



A Report Related to the Licence Appeal Tribunal and the Ontario New Home Warranty Plan Act 2006 – 2014

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Introduction

Canadians for Properly Built Homes (CPBH) continues to monitor the results from the Licence Appeal Tribunal (LAT), given homeowners' complaints about the Tarion Warranty Corporation (Tarion) and homeowners' dismal results at the LAT when homeowners appeal Tarion's decisions. While the LAT hears cases related to other matters such as funeral homes and car dealers, this analysis is limited to home warranty on newly built homes provided by Tarion, i.e., the Ontario New Home Warranty Plan Act (ONHWP).

Key Statistics for 2014

- Total number of cases heard at the LAT – 17 – a record low
- Total number of decision – 13
- Total number of settlements – 0
- Homeowner success:
 - Based on total issues presented for cases that were issued decisions – 7% -- **a 93% consumer failure rate**
 - For major structural defect claims – 0% -- **a 100% failure rate**
- Legal representation in hearings for:
 - Tarion – 100%
 - Homeowners – 0% - all self-represented.

Another notable for 2014

- **LAT's lack of jurisdiction to enforce an order** – Over the years, a number of consumers have complained that even though they “won” at the LAT, the LAT's orders were not followed. It is important to note that the LAT does not have jurisdiction to **enforce** the order. This is one of the key shortcomings of the legislation relating to the LAT. But the case found at this link is particularly interesting: <http://canlii.ca/t/gf0qn> Highlights of this decision:
 - In Nov. 2012, Tarion was ordered by the LAT to fix a water leak in areas around living room balcony doors and a master bedroom door. But, as the problem was not fixed, the consumer returned to the LAT for help.
 - Tarion argued the LAT no longer has jurisdiction after the order was made. The LAT agreed, and the motion was dismissed.
 - What is the point in consumers taking their disputes with Tarion to the LAT, if Tarion does not respect the LAT's order? This is another example of the ineffectiveness of the LAT as a means for consumers to resolve disputes with Tarion.

Response to CPBH re CPBH's 2013 report¹

- From Premier Wynne – no response
- From Minister Orazietti – no response
- From Auditor General Lysyk – no response
- From Ombudsman of Ontario Marin – no response

¹ This 2013 report is available at this link:

<http://www.canadiansforproperlybulthomes.com/html/whatsnew/2014/sept/2013LATanalysis.pdf>

- From LAT Associate Chair Yee – no response, however, his superior, Ms. Lamoureux, Executive Chair of the Safety, Licensing Appeals and Standards Tribunal Ontario (SLASTO) did respond. Her response said: *“.....your email of September 30, addressed to the Associate Chair of the Licence Appeal Tribunal has been referred to me for a reply.....Thank you for your email. It raises a number of issues of concern to SLASTO. Anytime a party believes that they did not experience the standard of service expected at a proceeding or in interactions with the tribunal is of concern.....”*

On Dec. 9, 2014, representatives from CPBH met with Ms. Lamoureux and key executives from the LAT. Ms. Lamoureux and these officials acknowledged a number of serious operating issues at the LAT and Ms. Lamoureux said she would need 12 – 18 months to fix these issues. The issues identified by Ms. Lamoureux and key LAT executives in this meeting included:

- The LAT needs to better inform consumers of what to expect at the LAT and how to prepare.
- Training is required for the LAT’s adjudicators, particularly given the nature of self-represented parties.
- LAT performance measurements and standards need to be developed. The LAT has started to measure its efficiency and effectiveness but this requires further effort.
- The LAT needs to become more transparent to the public in relation to its performance, e.g., against performance standards.
- The LAT has resource issues, e.g., a “terrible” website, and insufficient information technology and related systems.

CPBH’s March 2015 Position

It is gratifying to see that SLASTO and the LAT are finally acknowledging these serious problems. However, we are deeply concerned that while they are trying to “fix” these problems, they are continuing to accept and process cases. Under Ms. Lamoureux’s watch in 2014, consumers experienced a **93% failure rate**. CPBH has written to Ms. Lamoureux, the Attorney General (MPP Meilleur), Premier Wynne, MPP Singh (the NDP Critic) and MPP Sylvia Jones (the PC Critic) about these concerns. It appears that issues at the LAT go beyond what SLASTO/LAT officials acknowledged in the Dec. 9, 2014 meeting. (Please see one example below of one family’s LAT experience in 2014 and 2015.)

We are also concerned that 12 – 18 months may be an insufficient time for Ms. Lamoureux/SLASTO to fix these problems. For example, it appears that a fundamental organizational culture shift is required, and it typically takes at least five years of concerted effort for a culture shift.

Many who are aware of this situation agree that:

- SLASTO’s approach to trying to fix these problems, while continuing to accept and hear cases, is not only unfair to consumers, it is further damaging the credibility of the LAT and the Province of Ontario.
- The ongoing decline of cases at the LAT since 2006 is likely because the majority of consumers have lost faith in the LAT as a means to resolve their disputes with Tarion².

