



Exploratory, Confidential Consumer Study Conducted for  
The Honourable J. Douglas Cunningham Q.C.  
for consideration in relation to his  
Tarion Review

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**About Canadians for Properly Built Homes**

Founded in 2004, Canadians for Properly Built Homes (CPBH) is a national, not for profit corporation dedicated to healthy, safe, durable, energy efficient residential housing for Canadians, and is the only organization of its kind in Canada. Working for consumer awareness and protection, CPBH is run by a volunteer Board of Directors and is supported by a volunteer Advisory Council of industry experts and other key stakeholders. CPBH earned "partner" status with the Canadian Consumer Information Gateway (Industry Canada). [www.canadiansforproperlybulthomes.com](http://www.canadiansforproperlybulthomes.com)

## Contents

Abstract.....	3
Background .....	3
Methodology.....	3
Results.....	4
Respondents who have had Direct Experience with Tarion .....	4
Tarion Values for Service Delivery .....	4
Ontario Building Code Violations.....	5
Satisfaction with Interactions with Tarion.....	5
Satisfaction with the Outcome of the Claim or Conciliation Inspection.....	6
Willingness to Purchase Another Newly Built Home.....	7
Respondents who have not had Direct Experience with Tarion.....	8
Perception of the Tarion Warranty Corporation .....	8
The Current Legislation .....	9
Ontario Sunshine Requirements Concerning Salaries and Tarion .....	9
Appropriateness of One Organization as Both the Industry Regulator & Warranty Provider .....	10
Necessity for Homes to Have Warranty Provided by a Private, at Arms-Length Corp.....	10
Preference for a Choice of Warranty Provider .....	11
Discussion and Conclusion.....	12

## Abstract

Further to a request from Justice Douglas Cunningham who is conducting a review of the Tarion Warranty Corporation (Tarion) and the related legislation (the Ontario New Home Warranties Plan Act), Canadians for Properly Built Homes (CPBH) undertook a brief, exploratory, confidential consumer study. The results suggest serious concerns with Tarion's performance. The results also suggest very minimal interest in homeowners purchasing another newly built home given the current regime for Ontario's new home warranty. As well, additional key areas for changes to the legislation are suggested, including revocation of Tarion's monopoly status. Overall, this study's results strongly suggest that University of Toronto Law Professor Jacob Ziegel rightfully rang the alarm bell in June 1976 about the new home warranty legislation when his article was published in *The Globe and Mail*.

## Background

In November 2015, the Government of Ontario appointed Justice Douglas Cunningham to review Tarion and the 40-year old legislation Tarion administers, the Ontario New Home Warranties Plan Act. In March 2016, representatives from CPBH met with Justice Cunningham in Toronto.

On May 2, 2016 Justice Cunningham encouraged CPBH to undertake a confidential consumer survey and submit the results to him for his consideration as part of his Tarion Review. In order to be considered for his interim progress report to the Government of Ontario, Justice Cunningham requested the results by June 1, 2016. CPBH considered this request, and agreed to undertake such a consumer survey.

## Methodology

A CPBH team developed a brief, exploratory confidential consumer survey that could be easily administered, given the very short period of time that was available in order to submit the report by June 1, 2016 as requested. Most of the questions included were developed by CPBH, and these measures had not previously been tested. Two of the questions came from Tarion's own New Homeowner Survey.

No demographic information was collected, and no open-ended questions were asked given many consumers' need for privacy and confidentiality. Consumers often request confidentiality as many are concerned with the potential for litigation (by the builder and/or Tarion), the possibility of reducing their own property values (for example, if information about Ontario Building Code violations is revealed), and/or the possibility of conflict with neighbours who do not want information concerning shoddy construction revealed, again due to property value considerations.

The draft survey questions were pilot tested and minor revisions were made as a result. The survey was administered using the tool Survey Monkey.

Over a two week period, numerous notices were provided to the public via social media (Facebook and Twitter) advising people of the planned survey and encouraging them to request a copy of the survey for

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completion. The survey was released on May 25, 2016 to all of those who requested the survey, as well as to CPBH's Ontario mailing list. When the survey was sent, those receiving it were also encouraged to ask neighbours, family members, friends, etc. to complete it. The survey was designed for two groups: those who have had direct experience with Tarion, as well as those who have not had direct experience with Tarion, but who have knowledge about Tarion, for example through family, friends, the media, etc.

Those who had direct experience with Tarion responded to one set of questions. Those who had not had direct experience with Tarion were asked about their perception of Tarion. Both groups were asked to answer the same set of questions on the related legislation.

