

Statement by Canadians for Properly Built Homes

CPBH's Position: Tarion is Beyond Repair

Response to the Auditor General of Ontario's audit report related to the Tarion Warranty Corporation

Page | 1

Ottawa ON – Nov. 3, 2019 CPBH thanks the Auditor General of Ontario for the Special Audit of the Tarion Warranty Corporation. The level of detail is impressive, and we generally concur with many of the findings based on our own experience as a result of communications with thousands of Ontarians over the past 15 years, and CPBH's experiences with/observations of the Tarion Warranty Corporation itself.

That said, CPBH does have some serious concerns and reservations about the Auditor General of Ontario's report. We respectfully submit the following top 10 concerns/reservations for consideration.

1. The Auditor General's recommendations focus on "fixing" Tarion. Research continues to show that about 70% of change initiatives fail (e.g., Burke 2011; Anand & Barsoux 2017). One requirement for successful change is strong monitoring and oversight (e.g., Whelan-Berry and Somerville, 2010). The audit report did not discuss that over the past 15 years, Ministers have typically lasted only about a year or two. Indeed, in the first 13 months of the current ON Government (i.e., since June 2018), there have been three ministers responsible for Tarion. By the time the Minister starts to understand the Tarion file, he/she is shuffled out.
2. The omission of discussion/analysis of Tarion's organizational culture. Consideration of Tarion's organizational culture is fundamental to understanding Tarion and how it operates. For many years now research (e.g., McGregor and Doshi, 2015; Di Stefano, Scrima and Perry, 2019) has raised the importance of an organization's culture. As noted by management guru, the late Peter Drucker, "Culture eats strategy for breakfast". Leaders need to understand and manage organizational culture to drive organizational performance (e.g., Groysberg, Lee, Price & Cheng, 2018). Clearly there are very serious issues with Tarion's current organizational culture. And organizational culture is linked to leadership and ethics (e.g., Ardichvili, Mitchell & Jondle, 2008). The failure rate for organizational culture change initiatives is even higher than the general 70% overall failure rate discussed in #1 above. Burke (2019) notes that culture change is the most difficult organizational change of all.
3. No consideration of Tarion's published Code of Conduct or Tarion's published Values, such as Fairness. Values drive culture (e.g., Groysberg, Lee, Price & Cheng, 2018; Barrett

Values Centre). The audit report references the lack of a builders' Code of Conduct, but does not discuss Tarion's own Code of Conduct, which, according to Tarion's website, "applies to everyone at Tarion, including Board members, officers, and employees." This Tarion Code of Conduct includes principles such as Honesty and Integrity. These, along with the Tarion Value of Fairness, were clearly violated, based on key audit findings, e.g., "*Tarion's rules, in some cases, favoured builders at the expense of new-home owners*" (page 5, Audit Report).

4. No consideration of addressing how to compensate/make amends with past homeowners who have been wronged by Tarion. While the Auditor General's report clearly demonstrates how newly built home purchasers have been "screwed" (Toronto Sun headline, Oct. 30, 2019), the Auditor General did not provide any recommendations to address this for past purchasers, e.g., a process whereby those who feel that their claims have been wrongly denied by Tarion could have them reconsidered by an independent body. There **must** be accountability for these serious issues such as claims wrongly denied. Many serious consequences have emerged for many homeowners due to Tarion's improper handling of homeowners' claims. These range from financial hardship, mental illness such as stress, anxiety and trauma, physical illness such as asthma from mould resulting from Code violations, marital breakdown, and bankruptcy. As reported in the Toronto Star (Feb. 20, 2019), Dr. Earl Shuman took his own life in 2016 after a 27-year battle for compensation concerning his newly built home. As more recent examples, in the summer of 2019, two people (separate situations) reported to CPBH that they had considered suicide.
5. No opinion regarding whether there has been Value for Money. The Standing Committee on Public Accounts of the Legislative Assembly requested a value-for-money audit.
6. No opinion on whether Tarion currently has excessive financial resources, or whether Tarion's fees (most of which are paid by home purchasers) are appropriate.
7. The Auditor General's statement that "*Until recently, the Ministry of Government and Consumer Services did not effectively oversee Tarion to ensure that it was accomplishing its mandate of helping new-home buyers*" (Auditor General of Ontario's Conclusions document). The "until recently" is very premature. Yes, there have been some recent changes in oversight practices, but clearly there is much more that needs to be done for effective oversight.
8. Insufficient information about the role of public servants going forward. The Auditor General did not discuss in Recommendation #26 consideration of possible appropriate roles to be retained by the Ministry (i.e., public servants in addition to Administrative Authorities and/or the private sector). Ontario already has a source of reliable and professional workers who are non-partisan, unbiased and accountable to taxpayers:

public servants. They are experienced in implementing legislation and could be valuable to Ontario new home buyers in assuring that any organization implementing the consumer protection legislation does so fairly, impartially and in keeping with the law.

