



A Report Prepared at the Request of  
Attorney General Yasir Naqvi  
Regarding  
Process Issues at the Licence Appeal Tribunal (LAT)

The LAT: The Place that Fairness Forgot

Sept. 12, 2017

Please submit questions/comments to: [info@canadiansforproperlybulthomes.com](mailto:info@canadiansforproperlybulthomes.com) .

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).

Website: [www.canadiansforproperlybulthomes.com](http://www.canadiansforproperlybulthomes.com)

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## Background and Introduction

Ontarians do not have access to justice when it comes to appealing decisions made by Ontario's mandatory monopoly, the Tarion Warranty Corporation (Tarion). This has been a serious issue for more than a decade.

For the past 11 years, Canadians for Properly Built Homes (CPBH) has monitored the results from the Licence Appeal Tribunal (LAT), given homeowners' complaints about Tarion, homeowners' dismal results at the LAT when they appeal Tarion's decisions, and homeowners' complaints about LAT processes.

Annually, CPBH prepares an analysis of LAT decisions<sup>1</sup> and distributes it to key officials, requesting that they take appropriate action given the serious process problems reported by homeowners<sup>2</sup>. Examples of process problems include adjudicators who do not have the training to deal with complex housing issues and self-represented litigants, a highly legalistic and very adversarial approach to these cases in which the homeowner is often fighting both Tarion and the builder (both of which are represented by lawyers, with the homeowner usually self-represented), lost transcripts by the LAT, lengthy delays in the hearing process, and more.

CPBH has also met with key representatives of Safety, Licensing Appeals and Standards Tribunals Ontario (SLASTO) and the LAT about these process issues (Dec. 2014 and Nov. 2015). Many of these serious process issues were acknowledged by the SLASTO Executive Chair, Linda Lamoureux in Dec. 2014. Yet, to date, little to no action has been taken related to those issues. Indeed, some argue that SLASTO/LAT have taken regressive actions with the new "Licence Appeal Tribunal (LAT) Rules of Practice and Procedure" that were implemented in April 2016, e.g., dismissal without a hearing and no limit on the costs homeowners may face to pursue an appeal at the LAT.

During the period 2006-2016, homeowners lost a staggering 84% of the items appealed at the LAT. Many believe that key contributors to this very high homeowner failure rate are LAT processes.

Over the years, many homeowners advised CPBH that they will never appeal Tarion's decisions at the LAT due to LAT process issues. A letter from Frank Denton (former Assistant Deputy Minister of Government and Consumer Services) to Tarion's President Howard Bogach dated Oct. 7, 2014 also referenced the issue of homeowners unwilling to go to the LAT. ADM Denton's letter said:

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<sup>1</sup> While the LAT hears cases related to other matters such as funeral homes and car dealers, this analysis is limited to appeals of Tarion decisions, in relation to Tarion's administration of the Ontario New Home Warranty Plan Act (ONHWP).

<sup>2</sup> Here is the link to CPBH's most recent report:

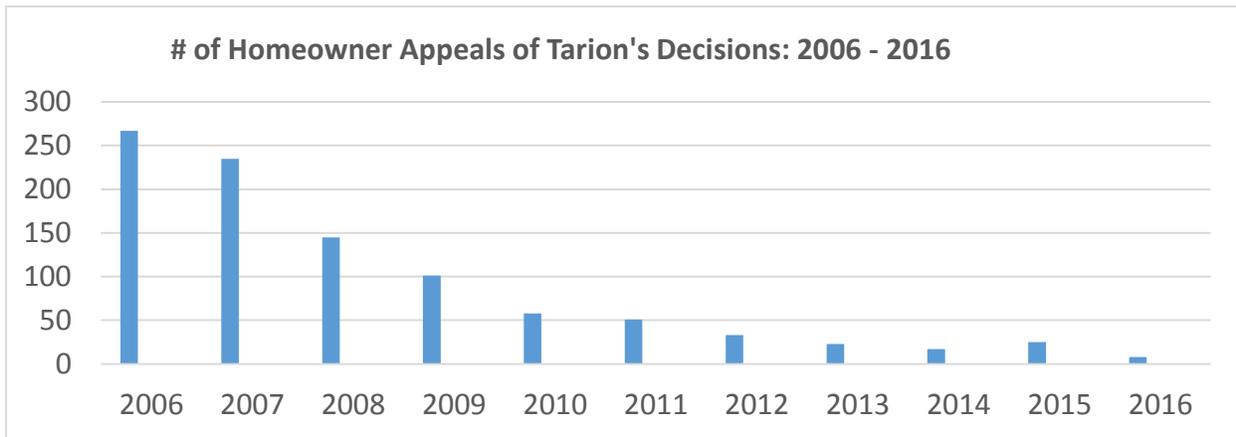
<http://www.canadiansforproperlybuilthomes.com/html/whatsnew/2017/july/2016LATFinalReport.pdf> .

