ARBITRATION TRIBUNAL
CONSTITUTED BY VIRTUE OF THE REGULATION RESPECTING THE GUARANTEE PLAN FOR NEW RESIDENTIAL BUILDINGS
(O.C. 841-98 OF 17 JUNE 1998)
ARBITRATION BODY AUTHORIZED BY THE RÉGIE DU BÂTIMENT DU QUÉBEC RESPONSIBLE FOR THE ADMINISTRATION OF THE BUILDING ACT (R.S.Q., C. B-1.1)
UNDER THE AEGIS OF
CANADIAN COMMERCIAL ARBITRATION CENTER (CCAC)

CANADA

PROVINCE OF QUÉBEC

FILE Nº: S25-081301 (claim 12976)

DATE: MAY 29, 2026

IN THE PRESENCE OF: **M^TRE TIBOR HOLLÄNDER**

LORETANA MICHELLE VERRELLI

«BENEFICIAY»

-and-

GRILLI SAMUEL CONSORTIUM INC.

«CONTRACTOR»

-and-

GARANTIE CONSTRUCTION RÉSIDENTIELLE (GCR)

«MANAGER»

ARBITRATION AWARD

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THE PARTIES

[1.] The following parties were present:

MS. LORETANA MICHELLE VERRELLI
[…]
BENEFICIARY

MS. MELANIE LEBOURDAIS
GRILLI SAMUEL CONSORTIUM INC.
[…]
CONTRACTOR

MTRE JEANNE PERRAULT
GARANTIE CONSTRUCTION RÉSIDENTIELLE (GCR)
[…]
ATTORNEY FOR THE MANAGER

ARBITRATION TRIBUNAL
MTRE TIBOR HOLLÄNDER
ARBITRATOR / CCAC
Place du Canada
1010 West, de la Gauchetière #950
Montréal, Québec, H3B 2N2

DATE OF HEARING:	April 9, 2026
LOCATION:	Place du Canada, 1010 Gauchetière West, Suite 950, Montréal, Québec H3B 2N2

IDENTIFICATION OF THE PARTIES

[2.] Ms. Loretana Michelle Verrelli is the Beneficiary within the meaning of section 1 of the *Regulation respecting the guarantee plan for new residential buildings* (the "**Regulation**")[1].

[3.] Grilli Samuel Consortium Inc. is the contractor within the meaning of section 1 of the Regulation[2].

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[1] CQLR c B-1.1, r.8; *"beneficiary" means a person, a partnership, an association, a non-profit organization or a cooperative that enters into a contract with a contractor for the sale or construction of a new residential building and, in the case of the common portions of a building held in divided co-ownership, the syndicate of co-owners; (bénéficiaire)*

[2] *"contractor" means a person holding a general contractor's licence authorizing him to carry out or have carried out, in whole or in part, for a beneficiary, construction work on a new residential building governed by this Regulation; (entrepreneur)*

[4.] *Garantie Construction Résidentielle* (GCR) is the manager authorized to administer a guarantee plan (hereinafter the "**Plan**") within the meaning of section 1 of the Regulation[3]. For the purposes of this Award, it is referred to as "**GCR**"

[5.] Mr. William Laverdière ("**Mr. Laverdière**") is the conciliator appointed by GCR to review the Beneficiary's claims and decide the matters in dispute. He is hereinafter referred to as the "**Conciliator**".

[6.] Mr. Laverdière rendered the decision dated May 23, 2025 (the "**Decision**")[4].

[7.] The following persons were present before the Tribunal:

[7.1] Ms. Loretana Michelle Verrelli, the Beneficiary;

[7.2] Ms. Melanie Lebourdais, the Contractor's representative;

[7.3] Mtre Jeanne Perrault, attorney representing GCR;

[7.4] Mr. William Laverdière, the conciliator and author of the Decision.

[8.] This hearing followed the case management conference of October 30, 2025. The hearing, initially scheduled for February 12, 2026, was rescheduled to April 9, 2026.

CHRONOLOGY

FILE N^{O} S25-081301 (claim #195422-12976)

2021-05-18	Preliminary contract signed by the Beneficiary and the Contractor (page 3, Exhibit A-11)
2021-05-20	Preliminary contract signed by the Beneficiary and the Contractor (Exhibit A-1)
2021-05-20	Guarantee contract signed by the Beneficiary and the Contractor (Exhibit A-2)
2021-08-10	Text message concerning specs (Exhibit A-8)
2022-03-21	Preliminary contract signed by the Beneficiary and the Contractor (Exhibit A-1)
2022-06-29	Pre-Acceptance Inspection Form signed by the Beneficiary and the Contractor (Exhibit A-3) & (Exhibit C-1)
2022-07-07	Text message to Delvin Lelcaire with photo concerning the grout between tiles and uneven tiles (Exhibit A-8)
2022-07-12	Text message to Delvin Lelcaire with photo concerning the bedroom balcony (Exhibit A-8)
2022-07-26	Email (13:13) from GCR to the Beneficiary, communicating *inter alia* copies of the (1) "*Le Guide d'entretien de votre habitation neuve*;" (2) "*Le feuillet Vos protections*"; (3) "*Le feuillet Une problématique avec votre propriété?*"; (4) "*Le feuillet Notre*

[3] *"manager" means a non-profit legal person authorized by the Board to manage a guarantee plan, or a provisional manager designated by the Board under section 83 of the Building Act (chapter B-1.1); (administrateur)*

[4] Exhibit A-11

	engagement: protéger les intérêts des acheteurs" (Exhibit A-14)
2022-09-08	Service after sale project 533 September 8, 2022 (Exhibit A-5)
2022-09-08	Email (8:28 PM) from Service after sale project 533 September 8, 2022 (Exhibit A-5) & (Exhibit C-2)
2021-09-21	Preliminary contract signed by the Beneficiary and the Contractor (Exhibit A-1-A)
2023-02-02	After-sale service project 533 February 2, 2023 (Exhibit A-5)
2023-02-02	Email (3:27 PM) from Melanie Lebourdais (Contractor) to Laurie Michelle Verrelli (Beneficiary) Re: 533 Service after sale and the After-Sale Service Project 533 February 2, 2023 (Exhibit C-3)
2024-11-15	Invoice from 9144-7003 Québec Inc. / Entreprises 7 Frères Inc., in the amount of $6,898.50 sales taxes included (Exhibit A-8) concerning the excavation of the driveway and foundation of gravel (Exhibit A-8)
2024-12-06	Invoice from Waterwell Irrigation Inc. in the amount of $2,069.55 sales taxes included concerning the "*reinstallation of system ripped out and modified due to the driveway relocation*" (Exhibit A-8)
2025-01-17	Email from the Beneficiary sent to the Contractor and the Administrator (Exhibit A-4)
2025-01-17	Contractor Notice Form (Denunciation form) from the Beneficiary to the Contractor and the Administrator (Exhibit A-4) & (Exhibit C-4)
2025-02-20	The 15-day notice email sent by the Administrator to the Contractor and the Beneficiary (Exhibit A-7)
2025-04-08	Email from the Beneficiary to the Contractor and the Administrator (Exhibit A-8)
2025-04-09	Email from the Beneficiary to the Contractor and the Administrator (Exhibit A-9)
2025-05-23	The Manager's decision (Exhibit A-11) & (Exhibit C-5)
2025-06-04	Email (7:32 AM) from GCR to the Beneficiary communicating the Manager's Decision in English (Exhibit A-15)
2025-08-13	The Beneficiary's request for arbitration (Exhibit A-12)
2025-08-27	Letter of appointment of the arbitrator (Exhibit A-12)
2025-09-15	Letter from Waterwell Irrigation Inc. signed by Mark Wiegard (Exhibit B-2-C)
2025-10-07	Letter from Clotures Heritage signed by Martin Leclair (Exhibit B-2-D)
2025-11-11	Email (3:30:55 PM) from Mtre Andreas Stegman (Exhibit A-16)

EXHIBITS

[9.] The exhibits are identified in accordance with the Book of Exhibits filed by the Manager. The Manager's exhibits are labeled and numbered "A-", the Beneficiary's exhibits "B-", and the Contractor's exhibits "C-".

MANAGER'S EXHIBITS

[10.] The exhibits listed below were compiled by the Manager, submitted to the parties and form part of the arbitration record:

FILE NO S25-081301 (CLAIM #195422-12976)

CONTRACTUAL DOCUMENTS

A-1	Preliminary contract signed by the Beneficiary and the Contractor on March 21, 2022
A-1-A	Preliminary contract signed by the Beneficiary and the Contractor on September 20, 2021

A-2 Guarantee contract signed by the Beneficiary and the Contractor on May 20, 2021

A-3 Pre-Acceptance Inspection Form signed by the Beneficiary and the Contractor on June 29, 2022

DENUNCIATIONS AND COMPLAINTS

A-4 Email from the Beneficiary sent to the Contractor on January 17th, 2025, including:

- Denunciation form dated January 17th, 2025.

A-5 Email from the Contractor sent to the Beneficiary and the Administrator on January 28th, 2025, including:

- Denunciation form dated January 17th, 2025 (see A-4).
- Processus reclamation.
- Pre-Acceptance Inspection dated June 29th, 2022 (see A-3).
- Annex September 8th, 2022.
- Annex dated February 2nd, 2023.

A-6 Claim form signed on February 10th, 2025.

A-7 The 15-day notice email sent by the Administrator to the Contractor and the Beneficiary on February 20, 2025, included:
Denunciation form dated January 17th, 2025 (see A-4)
Form of measures to be taken by the contractor (not included in the parts book).

CORRESPONDENCE

A-8 Email from the Beneficiary and the Contractor on April 8th, 2025, including:

- Invoice from 9144-7003 Québec Inc. / Entreprises 7 Frères Inc. dated November 15, 2024, in the amount of $6,898.50 sales taxes included
- Invoice from Waterwell Irrigation Inc. dated December 6, 2024, in the amount of $2,069.55 sales taxes included

A-9 Email from the Beneficiary and the Contractor on April 9th, 2025.

OTHER DOCUMENT

A-10 Statement from the «*Relevé du Registraire des entreprises du Québec*» regarding the Contractor;

DECISION OF THE CONCILIATION IN CONNECTION WITH THE REQUEST FOR ARBITRATION ALONG WITH THE REQUEST

A-11 The Manager's decision dated May 23rd, 2025, along with proof of handover to the Contractor and the Beneficiary.

A-12 Notification email from the arbitration body dated August 27th, 2025, including:

- Request for arbitration from the Beneficiary dated August 13th, 2025.
- Manager's decision dated May 23rd, 2025 (see A-11).
- Letter of appointment of the arbitrator dated August 27th, 2025.

A-13 Resume of the conciliator William Laverdière.

A-14 Email from GCR to the Beneficiary, dated July 26, 2022 (13:13), communicating *inter alia* copies of the (1) "*Le Guide d'entretien de votre habitation neuve*;" (2) "*Le feuillet Vos protections*"; (3) "*Le feuillet Une problématique avec votre propriété?*"; (4) "*Le feuillet Notre engagement: protéger les intérêts des acheteurs*"

A-15 Email from GCR to the Beneficiary, dated June 4, 2025 (7:32 AM), communicating the Manager's Decision in English

BENEFICIARY' EXHIBITS

[11.] The Beneficiary filed the following exhibits at the hearing and form part of the arbitration record:

B-1 (Point 1)	2 photographs depicting the ceramic tile in the kitchen
B-1-A (Point 1)	1 photograph depicting the ceramic tile in the kitchen
B-2 (Point 2)	Screenshot depicting the driveway
B-2-A (Point 2)	1 photograph depicting the building and an unfinished driveway
B-2-B (Point 2)	Copy of a land surveyor's plans of the property
B-2-C (Point 2)	1 photograph providing a bird's eye view of the property
B-2-D (Point 2)	An undated letter from Construction Jean-Houde Prestige inc.
B-2-E (Point 2)	1 photograph depicting the entrance to the driveway
B-2-F (Point 2)	1 photograph depicting the entrance to the driveway
B-2-G (Point 2)	An undated letter from 9144-7003 Quebec Inc.
B-2-H (Point 2)	A letter dated September 15, 2025 from Waterwell Irrigation Inc.
B-2-I (Point 2)	A letter dated October 7, 2025 from Clôtures Héritage
B-3 (Point 3)	2 photographs depicting cracked tiles in the kitchen
B-4-A (Point 4)	1 photograph depicting the kitchen island with measurement
B-4-B (Point 4)	1 photograph depicting a refrigerator under the kitchen island used to cool wines
B-5-A (Point 5)	1 photograph taken during the construction phase depicting the unfinished door frame with the notations "*wrong height*"
B-5-B (Point 5)	Architect's floor plan A0102
B-5-C (Point 5)	2 documents identified as "*Tableau de Porte*"
B-5-D (Point 5)	Architect's plan A0400 – "*Élévations avant & arrière*"
B-5-E (Point 5)	Architect's plan "*Total Height" for the "Ground Level to Rough Door Opening*"
B-6	Beneficiary's written submissions of November 17, 2025

CONTRACTOR'S EXHIBITS

[12.] The Contractor filed the following exhibits at the hearing and form part of the arbitration record:

C-1	Pre-Acceptance Inspection Form
C-2	Email dated September 8, 2022 (20:28) "*Re: JOB 533 Service after sale - september 8, 2022*" and a document titled "*JOB 533 Service after sale - september 8, 2022*"
C-3	Email dated February 2, 2023 (15:27) "*Re: 533 Service after sale*" and a document titled "*JOB 533 Service after sale – February 2 2023*"
C-4	Contractor Notice Form dated January 1, 2025
C-5	Manager's Decision – File number 195422-12976 – Decision dated May 23, 2025

MANDATE

[13.] The Tribunal was duly seized of the Beneficiary's application for arbitration concerning the Decision rendered by Mr. Laverdière with respect to six (6) claims under the Regulation, one of which (Point 6) did not require the Conciliator's intervention and therefore did not give rise to a decision. The

application was filed on August 13, 2025[5], and the undersigned was appointed as arbitrator on August 27, 2025[6].

[14.] The Conciliator noted that the Beneficiary withdrew Point 6, rendering a decision on that issue unnecessary. At the case management hearing held on October 30, 2025, the Beneficiary advised the Tribunal that Point 6 had not been abandoned.

[15.] The Tribunal is required to review and consider the Decision rendered by Mr. Laverdière dismissing Points 1 to 5 and not deciding Point 6 on the ground that it was withdrawn.

JURISDICTION OF THE ARBITRATION TRIBUNAL

[16.] The parties acknowledged the Tribunal's jurisdiction over the Beneficiary's request for arbitration dated August 27, 2025.

PRELIMINARY OBJECTIONS

[17.] The parties confirmed that there were no preliminary objections for the Tribunal to decide.

MANAGER'S DECISION

[18.] The Beneficiary has applied for arbitration involving six (6) points arising from the Decision:

[18.1] "*Point 1 – Ceramic floors*" was dismissed under section 10(3) of the Regulation, as the Beneficiary reported the defect approximately thirty (30) months after its discovery and twenty (20) months after the tile-replacement work, a delay the Conciliator considered unreasonable;

[18.2] "*Point 2 – Exterior*" was rejected on the basis that the claim falls outside the scope of the guarantee under section 12(9) of the Regulation;

[18.3] "*Point 3 – Pantry*" was dismissed under section 10(3) because the defect was reported approximately thirty-one (31) months after its discovery, which the Conciliator found to be unreasonable;

[18.4] "*Point 4 – Kitchen island*" was dismissed under section 10(2) due to the Beneficiary's failure to report the defect within a reasonable time, having done so approximately thirty-one (31) months after discovery;

[5] Exhibit A-11
[6] Exhibit A-12

[18.5] "*Point 5 – Front doors*" was likewise dismissed under section 10(2) on the same grounds, as the defect was reported approximately thirty-one (31) months after discovery;

[18.6] "*Point 6 – Living Room Ceiling*" was not addressed by the Conciliator because the Beneficiary indicated that the corrective work had been resolved.

A. THE FACTS

(1) CONTRACTS

[19.] The Decision refers to a preliminary contract of sale dated May 18, 2021[7]. At the hearing, Mr. Laverdière testified that the preliminary contract executed in May 2021 was received by GCR and formed part of the case file opened with respect to the parties. The evidence further establishes that the preliminary contract was subsequently amended by mutual agreement of the Beneficiary and the Contractor, as reflected by the version dated September 20, 2021[8], and a final version dated March 21, 2022[9].

[20.] The Beneficiary and the Contractor executed (i) a Preliminary Contract[10] for the acquisition of the building to be constructed by the Contractor and located at […] Île-Bizard, Quebec, (the "**Building**"); and (ii) the Guarantee Contract[11] guaranteeing the Contractor's contractual and legal obligations.

[21.] By executing:

[21.1] the Preliminary Contract the Beneficiary expressly acknowledged that she had "*studied and understood the provisions of the Preliminary Contract, including its annexes, which are an integral part … and the provisions of the Guarantee Contract*"[12]; and

[21.2] the Guarantee Contract the Beneficiary further acknowledged that the contract was "*established in accordance with the Regulation respecting the guarantee plan for new residential buildings adopted by the Régie du bâtiment du Québec (O.C. 841-98 June 17, 1998, …*" and that she had "r*ead, understood and accepted each and every clause appearing on the front and back of this Guarantee Contract and [that they].. [undertook] to comply with them*"[13].

[Emphasis added]

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[7] Exhibit A-11 page 3
[8] Exhibit A-1-A
[9] Exhibit A-1
[10] Exhibit A-1
[11] Exhibit A-2
[12] Exhibit A-1 page 6 of 6
[13] Exhibit A-2 page 6 of 6

[22.] The material provisions of the Guarantee Contract sections: 2.8 (Reasonable Time), 2.18 (Poor Workmanship), 2.23 (Construction Defect), 2.25 (Latent Defect), 9.3 (Guarantee against poor workmanship), 10 Guarantee against latent defects, 11.1 (Guarantee against construction defects), 19.1 (Remedy) and 21.1, 21.3, 21.4, 21.5 (Arbitration) are reproduced in Schedule "**1**" annexed hereto.

(2) PRE-ACCEPTANCE INSPECTION OF THE BUILDING AND LIST OF CORRECTIONS

[23.] On June 22, 2022, the Beneficiary and the Contractor carried out the pre-acceptance inspection of the Building and documented the work requiring completion or correction[14].

[24.] This mandatory inspection was conducted in accordance with section 17 of the Regulation, using the prescribed checklist to identify outstanding work, apparent defects, and instances of poor workmanship to be remedied by the Contractor.

[25.] By signing the Pre-Acceptance Inspection of the Building Form ("**Pre-Acceptance Form**"), the Beneficiary confirmed that while the Building was accepted on June 22, 2022, August 26, 2022, constituted the end of work and acknowledged the items to be completed or corrected by the Contractor.

[26.] The Pre-Acceptance Form does not record the defects now alleged by the Beneficiary in Points 1, 3, 4 and 5, nor does it indicate that any requested corrective work by the Beneficiary was refused by the Contractor.

(3) DENUNCIATION BY THE BENEFICIARY OF THE CLAIMS AND THE DECISION

(a) POINT 1 – CERAMIC FLOORING

[27.] Point 1 relates to alleged poor workmanship affecting the ceramic flooring. In her notice dated January 17, 2025, the Beneficiary described the issue as follows[15]:

> "*The ceramic flooring throughout my main floor living area, entrance, kitchen, dining room, and other spaces has an unacceptable amount of lippage (tiles are uneven, with some higher than others, and the joints do not align properly).*"

[28.] According to the Beneficiary, the defect was first observed on July 8, 2022[16], seventeen (17) days following the inspection and acceptance of the Building[17].

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[14] Exhibit A-3
[15] Exhibit A-4, page 4
[16] Exhibit A-4, page 5
[17] Exhibit A-3

[29.] Mr. Laverdière determined in the Decision that:

> "… *several interventions had been carried out by the contractor relating to the ceramic floors. On September 8, 2022, corrective work on the grout between the tiles as well as painting work on the grout joints were carried out. In April and May 2023, four tiles were replaced between the dining room and the living room. In November 2024, all of the grout was redone by the contractor.*
>
> *During the visit, it was observed that some ceramic tiles were not perfectly plane and some corners were slightly raised. Additionally, three tiles were damaged during the grout replacement in November 2024.*"[18]
>
> [Emphasis added]

[30.] Mr. Laverdière's decision is set out below[19]:

> "*Under the Regulation, non-apparent poor workmanship must be reported within one year of the acceptance of the building, and within a reasonable period of time following its discovery. In this case, although the beneficiary states that the problem was apparent as early as July 2022, no formal notice was submitted within a reasonable period of time following the corrective work conducted in 2022 and 2023.*
>
> *The manager is of the opinion that notice given more than thirty (30) months after the initial observation and more than twenty (20) months after the tile replacement work does not comply with the obligation to give notice within a reasonable period of time.*
>
> *As for the grout that was redone in November 2024, this intervention occurred beyond the guarantee period.*
>
> *Furthermore, the damage caused to three tiles during this work cannot be covered, as it resulted from work carried out by the contractor well after the end of the applicable guarantee period.*
>
> *Consequently, the manager dismisses the point of the claim relating to the ceramic flooring, as the notice given is considered late under the Regulation. No coverage can be provided for the damage observed or for the repair of the grout*."

[18] Exhibit A-11 page 6
[19] Exhibit A-11 pages 6-7

[31.] Mr. Laverdière relied on section 10(3) of the Regulation to dismiss Point 1[20]:

> "*At the visit to the premises, the conciliator noted that point 1 meets the criteria of non-apparent poor workmanship within the meaning of section 10, paragraph 3 of the Regulation respecting the guarantee plan for new residential buildings.*
>
> > *10. The guarantee of a plan, where the contractor fails to perform his legal or contractual obligations after acceptance of the private portion or the common portions, shall cover*
> >
> > *(3) repairs to non-apparent poor workmanship existing at the time of acceptance and discovered within 1 year after acceptance as provided for in articles 2113 and 2120 of the Civil Code, and notice of which is given to the contractor and to the manager in writing within a reasonable time following the discovery of the poor workmanship;*
>
> *The manager finds that the amount of time between the beneficiary's discovery of the poor workmanship and the written notice to the contractor and the manager is not reasonable.*
>
> *Given these circumstances, as the beneficiary failed to give written notice of the poor workmanship within a reasonable period of time following its discovery, the manager must dismiss the claim with respect to point 1.*"

(b) POINT 2 – EXTERIOR

[32.] Point 2 concerns exterior work relating to the driveway. In her notice dated January 17, 2025, the Beneficiary described the claim as follows[21]:

> "*The entire entranceway was constructed incorrectly, encroaching on the neighbor's property. Since Grilli Samuel chose not to address this issue, I had to hire outside help to re-pave the area, relocate all the trees, move the water irrigation system, and cut the sidewalk to access my driveway. I had no choice, as winter was approaching. I firmly believe the client should not bear the nearly $10K cost for this work, as it was not my wrongdoing.*"
>
> [Emphasis added]

[33.] The Beneficiary indicated that the issue was first observed on December 6, 2024[22].

[20] Exhibit A-11 page 10
[21] Exhibit A-4 page 3

[34.] In the Decision, Mr. Laverdière noted that[23]:

> "*The beneficiary gave notice concerning the driveway. This issue was first observed on December 6, 2024, which places this point in the third year of the guarantee. She informed the contractor and the manager of the situation in writing on January 17, 2025, approximately one (1) month following its discovery.*
>
> *During the visit to the premises, the beneficiary indicated that the corrective work had been carried out and that the problem had been resolved. However, she wishes to obtain reimbursement of the costs incurred, in the amount of $8,968.05.*
>
> *Analysis of the file shows that the work was carried out without the manager being informed or given the opportunity to observe the problem or assign the work to the contractor, as provided for in the claim handling protocol under the Regulation.*
>
> *Furthermore, the manager is of the opinion that the situation falls under the exclusions provided for in the Regulation, in particular with regard to exterior aspects that do not compromise the use of the building or affect its integrity*."

[35.] Mr. Laverdière dismissed the claim on the following grounds[24]:

> "*With regard to point 2, the visit to the premises made it clear that it concerns an element that is not an integral part of the main building.*
>
> *Here is what section 12, paragraph 9 of the Regulation respecting the guarantee plan for new residential buildings provides in such circumstances:*
>
> > *12. The guarantee excludes*
> >
> > *(9) parking areas or storage rooms located outside the building containing the dwelling units, and any works located outside the building such as swimming pools, earthwork, sidewalks, driveways or surface water drainage systems, except the negative slope of the land.*
>
> *In these circumstances, the manager must dismiss the beneficiary's claim with regard to point 2*."

[22] Exhibit A-4 page 4
[23] Exhibit A-11 page 10
[24] Exhibit A-11 page 11

(c) POINT 3 – PANTRY

[36.] Point 3 concerns alleged poor workmanship affecting the ceramic flooring in the pantry. In her notice dated January 17, 2025, the Beneficiary described the issue as follows[25]:

> "*Before the property was delivered, I noticed during the walkthrough that the ceramic flooring at the pantry entrance had two cracks – one on each side of the pantry in separate tiles. When I requested repairs during the walkthrough, I was told by Devin they would not address the issue because the moldings and finishing had already been installed.*"
>
> [Emphasis added]

[37.] The Beneficiary indicated that she first observed the issue on June 15, 2022[26], eight (8) days prior to the inspection and acceptance of the Building[27].

[38.] The Decision records Mr. Laverdière's finding that[28]:

> "*The beneficiary gave notice of a cracked ceramic tile in the pantry. This issue was first observed on June 15, 2022, which places this point in the first year of the guarantee. She informed the contractor and the manager of the situation in writing on January 17, 2025, approximately thirty-one (31) months following its discovery.*
>
> *During the visit, it could be seen that two ceramic tiles located at the entrance to the pantry were cracked.*
>
> *This issue is not mentioned in the pre-acceptance inspection form, although that form was completed for other items.*
>
> *To be covered, any apparent poor workmanship must be entered on the pre-acceptance inspection form and reported within a reasonable period following the agreed date of completion of the work, in accordance with the provisions of the Regulation."*
>
> *In this case, the issue was not mentioned in the form and the notice was given well after the reasonable time limit*."

[25] Exhibit A-4 page 4
[26] Exhibit A-4 page 5
[27] Exhibit A-3
[28] Exhibit A-11 page 11

[39.] Mr. Laverdière denied the claim for the reasons that follow[29]:

> "*At the visit to the premises, the conciliator noted that point 3 meets the criteria of apparent poor workmanship within the meaning of section 10, paragraph 2 of the Regulation respecting the guarantee plan for new residential buildings.*
>
> > *10. The guarantee of a plan, where the contractor fails to perform his legal or contractual obligations after acceptance of the private portion or the common portions, shall cover*
> >
> > *(2) repairs to apparent defects or poor workmanship as described in article 2111 of the Civil Code, notice of which is given in writing at the time of acceptance or, so long as the beneficiary has not moved in, within 3 days following acceptance. For the implementation of the guarantee for repairs to apparent defects or poor workmanship of the building, the beneficiary sends the claim in writing to the contractor and sends a copy to the manager within a reasonable time after the date of the end of the work agreed upon at the time of acceptance;*
>
> *However, the analysis of the file makes it clear that this apparent poor workmanship was not reported within the time periods set out in the Regulation.*
>
> *Under the circumstances, due to the late notice, namely after the acceptance of the building or more than 3 days after acceptance, as applicable, the manager must dismiss the beneficiary's claim regarding point 3.*"

(d) POINT 4 – KITCHEN ISLAND

[40.] Point 4 concerns alleged poor workmanship related to the kitchen island. In her notice dated January 17, 2025, the Beneficiary described the issue as follows:[30]:

> "*Before the property was delivered, I noticed during the walkthrough that the ceramic I had requested and provided all the measurements for the wine refrigerator to be placed under the kitchen island. However, when I moved in, the space was too small. Instead of removing and redoing it to fit properly, Devon decided to build a box around it so it could fit. As a result, when sitting at the counter, it no longer accommodates four chairs; it*

[29] Exhibit A-11 pages 13-14
[30] Exhibit A-4 page 5

> *only fits three, and one chair looks out of place as if it's not part of the counter.*"
>
> [Emphasis added]

[41.] The Beneficiary indicated that she first observed the issue on June 15, 2022[31], eight (8) days prior to the inspection and acceptance of the Building[32].

[42.] Mr. Laverdière stated in the Decision that[33]:

> "*The beneficiary gave notice concerning the kitchen island. The issue was first observed on June 15, 2022, placing this point in the first year of the guarantee. She informed the contractor and the manager of the situation in writing on January 17, 2025, approximately thirty-one (31) months following its discovery.*
>
> *During the visit, it could be seen that the kitchen island was designed with the refrigerator installed under the counter, which causes blowing air and makes the bar section of the island uneven.*
>
> *The beneficiary stated that when the house was being completed after acceptance, she reported this problem to the contractor, but he told her that he would not correct this situation.*
>
> *The manager is of the opinion that from the moment the contractor informed the beneficiary that he would not take any action to correct the problem, she should have reported the situation to the manager within a reasonable time following this response. Taking 31 months to give notice is considered unreasonable in this case.*"
>
> [Emphasis added]

[43.] Mr. Laverdière rejected the claim on the following grounds[34]:

> "*The visit to the premises allowed the manager to determine that point 4 meets the criteria of apparent poor workmanship within the meaning of section 10, paragraph 2 of the Regulation respecting the guarantee plan for new residential buildings.*
>
> *However, the manager is of the opinion that the claim was not sent within the required time period. The maximum time period between the date of the manager's receipt of the written claim and the date of the end of the work as agreed upon at the pre-acceptance inspection was not followed. The manager is of the opinion that the beneficiary's claim was not received within a*

[31] Exhibit A-4 page 5
[32] Exhibit A-3
[33] Exhibit A-11 page 14
[34] Exhibit A-11 pages 14-15

reasonable period of time as mentioned in section 10, paragraph 2 of the Regulation respecting the guarantee plan for new residential buildings.

> *10. The guarantee of a plan, where the contractor fails to perform his legal or contractual obligations after acceptance of the private portion or the common portions, shall cover*
>
> *(2) repairs to apparent defects or poor workmanship as described in article 2111 of the Civil Code, notice of which is given in writing at the time of acceptance or, so long as the beneficiary has not moved in, within 3 days following acceptance. For the implementation of the guarantee for repairs to apparent defects or poor workmanship of the building, the beneficiary sends the claim in writing to the contractor and sends a copy to the manager within a reasonable time after the date of the end of the work agreed upon at the time of acceptance;*

In these circumstances, due to the unreasonable delay in making the claim, the manager must dismiss the beneficiary's claim with regard to point 4."

(e) POINT 5 – FRONT DOOR

[44.] Point 5 relates to alleged poor workmanship in the installation of the front door. In her written notice dated January 17, 2025, the Beneficiary described the defect as follows[35]:

> "*The front door was supposed to be 96", but Devon made a mistake and installed an 80" door instead. During construction, I noticed the error and asked him to stop adding the bricks as the door size was incorrect. However, Devon insisted he could not change it due to structural constraints. The original plan called for a 96" door*."
>
> [Emphasis added]

[45.] The Beneficiary did not specify when she became aware of the front-door defect[36]. She nevertheless acknowledged that it was identified during the construction phase of the Building.

[35] Exhibit A-4 page 5
[36] Exhibit A-4 page 5

[46.] In the Decision, Mr. Laverdière noted that[37]:

> "*The beneficiary gave notice concerning the front door, which was supposed to be a 96" door, but an 80" door was installed. The issue was observed upon acceptance of the building. This situation is therefore in the first year of the guarantee. The beneficiary informed the contractor and the manager of the situation in writing on January 17, 2025, approximately thirty-one (31) months following its discovery.*
>
> *The beneficiary explained that upon acceptance, she informed the contractor that the door that had been installed did not meet the agreed-upon specifications, but the contractor informed her that he would not correct this situation.*
>
> *The manager is of the opinion that when the contractor informed the beneficiary that he would not correct this apparent poor workmanship, she should have mentioned it in the pre-acceptance inspection form.*"
>
> [Emphasis added]

[47.] Mr. Laverdière dismissed the claim on the following grounds[38]:

> "*At the visit to the premises, the conciliator noted that point 5 meets the criteria of apparent poor workmanship within the meaning of section 10, paragraph 2 of the Regulation respecting the guarantee plan for new residential buildings.*
>
> > *10. The guarantee of a plan, where the contractor fails to perform his legal or contractual obligations after acceptance of the private portion or the common portions, shall cover*
> >
> > *(2) repairs to apparent defects or poor workmanship as described in article 2111 of the Civil Code, notice of which is given in writing at the time of acceptance or, so long as the beneficiary has not moved in, within 3 days following acceptance. For the implementation of the guarantee for repairs to apparent defects or poor workmanship of the building, the beneficiary sends the claim in writing to the contractor and sends a copy to the manager within a reasonable time after the date of the end of the work agreed upon at the time of acceptance;*

[37] Exhibit A-11 page 15
[38] Exhibit A-11 pages 14-15

> *However, the analysis of the file makes it clear that this apparent poor workmanship was not reported within the time periods set out in the Regulation.*
>
> *Under the circumstances, due to the late notice, namely after the acceptance of the building or more than 3 days after acceptance, as applicable, the manager must dismiss the beneficiary's claim regarding point 5.*"

(f) POINT 6 – LIVING ROOM CEILING

[48.] Point 6 relates to an alleged crack in the living room ceiling. In her written notice dated January 17, 2025, the Beneficiary described the defect as follows[39]:

> "*The living room ceiling has had a crack from day one, extending about three feet from the window wall into the ceiling.*"
>
> [Emphasis added]

[49.] The Beneficiary did not specify when she became aware of the crack[40]. She nevertheless acknowledged that the crack existed from the first day.