The survey was left open for three days until May 27, 2016. It was closed at that point in order to analyze the results and prepare the report for Justice Cunningham.

## Results

In total, 126 people completed the survey and submitted their responses. There were 105 respondents who answered as having had direct experience with Tarion in purchasing a newly built home. Twenty-one respondents had no direct experience with Tarion.

## Respondents who have had Direct Experience with Tarion

There were 105 respondents who answered as having had direct experience with Tarion in purchasing a newly built home. This section of this report provides the responses to questions asked of this group.

### Tarion Values for Service Delivery

Tarion's web-site features five values that Tarion says guides its service delivery. Each value has been defined by Tarion as follows:

**“TEAMWORK** – Encouraging ideas and open collaboration between cross-functional teams to create the best possible solutions.

**LOGICAL** – Assessing problems from different perspectives and testing assumptions to ensure the facts and proposed solutions make sense.

**LISTENING** – Focusing on a true understanding of the customer's needs and asking clarifying questions before offering a solution.

**FAIRNESS** – Approaching each individual and situation in an unbiased manner and taking the time to logically consider information from all parties involved.

**CARING** – Treating people with respect and empathy, and adapting to their unique styles and needs”.

Respondents with direct experience with Tarion were asked to rate their perception of Tarion for each of these values, using Tarion's definition for each.

Overall, the vast majority (between 71 percent and 90 percent) strongly disagreed that Tarion displayed any of these values. Table 1 provides additional details.

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Table 1: Perception of Tarion Demonstrating its Values

	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	No opinion	Total
Teamwork	0.95 percent 1	8.57 percent 9	11.43 percent 12	71.43 percent 75	7.62 percent 8	105
Logical	1.90 percent 2	0.95 percent 1	10.48 percent 11	86.67 percent 91	0.00 percent 0	105
Listening	2.86 percent 3	1.90 percent 2	13.33 percent 14	81.90 percent 86	0.00 percent 0	105
Fairness	1.90 percent 2	2.86 percent 3	4.76 percent 5	90.48 percent 95	0.00 percent 0	105
Caring	1.90 percent 2	7.62 percent 8	5.71 percent 6	82.86 percent 87	1.90 percent 2	105

### Ontario Building Code Violations

Respondents with direct experience with Tarion were asked if they found one or more Ontario Building Code (OBC) violations in their home. Ninety-four people (90 percent) said that they had found OBC violations in their home. Eleven people (10 percent) said that they had not found OBC violations in their home.

Those that had found OBC violations in their home were then asked if Tarion and/or their builder had resolved the OBC violations to their satisfaction. Ninety-three people (99 percent) of these people said that Tarion and/or their builder had not resolved these OBC violations to their satisfaction. Only one person (1 percent) indicated that the OBC violations had been resolved to their satisfaction.

### Satisfaction with Interactions with Tarion

Respondents with direct experience with Tarion were asked in taking all things into consideration, how satisfied they were with their interactions with Tarion. This question has been asked in Tarion’s New Homeowner Survey as well. Of the 104 people who answered this question, the vast majority of respondents (79 or 76 percent) said that they were “extremely dissatisfied”. Table 2 provides additional details.

**Table 2: Satisfaction with Interactions with Tarion**

Answer Choices –	Responses –
– Extremely satisfied	0.00 percent 0
– Very satisfied	0.00 percent 0
– Somewhat satisfied	4.81 percent 5
– Somewhat dissatisfied	4.81 percent 5
– Very dissatisfied	14.42 percent 15
– Extremely dissatisfied	75.96 percent 79
Total	104

### Satisfaction with the Outcome of the Claim or Conciliation Inspection

Respondents with direct experience with Tarion were then asked about their satisfaction with the outcome of the claim or conciliation inspection. This question has been asked in Tarion’s New Homeowner Survey as well. Of the 104 people who answered this question, the vast majority of respondents (74 or 71 percent) said that they were “extremely dissatisfied”. Table 3 provides additional details.

**Table 3: Satisfaction with Outcome of the Claim or Conciliation Inspection**

Answer Choices –	Responses –
– Extremely satisfied	0.00 percent 0
– Very satisfied	0.96 percent 1
– Somewhat satisfied	4.81 percent 5
– Somewhat dissatisfied	6.73 percent 7
– Very dissatisfied	16.35 percent 17
– Extremely dissatisfied	71.15 percent 74
Total	104

## Willingness to Purchase Another Newly Built Home

The next question asked the respondents with direct experience with Tarion given their experiences, and under the current regime for Ontario's new home warranty, if they would buy another newly built home. Of the 104 people who answered this question, the vast majority (78 or 75 percent) said that they would not. Only 4 people (4 percent) said that they would purchase another newly built home under the current regime for Ontario's new home warranty. Table 4 provides additional details.