*“...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...”*

The Thomson/Cohl report dated Aug. 3, 2016 also raised serious concern about the LAT’s processes:

*“...It is hard to review such a lengthy proceeding without coming away with serious concern about how legalistic, court-like and adversarial the adjudicative process at the LAT...has become...”* (p. 25).

The figure that follows depicts the number of homeowner appeals of Tarion’s decisions at the LAT from 2006 to 2016 - from a high of 267 cases in 2006, to a new low of eight cases in 2016.



Some have suggested that this rapid decline in the number of appeals is perhaps because Tarion is adequately protecting homeowners. That notion is dispelled for anyone who has read Justice Cunningham’s Dec. 2016 Tarion Review Final Report. In that Report, Justice Cunningham has, in effect, recommended the dismantling of Tarion -- given all of the serious problems with that organization and the associated legislation. The rapid decline depicted in the above figure more likely suggests that consumers have abandoned the LAT as a plausible means of settling disputes as it is utterly broken.

On July 20, 2017, CPBH representatives met with the Yasir Naqvi, Attorney General of Ontario, about these very serious ongoing process issues at the LAT. The Attorney General requested that CPBH prepare a summary of the process issues. CPBH is pleased to provide this summary for the Attorney General in Appendix 1. This list has been limited to the top 20 process issues at the LAT. Many of them are interrelated.

In CPBH’s Dec. 9, 2014 meeting with SLASTO’s Ms. Lamoureux, the issue of patch and run was briefly discussed. Far too many homeowners have decided this is their only option, given an unresponsive builder, an unresponsive warranty provider, and the remote possibility of success given the performance of the LAT. Patch and run occurs when a homeowner decides to patch over obvious defects in a home in order to sell it quickly, rather than dealing with them through the builder, Tarion and the LAT or courts. The homeowner puts the home on the market with the intention of not disclosing construction defects to unsuspecting buyers, thus passing the whole problem on to someone else. Failure to disclose defects that would influence a buyer’s decision to buy is illegal.

Here is a link to a 2006 article published in Real Estate Magazine about patch and run: [http://www.canadiansforproperlybuilthomes.com/html/HVAC/pdfs/Dec2006Patch\\_Run.pdf](http://www.canadiansforproperlybuilthomes.com/html/HVAC/pdfs/Dec2006Patch_Run.pdf) .

Tragically, we know that patch and run continues in Ontario today – not because homeowners want to do this, but often because they feel that resolving the issues under the current regime is so difficult and so time consuming as to be impossible, leaving them with no option but to try to get their money out of the house and run. Thus, the current regime is so unreasonable for consumers to deal with that it compels otherwise law-abiding citizens to choose patch and run to escape the nightmare – a nightmare that can drag on for many years.

This issue is not just about money – it is also about the health and safety of the occupants of these homes. It is important to remember that far too many of Ontario’s families are suffering in their newly built homes that do not meet the minimum standards of the Ontario Building Code (OBC). Examples may include a lack of adequate heat due to inadequate heating, ventilation and air conditioning systems (HVAC), leaking roofs or foundations, or inadequate insulation – and/or because they lost at the LAT when they pursued rulings on such OBC violations. In the alternative, they may have given up, due to inadequate financial resources and/or employment consequences due to the massive demand for time off that dealing with these issues entails. The OBC is based on health and safety, so families living in homes that do not meet the OBC are at risk. Appendix Two provides a list of examples of OBC violations that have been reported to CPBH by homeowners.