[50.] In the Decision, Mr. Laverdière noted that[41]:

> "*During the visit to the premises, the manager's representative was informed that this issue had been resolved.*
>
> *With regard to point 6, the [beneficiary has] declared that the contractor has carried out corrective work or that such work has been carried out (as applicable) and that for this reason, the manager's intervention is no longer required.*
>
> *The manager therefore does not need to intervene, as point 6 is now resolved.*"
>
> [Emphasis added]

(g) ADDITIONAL CLAIMS SUBMITTED BY THE BENEFICIARY NOT DECIDED BY THE CONCILIATOR

[51.] On November 17, 2025, in her written submissions to the Tribunal, the Beneficiary raised additional claims which were not previously denounced by the Beneficiary to the Contractor and the Manager and were not part of the Decision.

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[39] Exhibit A-4 page 5
[40] Exhibit A-4 page 5
[41] Exhibit A-11 page 15

[52.] The claims are described as follows:

[52.1] Point 4 – Kitchen Design and Installation

"*Additional deficiencies include:*

- *Cabinet door paint that scratches or peels easily.*
- *A backsplash installed too low, compensated with MDF moulding*."

[52.2] Extra Context — Balcony and Major Delays

- *"My bedroom balcony took three years to repair properly. Several handyman attempts were made, but the repair was only completed correctly in August 2025, causing three full summers of unnecessary stress and inconvenience.*
- *Without my consent, the contractor dig a massive hole in my backyard — approximately 90 feet long, 8 feet deep, and 35 feet wide. No one has ever explained why this was done. This caused over a year of disruption and significantly impacted my ability to enjoy my home, massive stress to my life.*

These issues show a consistent pattern of poor workmanship, lack of accountability and communication, prolonged disruption to my home and family life."

[52.3] Claim in the amount of $250,000.00

"*I respectfully request that all deficiencies be corrected immediately, or that I be compensated for $250,000 I will hire qualified professionals to re-do and complete the work properly.*

Throughout this process, the prolonged delays, repeated errors, and ongoing disruptions have caused me substantial stress, frustration, and anxiety. This has affected not only my daily life but also my family, grandchildren, and even the well-being of our pets, limiting their ability to enjoy our home and run around on the property. I have done everything within my power to resolve these matters in good faith, yet much has been beyond my control.

All I have ever wanted is a safe, functional, and beautiful home where my family and grandchildren can feel comfortable and at peace. I respectfully ask that the issues

be corrected or that I receive fair compensation so that I can finally restore my home, family life and well-being."

B. THE ISSUES IN DISPUTE

[53.] The Tribunal is seized of the following issues:

(1) SECTION 19 OF THE REGULATION

[53.1] Whether the Beneficiary's application for arbitration was filed within the thirty (30) day period prescribed from receipt of the Decision;

[53.2] In the event of non-compliance with that time limit, whether the Beneficiary's delay in submitting the Decision to arbitration is attributable to the acts or omissions of the Manager, within the meaning of section 19.1 of the Regulation;

(2) POINT 1 — SECTION 10(3) OF THE REGULATION

[53.3] Whether the Beneficiary's written notice dated January 17, 2025, transmitted thirty-one (31) months and nineteen (19) days following discovery, was provided within a "*reasonable time*" as required under section 10(3) of the Regulation;

(3) POINTS 3, 4 AND 5 — SECTION 10(2) OF THE REGULATION

[53.4] Whether the Beneficiary's written notice dated January 17, 2025, sent thirty-one (31) months and nineteen (19) days following discovery, satisfies the requirement of notice within a reasonable time under section 10(2) of the Regulation;

(4) POINT 2 — SECTION 12(9) OF THE REGULATION

[53.5] Whether the claim relating to the driveway, including the corrective work and associated monetary claim, falls within the scope of coverage under the Regulation or is excluded pursuant to section 12(9);

(5) POINT 6 – LIVING ROOM CEILING

[53.6] Whether the claim has been previously settled or resolved, thereby relieving the Conciliator of any obligation to render a decision; and, if not, whether the claim was notified within a reasonable time following its discovery;

(6) CONTRACTOR'S/GCR'S CONDUCT — SECTION 19.1 OF THE REGULATION

[53.7] Whether the Beneficiary's failure to report the claims pertaining to Points 1, 3, 4, 5 and 6 within a reasonable time is attributable to the acts or omissions of the Contractor or the Manager within the meaning of section 19.1 of the Regulation;

[53.8] Whether the Beneficiary's failure to submit Points 1 through 6 to arbitration within the prescribed thirty (30) day period is attributable to the acts or omissions of the Contractor or the Manager under section 19.1 of the Regulation;

(7) IMPOSSIBILITY TO ACT

[53.9] Whether the Beneficiary was in a situation of impossibility to act, thereby preventing compliance with the time limits for reporting Points 1, 3, 4, 5 and 6 under sections 10(2) and 10(3) of the Regulation;

[53.10] Whether such impossibility to act equally prevented the Beneficiary from filing the Decision to arbitration within the thirty (30) days delay prescribed by section 19 of the Regulation;

(8) ADDITIONAL CLAIMS SUBMITTED BY THE BENEFICIARY – NOT DECIDED BY THE CONCILIATOR

[53.11] Whether the Tribunal has jurisdiction to adjudicate issues that were not the subject of a decision by the Conciliator;

[53.12] Whether the Tribunal has jurisdiction to entertain a claim in damages under the framework of the Regulation.

[54.] On November 11, 2025, the Manager formally acknowledged that it did not contest the existence of deficiencies in workmanship in respect to Points 1, 3, 4, and 5[42].

[55.] The Manager nevertheless maintains that the Beneficiary failed to provide notice of the alleged defects to both the Contractor and the Manager within a reasonable time, as required by the Regulation[43].

[42] Exhibit A-16, email from Mtre Andreas Stegmann "*the conciliator does not dispute the existence of the observed defects*"
[43] Ibid, "*While the conciliator acknowledges poor workmanship for points 1, 3, 4, and 5, these claims were dismissed solely due to the unreasonable delay, which will be the only matter addressed in arbitration.*"

[56.] In light of this admission, the existence of poor workmanship in respect of Points 1, 3, 4 and 5 is no longer in issue. The determinative question is therefore limited to whether the Beneficiary has established, on a balance of probabilities, that timely and compliant written notices were given in respect of each of those claims.

[57.] With respect to Point 2, the sole issue for determination is whether section 12(9) of the Regulation operates to exclude coverage for the alleged deficiencies affecting the driveway. The Manager submits that the work in question falls within an express exclusion, thereby placing the claim outside the scope of the Plan.

[58.] Regarding Point 6, the burden rested on the Beneficiary to demonstrate that she had not accepted the work and that the alleged deficiency was denounced to both the Contractor and the Manager within a reasonable time following its discovery.

C. TESTIMONY AT THE HEARING

[59.] The Tribunal first addresses the Beneficiary's testimony in its entirety, before examining it in relation to Points 1 to 6.

[60.] The Contractor's representative and the Conciliator did not provide evidence on each point in dispute, electing instead to advance their positions primarily through the cross-examination of the Beneficiary.

(1) GENERAL TESTIMONY OF THE PARTIES

(a) PRELIMINARY CONTRACT AND THE GUARANTEE CONTRACT

(i) BENEFICIARY'S TESTIMONY

[61.] Ms. Verrelli testified that, following explanations provided by the Contractor's project manager, she reviewed the Preliminary Contract and the Guarantee Contract (albeit not in their entirety) and believed she understood their contents.

[62.] She further testified that she was not advised by the project manager that defects must be denounced within a reasonable time following their discovery and acknowledged that she did not report all alleged deficiencies within such time.

[63.] She stated that she only reviewed the Guarantee Contract in full after receipt of the Decision[44], at which point she became aware of the requirement to denounce defects within a reasonable time of discovery.

[44] Sometime in June 2022

[64.] Based on the explanations provided by the project manager, she understood the Guarantee Contract to constitute a "*wall to wall*" guarantee or insurance covering all defects for a period of five (5) years.

(ii) CROSS-EXAMINATION BY MTRE PERRAULT

[65.] On cross-examination, Ms. Verrelli was questioned regarding: (i) her review and understanding of the Guarantee Contract; and (ii) her understanding of the procedural steps required to submit a dispute to arbitration following receipt of the Decision.

[66.] Mtre Perrault put to her two GCR communications: (i) an email dated July 26, 2022, attaching the Guarantee Certificate and hyperlinks to various informational documents[45]; and (ii) an email dated June 4, 2022, attaching the Manager's Decision in English[46].

[67.] In relation to the July 26, 2022, email, Mtre Perrault emphasized that GCR had provided Ms. Verrelli with references concerning the scope of coverage under both the Guarantee Contract and the Regulation.

[68.] Although Ms. Verrelli testified that she did not recall receiving this email, the Tribunal notes that it contained a summary of relevant documentation, including reference to GCR resources available to beneficiaries including, in particular, reference to the following document:

> ***Le feuillet Notre engagement: protéger les intérêts des acheteurs***
>
> *Vous trouverez sur ce feuillet les coordonnées des différentes ressources également disponibles pour vous accompagner dans vos différentes démarches relatives à votre habitation neuve.*
>
> *Vous trouverez également la documentation fournie par la Régie du bâtiment du Québec (RBQ) relative à votre habitation neuve à l'adresse suivante. https://www.garantiegcr.com/fr/publications/*
>
> *Pour plus de renseignements ou si vous désirez recevoir les documents ci-joints par la poste, nous vous invitons à communiquer avec notre service à la clientèle au 1 855 657-2333 ou par courriel à info@garantiegcr.com.*

[69.] The Tribunal further notes that, notwithstanding that the email was in French, the hyperlinks (https://www.garantiegcr.com/fr/publications/) directed users to GCR's website, which provides access to publications in English, such as:

[45] Exhibit A-14
[46] Exhibit A-15

All the tools
Documents explaining the guarantee plan and RBQ claims
Laws, regulations and policies
Forms for contractors
Forms for buyers
Annual reports
Internal documentation
Arbitration decisions

[70.] By accessing the section entitled "*Documents explaining the guarantee plan and RBQ claims*," users are directed to a publication entitled "*Required Reading – Guarantee Plan for New Residential Buildings*", the relevant substantive content of which is reproduced at Schedule "**2**" annexed hereto.

[71.] The Tribunal finds that a review of the essential elements set out in this publication would have enabled the Beneficiary to appreciate, in particular, the following:

[71.1] Pre-acceptance inspection (determinative step): The beneficiary must conduct a rigorous joint inspection, complete and sign the checklist, and record all deficiencies; this moment triggers key rights and limitation periods;

[71.2] Strict written denunciation regime: All deficiencies (completion items, apparent defects, non-apparent defects) must be declared in writing within prescribed delays (often at acceptance, within 3 days, or within a "reasonable time");

[71.3] Core post-acceptance coverage: a) completion of listed work; b) repair of apparent defects declared promptly; c) repair of latent (non-apparent) defects discovered within 1 year, subject to timely notice (generally ≤ 6 months);

[71.4] Centrality of time limits: Rights under the Plan are conditional on strict compliance with short procedural delays; failure generally leads to forfeiture, subject only to limited exceptions (fault of contractor/administrator, capped extension);

[71.5] Claim procedure (mandatory sequence): Prior written notice to contractor (copy to manager) is required to preserve recourse; procedures vary pre- and post-acceptance but remain formalistic;

[71.6] Date of acceptance as legal trigger: The acceptance date fixes the starting point for coverage periods, denunciation delays, and recourses;

[71.7] Limited scope of coverage: The Plan excludes certain external works, confirming a restricted, enumerated protection regime;

[71.8] Arbitration as exclusive recourse mechanism: Decisions of the plan manager may be contested by arbitration within thirty (30) days; arbitration is final, with costs largely borne by the administrator if the claimant succeeds;

[72.] The Tribunal notes that the scheme governing the Plan is inherently formal, prescriptive, and documentation-driven. It conveys to beneficiaries that a heightened standard of diligence is required, such diligence being necessary to ensure the preservation and exercise of their rights under the applicable regulatory framework.

[73.] Considering her testimony regarding the email of July 26, 2022, Ms. Verrelli was questioned on her knowledge of specific provisions of the Guarantee Contract, including sections 2.8 (reasonable time), 16 (exclusions), 19 (remedies), and 21 (arbitration). She acknowledged that she had not reviewed these provisions prior to the hearing.

[74.] This admission is material to the issues in dispute, as:

[74.1] Section 2.8 sets out the obligation to denounce deficiencies in writing within a reasonable time;

[74.2] Section 16 clarifies exclusions from coverage, including certain exterior works, such as driveways;

[74.3] Section 19 establishes available recourses; and

[74.4] Section 21.1 prescribes the thirty (30) day limit to initiate arbitration.

[75.] The core of Ms. Verrelli's testimony is that she believed defects attributable to poor workmanship were covered for five (5) years and that she had a corresponding period within which to submit claims.

[76.] Ms. Verrelli further testified that the terms of the Guarantee Contract had been explained to her by the project manager, who represented that the Building was subject to a "*wall-to-wall*" guarantee for a duration of five (5) years. According to her, this representation formed her understanding of both the scope and the duration of the contractual coverage afforded by the Guarantee Contract.

[77.] On cross-examination by Mtre Perrault, her evidence was refined as follows:

[77.1] She attributed the representation of a "*five (5) year guarantee*" to the Contractor's salesman, Mr. Stéphane Boily;

[77.2] She acknowledged relying on verbal representations rather than reviewing the Guarantee Contract, and was unaware of specific limitations, including the one (1) year coverage applicable to poor workmanship;

[77.3] She maintained that she understood the guarantee to operate akin to an insurance policy;

[77.4] She was unable to explain that under such a policy, prompt denunciation upon discovery would nevertheless be required;

[77.5] She testified that she contacted the Contractor's salesman on multiple occasions but was directed to GCR;

[77.6] Her communications with GCR were limited to inquiries made during the summer of 2025 regarding the arbitration process;

[77.7] Lastly, she testified that, as of January 2025, she had become increasingly frustrated by the Contractor's failure or refusal to remedy the identified deficiencies. Having undertaken unsuccessful attempts to resolve the matter amicably, and concluding that further efforts would be futile, she ultimately proceeded to formally denounce the deficiencies to both the Contractor and the Manager.

(iii) CONTRACTOR'S AND THE CONCILIATOR'S TESTIMONIES

[78.] Neither Ms. Lebourdais nor Mr. Laverdière provided testimony concerning the Preliminary Contract or the Guarantee Contract.

(b) CONSTRUCTION PHASE OF THE BUILDING

(i) BENEFICIARY'S TESTIMONY

[79.] Ms. Verrelli testified that she attended the construction site intermittently to monitor the progress of the work, which led to her identification of certain deficiencies referred to in Points 1, 3, 4 and 5.

(ii) CONTRACTOR'S AND THE CONCILIATOR'S TESTIMONIES

[80.] No testimony was provided by Ms. Lebourdais or Mr. Laverdière regarding the construction phase.

(c) PRE-ACCEPTANCE FORM

(i) BENEFICIARY'S TESTIMONY

[81.] Ms. Verrelli confirmed her presence at the pre-acceptance inspection conducted on June 22, 2022, and acknowledged signing the Pre-Acceptance Form.

[82.] She testified that the project manager instructed her to remain at a distance during the inspection to facilitate observation.

[83.] She stated that the inspection lasted between thirty minutes and one hour and that she felt pressured to complete it within that timeframe.

[84.] She understood that the inspection was intended to identify deficiencies and that she retained the right to accept or refuse the work.

[85.] She nonetheless explained that, due to the necessity of taking possession despite incomplete work, she focused on more significant issues and did not record certain minor deficiencies

(ii) CONTRACTOR'S AND THE CONCILIATOR'S TESTIMONIES

[86.] No testimony was provided by Ms. Lebourdais or Mr. Laverdière regarding the inspection of the Building.

(d) SERVICE AFTER SALE

(i) BENEFICIARY'S TESTIMONY

[87.] Ms. Verrelli testified that, in September or October 2022, the Contractor informed her that corrective work associated with Point 3 would be excessively costly and would not be carried out.

(ii) CONTRACTOR'S TESTIMONY

[88.] Ms. Lebourdais limited her testimony to Exhibits C-2 and C-3, which document the corrective measures undertaken by the Contractor following post-acceptance complaints made by the Beneficiary.

(iii) CONCILIATOR'S TESTIMONY

[89.] Mr. Laverdière did not testify on post-sale service issues.

(e) SUBMITTING THE DECISION TO ARBITRATION

(i) BENEFICIARY'S TESTIMONY

[90.] The Decision, issued in French on May 23, 2025[47], was transmitted, received, and opened by the Beneficiary on the same day[48].

[91.] As she does not understand French, she requested an English version, which was transmitted on June 4, 2025, at 7:32 AM[49].

[92.] In an email dated August 13, 2025, she attributed her delay in filing for arbitration to a lack of follow up from GCR and indicated that she had been awaiting a response from a supervisor[50] :

[47] The French decision was not filed by the Manager or the Beneficiary
[48] Exhibit A-11, page 24; sent at 12:31 PM, delivered at 12:32 PM, and opened at 12:33 PM
[49] Exhibit A-15

> *I am writing to formally contest the decision made by GCR. Although I am aware that my request is being submitted after the 30-day period, I have been waiting for a call back from one of GCR's supervisors since May 29th, which I never received. I have since learned that the supervisor is on extended sick leave.*
>
> *Due to this lack of communication, I missed the 30-day deadline. However, I have spoken directly with the CEO of GCR, who has confirmed that my file will proceed to arbitration.*
>
> *Please see my file attached for your review. I respectfully request that my case be accepted for arbitration under these circumstances.*

(ii) CROSS-EXAMINATION BY MTRE PERRAULT

[93.] On cross-examination, Ms. Verrelli was questioned regarding the steps taken following receipt of the English version of the Decision[51].

[94.] She acknowledged receipt and partial review of the Decision but testified that she did not know how to proceed[52]. She therefore contacted GCR to obtain procedural guidance.

[95.] The evidence establishes that she communicated with GCR representatives (Ms. Mélanie René, who referred her to Mr. Richard Massé) between May and August 2025 without receiving timely follow-up.

[96.] She ultimately obtained assistance from GCR's Chief Executive Officer, Mr. Jean-Pascal Labrosse, who assisted her in initiating the arbitration process.

[97.] Mtre Perrault drew her attention to the fact that the English version of the decision had been provided on June 4, 2025[53].

[98.] Ms. Verrelli was unable to confirm whether she had reviewed the portions of the Decision setting out the thirty (30) day arbitration deadline and the applicable procedure contained at pages 18 to 20 thereof, providing the following information:

> "*Page 18, under the heading "Arbitration", specifies that an application for arbitration must be submitted within thirty days following receipt of the Manager's decision and that such application must be filed directly with one of the arbitration bodies listed on the following page;*

---

[50] Exhibit A-12
[51] Exhibit A-11
[52] The Manager did not file a document establishing when the email of June 4, 2025, was sent, received and opened by the Beneficiary
[53] Exhibit A-15

> *Page 19 sets out the contact information for the arbitration bodies to which the Beneficiary could submit an application;*
>
> *Page 20 provides information concerning arbitration fees and recommends that the parties consult the guarantee contract and the Règlement sur le plan de garantie des bâtiments résidentiels neufs, in particular the provisions relating to arbitration, which offer additional guidance."*

(iii) CONTRACTOR'S AND THE CONCILIATOR'S TESTIMONIES

[99.] No testimony was provided regarding the delay in submitting the matter to arbitration by Ms. Lebourdais and Mr. Laverdière.

(2) POINT 1 – CERAMIC FLOORING

(i) BENEFICIARY'S TESTIMONY

[100.] In her notice dated January 17, 2025, Ms. Verrelli described the excessive lippage affecting the ceramic flooring throughout the main floor[54]:

> "*The ceramic flooring throughout my main floor living area, entrance, kitchen, dining room, and other spaces has an unacceptable amount of lippage (tiles are uneven, with some higher than others, and the joints do not align properly)*."

[101.] She testified that the condition was first observed on July 8, 2022, but was only formally denounced in writing approximately thirty (30) months later.

[102.] Her testimony focused primarily on grout colour discrepancies, which were initially addressed by the Contractor through repainting, although the paint later deteriorated.

[103.] The Contractor subsequently agreed to redo the grout and replace certain tiles exhibiting colour discrepancies. During the course of these corrective works, some tiles were damaged and some tiles were chipped.

[104.] The evidence indicates that several tiles were installed unevenly, forming the basis of the lippage claim.

[105.] The notice dated January 17, 2025, constitutes the first written denunciation of the alleged lippage to both the Contractor and the Manager.

[54] Exhibit A-4 page 2 of 3

(ii) CROSS-EXAMINATION BY THE CONTRACTOR

[106.] Ms. Verrelli was cross-examined by Ms. Lebourdais with respect to Exhibits C-2 ("*Service After Sale Project 533*," dated September 8, 2022) and C-3 ("*After-Sale Service Project 533*," dated February 2, 2023).

[107.] She confirmed that these exhibits reflect the ongoing exchanges between the parties concerning corrective work carried out by the Contractor following post-acceptance complaints, within the context of the Contractor's after-sales service.

[108.] Ms. Verrelli acknowledged that neither Exhibit C-2 nor Exhibit C-3 contains any reference to a complaint relating to excessive lippage affecting the ceramic flooring throughout the main floor, including the living area, entrance, kitchen, dining room, and other tiled areas.

[109.] She further acknowledged that the colour issue has been resolved and that her claim is now limited to the alleged lippage, which constitutes the only deficiency formally denounced in writing on January 17, 2025.

(iii) CROSS-EXAMINATION BY MTRE PERRAULT

[110.] Ms. Verrelli acknowledged that she first observed the alleged lippage on July 8, 2022, but reported it to the Contractor and the Manager only on January 17, 2025.

[111.] The Beneficiary attributed the delay of thirty-one (31) months and nineteen (19) days to the circumstances set out at paragraphs [77.2], [77.3] and [77.7].

(iv) QUESTIONED BY THE TRIBUNAL

[112.] Ms. Verrelli confirmed the accuracy of the facts as set out by the Conciliator at page 6 of the Decision.

(v) CONTRACTOR'S TESTIMONY

[113.] Ms. Lebourdais testified, with reference to Exhibits C-2 and C-3, that the claims submitted by the Beneficiary following the sale were duly identified and addressed by the Contractor in the ordinary course.

[114.] She further stated that the only claim pertaining to uneven ceramic tiles was raised in her written notice dated January 17, 2025, that is, thirty-one (31) months and nineteen (19) days after the defect was first observed.

(vi) CONCILIATOR'S TESTIMONY

[115.] Mr. Laverdière explained that, in his assessment of Points 1 to 5, he applied the established criteria to determine whether the Beneficiary had denounced the alleged deficiencies within a reasonable time following their discovery, in accordance with the applicable Regulation.

[116.] With respect to Point 1, Mr. Laverdière relied in particular on the information obtained during his inspection of April 1, 2025, and reached the following conclusions:

[116.1] The grout-related issue had been disclosed by the Beneficiary to the Contractor only, and was not reported to the Manager;

[116.2] The Contractor carried out corrective work on September 8, 2022, including reworking the grout between the tiles and applying paint to the grout joints;

[116.3] In April and May 2023, four tiles located between the dining room and the living room were replaced;

[116.4] In November 2024, the Contractor redid all of the grout;

[116.5] During that intervention, three tiles were damaged;

[116.6] Upon inspection, certain ceramic tiles were observed to be uneven, with slightly raised corners.

(vii) CROSS-EXAMINATION BY THE BENEFICIARY AND THE CONTRACTOR

[117.] Mr. Laverdière was not cross-examined by either the Beneficiary or Ms. Lebourdais with respect to Point 1.

(3) POINT 2 – EXTERIOR

(i) BENEFICIARY'S TESTIMONY

[118.] In her notice dated January 17, 2025, Ms. Verrelli described the alleged defect as follows[55]:

> *"The entire entranceway was constructed incorrectly, encroaching on the neighbor's property. Since Grilli Samuel chose not to address this issue, I had to hire outside help to re-pave the area, relocate all the trees, move the water irrigation system, and cut the sidewalk to access my driveway. I had no choice, as winter was*

[55] Exhibit A-4 page 2 of 3

approaching. I firmly believe the client should not bear the nearly $10K cost for this work, as it was not my wrongdoing.""

[119.] She testified that she first became aware of the alleged defect on December 6, 2024, namely twenty-nine (29) months and fifteen (15) days following acceptance of the Building, and that she reported it in writing to both the Contractor and the Manager forty-two (42) days thereafter.

[120.] Ms. Verrelli maintains that the Contractor improperly constructed the driveway such that it encroached upon the neighbouring property, as illustrated in Exhibits B-2-A and B-2-E:

[121.] Exhibit B-2-E includes handwritten annotations identifying the "*original entrance*" and the "*after*" configuration, thereby illustrating the relocation of the driveway.

[122.] Ms. Verrelli testified that the corrective work amounted to $8,968.05, taxes included[56]. She further stated that the situation caused significant inconvenience, including a temporary loss of use of the driveway.

(ii) CROSS-EXAMINATION BY THE CONTRACTOR

[123.] Ms. Lebourdais did not conduct any cross-examination with respect to Point 2.

(iii) CROSS-EXAMINATION BY MTRE PERRAULT

[124.] Mtre Perrault's cross-examination was limited to establishing that the Beneficiary had not reviewed, and was therefore unaware of, section 16 ("*Exclusions from the guarantees*") of the Guarantee Contract.

[56] Exhibit A-8

(iv) CONTRACTOR'S TESTIMONY

[125.] Ms. Lebourdais did not provide testimony with respect to Point 2.

(v) CONCILIATOR'S TESTIMONY

[126.] With respect to Point 2, Mr. Laverdière confirmed in his Decision[57], following inspection, that the Beneficiary discovered the alleged issue concerning the driveway on December 6, 2024, and reported it in writing on January 17, 2025, that is, approximately one (1) month later, thereby situating the claim within the third year of coverage.

[127.] At the time of the inspection, the Beneficiary advised that the corrective work had already been completed and that the issue was resolved, while seeking reimbursement in the amount of $8,968.05.

[128.] Mr. Laverdière nevertheless concluded that the work had been undertaken without providing prior notice or affording the Contractor and the Manager an opportunity to inspect the alleged defect or to implement corrective measures in accordance with the Regulation. He further determined that the claim fell within the exclusions provided under the Regulation, notably as it concerned exterior conditions that did not affect the use or structural integrity of the Building.

(vi) CROSS-EXAMINATION BY THE BENEFICIARY AND THE CONTRACTOR

[129.] Mr. Laverdière was not cross-examined by either Ms. Verrelli or Ms. Lebourdais with respect to Point 2.

(4) POINT 3 – PANTRY

(i) BENEFICIARY'S TESTIMONY

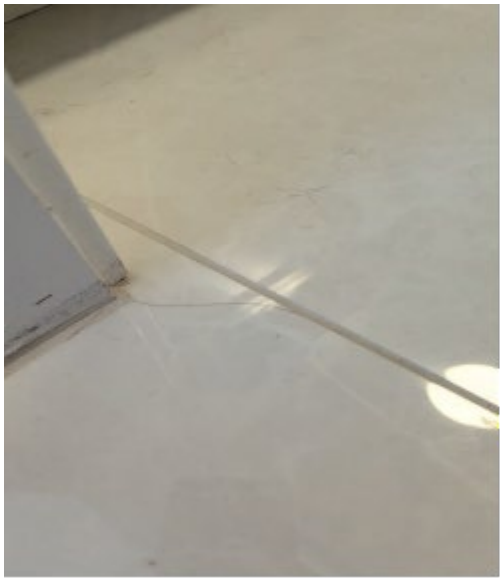
[130.] In her notice dated January 17, 2025[58], Ms. Verrelli alleged deficient workmanship affecting the ceramic flooring in the pantry, namely the presence of two cracked tiles at the entrance (one on each side), which she asserts were observed prior to taking possession of the Building.

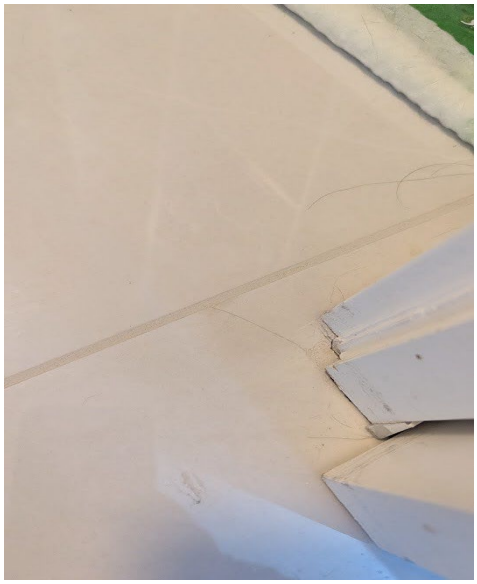
[131.] She testified that she raised this issue during the pre-delivery inspection; however, the Contractor refused to proceed with corrective work on the basis that the mouldings and finishing elements had already been installed.

[132.] According to her testimony, the defects were first observed on June 15, 2022, that is, eight (8) days prior to the inspection and acceptance of the Building. They were, however, only reported in writing to the Contractor and the Manager thirty-one (31) months and nineteen (19) days thereafter.

[57] Exhibit A-11 page 10
[58] Exhibit A-4 page 2 of 3

[133.] In support of her claim, she filed two photographs (Exhibit B-3) depicting the cracked tiles[59]:





[134.] Ms. Verrelli further testified that, in or about September–October 2022, the Contractor's project manager advised her that the cost of the corrective work was excessive and that no repairs would be undertaken.

(ii) CROSS-EXAMINATION BY THE CONTRACTOR

[135.] Ms. Verrelli was not cross-examined by Ms. Lebourdais with respect to Point 3.

(iii) CROSS-EXAMINATION BY MTRE PERRAULT

[136.] Mtre Perrault limited her cross examination to establishing that the Beneficiary did not read and was therefore unaware of section 2.8 "*Reasonable Time*" of the Guarantee Contract.

[137.] The Beneficiary attributed the delay of thirty-one (31) months and nineteen (19) days to the circumstances set out at paragraphs [77.2], [77.3] and [77.7].

(iv) CONTRACTOR'S AND CONCILIATOR'S TESTIMONIES

[138.] Neither Ms. Lebourdais nor Mr. Laverdière testified with respect to Point 3.

[59] The two photographs are the same as the ones found at page 13 of the Decision, Exhibit A-11

(5) POINT 4 – KITCHEN ISLAND

(i) BENEFICIARY'S TESTIMONY

[139.] In her notice dated January 17, 2025[60], Ms. Verrelli described deficient workmanship affecting the kitchen island. She asserted that although the ceramic installation had been designed to accommodate a wine refrigerator in accordance with her specifications, the allocated space proved insufficient upon occupancy. Rather than correcting the installation, the Contractor enclosed the appliance within a box, thereby reducing the island's seating capacity from four to three places and compromising its uniform appearance.

[140.] She testified that the situation was first observed on June 15, 2022, eight (8) days prior to the inspection and acceptance of the Building. She nevertheless explained that the full extent of the issue only became apparent following installation of the countertop and her subsequent occupancy, which, in her view, explains its omission from the Pre-Acceptance Form.

[141.] Upon taking possession of the Building, the deficiency became manifest. Although she brought the matter to the Contractor's attention, the latter declined to undertake corrective work.

[142.] The Beneficiary attributed the delay of thirty-one (31) months and nineteen (19) days to the circumstances set out at paragraphs [77.2], [77.3] and [77.7].

(ii) CROSS-EXAMINATION BY THE CONTRACTOR

[143.] Ms. Verrelli was not cross-examined by Ms. Lebourdais with respect to Point 4.