9. No discussion of the serious shortcomings of Delegated Administrative Authority (DAA) model. Concerns have been registered about the DAA model for decades¹. Another scathing report related to the Technical Standards and Safety Authority (TSSA), another DAA, was released in Dec. 2018 by the Auditor General of Ontario. Then-Minister, Bill Walker, was quoted as saying in relation to that TSSA audit report: *"It's simply shocking...It's unacceptable."* (CBC, Dec. 5, 2018). Meanwhile the Government of Ontario is proceeding with additional Delegated Administrative Authorities, e.g., the Home Construction Regulatory Authority (HCRA), and a possible new DAA concerning regulation of private home inspectors.
10. No recognition of the serious operational issues with the Licence Appeal Tribunal (LAT). This audit report identifies the LAT as a viable source of dispute recognition, but it is not. A number of officials have acknowledged the serious operational problems at the LAT. Many homeowners have advised that they are no longer willing to go to the LAT due to these problems. For example:
 - A letter from Frank Denton (former Assistant Deputy Minister of Government and Consumer Services) to Tarion's President Howard Bogach dated Oct. 7, 2014 referenced the issue of homeowners unwilling to go to the LAT. ADM Denton's letter said: *"...A less*

¹ For decades now, DAAs have been strongly criticized by many, including former MGCS Critic, PC MPP Jim McDonell, who in 2016 introduced Bill 58, Delegated Administrative Authorities Accountability and Transparency Act. In a June 19, 2018 e-mail (i.e., post-election) concerning the Wynne Government's response to the Tarion Review MPP McDonell said: *"When the previous Minister admitted Tarion had drifted too far from government, we agreed and highlighted the issue wasn't just Tarion but the entire DAA model. Accountability and transparency remained a key plank in our election platform and will form the basis of future PC government policies. Concrete and certain action to reform DAAs would need to come as government legislation. We committed to meaningful consultation with stakeholders and to a set of policymaking principles that value input, review and revision to ensure we get it right the first time, unlike the previous government's approach of legislating first and asking questions later. We fully intend to apply those principles while delivering our commitments to accountability across government, and I look forward to having CPBH as a valuable partner at the consultation table soon."* CPBH wrote to former Minister Walker and asked him what he plans to do to address the serious shortcomings of the DAA model. CPBH has also raised this numerous times with the current minister responsible for Tarion, Minister Thompson. CPBH also raised this issue in January 2019 with the Standing Committee on Finance and Economics. So far, the Ford Government remains mute on the serious issues with DAA model, other than the McDonell e-mail referenced above.

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..."

and

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).

Further, since 2006 CPBH has been conducting an annual analysis of LAT Decisions and homeowners' success rates at the LAT. Our analyses have found, overall, a homeowner failure rate of 85% from 2006 to 2018. As well, the number of homeowner appeals at the LAT has dropped from 267 in 2006 to 16 in 2018, another indicator of the lack of consumer confidence at the LAT.

The Auditor General of Ontario has jurisdiction over the LAT. Since 2007, CPBH has provided the Auditor General with a copy of our annual analysis and asked the Auditor General to take action given these very serious operational problems. Mr. Denton's letter and the Thomson/Cohl report have been referenced in CPBH's analyses, so the Auditor General should have been aware of these serious LAT operational issues.

In summary, CPBH respectfully disagrees with the Auditor General of Ontario's recommendations about the way forward as CPBH's position is that Tarion is beyond repair. Given the issues raised here, even full implementation of the recommendations is unlikely to deliver the organization, processes and service Ontarians deserve and require. We are deeply concerned by the Auditor General's recommendations to "fix" Tarion.

CPBH also respectfully notes at least two errors in the Auditor General of Ontario's report:

- Page 44 says that the Tarion Review cost "about \$530,000". The expenses related to this Tarion Review included contracts for Justice Cunningham and Deloitte, costs related to an estimated 20 focus groups/meetings held in different locations across the province (e.g., travel, accommodation, meals, meeting rooms, refreshments, etc.) as well as internal MGCS costs to support the Tarion Review, etc. Based on documents received via Freedom of Information, as well as related estimates, we understand that the costs for the Tarion Review ranged between \$750,000 and \$900,000.
- Appendix 1 indicates that the Builder Directory was introduced in 2013. In early 2008 when CPBH met with the Tarion President and CEO Howard Bogach shortly after he was hired, the serious problems with the builder directory were raised with him then. Mr. Bogach acknowledged in that meeting that he was aware of the issues with that directory.

CPBH proudly continues to work for properly built homes and consumer protection across Canada. It is the only organization of its kind in Canada. CPBH will continue to serve new home owners in crisis and remains ready, willing and able to work with the Ontario Government to better protect Ontarians vis-à-vis the largest purchase most make – a home.

- 30 -

Page | 5

For further information, media may e-mail: info@canadiansforproperlybulthomes.com .

Canadians for Properly Built Homes (CPBH) is an independent, 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. No one at CPBH gets paid a penny. CPBH has supporters in different parts of Canada, undertakes projects at the municipal, provincial and federal level, and offers a variety of ways for Canadians to get involved. CPBH earned "partner" status with the Canadian Consumer Information Gateway (Industry Canada). Visit www.canadiansforproperlybulthomes.com .