Most homeowners suffer in silence, afraid to speak out as they don’t want to erode their own property value, and/or they are worried about being sued by litigious builders. But one family, the Walters family with a teen-aged son, who decided to pursue their issues through the regular courts, has told their story to the Toronto Star. They have become “house wrecked” allegedly due to a simple OBC violation - missing insulation. The Walters family cannot live in their home due to sickness from mold, and have been awaiting their day in regular court for more than five years. They continue to wait to get their case to trial. The Toronto Star reported that they have been pushed into poverty due to this situation and go to bed hungry some nights. CPBH has facilitated the opening of a bank account so that the public can make donations. Here is a link to the Toronto Star stories about this family: [http://www.canadiansforproperlybuilthomes.com/html/inthenews/2015/aug/08-26-TOStar-Vaughan\\_dhomewowner.pdf](http://www.canadiansforproperlybuilthomes.com/html/inthenews/2015/aug/08-26-TOStar-Vaughan_dhomewowner.pdf) .

CPBH urges the Attorney General to take swift, effective steps to address these very serious process issues. Clearly SLASTO/LAT continue to fail in effectively addressing them. Many who are familiar with the LAT process issues believe that these problems are so serious that a new/different tribunal is necessary.

Ontario’s purchasers of newly built homes urgently need – and deserve – a fair appeal process for the largest purchase most consumers make: a home. CPBH supports this goal for Ontarians and all Canadians.

CPBH looks forward to a response from the Attorney General at the earliest opportunity.

## Appendix 1: Top 20 Process Issues at the LAT

Top 20 Key Process Issues (in no particular order)	Additional evidence/explanation
<p>1. The LAT's processes do not provide access to justice, particularly for self-represented litigants (SRLs).</p> <p>Over the past 11 years, the vast majority of homeowners appearing at the LAT to appeal Tarion's decisions are SRLs.</p> <p>In a Dec. 2014 meeting, SLASTO Chair Linda Lamoureux acknowledged serious issues with how the LAT deals with SRLs. It is now 2017, and there is no evidence of progress. Indeed, with the LAT's new Rules, implemented April 1, 2016, the situation has worsened, as noted in the opening section of this report.</p>	<p>Given the recent Supreme Court of Canada decision of <i>Pintea vs. Johns</i>, the LAT must <u>immediately</u> revise its processes to ensure that SRLs receive access to justice.</p> <p>As noted in a recent blog about this Supreme Court decision by law professor Julie MacFarlane, <i>"...it was very apparent that the Court took seriously the challenges that SRL's face, and the need to adjust and adapt to ensure that they have Access to Justice.."</i> (Source: <a href="https://representingyourselfcanada.com/this-case-is-about-a2j-and-about-insiders-and-outsiders/">https://representingyourselfcanada.com/this-case-is-about-a2j-and-about-insiders-and-outsiders/</a> )</p>
<p>2. LAT's orders not always followed, and the LAT has no "teeth" to enforce its orders.</p>	<p>Throughout the past decade, a number of homeowners have complained that even though they "won" at the LAT, the LAT's orders were not followed<sup>3</sup>.</p> <p>What is the point in consumers taking their disputes with Tarion to the LAT, if Tarion does not respect the LAT's order when the homeowner wins their case?</p>
<p>3. Highly legalistic, court-like and adversarial process at the LAT.</p>	<p>As noted earlier in this report:</p> <p>ADM Denton's Oct. 7, 2014 letter said:</p> <p><i>"...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</i></p>

<sup>3</sup> The case found at this link is particularly interesting: <http://canlii.ca/t/gf0qn> . Highlights of this case: In November 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.