(iii) CROSS-EXAMINATION BY MTRE PERRAULT

[144.] Mtre Perrault limited her cross-examination to establishing that the Beneficiary had not read, and was therefore unaware of, section 2.8 ("Reasonable Time") of the Guarantee Contract.

(iv) CONTRACTOR'S AND CONCILIATOR'S TESTIMONIES

[145.] Ms. Lebourdais and Mr. Laverdière did not provide testimony with respect to Point 4.

[60] Exhibit A-4 page 2 of 3

(6) POINT 5 – FRONT DOOR

(i) BENEFICIARY'S TESTIMONY

[146.] In her notice dated January 17, 2025[61], Ms. Verrelli alleges that the front door, specified at a height of 96 inches, was installed at 80 inches. She testifies that she identified this discrepancy during the construction phase and requested that the work be halted; however, the Contractor refused to proceed with any modification, invoking structural constraints.

[147.] Although Ms. Verrelli does not specify the exact date of discovery, she acknowledges that the deficiency was identified during construction

[148.] Exhibit B-5-B, filed by the Beneficiary, depicts the front door at an unfinished stage and bears the handwritten notation "*wrong height*." The condition of the surrounding walls and floor confirms that the photograph was taken during the construction phase.

(ii) CROSS-EXAMINATION BY THE CONTRACTOR

[149.] Ms. Verrelli was not cross-examined by Ms. Lebourdais with respect to Point 5.

(iii) CROSS-EXAMINATION BY MTRE PERRAULT

[150.] Mtre Perrault confined her cross-examination to establishing that the Beneficiary had neither read nor was aware of section 2.8 ("*Reasonable Time*") of the Guarantee Contract.

[61] Exhibit A-4 page 2 of 3

[151.] The Beneficiary attributed the delay of thirty-one (31) months and nineteen (19) days to the circumstances set out at paragraphs [77.2], [77.3] and [77.7].

(7) POINT 6 – LIVING ROOM CEILING

(i) BENEFICIARY'S TESTIMONY

[152.] In her written notice dated January 17, 2025[62], Ms. Verrelli reported the presence of a crack in the living room ceiling, described as existing since the outset and extending approximately three feet inward from the window wall.

[153.] Although the Beneficiary did not specify the exact date of discovery in her written notice, she testified that the condition was apparent from the first day of occupancy.

(ii) CROSS-EXAMINATION BY THE CONTRACTOR AND THE CONCILIATOR

[154.] Ms. Verrelli was not cross-examined by Ms. Lebourdais or Mtre Perreault with respect to Point 6.

(iii) CONTRACTOR'S AND CONCILIATOR'S TESTIMONIES

[155.] Neither Ms. Lebourdais nor Mr. Laverdière provided testimony concerning Point 6.

(8) ADDITIONAL CLAIMS SUBMITTED BY THE BENEFICIARY – NOT DECIDED BY THE CONCILIATOR

[156.] On November 17, 2025[63], the Beneficiary advanced three additional claims that were not determined by the Conciliator and do not form part of the Decision under review.

[157.] The first claim, related to Point 4 and described as "*additional deficiencies*", as well as the second claim concerning the "*balcony and major delays*", had not been previously denounced in writing to the Contractor or to the Manager and were not addressed in the Decision.

[158.] The third claim was formulated as follows:

> "*I respectfully request that all deficiencies be corrected immediately, or that I be compensated for $250,000 I will hire qualified professionals to re-do and complete the work properly*."

[62] Exhibit A-4 page 2 of 3
[63] Beneficiary's email dated November 17, 2025 (9:54 AM)

[159.] No additional evidence was adduced with respect to these claims. The Tribunal reminded the Beneficiary that such claims fall outside the scope of the Decision and are not properly before it under the Regulation.

D. PLEADINGS

[160.] The Beneficiary[64] and the Manager[65] filed written pleadings. The Contractor did not but supported the Decision.

[161.] The Manager admitted "*poor workmanship*" with respect to Points 1, 3, 4 and 5[66]; accordingly, the Beneficiary was not required to prove this element.

[162.] In light of that admission, the arbitration concerning Points 1, 3, 4 and 5 turned on whether the Beneficiary denounced the defects within a reasonable time of their discovery.

[163.] For Point 2, the Beneficiary bore the burden of establishing that the claim falls within the scope of the Regulation. For Point 6, the issues were whether the corrective work identified by the Conciliator was completed and, if not, whether the Tribunal should determine the claim.

[164.] In reviewing her submissions, the Beneficiary asserts that:

[164.1] The defects resulted from poor workmanship; and

[164.2] The defects were duly reported, but the Contractor delayed and failed to carry out the required corrections.

(1) BENEFICIARY'S PLEADINGS

(i) POINT 1 — CERAMIC FLOORS

[165.] The Beneficiary submits that the claim under Point 1, concerning uneven ceramic flooring, was reported in writing to both the Contractor and the Manager within a reasonable time.

[166.] She contests the Manager's finding of a thirty (30) month delay in reporting the alleged defect.

[167.] Although the initial notice referred to several uneven kitchen tiles, the Beneficiary argues that the issues are more broadly characterised by irregular grout joints and lippage.

[64] November 17, 2025
[65] April 2, 2026
[66] November 11, 2025

[168.] She maintains that the flooring defects existed from the outset and were not properly remedied, notwithstanding corrective measures undertaken by the Contractor between July 2022 and November 2024.

[169.] The Beneficiary further submits that this period reflects repeated delays attributable to the Contractor, including construction holidays, workload constraints, worker absences, missed appointments without notice, and vacations.

[170.] In conclusion, the Beneficiary claims that the installation is deficient, citing significant lippage and inconsistent grout joints, missing finishing edges at the living room transition, inadequate detailing in the powder room, and cracked tiles near the pantry door.

[171.] The Beneficiary submits that adequate remediation necessarily entails the removal and reinstallation of the flooring and all associated components in order to achieve a uniform and compliant finish. Failing such corrective work, she seeks an award of damages for inconvenience, stress, and substandard workmanship, quantifying her claim at $250,000.00.

(ii) POINT 2 — EXTERIOR (DRIVEWAY ERROR)

[172.] The Beneficiary submits that the claim does not concern "*earthwork*" but rather that the Contractor constructed the driveway on the neighbouring property.

[173.] She asserts that the cost of correction is approximately $10,000[67] and that the defect has rendered the driveway unusable, causing significant inconvenience.

(iii) POINT 3 — PANTRY

[174.] The Beneficiary contended that she raised the pantry issue at the outset of the project. She testified that the Contractor refused to correct it, stating that the required removal and reinstallation would constitute "*too big of a job*."

[175.] The Beneficiary further submitted that cracked tiles were present on both sides of the pantry door and that proper remediation necessitates the removal and reinstallation of the tiles and adjacent finishes, as reflected in the photos reproduced in the Decision.

(iv) POINT 4 — KITCHEN DESIGN AND INSTALLATION

[176.] The Beneficiary submits that the kitchen island was improperly built, particularly in the wine refrigerator area, and that the Contractor addressed the issue with cosmetic patching rather than corrective work.

[67] Exhibit A-8 two invoices aggregating to $8,968.05

[177.] She alleges that the island was not constructed in accordance with the parties' agreed specifications, resulting in reduced legroom and the permanent loss of one seating position (from four to three).

[178.] Although repeatedly informed that the issue was "*not fixable*" and subject only to temporary repairs, the Beneficiary maintains that the defect could have been remedied but for the Contractor's refusal to do so.

[179.] The Beneficiary further alleges the existence of additional deficiencies requiring corrective intervention, namely: (i) cabinet doors whose paint finish is prone to premature scratching and peeling; and (ii) a backsplash installed at an insufficient height, subsequently compensated by the addition of an MDF moulding. The Tribunal notes, however, that these matters were not included in the notice dated January 17, 2025 and are raised for the first time as part of the present claim.

(v) POINT 5 — MAIN ENTRANCE DOOR

[180.] The Beneficiary submits that the plans specified a 94-inch front door, whereas an 80-inch door was installed[68].

[181.] She further alleges that no credit was provided by the Contractor for the larger door for which payment had been made.

[182.] Accordingly, she seeks an order requiring the Contractor to (i) remove the existing front door; and (ii) install a 96-inch front door; and (c) modify the opening to accommodate such installation.

[183.] The requested corrective work includes (i) removal and reconstruction of the brickwork at the proper height, including installation of an appropriate lintel; and (ii) completion of full interior finishing, including mouldings, plaster, and paint.

[184.] The Beneficiary submits that the entrance as delivered is non-compliant with the contractual specifications and does not correspond to what was agreed upon or paid for.

[185.] In the alternative, in the event that the Contractor fails to carry out the required work, the Beneficiary seeks compensation for the alleged deficiency[69], without, however, quantifying the amount claimed.

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[68] In the notice dated January 17, 2025, the Beneficiary referred to the measurement of the front door as being 96 inches. The Manager likewise indicated, in the Decision, that the front door measured 96 inches. However, Exhibit B-5-C refers instead to a 94-inch front door. This discrepancy is of no material consequence and does not affect the outcome of the present arbitration.

[69] "*If the contractor will not perform the correction, I request appropriate compensation for the difference…*"

[186.] The Beneficiary also advanced additional claims not included in the January 17, 2025, notice which were neither reviewed nor determined by the Conciliator.

(vi) POINT 6 – LIVING ROOM CEILING

[187.] The Beneficiary advanced no submissions in respect of Point 6.

(vii) EXTRA CONTEXT — BALCONY AND MAJOR DELAYS

[188.] The Beneficiary advanced additional claims, not previously denounced, concerning significant delays and disruptions, namely that:

[188.1] The bedroom balcony required approximately three (3) years to be properly repaired, with completion only in August 2025, resulting in the loss of three (3) summer seasons and causing sustained inconvenience and stress;

[188.2] The Contractor allegedly undertook, without her consent, extensive excavation work in the backyard (measuring approximately 90 feet in length, 8 feet in depth, and 35 feet in width) for which no explanation was provided, causing over a year of disruption and materially affecting her use and enjoyment of the property;

[188.3] These circumstances, taken together, demonstrate a pattern of deficient workmanship, inadequate communication, and prolonged interference with her home and family life.

(viii) CLAIM OF $250,000

[189.] The Beneficiary's claim of $250,000 is grounded on allegations of prolonged delays, repeated deficiencies, and a lack of accountability on the part of the Contractor, which she submits caused significant stress, frustration, and disruption to her family life. She further contends that both the Contractor and GCR contributed to delays in the handling of her file, including difficulties in escalating her concerns within a reasonable time.

[190.] The Beneficiary requests that all outstanding deficiencies be corrected without delay or, in the alternative, that she be awarded $250,000 to retain qualified professionals to complete and remediate the work. She maintains that such compensation is necessary to restore the intended use, safety, and enjoyment of her home.

(ix) EXPLANATION FOR THE DELAY IN DENOUNCING THE DEFECTS

[191.] The Beneficiary attributed the delay in providing written notice to the Contractor and the Manager to factors beyond her control, stating that the passage of time was due not to inaction on her part, but to circumstances largely outside her control on both the Contractor's side and that of GCR.

(2) MANAGER'S PLEADINGS

[192.] The Manager submitted the following decisions:

1. *Guy Paul Bordeleau c Denise Thomassin,* 2002 CanLII 34288 (QC CQ)
2. *Chheng et 9302-0576 Québec inc.,* 2025 CanLII 115547 (QC OAGBRN)
3. *Ruthven et Construction G.P. Bertrand inc., 2025 CanLII 40418 (QC OAGBRN)*
4. *Paquette Dufour et Apax Construction inc.,* 2025 CanLII 143886 (QC OAGBRN)
5. *Marie France Arsenault c. J.B Construction et GCR*, 2024 CanLII 137626
6. *Alain Aoudé et M.M. Beaudin c Montclair résidentiel inc et GCR*
7. *Bensemmane c. Bel Habitat Inc et GCR*, 22024 CanLII 134156 (QC OAGBRN)
8. *Belanger et Chapdelaine c Constructions Auger-Ouellette f.a.s.n Les Constructions Jean Guy Ouelette et GCR*, 2022 CanLII 128166 (QC OAGBRN)
9. *Charaf et El Alami c Cartierville des Prairies et GCR*, (GAJD) 2026-03-19
10. *Markman c Les développements au tournant de la Gare inc et GCR,* (GAJD) 2026-03-09
11. *Bouliane c Immeubles Valdie et GCR,* (CCAC) 2026-02-06

[193.] The Tribunal shall assess the Manager's decisions in light of the applicable principles arising from each authority.

(i) LEGAL FRAMEWORK GOVERNING "POOR WORKMANSHIP"

[194.] To establish the legal framework governing "*poor workmanship*", the Manager relied on the following authorities:

1. *Bordeleau c Thomassin,* 2002 CanLII 34288 (QC CQ)
2. *Chheng et 9302-0576 Québec inc.,* 2025 CanLII 115547 (QC OAGBRN)
3. *Ruthven et Construction G.P. Bertrand inc.,* 2025 CanLII 40418 (QC OAGBRN)
4. *Paquette Dufour et Apax Construction inc.,* 2025 CanLII 143886 (QC OAGBRN)

[195.] In *Bordeleau c Thomassin*[70], the Court of Québec interpreted article 2120 of the Civil Code of Québec (the "**C.C.Q.**"), which provides a one-year warranty covering the contractor's work against poor workmanship existing at acceptance or discovered within the following year.

[196.] The Court held that "poor workmanship" refers to improperly performed work. In the absence of contractual specifications, compliance is assessed against the rules of the art, including recognized industry standards and accepted trade practices.

[197.] The applicability of article 2120 C.C.Q. does not depend on the seriousness of the defect or any resulting diminution in the building's usefulness.

[198.] In *Chheng et 9302-0576 Québec inc.*[71], arbitrator James R. Nazem defined "*poor workmanship*" as work improperly executed. In the absence of contractual standards, compliance is assessed against recognized industry standards ("*rules of the art*"). Such workmanship denotes defects that depart from the intended design and diminish the owner's use of the property.

[199.] In *Ruthven et Construction G.P. Bertrand inc.*[72], arbitrator Jean Morissette held that the contractor is required to remedy poor workmanship reported within the first year of the guarantee.

[200.] In *Paquette Dufour et Apax Construction inc.*[73], arbitrator Clément Lucas found that where a defect is apparent and timely reported, the claim cannot be dismissed solely because the remedy sought is monetary compensation.

(ii) WRITTEN NOTICE GIVEN IN A REASONABLE TIME

[201.] On the issue of the Beneficiary's delayed notice of defects to the Contractor and the Manager, and the requirement to act within a reasonable time, the Manager submitted the following authorities:

1. *Marie France Arsenault c. J.B Construction et GCR*, 2024 CanLII 137626
2. *Alain Aoudé et M.M. Beaudin c Montclair résidentiel inc et GCR*, (GAJD) 2025-11-19
3. *Bensemmane et Bel Habitat Inc.*, 2024 CanLII 134156 (QC OAGBRN)
4. *Belanger et Chapdelaine c Constructions Auger-Ouellette f.a.s.n Les Constructions Jean Guy Ouelette et GCR*, 2022 CanLII 128166 (QC OAGBRN)

[70] 2002 CanLII 34288 (QC CQ) [paras 6 to 8]
[71] 2025 CanLII 115547 (QC OAGBRN) [paras 46 and 47]
[72] 2025 CanLII 40418 (QC OAGBRN) [paras 61 and 62]
[73] 2025 CanLII 143886 (QC OAGBRN) [paras 86 and 87]

5. *Charaf et El Alami c Cartierville des Prairies et GCR*, (GAJD) 2026-03-19.

[202.] In *Marie France Arsenault c. J.B Construction et GCR*[74], the arbitrator James R. Nazem, dismissed the beneficiary's claim, finding that the denunciation made eleven (11) months after the defects were discovered, exceeded the time limit under section 2.9 of the guarantee contract.

[203.] The arbitrator further notes that the beneficiary provided no explanation for the delay between first observing the defect on February 16, 2022, and submitting the claim to the manager on February 22, 2023[75].

[204.] In *Alain Aoudé et M.M. Beaudin c. Montclair résidentiel inc. et GCR*[76], the arbitrator, Louis-Martin Richer, considered (i) whether the manager's application to dismiss part of the arbitration request for non-compliance with the Regulation's notice period was well founded in fact and law, and (ii) whether the beneficiaries established, on a balance of probabilities, that they were unable to act within the prescribed time limit.

[205.] The arbitrator found that the time limits prescribed by the Regulation, including the requirement to give notice within a reasonable time, are procedural in nature and not automatically determinative, and may, where appropriate, be extended.

[206.] An extension may be granted where the defaulting party demonstrates both a genuine inability to act, as opposed to mere neglect, and the absence of significant prejudice to the opposing party; such determination is made on a case-by-case basis.

[207.] In *Bensemmane et Bel Habitat Inc.*[77], the manager raised a preliminary objection seeking dismissal of the arbitration filed by the beneficiary on the basis that he reported the alleged defects too late.

[208.] The manager determined that a "*reasonable time*" for reporting defects is six (6) to ten (10) months; as the beneficiary reported certain deficiencies only after delays of one (1) to three (3) years, the claims were inadmissible under the Regulation.

[209.] The arbitrator upheld the preliminary objection and dismissed the beneficiary's application for arbitration[78]; he noted that the first step in assessing the time limit for reporting the defect, started with the moment of "*discovery*" of the defect within the meaning of article 1739 of the Civil Code of Quebec, determined objectively by the standard of a reasonable purchaser, which in our case is the Beneficiary.

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[74] 2024 CanLII 137626 [paras 33 to 36]
[75] 2024 CanLII 137626 [paras 125 to 128]
[76] (GAJD) 2025-11-19 [para 16]
[77] 2024 CanLII 134156 (QC OAGBRN) [paras 5 and 32]
[78] 2024 CanLII 134156 (QC OAGBRN) [paras 40-50

[210.] The applicable objective test requires a determination of whether a reasonable beneficiary, placed in comparable circumstances, would have been able to detect the alleged defect and duly denounce it to both the contractor and the manager within a reasonable time.

[211.] The arbitrator noted that the applicable delay is analogous to extinctive prescription and begins to run when the right of action arises, in accordance with articles 2875 and 2880 C.C.Q.

[212.] In *Belanger et Chapdelaine c Constructions Auger-Ouellette f.a.s.n Les Constructions Jean Guy Ouelette et GCR*[79], the arbitrator James R. Nazem, classified several claims as apparent defects/poor workmanship, which had to be reported at reception or within three (3) days following acceptance of the building. Because the beneficiaries did not report them by the deadline, those claims were dismissed.

[213.] For other claims, even where they were treated as non-apparent poor workmanship or even a hidden defect, the Regulation still requires reporting within a reasonable time after discovery.

[214.] Because the beneficiaries waited more than a year to notify the defects, the arbitrator found the notice unreasonable, resulting in the claims being dismissed[80].

[215.] In *Charaf et El Alami c Cartierville des Prairies et* GCR[81]*,* arbitrator Louis-Martin Richer, was asked to decide the manager's application seeking to exclude from arbitration two claim, on the ground that the time limit under the Regulation for filing such claims was not respected.

[216.] The arbitrator noted that the courts have consistently recognised the Regulation as being of public order, requiring strict compliance by the parties[82]. While the prescribed deadlines are procedural in nature and may, in certain circumstances, be extended, such relief is contingent upon proof of an impossibility to act and the absence of significant prejudice to the other parties[83].

[79] (CCAC) 2022-12-13 [paras 75-77]
[80] Ibid. [paras 79, 83, 86, 89-90, 92-93, 94-96 and 97-99]
[81] (GAJD) 2026-03-19 [para 4]
[82] Ibid. [para 17]
[83] Ibid. [paras 18-22]

[217.] The beneficiaries argued that a new denunciation restarts the applicable time limits for reporting defects [84]. The arbitrator rejected this position, holding that deadlines retain their significance and that a renewed denunciation does not, in itself, revive or reset them, as such an approach would effectively render the guarantee indefinite[85].

[218.] Accordingly, the arbitrator upheld the manager's objection in respect of one claim and concluded that the beneficiaries had failed to establish an inability to act within the prescribed time for the remaining claim[86].

(iii) THIRTY (30) DAYS TO FILE FOR ARBITRATION

[219.] The Manager submits that any application for arbitration was required to be filed within thirty (30) days, with the burden resting on the Beneficiary to demonstrate an inability to act within that period. In support, the Manager relies on *Markman c. Les développements au tournant de la Gare inc. et GCR*[87].

[220.] In *Markman*, arbitrator Louis-Martin Richer was seized of an application by the manager seeking the exclusion of certain claims from the scope of the arbitration, on the grounds that the time limits prescribed by the Regulation were not complied with.

[221.] On August 21, 2025, the beneficiaries filed two applications for arbitration arising from decisions rendered on November 16, 2022, and July 18, 2025. The arbitrator held that any application for arbitration, whether filed by a beneficiary or a contractor, must comply with the prescribed requirements, including those set out in sections 19, 19.1 and 107 of the Regulation[88].

[222.] The arbitrator recalled that the time limit established by the Regulation is procedural in nature and does not constitute a strict deadline entailing the automatic forfeiture of the right to arbitration upon expiry[89].

[223.] The same applies to the requirement of providing notice within a reasonable time, as contemplated, *inter alia*, by section 10 of the Regulation. Accordingly, a beneficiary or a contractor may be relieved from non-compliance, and the applicable time limits may be extended where the circumstances so warrant[90].

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[84] Ibid. [paras 46-48 and 50]
[85] Ibid. [para 48]
[86] Ibid. [paras 52-53]
[87] (GAJD) 2025-03-09
[88] Ibid. [para 16]
[89] Ibid. [para 19]
[90] Ibid. [paras 19-21]

[224.] The arbitrator while recognizing that the beneficiaries experienced significant and compelling personal circumstances, nevertheless, he could not disregard or relax the time limits prescribed by the Regulation to the extent that their effective application would be compromised.

[225.] The issue that he had to determine was whether the manager's application for dismissal of the arbitration request, on the basis of non-compliance with the prescribed notice period, was well founded in fact and in law.

[226.] The arbitrator concluded based on the evidence that the prescribed time limit was not met. Consequently, the determinative question was whether the beneficiaries demonstrated, on a balance of probabilities, that they were unable to act within the required time frame.

[227.] The impossibility to act had to be assessed on a case-by-case basis. Authorities serve as guidance only and cannot be applied mechanistically; due regard must be given to the specific facts of each case.

[228.] Having reviewed the evidence, the arbitrator found that the beneficiaries did not establish, on a balance of probabilities, that they were prevented by an impossibility from acting within the prescribed time limit.

(iv) CLAIMS EXCLUDED BY THE REGULATION

[229.] The Manager submits that the Regulation exhaustively defines the categories of claims excluded from the Plan and, consequently, restricts monetary compensation to those claims expressly provided for therein. In support of this position, the Manager relies on *Bouliane c Immeubles Valdie et GCR* [91], wherein, the arbitrator Pamela McGovern, stated that the Plan does not provide for the reimbursement of work undertaken at the beneficiary's own initiative.

[230.] Rather, subject to applicable limits and exclusions, the Plan requires the manager to restore the building and to repair material damage resulting from corrective work performed under the Plan[92].

[231.] Accordingly, the arbitrator dismissed the beneficiary's claim under the Plan and further noted that he lacked jurisdiction to extend the Plan's coverage to amounts not reimbursed by the beneficiary's insurer[93].

[91] (CCAC) 2026-02-06
[92] Ibid. [para 45]
[93] Ibid. [para 46]

(v) COST OF ARBITRATION

[232.] Lastly, the Manager submits that the costs of arbitration should be apportioned equally between the Beneficiary and the Manager, relying in support on *Bouliane c Immeubles Valdie et GCR* (CCAC)[94].

[233.] The costs for arbitration are governed by section 123 of the Regulation. In the event that the Tribunal dismisses the Beneficiary's application for arbitration, the costs of the arbitration must be apportioned between the Manager and the Beneficiary.

E. ANALYSIS AND ARBITRATION AWARD

[234.] Upon review of the evidence, the Regulation, and the applicable law, the Tribunal dismisses Points 1, 2 ,3, 4, 5 and 6, for the reasons set out hereafter.

(1) *PROCÈS DE NOVO*

[235.] At the case management conference held on October 30, 2025, the Tribunal clearly established the governing procedural framework. The parties were formally notified that the arbitration would proceed *de novo*, thereby confirming that the Tribunal is seized of full adjudicative authority over the dispute.

[236.] The Tribunal further clarified that (i) the parties bear the burden of presenting and advancing their respective cases; (ii) they are entitled to retain counsel; and (iii) they may adduce evidence not previously submitted before Mr. Laverdière.

[237.] These directions are consistent with the governing principles of procedural fairness and adversarial presentation.

[238.] In *9264-3212 Québec Inc. c. Moseka*[95], the Superior Court of Québec articulated the scope and function of the arbitration tribunal's role:

> "*[20] […] L'arbitre peut entendre des témoins, recevoir des expertises et procéder à l'inspection des biens ou à la visite des lieux.*
>
> *…*
>
> *[24] Le Tribunal rappelle que l'arbitre ne siège pas en appel ou en révision de la décision du Conciliateur. Il ne procède pas non plus à décider en se basant uniquement sur le dossier transmis. Les parties peuvent être représentées par avocat devant lui, comme ce fut le cas dans ce dossier.*"
>
> [Emphasis added]

[94] (CCAC) 2026-02-06 [para 49]
[95] 2018 QCCS 5286 (CanLII)

[239.] The Superior Court in *Moseka* confirmed that the arbitrator (i) is empowered to hear witnesses, receive expert evidence, and conduct site inspections; (ii) does not sit in appeal or review of the conciliator's decision; and (iii) is not bound by the documentary record transmitted at the conciliation stage.

[240.] The Conciliator's mandate is set out in the Decision, from which the Tribunal reproduces the relevant notice[96]:

> **CONCILIATOR'S MANDATE**
>
> *The mandate of the conciliator from La Garantie GCR consists in verifying and analyzing each of the points included in the beneficiary's written notice(s). The conciliator then, in particular, proceeds with a visit to the premises, collects statements from each of the parties involved, and consults the documentation, in order to prepare a detailed report stating whether or not the matter has been settled.*
>
> *In the absence of a settlement, the conciliator rules on the issues in dispute and provides detailed explanations of each decision made pursuant to the Regulation.*
>
> [Emphasis added]

[241.] The Conciliator's mandate, as described in the Decision, is investigative and facilitative in nature. In the absence of settlement, the conciliator renders a decision with reasons pursuant to the Regulation.

[242.] By contrast, arbitration constitutes a distinct and independent dispute resolution process. While it is triggered following the conciliator's intervention, it is not constrained by the conciliator's findings or conclusions.

[243.] The transition from conciliation to arbitration marks a fundamental shift (i) from an administrative and investigative process to a quasi-judicial adjudication; (ii) from a documentary and summary assessment to a full evidentiary hearing; and (iii) from a preliminary determination to a binding arbitral award.

[244.] Following the Beneficiary's denunciation dated January 17, 2025[97], the Conciliator complied with the procedural requirements set out in the Regulation, including convening the parties, conducting a site inspection, receiving statements, and reviewing documentation. No settlement having been reached, the Conciliator rendered a decision in accordance with his mandate.

[96] Exhibit A-11 page 3
[97] Exhibit A-4

[245.] Subsequently, the matter was brought before the Tribunal. The Tribunal, acting in accordance with the principles set out in *Moseka*, conducted a full hearing on the merits. Each party was afforded the opportunity to (i) file documentary exhibits; (ii) present testimonial evidence; and (iii) advance its arguments.

[246.] It is further noted that, although both parties were entitled to legal representation, neither elected to retain counsel.

[247.] The Tribunal heard the matter in accordance with the principles set out in *Moseka*. The parties filed documentary exhibits and provided testimony in support of their respective positions.

(2) BURDEN OF PROOF

[248.] As the party seeking arbitration, the Beneficiary bears the burden of proof, in accordance with the principle set out in article 2803 C.C.Q.:

> "*2803. A person wishing to assert a right shall prove the facts on which his claim is based.*"

[249.] In addition, the Tribunal's assessment of the evidence is guided by the principles set out in Article 2804 C.C.Q., which provides as follows:

> "*2804. Evidence is sufficient if it renders the existence of a fact more probable than its non-existence, unless the law requires more convincing proof.*"

[250.] Article 2811 C.C.Q. sets out the means by which a party discharges its burden of proof and provides as follows:

> "*2811. Proof of a fact or juridical act may be made by a writing, by testimony, by presumption, by admission or by the production of material things, according to the rules set forth in this Book and in the manner provided in the Code of Civil Procedure (chapter C-25) or in any other Act.*"

[251.] Accordingly, it was incumbent upon the Beneficiary to present admissible evidence, in accordance with Quebec rules of evidence, demonstrating on a balance of probabilities that the Manager erred in rejecting Points 1 through 5 and not deciding point 6.

[252.] These rules serve to guide the Tribunal's assessment of the evidence adduced by the Beneficiary, which she failed to discharge with respect to Points 1 to 6[98].

[98] *Caisse populaire de Maniwaki v. Giroux*, [1993] 1 S.C.R. 282 at page 291

(3) CREDIBILITY

[253.] Assessing the credibility of Misses Verrelli, Lebourdais and Mr. Laverdière, is a question of fact.[99] A criterion has been established for assessing the credibility and probative value of witness statements.

[254.] In *Stoneham v. Ouellet,*[100] the Supreme Court of Canada held that the evidence as a whole must be taken into account, and that the decision-maker must be on the lookout for contradictions, hesitations and circumstances that emerge from the evidence as a whole:

> "*(page 195)*
>
> *In a civil proceeding, where the rule is that of a preponderance of the evidence and the balance of probabilities, when a party testifies and is not believed it is possible for the trial judge to regard his assertions as denials and his denials as admissions, taking into account contradictions, hesitations, the time the witness takes to answer, his expression, circumstantial evidence and the evidence as a whole.*"
>
> [Emphasis added]

[255.] In *Boulin c. Axa Assurances inc.*[101] the Court of Québec referred to the *Stoneham* decision and listed the following criteria, which is not intended to be exhaustive:

> "*[141] Les critères retenus par la jurisprudence pour jauger la crédibilité, sans prétendre qu'ils sont exhaustifs, peuvent s'énoncer comme suit :*
>
> *1. Les faits avancés par le témoin sont-ils en eux-mêmes improbables ou déraisonnables?*
>
> *2. Le témoin s'est-il contredit dans son propre témoignage ou est-il contredit par d'autres témoins ou par des éléments de preuve matériels?*
>
> *3. La crédibilité du témoin a-t-elle été attaquée par une preuve de réputation?*
>
> *4. Dans le cours de sa déposition devant le tribunal, le témoin a-t-il eu des comportements ou attitudes qui tendent à le discréditer?*

[99] *Barabé c. Senécal,* 2024 QCCA 798 [para 6]
[100] [1979] 2 SCR 172 pages 195 and 196
[101] 2009 QCCQ 7643 (CanLII)

> *5. L'attitude et la conduite du témoin devant le tribunal et durant le procès révèlent-elles des indices permettant de conclure qu'il ne dit pas la vérité?*

[142] Ces critères d'appréciation de la crédibilité peuvent prendre en compte non seulement ce qui s'est dit devant le tribunal, mais aussi d'autres déclarations, verbalisations ou gestes antérieurs du témoin.

[143] Ainsi, un témoin qui, en des moments différents relativement aux mêmes faits, donne des versions différentes porte atteinte à la crédibilité de ce qu'il avance.

[144] Dans l'évaluation de la crédibilité d'un témoin, il est important de considérer sa faculté d'observation, sa mémoire et l'exactitude de ses déclarations.

[145] Il est également important de déterminer s'il tente honnêtement de dire la vérité, s'il est sincère et franc ou au contraire s'il est partial, réticent ou évasif.[9]

[146] La crédibilité d'un témoin dépend aussi de sa connaissance des faits, de son intelligence, de son désintéressement, de son intégrité, de sa sincérité. [10]

[147] La Cour suprême a souligné que dans une affaire civile où la règle est celle de la prépondérance de la preuve et des probabilités, quand la partie témoigne et qu'elle n'est pas crue, il est possible pour le juge qui procède de considérer ses affirmations comme des négations, et ses dénégations comme des aveux, compte tenu des contradictions, des hésitations, du temps que le témoin met à répondre, de sa mine, des preuves circonstancielles et de l'ensemble de la preuve. [11]

[148] Dans son analyse, le Tribunal devra certes examiner les témoignages au procès, mais aussi les interrogatoires hors cour et les déclarations antérieures.

[149] Il faudra vérifier si les versions sont concordantes, et si elles ne le sont pas si des explications claires ont été données justifiant les divergences ou les contradictions.