References

Anand, N. and Barsoux, J-L. (2017). What everyone gets wrong about change management. Harvard Business Review, 79-85.

Ardichvili, A., Mitchell, J. A., & Jondle, D. (2009). Characteristics of ethical business cultures. Journal of Business Ethics, 85(4), 445–451.

Barrett Values Centre: www.barrettvaluescenter.com .

Burke, W. (2011). A perspective on the field of organization development and change: The Zeigamik Effect. The Journal of Applied Behavioral Science, 47(2), 143-167.

Burke, W. (2019). Organizational change: Theory and practice (5th ed.) Thousand Oaks, CA: Sage.

Groysberg, B., Lee, J., Price, J., & Cheng, J. (2018). The leader’s guide to corporate culture. Harvard Business Review, 96(1), 44–52.

Kotter, J. P. (1995). Leading change: Why transformation efforts fail. Harvard Business Review, 73(2), 59–67.

Di Stefano, G., Scrima, F. & Parry, E. (2019). The effect of organizational culture on deviant behaviors in the workplace, *The International Journal of Human Resource Management*, 30:17, 2482-2503.

McGregor, L., & Doshi, N. (2015). How company culture shapes employee motivation. *Harvard Business Review*. November 25, 2-9.

Whelan-Berry, K. and Somerville, K. (2010). Linking change drivers and the organizational change process: A review and synthesis. *Journal of Change Management*, 10(2), 175-193.

Canadians for Properly Built Homes: Background, November 2019

Canadians for Properly Built Homes (CPBH) was founded in 2004 by Karen Somerville and Alan Greenberg, a couple who faced serious problems with their newly built home in Ottawa, Ontario. In trying to solve their own home problems, they talked to many homeowners, as well as builders, home inspectors, engineers and others involved in the home construction process. They learned that there are serious problems in Canada from coast to coast. Undoubtedly, the worst housing disaster in Canadian history relates to the "BC leaky condo crisis", which continues to this day. While there are good builders, there are, unfortunately, also poor builders, and consumers currently have no objective, reliable means of knowing who the good builders are.

Page | 7

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's Advisors and Board members have diverse backgrounds including the following professions: architecture, engineering, home building, fire safety, real estate, home renovation, environmental medicine, industrial hygiene, insurance, law, academe, political science and business. CPBH has approximately 40 volunteers in different parts of Canada and earned "partner" status with the Canadian Consumer Information Gateway (Industry Canada).

Consumers from many regions of Canada communicate with CPBH regularly, raising their issues and concerns and asking for assistance. Unfortunately, home construction defects present considerable problems for homeowners at all stages of life: from young adults barely able to scrape together their down payment for their first home through to senior citizens who are often on fixed incomes. While there are builders who will quickly and appropriately to address these construction defects, there are also builders who will not. In many of these cases, warranty programs and government officials are unwilling or unable to assist the homeowners, which, unfortunately leaves the homeowners to fend for themselves. Once faced with this situation, homeowners quickly learn that there is insufficient consumer protection for the largest purchase most consumers ever make: a home.

CPBH has had a number of notable successes. For example, CPBH hears regularly from Canadian consumers that CPBH has helped them, and that its work is important and necessary. CPBH has gained the support of Canada's Heating, Ventilation and Air-Conditioning (HVAC) industry in trying to raise the bar for HVAC in Canada. CPBH representatives have appeared on television, for instance, CTV's W-Five on multiple occasions, as well as a variety of appearances on news broadcasts on CBC, CTV, TVO and radio talk show programs such as Peter Warren's program from Victoria, BC, and Peter Silverman's program in Toronto, ON. Articles written by CPBH representatives have been published in national magazines such as The Canadian Home Inspector and Real Estate Marketing. Numerous newspaper articles have referenced the work of CPBH, including the Globe and Mail, the Toronto Star and the Ottawa Citizen. A number of

different organizations seek the input from CPBH as government programs are developed. Also, the Office of the Ombudsman of Ontario began to monitor complaints relating to new home ownership after CPBH presented a detailed submission to the Ombudsman in March 2007. This led to the Ombudsman Ontario's report: *"Building Clarity: Investigation into how the Ministry of Government and Consumer Services represents its relationship with the Tarion Warranty Corporation to the public"*. Many have suggested that if it hadn't been for CPBH's efforts over the previous 12 years, the Tarion Review, headed by the Honourable J. Douglas Cunningham Q.C., would never have been called by the Ontario Government in 2015, nor would the current audit. CPBH enjoys considerable grass roots support from across Canada from many homeowners, and potential homeowners. As well, many professionals working in the home inspection industry, the home construction industry, and government officials have expressed their support for CPBH and its work. CPBH receives no government funding, will not accept donations from builders and relies on donations from consumers to cover its operating costs. Here's how to donate to CPBH:

<http://canadiansforproperlybulthomes.com/what-you-can-do/donate/>