² For example, a letter from Frank Denton (Assistant Deputy Minister of Government and Consumer Services) to Tarion’s President Howard Bogach dated Oct. 7, 2014 said: *“...A less litigious and adversarial process would also address concerns the ministry has heard from homeowners that they are dissuaded from pursuing LAT appeals because the existing processes are not transparent, and are complicated, time-consuming, costly, and unbalanced...”*

CPBH's position remains as was stated in our 2013 report: *"...it is clear that Premier Wynne needs to take immediate action to replace the LAT for homeowners' disputes with Tarion -- with a fair, balanced, effective, efficient and cost efficient means for Ontario homeowners to resolve these disputes. This is in keeping with the report from the **Action Committee on Access to Justice in Civil and Family Matters.**"*

Also, for those consumers who are interested, there needs to be an independent review of all of those consumers' cases lost at the LAT in previous years, as consumers may have lost due to these serious operational issues now acknowledged by Ms. Lamoureux and the LAT.

It is both very surprising and very disturbing that officials such as the Ombudsman of Ontario, the Auditor General of Ontario, the Attorney General of Ontario³, the numerous Ministers over the years responsible for consumer protection and Premier Wynne did not respond to these issues when they were reported initially by Ontario consumers and CPBH. Consumers have also advised that both the offices of the Ombudsman of Ontario and the Auditor General of Ontario have not taken meaningful action when they complained to these offices. In the case of the office of the Ombudsman of Ontario, some consumers have complained to CPBH about poor treatment by this office. These responses to consumers have also served to dissuade consumers from taking their concerns/complaints to these offices. This lack of appropriate response from all of these officials strongly suggests that the entire system of consumer protection for Ontario's purchasers of newly built homes is highly ineffective. This is obviously a very serious concern, particularly when one considers that the purchase of a home is the largest purchase most consumers make, and considering the ongoing media reporting about serious issues with the quality of housing and the Tarion Warranty Corporation.

Consumers who have not been able to get their issues resolved have other options available to them including: living with the construction defects, going to regular court, paying for the repairs themselves, and/or "patching and running" – an illegal activity whereby the homeowner sells the home to another person without disclosing the construction defects.

Summary of related CPBH recommendations:

The Government of Ontario should:

1. immediately replace the LAT for homeowners' disputes with Tarion -- with a fair, balanced, effective, efficient and cost efficient means for Ontario homeowners to resolve these disputes.
2. offer all consumers who have lost at the LAT an independent review of their case.
3. determine why neither the Ombudsman of Ontario nor the Auditor General of Ontario took steps to investigate and report on these serious issues at the LAT given that they were made aware of them by consumers and CPBH.

³ The Auditor General of Ontario and the Ombudsman of Ontario both have jurisdiction over the LAT. Many consumers have been very disheartened that neither of these offices have investigated these serious issues at the LAT – or even acknowledged receipt of CPBH's 2013 LAT report. Meanwhile, media reports in 2014 said that these two officials were in a turf war. For example, on Dec. 4, 2014, the Toronto Star ran an article with the following headline: *"Ontario ombudsman accuses auditor general of 'perilous' power play"*.

A case study: One family's LAT experience in 2014 and 2015

For a number of reasons, most consumers will not publicly reveal what they are experiencing at the LAT, but, two consumers, Dr. Ferenc and Mr. Ferland, are recording some of their journey at the LAT on a Facebook site found at this link: <https://www.facebook.com/maketarionaccountable>. Mr. Ferland's and Dr. Ferenc's Facebook site has reported additional serious concerns about what is going on at the LAT. Here are some of the serious allegations and issues that Mr. Ferland and Dr. Ferenc include on their FaceBook site:

- allegations of bullying by the LAT adjudicator. Who rules on these allegations of bullying? - the same adjudicator, who found herself not to be a bully.
- missing tapes of this alleged bullying, which the same adjudicator has referred to as "unfortunate".
- allegations of the adjudicator's inconsistent treatment of Tarion and the consumers at the LAT hearings, e.g., hearsay evidence allowed by the adjudicator for Tarion, but hearsay evidence not allowed by the adjudicator for Mr. Ferland and Dr. Ferenc.
- 20 days of these LAT hearings thus far, and this is continuing to drag on. One of the reasons this lengthy case is continuing is because Tarion's lawyers/witnesses have not been available, while Dr. Ferenc and Mr. Ferland have made themselves available every day.

CPBH tried to find out if the tapes are indeed missing (e.g., as we were considering ordering a copy of the tapes). CPBH wrote to the LAT COO, Mr. Tom McDermott, and after the **third** request, Mr. McDermott responded that he could not provide any information as the case is currently underway.

Other consumers have attended as observers and agreed that it is very clear that Mr. Ferland and Dr. Ferenc are not getting a fair hearing. One consumer who has observed some of what has allegedly gone on in these hearings has filed a related legal affidavit.