[150] La vérité se dit et s'énonce clairement. Certes il se peut que quelqu'un puisse ne pas avoir toutes les factures ou à l'occasion avoir des trous de mémoire, mais cela ne peut justifier de représenter comme vraies des choses complètement inexactes.

[151] Les problèmes de récollection répétitifs et importants d'un témoin sur des éléments cruciaux portent atteinte au moins quant à sa fiabilité. Un tel témoin risque d'affirmer des choses comme avérées alors qu'il ne s'en souvient pas.

> *[152] Les contradictions entre diverses déclarations sur les mêmes faits portent aussi atteinte à la crédibilité.*"
>
> *[Emphasis added]*

[256.] In *Chénier c. R.*[102] the Court of Appeal of Québec stated:

> "*[19] […] La crédibilité d'un témoin s'attarde à sa personne et à ses caractéristiques, qu'il s'agisse de son honnêteté, de sa sincérité ou de son intégrité. La fiabilité porte sur la valeur du récit d'un témoin, ce qui inclut la considération de facteurs comme sa mémoire, la présence ou l'absence de contradictions et leur ampleur, sa faculté et sa capacité d'observation.[3]*"
>
> [Emphasis added]

[257.] The Court of Appeal distinguished between credibility and reliability of a witness; credibility is based on the person's characteristics, such as honesty, sincerity or integrity, while reliability relates to the value of a witness's account, which includes consideration of factors such the witness' memory, or the presence or absence of contradictions.

[258.] In *Construction GMR inc. c. Syndicat des copropriétaires du 521 de Cannes à Gatineau*,[103] the Quebec Court of Appeal held that testimony could contain certain inaccuracies without losing all its value.

[259.] Ms. Verrelli testified on the six (6) points submitted for arbitration. The evaluation of her credibility takes into consideration the contradictions, hesitations and circumstances that emerged from the evidence as a whole.

[260.] The contradictions in Ms. Verrelli's testimony arises from her reliance on the representations made by the Contractor's representative: at first, it was the project manager who explained the guarantee coverage; in cross-examination she stated that it was the Contractor's salesman.

[261.] The remainder of Ms. Verrelli's testimony does not raise issues of credibility, but her testimony highlights the consequences of not having read the Preliminary Contract, the Guarantee Contract and the Regulation, until the summer of 2025.

[262.] Ms. Verrelli stated that the Contractor represented that she possessed a five (5) year guarantee against defects; it was her understanding that claims such as poor workmanship were ensured for up to five (5) years.

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[102] 2020 QCCA 368 (CanLII)
[103] 2018 QCCA 129 [para 16]

[263.] Lastly, she asserted that prior to signing the Guarantee Contract, the Contractor did not bring to her attention sections 2.8 (Reasonable Time), 9 (Guarantee Against Poor Workmanship), 16 (Exclusions from the Guarantees), 19 (Remedy) and 21 (Arbitration).

[264.] Ms. Verrelli did not adduce any evidence establishing that she was prevented by the Contractor to review the Guarantee Contract (prior to signing), which she acknowledged reviewing it, albeit in a cursory manner. Furthermore, she testified that she understood the Guarantee Contract.

[265.] After signing the Guarantee Contract, Ms. Verrelli did not consult the Guarantee Contract nor the Regulation until after she received the English Decision[104].

[266.] Ms. Verrelli further testified that she was fully apprised of the purpose of the inspection conducted on June 22, 2022, and that, on that occasion, she understood that she had the option to either accept or refuse the acceptance of the Building.

[267.] Would a reasonable person under the same circumstances perform a cursory review and then sign the Guarantee Contract, without taking specific cognizance of sections 2.8 (Reasonable Time), 9 (Guarantee Against Poor Workmanship), 16 (Exclusions from the Guarantees), 19 (Remedy) and 21 (Arbitration)?

[268.] The Tribunal considers whether a reasonable beneficiary, apprised of the purpose of the inspection preceding acceptance of the Building would not have ensured that any defects observed prior to June 22, 2022 were expressly identified and recorded as deficiencies requiring corrective work by the Contractor.

[269.] Even if it were accepted that Ms. Verrelli relied on the explanations provided by the Contractor, the issue remains whether such reliance was reasonable and sufficient so as to excuse her failure to review the Guarantee Contract and the Regulation more closely, and to ensure that the alleged defects arising from poor workmanship were duly denounced to both the Contractor and the Manager within a reasonable time of their discovery.

[270.] Ms. Verrelli testified that she felt compelled to accept the Pre-Acceptance Inspection Form[105] without requiring the Contractor to remedy the observed defects. While this may explain her state of mind and may be understandable in the circumstances, it does not, in itself, have any bearing on the application of the obligations imposed by the Regulation.

[104] Exhibit A-11
[105] Exhibit A-3

[271.] However, no evidence was adduced by Ms. Verrelli to establish that she was prevented by the Contractor from denouncing the defects to both the Contractor and the Manager within the prescribed delay of three (3) days, or within the one (1) year following acceptance of the Building.

[272.] Once the defects were observed, a reasonable beneficiary (despite having relied on the Contractor's representations) would nevertheless have consulted the Guarantee Contract and the Regulation in order to ascertain and comply with the procedure required to have the defects remedied.

[273.] The Tribunal finds that Ms. Verrelli's explanations for failing to denounce Points 1, 3, 4, 5 and 6 within a reasonable time following their discovery (namely her alleged reliance on the Contractor's representations that she held a five (5) year guarantee akin to an insurance policy) lack credibility in the circumstances.

[274.] Furthermore, Ms. Verrelli's admission that she was unaware of the Regulation illustrates a failure to take reasonable steps to inform herself of her rights and of the scope and conditions of the guarantees provided thereunder.

[275.] The Preliminary Contract and the Guarantee Contract expressly referred to the Regulation, as did the Decision. Notwithstanding these repeated references, Ms. Verrelli acknowledged that she did not give any attention to the Regulation until the summer of 2025.

[276.] The Manager established that, on July 26, 2022, GCR transmitted to the Beneficiary the "*Certificat de garantie 135 Des Vinaigriers*", together with information regarding the coverage afforded under the Guarantee Contract and the Regulation, including a hyperlink directing the recipient to GCR's website, where publications in English intended for beneficiaries are readily accessible.

[277.] At the case management hearing, the Tribunal further reminded the parties that the Regulation, as well as the decisions and arbitral awards interpreting and applying it, are publicly available online.

[278.] While the Beneficiary was not under any obligation to retain legal counsel and was entitled to represent herself, she remained under a duty to acquaint herself with the terms and conditions of the contracts she executed and with the Regulation governing the claims submitted to the Conciliator and, subsequently, to this Tribunal.

[279.] In the present context, where access to information via the internet is immediate and widespread, a reasonably diligent beneficiary (whether represented by counsel or not) would be expected to undertake basic inquiries and consult the applicable Regulation. In so doing, such a person would, without difficulty, identify the resources available online, including at least two websites specifically dedicated to the Plan.

[280.] The Tribunal concludes that Ms. Verrelli did not act as a reasonable beneficiary placed in similar circumstances. The evidence demonstrates that she voluntarily elected, without any inducement or influence from the Contractor, to remain insufficiently informed of her rights and obligations, having limited her review to a cursory examination of the Guarantee Contract.

(4) REGULATION

[281.] At the outset, the Tribunal notes that the arbitration application and the issues submitted for determination are governed by the Regulation. The Tribunal therefore refers to the relevant provisions of the Regulation, as well as to the applicable provisions of the Civil Code of Québec, in rendering this Award.

[282.] The Tribunal further recalls that the purpose of the Regulation is to remedy the imbalance between consumers and contractors and to establish a comprehensive regime of public protection in the context of new residential construction[106].

[283.] In *Levy Chantal et 9615296 Canada inc. (Groupe Gérik)*, arbitrator Michel A. Jeanniot stated[107]:

> "*[51] Le Procureur général du Québec s'exprimait ainsi alors qu'il intervenait dans un débat concernant une sentence arbitrale rendue en vertu du Plan de garantie des bâtiments résidentiels neufs où il avait été appelé :*
>
> > *Les dispositions à caractère social de ce règlement visent principalement à remédier au déséquilibre existant entre le consommateur et les entrepreneurs lors de mésententes dans leurs relations contractuelles. En empruntant un fonctionnement moins formaliste, moins onéreux et mieux spécialisé, le système d'arbitrage vient s'insérer dans une politique législative globale visant l'établissement d'un régime complet de protection du public dans le domaine de la construction résidentielle.* "
>
> [Emphasis added]

[106] *Filteau et Menuiserie Ranger inc. (Entrepreneur général Ranger inc.)*, 2025 CanLII 32971 (QC OAGBRN), arbitrator Michel A. Jeanniot [para 61]; *Levy Chantal et 9615296 Canada inc. (Groupe Gérik)*, arbitrator Michel A. Jeanniot [para 51]; *Rousseau et 9253-5400 Québec inc. Faubourg Londonien (Habitations Trigone)*, (CCAC), S16-112001-NP, 2018-07-12, arbitrator Jean Philippe Ewart [para 39]

[107] 2024 CanLII 74678 (QC OAGBRN)

[284.] In *La Garantie des Bâtiments Résidentiels Neufs de l'APCHQ Inc. v. Maryse Desindes and Yvan Larochelle, and René Blanchet mise en cause*,[108] the Court of Appeal of Quebec confirmed that the parties' rights and obligations arise directly from the Regulation.

[285.] In *Gestion G. Rancourt inc. c. Lebel*, the Quebec Court of Appeal confirmed that the Plan operates as a supplement to the Civil Code of Quebec regime governing latent defects and does not require beneficiaries to waive the civil remedies available to them before or after the Plan's implementation[109]:

> "*[10] Le plan de garantie constitue « un complément aux garanties contre les vices cachés du Code civil ». Rien dans le Règlement n'impose au bénéficiaire de renoncer au droit d'action que le Code civil lui reconnaissait avant l'institution d'un Plan et qu'il lui reconnaît encore aujourd'hui.*"
>
> [Emphasis added]

[286.] Accordingly, the claims dismissed by the Conciliator pursuant to sections 10(2), 10(3) and 12(9) of the Regulation must be assessed strictly within the confines of that regulatory framework.

[287.] The Conciliator rejected Points 1, 3, 4 and 5 on the basis that the Beneficiary denounced the alleged defects approximately twenty (20) to thirty (30) months after their discovery for Point 1, and approximately thirty-one (31) months after discovery for Points 3, 4 and 5, which delays were found not to constitute notice given within a reasonable time.

[288.] The Conciliator did not render a determination with respect to Point 6. In the circumstances, the Tribunal will nevertheless consider this claim on the basis of the evidence adduced by the Beneficiary.

[289.] In *Gestion G. Rancourt inc*., the Court of Appeal, interpreting section 10(4) of the Regulation, incorporated the legal regime of latent defects set out in articles 1726 and 2103 C.C.Q., and affirmed that the Plan supplements, rather than displaces, the Civil Code framework governing hidden defects.

[290.] Although *Gestion G. Rancourt inc*. concerned section 10(4), the same principle is of equal application to sections 10(2) and 10(3) of the Regulation.

[291.] In *Tétreault et Construction Mera inc.*, arbitrator Roland-Yves Gagné reaffirmed the well-established principle that a beneficiary's recourse under the Plan lies against the plan manager, and not by way of an ordinary civil claim directly against the contractor. The manager's mandate is to administer the guarantee in circumstances where the contractor fails to comply with its legal or

[108] 2004 CanLII 47872 (QC CA) [para 38]
[109] 2016 QCCA 2094 (CanLII)

contractual obligations, thereby affording beneficiaries a complementary remedy to those available before the civil courts[110]:

> "*[86] C'est à bon droit que le procureur de la GCR a rappelé que le recours des Bénéficiaires est à l'encontre de l'Administrateur du plan de garantie et non un recours de droit commun contre l'Entrepreneur.*
>
> *[87] L'Administrateur gère la « garantie d'un plan dans le cas de manquement de l'entrepreneur à ses obligations légales ou contractuelles ».*
>
> *[88] L'Administrateur est soumis à un Règlement qui a été décrété par le Législateur pour donner un recours supplémentaire aux recours de droit commun pour couvrir le bâtiment des Bénéficiaires selon ses dispositions, Règlement que notre Cour d'appel a jugé à plusieurs reprises [1] comme étant d'ordre public.*"
>
> [Emphasis added]

[292.] This complementary relationship between the Regulation and the Civil Code of Québec has likewise been affirmed by the Quebec Superior Court's decision in *Garantie Habitation du Québec inc. c. Jeanniot*[111]:

> "*[63] Il est clair des dispositions de la Loi et du Règlement que la garantie réglementaire ne remplace pas le régime légal de responsabilité de l'entrepreneur prévu au Code civil du Québec. Il est clair également que la garantie prévue à la Loi et au Règlement ne couvre pas l'ensemble des droits que possède un bénéficiaire, notamment en vertu des dispositions du Code civil du Québec et que les recours civils sont toujours disponibles aux parties au contrat.*
>
> *[64] Cependant, selon l'article 19 du Règlement pour que la garantie s'applique, le bénéficiaire ou l'entrepreneur insatisfait d'une décision de l'administrateur doit soumettre le litige à l'arbitrage.*
>
> *[65] De plus, la clause 4.17 du contrat de garantie prévoit spécifiquement que «subject to the review procedure provided herein for claims made under the guarantee », si un différend ou un litige survient à la suite ou à l'occasion du contrat il doit être référé devant le tribunal de droit commun. La clause 4.17 est claire et ne souffre d'aucune ambiguïté. Elle oblige le bénéficiaire à se pourvoir devant les tribunaux de droit commun pour les différends ou litiges découlant du contrat, autres que ceux relatifs à la garantie.*

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[110] 2024 CanLII 132665 (QC OAGBRN)
[111] 2009 QCCS 909 (CanLII)

> *[66] En d'autres termes, en ce qui concerne l'exécution de la garantie, le Règlement n'offre pas un choix entre l'arbitrage et le recours aux tribunaux de droit commun. Il attribue une compétence exclusive à l'arbitre en regard de l'exécution de la garantie et sa décision à cet égard est finale et sans appel.*
>
> *[67] Cela dit, faut-il conclure, comme le soutient Garantie Habitation, que le bénéficiaire qui intente un recours devant le tribunal de droit commun renonce de ce fait au bénéfice de la garantie prévu au plan de garantie?*
>
> *[68] Selon le Tribunal, avec respect, ce postulat est sans fondement.*
>
> *[69] Aucune disposition de la Loi et du Règlement ne traite, ni expressément, ni implicitement, d'une renonciation à la garantie dans un tel cas*."
>
> [Emphasis added]

[293.] Accordingly, the Beneficiary's rights under the Regulation and under the Civil Code of Québec coexist and operate concurrently. The regulatory guarantee is circumscribed: it is triggered only where the contractor has failed to fulfil its legal or contractual obligations in the context of the construction of a new building, namely in respect of "*poor workmanship*" [112], "*latent defects*" [113], or "*construction defects*" [114]. It does not extend to other breaches of a contractual or legal nature, which remain governed exclusively by the ordinary rules of the Civil Code of Québec.

[294.] In *Garantie Habitation du Québec inc.*[115], the Quebec Superior Court referred to clause 4.17 of the guarantee contract. In the present matter, the Tribunal relies on section 17.6 of the applicable Guarantee Contract. Although their wording differs, the legal effect of these provisions is equivalent.

[295.] Section 17.6 provides that the Beneficiary's failure to give written notice or to comply with the prescribed claim delays entails forfeiture of the right to invoke the guarantee. In such circumstances, the Manager bears no liability in respect of the alleged defects, without prejudice to any recourses the Beneficiary may otherwise exercise against the Contractor under the Civil Code of Québec, subject to the applicable legal requirements.

[296.] In the present case, the application for arbitration is directed solely against the Manager of the Plan and does not constitute an action in ordinary civil liability against the Contractor.

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[112] Section 10(2) of the Regulation
[113] Section 10(4) of the Regulation
[114] Section 10(5) of the Regulation
[115] 2009 QCCS 909 (CanLII)

[297.] The Tribunal concludes that the Beneficiary's failure to provide timely written notice to both the Contractor and the Manager resulted in the forfeiture of her rights under the Plan, leaving only potential civil remedies beyond the scope of the Regulation.

(5) PUBLIC ORDER

[298.] Our courts and arbitral tribunals have consistently held that the Regulation is of public order.

[299.] In *Garantie des bâtiments résidentiels neufs de l'APCHQ inc. c. Desindes*, the Québec Court of Appeal affirmed the mandatory nature of the Regulation in the following terms[116]:

> "*[11]* ***Le Règlement est d'ordre public.*** *Il pose les conditions applicables aux personnes morales qui aspirent à administrer un plan de garantie.* ***Il fixe les modalités et les limites du plan de garantie*** *ainsi que, pour ses dispositions essentielles, le contenu du contrat de garantie souscrit par les bénéficiaires de la garantie, en l'occurrence, les intimés.*
>
> *[12] L'appelante est autorisée par la Régie du bâtiment du Québec (la Régie) à agir comme administrateur d'un plan de garantie approuvé. Elle s'oblige, dès lors, à cautionner les obligations légales et contractuelles des entrepreneurs généraux qui adhèrent à son plan de garantie.*
>
> ***[13] Toutefois, cette obligation de caution n'est ni illimitée ni inconditionnelle[7]. Elle variera selon les circonstances factuelles, notamment selon que le défaut de l'entrepreneur général survient avant ou après la « réception du bâtiment », soit : « l'acte par lequel le bénéficiaire déclare accepter le bâtiment qui est en état de servir à l'usage auquel on le destine… »[8].****;*
>
> *[14] Je reproduis ci-après les dispositions pertinentes, soit celles qui régissent le contenu et les limites de la garantie lorsque le contrat en est un d'entreprise et que le défaut de l'entrepreneur survient avant la réception d'une maison unifamiliale non détenue en copropriété :*
>
> ***CONTENU DE LA GARANTIE***
>
> ***7.*** *Un plan de garantie doit garantir l'exécution des obligations légales et contractuelles d'un entrepreneur dans la mesure et de la manière prévues par la présente section.*
>
> *[…]*

[116] 2004 CanLII 47872 (QC CA)

(Je souligne).

[15] ***La réclamation d'un bénéficiaire est soumise à une procédure impérative.*** Les dispositions pertinentes du *Règlement* quant à la réclamation se trouvent aux **articles 18, 19 et 20.** Ils prévoient :

> ***18.*** *La procédure suivante s'applique à toute réclamation faite en vertu du plan de garantie :*
>
> *1° dans le délai de garantie d'un, 3 ou 5 ans selon le cas, le bénéficiaire dénonce par écrit à l'entrepreneur le défaut de construction constaté et transmet une copie de cette dénonciation à l'administrateur en vue d'interrompre la prescription;*
>
> *2° au moins 15 jours après l'expédition de la dénonciation, le bénéficiaire avise par écrit l'administrateur s'il est insatisfait de l'intervention de l'entrepreneur ou si celui-ci n'est pas intervenu; il doit verser à l'administrateur des frais de 100 $ pour l'ouverture du dossier et ces frais ne lui sont remboursés que si la décision rendue lui est favorable, en tout ou en partie, ou que si une entente intervient entre les parties impliquées;*
>
> *3° dans les 15 jours de la réception de l'avis prévu au paragraphe 2°, l'administrateur demande à l'entrepreneur d'intervenir dans le dossier et de l'informer, dans les 15 jours qui suivent, des mesures qu'il entend prendre pour remédier à la situation dénoncée par le bénéficiaire;*
>
> *4° dans les 15 jours qui suivent l'expiration du délai accordé à l'entrepreneur en vertu du paragraphe 3°, l'administrateur doit procéder sur place à une inspection;*
>
> *5° dans les 20 jours qui suivent l'inspection, l'administrateur doit produire un rapport écrit et détaillé constatant le règlement du dossier ou l'absence de règlement et il en transmet copie, par poste recommandée aux parties impliquées;*
>
> *6° en l'absence de règlement, l'administrateur statue sur la demande de réclamation et, le cas échéant, il ordonne à l'entrepreneur de rembourser le bénéficiaire pour les réparations conservatoires nécessaires et urgentes, de parachever ou de corriger les travaux dans le délai qu'il indique et qui est convenu avec le bénéficiaire;*

> *7⁰ à défaut par l'entrepreneur de rembourser le bénéficiaire, de parachever ou de corriger les travaux et en l'absence de recours à la médiation ou de contestation en arbitrage de la décision de l'administrateur par l'une des parties, l'administrateur fait le remboursement ou prend en charge le parachèvement ou les corrections dans le délai convenu avec le bénéficiaire et procède notamment, le cas échéant, à la préparation d'un devis correctif, à un appel d'offres, au choix des entrepreneurs et à la surveillance des travaux.*
>
> ***V. Recours***
>
> ***19.*** *Le bénéficiaire ou l'entrepreneur, insatisfait d'une décision de l'administrateur,* ***doit****, pour que la garantie s'applique, soumettre le différend à l'arbitrage dans les 15 jours de la réception par poste recommandée de la décision de l'administrateur à moins que le bénéficiaire et l'entrepreneur ne s'entendent pour soumettre, dans ce même délai, le différend à un médiateur choisi sur une liste dressée par le ministre du Travail afin de tenter d'en arriver à une entente. Dans ce cas, le délai pour soumettre le différend à l'arbitrage est de 15 jours à compter de la réception par poste recommandée de l'avis du médiateur constatant l'échec total ou partiel de la médiation.*
>
> ***20.*** *Le bénéficiaire, l'entrepreneur et l'administrateur sont liés par la décision arbitrale dès qu'elle est rendue par l'arbitre.*
>
> *La décision arbitrale est finale et sans appel*."
>
> (Je souligne).
>
> [Emphasis added in bold]

[300.] In *Desindes*[117], the Court of Appeal further confirmed that, as a matter of public order, the Regulation determines the terms, conditions, and limits of the Plan, as well as the essential provisions of the Guarantee Contract. Significantly, the Court recognised that the guarantees afforded thereunder are neither unlimited nor unconditional.

[301.] The Court also underscored that the Beneficiary's claim is governed by the imperative procedures set out, *inter alia*, in sections 10(2), 10(3) and 19 of the Regulation.

[117] 2004 CanLII 47872 (QC CA) [para 13]

[302.] Subsequently, in *Garantie des bâtiments résidentiels neufs de l'APCHQ inc. c. MYL Développement inc.*, the Quebec Court of Appeal revisited the legal framework and reiterated the highly regulated nature of the scheme[118]:

> "*[8] Pour un examen approprié de l'affaire, il y a lieu de s'attarder d'abord à la nature des liens juridiques qui unissent les parties en cause.*
>
> *[9] L'appelante [notre ajout : l'Administrateur] est une personne morale autorisée par la Régie du bâtiment du Québec à administrer un plan de garantie (art. 81 de la Loi sur le bâtiment), (la Loi).*
>
> *[10] En l'espèce, ce plan de garantie est au bénéfice des personnes qui ont conclu un contrat avec un entrepreneur pour la construction d'un bâtiment résidentiel neuf. Le plan garantit l'exécution des obligations légales et contractuelles d'un entrepreneur sous réserve de certaines conditions.*
>
> *[12] La Loi oblige les entrepreneurs en construction à détenir une licence (art. 46). Suivant le Règlement, pour agir à titre d'entrepreneur en bâtiments résidentiels neufs toute personne doit adhérer à un plan qui garantit l'exécution de ses obligations résultant d'un contrat avec un bénéficiaire.*
>
> *[13] Le Règlement est d'ordre public. Il détermine notamment les dispositions essentielles du contrat de garantie en faveur des tiers. Le contrat doit de plus être approuvé par la Régie du bâtiment (art. 76).*
>
> *[14] De même, le Règlement oblige l'entrepreneur à signer une convention d'adhésion dont le contenu est, en grande partie, déterminé par le Règlement (art. 78). Qui plus est, la convention d'adhésion reprend, pour en faire partie intégrante, le contrat de garantie au bénéfice des tiers.*
>
> *[15] Pour reprendre l'expression de la juge Rayle dans l'arrêt Garantie des bâtiments résidentiels neufs de l'APCHQ inc. c. Desindes, nous sommes en présence de contrats (garantie et adhésion) fortement réglementés dont le contenu est dicté par voie législative et réglementaire.*"
>
> [Emphasis added]

[303.] The Tribunal must therefore analyse the Beneficiary's application for arbitration within the context of a highly regulated legal and contractual regime, the content and scope of which are dictated by the Regulation.

[118] 2011 QCCA 56 (CanLII)

[304.] While the Regulation has since been amended, the fundamental principles articulated by the Court of Appeal in *Desindes* and *MYL Développement* remain determinative.

[305.] These principles may be summarised as follows:

[305.1] The manager is authorised to administer an approved guarantee plan;[119]

[305.2] The contractor holds a licence[120] authorising it to carry out, in whole, construction work governed by the Regulation;[121]

[305.3] Any contractor engaged in the construction of new residential buildings must adhere to a guarantee plan securing the performance of its legal and contractual obligations; [122]

[305.4] The guarantee plan must comply with the standards and criteria prescribed by the Regulation[123] and approved by the *Régie du bâtiment du Québec*;[124]

[305.5] The guarantee contract is likewise subject to regulatory approval, i.e. the Regulation[125] and the *Régie du bâtiment du Québec*;[126]

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[119] Section 1 of the Regulation
[120] Section 46 of the Building Act, chapter B-1.1; Section 1 of the Regulation
[121] Section 1 of the Regulation
[122] Sections 6 and 7 of the Regulation: *6. Any person wishing to become a contractor for the new residential buildings referred to in section 2 shall, in accordance with Division I of Chapter IV, join a plan guaranteeing the performance of the legal and contractual obligations provided for in section 7 and resulting from a contract entered into with a beneficiary*. and 7. *The guarantee plan shall guarantee the performance of the contractor's legal and contractual obligations to the extent and in the manner prescribed by this Division*.
[123] Section 3 of the Regulation: *3. Any guarantee plan to which this Regulation applies shall meet the standards and criteria established herein and shall be approved by the Board*.; Chapter IV of the Regulation: STANDARDS AND CRITERIA OF GUARANTEE PLANS AND OF GUARANTEE CONTRACTS – *75. In addition to the guarantee requirements set out in Chapter II, the guarantee plan shall include the standards and criteria prescribed in Divisions I, II and III of this Chapter. - 76. No guarantee contract may be offered unless it complies with the rules established in Division IV of this Chapter and is approved by the Board*.
[124] Section 80 of the Building Act, chapter B-1.1: *80. A guaranty plan and any guaranty contract offered under such a plan shall conform with the standards and criteria established by regulation of the Board and be approved by the Board*.
[125] Sections 75 and 76 of the Regulation
[126] Sections 77 and 78 of the Building Act

[305.6] The Regulation determines the terms, conditions, and limits of the guarantee plan, as well as the essential provisions of the guarantee contract;[127]

[305.7] The benefit of the guarantee is conditional upon strict compliance by the beneficiary with the mandatory provisions of the Regulation.[128]

[306.] In *Tétreault et Construction Mera inc.*[129], arbitrator Roland-Yves Gagné, held that the Regulation, in its entirety, is of public order and not limited to any particular provision. The Tribunal adopts this reasoning.

[307.] The *Dictionnaire de droit québécois et canadien* defines "*public order*" as[130]:

> "*l'ensemble des règles de droit d'intérêt général qui sont impératives et auxquelles nul ne peut déroger par une convention particulière*» or the «*caractère impératif des règles juridiques auxquelles nul ne peut déroger par une convention particulière*."
>
> [Emphasis added]

[308.] Accordingly, rules of public order constitute mandatory norms of general interest from which no party may derogate.

[309.] It follows that strict compliance with the imperative provisions of the Regulation is required; neither the Beneficiary nor the Contractor may waive or disregard, *inter alia*, sections 10(3), 10(5), 12(9) and 19.

[310.] In that regard, sections 10, 12 and 19 establish mandatory conditions precedent to the applicability of the guarantee.

[311.] Section 7 of the Regulation provides that the Plan "*shall guarantee the performance of the contractor's legal and contractual obligations to the extent and in the manner prescribed by this Division*". Section 10 further stipulates that the "*guarantee of a plan, where the contractor fails to perform his legal or contractual obligations after acceptance of the building, shall cover…*". Finally, Section 19 provides that "*A beneficiary… who is dissatisfied with a decision of the manager shall … submit the dispute to arbitration within 30 days…*".

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[127] *La Garantie des Bâtiments Résidentiels Neufs de l'APCHQ Inc. v. Maryse Desindes and Yvan Larochelle, and René Blanchet mise en cause*, 2004 CanLII 47872 (QC CA) para [11]

[128] *La Garantie des Bâtiments Résidentiels Neufs de l'APCHQ Inc. v. Maryse Desindes and Yvan Larochelle, and René Blanchet mise en cause*, 2004 CanLII 47872 (QC CA), para [11]; *Garantie des bâtiments résidentiels neufs de l'APCHQ inc. c. MYL Développement inc.*, 2011 QCCA 56 (CanLII) [para 13]

[129] 2024 CanLII 132665 (QC OAGBRN)

[130] Hubert REID, *Dictionnaire de droit québécois et canadien*, 3e éd., Montréal, Wilson & Lafleur Ltée, 2004, p. 411

[312.] The repeated use of the term "*shall*" in sections 7, 10 and and 19 confirms the imperative character of these provisions and admits of no ambiguity.

[313.] Within this framework, the Beneficiary was required to comply strictly with the mandatory provisions of the Regulation; neither the Beneficiary nor the Contractor could, by agreement or otherwise, derogate from sections 10 and 19.

[314.] In *3223701 Canada inc. c. Darkallah*, the Quebec Court of Appeal clarified the interplay between the regulatory guarantee and the general law[131]:

> "*[22] Le bénéficiaire a le droit d'opter entre les deux régimes, voire parfois de les cumuler[10]. La garantie réglementaire n'écarte pas pour autant la garantie légale contre les vices cachés stipulée dans le C.c.Q. : elle vise à conférer un avantage au bénéficiaire de la garantie plutôt qu'à lui retirer un droit[11].*
>
> *[23] Cet avantage inclut l'intervention de l'administrateur qui s'est obligé à cautionner les obligations légales et contractuelles des entrepreneurs généraux qui adhèrent à son plan[12], ce qui permet au bénéficiaire d'exercer un recours contractuel direct contre lui[13]. Néanmoins, tel que le signalent les auteurs Jobin et Cumyn, il peut choisir de ne pas exercer de recours visant à mettre en œuvre le plan de garantie – et notamment ses droits contractuels directs contre l'administrateur – au profit de l'exercice d'un recours de droit commun contre l'entrepreneur-vendeur en vertu du contrat d'entreprise ou de vente et des garanties prévues dans le C.c.Q.[14].*"
>
> [Emphasis added]

[315.] In the present case, the guarantee provided by the Regulation would apply in the event of a failure by the Contractor to fulfil its legal or contractual obligations, including where the work is affected by defects resulting from poor workmanship.

[316.] However, such guarantee applies only to the extent and in the manner prescribed by section 10 of the Regulation.

[317.] Where the Beneficiary is dissatisfied with the conciliator's decision, the applicability of the guarantee is conditional upon submitting the dispute to arbitration within the prescribed delay following receipt of that decision[132].

[318.] In *Desindes*, the Court of Appeal also drew a fundamental distinction between the complaint itself and the dispute arising therefrom[133]:

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[131] 2018 QCCA 937

[132] Section 19 of the Regulation

> "*[32] … Les intimés ne pouvaient, par le seul contenu de leur plainte, dicter le mode de règlement de la garantie. On ne doit pas confondre la réclamation des intimés avec le différend qui découle de la suite des évènements, le cas échéant. …*"
>
> [Emphasis added]

[319.] Accordingly, a beneficiary cannot, by the mere formulation of a complaint, dictate the applicable mechanism for dispute resolution under the Plan.

[320.] It follows that claims advanced beyond the first year following acceptance of the building cannot be qualified as defects arising from poor workmanship, as such claims fall outside the scope of coverage prescribed by sections 10(2) and 10(3) of the Regulation.

(6) THE GUARANTEE PLAN – NOT A GENERAL GUARANTEE OF FIVE (5) YEARS

[321.] The Beneficiary appears to have proceeded on the basis that she benefited from a general five (5) year guarantee covering defects arising from poor workmanship[134].