**Table 4: Willingness to Purchase another Newly Built Home**

Answer Choices –	Responses –
– <b>Yes</b>	<b>3.85 percent</b> 4
– <b>Perhaps</b>	<b>21.15 percent</b> 22
– <b>No</b>	<b>75.00 percent</b> 78
Total	104

## Respondents who have not had Direct Experience with Tarion

The survey was also available to people who have not had direct experience with Tarion in purchasing a newly built home, but who have knowledge about Tarion, for example through family, friends, the media, etc. Twenty-one people fit this category of respondents. They were asked one unique question about their perception of Tarion.

## Perception of the Tarion Warranty Corporation

The majority of these respondents (11 or 53 percent) had either an “unfavourable” or “very unfavourable” perception of Tarion. Table 5 provides additional details.

**Table 5: Perception of the Tarion Warranty Corporation**

Answer Choices	Responses
– Very Favourable	0.00 percent 0
– Favourable	14.29 percent 3
– Somewhat Unfavourable	33.33 percent 7
– Unfavourable	9.52 percent 2
– Very Unfavourable	42.86 percent 9
Total	21



## The Current Legislation

Both groups of respondents were asked about their views on certain aspects of the current legislation – the Ontario New Home Warranties Plan Act. The following information was provided with the survey:

*“The current legislation in Ontario requires that:*

- *Tarion does not have to disclose its employee salaries as part of the Ontario Sunshine list, such as is required for other organizations, e.g., Crown corporations;*
- *Tarion is both the regulator of the building industry and the warranty provider;*
- *Newly built homes in Ontario must have a warranty provided by Tarion;*
- *Tarion operates as a private corporation that operates at arms-length from the Government of Ontario, and is a mandatory monopoly.*

*Other Canadian provinces have set up their legislation differently.”*

## Ontario Sunshine Requirements Concerning Salaries and Tarion

All respondents were asked if Tarion should be required to disclose salary information for employees who earn more than \$100,000 as is required by the Ontario Sunshine requirements.

Of the 121 people who answered this question, 106 people (88 percent) said yes, Tarion should be required to report its salaries as indicated by the Ontario Sunshine requirements. Table 6 provides additional information.

**Table 6: Ontario Sunshine Requirements Concerning Salaries and Tarion**

	Direct Experience	No Direct Experience	Total
Yes	91	15	106
No	4	1	5
No Opinion	9	1	10
No response	1	4	5
Total	105	21	126

## Appropriateness of One Organization as Both the Industry Regulator & Warranty Provider

Next the respondents were asked if it is appropriate for one organization (currently Tarion) to be both the industry regulator and the warranty provider. Of the 121 people who answered this question, 113 (93 percent) said that it is not appropriate for one organization to hold both roles. Table 7 provides additional information.

**Table 7: Appropriateness of One Organization as Both the Industry Regulator and Warranty Provider**

	Direct Experience	No Direct Experience	Total
Yes	4	2	6
No	99	14	113
No Opinion	1	1	2
No response	1	4	5
Total	105	21	126

## Necessity for Homes to Have Warranty Provided by a Private, at Arms-Length Corp.

Respondents were asked if all newly built homes should need to have a warranty provided by a private, at arms-length corporation such as Tarion. Of the 121 people who answered this question, 59 (49 percent) said yes and 56 people (46 percent) said no. Table 8 provides additional information.

**Table 8: Necessity for Homes to Have Warranty Provided by Private, at Arms-Length Corporation**

	Direct Experience	No Direct Experience	Total
Yes	46	13	59
No	53	3	56
No Opinion	5	1	6
No response	1	4	5
Total	105	21	126

## Preference for a Choice of Warranty Provider

The final question asked if there should be more than one approved warranty provider so that Ontarians can have a choice of warranty provider. Of the 121 people who answered this question, 109 (90 percent) said yes, there should be a choice of warranty provider. Table 9 provides additional information.

**Table 9: Preference for a Choice of Warranty Provider**

	Direct Experience	No Direct Experience	Total
Yes	92	17	109
No	8	-	8
No Opinion	4	-	4
No response	1	4	5
Total	105	21	126

## Discussion and Conclusion

The results of this study suggest serious concerns regarding both Tarion's performance and Ontario's 40-year old new home warranty legislation.

In relation to Tarion's purported five values (teamwork, logical, listening, fairness and caring), the vast majority of the respondents (71 percent to 90 percent) who have had direct experience with Tarion, evaluated their perception as "strongly disagree". These results suggest that Tarion is not "walking the talk" when it comes to these five values in relation to Tarion's service delivery to homeowners.