	<p><i>transparent, and are complicated, time-consuming, costly, and unbalanced...”.</i></p> <p>And, the Thomson/Cohl report dated Aug. 3, 2016 also raised serious concern:</p> <p><i>“...It is hard to review such a lengthy proceeding without coming away with serious concern about how legalistic, court-like and adversarial the adjudicative process at the LAT....has become...” (p. 25).</i></p>
<p>4. The LAT is an inappropriate “one-size fits all” approach for all of the cases heard, e.g., beer-in-grocery-store licensing appeals, appeals relating to horse racing licenses, appeals of Tarion’s decisions regarding newly built homes, etc.</p>	<p>As noted by the Canada Mortgage and Housing Corporation, new home construction is a very complex service involving thousands of different component parts by a large number of workers on and off site. As well, with advancements in technology, new home construction is becoming more complex. There are different legislative and regulatory considerations, e.g., the Ontario Building Code.</p> <p>Section 13 of the Ontario New Home Warranties Plan Act says:</p> <p><i>“13 (1) Every vendor of a home warrants to the owner,</i></p> <ul style="list-style-type: none"> <li><i>(a) that the home,</i> <ul style="list-style-type: none"> <li><i>(i) is constructed in a workmanlike manner and is free from defects in material,</i></li> <li><i>(ii) is fit for habitation, and</i></li> <li><i>(iii) is constructed in accordance with the Ontario Building Code;</i></li> </ul> </li> <li><i>(b) that the home is free of major structural defects as defined by the regulations; and</i></li> <li><i>(c) such other warranties as are prescribed by the regulations. R.S.O. 1990, c. O.31, s. 13 (1).”</i></li> </ul> <p>What is “workmanlike” typically leads to differing views, and even what meets Code will have different interpretations by professionals in the field. This makes it more challenging for the Adjudicator. Clarity is required.</p> <p>The LAT’s rules and processes must recognize the complexity of appeals of Tarion’s decisions.</p>

<p>5. Lack of adequate training for LAT adjudicators<sup>4</sup>.</p> <p>This involves lack of training for self-represented parties which, as noted earlier, comprises the majority of appeals at the LAT related to Tarion.</p> <p>There is also a lack of adjudicator knowledge regarding new home construction and the related legislation/regulations.</p> <p>Surprisingly, not all adjudicators are lawyers.</p>	<p>SLASTO Chair Lamoureux acknowledged this problem of lack of adequate training for LAT adjudicators as a key issue when CPBH representatives met with her Dec. 19, 2014.</p> <p>Recommendation 1 in the Thomson/Cohl report dated Aug. 3, 2016 recommended <i>“place a high priority on skills-based training for adjudicators involved in homeowner appeals to learn about and practice the skills required to manage cases involving self-represented parties. The training should include skills for dealing with the power imbalance when one or more parties are represented by lawyers and others are not. It should draw on work of the National Judicial Institute and the Society of Ontario Adjudicators and Regulators.”</i></p> <p>Recommendation 3 in the Thomson/Cohl report dated Aug. 3, 2016 recommended <i>“develop templates, model opening remarks, checklists and</i></p>
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<sup>4</sup> The following is an example of a serious issue encountered at the Ferland/Ferenc hearing. In an Order dated March 17, 2015, the adjudicator, Ms. Cassidy, advised that a new hearing would be required from the beginning in relation to the homeowners’ concerns about bias: *“The Tribunal notes that any finding of a reasonable apprehension of bias would lead to the consequence of starting the hearing from the beginning before a new panel. The Tribunal acknowledges that the Appellants have expressed that is not an outcome that they would like”* (p. 4).

But investigators Thomson/Cohl had a different opinion of this situation: *“...If concerns are raised about the bias of a panel member, that member could, if justified, step down from the case mid-way through without requiring the hearing to be re-started before a new adjudicator...”* (p. 29 of the Thomson/Cohl report).

The inaccurate decision (according to Thomson/Cohl) by LAT adjudicator, Ms. Cassidy, in her Order that a new hearing from the beginning before a new panel be held if these homeowners pursued their view that there was bias, was alarming for Mr. Ferland and Dr. Ferenc, as they simply could not start again, e.g., due to financial and work-related reasons, as well as utterly unreasonable demands on their time.

It is most unfortunate that Mr. Thomson and Ms. Cohl did not make a recommendation regarding this very serious outstanding issue (i.e., the alleged inaccurate decision by Ms. Cassidy about needing an entirely new hearing), which Mr. Ferland and Dr. Ferenc are still pursuing. For example, Mr. Ferland recently advised that he has contacted Attorney General Naqvi’s office several times, and continues to wait to hear from Attorney General Naqvi.