[322.] However, the jurisprudence has rejected such an interpretation. In *Syndicat des copropriétaires du 70 Saint-Ferdinand et 9158-4623 Québec inc.*, arbitrator Roland-Yves Gagné emphasized that the Plan does not constitute a universal indemnity scheme[135]:

> "*[375] L'Administrateur du plan de garantie ne gère pas un plan d'indemnisation universelle ...*
>
> *[376] De même, ce n'est pas parce que l'Administrateur du plan de garantie est une caution des obligations de l'Entrepreneur qu'il suffit de regarder si l'Entrepreneur est responsable pour conclure que l'Administrateur est nécessairement responsable comme caution.*"
>
> [Emphasis added]

[133] 2004 CanLII 47872 (QC CA)
[134] The Beneficiary's testimony in chief and cross-examination by Mtre Perrault
[135] 2021 CanLII 8798 (QC OAGBRN)

(7) THE GUARANTEE PLAN – NOT AN INSURANCE POLICY

[323.] The Beneficiary further appears to have equated the Plan administered by GCR with a private insurance policy[136].

[324.] This understanding is inconsistent with the legal nature of the Plan. In *Matte et 9278-4024 Québec inc. (Marchand Construction et Rénovation)*, arbitrator Roland-Yves Gagné clarified as follows[137]:

> "*[110] Avec égards, le Règlement sur le plan de garantie des bâtiments résidentiels neufs n'offre pas une assurance privée avec une couverture à la discrétion de l'assureur, ce n'est pas un chapitre du Code civil, mais bien un Décret gouvernemental adopté en vertu de la Loi sur le bâtiment, Règlement qui stipule, à ses articles 7 et 74 :*
>
> > *7. Un plan de garantie doit garantir l'exécution des obligations légales et contractuelles d'un entrepreneur dans la mesure et de la manière prévues par la présente section.*
> >
> > *74. Aux fins du présent règlement et, en l'absence ou à défaut de l'entrepreneur d'intervenir, l'administrateur doit assumer tous et chacun des engagements de l'entrepreneur dans le cadre du plan approuvé.*"
>
> [Emphasis added]

[325.] The Plan established by the Regulation is therefore not comparable to a private insurance regime governed by the Civil Code. Its scope is limited to ensuring the performance of the contractor's obligations, within the specific parameters set out by the Regulation.

[326.] The Tribunal concurs with this reasoning and reiterates that the Plan does not provide a general five (5) year coverage for poor workmanship, nor does it constitute insurance offering coverage at the discretion of an insurer. [138]

(8) SCOPE OF THE GUARANTEE UNDER THE REGULATION

[327.] The application of the guarantees provided by the Regulation is contingent upon the Beneficiary having given prior written notice to both the Contractor and the Manager. In the absence of such notice, the protections afforded by sections 10(2) and 10(3) of the Regulation cannot be invoked.

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[136] The Beneficiary's testimony in chief and cross-examination by Mtre Perrault
[137] 2024 CanLII 27262 (QC OAGBRN)
[138] *Mayers et Habitations Raymond Allard inc.*, 2025 CanLII 115541 (QC OAGBRN) [paras 429-435]

[328.] Sections 2.18, 2.18.1 and 2.18.2 of the Guarantee Contract define "*poor workmanship*" as work executed improperly or in contravention of applicable standards, whether prescribed by the contract or derived from the rules of the trade and industry practice. These provisions apply to defects of a minor nature that do not affect the structural integrity of the Building and that are either (i) apparent at the time of acceptance, or (ii) existing but not apparent at that time[139].

[329.] Section 2.25 of the Guarantee Contract defines a "*Latent Defect*" as a defect that renders the Building unfit for its intended use or that substantially reduces its utility.

[330.] Section 2.23 of the Guarantee Contract defines a "*Construction Defect*" as a defect in the design, construction or manufacture of the Building that results in, or is likely to result in, its partial or total loss.

[331.] Pursuant to section 9.3, and subject to the applicable limits, the Manager undertakes to repair non-apparent poor workmanship existing at the time of acceptance and discovered within one (1) year thereafter, provided that the defects are reported in writing to both the Contractor and the Manager within a reasonable time following their discovery.

[332.] Section 16.1 of the Guarantee Contract, including subsection 16.1.9, sets out exclusions from coverage, notably:

> "*16.1.9 Parking spaces and storage facilities outside the Building in which the residential units are located and all structures outside the Building, such as outdoor pools. earthworks, sidewalks, alleys and surface water drainage systems, except negative grading;*"
>
> [Emphasis added]

[333.] Section 17 of the Guarantee Contract ("*Claims*"), together with subsections 17.4 and 17.6, establishes the procedural requirements governing the exercise of the guarantee, as well as the consequences of non-compliance. In particular:

> *"17.4 On condition of having previously given written notice, in accordance with Subsections 9.3, … when required, …, a Beneficiary who wishes to claim the Guarantee Against Poor Workmanship, … shall adhere to the following Claim procedure:*
>
> *17.6 Subject to Subsection 17.7, failure to give written notice or to comply with the Claim deadlines prescribed in this section for any of the guarantees offered shall result in forfeiture of the Beneficiary's right to his Claim.*

[139] Exhibit A-2, page 2 of 6

> *The Manager then shall assume no responsibility for such defects. However, the Beneficiary shall maintain his rights and direct recourses against the Contractor to the extent provided by law*."
>
> [Emphasis added]

[334.] Subsection 17.7 provides limited exceptions where non-compliance with a claim period may not be set up against the Beneficiary, namely where the Contractor or the Manager has failed to fulfil its contractual obligations, or where the delay results from representations made by either of them, provided that the claim period has not expired for more than one (1) year:

> "*17.7 Non-compliance with a Claim period by the Beneficiary cannot be set up against the Beneficiary if the Contractor or Manager fails to perform the obligations under Subsections … 17.3, 17.4, … unless the Contractor or the Manager shows that such failure had no incidence on non-compliance with the period or that the time for filing the Claim has been expired for more than one (1) year.*
>
> *Non-compliance with a period cannot be set up against the Beneficiary if the circumstances make it possible to establish that the Beneficiary was made to exceed the period following representations by the Contractor or the Manager*."
>
> [Emphasis added]

[335.] The Guarantee Contract establishes a classification of defects by severity and corresponding denunciation periods, namely: one (1) year for poor workmanship, three (3) years for latent defects, and five (5) years for construction defects.

[336.] The Beneficiary cannot disregard the clear and unambiguous provisions of the contractual and regulatory framework, in particular:

[336.1] Sections 2.18 and 9.3 of the Guarantee Contract and sections 10(2) and 10(3) of the Regulation, which require that defects arising from poor workmanship be reported in writing within a reasonable time following their discovery; and

[336.2] Section 16.1.9 of the Guarantee Contract and section 12(9) of the Regulation, which expressly exclude the driveway from the scope of coverage, save and except in cases of negative grading.

[337.] Sections 9.3 and 16.1.9 of the Guarantee Contract expressly incorporate, by reference, the requirements set out in sections 10(2), 10(3) and 12(9) of the Regulation.

[338.] Both the Preliminary Contract[140] and the Guarantee Contract[141] expressly refer to the Regulation, which was accessible to the Beneficiary. Her failure to acquaint herself with these documents led to a misapprehension of the scope of the guarantee, in particular the requirement that defects attributable to poor workmanship be denounced in writing to both the Contractor and the Manager within a reasonable time of their discovery.

[339.] This misunderstanding directly resulted in the Beneficiary's failure to provide timely written notice to both parties following the discovery of the alleged defects.

(9) SECTION 10 OF THE REGULATION – NOTICE AND REASONABLE TIME

(i) POOR WORKMANSHIP

[340.] The Beneficiary's claims pertaining to Points 1, 3, 4, 5 and 6 fall to be analysed under sections 10(2) and 10(3) of the Regulation, which govern defects attributable to poor workmanship.

[341.] Section 10(3) of the Regulation incorporates articles 2113 and 2120 C.C.Q., thereby preserving the Beneficiary's recourses in respect of non-apparent poor workmanship and providing a one (1) year warranty covering defects existing at the time of acceptance or discovered within the first year thereafter.

[342.] While neither the Regulation nor the Civil Code expressly defines the notion of "*poor workmanship*" the concept is firmly established in jurisprudence, arbitral case law, and within the terms of the Guarantee Contract[142].

[343.] Accordingly, sections 10(2) and 10(3) must be applied in a contextual manner, having regard to the applicable rules of the trade (*règles de l'art*), as well as to recognized construction standards and evolving industry practices.

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[140] Exhibit A-1, page 1 of 6; "*This contract is used within the context of the application of the Regulation respecting the guarantee plan for new residential buildings, COLR c. B-1.1, r. 8) (hereinafter the "**Regulation**"). It constitutes the preliminary contract required by the legislation for the sale of an immovable (hereinafter the "**Preliminary Contract**")*; page 5 of 6 and page 6 of 6

[141] Exhibit A-2, page 2 of 6, "*This Guarantee Contract is established in accordance with the Regulation respecting the guarantee plan for new residential buildings adopted by the Régie du bâtiment du Québec (O.C. 841-98, June 17, 1998) and in force on January 1, 1999, as amended from time to time. The Régie du bâtiment du Québec approved the contents of this Guarantee Contract in its original French version as of July 3, 2014 (Resolution 2014-237-8-1011). This Guarantee Contract constitutes a Compulsory "**Guarantee Plan**" under the Regulation respecting the guarantee plan for new residential buildings, CQLR c. B-1.1, r. 8 (hereinafter the "**Regulation**"). The Contractor and the Beneficiary (Beneficiaries) expressly agree to use the English version of this Guarantee Contract.*"; page 5 of 6

[142] Exhibit A-2 Section 2.18

[344.] In the present matter, the Manager has expressly acknowledged that Points 1, 3, 4 and 5 disclose instances of poor workmanship[143]. The existence of that element is therefore not in dispute, and the Tribunal's analysis is confined to determining whether the Beneficiary provided written notice to both the Contractor and the Manager within a reasonable time following discovery.

[345.] In this regard, the Tribunal must nevertheless consider the nature and characteristics of the alleged poor workmanship, as such factors are relevant in assessing the reasonableness of the notice provided.

[346.] As underlined by arbitrator Michel A. Jeanniot in *Levy Chantal*, poor workmanship must be distinguished from construction defects in that it does not render the work unfit for its intended use, does not compromise the structural integrity of the building, and does not pose a danger to occupants[144]:

> "*[70] Dans certaines circonstances, le Tribunal se doit d'étudier le caractère du vice soulevé afin de déterminer quelle disposition du plan trouve application s'il en est. La jurisprudence et la doctrine ont fixé des paramètres différents à certains des critères que l'on retrouve visés aux différents alinéas de l'article 27 du Règlement.*
>
> *[71] Selon la preuve offerte, nous sommes en présence d'un désordre ou malfaçon portant sur la qualité technique de l'ouvrage ou d'un élément de son assemblage faisant indissociablement corps avec lui, mais qui ne rendent pas l'ouvrage impropre et n'affecte l'intégrité de l'ouvrage et/ou ne constitue pas un danger « pour la vie de l'homme en société ».*"
>
> [Emphasis added]

[347.] Similarly, in *Desbiens et Maisons Laprise inc.*, arbitrator Roland-Yves Gagné provides a comprehensive articulation of the concept of poor workmanship, emphasizing that the Plan covers failures to comply with the rules of the trade[145]:

> "*[183] La couverture du plan de garantie pour malfaçon couvre les manquements à la règle de l'art, c'est aussi la position des tribunaux judiciaires dans des dossiers portant sur le Règlement :*
>
> *[183.1] dans 9264-3212 Québec inc. c. Moseka[5], la Cour supérieure s'exprime ainsi :[5] 2018 QCCS 5286 (Johanne Brodeur, j.c.s.).*
>
> *[41] Pour ce qui est de l'argument relatif aux règles de l'art et au libellé de l'article 10 du Règlement, le Tribunal souligne*

[143] Exhibit A-14, email from the Manager's attorneys dated November 11, 2025 (3:30:55 PM)
[144] 2024 CanLII 74678 (QC OAGBRN)
[145] 2023 CanLII 102832 (QC OAGBRN)

que la notion de malfaçon est définie comme suit par l'auteur Vincent Karim :

> *« **Une malfaçon est un défaut mineur qui provient d'un travail mal exécuté et qui n'a aucune incidence sur la solidité de l'ouvrage, mais qui affecte la qualité du bâtiment, en raison de la qualité moindre de l'ouvrage**, de la sécurité du bâtiment ou de la destination finale de ce dernier. Elle peut découler d'une condition contractuelle, écrite ou verbale, qui n'a pas été remplie conformément à ce qui était prévu. Et peut-être, également, le résultat du non-respect des règles de métier de l'entrepreneur ou des sous-traitants. **Il y a aussi des malfaçons lorsque l'ouvrage est incomplet ou déficitaire ou encore non conforme aux règles de l'art ni aux ententes contractuelles.** »[19][6]*
>
> *(nos soulignés) [de la Cour supérieure]*

*[42] **Cette définition comprend ce qui n'est pas conforme aux règles de l'art**;*

[183.2] dans Construction d'Astous ltée c. Chorel[7], la Cour supérieure s'exprime ainsi :

> *[45] **Ensuite, un entrepreneur doit réaliser l'ouvrage en respectant les règles de l'art**[29][8] **et il ne peut être exonéré d'un défaut à cet égard sous prétexte que les conséquences ne se manifestent qu'à l'occasion ou sur plusieurs années**. Or, l'arbitre conclut que D'Astous ne respecte pas les règles de l'art en n'utilisant que quatre clous pour fixer les bardeaux. Que peu de bardeaux aient été arrachés après juin 2008 n'y change rien.*

[184] Le professeur Jacques Deslauriers enseigne à ce sujet[9] :

> *« Le respect des règles de l'art est de l'essence même du contrat d'entreprise, même si le contrat n'y réfère pas. Cette obligation est imposée par la loi et revêt un caractère d'ordre public.*
>
> *[…]*
>
> *Les sources édictant **les règles de l'art peuvent provenir des instructions ou des guides fournis par les fabricants d'équipements ou de matériaux utilisés dans la construction d'immeubles.** Les règles de l'art peuvent aussi provenir des normes ou des standards énoncés par les organismes canadiens ou américains de normalisation qui publient un grand nombre de normes sur plusieurs sujets relatifs à la construction, par exemple en matière de*

> *plomberie et d'électricité. Ces organismes ont des sites internet sur lesquels ces normes sont diffusées. (Le Tribunal souligne) »*
>
> *[185] Les auteurs Rodrigue et Edwards (auj. juge à la Cour supérieure) expliquent[10] :*
>
> > *Il est important de souligner que la malfaçon, aux termes de l'article 2120 C.c.Q., n'est subordonnée à aucune condition par rapport à l'effet qu'elle peut produire. Ainsi, contrairement à la responsabilité légale pour la perte de l'ouvrage de l'article 2118 C.c.Q., il n'est pas nécessaire que le vice ou la malfaçon mette en péril, de manière immédiate ou de manière plus ou moins éloignée, l'intégrité de l'ouvrage. De même, contrairement au vice interdit aux termes de la garantie de qualité du vendeur énoncée par l'article 1726 C.c.Q., il ne paraît pas nécessaire que la malfaçon entraîne une diminution de l'usage de l'immeuble.*"
>
> [Emphasis in bold added]

[348.] The arbitral and judicial authorities thus consistently confirm that the Plan extends to deficiencies resulting from a contractor's failure to comply with recognised standards of professional practice (*règles de l'art*).

[349.] In essence, poor workmanship denotes defects of a technical or executional nature which, while not affecting the structural soundness or safety of the building, nonetheless diminish its quality, conformity, or finish, and reflect a failure to perform the work in accordance with accepted standards of the trade.

(ii) SECTION 2.8 OF THE GUARANTEE CONTRACT – REASONABLE TIME DOES NOT EXCEED SIX (6) MONTHS

[350.] The Manager submitted that the six (6) month limit prescribed by section 2.8 of the Guarantee Contract applied to the present case.

[351.] Prior to 2015, section 10 of the Regulation imposed a maximum six (6) month period for the denunciation of defects. That limit has since been removed. The current framework prescribed by section 10 subsections (2), (3), (4) or (5), requires that notice be given within a "*reasonable time*", a standard that must be assessed in light of the circumstances of each case, including the nature and seriousness of the defect.

[352.] Arbitration tribunals generally adopt one of two analytical approaches. Some rely on a contextual six (6) month benchmark, treating a denunciation period of

approximately six (6) months as reasonable depending on the circumstances.[146]

[353.] Others, particularly following the 2015 amendments, apply a more flexible analysis, recognizing that the removal of the six (6) month cap reflects the legislator's intent to allow longer denunciation periods where justified.

[354.] Section 2.8 of the Guarantee Contract defines a "*reasonable time*" as the period within which the contractor and the manager may become aware of defects, which is generally set at a maximum of six (6) months, subject to special circumstances[147].

[355.] The Tribunal notes that the wording "*generally, not to exceed six (6) months, except in special circumstances*" appearing in section 2.8 of the Guarantee Contract, is absent from section 10, subsections (2), (3), (4) and (5). This divergence gives rise to a manifest inconsistency between the contractual provisions, section 10 referring solely to the notion of a "*reasonable time*" without prescribing any specific temporal limit.

[356.] The Tribunal cannot accept that the expression "*generally, not to exceed six (6) months, except in special circumstances*" is consistent with, or reflective of, the mandatory wording of section 10 of the Regulation.

[357.] Section 2.8 cannot be interpreted as merely descriptive; rather, it operates as a limiting provision that introduces a six (6) month time frame, subject only to the existence of "*special circumstances*".

[358.] Properly construed, this wording confines the arbitrator's discretion by making any departure from the six (6) month period conditional upon the prior demonstration of such circumstances. In other words, the arbitrator is not vested with a general power to extend the delay but may intervene only where "*special circumstances*" are established as justifying an exception to the prescribed time limit of six (6) months.

[359.] However, the Tribunal is bound to apply the Regulation and section 10 as legislated by the legislator. The Tribunal's discretion is not tempered by the language used in section 2.8 of the Guarantee Contract, which is inconsistent with the language used by the legislator in section 10 subsections (2) to (5).

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[146] *Robichaud et Jacques Cloutiers et Fils inc.*, 2022 CanLII 129754 (QC OAGBRN) [para16]; *SDC du 802 à 816 de la Seigneurie et 9241-5603 Québec inc. (Seigneurie du Ruisseau)*, 2023 CanLII 70159 (QC OAGBRN); *Levy Chantal et 9615296 Canada inc. (Groupe Gérik)*, 2024 CanLII 74678 (QC OAGBRN); *Ouadii et Groupe Immobilier Ménard inc.*, 2023 CanLII 140470 (QC OAGBRN); *Chheng et 9302-0576 Québec inc.,* 2025 CanLII 115547 (QC OAGBRN

[147] Section 2.8 of the Guarantee Contract "*Reasonable Time*": *... Generally, a Reasonable Time will not exceed six (6) months, except in special circumstances*.

[360.] In *9222-7529 Québec Inc. c. Marie-Christine Cayer et al. et La Garantie de Construction Résidentielle (GCR*), arbitrator Roland-Yves Gagné noted this inconsistency and held[148]:

> "*[342] Avec égards, le Tribunal d'arbitrage ignore la base juridique permettant l'ajout au contrat de garantie d'une stipulation que « de manière générale, est jugé raisonnable un délai n'excédant pas six (6) mois, à moins de circonstances particulières », considérant :*
>
> > *[342.1] que le Législateur a décrété spécifiquement d'enlever la limite de six mois qui était spécifiquement incluse dans l'ancienne version du Règlement, et suite à ce retrait décrété par le Législateur, l'Administrateur décide de son côté d'ajouter cette mention au contrat de garantie ;*
> >
> > *[342.2] il est mentionné « n'excédant pas six (6) mois, à moins de circonstances particulières » alors que :*
> >
> > > *[342.2.1] cette référence à des circonstances particulières n'est pas dans le Règlement, alors que le Règlement affirme plutôt (article 5): « Toute disposition d'un plan de garantie qui est inconciliable avec le présent règlement est nulle » ;*
> > >
> > > *[342.2.2] et plus généralement, chaque dossier d'arbitrage a des faits particuliers et des circonstances particulières qui lui sont propres ;*
> > >
> > > *[342.3] que la version du Règlement est nouvelle et que le soussigné n'est pas au courant de précédents jurisprudentiels ou doctrinaux sur ce qui de manière générale, est jugé raisonnable, en général ou en particulier, quant à l'application de la nouvelle version de l'article 10 du Règlement qui puisse supporter l'affirmation écrite ;*
> > >
> > > *[342.4] enfin, l'affirmation est sous une forme passive « de manière générale, est jugé raisonnable » sans préciser, est jugé par qui, l'Administrateur ou une Loi, un Règlement ou autre, tout en ajoutant ici qu'il s'agit d'une clause d'un contrat et non, d'un dépliant explicatif.*"

[148] (CCAC) S17-112201-NP 2018-08-16

[Emphasis added]

[361.] As arbitrator Roland-Yves Gagné observed, the expression "*generally considered reasonable*", without identifying the authority responsible for that determination (whether the manager, legislation, regulation, or another source) deprives the provision of any clear meaning or practical application.

[362.] In *Sangdehi et Tour Utopia inc. (Domaine Bobois)*[149], arbitrator Roland-Yves Gagné noted once again this inconsistency and referred to his decision in *9222-7529 Québec Inc. c. Marie-Christine Cayer et al. et La Garantie de Construction Résidentielle (GCR*)[150].

[363.] There is no question in the Tribunal's mind that the six (6) month restriction in section 2.8 is incompatible with the Regulation. Pursuant to section 139 of the Regulation, any irreconcilable contractual provision is null, and section 140 precludes a beneficiary from waiving rights conferred by the Regulation.

[364.] This interpretation has been confirmed by several arbitral decisions:

[364.1] In *Rousseau c. 9253-5400 Québec Inc.* arbitrator Jean Philippe Ewart concluded that, because the Regulation is of public order, any contractual clause imposing a six-month forfeiture period is null[151]:

> "*[40] … Nonobstant le fait que l'Entrepreneur et le Bénéficiaire ont signé un contrat qui prévoyait un délai de déchéance de 6 mois, le Règlement est d'ordre public et donc - tel que souscrit par le Tribunal (ci-dessus) - le Règlement prévaut en vertu de son article 139, et conséquemment toute clause d'un contrat de garantie qui est inconciliable avec le Règlement est nulle*."
>
> [Emphasis added]

[364.2] Similarly in *Syndicat des copropriétaires N'Homade c. Cap-Immo Gestion inc.*, arbitrator Jean Philippe Ewart, held[152]:

> "*[70] Le Tribunal est d'avis que le Législateur lors de ces amendements en 2015 a retiré l'exigence du délai maximal de six mois de la découverte ou survenance pour la dénonciation écrite; on se doit de saisir que le Législateur nous indique son intention de permettre un délai de plus de six mois, selon les circonstances. C'est donc une approche plus*

[149] (CCAC) S19-111301-NP [para 45]
[150] (CCAC) S17-112201-NP 2018-08-16 [paras 336 to 342]
[151] (CCAC) S16-112001-NP 2018-07-12
[152] 2021 CanLII 13990 (QC OAGBRN)

permissive et qui implique en partie une appréciation subjective."

[Emphasis added]

[364.3] In *Bensemmane et Bel-Habitat inc.*, arbitrator Michel A. Jeanniot held[153]:

"[70] Une analyse d'intérêt détaillée qui rejette l'approche d'un délai de base se retrouve entre autres sous la plume de Hon. Théroux JCQ dans l'affaire Leblanc[28] (2014) qui commente l'approche de l'auteur Edwards d'une base normalisée :

« [69] Par ailleurs, il s'avère que l'approche adoptée par la doctrine et la jurisprudence moderne en la matière n'est pas aussi restrictive et ne s'inscrit définitivement pas dans une démarche analytique visant l'atteinte d'un si haut niveau de précision par le développement d'une méthode scientifique pour mesurer le caractère raisonnable d'un délai pour agir.

[70] Avec égards, le Tribunal est d'avis que l'exercice de la discrétion ou de l'appréciation judiciaire s'accommode mal d'un encadrement aussi restreignant.»"

[Emphasis added]

[364.4] In *Lollier et 9330-0978 Québec inc. (Groupe CGI)* arbitrator Pierre-G. Champagne held[154]:

"[25] Quant au délai raisonnable pour dénoncer le vice à l'Entrepreneur et à l'Administrateur, la refonte du Règlement en 2015 a retranché le délai limite de six (6) mois pour le remplacer par un délai raisonnable, tout simplement6. On doit donc présumer que le législateur, en amendant le Règlement à cet effet, a voulu libéraliser la notion, sans doute pour la rendre conforme à celle du Code civil du Québec en pareille matière..."

[Emphasis added]

[153] 2024 CanLII 134156 (QC OAGBRN)
[154] 2024 CanLII 39541 (QC OAGBRN)

[365.] The Tribunal concurs with the reasoning adopted in *Syndicat des copropriétaires N'Homade et Cap-Immo Gestion inc., Bensemmane et Bel-Habitat inc*. and *Lollier et 9330-0978 Québec inc. (Groupe CGI)*.

[366.] By embracing the reasonable-time standard, the legislator has vested arbitration tribunals with broad discretion to assess the timeliness of a notice based on the specific circumstances of each case, not constrained by a six (6) month limit.

[367.] There is no fixed deadline that automatically renders a claim inadmissible. Rather, the Tribunal's analysis is contextual and evidence-based, focusing on whether the delay in reporting the defect was reasonable in the circumstances.

[368.] The Guarantee Contract must conform to the requirements prescribed by the Regulation[155] and approved by the *Régie du bâtiment du Québec*[156]. The language found in section 2.8 suggests that the section is in conformity with the Regulation and was approved by the *Régie du bâtiment du Québec*.

[369.] However, to the extent that section 2.8 of the Guarantee Contract purports to impose a six (6) month limit, it is inconsistent with the Regulation and restricts the Tribunal's discretion under section 10 and effectively undermines the application of section 19.1. Pursuant to sections 139 and 140 of the Regulation, any such incompatible clause is null and of no force or effect.

[370.] This conclusion is supported by arbitral jurisprudence. In *Cayer et 9222-7529 Québec inc.*[157], arbitrator Gagné rejected the contractual six (6) month benchmark as lacking legal foundation following the legislative amendment.

[371.] Similarly, in *Rousseau, Syndicat des copropriétaires N'Homade* and *Lollier* it was held that the removal of the six (6) month limit reflects a more flexible and contextual approach. In *Bensemmane*, arbitrator Michel A. Jeanniot emphasized that judicial discretion in assessing reasonableness cannot be confined by rigid parameters.

[372.] The Tribunal concurs with this jurisprudence. The Beneficiary remains subject to the flexible standard of a "*reasonable time*" as prescribed by the Regulation.

[373.] Consequently, the Tribunal concludes that the final sentence of section 2.8 of the Guarantee Contract is inconsistent with the Regulation and, as such, is without force or effect. The Beneficiary therefore retains the benefit of the more flexible "reasonable time" standard prescribed by the Regulation.

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[155] Sections 75 and 76 of the Regulation
[156] Sections 77 and 78 of the Building Act
[157] (O.A.G.B.R.N) (CCAC), 2018-08-16) SOQUIJ AZ-51526011

(iii) OBLIGATION TO GIVE WRITTEN NOTICE TO THE CONTRACTOR AND MANAGER WITHIN REASONABLE TIME

[374.] The Guarantee Contract and the Regulation condition coverage for poor workmanship on the Beneficiary's prior written denunciation of the defect to both the Contractor and the Manager.

[375.] Section 9.3 of the Guarantee Contract and sections 10(2) and 10(3) of the Regulation impose concordant obligations: the Beneficiary must notify the Contractor in writing and provide a copy or equivalent written notice to the Manager. Despite differences in wording, the legal requirement is identical.

[376.] No formal requirements govern the mode of transmission. Notice may be given by any written means, including mail, email, or personal delivery, provided the Beneficiary establishes that contemporaneous written notice was communicated to both recipients.

[377.] This dual denunciation constitutes a mandatory condition for coverage under section 10 of the Regulation and must be effected within a reasonable time, either following the end-of-work date (s. 10(2)) or the discovery of the defect (s. 10(3)).

[378.] The Quebec Court of Appeal in *Claude Joyal inc. c. CNH Canada Ltd.*[158] confirms that written denunciation is a substantive condition for the exercise of guarantee rights. Its purpose is to enable the debtor (Contractor or Manager) of the obligation to verify the defect, assess its extent, and perform corrective work. As a rule, the absence of denunciation is fatal to the recourse, subject to limited exceptions, and the consequences of any delay or omission must be assessed in light of the evidence and any resulting prejudice.

[379.] In *Claude Joyal inc.* the Court of Appeal clarified the legal requirements applicable to the denunciation of defects:

> "***II. La dénonciation : conditions et finalités***
>
> *…*
>
> *[23] Inspiré de cette approche, notre droit civil exigeait, avant 1994, que l'acheteur intente son action avec diligence raisonnable après la découverte d'un vice (art. 1530 C.c.B.-C.). Lors de la réforme du Code civil, cette exigence a toutefois été abandonnée au profit de celle de la dénonciation écrite, le législateur ayant voulu déjudiciariser, dans la mesure du possible, les rapports entre l'acheteur et le vendeur d'un bien affecté d'un vice (Edwards, par. 415).*

[158] 2014 QCCA 588 (CanLII)

[24] La dénonciation, aussi appelée préavis, avis et parfois mise en demeure, est donc une nouvelle condition de garantie légale contre les vices. Cette exigence, prévue au Code civil du Québec, s'applique autant en cas de vice de titre que de vice de qualité.

[25] Les articles 1738 et 1739 C.c.Q. stipulent que cette dénonciation doit être écrite et que, dans le cas d'un vice de titre, elle doit préciser la nature du droit ou de la prétention du tiers, alors que dans le cas d'un vice de qualité, elle doit décrire le vice. Cette condition de forme ne semble cependant pas impérative, la jurisprudence ayant parfois validé une dénonciation uniquement verbale (Pierre-Gabriel JOBIN, avec la collaboration de Michelle CUMYN, La vente, 3e éd., Cowansville, Éditions Yvon Blais, 2007, par. 168).

[26] Cette dénonciation doit aussi être donnée dans un délai raisonnable de la connaissance du vice allégué, sauf si le vendeur connaissait ou ne pouvait ignorer le vice (art. 1738 C.c.Q., 2e al. et art. 1739 C.c.Q., 2e al.), sous réserve toutefois du délai de prescription. L'ancien droit admettait également que lorsque le vendeur connaissait le vice ou ne pouvait l'ignorer, il ne pouvait bénéficier de l'écoulement du délai raisonnable.

[27] La finalité de la dénonciation est ainsi décrite par le professeur Jobin :

> *167 – Préavis. Droit du vendeur de remédier à son défaut –*
>
> *[…]*
>
> *La raison d'être de ce préavis est de permettre au vendeur de vérifier s'il s'agit bien d'un vice couvert par la garantie, de constater les dommages causés le cas échéant et, s'il y a lieu, d'effectuer la réparation ou le remplacement du bien à un coût inférieur à celui d'un tiers engagé par l'acheteur. […]*

[28] La jurisprudence et la doctrine reconnaissent généralement que la dénonciation est une condition de fond à l'exercice du droit à la garantie.

[29] À cet égard, dans Immeubles de l'Estuaire phase III inc. c. Syndicat des copropriétaires de l'Estuaire Condo phase III, 2006 QCCA 781, la Cour, sous la plume de la juge Bich, s'exprime ainsi :

> *[157] Une comparaison avec l'article 1739 C.c.Q. confirme cette interprétation. L'article 1738 C.c.Q. établit en effet pour le régime de la garantie du droit de propriété (articles 1723 à 1725 C.c.Q.) une exigence analogue à celle qu'édicte l'article 1739 C.c.Q. en*

matière de dénonciation du vice caché et elle devrait recevoir une interprétation semblable, qui ne soit ni plus ni moins sévère. L'article 1739 énonce que :

> *1739. L'acheteur qui constate que le bien est atteint d'un vice doit, par écrit, le dénoncer au vendeur dans un délai raisonnable depuis sa découverte. Ce délai commence à courir, lorsque le vice apparaît graduellement, du jour où l'acheteur a pu en soupçonner la gravité et l'étendue.*
>
> *Le vendeur ne peut se prévaloir d'une dénonciation tardive de l'acheteur s'il connaissait ou ne pouvait ignorer le vice.*

[158] Selon cette disposition, le défaut de préavis est généralement considéré comme fatal au recours de l'acheteur, même dans le cas où le vendeur connaissait ou était présumé connaître le vice. Pierre-Gabriel Jobin, dans son ouvrage sur la vente, écrit que :

> *Bien que le vendeur qui connaissait le vice ou ne pouvait pas l'ignorer ne puisse se plaindre d'avoir reçu un avis tardif, il a quand même droit de recevoir un avis écrit de l'existence du vice avant que l'acheteur n'intente des procédures contre lui; seule est supprimée, à l'égard d'un tel vendeur, l'obligation de l'aviser dans un délai raisonnable. Le but de ce préavis, on l'a vu, est de permettre au vendeur de réparer le vice et, le cas échéant, de vérifier si le vice est grave et s'il est attribuable à une mauvaise utilisation par l'acheteur; cet objectif est tout aussi pertinent pour le vendeur professionnel que pour celui qui ne l'est pas.*
>
> *(L'italique est dans le texte)*

[159] L'auteur indique dans ce passage que l'acheteur doit donner ce préavis avant d'intenter les procédures mais, vu le but du préavis, tel qu'expliqué plus haut (voir supra, paragr. [152]), il faut comprendre que l'acheteur doit donner ce préavis avant même de procéder aux réparations : on ne peut pas, autrement, parler de dénonciation.

