

# An Analysis of the Ontario Licence Appeal Tribunal's Decisions relating to the *Ontario New Home Warranty Plan Act: 2006*

## Introduction

Many Ontario new homeowners -- from virtually all regions of the province -- have advised Canadians for Properly Built Homes (CPBH) that they are dissatisfied with the services of Tarion Warranty Corporation (Tarion). Ontario homeowners may appeal Tarion's decisions to the Licence Appeal Tribunal (LAT). While the LAT hears cases related to other matters such as funeral homes and car dealers, this analysis is limited to newly built homes.

The LAT web-site provides considerable information, including the following statements:

- "...The Tribunal provides a fair, efficient, impartial and independent means to appeal decisions concerning compensation claims...."
- "...The Tribunal is designed to give you a simple, timely and inexpensive way to settle disputes concerning compensation claims..."
- "...Do I need a Lawyer or Agent to represent me? You may use a representative of your choice or you may represent yourself or you may wish to hire a lawyer or an agent. Please note that the Tribunal does not arrange or pay for representation. This is an individual decision of each party....."

It appears that some Ontario government officials measure homeowner satisfaction with Tarion via the number of appeals to the LAT. For example, in a letter dated Jan. 22, 2007 to CPBH from Minister Phillips, the Minister responsible for consumer protection as well as Tarion, Minister Phillips made the following statement: "...In the last year, of the over 460,000 homes enrolled in the warranty program, less than one per cent of the homeowners brought appeals to the LAT...."

However, CPBH has heard directly from many homeowners that they will not go to the LAT to settle their disputes with Tarion for two main reasons:

- The relatively low success rate for homeowners at the LAT, and
- The need to hire a lawyer, given that Tarion is typically represented by a lawyer.

Therefore, CPBH has undertaken an analysis of some of the key aspects of the Decisions made by the LAT in relation to Tarion for the calendar year 2006. The information used for the analysis was obtained from the LAT's web-site. The analysis is presented in this report. It does not include the results of other responsibilities of the LAT such as the 118 prehearings and 36 adjournments that were reported under the 2006 results on the LAT web-site. This report also presents a conclusion and related recommendations.

**Important Note:** A draft of this report was provided to the LAT for comment. The LAT's comments are provided at the end of this report in the form of two page facsimile dated March 22, 2007.

## Analysis

### Overall success of homeowners at the LAT

In 2006, 52 decisions were issued by the LAT related to the *Ontario New Home Warranties Plan Act*. There were 208 issues included in these 52 Decisions, and homeowners experienced success in relation to 33 of their issues (15.8%). Table 1 summarizes these results.

Table 1: Success of homeowner claims at the LAT in 2006

Total Decisions	Number of issues presented by homeowners	Success of homeowners based on total issues presented
52	208	33 (15.8%)

### Success of major structural deficiency claims

Tarion's warranty ends at the end of the second year after assuming possession of the home, except for major structural deficiencies, which are warranted for seven years. In 2006, there were 11 major structural deficiency Decisions, involving 23 issues. As shown in Table 2, none of these Decisions was in favour of the homeowner.

Table 2: LAT - Summary of Major Structural Claims in 2006

Month	No. of Items	LAT chair	Accepted by the LAT?
Feb.	1	Sanford	No
Apr.	1	Sanford	No
May	5	Laurin	No
June	1	Sherman	No
June	1	Laurin	No
June	1	Koprowski	No
Aug.	9	Laurin	No
Aug.	1	Israel	No
Sept.	1	Israel	No
Sept.	1	Sproule	No
Dec.	1	Koprowski	No
	23		

## Representation by Lawyers and Technical Support

Homeowners and Tarion can choose to be represented by legal counsel, and/or technical support (such as home inspectors and engineers) --- at their own expense. Table 3 provides a summary related to the 52 Decisions in 2006. It shows that 6% of homeowners were represented at the hearings by legal counsel, 12 % of homeowners had technical representation, with another 6% of the homeowners supporting their claims with technical reports. Tarion had legal representation 100% of the time, and was further represented by technical support in 23 % of the Decisions.

Table 3: Legal and Technical Representation/Reports at the LAT for 2006

	Homeowner	Tarion
Represented at the hearing by legal counsel	3 (6%) Note 1	52 (100%)
Represented at the hearing by technical support	6 (12%) Note 2	12 (23%) Note 3
Provided a technical report(s) only (no representation in person at the hearing)	3 (6%)	0

Note 1: In addition, one homeowner (the applicant) was a lawyer.

Note 2: In addition, three homeowners (the applicants) were engineers.

Note 3: In addition to the Tarion (technical) representative.