	<i>other materials for adjudicators to ensure they are well prepared to assist self-represented parties” (p. 2).</i>
<p>6. LAT not making homeowners aware of what to expect at the LAT and how to prepare.</p> <p>Clearly homeowners are at a huge disadvantage given that Tarion has decades of experience at the LAT, but typically the homeowner appeals Tarion’s decisions only once.</p>	<p>SLASTO Chair Lamoureux acknowledged this as a key issue when CPBH representatives met with her Dec. 19, 2014.</p> <p>Recommendation 2 in the Thomson/Cohl report dated Aug. 3, 2016 recommended <i>“expand efforts to develop practical, understandable and accessible materials for self-represented parties to prepare and present their cases before the Tribunal” (p. 2).</i></p>
<p>7. Lack of a level playing field at the LAT.</p> <p>This includes Tarion having virtually unlimited resources to hire the best and most experienced lawyers and technical experts. Most homeowners are self-represented.</p> <p>Tarion also has decades of experience at the LAT, and knows not only the processes, but the players, including the LAT players.</p> <p>Tarion also adds the builder as a party to the appeal, which results in a two-on-one against the homeowner.</p>	<p>This very serious issue is discussed in the report that Ms. Genevieve Chornenki prepared for Tarion, dated Sept. 1, 2015 (p. 48-49).</p>
<p>8. LAT staff will sometimes not provide requested guidance to self-represented homeowners.</p>	<p>There should at least be someone at the LAT to help homeowners interpret the Rules of Procedure.</p>
<p>9. LAT meetings that include Tarion but exclude the homeowner.</p> <p>The LAT adjudicator often asks to meet privately with Tarion and the builder, without the homeowner, at pre-hearing conferences.</p>	<p>This is discussed in the report that Ms. Genevieve Chornenki prepared for Tarion, dated Sept. 1, 2015 (p. 48-49).</p> <p>Obviously, homeowners should be invited to attend all meetings related to their case.</p>
<p>10. LAT does not provide all the correspondence that it shares with Tarion about the case with the homeowners who launched the appeal.</p>	<p>Obviously, homeowners should have access to all information about their case.</p>

<p>11. Lost/unavailable transcripts at/by the LAT.</p> <p>This very situation has been reported to CPBH on various occasions over the past 13+ years that CPBH has existed.</p> <p>-</p>	<p>One recent high profile case involved homeowners Mr. Jeffrey Ferland and Dr. Alexandra Ferenc. Since that case, in 2016 yet another family has reported that their LAT transcripts were unavailable.</p> <p>Oct. 22, 2015 in the Ontario Legislature:  <i>"...transcripts of testimony and evidence are essential and they must be available or access to justice is denied..."</i> -- MPP Randy Hillier, PC Critic for the Attorney General.</p> <p>Note: In the Thomson/Cohl report dated Aug. 3, 2016 it says that <i>"..SLASTO management is considering stopping its practices of recording hearings for tribunals with no statutory requirement to record them....We are concerned, for example, that the policy as currently envisaged could place an undue burden on parties wishing to make their own recordings..."</i> (p. 3). CPBH concurs with Mr. Thomson and Ms. Cohl on this issue.</p>
<p>12. LAT process issues related to managing complex cases.</p>	<p>The recent Ferland/Ferenc appeal provides an excellent example of a complex case. We recommend that the Ministry of the Attorney General contact Mr. Ferland and Dr. Ferenc to hear first-hand the process issues that they experienced. We also recommend that the Ministry of the Attorney General contact consumer advocate, Ms. Barbara Captijn, for her comments/observations, as she was an observer at this hearing for multiple days<sup>5</sup>.</p> <p>Recommendation 4 in the Thomson/Cohl report dated Aug. 3, 2016 provides a number of recommendations related to managing complex cases:</p> <p><i>"Review the process for homeowner appeals and implement strategies to address all stages of the process, including clear roles for managers, staff and adjudicators. The plan should include:</i></p>

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<sup>5</sup> Mr. Ferland, Dr. Ferenc and Ms. Captijn have authorized including their contact information in this report. Mr. Ferland – e-mail: [jeffrey.ferland@gmail.com](mailto:jeffrey.ferland@gmail.com)  
 Dr. Ferenc – e-mail: [aleks\\_ferenc@hotmail.com](mailto:aleks_ferenc@hotmail.com) Ms. Captijn – e-mail: [bcaptijn@gmail.com](mailto:bcaptijn@gmail.com)