> *[160] La comparaison des articles 1738 et 1739 C.c.Q. mène donc à la conclusion que le vendeur a le droit de recevoir une dénonciation écrite du problème, même s'il connaît ou est présumé connaître ce dernier.*

[30] En d'autres mots, la dénonciation constitue une condition de mise en œuvre de la garantie, hormis en certaines circonstances, notamment en cas d'urgence, de négation de responsabilité du vendeur au fait du vice, ou encore de renonciation, expresse ou implicite, à la dénonciation (Jean-Louis Baudouin et Pierre-Gabriel Jobin, Les obligations, 7e éd., par Pierre-Gabriel Jobin et Nathalie Vézina, Cowansville, Éditions Yvon Blais, 2013, par. 701; Pierre-Gabriel Jobin, supra, par. 168; Optimum, société d'assurances inc. c. Trudel, 2013 QCCA 716, par. 17; Quincaillerie Côté & Castonguay inc. c. Castonguay, 2008 QCCA 2216, par. 7; Immeubles de l'Estuaire phase III inc. c. Syndicat des copropriétaires de l'Estuaire Condo phase III, par. 161). Ces exceptions avaient également été reconnues sous l'ancien droit (Quintas c. Gravel, 1993 CanLII 3582 (C.A.)).

[31] Il s'ensuit que le défaut de dénoncer s'avérera généralement fatal à une demande en justice pour récupérer les coûts de réparations (Immeubles de l'Estuaire; Quintas).

[32] Par contre, si le bien est complètement détruit, il ne saurait être question de réparation, ni même de possibilité d'inspection pour tenter de découvrir la cause de sa perte.

[33] En pareil cas, la Cour refuse de prononcer l'irrecevabilité du recours, préférant laisser le tout au juge du fond (Jobin, supra, par. 168-169; Hino Diesel Truck (Canada) Ltd c. Intact, compagnie d'assurances (Compagnie d'assurances ING du Canada), 2011 QCCA 1808, par. 10; Promutuel Deux-Montagnes, société mutuelle d'assurances générales c. Venmar Ventilation inc., 2007 QCCA 540, par. 19-20).

[34] Dès lors, que dire de la situation où la dénonciation n'apprendrait rien au fabricant qu'il ne sache déjà?

[35] Considérant que les dispositions relatives à la garantie légale de qualité et du droit de propriété ont été adoptées principalement afin de protéger l'acheteur – ces dispositions étant inspirées de la Loi sur la protection du consommateur, L.R.Q., c. P-40.1, et de la Convention des Nations Unies sur les contrats de vente internationale de marchandises[3] (« Convention de Vienne ») – je suis d'avis que les conséquences du défaut de dénonciation dans un délai raisonnable doivent correspondre à un préjudice réel pour le vendeur, et non à un simple préjudice de droit, afin de pouvoir justifier l'irrecevabilité du recours intenté par l'acheteur.

[36] L'évaluation des conséquences du défaut de dénonciation, plutôt que le rejet automatique du recours de l'acheteur, est une solution que valide le professeur Jobin :

> ***169 - Préavis. Sanction*** *- Le préavis constitue une condition de fond de la garantie. Comme dans l'ancienne jurisprudence, lorsqu'il n'a pas été donné et qu'aucune exemption ne s'applique, l'action intentée par l'acheteur contre le vendeur doit donc en principe être rejetée, selon la jurisprudence. Il s'agit certes d'une sanction sévère. Elle est justifiée quand l'acheteur a réparé le bien ou l'a revendu sans laisser au vendeur la chance de vérifier s'il s'agit bel et bien d'un vice couvert par la garantie, notamment. Il n'en reste pas moins que cette technicalité » permet alors au vendeur d'échapper à toute sanction alors que normalement l'acheteur aurait droit au moins à une réduction du prix, ou souvent à la résolution, ainsi qu'à des dommages-intérêts dans bien des cas. C'est ce qui explique les nombreuses dispenses de préavis, signalées plus haut. Pour cette même raison, on a décidé, avec raison selon nous, que la sanction devrait être radicale (rejet de l'action) uniquement lorsque l'omission du préavis a privé le vendeur de la possibilité de vérifier l'existence et la gravité du vice et de le réparer; qu'une simple diminution des dommages-intérêts ou un ajustement à la baisse de la réduction du prix conviendrait mieux aux cas où le défaut de préavis a simplement privé le vendeur de la possibilité de réparer lui-même le vice à meilleur compte.*
>
> *Une comparaison avec la Convention de Vienne, l'une des sources principales de notre article 1739, plaide en faveur d'une certaine souplesse dans la sanction du préavis. En effet, cette convention présente deux facettes sur ce point précis : d'une part, elle fait de l'envoi du préavis une obligation stricte que l'acheteur doit respecter sous peine de déchéance (article 39, paragraphe 1); d'autre part, elle laisse subsister la réduction du prix et les dommages-intérêts quand l'acheteur n'a pas donné le préavis selon les prescriptions mais qu'il présente une excuse raisonnable (supra no 148) et - exception remarquable - elle exempte l'acheteur de tout avis quand le vendeur connaissait ou est présumé avoir connu la non-conformité (article 40).*
>
> *[Soulignement ajouté; références omises]*

> ***[37] En somme, l'appréciation des conséquences d'un défaut de dénonciation ne peut que relever du juge qui entendra la preuve****. En revanche, cela pourrait avoir une incidence sur le poids de la preuve qui sera présentée de part et d'autre (Promutuel, par. 21).*
>
> *[38] En l'espèce, le groupe CNH a forcément été avisé de la perte de la moissonneuse-batteuse, puisqu'il a reçu et encaissé un chèque d'un assureur en remboursement du prêt consenti pour favoriser son achat.*
>
> *[39] Seule l'enquête au fond permettra de déterminer l'étendue de la connaissance du groupe CNH.*"
>
> [Emphasis in bold added]

[380.] Arbitration tribunals have consistently applied these principles, notably in *Quévillon-Huberdeau et 9206-1308 Québec inc. (Constructions PG)*[159] and *Rousseau c. 9253-5400 Québec Inc., Faubourg Londonien (Habitations Trigone)*[160], affirming that denunciation remains a prerequisite to the implementation of the guarantee.

[381.] Section 10 distinguishes between apparent and non-apparent defects. Apparent defects must be reported at acceptance or, failing occupancy, within three (3) days thereafter, followed by a written claim within a reasonable time after the end-of-work date (s. 10(2)). Non-apparent defects existing at acceptance or discovered within one (1) year must be denounced in writing within a reasonable time following their discovery (s. 10(3)).

[382.] The notion of "*reasonable time*" is fact-specific and depends, *inter alia*, on the nature and seriousness of the defect, the Beneficiary's diligence, the existence of remedial discussions, and any prejudice to the Contractor or the Manager.

[383.] Arbitral jurisprudence recognises that this assessment varies with the category of defect. Poor workmanship, being of lesser gravity, may admit greater flexibility, whereas more serious defects affecting the building's integrity or safety justify stricter diligence.

[384.] Ultimately, the sufficiency and timeliness of denunciation fall to be determined by the Tribunal on the basis of the evidence in each case.

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[159] 2024 CanLII 132662 (QC OAGBRN) arbitrator Roland-Yves Gagné [para 148 and following];
[160] (CCAC), S16-112001-NP, 2018-07-12 arbitrator Jean Philippe Ewart [para 161 and following]

(iv) DETERMINATION OF REASONABLE NOTICE

[385.] The Plan distinguishes among three (3) categories of defects: "*poor workmanship*", "*latent defects*", and "*construction defects*". The seriousness of the defect determines the applicable scope and duration of coverage.

[386.] Poor workmanship represents the least serious category, as it involves minor deficiencies that do not affect the building's usability, structural integrity, or safety[161]. Coverage for such defects is limited to those discovered within one year following acceptance of the building.

[387.] Latent defects are more serious, as they render the building unfit for habitation or substantially diminish its usefulness. The guarantee covers latent defects discovered within three (3) years of acceptance.

[388.] Construction defects are the most serious category. These defects compromise the building's integrity or substantially diminish its usefulness and may result in partial or total loss of the building[162]. Coverage extends to construction defects discovered within five (5) years following completion of the work.

[389.] In *Levy Chantal et 9615296 Canada inc. (Groupe Gérik)*, arbitrator Michel A. Jeanniot examined the extent to which the nature of a defect affects the determination of what constitutes a reasonable time for denunciation to both the contractor and the manager[163]:

> "*[70] Dans certaines circonstances, le Tribunal se doit d'étudier le caractère du vice soulevé afin de déterminer quelle disposition du plan trouve application s'il en est. La jurisprudence et la doctrine ont fixé des paramètres différents à certains des critères que l'on retrouve visés aux différents alinéas … du Règlement.*
>
> *[71] Selon la preuve offerte, nous sommes en présence d'un désordre ou malfaçon portant sur la qualité technique de l'ouvrage ou d'un élément de son assemblage faisant indissociablement corps avec lui, mais qui ne rendent pas l'ouvrage impropre et n'affecte l'intégrité de l'ouvrage et/ou ne constitue pas un danger « pour la vie de l'homme en société ».*"
>
> [Emphasis added]

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[161] *Levy Chantal et 9615296 Canada inc. (Groupe Gérik)*, 2024 CanLII 74678 (QC OAGBRN) [para 71]
[162] *ABB Inc. v. Domtar Inc*, [2007] 3 SCR 461 [para 52]
[163] 2024 CanLII 74678 (QC OAGBRN)

[390.] In *Rousseau c. 9253-5400 Québec Inc.*, arbitrator Jean-Philippe Ewart analyzed how the nature of a defect affects the time frame for giving notice to the contractor and the manager and stated[164]:

> "*[44]* ***Le Tribunal est d'avis qu'une détermination de la raisonnabilité du délai de dénonciation recherche en partie des paramètres différents selon qu'il s'agisse d'une malfaçon ou d'un vice caché (et de même d'un vice au sens de 2118 C.c.Q.)***.
>
> *[45] Notre collègue arbitre Me France Desjardins se réfère dans l'affaire Valiquette et Construction Nordi[7] aux définitions fournies à titre de guide par la Régie du bâtiment du Québec, l'organisme chargé en vertu de la Loi Bâtiment de l'application du Règlement :*
>
> > *« [38] […]* ***Vices ou malfaçons*** *: Travail mal fait ou mal exécuté compte tenu des normes qui lui sont applicables. Ces normes se trouvent dans les conditions contractuelles et les règles de l'art (voir ci-dessous la notion de 'règle de l'art').*
> >
> > ***Règles de l'art*** *: Ensemble des techniques et pratiques de construction reconnues, approuvées ou sanctionnées. […] Elles trouvent notamment leurs sources dans les documents suivants :*
> >
> > *les instructions ou guides fournis par les fabricants d'équipements ou de matériaux entrant dans la construction des immeubles;*
> >
> > *[…]*
>
> *[46] À titre comparatif, puisque les définitions fournies ci-dessus adressent les expressions 'malfaçons' et aussi 'vices', notons le concept de déficit d'usage du bien souligné dans le cas de vice afin de distinguer la malfaçon :*
>
> > *« 2-378 - Notion de vice - La notion de vice du produit est essentiellement liée au déficit d'usage du bien. Comme le démontre un auteur, il existe trois formes principales de vice : une défectuosité matérielle (le bien s'avère endommagé), une défectuosité fonctionnelle (impossibilité de s'en servir selon la destination normale) ou une défectuosité conventionnelle (impossibilité de s'en servir pour une fin spécifique).»[8]*
>
> *[47] Notre collègue arbitre Me Johanne Despatis, dans une décision[9] sous le Règlement, cerne la malfaçon et ses paramètres, citant le juge G. Bossé dans l'affaire Bordeleau[10]:*

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[164] (CCAC) S16-112001-NP 2018-07-12

> *« [106] Désormais, pour cerner la 'malfaçon' définie au Règlement, on peut, on doit, s'en remettre au concept issu de l'article 2120 du Code civil du Québec. Or, selon la jurisprudence pertinente, la 'malfaçon' au sens de l'article 2120 s'entend du fruit d'un travail fait avec des matériaux déficients ou d'un travail mal fait.*
>
> *[nos soulignés]*
>
> *[48] Dans cette affaire Bordeleau précitée, la Cour du Québec écrit au sujet du concept de 'malfaçon' [Paragr. 7] :*
>
> *« [L'article 2120 C.c.Q.] garantit l'absence de 'malfaçons' dans l'ouvrage immobilier. Une 'malfaçon' étant un travail mal fait ou mal exécuté […] »*
>
> *[nos soulignés]*
>
> *[49] Nous sommes en présence d'un contrat de vente et non d'un contrat d'entreprise; toutefois d'une part le Règlement fait spécifiquement référence à l'article 2120 C.c.Q. et d'autre part dans les circonstances, la garantie prévue par 2120 C.c.Q. est applicable tant par l'effet de l'art. 1794 C.c.Q. - qui assujetti la vente par un entrepreneur d'un fond et immeuble d'habitation aux règles du contrat d'entreprise relatives aux garanties - que de l'art. 2124 C.c.Q. - qui y inclut le promoteur immobilier[11].*"

[391.] In *Rousseau*[165], arbitrator Jean Philippe Ewart identified several relevant factors, including the seriousness of the defect, the presence or absence of prejudice to the Contractor or the Manager, the Beneficiary's diligence upon discovery, and whether any delay resulted from efforts to resolve the issue through discussion.

[392.] He articulated the following criteria:

> "*[88] Critères relatifs au délai raisonnable. En sommaire, et sans restreindre les éléments identifiés à la rubrique 'Analyse et Motifs', le Tribunal considère qu'il est approprié dans les circonstances particulières de ce dossier de tenir compte pour les fins de la discordance de dimensions affectant le comptoir et modules de cuisine:*
>
> - *l'Entrepreneur (et subséquemment l'Administrateur) subit-il un préjudice de la longueur du délai pour les fins de la réclamation des dimensions discordantes; le Tribunal conclut qu'aucun préjudice notable n'est subi;*

[165] *Rousseau et 9253-5400 Québec inc. Faubourg Londonien (Habitations Trigone*), (CCAC) S16-112001-NP 2018-07-12 [para 88]

- *la sévérité moindre des conséquences d'une malfaçon (par exemple comparativement à un vice caché) permet une raisonnabilité élargie du délai;*
- *le Bénéficiaire a avisé l'Entrepreneur immédiatement suite à sa prise de connaissance de la malfaçon de discordance des dimensions;*
- *qu'un délai initial à la dénonciation est lié à des discussions entre les parties afin de tenter de trouver une solution négociée;*
- *l'Entrepreneur est soumis à une obligation de résultat."*

[393.] In *Sangdehi et Tour Utopia inc. (Domaine Bobois),* arbitrator Roland-Yves Gagné acknowledged that the reasonable period for reporting defects varies according to their nature, distinguishing delays applicable to "*poor workmanship*" from those applicable to "*latent or construction defects*"[166]:

> "*[67.2] that a reasonable delay for "poor workmanship" is different than for a "vice cache" or a "vice majeur",*
>
> *[67.3] the delay given to the Contractor to verify the extent of damages caused by the vice and to repair the vice is less important in the first case, while a latent defect, by definition, prevents the use of the good, and a major defect will cause the ruin of the good;*"

[394.] The Tribunal recalls that the jurisprudence consistently holds that the assessment of a reasonable delay for denunciation is fact-specific and varies according to the nature and seriousness of the defect. A distinction must be drawn between poor workmanship, which involve non-compliant yet non-serious deficiencies, and latent or major defects, which affect the use, integrity, or safety of the building.

[395.] The nature of the defect determines the degree of flexibility available to the Tribunal in assessing whether the Beneficiary reported it within a reasonable time. Poor workmanship may justify a more lenient approach, whereas latent or major defects warrant stricter scrutiny.

[396.] In all cases, the Tribunal must consider the severity of the defect, the absence or existence of prejudice to the Contractor or the Manager, the Beneficiary's diligence upon discovery, and whether any delay is attributable to efforts to resolve the matter amicably.

[166] (CCAC) S19-111301-NP 2020-08-03

(v) WHAT CONSTITUTES REASONABLE TIME?

[397.] What constitutes a "*reasonable time*" under sections 10(2) and 10(3) of the Regulation is guided by judicial and arbitral jurisprudence.

[398.] Reasonableness is a mixed question of fact and law[167]. It cannot be determined by a purely arithmetical calculation[168] and must be assessed contextually, having regard to the circumstances of each case[169].

[399.] As the Quebec Court of Appeal stated in *Bartolone c. Cayer*[170], the reasonable character of a delay must be assessed in light of all the circumstances of the case:

> "*[5] Le caractère raisonnable du délai doit être apprécié au regard de toutes les circonstances de l'affaire…*"

[400.] Similarly, in *Leblanc c. Dupuy*[171], the Superior Court of Quebec held that the reasonableness of a delay must be assessed on a case-by-case basis, having regard to the specific circumstances, including the purpose of the notice requirement and any resulting prejudice to the Contractor or the Manager:

> "*[110] … le caractère raisonnable du délai doit s'apprécier au cas par cas, en fonction des circonstances propres à chaque dossier. Ces circonstances doivent prendre en considération l'atteinte du but recherché par la dénonciation et l'existence ou l'absence d'un préjudice pour le vendeur.*
>
> *[111] Certes, l'auteur Jeffrey Edwards[60], maintenant juge à la Cour du Québec, s'appuyant sur une jurisprudence plutôt constante, propose un délai « de base » de six mois dans le cas d'un immeuble[61], lequel ne pourrait être prolongé qu'en présence de motifs qui justifient l'inaction de l'acheteur à l'intérieur du délai de base[62]. Une telle approche aurait l'avantage de minimiser l'incertitude inhérente à l'évaluation du caractère raisonnable et d'accroître la stabilité contractuelle de la vente[63].*
>
> *[112] Toutefois, d'autres auteurs mettent plutôt l'emphase sur l'atteinte de l'objectif recherché par la dénonciation, à savoir*

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[167] *Bartolone c. Cayer*, 2018 QCCA 137 (CanLII) [para 5]; *Syndicat des copropriétaires N'Homade et Cap-Immo Gestion inc.*, 2021 CanLII 13990 (QC OAGBRN) [para 20]; *Bensemmane et Bel-Habitat inc.*, 2024 CanLII 134156 (QC OAGBRN) [para 30]
[168] *Benoit c. Sanctuaire du Mont-Royal*, [1992] R.J.Q. 2858, page 2866; *Bensemmane et Bel-Habitat inc.*, 2024 CanLII 134156 (QC OAGBRN) [para 29]
[169] *Leblanc c. Dupuy*, 2014 QCCS 3226 (CanLII) [para 110]; *Syndicat des copropriétaires N'Homade et Cap-Immo Gestion inc.*, 2021 CanLII 13990 (QC OAGBRN) [para 25]
[170] 2018 QCCA 137
[171] 2014 QCCS 3226 (CanLII)

permettre au vendeur de constater la nature et l'étendue du vice et, le cas échéant, d'y remédier avant que l'acheteur modifie l'état du bien et procède lui-même aux réparations. Le professeur Jobin[64] le présente ainsi :

> *La raison d'être de ce préavis est de permettre au vendeur de vérifier s'il s'agit bien d'un vice couvert par la garantie, de constater les dommages causés le cas échéant, et, s'il y a lieu, d'effectuer la réparation ou le remplacement du bien à un coût inférieur à celui d'un tiers engagé par l'acheteur. […] l'exigence d'un préavis, selon nous, entraîne comme corollaire le droit du vendeur de remédier au vice avant que des sanctions ne soient prises contre lui. […][65] (Le soulignement est ajouté.)*

[113] Selon le professeur Jobin[66], la possibilité qu'a le vendeur de remédier à son défaut favorise ainsi la stabilité contractuelle, puisqu'elle évite dans bien des cas la résolution de la vente.

[114] Le fait est que le législateur ne prévoit pas un délai fixe à l'intérieur duquel l'acheteur doit dénoncer le vice, qu'il s'agisse d'un délai de rigueur ou même simplement d'une règle générale susceptible d'exceptions lorsque les circonstances le justifient. Tout au plus peut-on parler d'une balise ou d'un repère fixé à six mois par la jurisprudence.

[115] Donc, la détermination du caractère raisonnable demeure une question d'appréciation au cas par cas et les tribunaux demeurent souverains dans cette appréciation[67]. Cette détermination doit tenir compte de l'ensemble des circonstances.

[116] Au nombre des circonstances que le juge doit considérer est l'atteinte ou non de l'objectif recherché, à savoir permettre au vendeur de vérifier s'il y a effectivement présence d'un vice couvert par la garantie légale, en apprécier l'ampleur et évaluer les mesures correctives possibles, s'il en est. Pour ce faire, l'acheteur ne doit pas avoir commencé à modifier l'état des lieux et à corriger le vice.

[117] Ainsi, dans Facchini c. Coppola[68], la Cour d'appel enseigne que le recours ne devrait pas être rejeté si le but de la dénonciation est atteint :

> *[43] En effet, la dénonciation prévue à l'article 1739 C.c.Q. doit être envoyée avant l'exécution des travaux corrigeant le vice caché. Selon une décision récente de notre Cour, dans l'affaire Argayova c. Fernandez, le but de la dénonciation est atteint lorsque le vendeur est informé d'un vice avant les travaux et lorsqu'il a eu*

> *l'occasion de vérifier la nécessité et le coût de ceux-ci. L'absence d'une dénonciation entraîne le rejet du recours lorsque l'omission prive le vendeur de la possibilité de vérifier l'existence du vice et de la réparer. (références omises) (Le soulignement est ajouté.)*
>
> *[118] Le professeur Jobin approuve une telle approche :*
>
> > *[…] on a décidé, avec raison selon nous, que la sanction devrait être radicale (rejet de l'action) uniquement lorsque l'omission du préavis a privé le vendeur de la possibilité de vérifier l'existence et la gravité du vice et de le réparer; qu'une simple diminution des dommages-intérêts ou un ajustement à la baisse de la réduction du prix conviendrait mieux aux cas où le défaut de préavis a simplement privé le vendeur de la possibilité de réparer lui-même le vice à meilleur compte.[69] (Le soulignement est ajouté.)*
>
> *[119] Mais il y a plus. Dans un arrêt récent, Claude Joyal inc. c. CNH Canada Ltd.[70], la Cour d'appel, sous la plume du juge Dalphond, analyse les conditions et finalités de la dénonciation et conclut qu'afin de pouvoir justifier l'irrecevabilité du recours intenté par l'acheteur,*
>
> > *les conséquences du défaut de dénonciation dans un délai raisonnable doivent correspondre à un préjudice réel pour le vendeur, et non à un simple préjudice de droit, afin de pouvoir justifier l'irrecevabilité du recours intenté par l'acheteur.[71]*
>
> *[120] Le juge doit donc s'assurer de l'existence d'un préjudice réel pour le vendeur avant de rejeter le recours de l'acheteur faute d'avoir dénoncé le vice dans un délai raisonnable de sa découverte.*"
>
> [Emphasis added]

[401.] There is no fixed deadline that automatically renders a claim inadmissible. Rather, the Tribunal's analysis is contextual and evidence-based, focusing on whether the delay in reporting the defect was reasonable in the circumstances.

[402.] The following decisions reflect the range of delays considered reasonable by courts and arbitration tribunals under the post 2015 legislative framework:

1. **Six (6) months:** *Côté c.* Boyer, Quebec Superior Court[172];
2. **Seven (7) months:** *Paradjina et 8919972 Canada inc. (Construction Junic)*, arbitrator Robert Néron[173];

[172] 2015 QCCS 4817 (CanLII) [paras 57 to 60]

3. **Seven and one half (7½) months:** *Leblanc c. Bouchard*, Court of Quebec[174];
4. **Nine (9) to ten (10) months:** *Meunier c. Fontaine*, Quebec Court of Appeal[175];
5. **Ten (10) months:** *Alexandre Carrier et Nathalie Verret c. Construction S.M.B. Inc. et La Garantie de Construction Résidentielle (GCR)*, arbitrator Yves Fournier [176];
6. **Twelve (12) months:** *Beauchemin c. Champagne*, Court of Quebec[177];

[403.] The following decisions illustrate the range of delays that arbitration tribunals and courts have found to be unreasonable, even under the post-2015 legislative framework:

1. **Twenty-six (26) to fifty-six (56) days**: *Marois et Constructions Auger-Ouellette inc. (Constructions Jean-Guy Ouellette)*[178];
2. **Ten (10) months**: (1) *Lessard-Lacroix et Groupe Pentian Développements inc. (Condos 2050)*[179]; (2) *Vachon et Entreprises Ricbo inc.*[180];
3. **Eleven (11) months**: (1) *Arsenault et 9305-4179 Québec inc. (JB Construction)*[181]; (2) *Pagliuca et Bena Construction inc.*[182]*;* (3) *Michel et Pro-charpente Inc.*[183]; (4) *Marie France Arsenault c. J.B Construction et GCR*[184];
4. **Twelve (12) months**: *Syndicat des copropriétaires Q22 et 9508848 Canada inc. (Groupe Devlan)*[185];
5. **Thirteen (13) months**: (1) *Alizada et Bel-Habitat inc.*[186]; (2) *Hébert et Place St-Marc inc.*[187];

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[173] 2021 CanLII 155270 (QC OAGBRN) [para 15]
[174] 2014 QCCQ 4797 (CanLII) [para 130]
[175] 1988 CanLII 670 (QC CA)) [para 8]
[176] (CCAC)S20-052701-NP and (CCAC) S20-060901-NP 2020-11-19 [para 110]
[177] 2014 QCCQ 6262 (CanLII) [para 22]
[178] 2023 CanLII 145482 (QC OAGBRN) [para 23]
[179] 2022 CanLII 144769 (QC OAGBRN) [paras 25-26]
[180] 2021 CanLII 155612 (QC OAGBRN) [paras 61-62]
[181] 2024 CanLII 137626 (QC OAGBRN) [paras 111, 121, 123 and 127]
[182] 2023 CanLII 70165 (QC OAGBRN) [paras 37 and 39]
[183] 2023 CanLII 51826 (QC OAGBRN) [paras 18, 19, 21-22]
[184] 2024 CanLII 137626 (QC OAGBRN) [paras 111, 125 to 128]
[185] 2023 CanLII 136007 (QC OAGBRN) [paras 23 and 46]
[186] 2022 CanLII 128071 (QC OAGBRN) [paras 3 and 26]
[187] 2025 CanLII 53900 (QC OAGBRN) [paras 50-54]

6. **Fifteen (15) months**: (1) *Arguin-Mc Duff et Constructions Vincent Michaud inc.*[188]; (2) *Mayer et Construction Savco inc.*[189];

7. **Sixteen (16) months**: (1) *SDC du 802 à 816 de la Seigneurie et 9241-5603 Québec inc. (Seigneurie du Ruisseau)*[190]; (2) *Vanessa Dorcent et Les Développeurs du Nord et La Garantie de Construction Résidentielle (GCR)*[191];

8. **Seventeen (17) months**: (1) *Vidanovic et 3658791 Canada inc. (Constructions La Vérendrye*[192]; (2) *Palmieri c. Lafrenier*[193];

9. **Twenty (20) months**: *Vanessa Dorcent et Les Développeurs du Nord et La Garantie de Construction Résidentielle (GCR)*[194];

10. **Twenty-one (21) months**: *SDC de la copropriété Condos W Édifice 2000 et 9226-0520 Québec inc.*[195];

11. **Twenty-three (23) months**: *Syndicat des copropriétaires N'Homade et Cap-Immo Gestion inc.*[196];

12. **Twenty-four (24) months**: (1) *Levy Chantal et 9615296 Canada inc. (Groupe Gérik)*[197]; (2) *Ortu c. Roussel*[198]; (3) *Pelletier et Maison usinées Côté inc.*,[199]; (4) *Bayard et Constructions Alain Gaudreault et Fils inc.*[200];

13. **Twenty-six (26) months**: (1) *Ouadii et Groupe Immobilier Ménard inc.*[201]; (2) *Beaulieu et Constructions Auger-Ouellette inc. (Constructions Jean-Guy Ouellette inc.)*[202];

14. **Twenty-eight (28) months**: *Chantiri et Construction Briancon (1998) inc.*[203];

15. **Twenty-nine (29) months**: *Syndicat de la copropriété du 3167 boulevard de la Gare et Onze de la Gare Phase III inc.*[204];

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[188] 2024 CanLII 142123 (QC OAGBRN) [pars 63, 80 and 84]
[189] 2026 CanLII 7150 (QC OAGBRN) [paras 87 and 89]
[190] 2023 CanLII 70159 (QC OAGBRN) [paras 119, 121 and 123]
[191] 2020 CanLII 123746 (QC OAGBRN) [paras 79-82]
[192] 2024 CanLII 49722 (QC OAGBRN) [paras 126-127 and 137-139]
[193] 2024 QCCQ 5733 (CanLII) [para 17]
[194] 2020 CanLII 123746 (QC OAGBRN) [paras 37, 59-60]
[195] 2023 CanLII 102817 (QC OAGBRN) [para 136]
[196] 2021 CanLII 13990 (QC OAGBRN) [para 142]
[197] 2024 CanLII 74678 (QC OAGBRN) [paras 7.1, 71 and 74]
[198] 2015 QCCQ 11329 (CanLII) [paras 19-20]
[199] 2024 CanLII 49716 (QC OAGBRN) [para 16]
[200] 2023 CanLII 70170 (QC OAGBRN) [paras 16-17]
[201] 2023 CanLII 140470 (QC OAGBRN) [paras 152-155]
[202] 2022 CanLII 54032 (QC OAGBRN) [paras 53-59]
[203] 2022 CanLII 134760 (QC OAGBRN) [para 16]
[204] 2021 CanLII 57148 (QC OAGBRN) [para 82]

16. **Thirty (30) months**: (1) *Chantiri et Construction Briancon (1998) inc.*[205]; (2) *Reis et 9398-2585 Québec inc. (Habitamax) (Habitations Germat inc.*[206];
17. **Thirty-two (32) months**: *Bensemmane et Bel-Habitat inc.*[207];
18. **Thirty-three (33) months**: (1) *Robichaud et Jacques Cloutier et Fils inc.*[208]; (2) *Lebel et Expert Maisons inc. (Goscobec)*[209];
19. **Thirty-six (36) months**: *Guay et Construction Jolivar inc.*[210];
20. **Forty-one (41) months**: *Bensemmane et Bel-Habitat inc.*[211];
21. **Forty-two (42) months**: *Syndicat de la copropriété 1975 lofts et 9211-4057 Québec inc* [212];
22. **Forty-eight (48) months**: *Syndicat de la copropriété du 1425-1431, boulevard Mauricien, Trois-Rivières et Habitations Paris et Frères 2012 inc.*[213].

[404.] These decisions demonstrate that, despite the greater flexibility introduced by the 2015 amendment, the timeliness of notice remains subject to a contextual assessment focused on the purpose of the notice requirement and the existence of any resulting prejudice.

[405.] In *Marois et Constructions Auger-Ouellette inc. (Constructions Jean-Guy Ouellette)*, the arbitrator Michel A. Jeanniot considered whether the delays of twenty-six (26) days involving five (5) claims and fifty-six (56) days for another, were deemed to have been reported within a reasonable time. The arbitrator found that the delays were unreasonable[214].

[406.] There are certain similarities between the present case and *Marois*, concerning the beneficiary having received the (i) the warranty certificate, (ii) the guarantee plan, and (iii) the steps for filing a claim provided to him, followed by his admission that he did not read them[215].

[407.] In Marois, the beneficiary admitted that the deficiencies were known or identifiable at or shortly after taking possession but were not denounced within the mandatory delay.