## Decisions by LAT Chairs

An analysis of the success of homeowner claims by each LAT Chair was also undertaken. This revealed that there were 13 different LAT chairs that rendered these 52 Decisions in 2006. These results are presented in Table 4.

Table 4: LAT - Summary of Homeowner Success by LAT Chair

LAT Chair – Surname	No. of Decisions	No. of issues considered	No. of issues allowed	Homeowner success rate: per cent (rounded)
Dann	3	3	1	33
Diamond	3	62	9	15
Flude	4	31	5	16
Garbe	1	1	1	100
Israel	9	15	2	13
Kopowski	7	9	2	22
Laurin	5	19	0	0
McIntosh	4	18	7	39
Sanfold	2	2	0	0
Sherman	3	3	0	0
Sproule	1	4	0	0
Wallace	5	32	4	13
Weary	5	9	2	22
Total	52	208	33	16

## Location of LAT Hearings

Homeowners and Tarion must pay for their own travel and related costs related to the LAT. An analysis of the hearing location revealed that the vast majority (79%) of the LAT hearings for the province of Ontario related to the ONHWP took place in Toronto. Table 5 provides these results.

Table 5: Decisions: By Location

Location of hearing	No. of hearings	%
Toronto	41	79
Ottawa	7	14
Telephone	2	4
Windsor	1	2
London	1	1
Total	52	100

## Conclusion

It is clear from this analysis that homeowners experienced a very low success rate (15.8%) overall when they took their issues to the LAT. It is also clear that homeowners were not able to convincingly present their cases at the LAT related to major structural deficiencies, given that there was not one successful appeal of a major structural deficiency in 2006. However, the reasons for this lack of homeowner success are not clear. For example, were homeowners unsuccessful because:

- they entered into a legal process (the Tribunal itself) without legal representation and were at a serious disadvantage because their opponent (Tarion) always had legal representation?
- they did not have sufficiently qualified technical representation (such as home inspectors and/or engineers) at the LAT hearings?
- they did not present technical reports (prepared by a qualified technical representative such as home inspectors and/or engineers) to the LAT?
- they presented issues that were clearly not within the bounds of the *Ontario New Home Warranties Plan Act*?
- they did not have the experience that Tarion does in appearing before the LAT?
- they were not fairly treated by the LAT Chair?
- they were not fairly treated by the LAT process?

## Recommendations

While the LAT claims to provide a “fair, efficient, impartial and independent means to appeal decisions concerning compensation claims”, serious questions have been raised by homeowners as to whether the LAT is meeting its objectives in this regard. Further, not only should a process be fair, it also must be *perceived* to be fair. Therefore, it is recommended that an independent study be undertaken to analyze the effectiveness of the LAT in meeting its claims, using these 52 cases from 2006 as the basis for this study. The following are among the issues that should be explored in this study:

- The low rates of homeowner overall success;
- The total lack of homeowner success relating to major structural deficiency claims;
- The costs for each of these 52 cases including:
  - The estimated cost to repair the items presented to the LAT;
  - The out-of-pocket costs for the homeowners to present their cases to the LAT including technical experts, legal, travel and accommodation, lost wages;
  - Tarion’s estimated costs to prepare for and present their cases, including legal, technical and related overhead;
  - The builder’s estimated costs to prepare for and present their cases, including legal, technical and other overhead;
  - The cost of the LAT itself in relation to the costs to repair/resolve the homeowners issue(s) in the first place.

As well, the following issues should be included in the study:

- The process for ensuring that the LAT chairs are impartial and independent;
- The qualifications of the LAT chairs to decide on cases related to home construction;
- The process used to ensure that the Chairs are reasonably consistent in their approach in these hearings;
- The number of homeowners who decided to bypass the LAT and instead go to the civil court system, and the reasons for the homeowners bypassing the LAT;
- A comparison of the results of cases that lost at the LAT and then proceeded to the civil court process.

As part of this study, all of the homeowners who appeared before the LAT in 2006 for these 52 Decisions should be invited to participate to provide their views on their experience with the LAT. As well, those who went before the civil courts instead should also be invited to participate.

It is recommended that a retired judge, such as former Supreme Court Justice Frank Iacobucci, who recently chaired the Special Committee on Delayed Closings relating to Tarion, be retained to lead this study.

CPBH would be pleased to assist in this study in any way possible. In addition, CPBH requests the opportunity to review and provide comments related to the Terms of Reference for this study prior to finalization.

Once the study has been completed, recommendations for improvement should be developed and presented to the Government of Ontario by the person leading this study. The results of this review and the related recommendations should be made available to the public.

**Canadians for Properly Built Homes**  
**March 23, 2007**