	<ul style="list-style-type: none"> <li>- <i>Early identification of complex cases and strategies to manage them effectively, without compromising the independence of adjudicators who may ultimately preside over the hearings;</i></li> <li>- <i>Dedicated staff and multi-member panels for complex cases;</i></li> <li>- <i>A focus on settling cases through pre-hearing conferences and, where settlement is not possible, finding creative and acceptable ways to limit the length of the hearing, and</i></li> <li>- <i>Changes that will make hearings less formal and legalistic.” (p. 3).</i></li> </ul>
<p>13. LAT adjudicator was her own judge that she was not a bully in a particular case.</p> <p>Homeowners alleged that their LAT adjudicator bullied them. Who ruled on these allegations of bullying? The same adjudicator, who found herself not to be a bully.</p>	<p>This issue was encountered in the Ferland/Ferenc case. How can this be an appropriate procedure?</p>
<p>14. LAT does not always apply its own rules to Tarion/the builder, e.g., timeframes for submitting documents.</p>	<p>This is a frequent complaint from homeowners. Consequences of this include homeowners feeling that they have been disadvantaged, the LAT is unfair, and often results in an erosion of trust between the homeowner and the LAT.</p>
<p>15. Ineffective “watch dogs” of the LAT – the Ombudsman of Ontario and the Auditor General of Ontario.</p> <p>Both the Ombudsman of Ontario and the Auditor General of Ontario have jurisdiction over the LAT. Numerous homeowners have advised that they contacted these offices to complain about process issues, with no results. CPBH has also contacted both of these office many times over the past 13 years.</p>	<p>The only action CPBH is aware of was by the Ombudsman of Ontario reviewed the situation related to the Ferland/Ferenc investigation. However, this too was extremely disappointing, with many outstanding questions remaining. For example, in an e-mail dated April 23, 2017 from CPBH to the Ombudsman of Ontario, we said:</p> <p><i>“...On page 1, in the Background section, you highlighted that Mr. Ferland is concerned with the Tribunal's processes. Then, on page 3, it says that your office considered a number of factors, including whether "the Tribunal's process was administratively fair". The original investigators (Thomson and Cohl) made many recommendations. Then your letter goes on to highlight a number of examples of changes that the Tribunal claims to have made in its procedures, and will be making in the future. In</i></p>

	<p><i>your Conclusion section, you stated that Mr. Ferland was "afforded procedural fairness". Given all of the original investigators' recommendations, and all of the alleged changes that SLASTO says it has made and will be making, how can you possibly have concluded that this family was "afforded procedural fairness"? This is a stunning statement, all things considered, and it requires further explanation by your office as to how it arrived at that conclusion. Please provide that explanation."</i></p> <p>We continue to await that explanation from the Ombudsman of Ontario.</p>
<p>16. Numerous process questions/issues related to the investigation conducted by investigators Mr. Thomson and Ms. Cohl who were hired by the LAT, e.g., selection of those interviewed for this investigation, lack of adequate resources for interviews, etc.</p> <p>Our reading of this report strongly suggests that Mr. Thomson and Ms. Cohl did not go far enough in this investigation and in their conclusions.</p>	<p>CPBH prepared a written submission in September 2016 outlining our questions and concerns with this investigation and the related report. Our submission was sent to the Attorney General, along with several other parties.</p> <p>We continue to await a meaningful response from officials regarding this important matter.</p>
<p>17. LAT decisions not all available on Canlii, e.g., not even those from the past decade.</p>	<p>This hampers homeowners trying to do research to prepare for cases.</p>
<p>18. Lack of performance measures and standards for the LAT.</p> <p>This is a basic management requirement, not being met by the LAT. An example of an important performance measure is how long it takes for a decision, once an appeal is launched.</p>	<p>SLASTO Chair Lamoureux acknowledged this as a key issue when CPBH representatives met with her Dec. 19, 2014. We are not aware of any progress related to this process issue.</p>