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[205] 2022 CanLII 134760 (QC OAGBRN) [para 16]
[206] 2020 CanLII 127163 (QC OAGBRN), [para 52]
[207] 2024 CanLII 134156 (QC OAGBRN) [paras 100 and 107]
[208] 2022 CanLII 129754 (QC OAGBRN) [paras 16, 17-18]
[209] 2024 CanLII 134155 (QC OAGBRN) [paras 69-74]
[210] 2025 CanLII 32973 (QC OAGBRN) [para 42]
[211] 2024 CanLII 134156 (QC OAGBRN) [para 100]
[212] 2021 CanLII 18685 (QC OAGBRN) [para 28]
[213] 2024 CanLII 95685 (QC OAGBRN) [para 61]
[214] 2023 CanLII 145482 (QC OAGBRN) [para 23]
[215] Ibid [para 13]

[408.] Arbitrator Michel A. Jeanniot found that the mere existence of apparent defects or incomplete work does not give rise to a claim in the absence of a timely written denunciation as required by the Regulation and the Plan.

(vi) IGNORANCE OF THE LAW

[409.] The Beneficiary submits that she was unaware of the requirement to denounce in writing to both the Contractor and the Manager the defects identified under Points 1, 3, 4, 5 and 6, governed by the Guarantee Contract and sections 10(2) and 10(3), as well as of the exclusions set out under section 12(9) of the Regulation.

[410.] Although this may have been the case, the Beneficiary cannot rely on ignorance of the law to justify non-compliance with the requirements of the Regulation.

[411.] The Tribunal notes that similar submissions have previously been considered by arbitrator Michel A. Jeanniot in the following decisions:

[411.1] *Lefebvre et Entreprises Marc Lalonde inc.*[216]:

> "*[12] L'ignorance de la Loi ne peut pas faire échec à son application et l'excès de confiance des Bénéficiaires vis-à-vis les représentations possibles de l'Entrepreneur et/ou le défaut de prendre connaissance, sinon du texte de garantie, à tout le moins des sommaires et/ou dépliants accessibles sinon remis, sont le reflet d'une certaine insouciance que le soussigné peut difficilement cautionner. Ceci me contraint de ne pouvoir retenir les prétentions des Bénéficiaires quant aux points numéros 20, 21, 22, 24 et 31 de la décision du 5 novembre 2007 et des points numéros 10, 12 et 13 de la décision du 5 mars 2008 et je me dois donc de rejeter (pour ces points précis) la demande d'arbitrage des Bénéficiaires.*"
>
> [Emphasis added]

[411.2] *Marois et Constructions Auger-Ouellette inc. (Constructions Jean-Guy Ouellette)*[217]:

> *"[22] L'ignorance de la loi ne peut pas faire échec à son application et l'excès de confiance des bénéficiaires vis-à-vis les représentations de l'entrepreneur, à savoir les explications qui me furent soumises pour proposer que la déclaration de*

[216] O.A.G.B.R.N., 2008-09-10 SOQUIJ AZ-50512876 SORECONI
[217] 2023 CanLII 145482 (QC OAGBRN)

> *réception du bâtiment et/ou la dénonciation des désordres apparents soient ignorées, je ne peux les retenir et je me dois de rejeter la demande des bénéficiaires*.
>
> *…*
>
> *[25] Les bénéficiaires reconnaissent qu'ils n'ont pas été empêchés de présenter leur réclamation à l'administrateur à l'intérieur du délai, seule leur ignorance du critère d'application du délai est soulevée.*
>
> *[26] Et à regret, l'ignorance d'une loi ne peut faire échec à son application*.
>
> *[27] Le fait que les bénéficiaires ignoraient qu'ils devaient dénoncer la situation à l'administrateur à regret ne les décharge pas de cette obligation*."
>
> [Emphasis added]

[411.3] In *Shanmuganathan et St-Luc Habitation inc.*[218] arbitrator Albert Zoltowski, seized of a similar issue, held as follows:

> "*[55] L'ignorance de la loi (soit le premier motif) est un principe juridique maintes fois reconnu par les tribunaux civils et arbitraux. Il oblige ce tribunal d'arbitrage à rejeter cette première justification des Bénéficiaires*."
>
> [Emphasis added]

[412.] The Tribunal notes that analogous submissions have previously been considered by this Tribunal in the following decisions:

[412.1] *Gattas et Groupe Construction royale inc.*[219]

> "*[120] Les Bénéficiaires ont fait valoir que leur défaut de dénoncer les malfaçons à l'Entrepreneur et à l'Administrateur dans les 6 mois après la découverte des malfaçons a été causé par leur manque de connaissances*.
>
> *[121] Il est un fait que les Bénéficiaires avaient ignoré qu'ils devaient dénoncer les malfaçons dans les délais prescrits par l'article 10.3 du Règlement. Toutefois, leur manque de connaissances issu*

[218] O.A.G.B.R.N., 2010-06-18, SOQUIJ AZ-50653683 CCAC
[219] O.A.G.B.R.N., 2014-04-22, SOQUIJ AZ-51097314, SORECONI

> *directement de leur turpitude ne doit en aucun cas servir d'excuse pour ne pas se conformer aux délais prescrits par le Règlement.*
>
> *[122] Les Bénéficiaires n'ont pas fait valoir qu'il leur était impossible de dénoncer par écrit à l'Entrepreneur et à l'Administrateur les malfaçons dans les 6 mois qui suivent cette découverte. Cependant, même si un tel argument avait été soumis, le Tribunal ne peut étendre les délais au-delà des 6 mois prévus par le législateur à l'article 10.3 du Règlement.*[34]
>
> *[123] Le Tribunal comprend la position des Bénéficiaires et qu'ils n'ont pas tout à fait apprécié ou compris leur obligation de dénoncer les malfaçons dans les délais prescrits par le Règlement.*
>
> *[124] Néanmoins, le Tribunal ne peut pas ignorer les éléments de preuve qui lui ont été présentés. Les Bénéficiaires étaient les propriétaires de la maison visée par le plan de garantie, à condition que les modalités et conditions du plan de garantie et du Règlement soient respectées.*"
>
> [Emphasis added]

[412.2] *Mayers et Habitations Raymond Allard inc.*[220]

> "*[552.] The Tribunal concludes that the Beneficiaries being unaware of the Guarantee Contract and of the Regulation that required them to apply for arbitration with thirty days following receipt of the individual decisions by registered mail was a direct result of their own turpitude, which under no circumstances can serve as an excuse for not complying with the time limits prescribed by the Regulation.*"

[413.] As recalled by the arbitrator Michel A. Jeanniot in *Bensemmane et Bel-Habitat inc.*[221], a party cannot invoke its own fault, error, or ignorance to justify non-compliance with the mandatory requirements of the Regulation.

[414.] Applying this principle, the Tribunal finds that the Beneficiary's failure to denounce the defects in writing to both the Contractor and the Manager is attributable: (i) to her failure to acquaint herself with section 2.8 of the

[220] 2025 CanLII 115541 (QC OAGBRN)
[221] 2024 CanLII 134156 (QC OAGBRN) [para 101]

Guarantee Contract and sections 10(2) and 10(3) of the Regulation, which clearly require that defects be reported in writing within a reasonable time; and (ii) to her erroneous and unfounded belief that the Building was covered by a five (5) year guarantee.

[415.] While the Tribunal acknowledges the Beneficiary's good faith, such good faith cannot excuse non-compliance with the prescribed procedural requirements.

[416.] The delays incurred are not reasonable, and no exculpatory circumstances have been established. As the Beneficiary was not prevented from acting within the applicable time limits, her failure to comply is determinative and warrants dismissal of the claims.

[417.] Consequently, the written notice dated January 17, 2025, transmitted thirty-one (31) months and nineteen (19) days after discovery of the defects, is manifestly unreasonable within the meaning of the Regulation.

(10) SECTION 12(9) OF THE REGULATION

[418.] Regarding the exclusions from the guarantee, it is worth recalling the regulatory specifications of section 12 of the Regulation. This section lists a series of works, components, and situations that are expressly excluded from coverage, notwithstanding the general protections set out in section 10.

[419.] In particular, section 12(9) excludes from the Plan any exterior improvements not essential to the building itself, including driveways, sidewalks, parking areas, and other similar landscaping or access works, unless such works are necessary to ensure access to the building or are expressly provided for in the contract and integrated into the residential building.

[420.] In *Bordeleau and 9082-2883 Québec Inc. (Groupe Selona)*[222], the arbitrator Guy Pelletier considered a claim involving the rough levelling of the site which was uniform and free of debris. The rear and side slopes have been graded to direct surface water away from the foundations.

[421.] The arbitrator concluded that section 12(9) of the Regulation specifically excludes from the guarantee works located outside the building, such as earthworks and dismissed the beneficiary's claim.

[422.] In *Syndicat de la copropriété du 1425-1431, boulevard Mauricien, Trois-Rivières et Habitations Paris et Frères 2012 inc.*[223], arbitrator James R. Nazem considered the application of section 12(9) in the context requiring a beneficiary to demonstrate that the work forms part of the building itself (not landscaping), and only then establish a covered defect.

[222] (O.A.G.B.R.N. 2011-06-01) SOQUIJ AZ-50764378 (CCAC)
[223] 2024 CanLII 95685 (QC OAGBRN)

[423.] He determined that under the guarantee plan, works located outside the building, are functionally independent from the building (such as on-grade patio slabs) are assimilated to “landscaping” and fall within the exclusions of section 12[224]; once so characterized, they are not covered by the guarantee, regardless of the presence of defects.

[424.] In *Syndicat des copropriétaires 984, rue Notre-Dame, Repentigny et 9403-1952 Québec inc.*[225], arbitrator Roland-Yves Gagné, reviewed the application of section 12(9) which was interpreted restrictively: it applies only when the contractor has not completed the work. If the work was completed but is defective, the situation falls under a defect of poor workmanship, not under section 12(9).

[425.] *Syndicat des copropriétaires 984, rue Notre-Dame, Repentigny* reinforces the principle that beneficiaries must correctly categorize their claims to fall within the Plan.

[426.] The evidence establishes that the driveway is not structurally integrated into the residential building, nor is it necessary to ensure access to the essential entrances of the building within the meaning of the Regulation.

[427.] Moreover, no persuasive evidence was presented to demonstrate that the driveway formed an integral and inseparable part of the building as conceived under the Plan, or that it fell within one of the limited exceptions allowing exterior works to be covered.

[428.] Consequently, notwithstanding the Beneficiary’s assertion that the driveway was improperly constructed and encroached onto a neighbouring property, the nature of the work places it squarely within the exclusions provided for under section 12(9) of the Regulation.

[429.] Given this finding, it is neither necessary nor within the Arbitrator’s jurisdiction to assess the quality of the construction work itself, the alleged encroachment, or the corrective measures undertaken by the Beneficiary.

[430.] In light of sections 13, 14, 29, and 30 of the Regulation, which strictly limit the Tribunal’s authority to defects covered by the guarantee plan, no compensation may be awarded in respect of work that fall outside the scope of coverage.

[431.] The Manager therefore did not err in dismissing Point 2 of the claim, and the Beneficiary’s request for reimbursement in the amount of $8,968.05 must be denied.

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[224] Ibid. [paras 58-60]
[225] 2023 CanLII 135942 (QC OAGBRN)

(11) BENEFICIARY'S MONETARY CLAIMS

[432.] The Beneficiary claims damages in the amount of $250,000.00.

[433.] The arbitrator's jurisdiction derives exclusively from the Regulation, which governs both the scope of the guarantee and the arbitral process applicable to disputes arising from a conciliator's decision.

[434.] A plain reading of the Regulation reveals multiple and express references to arbitration and to the role of the arbitrator, thereby confirming the centrality of this adjudicative function within the statutory framework[226].

[435.] The arbitrator's mandate is limited to determining the merits of a conciliator's decision challenged by either the beneficiary or the contractor[227], where such decision arises from a claim by the beneficiary alleging a failure by the contractor to perform legal or contractual obligations covered by the Regulation.

[436.] The Regulation establishes a complete and self-contained regime governing both the guarantees and the resolution of disputes, thereby confining the arbitrator's role to the parameters it expressly prescribes.

[437.] The Plan secures the contractor's obligations solely within the limits, conditions, and modalities expressly set out in the Regulation[228]. Accordingly, any entitlement claimed by the Beneficiary is contingent upon strict adherence to that regulatory framework.

[438.] Coverage relating to a contractor's failure to perform is specifically delimited in section 9 of the Regulation, which exhaustively defines the forms of indemnification available depending on the juridical nature of the contract, namely a contract of sale or a contract of enterprise.

[439.] In substance, the Regulation limits recovery to: (i) the reimbursement of certain payments; (ii) the completion or correction of the work; and (iii) certain ancillary expenses, such as relocation, moving, or storage costs, in the limited circumstances expressly provided. In all cases, indemnification is strictly subject to the conditions and limitations set out in the Regulation.

[440.] The Regulation further delineates the scope of the guarantee through provisions governing exclusions[229] and financial ceilings[230]. These provisions operate both to exclude specified categories of claims and to limit the quantum of indemnity payable, thereby reinforcing the restricted and regulated nature of the Plan.

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[226] Sections 106, 107, 110, 112, 113, 114, 115, 116, 117, 118, 120, 123 and 124
[227] Section 19
[228] Section 7
[229] Sections 12 and 29
[230] Sections 13, 14, 30 and 31

[441.] When read as a whole, the Regulation constitutes an exhaustive regime whose scope cannot be extended beyond its express terms.

[442.] In particular, sections 13 and 30 make clear that any indemnity payable under the Plan is strictly limited to the risks and obligations expressly contemplated therein.

[443.] These provisions make clear that the Regulation does not create a general regime of civil indemnity. Rather, it restricts compensation to the specific heads of coverage it enumerates and provides for damages only in narrowly defined and exceptional circumstances.

[444.] The Regulation permits the award of damages only where a specific provision expressly so provides, and solely within the limits attaching to that coverage. As reflected in sections 13(4) and 30, damages may be awarded as a substitute remedy only where: (i) the covered obligation cannot be remedied; and (ii) the claim arises from an obligation encompassed within a contract of enterprise.

[445.] Even in such circumstances, recovery is limited to the actual loss suffered by the beneficiary and remains subject to the monetary limits prescribed by the Regulation, including those set out in section 13(3).

[446.] Accordingly, damages under the Plan are exceptional and ancillary, available only within the limits of the enumerated guarantees.

[447.] Any claim seeking compensation outside those limits, including under general civil liability, falls outside the arbitrator's jurisdiction and must be pursued before the competent courts.

[448.] In *Garantie de construction résidentielle (GCR) c. De Andrade*, the Superior Court of Quebec, in the context of a judicial review of an arbitral award, reiterated the nature of the Plan as a consumer protection mechanism and clarified the arbitrator's role as follows[231]:

> "*Principes – Rôles de l'arbitre et du tribunal de révision*
>
> *[40] L'arbitre est autorisé par la Régie à trancher les différends découlant des plans de garantie38. La Loi et le Règlement ne contiennent pas de clause privative complète, l'arbitre a compétence exclusive, sa décision lie les parties et elle est finale et sans appel. Il doit statuer conformément aux règles de droit et faire appel à l'équité lorsque les circonstances le requièrent[39].*"

[231] 2020 QCCS 1067 [para 47]

[449.] The Tribunal finds that its jurisdiction, being wholly circumscribed by the Regulation, is limited to the determination of disputes arising from a conciliator's decision within the strict parameters of the Plan, which constitutes a complete, closed, and exhaustive regime governing both the nature and extent of coverage and the remedies available thereunder;

[450.] As the $250,000.00 claim seeks compensation beyond the forms of relief provided by the Regulation, it falls outside the Tribunal's jurisdiction and must be dismissed.

(12) SECTION 19 – THIRTY (30) DAYS TO APPLY FOR ARBITRATION

[451.] The Manager submits that an application for arbitration was required to be filed within thirty (30) days, with the burden resting on the Beneficiary to demonstrate an inability to act within that period. In support, the Manager relies on *Markman c. Les développements au tournant de la Gare inc. et GCR*[232].

[452.] Section 19 of the Regulation requires that the Beneficiary submit the Decision to arbitration within thirty (30) days of its receipt:

> "*19. A beneficiary or contractor who is dissatisfied with a decision of the manager shall, in order for the guarantee to apply, submit the dispute to arbitration within 30 days following receipt … of the manager's decision…*"
>
> [Emphasis added]

[453.] The Beneficiary's application for arbitration arises from a Decision rendered in French on May 23, 2025, which was subsequently transmitted to the Beneficiary in English on or about June 4, 2025.

[454.] The Beneficiary was unable to specify the exact date on which she received the English version of the Decision. The Manager did not establish that the Beneficiary received the email of June 4, 2025, thereby becoming aware of the Decision on that date.

[455.] The Beneficiary filed her application for arbitration on August 13, 2025.

[456.] The determinative issue, therefore, is the date on which the Beneficiary received the Decision for the purposes of calculating this delay.

[457.] Even assuming, *prima facie* (and without acknowledging that such proof exists) that the Beneficiary received the Decision on June 4, 2025, the delay would have commenced on June 5, 2025, expiring thirty (30) days later July 5, 2025.

[232] (GAJD) 2025-03-09

[458.] As July 5, 2025, fell on a Sunday, the time limit would have been extended to Monday, July 6, 2025.

[459.] The Beneficiary's application for arbitration, filed on August 13, 2025, would therefore have been submitted seventy (70) days after the alleged receipt date of June 4, 2025.

[460.] However, this calculation is predicated on the assumption that the Decision was received on June 4, 2025, an assumption not established by the Manager, who has failed to discharge its burden of demonstrating the starting point of the thirty (30) day period prescribed by section 19 of the Regulation.

[461.] The evidence establishes that she communicated with GCR representatives (Ms. Mélanie René, who referred her to Mr. Richard Massé) between May and August 2025, without receiving timely follow up.

[462.] She ultimately obtained assistance from GCR's Chief Executive Officer, Mr. Jean-Pascal Labrosse, who assisted her in initiating the arbitration process.

[463.] The Manager submitted *Markman c Les développements au tournant de la Gare inc et GCR*[233]; the arbitrator Louis-Martin Richer was seized of an application by the manager seeking the exclusion of certain claims from the scope of the arbitration, on the grounds that the time limits prescribed by the Regulation were not complied with.

[464.] In *Markman*, the beneficiaries filed on August 21, 2025, two applications for arbitration arising from decisions rendered on November 16, 2022, and July 18, 2025. The arbitrator held that any application for arbitration, whether filed by a beneficiary or a contractor, must comply with the prescribed requirements, including those set out in sections 19, 19.1 and 107 of the Regulation[234].

[465.] The arbitrator Louis-Martin Richer recalled that the time limit established by the Regulation is procedural in nature and does not constitute a strict deadline entailing the automatic forfeiture of the right to arbitration upon expiry[235].

[466.] The November 16, 2022, decision was submitted to arbitration three (3) years and approximately eight (8) months after it was received. The delay was substantial, requiring significant and compelling explanations justifying the failure to submit the decision to arbitration within thirty (30) days.

[467.] The courts and arbitration tribunals have repeatedly decided that the delay of thirty (30) days is not strict, and an arbitrator retains the discretion to extend this delay where the circumstances so warrant.[236]

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[233] (GAJD) 2026-03-09
[234] (GAJD) 2025-03-09 [para 16]
[235] (GAJD) 2025-03-09 [para 19]

[468.] It is up to the Tribunal to decide whether under the circumstances of the present instance, the Beneficiary's failure to comply with the delay of thirty (30) days was reasonable, excusable and forgivable, otherwise her failure to comply with the thirty (30) day limit for filing an arbitration application is fatal to her claim.

[469.] The Manager, relying on the principles articulated in *Markman*, submits that it was not impossible for the Beneficiary to file for arbitration within thirty (30) days of receipt of the Decision.

[470.] The concept of impossibility to act must be assessed on a case-by-case basis. Jurisprudential authorities serve as interpretative guidance only and cannot be applied in a rigid or mechanistic manner. The analysis necessarily requires due consideration of the specific factual matrix of each case.

[471.] In determining a request for an extension, the Arbitrator may, where warranted by the circumstances, also have recourse to considerations of equity pursuant to section 116 of the Regulation. In this context, the Tribunal must further assess whether the delay occasioned any actual prejudice to the Contractor or the Manager.

[472.] The Tribunal will examine the following issues separately: (i) the application of section 19.1; (ii) the alleged impossibility to act; (iii) the application of section 116; and (iv) the notion of prejudice. These considerations relate, respectively, to the delay in submitting the Decision to arbitration (addressed hereinbelow) and to the delay in the Beneficiary's provision of written notice of the defects to the Contractor and the Manager (addressed in Section 13 below).

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[236] *Takhmizdjian c. Soreconi*, 2003 CanLII 18819 (QC CS), Ginette Piché, J.S.C.; *Hébert et 9122-9385 Québec inc. (Habitations Signature inc.)*, Claude Dupuis, arbitrator, 036373, 2004-09-17; *Construction Marcel Blanchard (1993) inc. et Callimaci*, Claude Dupuis, arbitrator, 2005-08-005 and 082003, 2006-10-17; *Construction Paveton inc. et Malboeuf*, Marcel Chartier, arbitrator, 071024001 and 117166-2 (GMN), 2007-12-28; *Syndicat de la copropriété Jardins de Limoges - 3550407 et Habitation Classique inc.*, Claude Dupuis, arbitrator, 083041-1 and 2007-09-017, 2008-04-03; *9050-8219 Québec inc. (1er Choix Immobilier) et Développements Le Monarque inc.*, Jeffrey Edwards, arbitrator, A-20252, U-502141, U-502142, S08-140301-NP, 12 913-18, S08-140302-NP and 12 913-19, 2008-08-22; *De Luca et Maisons usinées Confort Design inc.*, Michel A. Jeanniot, arbitrator, 080430001 and 115698-1, 2009-03-10; *Fortin et Construction Gilles Rancourt et Fils inc.*, Claude Dupuis, arbitrator, 147624-1 and 2011-04-002, 2011-08-01; *Fiducie RMLT et Construction Xaloma inc.*, Michel A. Jeanniot, arbitrator, 070605001, 080528001, 081105001 and 1022030001, 2011-11-14; *Syndicat des copropriétaires 2863 à 2867 Pierre-Bernard et Espaces Harmoniks inc.*, Roland-Yves Gagné, arbitrator, S12-011601-NP, 2012-06-22; *Girard et Groupe Pro-Fab inc.* (*Résidences PF*), Reynald Poulin, arbitrator, 112109001, 2012-06-28.

(i) SECTION 19.1 OF THE REGULATION

[473.] The Tribunal recalls that section 19.1 of the Regulation provides as follows:

> "*19.1. Failure by the beneficiary to file a claim or implement the guarantee in timely fashion cannot be set up against the beneficiary if the contractor_or manager fails to perform the obligations under sections 17, 17.1, 18, 66, 69.1, 132 to 137 and paragraphs 12, 13, 14 and 18 of Schedule II, unless the contractor or manager shows that such failure had no incidence on the failure to file a claim in timely fashion or that the time for filing the claim or implementing the guarantee has been expired for more than one year.*
>
> *Non-compliance with a period cannot be set up against the beneficiary if the circumstances make it possible to establish that the beneficiary was made to exceed the period following representations by the contractor or the manager.*"
>
> [Emphasis added]

[474.] Section 19.1 governs situations in which a beneficiary fails to "*file a claim or implement the guarantee in timely fashion*".

[475.] In such circumstances, the delay may not be invoked against the beneficiary where the contractor or the manager has failed to comply with their own obligations under the Regulation, unless it is demonstrated either that this failure had no impact on the delay or that the applicable deadline had expired for more than one year.

[476.] The application of section 19.1 is inherently fact-specific and turns on whether the beneficiary's failure to meet the deadline resulted from statements, conduct, or omissions of the Contractor or the Manager that reasonably led the beneficiary to postpone filing the claim.

[477.] Section 19.1 thus establishes an exception to the principle of strict forfeiture for late denunciation where the beneficiary's delay is reasonably explained by the conduct, representations, or omissions of the Contractor or the Manager, particularly where such conduct fosters the legitimate belief that the issue is being addressed.

[478.] This provision reflects the legislator's intention that prescribed deadlines serve a procedural (not punitive) function in appropriate circumstances. Their application must therefore be assessed contextually, with due regard to the principles of good faith[237], the beneficiary's reasonable expectation that the contractor would meet its obligations, and the rule that a contractor cannot benefit from conduct that contributes to or causes the delay.

[237] Article 6 C.C.Q.

[479.] In *Alizada v. Bel-Habitat inc.*[238] arbitrator Michel A. Jeanniot, held that the delay was reasonable in light of the beneficiary's sustained communications with the contractor, the contractor's repeated interventions, and the time reasonably allowed for the completion of the proposed corrective work.

[480.] Similarly, in *Paquette et Construction 3D Gervais et Fils inc.*[239], arbitrator Roland-Yves Gagné found that the beneficiaries had maintained consistent and diligent follow-up with the contractor and had fully cooperated in the proposed monitoring process, including the involvement of experts. The resulting delays were accepted as technically justified and necessary for an appropriate observation period.

[481.] Consequently, arbitrator Roland-Yves Gagné concluded that, on the basis of the evidence and the applicable law, the beneficiaries' claim was admissible. He held that the circumstances demonstrated that the beneficiaries were effectively compelled by the contractor's conduct to exceed the reasonable time limit from the date of discovery, within the meaning of the Regulation[240].

[482.] The Tribunal must therefore assess, in light of the evidence adduced by the parties, whether the factual context demonstrates that the Beneficiary did not merely fail to act within a reasonable time, but was effectively constrained to do so by the Contractor's conduct.

(ii) IMPOSSIBILITY TO ACT

[483.] Certain arbitral decisions, recognise that relief from the consequences of non-compliance with prescribed time limits may be granted where the party establishes that it was, in fact, unable to act within the applicable delays.

[484.] Each case turns on its specific facts. The Tribunal must assess the evidence and explanations advanced by the Beneficiary to determine whether she has discharged her burden of establishing the circumstances that prevented her from submitting the Decision to arbitration within thirty (30) days following receipt of the Decision.

[485.] The Tribunal recalls that impossibility to act must be assessed from the Beneficiary's perspective, in light of the consequences associated with forfeiture of her right to submit the Decision to arbitration.

[486.] The timeliness of the Beneficiary's application for arbitration, filed on August 13, 2025, depends on the presumed date of receipt of the Decision. If it were established that the Decision was received on June 4, 2025, the application would have been filed seventy (70) days thereafter.

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[238] 2022 CanLII 128071 (QC OAGBRN) [paras 22 and 26]]
[239] 2025 CanLII 28871 (QC OAGBRN) [paras 134, 141-144]
[240] Ibid [paras 131-134]

[487.] This calculation, however, rests on an unproven premise. The Manager has not discharged its burden of establishing the date of receipt of the Decision and consequently has failed to demonstrate the commencement of the thirty (30) day period prescribed by section 19 of the Regulation.

[488.] The evidence instead demonstrates that the Beneficiary engaged in communications with GCR representatives, namely Ms. Mélanie René and subsequently Mr. Richard Massé, between May and August 2025, without obtaining timely follow-up.

[489.] It was only thereafter that the Beneficiary obtained the assistance of GCR's Chief Executive Officer, Mr. Jean-Pascal Labrosse, who facilitated the initiation of the arbitration process.

[490.] Do the facts fall within the application of section 19.1 of the Regulation, which governs situations in which a beneficiary fails to "*file a claim in timely fashion*"?

[491.] The Tribunal must determine, based on the evidence, whether the prevailing factual matrix establishes not merely a failure by the Beneficiary to act within a reasonable time, but rather that such delay resulted from constraints attributable to the Manager's conduct.

[492.] The analysis therefore turns on whether the Manager's conduct between May and August 2025 gave rise to circumstances that could reasonably have inhibited the Beneficiary from submitting the Decision to arbitration within the time limit prescribed.

[493.] The Beneficiary's testimony stands uncontradicted. The evidence supports the finding that the Manager conducted itself in a manner that reasonably led the Beneficiary to believe that assistance would be provided in initiating arbitration. This induced reliance contributed to the delay in filing the application, a situation falling within the ambit of section 19.1 of the Regulation.

(iii) PREJUDICE

[494.] In the present instance, the Contractor did not invoke the Beneficiary's failure to comply with section 19. It was only the Manager who argues that section 19 must be applied to dismiss the Beneficiary's application.

[495.] In assessing the Manager's argument, the Tribunal considers whether any delay in submitting the Decision to arbitration caused prejudice to the Manager.

[496.] As noted by the Supreme Court of Canada in *St-Hilaire et al. v. Bégin*[241], the Tribunal's analysis requires determining whether the Manager has suffered prejudice as a result of the delay.

[241] *St-Hilaire et al. v. Bégin*, [1981] 2 SCR 79

[497.] The concept of prejudice must be understood in its ordinary legal sense. The *Dictionnaire de droit québécois et canadien*[242] defines "*prejudice*" as "*dans un sens général, atteinte portée aux droits ou intérêts de quelqu'un*."

[498.] In *Fortin v. Construction Gilles Rancourt et Fils inc.*, arbitrator Claude Dupuis stated[243]:

> *"[30] … ou qu'ils n'ont pas été négligents, et à condition qu'une prorogation ne soit pas préjudiciable à la partie poursuivie*."

[499.] Arbitrator Claude Depuis noted that the circumstances established that the beneficiaries failed to demonstrate that they acted diligently in submitting the application for arbitration within the prescribed time limit.

[500.] In *Claude Joyal inc. c. CNH Canada Ltd.*[244], the Quebec Court of Appeal in a unanimous decision handed down by the Honourable Justices Dalphond, Dutill and Bich, emphasized that the assessment of delay must account for whether the opposing party suffered actual prejudice.

[501.] Justice Dalphond, whose reasons were endorsed by Justices Dutil and Bich, stated as follows:

> "*[70] En effet, il reviendra au juge du fond de déterminer s'il y a eu négligence d'agir de CNH ou, au contraire, privation d'une occasion d'examiner de la moissonneuse-batteuse.*
>
> *[71] Dans ce dernier cas, le juge du fond devra ensuite déterminer si CNH souffre d'un réel préjudice. Dans le cadre de cette analyse, le juge devra notamment tenir compte du fait que Joyal, qui était également tenu de la garantie de qualité sous l'art. 1730 C.c.Q., a déjà obtenu un rapport d'expertise détaillé quant aux causes possibles de l'incendie de la moissonneuse-batteuse. Si ce rapport contient toutes les informations disponibles lors d'un examen, le fabricant peut-il vraiment se plaindre d'un quelconque préjudice?*
>
> *[72] De plus, même si le juge du fond concluait en l'insuffisance du rapport de l'expert retenu par Joyal, CNH devrait établir qu'il en résulte une impossibilité de démontrer une mauvaise utilisation de la moissonneuse-batteuse par Philie, et ainsi de repousser la présomption de vice associée à sa perte prématurée. Or, en l'espèce, je comprends que CNH pourra faire témoigner l'acheteur, l'opérateur de la machine au moment de l'incendie, de même que des représentants de Joyal, pour tenter d'établir des*

[242] Hubert Reid, 3rd edition, Wilson & Lafleur Ltée, 2004
[243] (GAMM) 147624-1 2011-04-002
[244] 2014 QCCA 588 (CanLII)

> *modifications, un mauvais entretien ou une utilisation inappropriée de la moissonneuse-batteuse*.
>
> *[73] Finalement, le juge devra tenir compte de l'ensemble de la preuve. Ainsi, si la preuve au fond démontrait que d'autres moissonneuses-batteuses ont connu le même sort que celle de Philie, CNH pourrait-elle sérieusement plaider qu'elle aurait été en mesure de repousser la présomption d'existence d'un vice de fabrication si elle avait pu procéder à l'examen de la carcasse de la moissonneuse-batteuse?*"
>
> [Emphasis added]

[502.] The Tribunal recalls that the notion of prejudice cannot be determined in the abstract or on a hypothetical basis. It must be assessed contextually, in light of the legal framework governing the application of section 19 of the Regulation.

[503.] Moreover, prejudice cannot be evaluated in isolation from the circumstances. As a matter of principle, a beneficiary who fails to comply with the time limit set out in section 19 inherently suffers prejudice, since non-compliance results in the dismissal of the claim.

[504.] In the present case, the dismissal of the claim flows as a direct legal consequence of the Beneficiary's failure to file her application for arbitration within the thirty (30) days prescribed following receipt of the Decision.

[505.] However, were the Manager's rights or interests impaired by the delay incurred under the circumstances to bring the Decision to arbitration?

[506.] The Manager who had the burden to establish that it was prejudiced by the Beneficiary's failure to apply for arbitration within the prescribed limit, failed to do so.

[507.] The Beneficiary established that she acted diligently and explained the circumstances involving the submission of her application for arbitration.

(13) THE JANUARY 2025 NOTICE — COMPLIANCE WITH THE REQUIREMENT OF REASONABLE TIME

(i) SECTION 19.1 OF THE REGULATION

[508.] Section 19.1 applies where a beneficiary fails to implement the guarantee within the prescribed time.