Page | 12

Ontario Building Code (OBC) violations are a very serious matter, as the OBC is focused primarily on safety considerations<sup>1</sup>. Ninety-four respondents (90 percent<sup>2</sup>) with direct experience with Tarion reported that they had found one or more OBC violations in their home. Of those 94 respondents, 93 people (99 percent) said that neither Tarion nor their builder had resolved these OBC violations to their satisfaction. This means that those 93 homeowners had to live with the OBC violations, fix them themselves, or "patch and run"<sup>3</sup>.

Taking all things into consideration, the vast majority (76 percent) of the respondents with direct experience with Tarion were "extremely dissatisfied" with their interactions with Tarion. The vast majority of respondents (71 percent) also said that they were "extremely dissatisfied" with the outcome of the claim or conciliation inspection.

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<sup>1</sup> It is important to note that Tarion uses a regulation (that Tarion developed and approved itself) to supercede Section 13 (1) (iii) of the ONHWP Act by unreasonably limiting timeframes for claims. Section 13 (1) (iii) of the Act says: *"Every vendor of a home warrants to the owner that the home is constructed in accordance with the Ontario Building Code."*

<sup>2</sup> Serious problems with municipal inspections and OBC violations in numerous locations in Ontario are reported in the media (and to CPBH) regularly. For example, here is a link to a media report with this headline: *"CTV News: Thousands of buildings in Toronto left uninspected: AG report"* <http://tinyurl.com/q3xeop9> . Section 18 (1) of the Act says: *"The Corporation shall appoint inspectors for the purposes of this Act. R.S.O. 1990, c. O.31, s. 18 (1)."* Section 18 (2) of the Act says: *"An inspector may, for the purpose of inspecting a home during its construction, enter in or upon and inspect the premises constituting the site of the construction at any time without a warrant. R.S.O. 1990, c. O.31, s. 18 (2)."* But Tarion chooses not to inspect during construction. For example, an e-mail from Tarion Vice-President Siloni Waraich dated June 26, 2015 to CPBH said: *"...from 2010-2015 Tarion has had three appointed inspectors, to be called upon to conduct inspections for the purposes enumerated above (e.g., licensing matters, and warranty backstop), but have not had to exercise the statutory right given them to enter without a warrant..."* .

<sup>3</sup> "Patch and run" describes a situation when the home is sold but the OBC violations are not disclosed to the next unsuspecting purchaser of the home. "Patch and run" is a serious situation as it calls into question the true condition of all listed real estate. For more information on "patch and run" please see: <http://tinyurl.com/gm5ojqj> .

In considering the responses to all of these questions answered by those who have had direct experience with Tarion, a bleak assessment of Tarion's performance is suggested.

Related to future newly built home purchases, this study also suggests that less than 4 percent of the respondents who have had direct dealings with Tarion, given their experiences - and under the current regime for Ontario's new home warranty - would buy another newly built home. This should be an important message for Ontario's builders/developers, and for the Government of Ontario as construction starts/new home sales are major drivers of the economy.

The majority of respondents who have had no direct experience with Tarion indicated that they have either an "unfavourable" or "very unfavourable" perception of Tarion.

The vast majority of the respondents in both groups indicated that Tarion employees should be subject to Ontario's Sunshine legislation that requires salaries over \$100,000 to be disclosed. As well, the vast majority are of the view that the same organization should not be both the industry regulator and the warranty provider.

In relation to Tarion's monopoly status, the vast majority of respondents indicated that there should be more than one warranty provider in Ontario, with Ontario offering a competitive landscape for new home warranty like British Columbia, Alberta and Manitoba. In other words, the results of this study strongly suggest that Tarion's monopoly should be revoked.

The only question for which there was not a strong majority regarding the legislation is in relation to whether it is necessary for homes to have a warranty provided by a private, at arms-length corporation. Responses for this question were about equally split, yes to no.

The results of this study suggest major changes are needed in relation to Ontario's 40-year old legislation for new home warranty. It is very important to note that on June 19, 1976, an article appeared in The Globe and Mail, written by Professor Jacob Ziegel of the University of Toronto, entitled "*Home Warranty – Bill being rushed so consumers won't be heard?*". Professor Ziegel raised a number of serious concerns in his 1976 article, for example:

*"...What is without precedent in Ontario consumer protection legislation is the nature of the body entrusted with the administration of the important powers contained in them..."*

The results of this study strongly suggest that Professor Ziegel rightfully rang the alarm bell in 1976.