<p>19. Lack of transparency to the public by the LAT, e.g., in relation to performance standards.</p> <p>Again, this is a very basic requirement that the LAT is not meeting.</p>	<p>SLASTO Chair Lamoureux acknowledged this as a key issue when CPBH representatives met with her Dec. 19, 2014.</p>
<p>20. Lack of appropriate communication from SLASTO/LAT to homeowners and consumer advocates.</p> <p>SLASTO/LAT do not always provide adequate responses when contacted. This has been reported by a number of homeowners, and indeed has been CPBH's own experience. In a number of situations, there was not even an acknowledgement of receipt of the correspondence, despite repeated follow-ups.</p>	<p>Clearly, this is unacceptable. SLASTO/LAT must at least acknowledge receipt of communication, and treat people with courtesy and respect.</p>

## Appendix 2 Examples of OBC violations that have been reported to CPBH

The following are examples of OBC violations that homeowners have reported to CPBH by homeowners:

- Major structural issues such as improperly installed floors, no foundation anchor bolts, collapsed walls, improperly installed stairs, rim boards not bearing weight, cracked foundations, etc.
- Exterior bricks that hang over the foundation too far
- Electrical outlets that spark
- Gas leaks
- No/missing insulation
- Leaking foundations
- Leaking roofs
- Broken/cracked roof trusses
- Missing vapour barriers, flashing and vents
- Exterior stucco issues
- Improperly installed windows causing cold drafts and heat loss
- Heating, ventilation, air-conditioning (HVAC) system issues. Numerous OBC violations have been reported related to HVAC including undersized furnaces, spaghetti ductwork, undersized ductwork, furnaces not vented to the outside, furnace exhaust and fresh air intake right beside each other, which can result in exhaust being drawn back into the house, etc.<sup>6</sup> The last two examples can lead to carbon monoxide poisoning.

*"...The Building Code's purpose...is to establish minimum standards for people to be able to survive in their homes..... It's basic, minimum standards, bare minimum.... All building code deficiencies are considered serious..."*

– Former City of Ottawa Chief Building Official, Arlene Gregoire

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<sup>6</sup> One particular type of SDHV-HVAC system is important to highlight: Nationally recognized HVAC expert Dara Bowser continues to report that a certain type of SDHV-HVAC system does not meet the Ontario Building Code, and he has called on Minister Mauro for an Inquiry under the Building Code Act. Other technical experts agree that these systems do not meet the OBC. Mr. Bowser continues to await a response from Minister Mauro following a March 1, 2017 meeting with him. According to CTV's W-Five in 2012, more than 50,000 of these systems had been installed in the GTA alone at that time. We understand that these same systems continue to be sold in Ontario today.

The second owner of one home with one of these SDHV-HVAC systems successfully sued the first owner in Small Claims court for not disclosing this HVAC issue when the house was sold on the real estate market. According to the second owner who sued, this was a case of patch and run.

## References

Oct. 7, 2014 - Letter from Mr. Frank Denton (Assistant Deputy Minister of Government and Consumer Services) to Tarion's President Howard Bogach.

Sept. 1, 2015 – Report prepared for Tarion by Ms. Genevieve Chornenki, found at <http://www.tarion.com/about/Documents/Report.pdf>

Aug. 3, 2016 – Final report from George Thomson and Karen Cohl, Public Complaint Investigation re Ferenc and Ferland v. Tarion Warranty Corporation and Polmat Group Inc.

Sept. 22, 2016 - Canadians for Properly Built Homes' Response to the Final Report of the Public Complaint Investigation re Ferenc and Ferland v. Tarion Warranty Corporation and Polmat Group Inc. by Investigators George Thomson and Karen Cohl

Dec. 2016 – Justice Cunningham's Tarion Review Final Report found at <https://www.ontario.ca/document/final-report-review-ontario-new-home-warranties-plan-act-and-tarion-warranty-corporation>

April 24, 2017 Supreme Court Decision Pinteá v. Johns found at <https://www.canlii.org/en/ca/scc/doc/2017/2017scc23/2017scc23.html>

July 19, 2017 – CPBH 11-year analysis of the LAT 2006 to 2016 found at <http://www.canadiansforproperlybuilt homes.com/html/whatsnew/2017/july/2016LATFinalReport.pdf>