not established structural deficiencies in the wood post. The appellant relied on visible cracks in the wooden post to prove this damage was warrantable but did not direct me to persuasive evidence that showed the cracks constituted a structural deficiency. While I recognize the appellant is not strictly required by the *Act* to establish the CPG are not met to prove his claim, it remains that he did not, and I accept article 2.1 as a reliable measure of whether a warranty breach occurred due to a defect in workmanship or materials. Further, the appellant did not raise a persuasive alternative guideline or standard to the CPG to show the post is warrantable.

[51] The appellant asserted that it was the respondent's responsibility to arrange for a structural engineering inspection and report. I disagree. The onus is on the appellant to prove his claim, and this requires him to produce the evidence he needs to support his arguments.

[52] For what it's worth, I find the respondent's evidence fell short of supporting its conclusion that the post cracks were non-warrantable. Mr. Caleb testified that the cracks did not constitute a warrantable defect because cracks were "permitted in wood" if they did not penetrate the whole width of the post per article 2.1 of the CPG. His opinion was echoed in the conciliation assessment report he prepared, which reads: "[s]everal cracks were noted but none of them penetrated through the entire piece of the wood." This observation was further noted and relied upon in the respondent's decision letter.

[53] However, I find article 2.1 sets no such standard. Rather, the standard for cracks in load-bearing posts as articulated in article 2.1 of the CPG is that they are acceptable **if no structural deficiency exists**. There is no mention here

whatsoever of the degree to which cracks penetrate the wood. Given that Mr. Caleb agreed during the hearing that he is not a structural engineer and did not engage an engineer or obtain an engineering report to evaluate the structural implications of the cracks in the post, I find his conclusion that the cracks do not constitute a defect in work or materials is unsupported.

[54] I also find that the tenability of the respondent's decision on whether the cracks are warrantable is further diminished by the actions of the builder.

[55] The appellant testified that the builder filled the wood post cracks with an unknown substance at some point in the 24 hours prior to the conciliation assessment. The appellant added that this was done without notice and unbeknownst to him. I accept this testimony as fact because Mr. Bagni agreed that the builder had applied a cosmetic wood filler to the cracks in the post; did not dispute the appellant's testimony that this occurred sometime during the day before the conciliation assessment; and was unsure when the builder filled these cracks. Further, the video and photo images filed by the parties clearly show wood filler has been applied to the cracks.

[56] In my view, this action was most likely an attempt to conceal the degree that the cracks penetrate the wood, as they could not be accurately viewed or measured once filled. And while I accept that the photo and video images filed by the parties show no cracks extending through to the opposite side of the wood post, I find this does little to demonstrate that the cracks do not, in fact, present a structural deficiency.

[57] I am persuaded that the cracks were identified to the builder as early as October 3, 2023, when the 30-day form was completed by the appellant. Mr. Bagni testified that he was aware the cracks were disclosed on the 30-day form and went to the appellant's home to inspect the post. He characterized these cracks as "cosmetic" and testified that he offered to patch them as a non-warrantable item to "make the appellant happy."

[58] In my view, this is a dubious explanation for the builder's actions. I do not accept, as coincidence or a gesture of goodwill, that the cracks were filled the day before the conciliation assessment when a span of more than a year passed between the time the 30-day form was completed in October 2023, and the conciliation assessment was performed in November 2024. At best, one could say the builder exercised exceedingly poor judgement. Given these circumstances, I am satisfied on a balance of probabilities that the builder attempted to camouflage the scope of

the cracks and the extent of their penetration. It follows too, that this action could be interpreted as a blatant attempt to hinder the respondent's conciliation assessment. Accordingly, I draw an adverse inference that the proximity of the builder's action to the conciliation assessment—in concert with its lack of notice to the appellant either before or after the work was performed—betrays a belief on the builder's part that the appellant's claim was more likely than not to be warrantable.

[59] In my view, this adverse inference is further supported by the degree of risk the builder undertook to minimize the appearance of the cracks, which, in the video filed by the appellant, appear to extend nearly the entire top-to-bottom length of the post. Section 18(4) of the *Act*, which pertains to the obstruction of inspectors, provides that no person shall hinder, obstruct, molest, or interfere with—**or attempt to hinder**, obstruct, molest or interfere with—an inspector in the exercise of a power or performance of a duty under the *Act*. In my view, Mr. Caleb meets the definition of inspector under section 1(1) the *Act*, and the performance of a conciliation assessment, as authorized at section 17(1) of the *Act*, constitutes a power or performance of a duty specified at section 18(4). The penalties for non-compliance with section 18(4) are made out in section 22(2.1), which says a person convicted of contravening section 18(4) is liable to: (a) a fine of not more than \$250,000.00, if the person is a corporation; or (b) a fine of not more than \$50,000.00 or to imprisonment for a term of not more than two years less a day, or both, if the person is an individual. Given these stakes, and putting the obvious ethical implications aside, I find it remarkable that the builder would nevertheless surreptitiously endeavour to fill in the cracks that formed the basis of the appellant's claim on the eve of a conciliation assessment.

[60] Notwithstanding all this, I am satisfied that the action taken by the builder, while certainly meriting censure, is insufficient in and of itself to prove that a structural deficiency exists in the wood post. As such, the appellant's claim must still fail because there is otherwise an overall lack of evidence to support a defect in workmanship or material that would constitute a breach of warranty.

ORDER

[61] The appellant is not entitled to receive payment out of the guarantee fund for damages to his kitchen cabinets or the wooden support post because he did not establish a breach of warranty. The appeal is dismissed.

LICENCE APPEAL TRIBUNAL

Michael Beauchesne, Member

Released: August 25, 2025