[509.] Its application is contingent upon the Beneficiary demonstrating, on a balance of probabilities, not merely a delay in acting within a reasonable time, but that such delay was caused or materially influenced by the Contractor's conduct.

[510.] The issue is therefore whether the Beneficiary has established that the Contractor's conduct (by its nature, persistence, or representations) created circumstances that reasonably prevented or inhibited her from denouncing the defective workmanship within the prescribed timeframe, thereby justifying the delay with respect to Points 1, 3, 4, 5, and 6.

[511.] The evidence does not support such a finding. To the contrary, the Beneficiary acknowledged in her testimony that the Contractor expressly advised her that Points 3, 4, and 5 would not be corrected.

[512.] In light of the evidence and the applicable law, the Tribunal finds that the circumstances do not demonstrate that the Beneficiary was constrained by the Contractor's conduct to exceed the reasonable time for denunciation from the date of discovery, within the meaning of the Regulation.

[513.] Consequently, the Tribunal finds that the circumstances of the present case do not warrant the application of section 19.1 and therefore cannot justify any extension of the prescribed time limits or the granting of the Beneficiary's claim.

(ii) IMPOSSIBILITY TO ACT

[514.] Considering that it took the Beneficiary thirty-one (31) months and nineteen (19) days to denounce Points 1, 3, 4, 5 and 6, was the Beneficiary unable to give notice within reasonable time following their discovery?

[515.] The principle enunciated by *Fortin v. Construction Gilles Rancourt et Fils inc.*[245], *Alizada v. Bel-Habitat inc.*[246] and *Paquette et Construction 3D Gervais et Fils inc.*[247] do not have an application in the present case.

[516.] The Beneficiary did not establish that the delay was reasonable in light of her sustained communications with the Contractor, the Contractor's repeated interventions, and the time reasonably allowed for the completion of the proposed corrective work, involving Points 1, 3, 4, 5 and 6, since no such facts existed.

(iii) PREJUDICE

[517.] The notion of prejudice does not apply in the present case. Even though the legal framework treats late notice as inherently prejudicial to the Beneficiary, her excessive delay of over thirty-one (31) months in denouncing defects related to poor workmanship (subject to a limited coverage period) results in the automatic loss of coverage under the Plan.

[245] (GAMM) 147624-1 2011-04-002
[246] 2022 CanLII 128071 (QC OAGBRN) [paras 22 and 26]]
[247] 2025 CanLII 28871 (QC OAGBRN) [paras 134, 141-144]

[518.] The issue is therefore not whether the Contractor or Manager suffered actual prejudice, but whether the Beneficiary complied with the timely written notice obligation. Given the unreasonable delay and the expiry of the applicable coverage, the analysis of prejudice becomes moot.

[519.] In short, non-compliance with the notice requirement extinguishes the Beneficiary's claim in itself, rendering any inquiry into actual prejudice unnecessary.

F. DECISION

[520.] Having regard to the evidence, the applicable Regulation, and the governing law, the Tribunal determines that it has no discretion but to uphold the Decision dated May 23, 2025.

[521.] The Tribunal underscores that neither the good faith nor the credibility of the Beneficiary, Contractor and the Manager, is being called into question or undermined; however, the Tribunal must render its decision under the Regulation in accordance with the law in force, and not according to its personal sympathies, assuming it has any.

[522.] For clarity, the Tribunal sets out in the table below the relevant timelines concerning the denunciation of the defects identified under Points 1, 3, 4, 5 and 6:

CLAIMS	DATE ACEPTANCE OF BLDG	3 DAYS FOLLOWING ACCEPTANCE	DATE DEFECT OBSERVED	EXPIRY DATE TO REPORT	DATE DEFECT REPORTED	DAYS	MONTHS
POINT 1	29-Jun-22		08-Jul-22	29-Jun-23	17-Jan-25	19	31
S. 10(3)							
POINT 3	29-Jun-22	01-Jul-22	15-Jun-22	04-Jul-22	17-Jan-25	19	31
S. 10(2)							
POINT 4	29-Jun-22	01-Jul-22	15-Jun-22	04-Jul-22	17-Jan-25	19	31
S. 10(2)							
POINT 5	29-Jun-22	01-Jul-22	CONSTRUCTION	04-Jul-22	17-Jan-25	19	31
S. 10(2)							
POINT 6	29-Jun-22		1ST DAY OCCUPANCY	29-Jun-23	17-Jan-25	19	31
S. 10(3)							

[523.] In *Bensemmane et Bel-Habitat inc.*[248], the arbitrator Michel A. Jeanniot considered what constituted a reasonable delay between the discovery of a defect and its denunciation, which must be assessed having regard to a range of factual considerations.

[524.] According to the said arbitrator, this assessment is not limited to a purely chronological analysis, but must also take into account the conduct, actions, and omissions of the parties, thereby giving rise to a mixed determination of fact and law.

[525.] Such an assessment further requires consideration of whether the reasonableness of the delay in denunciation, within the meaning of the Regulation, may be affected by circumstances inherent to the passage of time, and whether those circumstances are capable of either justifying or undermining the delay.

[526.] The Tribunal must assess the evidence and the explanations advanced by the Beneficiary to determine whether she has met her burden of establishing that circumstances existed within the meaning of section 19.1 which prevented her from denouncing the defects, in writing, to the Contractor and the Manager within a reasonable time of their discovery, with respect to Points 1, 3, 4, 5 and 6.

[527.] Were there circumstances justifying the application of section 19.1 of the Regulation, preventing the Beneficiary to "*implement the guarantee*" within a reasonable time following their discovery?

[528.] The Beneficiary's application hinges on establishing the facts which would have permitted the Tribunal to conclude that the Contractor through its actions led the Beneficiary not to denounce the defects within a reasonable time.

[529.] The evidence establishes that Points 1, 3, 4, 5 and 6 were only denounced in writing, to the Contractor and the Manager on January 17, 2025.

[530.] June 29, 2022, constitutes the "*acceptance of the building" means the act whereby the beneficiary declares that [she] accepts the building which is ready to be used for its intended purpose and which indicates any work to be completed or corrected*" within the meaning of section 8 of the Regulation.

(1) POINTS 1 AND 6

[531.] Points 1 and 6 must be assessed under section 10(3) of the Regulation, which guarantees the repairs to non-apparent poor workmanship existing at the time of acceptance and discovered within one (1) year after acceptance.

[248] 2024 CanLII 134156 (QC OAGBRN)

[532.] Regarding Point 1 (lippage), the Beneficiary testified that she observed lippage affecting the ceramic flooring throughout the main floor (including the entrance, kitchen, dining room, and adjacent areas) on July 8, 2022[249]. This observation occurred within the first year following acceptance of the Building.

[533.] With respect to Point 6 (living room ceiling), the Beneficiary stated that the condition was apparent on the first day of occupancy. However, the precise date of occupancy is not established by the evidence, other than her indication that it occurred in July or August 2022.

[534.] On the evidence, occupancy took place either in July or August 2022. Accordingly, the discovery of the defect relating to Point 6 necessarily occurred within the first year of coverage provided by section 10(3), regardless of the exact date.

[535.] Notwithstanding the foregoing, Point 6 was not denounced until January 17, 2025, approximately twenty-nine (29) months after its discovery

[536.] In these circumstances, section 10(3) required the Beneficiary to denounce, in writing, the defects concerning Points 1 and 6 within one year of acceptance, namely by June 29, 2023. The Beneficiary did not provide such notice until January 17, 2025, well beyond what would have constituted notification within a reasonable time frame, following discovery.

[537.] The facts surrounding Point 1 establish that:

[537.1] On September 8, 2022, the Contractor carried out corrective work on the grout between the tiles as well as painting work on the grout joints;

[537.2] During April and May 2023, four tiles were replaced between the dining room and the living room;

[537.3] By November 2024, all the grout was redone by the Contractor;

[537.4] Additionally, three tiles were damaged during the grout replacement in November 2024.

[538.] The Beneficiary at no time was prevented by the Contractor's conduct to "*implement the guarantee*" covering the defects within a reasonable time following their discovery.

[539.] The Tribunal finds that the circumstances do not establish facts justifying the application of section 19.1 of the Regulation; the Contractor did not act in a manner leading the Beneficiary to believe that the lippage would be repaired,

[249] The Beneficiary's testimony and Exhibit A-4

thereby allowing the Beneficiary to benefit from the protection afforded by section 19.1 of the Regulation.

[540.] Point 1 did not raise issues with the grout, nor with the three (3) damaged tiles. The Beneficiary's notice of January 17, 2025, was limited to issues involving lippage.

[541.] The Tribunal notes that the Beneficiary did not produce any documentary evidence establishing that the issues involving the grout between the tiles, were ever denounced in writing to the Contractor and the Manager.

[542.] It is clear that the Beneficiary communicated only with the Contractor concerning the grout issue. The damages to the three (3) tiles noted by the Conciliator occurred during the month of November 2024.

[543.] The Beneficiary did not disclose the damage to the tiles in the January 17, 2025 notice to the Contractor and the Manager.

[544.] Even though the Contractor would have caused such damages, it resulted from work that was not previously disclosed to the Manager, work that was performed by the Contractor outside the scope of the Plan.

[545.] Section 10(3) does not cover work not disclosed to the Manager, performed by the Contractor, some twenty-seven (27) months following acceptance of the Building.

[546.] The damages to the tiles may have occurred as a direct result of the work performed by the Contractor to repair the grout between the tiles. However, the Manager, as the Contractor's guarantor, is not responsible for the damages caused by the Contractor, when the work was not disclosed to the Manager.

[547.] The only issue that was disclosed to the Manager within the application of section 10(3) of the Regulation involved "*lippage*" of certain tiles, which denunciation took place thirty-one (31) months and nineteen (19) days following its discovery.

[548.] Regarding Point 6, Mr. Laverdière did not decide the merits of the claim seeing that the Beneficiary according to him, declared that the Contractor has remedied the defect, and his intervention was no longer required.

[549.] The Beneficiary claims that that was not the case. Faced with different versions, the Tribunal will not ask Mr. Laverdière to decide Point 6, since the denunciation of Point 6 was only made on January 17, 2025, beyond a delay that was reasonable under the circumstances of the present case.

[550.] In the present file, the interest of justice is not served by returning Point 6 to Mr. Laverdière to decide the claim, when evidently and manifestly, the claim was reported outside the boundary of what constitutes reasonable notice.

(2) POINTS 3, 4 AND 5

[551.] Points 3, 4, and 5, must be assessed under section 10(2) of the Regulation, which guarantees the correction of apparent defects and poor workmanship, provided that written notice is given at the time of acceptance or, where the Beneficiary has not taken possession, within three days following acceptance.

[552.] The inspection took place on June 22, 2022. In light of the Beneficiary's prior knowledge of the defects involving Points 3, 4 and 5, she was required to record them in the Pre-Acceptance Inspection Form for correction purposes, which was not done[250].

[553.] With respect to Point 3 (pantry) and Point 4 (kitchen island), the evidence establishes that the Beneficiary first observed the alleged defects on June 15, 2022, that is, eight (8) days prior to the inspection and acceptance of the Building[251].

[554.] The Beneficiary acknowledges that Point 3 was not included in the Pre-Acceptance Inspection Form and that the Contractor refused to carry out repairs on the basis that the mouldings and finishing had already been installed.

[555.] The Beneficiary further acknowledges that Point 4 was not included in the Pre-Acceptance Inspection Form, attributing this omission to the fact that the full extent of the defects became apparent only after installation of the countertop and subsequent occupancy.

[556.] With respect to Point 5 (front door), the evidence establishes that the Beneficiary identified the discrepancy in the dimensions of the front door during the construction phase and requested that the work be halted. The Contractor nevertheless refused to modify the installation, invoking structural constraints.

[557.] Regarding Point 5, the Beneficiary further testified that she delayed reporting the issue on the basis that she believed the claim remained covered under the five (5) year guarantee provided by the Plan.

[558.] In these circumstances, section 10(2) required the Beneficiary to denounce the defects involving Points 3, 4 and 5, in writing within three (3) days of acceptance, i.e., June 29, 2022. The delay therefore began to run on June 30, 2022, and expired on July 4, 2022[252]. The Beneficiary did not provide such notice until January 17, 2025, well beyond what would have constituted notification within a reasonable time frame, following discovery.

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[250] Exhibit A-3
[251] The Beneficiary's testimony and Exhibit A-4
[252] The time limit expired on Friday, July 1, 2022. As that date fell on a statutory holiday, the expiry was deferred to the next juridical working day, namely July 4, 2022.

[559.] The defects forming part of Points 3, 4 and 5 were denounced in writing to the Contractor and the Manager thirty-one (31) months and nineteen (19) days following the acceptance of the Building.

[560.] The facts establish that the delay by the Beneficiary in reporting the defects covered by Points 1, 3, 4, 5 and 6 were not caused or due to the Contractor's or the Manager's conduct, representations, or omissions, which would have fostered Beneficiary's legitimate belief that the issues were being addressed.

[561.] On the contrary, apart from the work performed by the Contractor involving the replacement of the grout between, the joints of the tiles, the Contractor made it clear to the Beneficiary that it would not correct Points 3, 4 and 5.

[562.] Nevertheless, the Beneficiary, hoping to amicably resolve the issues in Points 3, 4 and 5, failed to denounce the defects in question, until the heightened level of her frustration with the situation led her to give the January 17, 2025, notice.

[563.] The final analysis of the file makes it clear that Points 1, 3, 4, 5 and 6 were not reported by the Beneficiary within the reasonable time required by sections 10(2) and 10(3) of the Regulation.

(3) POINT 2

[564.] Regarding Point 2, the driveway leads to the Beneficiary's garage. The Beneficiary testified that the entrance to the driveway encroached on her neighbour's land.

[565.] That may very well have been the case. However, the work performed by the Contractor regarding the driveway, places it squarely within the exclusions provided for under section 12(9) of the Regulation, and consequently the claim is dismissed.

(4) CLAIM OF $250,000

[566.] The claim for $250,000 must be dismissed because it falls outside the Tribunal's jurisdiction. The Tribunal's authority is strictly limited to the remedies provided under the Regulation, which establishes a complete and exhaustive scheme. As the compensation sought exceeds the types of relief authorized by that regime, the Tribunal lacks jurisdiction to grant it.

G. RESERVATION OF RIGHTS

[567.] Section 11 of the Building Act[253] provides as follows:

> "*This Act does not limit any obligations otherwise imposed on a person contemplated in this Act*."

[253] chapter B-1.1

[568.] The Tribunal recalls the principles articulated by the Superior Court of Québec in *Garantie Habitation du Québec inc. c. Jeanniot*, wherein the Court held[254]:

> "*[63] Il est clair des dispositions de la Loi et du Règlement que la garantie réglementaire ne remplace pas le régime légal de responsabilité de l'entrepreneur prévu au Code civil du Québec. Il est clair également que la garantie prévue à la Loi et au Règlement ne couvre pas l'ensemble des droits que possède un bénéficiaire, notamment en vertu des dispositions du Code civil du Québec et que les recours civils sont toujours disponibles aux parties au contrat."*

[569.] Similarly, in *Hamelin et Groupe Sylvain Farand inc.* arbitrator Jean Robert LeBlanc stated[255]:

> "*[51] Enfin, le Tribunal souligne que la présente décision arbitrale est rendue uniquement et strictement dans le cadre de l'application du Règlement et qu'en conséquence elle est sans préjudice et sous toutes réserves des droits d'une Partie d'intenter tout recours approprié devant les tribunaux civils ayant compétence, sujet bien entendu, aux règles de droit commun et de prescription civile, le cas échéant*."

[570.] In light of the foregoing, the Tribunal reiterates that the present Arbitration Award is rendered exclusively within the confines of the Regulation. It does not purport to adjudicate, determine, or otherwise affect any rights or obligations arising under other applicable law.

[571.] Accordingly, this Arbitration Award is rendered without prejudice to the Beneficiary's right to assert any recourse available at law before the courts of competent jurisdiction against the Contractor. However, no such recourse lies against the Manager of the Guarantee Plan in this regard. All such rights remain subject to the applicable rules of substantive law, including those governing civil prescription.

H. CONCLUSION

[572.] The Beneficiary failed to discharge her burden of proof and consequently, the Tribunal finds that Mr. Laverdière did not erred in fact and in law in dismissing Points 1 to 5 and not deciding Point 6.

[573.] Consequently, the Beneficiary's application for arbitration is dismissed.

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[254] 2009 QCCS 909 (CanLII)

[255]

I. COSTS

[574.] Section 123 of the Regulation expresses the legislator's intention concerning the awarding of the costs of arbitration, worded as follows:

> "*123. Arbitration fees are shared equally between the manager and the contractor where the latter is the plaintiff.*
>
> *Where the plaintiff is the beneficiary, those fees are charged to the manager, unless the beneficiary fails to obtain a favourable decision on any of the elements of his claim, in which case the arbitrator shall split the costs.*"
>
> [Emphasis added]

[575.] The Regulation establishes a differentiated regime for the allocation of arbitration costs based on the party applying for arbitration. Where the contractor institutes the claim, arbitration fees are borne equally by the contractor and the manager.

[576.] Conversely, where the beneficiary seeks arbitration, such fees are, in principle, assumed by the manager. However, if the beneficiary fails on any aspect of the claim, the arbitrator is vested with discretion to apportion the costs between the parties.

[577.] The Manager argued that the costs of arbitration be apportioned equally between the Beneficiary and the Manager, relying on *Bouliane c Immeubles Valdie et GCR* (CCAC)[256].

[578.] In *Bouliane*, the arbitrator Pamela McGovern exercised her discretion under section 116 of the Regulation, by having the Beneficiary pay the sum of $25.00, with the Manager assuming the balance of the costs of the arbitration[257].

[579.] Consequently, the costs and fees of this arbitration, in accordance with sections 116 and 12 3 of the Regulation, shall be apportioned and paid in the following manner: $50.00 to be paid by the Beneficiary, with the balance being paid by the Manager.

FOR THESE REASONS, THE ARBITRATION TRIBUNAL:

[580.] **DISMISSES** the Beneficiary's arbitration application, including all claims advanced therein by the Beneficiary, with respect to Points 1, 2, 3, 4, 5 and 6.

[581.] **MAINTAINS** the Conciliator's decisions with respect to Points 1, 2, 3, 4 and 5.

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[256] (CCAC) 2026-02-06 [para 49]
[257] Ibid [par 51]

[582.] **ORDERS** in accordance with section 123 of the *Regulation respecting the guarantee plan for new residential buildings*, that the costs and fees of the arbitration be apportioned such that the Beneficiary shall pay the sum of $50.00, with the balance to be borne by the Manager.

Montreal, May 29, 2026

M^TRE TIBOR HOLLÄNDER
ARBITRATOR

ARBITRATION TRIBUNAL
CONSTITUTED BY VIRTUE OF THE REGULATION RESPECTING THE GUARANTEE PLAN FOR NEW RESIDENTIAL BUILDINGS
(O.C. 841-98 OF 17 JUNE 1998)
ARBITRATION BODY AUTHORIZED BY THE RÉGIE DU BÂTIMENT DU QUÉBEC RESPONSIBLE FOR THE ADMINISTRATION OF THE BUILDING ACT (R.S.Q., C. B-1.1)
UNDER THE AEGIS OF
CANADIAN COMMERCIAL ARBITRATION CENTER (CCAC)

CANADA
PROVINCE OF QUÉBEC

FILE Nº: S25-081301 (claim 12976)

LORETANA MICHELLE VERRELLI

«BENEFICIAY»

-and-

GRILLI SAMUEL CONSORTIUM INC.

«CONTRACTOR»

-and-

GARANTIE CONSTRUCTION RÉSIDENTIELLE (GCR)

«**MANAGER**»

SCHEDULE 1

EXTRACTS FROM THE GUARANTEE CONTRACT

EXHIBIT A-2

Section 2. DEFINITIONS

***2.8** "**Reasonable Time**": Period of time enabling the Contractor and the Manager to take note of any Poor Workmanship, Latent Defects, Construction Defects or Soil Defects affecting the Building in cases in which notice is given. Generally, a Reasonable Time will not exceed six (6) months, except in special circumstances.*

***2.18** "**Poor Workmanship**": Poorly performed or poorly executed work in terms of applicable standards.*

Such standards are defined in the contract conditions or industry best practices. These standards pertain to minor defects that have no impact on the building's integrity and:

***2.18.1** exist and are apparent at the time of Acceptance of the Building; or*

***2.18.2** exist but are not apparent at the time of Acceptance of the Building.*

***2.23** "**Construction Defect**": A defect in the Building's design, construction or production that causes or may cause partial or total loss of the Building.*

***2.25** "**Latent Defect**": Defect rendering the Building unfit for habitation or substantially reducing its usefulness, that exists but that is unknown to the Beneficiary at the time of Acceptance of the Building and that could not be detected by a prudent and diligent purchaser without the need to resort to an expert.*

Section 9. GUARANTEE AGAINST POOR WORKMANSHIP

***9.3** Subject to the limits contained herein, the Manager undertakes to the Beneficiary, if the Contractor fails to meet his contractual and legal obligations, to repair the existing and unapparent Poor Workmanship affecting the Building at the time of Acceptance of the Building and discovered in the first year following Acceptance of the Building provided that such Poor Workmanship is notified in writing to the Contractor and the Manager within a Reasonable Time of its discovery.*

Section 10. GUARANTEE AGAINST LATENT DEFECTS

***10.1** Subject to the limits and exclusions contained here in, the Manager undertakes to the Beneficiary, if the Contractor fails to meet his contractual and legal obligations, to repair the Latent Defects affecting the Building discovered within three (3) years following Acceptance of the Building, on condition that notice of such defects is provided in writing to the Contractor and the Manager within a Reasonable Time of their discovery or occurrence or, if the defect appears gradually, within a Reasonable Time of the date the Beneficiary could have suspected its seriousness and scope.*

Section 11. GUARANTEE AGAINST CONSTRUCTION DEFECTS

***11.1** Subject to t he limits and exclusions contained herein, the Manage r undertakes to the Beneficiary, if the Contractor fails to meet his contractual and legal obligations, to repair the Construction Defects affecting the Building discovered within five (5) years of the End of Work, on condition that notice of such defects is provided in writing o the Contractor and the Manager within a Reasonable Time of their discovery or occurrence, or, in the case of gradual defects or losses, within a Reasonable Time of their first significant appearance.*"

Section 19. REMEDY

19.1 The Beneficiary or Contractor who is dissatisfied with a decision of the Manager has recourse to … arbitration … according to the conditions described hereinafter.

Section 21. ARBITRATION

21.1 For the guarantee to apply, the Beneficiary … dissatisfied with a decision of the Manager, must submit the dispute to arbitration within thirty (30) days of receipt by registered mail of the decision of the Manager …

21.3 An arbitration award, once it is rendered by the arbitrator, is binding on the Beneficiary, the Contractor and the Manager.

21.4 The arbitration award is final and not subject to appeal.

21.5 Arbitration costs are shared equally between the Manager and the Contractor where the latter is the plaintiff.

Where the plaintiff is the Beneficiary, these costs are assumed by the Manager, unless the Beneficiary fails to obtain a favourable decision on any of the elements of his claim, in which case the arbitrator shall split the costs.

[Emphasis added]

ARBITRATION TRIBUNAL
CONSTITUTED BY VIRTUE OF THE REGULATION RESPECTING THE GUARANTEE PLAN FOR NEW RESIDENTIAL BUILDINGS
(O.C. 841-98 OF 17 JUNE 1998)
ARBITRATION BODY AUTHORIZED BY THE RÉGIE DU BÂTIMENT DU QUÉBEC RESPONSIBLE FOR THE ADMINISTRATION OF THE BUILDING ACT (R.S.Q., C. B-1.1)
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-and-

GARANTIE CONSTRUCTION RÉSIDENTIELLE (GCR)

«**MANAGER**»

SCHEDULE 2

EXTRACTS FROM PUBLICATION ON GCR'S WEBSITE

"*REQUIRED READING – GUARANTEE PLAN FOR NEW RESIDENTIAL BUILDINGS*"

***Page 11 – The guarantee contract**:*

…

- *Conscientiously complete the pre-acceptance inspection of your home, accompanied by your contractor, and complete the checklist given to you by your contractor.*[4]
- *Comply with the deadlines and procedures set out in the contract and in the Regulation.*

[4.] See The Inspection Before Acceptance of the Building, page 19, and the Pre-Acceptance Inspection Checklist, beginning on page 43

***Page 12 – Coverage provided**:*

If your contractor fails to comply with the legal or contractual obligations covered by the Guarantee Plan for New Residential Buildings, you're protected. How?

To begin with, some coverage is applicable before acceptance of your home, while other coverage is applicable after acceptance. In each case, maximum benefit amounts have been set out.[5]

…

[5.] See page 15

Page 13 – PROTECT YOURSELF!

The coverage and benefits provided are described in detail in the guarantee contract you received and in the Regulation respecting the guarantee plan for new residential buildings, which is available at: www.garantie.gouv.qc.ca

Read it carefully, it's about your rights!

***APPLICABLE COVERAGE AFTER ACCEPTANCE OF THE BUILDING**: After you have accepted the building, the following coverage is available to you:*

- *Completion of work related to your building and declared in writing in the document you completed at the time of acceptance[8] or, if you have not moved in, within three days following the acceptance.*
- *The repair of apparent defects or poor workmanship[9] listed and declared in writing at the time of acceptance of your building or, if you have not moved in, within three days following the acceptance.*
- *The repair of existing poor workmanship that is not apparent at the time of acceptance of your building and that is discovered within one year following the acceptance.*
- *Existing, non-apparent poor workmanship must be declared in writing to the contractor and to the plan manager within a reasonable amount of time.[10]*
- *…*

[8.] See The Inspection Before Acceptance of the Building, page 19.

[9.] What are "defects" and "poor workmanship"? See page 41.

[10] According to the majority of arbitration decisions and court rulings, a reasonable amount of time means a period that should not exceed six months, except in exceptional circumstances.

Page 17 – Exclusions from the Guarantee Plan

***The Guarantee Plan does not cover the following**:*

- *Parking areas or storage rooms located outside the building containing the dwelling units, and any works outside the building, such as swimming pools, landscaping, sidewalks, driveways or surface water drainage, **with the exception of the descending slope of the lot, which is covered***

***Page 19 – The inspection before acceptance of the building**:*

No matter what type of residence you buy, the Regulation … requires you to complete a pre-acceptance inspection in the company of your contractor. Good idea!

A conscientious inspection is the best way to protect your rights and mark the beginning of certain guarantees.

…

Once the pre-acceptance inspection has been completed, you will still have three days to complete the checklist and to add items to the list of work to be corrected or completed, on the condition that you have not yet moved into your new home.

Once the checklist has been completed, you must sign it and keep your copy in a safe place where you can find it. Did you request additional changes or corrections on the checklist?

Make sure to send a copy of your revised list to your contractor and to the Guarantee Plan manager. Your contractor should complete the work and correct any defects noted on the checklist. In the event that your contractor does not do so, see Procedures for Making a Claim, page 21.

Page 20 – BE VIGILANT!

If you are not sure you have the knowledge needed to verify these elements properly, you may be accompanied by an individual of your choice. It is in your best interests to be accompanied during this very important step by an experienced person or a trained professional.[19] Moreover, in the whirlwind of an upcoming move, a second opinion can prove to be very useful in finding all the work that needs to be completed or corrected!

Use the checklist to inspect your home thoroughly. You must verify whether or not all of the work agreed upon in writing with the

contractor has been done and make a list of those things that will have to be completed or corrected.

Pay particular attention to any extra work that you have requested of your contractor. Meticulously note all elements to be completed or corrected, for example, a door that has not been properly adjusted, a scratch in the bathtub or on a countertop, etc.

…

Page 21 – Procedures for Making a Claim

Obviously, you hope that the acquisition of your new home will be problem-free. Despite all your precautions, however, things can go wrong and the contractor may fail to meet their contractual obligations.

In such a case, if the work is covered by the guarantee,[20] you are entitled to make a claim. The procedure to follow varies, depending upon when the problem arises.

[20] See Coverage provided, page 12, and Benefits provided, page 15.

READ YOUR CONTRACT

The procedure for making a claim is described in your guarantee contract. Read it carefully, and above all, be sure to comply with the time limits it sets out.

COVERAGE BEFORE ACCEPTANCE OF THE BUILDING

Claims that can be made in the event that the contractor fails to meet their legal or contractual obligations before the acceptance of your home are related to the following types of coverage:[21]

…

- *The completion of work under the conditions mentioned*

…

[21] See page 12 for more details

Page 27 – COVERAGE AFTER ACCEPTANCE OF THE BUILDING

As mentioned before, it's during the inspection you make before the acceptance of the house with your contractor that you list the work left to be done, if necessary. When you sign that document, you're accepting the building. The date of your signature is thus very important as it marks the beginning of several time limits. Claims that can be made after acceptance of your home are related to the following types of coverage[28]:

- *The completion of work declared in writing at the time of acceptance or within three days following the acceptance if you have not moved in*

- *The repair of apparent defects and poor workmanship declared in writing at the time of acceptance or within three days following the acceptance if you have not moved in*
- *The repair of defects and poor workmanship that exist, but are not apparent, at the time of acceptance and that are discovered within one year following the acceptance*

…

[28.] See page 12 for more details.

BE AWARE!

Claims relating to completion or correction of the work must be sent to your contractor in writing, and a copy sent to the plan manager, within a reasonable amount of time[29] from the date agreed upon with your contractor, at the time of the preacceptance inspection, for carrying out this work.

[29.] According to the majority of arbitration decisions and court rulings, a reasonable amount of time means a period that should not exceed six months, except in exceptional circumstances.

Page 28 – PROCEDURE TO FOLLOW

Are you experiencing problems with your home? Have you spoken to your contractor about it and not received any satisfactory solutions? You must follow the steps listed below in order to implement the guarantee that applies after the acceptance of your home. Be vigilant: The time limits for submitting your claim must be respected; otherwise, the plan manager may refuse it.

Here is the procedure to follow:

- *Within a reasonable amount of time following the discovery of a defect or poor workmanship, as the case may be, inform the contractor in writing, preferably by registered mail, of the construction defect and send a copy to the plan manager, in order to preserve your right to recourse.*

…

Page 30 – RECOURSE

Page 31

*Do you disagree with the plan manager's decision regarding your claim? You may submit your file to … an arbitrator within **30 days** following receipt of the plan manager's decision. And of course, if your contractor is not satisfied, they may also do so.*

Page 32 – Arbitration

The government of Québec chose to include in the Regulation … a direct course of action that is without appeal and generally inexpensive for consumers: arbitration. Arbitration allows anyone who buys a new home covered by the mandatory Guarantee Plan to contest a decision made by the plan manager. As with mediation, your contractor can also take recourse in arbitration if they are not satisfied with a decision made by the plan manager.

THE REQUEST

… if you go directly to arbitration, you have 30 days starting from the date of receipt by registered mail of the plan manager's decision, to consult an arbitration body authorized by the RBQ.[31] You can access the decisions rendered by these bodies on the website www.garantie.gouv.qc.ca/en, in section Know your recourses. You can search by subject and consult a summary of these decisions.

...

[31.] The list of authorized arbitration bodies can be found on page 52

Page 34 – COSTS

- *Arbitration costs are fully reimbursed by the plan manager if you partially or completely win your case. If you lose on every point of your claim, you may have to pay some fees. You can find out about these fees from the arbitration bodies before the beginning of this process.*
- *Your lawyer's fees are your responsibility and will not be reimbursed by the plan manager.*

...

Page 36 – RESPECTING PLAN TIME LIMITS

The Regulation …[34] includes, within its mechanisms of implementation and recourse, time limits within which you must send your request to the contractor, the plan manager, a mediator, or an arbitration body. If you fail to comply with the time limits for claims (implementation of the guarantee) or for recourse, this may compromise your claim or your request for mediation or arbitration. However, you may not be penalized if you can show that your failure to comply with a time limit can be attributed to a fault on the part of either the plan manager or the contractor.

If, for example, the plan manager fails to send you this informational document, as the Regulation requires, you could invoke this failure to gain an additional one-year period to present a claim. Thus, in the case of a claim concerning a latent defect, the time limit for sending in the claim could be four years following the acceptance of your home, even though the Regulation stipulates that such claims must be made within three years.

…

But beware! If the contractor or the plan manager can prove that the breach of their obligation had no effect on your failure to comply with the time limit, or if the time limit for the claim (implementation of the guarantee) or the recourse has been expired for more than one year, the arbitrator could reject your request.

[34] The Regulation respecting the guarantee plan for new residential buildings is available at www.garantie.gouv.qc.ca.

[Emphasis added]